

BETWEEN:

**TSM (a child)**

Appellant

and

**THE STATE OF WESTERN AUSTRALIA**

Respondent



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**APPELLANT'S REPLY**

**Part I:**

1. These submissions are in a form suitable for publication on the internet.

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**Part II:**

2. The State contends that Beech JA's construction detracts from the primacy of the 'acts or omissions' insofar as the definition of what is called an offence is concerned.
3. To the contrary, such a construction highlights that there are two essential constituents of 'an offence'. Firstly, the acts or omissions described in the various offence creating provisions in the Code. Second, that the relevant acts or omissions must also render the person who did the acts or made the omissions 'liable to punishment'. Section 2 of the *Criminal Code* (WA) (the Code) places no primacy in one essential constituent of 'an offence' over the other.

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4. *R v Barlow* [1997] HCA 19; (1997) 188 CLR 1 does not support a construction that requires the principal's act or omission to be considered divorced from the principal's criminal responsibility.
5. In the context of section 8 of the Code, the plurality in *R v Barlow* [1997] HCA 19; (1997) 188 CLR 1 at 10 explained that liability for the principal offender's act or omission only arises for the secondary offender as (1) that act or omission renders the principal liable to punishment and (2) only to the extent that that act or omission was a probable consequence of prosecuting a common unlawful purpose.
6. In any event, no issue as to the criminal responsibility of the principal offender arose  
10 for consideration in *R v Barlow* [1997] HCA 19; (1997) 188 CLR 1.
7. Further, the State contends that Beech JA's construction renders superfluous section 7(a) of the Code.
8. To the contrary, section 7(a) of the Code has work to do where two offenders act in concert to collectively do the acts or make the omissions which constitute the offence.
9. In such a circumstance, section 7(a) of the Code provides that each of the two offenders acting in concert would only be deemed to be guilty of the offence where the acts or omissions done collectively constitute the offence, and when an offence has been committed.
- 20 10. Section 7(a) of the Code would therefore be as essential within Beech JA's construction as sections 7(b), (c) and (d) and 8 of the Code.

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