



## HIGH COURT OF AUSTRALIA

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#### Details of Filing

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IN THE HIGH COURT OF AUSTRALIA  
SYDNEY REGISTRY

BETWEEN:

THE KING

Appellant

and

ANDREW STUART MCGREGOR

Respondent

**RESPONDENT'S OUTLINE OF ORAL SUBMISSIONS**

**Part I: CERTIFICATION**

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

**Part II: OUTLINE OF RESPONDENT'S PROPOSITIONS**

**Ground 2**

2. **Section 53A** permits a NSW court to impose a single sentence for multiple offences. It simplifies the sentencing process by alleviating a court from setting start and end dates for the sentence for each offence, and from setting non-parole periods (unless the offence attracts a standard non-parole period). An aggregate sentence is not intended to be any different from the overall effective sentence which a judge would otherwise have arrived at.
3. The operative words of s53A(2)(b) require the court, in doing so, to indicate "the sentence that would have been imposed for each offence ... had separate sentences been imposed instead of an aggregate sentence." By necessary implication, this requires a judge to determine these "indicative sentences" in determining the aggregate sentence. Although the words in parentheses assist in the section's interpretation, they do not change its meaning. They direct attention, inclusively, to some of the matters which would need to be taken into account in giving such an indication.
4. The Appellant contends that, without the parenthetical words, in NSW the discount for the plea of guilty could be applied to the aggregate sentence rather than to the "indicative sentences". The controversy about whether discounts should be taken into account in determining indicative sentences or should be applied to the aggregate sentence was determined in *PG*.<sup>1</sup> The parenthetical words were one factor among many in determining the issue. The court was not called upon to determine the question in the absence of those words but the result would have

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<sup>1</sup> (2017) 268 A Crim R 61 at [78] (JBA 1459).

been no different because it is what the text demands – an undiscounted starting point is not the sentence *which would have been imposed* – and for the other reasons in *PG*.

5. **The purpose of s68(1)** is to effect “uniformity within each State as to the procedure for dealing with State and federal offences”.<sup>2</sup> It proceeds upon the hypothesis that the text of a State law is capable of application and on the understanding that any State law which is picked up was originally intended to apply as State law to State offenders in State courts. It must proceed by analogy and requires a degree of translation.<sup>3</sup>
6. **The limits of s68(1)** relevantly include that the text of a State law cannot be picked up if it is inconsistent with federal legislation; or if to do so would give it an altered meaning (being a “substantively different legal operation”<sup>4</sup> or a change in a provision’s “essential meaning”<sup>5</sup>).
7. **Asserted inconsistency:** The parenthetical words do not require a court which is determining a federal aggregate sentence to consider matters under State laws which are inconsistent with s16A. Rather, as the CCA correctly held, “such matters as are relevant” means relevant to the determination of the individual sentences which would otherwise have been imposed.<sup>6</sup> For a federal offender, any State matters inconsistent with federal law “would not and could not be relevant” to that exercise.
8. **Asserted altered meaning:** Further, the CCA’s analysis shows that the provision does not have an altered meaning when compared with its operation on a State offender.<sup>7</sup> The terms of the section require a court sentencing a federal offender to take into account all relevant matters in determining the sentence it would have imposed for each individual offence had separate sentences been imposed.
9. **Translation:** Alternatively, the CCA correctly found that the parenthetical words could be translated.<sup>8</sup> Part 1B of the Crimes Act is the analogical counterpart to the NSW Act and translation by analogy is consistent with the purpose of s68(1).
10. **Severance:** As contended in the CCA, s53A could be picked up without the parenthetical words. For the reasons stated above, taking a “blue pencil”<sup>9</sup> to the parenthetical words would not change the substantive legal operation of the section.

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<sup>2</sup> *Attorney-General (Cth) v Huynh* (2023) 97 ALJR 298 per Kiefel CJ, Gageler and Gleeson JJ at [53] (JBA 1152).

<sup>3</sup> *Huynh* per Kiefel CJ, Gageler and Gleeson JJ at [59] (JBA 1152-1153).

<sup>4</sup> *Huynh* per Kiefel CJ, Gageler and Gleeson JJ at [66] (JBA 1154).

<sup>5</sup> *Huynh* per Edelman J at [184] (JBA 1176).

<sup>6</sup> CCA [74] (CAB 70).

<sup>7</sup> CCA [75]-[79] (CAB 71-72).

<sup>8</sup> CCA [81] (CAB 73).

<sup>9</sup> *Huynh* per Edelman J at [239] (JB 1186).

**Ground 1**

11. Unless s16AAA requires a court to impose a sentence of imprisonment on a person *exclusively* for a listed offence, the ground fails.
12. **Text of s16AAA:** The natural meaning of sentence of imprisonment includes a sentence imposed for multiple offences.<sup>10</sup> There is nothing in the text which suggests a narrower meaning.
13. **Purpose of s16AAA:** A purpose of a mandatory minimum sentencing provision is general deterrence. By its nature, the provision itself, requiring a term of imprisonment of a minimum length measured in years, provides a powerful deterrent message. That message is not diminished by aggregate sentencing. An offender, whether facing sentencing for other offences or not, will be sentenced to imprisonment and for at least the period required by s16AAA. The considerations of totality are the same regardless of whether there are individual sentences or an aggregate.
14. Other purposes of s 16AAA<sup>11</sup> are not better served by an interpretation of the section which requires the imposition of an exclusive term of imprisonment.
15. **Statutory context:** Sections 16AAA and 16AAB do not explicitly exclude the imposition of aggregate sentences, in a statutory context where: the Crimes Act provides for aggregate sentencing for summary offences; s19AB requires single, aggregate non-parole periods; and aggregate sentences have been imposed for Commonwealth offences.<sup>12</sup> Commonwealth criminal law is a specialised area of law and those responsible for amendments to such legislation would have been aware that decisions of this court and of intermediate appellate courts have held that particular State and Territory aggregate sentencing provisions were applicable to federal offenders.<sup>13</sup>

Dated: 7 October 2025



Richard J Wilson

<sup>10</sup> *Pearson v Commonwealth* (2024) 99 ALJR 110 at [50] (JBA 1422)

<sup>11</sup> Referred to in *Hurt v The King* (2024) 98 ALJR 485 at [42]-[43] (JBA 1259-1260).

<sup>12</sup> CCA [46]-[48] (CAB 60-61).

<sup>13</sup> *Electrolux Home Products Pty Ltd v Australian Workers' Union* (2004) 221 CLR 309 at [81] (JBA 740-741).