HIGH COURT OF AUSTRALIA

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Details of Filing

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IN THE HIGH COURT OF AUSTRALIA **S140/2022**
SYDNEY REGISTRY

BETWEEN: **Enrico Robert Charles Delzotto**
Appellant

and

The King
Respondent

APPELLANT'S SUBMISSIONS

PART I CERTIFICATION

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

PART II ISSUES ON APPEAL

2. The New South Wales Court of Criminal Appeal ("CCA") held that (a) s16AAB of the *Crimes Act 1914* (Cth) ("Crimes Act") applied to the Appellant and (b) the approach in *Bahar v R* [2011] WASCA 249; (2011) 45 WAR 100 ('*Bahar*') applies to the interpretation of s16AAB.
3. The following questions arise for consideration:
    a. Is the approach in *Bahar* correct? (**Question 1**)
    b. Does the *Bahar* approach apply to the operation of s16AAB of the *Crimes Act 1914* (Cth)? (**Question 2**)
    c. Does the element that "the person used a carriage service to obtain or access the material" in s474.22A(1)(c) of the *Criminal Code* (Cth) amount to "relevant conduct" for the purposes of the application provisions of s16AAB? (**Question 3**)
4. The Appellant's position is that the first two questions should be answered "no" and the third "yes".

PART III NOTICE UNDER SECTION 78B OF THE JUDICIARY ACT

5. The Appellant does not consider that any notice under s78B of the *Judiciary Act 1903* (Cth) to the Attorneys-General of the States and Territories is required.

PART IV DECISIONS BELOW

6. The decision at first instance is *R v Delzotto* [2021] NSWDC 325 (CAB 14). The decision of the New South Wales Court of Criminal Appeal is *R v Delzotto* [2022] NSWCCA 117 (CAB 44).

PART V RELEVANT FACTS

7. On 25 June 2021, in the District Court of New South Wales at Albury, the Appellant was convicted of, and sentenced for, two offences contrary to provisions of the *Criminal Code* (Cth) ("the Code") relating to child abuse material. The Appellant was sentenced to a single aggregate sentence of imprisonment for 3 years and 3 months with a non-parole period of 2 years and 2 months. The offences each had a maximum penalty of 15 years imprisonment. The indicative sentences specified by the sentencing judge, pursuant to s53A(2)(b) of the *Crimes (Sentencing Procedure) Act 1999* (NSW), were as follows:

Sequence	***Offence and Section of Code***	***Sentence***
5	Possess child abuse material using carriage service s474.22A(1)	2y 9m
8	Access child abuse material using carriage service s474.22(1)	18m[1]

8. The Appellant was sentenced on the then undisputed basis that s16AAB of the Crimes Act applied to his sentencing for offence Sequence 5 because of some relevant prior convictions in Queensland in 2001.[2] The effect of s16AAB (if applicable) was, subject to s16AAC, to require the judge to impose on the Appellant, on conviction of offence Sequence 5, a sentence of at least four years imprisonment. This is the period specified in Column 2 of the table in s16AAB for an offence contrary to s474.22A(1) of the Code. Section 16AAC permitted the judge to impose, on conviction, a sentence of less than four years (theoretically down to two years imprisonment), as a result of discounts for the Appellant's plea of guilty and assistance to authorities: s16AAC(2) and (3).

9. The sentencing judge arrived at the indicative sentence of 2 years and 9 months for Sequence 5 from a starting point of 4 years after allowing a total discount of 30%, comprising 25% for the plea and 5% for assistance.

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[1] In relation to Sequence 8 only, two similar offences were taken into account pursuant to s16BA of the Crimes Act.

[2] On appeal, the Appellant unsuccessfully argued that the section, for technical reasons based on the definition of "child sexual abuse offences", did not apply to him. This argument is not maintained in this appeal. Another argument, based upon the application provisions for the section, was also the subject of the appeal to the CCA and is maintained in this court as Ground 2.

10. The sentencing judge rejected the Crown's submission that he should use the period of 4 years specified in s16AAB as a guidepost representing a least serious case in accordance with the approach in *Bahar*. Instead, his Honour adopted the approach of Riley CJ in *R v Pot, Wetangky and Lande*[3] ("*Pot*"). The sentencing judge therefore considered all relevant sentencing factors except the terms of s16AAB, including the maximum penalty. His Honour applied discounts and arrived at a sentence. Satisfied that the sentence arrived at did not fall below the minimum required to be imposed (by the combined operation of s16AAB and s16AAC), the sentencing judge then indicated that sentence and imposed the aggregate.

11. The Crown appealed against the sentence and ultimately pressed two grounds of appeal, namely manifest inadequacy and that:

> The sentencing judge erred in sentencing for Sequence 5 by imposing a sentence that did not reflect the sentencing principle that the mandatory minimum head sentence of 4 years imprisonment was for the least serious category of offending as set out in *Bahar v R* [2011] WASCA 249; (2011) 45 WAR 100 and *Karim v R* [2013] NSWCCA 23; (2013) 301 ALR 597.

12. On 6 June 2022, the CCA rejected two new arguments by the Appellant that s16AAB did not apply to his case. One of those arguments is the basis of Ground 2 in this appeal. The CCA then upheld the two grounds pressed by the Crown, determining that the approach in *Bahar* and *Karim v R*[4] *("Karim"),* and not *Pot*, applied.

13. The CCA resentenced the Appellant to an aggregate sentence of 4 years and 6 months with a non-parole period of 3 years. The indicative sentences specified by the CCA, after a total discount of 30%, were imprisonment for 18 months for Sequence 8 and 4 years and 2 months for Sequence 5.

PART VI ARGUMENT

14. As a threshold issue, the Appellant says that s16AAB did not apply to him because of the application provisions in the amending Act which introduced it. This is the basis of Ground 2.

15. In relation to Ground 1 the Appellant says that the CCA erred by applying the approach in *Bahar* to s16AAB. This involved following *Bahar* in two respects: firstly, by erroneously characterising the operation of the section as imposing a "minimum penalty", and secondly, by erroneously determining that the "minimum penalty" was a

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[3] Unreported, NT Supreme Court, Riley CJ, 18 January 2011.
[4] (2013) 83 NSWLR 268; (2013) 274 FLR 388; (2013) 301 ALR 597; (2013) 227 A Crim R 1; [2013] NSWCCA 23

symmetrical counterpart to the maximum penalty and reserved for the least serious category of offending.[5]

Question 1: Is the approach in *Bahar* correct?

