IN THE MAGISTRATES' COURT

OF VICTORIA AT *HEIDELBERG*

BETWEEN

REECE STORME FERRARA

Applicant

v

THE STATE OF VICTORIA

Respondent One

THE COMMONWEALTH OF AUSTRALIA

Respondent Two

THE HON. MINISTER ANTHONY CARBINES MP

Respondent Three

THE HON. ENVER ERDOGAN MLC

Respondent Four

ATTORNEY GENERAL OF STATE OF VICTORIA

Respondent Five

THE HON. DANIEL ANDREWS

Respondent Six

CHIEF COMMISSIONER OF VICTORIA POLICE

Respondent Seven

DEPARTMENT OF JUSTICE AND COMMUNITY SAFETY

Respondent Eight

INDEPENDENT BROAD-BASED ANTI-CORRUPTION COMMISSION

Respondent Nine

MAGISTRATES' COURTS VICTORIA

Respondent Ten

AND

ORS

CERTIFICATE OF EXHIBIT

Date of document:	11/04/2024	Solicitors Code:	N/A
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Magistrates Court Act 1989 (Vic) section 133 Contempt in the face of the Court			P12154228

Exhibit [RF0A1BBB] List of Jurisprudence and Case Authorities with Definitions of relevant Legal terms

OFFENCES AGAINST JUSTICE

1. Victorian Law Reform Commission, '*Contempt of Court (Consultation paper, May, 2019)* Chapter 4 '*Contempt in the face of the court.*'
2. At [4.37]
   On one view, expressed in obiter by Justice Kirby in European Bank A-G v Wentworth, contempt 'in the face of the court' should be limited to conduct that is seen, heard or otherwise sensed by the judge.
3. At [4.38]
   …he noted that confining the expression in this way had the 'appropriate' result of limiting both the contempt jurisdiction of inferior courts and the availability of the special summary procedure to try and punish the contempt. He also noted that this approach 'takes the summary procedure back to its historical origin where it was undoubtedly confined to things which the court actually saw, heard or otherwise sensed and did not need evidence precisely for that reason'.
4. Victorian Law Reform Commission, '*Committals*' (Report, March 12, 2020) Chapter 9 '*Disclosure*'
5. *[9.5] In R v Farquharson, the Victorian Court of Appeal said:*
   It is axiomatic that there must be full disclosure in criminal trials. The prosecution has a duty to disclose all relevant material. A failure of proper disclosure can result in a miscarriage of justice.[7]
6. *[9.6] The scope of the duty to disclose extends beyond material that the prosecution intends to rely on for its own case. In Ragg v Magistrates' Court of Victoria, Justice Bell set out an extensive list of material that is disclosable at common law, including material in the possession of or known to the prosecution that may:*
   - *undermine the prosecution case*
   - *assist the defence case*
   - *exculpate the accused*
   - *affect the credit of prosecution witnesses.*[8]

   Additional disclosable material includes:
   - *statements of material witnesses whom the prosecution does not intend to call*
   - *'documents, photographs and other real evidence, including scientific analysis'.*[9]
7. *[9.7] While emphasising the breadth of the prosecution's disclosure obligations, Justice Bell noted that:*

[they do] not require the disclosure of material that might undermine the defence case, such as matters affecting the credibility of defence witnesses: the defence is responsible for making its own inquiries in this regard.[10]

8. *[9.8] The prosecution's duty of disclosure extends beyond material in its possession or that is known to it. The duty encompasses an obligation to seek out material likely to be relevant, and therefore disclosable. In Anile v The Queen, the Victorian Court of Appeal noted that:*

   the rule requiring disclosure applies in relation to material both in the possession of the prosecution, and material which it should obtain. In other words, the obligation to disclose includes, in an appropriate case, an obligation to make enquiries.[11]

9. *[9.9] When considering whether non-disclosure has infringed on an accused's right to a fair trial, it is immaterial whether the failure to disclose material is attributable to the informant or the prosecution. This was confirmed in Farquharson.*[12] *One of the grounds of appeal in that case was the informant's failure to disclose, to either the prosecutor or the accused, pending criminal charges against the prosecution's key witness. The Court accepted the Director of Public Prosecutions' concession that 'there is no distinction for disclosure purposes to be drawn between the prosecution … and the police informant'.*[13]

10. *[9.48] The statutory regime for disclosure in indictable stream matters in Victoria does not provide clear guidance for informants. It could be improved by clarifying: • that the informant is required to disclose all relevant material, including exculpatory material or material that otherwise assists the case for the defence or undermines the case for the prosecution, and including material on which the prosecution does not intend to rely • the process by which an informant may object to disclosure on public interest immunity or other grounds, including those set out in section 45 of the CPA.*

11. **R v McGee [2008] SASC 328; 102 SASR 318; 190 A Crim R 521**

12. At [13]

    The statutory offence of Attempting To Pervert The Course Of Justice is a substantive offence. In other words, it is not an inchoate offence in the sense of it being an offence of an attempt to commit a crime. The common law offence of Attempt To Pervert The Course Of Justice was always recognised as a substantive offence;1. likewise, the statutory offence. As McHugh J said in R v Rogerson,2. the word "attempt" in the context of the common law charge (and I state, in the statutory charge) is misleading.

13. At [14]

Conspiracy is an offence known to the common law. A conspiracy is an " … agreement of two or more to do an unlawful act or to do a lawful act by unlawful means".3. As Brennan and Toohey JJ said in Rogerson:4.

14. *What makes a conspiracy unlawful is the unlawfulness of its intended object or the unlawfulness of the means intended to effect its object, … As the "very plot" is the actus reus of the offence, the offence is complete before any further unlawful act is done or any further lawful act is done to carry the unlawful object into effect.*

15. At [15]

The following observations of Brennan and Toohey JJ in Rogerson are also apposite in the present context, albeit they are referring to common law offences:

16. *At common law, attempting to pervert the course of justice, like perverting the course of justice, is a substantive offence. It consists in the doing of an act which has a tendency to pervert the course of justice with an intent to pervert the course of justice. A conspiracy to pervert the course of justice, like any other conspiracy to commit an offence, is an inchoate offence in the sense that it is complete without the doing of any act save the act of agreeing to pervert the course of justice. Such an agreement imports a common intention among the conspirators that an act be done by somebody which will have the effect of perverting the course of justice.*

17. **MALLARD v R (2005) 222 ALR 236**

[62] The foregoing paragraphs (at least paras 61 and 63) are designed to relieve the prosecution of obligations to produce to the defence the text of statements made by collaborators, supporters and friends of the accused. In the present case, the unprovided and suppressed materials did not fall into that category. Without exception, they were statements procured in the preparation of the police brief for ultimate tender to the prosecutor. At least some of them were certainly known to the prosecutor. All of them would have been available to the Director of Public Prosecutions.

18. *[63] Where a form of statutory instrument is adopted, enjoying authority under an Act of the Parliament, it prevails, to the extent of any inconsistency, over principles of the common law. However, it is clear from the language and purpose of the guidelines that they were not intended to expel the operation in Western Australia of the general principles of the common law on prosecution disclosures. Instead, they were intended to express, clarify, elaborate and make public the "longstanding prosecution policy" that had developed conformably with the common law. Moreover, as noted above,[38]*

they were intended to give effect to international principles which, in turn, were designed to ensure observance of "human rights and fundamental freedoms recognised by national and international law".[39]

19. *[64] This court's authority: The consequence of an omission of the prosecution in a criminal trial to supply to the defence statements of material witnesses was considered by this court in Lawless v R.*[40] *There, a majority*[41] *refused special leave to appeal against the dismissal of a petition of mercy on the ground that the "fresh evidence" relied upon would not have been likely to have led to a different result in a new trial. Murphy J, dissenting as to the result,*[42] *observed that the trial judge had directed the prosecution to hand over to the applicant copies of all statements by witnesses. The prosecutor having disobeyed this direction bfailing to hand over one such statement which "could have been useful to the applicant ... [i]n the way the trial ran", Murphy J considered that the applicant had suffered a miscarriage of justice on the ground of the suppression of the evidence in and of itself.*

20. *[65] In R v Apostilides,*[43] *this court affirmed the responsibility borne by a prosecutor in the conduct of a criminal trial. However, it acknowledged the jurisdiction of courts of criminal appeal to consider the consequences of the prosecutor's decision where, for example, an election not to call a particular person as a witness, when viewed against the conduct of the trial taken as awhole, could be seen to have given rise to a miscarriage of justice.44 The court emphasised that the object of judicial scrutiny in such cases was not to discover whether there had been "misconduct" by the prosecution. It was to consider whether, in all of the circumstances, the verdict was unreasonable or unsupportable in the statutory sense.*[45]

21. *[66] A case involving a more explicit failure of the prosecution, being a failure to reveal that a key prosecution witness had been given a letter of comfort by an investigating police officer despite "widespread and deep involvement" in crimes of the type charged against the accused, was Grey v R.*[46] *The question in that case became whether the non-disclosure in question had occasioned a miscarriage of justice that was not insubstantial and had deprived the accused of a fair chance of acquittal. It was held that it was not reasonably necessary for the accused in that case to "fossick for information" to which he was entitled in the proper conduct of the prosecution against him.*[47]

22. *The guidelines considered in that case, issued under the Director of Public Prosecutions Act 1986 (NSW), were not materially different from the guidelines*

applicable to the present appeal.[48] The determining consideration in Grey was that the undisclosed material was highly relevant to the credibility of several of the witnesses called by the prosecution against the accused and to the evaluation of the accused's own case. The same can be said of the undisclosed evidence in these proceedings. In Grey, the appeal was upheld.

