

Party status and strike-out application

Simms v Minister for Land & Water Conservation [2002] FCA 15

Lindgren J, 21 August 2002

Issues

This case concerned applications by the New South Wales Native Title Services (NSWNTS) to be joined as a party to the proceedings and then to strike out the main application because of lack of authorisation.

Application for joinder

NSWNTS relied on s. 84(5) of the *Native Title Act 1993* (Cwlth) (NTA) which authorises the Federal Court to join any person at any time as a party to the proceedings 'if the Court is satisfied that the person's interests may be affected by a determination in the proceedings'. Although NSWNTS is not a representative Aboriginal/Torres Strait Islander body, it has been funded under 203FE of the NTA to perform the functions of such a body.

Decision

Justice Lindgren decided that NSWNTS had interests which may be affected by a determination in the proceedings and should be joined to the proceedings pursuant to s. 84(5) of the NTA: *Bissett v Minister for Land and Water Conservation* [2002] FCA 365, *Gale v Minister for Land and Water Conservation* [2002] FCA 972 and *Woodridge v Minister for Land and Water Conservation* [2002] FCA 1109.

Application for strike-out

If an application does not comply with s. 61 of the NTA (among others), then a party to the proceeding may apply to the court to have that proceeding struck out: s. 84C. NSWNTS sought strike-out on the basis that the applicant in the claimant application was not duly authorised by as required under ss. 61(1) and 251B of the NTA.

The affidavit evidence provided in support of the applicant's authorisation related to a previous native title proceeding, brought by ostensibly the same native title group (the Elouera people), which had been dismissed for non-compliance with conditional orders made in May 2002. The current proceedings were commenced on 21 May 2002 in substantially similar terms as in the previous proceedings. There was evidence that, at a meeting convened by or with NSWNTS, the Elouera people had decided that the conditional order for dismissal of the previous proceedings should be allowed to take effect and that the matter should be considered further in September 2002.

Decision

His Honour found on the evidence before him that the three people named as the applicant were not authorised to commence these proceedings and the application was struck out.