

A Compensation Claim relating to Resumption of Land in 1922

Date : July 24, 2017

Recently, Moore J of the Land and Environment Court, determined two separate questions in an unusual matter that related to the 1922 resumption of land in far Western NSW, i.e. the resumption of land that occurred approximately 95 years ago (see *Lawson v South Australian Minister for Water and the River Murray* [2017] NSWLEC 62 (**Lawson**)).

In 1922, the New South Wales Government resumed all land at Lake Victoria in private possession, necessary for the purposes of the transfer of those lands to the representative for South Australia for future water storage uses.

Mrs Lawson's possessory title in the land was originally held by her great grandfather, the possessory title was then transferred to her great grandmother (Mrs Mitchell) who held the title at the date of resumption. Mrs Mitchell died in 1956 and the possessory title transferred to Mrs Lawson.

An Extension of Time

Biscoe J in 2014 (see *Lawson v South Australian Minister for Water and the River Murray No 2*) [2014] NSWLEC 189) had allowed Mrs Lawson, the Applicant, an extension of time to lodge a claim for compensation for the resumption of land under the *Public Works Act 1912* (**Public Works Act**).

The Separate Questions

Mrs Lawson has since lodged her claim for compensation, the validity of which is being tested in the Land and Environment Court, from which two preliminary questions arose to be determined (see [5]):

1. On the assumed, but not agreed, fact that a person (now being deceased) held an entitlement to claim compensation under the Public Works Act by reason of the resumption of land in 1922, was such an entitlement, as a matter of law, amenable to transfer or transmission to, or otherwise passing to another person?
2. If the answer to Q1 is yes, by what legal mechanisms and to what person or classes of persons might the entitlement pass?

Consideration

The Public Works Act provided that interests in private land that existed prior to resumption were converted into a claim for compensation (s 45(2)). Every person who claimed compensation for land that was resumed under the relevant notification was required within 90 days of the notification, or within such time as the Land and Environment Court appointed, to

serve a notice on the Crown Solicitor which outlined the nature of the interest in land, with an abstract of his title.

His Honour determined that because Mrs Mitchell did not make a claim with respect of compensation within her lifetime, there was no cause of action that could pass to Mrs Lawson (see [19]).

His Honour then considered whether there was a statutory right for Mrs Mitchell to have sought to have claimed compensation for the resumption in 1922 and whether that right was capable of passing to her estate.

Determination of the Separate Questions

His Honour determined that the suggestion that the right to seek an extension of time to lodge the claim, as provided in s 102 of the Public Works Act, is extinguished by the death of the claimant was somewhat absurd based on the construction that if a person were to die an hour after the 90 day notification period expired the right to extend the time would be extinguished (at [33]-[36]).

The answers to the two questions were thus (at [42]):

1. Yes
2. The entitlement might pass (or might have passed) on the death of a person holding such an entitlement under Probate and Administration Act 1898 s61 to the Public Trustee and on the grant of probate of a will of that deceased person or letters of administration of the estate of that deceased person (as the case may be) Probate and Administration Act 1898 s44, to the executor or administrator of the estate of that deceased person named in the grant of probate or letters of administration on trust for such person or persons entitled under the will of that deceased person or in the case of an intestacy for such persons entitled to the estate of that deceased person on intestacy.

Except as stated, it is inappropriate to answer the question.

Takeaways

An interesting and unusual matter in that the wording of the relevant resumption legislation directly allows for an extension of time for the lodging of a claim for compensation, of course at the discretion of the court. It will be interesting to see how the matter continues to unfold given the lengthy period of time since the land itself was resumed.