



## HIGH COURT OF AUSTRALIA

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#### Details of Filing

File Number: B26/2020  
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IN THE HIGH COURT OF AUSTRALIA  
BRISBANE REGISTRY

BETWEEN:

Clive Frederick Palmer  
First Plaintiff

Mineralogy Pty Ltd  
ABN 65 010 582 680  
Second Plaintiff

and

The State of Western Australia  
First Defendant

Christopher John Dawson  
Second Defendant

**OUTLINE OF ORAL SUBMISSIONS OF THE ATTORNEY-GENERAL OF THE  
AUSTRALIAN CAPITAL TERRITORY (INTERVENING)**

**Part I:**

1. These submissions are in a form suitable for publication on the internet.

## Part II: Propositions

### Equivalent provision to s 92

2. Section 69 of the *Australian Capital Territory (Self-Government) Act 1988* (Cth) is in equivalent terms to s 92 of the Commonwealth Constitution, and is to be given the same meaning (ACT Submissions [8]-[9]).

*AMS v AIF* (1999) 199 CLR 160 at 175-176 [36], **JBA Vol 3 pp 503-504**

### The assessment of risk

3. Various jurisdictions have made different assessments of risk in relation to the transmission of COVID-19, and have enacted various public health measures reflecting that assessment (e.g. *Public Health (COVID-19 Interstate Travellers) Emergency Direction 2020 (No 2)* (ACT) (NI2020-661), **Supplementary Court Book pp 274-281**).

#### *(A) Justification of the law - excess*

4. The fact that the risk of transmission of COVID-19, as currently assessed, varies as between each State and Territory, and that Western Australia has applied the same restrictions in respect of each State and Territory, does not mean that the Directions lack a rational connection to limiting the spread of COVID-19, or that they are excessive (ACT Submissions [56]-[57], [63], [69]-[70]).

*Palmer v State of Western Australia No 4* [2020] FCA 1221 [158]-[171], [254]-[291] and [317]-[321], **JBA Vol 14 pp 5335-5337, 5356-5362, 5367**

#### *(B) Justification of the law – a precautionary approach*

5. Whether the assessment is of “reasonable necessity” or “reasonably appropriate and adapted” in the context of the proportionality analysis, the question is one of the justification of the law and, in making that assessment, a precautionary approach is appropriate (ACT Submissions [40]-[42], [69]-[70]).

*Palmer v State of Western Australia No 4*) [2020] FCA 1221 [72], [76], [109], [366]),  
**JBA 5314-5315, 5316, 5323, 5380-5382**

6. The plaintiffs' submission that "adequate" measures that are "not as effective" could be contemplated as an alternative to the current measures is inconsistent with the application of a precautionary approach, and does not meet the purpose of the Directions (ACT Submissions [18]-[19], [55], [58]-[62]).

Dated: 4 November 2020

P J F Garrison	H Younan	A M Hammond
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