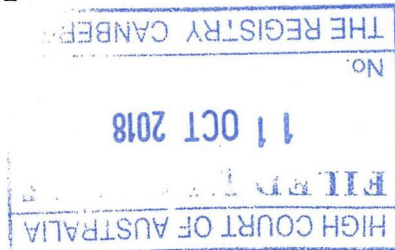


BETWEEN:



JOHN GRAHAM PRESTON
Appellant

and

ELIZABETH AVERY
First Respondent

and

SCOTT WILKIE
Second Respondent

OUTLINE OF ORAL SUBMISSIONS OF THE
ATTORNEY-GENERAL FOR THE STATE OF QUEENSLAND

PART I: Internet publication

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

PART II: Outline of propositions

2. There is no relevant difference between the Victorian law and the Tasmanian law which would justify different results in the two matters before the Court. Each impugned law is equally justified.

- QS in *Clubb* at [6]; QS in *Preston* at [4(a)]

Burden on implied freedom

3. The nature and extent of the burdens imposed by the Victorian law and the Tasmanian law are materially indistinguishable. In particular, the use of the word 'protest' in the Tasmanian law does not introduce viewpoint discrimination. The immediately following words 'in relation to' make plain that the Tasmanian law is capable of capturing protests in favour of abortion.

Outline of oral submissions
Filed on behalf of the Attorney-General for the
State of Queensland
Form 27F; Rule 44.08.2

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Dated: 11 October 2018
Per Kent Blore
Ref PL8/ATT110/3735/PXJ

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- QS [10]-[12]

Purpose

4. A purpose which is compatible in one jurisdiction will be compatible in another.

- QS [17]

5. There is no need for the mischief to which the law is directed to be established by evidence.

- 10 - Cf Appellant's oral submissions [2018] HCATrans 206, lines 1855-1860

6. Evidence of the mischief may be relevant to demonstrating the importance of the purpose. Such evidence will be equally relevant where it relates to the experience in another Australian jurisdiction. Legislatures are entitled to act prophylactically and in response to inferred legislative imperatives. Indeed, not only are legislatures entitled to so act, but they should so act on the basis of an available rationale, albeit at times a seriously politically contestable rationale.

- QS at [32]

- 20 - *Brown* (2017) 91 ALJR 1089, 1145 [288] (Nettle J) (vol 3, tab 21, 1191)

- *McCloy* (2015) 257 CLR 178, 262 [233] (vol 5, tab 35, 2221)

7. For that reason, one of the legitimate legislative imperatives in Victoria may inform a legitimate legislative imperative in Tasmania. The Victorian experience is relevant to the Tasmanian proceedings.

Burden of justifying measure

30 8. A defendant jurisdiction does not bear the burden of justifying a restriction on the implied freedom.

- *Brown* (2017) 91 ALJR 1089, 1145 [288] (Nettle J) (vol 3, tab 21, 1191)

- Cf Appellant's oral submissions [2018] HCATrans 206 (9 October 2018) lines 1785-1789

9. This is not inconsistent with statements to the effect that it is 'incumbent' upon a defendant polity to justify a restriction, or that 'it is for those supporting the impugned legislation to justify any of its measures which burden the freedom'.

- 40 - *McCloy* (2015) 257 CLR 178, 201 [24] (French CJ, Kiefel, Bell and Keane JJ) (vol 5, tab 35, 2160)

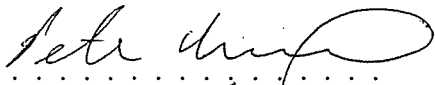
- *Brown* (2017) 91 ALJR 1089, 1116 [131] (Kiefel CJ, Bell and Keane JJ) (vol 3, tab 21, 1162)

10. Those statements are consistent with a tactical or provisional burden; that is, ‘if the defendant fails to call any or any weighty evidence, it will run a risk of losing on the issue’ though it will not necessarily lose on the issue.

- *Strong v Woolworths Ltd* (2012) 246 CLR 182, 201-202 [53] (Heydon J)

Dated: 11 October 2018.

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Peter Dunning QC
Solicitor-General



Felicity Nagorcka

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