23. *[68] North American cases: In the United States of America, suppression by the prosecution of evidence favourable to an accused, where it is material to guilt or punishment, may be judged a violation of the due process requirements of the Fourteenth Amendment to the Constitution.49 Although Australia has no such constitutional provision, many of the notions that are protected by the Fourteenth Amendment are familiar to us given that, in criminal trials, the primary purpose of that constitutional protection is to ensure against miscarriages of justice that are equally abhorrent to our law.[50]*
24. *[71] Many of the same considerations have been upheld in the Supreme Court of Canada, including since the adoption of the Canadian Charter of Rights and Freedoms. Thus in R v Stinchcombe,[58] Sopinka J[59] referred to the duties of prosecutors in Canada which render "the fruits of the investigation ... not the property of the Crown for use in securing a conviction but the property of the public to be used to ensure that justice is done".*
25. *[74] Subject to any exceptions provided by statute or common law, I would accept this as a statement expressing the common law rule in this country. Its foundation, as Lord Hope explained, lies in "the principle of fairness [which is] at the heart of all the rules of the common law about the disclosure of material by the prosecutor".[67]*
26. **R v Murphy (1985) 61 ALR 139**
27. At p. 144

    In a later case, R v Selvage [1982) 1 All ER 96; [1982] 1 QB 372, the Court of Appeal reaffirmed that there may be an attempt to pervert the course of justice notwithstanding that no legal proceeedings have begun…
28. At p. 145

    The words "in relation to the judicial power of the Commonwealth" give the section a wider operation than it would have had if the limitation had been expressed by the use of the words "in any judicial proceeding".
29. *The section renders unlawful an interference with the course of justice in relation to the judicial power of the Commonwealth. Clearly an attempt to pervert the course of*

committal proceedings is an attempt to pervert the course of justice. The critical question is whether, when the committal proceedings are in relation to an offence against a law of the Commonwealth, the course of justice can properly be said to be "in relation to the judicial power of the Commonwealth". The words "in relation to" simply connote the existence of a connection or association between the course of justice which is attempted to be perverted and the judicial power of the Commonwealth: see the discussion of the meaning of similar words in such cases as Grannall v Marrickville Margarine Pty Ltd (1955) 93 CLR 55 at 77; Victoria v Commonwealth (1971) 122 CLR 353 at 399; Fountain v Alexander (1982) 150 CLR 615 at 629; 40 ALR 441 at 450, and Re Ross-Jones; Ex parte Green (1984) 59 ALJR 132 at 136; 56 ALR 609 at 616.

30. At p. 147

Although, as will appear, we think that the relationship between committal proceedings and the trial of an indictable offence is such that they are part of the matter which the trial ultimately determines, we are also, perhaps necessarily, of the view that the relationship is such that to make provision for the conduct of committal proceedings is incidental to the investing of a State court with jurisdiction to try an indictable offence against a law of the Commonwealth. It may be that the first limb of the incidental power contained in s 51(xxxix) would support the validity of s 68(2)(b), although s 77(iii) alone would confer sufficient power.

31. *That powers incidental to judicial functions as well as judicial functions may be invested in State courts has long been recognized (Peacock v Newtown Marrickville and General Co-operative Building Society (No 4) Ltd (1943) 67 CLR 25 at 37; Cominos v Caminos (1972) 127 CLR 588 at 591,599 and 605; Russell v Russell (1976) 9 ALR 103; 134 CLR 495 at 530).*

32. *Some of these cases relate to the vesting of jurisdiction in a federal court, but for the purposes of the question under discussion no distinction is to be drawn between vesting jurisdiction in a federal court and investing a State court with federal jurisdiction (Insurance Commissioner v Associated Dominions Assurance Society Pty Ltd (1953) 89 CLR 78 at 85). The constitutional authority for investing in a State court functions which are incidental to a judicial function is to be found either in the circumstance that power to invest is conferred "with respect to ... matters" or in the rule that the ambit of the power extends to what is incidental to the subject matter.*

33. **Attorney-General for New South Wales V Dean (1990) 20 NSWLR 650**

34. At 655,

'*The opponent repeatedly laid stress upon the absence of any intention to interfere in the administration of justice. However, it is clear that although contempt is criminal in nature, proof of an intention to interfere in the administration of justice is not an ingredient of the charge…*'

35. at 656,

'*…The absence of the specific intent, by those words, to interfere in the administration of justice is no answer or defence to a charge of contempt. On the other hand, the presence or absence of such an intention will be relevant to the Court's decision as to penalty*.'

36. **Meissner v R (1995) 130 ALR 547**

37. At p. 547

Held, per Brennan, Deane, Toohey and McHugh JJ (Dawson J dissenting):

38. *(i) If a plea of guilty is procured by pressure and threats and not in the exercise of free choice the course of justice perverted.*

39. *(ii) Any conduct designed to intimidate an accused person to plead guilty is improper conduct and necessarily constitutes an attempt to pervert the course of justice even if the intimidator believes that the accused is guilty of the offence. R v Kellett [1976] QB 372 , followed*

40. *(iii) At common law a person is guilty of the offence of attempting to pervert the course of justice when that person engages in conduct that has the tendency to pervert the course of justice and does so with the intention of perverting the course of justice. R v Vreones [1891] 1 QB 360 ; R v Rogerson (1992) 174 CLR 268 ; 107 ALR 225 , followed*

41. *(iv) Whether or not conduct succeeds in perverting the course of justice is irrelevant. R v Rogerson (1992) 174 CLR 268 ; 107 ALR 225 , followed*

42. *(v) It is sufficient proof of the intention that the person intended to engage in conduct for a purpose that in law constitutes the actus reus of an attempt to pervert the course of justice.*

43. *Per Deane J:*

(vi) The notion of "perverting" the course of justice involves no more than an adverse interference with the proper administration of justice.

44. *(vii) Obiter: The circumstances were such that it was open to the Crown prosecutor, in the proper discharge of his duties in accordance with traditional standards of fairness, to decide to refrain from calling P as a witness. Whitehorn v R (1983) 152 CLR 657 ; 49 ALR 448 , followed*

45. **Sara Borg v R [2020] VSCA 191; BC202007081**

46. At [32]

Patrick Newton, a clinical and forensic psychologist, in a report dated 16 May 2020, was of the view that the appellant presents with significant anxiety and depression. There are indications to suggest that she has experienced trauma in the past and she continues to manifest residual traumatic symptoms. Accordingly, the appropriate diagnosis in her case is one of post-traumatic stress disorder, in partial remission.

47. At [41]

Counsel for the appellant submitted that in the circumstances of this case, the relevant hardship goes beyond the 'tragic but inevitable consequences' of an offender causing hardship to their dependants by their own criminal offending. In the instant case, the hardship arises from the protracted family violence of which the appellant has been a victim for many years. Counsel for the appellant submitted that due to the history of family violence, which previously has included involvement by child welfare authorities…

48. At [48]

The relevant principles were recently discussed by this Court in Cross… We can, however, show some mercy, tempering the wind to the shorn lamb. I think this is a case in which to do it: compare Miceli (1997) 94 A Crim R 327 [R v Miceli [1998] 4 VR 588]. A similar attitude has been taken in the English cases of Vaughan (1982) 4 Cr App R (S) 83 and Haleth (1982) 4 Cr App R (S) 178 . In each of those cases an amendment of sentence was made on appeal so as to achieve the immediate release of a prisoner in order to allow a sick child or children to be cared for.

49. At [53]

Albeit that she was the architect of her downfall, the appellant has suffered a spectacular fall from grace. Her good character and reputation have been indelibly tarnished by her offending, and she has suffered humiliation and embarrassment from which she will likely never recover. It is probable that her aspiration of practising law will have evaporated (at least for the foreseeable future), and her capacity to pursue a public service career irretrievably lost.

50. At [54]

Importantly, it does not appear that the appellant had anything to gain from her offending. There was to be no financial reward. Indeed, the offending that is the basis of charges 2 to 6 seems to have flown from sadly misguided altruism, influenced by the compromise to her judgment of which Mr Newton spoke. Further, when her misconduct was detected, she did not endeavour to defend her actions, pleading guilty at the earliest opportunity.

51. **R v Allan [1995] 2 VR 468**

52. At p. 468

HELD, refusing leave to appeal: (1) It was open to the jury to find that the applicant prepared the brief with the intent to ***pervert*** *the course of justice in that, having prepared the brief, there was a risk or possibility that injustice would result, that injustice being the wrongful issue of proceedings against the motorist and his consequent appearance before a court on a false charge.*

53. At p. 471

Mason CJ also said in Rogerson at 277: The fact that police investigation stands outside the concept of the course of justice does not mean that, in appropriate circumstances, interference with a police investigation does not constitute an attempt or a conspiracy to pervert the course of justice. It is well established at common law and under cognate statutory provisions that the offence of attempting or conspiring to pervert the course of justice at a time when no curial proceedings are on foot can be committed: R v Murphy (1985) 158 CLR 596 at 609; R v Vreones [1891] 1 QB 360; R v Sharpe [1938] 1 All ER 48; R v Kane [1967] NZLR 60 ; R v Spezzano (1977) 76 DLR (3d) 160; Thomas [1979] QB 326. That is because action taken before curial or tribunal proceedings commence may have a tendency and be intended to frustrate or deflect the course of curial or tribunal proceedings which are imminent, probable or even possible. In other words, it is enough that an act has a tendency to frustrate or deflect a prosecution or disciplinary proceeding before a judicial tribunal which the accused contemplates may possibly be instituted, even though the possibility of instituting that prosecution or disciplinary proceeding has not been considered by the police or the relevant law enforcement agency: R v Spezzano (1977) 76 DLR (3d) 160, at 163.

