

# Representation by non-lawyer — s. 85

## *Rubibi v Western Australia* [2003] FCA 62

Merkel J, 10 February 2003

### Issue

The question in this case was whether the Federal Court should allow a native title claim group to be represented by a person who was not legally qualified pursuant to s. 85 of the *Native Title Act 1993* (Cwlth) (NTA). Conditional leave was granted.

### Background

A group of Aboriginal respondents, known as the Walman Yawuru, made application under s. 85. The group had been legally represented previously but were no longer able to pay legal fees. Section 85 provides that a party may appear in person or may be represented by a barrister, a solicitor or, with the leave of the Federal Court, another person.

Leave under s. 85 to be represented by a non-legally qualified person had been granted previously in *Rubibi Community v Western Australia* (2001) 112 FCR 409; [2001] FCA 607, which involved a number of the parties to these proceedings. The court found the grant of leave in that case was ‘of assistance to the court and served the interests of justice’ — at [7].

The court noted that, while the power to grant such leave should be exercised sparingly, there are particular benefits in having one person represent a claimant group, particularly in cases where ‘the nominated representative may be inadequately but nonetheless better qualified to represent the group members than the group members themselves’ — at [11].

### Decision

Leave was granted, subject to the followings conditions:

- the representation was confined to matters that the Walman Yawuru respondents had an interest in contesting;
- as the nominated representative was female, if male gender restricted evidence is to be given, then either male Walman Yawuru or such other male persons to whom the court grant leave, will represent the respondents in relation to that evidence;
- the court may at any time, either of its own motion or upon application by any party, revoke or vary these conditions; and
- the grant of leave is not to be used as a basis for varying any time fixed for the taking of interlocutory steps in the matter — at [13].