HIGH COURT OF AUSTRALIA

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IN THE HIGH COURT OF AUSTRALIA

SYDNEY REGISTRY

BETWEEN:

AGRINOVA PTY LTD
ACN 629 285 589

Applicant

and

CHIEF COMMISSIONER OF STATE REVENUE (NSW)

First Respondent

NEW SOUTH WALES CIVIL AND ADMINISTRATIVE TRIBUNAL

Second Respondent

SUBMISSIONS OF THE ATTORNEY-GENERAL OF THE COMMONWEALTH (INTERVENING)

PART I CERTIFICATION

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

PARTS II AND III INTERVENTION

2. The Attorney-General of the **Commonwealth** intervenes in this proceeding, pursuant to s 78A of the *Judiciary Act 1903* (Cth), in support of the Applicant, to address the constitutional validity of s 90(1)(a) of the *Family Law Act 1975* (Cth) (**FLA**) in its application to instruments executed for the purposes of, or in accordance with, an order made under Pt VIII of the FLA: **SC [10]-[21]**.

PART IV ARGUMENT

A. SUMMARY OF ARGUMENT

3. The FLA establishes, among other things, a national regime to facilitate a fair, cost-effective and final dissolution of the relationship between married persons. Part VIII is central to that regime. Within Pt VIII, s 79 empowers a court to make orders to alter the property interests of the parties to a marriage, where satisfied that it is just and equitable

to do so. Section 90(1)(a) operates to exclude the operation of State and Territory taxing laws when those laws would otherwise apply to a transfer or deed that is executed to give effect to a validly made order under Pt VIII.

4. Section 90(1)(a)'s principal purpose is to protect the integrity and practical efficacy of court orders made under that regime. It seeks to achieve this by: (i) preserving the nature, quantum and intended balance of the financial settlements effected by an order made in s 79 proceedings, and (ii) facilitating the separating parties' compliance with the court order, by not subjecting them to the imposition of potentially onerous financial burdens as a condition of achieving that compliance. A related purpose of the provision is to encourage the separating parties to settle property disputes at an early stage, by bringing certainty to how property transfers will be treated under State and Territory taxation laws that would ordinarily apply.

5. So understood, s 90(1)(a) is a law with respect to marriage (s 51(xxi)) and/or divorce and matrimonial causes (s 51(xxii)). That conclusion also follows from the following state of affairs: (i) any court order to which s 90(1)(a) attaches will necessarily be made under Pt VIII of the FLA, and (ii) no argument is advanced in these proceedings that Pt VIII orders fall outside Commonwealth legislative power. The Appeal Panel of the New South Wales Civil and Administrative Tribunal (**NCAT**) erred in reaching a determination on the basis that s 90(1)(a) of the FLA was invalid.

6. To approve the above analysis, this Court would need to re-open and overrule ***Gazzo***.[1] The factors summarised in ***John***[2] favour re-opening. The reasoning of the majority in *Gazzo* is, in important respects, contrary to legal principle as consistently articulated in decisions of this Court. That supports formal correction. The consequences of overruling do not run against that course.

B. LEGISLATIVE FRAMEWORK

7. ***Overarching purposes of the FLA:*** The FLA replaced the *Matrimonial Causes Act 1959-1973*. By the FLA, the Commonwealth Parliament sought to introduce a "comprehensive

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1 *Gazzo v Comptroller of Stamps (Vic)* (1981) 149 CLR 227.

2 *John v Federal Commissioner of Taxation* (1989) 166 CLR 417 at 438-439.

set of provisions”[3] governing not only divorce but “as many areas of family law as is constitutionally possible”, including, for the first time, property disputes, maintenance, and custody “in a non-divorce situation”.[4] The FLA also simplified procedure and reduced costs in proceedings in family law courts.[5]

8. The FLA pursued at least the following purposes: (i) where a marriage has irretrievably broken down, the legal shell should be destroyed with maximum fairness and minimum bitterness, distress and humiliation; (ii) the financial dispute between the spouses should be resolved as quickly and finally as practicable, and (iii) the whole process should be performed with dignity, relative privacy and as little expense as possible.[6]

9. As to **(i)** and **(ii)**, Parliament expressly sought to ensure that court orders, made under the FLA in property and maintenance proceedings, would “finally determine the financial relationships between the parties to the marriage and avoid further proceedings between them” (s 81); so that each party could experience a “clean break” and “be free to start a separate, new life”.[7] The FLA’s chosen mechanism for achieving those ends in property proceedings was one of “separation of property”. That had been the system of matrimonial property law prevailing in Australia since the colonial Married Women’s Property Acts.[8] To that end, the FLA introduced Pt VIII (ss 71-90), providing for spousal maintenance and the division of the property of parties to a marriage. Section 79 provided for the court to make orders as it thinks fit in property settlement proceedings to alter the interests of the parties in that property when satisfied that it is just and equitable to do so. Section 80 conferred other general powers on the court (including the power to order that

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3 Second Reading Speech for the Family Law Bill 1974 (No 2) (Senate, Hansard) at 758.

4 Explanatory Memorandum, Family Law Bill 1974 (House of Representatives) at [2]. See also, Senate Standing Committee on Constitutional and Legal Affairs, Commonwealth Parliament, *Report on the Law and Administration of Divorce and Related Matters and the Clauses of the Family Law Bill 1974* (Parliamentary Paper No. 133 of 1974, October 1974) at [86]-[89]. Extrinsic materials for previous versions of the Family Law Bill are relevant to construing the FLA as enacted, as each successive version of the Bill took into account previous debates, inquiries, and committee reports: *Acts Interpretation Act 1901* (Cth), ss 15AA, 15AB(2)(c), (e); ***Ravbar*** *v Commonwealth* (2025) 99 ALJR 1000 at [45].

5 Explanatory Memorandum, Family Law Bill 1974 (House of Representatives) at [2].

6 Joint Select Committee on the Family Law Act, *Family Law in Australia: A report of the Joint Select Committee on the Family Law Act* (Report Volume 1, Parliamentary Paper No. 150 of 1980, July 1980) (**1980 JSC Report**) at [1.13] (emphasis added), referring to the evidence taken by the Senate Standing Committee on Constitutional and Legal Affairs on 11 September 1974. See generally, Second Reading Speech for the Family Law Bill, 13 December 1973 (Senate, Hansard) 2832.

7 Second Reading Speech for the Family Law Bill 1974 (No 2) (Senate, Hansard) at 759.

8 1980 JSC Report at [5.84].

