



IN THE HIGH COURT OF AUSTRALIA
DARWIN REGISTRY

BETWEEN:

NORTHERN LAND COUNCIL
First Appellant

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

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and

KEVIN LANCE QUALL
First Respondent

ERIC FEJO
Second Respondent

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RESPONDENTS' JOINT OUTLINE OF ORAL SUBMISSIONS

Part I: Certification

1. This outline is in a form suitable for publication on the internet.

Part II: Outline

2. The question of statutory construction is whether the function conferred on the First Appellant as a representative body by s 203BE(1)(b) and, entwined with it, the formation of the opinion contemplated by s 203BE(5), may be performed by a person other than the body itself.
 - a. RS[2], [11]-[15]
 - b. FC[136] (AB95), see also order 1 (CAB110) and CAB107 [5]
 - c. *Native Title Act 1993* (Cth) ("NTA") s 203BE(1), (5)

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3. Although the formal act of certification is straightforward of itself, the content of the opinion required by s 203BE(5) is suited to formation personally by those responsible for the executive decisions of the representative body, being those most directly obliged to the represented persons.

- a. RS[29]-[31]
- b. FC[98]-[100] (CAB83-84), [148], [151]-[153] (CAB99-100)
- c. NTA ss 201A, 251A

4. The body in question in this case is a collegiate body, owing duties to, and composed of, Aboriginals living in the area of the Land Council.

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- a. RS[16]-[20]
 - b. FC[62]-[68] (CAB70-71), [130] (CAB93)
 - c. *Aboriginal Land Rights (Northern Territory) Act 1976* (Cth), ss 23-24, 27-29, 31

5. The manner in which the s 203BE(1) function is to be performed, and the character of the s 203BE(5) opinion, are harmonious with the composition and character of the representative body at issue in this case.

- a. RS[27], [44]-[48]
- b. FC[96]-[97] (CAB83), [134] (CAB94), [154] (CAB101)
- c. NTA s 203BA

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6. The statutory context, particularly within Div 3 of Pt 11 of the NTA, supports the conclusion that the s 203BE(5) opinion is to be formed, and hence the certification function must be performed, by the representative body itself.

- a. RS[22]-[26], [36]-[42]
- b. FC [73]-[80] (CAB73-75), [84]-[97] (CAB77-83), [135] (CAB94-95)
- c. NTA ss 24CG(3), 24CL(3)-(4), 203AD(1), 203B, 203BK, 203FEA, 203FH, 203FI

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Bret Walker
T: (02) 8257 2527

E: maggie.dalton@stjames.net.au

Patrick McIntyre
T: (08) 8941 3373

E: counsel@patmcintyre.com

Alexander Flecknoe-Brown
T: (02) 9236 8627

E: alexander.flecknoe-brown@stjames.net.au