

CITATION: *Fairweather v Harrison* [2026] NTSCFC 1

IN THE MATTER of a special case under  
s 162 of the *Local Court (Criminal  
Procedure) Act 1928* (NT)

PARTIES: FAIRWEATHER, Alexander James

v

HARRISON, Alicia

TITLE OF COURT: FULL COURT OF THE SUPREME  
COURT OF THE NORTHERN  
TERRITORY

JURISDICTION: ON REFERENCE from the Supreme Court  
exercising Territory jurisdiction

FILE NO: 2 of 2026 (22433255)

DELIVERED: 3 June 2026

HEARING DATE: On the papers

JUDGMENT OF: Grant CJ, Southwood, Brownhill,  
Huntingford & Burns JJ

**CATCHWORDS:**

CRIMINAL PROCEDURE – Stay of proceedings – Temporary

Reservation of questions of law under s 162 of the *Local Court (Criminal Procedure) Act* – Referral of special case to Full Court pursuant to s 21(1) of the *Supreme Court Act* – Whether *Dietrich* principle has application to summary criminal proceedings – Local Court can hear and determine serious offences carrying real risk of imprisonment – Requirement for fair trial applies in summary proceedings – Local Court has implied power to regulate its own proceedings – *Dietrich* principle applies to summary proceedings – What restrictions apply to application of principle – Question not properly

raised in stated case procedure – General review of considerations governing exercise of power to stay or adjourn proceedings in accordance with *Dietrich* principle

*Local Court (Criminal Procedure) Act 1928* (NT) s 162

*Dietrich v The Queen* (1992) 177 CLR 292, *Donnachy v Riegert* (2004) 144 A Crim R 260, *Hudson v ACT Magistrates Court & Anor* (2014) 9 ACTLR 295, *Inder-Smith v Tudor-Stack* [2004] NTSC 48, *Jago v District Court of New South Wales* (1989) 168 CLR 23, *Neil v County Court of Victoria* (2003) VSC 328, *Visser v Hodgetts* [2002] TASSC 44, *Weinel v Fedcheshen* (1995) 65 SASR 156, *Williamson v Trainor* [1992] 2 Qd R 572, *Wunsch v SA Police* (1995) LSJS 217, considered

*Highway v Tudor-Stack* (2006) 163 A Crim R 178, overruled

## **REPRESENTATION:**

### *Counsel:*

Applicant:	PK Williams with LJ Auld
Respondent:	A Abayasekara SC

### *Solicitors:*

Applicant:	Office of the Director of Public Prosecutions
Respondent:	Territory Criminal Lawyers

Judgment category classification:	A
Number of pages:	13

IN THE FULL COURT OF THE SUPREME COURT  
OF THE NORTHERN TERRITORY  
OF AUSTRALIA  
AT DARWIN

*Fairweather v Harrison* [2026] NTSCFC 1  
No. 2 of 2026 (22433255)

BETWEEN:

**ALEXANDER JAMES  
FAIRWEATHER**

Applicant

AND:

**ALICIA HARRISON**

Respondent

CORAM: GRANT CJ, SOUTHWOOD, BROWNHILL,  
HUNTINGFORD & BURNS JJ

REASONS FOR JUDGMENT

(Delivered 3 June 2026)

**THE COURT:**

- [1] The respondent is charged on information with three counts of aggravated assault, one count of aggravated unlawful entry and one count of going armed in public alleged to have been committed on 27 April 2023. Each offence was punishable by not more than 10 years' imprisonment and under s 121A of the *Local Court (Criminal Procedure) Act 1928* (NT) the charges were listed for summary trial in the Local Court on 5 March 2026. On 2 March 2026, the grant of legal aid was withdrawn because the respondent was not in custody.

