



## HIGH COURT OF AUSTRALIA

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#### Details of Filing

File Number: S129/2020  
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Registry: Sydney  
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IN THE HIGH COURT OF AUSTRALIA  
SYDNEY OFFICE OF THE REGISTRY

BETWEEN:

JOHN SHI SHENG ZHANG  
Plaintiff

and

THE COMMISSIONER OF POLICE & OTHERS  
Defendants

OUTLINE OF ORAL ARGUMENT ON BEHALF OF THE ATTORNEY-GENERAL  
FOR NEW SOUTH WALES INTERVENING

**PART I: PUBLICATION**

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

**PART II: ARGUMENT**

2. Sections 92.3(1) and (2) of the Criminal Code (Cth) ("**Criminal Code**") do not contravene the implied freedom.
3. The provisions in question do not purport to regulate communication as such and are not aimed at its content at all. Accordingly, the extent of the effective burden imposed is slight, a factor that is relevant to the application of the test articulated in McCloy v New South Wales (2015) 257 CLR 178 ("**McCloy**") at 193-194 [2] and refined in Brown v Tasmania (2017) 261 CLR 328 ("**Brown**") at 364 [104]. See Written Submissions ("**WS**") at [17]-[18], [26].
4. The relevance of the extent of the burden in question was noted by the plurality in Brown (at 369 [128] per Kiefel CJ, Bell and Keane JJ):

It is possible that a slight burden on the freedom might require a commensurate justification. Certainly a heavy burden would ordinarily require a significant justification.

5. Moreover, much of the conduct the subject of the provisions in question would not be protected by the implied freedom, for example, conduct the subject of s 92.3(1)(c)(iii) and (iv), because it undermines the system of representative and responsible government. See WS at [19]. See also Brown at 359 [88].

Dated: 7 April 2021



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