



HIGH COURT OF AUSTRALIA

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Details of Filing

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Important Information

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

No B48/2024

BETWEEN:

G GLOBAL 120E T2 PTY LTD atf THE G GLOBAL 120E AUT
Appellant

and

COMMISSIONER OF STATE REVENUE
Respondent

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No B49/2024

BETWEEN:

G GLOBAL 180Q PTY LTD atf THE G GLOBAL 180Q AUT
Appellant

and

COMMISSIONER OF STATE REVENUE
Respondent

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No B50/2024

BETWEEN:

G GLOBAL 180Q PTY LTD atf THE G GLOBAL 180Q AUT
Appellant

and

COMMISSIONER OF STATE REVENUE
Respondent

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OUTLINE OF ORAL SUBMISSIONS OF THE APPELLANTS

PART I INTERNET PUBLICATION

This outline of oral submissions is in a form suitable for publication on the internet.

PART II PROPOSITIONS TO BE ADVANCED IN ORAL ARGUMENT

1 There is no material difference between the Queensland provisions imposing the Foreign Surcharge and the Victorian provisions imposing the tax challenged in *Stott*. In both cases, the provisions were inconsistent with s 5(1) of the ITA Act: Q1 of the Special Cases.

A EXTERNAL AFFAIRS (QUESTION 2)

2 It is necessary to determine whether s 5 of the ITA Act, as amended, retains its character as a law with respect to external affairs: **GG [25]; GG Rep [4]-[5]**. That analysis is to be undertaken on the assumption that the Commonwealth Amendment Act is valid.

- *Kartinyeri* (1998) 195 CLR 337 at [15]-[18], [47], [49], [70], [73], [84] (**GG V8 T61**).

3 For a law to be supported by the treaty implementation aspect of s 51(xxix), it must have as its purpose the implementation of a treaty obligation. A law that “partially” implements a treaty obligation will not satisfy that condition of validity if its purpose is, or its means are, inconsistent with that obligation: **GG [26]-[28]**.

- *Tasmanian Dams* (1983) 158 CLR 1 at 172, 233-234, 268 (**GG V6 T47**);
- *Richardson* (1988) 164 CLR 261 at 307-312 (**GG V11 T73**);
- *Gerhardy* (1985) 159 CLR 70 at 119 (**GG V8 T58**);
- *IR Act Case* (1996) 187 CLR 416 at 487-489 (**GG V13 T84**);
- *Burgess* (1936) 55 CLR 608 at 626, 645-647, 651-653, 674, 694 (**GG V10 T71**).

4 Before the Commonwealth Amendment Act, s 5 was supported by s 51(xxix) because its purpose could be identified as the implementation of, relevantly, Art 24: **GG [29]**.

4.1. If s 5(3) changed the purpose of s 5 so that the resulting law has ceased to have that purpose, then the resulting law would not be supported by the external affairs power because it would not satisfy the condition of validity.

4.2. If s 5(3) did not change the purpose of s 5, then the enactment of s 5(3) has created a disconnect between means and ends. As amended, s 5 contradicts Art 24: **GG [24], [30]-[35]; GG Rep [6]-[7]**.

5 Only the Commonwealth Amendment Act is invalid because it is that Act which has sought to bring about something that is not within the competence of the Parliament to achieve.

- *Pacific Coal* (2000) 203 CLR 346 at [75]-[80], [169]-[170], [288] (**GG V11 T74**);
- *Clyne* (1958) 100 CLR 246 at 267-268 (**GG V5 T43**);
- *Air Caledonie* (1988) 165 CLR 462 at 471-472.

B ACQUISITION OF PROPERTY (QUESTION 4)

6 **Property:** As a matter of historical fact, upon payment of the (invalid) Foreign Surcharge, the GG Entities accrued common law causes of action for restitution (based on duress or total failure of consideration): **GG [48]; GG Rep [11]**.

- *Georgiadis* (1994) 179 CLR 279 at 304-306, 312 (**GG V8 T57; S V7 T61**).

