



## HIGH COURT OF AUSTRALIA

12 March 2025

COMMONWEALTH OF AUSTRALIA v YUNUPINGU (ON BEHALF OF THE GUMATJ  
CLAN OR ESTATE GROUP) & ORS  
[2025] HCA 6

Today, the High Court by majority dismissed an appeal from a decision of the Full Court of the Federal Court of Australia. The appeal raised three important questions of law. The first question was whether the power conferred on the Commonwealth Parliament by s 122 of the *Constitution* to make laws for the government of a territory extends to making a law with respect to the acquisition of property otherwise than on just terms within the meaning of s 51(xxxi) of the *Constitution*. The second question was whether an extinguishment by or under a law of the Commonwealth of native title recognised at common law before the commencement of the *Native Title Act 1993* (Cth) constituted an acquisition of property within the meaning of s 51(xxxi). The third and more specific question was whether the grant of a pastoral lease in 1903 by the Governor of South Australia under the *Northern Territory Land Act 1899* (SA) had the effect of extinguishing any non-exclusive native title rights over minerals on or under the subject land.

In an application to the Federal Court made on their behalf, the Gumatj Clan or Estate Group of the Yolngu People claim an entitlement to compensation under the *Native Title Act* for "past acts" that are "attributable" to the Commonwealth. Within the meaning of the *Native Title Act*, an "act" includes the making of legislation as well as the exercise of executive power whether or not under legislation. A "past act" includes an act which, apart from the retrospectively validating operation of the *Native Title Act*, was invalid to any extent at the time it occurred but would have been valid to that extent at that time if native title did not exist. A past act is "attributable" to the Commonwealth if it was done by the Commonwealth Parliament or under a law of the Commonwealth. The Gumatj Clan claim that the past acts attributable to the Commonwealth for which they are entitled to compensation are specified appropriations to the Commonwealth and grants to third parties of interests in land in the Gove Peninsula in the Northern Territory between 1939 and 1969 by or under ordinances made by the Governor-General under the *Northern Territory (Administration) Act 1910* (Cth). The Gumatj Clan claim that each appropriation or grant was invalid at the time it occurred to the extent that it was inconsistent with native title rights and interests which it must now be accepted that the common law of Australia then recognised the Gumatj Clan to hold in relation to the land.

The claim of the Gumatj Clan is founded on two main propositions. The first is that the power conferred on the Commonwealth Parliament by s 122 of the *Constitution* – the source, or at least a source, of the power to enact the *Northern Territory (Administration) Act* – does not extend and has never extended to making a law with respect to the acquisition of property otherwise than on just terms within the meaning of s 51(xxxi) of the *Constitution*. The second is that a law is properly characterised as a law with respect to the acquisition of property within the meaning of s 51(xxxi) if and to the extent that the law purported before the commencement of the *Native Title Act* to appropriate or grant an interest in land which was inconsistent with a native title right or interest in relation to that land then recognised at common law. The Full Court, in answering separate questions stated in order to elicit an authoritative determination of the correctness or incorrectness of the two propositions, accepted both propositions to be correct.

The High Court held that the Full Court was right to accept both propositions to be correct. The answer to the third and more specific question of law raised in the appeal was that the grant of the pastoral lease in 1903 by the Governor of South Australia under the *Northern Territory Land Act* did not have the effect of extinguishing any non-exclusive native title rights over minerals on or under the subject land.

*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.*