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

THE ATTORNEY-GENERAL FOR THE AUSTRALIAN CAPITAL TERRITORY
Second respondent

FIRST RESPONDENT'S OUTLINE OF ORAL ARGUMENT

PART I: PUBLICATION

1. This outline is in a form suitable for publication on the internet.

PART II: PROPOSITIONS TO BE ADVANCED

The approach to s 46 of the Land Grand Act

2. Section 46 of the Land Grant Act is not limited to notions of impossibility of simultaneous obedience. An ACT law which would alter, impair or detract from the operation of the Land Grant Act cannot operate concurrently with the Land Grant Act (**1RS [27]–[35], [59]–[60]**).

   - *Dickson v The Queen* (2010) 241 CLR 491 at [13], [33]

3. Section 46 of the Land Grant Act is not a provision that encourages "reading down" of the Land Grant Act to accommodate laws applied by the Jervis Bay Act (**1RS [23]–[26]**). So much would be inconsistent with the text, and is an unlikely intent. It is also not consistent with *Commonwealth v Australian Capital Territory* (2013) 250 CLR 441 at [52]–[54].

4. The appellant's approach errs in effectively treating the Land Grand Act and ACT laws as applied in the Territory as though made by the same body (**1RS [29]–[30]**).

   - Cf *Commissioner of Police (NSW) v Eaton* (2013) 252 CLR 1 at [45], [48]

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Concurrent operation is not possible

5. The power of the Council to grant leases conferred by s 38(2) of the Land Grand Act should be construed as including the power to determine for itself the terms of those leases and not subject to qualification by provisions which would alter those terms.

   - Land Grant Act.
   - Cf Residential Tenancies Act.

6. In sum:

   (1) The powers of the Council are properly to be regarded as wholly statutory in origin. The legislative scheme cannot be described as one in which the Council is an ordinary landowner (**1RS [39]–[42]**).

   (2) The nature of the property dealings authorised by the Land Grant Act sits uneasily with the prospect of legislative alteration of the terms of leases granted by the Council (**1RS [43]–[47]**).

   (3) The degree of community control over the activities of the Council supports a construction which gives the Council the greatest ability to set terms for community members (**1RS [48]–[54]**).

   (4) Various limitations on the Council's powers are inconsistent with the Council being under the kind of obligations imposed by cll 54–60 of sched 1 to the Residential Tenancies Act (**1RS [55]–[57]**).

   - *Australian Mutual Provident Society v Goulden* (1986) 160 CLR 330 at 335–7.

7. No weight should be placed on the submission that the consequence of the Council's success would be that the Residential Tenancies Act cannot apply at all to Aboriginal Land or that the Land Grant Act creates a "legal silo" (**1RS [61]**).

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