Party status

Jinibara People v Queensland [2009] FCA 816

Spender J, 17 July 2009

Issue
The issue was whether the Federal Court should join people who were claimants on a previously overlapping claimant application as respondents to another claimant application made under the *Native Title Act* 1993 (Cwlth) (NTA). Joinder was refused.

Background
In February 2009, Mr Serico and Dr Fesl applied for orders that they become respondents to a claimant application made on behalf of the Jinibara People. Mr Serico and Dr Fesl were claimants in an application made on behalf of the Gubbi Gubbi claim that had overlapped the Jinibara but had since been withdrawn.

Decision
Justice Spender dismissed application for joinder because:

- the material provided did not establish the requirements for joinder as provided by s. 84(5) of the NTA;
- neither Dr Fesl nor Mr Serico claimed that they held native title over the area but merely asserted that they had certain rights and interests;
- Mr Serico had neither demonstrated how his interests might be affected by a determination in the Jinibara proceedings (see s. 84(5) of the NTA) nor provided evidence of the traditional laws and customs that gave rise to the rights and interests he claimed to hold—at [4], [6] and [10] to [11].

His Honour was careful to point out that:

> I am ... not in the slightest doubting the important and distinguished contribution ... [Mr Serico and Dr Fesl] have made, nor do I doubt that somewhere in the background there is an assertion that somehow they have a claim to at least part of the Jinibara People's area. There is just no material to demonstrate a proper basis for joinder and, unfortunately, in those circumstances each application for joinder is dismissed—at [12].

Comment - one determination in respect of a particular area
In encouraging further discussions to resolve native title issues, Spender J said at [13] that: '[U]nder the Act, there can only be one determination in respect of a particular area. There cannot be overlaps'. While s. 68 provides that there can only be one determination of native title in relation to a particular area (other than one made on appeal or pursuant to a successful application under s. 13 to revoke or revise a determination), a number of determinations have recognised 'shared country' i.e. native title rights and interests being held in the same area by different or 'overlapping' groups. See, e.g. *James v*

Western Australia [2002] FCA 1208; *Attorney-General of the Northern Territory v Ward* (2003) 134 FCR; [2003] FCAFC 283; *Daniel v Western Australia* [2003] FCA 666; and *Lardil Peoples v Queensland* [2004] FCA 298.