54. **R v Murphy (1985) 61 ALR 139**

55. *Held: (i) The words 'in relation to' in s 43 of the (CTH) Crimes Act 1914 connoted the existence of a connection between the course of justice attempted to be perverted and the judicial power of the Commonwealth.*

56. *(ii) An attempt to pervert the course of committal proceedings in relation to an alleged offence against a law of the Commonwealth is an attempt to pervert the course of justice 'in relation to the judicial power of the Commonwealth' pursuant to s 43 (CTH) Crimes Act 1914 because such committal proceedings although not an exercise of judicial power, have a close connection with an actual exercise of the judicial power of the Commonwealth.*

57. *(iii) Section 43 of the (CTH) Crimes Act 1914 was a valid law of the Commonwealth because, granted that legislative power exists to create a particular offence, that legislative power necessarily extends to the protection of the course of justice, including committal proceedings, in relation to the process of bringing an offender to justice.*

58. *(iv) Section 68(2)(b) of the (CTH) Judiciary Act 1903 and s 85E(1) of the (CTH) Crimes Act 1914 were intra vires s 77(iii) of the Commonwealth Constitution because to make provision for the conduct of committal proceedings is incidental to the investing of a State court with jurisdiction to try an indictable offence against a law of the Commonwealth.*

59. *(v) It was appropriate for the High Court to accept jurisdiction pursuant to s 72(1) of the (CTH) Judiciary Act 1903 to decide questions of law reserved by a State court. (vi) The reserved questions of law should be remitted, pursuant to s 44 of the (CTH) Judiciary Act 1903 to the Supreme Court of NSW because the High Court should have the benefit of the opinion of that court and there were other issues which would possibly be pursued on appeal in any event.*

60. **McAuliffe (SP) v R (1995) 130 ALR 26**

61. At p. 26

(i) The doctrine of common purpose applies where a venture is undertaken by more than one person acting in concert in pursuit of a common criminal design. The complicity of a secondary party may be established by reason of a common purpose shared with the principal offender or with that offender and others. Such a common purpose arises where a person reaches an understanding or arrangement amounting

to an agreement between that person and another or others that they will commit a crime.

62. At p. 32

After the decision in Chan Wing-Siu v R, in which Sir Robin Cooke relied expressly on Johns, there were a number of decisions of the Court of Appeal in England in which Chan Wing-Siu v R was applied. In a commentary in the Criminal Law Review upon one of those decisions[13] Professor JC Smith pointed out that insufficient attention had been paid to the distinction to which we have referred between acts falling within the scope of the common purpose and acts which, although excluded from any understanding or arrangement, are within the contemplation of one of the parties to a joint criminal enterprise who neverthe]ess continues in it. In R v Hyde 14 Lord Lane CJ referred to the commentary by Professor Smith and, in correction of some remarks made in R v Slack, 15 said that the correct principle, being that enunciated by Sir Robin Cooke in Chan Wing-Siu v R, was as fo1lows:[16]

63. *(i) If B realises (without agreeing to such conduct being used) that A may kill or intentionally inflict serious injury, but nevertheless continues to participate with A in the venture, that will amount to a sufficient mental element for B to be guilty of murder if A, with the requisite intent, kills in the course of the venture. As Professor Smith points out, B has in those circumstances lent himself to the enterprise and by so doing he has given assistance and encouragement to A in carrying out an enterprise which B realises may involve murder.*

64. *In Hui Chi-Ming v R[17] the Privy Council accepted that passage as correctly stating the law. However, their Lordships correctly qualified the passage cited above from the judgment of Sir Robin Cooke in Chan Wing-Siu v R in which the word authorisation was said to be a synonym for contemplation. They said: [18]*

Their Lordships consider that Sir Robin used this word [authorisation] - and in that regard they do not differ from counsel - to emphasise the fact that mere foresight is not enough: the accessory, in order to be guilty, must have foreseen the relevant offence which the principal may commit as a possible incident of the common unlawful enterprise and must, with such foresight, still have participated in the enterprise. The word "authorisation" explains what is meant by contemplation, but does not add a new ingredient. That this is so is manifest from Sir Robin's pithy conclusion to the passage cited: "The criminal culpability lies in participating in the venture with that foresight."

65. **Certain Children (By Their Litigation Guardian, Sister Marie Brigid Arthur) v Minister For Families And Children and Others (2016) 51 VR 473**

66. *[237] I note the caveat that Emerton J expressed in Castles v Secretary to the Department of Justice[152] that the right under s 22(1) not be conflated with the right protected by s 10(b). Emerton J observed:*

> *[Section] 22(1) of the Charter ought not to be conflated with s 10(b), which protects persons from treatment or punishment that is cruel, inhuman or degrading. Section 22 is a right enjoyed by persons deprived of their liberty; s 10(b) applies more generally to protect all persons against the worst forms of conduct. Section 10(b) prohibits 'bad conduct' towards any person; s 22(1) mandates 'good conduct' towards people who are detained.*

67. *[239] In Certain Children, Garde J stated about the right under s 10(b):*

> *(a) International authority suggests that the prohibition of torture, or other cruel, inhuman or degrading treatment or punishment protects against acts that cause both physical and mental suffering. The particular circumstances of the individual are relevant and should be taken into account, and children should be accorded treatment appropriate to their age.[153]*

68. *[240] …Immediately following his recitation of the defendants submissions, Garde J expressed his finding in respect of s 10(b): I find that the right in s 10(b) of the Charter is engaged. There is evidence that one or more young persons have, or may have, been subject to a breach of s 10(b) by reason of the harsh conditions at the Grevillea unit of the Barwon Prison at least in the first two weeks of its occupancy as a remand centre including:*

> *(a) very long periods of solitary and prolonged confinement of young people in cells formerly used for high security adult prisoners;*
> *(b) uncertainty as to the length and occurrence of lockdowns;*
> *(c) fear and threats by staff against young persons;*
> *(d) the use of SESG inside the Grevillea unit, including German Shepherd dogs;*
> *(e) the use of handcuffs on young people when moving to outdoor areas;*
> *(f) the noise of loud banging on the doors or screaming;*
> *(g) the failure to advise young people of their rights or the rules of the centre;*
> *(h) the general lack of space and amenities for young persons and the limited opportunity to use the space and amenities available;*
> *(i) the absence or very limited opportunity for education or other pursuits; and*

(j) the absence of family visits or access to religious services or advisers. The evidence of Ms Fitzgerald, Ms Leikin, and Mr Murray supports these findings.[162]

69. *[241] …very long periods of solitary and prolonged confinement of young people in cells formerly used for high security adult prisoners might engage the right on the basis that it is concerned with deliberate infliction of acute or severe suffering,*

70. *[243] In summary, Garde J concluded that:*[163]

(a) the right to dignity in s 22(1) recognises the vulnerability of all persons deprived of their liberty.[164]

(b) The content of s 22(1) of the Charter is informed by Article 10 of the ICCPR, which references conditions of detention, including relevantly that each prisoner shall occupy by night a cell or room by himself or herself, be provided with a separate bed and with separate sufficient and clean bedding, and shall have at least one hour of suitable exercise in the open air daily including physical and recreational training. Discipline and order shall be maintained with no more restriction than is necessary to ensure safe custody, the secure operation of the prison and a well-ordered community life. In no circumstances may restrictions or disciplinary sanctions amount to torture or other cruel, inhuman or degrading treatment or punishment, and prohibited practices include prolonged solitary confinement.

(c) As Emerton J stated in Castles,165 the starting point should be that prisoners not be subjected to hardship or constraint other than the hardship or constraint that results from the deprivation of liberty, accepting that a necessary consequence of the deprivation of liberty is that rights and freedoms which are enjoyed by other citizens will necessarily be curtailed, attenuated and qualified.

[244] On appeal, in Taunoa v Attorney-General (NZ),169 the New Zealand Supreme Court considered the interaction between the equivalent rights to freedom from cruel treatment under s 9 of the New Zealand Bill of Rights Act 1990 (NZBORA), and to humane treatment when deprived of liberty under s 23(5) of the NZBORA. After noting that the former was concerned with the prevention of treatment properly characterised as 'inhuman', while the latter was concerned to ensure prisoners were treated 'humanely', Elias CJ stated:

The concepts are not the same, although they overlap because inhuman treatment will always be inhumane. Inhuman treatment is however different in quality. It amounts to a denial of humanity. That is I think consistent with modern usage which contrasts 'inhuman' with 'inhumane' ... In application to thosedeprived of liberty, such provisions are based on the fundamental premise that prisoners are not to be treated as if they are less than human. Denial of humanity may occur through deprivation of basic human needs, including personal dignity and physical and mental integrity. Inhuman treatment is treatment that is not fitting for human beings, 'even those behaving badly in prison'.[170]

[245] Blanchard J similarly concluded that the right against inhuman treatment in s 9 of the NZBORA was 'intended to capture treatment or punishment which is so grossly disproportionate in the circumstances'.171 His Honour continued:

That leaves to s 23(5) the task, couched as a positive instruction to the New Zealand government, of protecting a person deprived of liberty and therefore particularly

vulnerable (including a sentenced prisoner) from conduct which lacks humanity, but falls short of being cruel; which demeans the person, but not to an extent which is degrading; or which is clearly excessive in the circumstances, but not grossly so.[172]

71. *[249] While there can doubtless be overlap in the scope of different rights under the Charter, the proper scope of the s 10(b) right is informed by the principles identified in the judgments of foreign and international courts and tribunals that were set out by Garde J as the submissions made to him by the defendants. The same material, in substance, was put before me. Section 32(2) of the Charter permits a court to consider such materials in interpreting the scope of a human right defined by the Charter.*

72. *[250] The scope of the s 10(b) right is conditioned by a minimum standard or threshold of severity or intensity that can manifest in bodily injury or physical or mental suffering. It is the combination of the adjectives in s 10(b) that defines the prohibited treatment or punishment, and the discussion in Taunoa is most helpful in appreciating the distinction. The assessment of the minimum threshold is relative and depends on all the circumstances of the case, including the duration of the treatment, its physical or mental effects, and the sex, age and state of health of the*

alleged victim. Children should be accorded treatment appropriate to their age. The use of force in law enforcement or corrections that is grossly disproportionate to the purpose to be achieved and results in pain or suffering meeting that threshold may constitute a breach of the right. Most cases of breach will involve on the part of the offender deliberate imposition of severe suffering or intentional conduct to harm, humiliate or debase a victim. The purpose of the offender's conduct will, at the very least, be a factor to be taken into account, though the absence of such a purpose does not conclusively rule out a violation of the right.