16. The Appellant submits that there are three fundamental problems with the approach in *Bahar*. Firstly, this approach pays insufficient regard to the statutory text. Secondly, it involves circular reasoning: assuming the correctness of its conclusion about the nature of the provision and, on that assumption, reasoning from there to the conclusion. Thirdly, it leads to a construction which fails to grapple with the impact of this approach on personal liberty, having regard to the 'centrality' of this right to the common law of Australia.[6]

The text of the Migration Act provisions

17. In legislation where a minimum penalty is imposed for a statutory offence, this is generally achieved by the use of clear and explicit language in the offence provision.[7] It is not disputed that Parliament may provide for minimum penalties in this way. However, this was not the way in which the relevant provisions of the *Migration Act 1958* (Cth) ("Migration Act") were drafted.

18. When a statutory provision *commands a court* to impose "at least" or "not less than" a penalty of a particular type and/or quantum, there are, arguably, two main possibilities as to its nature. One possibility is that it may amount to a limit or constraint on the discretion of the sentencing court, akin to provisions which govern the imposition of a non-parole periods,[8] limit the length of bonds or recognizances,[9] or make certain sentencing options unavailable for certain offences,[10] for sentences of more than a

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[5] Which category is determined by reference to the circumstances of both the offence and the offender: *Bahar* at [55] and [58].
[6] *Williams v The Queen* (1986) 161 CLR 278 at 292; *North Australian Aboriginal Justice Agency Ltd v Northern Territory* (2015) 256 CLR 569 at 610 [94] – [96].
[7] See, for example, various provisions of the *Dog Act 1976* (WA) (ss22(2), 26, 33A, 33D, 33GA- 33GE, 33K, 38, 43 and 43A) and s34 of the *Traffic Act 1987* (NT) which use the term "penalty" for the maximum penalty and "minimum penalty". Other legislation provides for a penalty of "not more than" or "not exceeding" *and* "not less than" specified penalties: see for example s120(2)(b) of the *Excise Act 1901* (Cth), s234(2)(a) and (b) of the *Customs Act 1901* (Cth) and s360 *Health (Miscellaneous Provisions) Act 1911* (WA).
[8] For example, s19AB and s19AG *Crimes Act 1914* (Cth).
[9] For example, s20(1)(a)(i) *Crimes Act 1914* (Cth).
[10] For example: s67 *Crimes Sentencing Procedure Act 1999* (NSW) which makes Intensive Correction Orders (ICOs) unavailable for specified offences. See also s203(1) *Road Transport Act 2013* (NSW) which limits the ability of a court to discharge an offender without conviction under s10 of the *Crimes (Sentencing Procedure) Act 1999* (NSW) for certain offences in certain circumstances.

certain length[11] or for certain classes of offender.[12] There are many such laws which may properly be described as "limits upon the jurisdiction of the sentencing court".[13] This is consistent with the interpretation of the Migration Act provisions adopted in *Pot*. A second possibility is that it may amount to the imposition of a penalty – a minimum penalty - for an offence. This was the interpretation adopted in *Bahar*.

19. The first type of interpretation – that such provision was a constraint on the court - is the approach applied by the CCA in *Garth v R*[14] ("*Garth*") to s25B of the *Crimes Act 1900* (NSW). Section 25A(2) of that Act created an offence of assault causing death while intoxicated and provided for a maximum penalty of 25 years imprisonment. An element of the offence was that the offender was "of or above the age of 18 years" at the time of the offence.[15] Section 25B, which was headed "mandatory minimum sentence", provided that "a court is required to impose a sentence of imprisonment of not less than 8 years on a person guilty of an offence under s25A(2)".[16] It also provided that "any non-parole period for the sentence is also required to be not less than 8 years".[17] Another subsection precluded the imposition of "no sentence", effectively eliminating the possibility of discharge without conviction.[18] In rejecting an argument that the provisions were unconstitutional, the CCA said as follows:

> The essence of the applicant's argument was that, as s25B was constitutionally invalid, the offence charged was not one punishable by law. The difficulty with this argument is that the offence is punishable by s25A(2) itself, which provides for a maximum penalty of 25 years. *Section 25B does not impose a punishment. Rather, it operates to impose a constraint on the sentence which can be imposed.* Even if the constraint is constitutionally invalid, an offence under s 25A(2) remains an offence punishable by law.[19]

20. The Appellant contends that the CCA's analysis of the text in *Garth* is correct and is apposite to the construction of the provisions of Migration Act which were under consideration by the court in *Bahar*. The structure and the text of the provisions were

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[11] For example: s68 of the *Crimes Sentencing Procedure Act 1999* (NSW) which places restrictions on the length of a sentence which may be served by an Intensive Corrections Order (ICO).
[12] For example: s7(3) of the *Crimes Sentencing Procedure Act 1999* (NSW) which makes ICOs unavailable for offenders under the age of 18 years.
[13] *Stanley v Director of Public Prosecutions (NSW) & Anor* (2023) 97 ALJR 107; [2023] HCA 3 per Gordon, Edelman, Steward and Gleeson JJ at [58].
[14] (2016) 261 A Crim R 583; (2016) 341 ALR 620; [2016] NSWCCA 203.
[15] Section 25A(2) *Crimes Act 1900* (NSW).
[16] Section 25B(1) *Crimes Act 1900* (NSW).
[17] Section 25B(1) *Crimes Act 1900* (NSW).
[18] Section 25B(2) *Crimes Act 1900* (NSW) which operated to make unavailable provisions of the *Crimes (Sentencing Procedure) Act 1999* (NSW) including s10 which provided for discharge without conviction.
[19] *Garth* at [24] per Bathurst CJ, Beazley P and Simpson JA agreeing (emphasis added).

very similar. Certain sections (s232A and s233A) created the relevant offences and made them punishable by a maximum penalty. Another section (s233C) was directed to the sentencing court and constrained the court, in certain circumstances (on conviction of an offender 18 years or older[20]), to impose a sentence of imprisonment of at least a certain length and non-parole period. Another provision (s233B) precluded a court from dealing with an offender 18 years or older by discharge without conviction under s19B of the Crimes Act.

21. The text of s233C did not contain customary words of penalty creation.[21] The penalty for the offences was specified in the sections creating the offences (s232A and s233A). The operative words of s233C were directed to the sentencing court, imposing a requirement about the sentence which the court must impose on conviction for an offender of or above 18 years of age. The heading "Mandatory penalties for certain offences" did not imply that any penalty was being *created* by the section any more than did a similar heading to the provision under consideration in *Garth*.

