

# HIGH COURT OF AUSTRALIA

Lanyon Pty. Ltd.

Vs.

The Commonwealth.

(Menzies J.)

4 April 1974

## CATCHWORDS

Evidence - Subpoena duces tecum - Privilege - Documents in possession of Commonwealth - Cabinet papers and documents preparatory to cabinet's decision - Claim of privilege - Opinion of Minister that in public interest the documents ought not to be produced - Whether Court should inspect documents to satisfy itself upon claim to privilege.

## HEARING

Sydney, 1974, April 4. 4:4:1974  
ACTION.

## DECISION

April 4.  
MENZIES J. delivered the following judgment:-

On 6th May 1970 the plaintiff in this action, being the owner of the the then Minister for the Interior a plan for the development of that property in freehold subdivision and sought government approval in principle for its plan. It was not until 18th September 1970 that an answer was forthcoming. It was in these terms:

"Some time ago you left with me a document described as 'A proposal for development presented by Lanyon Pty. Limited to the Federal Government'. I understand that you wished me to examine this document with a view to stating the Commonwealth's attitude to the proposals set out therein. The document has been carefully examined. However, it has been decided that any development of the area involved will be by the Commonwealth.

I must therefore advise you that the Government has decided that the freehold land in the area should be acquired by the Commonwealth under the [Lands Acquisition Act](#). Having regard to the requirements under that Act I am forwarding herewith a Notice to Treat." (at p652)

2. The decision so conveyed was, it appears, a cabinet decision which involved policy

considerations including the question whether or not private development of freehold land in the Australian Capital Territory for sale in subdivision should be permitted. (at p652)

3. The plaintiff seeks the production of the documents which came into existence in the course of the examination of its request leading to the decision already stated, including all minutes of cabinet and of committees and sub-committees of cabinet. (at p652)

4. Three subpoenas have been issued:

1. to the Minister, the Department of the Capital Territory, seeking copies and originals of all correspondence, reports and documents and all minutes of cabinet and committees and sub-committees of cabinet relating to the proposal which the plaintiff submitted;

2. to the secretary of the cabinet seeking the production of the same documents as in 1;

3. to the National Capital Development Commission seeking copies and originals of all correspondence, reports, documents and minutes relating to the proposed development. (at p653)

5. To each subpoena a claim for Crown privilege has been made, supported as to the first subpoena by an affidavit of the Minister of State for the Capital Territory, as to the second by an affidavit of the secretary to cabinet, and as to the third by the Minister of State for Urban and Regional Development to whom the administration of the National Capital Development Commission Act is committed. In each case it has been sworn that it is the opinion of the deponent that on grounds of public interest the documents sought ought not to be produced. (at p653)

6. The central problem is, as I see it, whether I should - without examination of the documents covered by the subpoenas - uphold the claim for privilege for documents of a particular class or classes which may be described as documents brought into existence within government departments and instrumentalities for consideration in formulating a submission to cabinet and recording the decision of cabinet, its committees or sub-committees thereon. (at p653)

7. I have decided that I should. (at p653)

8. The basis upon which I do so may not be precisely that taken in the affidavits claiming privilege. It is that the governmental process directed to obtaining a cabinet decision upon a matter of policy and cabinet's decision upon that matter should not, in the public interest, be disclosed by the production of cabinet papers including what I would describe as papers which have been brought into existence within the governmental organization for the purpose of preparing a submission to cabinet. Such papers belong to a class of documents that, in my opinion, are of a nature that ought not to be examined by the Court, except, it may be, in very special circumstances. There are no such circumstances here. (at p653)

9. Accordingly, I uphold the claim for privilege.

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