



HIGH COURT OF AUSTRALIA

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Details of Filing

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IN THE HIGH COURT OF AUSTRALIA

DARWIN REGISTRY

BETWEEN:

NORTH AUSTRALIAN ABORIGINAL JUSTICE AGENCY LIMITED

Plaintiff

and

NORTHERN TERRITORY OF AUSTRALIA

Defendant

SUBMISSIONS OF THE DEFENDANT

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PART I FORM OF SUBMISSIONS

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

PART II CONCISE STATEMENT OF THE ISSUE

2. Does a Territory law precluding Territory courts granting bail to a person accused of a specified offence unless the Court has a high degree of confidence that the person will not, if released on bail, commit a relevant offence or otherwise endanger the safety of the community, substantially impair their institutional integrity so as to infringe the *Kable* principle? The Defendant submits the answer is “no”.

PART III SECTION 78B NOTICE

- 10 3. No further notice s 78B of the *Judiciary Act 1903* (Cth) is required.

PART IV MATERIAL FACTS IN DISPUTE

4. There are no facts in dispute, and the respondent does not take issue with PS [4].

PART V ARGUMENT

5. **Standing.** NAAJA does not have standing to seek relief. It does not have the same interest as its clients who have sought and been refused bail: cf PS [5]. Statements in decisions of this Court have doubted that a representative body has standing to challenge the validity of a law because its members would do so.¹ Those doubts are well-founded. A corporation is distinct from its shareholders and a representative body from those it represents.
- 20 6. *Shop, Distributive and Allied Employees Association v Minister for Industrial Affairs (SA) (SDAEA)* does not assist NAAJA because its outcome reflects the limited manner in which standing was contested.² “In raising the question of standing the Minister does not rely on the fact that the union is an association. The submission is put on the basis that the union has the same interest as its members”.³ Because its members had standing, this Court concluded that the union did: “For these reasons we are of the opinion that the union has, upon the basis conceded by the Minister, the interest necessary to give it standing in this matter”.⁴ Nor does *North Australian Aboriginal Legal Aid Service Inc v*

¹ See *Victorian Chamber of Manufactures v Commonwealth* (1943) 67 CLR 335 at 343; *Real Estate Institute of NSW v Blair* (1946) 73 CLR 213 at 224, 226, 228; *British Medical Association v Commonwealth* (1949) 79 CLR 201 at 247; *Australian Conservation Fund Inc v Commonwealth* (1979) 146 CLR 493 at 531; *Croome v Tasmania* (1997) 191 CLR 119 at 126, 137.

(1995) 183 CLR 552.

² (1995) 183 CLR 552 at 557 (Brennan, Dawson, Toohey, Gaudron and McHugh JJ).

³ (1995) 183 CLR 552 at 559 (Brennan, Dawson, Toohey, Gaudron and McHugh JJ).

Bradley assist, given that Weinberg J relied upon *SDAEA* without appreciating that its result was premised on a particular concession⁵ and standing was not at issue on appeal.

7. NAAJA does not have standing in its own right separate from its clients. There is no question of NAAJA ever seeking bail for itself let alone being granted or refused it. By obtaining a declaration of invalidity, it would not receive any benefit or advantage, or avoid any detriment or disadvantage, greater than ordinary members of the community. *North Australian Aboriginal Justice Agency Ltd v Northern Territory (NAAJA)*⁶ is distinguishable because there was a second plaintiff and standing was not disputed.
8. The possible grant of bail arises at different stages of the criminal process (post-arrest, committal, pre-trial, post-conviction, pending appeal: see s 6). Section 7A(2AB) is relevant at each stage. If NAAJA has standing, it would appear to be free to question the validity of every operation of s 7A(2AB) whereas a person accused of an offence and seeking bail might be confined only to the operations particular to them. That is an implausible outcome. It reveals the advisory, and thus hypothetical, nature of this case.

A. OVERVIEW OF DEFENDANT'S RESPONSE TO INVALIDITY SUBMISSIONS

9. NAAJA's case is that a discrete provision of Territory law (s 7A(2AB) of the *Bail Act*), which may sometimes operate to cause a Territory court to refuse bail to a person accused of certain offences, is incompatible with Ch III of the Constitution because it: (a) authorises the involuntary detention of such a person by such a court (PS [28]-[29]), which detention is prima facie punitive in character "by default" (PS [29]); (b) is not within an "exceptional case" of constitutionally permissible, non-punitive detention because it does not have a non-punitive purpose (PS [30]-[34]) or not a "legitimate" one (PS [35]-[38]) and is not reasonably capable of being seen to be necessary for a legitimate and non-punitive purpose (PS [39]-[44]); and (c) thereby purports to confer power of a kind "antithetical" to the character of such courts as an institution for the administration of justice so as to substantially impair their institutional integrity: PS [11].
10. Limbs (a) and (b) reflect NAAJA's analysis of jurisprudence on *Chu Kheng Lim v Minister for Immigration, Local Government and Ethnic Affairs (Lim)*⁷ in respect of Commonwealth laws. Limb (c) is solely put on the basis that it necessarily follows from limbs (a) and (b) that such a Territory law substantially impairs the institutional integrity

⁵ (2001) 192 ALR 625.

⁶ (2015) 256 CLR 569.

⁷ (1992) 173 CLR 1.

of Territory courts: **PS [45]**; see also **PS [7]-[11]**. In other words, NAAJA's *Kable* case is put as following *inde sequitur* from its *Lim* case.

11. **As to (a):** this limb mischaracterises s 7A(2AB) as requiring or authorising a court to remand pending trial (or appeal as the case may be). Section 7A(2AB) is not such a power.
12. **As to (b):** to the extent s 7A(2AB) is a law authorising detention, it is such a law because it forms part of an integrated statutory scheme that authorises a court to remand in custody a person accused of a relevant offence (or commit to prison following conviction and sentence) absent a grant of bail or dispensation of the requirements of bail. Detention on remand is to ensure the accused is available to be dealt with by the courts for the offence charged, which *Lim* itself described as “[t]he most important” of the “exceptional cases” and “not seen by the law as punitive or as appertaining exclusively to judicial power”.⁸ This form of exceptional case has been repeatedly recognised in this Court.⁹
13. The charging of a person with a relevant offence makes them susceptible to detention for the purposes of being dealt with by the courts for the alleged offence. As section B and C below show, bail regimes supply a regime for the relaxation of such custody. But there is no common law right to bail for accused persons and there is a very long history of the legislature regulating who can get bail at all and, if available, then the matters to take into account in deciding whether to grant bail as a release from custody. Such regulation of bail does not change the purpose of remand or deprive it of constitutional legitimacy.
14. Section 7A(2AB) must be read in this broader context and cognisant that persons accused of offences to which s 7A(1) applies are not persons who would otherwise be at liberty pending determination of the charge absent bail. Section 7A(2AB) is part of a suite of provisions (the validity of which are not otherwise challenged) that regulate the availability of bail by elevating the importance of community safety by making it a threshold consideration (in s 7A(2AB)) and a paramount bail consideration (in ss 7A(2AA) and 24(1)(aa)). Doing so does not alter the purpose of remanding a person into custody (cf **PS [30]-[34]**), or have the effect that such remand can only be justified if it also meets the requirements for preventative detention established in respect of

⁸ (1992) 173 CLR 1 at 27-28.

