

Prescribed body corporate — Tjurabalan

Ngalpil v Western Australia [2003] FCA 1098

Carr J, 9 October 2003

Issue

In this case, the court considered whether the Tjurabalan Native Title Land Aboriginal Corporation (the Corporation) was a duly nominated prescribed body corporate and whether the requirements of the Native Title (Prescribed Bodies Corporate) Regulations 1999 (PBC Regulations) had been satisfied.

Background

On 20 August 2001, Justice Carr made a determination of native title by consent in relation to the Tjurabalan People. In compliance with s. 56 of the *Native Title Act 1993* (Cwlth) (NTA), orders were made requesting a representative of the common law holders of native title to indicate whether they intended to have the native title held in trust and if so, to nominate in writing the prescribed body corporate to be the trustee.

The applicant's solicitor filed certain documents, including one headed 'Nomination of the Tjurabalan Native Title Land Aboriginal Corporation as the Prescribed Body Corporate'. Three other documents were attached, namely:

- a copy of a certificate of incorporation;
- a copy of the objects and rules of the corporation; and
- a copy of a letter on corporation letterhead signed by the 'Chairperson' of the corporation nominating the corporation as the prescribed body corporate.

It was held that there were three questions before the court:

- whether a representative of the common law holders had made the nomination in writing;
- whether the corporation was a 'prescribed body corporate'; and
- whether the corporation had given its written consent to be the trustee of the native title rights and interests — at [12] to [14].

Decision

Carr J decided that:

- the written nomination of the corporation by its 'elected Chairperson' was made by that person as the representative of the common law holders for the purpose of making that nomination;
- the corporation met the four requirements prescribed in Regulation 4 of the PBC Regulations, namely that:
 - the corporation was incorporated under the Aboriginal Councils and Associations Act;
 - all members of the corporation were included in the native title determination as native title holders;

- the objects of the corporation expressly stated its purpose as a registered native title body corporation;
- all members of the corporation were persons who have native title rights and interests in relation to the determination area — Reg. 4(1)(a) and Reg. 4(2).
- the court would accept the written nomination of the corporation by its ‘elected Chairperson’ as also being the written consent of the corporation to be trustee of Tjurabalan land and, therefore, the native title holder as defined in s. 253 of the NTA—at [17] to [19] and [21] to [37].

Although not considering it necessary given the orders made in the consent determination, his Honour formally determined that ‘the Corporation is to hold the native title rights and interests from time to time comprising the native title in trust for the common law holders’—at [38].

Comment

In relation to the terms ‘Tjurabalan People’ and ‘Determination Area’ defined in clause 2 of the rules of the corporation, his Honour observed that:

Those definitions mirror the definitions of ‘Tjurabalan People’ and ‘Determination of the Area’ in the Third and First Schedules respectively to the Determination. Both sets of definitions are framed in exclusive and exhaustive terms—at [26].

Justice French has previously expressed concern that the membership class of a prescribed body corporate be textually aligned precisely with the definition of the native title holders in the relevant native title determination: *James v Western Australia* (No 2) [2003] FCA 731 at [16] and [17]. See also *Native Title Hot Spots Issue 6*.