

BETWEEN:



CRAIG WILLIAM JOHN MINOGUE
Plaintiff

and

STATE OF VICTORIA
Defendant

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OUTLINE OF ORAL ARGUMENT OF ATTORNEY GENERAL
FOR NEW SOUTH WALES, INTERVENING

Part I:

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

Part II:

- 20 2. Section 74AAA of the Corrections Act 1986 (Vic) applies to a particular class of prisoner, delineated by reference to (WS [10]-[11]):
 - a. the prisoner having been convicted and sentenced to a term of imprisonment with a non-parole period for the crime of murder; and
 - b. whether the prisoner knew, or was reckless as to whether, the person murdered was a police officer who, at the time of the murder, was performing the duties or exercising the powers of an officer, or whose murder arose from or was connected with his or her role as a police officer.
- 30 3. There is no constitutional difficulty with the Victorian Parliament singling out for special treatment a class of prisoner by reference to the above criteria, findings as to which do not involve the Adult Parole Board ("Board") traversing the jury's verdict, or the sentence of life imprisonment that Vincent J imposed (at which point the exercise of judicial power was spent) (WS [12]).

Baker v The Queen (2004) 223 CLR 513 at [8], [43]; Crump v New South Wales (2012) 247 CLR 1 at [36]; Knight v Victoria (2017) 91 ALJR 824 at [25]-[26], [29].
4. If a prisoner falls within the class to which s 74AAA applies, the section prohibits the Board from making a parole order under s 74 or s 78 of the Corrections Act unless (WS [14]):

- a. the prisoner has made an application for parole (s 74AAA(1)); and
- b. after considering that application, the Board is satisfied as to the matters in s 74AAA(4).

5. Section 127A of the Corrections Act puts beyond doubt that the Victorian Parliament intended s 74AAA to apply to all applications for parole from prisoners within the prescribed class, whenever made. The matters of which the Board must be satisfied in order to overcome the prohibition in s 74AAA(4) are forward-looking; and the Board's decision under s 74AAA operates prospectively (WS [17]).

10 6. Having regard to its operation, it does not follow from the fact that s 74AAA curtails the scope for the Plaintiff to be released on parole, as compared with the position before the section was enacted, that applying s 74AAA to his application for parole is contrary to the rule of law (WS [18]).

Crump v New South Wales (2012) 247 CLR 1 at [20], [35]-[36], [60].

7. There is no recognised constitutional limitation on the legislative power of the Victorian Parliament, arising from the rule of law, that precludes s 74AAA from applying to the Board's consideration of applications for parole which had been made by the time of its enactment (the intention that it do so being confirmed by s 127A) (WS [19]-[23]).

20 H A Bachrach Pty Ltd v Queensland (1998) 195 CLR 547 at [12], [17], [19]-[20]; Duncan v Independent Commission Against Corruption (2015) 256 CLR 83 at [26], [42]; Australian Capital Television v The Commonwealth (1992) 177 CLR 106 at 135.

Dated: 15 May 2018

M G Sexton SC SG

Anna Mitchelmore