Authorisation – Combined Mandingalbay Yidinji-Gunggandji appeal

Noble v Mundraby [2005] FCAFC 212

North, Weinberg and Greenwood JJ, 30 September 2005

Issue
The main issue in this appeal to the Full Court of the Federal Court was whether the authorisation provisions of s. 251B of the *Native Title Act 1993* (Cwlth) (NTA) had been applied correctly to support the removal and replacement of the applicant under s. 66B(2).

Background
Frederick Noble sought to appeal against a decision of his Honour Justice Spender in *Combined Mandingalbay Yidinji-Gunggandji Claim v Queensland* [2004] FCA 1703, summarised in *Native Title Hot Spots* Issue 13. Justice Spender determined an application made under s. 66B(1) by Vincent Mundraby, Les Murgha and Stewart Harris seeking removal of Mr Noble from the group of people named as 'the applicant' in a claimant application that was a combination of several earlier claimant applications. On the definition of 'the applicant', see ss. 61(2) and 253.

The question of whether leave to appeal was required was raised. The court determined that, whether or not leave was required, it would need to consider the merits of the appeal. Therefore, it approached the case on that basis—at [6].

At first instance
Spender J considered evidence of a meeting of the members of the combined claim group before concluding that:

- the meeting voted to remove Mr Noble and replace him with Charles Garling;
- the minutes of the meeting supported the finding that 'all the persons in the native title claim group' had authorised the latter named individuals;
- the claim was a joint (combined) claim and 'all the persons in the native title claim group' were not the Gunggandji People, the Yidinji People or the Mandingalbay People but all the people in the native title claim group for the combined claim, i.e. all three groups;
- the requirements of authorisation under s. 251B relate to authorisation by all the members of the claim group, not a sub-group;
- Mr Mundraby, Mr Murgha, Mr Harris and Mr Garling were authorised under s. 251B of the NTA.

On appeal— proof of decision-making system required?
It was argued for Mr Noble that:

- Spender J should have received evidence and made findings as to whether the process used at the meeting was agreed to and adopted by the claim group, as contemplated by s. 251(b), given there was dispute about it at the meeting; and
- subsection 251B(b) refers to 'a process of decision-making' and that requires proof of some system of decision-making, not merely evidence of the way in which a 'one-off' decision was made.

Weinberg and Greenwood, in a joint judgment, noted that Spender J:
- appreciated the need to identify the appropriate decision-making process and to determine whether that process had been followed;
- rejected the argument that individual sub-group processes governed authorisation for the combined claim;
- stated that the conditions for the making of the order had been met—at [16].

The court held that:
- Spender J found that the members of the claim group agreed that the vote at the community meeting was a process of decision-making for the purpose of authorising the applicant for the claimant application;
- the members of the native title claim group then adopted that process;
- based on the evidence, it was open to the court to conclude that, by voting on the motions put to the meeting, those present agreed to a process of authorisation under s. 251B(b) by a vote of all the members of the native title claim group—at [16] to [18].

Section 251B
It was observed that s. 251B:
- does not require proof of a system of decision-making beyond proof of the process used to arrive at the particular decision in question;
- accommodates a situation where a native title claim group agrees to follow a particular procedure for a particular decision, even if other procedures are normally used for other decisions;
- does not require a formal agreement to the process adopted for the making of a particular decision; and
- contemplates that agreement may be proved by the conduct of the parties—at [18].

In this case, the court noted that there was evidence that:
- the claim group conducted itself at the meeting on the basis that it agreed to a vote by the members of the group to determine the question of authorisation;
- all persons present voted in favour of the motion;
- nobody was recorded as leaving the meeting or refusing to vote or in any other way conducting to indicate dissent from the course adopted—at [18].

Decision
It was held that Mr Noble could not succeed in an appeal because there was evidence from the conduct of the claim group on which Spender J could base his conclusion that the requirements of s. 251B(b) were satisfied. Therefore, if leave to appeal was

required, such leave was refused and, if not, the appeal should be dismissed—at [18] and [19].