

Party status — local council refused

Akiba on behalf of the Torres Strait Regional Seas Claim People v Queensland (No 1) [2006] FCA 1102

French J, 18 August 2006

Issue

The issue before the Federal Court was whether to join the Torres Shire Council (the council) as a respondent to a claimant application.

Background

The Torres Strait Regional Seas Claim was filed in November 2001. It covers approximately 44 000 km sq seaward of the high water mark around certain islands and includes beaches, reclaimed areas and inter-tidal zones. The council sought to be joined as a party to the proceedings on 22 June 2005.

Interests of the council

The council submitted that the interests it held within the application area may be affected by a determination of native title, with those interests being (among others):

- existing council infrastructure;
- operational interests including foreshore maintenance;
- community recreation and access, particularly in relation to beaches and the inter-tidal zone;
- the operation and enforcement of council's local laws which restrict and regulate activities within its local government area.

Justice French noted that:

- the council's interests would be sufficient interests for the purposes of s. 84 of the *Native Title Act 1993* (Cwlth) (NTA), referring to the requirement in s. 66(3) for notice of native title determination applications to be given to local government bodies for any area covered by such applications;
- however, in this case, those interests did not reflect any actual or proposed engagement or activity of the council in the area concerned — at [29].

Decision

French J exercised his discretion against the joinder of the council, relying on:

- the theoretical, abstract and limited character of the interests relied upon;
- the very significant and largely unexplained delay (more than three years) in seeking joinder;
- the fact that the State of Queensland could be expected to adequately represent the council's interests;
- any native title determination would 'inevitably' be subject to the valid laws of the state and its authorities;

- given that protection, it was difficult to see any further practical basis for the council's involvement—at [29].