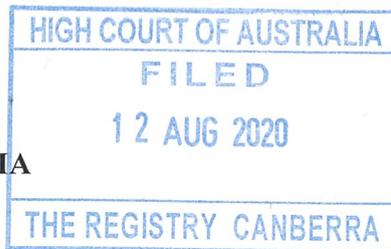


IN THE HIGH COURT OF AUSTRALIA
DARWIN REGISTRY



No. D21 of 2019

BETWEEN: **NORTHERN LAND COUNCIL**
First Appellant

**JOE MORRISON AS CHIEF EXECUTIVE
OFFICER OF THE NORTHERN LAND
COUNCIL**
Second Appellant

AND: **KEVIN LANCE QUALL**
First Respondent

ERIC FEJO
Second Respondent

**ATTORNEY-GENERAL FOR THE COMMONWEALTH OF AUSTRALIA AS
INTERVENER AMENDED OUTLINE OF ORAL ARGUMENT**

PART I: CERTIFICATION

- 10 1. I certify that this outline of oral argument is in a form suitable for publication on the internet.

PART II: PROPOSITIONS TO BE ADVANCED IN ORAL ARGUMENT

The Full Court did not consider s 203FH of the *Native Title Act* (Attorney-General's submissions [11] – [15])

2. The Full Court's decision was made without consideration of s 203FH of the *Native Title Act 1993* (Cth) and was in error. Section 203FH of the *Native Title Act* expressly contemplates that a representative body may act through its directors or employees.
3. Sections 203B(3) and 203FH of the *Native Title Act* read together draw a distinction between a person who is external to the representative body being engaged to perform the certification function and a director or employee within a representative body performing that function.
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Filed on behalf of the Intervener, the Attorney-General for the Commonwealth, by:

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Date of this document: 12 August 2020

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The role of the Native Title Registrar and the Full Court’s consideration of a representative body’s “special aptitude” (Attorney-General’s submissions [16] – [28])

4. The state of satisfaction which the Registrar is required to form under s 24CL(3) of the *Native Title Act* as to the requirements of s 24CG(3)(b) being met, mirror the task required under s 203BE(5)(a) and (b).
5. The “special aptitude” identified by the Full Court (CAB 71 -72 [67]-[68], 93 [130]) is not a requirement for the Registrar to perform that function under s 24CG(3)(b). Further, that function is delegable to a Deputy Registrar or a member of staff assisting the Tribunal: *Native Title Act*, s 99.
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6. The *Native Title Act* identifies the features or characteristics that an “eligible body” (*Native Title Act*, s 201B) ought to possess to be recognised as a representative body. It does not prescribe the organisational structures or administrative arrangements that apply to the representative body: *Native Title Act*, ss 203AI and 203BA(2).

The Second Appellant was not precluded from making the certification (Attorney-General’s submissions [38] – [47])

7. The relevant legislative framework for this proceeding is:
- 7.1. the *Aboriginal Land Rights (Northern Territory) Act 1976* (Cth) (**ALRA**);
- 7.2. the *Native Title Act*; and
- 20 7.3. the *Public Governance, Performance and Accountability Act 2013* (Cth).
8. Alone of those three Acts, the *Native Title Act* does not require or limit the employees, members or directors of the NLC through which the NLC may perform a prescribed function.
9. The proper construction of the ALRA and *Native Title Act* is that the “necessary or convenient” power in either of s 27 of the ALRA or s 203BK of the *Native Title Act* is apt to enable the NLC as a representative body to perform the certification function through the Second Appellant.

Dated: 12 August 2020

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Name: R. J. Webb QC