

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

Champion v Western Australia [2009] FCA 941

McKerracher, 24 August 2009

Issue

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

Background

In 2007, the Native Title Registrar's delegate decided pursuant to s. 190A that a claimant application made by Brian Champion and others must not be registered. The delegate was unable to determine whether the claim satisfied the merit conditions in s. 190B because of a failure to satisfy s. 190C. Pursuant to s. 190F(6), the court may dismiss a claimant application (on the application of a party or on its own motion) if the court:

- is satisfied that the application 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
- is of the opinion that there is no other reason why the application should not be dismissed.

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

- the Registrar does not accept the claim for registration because it does not satisfy all the merit conditions of the registration test found in s. 190B or 'it was so procedurally defective as to render it impossible' to determine whether the claim satisfies those conditions (as in this case); and
- the court is satisfied that 'any avenues for reconsideration and review have been exhausted without registration of the claim'—at [2] to [3].

On 9 December 2008, the applicant was ordered to file submissions in relation to the s. 190F(6) by 28 February 2009 but none were filed.

Decision

The application was dismissed on 22 June 2009 and Justice McKerracher subsequently gave reasons for doing so which were, in summary, that:

- there had been no amendment since the decision of the Registrar's delegate;
- notwithstanding opportunities provided, there was no evidence or indication that the application was likely to be amended in any way that would lead to any different conclusion by the Registrar; and

- there was no other reason why the application should not be dismissed—at [12] to [13].