22. Significantly, a note to each of the relevant offence creating provisions (s232A and s233A) was inserted at the time of the introduction of s233C[22] and remained in the later version of the legislation considered in *Karim*.[23] The note to s232A and s233A was in these terms (the later versions are relevantly identical):

> Note: Sections 233B and 233C limit conviction and sentencing options for offences under this section.

23. Despite being part of the text of the Migration Act,[24] and bearing directly on the issue of the nature of the provisions, there was no mention of these notes in *Bahar* or any of the authorities which followed it.[25] While the notes are subordinate to the substantive provisions and cannot displace them, they are part of the text of the Act and may (and

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[20] At the time of the commission of the offence – s233C(1).
[21] Compare the wording in the statutes referred to in footnote 6 above.
[22] Items 4 and 5, Schedule 2, *Border Protection (Validation and Enforcement Powers) Act 2001* (Cth).
[23] (2013) FLR 388; (2013) 301 ALR 597; [2013] NSWCCA 23; Items 8 and 9, Schedule 1, *Anti-People Smuggling and Other Measures Act 2010* (Cth). For a detailed summary of the relevant provisions considered in the two cases, and the history of the provisions, see *Karim* at [12]-[13]; [22].
[24] Section 13 *Acts Interpretation Act 1901* (Cth). The notes were inserted directly after the offence creating sections by the amending Acts and were not "alternative text" as referred to in s13(3).
[25] In New South Wales: *Karim; Radimin v The Queen* (2013) 235 A Crim R 244; [2013] NSWCCA 220; *Dui Kol v Regina* [2015] NSWCCA 150; In Queensland: *R v Karabi*; (2012) 220 A Crim R 338; [2012] QCA 47; R v *Latif; ex parte Cth DPP* [2012] QCA 278; *R v Nitu* [2013] 1 Qd R 459; (2012) 269 FLR 216; (2012) 222 A Crim R 540; [2012] QCA 224; *R v Selu; ex parte Cth DPP* [2012] QCA 345; In Victoria: *DPP (Cth) v Haidari* (2013) 230 A Crim R 134; [2013] VSCA 149; In Western Australia: *R v Abbas* (2019) 277 A Crim R 105; [2019] WASCA 64.

should) be used as an aid to the construction of those provisions.[26] The notes make clear that the function of the provisions is not to set a penalty, but instead to place limits on the exercise of the court's sentencing discretion. The clarity of the notes means there was no call for any recourse to extrinsic material[27] although, in any event, the extrinsic material supports this construction.

24. In the "Outline" of the Explanatory Memorandum to the 2001 amending Act[28] the relevant amendments were described as introducing "minimum mandatory penalties", albeit this phrase was not explained and is consistent with either construction.[29] However the detailed explanation of the relevant new sections (s233B and s233C) in the memorandum accorded almost precisely with the terms of the new notes to the relevant offences set out above.[30]

25. Further, in the memorandum, the operation of s233C was described as if it required the imposition of the actual sentence specified, rather than a sentence of at least that length.[31] The Explanatory Memorandum supported the characterisation of the provision as imposing constraints on a court, rather than providing for a penalty.

26. In the second reading speech, the Minister referred to the amendments variously as providing for "minimum mandatory sentences"[32] and "mandatory sentencing arrangements".[33] The purpose of the legislation, according the Minister, was general deterrence.[34] The Minister's words did not refer to, or even hint at, a purpose of introducing an additional sentencing guidepost which would lead to an increase in the overall level of sentences. The extrinsic material, overall, was supportive of an interpretation of s233C consistent with *Pot*/*Garth* and inconsistent with *Bahar*.

27. The court in *Bahar* identified the clear intention of Parliament (at least in relation to offenders of or above 18 years of age):

> The statutory language makes it unequivocally clear that the Commonwealth Parliament intended to deprive a judicial officer sentencing an offender for a breach of s 232A of both the power to impose a non-custodial sentence and the

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[26] *DPP v Walters (A Pseudonym)* (2015) 49 VR 256; [2015] VSCA 303 at [50]-52].
[27] Section 15AB *Acts Interpretation Act 1901* (Cth).
[28] *Border Protection (Validation and Enforcement Powers) Act 2001* (Cth).
[29] Explanatory Memorandum at [11].
[30] Explanatory Memorandum at [46]. The explanation of the adding of the notes simply reiterates the terms of the notes: see [43] and [45].
[31] Explanatory Memorandum at [52]-[53].
[32] House of Representatives, Hansard 17 September 2001, p30870.
[33] House of Representatives, Hansard 18 September 2001, p30873.
[34] House of Representatives, Hansard 17 September 2001, p30870.

power to impose a sentence of less than five years.[35]

28. This was obvious from the text of s233B and s233C and the notes to the offence-creating provisions. However, such an intention is not the same as an intention (a) to create a minimum penalty for which the offence is punishable, (b) to reserve such a penalty for cases in the least serious category of offending or (c) to effect a general increase in sentences for the offence. It is more consistent with an intention to impose constraints on a sentencing court.

29. Likewise, the Appellant does not cavil with the identification, in *Bahar,* of the purpose of the provisions:

> The primary statutory purpose of s 233C is to create certainty as to the type and minimum length of sentence for the offence of people smuggling in order to maximise its deterrent effect, both in and outside Australia.[36]

30. While an interpretation of the statute which best achieves this purpose is to be preferred,[37] the *Bahar* and *Pot/Garth* interpretations equally serve the purpose of general deterrence by providing the certainty of a substantial term of imprisonment for anyone (18 years or older) who commits the offence.[38]

31. One problematic aspect of the reasoning in *Bahar* was the finding that:

> [A] statutory minimum penalty, like a statutory maximum, is a legislative direction as to the seriousness of the offence.[39]

32. There are three problems with this finding.[40] Firstly, it "assumes the correctness of the characterisation of a statutory minimum that it seeks to prove."[41] Secondly, for the reasons explained above, the assumption was a false one which is inconsistent with the text of the legislation. Thirdly, there was no authority for the proposition that a minimum penalty, if this was one, is a legislative direction as to the seriousness of an offence.