"any necessary deed or instrument be executed … as are necessary to enable an order to be carried out effectively": s 80(d)). Accompanying those powers was a series of provisions directed on their face to facilitating the enforcement and efficacy of the court's orders, including: s 84 (execution of instruments by order of court); s 85 (transactions to defeat claims); and s 88 (enforcement of maintenance agreements).

10. The final section in this suite was (and remains) s 90 (instruments not liable to duty). As enacted, s 90 provided: "[a] maintenance agreement, or a deed or other instrument executed by a person for the purposes of such an agreement or for the purposes of, or in accordance with an order under, this Part, is not subject to any duty or charge under any law of a State or Territory". Section 29 of the *Family Law Amendment Act 1976* (Cth) extended the exemption in s 90 to encompass "any law of the Commonwealth that applies only to or in relation to a Territory". That version of s 90 (**1976 version**) was challenged in *Gazzo*.

11. As to **(iii)**, one purpose for introducing the FLA was to "eliminate so far as possible the high costs, the delays and indignities experienced by so many parties to divorce proceedings under the existing Matrimonial Causes Act".[9] As enacted, this was reflected in s 117 (now s 114UB), regulating costs applicable in FLA proceedings. It found further expression in s 90. In the second reading speech introducing the first iteration of what would become the FLA, Senator Murphy observed that the clause that became s 90 was included to "remove a quite unreasonable impost [State stamp duty] that has existed in a number of States, notably New South Wales".[10]

12. As developed below, these overarching purposes persist in the structure and text of Pt VIII, in the subsequently introduced Pt VIIIAA, and in the present form of s 90(1)(a).

13. ***Property alteration orders – emergence of difficulties and 2003 amendments:*** In the years following the FLA's enactment, it became apparent that the court's powers to alter the interests of parties to a marriage in property settlement proceedings may not be sufficiently broad to deal fully and finally with the division of assets between divorcing persons, depending on the nature of those assets and the form in which they were held.

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[9] Second Reading Speech for the Family Law Bill 1974 (No 2) (Senate, Hansard) at 758.

[10] Commonwealth, *Parliamentary Debates*, Senate, 13 December 1973, 2831 (Mr Lionel Murphy, Attorney-General).

In the 1980 JSC Report, the Committee noted the concerns raised in various submissions that "problems can arise in property proceedings under the [FLA] where the property in which one of the parties claims an interest is subject to a family trust or company arrangement".[11] It identified that, where a family trust or company is established for a reason unconnected with the breakdown of the marriage (such as reduction of tax liability), the court may not have power to make orders dividing the assets held by that trust or company.[12]

14. Subsequently, in ***Ascot***,[13] this Court considered whether the Family Court had the power to make orders (under s 80 of the FLA) requiring a company to register a transfer of the husband's substantial, but not controlling, shareholding in a private company, despite the power in the memorandum of association for the directors to refuse to register a transfer. A majority held that s 80 did not, as a matter of construction, confer a general power for the Family Court to direct that a company register a transfer of shares.[14] That reasoning cast doubt on the extent to which Pt VIII authorised a court to make orders binding third parties.[15] Two decades later, Parliament enacted Pt VIIIAA of the FLA,[16] the stated object of which was to allow a court, in relation to the property of a party to a marriage, to make an order under (relevantly) s 79 in property settlement proceedings that is "directed to, or alters the rights, liabilities or property interests of a third party": s 90AA.[17]

15. ***Overview of key provisions:*** Against that backdrop, certain aspects of the present legislative scheme merit attention (noting, where relevant, aspects of the 2019 regime.)

16. <u>Jurisdiction of courts</u>: The touchstone of jurisdiction under the FLA is a "matrimonial cause" as defined in s 4(1).[18] That includes "proceedings between the parties to a marriage with respect to the property of the parties to the marriage or either of them, being proceedings: (i) arising out of the marital relationship; [or] (ii) in relation to concurrent,

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[11] 1980 JSC Report at [5.117].

[12] 1980 JSC Report at [5.118]-[5.121].

[13] *Ascot Investments Pty Ltd v Harper* (1981) 148 CLR 337.

[14] (1981) 148 CLR 337 at 343-344, 354, 356, 358.

[15] *Kennon v Spry* (2008) 238 CLR 366 at [68]-[69].

[16] By the *Family Law Amendment Act 2003* (Cth).

[17] *Federal Commissioner of Taxation v **Tomaras*** (2018) 265 CLR 434 at [65], [76], [113].

[18] FLA, s 39.

pending or completed divorce proceedings between those parties…”.[19] The jurisdiction conferred on those courts is to be exercised in accordance with the FLA and applicable court rules.[20]

17. Part VIII: Pt VIII continues to provide for spousal maintenance and the division of the property of parties to a marriage. Proceedings with respect to the property of the parties to a marriage, or either of them, are defined as “property settlement proceedings”.[21] “Property” is relevantly defined in s 4(1) as property to which one party to a marriage is, or both parties to a marriage are, entitled, whether in possession or reversion.

18. In property settlement proceedings, s 79 authorises a court to make orders altering the interests of the parties to the marriage in property.[22] In assessing whether to make orders under s 79, the court: (i) must not make such an order unless satisfied that it is just and equitable to do so in all the circumstances (s 79(2)); (ii) must identify the parties’ existing legal rights, and (iii) must take into account a range of considerations relevant to the parties’ marriage and financial contributions thereto (in 2019, s 79(4), and now ss 79(3)(b), (4), (5)). By s 80, in exercising its powers under Pt VIII, the court may make a range of orders, including those in s 80(d) (unchanged from the FLA as made: see [9] above).[23]

19. Still within Pt VIII, s 90 has stood in its current form since 1983, when it was repealed and substituted in response to this Court’s decision in *Gazzo*.[24] The revised version of s 90 splits into separate sub-paragraphs the instruments on which the provision operates: ss 90(1)(a)-(c). Section 90(1)(a) applies to “a deed or other instrument executed by a person for the purposes of, or in accordance with, an order made under this Part”.[25]

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[19] FLA, s 4(1) definition (ca) of “matrimonial cause”.

[20] FLA, s 42(1)

[21] FLA, s 4(1). Proceedings with respect to maintenance of a party to a marriage are referred to as “spousal maintenance proceedings” (s 4(1) and 74).

[22] FLA, s 79(1). See *Tomaras* (2018) 265 CLR 434 at [3], [19], [67], [77]; *Stanford v Stanford* (2012) 247 CLR 108 at [1].

