



HIGH COURT OF AUSTRALIA

13 February 2019

WILLIAMS v WRECK BAY ABORIGINAL COMMUNITY COUNCIL & ANOR
[2019] HCA 4

Today the High Court, by majority, allowed an appeal from a decision of the Court of Appeal of the Supreme Court of the Australian Capital Territory. The appeal concerned the extent to which the *Residential Tenancies Act 1997* (ACT) applies to leases granted pursuant to the *Aboriginal Land Grant (Jervis Bay Territory) Act 1986* (Cth) ("the Land Grant Act") over certain land, known as "Aboriginal Land", within the Jervis Bay Territory ("the JBT").

The Wreck Bay Aboriginal Community Council ("the Council") is empowered under the Land Grant Act to grant leases over Aboriginal Land within the JBT. Section 46 of the Land Grant Act provides that "[t]his Act does not affect the application to Aboriginal Land of a law in force in the [JBT] to the extent that that law is capable of operating concurrently with this Act". By statute, laws in force in the ACT apply in the JBT as if the JBT formed part of the ACT. The *Residential Tenancies Act* provides that all leases to which it applies include "standard residential tenancy terms", including a term requiring the lessor to "maintain the premises in a reasonable state of repair having regard to their condition at the commencement of the [lease]". Subject to an exception, the *Residential Tenancies Act* renders void terms of a lease that are inconsistent with the standard residential tenancy terms.

The appellant has resided in premises leased from the Council since 1989. A dispute arose between the Council and the appellant as to whether the Council was obliged, under the *Residential Tenancies Act*, to keep the premises in a reasonable state of repair. Ultimately, a special case was filed in the Supreme Court, asking whether, and to what extent, the *Residential Tenancies Act* is a law which is not capable of operating concurrently with the Land Grant Act within the meaning of s 46 of the Land Grant Act. The Supreme Court held that the *Residential Tenancies Act* is a law capable of operating concurrently with the Land Grant Act. The Court of Appeal held that the *Residential Tenancies Act* is not capable of operating concurrently with the Land Grant Act insofar as it requires a lease granted by the Council to contain the standard residential tenancy terms and renders void terms of a lease granted by the Council that are inconsistent with the standard residential tenancy terms.

By grant of special leave, the appellant appealed to the High Court. A majority of the Court held that the provisions of the Land Grant Act considered together do not purport to provide a complete statement of the law governing the rights and obligations of parties to leases granted by the Council so as to exclude the application of the law generally applicable to leases within the JBT. The majority held that the *Residential Tenancies Act* does not apply to Aboriginal Land for the purposes of s 46 of the Land Grant Act only to the extent that certain provisions of the *Residential Tenancies Act* would prohibit subletting by a tenant of the Council.

- *This statement is not intended to be a substitute for the reasons of the High Court or to be used in any later consideration of the Court's reasons.*