



## HIGH COURT OF AUSTRALIA

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#### Details of Filing

File Number: C7/2023  
File Title: Hurt v. The King  
Registry: Canberra  
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#### Important Information

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

**BETWEEN:**

**RAYMOND JAMES CHOI HURT**

Appellant

and

**THE KING**

Respondent

**SUBMISSIONS OF THE RESPONDENT**

**PART I FORM OF SUBMISSIONS**

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

**PART II CONCISE STATEMENT OF ISSUES**

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2. The respondent relies upon its submissions in *Delzotto v The King* (S44/2023).

**PART III SECTION 78B NOTICE**

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3. No notice under s 78B of the *Judiciary Act 1903* (Cth) is required.

**PART IV MATERIAL FACTS IN DISPUTE**

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4. There are no facts in dispute, and the respondent does not take issue with **AHS [6]-[11]**.

**PART V ARGUMENT**

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5. The respondent relies upon its submissions in *Delzotto v The King*. The only matter to address separately here is how ground 2 arises in this appeal.
- 20 6. Mr Hurt pleaded guilty to three offences, one against each of ss 474.22(1)(a)(ii), 474.22(1)(a)(i) and s 474.22A(1) of the *Criminal Code* (Cth): **CA [112] [AB 105]**. It is the third offence which is of present relevance. It concerned Mr Hurt's possession of material found on his phone when a search warrant was executed at his house on 29 July 2020: **CA [115] [AB 106]**. That material, all of which was possessed after 23 June 2020, comprised:
- 6.1. 461 photos and seven videos which he had downloaded or accessed before 23 June 2020: **CA [114] [AB 105-106]**;

6.2. an additional 48 videos obtained or accessed before 23 June 2020: CA [115]-  
[116] [AB 106];

6.3. 25 images obtained or accessed on or after 23 June 2020: CA [116] [AB 106].

7. The question was whether Item 3 of Schedule 6 to the *Crimes Legislation Amendment (Sexual Crimes Against Children and Community Protection Measures) Act 2020* (Cth) applied in circumstances where the whole of the relevant material was possessed after the relevant date (23 June 2020) but some of that material had been obtained or accessed using a carriage service before the relevant date. That is the same issue as in *Delzotto v The King*, and should be resolved in the respondent's favour for the reasons set out in its written submissions in that appeal.
8. If the appellants succeed on ground two then a question arises in Mr Hurt's case as to how Item 3 of Schedule 6 applies where some of the material possessed was obtained or accessed after the relevant date of 23 June 2020 and some of it was not. By contrast, all the relevant material in *Delzotto v The King* was obtained or accessed before the relevant date.
9. If ground two succeeds (which it should not), then the answer would seem logically to be that Item 3 *does not* apply. Assuming for argument's sake that the appellants succeed on ground two, the logic of the appellants' argument is that Item 3 does not apply if some of the relevant conduct occurred before 23 June 2020: that must be why it is immaterial that possession of the material occurred after the commencement date when accessing or obtaining the material by using a carriage service occurred beforehand. Taken to its logical conclusion, the fact that some of the material possessed was accessed or obtained prior to 23 June 2020 would lead to the conclusion that not all of the relevant conduct occurred after commencement, such that Item 3 does not apply.
10. This is why, in circumstances where the third offence was charged as a single rolled-up count, the respondent has never argued below that Item 3 applies to the whole charge merely because 25 images were obtained or accessed on or after 23 June 2020.
11. But to be clear, the respondent contends that Item 3 does apply, for the reasons given in its written submissions in *Delzotto v The King*.

## 30 PART VI NOTICE OF CONTENTION OR NOTICE OF CROSS-APPEAL

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12. There is no notice of contention or cross-appeal.

**PART VII ESTIMATE OF TIME FOR ORAL ARGUMENT**

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13. A total of 2 hours for this matter and *Delzotto v The King* (S44/2023) combined.

Dated: 7 July 2023



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**ANNEXURE TO THE RESPONDENT'S SUBMISSIONS**

10 Pursuant to paragraph 3 of *Practice Direction No 1 of 2019*, the Crown sets out below a list of the particular statutes and Conventions referred to in these submissions.

<b>No</b>	<b>Description</b>	<b>Version</b>	<b>Provision(s)</b>
1.	<i>Acts Interpretation Act 1901</i> (Cth)	Current	s 13
2.	<i>Crimes Act 1914</i> (Cth)	As at 16 September 2021	ss 4F, 16A, 16AAA, 16AAB, 16AAC, 19AC, 19AB, 20(1)
3.	<i>Crimes Legislation Amendment (Sexual Crimes Against Children and Community Protection Measures) Act 2020</i> (Cth)	As enacted	
4.	<i>Criminal Code Act 1995</i> (Cth)	As at 29 July 2020	ss 4.1, 474.22A(1)
5.	<i>Migration Act 1958</i> (Cth)	As at 23 June 2009	ss 232A, 233A, 233B, 233C