[23] Section 79AA (introduced through the *Family Law Amendment Act 2024* (Cth)) is not addressed here because it commenced after the Appeal Panel’s decision.

[24] *Family Law Amendment Act 1983* (Cth).

[25] The underlining identifies the additional drafting in s 90(1)(a) that was not reflected in the 1976 version of s 90 considered by this Court in *Gazzo*.

20. Pt VIIIAA: Within Pt VIIIAA, s 90AE is expressly parasitic upon s 79: ss 90AE(1), (2). It expands the range of powers the court can exercise in Pt VIII proceedings, to include (relevantly) orders directed to, or altering, the rights, liabilities, or property interests of third parties.[26] The provision "is intended to cover a range of possible interests that a party to the marriage may have, including ownership of life insurance products that offer benefits similar to superannuation".[27]

21. Importantly, however, ss 90AE(1) and (2) confine the types of orders that may be made in relation to third parties in s 79 proceedings,[28] and s 90AE(3) establishes strict preconditions for such orders.[29] Among other things, the making of the order must be "reasonably necessary, or reasonably appropriate and adapted, to give effect to a division of property between the parties to the marriage" (s 90AE(3)(a)); and the court must be satisfied that, "in all the circumstances, it is just and equitable to make the order": s 90AE(3)(d). When validly invoked, Pt VIIIAA has effect despite anything in any other law (written or unwritten) of the Commonwealth, State or Territory or anything in a trust deed or other instrument.[30]

22. Pt VIIIA: Pt VIIIA facilitates the making of "financial agreements" before or during a marriage, or after a divorce order is made. Such an agreement may deal with, relevantly, "how, in the event of the breakdown of the marriage, all or any of the property or financial resources" of either party are to be dealt with: s 90B(2)(a). Within that Part, s 90L mirrors s 90,[31] by providing that neither a financial agreement, nor a termination agreement, nor a deed or other instrument executed for the purposes of, or in accordance with, an order or financial agreement made under Pt VIIIA, is subject to a duty or charge.

23. Pt VIIIAB: Pt VIIIAB, dealing with financial matters relating to de facto relationships, was introduced in 2008 and is supported by referrals of powers from States under

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26 FLA, s 90AA. See *Tomaras* (2018) 265 CLR 434 at [67]-[68]; *B Pty Ltd v K* (2008) 219 FLR 107 at [3], [20]-[28], [38]-[40].

27 Revised Explanatory Memorandum, Family Law Amendment Bill 2003 (Cth) at [147].

28 *Tomaras* (2018) 265 CLR 434 at [69], [71]-[72].

29 *Tomaras* (2018) 265 CLR 434 at [127].

30 FLA, s 90AC(1). The only exception is in s 90ACA in respect of superannuation annuities within the meaning of the *Income Tax Assessment Act 1997* (Cth).

31 See the Further Revised Explanatory Memorandum, Family Law Amendment Bill 2000 (Cth) at [164].

s 51(xxxvii).[32] By design, various sections mirror equivalent provisions in Pt VIII.[33] Section 90WA materially reflects s 90(1),[34] and s 90WA(1)(a) reflects s 90(1)(a).

C. PROCEDURAL CONTEXT AND THIS COURT'S HOLDING IN *GAZZO*

24. The basis upon which NCAT confirmed the Commissioner's assessments was this Court's holding, in *Gazzo,* that the 1976 version of s 90 of the Act was invalid*:* **SCB 205 [3], [6], 218 [65], 270-271 [207]-[209]**. NCAT at first instance considered it was bound to mould its reasoning to that holding: **SCB 218 [65]**. The Appeal Panel dismissed the appeal on the same basis: **SCB 270-271 [207]-[209]**. Question 1 in this Court asks whether the Appeal Panel's approach was correct.

25. *Gazzo* concerned an order made by the Supreme Court of Victoria under Pt VIII of the FLA that the husband transfer his right, title and interest in a property to the wife (as trustee of the children of the marriage as tenants in common in equal shares). The Comptroller of Stamps of Victoria, acting under the *Stamps Act 1958* (Vic), assessed the transfer as subject to stamp duty. The wife objected to the assessment on the ground that the transfer was exempt from duty pursuant to s 90 of the FLA. That objection was treated as an appeal and set down for hearing in the Supreme Court of Victoria. The cause was removed into this Court and the following question referred: Is s 90 of the FLA a valid law of the Commonwealth?[35]

26. In separate reasons, Gibbs CJ, Stephen and Aickin JJ (Mason and Murphy JJ dissenting) held that, in its application to the State, stamp duty imposed on transfers of land executed by a person in accordance with orders under Pt VIII, s 90 was not a valid law.[36]

27. The reasons of the three majority justices overlap in important respects, although their Honours applied different formulations of constitutional principles and relied on different authorities to reach the ultimate conclusion.

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[32] *Family Law Amendment (De Facto Financial Matters and Other Measures) Act 2008* (Cth).

[33] FLA, s 90TA. See ss 90SM (substantially similar to s 79), 90SS (substantially similar to s 80), 90ST (identical to s 81).

[34] Explanatory Memorandum, Family Law Amendment (De Facto Financial Matters and Other Measures) Bill 2008 (Cth) at [183]-[187].

[35] *Gazzo* (1981) 149 CLR 227 at 230-231, 261-262.

[36] *Gazzo* (1981) 149 CLR 227 at 240, 245, 280.

28. ***Characterisation of s 90:*** Gibbs CJ characterised the object of s 90 as destroying a liability that would otherwise be owed by a person to a State, as the covered State laws did not take, as the "criterion of liability", anything related to marriage or the matrimonial cause.[37] Stephen J reasoned that the "concern" of s 90 was to exclude the operation of certain *State* laws which are "of their nature wholly remote from" ss 51(xxi) and 51 (xxiii).[38] The law had nothing to do with "marriage or with divorce and matrimonial causes as the criterion of tax liability".[39] It might be "very different" if s 90 were directed to discriminatory State taxing laws that imposed a special impost on some aspect of marriage or divorce or matrimonial causes (like a tax on marriage certificates).[40] Aickin J characterised s 90 as neither creating, nor defining, nor declaring rights and duties "in the relevant sense at all". Rather, it destroyed the rights of a third party (Victoria) by "purport[ing] to destroy an obligation placed by State law on persons seeking to register transfers of land executed by them pursuant to" a Family Court order.[41]

29. ***The nature of the connection required to enliven ss 51(xxi) and 51 (xxii):*** Gibbs CJ framed the "crucial question", for the purposes of determining whether a law was one with respect to s 51(xxi), as "whether the legislation creates, defines or declares rights or duties that arise out of, or have a *close connexion* with the marriage relationship. If not, the law cannot be said to be one with respect to marriage".[42] Aickin J expressly adopted this formulation of the test, applying it to both s 51(xxi) and s 51(xxii).[43]

30. Applying the "close" connection test, Gibbs CJ accepted that legislation under s 51(xxi) could enforce rights and duties against other persons; but found that s 90 had only a "remote" connection to the marriage and matrimonial causes powers, "since the object of the section is to destroy a liability that would otherwise be owed by a person … to a State, under a law which does not take as the criterion of the liability anything related to the

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37 *Gazzo* (1981) 149 CLR 227 at 235.

