



HIGH COURT OF AUSTRALIA

NOTICE OF FILING

This document was filed electronically in the High Court of Australia on 05 Aug 2025 and has been accepted for filing under the *High Court Rules 2004*. Details of filing and important additional information are provided below.

Details of Filing

File Number: M20/2025
File Title: Farshchi v. The King
Registry: Melbourne
Document filed: Form 27F - Outline of oral argument (Applt)
Filing party: Appellant
Date filed: 05 Aug 2025

Important Information

This Notice has been inserted as the cover page of the document which has been accepted for filing electronically. It is now taken to be part of that document for the purposes of the proceeding in the Court and contains important information for all parties to that proceeding. It must be included in the document served on each of those parties and whenever the document is reproduced for use by the Court.

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

BETWEEN:

SEYYED ABDOLZADEH FARSHCHI

Appellant

and

THE KING

Respondent

APPELLANT'S OUTLINE OF ORAL SUBMISSIONS

PART I: CERTIFICATION AS TO PUBLICATION

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

PART II: OUTLINE OF ORAL SUBMISSIONS

Background and legislative provisions (AS [8]-[11])

2. The *Jury Directions Act 2015* (Vic) (**JDA**) requires a trial judge to explain proof beyond reasonable doubt (**BRD**) unless there are good reasons for not doing so. It indicates how the explanation may be given, including the impugned explanation in s 64(1)(e) that “a reasonable doubt ... is not an unrealistic possibility” (**the Direction**): JDA ss 63, 64 (**JBA vol 1, 173**).

Approach to determining inconsistency (AS [12]-[21]; A Rep [3]-[4])

3. The Direction is not picked up by s 68(1) of the *Judiciary Act 1903* (Cth) (**Judiciary Act**) because it is inconsistent with s 13.2 of the *Criminal Code 1995* (Cth) (**Code**) (Ground 1) and s 80 of the *Constitution* (Ground 2).
4. The question of whether the Direction is picked up is anterior to questions about its effect in any particular trial.
5. The question is whether the Direction alters, impairs, or detracts from s 13.2 of the *Code* or s 80 of the *Constitution*: *Attorney-General (Cth) v Huynh* (2023) 97 ALJR 298 (**JBA vol 7, 1734**) at [58], [149], [194]; *Masson v Parsons* (2019) 266 CLR 554 (**JBA vol 4, 1004**) at [43].

The Direction diminishes the criminal standard (AS [22]-[54]; A Rep [2], [5]-[9])

6. The Direction is definitional. It conveys a lesser state of satisfaction or degree of certainty required for a conviction and risks obfuscating the jury’s task. There is a meaningful difference between an “unreal possibility” and an “unrealistic” one: *Green v The Queen* (1971) 126 CLR 28 (**JBA vol 3, 721**) at 31-32, 34; *Thomas v The Queen* (1960) 102 CLR 584 (**JBA vol 5, 1471**) at 593, 599, 605, 606; *R v Dookheea* (2017) 262 CLR 402 (**JBA vol 5, 1360**) at [25], [28], [34], [37], [39].

7. The Direction is an outlier, it is unique in the common law world: *R v Lifchus* [1997] 3 SCR 320 (**JBA vol 7, 1937**) at [39].
8. The Direction is not picked up by s 68(1) of the *Judiciary Act*, and there has been a substantial miscarriage of justice

Ground 2 should be determined (A Rep [10]-[13])

9. Ground 1 could be dispositive of this appeal. However, the prudential approach is not a rigid rule imposed by law and can yield to special circumstances; there is an evaluative choice to be made by the Court: *Zhang v Commissioner of the Australian Federal Police* (2021) 273 CLR 216 (**JBA vol 6, 1701**) at [22]; *Mineralogy Pty Ltd v Western Australia* (2021) 274 CLR 219 (**JBA vol 4, 1059**) at [56]-[60], [100], [103].
10. There are good reasons to determine Ground 2: given the changing tide on explaining BRD to jurors, guidance from this Court on the constitutional limits of such explanations is important; if the verdict was unconstitutional, determining Ground 2 is necessary to “do justice in the case” in circumstances where the appellant was convicted of indictable offences, deprived of his liberty and has squarely pressed the issue since his trial.
11. Given the overlap between the grounds, the interpretation of the Direction is best undertaken in its full constitutional context, and if “a broad cohesive vision of s 80 continues to elude the High Court”, that fortifies the public interest in considering the ground.

The criminal standard is an essential characteristic of trial by jury (AS [55]-[76], A Rep [14]-[15])

12. History, principle and authority, including an appreciation of the objectives of the institution of trial by jury, support the appellant: *Cheatle v The Queen* (1993) 177 CLR 541 (**JBA vol 3, 542**) at 562; *Brownlee v The Queen* (2001) 207 CLR 278 (**JBA vol 3, 452**) at [21]-[23], [54].
13. **History:** s 80 “ought prima facie to be construed as an adoption of the institution of ‘trial by jury’ with all that was connoted by that phrase in constitutional law and in the common law of England”: *Cheatle* (**JBA vol 3, 542**) at 549. The pre-federation

position was that the standard of proof in a criminal trial was beyond reasonable doubt, and the onus rested on the prosecution, subject to limited exceptions: *R v Dookheea* (2017) 262 CLR 402 (**JBA vol 5, 1360**) at [30]-[34]; *Woods, A History of Criminal Law in New South Wales* (**JBA vol 9, 2882**) at 4.

14. History demonstrates that s 80 has both a liberty protective and democratic purpose: *Convention Debates* (**JBA vol 9, 2631**) at 72-75; *Cheatle* (**JBA vol 3, 542**) at 558-559; *Alqudsi v The Queen* (2016) 258 CLR 203 (**JBA vol 3, 267**) at [116], [129].
15. **Principle:** “unanimity reflects a fundamental thesis of our criminal law, namely, that a person accused of a crime should be given the benefit of any reasonable doubt”; *Cheatle* (**JBA vol 3, 542**) at 553, 561; *Brownlee* (**JBA vol 3, 452**) at [22].
16. **Authority:** the appellant’s case is consistent with *Cheatle* and *Brownlee*, and this Court’s repeated emphasis on the fundamental importance of the criminal standard; see, eg, *Azzopardi v The Queen* (**JBA vol 3, 345**) at [34]; *Lee v New South Wales Crime Commission* (**JBA vol 4, 878**) at [177].
17. **Reverse onuses:** the existence of reverse onuses, at the time of federation or now, does not diminish the essential characteristic. In a jury trial, the prosecution must prove its case BRD: “Juries are always told that, if conviction there is to be, the prosecution must prove the case beyond reasonable doubt”; *Woolmington v Director of Public Prosecutions* [1935] AC 462 (**JBA vol 7, 2068**) at 481.
18. A core function of s 80 is the provision of a robust community interposition between the individual and the State. This protects liberty and the constitutional relationship between the individual and the State. There is no incoherence in the notion that that function can tolerate a reverse onus on an element of an offence, but not a uniform reduction of the standard of proof.
19. **Societal values:** “reasons of contemporary convenience or practical utility” cannot justify a weakening of an essential feature: *Cheatle* (**JBA vol 3, 542**) at 561-562.

Dated: 5 August 2025



Daniel Gurvich KC



Michael Stanton SC