

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

***Banks v Western Australia* [2009] FCA 703**

Gilmour J, 15 June 2009

Issue

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

Background

The Jiddngarri application, which covered an area in the Kimberly region of Western Australia, was made in 1997. In August 1999, a delegate of the Native Title Registrar found the claim made in the application did not meet all of the conditions of the registration test and so must not be registered (see s. 190A). As a result of the commencement of the *Native Title Amendment Act 2007* (Cwlth), the Jiddngarri application had to be tested again. In November 2007, the Registrar's delegate again found the claim must not be registered. Notice of that decision was given to the applicant and the court pursuant to s. 190D indicating (as required) that it was not possible for the delegate to determine whether the claim satisfied the conditions in s. 190B because of a failure to satisfy s. 190C. This meant the court's power to dismiss pursuant to s. 190F(6) was enlivened because s. 190F(5) was satisfied. Justice Gilmour subsequently ordered the applicant to file submissions on this issue but the applicant could not be reached. There was no appearance for the applicant at the hearing.

Decision

Gilmour J dismissed the application pursuant to s. 190F(6), noting (among other things) that:

- the applicant had not applied for judicial review of the delegate's decision pursuant to s. 190F(1);
- there was nothing to suggest the applicant intended to seek to amend the application or that the application was likely to be amended in such a way as to lead to any different conclusion being reached on registration by the Registrar;
- there did not appear to be any other reason why the application should not be dismissed—at [12] to [13].