

Prescribed body corporate — alignment of membership clause with native title holders

James v Western Australia (No 2) [2003] FCA 731

French J, 17 July 2003

Issue

The question in this case was whether the body corporate nominated by the native title holders complied with the requirements of the *Native Title Act 1993* (NTA) and the *Native Title (Prescribed Body Corporate) Regulations 1999* (the Regulations).

Background

Section 55 of the NTA requires the Federal Court, at the time of determining that native title exists, to make a determination under either s. 56 (which deals with holding the native title on trust by a prescribed body corporate) or s. 57 (which deals with non-trust functions of prescribed bodies corporate). Section 59 provides for making regulations to prescribe the appropriate body corporate—see reg. 4 of the Regulations.

Following a consent determination of native title recognising the Martu People (along with, in relation to a particular area, the Ngurrara People) as the common law holders of native title in relation to the determination area, Western Desert Lands Aboriginal Corporation (Jamukurnu-Yapalikunu) (the corporation) was nominated as the prescribed body corporate to hold native title on trust for the common law holders of native title in the determination area (i.e. both the Martu and Ngurrara people)—see s. 56(2)(a). The nomination was made by Colin Peterson as the representative of the common law holders. Annexed to the nomination were:

- a document evidencing the written consent of the corporation to act as trustee, as required by s. 56(2)(a);
- the certificate of incorporation under the *Aboriginal Councils and Associations Act 1976* (Cwlth), the method of incorporation prescribed by the Regulations;
- a copy of the rules of the corporation; and
- an affidavit supporting the nomination from a solicitor engaged to assist the common law holders in developing and registering the corporation that also detailed the lengthy process of consultation within and between the Martu and Ngurrara people, according to traditional laws and customs, that led to the formation of the nominated corporation—see [4] to [10].

Decision

Justice French was satisfied the corporation complied with the NTA and Regulations in that:

- it was properly incorporated for the purpose of being the subject of either a s. 56 or s. 57 determination;
- its objects set out its purpose of becoming a registered native title body corporate;

- all members of the corporation are persons who are included in the native title determination as common law holders of native title;
- the membership clause in the rules does not allow for anyone other than a person who is in the class of native title holders defined in the determination of native title to become a member of the corporation—at [14] to [20].

His Honour noted that it would be desirable if the membership class of a prescribed body corporate be ‘textually aligned precisely’ with the definition of the native title holders in the relevant determination of native title. While this is not an express requirement, doing so would avoid any doubt as to compliance with the Regulations—at [16].