⁹ See *Fardon v Attorney-General (Qld)* (2004) 223 CLR 575 (**Fardon**) at [80] (Gummow J); *NAAJA* (2015) 256 CLR 569 at [97] (Gageler J); *Minister for Home Affairs v Benbrika* (2021) 272 CLR 68 at [18] (Kiefel CJ, Bell, Keane and Steward JJ), [219] (Edelman J); *Vella v Commissioner of Police for New South Wales* (2019) 269 CLR 219 (**Vella**) at [157] (Gageler J); *Garlett v Western Australia* (2022) 277 CLR 1 (**Garlett**) at [178] (Gordon J); *EGH19 v Commonwealth* (2026) 100 ALJR 400 (**EGH19**) at [107] (Gordon J), [318(1)] (Jagot J).

persons who (unlike accused persons) are not otherwise susceptible to detention (cf **PS [35]-[38]**). Analogising from this Court's decisions on preventative detention fails to appreciate the distinctive, historical and constitutionally recognised exceptional case of detention pending trial and the distinctive status of persons accused of offences of the kind identified in s 7A(1).

15. Considerations of substance and procedure further support the conclusion that remand of persons accused of s 7A(1) offences is reasonably capable of being seen as necessary for the constitutionally legitimate purpose of securing availability for trial. Section 7A(2AB) imposes a heightened test for bail for persons accused of those offences, but that does not
 10 alter the purpose of remand absent bail. The conferral of power to grant bail subject to s 7A(2AB) requires a court to apply a standard capable of judicial application, and which — when exercised by the court — is accompanied by all the usual features of judicial process. There is also no limit to the number of bail applications that may be made.
16. **As to (c):** Section 7A(2AB) does not substantially impair the institutional integrity of Territory courts. Even were the impugned provision to be a law of the Commonwealth, it would not offend the *Lim* principle for the reasons given in answer to limbs (a) and (b) of NAAJA's case. But even if it did, the Northern Territory is not subject to the same limits
 20 as the Commonwealth. Neither the Constitution nor the *Self-Government Act* mandates an equivalent separation of judicial and non-judicial powers as a limitation on the legislative power of the Territory. It is within its plenary legislative competence to confer power upon, remove power from, and regulate the power of, Territory courts to grant bail.
17. The *Lim* inquiry could only be relevant if and in so far as it informs the ultimate question of institutional integrity. Here, there is a very long history of courts exercising powers to remand or grant bail in accordance with statutory restrictions on those powers. Where, as here, s 7A(2AB) enacts a standard capable of judicial application, and the statute as a whole does not impair the Supreme Court's power to issue a writ of *habeas corpus* or the availability of courts to consider bail applications throughout the criminal process and grant bail to any person entitled to it under Territory law, there is nothing threatening to a court's institutional integrity in exercising power to remand or bail subject to s 7A(2AB)
 30 as an ancillary to the process of adjudging and punishing criminal guilt. Section 120 of the Constitution can be seen as contemplating such arrangements in the federation.

B. REMAND AND BAIL: MATTERS OF HISTORY

18. NAAJA's history of bail is not accurate. For example, **PS [15]** quotes from a *Harvard Law Review* article but the story of bail law which it describes as characterised by "continual efforts to restrict the power of the state to lock a person up before trial" is a story of the "distinctively American tradition" of bail, not the "common law model" of bail inherited from England¹⁰ from which it differed dramatically. It is the common law model, rather than American exceptionalism, which is of particular relevance to Australia. NAAJA's reliance on *Stack v Boyle*¹¹ at **PS [43]** is thus of no assistance.
19. **Early history.**¹² In 1215, *Magna Carta* declared that "[n]o free man shall be arrested or imprisoned ... except by the lawful judgment of his peers or by the law of the land", but "it remained unclear whether the 'no free man' canon [in *Magna Carta*] set limits on pretrial detentions".¹³ Stephen explained that "[w]hen the administration of justice was in its infancy, arrest meant imprisonment without preliminary inquiry till the sheriff held his tourn at least, and, in more serious cases, till the arrival of the justices", such that it was "a matter of the utmost importance to be able to obtain a provisional release from custody" while waiting for them to arrive in town (which might be some years).¹⁴
20. **1275 (Eng):** In 1275, the *Statute of Westminster* (3 Edw 1, c 12) was "[t]he first statutory regulation of the granting of bail in England"¹⁵ and it "was for 550 years the main foundation of the law of bail".¹⁶ In response to abuses by sheriffs in granting bail when they should not have and refusing it when they should have, it identified 13 classes of persons who could not be granted bail and six classes of persons who should not be refused bail. It also provided that those granted bail "shall from henceforth be let out by sufficient surety" and imposed a penalty on a person who denied bail when it was available. The *Statute of Westminster* thus limited executive discretion, but in a way that is inconsistent with any presumption that bail must be available for anyone charged with

¹⁰ See, eg, Kellen R Funk and Sandra G Mayson, "Bail at the Founding" (2024) 137 *Harvard Law Review* 1816 (**Bail at the Founding**) at 1821-1823, 1826, 1832, 1892.

¹¹ (1951) 342 US 1 at 8-9 (Jackson J).

¹² Bail was historically a form of alternative custody whereas mainprize was a form of conditional release: see B H K Donovan, *The Law of Bail: Practice, Procedure and Principles* (Legal Books Pty Ltd, 1981) at [0.5]. The term "bail" will be used in this Part B.

¹³ Bail at the Founding at 1827.

¹⁴ Sir James Fitzjames Stephen, *History of the Criminal Law of England* vol 1 p 233.

¹⁵ R P Roulston, "The Quest for Balance in Bail: The New South Wales Experience" in Duncan Chappell and Paul Wilson (eds), *The Australian Criminal Justice System* (Butterworths, 1972) 467 (**Balance in Bail**) at 469.

¹⁶ Sir James Fitzjames Stephen, *History of the Criminal Law of England* vol 1 p 234.

an offence. It was especially concerned with detention prior to being brought before an authority with power to examine the charge, and in particular proscribing conduct inconsistent with the Statute by persons authorised to grant bail or required to refuse it.¹⁷

21. **1627 and 1628 (Eng):** In 1627, the Court of King’s Bench refused bail to five individuals who had been committed without charge.¹⁸ In response, the *Petition of Right* in 1628 established that “free men were not to be detained without a timely, public charge”.¹⁹
22. **1641 (US):** Over in Massachusetts, the General Council adopted the Body of Liberties which Nathaniel Ward had drafted.²⁰ Liberty 18 provided that:

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No mans person shall be restrained or imprisoned by any Authority whatsoever, before the law hath sentenced him thereto if he can put in sufficient securitie, bayle, or mainprise, for his appearance, and good behaviour in the meane time, unless it be in Cries Capitall, and Contempts in open Court, and in such case where some expresse act of Court doth allow it.

