

Dismissal under s. 190F(6) – failed merit conditions of registration test

***Wongyabong v Western Australia* [2008] FCA 1561**

Gilmour J, 13 October 2008

Issue

The issue in this case was whether the Federal Court should, of its own motion, dismiss a claimant application pursuant to s. 190F(6) of the *Native Title Act 1993* (Cwlth) (NTA). The application was dismissed.

Background

Subsection 190F(6) provides that the court may, of its own motion or on the application of a party, dismiss a claimant application if:

- the court is satisfied that the application in issue has not been amended since consideration by the Registrar, and is not likely to be amended in a way that would lead to a different outcome once considered by the Registrar; and
- in the opinion of the court, there is no other reason why the application in issue should not be dismissed.

Subsection 190F(5) provides that s. 190F(6) applies if:

- in the Native Title Registrar's opinion, the claim made in the application does not satisfy all of the merit conditions found in s. 190B or it is not possible to determine whether all of those conditions are met because of a failure to meet all of the procedural and other conditions found in s. 190C; and
- the court is satisfied that all avenues for judicial review or reconsideration by the National Native Title Tribunal have been exhausted without the claim being registered.

The application in this matter was made over an area of the Goldfields in Western Australia. A delegate of the Native Title Registrar decided it failed the registration test on 23 January 2008 and, in particular, that it failed to meet all of the conditions found in s. 190B(5). The applicant did not apply to the Tribunal for a reconsideration for registration pursuant to s. 190E(1). Nor was application made to the court for review of the delegate's decision pursuant to s. 190F(1). The court, of its own motion, directed the parties to file and serve submissions to show cause why the application should not be dismissed pursuant to s. 190F(6).

The Goldfields Land and Sea Council, which acts for the applicant in this matter, advised the court that it had not received any instructions to make any submissions to the court.

Decision

The application was dismissed because his Honour Justice Gilmour held that:

- there was no evidence, and there were no submissions, that the application was likely to be amended, 'never mind in a way that might lead to a different outcome;
- there was nothing before the court as to whether or not there is another reason why the application should not be dismissed—at [6] to [7] and [9].