[2] On 3 March 2026, the Local Court granted the respondent's legal representative leave to cease acting for the respondent even though the trial was scheduled to commence only two days later. On 4 March 2026, that same legal representative purported to act for the respondent as *amicus curiae* in an application for a stay of proceedings in accordance with the principle in *Dietrich v The Queen (Dietrich)*.<sup>1</sup>

[3] The application for a stay of the proceedings raised the preliminary issue of whether the principle in *Dietrich* applies to criminal charges heard and determined summarily, because the reasons of the Court of Appeal in *Highway v Tudor-Stack* state that they do not.<sup>2</sup>

[4] At the invitation of the Crown, the Local Court stated a special case for the opinion of the Supreme Court under s 162 of the *Local Court (Criminal Procedure) Act* on the following questions of law:

1. Can the Local Court grant a stay or an adjournment in accordance with the principles enunciated in *Dietrich v The Queen* (1992) 177 CLR 292 in respect of summary criminal proceedings?
2. If the Local Court has power to grant a stay or an adjournment, what restrictions, if any, apply?

[5] With the consent of the parties, that special case was subsequently referred to the Full Court pursuant to s 21 of the *Supreme Court Act 1979* (NT), because it involves a consideration of the correctness of a decision of the Court of Appeal.

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<sup>1</sup> *Dietrich v The Queen* (1992) 177 CLR 292.

<sup>2</sup> *Highway v Tudor-Stack* (2006) 163 A Crim R 178 at [32].

### The decision in *Highway v Tudor-Stack*

[6] The appellants in *Highway v Tudor-Stack* had each been convicted by the Court of Summary Jurisdiction of the offence of intentionally disturbing the Legislative Assembly contrary to s 61(a) of the *Criminal Code 1983* (NT). The appellants each lodged an appeal against conviction to the Supreme Court. One ground of appeal was that the trials were unfair because the appellants were unrepresented and had applied for but were refused an adjournment of the proceedings. In rejecting that ground of appeal (at this intermediate level), Angel J said (emphasis added):

The common grounds of appeal against conviction also include a complaint that the appellants were legally unrepresented before the learned Magistrate (ground 2). I do not consider that the principles established in *Dietrich v The Queen* (1992) 177 CLR 292 have any application here. The appellants stated before me that they could not afford legal representation and legal aid would only have been provided if they had pleaded guilty. However, none of the appellants at the outset of the hearing on 31 October 2002 sought an adjournment or indicated he wanted to obtain legal advice or legal representation. Indeed, prior to sentencing each expressly indicated to the learned Magistrate on 22 May 2003 that they did not wish to have a lawyer for the purpose of making submissions in relation to sentence. It is not uncommon for defendants before the Court of Summary Jurisdiction to exercise their right to represent themselves. That is a matter for them and if in hindsight that does not seem to have been a wise decision, it does not support a claim that there was thereby any unfairness in the fact that they were not legally represented (see *Phillips v Bahnert* [1998] NTSC 68).<sup>3</sup>

[7] The reasoning that the principle established in *Dietrich* had no application in the circumstances of that matter was apparently directed

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<sup>3</sup> *Inder-Smith v Tudor-Stack* [2004] NTSC 48 at [17].

to the failure on the part of the appellants to seek an adjournment or legal representation at either the commencement of the trial or for the purpose of sentencing submissions, and that the appellants had exercised their right of self-representation. The determination was not that the principle in *Dietrich* had no application to summary proceedings.

[8] The appellants then lodged appeals from the decision of the Supreme Court to the Court of Appeal. Those appeals were brought on a number of grounds, including that the appellants were unrepresented at trial and not adequately advised of their rights. In dismissing that ground of appeal, Mildren J endorsed the finding at intermediate level that the appellants had not sought an adjournment of the trial on the basis they had no legal representation. However, Mildren J then went on to observe:

Next we were directed to the fact that the accused were self-represented, apparently because legal aid had been refused and they were indigent. As Angel J correctly pointed out the principles established in *Dietrich v The Queen* (1992) 177 CLR 292 do not apply to summary proceedings.<sup>4</sup>

[9] The reasons of Mildren J were generally adopted by the other members of the Court of Appeal, but without specific reference to that paragraph. It may be accepted that Mildren J's statement was not reflective of the reasoning below, but the question whether *Dietrich* has application to summary proceedings remains.

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<sup>4</sup> *Highway v Tudor-Stack* (2006) 163 A Crim R 178 at [32].