38 *Gazzo* (1981) 149 CLR 227 at 241.

39 *Gazzo* (1981) 149 CLR 227 at 244.

40 *Gazzo* (1981) 149 CLR 227 at 242.

41 *Gazzo* (1981) 149 CLR 227 at 267.

42 *Gazzo* at 234 (emphasis added), quoting *R v Lambert* (1980) 146 CLR 447 at 456-457. In dissent, Mason J said the word "close" is too limiting, suggesting too strict a nexus (at 248). See also Murphy J at 255.

43 *Gazzo* (1981) 149 CLR 227 at 265.

marriage or the matrimonial cause".[44] His Honour reasoned that the provision could only be sustained by the implied incidental operation of either s 51(xxi) or s 51 (xxii). It was not supportable on that basis, because the law could not "be said to be necessary to render a court order effective or to be reasonably incidental to the power".[45] However, the position "might well be different" if the State law constituted a practical barrier to execute the instruments in accordance with the order.[46]

31. Aickin J observed that the "rights and duties" relevant to s 51(xxi) and s 51 (xxii) were "primarily" as between the parties to a marriage, including rights and duties in respect of the children of a marriage".[47] Section 90 had neither a "close nor a sufficient connexion" to either s 51(xxi) or s 51 (xxii).[48] His Honour rejected the contention that relieving the parties from the costs of transferring property pursuant to a Family Court order had a "close" connection to divorce, stating that the law did not facilitate transfers "except in the sense that they would be cheaper if no stamp duty were payable".[49] The pursuit of that outcome was not incidental to the execution of the legislative power, in contrast with laws providing for enforcement of such orders.[50]

32. By contrast, Stephen J applied a test of "reasonable" connection (at least in assessing the incidental area of the powers).[51] Unlike Gibbs CJ and Aickin J, his Honour appears to have been concerned with the characterisation of s 90 as a whole (and not in its application to transfers pursuant to orders made under Pt VIII); hence the observation that State laws imposing duties or charges on instruments have only a "slender" nexus with marriage and divorce and are "wholly remote" from ss 51(xxi) and 51(xxii).[52]

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44 *Gazzo* (1981) 149 CLR 227 at 235.

45 *Gazzo* (1981) 149 CLR 227 at 239. That reasoning is difficult to reconcile with his Honour's reasoning, at 236, that the Commonwealth Parliament may, as incidental to the subject matter of s 51(xxi) and (xxii) "provide against any impairment of the operation and practical" efficacy of orders made by the court in an exercise of federal jurisdiction.

46 *Gazzo* (1981) 149 CLR 227 at 239.

47 *Gazzo* (1981) 149 CLR 227 at 265.

48 *Gazzo* (1981) 149 CLR 227 at 267, 268.

49 *Gazzo* (1981) 149 CLR 227 at 269.

50 *Gazzo* (1981) 149 CLR 227 at 269, 270.

51 *Gazzo* (1981) 149 CLR 227 at 244.

52 *Gazzo* (1981) 149 CLR 227 at 241.

33. ***Concern about s 90's intrusion into State powers:*** Each of the majority judges expressed concern about the effect of s 90 on State laws of general application. Gibbs CJ observed that, at least in the incidental area of the subject matter of the power, "it is not always irrelevant that the effect of the law is to invade State power".[53] Stephen J observed that a law operating to reach into "the exercise of the constitutional powers of the States" required "careful scrutiny",[54] which s 90 did not survive: it was an example of the Commonwealth legislating on a subject matter that was "prima facie" within the province of the States.[55] Aickin J stated that the operation of State laws with respect to the nature, incident, and mode of transfer of property (and most State taxes) appeared to "stand outside the range of legislation" which may be enacted pursuant to ss 51(xxi) or 51 (xxii).[56] The application of those laws to married persons, divorced persons, and transfers of property between them, was insufficient to ground a law with respect to marriage or divorce.[57]

34. The majority judgments disclose four affinities. First, all justices identified s 90's purpose as being to immunise relevant transactions from State duties.[58] Second, two justices (Gibbs CJ and Aickin J) reasoned that s 90 could only be sufficiently connected with marriage, divorce, or matrimonial causes if the law had a "close connection" with those subjects.[59] Third, all justices considered that the only plausible basis on which s 90 might be valid, was through the incidental area of the powers and, in that regard, considered the operation of the <u>State law</u> as relevant to determining the degree of connection between ss 51(xxi) and 51 (xxii) and s 90.[60] Fourth, all justices relied heavily on the effect of the immunisation being to "invade State power".[61]

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53 *Gazzo* (1981) 149 CLR 227 at 240, referring to Dixon CJ's observations in *Victoria v Commonwealth* (1957) 99 CLR 575 at 614 (***Second Uniform Tax Case***) (among other decisions). Despite this reliance, s 90(1)(a), properly characterised, is not analogous to the examples there addressed by Dixon CJ.

54 *Gazzo* (1981) 149 CLR 227 at 244.

55 *Gazzo* (1981) 149 CLR 227 at 244. See also at 242.

56 *Gazzo* (1981) 149 CLR 227 at 272.

57 *Gazzo* (1981) 149 CLR 227 at 272.

58 *Gazzo* (1981) 149 CLR 227 at 239, 241, 269, 270.

59 *Gazzo* (1981) 149 CLR 227 at 234, 265.

60 *Gazzo* (1981) 149 CLR 227 at 237, 241-242, 269, 272.

61 *Gazzo* (1981) 149 CLR 227 at 240. See also at 244, 272.