23. This “represented a dramatic check on the discretion (to bail or commit) that magistrates had previously exercised. Rather than allow discretion in the main run of cases, Ward’s bail clause made bail mandatory except in narrowly drawn categories”.²¹

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24. **1679 (Eng):** In 1679, the *Habeas Corpus Act of 1679* was enacted in response to delays in holding a bond hearing such that a person “may be long detained in prison in such cases where by law they are bailable”.²² The concern was with continued detention in the absence of lawful authority, or alternatively in subversion of the content of bail law.

25. **1682 (US):** The *Frame of Government of Pennsylvania* contained a bail clause that said “[t]hat all Prisoners shall be Bailable by sufficient Sureties, unless for Capital Offences where the Proof is evident or the Presumption great”.²³ This “dramatically expanded the right to bail vis-à-vis the common law, leaving magistrates discretion to deny bail only in capital cases. This change was quite radical”.²⁴

26. **1689 (Eng):** In response to excessive bail having been required of persons committed in criminal cases to elude the benefit of the laws made for the liberty of the subjects, the *Bill of Rights* (1 W & M, 2 c 2) provided that “excessive bail ought not to be required”.

¹⁷ Bail at the Founding at 1833.

¹⁸ *Darnell’s Case*, 3 How St Tr 1 (1627).

¹⁹ Bail at the Founding at 1828.

²⁰ Bail at the Founding at 1836.

²¹ Bail at the Founding at 1837.

²² For the specific context, see Bail at the Founding at 1828.

²³ Bail at the Founding at 1840.

²⁴ Bail at the Founding at 1840-1841.

27. **1770 (Eng):** In the first edition of his *Commentaries on the Laws of England*, Blackstone dealt with commitment and bail together in Chapter 22. He explained that “[t]he justice, before whom such prisoner is brought, is bound immediately to examine the circumstances of the crime alleged”.²⁵ If it manifestly appeared that no crime had been committed then the person would be discharged. Otherwise, the person was to be committed to prison or given bail, which is to say “put in securities for his appearance, to answer the charge against him”.²⁶ Blackstone noted that “[t]his commitment therefore being only for safe custody, wherever bail will answer the same intention, it ought to be taken, as in most of the inferior crimes” but not the felonies.²⁷ And Blackstone went on to note and discuss “who may *not* be admitted to bail, or what offences are *not* bailable”.²⁸
28. **1792 (US):** The United States Bill of Rights came into effect in 1792. The Eighth Amendment contains a prohibition on excessive bail. Professor Funk and Professor Mayson explained the position that prevailed in the United States as follows:²⁹
- The dissenters’ clause [based on the *Frame of Government of Pennsylvania*] inverted the English law of bail. The common law model sandwiched a broad range of magisterial discretion between narrow bands of cases in which bail was either prohibited or mandatory” whereas the American model “eliminated the mandatory-detention category, shrank the discretionary category down to capital crimes, and made the right to bail the default” and “magistrates were under an obligation to find a way to release defendants who had a right to bail, and unrealistic pledge demands were impermissibly “excessive”.
29. **1816 (Eng):** In 1816, Joseph Chitty wrote in his *A Practical Treatise on the Criminal Law* that “[b]ail is a delivery or bailment of a person to his sureties, upon their giving, together with himself, sufficient security for his appearance, he being supposed to continue in their friendly custody, instead of going to prison”.³⁰ He explained bail under three heads, being “1st, when they *cannot* bail,-- 2ndly, when they have a *discretionary power*,--3rdly, when they *must* bail”.³¹ He explained that “though the judges are not compelled to observe the rules prescribed by the statute of Westminster the first, yet, in their uniform practice, they pay a due regard to them, and seldom admit a person to bail, who is there expressly

²⁵ *Commentaries on the Laws of England* (1770) vol 4 at p 293.

²⁶ *Commentaries on the Laws of England* (1770) vol 4 at pp 293-294.

²⁷ *Commentaries on the Laws of England* (1770) vol 4 at p 294.

²⁸ *Commentaries on the Laws of England* (1770) vol 4 at p 295.

²⁹ Bail at the Founding at 1843.

³⁰ J Chitty, *A Practical Treatise on the Criminal Law* (Butterworth and Son, 1816) at 92.

³¹ J Chitty, *A Practical Treatise on the Criminal Law* (Butterworth and Son, 1816) at 95.

declared to be irreplevisable by the inferior magistrates, without some particular circumstances are shown to exist in his favour”.³²

30. **1826 (Eng):** “[N]o basic changes were made in the principles upon which bail should be granted or withheld” prior to 1826³³ when the *Criminal Law Act 1826* (7 Geo 4, ch 64) enacted that a person should be committed to prison where the evidence “raise[d] a strong Presumption of the Guilt of the Person charged” and bail granted where the evidence was sufficient to warrant committal but not so strong as to raise that presumption.
31. **1828 (NSW):** The *Australian Courts Act 1828* (9 Geo 4, c 83, s 24) applied English law to NSW. The *Imperial Criminal Acts Adoption Act 1828* (9 Geo 4, no 1a) adopted the *Criminal Law Act 1826* in NSW. **1835 (Eng):** The *Criminal Law Act 1835* (5 & 6 Will IV, ch 33) provided that two justices of the peace could grant bail to a person charged with any felony regardless of the strength of the case against them so long as doing so did not endanger their appearance at the trial. This was not adopted in NSW. **1848 (Eng and NSW):** The *Indictable Offences Act 1848* (11 & 12 Vic, ch 42) provided that a committing magistrate had the discretion to admit to bail a person charged with any felony, and in respect of some crimes bail could not be refused.³⁴ This was adopted in NSW by the *Imperial Acts Adoption and Application Act 1950* (14 Vic No 43). **1898 (Eng):** The *Bail Act 1898* (61 & 62 Vict, ch 7) modified the absolute requirement as to sureties and gave magistrates an unfettered discretion to admit to bail any person whom they have reason to believe will submit to trial. This was not adopted in New South Wales.
32. **The Commonwealth Constitution** provides in s 120 that “[e]very State shall make provision for the detention in its prisons of persons accused or convicted of offences against the laws of the Commonwealth, and for the punishment of persons convicted of such offences, and the Parliament of the Commonwealth may make laws to give effect to this provision”. This contemplates that persons accused of offences might be held in prison and that States may make provision for such detention. No limit was imposed on State power with respect to bail, save that it must also provide for federal offenders.
33. The above history contextualises the following statement in *Williams v The Queen*:³⁵

A person who is arrested may be detained only for the purpose of bringing him before a justice (or nowadays before some other person with power to deal with him) to be

³² J Chitty, *A Practical Treatise on the Criminal Law* (Butterworth and Son, 1816) at 98.

