



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

CIVIL AND ADMINISTRATIVE TRIBUNAL OF NEW SOUTH WALES
Second Respondent

**SUBMISSIONS OF THE ATTORNEY-GENERAL FOR VICTORIA
(INTERVENING)**

PART I: CERTIFICATION

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

PARTS II & III: INTERVENTION

2. The Attorney-General for Victoria intervenes pursuant to s 78A of the *Judiciary Act 1903* (Cth) in support of the First Respondent (**Commissioner**).

PART IV: ARGUMENT

A. Introduction and summary

3. Victoria's submissions are limited to issues arising under Question 1 of the Special Case regarding the validity of s 90(1)(a) of the *Family Law Act 1975* (Cth) (**FLA**) in its application to duties or charges under a law of a State.
4. Victoria supports and adopts the Commissioner's submissions as to why leave should be refused to reopen *Gazzo v Comptroller of Stamps (Vic)*:¹ NSW [23]-[33]. In the event that *Gazzo* is reopened, Victoria submits that s 90(1)(a), if it applies, is not supported by the marriage or divorce powers in s 51(xxi) or (xxii) of the *Constitution*.
5. Section 90(1)(a) is not within the direct scope of the marriage or divorce powers, because it does not have "a direct legal operation on the subject matter" of those powers.²
6. Nor is s 90(1)(a) within the incidental scope of the marriage or divorce powers, because it is "insufficiently adapted" to achieving its purported purpose of reducing the costs of divorce.³ That is so for the following reasons.
 - a. *First*, s 90(1)(a) is capable of applying in a very wide range of circumstances, by reason of its language — "for the purposes of, or in accordance with" — and the broad range of orders that may be "made under this Part" (namely, Part VIII).
 - b. *Second*, it purports to apply to all State laws that impose a duty or charge, without calibration to particular laws or circumstances connected to a marital relationship or the costs of a divorce.
 - c. *Third*, its effect on the subject matter of marriage and divorce is slight and speculative.

¹ (1981) 149 CLR 227.

² *Spence v Queensland* (2019) 268 CLR 355 at [58] (Kiefel CJ, Bell, Gageler and Keane JJ).

³ *Spence* (2019) 268 CLR 355 at [62] (Kiefel CJ, Bell, Gageler and Keane JJ).

- d. *Fourth*, it is discriminatory without justification, in that it applies to all State laws, but only to Commonwealth laws that apply “only to or in relation to a Territory”.
- e. *Fifth*, it enters upon matters that are in the heartland of State legislative power, being the power of taxation with respect to land.
- f. *Sixth*, while Part VIII relies on State land registration systems to give efficacy to orders made under it for the transfer of marital property, s 90(1)(a) purports to modify an important element of those systems — liability to pay duty as a condition of registration.

10 7. As a result, in its application to State duties and charges, s 90(1)(a) is properly characterised as a law with respect to State taxation and not marriage or divorce. It is therefore beyond Commonwealth legislative power.

B. Legislative framework and background

B.1 The scope of s 90 of the FLA

- 8. Section 90(1) provides that certain “agreements, deeds and other instruments are not subject to any duty or charge under any law of a State or Territory or any law of the Commonwealth that applies only to or in relation to a Territory”. By s 90(1)(a), these include “a deed or other instrument executed by a person for the purposes of, or in accordance with, an order made under this Part”, being Part VIII.
- 20 9. Part VIII relates to property, spousal maintenance and maintenance agreements. A broad range of orders may be made under Part VIII. Section 79(1) provides power in “property settlement proceedings” for the court to make “such order as it considers appropriate” altering the interests of the parties to a marriage in their property. The court may do so if it “is satisfied that, in all the circumstances, it is just and equitable to make the order” and takes specified matters into account: s 79(2)-(4). Section 79 “confers a very wide discretion on the Court”.⁴ Nevertheless, “it is obvious that the section must be read down”