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[35] *Bahar* at [53] per McClure P.
[36] *Bahar* at [60] per McClure P.
[37] Section 15AA *Acts Interpretation Act 1901* (Cth).
[38] A similar point is made by Mossop J in *R v Hurt (No.2)* (2021) 294 A Crim R 473; [2021] ACTSC 241 at [86] and [90] ("*R v Hurt (No.2)*"); and by Loukas-Karlsson J in dissent in *Hurt v The Queen* (2022) 18 ACTLR 272; (2022) 372 FLR 312; [2022] ACTCA 49 at [76]-[77]. ("*Hurt v The Queen")*
[39] *Bahar* at [46] per McClure P.
[40] For further analysis of the difficulties with this reasoning, see the judgments of the Mossop J *in R v Hurt (No.2)* at [80]-[82] and of Loukas-Karlsson J in *Hurt v The Queen* at [1], [47], [53]-[56], [66]-[67].
[41] *R v Hurt (No.2)* per Mossop J at [82]; cited with approval by Loukas-Karlsson J (in dissent) in *Hurt v The Queen* at [55].

33. The Appellant acknowledges that there appears to be limited support for the impugned proposition in this court's later decision in *Magaming v The Queen*.[42] In *obiter dicta* the majority said in reference to a later (but relevantly identical) version of the Migration Act provisions:[43]

> The prescription of a mandatory minimum penalty for the offence created by that section was the Parliament's conclusion about what was the least penalty that should be imposed on any offender for a breach of that section.[44]

And

> The prescription of a mandatory minimum penalty may now be uncommon but, if prescribed, a mandatory minimum penalty fixes one end of the relevant yardstick.[45]

34. However, there are two difficulties with reliance on these statements. Firstly, it was never contended in *Magaming* that that the relevant provision was simply a constraint on the sentencing court and not a minimum penalty and so the question was not the subject of argument. Likewise, the significance or utility of such a penalty as a "yardstick" was neither considered nor explained. Secondly, the statement concerned a mandatory minimum penalty "if prescribed". For the reasons above, although Parliament clearly possessed the power to do so,[46] the provisions considered in *Bahar* did not prescribe a minimum penalty.

35. Instead of engaging with the text of the *Migration Act*, the court in *Bahar* sought to reconcile the assumed effect of s233C with the laws of sentencing set out in Part 1B of the Crimes Act. The only relevantly possible conflict[47] was between the demands of the Migration Act provisions and the requirement of s16A(1) of the Crimes Act to "impose a sentence or make an order that is of a severity appropriate in all the circumstances of the offence". It is accepted that this provision imports the common law principle of proportionality into federal sentencing.[48] The question was whether the *Migration Act* provisions were intended to apply: (a) despite s16A(1), or (b) subject to s16A(1). This

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[42] (2013) 252 CLR 381; [2013] HCA 40.
[43] Note: potentially confusingly, s233C in the later version of the Act was an offence creating provision and the equivalent of the old s233C was s236B.
[44] *Magaming* at [43] per French CJ, Hayne, Crennan, Kiefel and Bell JJ.
[45] *Magaming* at [48] per French CJ, Hayne, Crennan, Kiefel and Bell JJ (footnotes omitted).
[46] See the discussion of Parliament's powers by Keane J in *Magaming* at [105]-[106].
[47] It may be that the conflict with s17A identified in *Bahar* (at [53] per McClure P) was illusory, since the provisions under consideration rendered sentencing options other than imprisonment *unavailable*: cf *Taylor v R* [2022] NSWCCA 256 at [63] at Simpson AJA. In any event, s17A is entirely neutral in relation to the constructional choice between the *Garth/Pot* and *Bahar* approach.
[48] Joh*nson v The Queen* (2004) 205 ALR 346; (2004) 78 ALJR 616; [2004] HCA 15 at [15]; see also *Barbaro v The Queen* (2014) 253 CLR 58 at [52] per Gageler J.

was resolved in *Pot* in favour of the former and in *Bahar* in favour of the latter. The issue was essentially *when*, in the sentencing process, the Migration Act provisions were to apply: *after* the determination of a sentence otherwise appropriate in all the circumstances of the case or *during* that process.

36. Under the *Pot/Garth* interpretation the provision is characterised as a constraint, or limit, on the sentencing jurisdiction of the court. For the reasons explained above, the Appellant contends that this is the correct characterisation. As such, the relevance of the jurisdictional limit,[49] and its relationship to the maximum penalty, is as set out in this court in *Park v The Queen*: [50]

> a jurisdictional limit is not a matter required to be taken into account "[i]n determining the appropriate sentence for an offence" ... A jurisdictional limit relates to the sentencing court, not to the task of identifying and synthesising the relevant factors that are weighed to determine the appropriate sentence. To the contrary, the maximum penalty for an offence is a matter that is almost always required to be taken into account to determine the appropriate sentence...

37. If the provision is a constraint, or limit, on the sentencing court then to take it into account as being reserved for a "least serious case" is to err in the same way as was rejected by this court in *Park*, referring to *R v Doan*.[51]

Equal justice vs interference with personal liberty

38. The "independent reason" provided by Allsop P in *Karim*[52] in support of the *Bahar* approach, and adopted by the CCA in the decision below,[53] was based on the principle of equal justice. The nub of the argument was that the *Pot* approach would result in some offenders, with relevantly different cases ordinarily warranting different sentences, being given the same punishment. The reasoning was based upon the principle of legality: that because the norm of equal justice is a fundamental part of the legal system, Parliament would not have intended to provide for a law which resulted in "unequal justice" without clear language. This argument is flawed because it ignores another, competing, aspect of the principle of legality: the protection of personal liberty.

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[49] Cf *Stanley v Director of Public Prosecutions (NSW) & Anor* (2023) 97 ALJR 107; [2023] HCA 3 per Gordon, Edelman, Steward and Gleeson JJ at [58].
[50] *Park v The Queen* (2021) 273 CLR 303; (2021) 291 A Crim R 285; (2021) 95 ALJR 968; [2021] HCA 37 per Kiefel CJ, Gageler, Keane, Edelman and Gleeson JJ at [19] (footnotes omitted).
[51] *Park* at [23], citing *R v Doan* (2000) 50 NSWLR 115 at 123 [35].
[52] *Karim* at [45] per Allsop P (Bathurst CJ, Hall and Bellew JJ agreeing; McClellan CJ at CL expressing no opinion.
[53] CAB p6 [4]; p14 [26]; p17 [34]; p31 [82].

