



The Northern Territory - In Focus

NT Election Update

Background

The Northern Territory Parliament consists of the Northern Territory Legislative Assembly and the Monarch represented by the Administrator of the Northern Territory. It is one of the three unicameral parliaments in Australia with another two being Australian Capital Territory Parliament and Queensland Parliament.

The Legislative Assembly of the Northern Territory is the unicameral legislature of the Northern Territory consisting of 25 members, each representing a single electoral division. Members of the Legislative Assembly (MLAs) are elected through an optional preferential voting system for a set term of four years. The leader of the party with the most seats in the Legislative Assembly is invited by the Administrator of the Northern Territory to form government.

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Result

In the election for the NT Legislative Assembly held on 27 August 2016, Northern Territory Labor was elected to Government, having won a majority of seats in the election to form a majority in Northern Territory Parliament. With the completion of recounting on 12 September 2016, the final outcome has seen Labor winning 18 seats, the Country Liberal Party (CLP) retaining 2 seats, and Independents holding 5 seats.

The Hon Michael Gunner was elected as Chief Minister of the Northern Territory, and the new Ministry came into operation on 31 August 2016 following his swearing-in at the Northern Territory Government House.

Darwin Luxury Hotel Project

With ongoing interest in the mining, oil and gas sector within the Northern Territory region, there has been noticeable growth in the business travel sector in NT. The NT Government has always been keen to address demand for a higher standard of accommodation in Darwin. Following a strong response to the NT Government's invitation for expressions of interest, a number of shortlisted proponents submitted their proposals in June 2016.

On 3 August 2016 the NT Government and Chinese-owned port operator Landbridge Infrastructure Group Australia (LIGA) signed a binding heads of agreement on key commercial terms for the development of a luxury hotel in Darwin. The hotel will be built at the Darwin Waterfront on part of the land recently returned to the NT Government by Toga Group.

Construction of this \$250 million hotel project will begin next year with completion expected by 2020. Once completed, the hotel will be operated by Starwood Hotels & Resorts through the introduction of its Westin brand to the Northern Territory.

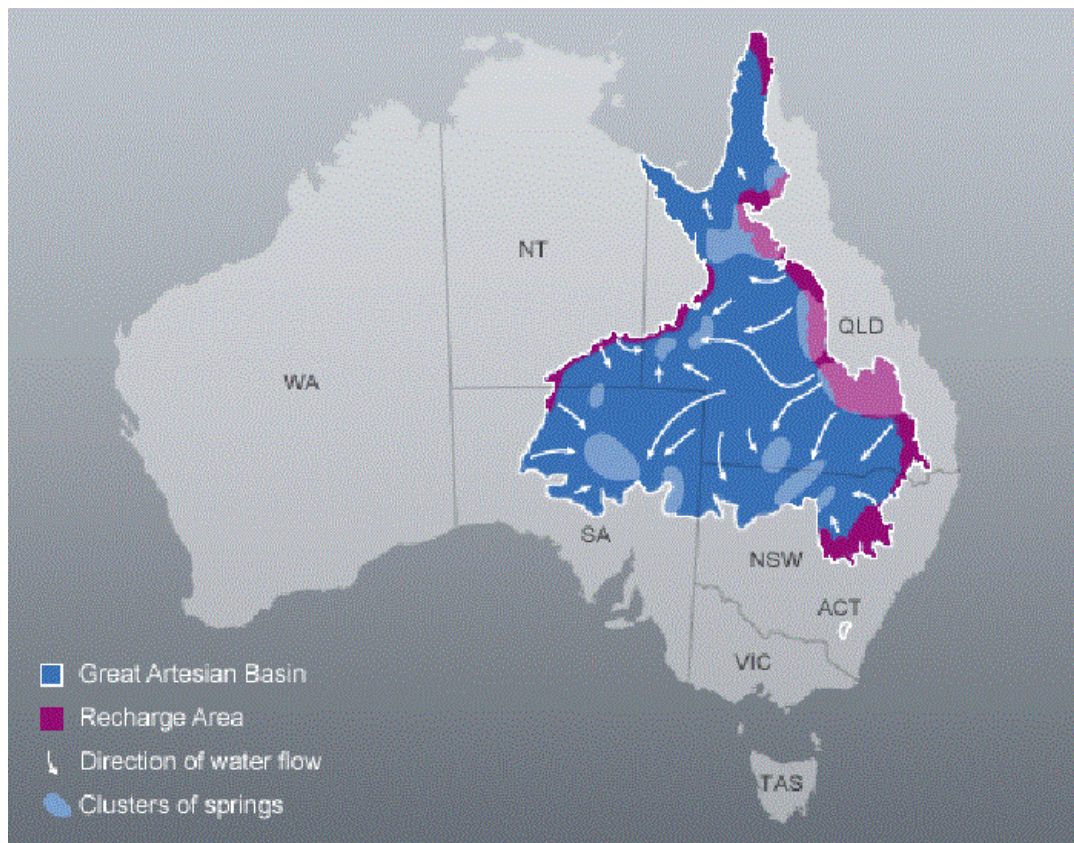
The former Chief Minister said that taxpayers will need to contribute \$10 million towards servicing the site for the hotel, but no other support will be needed for its ongoing operations.

The construction and operation of the hotel is expected to provide a significant economic boost to the NT as it would generate more than 500 jobs during the construction phase and hundreds of ongoing jobs when it opens.