⁴ *Norbis v Norbis* (1986) 161 CLR 513 at 521 (Mason and Deane JJ), see also 536 (Brennan J). See also *Stanford v Stanford* (2012) 247 CLR 108 at [35]-[40] (French CJ, Hayne, Kiefel and Bell JJ); *Kennon v Spry* (2008) 238 CLR 366 at [54] (French CJ), [91]-[98], [125]-[126] (Gummow and Hayne JJ); *Mallet v Mallet* (1984) 156 CLR 605 at 608-609 (Gibbs CJ), 625 (Mason J), 639 (Deane J), 646-647 (Dawson J).

because it “can only have a valid application with respect to a claim based on circumstances arising out of the marriage relationship”.⁵

10. The powers in s 79 are extended by s 80, which provides for additional “general powers” that include (relevantly to this case) powers to: “order that any necessary deed or instrument be executed and that such documents of title be produced or such other things be done as are necessary to enable an order to be carried out effectively or to provide security for the due performance of an order” (sub-s (1)(d)), “make an order by consent” (sub-s (1)(j)) and “make any other order (whether or not of the same nature as those mentioned in the preceding paragraphs of this section), which it thinks it is necessary to make to do justice” (sub-s (1)(k)).
11. The powers in s 79 are further extended by s 90AE in Part VIIIAA, which is titled “Orders and injunctions binding third parties”. Part VIIIAA was enacted in 2003 and is “ancillary” to Part VIII.⁶ Section 90AE provides for orders that the court may make “under section 79 binding a third party”. Among other things, s 90AE(2)(b) provides that, in proceedings under s 79, the court may make any other order that “alters the rights, liabilities or property interests of a third party in relation to the marriage”. An order can only be made under s 90AE(1) or (2) if the conditions in s 90AE(3) are satisfied, including that “the making of the order is reasonably necessary, or reasonably appropriate and adapted, to effect a division of property between the parties to the marriage” (sub-s (3)(a)). By reason of the enactment of Part VIIIAA, the scope of s 90(1)(a) is now broader than the previous iteration of s 90 that was held invalid in *Gazzo*.
12. Section 90 is further extended by s 90(1)(b) and (c), which apply the immunising effect of the provision to “relevant maintenance agreements” and “a deed or other instrument executed by a person for the purposes of, or in accordance with, a relevant maintenance agreement”.

⁵ *Dougherty v Dougherty* (1987) 163 CLR 278 at 285-286 (Mason CJ, Wilson and Dawson JJ), referring to *Russell v Russell* (1976) 134 CLR 495; see also 293 (Brennan J), 299 (Gaudron J). See also FLA s 39, conferring jurisdiction in “matrimonial causes”, and the definition of that term in s 4(1), especially at sub-par (ca).

⁶ *Federal Commissioner of Taxation v Tomaras* (2018) 265 CLR 434 at [4]-[5] (Kiefel CJ and Keane J); see also [113]-[114] (Edelman J).

B.2 The orders and transfers of property in the present case

13. The material facts are set out in the Commissioner's submissions: **NSW [5]-[16]**. Victoria emphasises the following facts concerning the reasons given for the orders and transfers of property.

a. Before the Family Court, the explanation given for the October 2019 consent orders requiring transfer of several properties from the wife and husband (Order 5) and the husband's parents (Order 7) to Agrinova was that the transfer was needed so that "the bank would advance the funds" for the husband "to pay the wife in accordance with" the January 2019 orders: **SCB 136-137, 140**. No reference was made to exemption from duty, nor was it suggested that those transfers could not be effected without an exemption from duty.

