



HIGH COURT OF AUSTRALIA

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Details of Filing

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Important Information

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IN THE HIGH COURT OF AUSTRALIA
PERTH REGISTRY

No. P56/2021

BETWEEN:

PETER ROBERT GARLETT
Appellant

and

10

THE STATE OF WESTERN AUSTRALIA
First Respondent

THE ATTORNEY GENERAL FOR WESTERN AUSTRALIA
Second Respondent

**OUTLINE OF ORAL SUBMISSIONS OF THE ATTORNEY-GENERAL OF THE
COMMONWEALTH (INTERVENING)**

PART I: CERTIFICATION

- 20 1. This outline is in a form suitable for publication on the internet.

PART II: OUTLINE

The *Kable* principle should be considered in the first instance in this case

2. It is not necessary in every case to analyse whether a State law infringes the *Kable* principle by first considering whether the Commonwealth Parliament could enact a law in the same terms. The present case is more appropriately resolved by turning directly to the *Kable* principle: CS [3], [12]-[14].

- *Fardon* (2004) 223 CLR 575 at [3], [18], [219] (JBA 4 tab 20)
- *Condon* (2013) 252 CLR 38 at [124]-[126] (JBA 3 tab 14)

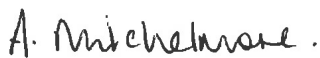
30 **The *High Risk Serious Offenders Act 2020* (WA) (HRSO Act) does not infringe the *Kable* principle**

3. On its proper construction, including in its application to a person convicted of the offence in s 392 of the *Criminal Code* (WA), the HRSO Act does not confer a power or function on the Supreme Court which substantially impairs the Court's institutional integrity: CS [40]-[44].
4. Relevant features of the HRSO Act in this respect include (CS [15]-[39]):
- 4.1 the objects of the Act (s 8): CS [15];

- 4.2 the class of offender in respect of whom the State may apply for a restriction order, and when the State may apply (ss 35, 36): CS [16];
- 4.3 the State’s duty of disclosure (ss 39, 40), and the CEO’s obligation to provide information to persons or bodies preparing reports under s 74 and s 75 (s 76);
- 4.4 the onus of proof, the standard of proof and the nature of the evidence that may be led (ss 7, 84): CS [22], [31]-[33];
- 4.5 the matters the Supreme Court must consider in deciding whether an offender is a “high risk serious offender” under s 7(1), including:
- 10 (i) not only the likelihood that the offender will commit a serious offence, but also the consequences for the community if the offender were to do so: CS [21]-[24], [26];
- *Benbrika* (2021) 95 ALJR 166 at [46]-[47] (JBA 8 tab 43)
- (ii) other measures by which the community could be adequately protected which are less restrictive of the offender’s liberty: CS [25]; and
- *Thomas* (2007) 233 CLR 307 at [21]-[22], [102]-[103] (JBA 7 tab 36)
- (iii) the enumerated matters in s 7(3): CS [27];
- 4.6 the language in s 7(1), which invokes evaluative tasks that are often performed by courts in the context of laws similar to the HRSO Act: CS [23];
- 20 4.7 the paramount consideration of the need to ensure adequate protection of the community in deciding whether to make a continuing detention order or a supervision order (s 48(2)): CS [34];
- 4.8 the requirement for detailed reasons and the right of appeal (ss 28, 69): CS [39]; and
- 4.9 the regime for review of continuing detention orders and for amending supervision orders (ss 49, 50, Pt 5): CS [35].
5. That the State Parliament has legislated to require the Supreme Court to make a restriction order in the event that the Court determines certain conditions are satisfied is unexceptional, and does not involve an attempt to direct the Court as to the outcome
- 30 of the exercise of its jurisdiction: CS [28].

- *International Finance* (2009) 240 CLR 319 at [77], [121] (JBA 4 tab 23)
6. No incompatibility with the institutional integrity of the Supreme Court arises from:
- 6.1 an offence under s 392 of the *Criminal Code* (WA) being within the class of offences in respect of which an application may be made under the HRSO Act; or
- 6.2 the risk of commission of such an offence being considered for the purposes of s 7(1) of the Act: CS [18]-[19], [45]-[48].

Dated: 10 March 2022



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