

IN THE HIGH COURT OF AUSTRALIA  
CANBERRA REGISTRY

No. C5 of 2018

BETWEEN:



**GLEN RICHARD WILLIAMS**  
Appellant

and

**WRECK BAY ABORIGINAL COMMUNITY COUNCIL**  
First Respondent

and

**ATTORNEY-GENERAL FOR THE AUSTRALIAN CAPITAL TERRITORY**  
Second Respondent

## SECOND RESPONDENT'S OUTLINE OF ORAL SUBMISSIONS

### Part I: Publication

1. I certify that this outline is in a form suitable for publication on the internet.

20

### Part II: Propositions

2. Section 46 of the *Aboriginal Land Grant (Jervis Bay Territory) Act 1986* (Cth) (**Land Grant Act**) may be construed according to its terms and without resort to any conflict of laws test derived from other legislation or contexts.
3. In particular, any question of 'inconsistency' under s 109 *Constitution* (between a *Commonwealth law* and a *State law*) or under s 28 *Australian Capital Territory (Self-Government) Act 1988* (ACT) (between a *Commonwealth law* and an *ACT law*) does not arise.
4. The conflict in this case is not between a Commonwealth law and an ACT law or between a Commonwealth law and a State law; rather it is between two types of Commonwealth laws.
5. There are 4 different types of Commonwealth laws in force in the JBT: original, delegated, applied and surrogate.

30

---

Filed for the Second Respondent  
ACT Government Solicitor  
Level 2, 12 Moore Street  
CANBERRA ACT 2601  
DX 5602 Canberra

Telephone: (02) 6207 0635  
Fax: (02) 6207 0630  
Email: derek.kettle@act.gov.au  
Ref: Derek Kettle (634105)

6. While there is a hierarchy among these, the application of the test in s 46 produces the same outcome regardless which type of Commonwealth law is in question.
7. The key phrase 'capable of operating concurrently with this Act' entails laying the two laws, properly construed, side-by-side and determining the extent to which there can be concurrent (simultaneous) obedience.
8. The Land Grant Act does not provide an exhaustive or exclusive statement of the law on any topic such that it entails an 'implicit negative proposition'. In particular, it does not prescribe a 'special leasing power' that would require the standard residential tenancy terms in the *Residential Tenancies Act 1997 (ACT)* (**Tenancies Act**) to be given no effect at all.  
10
9. While such an 'implicit negative proposition' might exist *if one were to read into* the Land Grant Act a further power to determine the terms of the lease on such terms as the first respondent thinks fit, there is no justification for doing so in the text or purpose of the Land Grant Act.
10. Since 'reading in' the power is a necessary plank in any argument that the Land Grant Act contains a 'special leasing power' that amounts to an 'exhaustive or exclusive provision' on leasing, it must be concluded that the Tenancies Act can be given effect to the extent that it can be simultaneously obeyed.
11. When laid side-by-side with the Land Grant Act, it is clear the standard residential tenancy terms in the Tenancies Act are capable of simultaneous obedience except in  
20 respect of the right of a tenant to sublease without landlord consent.

Dated: 12 September 2018



Peter J F Garrisson AM SC  
Solicitor-General for the ACT  
Telephone: (02) 6207 0654  
30 Facsimile: (02) 6207 0630  
Email: peter.garrisson@act.gov.au



Prue M Bindon  
Counsel  
Telephone: (02) 6185 1414  
Facsimile: (02) 6185 1450  
Email: bindon@keychambers.com.au

Counsel for the Second Respondent