Replacing the applicant under s. 66B — Yaburara Murdudhunera

Holborow v Western Australia [2002] FCA 1428

French J, 20 November 2002

Issue
This was an application brought pursuant to s. 66B of the *Native Title Act 1993* (Cwlth) (NTA) to replace the current applicant in the claimant application made on behalf of the Yaburara and Murdudhunera people (the main proceedings). It was found that the applicant should be replaced.

Background
A future act agreement (see s. 31(1)(b) of the NTA) had been prepared that had the support of the majority of the native title claim group. However, Patricia Cooper (who was one of the people named as the applicant in the main proceedings) refused to sign the agreement. As the claim was registered on the Register of Native Title claims, she was also one of those who constituted the registered native title claimant. In any right to negotiate proceedings, she was included as part of the native title or negotiation party. The future act agreement could not be finalised without her signature—see ss. 29, 30, 61(2), 75 and 253 of the NTA.

Subsequent to her refusal to sign the agreement, meetings were called by the Yaburara and Coastal Mardudhunera Aboriginal Corporation (the corporation). The corporation is run by a committee on behalf of the native title claim group, who constitute all the corporation's members. The decision-making process utilised by the corporation was said to be an adaptation of a consensus model used in traditional times.

Three meetings were called, at each of which resolutions were passed to remove Ms Cooper as one of those named as the applicant by making an application to the Federal Court under s. 66B of the NTA. There were two unsuccessful hearings of the s. 66B application subsequent to the first and second meetings. In the first, Justice French was of the view that the original meeting was procedurally flawed for reasons, among others, of insufficient notice: see *Daniel v Western Australia* [2002] FCA 1147, summarised in *Native Title Hot Spots* Issue 2.

At the second hearing, following a meeting by teleconference, his Honour formed the view that nothing less than a face-to-face meeting of the native title claimant group was necessary to endeavour to resolve the issue and to ensure that resolutions, if any, passed by the group reflected the intentions of its members. Consequently, a third meeting, facilitated by a member of the National Native Title Tribunal, was held as ordered on 14 November 2002.

Decision

French J was of the view that there was no 'single mandated process of traditional decision-making' covering both groups and that, while there might be a traditional decision-making process relevant to land that can be located within the subgroups of the native title claim group, the native title determination covered both groups. However, his Honour accepted that the process of decision-making utilised at the third meeting of the native title claim group to resolve this issue was a process agreed to and adopted by the persons in the native title claim group—see at [41] and [50].

It was found that Ms Cooper, in failing to comply with the directions of the claim group, had exceeded her authority. Therefore, an order was made pursuant to s. 66B to replace the applicant, the effect of which was to remove Ms Cooper as one of the people named as the applicant in the main proceedings—at [50] to [52].