



## HIGH COURT OF AUSTRALIA

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#### Details of Filing

File Number: D2/2021  
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**IN THE HIGH COURT OF AUSTRALIA  
DARWIN REGISTRY**

**D2 OF 2021**

BETWEEN:

**THE QUEEN**  
Applicant

and

**ZACHARY ROLFE**  
Respondent

**RESPONDENT'S OUTLINE OF ORAL SUBMISSIONS**

**PART I: Certification**

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

**PART II:**

**1** Now that the possibility of sec 148B PA Act applying – depending on facts that may be found by the jury – is common ground, the hypothetical aspects of the proposed appeal are more apparent. Special leave should be refused, not least so as to avoid fragmentation of criminal process.

RS [3]

**2** No constitutional point is raised, however, given the authority of *Mellifont 173 CLR 289*, and that leave is not sought to argue it was wrongly decided.

**3** Sec 148B plainly operates differently from sec 208E Criminal Code, partially if not only by resort to good faith rather than reasonableness. But those standards will often overlap and inform each other.

RS [13], [14], [36] – [42]

**4** Sec 148B and sec 208E must both be applied, and do not permit, let alone require, the 2016 enactment of the present sec 148B somehow to yield to sec 208E. Nor does the different operation of the earlier sec 208E require sec 148B to be read so as to leave sec 208E as the only or most beneficial protection of police officers from relevant criminal liability.

**5** The arguable application of sec 148B depends on the anticipated facts showing that the alleged offending conduct was committed in the exercise or purported exercise of a power or performance or purported performance of a function “under” PA Act. Arrest pursuant to a warrant, prevention of offences and the protection of life are intrinsically

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within the powers and functions of a police officer. Nothing in PA, including subsection 5(2) and sec 126, suggests they are not also included within those concepts expressed in sec 148B.

RS [30] – [35], [43] – [48]

- 6 No sensible purpose would be served by removing the Police Force’s “core functions” enacted in sec 5 from the functions for which powers are required to be exercised, within the meaning of sec 148B. Only by its members, sworn under sec 26, can the Force’s core functions be carried out.

RS [23] – [27], [30] – [35]

- 7 No difficulty in construing sec 148B thus is presented by the presence and operation of intersecting possibilities such as self-defence or defence of another.

RS [43]

- 8 The evident purpose of sec 148B is to affect the outcome of some criminal trials, by reference to the status (or office) of the accused and a specified factual character of his or her relevant conduct. It is conveyed so as to present a paradigm of a jury question. The text and the purpose conveyed, do not justify preventing a jury from addressing it in this case.

RS [46] – [49]

1 November 2021



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