



HIGH COURT OF AUSTRALIA

Public Information Officer

15 May 2008

ALAN GRIFFITHS ON BEHALF OF THE NGALIWURRU AND NUNGALI PEOPLES AND WILLIAM GULWIN ON BEHALF OF THE NGALIWURRU AND NUNGALI PEOPLES v MINISTER FOR LANDS, PLANNING AND ENVIRONMENT AND LANDS AND MINING TRIBUNAL

The Northern Territory Government had the power to acquire compulsorily land subject to native title, both when there were co-existing non-native title interests in the land and when there were not, provided the acquisition was not discriminatory, the High Court of Australia held today.

The Minister issued three notices in 2000 proposing acquisition of interests in land at the town of Timber Creek in the north-west of the NT. Section 43(1) of the NT's *Lands Acquisition Act* (LAA) empowered the Minister to compulsorily acquire land "for any purpose whatsoever" by publishing a notice in the Gazette. (The section previously used the term "for public purposes".) Under the LAA, "land" included native title rights and interests. In 1999, the Ngaliwuru and Nungali peoples began proceedings in the Federal Court of Australia for a determination of native title to vacant Crown land in Timber Creek. The Court made a determination of native title in 2006 and the Full Court of the Federal Court varied the determination in favour of the Ngaliwuru and Nungali peoples last November. No other title existed over the lots the Minister sought to acquire. Proposed uses were goat breeding, hay production and market gardening on one lot, cattle husbandry on a second, and tourism on five more lots. For the first two proposals, a Crown lease would be granted to Warren Pty Ltd, while lots in the third proposal would be offered at a public auction for Crown leases. Upon completion of each development the lease could be exchanged for freehold title.

Objections by Mr Griffiths and Mr Gulwin to the proposed acquisitions were heard by the Lands and Mining Tribunal. In 2002, the LMT recommended the compulsory acquisition of native title, subject to the NT's paying compensation if native title were determined by the Federal Court to have existed prior to acquisition. The Minister accepted the recommendations. Mr Griffiths and Mr Gulwin commenced proceedings in the NT Supreme Court to set aside the recommendations and the decision of the Minister to act upon them. In 2003, Justice David Angel made such orders. The Minister successfully appealed to the NT Court of Appeal in 2004. Mr Griffiths and Mr Gulwin appealed to the High Court to seek reinstatement of Justice Angel's orders. They argued that, despite the phrase "for any purpose whatsoever", section 43(1) of the LAA did not confer power on the Minister to acquire land from one person solely to enable it to be sold or leased for private use to another person. They also argued that native title interests may be acquired only when there were co-existing non-native title interests that also were acquired.

The High Court, by a 5-2 majority, dismissed the appeal. Following amendments in 1998 to the Commonwealth *Native Title Act* (NTA) and a 1984 decision by the High Court limiting the meaning of "to acquire land for a public purpose" in earlier federal legislation for the territories, the LAA was amended to remove potential limitations on the NT's statutory power to acquire land. The NTA provided for an entitlement to compensation when native title rights or interests were extinguished through compulsory acquisition of land. It provided for extinguishment of native title rights and interests where certain conditions designed to avoid racial discrimination were met, including that "all non-native title rights and interests" also be acquired. The majority held that "all" meant any non-native title rights and interests as may exist at the time of acquisition. There was no requirement that there be non-native title interests in the land for the compulsory acquisition of native title interests to be permitted under the NTA. The majority held that the Minister's power under the LAA to acquire land "for any purpose whatsoever" included acquisition for the purpose of granting a freehold estate or Crown lease pursuant to other NT legislation.

- *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.*