

Non-compliance with orders – risk of dismissal

Gia People v Queensland [2008] FCA 1696

Rares J, 17 October 2008

Issue

In this case, there had been repeated non-compliance with Federal Court orders in relation to claimant applications made on behalf of the Gia People and the Birri-Gubba People. Further orders were made. If these are not complied with, the applications will stand dismissed.

Background

These two claims were previously represented by the Central Queensland Land Council (CQLC). On 23 July 2007, the court was informed that CQLC intended to file two new claims over the relevant area and then combine all four claims so as to regularise both proceedings consistent with anthropological research that had been undertaken.

The North Queensland Land Council (NQLC) had subsequently been allocated responsibility for the matters as part of the reorganisation of representative body functions that commenced on 1 July 2008. There had been non-compliance with court orders from March and May 2008 for the further progress of both claims. His Honour Justice Rares noted that:

It is a tragedy that the applicants, who as long ago as over nine years before today brought proceedings in this court for the adjudication of their claim to native title rights, have been so failed by their lawyers and representative bodies. Even in an attempt to explain matters to the Court today, no proper investigation of the material filed on their behalf in the Court and relied on before the Court had been made—at [17].

Regularise, reconstitute or stand dismissed

Rares J held that:

- in light of the history of non-compliance and lack of diligence in the prosecution of these matters by those representing the applicants, certainty needed to be brought to the proceedings;
- the applicants must regularise or reconstitute the claims within a reasonable time;
- certain actions, including meetings of the applicants for the provision of instructions, must be undertaken;
- if these orders are not complied with by 30 October 2009, the matters would stand dismissed under Order 35A of the Federal Court Rules, i.e. for failing to comply with orders of the court or failing to prosecute with due diligence—at [18] and [19].