D. *GAZZO* SHOULD BE RE-OPENED AND OVERRULED

35. The Commonwealth contends that *Gazzo* was wrongly decided, and s 90(1)(a), in its application to instruments executed for the purposes of, or in accordance with, an order made under s 79 of the FLA, is supported by s 51(xxi) and/or s 51 (xxii). The Commonwealth seeks leave to re-open *Gazzo* and emphasises the following factors.[62]

36. ***The constitutional analysis in* Gazzo *is erroneous and discordant with later decisions:*** *Gazzo* imposes manifestly wrong limits on the scope of ss 51(xxi) and 51 (xxii), and ought be corrected to clarify a question of constitutional importance.[63] Subsequent authority is inconsistent with key aspects of the Court's approach to these specific heads of power and constitutional characterisation generally; approaching (but not quite reaching) the point at which it might be submitted that *Gazzo* has impliedly been overruled.[64]

37. First, the reasoning of two members of the majority is inconsistent with now settled principles governing whether Commonwealth laws can be characterised as falling within a head of power, following cases such as *Grain Pool, Bayside* and *Spence*.[65] Gibbs CJ and Aickin J expressly endorsed a test of "close" connection between an impugned law and s 51(xxi) or s 51 (xxii). But whether a law is "with respect to" a head of power involves examining the legal and practical operation of the law properly construed and then assessing whether there is a "<u>sufficient</u> connection"[66] (one that is not "insubstantial, tenuous or distant") between what the law does and the subject matter of a head of power.[67] In that analysis, the constitutional description of the particular head of power must "be construed with all the generality which the words used admit".[68] A law may

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[62] *John* (1989) 166 CLR 417 at 438-49; ***Wurridjal*** *v Commonwealth* (2009) 237 CLR 309 at [65]-[71]; ***G Global*** *120E T2 Pty Ltd v Commissioner of State Revenue* (2025) 99 ALJR 1465 at [76].

[63] ***Vanderstock*** *v Victoria* (2023) 279 CLR 333 at [128]-[129]; *G Global* (2025) 99 ALJR 333 at [89].

[64] See *Barley Marketing Board (NSW) v Norman* (1990) 171 CLR 182 at 200-201; *Shaw v Minister for Immigration and Multicultural Affairs* (2003) 218 CLR 28 at [38]-[39]; *Vanderstock* (2023) 279 CLR 333 at [10], [133], [934]-[940].

[65] ***Grain Pool*** *(WA) v Commonwealth* (2000) 202 CLR 479; ***Bayside*** *City Council v Telstra Corporation Ltd* (2004) 216 CLR 595; ***Spence*** *v Queensland* (2019) 268 CLR 355. See also, *Ravbar* (2025) 99 ALJR 1000.

[66] *Grain Pool* (2000) 202 CLR 479 at [16] (emphasis added).

[67] *Spence* (2019) 268 CLR 355 at [57]; *Plaintiff S156/2013 v Minister for Immigration* (2014) 254 CLR 28 at [22], [26].

[68] *Spence* (2019) 268 CLR 355 at [57], quoting *R v Public Vehicles Licensing Appeal Tribunal (Tas); Ex parte Australian National Airways Pty Ltd* (1964) 113 CLR 207 at 225. See also: *Grain Pool* (2000) 202 CLR 479 at [16].

bear more than one character – eg, it may enter into domains traditionally regulated by the States – but that does "not make it possible to ignore the character … of constitutional relevance".[69] And, in the setting of ss 51(xxi) and s 51(xxii), at least one subsequent decision by a majority of Justices has applied the more liberal "sufficient connection" threshold in the characterisation exercise.[70]

38. Second, the majority in *Gazzo* adopted an impermissibly narrow approach to the ambit of s 51(xxi) and s 51(xxii) in a way that affected their Honours' characterisation of the "incidental" area of the powers. As this Court explained in *Commonwealth v ACT,* the object of the powers in ss 51(xxi) and 51 (xxii) was "to enable the federal Parliament to provide uniform laws governing marriage and divorce",[71] such that the status of marriage and its dissolution would be subject to a single national system and the patchwork of State and Territory laws would be swept aside along with the need to resort to rules of private international law.[72]

39. This Court there recognised that s 51(xxi) confers power with respect to a juristic status, reflective of a social institution, to which legal consequences attach.[73] It explained that such legal consequences will "commonly include rights and obligations about maintenance and support, <u>succession to and ownership of property (both as between the parties to the marriage and between the parties and others)</u> and, if there are children of the union, rights and obligations in relation to them".[74] That statement alone demonstrates that the mutual rights and obligations of married parties <u>as between themselves</u> do not mark the "outer limits" of the subject matter of the power.[75] As a matter of principle, a law may be with respect to s 51(xxi) because it operates to adjust

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69 *Bayside* (2004) 216 CLR 595 at [26]-[27]. See also *Grain Pool* (2000) 202 CLR 479 at [16]; *Ravbar* (2025) 99 ALJR 1000 at [90], [206].

70 *P v P* (1994) 181 CLR 583 at 600 (albeit footnoting *Gazzo*), 631. See also *Fisher v Fisher* (1986) 161 CLR 438 at 452-453. Cf *Gazzo* (1981) 149 CLR 227 at 247, 255, 261.

71 (2013) 250 CLR 441 at [7].

72 See Barwick, 'The Commonwealth Marriage Act 1961' (1962) 3 *Melbourne University Law Review* 227; 1980 JSC Report, Chs 1 and 2; Convention Debates, Sydney 1891 (28, 84) (Sir Henry Parkes); Convention Debates, Sydney, second session, 1897, at 1077-1082; Quick and Garran, *The Annotated Constitution of the Australian Commonwealth* (2014) at 608.

73 (2013) 250 CLR 441 at [7], [15]; *Attorney-General (Vic) v Commonwealth* (1962) 107 CLR 529 at 543, 576.

74 (2013) 250 CLR 441 at [34] (emphasis added).

