



HIGH COURT OF AUSTRALIA

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Details of Filing

File Number: M61/2021
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Important Information

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IN THE HIGH COURT OF AUSTRALIA
MELBOURNE REGISTRY

No M61 of 2021

BETWEEN:

CHRISTOPHER VANDERSTOCK

First Plaintiff

KATHLEEN DAVIS

Second Plaintiff

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and

THE STATE OF VICTORIA

Defendant

**OUTLINE OF ORAL SUBMISSIONS OF THE ATTORNEY-GENERAL FOR THE
STATE OF TASMANIA, INTERVENING**

PART I: INTERNET PUBLICATION

1. These submissions are in a form suitable for publication on the internet.

PART II: PROPOSITIONS TO BE ADVANCED IN ORAL ARGUMENT

- 20 2. Tasmania respectfully adopts and supports the submissions of the Defendant.
3. Tasmania otherwise relies on its written submissions and seeks to address the Court only with respect to the following matters.

Is a consumption tax a duty of excise?

4. Tasmania's understanding of "consumption" is that expressed by Barwick CJ in *Dickenson's Arcade* (**JBA 4, Tab 21**) at 187.
5. It has been accepted by this Court that a tax upon consumption is not a duty of excise: *Dickenson's Arcade* at 130, at 185-186 (Barwick CJ), 209, 213 (Menzie J), 217-223 (Gibbs J), 229-231 (Stephen J), 238-239 (Mason J) (**JBA 4, Tab 21**).
6. *Dickenson's Arcade* remains good law in that regard.
- 30 7. The Commonwealth's suggestion that *Dickenson's Arcade* is irreconcilable with *Ha* (1997) 189 CLR 465 (**JBA 4, Tab 23**) and *Capital Duplicators (No 2)* (1993) 178 CLR 561 (**JBA 4, Tab 17**) ought to be rejected.

8. Those cases did not overrule the earlier acceptance of the principle that a duty of excise is a tax on a step in the production or distribution of goods “to the point of receipt by the consumer” or “to the point of consumption”. Instead the majority:
 - (a) noted the reference to the principle as a “rock” in the sea of uncertain principle: *Ha* (**JBA 4, Tab 23**) at 490;
 - (b) stated that the “rejection of the criterion of liability as an exclusive test has not disturbed the general acceptance of the proposition that a tax in respect of good at any step in the production or manufacture to the point of consumption is an excise”: *Capital Duplicators* [2] (**JBA 4, Tab 17**) at 583.

10 ***Goods as commodities***

9. A duty of excise is concerned with dealings with goods as commodities or articles of commerce rather than with the use of items in private possession or ownership. On that point, Tasmania agrees with and adopts the submissions of the Attorney-General for the Australian Capital Territory (**ACT WS** particularly at [4]-[7];[15]-[22]).
10. Thus, not all steps taken in relation to goods are capable of attracting a duty of excise (**Tas WS [18]**) but only those dealing with goods in their capacity as articles of commerce. The exclusive power to impose excises therefore avoids an intrusion into the daily activities of Australians in the use of their goods (**Tas WS [29]**).
11. The ZLEV charge is not imposed on ZLEVs as commodities.

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Dated: 16 February 2023



Sarah Kay

Emily Warner