

# Dismissal of future act related claimant application— s 94C

## *Angale on behalf of the Irlpme Arrernte People v Northern Territory* [2009] FCA 1488

Mansfield J, 18 December 2009

### Issue

In this case, the Federal Court, on its own motion, dismissed a claimant application pursuant to s. 94C of the *Native Title Act 1993* (Cwlth) (the NTA), which deals with claimant applications made in response to a future act notice.

### Background

A claimant application was made in 2006 in response to a future act notice dealing with an exploration licence application (ELA). The external boundary of the application coincided exactly with those of the ELA. The application passed the registration test. In February 2008, the court was informed that the claimants had reached an agreement with the tenement holder. In August 2009, the applicant was directed to produce a program for the further progress of the matter but did not do so within the time allowed. In December 2009, the Central Land Council (the applicant's legal representative) indicated the applicant was not willing to give instructions for the withdrawal of the application and was 'apparently content [for it] to sit inert for an indefinite duration'. Therefore, the court considered whether it should, of its own motion, dismiss the application 'having regard to' ss. 94C(1) and 94C(3)—at [9] to [10].

### Dismissal under s. 94C

As Justice Mansfield noted:

Section 94C ... defines the circumstances in which native title applications, apparently made in response to future act notices given in relation to land or waters wholly or partly within the area covered by the native title application, are subject to dismissal by the Court. This circumstance arises where the procedural rights of the native title claimants in relation to the future acts have been exhausted and no steps are taken to advance the resolution of the application itself—at [11].

Subsection 94C(1) provides (among other things) that the court must, on its own motion, dismiss an application made under s. 61 if certain conditions are met, provided the applicant has been given a reasonable opportunity to present a case against dismissal first and that there are no 'compelling reasons' why the court should not do so. After setting out the relevant provisions, his Honour noted that:

- it was clear from the circumstances that s. 94C(1)(b) was satisfied, i.e. it was apparent that the application was made in response to a future act notice;

- paragraph 94C(1)(c) was satisfied, i.e. the future act requirements in relation to the future act identified in the notice were satisfied in that an agreement had been reached and the ELA withdrawn;
- the Native Title Registrar had given notice pursuant to s. 66C;
- the court had given the applicant directions pursuant to s. 94C(1)(e)(i) as to future progress of the claim but the applicant did not comply with those directions and failed to take steps within a reasonable time to have the claim resolved—at [15] to [16].

Therefore, the ‘mandatory dismissal power’ under s. 94C was ‘available’ to the court, subject to s. 94C(3), i.e. were there any compelling reasons why the court should not dismiss the application? According to his Honour, there were none—at [16] to [17].

### **Decision**

Pursuant to s. 94C, the application was dismissed.