³³ Balance in Bail at 469.

³⁴ *Indictable Offences Act 1848* (11 & 12 Vic, ch 42) s 23.

³⁵ (1986) 161 CLR 278 at 305-306 (Wilson and Dawson JJ).

10 dealt with according to law. For arrest is the beginning of imprisonment and, whilst it is recognized that imprisonment before trial may be necessary in the administration of criminal justice, it must be justified in accordance with the law. There must be a charge and if the person charged can establish his entitlement to bail and can furnish it, the law requires that he be released subject to any conditions which might be imposed upon him. The function of the justice in granting or withholding bail is an ancient one: 1, 2 Philip and Mary c. 13; Holdsworth, *History of English Law*, 5th ed. (1931), vol. I, p. 296. The point at which an arrested person is brought before a justice upon a charge is the point from which the machinery of the law leading to trial is put into operation. It is the point from which the judicial process commences and purely ministerial functions cease.

34. Their Honours used the conditional “if” when describing the rights of an accused to bail; “if the person charged can establish his entitlement to bail and can furnish it”, then the law requires he be released. The history summarised above is replete with examples of Parliament legislating to alter the availability of any entitlement to bail, and the criteria for its availability on sufficient surety or the conditions on which it might be granted.

35. History also informs what was said in *Lim* by Brennan, Deane and Dawson JJ that:³⁶

20 There are some qualifications which must be made to the general proposition that the power to order that a citizen be involuntarily confined in custody is, under the doctrine of the separation of judicial from executive and legislative powers enshrined in our Constitution, part of the judicial power of the Commonwealth entrusted exclusively to Ch III courts. The most important is that which Blackstone himself identified in the above passage, namely, the arrest and detention in custody, pursuant to executive warrant, of a person accused of crime to ensure that he or she is available to be dealt with by the courts. Such committal to custody awaiting trial is not seen by the law as punitive or as appertaining exclusively to judicial power. Even where exercisable by the Executive, however, the power to detain a person in custody pending trial is ordinarily subject to the supervisory jurisdiction of the courts, including the “ancient common law” jurisdiction, “before and since the conquest”, to order that a person committed to prison while awaiting trial be admitted to bail.

30 36. The bulk of this passage is about executive power to commit a person to custody before they are brought before a court. That emphasis is understandable in the context of the detention in issue in *Lim* (executive detention). The reasoning, however, also identifies that committal to custody awaiting trial – whether imposed by the executive or judiciary – is custodial power for a purpose (“ensure that [the accused] is available to be dealt with by the courts”) that “is not seen by the law as punitive”. Such custody is an exceptional case compatible with Ch III, and, as shown, has a long common law and statutory history.

37. In the decades since *Lim*, it has been repeatedly recognised that remand pending trial, subject to any entitlement to bail (if any) and the supervisory jurisdiction of the courts, is

³⁶ (1992) 172 CLR 1 at 28.

an “exceptional” case: fn 9 above. NAAJA’s case seeks to use statements made in this Court about *Lim* in different kinds of case that have been found to be non-exceptional, to rework that which *Lim* identified as the most important of the exceptions.

C. THE NORTHERN TERRITORY STATUTORY SCHEME

38. The Northern Territory statutory scheme for remand, bail and dispensation from requirements for bail fits comfortably within this historical tradition.
39. **Detention and bail pending court attendance:** A Territory police officer can arrest a person with a warrant³⁷ or without a warrant.³⁸ From arrest, that person can be granted bail by a police officer under s 16 of the *Bail Act* or be released from custody under s 137 of the *Police Administration Act 1978* (NT). It is unclear whether NAAJA challenges s 7A(2AB) in this context. If not granted bail or released, then, after arresting the person, the police officer must bring that person before a court of competent jurisdiction as soon as practicable (s 137(1)) but custody may also be used for other purposes: s 137(2), (3).
40. **Detention, bail and dispensation from bail requirements after first court attendance:** When an accused is brought before the Local Court, the Local Court has power to grant bail: s 20(1) *Bail Act*. The Local Court may do so in respect of any of the periods of time specified in s 6 of the *Bail Act*. This power to grant bail includes a power to refuse bail (s 13). There is no limit on the number of bail applications that may be made to a court by a person accused of an offence: s 19. Additionally, pursuant to the *Local Court (Criminal Procedure) Act 1928* (NT) (**Local Court Act**), that Court has power to order the remand, release on bail of a person or to dispense with the requirements for bail at various stages of proceedings: see ss 59, 60 and 65.
41. During any preliminary examination (committal) process in the Local Court for an indictable offence, there is an express power to remand or admit to bail under ss 113 and 114 of the Local Court Act. Remand is subject to time constraints (s 113(3), (4)). Once the preliminary examination is completed, the Court must, if of the opinion that the evidence is not sufficient to put the person to trial for the offence, forthwith order that the person be discharged if the person is in custody (s 112(2)). Otherwise, the Court must direct that the person be tried by the Supreme Court and either commit the person by warrant into the custody of the Commissioner of Correctional Services until the trial, or

³⁷ *Police Administration Act 1978* (NT), ss 121, 122, 124.

³⁸ *Police Administration Act 1978* (NT), s 123.

grant bail (s 112(3)). The Local Court may not grant bail after the person has appeared before the Supreme Court following, relevantly, committal (s 21).

42. Following committal, ss 6(b) and 23(1) of the *Bail Act* grant the Supreme Court power to grant bail to the person between committal for trial and the accused person's appearance before that Court consequent upon the committal. This power to grant bail includes a power to refuse bail (s 13). The *Supreme Court Rules 1987*, which in this respect relevantly defines an **accused** to mean a person "committed or remanded to the Court for trial or sentence or directed to be tried at the Court" or "in respect of whom an indictment has been presented" (r 81A.01(a)), supplies general rules of procedure in criminal proceedings and by r 81A.41(7) provides the form for any warrant of remand (Form 81A-N). During adjournments of a trial, that Court has a power to remand under s 334 of the *Criminal Code Act 1983* (NT) or to grant bail under ss 6(c) and 23(1) of the *Bail Act*. There is again no limit on the number of bail applications: s 19.
43. **Nature of bail:** Bail under the *Bail Act* relevantly means "authorisation under this Act ... to be at liberty instead of in custody" (s3(1)). Such authorisation, if granted, requires a person to give a bail undertaking before they may be "released on bail" (s 25). The authorisation may be granted unconditionally or subject to conditions (ss 27, 28). A court that may grant bail may instead dispense with the requirement for bail (s 9). Section 7 states the statutory entitlements of bail in qualified terms. It provides that "when" bail is granted, and an accused person enters into the bail undertaking and any bail conditions imposed are "entered into", then the accused person is, "subject to this Act, entitled (d) to be released from custody and to remain at liberty in respect of the offence... until the accused is required to appear before a court in accordance with the bail undertaking".
44. Since 1994,³⁹ s 7A of the *Bail Act* has contained a presumption against bail applicable to certain specified offences. That remains the case in s 7A as currently in force. Relevantly, s 7A(2), in the form enacted by the *Bail and Youth Justice Legislation Amendment Act 2025* (NT) (**2025 Amending Act**), and which NAAJA does not challenge, provides:
- An authorised member or court must not grant bail to a person accused of an offence to which this section applies unless the person satisfies the member or court that bail should be granted.
45. Section 24 sets out the criteria to be considered in deciding a bail application. The 2025 Amending Act added, as s 24(1)(aa), "the risk (if any) to the safety of the community that

