Dismissal of claim made in response to future act notice – s. 94C

Jones v Northern Territory [2007] FCA 1802

Mansfield J, 22 November 2007

Issue

The issue in this case was whether the Federal Court should dismiss 55 claimant applications in the Northern Territory pursuant to s. 94C of the *Native Title Act 1993* (Cwlth) (the NTA) as a consequence of receiving two reports from the Native Title Registrar (the Registrar) pursuant to s. 66C. It was found that the conditions specified for the exercise of the power to dismiss in s. 94C(1) had not arisen.

Background

Section 94C was inserted into the NTA by the *Native Title Amendment Act 2007* (Cwlth) (2007 amendments). It requires the dismissal of claimant applications made in response to future act notices if certain conditions are met. Section 66C, also inserted by the 2007 amendments, provides that the Registrar may advise the Registrar of the court of any applications that meet certain criteria found in s. 94C(1). Both ss. 66C and 94 were subsequently amended by the *Native Title Amendments (Technical Amendments) Act 2007* (Cwlth) (technical amendments).

The Registrar's reports in this case advised the court that certain applications fell 'within the shadow' of s. 94C. One report was given before the technical amendments came into force and the other after. Justice Mansfield did not think that this gave rise to any different issues because 'in relevant respects', the provisions in ss. 66C(1) and 94C had the same substantive effect. No party had applied to dismiss any of the applications. The question was whether the court, of its own motion, should do so—at [7], [9] and [13].

Webb approved and followed

His Honour referred to Justice French's comments in *Webb v Western Australia* [2007] FCA 1342 (*Webb)* at [11] to [12] (summarised in *Native Title Hot Spots* Issue 26), where French J said:

> Where the Native Title Registrar provides an advice under s 66C and the Court finds the facts set out in his advice, consideration of mandatory dismissal does not follow automatically … . The Court does not proceed to consider dismissal until there has been a failure to comply with its direction under s 94C(1)(e)(i) or there has been a failure to take steps within a reasonable time to have the claim resolved.
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> The mandatory dismissal power, in effect, provides a tool or sanction to be used by the Court to dispose of applications lodged to get procedural rights and not otherwise being pursued.

Mansfield J adopted French J's views.

As in *Webb*, the existence of the conditions in ss. 94C(1)(a), (b) and (c) were not really in issue in this case and the Registrar's reports did not address the alternative conditions in s. 94C(1)(e) because this is not one of the matters specified in s. 66C(1)—at [10] to [12].

Lead matter strategy

A strategy to address and manage the many claimant applications relevant to this case had been adopted by the court following directions hearings and user group meetings involving the applicants, the representative bodies, the Northern Territory, the Commonwealth and the respondents. Various applications were grouped into categories with the intention that a 'lead matter' in each category be progressed to resolution so that issues common to applications in each category would be heard and determined. It was expected that other applications within each category would then, subject to issues peculiar to it, be resolved by agreement, assisted by ongoing court supervision. As the court noted, the lead matters in each of the categories had now resolved, were about to resolve, or there were other circumstances indicating the prospect of timely resolution. It was expected that there would be a progressive resolution of the claims, or many of them, without the need for further hearings—at [16].

Decision

As the conditions specified in s. 94C(1)(e) for the exercise of the power in s. 94C(1) in respect of any of the 55 matters had not arisen, his Honour simply noted the two reports—at [17] to [28].