

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

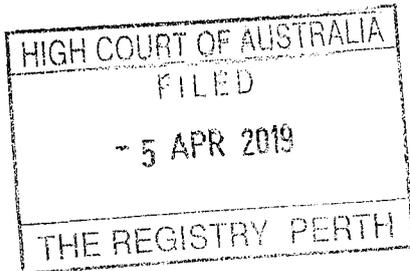
**No. B35 of 2018**

**BETWEEN:**

**GARY DOUGLAS SPENCE**  
Plaintiff

**AND**

**STATE OF QUEENSLAND**  
Defendant



20

**NOTE ON SEVERANCE ON BEHALF OF ATTORNEY GENERAL FOR  
WESTERN AUSTRALIA (INTERVENING)**

---

Date of Document: 5 April 2019

Filed on behalf of the Attorney General for Western Australia by:

State Solicitor for Western Australia  
David Malcolm Justice Centre  
28 Barrack Street  
PERTH WA 6000  
Solicitor for the Attorney General  
for Western Australia

Tel: (08) 9264 1809  
Fax: (08) 9321 1385  
Ref: Madeleine Durand  
Email: [m.durand@sg.wa.gov.au](mailto:m.durand@sg.wa.gov.au)

**Part 1: Publication**

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

**Part II: Severance**

2. Western Australia accepts the general principles regarding severance set out in paragraphs [2]-[3] of the Commonwealth's Note on Severance.
3. Paragraphs [4]-[10] of the Commonwealth's Note only apply if the Court reaches the conclusions set out in paragraph [4] of the Commonwealth's Note. That is, s.302CA is outside power or invalid (due to the *Melbourne Corporation* doctrine) in so far as it applies to Untied Donations, but not in relation to Commonwealth Donations. In this situation, WA adopts paragraphs [12]-[16] of the Defendant's Note on Severance of s.302CA.  
10
4. WA makes the following submissions in respect of the consequences of severance referred to in paragraphs [11]-[14] of the Commonwealth's Note.
5. The Commonwealth's Note implicitly assumes that the Commonwealth has exclusive legislative power in respect of gifts which are required to be used for the purposes of Commonwealth Donations, but not in respect of Untied Donations. Consequently, the Commonwealth submits that if the relevant Queensland provisions purport to operate in respect of an area which is, to any extent, outside the legislative competence of the Queensland Parliament, the Queensland provisions are wholly invalid. That is because Queensland accepted that the Queensland provisions could not be read down.  
20
6. WA maintains its submission<sup>1</sup> that the Queensland Parliament has legislative power to pass laws in respect of Commonwealth Donations to the extent that Commonwealth Donations potentially have flowback or indirect consequences for the integrity of Queensland elections. WA accepts that the flowback consequences for Commonwealth Donations may be different to the flowback consequences of Untied Donations, so the question of the legislative competence of the Queensland Parliament in respect of each category may need to be considered separately.<sup>2</sup>

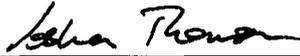
---

<sup>1</sup> Outline of Oral Argument of Argument of the Attorney General for Western Australia (Intervening) at [6], Transcript (15 March 2019) Lines 10,599-10,604, see also lines 10,749-10,803.

<sup>2</sup> Transcript (15 March 2019) Lines 10,769-10,774.

7. If WA's submission about flowback consequences is accepted with respect to Commonwealth Donations, the Queensland provisions with respect to Commonwealth Donations are within the Queensland Parliament's legislative power. However, they will not operate to the extent of any inconsistency with s.302CA (as severed) due to s.109 of the Constitution. On this alternative analysis, the Queensland provisions will still operate in respect of Untied Donations, but not in respect of Commonwealth Donations while s.302CA remains a law.
8. WA does not make any submissions in respect of paragraph [15] of the Commonwealth's Note.

10



---

J. A. Thomson SC  
Solicitor-General for Western Australia  
Telephone: (08) 9264 1806  
Facsimile: (08) 9321 1385  
Email: j.thomson@sg.wa.gov.au

---

J. M. Misso  
State Solicitor's Office  
Telephone: (08) 9264 1888  
Facsimile: (08) 9264 1440  
Email: j.misso@sso.wa.gov.au