

# Party status – former representative body

## ***Bennell v Western Australia* [2008] FCA 1633**

Siopis J, 5 November 2008

### **Issue**

The issue before the court was whether the former representative body for the area, the Noongar Land Council, retained a sufficient interest to remain as a party to a claimant application (known as the Single Noongar claim) made in respect that area. This matter was brought before the court by the current representative body for the area, the South West Aboriginal Land and Sea Council (SWALSC). The court ordered that the Noongar Land Council cease to be a party.

### **Background**

In 1996, the Noongar Land Council (NLC) was appointed as a representative body under the *Native Title Act 1993* (Cwlth) (NTA). It became a party to the Single Noongar claim based on its status as a representative body at the time it was joined and its application to be recognised as a representative body under a new regime for representative bodies introduced by the *Native Title Amendment Act 1998* (Cwlth). NLC subsequently failed to secure recognition as a representative body under the new regime and, therefore, ceased to have any statutory role or functions under the NTA.

SWALSC sought to have the NLC removed from the proceedings on the ground that it lacked a qualifying interest, relying upon ss. 84(8) and 84(9) of the NTA, which relevantly provide that:

- the court may, at any time, order that a person (other than the applicant) cease to be a party to the proceedings;
- the court is to consider making such an order if it is satisfied that the person never had, or no longer has, interests that may be affected by a determination in the proceedings.

### **A qualifying interest**

His Honour Justice Siopis noted that:

- the functions of a recognised representative body, set out in Pt 11, Div 3 of the NTA, are directed towards assisting native title claimants in relation to matters associated with native title related claims;
- pursuant to ss. 66(3)(a) and 84(3), a representative body under the NTA has the standing to become a party to a native title determination application;
- pursuant to s. 203AD(4) (part of the new representative body regime), there can be only one representative body for each designated area at any one time;
- as a result, a representative body that was unsuccessful in its application to be recognised lost its status and had to make way for a new representative body in accordance with s. 203FC—at [16] to [19].

The NLC failed to secure recognition as a representative body under the new regime but sought to stay on as a party in order to represent dissident interests within the Single Noongar claim group. Siopis J found that the NTA does not provide for any entitlement for a body to become, or remain, a party to a native title determination proceeding on that basis—at [20] to [23].

### **Decision**

The court ordered that NLC cease to be a party to the Single Noongar claim because it did not have a sufficient interest entitling it to be, or continue to be, a party to that proceeding—at [24] to [25].