HIGH COURT OF AUSTRALIA

Public Information Officer

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REGGIE WURRIDJAL, JOY GARLBIN AND BAWINANGA ABORIGINAL CORPORATION v THE COMMONWEALTH OF AUSTRALIA AND ARNHEM LAND ABORIGINAL LAND TRUST

Proper provision had been made for compensation of Aboriginal organisations and people in the Northern Territory where property rights had been affected by the Commonwealth's NT intervention laws, the High Court of Australia held today.

In August 2007, the federal government introduced a package of legislation designed to support an emergency response to deal with sexual abuse of Aboriginal children in the NT, along with alcohol and drug abuse, pornography and gambling. The response included improving living conditions and reducing overcrowding by building houses and providing other facilities and infrastructure. To do this the government took control of certain townships for a limited period. Under the *Northern Territory National Emergency Response Act* (NER Act), five-year leases were created over Aboriginal land, communities and town camps. Any pre-existing right, title or interest in land was preserved and provision made for compensation to be paid where required by section 51(xxxi) of the Constitution. Section 51(xxxi) gives Parliament power to make laws for the acquisition of property on just terms from any State or person for any purpose in respect of which Parliament has power to make laws.

The *Families, Community Services and Indigenous Affairs and Other Legislation Amendment (Northern Territory National Emergency Response and Other Measures) Act* (FaCSIA Act) amended the Commonwealth *Aboriginal Land Rights (Northern Territory) Act* (Land Rights Act) to provide that permits for entry onto Aboriginal land would no longer be required for townships and roads. The FaCSIA Act also provided for reasonable compensation if action under the amendments to the Land Rights Act would result in an acquisition of property to which section 51(xxxi) applied.

Reggie Wurridjal and Joy Garlbin are senior members of the Dhukurrdji clan, the traditional Aboriginal owners of Maningrida land. The land, measuring 10.456 square kilometres, includes a township, four sacred sites, an outstation, a sand quarry, a billabong and a ceremonial site. It is part of a total land grant of almost 90,000 square kilometres held by the Arnhem Land Aboriginal Land Trust under the Land Rights Act as an estate in fee simple. A five-year lease on Maningrida land was granted to the Commonwealth under the NER Act. Mr Wurridjal and Ms Garlbin claimed that the grant of the lease constituted an acquisition of Land Trust property that was not on just terms within the meaning of section 51(xxxi) of the Constitution. They also alleged that their entitlement under section 71 of the Land Rights Act to enter, use or occupy Maningrida land in accordance with Aboriginal tradition constituted property that had been acquired by the Commonwealth other than on just terms. They argued that their property had been acquired because their section 71 entitlement could be terminated at any time by the Minister under the NER Act and/or was effectively suspended by the grant of the lease. No party submitted that the Commonwealth had acquired any native title rights held by the Dhukurrdji clan.

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Mr Wurridjal, Ms Garlbin and the Bawinanga Aboriginal Corporation began proceedings in the original jurisdiction of the High Court in October 2007 to challenge the validity of certain provisions of the NER and FaCSIA Acts. In March 2008, the Commonwealth demurred to their claim on the ground that it did not show any cause of action to which the Court could give effect. The Commonwealth alleged that the Acts were not subject to the just terms requirement in section 51(xxxi) of the Constitution because they were supported by section 122 of the Constitution, which gives Parliament the power to make laws for the governing of any territory; that if they were subject to it they provided for compensation amounting to just terms; and that any property affected was not property within the meaning of section 51(xxxi) or was not property capable of being acquired.

The High Court, by a 6-1 majority, held that the demurrer should be allowed. A majority held that the creation of the statutory lease on the Maningrida land constituted an acquisition of property from the Land Trust but the acquisition was on just terms due to the compensation provisions in the NER Act. There was no acquisition of Mr Wurridjal and Ms Garlbin's rights under section 71 of the Land Rights Act because those rights had been preserved throughout the intervention and could not be extinguished by the Commonwealth pursuant to the NER Act. Their interests in their sacred sites also remained protected under section 69 of the Land Rights Act, which makes intruding on a sacred site a criminal offence. To the extent that abolition of the permit system had resulted in an acquisition of property, just terms were afforded by the compensation provisions of the FaCSIA Act.

A majority of the Justices overruled a 1969 decision of the High Court, *Teori Tau v The Commonwealth*, which held that the just terms requirement in section 51(xxxi) did not apply to laws made by the Commonwealth for the governing of the territories. Therefore, section 122 of the Constitution is subject to the just terms requirement in section 51(xxxi).

- *This statement is not intended to be a substitute for the reasons of the High Court or to be used in any later consideration of the Court's reasons.*