

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

Strickland v Western Australia [2010] FCA 272

McKerracher J, 23 March 2010

Issue

The issue was whether the Federal Court, of its own motion, should dismiss a claimant application pursuant to s. 190F(6) of the *Native Title Act 1993* (Cwlth) (NTA) where the claim made in the application had failed to meet the merit conditions of the registration test. The application was dismissed.

Background

In this case, the applicant represented the Maduwongga people. In 1999, the Registrar's delegate did not accept the claim made in the application for registration. Following an application for judicial review, the delegate's decision was set aside and the Registrar was ordered to accept the claim for registration—see *Strickland v Native Title Registrar* [1999] FCA 1530, upheld on appeal in *Western Australia v Strickland* (2000) 99 FCR 33. On 12 September 2005, the Registrar's delegate considered the claim made by the applicant in an amended application and found it did not meet the conditions of the registration test and so it was removed from the Register of Native Title Claims. The area covered by the application was then significantly reduced as a result of the order made in *Harrington-Smith on behalf of the Wongatha People v Western Australia (No 9)* [2007] FCA 31 (Wongatha) that it be dismissed in part. In June 2009, a delegate of the Registrar considered the remainder of the claim and decided not to accept it for registration. As a result of that decision, the court's power to dismiss the application pursuant to s. 190F(6) was enlivened because s. 190F(5) was satisfied. On 14 December 2009, Justice Mc Kerracher ordered that, unless submissions in relation to the disposition of the application under s. 190F(6) were filed, he would proceed to determine the matter. No submissions were filed.

Decision

The application was dismissed because:

- on the basis of the history of the claim, the court was satisfied for the purposes of s. 190F(6) that the application had not been amended since it was considered and rejected by the delegate;
- there was no evidence that the application was likely to be amended in a way that would lead to any different conclusion being reached by the Registrar's delegate;
- there was no other reason why the application should not be dismissed—at [20] to [21].