



HIGH COURT OF AUSTRALIA

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Details of Filing

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Important Information

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IN THE HIGH COURT OF AUSTRALIA
BRISBANE REGISTRY

No B11/2024

BETWEEN:

RODNEY MICHAEL CHERRY

Plaintiff

and

STATE OF QUEENSLAND

Defendant

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**OUTLINE OF THE ORAL SUBMISSIONS OF THE ATTORNEY-GENERAL FOR
THE STATE OF SOUTH AUSTRALIA (INTERVENING)**

Part I: PUBLICATION OF SUBMISSIONS

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

Part II: OUTLINE OF ORAL SUBMISSIONS

The impugned provisions do not alter the sentence imposed on the Plaintiff

2. The setting of a minimum period of incarceration ensures that an offender gets their just deserts. It is silent on the question of whether the executive might extend leniency upon the expiration of that period. It does not confer on a prisoner a right to parole. It follows that changes to the rules that govern the availability of parole do not interfere with the setting of the non-parole period: SA, [7]-[10].
- 10 3. The Plaintiff's attempt to distinguish the application of these principles in *Crump* (V3, T18), *Knight* (V4, T28) and *Minogue* (V5, T34) is formalistic: PS, [38]; SA, [11]-[14].
4. For these reasons, the Plaintiff's challenge must fail, and it is unnecessary to consider the additional issues identified by the Plaintiff: SA, [15].

The impugned provisions do not confer judicial power on the Parole Board

5. The Plaintiff's contention that the power conferred by the impugned provisions on the Parole Board is judicial is inconsistent with the fact that the executive branch has historically been authorised to determine when sentences imposed by courts might be mitigated by reference to a range of policy considerations. It is also inconsistent with this Court's decision in *Minogue* (V5, T34): SA, [16]-[19].
- 20 **The novel defining characteristic proposed by the Plaintiff should not be accepted**
6. Whilst it may be accepted that interferences with judicial sentences may impair the institutional integrity of state courts so as to enliven the *Kable* doctrine, there is no authority to support the existence of the novel defining characteristic that the Plaintiff contends for. The decision of *Attorney-General (Qld) v Lawrence* [2014] 2 Qd R 504 (V6, T40) does not assist the Plaintiff: SA, [23]; *Lawrence*, [27], [30], [32], [33], [42].

Dated: 4 February 2025

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30 **MJ Wait SC**
Solicitor-General for South Australia

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JF Metzger
Counsel for the Attorney-General