



GLEN RICHARD WILLIAMS
Appellant

and

WRECK BAY ABORIGINAL COMMUNITY COUNCIL
First Respondent

THE ATTORNEY-GENERAL FOR THE AUSTRALIAN CAPITAL TERRITORY
Second Respondent

APPELLANT'S OUTLINE OF ORAL ARGUMENT

1. This outline is in a form suitable for publication on the internet.
2. This case turns on s 46 of the Land Grant Act. Provisions in the RT Act which imply terms into residential tenancy agreements cannot operate to the extent that they are not “capable of operating concurrently with [the Land Grant] Act”. (WS [10])
3. It is necessary to distinguish between provisions which provide rules for resolving conflicts between laws on the one hand, and provisions which aid the construction of statutes – thereby creating or avoiding such conflicts – on the other. (WS [15])
4. Section 46 is a provision of the latter kind. It does not supply a rule for resolving conflicts. It speaks of “a law in force in the Territory” and therefore does work in relation to:
 - a. laws of the ACT picked up under the former s 4 or the current s 4A of the JBT Act (held by the Court of Appeal to be subordinate to Commonwealth Acts);
 - b. Ordinances made under the JBT Act (subordinate to Commonwealth Acts under ordinary principles of repugnancy); and

- c. other Commonwealth Acts applying in the Territory (as to which, in the last resort, the later enactment would impliedly overrule the earlier).
5. Section 44 is therefore not comparable to either s 109 of the Constitution or s 28 of the Self-Government Act, which both erect rules of resolution and define the conflicts to which they apply in terms of “inconsistency”. And *Commonwealth v Australian Capital Territory* (Authorities Tab 15) at [51]-[61] does not control the content of the phrase “capable of operating concurrently” in s 46. The phrase means what it says.
6. The language used in s 46 means what it says. It confirms a legislative intention that the Land Grant Act is not to displace (pursuant to any applicable rule of resolution) a provision of another applicable law unless the two laws come into direct conflict. It therefore points to the answer to questions as to whether any provision of the Land Grant Act is to be construed as conferring powers or permissions that operate to the exclusion of other statutory provisions in force in the Territory. The Court of Appeal was wrong to regard the construction of the Land Grant Act as anterior to the application of s 46. (WS [17]-[18])
7. Section 38(2) of the Land Grant Act is not incapable of applying concurrently with a statute that regulates relationships between landlords and tenants by imposing implied terms of the kind in issue here. (WS [20]-[25])
 - a. The test is not whether compliance with the implied terms is inconvenient for the Council or even inimical to the performance of its functions. The extent to which the Council is empowered to pursue the performance of its functions is a question of construction of the statute as a whole, including s 46.
 - b. Section 38 applies to land that has been “vested” in the Council (s 10). That language obviously connotes a capacity to deal with such land. Section 38(1) takes away that capacity, “except as provided by this Part”. Section 38(2) is an element of the foreshadowed exception: it qualifies the restriction imposed by subsection (1).
 - c. Even if it is seen as a distinct source of authority, s 38(2) confers no more than a capacity (which any landowner would have) to dispose of interests in land by way of a familiar form of contractual transaction. Statutory regulation of the relationships created by such transactions was hardly unknown. Nothing in the Act suggests an intention to immunise the Council’s transactions from such regulation.

8. The point is highlighted by provisions which impose obligations or confer permissions in a more specific way. For example s 41(1) of the Land Grant Act authorises a grant of a sub-lease which the RT Act in its current form would prohibit. (WS [26])
9. The outcome is no different if s 46 adopts a broader test of inconsistency akin to s 109 (WS [27]).

Geoffrey Kennett

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