



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

No D11 of 2019

Between **JOSIAH BINSARIS** Appellant  
and  
**NORTHERN TERRITORY OF AUSTRALIA**  
Respondent

No D12 of 2019

Between **KEIRAN WEBSTER** Appellant  
and  
**NORTHERN TERRITORY OF AUSTRALIA**  
Respondent

No D13 of 2019

Between **LEROY O'SHEA** Appellant  
and  
**NORTHERN TERRITORY OF AUSTRALIA**  
Respondent

No D14 of 2019

Between **ETHAN AUSTRAL** Appellant  
and  
**NORTHERN TERRITORY OF AUSTRALIA**  
Respondent

**APPELLANTS' OUTLINE OF ORAL SUBMISSIONS**

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These are the outline of oral submissions for each appellant in the four related appeals.

**PART I: Certification**

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

**PART II:**

*Weapons Act*

1 Section 6 of the *Weapons Act* renders the use of a weapon a criminal offence unless a statutory exemption applies. The exemption in para 12(2)(a) for a ‘prescribed person’ encompasses prison officers but not youth justice officers (AS [24]).

2 The exemption in subsec 12(2) of the *Weapons Act* was not engaged, because the weapon  
10 was supplied to the prison officers by their employer for the performance of their duties as prison officers — as opposed to their exercise of the superintendent’s powers delegated pursuant to subsec 157(2) of the *Youth Justice Act* (Reply [11]).

*Youth Justice Act*

3 A youth detention centre is not a prison. There is no general authorisation for a prison officer to use force — let alone use a prohibited weapon — in a youth detention centre. What is delegated to a prison officer under subsec 157(2) of the *Youth Justice Act* are the powers (not duties) of the superintendent necessary (not convenient) to perform the superintendent’s functions (not prison officers’ functions) under para 151(3)(c) of the *Youth Justice Act* (AS [26]).

4 The powers being exercised in this case were those arising under the *Youth Justice Act*,  
20 not the *Prisons Act*. Those powers under the *Youth Justice Act* did not include any exemption from the operation of the *Weapons Act* (AS [26]).

5 It was not a sufficient authorisation that the superintendent had the ‘powers that are necessary or convenient for the performance of his or her functions’: *Youth Justice Act* subsec 152(1). Those general provisions are not apt to permit infringement of fundamental rights by the forceful use of a prohibited weapon (AS [28]).

6 Subsection 152(1) does not render subsec 157(2) ineffective to impose a limit on the use of force. The latter restricts the prison officers’ delegated powers to those ‘necessary’ (AS [29]).

7 There are no provisions for an officer of the executive to dispense with the penal provisions of the *Weapons Act*, let alone because dispensation was supposedly ‘necessary’ (AS  
30 [30]–[32]).

8 Subsection 153(2) is the only general provision of the *Youth Justice Act* that expressly authorises the use of force. It is qualified by subsec 153(3). The use of CS gas constituted enforced dosing contrary to para 153(3)(b), and was thus unlawful (AS [34]).

9 The disjuncture drawn by the Court of Appeal between ‘discipline’ and ‘order’ is unidiomatic and inutile. The preferable construction of sec 153 is that it imposes limits on the permissible use of force generally (AS [36]; cf RS [17]-[18]).

10 It is not open to construe the incidental ‘necessary or convenient’ power as a plenary authorisation to use force in disregard of the express limits set by subsec 153(3). The court’s construction is at odds with the *Anthony Hordern* principle and the *generalia specialibus non derogant* rule. Subsection 152(1) is the general provision, and sec 153 is the specific: the former cannot derogate from the latter (AS [37]-[38]).

11 Paragraph 153(3)(b) should be read in accordance with its plain meaning. It is not concerned only, let alone centrally, with the therapeutic administration of a medicine or drug; nor does it exclude drugs or other substances aerosolised so as to be inhaled (AS [39]-[40]; AFM 53-54).

#### *Prisons Act*

12 The *Prisons Act* only authorised the use of weapons ‘in a prison ... as necessary to maintain the security and good order of a prisoner or a prison’: subsec 62(2) (AS [25]).

20 13 The appellants were not ‘prisoners’ within the meaning of the *Prisons Act* (Reply [4]). (That point — and reliance on the word ‘prisoners’ in subsec 6(2) — were not raised below, and are not within the notice of contention.) They were youth ‘detainees’ under the *Youth Justice Act* and none was serving a term of imprisonment. The claim that they were prisoners simply because they were ‘in lawful custody’ is not a proper reading of either the *Prisons Act* or the *Youth Justice Act*.

14 Neither subsec 8(2) nor sec 9 of the *Prisons Act* provide any authority. So far as subsec 8(2) is concerned, the deployment could not become lawful simply by the fiat of the director of correctional services (Reply [7]).

30 15 Section 9 of the *Prisons Act* does not create a freestanding entitlement to exercise the powers of a police officer independently of the scheme of the *Prisons Act*. It concerns only the duties of a prison officer ‘while acting as such’ (Reply [9]).

16 Within the *Prisons Act*, sec 62 is the specific provision authorising the use of force and the use of weapons. That authorisation is limited. On ordinary principles, the general provision in sec 9 cannot be used to evade the express limitations prescribed by the specific provision in sec 62 (**Reply [10]**).

17 The appellants were not acting as police and the weapon was not supplied to them for the performance of duties as police. (**Reply [11]**). Any contention that the relevant officers were acting *otherwise* than as prison officers is inconsistent with the concurrent findings of the courts below (**Reply [12]**).

18 The appellants' grounds of appeal are independent. Unless the use of the prohibited  
10 weapon was otherwise authorised by statute, its use was unlawful whether or not it also amounted to 'enforced dosing'; and if that use did amount to 'enforced dosing', it was unlawful whether or not use of the weapon was otherwise authorised by statute (**Reply [3]**).

18 March 2020



Bret Walker



Kathleen Foley



James McComish