b. In the objection process before the Commissioner, a different reason was given. There, Agrinova submitted that the October 2019 orders were sought on the advice of counsel for the "Agrinova Parties" (the husband, his parents, his sister and Agrinova) "as part of a restructure of their agribusiness for asset protection purposes" because it was thought that, if the transfers were directed by the orders, they would be exempt from stamp duty: **SCB 172 [5]-[6]**. It was then asserted that the Agrinova Parties would not have proceeded with the transfers if stamp duty was payable, because neither Agrinova nor the family would have had sufficient funds available to pay it: **SCB 172 [8]**. That assertion was made in circumstances where the total value of real property to be transferred to Agrinova was \$65 million: **SCB 156**. The duty payable on the transfers (excluding penalty and interest) was \$1,350,869.50: **SCB 29 [17]**. Further, as the Commissioner submits, the January 2019 orders contained a mechanism for the two properties owned by the husband and wife to be sold and the wife paid out of the settlement funds: **NSW [51]**.

14. It may be noted that s 90AE(2)(b) of the FLA presents as a possible source of power for Order 7, although Agrinova relies upon s 80 in circumstances where there is no evidence that the preconditions and matters in s 90AE(3) and (4) were met or considered: **AS [86]-[88]**.⁷ In any event, it is clear that s 90(1)(a) may be enlivened by orders directed to third parties, including orders for the transfer of property interests between persons who are not parties to the marriage or children of the marriage.

⁷ Cf *Ascot Investments Pty Ltd v Harper* (1981) 148 CLR 337 at 342 (Barwick CJ), 354 (Gibbs J; Stephen, Aickin and Wilson JJ agreeing).

B.3 State duty and exemptions

15. Each State and Territory has enacted legislation that: (a) creates a framework for the registration and transfer of interests in real property; and (b) imposes duty in respect of those transfers, payable by the transferee as a condition of registration.⁸ The amount of duty varies, but typically it is between three and six per cent of the value of the dutiable property.⁹
16. Following this Court's decision in *Gazzo*, each State enacted provisions that exempted from duty certain transfers that occurred in the context of divorce proceedings under the FLA.¹⁰ The Victorian exemption, as first enacted, was engaged only if "both the persons
10 are, or have been, married to each other and no other person takes or is entitled to take an interest in the property in pursuance of the instrument".¹¹
17. Similar exemptions remain in effect in each State today.¹² The State exemptions are narrower and more tailored than the general and unqualified exemption in s 90(1)(a) of the FLA. For example, s 68(1) of the NSW Duties Act relevantly provides that the exemption from paying the relevant duty is limited to circumstances where the transfer is of "matrimonial property" to either of the parties of a dissolved or annulled marriage, or the children of the parties or either of them, or a trustee of such children; and the transfer is effected by or in accordance with an order of a court under the FLA.
18. Section 44(1) of the *Duties Act 2000* (Vic) likewise provides for exemptions from duty
20 in specified circumstances, including if the Commissioner is satisfied that the transfer has been made solely because of the breakdown of a marriage or domestic relationship; the transferor is a party (or both parties) to the marriage (or their trustee); the transferee is a party to the marriage or their dependent child (or their trustee); and no other person is entitled to take an interest in the property under the transfer. As in NSW, duties are administered in Victoria on the basis that, in accordance with *Gazzo*, s 90(1)(a) of the FLA is not effective to exclude duty charged under Victorian law: **NSW [33]**.

⁸ In Victoria, see *Transfer of Land Act 1958* (Vic), s 40; *Duties Act 2000* (Vic), ss 7, 9-12, 16, 269. In NSW, see especially s 301 of the NSW Duties Act.

⁹ See, eg, NSW Duties Act, ss 8, 19, 32; *Duties Act 2000* (Vic), ss 18, 28.

¹⁰ See **SCB 30-31 [28.1]-[28.2], SC-21 to SC-28**.

¹¹ *Stamps (Matrimonial Settlements) Act 1982* (Vic), s 2(1).

¹² NSW Duties Act, s 68; *Duties Act 2000* (Vic), s 44; *Duties Act 2001* (Qld), ss 420, 421, 424; *Duties Act 2008* (WA), ss 128, 129, 131; *Stamp Duties Act 1923* (SA), s 71CA; *Duties Act 2001* (Tas), s 56. See also *Duties Act 1999* (ACT), s 232F; *Stamp Duty Act 1978* (NT), s 91.

