

Party status – claim group member seeks joinder

Bidjara People #2 v Queensland [2003] FCA 324

Ryan J, 7 April 2003

Issue

This decision concerned a decision by the Federal Court to accede to an application under s. 84(5) of the *Native Title Act 1993* (Cwlth) (NTA) by a member of a native title claim group to be joined as a party to that group's claimant application.

Background

In this case, the person seeking to be joined as a respondent to the claim (Jo-ann Fraser) indicated that she did not accept that those named as the applicant (one of whom is her brother) in the claimant application have, or ever have had, authority to make the application and conduct the proceedings on her behalf.

Justice Ryan:

- noted that there was no facility under s. 61(1) of the NTA for proceedings to be constituted by applicants acting in different interests or claiming different authorisation to bring proceedings; and
- referred to *Kulkalgal People (Aureed Island) v Queensland* [2003] FCA 163 (summarised in *Native Title Hot Spots Issue 5*), in which His Honour Justice Drummond rejected a similar application on the basis that the NTA is clearly designed to prevent such an application from succeeding.

However, Ryan J was of the view that the application under s. 84(5) could succeed because:

- a dissatisfied claimant is 'clearly' a person whose interests may be affected by a determination in the proceedings 'within the meaning of s 84(3)(ii) or (iii)'; and
- it would be unjust to not allow dissentient members a voice in proceedings but that it would unnecessarily multiply proceedings to require such persons to institute their own claims—at [7].

His Honour acknowledged that s. 61(1) requires the person or persons who are named as the applicant to be authorised by all the members of the native title claim group and s. 66B enables the replacement of the applicant in certain circumstances.

However, Ryan J was of the view that s. 66B:

[D]oes not accommodate the situation which has arisen here, where the applicants retain the authorisation...of the majority of the claim group, but there are...dissentient members of the group—at [7].

Decision

Pursuant to s. 84(5) of the NTA, Ms Fraser was joined as a party to the proceedings.