## The application of *Dietrich* to summary proceedings

[10] The first question of law reserved asks whether the Local Court has power to grant a stay or an adjournment in accordance with the principle enunciated in *Dietrich* in respect of summary criminal proceedings. The classic statement of principle in *Dietrich* appears in the reasons of Mason CJ and McHugh J in the following terms:

[A] trial judge who is faced with an application for an adjournment or a stay by an indigent accused charged with a serious offence who, through no fault on [their] part, is unable to obtain legal representation. In that situation, in the absence of exceptional circumstances, the trial in such a case should be adjourned, postponed or stayed until legal representation is available. If, in those circumstances, an application that the trial be delayed is refused and, by reason of the lack of representation of the accused, the resulting trial is not a fair one, any conviction of the accused must be quashed by an appellate court for the reason that there has been a miscarriage of justice in that the accused has been convicted without a fair trial.<sup>5</sup>

[11] That approach is an incident of the broader principle of the right to a fair trial which has application in all criminal proceedings. The same underlying principle is evident in the reasons of the other members of the majority in that case. However, those reasons do not deal expressly with the question of whether the principle has application to summary proceedings. The charge under consideration in *Dietrich* was brought on indictment for importing a trafficable quantity of heroin, and there was no occasion to deal with the operation of the principle in summary proceedings. The closest any of the reasons of the majority come to

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<sup>5</sup> *Dietrich v The Queen* (1992) 177 CLR 292 at 315.

addressing that issue is the observation of Deane J that the principle may not have application to ‘proceedings before a magistrate or judge, without a jury, for a non-serious offence’ where there is no real threat of deprivation of personal liberty.<sup>6</sup> That observation might be seen to suggest that the principle may have application to summary proceedings for a serious offence carrying the real risk of incarceration.

[12] Neither party was able to identify any intermediate appellate court authorities dealing with the question of whether the principle in *Dietrich* has application to summary proceedings. However, there are at least two single judge decisions from superior courts in other jurisdictions which have found that the principle does have application where an accused is facing a charge for a serious offence and the real risk of actual imprisonment in summary proceedings.<sup>7</sup> That approach is properly adopted in this jurisdiction. First, there is no doubt that the Local Court can hear and determine serious offences carrying a real risk of imprisonment on a summary basis.<sup>8</sup> Second, the fundamental right to a fair trial, or not to be tried unfairly, has no less application in

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<sup>6</sup> *Dietrich v The Queen* (1992) 177 CLR 292 at 336.

<sup>7</sup> *Weinel v Fedcheshen* (1995) 65 SASR 156 at 161; *Donnachy v Riegert* (2004) 144 A Crim R 260 at [55].

<sup>8</sup> The Local Court has jurisdiction to hear and determine charges for offences carrying maximum penalties of imprisonment for 10 years or less and, in some circumstances involving the offence is of robbery and aggravated burglary, maximum penalties of imprisonment for 14 years and 20 years respectively: *Local Court (Criminal Procedure) Act*, s 121A(1)(a). The Local Court has jurisdiction to impose sentences to imprisonment of up to five years for a single offence: *Sentencing Act 1995* (NT), s 122(1).

summary proceedings than it does in proceedings on indictment, although the necessary incidents of a fair trial may vary according to the nature of the hearing. Third, the Local Court has an implied power to regulate its own proceedings, including a power to prevent the abuse of its processes.<sup>9</sup> That power extends to the grant of a stay of proceedings to prevent unfairness.<sup>10</sup>

[13] It necessarily follows from these uncontroversial propositions that the Local Court has an implied power to grant a stay or an adjournment if the conditions attracting the application of the principle in *Dietrich* are satisfied. The decision in *Highway v Tudor-Stack* (2006) 163 A Crim R 178 should not be followed to the extent that it states otherwise.

### **Restrictions on the application of the *Dietrich* principle**

[14] If, as we have found, the Local Court has power to grant a stay or adjournment in the application of the *Dietrich* principle, the second question of law purportedly reserved asks what restrictions, if any, apply to the exercise of that power. It is unclear what is intended to be conveyed by the term ‘restrictions’ in the question reserved. The *Dietrich* principle has application to ‘an indigent accused charged with a serious offence who, through no fault on [their] part, is unable to

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<sup>9</sup> *Grassby v The Queen* (1989) 168 CLR 1 at [21]; *Rigby v TH* [2023] NTSCFC 2 at [35]; *O’Neill v Rankine* (2015) 295 FLR 363 at [25]; *Director of Public Prosecutions v Shirvanian* (1998) 4 NSWLR 129 at 134-135.