³⁹ See *Bail Amendment Act 1994* (NT).

would result from the accused person's release on bail". NAAJA does not challenge the insertion of this bail consideration. Other pre-existing considerations in s 24(1) include not only "the probability of whether or not the person will appear in court in respect of the offence for which bail is being considered" but also, for example, "the interests of the person", "the risk (if any) that the accused person would (if released on bail) interfere with evidence, witnesses or jurors", "the risk (if any) that the accused person would (if released on bail) commit an offence, a breach of the peace, or a breach of the conditions of bail" and "whether a domestic violence order is in force against the accused person". NAAJA does not challenge the validity of these statutory considerations.

- 10 46. The 2025 Amending Act inserted s 7A(2AA), providing that "[t]he matter mentioned in section 24(1)(aa) is the paramount consideration when the authorised member or court is determining whether bail should be granted to the person". That is, "the risk (if any) to the safety of the community that would result from the accused person's release on bail" is the paramount bail consideration. NAAJA does not challenge s 7A(2AA).

47. The 2025 Amending Act also inserted s 7A(2AB) into the *Bail Act*. It provides:

Even if an authorised member or court is satisfied, as mentioned in subsection (2), that bail should be granted, the member or court must not grant bail to the person unless the member or court has a high degree of confidence, when considered in isolation from matters mentioned in sections 24 and 24A, that the person will not, if released on bail:

- 20 (a) commit a prescribed offence or a serious violence offence; or
(b) otherwise endanger the safety of the community.

48. **PS[37]** raises a question as to the meaning of endangering the safety of the community which is difficult to evaluate in the absence of concrete facts. The Defendant's position is that even on NAAJA's construction the provisions are valid, but that, if necessary to avoid invalidity, it could be (a) read down such that the endangerment is of the same magnitude as the commission of a serious criminal offence, or (b) alternatively, severed.

49. Section 3(1) of the *Bail Act* defines "serious violence offence", and s 3B of the *Bail Act* (together with reg 2 of the *Bail Regulations 1983* (NT)) give content to "prescribed offence". A "serious violence offence" includes offences within Part V, Div 2 of the *Criminal Code Act 1983* (NT) (child abuse material and other offensive material and articles) and Part VI, Divisions 3 to 6A (homicide, endangering life and serious harm, offences against the person, female genital mutilation, assault, assault with intent to steal and kidnapping and abduction) as well as offences under ss 211 and 212 as in force before
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s 10 of the *Criminal Code Amendment (Property Offences) Act 2022* (NT) (being robbery and assault with intent to steal). A range of “prescribed offences” also exist.

50. Section 7A(2AB) is the only provision challenged by NAAJA. It was modelled on s 22C(1) of the *Bail Act 2013* (NSW) (**PS fn 118**). The effect of s 7A(2AB), read in context, is that s 7A imposes a “two-step process” qualifying persons, within the class of those charged with s 7A(1) offences, who may be bailed, requiring first consideration of the matters in s 24 and then, separately, the criteria in s 7A(2AB).⁴⁰ Confidence means “an assured expectation, the state of feeling certain (of)” and “created a ‘high bar’ but not one amounting to a state of certainty”.⁴¹ “[T]he assessment required under the first step” of s 24(1)(aa) “involves a lesser degree of certainty and a lower bar”.⁴²
51. Sections 7(2), (2AA) and (2AB) do not apply to a person assessed as suitable to participate in a rehabilitation program prescribed by the regulations or declared under s 85A(1) of the *Domestic and Family Violence Act 2007* (NT) to be a rehabilitation program.

D. RESPONSE TO EACH LIMB OF NAAJA’S CASE

52. **Limb (a): Section 7A(2AB) is not a power to detain.** The above analysis reveals that, pursuant to a range of statutory powers, the relevant Territory courts have power to remand a person accused of a s 7A(1) offence in custody in connection with the alleged offence and as part of the criminal process. The *Bail Act* (including in combination with other Territory laws) supplies those same courts with power to grant (s 6) and continue (s 32) bail instead of remand in respect of an offence, with bail being an authorisation to “be at liberty instead of in custody” (s 3). This collection of powers thus operates to require the courts administering criminal jurisdiction to decide, at various points, whether to remand the defendant in custody, grant bail in accordance with the *Bail Act*, or dispense with the requirements for bail (s 9).⁴³
53. Within this statutory regime, the person is subject to detention in custody on account of being arrested and charged with an offence. The person can be relieved from that detention, and thus have their liberty enhanced, by the grant of bail.⁴⁴ But a provision such

⁴⁰ *R v Abuelheish (aka Jorban)* (2025) 396 FLR 73 at [24] (Reeves J).

⁴¹ *R v Abuelheish (aka Jorban)* (2025) 396 FLR 73 at [27]-[28] (Reeves J).

⁴² *R v Abuelheish (aka Jorban)* (2025) 396 FLR 73 at [29] (Reeves J).

⁴³ See, eg, Local Court Act, ss 59, 65, 112(3).

⁴⁴ See *EGH19* (2026) 100 ALJR 400 at [208].

as s 7A(2AB) that regulates the power of a court to grant bail, and thereby qualifies the circumstances in which the statutory regime operates to confer statutory rights on an accused person that would enhance their liberty, is not a power to authorise detention or a relevant constitutional detriment requiring justification.⁴⁵ It is a provision regulating the availability of bail in respect of detention otherwise authorised by law.

