

Determination of native title — non-claimant application

Hillig v NSW Native Title Services Ltd [2006] FCA 1184

Bennett J, 1 September 2006

Issues

The question in this case was whether the Federal Court should make an ‘approved determination’ that native title did not exist in relation to land covered by a non-claimant application to facilitate the sale of that land.

Background

A non-claimant application was made under s. 61(1) of the *Native Title Act 1993* (Cwlth) (NTA) by Peter Hillig, the administrator of the Worimi Local Aboriginal Land Council (the council). It covered parcels of land transferred to the council under the *Aboriginal Land Rights Act 1983* (NSW) (Land Rights Act). The members of the council had resolved to sell the land and a contract for sale had been signed. However, the transfer to the council was subject to ss. 40 and 40AA of the Land Rights Act, which provided that the land could not be dealt with unless it was subject to an ‘approved determination’ of native title, as defined by ss. 13 and 253 of the NTA. Mr Hillig sought a determination that native title did not exist in relation to the land to facilitate the completion of the contract for sale.

Unopposed applications—s. 86G

Section 86G of the NTA empowers the court to make orders in an application under s. 61(1) (in this case, a non-claimant application) at any stage of proceedings after the notice period in s. 66 has expired if the application is unopposed and the court is satisfied it is within its power to make those orders. Justice Bennett noted that:

- notice as required by s. 66 had been given by the Registrar and the notification period had expired;
- the application was unopposed within the meaning of s. 86G(1)(a) because the only respondent, NSW Native Title Services Ltd (the representative body for the area), had notified the court it did not oppose the orders being made and signed the proposed minutes of order;
- Mr Hillig was the holder of a non-native title interest in the land and was entitled to bring the non-claimant application under s. 61(1) and there was no approved determination of native title in relation to the land under s. 13(1)(a);
- there was no evidence of any native title rights and interests in the land nor any evidence of persons who have asserted or might seek to assert such rights—at [9] to [11].

Decision

Having found that s. 86G(1) was satisfied, Bennett J exercised the discretion available under that subsection to make an approved determination that no native title exists over the area concerned.