

## Party status

### *Atkinson on behalf of the Gunai/Kurnai People v Victoria (No 4)* [2010] FCA 907

North J, 16 August 2010

#### Issue

Colin Francis Wood 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) on the basis that he was a recreational user of public lands subject to that application. 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.

In his application, Mr Wood stated he hunted, fished and otherwise used parts of the claim area for recreational purposes.

Mr Wood was given notice of the hearing but did not appear. This was found to amount 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].

It was also found that Mr Wood's application did not satisfy the requirements of s. 84(5) because:

The details of his interest claimed ... are insufficient to support his application, with all the attendant participation in the application which would be the result, as they do not indicate with sufficient detail the location of his activities, nor the frequency of them. Further, it is not made clear that the activities undertaken would be affected in a demonstrable way by a determination in relation to the application — at [7] to [8], referring to to *Byron Environmental Centre Incorporated v Arakwal People* (1997) 78 FCR 1.

#### Decision

The application for joinder was dismissed.