73. *[251] I propose to assess the issues of the s 10(b) right and the 22(1) right in this proceeding on the basis of the foregoing observations. It is not in issue that the s 22(1) right was engaged and was considered by the decision-makers.*

74. *[453] 453 The principal limitations on the s 17(2) right evident from my findings are:*

   (a) The limitations on the s 22(1) right already discussed are applicable, particularly because of the vulnerability of the child detainees.

   (b) Disciplinary measures applied through the use of isolation by lockdown and handcuffing detrimentally affect the inherent dignity of children and the fundamental rehabilitative objectives of care in detention under the CYF Act. Such measures may compromise the physical or mental health or well-being of detainees.

   (c) The detainees' right to maintain contact with their families was in many cases, constrained by the remoteness of Grevillea and the visitor policies enforced in respect of visitors to Barwon Prison.

75. *[455] First, I remain unpersuaded that the defendants appreciate the true nature of the engaged rights. As Bell J suggested in Re Lifestyle Communities Ltd (No 3) (Anti-Discrimination),[218] what must be considered is the the quality of the right and the importance of the values that underpin it. The ss 17(2) and 22(1) rights engaged in this proceeding protect important values that I have already discussed, including the protection of bodily integrity, mental health, dignity and self-worth. The Charter makes clear that children are not to be treated like adults. Children in detention are particularly vulnerable by reason of their age and circumstances. The focus on a child's opportunity to continue to develop, particularly to adult maturity, is sharp and rightly so. It is fundamental that vulnerable children from disadvantaged circumstances be rigorously protected by the law in a free and democratic society*

based on human dignity, equality and freedom. Dr Deacon's evidence explained why that is so.

76. *[456] The evidence does not reveal that the defendants sought any specialist advice, whether externally from consultants or internally, to inform them of the complexities of the impact of Grevillea's built environment on matters such as mental health, dignity and self-worth, or in respect of the special vulnerabilities of the remand cohort in the Secretary's custody. These were the key respects in which limitations on the engaged human rights would operate.*

77. *[460] Thirdly, the nature and extent of the limitations is very significant for those who must suffer them. So much is clear from the evidence, particularly that of Dr Deacon and Ms Buchanan, which provides independent support for the evidence of the plaintiffs and their solicitor.*

78. *[471] This evidence makes clear that there were less restrictive ways reasonably available at the time of the relevant decisions to achieve the purposes that the limitations sought to achieve. I infer also that other less restrictive means may have been available from the absence of positive evidence from the defendants. The defendants bear the onus, once prima facie incompatibility is established, to justify the limitations created by their actions or decisions. The standard of proof is high, requiring a degree of probability which is commensurate with the occasion, and must, by reason of the vulnerability of the plaintiffs, be strictly imposed.*

79. *[475] In a free and democratic society based on human dignity, equality and freedom, the executive is expected to make a proper proportion of its resources available for the protection and advancement of its children. The defendants do not contend, appropriately, that the Victorian community lacks the resources that could be applied to advance less restrictive means of providing secure accommodation. By simply identifying four alternative places that are not suitable, the defendants fell well short in demonstrating that resources were inadequate for the provision of less restrictive measures.*

80. *[476] For these reasons, I conclude that the limits on the human rights of the plaintiffs under ss 22(1) and 17(2) that were imposed by the Grevillea Orders were not demonstrably justified in a substantive sense. In a free and democratic society based on human dignity equality and freedom, these limits were unreasonable.*

81. **Onus And Another V Alcoa Of Australia Ltd (1981) 55 ALJR 631**

at p 634 B 'On the other hand…'

p 634 D ‘The Principle…’,

p 635 B - D ‘in Australian..’,

p 635 C - D ‘In any case...the question whether..’,

p 636 E ‘ For their second..’,

p 637 B - D ‘I should say…’,

p 637 E - F ‘Courts necessarily…’,

p 637 G – 638 A ‘Standing is a judicial…’,

p 638 D - E ‘Restrictive rules…’,

p 640 B -C ‘The classic formulation…’,

p 640 G - A ‘The same view…’,

p 640 D – E ‘In my opinion…’,

p 641 B – E ‘See also Mason J….’

82. **R v IRC, ex parte National Federation of Self-Employed [1981] 2 WLR 722, [1982] AC 617**

83. at p 723 B

‘A federation representing…’ to G ‘(2) That the appeal must… to the nature of “the matter”…’, p 724 B ‘But that is not…’ to E, p 727 at F ‘..have always reserved…’, p 728 at C ‘First, it does not…’ to G ‘…management Act 1970.’, p 729 at C ‘…it must follow..’ to D ‘possibility certaintly exists.’,

84. p 733 at F Lord Diplock,

‘if it were established that the board were proposing to exercise or to refrain from exercising its powers not for reasons of " good management " but for some extraneous or ulterior reason, that action or inaction of the board would be ultra vires and would be a proper matter for judicial review if it were brought to the attention of the court by an applicant with " a sufficient interest" in having the board compelled to observe the law.’

85. **Re LOVEDAY and ANOTHER: Ex parte CLYNE (1984) 61 ALR 136**

86. *…Later in R v Sharkey (1949) 79 CLR 121 , this court seems to have proceeded on the footing that the judge of a State court exercising federal jurisdiction had a discretion to reserve questions either for the Full Court of the Supreme Court or for the Full Court of the High Court. In that case the High Court answered questions*

reserved by a State court exercising federal jurisdiction without suggesting that the reservation was invalid on that account.

87. *The jurisdiction to make an order for mandamus which the applicant invokes is not that conferred by s 75(v) of the Constitution. Judge Loveday is a judge of a State court exercising federal jurisdiction. It has been held that a judge of a State court exercising federal jurisdiction is not an officer of the Commonwealth for the purposes of s 75(v) (R v Murray and Cormie Ex parte Commonwealth (1916) 22 CLR 437 ; Re Anderson; Ex parte Bateman (1978) 53 ALJR 165 ; 21 ALR 56). Instead of s 75(v), reliance is placed on s 33(1)(a) and (e) of the Judiciary Act.*

88. **Cruse v State of Victoria [2019] VSC 574 (2019) 59 VR 241**

89. *[188] Dr Serry reviewed Mr Cruse once more on 2 July 2019, shortly before the trial. He found that Mr Cruse's condition had remained reasonably stable. Diagnostically, Dr Serry was of the opinion that Mr Cruse continued to present with a major depression with anxious features, with features of traumatisation consistent with a PTSD and with associated paranoid ideation which he did not consider to be psychotic. Dr Serry also noted ongoing substance misuse issues. He considered Mr Cruse's prognosis to be 'somewhat guarded given the persistent nature of his symptomatology, suboptimal coping strategies and a lack of engagement with appropriate treatment'.*

90. *[189] In his evidence at trial, Dr Serry adopted the opinions he had expressed in his three reports. In cross-examination, he agreed that a significant component of Mr Cruse's anxiety and paranoia was his concern that people would think of him differently because he had been arrested on suspicion of a terrorism offence. He did not agree that the fear of reputational damage was the major cause of Mr Cruse's psychiatric condition. He maintained that Mr Cruse's experience of the incident itself was a relevant and significant cause. He was unable to clinically disentangle the relative contribution of these causes, other than to say that in his clinical opinion they were both significant and relevant.*

91. *[190] I accept Dr Serry's evidence without reservation. I find that Mr Cruse suffers from post-traumatic stress disorder and major depression with anxious features. His depressive symptoms have become worse over time, and his prognosis is guarded.*

92. *[191] The State submitted that the major cause of Mr Cruse's psychiatric condition was his shame that he had been accused of terrorism and his anxiety that people now thought of him as a terrorist. It further submitted that various other matters*

contributed to his low mood, including the death of two friends in the months before the raid, and a fear of further publicity and reputational damage during the trial. It submitted that psychiatric injury due to these causes should be distinguished from injury due to the batteries and assault.