54. Section 7A(2AB) may have the result that a person is refused bail, but the refusal of bail is not a detriment that warrants characterisation as punishment because there is no right to bail other than what right the Parliament confers subject to whatever limitations the Parliament prescribes. As Gleeson CJ said, “[t]here is no common law right in a person who has been arrested and charged with a serious crime to be at liberty or on bail pending the resolution of the charge” and even “if there were such a right, it could be modified by statute”.⁴⁶ If there is no right to bail – as the history of non-bailable offences shows – then merely making it more difficult to obtain bail is not to punish. As Gleeson CJ also said: “it can scarcely be inconsistent with Chapter III for a statute to make it more difficult for persons charged with certain types of offence to obtain bail”.⁴⁷
55. That s 7A(2AB) does not itself authorise detention is illustrated by the fact that it applies when deciding whether to grant bail pending appeal (s 6(d)). In such a case, it is the sentence of imprisonment that authorises detention absent bail, not the refusal of bail.
56. In so far as these submissions are inconsistent with any contended admissions in [19] and [21.1] of the Defence and the agreement in [6] of the special case, these are matters of law which the defendant will seek leave to withdraw. This Court could not, in a constitutional matter, be bound by the parties on matters of law in any event.
57. **Limb (b): The purpose of remand and constitutional justification.** It is constitutionally permissible for a person to be detained to ensure their availability to be tried for an indictable offence with which they have been charged. Such detention is permissible because it ensures the vindication of judicial power, and it is for a duration that is capable of being considered reasonably appropriate to that purpose because detention will end once the criminal justice process ends. As Jagot J said in *EGH19*:⁴⁸
- The power to arrest a person and to hold them in custody when charged is essential to the functioning of the criminal justice system, including by ensuring the person can be

⁴⁵ Except insofar as bail limits liberty through the imposition of conditions, which is not in issue here.

⁴⁶ *Chau v Director of Public Prosecutions* (1995) 37 NSWLR 639 at 646.

⁴⁷ *Chau v Director of Public Prosecutions* (1995) 37 NSWLR 639 at 646.

⁴⁸ (2026) 100 ALJR 400 at [318(1)].

brought before the courts for trial, and in any event is subject to close judicial supervision (including the power to grant the writ of habeas corpus and to grant bail); such a power is necessary to enable vindication of judicial power and is not punitive.

58. That is the constitutional bedrock. Similarly, in *Vella*, Gageler J said that:⁴⁹

10 The power to detain an accused person in custody or to impose conditions of bail constraining the liberty of the accused person pending trial for a criminal offence is different in so far as it “is not seen by the law as punitive or as appertaining exclusively to judicial power”. As a power ancillary to the process of adjudging and punishing criminal guilt, it lies within the category of powers not independently judicial in nature which can be committed to courts as “incidents in the exercise of strictly judicial powers”.

59. Where bail is granted, that is an enhancement of a person’s liberty. It frees them conditionally from the state of detention in which they would otherwise be on account of being accused of an offence for which they are awaiting trial. Where bail is refused, the person will remain in detention, but they are being detained for the purpose of a trial of the offence with which they are charged. That is so whatever the reason or reasons for refusing them bail. That bail decision-makers (both police officers and courts) are commanded to apply particular tests or to consider particular factors does not detract from the underlying purpose of detention on remand. These tests and factors constitute
20 legislative guideposts as to when it may be appropriate to enhance the liberty of the individual who would otherwise be subject to detention pending trial.⁵⁰ The tests and factors that may be legislated do not alter the true purpose, or diminish the justification, for remand in the absence of an entitlement to bail (or commitment pending appeal).

60. For example, a purpose of s 7A(2AB) is to ensure that a person is not granted bail where to do so would threaten the safety of the community: see **PS [31]-[33]**. That is also, though, the evident purpose of s 24(1)(aa) and s 24(1)(d) and (g) – which NAAJA does not challenge. Section 7A(2AB) should be understood as the Parliament deciding not to forego the purpose of detention pending trial where doing so would put the community at risk, but the purpose of the ongoing detention does not thereby transform into detention
30 merely for a protective purpose.

61. *Plaintiff M96/2016 v Commonwealth*⁵¹ supplies a useful analogy. The plaintiffs argued that they had been taken to Australia under s 198B for the temporary purpose of receiving medical attention such that they were no longer being detained for the constitutional

⁴⁹ (2019) 269 CLR 219 at [157]. See also *EGH19* (2026) 100 ALJR 400 at [107] (Gordon J).

⁵⁰ See *EGH19* (2026) 100 ALJR 400 at [208] (Edelman J).

⁵¹ (2017) 261 CLR 582.

purpose of removal. That argument was rejected; their detention was for the ultimate purpose of removal. Here, one purpose reflected in the criteria for *refusing bail* could be said to be community protection from the risk of harm specified in s 7A(2AB). But the detention is justifiable because the detention is reasonably capable of being seen as necessary to vindicate judicial power by having the person available for trial.

62. The statements made in Parliament to which NAAJA draws attention in **PS [34]** do not change the objective purpose of the detention, in part because they represent subjective political considerations rather than the objective intention of s 7A(2AB),⁵² and in part because they are about, at most, why bail and enhancement of liberty is being made harder to obtain rather than the more fundamental issue of the underlying purpose of detention.
63. In any event, protection of the community and the likelihood of offending while on bail are not disconnected from the question of the person's future attendance at trial. If the person is likely to pose a threat to the safety of the community or commit a relevant offence while on bail, doing so is likely to involve that person in some form of dangerous behaviour. Engaging in such behaviour may jeopardise their attendance at trial. And if the person is likely to pose a threat or commit an offence while on bail, that reduces the confidence one could have that they would answer their bail undertaking and appear at trial. It is wrong to say, therefore, that s 7A(2AB) is "entirely disconnected from the availability purpose" (**PS [31]**), even leaving aside the incorrect elision between the purpose for detention and the various reasons that might exist for refusing bail.
64. Further still, if protection of the community is regarded as one of the purposes of detention considered to be authorised by s 7A(2AB), then that is not an impermissible purpose to pursue in combination with others.⁵³ "[A]lthough there is scope for debate about the types of harm against which a law can protect and the degree of precision by which the harm must be identified" if mere protection is the justification,⁵⁴ protection of the community in the *Bail Act* context cannot be divorced from the fact that there is no general right to be at liberty pending trial for an offence to which s 7A(1) applies. When assessed in that context, it is not punishment to permit liberty to be enhanced to a lesser degree than might otherwise have been the case had s 7A(2AB) not been included.

⁵² See *Ravbar v Commonwealth* (2025) 99 ALJR 1000 at [138] (Gordon J).

⁵³ See generally *Re Woolley; Ex parte Applicants M276/2003* (2004) 225 CLR 1 at [60]-[61]; *Minister for Home Affairs v Benbrika* (2021) 272 CLR 68 at [39]-[40].

⁵⁴ *EGH19* (2026) 100 ALJR 400 at [361] (Beech-Jones J).

