



HIGH COURT OF AUSTRALIA

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Details of Filing

File Number: D15/2025
File Title: North Australian Aboriginal Justice Agency Limited & Anor v
Registry: Darwin
Document filed: Form 27F - (A-G of ACT) Outline of oral submissions
Filing party: Interveners
Date filed: 09 Oct 2026

Important Information

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IN THE HIGH COURT OF AUSTRALIA
DARWIN REGISTRY

BETWEEN:

NORTH AUSTRALIAN ABORIGINAL JUSTICE AGENCY LIMITED

First Plaintiff

XAVIER MARDINGA

Second Plaintiff

and

NORTHERN TERRITORY OF AUSTRALIA

Defendant

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

PART I INTERNET PUBLICATION

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

PART II PROPOSITIONS TO BE ADVANCED IN ORAL ARGUMENT

1 Section 7A(2AB) of the *Bail Act 1982* (NT) (**JBA 1/4**) applies with respect to all of the Commonwealth offences referred to in s 7A(1), whether they are referred to expressly or by general description. The power of the Legislative Assembly of the Northern Territory “to make laws for the peace, order and good government of the Territory” includes a power to make laws regulating the exercise of federal jurisdiction: *Northern Territory (Self-Government) Act 1978* (Cth), s 6 (**JBA 2/22**); **NT Supp S [6]-[12]**; **ACTS [11]**. Section 7A(2AB) was enacted in exercise of that power.

2 In the alternative, s 7A(2AB) is picked up and applied as a federal law by s 68(1) of the
30 *Judiciary Act 1903* (Cth) (**JBA 1/17**).

2.1. The *Judiciary Act* picks up and applies State laws that do not apply of their own force in federal jurisdiction: ***Rizeq v State of Western Australia*** (2017) 262 CLR 1 (**JBA 9/91**) at [91]-[92].

2.2. Section 68(1), like s 79, enables State and Territory courts to apply a common procedure to local and federal laws. In addition to fulfilling a jurisdictional “gap-filling” role, s 68(1) seeks to avoid “the establishment of two independent systems of justice”: *Attorney-General (Cth) v Huynh* (2023) 280 CLR 341 (**JBA 5/62**) at [41]-[42]. The design reflects a legislative choice to pursue uniformity within each State/Territory with respect to State/Territory and federal offences, rather than a uniform procedure for all federal offences: *Huynh* at [53].

2.3. Section 68(1) does not demand precise coincidence between the surrogate federal law and the State or Territory law that is picked up and applied. It calls for a “degree of translation”: *Huynh* at [42].

(a) A State or Territory law may need to operate by way of analogy in order to be picked up and applied as a federal law: *Huynh* at [59]-[60].

(b) Section 68(1) may pick up part, rather than the whole, of a State or Territory scheme: *Huynh* at [65]; *Brown v The Queen* (1986) 160 CLR 171 at 200-201, 218 (**JBA 5/66**).

(c) Section 68(1) is cast in sufficiently general and ambulatory language to accommodate a range of State and Territory models: *Huynh* at [53]; *R v Gee* (2003) 212 CLR 230 at 241 [7] (**JBA 9/88**).

Date: 9 October 2026



Peter Garrison

Christine Ernst