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

SYDNEY REGISTRY

BETWEEN: **THE KING**

Appellant

and

ANDREW STUART MCGREGOR

Respondent

OUTLINE OF ORAL SUBMISSIONS OF THE APPELLANT

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

GROUND ONE

1. ***Text***. Sections 16AAA and 16AAB of the *Crimes Act 1914* (Cth) (**Cth Act**) require a sentence of imprisonment to be imposed for the offence to which the mandatory minimum sentence applies. By contrast, s 53A(1) of the *Crimes (Sentencing Procedure) Act 1999* (NSW) (**NSW Act**) allows an aggregate sentence to be imposed for a group of two or more offences. An aggregate sentence under s 53A(a) is imposed upon the group of offences instead of imposing a separate sentence of imprisonment for each. Section 53A(2)(b) requires a court to indicate "the sentence that would have been imposed for each offence … had separate sentences been imposed instead of an aggregate sentence" but thereby presumes that a sentence has not "been imposed for each offence". Therefore s 53A cannot be picked up when a court is sentencing for a mandatory minimum offence under ss 16AAA or 16AAB: **AS [31]-[37]**.

2. ***Purpose***. A separate sentence for an offence to which a mandatory minimum applies best achieves the purpose of the *Crimes Legislation Amendment (Sexual Crimes Against Children and Community Protection Measures) Act 2020* (Cth) amendments. It sends a clearer deterrent message. It reduces the risk of less attention being paid to the criminality of the individual offence or obscuring of offending amidst the offender's total criminality. Unduly lenient sentences for the offences can be more readily appealed: **AS [45]-[49]; AR [9]-[10]**.

   (a) *Hurt v The King* (2024) 98 ALJR 485 at [43] (**JBA Vol 5, Tab 25, p 1260**).

(b) Second reading speech at 2445-2446, 2448 (**JBA Vol 7, Tab 41, pp 1671-1672, 1474**)

(c) Explanatory memorandum at [1] (**JBA Vol 7, Tab 43, p 1742**).

3. Proposition 2 is correct when considering ss 16AAA or 16AAB against s 53A. The reduced transparency achieved under s 53A is only exacerbated under the equivalent aggregate sentencing provisions of Tasmania, South Australia, and worst of all, Victoria: **AS [38]-[39]**.

4. ***Context***. Contextual matters raised by the CCA and by the respondent do not favour aggregate sentencing for Commonwealth child sex offences to which ss 16AAA-16AAC apply. See **CAB 78-80 [96]-[100]**; **RS [11], [13], [15]-[19]; AR [2]-[10].**

(a) The purposes of ss 16AAA-16AAAC are not best achieved merely by ensuring that the term of an aggregate sentence exceeds the mandatory minimum for one offence: cf **CAB 79 [97]**.

(b) The relevance of totality, concurrency and accumulation in sentencing for Commonwealth child sex offences is not material to this constructional question: cf **CAB 79 [98]-[99]**.

(c) The purpose of aggregate sentencing to simplify the sentencing process comes at the expense of aspects of the sentencing process that the 2020 reforms would seek to emphasise: cf **CAB 80 [100]**.

(d) Section 4K of the Cth Act does not demonstrate that an aggregate sentence is compatible with a mandatory minimum offence, because s 4K(4) should itself be construed so as not to permit that course: **AR [5]-[6];** cf **RS [13].**

(e) The provision for single non-parole periods in s 19AB is not a material consideration: **AR [7]**; cf **RS [15]-[16]**; see second reading speech (**CAB 1677**); explanatory memorandum at [195] **(CB 1748**).

(f) Legislative history does not reveal implicit endorsement of aggregate sentencing: **AR [8];** cf **RS [17]-[19]**.

GROUND TWO

5. **The two inconsistent schemes:** The command under s 16A of the Cth Act is for the court to impose upon the federal offender a sentence of a severity appropriate in all of the circumstances of the case having regard to a non-exhaustive, but extensive, list of

mandatory factors (the **federal scheme)**. By contrast, the NSW Act, especially in Part 3, lays down its own elaborate, but different, procedure for sentencing with respect to State offences (the **State scheme**).

6. The federal and State schemes represent different approaches to sentencing, and a court cannot apply both at the same time. It is inconsistent with s 16A of the Crimes Act to contemplate applying the full sweep of the NSW Act in sentencing a federal offender, because that Act enacts "peculiarly local or state statutory principles of sentencing": *R v Hatahet* (2024) 98 ALJR 863 at [13] (**JBA Vol 5, Tab 35, p 1514**); *Chan v R* [2023] NSWCCA 206 at [105]-[112] (**JBA Vol 5, Tab 24, pp 1232-1233**); **AS [68]**.

7. **The correct construction of s 53A(2)(b):** Section 53A(2)(b) of the *Crimes (Sentencing Procedure) Act 1999* (NSW) requires a sentencing court to consider indicative sentences by reference to "such matters as are relevant under Part 3 or any other provision of this Act". On a straightforward textual construction, this must mean the factors under the NSW Act as has been held previously: *JM v The Queen* (2014) 246 A Crim R 528 at [39(3)] (**JBA Vol 5, Tab 28, pp 1368-1369**): **AS [51]-[53].**

8. **The CCA's alternative, and erroneous, construction:** The CCA's construction of s 53A(2)(b) departs from the text, and discerns at some higher level of generality or purpose a meaning which turns the provision on its head. Instead of the court doing indicatives as per the State scheme, it is now to do them however it otherwise would. No process of construction of the text can achieve this result: **CAB 72-74 [73]-[80]**; **AS [54]-[66]; AR [14]**.

9. **Translation:** The CCA's alternative reliance upon "translation" should be rejected. It goes well beyond any permissible "translation" to interpret s 53A(2)(b) to mean the Crimes Act when picked up by s 68 of the *Judiciary Act 1903* (Cth). Cf **CAB 73 [81];** *Attorney-General (Cth) v Huynh* (2023) 97 ALJR 298 (**JBA Vol 5, Tab 23**): **AS [67]-[71]**; **AR [15]**.

10. **Severance:** The CCA was correct not to embrace a severance argument. The parenthetical language cannot be severed without substantively altering the provision.

Dated: 7 October 2025

Justin Gleeson

Justin Gleeson SC Christopher Tran