

COMMISSIONER OF TAXATION FOR
THE COMMONWEALTH OF
AUSTRALIA
Appellant

BETWEEN:

AND: TOMARAS
First Respondent

AND TOMARAS
Second Respondent

AND OFFICIAL TRUSTEE IN BANKRUPTCY
Third Respondent

APPELLANT'S OUTLINE OF ORAL SUBMISSIONS

Part I: Certification for publication

- 10 1. The appellant certifies that this outline of oral submission is in a form suitable for publication on the internet.

Part II: Outline of the propositions the appellant intends to advance in oral argument

2. Overview of relevant provisions from the *Family Law Act 1975* (Cth).

First ground of appeal: The presumption is engaged

3. The plurality in the Full Court erred in concluding at J[16] (CAB 37) that the presumption that “the Crown is not bound by a statute” is one which “applies only to provisions which impose an obligation or restraint on the Crown.” Justice Aldridge at J[71] (CAB 47) correctly held that the issue of benefit to or burden upon the Crown is not a threshold issue: see appellant’s written submissions (“AS”) at [16]-[22].

10. The application of s 90AE(1) and (2) to tax debts or to the Commissioner would have unintended, anomalous and unworkable consequences of a kind which weigh against any rebuttal of the presumption: see AS [58]-[60].
11. Part VIII A A, and s 90AE in particular, should be read (in light of the presumption) so as not to apply to the Commissioner or the Commonwealth or in respect of tax debts:³ see AS [50]-[51], [57]-[60].
12. Because Pt VIII A A has no application to the Commissioner or the Commonwealth or to tax-related liabilities, the taxation statutes do not relevantly provide “to the contrary” of Pt VIII A A. Thus, there is no occasion for s 90AC to operate: see AS [61].
13. The single reason identified by the Full Court for rebutting the presumption (J[55]-[56] CAB 44) should be rejected. Sections 79 and 79A confer protections and rights upon creditors, while s 90AE(1) and (2) operate so as to interfere with, and adjust, the rights of creditors and third parties. There is no reason to treat the words “creditor” and “debt” in ss 79 and 79A, on the one hand, and in s 90AE(1), on the other, as bearing a uniform meaning. “[A]n Act may, when construed in context, disclose a legislative intent that one of its provisions will bind the Crown while others do not.”⁴ Sections 79 and 79A apply to the Commissioner and the Commonwealth and to tax debts, while s 90AE does not: see AS [62]-[70] and Reply [8].

20 Dated: 10 August 2018

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³ See *Bruton Holdings Pty Ltd (in liq) v FCT* (2009) 239 CLR 346 at [18], [21] (French CJ, Gummow, Hayne, Heydon and Bell JJ).

⁴ *Bropho v Western Australia* (1990) 171 CLR 1 at 23 (Mason CJ, Deane, Dawson, Toohey, Gaudron and McHugh JJ).