



HIGH COURT OF AUSTRALIA

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**IN THE HIGH COURT OF AUSTRALIA
SYDNEY REGISTRY**

BETWEEN: **ENRICO ROBERT CHARLES DELZOTTO**
 APPELLANT
 AND
THE KING
 RESPONDENT

AND

10 **IN THE HIGH COURT OF AUSTRALIA
CANBERRA REGISTRY**

BETWEEN: **RAYMOND JAMES CHOI HURT**
 APPELLANT
 AND
THE KING
 RESPONDENT

OUTLINE OF ORAL SUBMISSIONS OF THE RESPONDENT

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PART I INTERNET PUBLICATION

This outline of oral submissions is in a form suitable for publication on the internet.

PART II PROPOSITIONS TO BE ADVANCED IN ORAL ARGUMENT

1. The minimum sentences in sections 16AAA and 16AAB have the same functions as maximum penalties save that they operate at the other end of the spectrum. **RDS [32]-[34], [35]-[38], [69].**
 2. Maximums and minimums have a double function of (a) limiting Court power and (b) manifesting the legislative policy on the offence for the purpose of informing the instinctive synthesis of s 16A and other factors. **RDS [40]-[46].**
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- *R v Tait* (1979) 46 FLR 386 at 398 (**JBA Vol 6, Tab 72**); *R v Oliver* (1980) 7 A Crim R 174 at 177 (**JBA Vol 6, Tab 66**); *Hansford v Neesham* [1995] 2 VR 233 at 236 (**JBA Vol 5, Tab 51**); *Magaming v The Queen* (2013) 252 CLR 381 at [48], [84],

[103] (**JBA Vol 3, Tab 30**); *Hinds v The Queen* [1977] AC 195 at 226 (**not in JBA**); *Reynolds v Wilkinson* (1948) 51 WALR 17 at 18 (**JBA Vol 6, Tab 73**).

- *Garth v R* (2016) 261 A Crim R 583 (**JBA Vol 5, Tab 49**); *R v Pot* (Unreported, NTSC, Riley CJ, 18 January 2011) (**JBA Vol 6, Tab 67**).

3. The statutory context does not require a minimum to be confined to the single function of restricting a court's power. To the contrary, the minimum is a relevant consideration in the exercise of other sentencing discretions and dispositions. In particular:

- Section 16A(1) and its note: **RDS [50]-[51]**.

- Section 19B (non-conviction orders): **RDS [55]**.

10 • Sections 19AB, 19AC and 20(1) (non-parole period, recognizance release orders and conditional release): **RDS [59]**.

- Section 16AAC (guilty plea and cooperation): **RDS [56]-[58]**.

- Section 4F: **RDS [54]**.

4. Important common law values and principles of equal justice, proportionality and liberty favour giving the minimum in s 16AAB a dual function. **RDS [45]-[48], [60]-[63]**.

- *Green v The Queen* (2011) 244 CLR 462 at [28] (**JBA Vol 3, Tab 26**); *Karim v The Queen* (2013) 83 NSWLR 268 at [45] (**JBA Vol 5, Tab 55**).

- *ABCC v Pattinson* (2022) 274 CLR 450 at [39] (**not in JBA**).

20 • Explanatory Memorandum to the Crimes Legislation Amendment (Sexual Crimes Against Children and Community Protection Measures) Bill 2019 (Cth) at [42], [195]-[196] (**JBA Vol 7, Tab 78**).

- Second reading (**JBA Vol 7, Tab 80 p 1762**).

5. The legislative history and purpose favours giving the minimum in s 16AAB a dual function. **RDS [64]-[68]**

- (a) The obvious intention of the *Crimes Legislation Amendment (Sexual Crimes against Children and Community Protection Measures) Act 2019* (Cth) was to increase the sentences imposed on offenders to which ss 16AAA and 16AAB applied. **RDS [64]-[65]**.

- Explanatory Memorandum, Crimes Legislation Amendment (Sexual Crimes Against Children and Community Protection Measures) Bill 2019 (Cth) at [1], [2], [24], [25]-[27], [40]-[42], [193] (**JBA Vol 7, Tab 78**).

(b) The Parliament was aware of the dual function approach. **RDS [70]**.

- Second reading debates (**JBA Vol 7, Tab 80 p 1763**).
- *R v Pot* (Unreported, NTSC, Riley CJ, 18 January 2011) (**JBA Vol 6, Tab 67**); *Bahar v The Queen* (2011) 45 WAR 100 (**JBA Vol 5, Tab 42**); *R v Karabi* (2012) 220 A Crim R 338 (**JBA Vol 6, Tab 63**); *R v Nitu* (2012) 222 A Crim R 246 (**JBA Vol 6, Tab 65**); *R v Latif* [2012] QCA 278 (**JBA Vol 6, Tab 64**); *R v Selu* [2012] QCA 345 (**JBA Vol 6, Tab 69**); *Karim v The Queen* (2013) 227 A Crim R 1 (**JBA Vol 6, Tab 55**); *Bayu v The Queen* [2013] HCATrans 144 (**JBA Vol 5, Tab 43**); *DPP (Cth) v Haidari* (2013) 230 A Crim R 134 (**JBA Vol 6, Tab 45**); *Magaming v The Queen* (2013) 252 CLR 381 (**JBA Vol 3, Tab 30**).

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6. *Bahar v The Queen* (2011) 45 WAR 100 (**JBA Vol 5, Tab 42**) was not wrongly decided. **RDS [52]**.

7. Section 16AAB applies by reason of item 3(2) of Sched 6 to the *Crimes Legislation Amendment (Sexual Crimes Against Children and Community Protection Measures) Act 2020* (Cth). **RDS [8]-[22]**. The relevant conduct is possessing or controlling material that fits the statutory description, not obtaining or accessing that material using a carriage service.

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Dated: 9 November 2023



Justin Gleeson SC

Krista Breckweg

Christopher Tran