Determination of native title — non-claimant application

Cruse v NSW Native Title Services Ltd [2006] FCA 1124

Jacobson J, 23 August 2006

Issue
The question in this case was whether the Federal Court should make a determination that native title did not exist in relation to the area covered by a non-claimant application made under s. 61(1) of the *Native Title Act 1993* (Cwlth) (NTA).

Background
The two parcels of land covered by the non-claimant application were subject to restrictions on dealings under ss. 40 and 40AA of the *Aboriginal Land Rights Act 1983* (NSW), which prevent Aboriginal land councils from dealing with land unless it is the subject of an 'approved determination' of native title, as defined by ss. 13 and 253 of the NTA . The applicant, who made the application on behalf of the Eden Local Aboriginal Land Council (the council), was the registered proprietor of one of the parcels and held an equitable interest in the other because the relevant Minister had agreed to transfer legal title to the applicant upon completion of a survey—at [3] to [4].

Justice Jacobson was satisfied that the court had power under s. 86G of the NTA to make the proposed consent orders and that it was appropriate to do so on the following grounds:

- notice in accordance with s. 66 of the NTA had been given and the notice period had expired;
- the only respondent was the representative body for the area and it had consented to the orders being made
- therefore, the application was 'unopposed' in the terms that is used in s. 86G of the NTA;
- if the non-claimant application was successful, the land would be used for purposes consistent with the interests of the council and the local Indigenous community;
- native title had not been extinguished over the application area—at [6] to [11].

Decision
An approved determination of native title was made that no native title existed in relation to the area covered by the non-claimant application.