

Delay in Victorian native title settlement framework

Edwards on behalf of the Wamba Wamba, Barapa Barapa, Wadi Wadi People v Victoria [2010] FCA 744

North J, 16 August 2010

Issue

In this case, Justice North was not happy with timetable the parties had agreed in relation to a claimant application made on behalf of the Wamba Wamba, Barapa Barapa, Wadi Wadi People and so referred it back to the National Native Title Tribunal to see if it could be expedited. This claim is being dealt with under the Victorian native title settlement framework.

Background

The Tribunal filed a mediation report with the court prior to a directions hearing which updated the court on the progress of mediation. The report indicated the matter would be settled by April 2012. According to North J, this ‘appeared to conflict’ with earlier submissions indicating it would settle by the middle of 2011. Therefore, his Honour called for ‘further explanation’. It was noted that the adoption of the State of Victoria’s native title settlement framework took some time and resulted in ‘a considerable slowing of the progress of native title applications in Victoria’. It was against this background that the court became concerned that ‘utilising the new Framework, the time for conclusion of this application has been almost doubled’. The state contended the timetable had not changed. Rather, the new timetable included nine months required to deal the authorisation, notification and registration of an indigenous land use agreement that was not factored into earlier versions. The Tribunal member conducting the mediation, Dr Gaye Sculthorpe, indicated the timetable was more comprehensive than previous versions and was ‘quite tight, given that the application involves three distinct groups’ — at [2] to [8].

Notwithstanding these explanations, his Honour was concerned that the outcomes promised from adopting the framework ‘might not be being delivered in the way which the Court was led to expect’. It was noted that the relevant applications ‘go back 10 years’. North J was disappointed that the resolution of those claims would take ‘yet another two years, under what was said to be a new and more efficient system’ — at [9].

Decision

The ‘issue of the timetable’ was referred back to the Tribunal ‘for re-examination, with a view to providing a timetable which more satisfactorily reflects the expectations of the history which I have outlined’. The Tribunal is to report on ‘attempts to expedite an outcome in a timelier manner than is proposed in the present’ Tribunal report — at [11].