



HIGH COURT OF AUSTRALIA

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Details of Filing

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

BETWEEN:

PRESIDENT OF THE LEGISLATIVE COUNCIL OF NEW SOUTH WALES
Appellant

and

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JAMES CULLEN
First Respondent

ATTORNEY GENERAL FOR NEW SOUTH WALES
Second Respondent

SPEAKER OF THE LEGISLATIVE ASSEMBLY OF NEW SOUTH WALES
Third Respondent

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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

1 The statutory process under the PE Act has six steps (**AS [13]-[19]**):

1.1 the issue of a summons by a House or committee for a person to “attend and give evidence”, signed by the relevant Clerk or committee Chair (s 4);

1.2 the President/Speaker being “satisfied” that the person was duly summoned to attend and give evidence; that the person failed to appear; and that failure was “without just cause or reasonable excuse”, and certifying accordingly to the
10 Supreme Court (s 7): **AS [15.1]**;

1.3 determination by the Supreme Court of whether the certificate meets certain requirements, namely that: the certificate states the three matters the subject of the President/Speaker’s “satisfaction”; the certificate was signed and sealed by the President or Speaker; and that, at the time, the purported President or Speaker in fact held the relevant office: **AS [16.1]**;

1.4 if the Supreme Court determines that those requirements are met, the issue of a warrant by the Court addressed to the Sheriff (and various other State officers) (s 8);

1.5 the arrest and detention in custody of the person named in the warrant (s 9(1));

20 1.6 appearance of the person before the House or committee to give evidence, followed by remand or release by order of the President/Speaker (s 9(1)).

2 Steps 1 and 2 in the process are “proceedings in Parliament” for the purpose of Art 9 of the Bill of Rights: **AS [14], [15.2]; Reply [11]-[12]; CAB 18 [21]**.

3 It is no part of the Supreme Court’s function at Steps 3 or 4 to scrutinise the basis upon which a summons was issued or the basis upon which the President or Speaker formed the requisite state of satisfaction. The contrary conclusion would be inconsistent with Art 9 of the Bill of Rights and the principle of exclusive cognisance: **AS [16.2]-[16.3], [17.2]; Reply [9.5], [13]-[14]**.

4 Whether ss 7 to 9 of the PE Act substantially impair the institutional integrity of the Supreme Court must be informed by:

30 4.1 the constitutional values reflected in Art 9 of the Bill of Rights and the principle of “exclusive cognisance”: **AS [16.3], [17.2], [20], [36], [47], [50]; Reply [9.5]**;

4.2 the historical and continuing legislative practice of the conferral of warrant functions on judicial officers: **AS [20]-[23]; Reply [5], [9.2];**

- *Wainohu* (2011) 243 CLR 181 at [94], [106]-[107] (Gummow, Hayne, Crennan and Bell JJ) (**JBA Vol 7, Tab 40**)

4.3 the pre-Federation conferral of the same warrant function on the Supreme Court of the Colony of New South Wales, which became a “Supreme Court” within the meaning of s 73 of the Constitution: **AS [24]-[30]; Reply [2]-[4].**

- *Forge* (2006) 228 CLR 45 at [36], [40] (Gleeson CJ) (**JBA Vol 4, Tab 25**)

5 Further, if it matters, ss 7 to 9 of the PE Act are reasonably capable of being seen as
10 necessary for a legitimate and non-punitive purpose: **AS [31]-[39].**

5.1 The provisions are designed to secure the attendance of a person to give evidence from time to time, being the same attendance that was sought to be achieved by the issue of a summons: **AS [40]; Reply [9.1];**

5.2 The provisions are reasonably capable of being seen as necessary for that purpose.

(i) The duration of the detention is reasonably capable of being seen to be necessary to effectuate the purpose: **AS [48]-[50]; Reply [9.4];**

(ii) The detention must cease (and habeas corpus may be granted) if the coercive purpose of the detention ceases to be capable of being achieved in fact — for example, if the Parliament is prorogued or dissolved: **CAB 31 [56];**

20 • *NZYQ* (2023) 280 CLR 137 at [40]-[41] (the Court).

(iii) The limited role of the Court in the statutory process is justified by the systemic and historical matters in paragraph 4 above: **AS [20], [44]-[45].**

6 That the Parliament might have instead conferred the same warrant function on itself does not require any different conclusion: **AS [43]; Reply [9.6].**

7 Nor does any different conclusion follow from the fact that no warrant had ever been issued — what matters is that the function was conferred by Parliament, bringing with it the salutary possibility of arrest and detention for non-compliance: **Reply [5].**



Bret Walker

10 September 2026