Coyne v Western Australia [2010] FCA 1052

Siopis J, 25 June 2010

Issue

The issue was whether the applicants for the Wagyl Kaip and the Southern Noongar claimant applications should be replaced pursuant to an application made under s. 66B(1) of the *Native Title Act 1993* (Cwlth) (NTA).

Background

The application to replace those who comprised the 'current applicant' was made because one person included in both applicant groups had died. In *Coyne v Western Australia* [2009] FCA 533, Justice Siopis considered the effect of resolutions passed at an authorisation meeting held in Albany on 1 December 2007 for the same native title claims. The terms of the authorisation resolutions were that certain people would act as the applicant 'or such of them as are eligible to act as an applicant and who remain willing and able to act in respect of the application in the future'. It was found that if the original authorisation is in these terms, then no further authorisation is necessary for those who remain to act as 'the applicant' if one or more of the persons authorised to comprise the applicant subsequently dies—at [3] to [5].

Comment – only applies if no traditionally mandated decision making process

This decision relates to circumstances where the claim group does not have a process mandated by traditional law and custom for making decisions like who should be authorised to make a claimant application, i.e. this reasoning does not necessarily apply if s. 251B(a) is relied upon.

Decision

In these circumstances, Siopis J made orders to replace the applicant for each application.