93. *[192] I reject this submission, for two reasons.*

94. *[193] First, the submission was made without reference to the law concerning causation. Because the law recognises that several acts may each amount to a cause of an injury, it is for the plaintiff to establish that the injury is 'caused or materially contributed to' by the defendant's wrongful conduct.31 Causation is established if the relevant act was 'so connected with the plaintiff's loss or injury that, as a matter of ordinary common sense and experience, it should be regarded as a cause of it'.32 Generally speaking, causation is established if it appears that the plaintiff would not have suffered the injury 'but for' the defendant's wrongful act.33 The act may have materially contributed to, and hence caused, the injury even if other factors have also played a significant role.34*

95. *[194] Second, the submission was not supported by medical opinion. Dr Serry's evidence was that Mr Cruse's experience of the incident was traumatic and was a significant and relevant cause of his psychiatric conditions. He did not consider that it was clinically possible to disentangle or apportion the contribution made by other causes to the conditions he had diagnosed.*

96. *[195] I am satisfied that the batteries and assault that Mr Cruse experienced at the hands of police on 18 April 2015 materially contributed to both the post-traumatic stress disorder and the major depression with anxiety that he suffers. I am also satisfied that, but for the batteries and the assault, he would not have suffered these psychiatric injuries.*

RESTRICTIONS ON COMMONWEALTH AND STATE POWERS

97. R v Smithers; Ex parte Benson [1912] HCA 96
98. Lange v Australian Broadcasting Corporation, [1997] HCA 25
99. Commonwealth of Australia and Another V. State of Tasmania and Others [2020] EWHC 2291 (Admin)
100. Commonwealth v Mewett, [1997] HCA 29
101. W & A McArthur Ltd v Queensland (1920) 28 CLR 530 (1920)
102. Brandy v Human Rights & Equal Opportunity Commission (1995) 69 ALJR 191

103. Al-Masarir v Kingdom of Saudi Arabia [2022] EWHC 2199 (QB)

INTERNATIONAL TREATY

104. Choudhary v. Canada (Communication No 1898/2009)
105. Commonwealth Of Australia And Another v. State Of Tasmania And Others (1985). International Law Reports, 68, 266-511
106. Griffiths V. Australia (Communication No 1973/2010) 173 ILR 569
107. Horvath v. Australia 165 ILR 354
108. Herman V. Trans World Airlines Inc. 69 Misc. 2d 642
109. FKAG and Others v. Australia (Communication No 2094/2011) 163 ILR 266
110. KA, KB, KC and KD v Commonwealth of Australia (Department of Prime Minister and Cabinet, Department of Social Services, Attorney- General's Department) AusHRC 8

CONSTITUTIONAL WRITS

111. Chief Executive Officer, Aboriginal Areas Protection Authority v Director of National Parks [2022] NTSCFC 1
112. R v Macfarlane; Ex parte O'Flanagan (1923) 32 CLR 518
113. R v Bowen; Ex parte Federated Clerks Union of Australia [1984] HCA 27
114. Bare v Small [2013] VSC 129

TORTURE AND CRUEL INHUMAN, AND DEGRADING TREATMENT

115. Nowak, Manfred, Protecting Persons with Disabilities from Torture, and Solitary Confinement, Res. 62/148, GAOR, 63rd session, Agenda Item 67 (a), UN Document A/63/175, (2008/07/28)
116. Manfred Nowak, Special Rapporteur, *Impunity as a Root Cause of the Prevalence of Torture*, GA Res. 64/153, GAOR, 65th Session, Agenda Item 69 (b), UN Document A/65/273, (2010/08/10)
117. Nils Melzer, Special Rapporteur, Corruption-related Torture and Ill-treatment, HRC Res. 34/19, HRCOR, 40th Session, Agenda item 3, UN Document A/HRC/40/59, (2019/01/16)
118. Nils Melzer, Special Rapporteur, Psychological Torture, HRC Res 34/19, GAOR, 43rd session, Agenda Item 3, UN Document A/HRC/43/49, (2020/03/20)

119. Nils Melzer, Special Rapporteur, Biopsychosocial Factors Conducive to Torture and Ill-treatment, GA Res 72/163, GAOR, 77th session, Agenda Item 72 (a), UN Document A/75/179, (2020/07/20) 16; 17
120. Nils Melzer, Significance of Accountability to the Absolute and Non-derogable Prohibition of Torture and Ill-treatment, G.A. Res 72/163, GAOR,76th session, Agenda Item 75(a), UN Document A/76/168, (2021/07/16)
121. Manfred Nowak, Special Rapporteur, Protecting persons with disabilities from torture, solitary confinement., Res. 62/148, GAOR, 63rd Session, Agenda Item 67 (a), UN DOC No. A/63/175, (2008/07/28)
122. Nils Melzer, Special Rapporteur, Utilization of thematic reports presented by the Special Rapporteur, HRC Res. 43/20, GAOR, 49th session, Agenda Item 3, UN Document A/HRC/49/50, (2021/12/28)
123. Pau Perez-Sales, *Psychological torture: Definition, Evaluation and Measurement*, Taylor & Francis Group, (2016). ProQuest Ebook Central, http://ebookcentral.proquest.com/lib/deakin/detail.action?docID=4732404
124. Declaration of basic principles of justice for victims of crime and abuse of power, Session, GA Res. 40/34, (1985/11/24)

LEGAL DEFINITIONS

125. Ray Finkelstein and David Hamer, '*LexisNexis Concise Australian Legal Dictionary'* (LexisNexis Butterworths, 2020)

126. **Abuse of Power**

Administrative law Generally, the misuse, or improper use, of a statutory power, in particular, the exercise of a discretionary power conferred by statute so as to exceed the intended scope of the power conferred. Types of abuse of power include: taking an irrelevant consideration into account; failing to take a relevant consideration into account; exercising a power in bad faith or for an improper purpose; making a decision so unreasonable that no reasonable person could have reached it; acting under dictation; or applying policy inflexibly. These types of abuse of power are also known as 'improper exercise of power' and are codified in Administrative Decisions (Judicial Review) Act 1977 (Cth) ss 5(1)(e), (2), 6(1)(e), (2). See also bad faith; broad ultra vires; judicial review; procedural fairness; ultra vires; Wednesbury unreasonableness.

127. **Abuse of Process**

Instituting or maintaining civil or criminal proceedings that will clearly fail or are proceedings unjustifiably oppressive or vexatious in relation to the defendant, or more generally any process that gives rise to unfairness (Walton v Gardiner (1993) 177 CLR 378; 112 ALR 289; Batistatos v Roads and Traffic Authority of New South Wales (2006) 226 CLR 256; 227 ALR 425; [2006] HCA 27; Ashby v Slipper (2014) 219 FCR 322; [2014] FCAFC 15) or which may result in a diminution in public confidence in the court. A court should refuse to hear proceedings that are an abuse of process by staying the proceedings either permanently or temporarily: Williams v Spautz (1992) 174 CLR 509, 522; 107 ALR 635; Walton v Gardiner (1993) 177 CLR 378; 112 ALR 289; Ridgeway v The Queen (1995) 184 CLR 19; 129 ALR 41. See also frivolous and vexatious; stay. Tort An action on the case arising when a person uses the process of the court predominantly for an ulterior and improper purpose, causing damage to the plaintiff as a result: Varawa v Howard Smith Co Ltd (1911) 13 CLR 35. More recently, courts have suggested that the tort action be called "collateral abuse of process" to distinguish it from the use of the concept in other contexts: see Williams v Spautz (1992) 174 CLR 509; 107 ALR 635. See also action on the case; malicious prosecution.

128. **Absolute liability offence**

An offence that does not require proof of any mental element or intention on the part of the accused. Generally found in relation to regulatory offences concerned with public health or safety. Under the Criminal Codes of the Commonwealth, the Australian Capital Territory and the Northern Territory, the statute creating the offence must state that it is an absolute liability offence otherwise a default fault element applies: for example, Criminal Code (Cth) s 6.2. See also default fault element; fault element; mens rea; strict liability; strict liability offence; voluntariness.

129. **Accessory**

Criminal law A person who assists a principal offender in the commission of an offence. The term derives from the common law. In the code jurisdictions, the more usual term is 'party to an offence', except with respect to an accessory after the fact: for example, Criminal Code (Qld) s 10. A person who encourages the commission of an offence but is not present when it is committed is an accessory before the fact. A person who encourages or incites another to commit an offence at the scene of the crime is an accessory at the fact or a principal in the second degree. When an offence has been committed, someone who conceals the offender or helps the offender to avoid arrest or prosecution is an accessory after the fact. An accessory is liable to the same punishment as the principal in the first degree: Crimes Act 1900 (NSW) ss 345–347; Criminal Code (Qld) s 7. See also ***code jurisdictions; complicity****;* ***principal in the first degree****;* ***principal in the second degree****.*

130. ***Actus Reus*** **(Latin term for 'A Guilty Act')**

Voluntary actions or omissions constituting a crime; the physical element of an offence: Ryan v R (1967) 121 CLR 205; [1967] HCA 2. The actus reus may be a positive act or a failure to act, where there is a duty to act. The extent to which a mental element is relevant to the commission of an offence depends upon the construction of the statute creating the offence: He Kaw Teh v R (1985) 157 CLR 523; 60 ALR 449; [1985] HCA 43; Environment Protection Agency v N (1992) 26 NSWLR 352; 76 LGRA 114. It is sometimes called the 'external element' of a crime: He Kaw Teh v R, 565. See also absolute liability; act or omission; fault element; mens rea; physical element; strict liability..