<sup>10</sup> *Jago v District Court of New South Wales* (1989) 168 CLR 23; *Williamson v Trainor* [1992] 2 Qd R 572 at 580; *Neil v County Court of Victoria* (2003) VSC 328 at [32]-[38]; *Hudson v ACT Magistrates Court & Anor* (2014) 9 ACTLR 295 at [71]; *Wunsch v SA Police* (1995) LSJS 217 at 225; *Visser v Hodgetts* [2002] TASSC 44.

obtain legal representation'. Accordingly, the following considerations will govern the exercise of the power.

[15] *First*, the principle in *Dietrich* applies only to proceedings in which an accused is being tried on a criminal charge. The *Dietrich* principle has no application to: (a) committal proceedings;<sup>11</sup> (b) appeals or applications for leave to appeal;<sup>12</sup> (c) witnesses in criminal trials or witnesses appearing before statutory inquiries into criminal conduct;<sup>13</sup> (d) civil proceedings, including proceedings for civil contempt, even if punishable by a term of imprisonment;<sup>14</sup> (e) administrative inquiries or hearings, even where the inquiry is directed to doubts concerning the guilt of a convicted person; or (f) administrative review proceedings, including applications for refugee status, deportation proceedings and extradition proceedings, even where the decision is likely to inflict a severe impact or considerable hardship on the individual concerned.<sup>15</sup>

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11 *New South Wales v Canellis* (1994) 181 CLR 309 at 328, 335; *R v Rich* [1998] 4 VR 44 at 48; *R v Matterson; Ex parte Helfenbaum* (1993) 2 Tas R 115; *Fuller v Field* (1994) 62 SASR 112; *Fuller v Director of Public Prosecutions (Cth)* (1994) 68 ALJR 611; *Clarke v Director of Public Prosecutions (Cth)* (1998) 147 FLR 165; *Elliott v Australian Securities & Investments Commission* (2004) 10 VR 369 at [160].

12 *R v Rich* [1998] 4 VR 44 at 47–48; *Johns v The Queen* (1995) 13 WAR 380; *Sinanovic v The Queen* (1998) 72 ALJR 1050; *Clarke v Director of Public Prosecutions (Cth)* (1998) 147 FLR 165; *R v Milat* (Unreported, New South Wales Court of Criminal Appeal, 26 February 1998); *Milat v The Queen* (2004) 78 ALJR 672.

13 *New South Wales v Canellis* (1994) 181 CLR 309 at 328–329, 335.

14 *Australian Securities & Investments Commission v Reid (No 1)* (2006) 151 FCR 540; *McGibbon v Linkenbach* (1996) 62 IR 426; *Australian Competition & Consumer Commission v Leelee Pty Ltd* [2000] ATPR 41-742.

15 *New South Wales v Canellis* (1994) 181 CLR 309; *Nguyen v Minister for Immigration & Multicultural Affairs* (2000) 101 FCR 20; *Federal Commissioner of Taxation v La Rosa* (2002) 50 ATR 450; *Rivera v United States* [2004] FCAFC 154; *Nakane v New Zealand* [2014] FCA 772.

[16] *Second*, the principle in *Dietrich* applies only in respect of serious criminal charges. For that reason, the trial of a person before a magistrate or judge sitting without a jury for a ‘non-serious’ offence where there is no real threat of deprivation of personal liberty may not infringe the general requirement of fairness by reason of any failure to obtain legal representation.<sup>16</sup> It has been suggested on that basis that the likelihood of imprisonment for a significant period if convicted is a powerful indicator that an accused is facing a ‘serious offence’;<sup>17</sup> but the mere possibility of imprisonment for any period is insufficient.<sup>18</sup> The term ‘serious offence’ is not otherwise defined in the reasons of the majority, and the subsequent cases have not articulated guidelines<sup>19</sup> beyond an acceptance that the term does not have a narrow or technical meaning. Its scope is ultimately governed by whether a fair trial is possible having regard to the offence and the surrounding circumstances. The question whether the accused is facing a ‘serious offence’ must be considered having regard to ‘the seriousness of the nature of the crime, the complexity of the means of prosecution (including evidentiary and legal issues), sanction and its likelihood’.<sup>20</sup>

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**16** *Dietrich v The Queen* (1992) 177 CLR 292 at 336.