75 *Gazzo* (1981) 149 CLR 227 at 247.

the rights of one party to the marriage vis-à-vis a third party (including a State), if to do so is incidental to dealing with the mutual rights and obligations of the married parties.[76]

40. Further, the Court emphasised that neither the legal status of marriage, nor the rights and obligations attaching to it, are "immutable".[77] The criteria giving rise to the status have changed over time. What was once a voluntary union binding for life, is now a union that can be voluntarily dissolved.[78] So too may the rights and obligations attaching to a marriage, or to its dissolution, ebb and flow to fit social changes or reflect new social norms; a proposition consistent with the Court's acknowledgment that the power to make laws as to any class of rights involves a power to alter, limit, and extend those rights.[79] One manifestation of this is the shift over time in the nature and form of proprietary interests that may be relevant to the "fair and proper treatment of … asset[s] in the adjustment of property rights between divorcing spouses" – for example, the increased "significance of superannuation as a family asset",[80] and the use of family trusts and corporate structures to hold property (see [13] above). Marriage has ineluctable "economic aspects",[81] and "[o]ver the years, legal treatment of the economic incidents of marriage" – and of the unwinding of that partnership – "has involved the regulation, in varying combinations, of the capacity to accumulate, own and manage property with the obligation of the spouse in the preferred economic position to maintain or support the other".[82] Neither the way in which married parties may accumulate, own and manage property, nor the manner in which laws under s 51(xxi) and s 51 (xxii) may fairly adjust separating or divorcing parties' economic positions, ossified in 1901 or 1975.

41. Viewed in this light, the *Gazzo* majority's reasoning that s 90 was too remote from the marriage and matrimonial causes powers merely because it interfered with obligations owed to a third party (a State)[83] can no longer be supported.

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76 *Gazzo* (1981) 149 CLR 227 at 247.

77 *Commonwealth v ACT* (2013) 250 CLR 441 at [17], [19].

78 *Commonwealth v ACT* (2013) 250 CLR 441 at [17].

79 *Commonwealth v ACT* (2013) 250 CLR 441 at [21], citing *Grain Pool* (2000) 202 CLR 479 at [20].

80 1980 JSC Report at [5.108].

81 1980 JSC Report at [5.150].

82 Shone, 'Principles of Matrimonial Property Sharing: Alberta's New Act' (1979) 17(2) *Alberta Law Review* 143 (cited in the 1980 JSC Report at 111 fn 64) at 144.

83 *Gazzo* (1981) 149 CLR 227 at 234-235, 244 and 265-267.

42. Third, contrary to the reasoning in *Bayside*, each of the majority justices in *Gazzo* assumed that the mere fact that the impugned law destroyed liabilities attaching under generally applicable State laws meant that it could not be a law with respect to the marriage or matrimonial causes powers.[84] In *Bayside*, the Court accepted that s 51(v) of the Constitution supported laws conferring immunities upon telecommunication carriers from discriminatory burdens imposed upon them by State or Territory laws in their capacity as carriers. The power supported the Commonwealth's regulation of telecommunications-related activities undertaken by carriers, <u>including</u> the provision for immunities in connection with those activities – which was said to have a "direct and substantial connection" with the power.[85] Such laws recognise the reality that to tax an activity is to impose a meaningful burden on it.[86] Given the principle of dual characterisation, it was irrelevant that such a law may also be a law with respect to discrimination.[87]

43. Fourth, the majority's methodology for identifying the object of s 90 is discordant with subsequent authorities. Both Gibbs CJ[88] and Stephen J[89] relied upon "criterion of liability" reasoning to analyse whether the <u>State</u> laws to which the impugned Commonwealth law was directed had a relationship with the subjects of marriage, matrimonial causes or divorce. The relevance of this analysis to their Honours' characterisation of the <u>Commonwealth</u> law may itself be doubted, suggesting error at the stage of methodology. But, in any event, in the context of s 90 of the Constitution, this Court has explained that the "criterion of liability" approach cannot be an exclusive determinant of a law's constitutionality as the approach gives rise to uncertainty.[90] By the same logic, their Honours' failure to look beyond the State Act's "criterion of tax liability" renders their ensuing characterisation of s 90 of the FLA inevitably flawed. Further, each of the majority justices appeared to conflate the <u>object</u> of s 90 for

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84 *Gazzo* (1981) 149 CLR 227 at 235, 244, 271-272.

85 (2004) 216 CLR 595 at [27].

86 *Vanderstock* (2023) 279 CLR 333 at [925].

87 *Bayside* (2004) 216 CLR 595 at [27]-[28]. See also, *Re F; Ex parte F* (1986) 161 CLR 376 at 388; *Actors and Announcers Equity Association v Fontana Films Pty Ltd* (1982) 150 CLR 169 at 191-192.

88 *Gazzo* (1981) 149 CLR 227 at 235.

89 *Gazzo* (1981) 149 CLR 227 at 244.

90 *Capital Duplicators Pty Ltd v ACT [No 2]* (1992) 178 CLR 561 at 583; *Philip Morris Ltd v Commissioner of Business Franchises (Vic)* (1989) 167 CLR 399 at 490-491.

constitutional purposes with what the law does (immunisation of certain instruments from State duties).[91] That is contrary to subsequent authority of this Court that the requisite enquiry is to identify, at a level of generality appropriate to the subject matter, the legislative purpose in the sense of the "public interest sought to be protected and enhanced" by the law.[92]

44. ***The majority's analysis in* Gazzo *hangs out on a limb***: The decision in *Gazzo* did not rest on a principle carefully worked out in a significant succession of cases. In particular, the reasoning framing the head of power test as requiring a "close" connection "not only stands isolated but has proven to be incompatible with the ongoing development of constitutional jurisprudence".[93] The reasoning has been doubted by members of this Court in subsequent decisions,[94] but has not yet been revisited.[95] *Gazzo* has also been the subject of learned academic criticism.[96]

45. ***No useful result***: It cannot be said that *Gazzo* has achieved a useful result. The result is not useful for separating parties fixed with burdensome tax liabilities upon completion of their property settlements in family law proceedings. As for the position of the taxing States, it is significant that no State attempted to maintain the full capacity to charge duty that the Court secured for them in *Gazzo.* Rather, each State enacted laws to vary (at least partially) the effect of *Gazzo*, such that, in respect of many orders made under Pt VIII, the pre-*Gazzo* status quo was restored: **SC [28]**. In the second reading speech for NSW's

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91 *Gazzo* (1981) 149 CLR 227 at 235, 241, 267, 270.

92 *Cunliffe v Commonwealth* (1994) 182 CLR 272 at 300; *Alexander v Minister for Home Affairs* (2022) 276 CLR 336 at [101]-[102]; *Jones v Commonwealth* (2023) 280 CLR 62 at [19]; *YBFZ v Minister for Immigration, Citizenship and Multicultural Affairs* (2024) 99 ALJR 1 at [245]; *Babet v Commonwealth* (2025) 99 ALJR 883 at [32]; *Ravbar* (2025) 99 ALJR 1000 at [41]-[45], [173].

