Authorisation — Bunthamarra People #2

Booth v Queensland [2003] FCA 418

Tamberlin, J, 9 May 2003

Issue

The question in this case was the applicant was authorised by the native title claim group to make a claimant application on their behalf. It was found that the applicant was not and so the application was dismissed.

Background

The Queensland South Representative Body Aboriginal Corporation (Queensland South) applied to be joined as a party to the proceeding and subsequently moved that the proceedings be either struck out pursuant to s. 84(5) of the *Native Title Act 1993* (Cwlth) (NTA) or dismissed pursuant to O 20 r 2(1) of the Federal Court Rules.

Justice Tamberlin was satisfied on the evidence filed that Queensland South could be joined as a party. The second question was whether the applicant had been authorised pursuant to the NTA to bring the application. The applicant relied upon:

- his status as the son of a Bunthamarra elder;
- his status as Managing Director of Yundra Pty Limited, pursuant to which he holds 'authority' from that company as a trustee of the Bunthamarra Native Title Group;
- his previous negotiations on behalf of the native title claim group;
- his evidence that, between 1997 to 2000, members of each Bunthamarra family had attended several meetings or had been consulted by telephone and, as a result, he was authorised by 'majority vote' (There were no formal records of the meetings, telephone calls or notices of the meetings)—at [8].

Queensland South contended there was no evidence of a decision making process by which the applicant had been authorised nor any evidence that the decisions from the 1997 to 2000 meetings were current when the application was lodged in April 2002—at [9].

Section 251B

Tamberlin J noted that the members of the native title claim group were not identified by either name or description. In relation to the requirements of s. 251B, it was found that:

> There is ... a lack of evidence that the [claim group] ... alleged to have authorised [the applicant] had any applicable traditional decision-making process or that any particular process was followed. There is no evidence that the [group] agreed to and adopted some other decision-making process in relation to authorising the applicant to make the application. Nor is there any evidence that the process has been recognised or that any process has been followed ... . [T]here is no evidence, oral or written, as to the constitution of the group or the basis on which it is claimed that a majority vote would be sufficient.

> Moreover, this begs the questions in relation to the majority vote as to who and how many persons are entitled to vote and precisely what is meant by the expression "majority vote"—at [11].

His Honour referred to the recent decisions of the court dealing with the requirements for the authorisation of a claimant application. In the light of the matters noted above and the authorities cited, Tamberlin J was not persuaded that the applicant had complied with the requirements of NTA in relation to establishing authorisation to make or pursue the application—at [12] to [13].

Decision

The claimant application was dismissed.