**17** *R v Gudgeon* (1995) 128 FLR 221.

**18** *R v Pirimona* (1998) 7 Tas R 407; *Khalifeh v Job* (1996) 85 A Crim R 68.

**19** *R v Rich* [1998] 4 VR 44 at 49.

**20** *R v Pirimona* (1998) 7 Tas R 407 at 419. By way of example, the *Dietrich* principle has been applied to the offences of murder or manslaughter (*Attorney General (NSW) v Milat* (1995) 37 NSWLR 370; *R v Phillips* (Unreported, Supreme Court of Western Australia, 2 November 1998); *Walton v The Queen* (Unreported, Supreme Court of Western Australia, 26 March 1998); *R v Marchi* (1996) 67 SASR 368); conspiracy to supply prohibited drug

[17] *Third*, the *Dietrich* principle only has application where the accused person ‘lacks the means to engage appropriate legal representation to conduct [a] defence’.<sup>21</sup> While an accused ‘need not be a pauper’, the means which the person possesses must be insufficient to cover the reasonable expenses of their legal defence.<sup>22</sup>

[18] *Fourth*, even where an accused lacks sufficient means, the principle in *Dietrich* applies only where the accused is unable to obtain legal representation through no fault of their own. The onus is on an accused seeking an adjournment or stay to establish that any undue delay in obtaining representation is not their fault. The principle will have no application in circumstances where an accused faces trial without legal representation as a result of their own fault or decision by, for example, unjustifiably withdrawing instructions from counsel at, or shortly prior to, the trial’s commencement;<sup>23</sup> failing to retain legal

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(*R v Kay* (1998) 100 A Crim R 367); selling, possessing or importing prohibited drug (*Dietrich v The Queen* (1992) 177 CLR 292; *R v Siciliano* [1999] SASC 85; *Director of Public Prosecutions (Cth) v Wodak* (1998) 146 FLR 287; *R v Ridgeway* (1993) 60 SASR 207); fraudulent conversion and serious property offences (*R v Rich* (1997) 68 SASR 390); offences relating to the administration of corporations (*Clarke v Director of Public Prosecutions (Cth)* (1999) 150 FLR 180; *R v Karounos* (1995) 63 SASR 451; *R v Fuller* (1997) 69 SASR 251); theft, damaging and receiving stolen property (*Craig v South Australia* (1995) 184 CLR 163; *Wilson v The Queen* (Unreported, Supreme Court of the Northern Territory, 19 September 1997); *Director of Public Prosecutions (NSW) v Allan* (Unreported, New South Wales Court of Criminal Appeal, 1 November 1995)); aggravated sexual assault (*Walker v The Queen* (1998) 101 A Crim R 152); and armed robbery (*R v Rich* [1998] 4 VR 44).

**21** *R v Marchi* (1996) 67 SASR 368 at 375; *R v Burns* (2000) 109 A Crim R 292 at [15].

**22** *Wilson v The Queen* (Unreported, Supreme Court of the Northern Territory, 19 September 1997). See also *R v Lucas* (1993) 78 A Crim R 480 at 485; *R v Phillips* (Unreported, Supreme Court of Western Australia, 2 November 1998); *R v Marchi* (1996) 67 SASR 368 at 375.

**23** *Greer v The Queen* (1992) 62 A Crim R 442; *Frawley v The Queen* (1993) 69 A Crim R 208.

representation although afforded adequate time to do so;<sup>24</sup> or for reasons the accused declines to reveal on the ground of legal professional privilege.<sup>25</sup> A trial in such circumstances will not be rendered unfair within the *Dietrich* principle.<sup>26</sup>

[19] *Finally*, even where all the other criteria are satisfied, the *Dietrich* principle will only have application if by reason of the lack of legal representation it is not possible to conduct a fair trial.<sup>27</sup> Although it will ordinarily be the case that a litigant in person facing a serious criminal charge will be at a disadvantage,<sup>28</sup> whether that is so will depend upon the likely impact of the lack of representation having regard to such matters as the type of criminal offence to be tried, the forensic complexity of the case against the accused and whether the accused would otherwise be able to present an organised and coherent