7 No provision of the Administration Act precluded the causes of action from accruing: **GG Rep [13]-[14]; S Rep [19]**.

- *Glencore* (2022) 12 QR 295 at [74], [86]-[87], [93] (**GG V14 T90**);
- *BAT* (2003) 217 CLR 30 at [29] (**GG V5 T40; S V5 T41**).

10 8 **Acquisition:** On its terms, on 8 April 2024, the Commonwealth Amendment Act operated to extinguish the causes of action: **GG Rep [10]**.

9 Neither ss 36(2) and 188(2) of the Administration Act, nor s 10A of the Limitation Act, operated to extinguish the causes of action before that date: **GG Rep [15]**.

9.1. The Commissioner contends that the provisions regulate the exercise of jurisdiction, (in other words, that they bar the remedy): **Q [41]**. If that is right, the provisions did not extinguish the vested causes of action.

- *Mewett* (1997) 191 CLR 471 at 508-509, 511-512 (**GG V6 T46; S V6 T51**).

9.2. The Commonwealth contends that the provisions operated, by their own force, to extinguish the causes of action. If that is right, they were inconsistent with s 64 of the Judiciary Act because they would place Queensland in a privileged position to that of a subject: **GG [55]-[57]**.

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10 **Construction of s 64:** The construction of s 64 is settled by authority.

10.1. One purpose of s 64 is to ensure “the equality of subject and Crown in litigation”: *BAT* (2003) 217 CLR 30 at [71].

10.2. Section 64 operates in relation to all “rights of parties” (substantive and procedural): *BAT* at [73]-[74], [169].

10.3. Those rights are to be ascertained, as nearly as possible, “by the same rules of law, substantive and procedural, statutory and otherwise” as would apply if the government party were a subject: see *Evans Deakin* (1986) 161 CLR 254 at 262-263 (**GG V5 T45**).

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10.4. Section 64 applies in connection with the recovery of an unconstitutional tax: *BAT* at [78]-[84], [168].

- 10.5. If it is possible to say that “once a suit is commenced”, the government party will be held liable because of the operation of s 64, “it follows that it can also be said that, before the suit is commenced, that the events which have happened have created a liability which will be recognised and enforced in legal proceedings”: *Evans Deakin* at 266.
- 10.6. Section 64 may make the rights of parties “be the same” by: (a) conferring a right on the non-government party (including by conferring a cause of action against the government party, as in *Evans Deakin*); or (b) denying the government party a right that was otherwise available to them (including by extinguishing a cause of action against the non-government party, as in *Maguire*): see *Evans Deakin* at 262.
- 11 On that authority, s 64 operates here (together with s 109 of the Constitution) to deny Queensland the benefit of the Queensland provisions, in circumstances where a subject would not have that benefit: **GG [55]-[56]**.
- 11.1. There has been no application to overrule any part of *Maguire*, *Evans Deakin* or *BAT*.
- 11.2. *Rizeq* did not overrule any of those authorities on the construction of s 64. Section 79 of the Judiciary Act is textually different to s 64 and serves a different purpose.
- *Huynh* (2023) 97 ALJR 298 at [42] (**GG V14 T87**).
- 12 **Validity of s 64:** That application of s 64, in a matter arising under a law of the Commonwealth (s 76(ii) of the Constitution), is supported by the head of power supporting the law under which the matter arises, together with ss 51(xxxix) and 78: **GG Rep [16]**.
- *BAT* (2003) 217 CLR 30 at [87] (**GG V5 T40; S V5 T41**);
 - *Huynh* (2023) 97 ALJR 298 at [43], [47] (**GG V14 T87**);
 - *Maguire* (1977) 139 CLR 362 at 401-402 (**GG V9 T63**).
- 13 That application of s 64 is severable from any invalid application of s 64 to the States (making it unnecessary to decide any broader question of the validity of s 64 in relation to the States): cf **C(GG) [47]-[48]; V(GG) [15]; SA [24], [28]**.
- C QUEENSLAND AMENDMENT ACT (QUESTIONS 4A AND 4B)**
- 14 The Queensland Amendment Act is materially identical to the Victorian Amendment Act, and is invalid for the same reason.
- *Native Title Act Case* (1995) 183 CLR 373 at 451 (**GG V13 T86; S V15 T100**).

Dated: 7 May 2025

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