

Membership – Aboriginal/Torres Strait Islander corporation

Lawton v Bidgerdii Aboriginal and Torres Strait Islanders Corporation Community Health Service Central Queensland Region [2004] FCA 1474

Kiefel J, 16 November 2004

Issue

The issue before the Federal Court was whether an Aboriginal and Torres Strait Islander corporation could, without express provision within its rules of association, reject an application for membership by a person who qualified for membership and who had paid any necessary fees. It is of interest for whatever relevance it may have to the rules of incorporation of prescribed bodies corporate: see ss. 56 and 57 NTA and the Native Title (Prescribed Bodies Corporate) Regulations 1999 (the PBC regulations).

Background

The Bidgerdii Aboriginal and Torres Strait Islanders Corporation Community Health Service Central Queensland Region (the association) was a community health association incorporated under the *Aboriginal Councils and Associations Act 1976* (Cwlth) (ACA Act), the same statute that applies (subject to the NTA and the PBC regulations) to the incorporation of prescribed bodies corporate: see reg. 4 of the PBC regulations.

On 7 February 2003, the applicant Margaret Lawton applied for membership to the association under the rules of the association. Hers was one of 18 applications for membership made on or before 14 February 2003.

On 14 February 2003, the membership fees for all 18 applications were returned to Ms Lawton and she was advised that, given the large number of applications received in bulk, together with talk of an impending 'take over', that the governing committee (the committee) had decided not to accept any membership applications lodged between 18 February (when most of the membership applications were received) and 7 March 2003 (the date of a special general meeting of members called to discuss the issue of membership). Neither Ms Lawson nor the other persons who applied during this time were admitted to membership.

At the time Ms Lawson and the others made their applications, sub-rules 8(1) and (2) of the association's rules provided, respectively, that:

- membership of the association shall be open to adult Aboriginal and Torres Strait Islander persons normally and permanently resident in Rockhampton and the Central Queensland Region; and

- the members of the association shall be those Aboriginal and Torres Strait Islander persons who qualify for membership and who apply to the committee and who pay an annual membership fee as prescribed by the governing committee of the association. A register of members shall be kept by the public officer.

On 4 April 2003, sub-rule 8(2) was amended to read:

The members of the Association shall be those Aboriginal and Torres Strait Islander persons who qualify for membership, who apply in writing to the Committee and whom the Committee decides to admit to membership. An annual membership fee as prescribed by the Governing Committee shall be paid each year. The Committee will issue membership forms to those persons approved by the Governing Committee to apply for membership. The Governing Committee may seek more information from applicants to assist members of the Committee in considering applications for membership. The Governing Committee's decision is final.

Ms Lawson contended that the rules did not give the committee power to reject applications for membership if persons fulfilled the description required and paid any necessary fees. In response, the association submitted that there must be discretion to prevent a person who might be likely to obstruct the association in the pursuit of its objectives from becoming a member. No particular object was said to be in question in relation to these applications.

Findings

Her Honour Justice Kiefel held that:

- while the rules made provision for the expulsion of a member, they did not permit the committee to prevent persons who might be likely to obstruct it in the pursuit of the associations objectives from becoming members;
- the mere fact of a person having to apply to the committee of the association does not provide the committee with wider powers of refusal or rejection than are marked out by the rules. The method of application was simply a procedure to be followed;
- it was not possible to read into the rules a discretion in the committee to reject a person's application—at [18] and [20].

Her Honour rejected a submission by the association that, if there were no discretion to refuse membership, then a person who had been expelled could apply for membership again and would have to be accepted. It was held that expulsion from the association implied an inability to continue to be a member that could not be overcome by a fresh application unless the resolution was rescinded—at [15] to [16].

In relation to the amendment to rule 8, Keifel J indicated (obiter) that even after amendment, there may be no power in the committee to reject or suspend an application for membership unless the application was not in accordance with the rules—at [20].

Decision

The court declared that, with respect to the applications made prior to 4 April 2003, the committee of the association did not have the power to reject as a member any person who was eligible in accordance with sub-rules 8(1) and (2), who paid the annual fee and who was not the subject of a prior resolution of expulsion.