



## HIGH COURT OF AUSTRALIA

11 November 2015

### NORTH AUSTRALIAN ABORIGINAL JUSTICE AGENCY LIMITED & ANOR v NORTHERN TERRITORY OF AUSTRALIA

[2015] HCA 41

Today the High Court, by majority, dismissed an application for a declaration that Div 4AA of Pt VII of the *Police Administration Act* (NT) ("the Act") is invalid.

Section 133AB(1) of the Act, which appears in Div 4AA, provides that the section applies if a member of the Police Force has arrested a person without a warrant in accordance with s 123 because the member believed on reasonable grounds that the person had committed, was committing or was about to commit an infringement notice offence. Section 133AB(2) provides that the member may take the person into custody and hold him or her for a period of up to four hours or, if the person is intoxicated, until the member reasonably believes that the person is no longer intoxicated. Section 133AB(3) provides that at the expiry of the relevant period in sub-s (2), the member may release the person unconditionally, with an infringement notice or on bail, or may bring the person before a justice of the peace or court.

The first plaintiff provides legal services to Aboriginal and Torres Strait Islander persons in the Northern Territory. The second plaintiff, an Aboriginal person resident in the Northern Territory, was arrested by members of the Northern Territory Police Force in Katherine on 19 March 2015 and was detained pursuant to Div 4AA for a period of close to 12 hours.

The first plaintiff commenced proceedings in the original jurisdiction of the High Court, joined by the second plaintiff. The plaintiffs sought a declaration that Div 4AA is invalid. The plaintiffs contended that Div 4AA is invalid because it confers powers on the Northern Territory Executive which are penal or punitive in character, and that this is beyond the legislative power of the Northern Territory because that power is subject to the same doctrine of the separation of judicial power which limits the legislative power of the Commonwealth. The plaintiffs also contended that Div 4AA is invalid because it confers powers on the Northern Territory Executive which undermine or interfere with the institutional integrity of the Northern Territory courts. The parties agreed a special case which asked the Court to determine whether Div 4AA of Pt VII is invalid.

The High Court, by majority, held that Div 4AA is valid. A majority of the Court held that, upon the proper construction of Div 4AA, the powers it confers on members of the Police Force are not penal or punitive in character and do not impair, undermine or detract from the institutional integrity of the Northern Territory courts. Div 4AA, properly construed, does not authorise members of the Police Force to detain a person for longer than is reasonably practicable for them to make a determination about which one of the options under s 133AB(3) is to be exercised. The Court ordered that the matter be referred to a single Justice for further directions.

- *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.*