

IN THE COUNTY COURT OF VICTORIA AT MELBOURNE
CRIMINAL JURISDICTION

Indictment No: C2114732.1A

Court Ref: CR-22-00765

THE DIRECTOR OF PUBLIC PROSECUTIONS

-v-

DAVID CRUSE

DEFENDANT'S SUBMISSIONS ON THE CONSTITUTIONAL ISSUE

Date of Document: [19/03/2025]

Filed on behalf of: David Cruse

Prepared by: [David cruse with Elijah cruse, Andre cruse, Lee cruse]

A. INTRODUCTION

1. These submissions address the constitutional and legal issues raised in response to the charges against the accused, David Cruse, under sections 111A and 111C of the *Fisheries Act 1995* (Vic). The accused submits that these provisions do not validly apply to him as an Aboriginal Australian due to the following fundamental legal principles:
 - a. **Sovereignty was never ceded** by Aboriginal people, a fact officially acknowledged by the State of Victoria.
 - b. The High Court in *Mabo v Queensland (No. 2)* [1992] HCA 23 invalidated the doctrine of *terra nullius*, which formed the basis of British sovereignty claims.
 - c. The *Racial Discrimination Act 1975* (Cth) (*RDA*) prohibits laws that unjustly discriminate against Aboriginal people in relation to their cultural practices, including traditional hunting and fishing.
 - d. The *United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP)*, endorsed by Australia, affirms Indigenous self-determination and control over traditional lands and resources.
 - e. Unlike New Zealand, which has the *Treaty of Waitangi*, Australia lacks any treaty with Indigenous peoples, rendering the legal basis for British sovereignty over Aboriginal lands unestablished.
 - f. No free, prior, and informed consent was obtained from Aboriginal people regarding the imposition of Victorian laws upon them.
 - g. Victoria's failure to provide exemptions for Aboriginal cultural fishing, unlike other Australian states, constitutes systemic discrimination.

B. THE SOVEREIGNTY ARGUMENT

2. The accused's position is grounded in the principle that Aboriginal sovereignty was never ceded. This argument is supported by:
 - a. The Victorian Supreme Court decision in *Uncle Robbie Thorpe's Case* (2024), which acknowledged that Victoria's First Peoples never ceded sovereignty.
 - b. The *Yoorrook Justice Commission* (2023) and official statements by Premier Jacinta Allan (2024) reaffirming that First Nations people never ceded sovereignty.
 - c. *Mabo No. 2*, which invalidated *terra nullius* but left the issue of sovereignty unresolved, despite

acknowledging Indigenous peoples' enduring connection to their land. d. The absence of a treaty or other lawful process legitimizing Crown authority over Aboriginal lands, making the application of Victorian laws to Aboriginal people legally questionable.

C. APPLICATION OF THE RACIAL DISCRIMINATION ACT 1975 (Cth)

3. The *RDA* prohibits laws that discriminate against Aboriginal Australians in their cultural practices. The *Fisheries Act 1995* (Vic) violates the *RDA* by:
 - a. Criminalizing traditional Aboriginal hunting and fishing practices that have existed for millennia, thus imposing a racial distinction.
 - b. Failing to provide exemptions for Aboriginal people, in contrast to other jurisdictions such as South Australia, which recognize cultural fishing rights.
 - c. Disproportionately penalizing Aboriginal fishers for engaging in their traditional practices, breaching Article 5 of the *RDA* (equal treatment under the law).
 - d. Ignoring the documented historical and cultural significance of Aboriginal fishing traditions, as outlined in *Mutton Fish: The Surviving Culture of Aboriginal People and Abalone on the South Coast of NSW* by Liddy Stewart, Sue Norman, and Beryl Cruse.
 - e. Contravening *UNDRIP* and other international human rights instruments that protect Indigenous cultural practices.

D. HIGH COURT PRECEDENT AND LEGAL CONTRADICTIONS

4. The prosecution's reliance on *Coe v Commonwealth* (1979, 1993), *R v Walker* (1994), and *Love v Commonwealth* (2020) is flawed due to the following contradictions:
 - a. *Mabo No. 2* rejected *terra nullius*, yet sovereignty was still assumed to rest with the Crown without a legal foundation.
 - b. While Indigenous land connection was acknowledged, political sovereignty was denied without justification.
 - c. Without conquest or treaty, the Crown's claimed authority over Aboriginal people remains legally tenuous.
 - d. Recognition of Māori sovereignty in New Zealand via the *Treaty of Waitangi* undermines claims that British colonies had unrestricted authority over Indigenous lands in Australia.

E. UNITED NATIONS DECLARATION ON THE RIGHTS OF INDIGENOUS PEOPLES (UNDRIP)

5. *UNDRIP*, which Australia has endorsed, supports Indigenous rights to self-determination and cultural practices. Relevant provisions include:
 - a. **Article 3** – Indigenous peoples have the right to self-determination.
 - b. **Article 8** – Indigenous peoples have the right not to be subjected to forced assimilation or cultural destruction.
 - c. **Article 26** – Indigenous peoples have rights over their traditional lands and resources.

6. The Victorian Government has failed to incorporate *UNDRIP* principles into its legal framework, despite its recognition that sovereignty was never ceded.
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F. FISHING RIGHTS AND TRADITIONAL CUSTOMS

7. The prosecution disregards legal precedents that support Aboriginal fishing rights:
 - a. *Galarrwuy Yunupingu's Case* (2024), where the Northern Territory Court recognized significant Indigenous land rights in a native title decision.
 - b. *Yanner v Eaton* (1999), which confirmed that Indigenous Australians retain traditional hunting rights despite state laws.
 - c. The recognition of cultural fishing exemptions in other Australian jurisdictions, demonstrating Victoria's discriminatory approach.
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G. CONCLUSION

8. The *Fisheries Act 1995* (Vic), as applied to the accused, is inconsistent with:
 - a. international law (*UNDRIP*),
 - b. The *Racial Discrimination Act 1975* (Cth), and
 - c. Fundamental human rights principles.
 9. Given that Aboriginal sovereignty was never ceded and the Victorian Government has acknowledged this fact, the application of the *Fisheries Act* to the accused is unlawful.
 10. The Act disproportionately targets Aboriginal people and fails to accommodate their cultural rights, making it invalid under the *RDA*.
 11. The Court should rule that the *Fisheries Act 1995* (Vic) does not apply to the accused and dismiss all charges.
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Date: [19/03/2025]

David Cruse