

## ***Budby v Queensland* [2010] FCA 1017**

Collier J, 15 September 2010

### **Issue**

The main issue for the Federal Court was whether the Wiri Cultural Heritage and Community Development Corporation (the corporation) should cease to be a respondent party to a claimant application pursuant to ss. 84(8) of the *Native Title Act 1993* (Cwlth) (NTA). It was decided it should because it did not have sufficient interests to justify it maintaining that status.

### **Background**

The applicant to the Barada Barna People's claimant application sought an order that the corporation be 'struck out' as a respondent party. The corporation was not represented in the proceedings. The only evidence of the corporation's interest before the court was identified in a Form 5 (notice of intention to become a party) as 'traditional connection to and Native Title Cultural Heritage "rights and interests" in lands over which this NT Application has been made'.

### **Corporation's interests insufficient**

Subsection 84(8) provides that the court 'may at any time order that a person ... cease to be a party to the proceedings' and s. 84(9) relevantly provides that the court 'is to consider' making an order under s. 84(8) if the court is satisfied that 'the person never had, or no longer has, interests that may be affected by a determination in the proceedings'. Justice Collier held that 'interests' has the same meaning for the purposes of ss. 84(5) and 84(9). Therefore:

- the basis of the corporation's claimed interest was identical to that on which certain individual respondents claimed to have such interests;
- there was no evidence that the corporation had any interests above that of an ordinary member of the public or interests other than by association with the individual members of the corporation—at [12] to [13], applying *Byron Environment Centre Incorporated v Arakwal People* (1997) 78 FCR 1, *Adnyamathanha People No 1 v South Australia* (2003) 133 FCR 242 ; [2003] FCA 1377; and *Combined Dulabed and Malanbarra/Yidinji Peoples v Queensland* (2004) 139 FCR 96; [2004] FCA 1097.

Therefore, the court was not satisfied that the corporation had interests that may be affected by a determination in the proceedings—at [13].

### **Decision**

The court ordered that the corporation cease to be a respondent.