131. **Cruel, inhuman, or degrading treatment**

International law prohibits not only torture, but also the infliction by the state of cruel, inhuman, or degrading treatment: see International Covenant on Civil and Political Rights 1966 (Int) Art 7; Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment 1984 (Int) Art 16. While the individual terms are

not defined, the prohibition is considered to protect both the dignity and the physical and mental integrity of the individual: Human Rights Committee, General Comment No. 20: Article 7 (Prohibition of Torture, or Other Cruel, Inhuman or Degrading Treatment or Punishment), 1992.

132. *In relation to the detention of asylum seekers, the prohibition has been found to be breached by the cumulative effect of prolonged detention, the refusal to provide information and procedural rights to the detainees and the difficult conditions of detention: FKAG v Australia UN Doc CCPR/C/108/D/2094/2011, (2013). The application of the death penalty, prolonged detention on death row (Soering v United Kingdom 161 Eur Ct HR (ser A) (1989)) and certain methods of execution (Ng v Canada UN Doc CCPR/C/49/D/469/1991 (1993)) may constitute cruel, inhuman, or degrading treatment. The expression is defined in the Migration Act 1958 (Cth) s 5(1) as part of that Act's provision for complementary protection from significant harm. See Human Rights Act 2004 (ACT) s 19; Charter of Human Rights and Responsibilities Act 2006 (Vic) s 22; Human Rights Act 2019 (Qld) s 17.*

133. **Concealing an offence**

In New South Wales, the offence of failing to disclose information in circumstances where the person, knowing or believing that a serious offence has been committed, suppresses information which might materially assist in prosecuting or convicting the offender for the offence: Crimes Act 1900 (NSW) s 316. The offence is a statutory replacement for the common law offence of misprision of felony. In Victoria, it is a crime to conceal an offence for a benefit: Crimes Act 1958 (Vic) s 326. See also compounding a felony; knowing; misprision of felony.

134. **Concealment**

A conscious or deliberate keeping back of facts: Clark v Esanda Ltd [1984] 3 NSWLR 1, 4–5. In contract law, a concealment of material facts by one party generally does not result in the contract being void or voidable at common law, as silence does not usually constitute misrepresentation: Jones v Acfold Investments Pty Ltd (1985) 6 FCR 512; 59 ALR 613, 622–4. However,concealment may amount to a misrepresentation where it distorts a positive representation (for example, Jennings v Zilahi-Kiss (1972) 2 SASR 493), or where the contract is uberrimae fidei (for example, Dalgety and Co Ltd v Australian Mutual Provident Society [1908] VLR 481), or where a fiduciary duty requiring disclosure exists between the contracting parties (for example, Hill v Rose

*[1990] VR 129, 143–144). See also **duty to disclose**; **fiduciary duty**; **material fact**; **misrepresentation**; **uberrimae fidei**.*

135. **Co-Conspiracy Rule**

The rule of evidence that statements by persons allegedly involved in a conspiracy, made in the absence of an accused but in furtherance of the conspiracy, are admissible against the accused in order to establish the accused's participation in the conspiracy: Ahern v R(1988) 165 CLR 87; 80 ALR 161. It must be established that the conspiracy existed and that there is reasonable evidence, independent of those statements, of the accused's participation in it before the evidence is admissible: R v Masters, Richards & Wunderlich(1992) 26 NSWLR 450; 59 A Crim R 445.

136. **Conspiracy**

An offence at common law and under statute characterised by an agreement between two or more people to carry out an unlawful act or a lawful act by unlawful means (Nirta v The Queen (1983) 51 ALR 53; 79 FLR 190), where it is intended that an offence be committed ((CTH) Criminal Code s 11.5(2)(b)), or the agreement carried out (Trudgeon v The Queen (1988) 39 A Crim R 252. Under some codes, unlike the common law, there must be proof that an act has been performed in accordance with the agreement (an overt act): (CTH) Criminal Code s 11.5(2)(c); (NT) Criminal Code s 43BJ(2)(c). It does not matter that the agreement is in fact never carried out (R v Aspinall(1876) 2 QBD 48), or that it is impossible for the offence to be committed ((CTH) Criminal Code s 11.5(3)(a); R v Mai(1992) 26 NSWLR 371; 60 A Crim R 49). The mens rea of the offence is the intention to do the act the subject of the agreement and the actus reus is the fact of the agreement: Director of Public Prosecutions v Nock[1978] AC 979; 2 All ER 654. It is not necessary that all parties to the conspiracy be identified; a person may be accused of conspiring with 'a person or persons unknown' to commit an unlawful act: Gerakiteys v R(1984) 153 CLR 317; 51 ALR 417. There cannot be a conspiracy to commit a reckless act: R v LK(2010) 241 CLR 177; 266 ALR 399; [2010] HCA 17.

137. **Cruel and unusual punishment**

Punishment that is more harsh or excessive than is permitted by the law or precedent. The term is derived from the preamble to the Bill of Rights 1688. It means the same as 'cruel and illegal': Harmelin v Michigan 501 US 957 (1991); R v Boyd (1995) 81 A Crim R 260.

138. **Contempt**

Conduct interfering with, or tending to interfere with, the administration of justice. Contempt may take many forms. It is normally divided into civil and criminal contempt. Civil contempt involves disobedience of a court order or injunction or an undertaking given to the court. Criminal contempt may involve sub judice contempt, scandalising the court, disclosing jury deliberations, reprisal against judges, parties, witnesses or jurors, or contempt in the face of the court. See also criminal contempt; stay.

139. **Contempt in the face of the court**

Intentional acts of contempt that occur in a court (Wade v Gilroy (1986) 83 FLR 14; 10 Fam LR 793) and come to the notice of the court (Lewis v Ogden (1984) 153 CLR 682; European Asian Bank AG v Wentworth (1986) 5 NSWLR 445), for example, rude or aggressive behaviour towards the judge and harassment of parties, jurors, or witnesses. All courts have an inherent jurisdiction to punish this type of conduct at common law and under legislation: for example, District Court Act 1973 (NSW) s 199; Justices Act 1886 (Qld) s 40; Magistrates' Court Act 1989 (Vic) s 133.

140. **Deception**

Misleading by deliberate misrepresentation; intentionally inducing in another a state of mind which the offender knows does not accord with fact: Corporate Affairs Commission v Papoulias (1990) 20 NSWLR 503; 2 ACSR 655. Deception includes deception (whether deliberate or reckless) by words or conduct as to fact or law, including deception as to the present intentions of any person: for example, Crimes Act 1900 (NSW) s 192B; Criminal Law Consolidation Act 1935 (SA) s 130; Crimes Act 1958 (Vic) s 81(4)(a). See also fraudulent misrepresentation;

141. **Disclosure**

An act of imparting that which is secret or not commonly known, particularly the revelation of facts that are relevant to the person to whom the declaration is made.

142. *Administrative law: 1. The principle of procedural fairness which requires that evidence placed before a decision-maker by one party must be disclosed to other parties, who must be given an opportunity to oppose it: Sullivan v Dept of Transport (1978) 20 ALR 323; 1 ALD 383; [1978] FCA 48. 2. A requirement that the documents of an agency be made available to the public or to an individual requester, by means of inspection or copies: Freedom of Information Act 1982 (Cth). See also freedom of information; procedural fairness.*

143. *Agency: An agent's provision to the principal of the information that an average commercial person would consider the principal would require for the agent to avoid a potential breach of fiduciary duty: Buttonwood Nominees Pty Ltd v Sundowner Minerals NL (1986) 10 ACLR 360. See also conflict of interest; fiduciary duty; non-disclosure.*

144. *Legal Profession Uniform Law (NSW; Vic) s 174. 4. The obligation on a prosecutor to disclose to the defence any evidence that the jury could reasonably regard as credible and that could be of importance to the accused's case: see Mallard v R (2005) 224 CLR 125; [2005] HCA 68.*

145. **Dishonest**

Discreditable; at variance with straightforward or honest dealing: R v Salvo [1980] VR 401; (1979) 5 A Crim R 1. An act is dishonest if it is done in the knowledge that it will produce adverse consequences for others: R v Bonollo [1981] VR 633; (1980) 2 A Crim R 431. In New South Wales, the term 'dishonesty' is defined by statute as 'dishonest according to the standards of ordinary people and known by the defendant to be dishonest according to the standards of ordinary people': Crimes Act 1900 (NSW) s 4B. A similar definition is contained in some other jurisdictions: for example, Corporations Act 2001 (Cth) s 9; Criminal Code (Cth) s 73.9(3); Criminal Code (ACT) s 300; Criminal Law Consolidation Act 1935 (SA) s 131. See also deception; fraud.

146. **Intra vires (Latin term for '*within power*')**

An intra vires act or decision is within the legal power or authority of a person or institution; it is something that the person or institution is legally authorised to do. The opposite of ultra vires. See also decision; decision of an administrative character; ultra vires.

147. **Jurisdictional fact doctrine**

The doctrine that a superior court may review an administrative decision if made in the absence of an essential statutory precondition upon which the decision-maker's jurisdiction depends: Corp of the City of Enfield v Development Assessment Commission (2000) 199 CLR 135; 169 ALR 400; [2000] HCA 5; Plaintiff M70/2011 v Minister for Immigration and Citizenship (2011) 244 CLR 144; 280 ALR 18; [2011] HCA 32. This may be the existence of a preliminary state of affairs or factual condition, or it may be the formation of an opinion or the existence of a certain state of mind in the decision-maker: Minister for Immigration and Citizenship v SZMDS (2010) 240 CLR 611; 266 ALR 367; [2010] HCA 16. The decision-maker must properly

construe the statutory precondition. If the precondition is the formation of an opinion or state of mind the decision may be challenged on the ground of unreasonableness. A mistake as to the existence of a jurisdictional fact is a jurisdictional error on the part of the decision-maker. See also

148. ***Locus Standi*** **(Latin term meaning 'a place to stand on')**

The right to appear in court and argue a case.

