Determination of native title—non-claimant application

Eden Local Aboriginal Land Council v Minister for Lands (NSW) [2008] FCA 1934

Jacobson J, 17 December 2008

Issue
The issue before the court was whether to make a determination under the *Native Title Act 1993* (Cwlth) (NTA) on a non-claimant application that native title did not exist in relation to three lots in Bega, New South Wales. The court made the determination.

Background
The three lots concerned were transferred to the Eden Local Aboriginal Land Council by the Minister for Lands for New South Wales. The non-claimant application was made cooperatively with the minister to cure certain conveyancing errors made at an earlier stage in relation access. Justice Jacobson noted that the application involved two steps:

- the applicant's consent to the grant of easements over a part of each lot covered by the non-claimant application;
- a land swap whereby a small area of land (comprised of a part of a driveway and a carport) would transferred to the applicant and certain other lands (identified in the application) would be transferred to the Crown—at [6].

The purpose of this was to adjust the boundaries in order to bring them into line with existing use—at [6].

His Honour was satisfied that he had the power to make the orders sought. Although the court was not presented with a formal minute of consent orders, the provisions of s. 86G(2) sufficiently covered an application made co-operatively as was done in this instance.

Decision
Orders were made in terms agreed by the parties, i.e. a determination that native title did not exist over the three lots concerned. By consent, the minister was ordered to pay the applicant's costs—at [7] and [8].