93 *Wurridjal* (2009) 237 CLR 309 at [71].

94 *Fisher v Fisher* (1986) 161 CLR 438 at 453; *Spence* (2019) 268 CLR 355 at [453].

95 In its written submissions filed 24 September 2003 in *Bayside*, the Commonwealth sought leave to re-open *Gazzo* if necessary to do so (fn 47). At the hearing, the Court was taken to *Gazzo* and Gummow J described the decision as "a conspicuous page in the Court's jurisprudence": see Transcript of hearing 2 October 2003 at 2794-2820. The Commonwealth also sought that leave, to the extent necessary, in written submissions filed on 31 March 2006 in *Magill v Magill* (M152/2005) (at [29.1]).

96 Stellios, *Zines and Stellios's The High Court and The Constitution*, 7th ed (2022) at 67, 555-559, and the substantially similar critique in each previous edition: 2nd ed (1987) at 303-308; 3rd ed (1992) at 295-300; 4th ed (1997) at 343-347; 5th ed (2008) at 477-480; 6th ed (2015) 511-515. The Stellios and Zines critique is endorsed by Hanks, Gordon, Hill and Wood in *Constitutional Law in Australia,* 5th ed (2024) at 343. See also; Zines, *Justice Lionel Murphy: Influential or Merely Prescient?* (1997) at 9-10; Rose, 'Comment on the Corporations Power and the Races Power' (1984) 14 *Federal Law Review* 253 at 255.

amending Bill, for example, the Treasurer emphasised that the Bill's main purpose was "to ensure that the exemption which had been applied by the Commissioner … to transfers of matrimonial property between spouses under divorce proceedings following the introduction of the [FLA] continues" (**SCB 277**). NSW also later referred power to the Commonwealth to support the law in Pt VIIIAB that applies to de facto relationships (including s 90WA, the equivalent of s 90: see [23] above; **SC [28.4]**).

46. ***No reliance by NSW that militates against reconsideration of* Gazzo**: Finally, the Commissioner is unable to "provide any estimate of the revenue foregone for the State of NSW if the Commissioner had applied the immunity from State duties or charges purportedly conferred by s 90(1)(a)" (**SC [34]**). Accordingly, it is not clear on what basis the Commissioner could ask this Court to infer that s 90(1)(a), if validly enforced, would lead to inconvenience or prejudice for NSW from lost revenue associated with stamp duties on third parties' transfers from orders made in s 79 proceedings.

E. SECTION 90(1)(a) IS A LAW WITH RESPECT TO s 51(xxi) AND/OR 51(xxii)

47. ***Section 90(1)(a) protects the integrity and practical efficacy of orders made under s 79 and encourages settlements anterior to court orders:*** Section 90(1)(a) operates to exclude the operation of State and Territory taxing laws when those laws would otherwise apply to a transfer or deed that is occurring pursuant to a validly made order in a property settlement proceeding. Put differently, it provides relief from the payment of State and Territory duties and charges that would otherwise apply to such transfers.

48. Pt VIII (read with Pt VIIIAA), as it relates to property settlement proceedings, is central to the uniform regime that Parliament has enacted to facilitate the fair, cost-effective and final dissolution of the relationship between married persons. Exercising the FLA jurisdiction, a court may make various orders altering property interests.

49. Section 90(1)(a) has two interconnected purposes. Its principal objective is to protect the integrity and practical efficacy[97] of court orders made under this regime. It seeks to do so in two ways. First, it preserves the nature, quantum and intended balance of the financial settlements effected by an order made in s 79 proceedings. An example

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97 *Insurance Commissioner v Associated Dominions Assurance Society Pty Ltd* (1953) 89 CLR 78 at 87, which the Commonwealth Solicitor-General (Byers QC) relied upon in argument in *Gazzo* (1981) 149 CLR 227 at 229 and 249.

illustrates this. The Court determines that a fair adjustment of the divorcing parties' interests requires one spouse to keep a $700,000 superannuation benefit, but to transfer a house worth $700,000 to the other spouse. If the spouse receiving the house is immediately required to pay a significant amount of State land tax on the transfer, the economic balance struck by the Court has been unsteadied. The Court order is not the final word on how the parties' assets and finances should fairly be distributed between them upon their separation. Section 90(1)(a), playing a role functionally similar to an anti-circumvention provision (see [9]-[10] above), avoids that result. Second, s 90(1)(a) facilitates the divorcing parties' compliance with the order, by immunising them from the imposition of onerous financial burdens as conditions for achieving that compliance.

50. A related purpose of the provision is to encourage property settlements between separating parties <u>before</u> contested court orders become necessary, by providing certainty that they can divide their economic affairs without the risk and complication of State and Territory tax liabilities supervening at the conclusion of their bargain.

51. The Committee invoked each of these purposes in the 1980 JSC Report, being one of the reports that Parliament sought to implement when it enacted the amending legislation that repealed and substituted s 90 three years later.[98] Speaking generally of the considerations that it viewed as important in determining the characteristics of matrimonial property law, the Committee relevantly stated that: (i) there "would be advantages in having a law which is a precise and explicit exercise of Commonwealth power prescribing with certainty the property rights of parties to a marriage";[99] and (ii) this "would also mean that people contemplating divorce would be able to determine with greater certainty the material consequences of this step".[100] The Committee expressed that opinion after canvassing the features of matrimonial property systems in various other jurisdictions. These included (among others) Alberta, Canada, where new legislation required courts to take into account "any tax liability by one spouse which might result from transfer or sale

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98 Explanatory Memorandum, Family Law Amendment Bill 1983 (Cth), first para under "Outline", referring to the 1980 JSC Report.

99 1980 JSC Report at [5.149].

100 1980 JSC Report at [5.149]. See also at [5.152] ("[t]he law should … provide divorcing parties with distinct signposts to guide their informal bargaining in the hope that the often officious and always costly intervention of courts and lawyers may be avoided").

of property" as one factor in determining a property settlement order.[101] Alberta's policy was one available approach, but it can be inferred that the Committee – and, ultimately, the Parliament – preferred, in s 90, a different approach that provided more certainty for the parties to a marriage.[102]

52. Therefore, s 90(1)(a) is supported by s 51(xxi) and/or s 51(xxii). Just as the description of "marriage" is not "immutable" for constitutional purposes,[103] so too is it within the power of the Commonwealth Parliament to enact legislation concerning "marriage" and "divorce" that accommodates and conforms to changing social norms, including to ensure that court orders can effectively and finally deal with the diverse ways in which parties to a marriage may structure their financial affairs when determining property settlement proceedings. Such laws operate on the status of marriage and its dissolution and define mutual rights and obligations concerning succession to and ownership of property.[104] A law that: (i) preserves the integrity and efficacy of that federal scheme (by preventing external factors from changing the practical effect for separating parties of court orders made thereunder), and (ii) encourages separating parties to agree on arrangements for dividing their property, has a direct operation on the subject matter of the powers.[105] Alternatively, such a law does not have a "tenuous" or "distant" connection to the powers.

