Party status – mining company

Walker v Western Australia [2002] FCA 869

French J, 10 July 2002

Issue
The main issue was whether a mining company with applications for mining tenements pending had a sufficient interest under s. 84 of the *Native Title Act 1993* (Cwlth) (NTA) to be joined as a respondent to a claimant application. The Federal Court decided that it was sufficient.

Background
AngloGold Australia Ltd (the company) sought to become a respondent to a claimant application filed on behalf of Ngalia Kutjungkatja People on the basis that the 15 exploration licence applications and four prospecting licence applications it had 16 pending over the claim area provided sufficient grounds to support a joinder application. Seven of the exploration licence applications had been recommended for approval as at the date of the hearing. The native title applicant did not oppose the application for joinder

Justice French accepted that the company had a 'genuine and substantial interest' in exploring for gold in the area the subject of the claim, with expenditure of approximately $100,000 to $150,000 budgeted for exploration should the tenements be granted—at [7].

It was noted that, pursuant to s. 84(3)(b), a person who has an interest that may be affected by a determination in the proceedings who notifies the Court, in writing, that they want to be a party within the period specified in s. 66 is entitled to become a party.

***Yorta Yorta* distinguished**
After surveying the relevant case law, French J turned to the decision in *Members of the Yorta Yorta Aboriginal Community v Victoria* [1996] FCA 453, where his Honour Justice Olney found that a single pending application for an exploration licence was not a sufficient interest for purposes of s. 84 of the NTA.

French J distinguished that case on the basis that the company in this case had a number of well advanced applications directed at furthering its already substantial economic interest the area, an interest that could not be 'dismissed as speculative or nebulous'. However, in a note of caution, his Honour commented that:

> [I]f a party's interests were used as a platform to pursue some collateral ideological or other agenda or if a party were to act grossly unreasonably in relation to a proposed consensual settlement, there is a discretion on the part of the Court to dismiss the party from the action—at [20], referring to *Bissett v Minister for Land and Water Conservation* (NSW) [2002] FCA 365 at [24].

Decision
His Honour made orders that the company be joined as a respondent—at [21].