39. The Migration Act provisions were clearly intended to interfere with the right to personal liberty. Where a statutory provision is aimed at interfering with or affecting a common law right or principle, in some cases an appeal to the principle of legality will be of little assistance in the construction of it.[54] However, this was not the approach taken in *Bahar*, *Karim* or the decision below. The issue which needed addressing was not *whether* the Migration Act provisions were intended to interfere with liberty, but the *extent* of the interference. As was acknowledged by Allsop P in *Karim*[55] (and by the court below[56]), the *Bahar* approach leads to a general increase in sentences for all offenders while the *Pot* approach affects only those whose sentences would otherwise have fallen below the applicable minimum. As this court has said of the principle of legality:[57]

> It is a principle of construction which is not to be put to one side as of "little assistance" where the purpose of the relevant statute involves an interference with the liberty of the subject. It is properly applied in such a case to the choice of that construction, if one be reasonably open, which involves the least interference with that liberty.

40. The court in *Bahar* and *Karim* (and the court below) failed to consider the impact of the *Bahar* approach upon personal liberty, which is "the most elementary and important of all common law rights".[58] Ultimately this involves consideration of the tension between, on the one hand, the broad systemic goal of achieving consistency between relevantly similar cases in order to maintain public confidence in the administration of justice[59] and, on the other, the right to personal liberty.

41. In *Karim,* Allsop P reasoned that because under the *Pot* approach some offenders with relevantly different cases would receive the same sentence, this meant that the "statute, and through it the order of the Court, would be an instrument of unequal justice and, so injustice".[60] This reasoning begs the question: injustice to whom? If the answer is "to

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[54] *See Australian Securities and Investments Commission v DB Management Pty Ltd* (2000) 199 CLR 321; [2000] HCA 7 at [43] per Gleeson CJ, Gaudron, Gummow, Hayne and Callinan JJ; *Lee v New South Wales Crime Commission* (2013) 251 CLR 196; [2013] HCA 39 at [307]-[314] per Gageler and Keane JJ.
[55] *Karim* at [45].
[56] CAB p17 [34], p31 [82].
[57] *North Australian Aboriginal Justice Agency Ltd v Northern Territory* (2015) 256 CLR 569; [2015] HCA 41 at [11] per French CJ, Kiefel and Bell JJ.
[58] *Williams v The Queen* (1986) 161 CLR 278 at 292 per Mason and Brennan JJ, citing Fullagar J in *Trobridge v Hardy* (1955) 94 CLR 147 at 152; See also *Garlett v Western Australia* (2022) 404 ALR 182; (2022) 96 ALJR 888; [2022] HCA 30 at [73]; [125]; [127]; [163]; [174]; [179]; [199].
[59] See *Lowe v The Queen* (1984) 154 CLR 606 at 610 per Gibbs CJ, at 610-611 per Mason J; at 623-624 per Dawson J; *Green v The Queen; Quinn v The Queen* (2011) 244 CLR 462 at [29]; [31].
[60] *Karim* at [45].

the offenders who would have received the minimum sentence in the absence of the provisions", then the proposed remedy for this perceived injustice to such offenders was antithetical to justice for them. It was to adopt a construction which would result in them being given a longer sentence. If the injustice was systemic, then the remedy involved prioritising the systemic goal of equal justice over, or without regard to, personal liberty.

42. Whether or not the description "unjustly increased harshness"[61] or "at a very high cost"[62] is apt, the reasoning is flawed because it fails to consider, in construing the provisions, the impact of that construction upon the personal liberty of *all offenders* to whom the provision applied and the tension between the principle of equal justice and the right to personal liberty. The proper resolution of that tension, should the text of a statute permit it, ought to be in favour of personal liberty.[63] This is consistent with the manner in which that tension has traditionally been resolved in sentencing law, so that the parity principle may result in a decrease, but not an increase, in a sentence in order to seek to achieve equal justice.[64] To attribute to Parliament an intention to resolve that tension in favour of the systemic goal of equal justice at the cost of a greater impact upon the personal liberty of all offenders would require clear and unambiguous words.[65] The very fact that there exists a constructional choice between the *Bahar* and *Pot/Garth* approach tells against that.

43. Further, characteristics of judicial power "are deeply rooted in a tradition within which judicial protection of individual liberty against legislative or executive incursion has been a core value" and the Court must be 'vigilant to protect against, "the creeping normalisation of piecemeal borrowing of judicial services to do the work of the legislature or the executive" that gradually erodes judicial independence'.[66] Without

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[61] *Dui Kol v Regina* [2015] NSWCCA 150 at [16] per Adams J (McCallum J agreeing)
[62] *R v Hurt (No.2)* [2021] ACTSC 241 at [85] per Mossop J.
[63] See *North Australian Aboriginal Justice Agency Ltd v Northern Territory* (2015) 256 CLR 569; [2015] HCA 41 at [11] per French CJ, Kiefel and Bell JJ.
[64] This was a point made by Adams J (McCallum J agreeing) in *Dui Kol v Regina* [2015] NSWCCA 150 at [16] and was referred to by Mossop J in *R v Hurt (No.2)* at [59]. For the application of this aspect of the parity principle, see *R v Radloff* (1996) 6 Tas R 99 at 106-107; *Steer v the Queen* (2000) 171 ALR 463; [2000] FCA 462; at [11]; *R (Cth) v Nguyen* [2010] NSWCCA 331 at [62]; *R v Connell* [2013] NSWCCA 155 at [46]; *Delaney v R; R v Delaney* (2013) 230 A Crim R 581 [2013] NSWCCA 150; at [69]-[70]; *The Queen v Mossman* [2017] NTCCA 6 at [67]-[72]; *Bowe v State of Western Australia* [2017] WASCA 166 at [83]. See also *Green v The Queen; Quinn v The Queen* (2011) 244 CLR 462 at [35]-[45].
[65] *R v Home Secretary; Ex parte Simms* [2000] 2 AC 115 at 131; *BVD17 v Minister for Immigration and Border Protection* (2019) 268 CLR 29 at [55]; and see the discussion by Mossop J in *R v Hurt* (No.2) at [91]-[92] and by Loukas-Karlsson J in *Hurt v The Queen* at [80]-[85].
[66] *Garlett v Western Australia* (2022) 404 ALR 182; [2022] HCA 30 [174] and [183] per Gordon J.

specific statutory warrant, the *Bahar* approach to the construction of s16AAB erodes judicial independence in precisely this way: a general increase in sentences burdens all offenders by imposing upon them a greater punishment than would otherwise be mandated, not only those whose sentences would otherwise fall below the mandated minimum.

44. For all these reasons the Appellant contends that the approach in *Bahar* was wrong.

Question 2: Does the *Bahar* approach apply to the operation of s16AAB of the *Crimes Act 1914* (Cth)?