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24 *R v Small* (1994) 33 NSWLR 575. In *Frawley v The Queen* (1993) 69 A Crim R 208 at 212, it was stated that '[t]he fact that the appellant was unrepresented, resulting, as it did, substantially from his own rejection of the legal advice and representation that was provided to him at public expense, [did] not of itself amount to unfairness'. It is also the case that the application of the *Dietrich* principle does not extend to enable an accused to select their preferred counsel: *Hakimi v Legal Aid Commn (ACT)* (2009) 195 A Crim R 275; *Attorney General (NSW) v Milat* (1995) 37 NSWLR 370; *Slaveski v Smith* (2012) 34 VR 206; *R v Grosser* [2001] SASC 68.

25 *R v Batiste* (1994) 35 NSWLR 437.

26 *McInnis v The Queen* (1979) 143 CLR 575. However, in exercising a discretion to grant or refuse an adjournment to an accused, who is unrepresented due to their own fault, a judge should nevertheless give due weight to the importance for both an accused and the general administration of justice that a person facing criminal charges be represented. Consideration should also be given to the duration of additional delay involved in permitting the accused to obtain representation and the interests of the Crown and witnesses: see *R v Small* (1994) 33 NSWLR 575 at 588-591; *Rodny v Stricke* [2020] NSWSC 800 at [46]-[48]; *McInnis v The Queen* (1979) 143 CLR 575 at 579, 581-582.

27 *Dietrich v The Queen* (1992) 177 CLR 292 at 315.

28 *Dietrich v The Queen* (1992) 177 CLR 292 at 353-354.

defence.<sup>29</sup> In what have been described variously as ‘exceptional circumstances’ or ‘compelling circumstances’,<sup>30</sup> a stay or adjournment may be refused despite the other criteria being satisfied. The only hypothetical example of such circumstances given in the reasons in *Dietrich* was where the accused is a ‘skilled litigant’.<sup>31</sup> Another example which has been given is where there is no defence, such as where a competent accused has made a detailed and recorded confession and does not seek to challenge the making or truth of the confession or prove any additional facts consistent with innocence.<sup>32</sup>

[20] Although the foregoing considerations will govern the exercise of the power to stay or adjourn proceedings in accordance with the *Dietrich* principle, they are not properly characterised as ‘restrictions’ in the orthodox sense of that term. The applicant’s written submissions suggest that the question as reserved is intended to seek guidance from the Court as to when it might be appropriate to grant an adjournment as opposed to a temporary stay if the conditions in *Dietrich* are satisfied. That is not a question of law within the scope of s 162(1) of the *Local Court (Criminal Procedure) Act*, and its answer would depend upon the facts and circumstances presenting in the individual case. The matter is not appropriately raised or answered using the special case procedure.

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**29** *Dietrich v The Queen* (1992) 177 CLR 292 at 314-315, 325.

**30** *Dietrich v The Queen* (1992) 177 CLR 292 at 315, 337, 357.

**31** *Dietrich v The Queen* (1992) 177 CLR 292 at 302, 315.

**32** *R v Rich* [1998] 4 VR 44 at 50.

In any event, there will often, and usually, be little practical difference between the grant of a temporary stay and the grant of an adjournment.

[21] The failure to frame a question that can be answered in this special case procedure highlights the utility of following the stated case procedure in Order 64 of the *Supreme Court Rules*, or the adoption of a similar process. Under that procedure, the party having carriage of the proceedings is appointed as applicant, the applicant prepares a draft stated case in consultation with the respondent, and the draft case is settled by the court with the benefit of submissions from the parties.

**Answers to the questions of law reserved**

[22] The questions of law reserved are answered are as follow.

**Question 1:**

Can the Local Court grant a stay or an adjournment in accordance with the principle enunciated in *Dietrich v The Queen* (1992) 177 CLR 292 in respect of summary criminal proceedings?

**Answer:**

Yes, the Local Court has an implied power to grant a stay or an adjournment if the conditions attracting the application of the principle in *Dietrich* are satisfied.

**Question 2:**

If the Local Court has power to grant a stay or an adjournment, what restrictions, if any, apply?

**Answer:**

This is not a question properly raised under s 162(1) of the *Local Court (Criminal Procedure) Act 1928* (NT).