

# Party status under s. 84(5) — Aboriginal Cultural Development Foundation

***Adnyamathanha People No 1 v South Australia* [2003] FCA 1377**

Mansfield J, 28 November 2003

## Issues

This decision relates to an application under s. 84(5) of the *Native Title Act 1993* (Cwlth) by an incorporated association established to advance, promote and protect the interests of its members (and, more widely, the Aboriginal communities in South Australia) to be joined as a party to various claimant applications.

## Background

The Aboriginal Cultural Development Foundation Incorporated (ACDF) applied under s. 84(5) of the NTA to be joined as a party to the *Adnyamathanha People No 1* application and fourteen other native title proceedings.

The application was opposed by the Aboriginal Land Rights Movement (ALRM, the relevant representative body), the State of South Australia, pastoralists and, in most instances, the applicant on behalf of the relevant native title claim group.

Justice Mansfield applied the test outlined by the Full Court of the Federal Court in *Byron Environment Centre Incorporated v Arakwal People* (1997) 78 FCR 1 (*Arakwal*), followed in other recent authorities as outlined by his Honour and explained by Justice Branson in *Davis-Hurst v New South Wales Minister for Land and Water Conservation* [2003] FCA 541 (summarised in *Native Title Hots Spots Issue 6*). Those authorities concluded that an interest sufficient to qualify for the court's exercise of its joinder power under s. 84(5) must, whilst not necessarily proprietary (or even legal or equitable) in nature, be 'capable of clear definition' and 'of such a character that they may be affected in a demonstrable way by a determination in relation to the application' — at [3] to [4].

The constitution of the ACDF stated the objectives of the organisation related to the regaining of traditional land, the preservation of traditional history and culture, the exploration of future conservation initiatives and the provision of opportunities to Aboriginal persons to participate in those activities, develop their traditional expertise and to promote welfare and development. The objectives also included acting on behalf of Aboriginal people and organisations associated with the ACDF, and generally 'to promote the interests of Aboriginal people as they relate to the overall implementation of the policies of self-determination and self-management'.

The ACDF mission statement indicates it was 'a community organisation specifically created and incorporated to provide support for Aboriginal community and cultural development programmes across South Australia and elsewhere' through assisting in 'creating and implementing suitable programs for community ACDF's initiatives

that recognise the individual needs and resources of particular Aboriginal application groups'. Many of these programs cover activities well beyond the boundaries of the claim areas—at [17] to [18].

Mansfield J could not discern from the constitution of the ACDF and its mission statement and objectives that it had interests in the proceedings that may be affected directly by a determination in any of the proceedings:

Its general functions and purposes will not be directly impaired by such a determination. ... [T]he ACDF does not claim itself to enjoy native title rights and interests, or any other real and substantial interests, in the claim area in this or the other 14 matters in its own right. Such interests as it has are dependent upon, and exist only to the extent that, it has members who enjoy native title rights and interests in the claim areas. Its interests are self-declared, and dependent upon the attitude of those members who enjoy those interests. An association such as the ACDF does not qualify for party status in these applications simply by its establishment to enjoy, by the grant or consensus of the holder of native title rights and interests, the privilege of certain of those rights and interests—at [20].

Various particular claims based on 'legal considerations' were described by his Honour as 'cryptic' and 'hard to understand'. It was found that they did not demonstrate any relevant way in which the ACDF's interests may be affected by a determination of native title—at [22] to [30].

Mansfield J similarly disposed of 'historical and environmental considerations' on the basis that any rights that may exist under these considerations were not enjoyed by the ACDF, which (at best) is the representative or mouthpiece for those members who claim their rights or interests may be affected. The representative role of the ACDF does not convert its members' claimed rights or interests into those of the ACDF—at [31] to [35].

His Honour was not satisfied that the ACDF has any interests which may be affected by a determination in any of the fourteen applications. Its contentions did not identify any particular claimed native title right or interest in respect of any of the claim areas which, if determined to exist, might affect any of its interests in the sense explained in *Arakwal*—at [36].

His Honour noted that the individual or groups of individual persons represented by the ACDF and whose interests may be affected by the determination sought may seek to become parties to the proceedings. In such case, the application for joinder would need to explain the particular interest or interests which was said to be possibly affected by the determination with some precision and how the determination may affect that interest or those interests—at [34] to [35], *Rubibi v Western Australia* [2002] FCA 876 and *Harrington-Smith v Western Australia* [2002] FCA 184.

## **Decision**

Mansfield J dismissed the ACDF's application under s. 84(5) to be joined as a party to each of the proceedings—at [37].