Strike-out under s. 84C – Noonukul application

Walker v Queensland [2007] FCA 967

Collier J, 3 July 2007

Issue
The issue in this case was whether the Federal Court should strike out a claimant application pursuant to s. 84C of the *Native Title Act 1993* (Cwlth) (NTA). The court decided to do so.

Background
Dennis Walker filed the claimant application in question on behalf of the Noonukul of Minjerrabah (the Noonukul application) under s. 61(1) of the NTA in 2006. The area covered by that application substantially overlapped the area covered by claims made on behalf of the Quandamooka people. A notice of motion was filed on behalf of the Quandamooka people seeking joiner and, if joined, to have the Noonukul application struck out.

Queensland South Native Titles Services (QSNTS), acting for the Quandamooka people, submitted that the strike out application was brought because the Noonukul application would impede the progress of the Quandamooka people to a consent determination recognising their native title. This was because the State of Queensland would not engage in mediation if there were overlapping claimant applications.

Orders were made joining the Quandamooka people as a respondent. At the hearing of this matter, there was no appearance by the Noonukul applicant nor were any documents filed. Her Honour Justice Collier was satisfied that all attempts had been made to make the Noonukul applicant aware of the hearing and so proceeded to decide the matter on the basis of documents filed by QSNTS and the state— at [3] to [9].

Strike out application
The notice of motion to strike out the Noonukul application was brought pursuant to both s. 84C of the NTA and Order 20 rule 2 of the Federal Court Rules.

Justice Collier noted that section 84C:
- is limited to native title determination applications made under the NTA and refers to 'strike-out', whereas O 20 r 2 deals with either a permanent stay or summary dismissal of the proceedings;
- applies where an application does not comply with ss. 61, 61A or 62, whereas O 20 r 2 is only enlivened if no reasonable cause of action is disclosed, the proceeding is frivolous or vexatious, or the proceeding is an abuse of process;

- is concerned with matters of form and authority rather than the merit of any native title determination;
- was a power that should be used only when the court is satisfied that a clear case has been made—at [16] and [18].

Collier J held (among other things) that:
- the evidence in this case showed a lack of clarity as to the persons making up the native title claim group and, in any event, the Noonukul application was not authorised by all of the claim group as required by s. 61(1);
- the Noonukul application did not comply with s. 62—at [37] to [43].

Failure to comply with ss. 61 and 62 supported the motion to strike out, with her Honour noting that:
- the evidence was that members of the Noonukul claim group were also members of the Quandamooka claim group and had a right to participate in the decision-making processes;
- the Noonukul application would prevent the resolution of native title issues over the land subject to the Quandamooka claims—at [44] to [45].

Decision
Collier J held that:
- the serious and fundamental deficiencies in the Noonukul application could not be cured by amendment and it should be struck out pursuant to s. 84C of the NTA;
- it was unnecessary to consider whether the application should also be summarily dismissed pursuant to O 20 r 2 of the FCR—[44] to [46].