65. The above analysis is sufficient to establish that any detention which s 7A(2AB) is considered to authorise is reasonably capable of being seen as necessary (in the sense of “being ‘reasonably appropriate and adapted’ rather than essential or indispensable”⁵⁵) for the purpose of making the person available for the trial of the offence for which they have been charged. However, if it is necessary to go further, then the following considerations preclude a conclusion that s 7A(2AB) is inconsistent with Ch III.
66. *First*, remand and the refusal of bail are not part of adjudging and punishing criminal guilt as such but they are powers ancillary to that process. Compare it to the constitutional paradigm of detention “(1) by a court; (2) in the exercise of judicial power; (3) in the performance of the exclusively judicial function of adjudging and punishing criminal guilt”.⁵⁶ The operation of s 7A(2AB) challenged by NAAJA involves a court, thus satisfying (1). As to (2) and (3): the detention on remand occurs in the exercise of a power incidental (ancillary) to judicial power; detention post sentence subject to bail pending appeal involves the paradigm of detention as an imposition of punishment for adjudicated guilt and sentence. The regime in issue is closely allied to the paradigmatic case.
67. *Second*, the duration of detention absent bail is appropriately calibrated in that it is subject to any further application for bail (which may be made at any time and multiple times) and will come to an end on adjudication of guilt and/or sentencing (unless replaced by a sentence of imprisonment as punishment).
68. *Third*, what is reasonably appropriate and adapted must be informed by history.⁵⁷ The fuller history in section B above shows that remand pending trial is a distinguishing status for the purposes of a person’s entitlement to liberty, and the grant of bail can be regulated in different ways, including by making it unavailable for entire classes of person or offence or by imposing an onus to justify bail.
69. *Fourth*, NAAJA also draws attention to the wide range of accused whose bail prospects are subject to s 7A(2AB) by reason of s 7A(1): see **PS [43]**. It is a matter for Parliament to identify those offences for which heightened requirements must be established before granting bail.⁵⁸ The selection of offences in s 7A(1) reflects a legislative judgment of the offences in respect of which bail should generally not be granted. Those offences are

⁵⁵ *YBFZ v Minister for Immigration, Citizenship and Multicultural Affairs* (2024) 99 ALJR 1 (**YBFZ**) at [18] (Gageler CJ, Gordon, Gleeson and Jagot JJ).

⁵⁶ *EGH19* (2026) 100 ALJR 400 at [16] (Gageler CJ and Gleeson J).

⁵⁷ See, eg, *EGH19* (2026) 100 ALJR 400 at [325] (Jagot J).

⁵⁸ See generally *Garlett* (2022) 277 CLR 1 at [79]-[83] (Kiefel CJ, Keane and Steward JJ).

reasonably capable of being regarded as serious by the Parliament. Preventative detention regimes that depend in part for their application on a wide range of conduct can be valid despite that feature.⁵⁹ If s 7A(1) is regarded as applying to a wide range of conduct, then that is even less troubling here where the premise is that the person has been charged with one of those offences. And if s 7A(1) is thought to go too far, then questions of severance might arise which are difficult to evaluate given the form of NAAJA's suit.

70. *Fifth*, conversely, to apply the special provisions in s 7A to a sub-set of offences on the criminal statute book only does not mean that detention after deciding to refuse bail to a person charged with such an offence and remand them into custody is any less for the purpose of them being tried for that offence. That the Parliament singles out a class of offences to which s 7A(2AB) applies "alone cannot change a purpose that is consistent with the constitutionally prescribed system of government into one that is not".⁶⁰
71. *Sixth*, NAAJA challenges s 7A(2AB) in its application to courts. But in that operation, the application of the provision will fall to be determined in accordance with ordinary court processes.⁶¹ Multiple applications for bail are permitted: s 19. Nothing in the *Bail Act* constricts the powers of the Supreme Court in connection with writs of *habeas corpus*.
72. *Seventh*, there is no analogy to "other regimes authorising preventative detention" (see **PS [37]**; see also **PS [35]**). Those regimes are not contingent on a person being charged with an offence being detained pending the trial of that charge. They do not operate on persons who are already and independently liable to be detained on account of having been charged with a criminal offence. Those other regimes depended for their validity on the sufficiency, in isolation, of the mere purported justification of protective detention.
73. *Eighth*, NAAJA has not suggested that s 7A(2AB) imposes a non-judicial or unworkable standard, nor could it do so. The requirement of a "high degree of confidence" as to a negative state of affairs does make it more difficult for a person to get bail (cf **PS [41]**) but there is no basis to conclude that it would be impossible to do so.
74. **Limb (c): No substantial impairment of institutional integrity.** The limitation in *Lim* is that "a law enacted by the Commonwealth Parliament which authorises the detention of a person, other than through the exercise by a court of the judicial power of the

⁵⁹ See, eg, *Minister for Home Affairs v Benbrika* (2021) 272 CLR 68 at [166].

⁶⁰ *EGH19* (2026) 100 ALJR 400 at [48] (Gageler CJ and Gleeson J).

⁶¹ Cf *YBFZ* (2024) 99 ALJR 1 at [85]; *EGH19* (2026) 100 ALJR 400 at [53]-[54] (Gageler CJ and Gleeson J), [140]-[141] (Gordon J), [340] (Jagot J).

Commonwealth in the performance of the function of adjudging and punishing criminal guilt, will contravene Ch III of the *Constitution* unless the law is reasonably capable of being seen to be necessary for a legitimate and non-punitive purpose”.⁶² That principle has been applied in recent years in considering Commonwealth legislation that purported to authorise detention or otherwise inflict a detriment on a person without involvement of a court. The present case is different for two reasons.

75. The first reason is that detention flowing from remand and the refusal of bail does involve the courts: see [40]-[40] above. The second reason is that the Northern Territory is not subject to the same constitutional limits as the Commonwealth. The *Kable* principle does not import the separation of powers doctrine to State and Territory legislatures.⁶³ Because the separation of powers doctrine does not apply in terms to the States and Territories, there “can be no direct application of all aspects of the doctrines that have been developed in relation to Ch III”.⁶⁴ In *Garlett*, Kiefel CJ, Keane and Steward JJ went so far as to say that “the *Lim* principle has no application to establish the invalidity of the [Western Australian] HSRO Act”.⁶⁵ If *Lim* is not analytically irrelevant,⁶⁶ then its relevance can only be if and in so far as it may inform the ultimate question of whether Territory law substantially impairs the courts’ institutional integrity. NAAJA’s case does not identify any reason for such asserted impairment beyond its case of non-compliance with *Lim*.
76. There is no contravention of the *Lim* principle. But even if there was, s 7A(2AB) does not substantially impair the institutional integrity of Territory courts. *First*, the likelihood of the person committing an offence on bail has long been a traditional bail consideration and there can be no suggestion that considering this factor imperils the institutional integrity of a court ordering remand instead of granting bail.⁶⁷ NAAJA implies at **PS [36]** that the likelihood of offending while on bail is not one of the “ordinary bail considerations”, but it is. *Second*, s 7A(2AB) must be considered in the context of the *Bail Act* as a whole. The Parliament has sought to elevate this particular bail consideration

⁶² (2023) 280 CLR 137 at [39].

