

HUDDLESTON V ABORIGINAL LAND COMMISSIONER

Federal Court of Australia (Keane CJ, Spender and Barker JJ)

8 June 2010

[2010] FCAFC 66

Administrative law – native title claims – further information requested pursuant to s 67A(7) of the *Aboriginal Land Rights (Northern Territory) Act 1976* (Cth) – disposal of claims for failure to provide information within time frame – whether the Aboriginal Land Commissioner denied procedural fairness

Facts:

Huddleston and five others made native title claims under s 50(1)(a) of the *Aboriginal Land Rights (Northern Territory) Act 1976* (Cth) ('the Act') in relation to areas of unalienated Crown land in the Northern Territory. Pursuant to s 67A(7) of the Act, the Aboriginal Land Commissioner requested each of the applicants to provide further information about their claims within six months. The Northern Land Council ('NLC'), as the representative of each of the applicants, applied for a time extension to fulfil this request, and stated that a substantiated request for an extended time frame for completion would be provided the following week. The NLC failed to provide this substantiated time frame to the Commissioner within the allotted time period, and the Commissioner consequently made a determination to dispose of the claim.

The issues for the Federal Court to decide were whether the Commissioner denied the applicants procedural fairness when making a determination to dispose of the claim, and whether the determination made by the Commissioner should be quashed.

Held, per curiam, quashing the respondent's determination for failure to accord procedural fairness:

1. While the Commissioner was reasonably able to find that no basis for a time extension was presented to him by the NLC, the Commissioner must consider the difficulties involved for an applicant in making a meaningful response to a request for information as well as the serious adverse

consequences of making a determination that shuts out forever any possibility of a successful claim under the Act: [20], [26].

2. The Commissioner's discretion to make a determination authorised under s 67A(7) of the Act is constrained by the principles of procedural fairness outlined in *Kioa v West* (1985) 159 CLR 550. The Commissioner cannot make an adverse determination that there had not been a response to his requests without granting an opportunity to the applicants to argue against the exercise of this power: [36].

3. By failing to consider the adverse consequences of the determination on the applicant, and the effect of NLC's working capacity on their ability to respond in a timely manner, the Commissioner failed to accord procedural fairness when making the determination to dispose of the claim: [38], [39].