



## HIGH COURT OF AUSTRALIA

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**IN THE HIGH COURT OF AUSTRALIA  
SYDNEY REGISTRY**

**BETWEEN:** **ENRICO ROBERT CHARLES DELZOTTO**  
APPELLANT  
AND  
**THE KING**  
RESPONDENT

AND

10 **IN THE HIGH COURT OF AUSTRALIA  
CANBERRA REGISTRY**

**BETWEEN:** **RAYMOND JAMES CHOI HURT**  
APPELLANT  
AND  
**THE KING**  
RESPONDENT

20 **OUTLINE OF ORAL SUBMISSIONS OF THE RESPONDENT**

**PART I INTERNET PUBLICATION**

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This outline of oral submissions is in a form suitable for publication on the internet.

**PART II PROPOSITIONS TO BE ADVANCED IN ORAL ARGUMENT**

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1. The minimum sentences in sections 16AAA and 16AAB have the same functions as maximum penalties save that they operate at the other end of the spectrum. **RDS [32]-[34], [35]-[38], [69].**
  2. Maximums and minimums have a double function of (a) limiting Court power and (b) manifesting the legislative policy on the offence for the purpose of informing the instinctive synthesis of s 16A and other factors. **RDS [40]-[46].**
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- *R v Tait* (1979) 46 FLR 386 at 398 (**JBA Vol 6, Tab 72**); *R v Oliver* (1980) 7 A Crim R 174 at 177 (**JBA Vol 6, Tab 66**); *Hansford v Neesham* [1995] 2 VR 233 at 236 (**JBA Vol 5, Tab 51**); *Magaming v The Queen* (2013) 252 CLR 381 at [48], [84],

[103] (**JBA Vol 3, Tab 30**); *Hinds v The Queen* [1977] AC 195 at 226 (**not in JBA**); *Reynolds v Wilkinson* (1948) 51 WALR 17 at 18 (**JBA Vol 6, Tab 73**).

- *Garth v R* (2016) 261 A Crim R 583 (**JBA Vol 5, Tab 49**); *R v Pot* (Unreported, NTSC, Riley CJ, 18 January 2011) (**JBA Vol 6, Tab 67**).

3. The statutory context does not require a minimum to be confined to the single function of restricting a court's power. To the contrary, the minimum is a relevant consideration in the exercise of other sentencing discretions and dispositions. In particular:

- Section 16A(1) and its note: **RDS [50]-[51]**.

- Section 19B (non-conviction orders): **RDS [55]**.

10 • Sections 19AB, 19AC and 20(1) (non-parole period, recognizance release orders and conditional release): **RDS [59]**.

- Section 16AAC (guilty plea and cooperation): **RDS [56]-[58]**.

- Section 4F: **RDS [54]**.

4. Important common law values and principles of equal justice, proportionality and liberty favour giving the minimum in s 16AAB a dual function. **RDS [45]-[48], [60]-[63]**.

- *Green v The Queen* (2011) 244 CLR 462 at [28] (**JBA Vol 3, Tab 26**); *Karim v The Queen* (2013) 83 NSWLR 268 at [45] (**JBA Vol 5, Tab 55**).

- *ABCC v Pattinson* (2022) 274 CLR 450 at [39] (**not in JBA**).

20 • Explanatory Memorandum to the Crimes Legislation Amendment (Sexual Crimes Against Children and Community Protection Measures) Bill 2019 (Cth) at [42], [195]-[196] (**JBA Vol 7, Tab 78**).

- Second reading (**JBA Vol 7, Tab 80 p 1762**).

5. The legislative history and purpose favours giving the minimum in s 16AAB a dual function. **RDS [64]-[68]**

(a) The obvious intention of the *Crimes Legislation Amendment (Sexual Crimes against Children and Community Protection Measures) Act 2019* (Cth) was to increase the sentences imposed on offenders to which ss 16AAA and 16AAB applied. **RDS [64]-[65]**.

- Explanatory Memorandum, Crimes Legislation Amendment (Sexual Crimes Against Children and Community Protection Measures) Bill 2019 (Cth) at [1], [2], [24], [25]-[27], [40]-[42], [193] (**JBA Vol 7, Tab 78**).

(b) The Parliament was aware of the dual function approach. **RDS [70]**.

- Second reading debates (**JBA Vol 7, Tab 80 p 1763**).
- *R v Pot* (Unreported, NTSC, Riley CJ, 18 January 2011) (**JBA Vol 6, Tab 67**); *Bahar v The Queen* (2011) 45 WAR 100 (**JBA Vol 5, Tab 42**); *R v Karabi* (2012) 220 A Crim R 338 (**JBA Vol 6, Tab 63**); *R v Nitu* (2012) 222 A Crim R 246 (**JBA Vol 6, Tab 65**); *R v Latif* [2012] QCA 278 (**JBA Vol 6, Tab 64**); *R v Selu* [2012] QCA 345 (**JBA Vol 6, Tab 69**); *Karim v The Queen* (2013) 227 A Crim R 1 (**JBA Vol 6, Tab 55**); *Bayu v The Queen* [2013] HCATrans 144 (**JBA Vol 5, Tab 43**); *DPP (Cth) v Haidari* (2013) 230 A Crim R 134 (**JBA Vol 6, Tab 45**); *Magaming v The Queen* (2013) 252 CLR 381 (**JBA Vol 3, Tab 30**).

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6. *Bahar v The Queen* (2011) 45 WAR 100 (**JBA Vol 5, Tab 42**) was not wrongly decided. **RDS [52]**.

7. Section 16AAB applies by reason of item 3(2) of Sched 6 to the *Crimes Legislation Amendment (Sexual Crimes Against Children and Community Protection Measures) Act 2020* (Cth). **RDS [8]-[22]**. The relevant conduct is possessing or controlling material that fits the statutory description, not obtaining or accessing that material using a carriage service.

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**Dated: 9 November 2023**



Justin Gleeson SC

Krista Breckweg

Christopher Tran