



HIGH COURT OF AUSTRALIA

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Details of Filing

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

No M20/2025

BETWEEN:

SAYED ABDOLZADEH FARSHCHI
Appellant

and

THE KING
Respondent

**OUTLINE OF ORAL SUBMISSIONS OF THE ATTORNEY-GENERAL FOR THE
STATE OF VICTORIA (INTERVENING)**

Part I: Internet publication

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

Part II: Propositions to be advanced in oral argument

Ground 1: s 13.2 of the *Criminal Code* (Cth)

2. Whether the words “an unrealistic possibility” in s 64(1)(e) of the *Jury Directions Act* are inconsistent with the “beyond reasonable doubt” standard in s 13.2 of the Code cannot be determined by considering the meaning of those words in isolation: **VS [41]-[49]**.
 - 2.1. The provisions do different work. Section 13.2 provides for the standard of proof. Section 64 provides for the manner in which that standard may be explained: VSCA, [47] (**CAB 218**). A conclusion of inconsistency can only be reached if an explanation incorporating those words in s 64(1)(e) *necessarily* diminishes the standard, irrespective of what else is contained in the charge.
 - 2.2. That there is no necessary diminishment, and thus no inconsistency, is well illustrated by the charge in this case, which would not have resulted in the jury “deriv[ing] a false perception of the basis for deciding whether the Crown has proved its case” beyond reasonable doubt: *R v Dookheea* (2017) 262 CLR 402 (**JBA vol 5/30**), [37]-[39]; **VS [47]-[49]**; and adopting **RS [34]-[40]**.

3. Contrary to AS Reply [6], the legislative context assists in determining the meaning of the words “an unrealistic possibility” in s 64(1)(e) and therefore how a jury listening to the summing up might understand an explanation incorporating those words.
- 3.1. The legislative context and history confirms that ss 63 and 64 of the JD Act were intended by the Parliament, to clarify and reinforce the beyond reasonable doubt standard and are likely to have that effect on the understanding of the jury: **VS [20]-[40]**.

Ground 2: s 80 of the *Constitution*

4. It is not necessary to reach the question of whether the words “an unrealistic possibility” in s 64(1)(e) are inconsistent with s 80 of the *Constitution*: **VS [50]-[51]**.
- 4.1. If, contrary to the above submissions, the impugned words *necessarily* diminish the standard of proof and are thus inconsistent with s 13.2 of the Code, s 68(1) of the *Judiciary Act* would not operate to pick up the legislative authorisation of the use of those words in s 64(1)(e) of the JD Act.
5. If the Court reaches the constitutional question, the beyond reasonable doubt standard is not an essential element of a trial by jury for the purposes of s 80: **VS [50]-[61]**.
- 5.1. Assuming that the purposes of s 80 are to ensure democratic representation in the criminal process and to protect individual liberty, variations to the standard of proof do not undermine either of these purposes.
- 5.2. The criminal standard of proof, like the rules of evidence, the selection of elements by the legislature and the inclusion of deeming provisions, affects the manner in which the Crown must prove an offence, not the character or function of the jury.

Dated: 5 August 2025



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