



HIGH COURT OF AUSTRALIA

10 April 2014

ATTORNEY-GENERAL FOR THE NORTHERN TERRITORY & ANOR v EMMERSON & ANOR

[2014] HCA 13

Today the High Court, by majority, held that a statutory scheme for the forfeiture of property, effected by the combined operation of s 36A of the *Misuse of Drugs Act* (NT) and s 94 of the *Criminal Property Forfeiture Act* (NT), was within the legislative power of the Northern Territory Legislative Assembly and was valid.

Section 36A of the *Misuse of Drugs Act* provides that the Supreme Court of the Northern Territory can declare that a person who, within a 10 year period, has been convicted three or more times of certain offences is a "drug trafficker". Section 94(1) of the *Criminal Property Forfeiture Act* provides for the forfeiture to the Northern Territory of property owned, effectively controlled or given away by that person without the need for a further court order.

The Director of Public Prosecutions applied successfully to the Supreme Court for a declaration that Mr Emmerson was a drug trafficker. The Court of Appeal of the Northern Territory, by majority, allowed Mr Emmerson's appeal and set aside the primary judge's declaration. The majority concluded that the statutory scheme was invalid because it required the Supreme Court to act in a manner incompatible with the proper discharge of the Court's function as a repository of federal jurisdiction and with its institutional integrity. All members of the Court of Appeal rejected Mr Emmerson's submission that the statutory scheme effected an acquisition of property otherwise than on just terms, within the meaning of s 50(1) of the *Northern Territory (Self-Government) Act* 1978 (Cth), and rejected his purported construction of s 52(3) of the *Criminal Property Forfeiture Act*. By special leave, the Attorney-General for the Northern Territory appealed to the High Court.

The High Court, by majority, allowed the appeal and held that s 36A of the *Misuse of Drugs Act* and s 94(1) of the *Criminal Property Forfeiture Act* were compatible with the limits imposed on State and Territory legislative power by Ch III of the Constitution. The impugned provisions did not operate to deny the Supreme Court such independence and impartiality as is compatible with its constitutional role as a repository of federal jurisdiction. The Court held that ss 36A and 94(1) did not effect an acquisition of property otherwise than on just terms. Further, the Court held that s 52(3) of the *Criminal Property Forfeiture Act* did not contain any temporal limitation on restraining orders imposed under that Act.

- *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.*