

Strike-out under s. 84C — Perth metro area

Wilkes v Western Australia [2003] FCA 1140

Wilcox J, 8 October 2003

Issue

This decision deals with an application under s. 84C of the *Native Title Act 1993* (Cwlth) (NTA) and Order 20 rule 2(1) of the Federal Court Rules (FCR) to strike out two claimant applications on the basis that the applicants were not the traditional owners of the area the subject of the applications (the application area).

Background

In bringing the strike out application, Christopher Bodney asserted that his family, being the last remaining persons in the Aboriginal societies known as the Ballarruk and Didjarruk Peoples, were the traditional owners of the application area. Mr Bodney submitted that the application should not be allowed to proceed and would inevitably fail as the applicants were not associated with the traditional owners of the application area. Mr Bodney did not suggest that the application failed to comply with the NTA.

Decision

Justice Wilcox accepted that Mr Bodney's opinion was genuinely held but stated that he could not act on the basis of that opinion, whether it be well-founded or not, in considering a strike out application.

In finding that he was not satisfied that there was any basis on which it could be said that the application did not comply with ss. 61 or 62 of the NTA, his Honour noted that:

- whether the application would succeed was a matter to be resolved after the evidence is complete and submissions have been made;
- O 20 r 2(1) of the FCR did not apply as, even though the application may ultimately fail, it was not possible to say that the proceeding was frivolous, vexatious or an abuse of process—at [9] to [11].

Therefore, the strike-out application was dismissed.