HIGH COURT OF AUSTRALIA

NOTICE OF FILING

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Details of Filing

File Number:	M131/2020
File Title:	Director of Public Prosecutions Reference No 1 of 2019
Registry:	Melbourne
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Important Information

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IN THE HIGH COURT OF AUSTRALIA
MELBOURNE REGISTRY **No. M131/2020**

IN THE MATTER OF:

THE DIRECTOR OF PUBLIC PROSECUTIONS REFERENCE NO. 1 OF 2019

ACQUITTED PERSON'S OUTLINE OF ORAL SUBMISSIONS

PART I:

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

PART II:

2. Section 17 of the *Crimes Act* 1958 (Vic) ('**CA**') creates the offence of recklessly causing serious injury ('**RCSI'**).

3. There is no dispute that the words 'reckless' and 'recklessly' in the CA have had a settled meaning for more than a quarter of a century. Over that time, the legislature has shown a lively interest and active engagement in the criminal law generally, and the offences against the person particularly. The legislature's actions over that period should be understood as informed by the settled meaning.

4. Far too much has happened on the back of that settled meaning for this Court to now intervene in the way urged upon it by the Appellant. In light of the legislative action over the last two decades, this case raises a number of issues relating to the construction of the word recklessly that did not arise in the case of *Aubrey v The Queen* (2017) 260 CLR 305.

5. Four aspects of the legislative history and context compel the retention of the settled meaning in Victoria.

6. First, mandatory terms of imprisonment and mandatory minimum sentences have been enacted for offences of recklessness in the CA, including for RCSI, since the settled meaning was adopted. Such mandatory minimum sentences are necessarily calibrated to attach to the minimum level of offending encompassed by the statutory language, as

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understood by the legislature. It would be unjust to reduce the minimum level of offending below the level apprehended by the legislature.

7. Secondly, since it came to have a well-known and settled meaning in the CA, recklessness has become a standard building block for Victorian criminal offences. The shape of those offences should not now be altered from their parliamentary design, so as to expose persons to liability for offences in a way that has not been demonstrated to have been intended by parliament.

8. Thirdly, s 15B of the CA creates an aggravated version of RCSI. The offence was founded upon the settled meaning. The two are statutory alternatives and are regularly tried together. Recklessness should be given the same meaning in the simple and aggravated offence.

9. Fourthly, the maximum penalty for RCSI has also been increased since the settled meaning was adopted. The legislature, being aware of the settled meaning, should be understood to have calibrated the maximum penalty to that settled meaning.

10. Any of those factors, but all the more so the combination of them, compel the retention of the settled meaning.

11. Finally, it is necessary to address the single contention that underlies the Appellant's entire argument: that the legislative intent when enacting RCSI in 1985 was to pick up the meaning given to the word 'recklessly' in the context of malice, and insert it into RCSI. That contention is unsound, because RCSI was designed and constructed elsewhere, from different materials.

12. Regardless, even if the Appellant's construction was preferable in 1985, it cannot now overcome the force of the subsequent legislative history. The settled meaning, unchallenged for a quarter of a century, has caused no inconvenience, and is not plainly wrong, even before one comes to consider the subsequent legislative history. Once that is brought to attention, the settled meaning must prevail.

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Dermot Dann

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Chris Carr

Dated: Friday, 14 May 2021