

## Party status

### *Atkinson on behalf of the Gunai/Kurnai People v Victoria (No 2)* [2010] FCA 905

North J, 16 August 2010

#### **Issue**

David James Baldwin, the holder of a grazing licence, applied to be joined as a respondent to the Gunai/Kurnai #2 claimant application pursuant to s. 84(5) of the Native Title Act 1993 (Cwlth). The application for joinder was dismissed because Mr Baldwin was in default and, in any case, had not demonstrated an interest of the kind required.

#### **Background**

Subsection 84(5) provides that:

The Federal Court may at any time join any person as a party to the proceedings, if the Court is satisfied that the person's interests may be affected by a determination in the proceedings and it is in the interests of justice to do so.

Mr Baldwin claimed an interest as a primary producer and holder of a water frontage licence on the Mitchell River. He was given notice of the hearing but did not appear. It was found that this amounted to a default within the meaning of O 35A r 2(f) of the Federal Court Rules, i.e. he was in default because he failed to 'prosecute the proceeding with due diligence'. Pursuant to O 35A r 3(a), where an applicant is in default, the court may order that 'the proceeding be stayed or dismissed as to the whole or any part of the relief claimed by the applicant'. The application for joinder was dismissed because of the 'non-appearance' —at [3] to [6].

Further, the Victorian Department of Sustainability and Environment indicated Mr Baldwin's grazing licence was not within the area covered by Gunai/Kurnai #2. It was within the area covered by Gunai/Kurnai #1. Therefore, that licence did not provide a basis for the application to be joined —at [7].

#### **Decision**

The application for joinder was dismissed.