45. As Gordon J recently observed:

> The Court must be wary of "domino" reasoning; "[i]t is a mistake to take what was said in other cases about other legislation and apply those statements without close attention to the principle at stake".[67]

46. Were the court to find that the *Bahar* approach was correct in relation to the provisions of the Migration Act, this does not necessarily mean that it is applicable to other legislation, even if some of the wording is identical.[68]

Relevant differences between s16AAB and the Migration Act provisions

47. The CCA found that there was no relevant distinction between s16AAB and the provisions of the Migration Act which were considered in *Bahar*.[69] It is acknowledged that s16AAB and some of the Migration Act provisions considered in *Bahar*[70] are similarly worded and that they are relevantly directed to the court. All are applicable only on conviction of an offender aged 18 years or above. However, it is submitted that there are five relevant distinctions, each of which supports the *Pot/Garth* approach rather than *Bahar*:

1. The statutory context

48. Unlike the Migration Act provisions, s16AAB is not found in the Act which created any of the relevant offences.[71] Section 16AAB is found in the context of Part 1B of the Crimes Act, which provides for many different aspects of Commonwealth sentencing

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[67] *Garlett v Western Australia* (2022) 96 ALJR 888; [2022] HCA 30 at [186], citing *Vella v Commissioner of Police (NSW)* (2019) 269 CLR 219 at [188].
[68] *McNamara v Consumer Trader and Tenancy Tribunal* (2005) 221 CLR 646 per McHugh, Gummow and Hayden JJ at [40].
[69] Decision below at [90] – CAB p33.
[70] And the later versions considered in *Karim*. For a detailed summary of the relevant provisions considered in the two cases, and the history of the provisions, see *Karim* at [12]-[13]; [22]. The later amendments did not affect the arguments for and against the *Bahar* approach to that legislative scheme.
[71] In Commonwealth legislation, the penalty for an offence is usually found in the provision creating the offence, as is the case for s474.22A(1) of the Code: see s4D of the *Crimes Act*.

law and procedure and includes numerous provisions which impose constraints and limits on courts' exercise of federal sentencing powers.[72]

2. Section 19B remains available

49. In contrast to the relevant provisions of the Migration Act,[73] which precluded a court from making an order under s19B of the *Crimes Act* discharging an offender without conviction, there is no restriction on s19B for offences falling within s16AAB. It was the combination of this prohibition and the requirement to impose a sentence of "at least" a certain length which operated to "deprive a judicial officer sentencing an offender ... of both the power to impose a non-custodial sentence and the power to impose a sentence of less than" the stipulated sentence of imprisonment.[74] This formed one of the basal premises for the reasoning in *Bahar*, but cannot be said about s16AAB.

3. A moveable floor

50. The *Migration Act* provisions imposed full time imprisonment by way of both a mandatory minimum head sentence and a mandatory minimum non-parole period which were clearly stated, readily identifiable and (other than for offenders under the age of 18), applied without exception. In addition to not ousting the operation of s19B, s16AAB does not require a sentence of full-time imprisonment or a non-parole period of any particular length or at all (see below). Section 16AAB is subject to s16AAC which provides for the period specified for an offence in the table in s16AAB to be reduced by a total of up to 50%. The "minimum penalty" specified in s16AAB is therefore not the minimum penalty which can be imposed for a listed offence, even where the section applies.

4. No mandatory minimum period of custody

51. Section 16AAB does not provide for any minimum period of custody before release, whether by way of non-parole period or recognizance release order. There is no prohibition on a non-parole period for as short as "until the rising of the court" or immediate release on a recognizance release order (RRO).[75]

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[72] See, for example: s16A(1) and (2); s16AC(2); s16B; s16D; s17A; s19AG(2). Section 19AG has been said to impose "a statutory fetter upon the exercise of judicial discretion by prescribing a non-parole period of at least ¾ for" certain offences: *Lodhi v The Queen* [2007] NSWCCA 360 per Price J (Spigelman CJ and Barr J agreeing) at [261].

[73] Section 233B of the version of the provisions under consideration in *Bahar* and s236A under the later version under consideration in *Karim*.

[74] *Bahar* at [53] per McClure P.

[75] This is the combined effect of Crimes Act s20(1)(b), s20(1)(a) , s19AC and s19AB.

52. In Commonwealth sentencing law, there is no statutory or other relationship between the length of a sentence of imprisonment and the minimum period ordered to be served in custody (whether by a non-parole period or RRO).[76] The length of a such a period is the minimum period which justice requires must be served having regard to all the circumstances of the offence and the offender.[77] The decision by Parliament not to mandate a minimum period means that a court is significant and means that courts have the discretion to reflect the particular circumstances of the offence and the offender in the non-parole or pre-release period. The Explanatory Memorandum to the legislation which introduced s16AAB supports this interpretation:

> This Schedule does not impact the current requirement for courts to consider all the circumstances, including the matters listed in s16A of the Crimes Act, when fixing a non-parole period. This allows the courts to take into account individual circumstances and any mitigating factors in considering the most suitable non-parole period.[78]

53. The implication is that this flexibility in fixing non-parole periods is in contrast to the court's ability to take into account individual circumstances when setting the term of the sentence, which may be curtailed by the requirement to impose a sentence of "at least" the specified length. This flexibility is more consistent with the *Pot* approach and further undermines any support which the *Bahar* approach might take from the principle of equal justice because significantly different sentences may be imposed on different offenders even if the overall term of imprisonment is the same.[79]

5. Section s16AAB says nothing about the seriousness of the offence

54. All of the above arguments apply equally to s16AAA. There is a further argument which additionally applies to s16AAB. Section 16AAB does not apply generally to the offences listed in the table. It applies only to offenders who (a) are *convicted* of a *Commonwealth child sexual abuse offence* listed in the section and (b) have been

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[76] *Hili v The Queen* (2010) 242 CLR 520; [2010] HCA45 at [13].
[77] *Hili v The Queen* (2010) 242 CLR 520; [2010] HCA45 at [40]; [44]; *Power v The Queen* (1974) 131 CLR 623; *Deakin v The Queen* (1984) 58 ALJR 367; 54 ALR 765; *Deakin v The Queen* (1984) 58 ALJR 367; 54 ALR 765. Note: there is a statutory exception which applies to certain, mostly terrorism, offences: s19AG of the *Crimes Act 1914* (Cth) requires a court, if imposing a sentence of imprisonment, to fix a non-parole period of at least 75% of the length of the term of the sentence.
[78] Explanatory Memorandum to *Crimes Legislation Amendment (Sexual Crimes Against Children and Community Protection Measures) Bill 2019* (Cth) at [196]):
[79] For example, on conviction, two offenders who each pleaded guilty to an offence such as the Appellant's sequence 5 and were allowed a 25% discount might each be sentenced to a term of imprisonment for 3 years. At one extreme, an offender may be released on a RRO without having served any time in custody. At the other, an offender might be sentenced to a fixed term of 3 years. Of course, yet another offender might be discharged without conviction pursuant to s19B.

