



HIGH COURT OF AUSTRALIA

7 October 2020

NORTHERN LAND COUNCIL & ANOR V QUALL & ANOR [2020] HCA 33

Today the High Court unanimously allowed an appeal from a judgment of the Full Court of the Federal Court of Australia. The issue raised by the appeal was whether the Northern Land Council ("the NLC") has the power to delegate to its Chief Executive Officer ("the CEO") the function conferred on it by s 203BE(1)(b) of the *Native Title Act 1993* (Cth) ("the NT Act") of certifying applications for registration of indigenous land use agreements ("ILUAs"). Under s 203BE(5) of the NT Act, a representative body must not certify an application for registration of an ILUA unless it is of the opinion that all reasonable efforts have been made to ensure that all persons who hold or may hold native title in relation to land or waters in the area covered by the agreement have been identified and that those persons have authorised the making of the agreement. Under s 203BE(6), a certification of an application for registration of an ILUA must include a statement to the effect that the representative body is of the opinion that the requirements of s 203BE(5) have been met and briefly set out its reasons for being of that opinion. Section 27(1) of the *Aboriginal Land Rights (Northern Territory) Act 1976* (Cth) ("ALR Act") relevantly provides that, subject to the ALR Act, a Land Council may do all things necessary or convenient to be done for or in connection with the performance of its functions.

In 2016, the NLC made an ILUA in relation to land and waters at the Cox Peninsula near Darwin which was varied in February 2017 ("the Kenbi ILUA"). In March 2017, the CEO signed a certificate purporting to act as a delegate of the NLC stating that the NLC certified the application for registration of the Kenbi ILUA pursuant to s 203BE(1)(b) of the NT Act and that the NLC was of the opinion that the requirements of s 203BE(5) were met. Mr Quall and Mr Fejo commenced judicial review proceedings in the Federal Court challenging the efficacy of the certificate on the grounds that the NLC's certification function under s 203BE(1)(b) was not delegable or, if it was delegable, it was not validly delegated by the NLC to the CEO. The primary judge rejected the first ground but accepted the second, with the result that the certificate was declared not to amount to certification pursuant to s 203BE(1)(b) of the NT Act. The NLC and the CEO appealed to the Full Court of the Federal Court, and Mr Quall and Mr Fejo brought a cross-appeal in which they argued that the NLC's certification function was not delegable. The Full Court allowed the cross-appeal on the basis that the certification function conferred by s 203BE(1)(b) was incapable of delegation, and as a result the issues in the appeal were not determined.

The NLC and the CEO appealed to the High Court, contending that the Full Court erred in holding that the NLC did not have the power to delegate the certification function conferred by s 203BE(1)(b) of the NT Act to the CEO. The High Court unanimously allowed the appeal. The majority of the Court held that the NLC has power under s 27(1) of the ALR Act to delegate the certification function conferred by s 203BE(1)(b) of the NT Act to the CEO if and to the extent that such delegation is objectively necessary or convenient to be done for or in connection with the performance of the certification function or other functions of the NLC. The minority held that, while the certification function under s 203BE(1)(b) of the NT Act is not delegable, the CEO can perform this function as an agent of the NLC. The appeal to the Full Court was remitted for determination of whether the certification function conferred by s 203BE(1)(b) of the NT Act was in fact duly delegated by the NLC to the CEO under s 27(1) of the ALR 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.*