HIGH COURT OF AUSTRALIA

3 September 2025

LA PEROUSE LOCAL ABORIGINAL LAND COUNCIL ABN 89136607167 & ANOR v QUARRY STREET PTY LTD ACN 616184117 & ANOR
[2025] HCA 32

Today, the High Court by majority allowed an appeal from the Court of Appeal of the Supreme Court of New South Wales. The issue was whether lands vested in the Crown in right of New South Wales are "lawfully used" within the meaning of s 36(1)(b) of the *Aboriginal Land Rights Act 1983* (NSW) ("the Act") merely by reason of those lands being the subject of an existing lease from the Crown.

From 1962 until 1 December 2010, land falling in the area of the first appellant, La Perouse Local Aboriginal Land Council, included an area ("the Land") which was the subject of a special lease for recreation (bowling) and the erection of buildings (a clubhouse) in favour of Paddington Bowling Club Ltd. The Land was "Crown land", meaning that the Crown in right of New South Wales was registered as proprietor, holding an estate in fee simple. On 1 December 2010, a new lease was granted to the lessee for a term of 50 years for the exclusive purposes of "Community and Sporting Club Facilities, Tourist Facilities and Services, Access". The lease granted on 1 December 2010 was transferred with the consent in writing of the Crown Lands Minister to CSKS Holdings Pty Ltd ("CSKS") on 30 December 2011. However, CSKS undertook no purposeful activity on the Land. On 19 December 2016, the second appellant, the New South Wales Aboriginal Land Council, made a land claim under s 36(2) of the Act in respect of the Land. On 1 February 2018, the Minister consented to a transfer of the lease from CSKS to the first respondent, Quarry Street Pty Ltd. The Minister determined the second appellant's land claim on 10 December 2021. The Minister allowed the claim, relevantly concluding that the Land was "claimable Crown lands".

The first respondent brought an application for judicial review in the Land and Environment Court of New South Wales seeking an order for certiorari quashing the decision of the Minister to allow the claim made on 19 December 2016 in respect of the Land. The primary judge dismissed the application, rejecting an argument by the first respondent that the decision of the Minister should be quashed as the criterion in s 36(1)(b) was not satisfied because the Land was lawfully used by reason of the existence of the lease. The Court of Appeal allowed an appeal brought by the first respondent and granted an order quashing the decision of the Minister to grant the second appellant's claim in respect of the Land. The Court of Appeal held that the lease of the Land by the Crown in right of New South Wales to CSKS was a relevant use of the Land within s 36(1)(b).

The High Court held, by majority, that lands vested in the Crown in right of New South Wales are not "lawfully used" within the meaning of s 36(1)(b) of the Act merely by reason of those lands being the subject of an existing lease from the Crown. Properly construed, land is only "used" within the meaning of s 36(1)(b) of the Act if, when the claim is made, the land is physically deployed for a purpose.

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.