Great Artesian Basin Economic Report

On 22 August 2016, the Department of Agriculture and Water released a report looking at the economic value generated by Great Artesian Basin (GAB) water resources, which estimates that the GAB contributes more than \$12 billion to the Australian economy each year. This is the first clear economic figure that has been put on the value of the water in the Basin.

The GAB is Australia's largest underground freshwater reservoir underlying approximately 22% of Australia – occupying an area of over 1.7 million square kilometres beneath parts of Queensland, New South Wales, South Australia and the Northern Territory. It is a highly valued water resource which provides diverse economic benefits and opportunities. The use of Basin water resource adds economic value to regional resources, and underpins much of the economic activity and employment across the region.



According to the report, the provision of drinking water through domestic bores and town water supply within the Basin is used in more than 120 towns and settlements. It is reported that the estimated consumptive use of GAB water underpins at least \$12.8 billion of production annually. Mining and agriculture were found to be the two biggest economic contributors in the GAB regions. The statistic shows that the total mining output dependant on water from the GAB was estimated to exceed \$6 billion annually, and the figure was \$4.7 billion for economic value of livestock production, which was generated from over 14 million beef cattle for meat production and over 11 million sheep and lambs in GAB areas. In addition, the value of irrigated agriculture that uses GAB water is estimated to be greater than \$60 million.

Electronic Signatures

Electronic signatures are part of today's business environment, whether we like it or not.

What constitutes a valid electronic signature?

An electronic signature is sufficient if the method used to record the signature was appropriately reliable for the purpose for which an electronic communication was generated.

An electronic signature is sufficient if it identified the person and indicated their approval for the electronic communication.

In *Get Up Limited v Electoral Commissioner*, the Federal Court upheld electronic signatures allowing members of Get Up to enrol online with the Australian Electoral Commission. The enrolment application utilised a "signature tool" to either use a digital pen, finger or mouse.

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Directors Guarantees

A guarantee and indemnity provided by one or more of the directors or shareholders of a company, in support of an application for credit, is an important credit management tool. Therefore, when a credit manager receives a signed credit application supported by a signed guarantee, appropriately witnessed, all should be in order, right?

Yet, what if the signature of the guarantor is an electronically generated signature? How can the credit manager identify the signature as an electronic signature?

This issue arose for a particular credit manager of a company trading as JH Williams.

Williams Group Australia Pty Ltd v Crocker [2015] NSWSC 1907

This case concerned the enforcement of a guarantee allegedly given by a director of a company (Crocker) to secure the terms of a trade supplier agreement. JH Williams was the trade supplier, and the plaintiff to the proceedings.

The principal debtor was a company that was placed in liquidation. The second, third and fourth defendants were the directors, being sued under their guarantees.

Two of the three directors did not defend the claim, leading to summary judgment being entered against those two defendants. The remaining defendant, Crocker, did defend on the basis of an electronic signature.

Background

In May 2012, one of the directors, Mr Brooks advised Mr Crocker, a Defendant that he had set up an electronic signing system for the directors – “Hello Fax” allowing for uploading of an electronic signature. The purpose was to enable directors to sign documents electronically when it was inconvenient for them to sign in person. There was a user name and password.

In July 2012, an Application for Credit issued to the Plaintiff and personal guarantee was signed by 3 directors. The signatures for Mr Crocker

were placed using the Hello Fax electronic signature system.

By July 2013, a debt of \$889,534.35 had accumulated in relation to the sale of building equipment.

In October 2013, a Liquidator was appointed to the debtor company.

The Defence

Interestingly, while not stated in the judgement, it was only during the course of the litigation that the credit manager at JH Williams discovered the signature was an electronic signature.

Mr Crocker’s (the Guarantor) evidence included the following: -

- Mr Crocker was not in the office at the time when the personal guarantee had his signature affixed.
- Mr Crocker had left Mr Brooks (co-director) with his passwords and email address and authority to access the Hello Fax system.
- Mr Crocker did not give authority for his signature to be given to a personal guarantee.

The Decision

JH Williams lost the argument that there had been an agency agreement between the directors, or there was actual authority or an ostensible authority to sign the guarantee.

JH Williams also had to pay Mr Crocker’s costs.

Implications :

- The New South Wales Court of Appeal dismissed an appeal against the decision on 22 September 2016.
- On one view of the world that is the credit managers view the decision is harsh – whilst Crocker may not have left internal instructions that his electronic signature could not be used on a personal guarantee – equally on the other hand he had not provided any instructions on its use – it really is one of the normal usages of commerce that directors would be expected to execute directors guarantees.

- The case really is a reflection of a long standing practice of the courts and the common law that guarantees will be interpreted strictly against the person attempting to rely upon them.
- Best practice would be to ensure guarantees are executed and witnessed in pen and the original is received.
- At its most extreme this could involve a representative of a credit manager attending on site to have the guarantee witnessed.
- Alternatively an additional step in appropriate prudential checks could be to speak to the director at time of execution and ensure he is aware he has signed a personal guarantee and making detailed records of that conversation.
- It is a cost benefit analysis of the steps required to mitigate the risk created by the case and when you are talking about a \$890,000 loss these suggested initial steps seem to be the lesser of two evils.

Joint & Several Guarantees

Where the guarantee contemplates more than one director or shareholder signing and only one guarantor in fact signs the personal guarantee, it can be argued by the second or third guarantor that they are not liable because a necessary pre-condition was there would be two or three guarantors executing the guarantee.

In the JH Williams' case, the two directors might have successfully defended the claim on this basis, rather than standing back and having judgment entered against them summarily.

The guarantee should contain a clause that each guarantor is bound jointly and severally irrespective of whether they all signed the guarantee.



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