

Party status—peak fishing body denied

Dann v Western Australia [2006] FCA 1249

French J, 18 September 2006

Issue

The issues in this case were whether:

- the Western Australian Fishing Industry (Inc) (WAFIC) should be joined as a party to two claimant applications;
- the court should make a springing order to remove inactive respondents from claimant applications in the Geraldton/Pilbara region.

Background

WAFIC made application under s. 84(5) of the *Native Title Act 1993* (Cwlth) (NTA) to be joined as a respondent to two claimant applications. It described itself as the peak body for the fishing industry in Western Australia. WAFIC had been joined as a respondent to other claimant applications but, as noted, that was done without contention. The application for joinder in this case was referred to a judge because Justice Lindgren refused to join the Chamber of Minerals and Energy of Western Australia in *Harrington-Smith v Western Australia* [2002] FCA 184. The crucial question was whether WAFIC had an interest that may be affected by a determination in the proceedings—at [15].

Justice French referred to earlier relevant decisions, including the Full Court of the Federal Court in *Byron Environment Centre Inc v Arakwal People* (1997) 78 FCR 1 (*Byron*). In that case at 9, Black CJ said that:

[A] body that represents the interests of others whose members have interests that may be affected, does not, for that reason alone, become a person whose interests are affected ... [but that] ... is not to deny that a corporation may have interests that may be affected by a determination of native title if, for example, its activities might be curtailed or otherwise significantly affected by the determination.

French J went on to note that:

It is clear from the authority ... in *Byron* ... that WAFIC cannot acquire party status by reason of the possible effects of a native title determination on the interests of its members. It asserts, however, that it has an affected interest by reason of its participation in statutory committees advising government in relation to managed fisheries, some of which exist in the claim area—at [26].

His Honour rejected this submission because:

- this function could not, apparently, be compared to that of a statutory authority with direct responsibility for the management of an area the subject of a native title determination application;
- there was no evidence logically linking WAFIC's economic interests to a native title determination or to demonstrate 'any real basis upon which WAFIC's

capacity to participate in the committees to which it has referred would be affected’ — at [26].

Decision on joinder

Joinder was refused. It was noted that WAFIC was acting as an agent for fishing interests in other cases and that did not require the intervention of the Federal Court: ‘Under s 84B a party to a proceeding can appoint an organisation as its agent’ — at [27].

General springing orders refused

An application from the representative body in the Pilbara and Geraldton regions for general springing orders to remove inactive respondents was refused. French J did not consider such a ‘global order’ as appropriate but left open the possibility of such orders in respect of particular applications because they may be ‘helpful ... where evidence is put before the Court to support the practical utility and justice of such a direction’ — at [32].