Far West Coast Native Title Claim v South Australia [2011] FCA 24

Mansfield J, 21 January 2011

Issue

The issue before the Federal Court was whether to join Mirning Community Incorporated (MCI) as a respondent party to the Far West Coast Native Title Claim (FWCNTC). The court found MCI did not have sufficient interests to be joined.

Background

The FWCNTC originated subsequent to agreements between the Mirning People and the Far West Coast People to resolve their overlapping claimant applications. MCI was incorporated on 20 November 2009 under the *Associations Incorporation Act 1985* (SA). Its objects are to:

- encourage, promote and cultivate an appreciation of Mirning language, culture, history and heritage;
- preserve and protect that language, history and culture and to carry out activities to do so; and
- to engage in such other activities as may be incidental to or in furtherance of those purposes.

Membership is confined to Mirning persons who were accepted by the board of MCI.

Sufficient interest?

MCI contended it had a sufficient interest to be joined as a party because it had a legal or equitable estate or interest in the area subject to the FWCNTC or some other right, charge, power or privilege over or in connection with that area so as to enliven either ss. 253(a) or (b) (the definition of interest) of the *Native Title Act 1993* (Cwlth) (NTA). Justice Mansfield applied the test expressed in *Byron Environment Centre Inc v Arakwal People* (1997) 78 FCR 1; [1997] FCA 797 and found that:

- MCI did not itself have a sufficient interest for the purposes of s. 84(5) to be joined as a respondent party; and
- its objects did not include any basis upon which it could assert a direct entitlement to interests in the area which constituted the claim area – at [21], [27], [28] and [29].

Decision

The application to be joined as a respondent was refused.