Determination of native title—non-claimant application

NSW Aboriginal Land Council v NSW Native Title Services Ltd [2007] FCA 112

Graham J, 6 February 2007

Issue
The question here was whether the Federal Court should make a determination under s. 225 of the *Native Title Act 1993* (Cwlth) (NTA) that native title did not exist in relation to an area subject to a non-claimant application made under s. 61(1) of the NTA.

Background
The non-claimant application was originally filed by Illawarra Local Aboriginal Land Council (Illawarra LALC) and sought a determination that native title did not exist in respect of certain land at Kembla Grange in New South Wales. Orders were subsequently made that the New South Wales Aboriginal Land Council (NSWALC) be substituted as the applicant in the proceedings and that Illawarra LALC be joined as a respondent.

The area in question had been transferred to the NSWALC under the *Aboriginal Land Rights Act 1983* (NSW) (ALRA). Section 40AA of the ALRA provides that NSWALC may not sell or otherwise deal with land vested in it subject to native title rights and interests unless the land is the subject of an 'approved determination' of native title—see ss. 13 and 253 of the NTA.

It was NSWALC policy to transfer such lands to the relevant local Aboriginal Land Council (in this case, Illawarra LALC) and, in order to do so, to seek an approved determination that native title did not exist.

Justice Graham was satisfied that:
- no other applications for a determination of native title fell within the external boundary of the non-claimant application;
- no approved determination of native title had been made in relation to the land;
- the determination sought was unopposed;
- orders of this kind had previously been made by the court—at [18], [19], [25] and [28] to [29].

Decision
Graham J made an order, pursuant to ss. 86G and 225 of the NTA, that native title did not exist in relation to the area covered by the non-claimant application—at [30].