⁶³ See *Pollentine v Bleijie* (2014) 253 CLR 629 at [42]; *Assistant Commissioner Condon v Pompano Pty Ltd* (2013) 252 CLR 38 at [124]; *Fardon* (2004) 223 CLR 575 at [101]; *Kable v Director of Public Prosecutions (NSW)* (1996) 189 CLR 51 at 92-94, 103-104 (Gaudron J), 118 (McHugh J).

⁶⁴ *Assistant Commissioner Condon v Pompano Pty Ltd* (2013) 252 CLR 38 at [125]; *Pollentine v Bleijie* (2014) 253 CLR 629 at [42]; *Kuczborski v Queensland* (2014) 254 CLR 51 at [104].

⁶⁵ (2022) 277 CLR 1 at [40].

⁶⁶ See, eg, *Garlett* (2022) 277 CLR 1 at [124]-[134] (Gageler J), [184] (Gordon J); *EGH19* (2026) 100 ALJR 400 at [319] (Jagot J).

⁶⁷ See, eg, *R v Harrison* [1950] VLR 20 at 21; *R v Light* [1954] VLR 152 at 156-157; *R v Fisher* (1964) 14 Tas R 12 at [18].

(community safety) and to dictate the weight that should be given to it in two ways: one is by requiring it to be given “paramount” weight in s 7A(2AA) and one is by treating it as a threshold or gateway provision in s 7A(2AB). Making it more difficult for a person to be granted bail does not threaten a court’s institutional integrity. Bail decision-makers have always had to exercise their discretion subject to Parliament’s laws. The history of bail is marked by the Parliament asserting itself to control the executive to ensure that any statutory right of bail is not undermined while also limiting the availability of bail as Parliament chooses. *Third*, the Constitution does not demand that bail be available. As a matter of history, there have been non-bailable offences from time to time (see also

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PS [16]), and it is implicit in the (valid) presumption against bail requiring a person to persuade the decision-maker to grant it that there is no necessary right to bail. *Fourth*, the institutional integrity of the courts does not demand that they have a free discretion as to bail. That is far from the norm across the federation or as a matter of Australia’s history.

77. **Answers to questions of law:** (1) No. (2) Yes. (3) No. (4) No. (5) None. (6) The Plaintiff.

PART VI ESTIMATE OF TIME FOR ORAL ARGUMENT

78. The Defendant will require 2.5 hours for oral submissions

Dated: 23 July 2026

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IN THE High Court OF AUSTRALIA

DARWIN REGISTRY

BETWEEN:

NORTH AUSTRALIAN ABORIGINAL JUSTICE AGENCY LIMITED

Plaintiff

and

NORTHERN TERRITORY OF AUSTRALIA

Defendant

ANNEXURE TO DEFENDANT'S SUBMISSIONS

No	Description	Version	Provision(s)	Reason providing for this version	Applicable date or dates
1.	The Constitution	Current	s120, Ch III	Currently in force	All relevant times
<i>Northern Territory statutes and statutory instruments</i>					
2.	<i>Bail Act 1982 (NT)</i>	Current	ss 3, 3B, 6, 7, 7A, 9, 13, 16, 19, 20(1), 21, 23(1), 24, 25, 27, 28, 32	Currently in force	All relevant times
3.	<i>Bail Amendment Act 1994 (NT)</i>	As made	Entire Act	Amending Act	N/A
4.	<i>Bail and Youth Justice Legislation Amendment Act 2025 (NT)</i>	As made	Entire Act	Amending Act	N/A
5.	<i>Bail Regulations 1983 (NT)</i>	Current	Reg 2	Currently in force	All relevant times
6.	<i>Criminal Code Act 1983 (NT)</i>	Current	Part V Division 2, Part VI Divisions 3 to 6A, ss 211, 212, 334	Currently in force	All relevant times

7.	<i>Criminal Code Amendment (Property Offences) Act 2022 (NT)</i>	As made	s 10	Amending Act	N/A
8.	<i>Domestic and Family Violence Act 2007 (NT)</i>	Current	s 85A(1)	Currently in force	All relevant times
9.	<i>Local Court (Criminal Procedure) Act 1928 (NT)</i>	Current	ss 59, 60, 65, 112, 113, 114	Currently in force	All relevant times
10.	<i>Police Administration Act 1978 (NT).</i>	Current	ss 121, 122, 123, 124, 137	Currently in force	All relevant times
11.	<i>Supreme Court Rules 1987</i>	Current	rr 81A.01, 81A.47, Form 81A-N	Currently in force	At all relevant times
<i>Other statutes</i>					
12.	<i>Australian Courts Act 1828 (NSW)</i>	As made	9 Geo 4, c 83, s 24	Illustrative purposes	N/A
13.	<i>Bail Act 1898 (Eng)</i>	As made	61 & 62 Vict, ch 7	Illustrative purposes	N/A
14.	<i>Bail Act 2013 (NSW)</i>	Current	s 22C(1)	Illustrative purposes	N/A
15.	<i>Bill of Rights 1689 (Eng)</i>	As made	1 W & M, 2 c 2	Illustrative purposes	N/A
16.	<i>Bill of Rights 1792 (US)</i>	As made	Amendment 8	Illustrative purposes	N/A
17.	<i>Body of Liberties 1641 (US)</i>	As made	Lib 18	Illustrative purposes	N/A
18.	<i>Criminal Law Act 1826 (Eng)</i>	As made	7 Geo 4, ch 64	Illustrative purposes	N/A

19.	<i>Criminal Law Act 1835 (Eng)</i>	As made	5 & 6 Will IV, ch 33	Illustrative purposes	N/A
20.	<i>Frame of Government of Pennsylvania 1682 (US)</i>	As made	Entire Act	Illustrative purposes	N/A
21.	<i>Habeas Corpus Act of 1679 (Eng)</i>	As made	Entire Act	Illustrative purposes	N/A
22.	<i>Imperial Criminal Acts Adoption Act 1828 (Imp)</i>	As made	9 Geo 4, no 1a	Illustrative purposes	N/A
23.	<i>Imperial Acts Adoption and Application Act 1950 (Imp)</i>	As made	14 Vic No 43	Illustrative purposes	N/A
24.	<i>Indictable Offences Act 1848 (Eng & NSW)</i>	As made	11 & 12 Vic, ch 42	Illustrative purposes	N/A
25.	<i>Northern Territory (Self-Government) Act 1978 (Cth)</i>	Current	Entire Act	Currently in force	All relevant times
26.	<i>Judiciary Act 1903 (Cth)</i>	Current	S 78B	Currently in force	All relevant times
27.	<i>Statute of Westminster 1275 (Eng)</i>	As made	3 Edw 1, c12, ch15	Illustrative purposes	N/A