HIGH COURT OF AUSTRALIA

13 March 2019

NORTHERN TERRITORY OF AUSTRALIA v MR A. GRIFFITHS (DECEASED) AND LORRAINE JONES ON BEHALF OF THE NGALIWURRU AND NUNGALI PEOPLES & ANOR; COMMONWEALTH OF AUSTRALIA v MR A. GRIFFITHS (DECEASED) AND LORRAINE JONES ON BEHALF OF THE NGALIWURRU AND NUNGALI PEOPLES & ANOR; MR A. GRIFFITHS (DECEASED) AND LORRAINE JONES ON BEHALF OF THE NGALIWURRU AND NUNGALI PEOPLES v NORTHERN TERRITORY OF AUSTRALIA & ANOR

[2019] HCA 7

Today, the High Court unanimously allowed two appeals in part and dismissed one appeal from a judgment of the Full Court of the Federal Court of Australia, in relation to the compensation payable, pursuant to s 51 of the *Native Title Act 1993* (Cth), to the Ngaliwurru and Nungali Peoples ("the Claim Group") for the extinguishment of their non-exclusive native title rights and interests. The Court awarded compensation for economic loss equating to 50 per cent of the freehold value of the affected land with simple interest, and compensation for cultural loss in the amount of $1.3 million.

The Northern Territory was responsible for 53 acts held to have impaired or extinguished the Claim Group's native title rights and interests, which gave rise to the Claim Group's entitlement to compensation on just terms under s 51 of the *Native Title Act* ("the compensable acts"). At issue was the amount of compensation payable to the Claim Group.

The trial judge held the Claim Group was entitled to an award for economic loss equating to 80 per cent of the freehold value of the affected land, simple interest on that award, and compensation for cultural loss in the amount of $1.3 million. On appeal, the Full Court varied the trial judge's assessment of economic loss from 80 per cent to 65 per cent of the freehold value of the land, but otherwise, relevantly, affirmed the trial judge's decision.

By grants of special leave, the Claim Group, the Northern Territory and the Commonwealth appealed to the High Court. The Claim Group contended among other things that its economic loss equated to the freehold value of the affected land without reduction. The Northern Territory and the Commonwealth contended among other things that the value of the Claim Group's economic loss did not exceed 50 per cent of the freehold value of the affected land, and the award for cultural loss was manifestly excessive.

The High Court unanimously allowed the Northern Territory and Commonwealth appeals in part, and dismissed the Claim Group's appeal. The Court held, by majority, that the economic value of the Claim Group's rights and interests involved determining the percentage reduction from full exclusive native title represented by the Claim Group's non-exclusive native title rights and interests relative to full exclusive native title, and then applying that percentage reduction to full freehold value as a proxy for the economic value of full exclusive native title. The Court held that the value of the Claim Group's non-exclusive native title rights and interests, expressed as a percentage of freehold value, was no more than 50 per cent. The Court rejected that the Claim Group was entitled to compound interest on that sum and awarded simple interest at the Pre-Judgment Interest Rate fixed by the Federal Court of Australia Practice Note CM16. That

Please direct enquiries to Ben Wickham, Senior Executive Deputy Registrar
Telephone: (02) 6270 6893 Fax: (02) 6270 6868
Email: enquiries@hcourt.gov.au Website: www.hcourt.gov.au

interest was not part of the total compensation payable for the extinguishment of native title within the meaning of s 51A of the *Native Title Act*.

The Court upheld the award for cultural loss of $1.3 million. The Court held that assessment of cultural loss required determining the spiritual relationship which the Claim Group have with their country and then translating the spiritual hurt caused by the compensable acts into compensation and that the assessment will vary according to the compensable act, the identity of the native title holders, the native title holders' connection with the land or waters by their laws and customs and the effect of the compensable acts on that connection. The Court held that the award to the Claim Group was not manifestly excessive and was not inconsistent with acceptable community standards.

- *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.*