

TAJJOUR v STATE OF NEW SOUTH WALES (S36/2014)
HAWTHORNE v STATE OF NEW SOUTH WALES (S37/2014)
FORSTER v STATE OF NEW SOUTH WALES (S38/2014)

Court from which causes removed: New South Wales Court of Appeal

Date causes removed: 14 February 2014

Date special cases referred to Full Court: 5 March 2014

Section 93X of the *Crimes Act* 1900 (NSW) (“the Act”) creates an offence of consorting. The offence is committed where a person consorts with two or more convicted offenders on two or more occasions, after receiving a warning from a police officer of the potential offence.

After being charged with offences pursuant to s 93X of the Act, the Plaintiffs each commenced Supreme Court proceedings to challenge the validity of s 93X. On 13 May 2013 Justice Beech-Jones ordered that the question “is s 93X of [the Act] invalid?” be decided separately from all other questions in the proceedings. His Honour then removed all three proceedings into the Court of Appeal.

The Attorney-General for New South Wales then intervened in the three proceedings pursuant to s 78A of the *Judiciary Act* 1903 (Cth) and applied for their removal into this Court. On 14 February 2014 Justices Kiefel and Bell ordered that the whole of all three causes be removed from the Court of Appeal into this Court.

A special case filed in each of the proceedings was referred to the Full Court by Justice Kiefel on 5 March 2014.

In response to Notices of a Constitutional Matter filed in this Court, the Attorneys-General of Victoria, Western Australia, Queensland and South Australia are all intervening in addition to the Attorney General for New South Wales. The Australian Human Rights Commission has also applied for leave to intervene (or to appear as *amicus curiae*) in these proceedings.

In the matters of *Tajjour* (S36/2014) and *Hawthorne* (S37/2014), the following questions are stated for the opinion of the Full Court:

1. Is s 93X of the Act invalid because it impermissibly burdens the implied freedom of communication on governmental and political matters, contrary to the Commonwealth *Constitution*?
2. Is there implied into the Commonwealth *Constitution* a freedom of association independent of the implied freedom of communication on governmental and political matters?
3. Does s 93X of the Act contravene any implied freedom of association referred to in question 2?

4. Is s 93X of the Act invalid because it is inconsistent with the International Covenant on Civil and Political Rights as ratified by the Commonwealth of Australia?
5. Who should pay the costs of the special case?

In the matter of Forster (S38/2014), the questions stated for the opinion of the Full Court are:

1. Is s 93X of the Act invalid because it impermissibly burdens the implied freedom of communication on governmental and political matters, contrary to the Commonwealth *Constitution*?
2. Who should pay the costs of the special case?