



HIGH COURT OF AUSTRALIA

NOTICE OF FILING

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Details of Filing

File Number: M104/2020
File Title: Gerner & Anor v. The State of Victoria
Registry: Melbourne
Document filed: Form 27F - Outline of oral argument
Filing party: Defendant
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Important Information

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IN THE HIGH COURT OF AUSTRALIA
MELBOURNE REGISTRY

No M104 of 2020

BETWEEN:
JULIAN KINGSFORD GERNER
First Plaintiff

**MORGAN'S SORRENTO VIC PTY
LTD**
Second Plaintiff

AND:
STATE OF VICTORIA
Defendant

**OUTLINE OF ORAL SUBMISSIONS OF THE ATTORNEY-GENERAL FOR THE
NORTHERN TERRITORY**

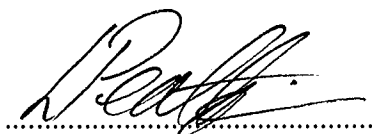
PART I: PUBLICATION ON THE INTERNET

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

PART II: STATEMENT OF ARGUMENT

2. The Northern Territory relies on its written submissions and adopts the written submissions of the Defendant. It makes only one point orally, in response to the Plaintiffs' Reply (**PR**).
3. The Plaintiffs contend the General Freedom of Movement is supported by a freedom of observation, as distinct from (or as an extension of) the implied freedom of political communication: **PR**[11].
4. Communication involves the exchange of information between more than one person. Observation is the unilateral receipt of information.
5. The distinction is irrelevant for present purposes. The constitutional implication is limited to the dissemination and receipt of *political* information: **NT**[44].
6. Any implied freedom of observation must be similarly limited. There can be no general freedom of observation "for any reason" whatsoever: **D Reynolds**, 'Freedom of Political Observation in the Australian Constitution' (2018) 42(1) *Melbourne University Law Review* 199, 202 (**JBA 5996**); *Lange v Australian Broadcasting Corporation* (1997) 189 CLR 520 at 560-1, 566-7, 571 (**JBA 2472-3, 2478-9, 2483**).
7. That is tacitly accepted by the Plaintiffs. The examples of protected observations are limited to *political* matters: **PR**[11]; see also **PS**[50].
8. A limited implied freedom of political observation is incapable of supporting a derivative, general freedom of movement for any reason whatsoever: **NT**[46]-[47]; **D Reynolds**, 'Freedom of Political Observation in the Australian Constitution' (2018) 42(1) *Melbourne University Law Review* 199, 202 (**JBA 6012**).
9. In any event, no court has recognised a freedom of political observation. This case does not present a suitable vehicle to explore the question.

Dated: 6 November 2020



Lachlan Peattie
Crown Counsel for the Northern Territory