149. **Material omission**

A non-disclosure or failure to do a thing which would have had some influence or effect on the mind of the party or parties involved.

150. ***Mens Rea*** **(Latin term for 'A Guilty Mind')**

The state of mind required to constitute a particular crime; the mental element of an offence: He Kaw Teh v R (1985) 157 CLR 523; 60 ALR 449; [1985] HCA 43. There is a general presumption that a statutory offence contains mens rea: Sweet v Parsley [1970] AC 132; Cameron v Holt (1980) 142 CLR 342; 28 ALR 490. [1980] HCA 5. There may be more than one mental or fault element of an offence and it may include intention, recklessness, negligence, dishonesty, or malice. There must be a temporal connection between the mens rea and the actus reus (physical element) of the offence: Meyers v R (1997) 147 ALR 440; [1997] HCA 43; Royall v R (1991)172 CLR 378; 100 ALR 669; [1991] HCA 27. Under legislation, absolute and strict liability offences have been created where there is no mens rea or mental element as part of the offence. See also absolute liability; actus reus; fault element; physical element; strict liability.

151. **Mental Cruelty**

A course of conduct which is not physical cruelty but nevertheless causes danger to the life, limb or bodily or mental health of the victim, or gives rise to a reasonable apprehension of such danger: Paton v Paton [1964] NSWR 591.

152. **Misprision of felony**

The offence at common law of failing to report a known felony to the police within a reasonable time, when a reasonable opportunity for doing so existed: R v Wozniak (1988) 16 NSWLR 185; 40 A Crim R 290. In some jurisdictions the common law offence has been abolished: Crimes Act 1900 (NSW) s 341; Criminal Law Consolidation Act 1935 (SA) Schedule 11. In Victoria there is a provision exempting a person from misprision in relation to an offence committed by his or her spouse; Crimes Act 1958 s 337.

153. **Misrepresentation**

A statement or conduct that is false or misleading. Misrepresentations may be fraudulent, negligent, or innocent.

154. **Mistake of Fact**

1. A belief regarding a particular fact that is not correct. Mistake of fact may in some circumstances be raised as a defence to negative the Crown's case that the accused was criminally responsible for an offence if theaccused was under an honest and reasonable, but mistaken, belief in the existence of any state of things: Criminal Code (Qld) s 24; Criminal Code (WA) s 24; Ostrowski v Palmer (2004) 218 CLR 493; [2004] HCA 30. A mistaken belief as to a matter of fact is a defence to a criminal or statutory offence, but a mistaken belief as to a matter of law is not a defence to such a charge: Thomas v R (1937) 59 CLR 279, 305–306. ***2.*** *Restitution A mistaken belief in the existence of facts that causes a person to pay money to or confer a benefit on another, and may provide the basis for a claim of restitution. When money is paid under a mistake of fact, the person paying the money may recover it from the recipient in an action at common law for money had and received: Moses v Macferlan (1760) 2 Burr 1005; 97 ER 676; Australian Financial Services and Leasing Pty Ltd v Hills Industries Ltd (2014) 253 CLR 560; [2014] HCA 14. The restitutionary claim was available in any case in which money had been paid in circumstances where it was unjust for the recipient to retain it: Equuscorp Pty Ltd v Haxton (2012) 246 CLR 498; [2012] HCA 7 at [30]. See also* ***actus non facit reum, nisi mens sit rea****;* ***error of fact****;* ***ignorance****;* ***ignoranti facti excusat****;* ***mens rea****;* ***mistake****;* ***mistake of law****.*

155. **Mistake of Law**

Ignorance of or an inadvertence to the existence or operation of a legal principle or statutory provision: J & s Holdings Pty Ltd v NRMA Insurance Ltd (1982) 41 ALR 539; 61 FLR 108. See also mistake; mistake of fact. Restitution A mistaken understanding of the law as opposed to a mistake of fact; for example, a belief that an ultra vires term of a contract or statute is valid: David Securities Pty Ltd v Commonwealth Bank of Australia (1992) 175 CLR 353; 109 ALR 57; Australian Financial Services and Leasing Pty Ltd v Hills Industries Ltd (2014) 253 CLR 560. Historically, an action for money had and received did not extend to recovery of money paid under mistake of law: Bilbie v Lumley (1802) 2 East 469; 102 ER 448; Brisbane v Dacres (1813) 5 Taunt 143; 128 ER 641 However, the rule precluding recovery of a payment made under a mistake of law is no longer a bar to restitution: David Securities Pty Ltd v Commonwealth Bank of

Australia (1992) 175 CLR 353, 376; Kleinwort Benson Ltd v Lincoln City Council [1999] 2 AC 349. See also error of law; ignorance; mistake; ultra vires.

156. **Non-disclosure**

The failure to reveal, divulge, or uncover.

157. **Overt Act**

A central element of the crime of conspiracy, an overt act is conduct proving the existence of a conspiracy, the persons involved, the terms of the conspiracy, and its objects: R v Kempley (1944) 44 SR (NSW) 416; 61 WN (NSW) 169.

158. **Premeditation**

Aforethought; sufficient thought or consideration before an act to impute deliberation or intent to commit the act. In the past, premeditation or malice aforethought was thought to be an essential element of murder. However, the law of murder no longer places emphasis on premeditation: Van Den Hoek v R (1986) 161 CLR 158; 69 ALR 1; [1986] HCA 76. The absence of premeditation is a prerequisite for the success of the defence of provocation: Johnson v R (1976) 136 CLR 619, 644; 11 ALR 23; [1976] HCA 44.

159. **Persecution**

Serious punishment or penalty or some significant detriment or disadvantage: Chan v Minister for Immigration and Ethnic Affairs (1989) 169 CLR 379, 388; 87 ALR 412; [1989] HCA 62. Persecution may include measures in disregard of human dignity as well as interference with life and liberty, including denial of access to employment, the professions and education, and the imposition of restrictions traditionally guaranteed in a democratic society such as freedom of speech, assembly, worship or movement: Chan v Minister for Immigration and Ethnic Affairs.

160. **Prosecutor's duty of disclosure**

Due to the prosecutor's role to ensure a fair trial for an accused, the prosecutor must disclose to the defence all relevant evidence including material that is relevant to the credit of a prosecution witness: Grey v R (2001) 184 ALR 593; [2001] HCA 65. The duty exists throughout the whole of the criminal justice system including a review of the evidence on a petition for clemency: Mallard v R (2005) 224 CLR 125; 222 ALR 236; [2005] HCA 68. The disclosure includes any material known to the prosecution that undermines the prosecution case or assists the defence. The duty is derived from the common law but is also contained in professional rules that govern the behaviour of solicitors and barristers; for example, r 29.5 of the Legal Profession Uniform Law Australian Solicitor's Conduct Rules 2015.

161. *The duty is also expressed in Guidelines issued by the Director of Public Prosecutions: for example, Guideline 18 in the New South Wales Guidelines. The police have a duty to disclose material in its possession to the prosecutor: for example, Director of Public Prosecutions Act 1986 (NSW) s 15A and Director of Public Prosecutions Regulation 2010 (NSW) r 5. There are also the disclosure provisions effecting all the parties to a criminal trial: for example, Criminal Procedure Act 1986 (NSW) s 137. A failure to disclose may result in a conviction being quashed on appeal or a stay of the trial until the prosecution complied with its obligation: R v Lipton (2011) 82 NSWLR 123; 221 A Crim R 384. See also Director of Public Prosecutions; duty to disclose; Legal Profession Uniform Law; prosecution;*

162. **Reasonable skill and diligence**

A fair, proper and due degree of care and ability as might be expected from an ordinarily prudent person with the same knowledge and experience as the defendant engaging in the defendant's particular conduct or omission in the particular circumstances: Australian Securities Commission v Gallagher (1994) 11 WAR 105; 10 ACSR 43. A person who fails to exercise reasonable skill and diligence may incur liability under negligence law. See also reasonable person.

163. **Reasonable suspicion**

A suspicion based on facts which, when objectively seen, are sufficient to give rise to an apprehension of the suspected matter: R v Chan (1992) 28 NSWLR 421, 437; 63 A Crim R 242. Reasonable suspicion involves less than a reasonable belief but more than a possibility; some factual basis must exist for the belief: R v Rondo (2001) 126 A Crim R 562; [2001] NSWCCA 540. It does not require proof on the 'balance of probabilities'. It is an inclination of the mind towards assenting to, rather than rejecting, a proposition: George v Rockett (1990) 170 CLR 104; 93 ALR 483; [1990] HCA 26.

164. *To say that a suspicion is reasonable does not necessarily imply that it is well-founded or that the grounds for suspicion must be factually correct: Tucs v Manley (1985) 40 SASR 1; 62 ALR 460. The police power of arrest is based upon the officer holding a reasonable suspicion that an offence has been committed or that a warrant has been issued for the offender's arrest: for example, Crimes Act 1900 (ACT) s 217; Law Enforcement (Powers and Responsibilities) Act 2002 (NSW) s 99; Criminal Code (Qld) s 546; Summary Offences Act 1953 (SA) s 79. See also arrest.*

165. **Recklessness**

Heedless or careless conduct where the person can foresee some possible harmful consequence but nevertheless decides to continue with those actions with an indifference to, or disregard of, the consequences: R v Nuri [1990] VR 641; (1990) 49 A Crim R 253. Recklessness implies something less than intent but more than mere negligence. It is defined in some legislation: Criminal Code (Cth) s 5.4; Criminal Code (ACT) s 20; Criminal Code (NT) s 43AK. Recklessness can include intention or knowledge; Criminal Code (Cth) s 5.4(4); Criminal Code 2002 (ACT) s 20(4); Crimes Act 1900 (NSW) s 4A.

