

NATIVE TITLE COMPENSATION

*Commonwealth of Australia v
Yunupingu [2025] HCA 6*



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The High Court's ruling in *Commonwealth of Australia v Yunupingu* is a landmark decision with significant implications for native title compensation. This case was initiated by the Gumatj Clan, a Yolngu Indigenous group from north-eastern Arnhem Land, seeking compensation for the historical extinguishment of their native title rights in the Gove Peninsula.

The claim concerned land appropriations and grants made by the Commonwealth to third parties between 1936 and 1969 under the *Northern Territory (Administration) Act 1910* (Cth). The Gumatj Clan argued that these acts were invalid to the extent they conflicted with native title rights, which were later recognised in *Mabo v Queensland [No 2]* (1992).



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The key legal issue was whether the Commonwealth's broad power to make laws for the government of territories under s 122 of the *Constitution* was constrained by the requirement in s 51(xxxi) that property acquisitions must be on just terms. The Federal Court ruled in favor of the Gumatj Clan, a decision upheld by the High Court, affirming that past extinguishments of native title by the Commonwealth may give rise to compensation obligations.

This decision establishes an important precedent for future native title compensation claims, particularly in the Northern Territory, and raises broader questions about the Commonwealth's powers and responsibilities concerning native title.



Key Findings

1. **Section 51(xxxi) applies to Section 122:** The Commonwealth cannot acquire property in territories without providing just terms.
2. **Native Title as Property:** The Court confirmed that extinguishing native title under common law before the Native Title Act 1993 constitutes an acquisition of property requiring compensation.
3. **Mineral Rights Intact:** The 1903 pastoral lease did not extinguish non-exclusive native title rights over minerals, as it only withheld mineral rights from the leaseholder, not from the native title holders.



Issues Remitted to the Federal Court

- **Compensation Calculations:** The Federal Court of Australia (FCA) must assess the quantum of compensation owed to the Gumatj Clan for the past acts of extinguishment by the Commonwealth.
- **Identification of Past Acts:** The FCA will need to determine which specific past acts meet the criteria for compensation under the Native Title Act 1993 (Cth).
- **Assessment of Impact:** The FCA will evaluate the impact of the extinguishments on the native title rights and determine the extent to which the acts resulted in compensable acquisitions of property.



Implications for Future NT Compensation Claims

This High Court ruling has profound implications for the future of native title compensation claims, especially those in the Northern Territory. By confirming that Section 51(xxxi) applies to the Commonwealth's power under Section 122, the Court has broadened Commonwealth liability for past extinguishments under the *Native Title Act 1993* (Cth). This landmark decision strengthens Indigenous land rights and opens the door to new compensation claims for historical extinguishments.



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