

National Trust of Australia (NT) -v- Minister for Lands, Planning and Environment

Supreme Court No 267 of 1997
Judgment of Mildren J delivered 24 November 1997

ADMINISTRATIVE LAW - HERITAGE CONSERVATION - s33(1) HERITAGE CONSERVATION ACT

In 1993 the old Alice Springs Gaol was declared part of the Alice Springs Heritage Precinct and a heritage place pursuant to s26(1) (a) of the *Heritage Conservation Act 1991* ("the Act").

On 22 October 1997 the Minister for Lands, Planning and Environment announced that a "prime block of Alice Springs land" would be released by the Northern Territory Government for development. The Gaol was situated on the block in question and the release necessarily involved its demolition.

On 3 November the Director of the plaintiff wrote to the Minister stating that he had legal advice that the proposed demolition of the old Gaol was unlawful. The plaintiff also brought to

the Minister's attention to s27 of the Act. This provision establishes a procedure for the revocation of heritage place declarations on application to the Heritage Advisory Council.

On 14 November 1997 the Government let a contract for the demolition of the Gaol. Mildren J granted an interim injunction on the ex parte application of the plaintiff the same day.

On 19 and 20 November the Court considered the plaintiff's application for declaratory and prerogative relief. The plaintiff contended that the Minister's authorisation for the demolition, purportedly given under s33 of the Act, was ultra vires and invalid.

Section 33(1) of the Act prohibits the carrying out of "work of any sort" on a heritage place without the consent of the Minister. The defendant argued that the plaintiff did not have any standing to bring the suit and that s33 empowered the Minister to consent to any work, including demolition work.

HELD

1. As the premier body interested in the

protection and preservation of heritage areas in the Territory, the plaintiff has a "special interest" in seeing that appropriate procedures were followed prior to the carrying out of work in the Alice Springs Heritage Area.

2. The purpose of the Act is to protect heritage places and control activity on declared heritage places for the benefit of the general public. The exercise of power by the Minister in the instant case was for a purpose that fell outside the objects, scope and purposes of the Act.
3. Declaratory relief should be granted.
4. The approval given by the Minister for the demolition of the Gaol was ultra vires and void.

APPEARANCES:

Plaintiff

Counsel McDonald

Solicitors Dyall

Defendant

Counsel Reeves

Solicitors Solicitor for the NT

Risk Management Seminar from Sedgwick

Julie Kinnear and Cheryl Richardson from the Society's PII broker, Sedgwick travelled to the NT to present a series of risk management seminars to the profession in Darwin and Alice Springs in December.

The sessions were well attended by the local profession, with approximately 100 practitioners taking advantage of this opportunity to learn more on how to minimise their exposure to claims.

Feedback from participants indicated the value of the seminars and suggestions for other topics to be covered in further seminars will be incorporated into Sedgwick's evaluation of the exercise.

The objectives of the three-hour seminar were to enable practitioners to define the risk management process and objectives, identify the major causes of PII claims, with particular reference to those in the NT, identify and evaluate areas of risk within their own practice and to develop plans and strategies to reduce risks.

The seminars were proposed by Sedgwick as part of the service offered to practitioners by their PII brokers and the concept was perceived by the Law Society as being of great value to the profession. Insurers indicated their support by contributing to the funding of the series and also by offering a rebate to participants on their 1998/9 premiums.



Cheryl Richardson (left) is responsible for the day-to-day running of the NT's PII claims and Julie Kinnear (right) is Sedgwick's claims manager, responsible for administration of NT claims.