



## HIGH COURT OF AUSTRALIA

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#### Details of Filing

File Number: M60/2024  
File Title: Stott v. The Commonwealth of Australia & Anor  
Registry: Melbourne  
Document filed: Form 27F - AG-VIC's Outline of oral argument  
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#### Important Information

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

No M60/2024

BETWEEN:

**FRANCIS STOTT**  
Plaintiff

and

**COMMONWEALTH OF AUSTRALIA**  
First Defendant

**THE STATE OF VICTORIA**  
Second Defendant

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

Nos B48-50/2024

BETWEEN:

**G GLOBAL 120E T2 PTY LTD ATF THE G GLOBAL 120E AUT**  
Appellant

and

**COMMISSIONER OF STATE REVENUE**  
Respondent

BETWEEN:

**G GLOBAL 180Q PTY LTD ATF THE G GLOBAL 180Q AUT**  
Appellant

and

**COMMISSIONER OF STATE REVENUE**  
Respondent

BETWEEN:

**G GLOBAL 180Q PTY LTD ATF THE G GLOBAL 180Q AUT**  
Appellant

and

**GLOBAL 180Q PTY LTD ATF THE G GLOBAL 180Q AUT**  
Respondent

**OUTLINE OF ORAL SUBMISSIONS OF THE STATE OF VICTORIA**

1. **First submission:** At the point in time the *Stott* proceeding falls for decision, the Commonwealth Amendment Act and the State Amendment Act operate complementarily and result in the payments made by the plaintiff in respect of the past invalid imposition of LTS on him satisfying his obligation to pay new land tax imposed by s 106A of the Land Tax Act.
  - 1.1. The Commonwealth Amendment Act, whether construed retroactively or retrospectively, “cleared the way” for the State to legislate to give new legal consequences to past acts or events: **VS [29]-[39]**.
  - 1.2. The State Amendment Act then inserted s 106A into the Land Tax Act, retrospectively imposing new land tax on the plaintiff by reference to the past purported (but invalid) imposition of LTS: **VS [40]-[45]**.
  - 1.3. Alternatively to paragraph 1.1, even in its solely prospective operation, the Commonwealth Amendment Act is valid and effective to “clear the way” for the State to legislate in the way that it has done, by the State Amendment Act, to give new legal consequences to past acts or events: **VS [35]-[38]**.
2. Acceptance of the first submission is dispositive. It is unnecessary to consider whether *Metwally* should be re-opened or overruled, or whether s 51(xxxi) of the Constitution is engaged by the Commonwealth Amendment Act.
  - 2.1. The plaintiff is liable for land tax in the same amount and circumstances regardless of how those constitutional issues are resolved: **VS [47]**.
    - (a) If cl 2 of Sch 1 of the Commonwealth Amendment Act *is invalid* by reason of s 51(xxxi), the clause could be read down (as retrospective) or severed (such that s 5(3) of the ITA Act would continue to operate prospectively). Either way, the Commonwealth Amendment Act would remain effective to “clear the way” for the State Amendment Act to validly impose new land tax on the plaintiff: **VS [35]-[39]**.
    - (b) Alternatively, if *Metwally* is overruled but cl 2 of Sch 1 *is not invalid* by reason of s 51(xxxi), the plaintiff is (and has always been) liable for the original imposition of LTS: **VS [35] n 32**.

- 2.2. Further, the legal operation and effect of the Commonwealth Amendment Act must be determined before the question of its connection with a Commonwealth head of power can be determined. The plaintiff’s submissions about s 51(xxxi) wrongly depend on the Commonwealth Amendment Act having a legal operation and effect — retroactively reviving the original imposition of LTS — that it does not have unless *Metwally* is overruled. But the plaintiff does not seek to re-open *Metwally*: **VS [46]; cf PS [28]-[31]; PRS [21]**.
3. **Second submission:** If *Metwally* is overruled, the Commonwealth Amendment Act was effective on its own to retroactively revive the original imposition of LTS: **VS [48]-[63]**.
- 3.1. The Commonwealth Amendment Act is not properly characterised as a law with respect to the acquisition of the plaintiff’s claims in restitution: **VS [52]-[55]**.
- 3.2. The plaintiff’s claims have not been “acquired” for the purposes of s 51(xxxi) because those claims, being founded upon exercises of executive and legislative power by the Commonwealth that were always susceptible to change, were inherently defeasible: **VS [56]**.
- 3.3. The plaintiff’s claims are not “property” for the purposes of s 51(xxxi). That is because they have no real prospect of success by reason of s 96(2) of the Administration Act and (with respect to claims in respect of tax paid before 20 February 2023) s 20A of the Limitations Act: **VS [57]-[63]**.

See also **CS [39]-[45]**.

4. **Third submission:** Even if the first and second submissions are rejected, the Court should decline to grant the relief sought in its discretion because of the plaintiff’s failure to invoke the available statutory procedure for challenging invalid taxes in the Administration Act: **VS [65]-[67]**.
5. In relation to the *G Global* proceedings, Victoria relies upon its written submissions.

**Dated:** 7 May 2025



**Alistair Pound SC**