convicted of a *child sexual abuse offence*.[80] Although the heading of s16AAB is "Second or subsequent offence", the timing of commission of the offences is irrelevant. The application of the section to an offender is determined solely by the relative timing of the convictions.[81] The *Migration Act* provisions considered in *Bahar* provided for an *increased* "minimum penalty" for a "repeat offence". However, those provisions also provided for an absolute minimum for the offences. It was the minimum, applicable to all offenders, which provided a necessary basis for the reasoning that a "minimum penalty" amounted to a legislative statement of the seriousness of the offence.

The text and statutory context of s16AAB

55. The arguments set out above in relation to Question 1 are largely applicable to the text of s16AAB. The operative words of the section do not refer to the creation of a penalty, but are directed to the sentencing court. There is no hint in the text that the section is setting a base line which is to represent a least serious case and should be taken into account as a guidepost in setting the sentence for all offenders to whom the section applies or that a general increase in sentences was intended.

56. The term "minimum penalty" appears in the heading before s16AAA and s16AAC and, by implication, is also applicable to s16AAB. However, there is no definition of "minimum penalty" and the phrase is equally applicable (a) to the concept of a minimum penalty which, by way of a limit on the court's discretion, is required to be imposed and (b) to the concept of a penalty-creating provision.[82] When s16AAB was introduced to the *Crimes Act*, the amending Act added the following note to s16A(1):

> Note: Minimum penalties apply for certain offences – see sections 16AAA, 16AAB and 16AAC.

57. If sections 16AAA and 16AAB were intended to operate in accordance with the *Bahar* approach, this note would serve no purpose. The apparent purpose of the note is to indicate that the operation of s16A(1) may be affected by the sections referred to. In other words, consistently with the *Pot* approach, those sections would apply *despite*

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[80] *Commonwealth child sexual abuse offence* and *child sexual abuse offence* are defined in s3 of the Crimes Act. The latter includes a very wide variety of State and Territory offences.

[81] It could therefore apply to an offender's first ever offence, if the offender happens to be convicted of a Commonwealth child sexual abuse offence after having been convicted of a child sexual abuse offence which had been committed after the commission of the Commonwealth child sexual abuse offence.

[82] cf s268 of the *Criminal Procedure Act 1986* (NSW) where the jurisdictional limit on the sentencing power of the Local Court for certain offences is described as the "maximum penalty which may be imposed". This was one of the provisions considered by this Court in *Park* and, despite the use of the term "maximum penalty", amounted to a jurisdictional limit and not a maximum penalty.

s16A(1). This interpretation is supported by the explanation of the note in the Explanatory Memorandum:[83]

> This item clarifies that, *despite* section 16A(1), there will be applicable minimum penalties for certain Commonwealth child sex offences under proposed sections s16AAA, 16AAB and 16AAC.

58. Another factor in support of the *Pot/Garth* approach is the existence of the application provisions in the amending Act.[84] If the effect of s16AAB (or s16AAA) was to impose an increased penalty (from a theoretical minimum of nil[85]) then this would be accommodated by s4F of the Crimes Act which provides that an increased penalty applies only to offences committed after commencement of the provision introducing the increase. If s16AAB imposes a penalty, the application provisions would be otiose. If the section imposes a constraint on a sentencing court then the application provision would still have work to do.[86]

59. There was, in the package of legislative reforms which included s16AAB, a clearly expressed intention to increase the overall level of sentences for the particular offences where the maximum penalties were increased.[87] However, the secondary materials do not provide any clear guidance as to whether the "mandatory minimum" sentence provisions were intended to lead to an increase in sentences generally or were intended to eliminate, or minimise, sentences which were perceived as unduly lenient because they did not involve full time custody or even a period of supervision.[88]

Equal justice and personal liberty under s16AAB

60. The arguments in relation to equal justice and personal liberty discussed above in relation to the Migration Act provisions are equally, if not more,[89] applicable to s16AAB. There being an available construction which has a lesser impact upon personal liberty, it should be preferred. Further, on its face s16AAB appears to be

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[83] Explanatory Memorandum to the *Crimes Legislation Amendment (Sexual Crimes Against Children and Community Protection Measures) Bill 2019* at [97] (emphasis added).
[84] Clause 3 Sch 6 *Crimes Legislation Amendment (Sexual Crimes Against Children and Community Protection Measures) Act 2020* (Cth).
[85] See *Rex v Taylor* [2022] NSWCCA 256 at [62] per Simpson AJA (Davies and Wilson JJ agreeing).
[86] See *Commonwealth v Baume* (1905) 2 CLR 404 at 414 per Griffith CJ; Project Blue Sky Inc v Australian Broadcasting Authority (1998) 194 CLR 355 at [71] per McHugh, Gummow, Kirby and Hayne JJ.
[87] This is the normal effect of an increase in maximum penalties: *Muldrock v The Queen* (2011) 244 CLR 120 at [31]. See the Explanatory Memorandum to the *Crimes Legislation Amendment (Sexual Crimes Against Children and Community Protection Measures) Bill 2019* (Cth) at p6 [20] and p9 [41].
[88] See the Explanatory Memorandum at p3 [3]; pp6-7 [20]-[27], p9 [40]-[42]; pp46-48 and the Second Reading speech by the Attorney-General: 11.9.2019, House of Representatives, Hansard pp2444-2447, in particular at p2445 and p2447.
[89] See the discussion under the heading "*4. No mandatory minimum period of custody*" above.

intended to achieve disparity between offenders who have, and have not, been convicted of certain offences at an earlier sittings (regardless of the timing of their offending). It would therefore be somewhat paradoxical to infer that Parliament must have intended to prioritise the principle of equal justice over the right to personal liberty.

61. For all these reasons, whether or not the approach in *Bahar* was correct in relation to the Migration Act provisions, it is inapplicable to s16AAB.

Question 3: Does the element that "the person used a carriage service to obtain or access the material" in s474.22A(1)(c) of the *Criminal Code* (Cth) amount to "relevant conduct" for the purposes of the application provisions of s16AAB?

