

## **KNIGHT v STATE OF VICTORIA & ANOR (M251/2015)**

Date Special Case referred to Full Court: 14 November 2016

On 10 November 1988 the Plaintiff, Julian Knight, pleaded guilty to seven counts of murder and 46 counts of attempted murder. He was sentenced by Hampel J in the Supreme Court of Victoria to life imprisonment with a minimum term of 27 years. The minimum term expired on 8 May 2014. On 2 April 2014 the *Corrections Amendment (Parole) Act 2014 (Vic)*, which inserted s 74AA into the *Corrections Act 1986 (Vic)*, came into operation. Section 74AA provides that the Adult Parole Board ('the Board') may make an order for release "of the prisoner Julian Knight if, and only if," he is in imminent danger of dying or seriously incapacitated and does not pose a risk to the community.

The Plaintiff is not at present in imminent danger of dying or seriously incapacitated. On 11 March 2016 he applied for the Board to make an order that he be released on parole. After considering the application, the Board determined to obtain reports pursuant to s 74AA(3) of the *Corrections Act* and to not make any order that the plaintiff be released on parole.

The Plaintiff contends that s 74AA is inconsistent with Ch III of the Constitution and invalid for two reasons: (a) First, as a matter of substance, s 74AA operates to interfere with a particular and readily identifiable exercise of judicial power by the Supreme Court of Victoria, namely the sentence imposed on the Plaintiff by Hampel J following the Plaintiff's guilty plea and conviction; (b) Second, s 74AA authorises Victorian judicial officers to participate in a decision making process that undermines their judicial independence from the executive and hence renders the courts on which they sit unsuitable to be repositories of federal judicial power.

On 14 November 2016 Gordon J referred the Special Case for consideration by the Full Court.

Notices of Constitutional Matter have been served. At the time of writing the Attorneys-General for the Commonwealth, New South Wales, Queensland, South Australia, and Western Australia have filed Notices of Intervention.

The questions in the Special Case include:

- Is s 74AA of the *Corrections Act* invalid on the ground it is contrary to Ch III of the Constitution?