

***Penangke v Northern Territory* [2011] FCA 147**

Reeves J, 24 February 2011

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 applications made in response to a future act notice.

Background

The relevant claimant application was made in 2003. The applicant's legal representative informed the court at various times that it was made in response to a future act notice (the proposed grant of a mining tenement) and that an agreement had been reached with the tenement holder. In August 2010, the applicant was directed to file and serve a program for further progress of the matter but did not comply. In December 2010, the applicant's legal representative made no submissions as to whether the court should make orders dismissing the application under s. 94C. The court therefore considered on its own motion whether to dismiss the application.

Dismissal under s. 94C

Subsection 94C(1) provides (among other things) that the court must dismiss a native title determination application if certain conditions are met, provided the applicant has been given a reasonable opportunity to present a case against dismissal and that there are no 'compelling reasons' why the court should not do so. Justice Reeves decided that, taking into account what the applicant's legal representative had said and the matters set out in s. 94C(1A) to (1G), each of the matters set out in s. 94C was met, in particular that:

- this was an application for a determination of native title in relation to an area;
- it was clear the application was made in response to a future act notice;
- the future act requirements were satisfied;
- the applicant had failed to take steps within a reasonable time to have these proceedings resolved;
- the applicant has been given a reasonable opportunity to present its case as to why the application should not be dismissed;
- there were no compelling reasons why the court should not dismiss the proceedings—at [8] to [9].

Decision

The application was dismissed pursuant to s. 94C.