166. *Reckless conduct in committing an offence is liable to attract more serious penalties than conduct which unintentionally results in an offence: for example, Gene Technology Act 2001 (Qld) ss 32, 35A; Environmental Protection Act 1970 (Vic) s 59E. See also malice; mens rea; reckless driving; reckless indifference to human life.*

167. **Reckless indifference**

A state of mind in which a person is aware of the possibility that a certain circumstance exists or a certain result will possibly occur but continues to act regardless of that possibility or without considering whether that circumstance exists or that result could occur. It is a state of mind commonly associated with recklessness as to consent in sexual assault offences: Criminal Law Consolidation Act 1935 (SA) s 47; R v Tolmie (1995) 37 NSWLR 660; 84 A Crim R 293; Banditt v R (2005) 224 CLR 262; 223 ALR 633; [2005] HCA 80. It is used in some statutory offences: for example, Motor Vehicles Act 1959 (SA) s 116; Summary Offences Act 1953 (SA) s 17B. See also reckless indifference to human life; recklessness.

168. **Right to fair trial**

The right in all legal proceedings to a hearing which is fair and public (with some exceptions, such as for the protection of vulnerable witnesses), before an independent, impartial tribunal: Barton v R (1980) 147 CLR 75; 32 ALR 449; [1980] HCA 48; Jago v District Court (NSW) (1989) 168 CLR 23; 87 ALR 577; [1989] HCA 46; R v Benbrika (Ruling No 20) (2008) 18 VR 410; [2008] VSC 80. The right to a fair trial is a fundamental common law right in the Australian legal system: Dietrich v R (1992) 177 CLR 292; 109 ALR 385; [1992] HCA 57.

169. *The right is recognised in the Universal Declaration of Human Rights 1948 (Int) Art 10 and the International Covenant on Civil and Political Rights 1966 (Int) Art 14. See Human Rights Act 2004 (ACT) ss 21–25 and Charter of Human Rights and*

Responsibilities Act 2006 (Vic) ss 24–27; Human Rights Act 2019 (Qld) ss 31–35. See also due process rights; right to legal representation; Universal Declaration of Human Rights 1948.

170. **Right to Liberty**

Also known as the right to liberty and security of the person, this is the fundamental right not to be subjected to arbitrary arrest or detention nor deprived of freedom except and in accordance with procedures established by law: International Covenant on Civil and Political Rights 1966 (Int) Art 9; Universal Declaration of Human Rights 1948 (Int) Art 3. The right to personal liberty in Australia is a fundamental common law right: Foster v R (1993) 113 ALR 1, 8; 66 A Crim R 112. See Human Rights Act 2004 (ACT) s 18; Charter of Human Rights and Responsibilities Act 2006 (Vic) s 21; Human Rights Act 2019 (Qld) s 29. See also detention without trial; Universal Declaration of Human Rights 1948.

171. **Solitary Confinement**

Incarceration of a prisoner separately or in isolation from other prisoners. Solitary confinement may be prohibited by the International Covenant on Civil and Political Rights 1966 (Int) Art 7 as 'cruel, inhuman or degrading treatment or punishment', and is expressly prohibited in New South Wales: Crimes (Administration of Sentences) Regulation 2014 (NSW) reg 164.

172. **State of mind**

A person's belief, thought, perception, intention, purpose, or will. In criminal law, a person is generally only guilty of an offence where he or she possessed the relevant state of mind (*mens rea*) at the time of commission of the impugned act (*actus reus*). The states of mind are generally classified as intention, recklessness, wilful blindness and negligence: *R v Crabbe* (1985) 156 CLR 464; 58 ALR 417; [1985] HCA 22.

173. The nature of the state of mind required depends upon the definition of the particular crime in question: *R v Turnbull* (1943) 44 SR (NSW) 108; 61 WN (NSW) 70; *White v Ridley* (1978) 140 CLR 342; 21 ALR 661; [1978] HCA 38. The presumption that criminal liability depends upon proof of a certain state of mind may be displaced by statute: *Proudman v Dayman* (1941) 67 CLR 536; [1941] HCA 28; *He Kaw Teh v R* (1985) 157 CLR 523; 60 ALR 449; [1985] HCA 43. See also **absolute liability**; **actus reus**; **intention**; **mens rea**; **negligence**; **recklessness**; **strict liability**; **wilful blindness**.

174. **Statutory offence**

An offence created and defined by statute. The other type of offence is that defined by the common law.

175. **Strict Liability Offence**

An offence which does not require any proof of mens rea (guilty mind) but to which the common law defence of honest and reasonable mistake of fact applies. An example of a strict liability offence is culpable or dangerous driving: Jiminez v R (1992) 173 CLR 572; 106 ALR 162.; [1992] HCA 14.

176. The question whether an offence is one of strict liability is determined by interpretation of the provision creating the offence, although there is a general presumption in favour of mens rea in all offences: He Kaw Teh v R (1985) 157 CLR 523; 60 ALR 449.; [1985] HCA 43. Some statutes declare that an offence is one of strict liability: for example, Crimes Act 1900 (ACT) s120 (defacing premises). Some legislation requires that the statute must indicate if an offence is one of strict liability: for example, Criminal Code (Cth) s 6.1; Criminal Code (NT) s 43ACA.

177. **Tampering with Evidence**

Suppressing, concealing, destroying, altering, or falsifying evidence that is or may be required in a judicial proceeding. It is a crime to tamper with evidence with the intention of misleading a judicial tribunal in a judicial proceeding: for example, Crimes Act 1900 (NSW) s 317; Criminal Code (Qld) s 129. See also ***attempting to pervert the course of justice****;* ***perverting the course of justice****.*

178. **Torture**

The ***infliction of severe*** *physical or* ***mental suffering by****,* ***or with*** *the* ***consent or acquiescence*** *of, a* ***public official****, usually in order to obtain information: Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment 1984 (Int) Art 1(1).* ***Australia has implemented the Convention in the Criminal Code (Cth) Div 274****. Torture does not include pain or suffering arising only from lawful sanctions* ***where the sanctions are consistent with the International Covenant on Civil and Political Rights 1966 (Int): Criminal Code Act 1995 (Cth) s 274.2(4)****.*

179. *Neither exceptional circumstances* ***nor order from a superior officer or a public authority may be invoked as a justification for torture****: Criminal Code Act 1995 (Cth) s 274.4.* ***A confession influenced by torture or the threat of torture is inadmissible in Australia****: for example, Evidence Act 1995 (Cth) s 84.* (emphasis added)

180. **Treachery**

In criminal law ***an act done with the intent*** *of* ***overthrowing the Constitution****, an Australian government, or the lawful authority of the Commonwealth Government by the* ***use of force or violence****.: Criminal Code Act 1995 (Cth)* (emphasis added)

181. **Treason**

An indictable offence constituted by any of several acts, or an intention manifested by an overt act to do any such act, directed against the Crown or Commonwealth.

182. *It is treason to kill the Sovereign, his or her consort, the heir apparent, the Governor-General or the Prime Minister; or to harm, imprison, or restrain the Sovereign, Governor- General or Prime Minister. It is also treason to levy war against the Commonwealth; to assist an enemy who is at war with the Commonwealth or a country or organisation engaged in armed hostilities against the Australian Defence Force; or to instigate a person to make an armed invasion of the Commonwealth: Criminal Code Act 1995 (Cth) s 80.1. A person convicted of treason may not be entered on the electoral roll: Commonwealth Electoral Act 1918 (Cth)* s 93(8)(b), (10). See also treason felony; Sovereign. s 80.1AC. See also terrorism; treason; urging violence.

183. **Welfare**

1. social effort, in the form of payment or provision of services, either by a government of private body designed to promote the basic physical and material well-being of peoplein need. 2. A state of wellbeing; having one's needs satisfied happiness. Welfare is not restricted to material wellbeing but includes health, spiritual wellbeing, and happiness: W v W [1926] All ER Rep Ext 772; P 111; In the Marriage of Bishop (1981) 6 Fam LR 882; FLC ¶91–016. In more modern terminology, it would include meeting children's developmental needs. The family courts have jurisdiction to make orders for the welfare of a child, apart from the jurisdiction to make parenting orders (Family Law Act 1975 (Cth) s 67ZC), although the scope of that jurisdiction is limited (Minister for Immigration and Multicultural and Indigenous Affairs v B (2004) 219 CLR 365; 31 Fam LR 339; FLC ¶93–174; [2004] HCA 20). See also child; contact order; parenting order; residence order; social security; welfare principle.

The contents of this exhibit are true and correct from the sources in which they were obtained, and I make it knowing that a person making a false affidavit may be prosecuted for the offence of perjury.

Affirmed at: _____
Place

in the State of Victoria

On: _____

Before me,

_____
Name of witness

_____
Qualification/Authority

_____
Signature of witness

[name, statement of the capacity in which the authorised affidavit taker has authority to take the affidavit, and person or professional address in legible writing, typing or stamp]

_____
Name of deponent

_____
Signature of deponent

Date: _____

A person authorised under section 19(1) of the Oaths and Affirmations Act 2018 to take an affidavit.