

Tuesday, 11 February 2020

High Court decision natural outcome of *Mabo*

The Law Council of Australia has welcomed a landmark High Court decision confirming that the Australian Parliament cannot use the “aliens” power to make laws for Aboriginal Australians.

Law Council President, Pauline Wright, said the decision of the High Court today in *Love v Commonwealth of Australia; Thoms v Commonwealth of Australia* flows from the *Mabo* (No. 2) decision in 1992.

This decision confirms that the question of membership of Aboriginal societies is outside of the legislative power of the Australian Parliament, Ms Wright said.

“Many lawyers were concerned about the notion that people of Indigenous heritage could be deported both for the individuals concerned and their families,” Ms Wright said.

“The Law Council welcomes the decision which turned on the principle of Aboriginal and Torres Strait Islander people having native title rights. These rights depend on the existence of societies with continuing systems of law and customs that pre-date the acquisition of sovereignty by the British, and the unique connection Aboriginal people have to the lands of Australia. This means they cannot be regarded as aliens.”

Ms Wright said the decision raised a number of complex issues which require careful consideration.

The plaintiffs in the case were both born outside Australia and were not Australian citizens but they identified as Aboriginal people and were accepted as such by other members of their community.

“The decision is not one which the High Court has previously had to consider but is one of a number of questions which might naturally flow from the *Mabo* (No 2) decision in 1992,” Ms Wright said.

“It will no doubt be the subject of much scrutiny and comment in the coming weeks and months.”

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