53. ***Section 90(1)(a) falls within power as it is parasitic on a Pt VIII order*:** Relatedly, any court order to which s 90(1)(a) attaches will necessarily be made under Pt VIII of the FLA, in an exercise of the judicial power of the Commonwealth in a proceeding concerning the property of the parties to a marriage.[106] There is no argument advanced in these proceedings that Pt VIII orders fall outside Commonwealth legislative power. The careful limits and conditions on the making of Pt VIII orders fatally undermine that

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[101] 1980 JSC Report at [5.144] and at 111 (fn 64).

[102] Shone, 'Principles of Matrimonial Property Sharing: Alberta's New Act' (1979) 17(2) *Alberta Law Review* 143 (cited in the 1980 JSC Report at 111 fn 64) at 143, notes that the Attorney-General had delayed fixing a proclamation date for the new law as the government was "awaiting assurances of federal legislation touching upon taxation matters to ensure that Albertans do not find themselves in a position where they have experienced an unexpected tax problem as the result of a distribution order made pursuant to this act".

[103] *Commonwealth v ACT* (2013) 250 CLR 441 at [16], [22]-[23].

[104] *Commonwealth v ACT* (2013) 250 CLR 441 at [33]-[34].

[105] See, by analogy, *Bayside* (2004) 216 CLR 595 at [26]-[27].

[106] See the definition of "matrimonial cause" in s 4(1), cited at [16] above.

proposition in any event (see [18] and [21] above). For this reason, too, s 51(xxi) and/or s 51 (xxii) of the Constitution must logically sustain s 90(1)(a).

F. CONSEQUENCES FOR QUESTION 1 OF THE AGREED QUESTIONS OF LAW

54. At the time of the Appeal Panel's decision, in circumstances where the parties conceded that s 90(1)(a) was not materially different from the provision held invalid in *Gazzo*, it was appropriate for the Appeal Panel to act on the view of the law endorsed by the majority in that case in moulding its conduct according to law.[107] However, if this Court accepts that s 90(1)(a) is a valid law of the Commonwealth Parliament, which NCAT must apply by virtue of covering cl 5 of the Constitution, it follows that the Appeal Panel fell into error.[108]

PART V ESTIMATED TIME

55. The Commonwealth estimates that 1 hour will be required to present her oral argument.

Dated: 12 August 2026

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[107] *Re Adams and the Tax Agents' Board* (1976) 7 ATR 87 at 89 cited with approval in *Citta Hobart Pty Ltd v Cawthorn* (2022) 276 CLR 216 at [24] and [63].

[108] *Abdel-Hady v Commonwealth* (2026) 100 ALJR 742 at [1], [3], [88] and [217].

ANNEXURE TO THE SUBMISSIONS OF THE ATTORNEY-GENERAL OF THE COMMONWEALTH (INTERVENING)

No	Description	Version	Provision(s)	Reason for providing this version	Applicable date(s)
1.	Commonwealth Constitution	Current	s 51	Currently in force.	All relevant times
Commonwealth					
2.	*Family Law Act 1975* (Cth)	As made	Pt VIII	For illustrative purposes	N/A
3.	*Family Law Act 1975* (Cth)	1 Aug 1979 – 3 Mar 1982	s 90	In force from date of hearing to date of orders in *Gazzo v Comptroller of Stamps (Vic)* (1981) 149 CLR 227.	24 Dec 1981
4.	*Family Law Act 1975* (Cth)	Compilation No 87	s 4, Pt VIII, Pt VIIIA, Pt VIIIAA, Pt VIIIAB	In force on the date of the January 2019 orders.	31 Jan 2019
5.	*Family Law Act 1975* (Cth)	Compilation No 89	s 4, Pt VIII, Pt VIIIA, Pt VIIIAA, Pt VIIIAB	In force on the date of the October 2019 orders and the transfers to Agrinova.	23 Oct 2019; Dec 2019
6.	*Family Law Act 1975* (Cth)	Compilation No. 101	s 4, Pt VIII, Pt VIIIA, Pt VIIIAA, Pt	Illustrative purposes. In force from 10 June 2025 (amendments	Current

No	Description	Version	Provision(s)	Reason for providing this version	Applicable date(s)
			VIIIAB	made by Divs 1 and 2 of the *Family Law Amendment Act 2024* (Cth) apply in relation to proceedings instituted on or after and proceedings instituted before, and not finally determined, before 10 June 2025).	
7.	*Family Law Amendment (De Facto Financial Matters and Other Measures) Act 2008* (Cth)	As made	N/A	Introduced Pt VIIIAB to the *Family Law Act 1975* (Cth).	N/A
8.	*Family Law Amendment Act 1976* (Cth)	As made	s 29	Amended s 90 of the *Family Law Act 1975* (Cth).	N/A
9.	*Family Law Amendment Act 1983* (Cth)	As made	s 46	Repealed and substituted s 90 following the decision in *Gazzo v Comptroller of Stamps (Vic)* (1981)	N/A

No	Description	Version	Provision(s)	Reason for providing this version	Applicable date(s)
				149 CLR 227.	
10.	*Family Law Amendment Act 2003* (Cth)	As made	N/A	Introduced Pt VIIIAA to the *Family Law Act 1975* (Cth).	N/A
11.	*Matrimonial Causes Act 1959-1966* (Cth)	As made	N/A	For illustrative purposes.	N/A
12.	*Matrimonial Causes Act 1965* (Cth)	As made	N/A	For illustrative purposes.	N/A
13.	*Matrimonial Causes Act 1966* (Cth)	As made	N/A	For illustrative purposes.	N/A
States and Territories					
14.	*Stamps Act 1958* (Vic)	10 Dec 1974– 24 December 1981	N/A	Versions in force from date of the Pt VIII orders to orders in *Gazzo v Comptroller of Stamps (Vic)* (1981) 149 CLR 227.	26 May 1977-24 Dec 1981