62. Section s16AAB was inserted into the Crimes Act on 23 June 2020. The amending Act provided that the section applied to a conviction for a Commonwealth child sexual abuse offence where "the relevant conduct was engaged in on or after" commencement of the relevant Part of the amending Act (23 June 2020).[90]

63. The Appellant's relevant conviction was for an offence contrary to s474.22A of the Code. That offence has two elements involving conduct by the offender: "the person has possession or control of material"[91] and "the person used a carriage service to obtain or access the material".[92] Albeit expressed in different tenses, both are conduct by the offender which comprise an element which must be proven by the Crown. In the Appellant's case, any obtaining or accessing of the material the subject of Sequence 5 took place before 23 June 2020.[93] Therefore, if that conduct was "relevant conduct" under the application provision, s16AAB had no application to him. The CCA held that only the first element – possession or control – need have occurred prior that date.

64. The Appellant contends that the CCA erred in coming to that conclusion by (a) interpreting the word "conduct" in the amending Act as limited to conduct which can be categorised as a "conduct element" of an offence under s4.1 of the Code and (b) by determining that the obtaining or accessing of the material by the Appellant was not a "conduct element". In doing so, the CCA purported to be following a decision of the

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[90] Item 3 of Part 1 of Schedule 6 of the *Crimes Legislation Amendment (Sexual Crimes Against Children and Community Protection Measures) Act 2020* (Cth).
[91] s474.22A(1)(a).
[92] s474.22A(1)(c).
[93] See the decision below CAB p24-25 [60]; p26 [66]. The Crown conceded that there was no evidence that any of the material the subject of the s474.22A offence had been accessed after 23 June 2020. The reference by Adamson J at [66] to "almost all" of the material may be a reference to the fact that offence sequence 10 (which had been taken into account pursuant to s16BA of the Crimes Act in relation to sequence 8) involved access of material after that date: [7].

Victorian Court of Appeal.[94] However that Court declined to determine, or even consider, the first issue[95] and their view of the second was arguably *obiter dicta*.[96] The Court of Appeal of the Australian Capital Territory, in a subsequent judgment (which is the subject of an appeal to be heard with the present case), came to the same conclusion as the CCA, based largely on the difference in the tenses used.[97]

65. The use of two different tenses is, however, explicable by reference to the temporal relationship between the two types of conduct. In particular, material cannot be possessed until it has been obtained. One aspect of the element - "used a carriage service" – appears to provide a link to a constitutional head of power. However, it does so in a way which requires proof by the Crown of *conduct by the accused*, albeit with generous facilitations of the proof of conduct[98] and no requirement to prove a fault element.[99] It remains that a person accused of an offence against s474.22A is not guilty if *somebody else* used a carriage service to obtain or access the material.[100] This is not consistent with this element serving a purpose of nothing other than ensuring constitutional validity.[101]

66. That "the relevant conduct" was intended to have a broad meaning is apparent from the necessity to include the following qualification in the provision: "(regardless of whether the relevant previous conviction of the person for a child sexual abuse offence occurred before, on or after that commencement)".[102]

67. In the Code, conduct "means an act, an omission or to perform an act or a state of affairs".[103] This definition is only picked up by the Crimes Act in relation to Part 1AB which deals with Controlled Operations.[104] This provides further support for the contention that "conduct" in the Crimes Act, and therefore the amending Act, does not

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[94] CAB p26 [64]-[65]; *Justin Allison (a pseudonym) v The Queen* [2021] VSCA 308.
[95] *Justin Allison (a pseudonym) v The Queen* [2021] VSCA 308 at [15].
[96] It did not have any impact upon what they were called upon to decide (asserted duplicity): *Justin Allison (a pseudonym) v The Queen* [2021] VSCA 308 at [41].
[97] *Hurt v The Queen* at [187] per Kennett and Rangiah JJ, Loukas-Karlsson J agreeing on this point (at [6] and [100]).
[98] Section 474.22A(3).
[99] Section 474.22A(2).
[100] See s474.22A(3).
[101] Compare, for example, s307.8 of the Code where an element of the offence of possessing a commercial quantity of border controlled drugs concerns a particular quality of the substance possessed rather than the conduct of the offender: "the substance is reasonably suspected of having been unlawfully imported" (s307.8(b)).
[102] Item 3(2) of Part 1 of Schedule 6 of the *Crimes Legislation Amendment (Sexual Crimes Against Children and Community Protection Measures) Act 2020* (Cth).
[103] s4.1(2) Code.
[104] s15GC Crimes Act.

have a specialized meaning derived from the Code. There is no warrant, from the text or purpose of the provision, for interpreting "conduct" in a narrow way contrary to the ordinary meaning of the text of the amending Act and restricting that meaning by reference to another Act which it was not amending.

68. For these reasons, s16AAB did not apply to the Appellant's conduct in offence Sequence 5.

PART VII ORDERS SOUGHT

69. The Appellant seeks the orders set out in the Notice of Appeal (CAB p90).

PART VIII ESTIMATE OF TIME

70. The Appellant estimates that approximately 2.5 hours will be required for the presentation of oral argument.

Dated: 9 June 2023

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Annexure to the Appellant's submissions.

Acts Interpretation Act 1901 **(Cth)** - current

ss 13, 15AA, 15AB

Crimes Act 1914 **(Cth)** - as at 25.6.2021

s 3, Part 1B

Criminal Code **(Cth)** - as at 1.7.2020

ss 474.22, 474.22A

Migration Act 1958 **(Cth)**

Part 2, Div 12, Subdivision A:

a. as at 23.6.2009
b. as at 1.6.2010

Excise Act 1901 **(Cth)** - current

s 120(2)(b)

Customs Act 1901 **(Cth)** - current

ss 234(2)(a), 234(2)(b)

Crimes (Sentencing Procedure) Act 1999 **(NSW)** - current

ss 7, 10, 53A, 67, 68

Crimes Act 1900 **(NSW)** - as at 3.4.2014

ss 25A, 25B

Criminal Procedure Act 1986 **(NSW)** - current

s 268

Road Transport Act 2013 **(NSW)** - current

s 203(1)

Dog Act 1976 **(WA)** - current

ss 22(2), 26, 33A, 33D, 33GA-33GE, 33K, 38, 43, 43A

Health (Miscellaneous Provisions) Act 1911 **(WA)** - current

s 360

Traffic Act 1987 **(NT)** - current

s 34