



## HIGH COURT OF AUSTRALIA

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#### Details of Filing

File Number: D1/2025  
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#### Important Information

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**IN THE HIGH COURT OF AUSTRALIA  
DARWIN REGISTRY**

**D7/2025**

**BETWEEN:**

**ASHER BADARI**

First Appellant

**RICANE GALAMINDA**

Second Appellant

**LOFTY NADJAMERREK**

Third Appellant

**CARMELENA TILMOUTH**

Fourth Appellant

and

**MINISTER FOR TERRITORY FAMILIES  
AND URBAN HOUSING**

First Respondent

**MINISTER FOR HOUSING AND HOMELANDS**

Second Respondent

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**D1/2025**

**BETWEEN:**

**ASHER BADARI**

First Applicant

**RICANE GALAMINDA**

Second Applicant

**LOFTY NADJAMERREK**

Third Applicant

**CARMELENA TILMOUTH**

Fourth Applicant

and

**MINISTER FOR HOUSING AND HOMELANDS**

First Respondent

**CHIEF EXECUTIVE OFFICER (HOUSING)**

Second Respondent

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**OUTLINE OF ORAL SUBMISSIONS OF THE RESPONDENTS**

## PART I INTERNET PUBLICATION

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

## PART II PROPOSITIONS TO BE ADVANCED IN ORAL ARGUMENT

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### A D7/2025 (FIRST TO THIRD DETERMINATIONS)

2 This proceeding concerns the validity of three determinations made under s 23 of the *Housing Act 1982* (NT) (**JBA V1 T3**), which confers a broad discretion on the Minister to determine “from time to time” the “rent to be paid for a dwelling or class of dwelling” and overrides any agreement or purported agreement entered into by a tenant: s 23(4).

10 2.1. *Housing Act* also establishes and provides for the functions and powers of Chief Executive Officer (Housing), including to let premises, and provides for regulations to be made in relation to the letting of dwellings by the CEO: ss 6, 15, 16, 37(2)(e).

2.2. *Housing Regulations 1983* (NT) (**JBA V2 T8**), permits CEO to let a dwelling to an “eligible person” and provides for rent rebates to be granted in the CEO’s discretion: regs, 4, 5.

### Ground 1: Procedural Fairness

#### *Q1: The power is conditioned by obligation to afford procedural fairness*

3 Whether a power is conditioned by the obligation is a question of statutory construction that depends on two inquiries: (1) whether the power is of a kind that **attracts** the presumption; and (2) if so, whether it has been **displaced** by the statutory scheme: **RS/D7**  
 20 **[31]**. Section 23 attracts the presumption, and there is nothing in the scheme that displaces it.

4 A power will attract the presumption if: (i) its exercise is “capable” of having an adverse effect on the “legally recognised rights or interests” of an individual; (ii) that individual is affected in their “individual capacity” (as distinct from a member of the general public or class thereof): **RS/D7 [32]-[33]**.

- *Disorganized Developments* (2023) 97 ALJR 575 at [33]-[34] (**JBA V5 T27**)

5 The rationale for that second requirement as to nature of the effect is important because, where satisfied, it will be an exercise of power about which the individual could realistically have something to say in respect of considerations personal to the individual.  
 30 In that way, it serves the instrumental purpose of reducing the risk of error by the decision-maker: **RS/D7 [34]**.

- *Jarrett* (2005) 224 CLR 44 at [25] (**JBA V3 T17**)

- *Nathanson* (2022) 276 CLR 80 at [51] (**JBA V4 T21**)

6 Section 23 satisfies both requirements and so attracts the presumption: (i) it is capable of being exercised to increase rent, thereby adversely affecting financial interests; (ii) that can involve affectation of a person in an “individual capacity” where the power is exercised for a single dwelling and, in some cases, where it is exercised for a class: **RS/D7 [35]-[39]**.

- *Vanmeld* (1999) 46 NSWLR 78 at [62] (**JBA V5 T31**)
- *Leahy* (2023) 15 QR 101 at [37], [38] (**JBA V5 T25**)
- *Castle* [2008] NSWCA 231 at [5]-[6] (**JBA V5 T26**)

***Q2: The content of the obligation in the circumstances***

10 7 The correct inquiry is not what could have been done, but what was necessary or reasonable — if anything — to satisfy the obligation: **RS/D7 [41]-[44]**.

- *Haoucher* (1990) 169 CLR 648 at 652 (**JBA V3 T15**)
- *CPCF* (2015) 255 CLR 514 at [367] (**JBA V3 T14**)

8 If a decision maker is not bound to take into account any matters affecting an individual as an individual and does not otherwise propose to do so as a matter of discretion, then the (flexible) requirements of procedural fairness may be met without giving any hearing: **RS/D7 [47]-[48]**.

- *Kioa* (1985) 159 CLR 550 at 580, 584-586, 588 (Mason J), 619, 620, 624, 628 (Brennan J) (**JBA V3 T18**).
- *O’Shea* (1987) 163 CLR 378 at 412 (**JBA V4 T22**).

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9 That is precisely what occurred in the making of the First to Third Determinations: **RS/D7 [45]-[46], [49]-[52]**.

9.1. The Minister on each occasion exercised the broad and unconfined discretion (under s 23 to make each determination in respect of four classes of dwellings (by reference to number of bedrooms) applying to over 5000 dwellings.

- *Peko-Wallsend* (1986) 162 CLR 24 at 40 (**JBA V3 T19**)
- Parliamentary Debates, 1 September 1982 at 2810 (**JBA V6 T39**)

9.2. The personal circumstances of each of the tenants were not (and need not have been) taken into account.

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- *O’Shea* (1987) 163 CLR 378 at 387, 389 (Mason J), 411 (Brennan J) (**JBA V4 T22**)
- *Disorganized Developments* (2023) 97 ALJR 575 at [43]-[45] (**JBA V5 T27**)

**Ground 2: Unreasonableness**

10 The rents specified, and the manner of their determination, did not contravene the condition that the exercise of the s 23 power must be reasonable: **RS/D7 [54]-[60]**.

10.1. The appellants' allegation as to unreasonableness at its core is a complaint about the *merits* of selecting a price per bedroom for up to four or more bedrooms, to give effect to the policy of the New Framework.

10.2. The reliance on ss 41 and 42 of the *Residential Tenancies Act 1999* (NT) (**JBA V2 T10**) and on the Fourth Determination is misplaced: see **RS/D7 [25]-[27]**.

**B D1/2025 (FOURTH DETERMINATION)**

10 11 The appropriate orders for this Court in D1/2025 are set out at **RS/D1 [32]**; see also **[34]**, **[38]**. That position is agreed: **AReply/D1 [5]**.

12 The difference between the parties concerns the appropriate characterisation of the error.

13 The respondents' primary position is that the referral to the Full Court NT was made, but then declined: **RS/D1 [30]-[32]**. The applicants appear to agree that is the correct legal characterisation of what occurred: see **AReply/D1 [3(a)]**.

14 If that is right, the Full Court NT had no jurisdiction to dismiss the application for judicial review of the Fourth Determination or any part of it. That question of jurisdiction is necessarily anterior to any question of procedural fairness: cf **AReplyD1 [3(c)]**.



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**Craig Lenehan****Rachel Amamoo****Dated:** 3 September 2025