

IN THE HIGH COURT OF AUSTRALIA
SYDNEY REGISTRY



No. S119 of 2019

BETWEEN:

State of New South Wales
Appellant

and

Bradford Robinson

Respondent

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APPELLANT'S OUTLINE OF ORAL ARGUMENT

PART I: PUBLICATION

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

PART II: OUTLINE OF PROPOSITIONS

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2. The primary judge's unchallenged findings of fact establish all the matters expressly required for a lawful arrest without warrant under s 99(1) of LEPPRA (AS [6]–[8]; Reply [2]).
3. The text of s 99(1) of LEPPRA, read in the context of the Act as a whole, is inconsistent with an implied requirement that, at the time of the arrest, the arresting police officer must have formed a positive intention to charge the arrested person with an offence.
 - a. Section 99(1) specifies with care the requirements for an arrest and does not include the implied requirement (AS [20]).
 - b. The implied requirement is inconsistent with the reference to reasonable suspicion in s 99(1)(a) (AS [21]–[25]; Reply [8]–[11]).
 - *George v Rockett* (1990) 170 CLR 104 at 115–116
 - *A v New South Wales* (2007) 230 CLR 500 at [38], [64], [71], [80], [83]

- c. The implied requirement is inconsistent with various reasons for arrest in s 99(1)(b) (AS [26]–[27]).
- d. The terms of s 99(3) do not support the implied requirement (AS [28]–[29]; Reply [12]).
- e. Section 105 is inconsistent with the implied requirement (AS [30]–[31]; Reply [12]).
- f. Pt 9 is inconsistent with the implied requirement (AS [32]–[33]; Reply [13]).
 - *Project Blue Sky v ABA* (1998) 194 CLR 355 at [69]–[70]
 - *Plaintiff S297/2013 v Minister for Immigration and Border Protection* (2014) 255 CLR 179 at [25]

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4. The context provided by previous “arrest” cases does not support the implied requirement.

a. The cases do not support the proposition that “arrest” is a technical word carrying with it the implied requirement (AS [36]–[47]; Reply [15]–[17]). It is an error to make an *a priori* assumption to that effect (Reply [3], [5]).

- *McNamara v Consumer Tribunal* (2005) 221 CLR 646 at [40]
- *Bales v Parmeter* (1935) 35 SR (NSW) 182 at 186, 188–189
- *Williams v The Queen* (1986) 161 CLR 278 at 283–285, 289–292, 295–300, 303, 305–306, 312
- *Foster v The Queen* (1993) 67 ALJR 550 at 552, 555
- *North Australian Aboriginal Justice Agency Ltd v Northern Territory* (2015) 256 CLR 569

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b. The principle of legality requires construing legislation strictly to protect liberty; it is not a basis for reading in an implied requirement, even if such a requirement may have been found in other cases (AS [46]–[49]; Reply [6]). In any event, the statutory language here is clear (AS [50]; Reply [4]).

5. The context provided by the 2013 Amendment Act is inconsistent with the implied requirement.

a. A comparison of LEPRA before and after the amendments shows that the purpose of the 2013 Amendment Act is inconsistent with the implied requirement (AS [53]–[57]).

b. The extrinsic material connected to the 2013 Amendment Act is to like effect (AS [58]–[59]).

- *Review of the Law Enforcement (Powers and Responsibilities) 2002, Report Part 1 – Section 99, 25 October 2013, pp 2–9*

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- Second Reading Speech for the Law Enforcement (Powers and Responsibilities) Amendment (Arrest without Warrant) Bill 2013, Legislative Assembly, *Parliamentary Debates* (Hansard), 30 October 2013, pp 25093

3 September 2019



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