

Notice of amended claimant application

Turrbal People v Queensland [2006] FCA 1687

Spender J, 4 December 2006

Issue

The issue concerned the giving of notice of an amended claimant application under s. 66A of the *Native Title Act 1993* (Cwth) (NTA).

Background

On 2 March 2006, Justice Spender granted leave to the Turrbal people to file and serve an amended claimant application. The directions included a direction that:

The Native Title Registrar, in addition to the notice required under *Native Title Act 1993* (Cth) s. 66A(1)(d), give notice of the amended application to the persons or bodies referred to in s 66(3)(a), to the extent that such persons or bodies are not already parties to the application, and to notify the public in the determined way—at [2].

On 1 December 2006, Spender J made springing orders to the effect that the applicant file and serve an amended claimant application within 21 days and the Native Title Registrar, so far as the Registrar was reasonably capable of doing so, was directed to comply with the direction set out above concerning notice within 28 days of the applicant complying with the order to file and serve the amended application.

It came to his Honour's attention that, in relation to the proposed amended application, the provisions of s 66A(1)(e) (which govern the giving of notice of amended application by the Registrar) had no application because the period specified in the notice of the original application, in accordance with s. 66(10)(c), had ended. Paragraph 66A(1)(e) only requires the Registrar to give notice of the amended application to the people notified pursuant to s. 66(3)(a) if the period specified in s. 66(10)(c) has not ended.

Decision

Spender J felt it appropriate that proper notice be given to parties who are affected by the amended application and relied on the power given to the court under s. 66A(4) to direct the Registrar as to appropriate notice of an amended application—at [4].

His Honour made orders to ensure that parties who may be affected by the amended application be given notice by the Registrar—at [5] to [7].

Comment

His Honour's reasons for decision indicate he relied upon the power in s. 66A(4), which relates to the 'Native Title Registrar'. This means 'the Native Title Registrar appointed under Part 5' of the NTA (see s. 253) i.e. the Registrar of the National

Native Title Tribunal. However, the orders as made were addressed to 'the Native Title Registrar of the Federal Court of Australia', a different entity.