

IN THE HIGH COURT OF AUSTRALIA
SYDNEY REGISTRY

No. S38 of 2014

BETWEEN:



CHARLIE MAXWELL FORSTER
Plaintiff

and

STATE OF NEW SOUTH WALES
Defendant

PLAINTIFF'S SUBMISSIONS

20 **Part I:** I certify that this submission is in a form suitable for publication on the Internet.

Part II: The issue is whether or not section 93X of the Crimes Act 1900 (NSW) infringes the implied freedom of communication on political and government matters, as guaranteed by the Commonwealth Constitution and is invalid?

Part III: I certify that the plaintiff has served a notice on all state and territory Attorneys-General in compliance with section 78B of the Judiciary Act 1903.

30 **Part IV:** Not applicable.

Part V: The relevant facts are:

- i) On 29 June 2012, the plaintiff was convicted in the Inverell Local Court of an offence under the Crimes Act 1900 (NSW) after

Date of document: 26 March 2014
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pleading guilty to a charge under that section. The plaintiff was sentenced to 12 months imprisonment with a non-parole period of 9 months.

- ii) On 13 August 2012, leave was sought in the Armidale District Court to withdraw the plea of guilty and to quash the plaintiff's conviction and sentence. Leave was granted.
- iii) The plaintiff currently stands charged with the offence, "habitually consort with convicted offenders after warning" under section 93X of the Crimes Act 1900 (NSW). That matter is currently stood over in the Armidale Local Court awaiting the outcome of this present application before the High Court.

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Part VI: The Constitution provides an implied right to communicate on political and government matters.

Section 93X of the Crimes Act 1900 (NSW) absolutely denies that right as between certain persons. *Monis v. The Queen* [2013] HCA 4 (27 February 2013), *Lange v. Australian Broadcasting Corporation* [1997] HCA 25; 189 CLR 520 and *Coleman v. Power* [2004] HCA 39; 220 CLR 1 are authorities that there should not be an absolute denial of the right to communicate.

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Part VII: The applicable constitutional provision is the implied freedom to communicate on political and government matters.

The relevant section in force at the time and at the date of making these submissions was section 93X of the Crimes Act 1900 (NSW):

- (1) A person who:
 - (a) habitually consorts with convicted offenders, and
 - (b) consorts with those convicted offenders after having been given an official warning in relation to each of those convicted offenders, is guilty of an offence.Maximum penalty: Imprisonment for 3 years, or a fine of 150 penalty units, or both.
- (2) A person does not "habitually consort" with convicted offenders unless:

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- (a) the person consorts with at least 2 convicted offenders (whether on the same or separate occasions), and
 - (b) the person consorts with each convicted offender on at least 2 occasions.
- (3) An "official warning" is a warning given by a police officer (orally or in writing) that:
- (a) a convicted offender is a convicted offender, and
 - (b) consorting with a convicted offender is an offence.

10 **Part VIII:** Orders sought by the plaintiff are:

- i) A declaration in the following form:
"Section 93X of the Crimes Act 1900 (NSW) is invalid".
- ii) Costs

Part IX: I estimate the number of hours required for the presentation of the plaintiff's oral argument to be 15 minutes subject to issues raised by interveners.

Dated: 26 March 2014

20 **Signed:** 

(Senior legal practitioner presenting the case in Court)

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