19. The exemptions in force in the other States are also more narrowly tailored than s 90(1)(a), for example by limiting the exemption to transfers of “matrimonial property” or by reference to the identity of the parties to the transfer.

C. The marriage and divorce powers

20. Section 51(xxi) and (xxii) of the *Constitution* confer power on the Commonwealth Parliament to make laws with respect to “marriage” and “divorce and matrimonial causes; and in relation thereto, parental rights, and the custody and guardianship of infants”.
21. The marriage power covers “the status of the married parties”, being “the particular legal position they hold by reason of their married state”.¹³ Thus, s 51(xxi) confers power to
 10 make laws with respect to “[t]he status of marriage, the social institution which that status reflects, and the rights and obligations attached to that status”.¹⁴ Those rights and obligations include “maintenance and support, succession to and ownership of property (both as between the parties to the marriage and between the parties and others) and, if there are children of the union, rights and obligations in relation to them”.¹⁵
22. However, it does not follow that those “rights and obligations” extend to all tax liabilities arising in respect of marital property, let alone in respect of property of persons who are not parties to the marriage. The phrase “between the parties and others” in the statement just quoted cannot be read as endorsing such a view: cf **Cth [39]**. There is no good reason
 20 why the tax liabilities of the parties to a marriage should, in general and without more, be described as “attached” to “the particular legal position they hold by reason of their married state”.¹⁶ In any event, the “liabilities” that are relevant in the present case are tax liabilities of a legal person that is *not* a party to the marriage — Agrinova — which arise principally in respect of properties that were transferred by persons who are also not parties to the marriage — the husband’s parents.

¹³ *Commonwealth v Australian Capital Territory* (2013) 250 CLR 441 at [15] (the Court), quoting *Attorney-General (Vic) v Commonwealth* (1962) 107 CLR 529 at 543 (Dixon CJ).

¹⁴ *Commonwealth v Australian Capital Territory* (2013) 250 CLR 441 at [16] (the Court).

¹⁵ *Commonwealth v Australian Capital Territory* (2013) 250 CLR 441 at [34] (the Court).

¹⁶ *Commonwealth v Australian Capital Territory* (2013) 250 CLR 441 at [16], [14] (the Court).

D. Section 90(1)(a) of the FLA is not a valid law of the Commonwealth

23. The general principles governing the characterisation of a Commonwealth law under s 51 of the *Constitution* are well settled.¹⁷ Among other things, a law will not be supported by a head of power if its connection with the subject matter of that power is “insubstantial, tenuous or distant”.¹⁸ The character of the law must be determined by reference to “the rights, powers, liabilities, duties and privileges which it creates”, as well as its “practical operation”.¹⁹
24. A law will be within the direct scope of a head of power if it “has a direct legal operation on the subject matter of the power” or “creates rights and duties directly regulating something that forms part of that subject matter”.²⁰ If a law is not of that character, it nevertheless may be supported by a head of power if it is “incidental” or “penumbral” to the subject matter of that head of power.²¹ In that case, the sufficiency of the connection between the law and a head of power may “turn on questions of degree”,²² on which minds may differ. The metaphors of the “core” and the “periphery” may be correlated with the distinction between the legal and practical operation of a law.²³ When assessing whether a law is within the incidental scope of a head of power, a test of “reasonable proportionality” should be applied.²⁴

¹⁷ See *Spence* (2019) 268 CLR 355 at [57]-[58] (Kiefel CJ, Bell, Gageler and Keane JJ); *Ravbar v Commonwealth* (2025) 99 ALJR 1000 at [90] (Gordon J), [202] (Edelman J); *Grain Pool of Western Australia v Commonwealth* (2000) 202 CLR 479 at [16] (Gleeson CJ, Gaudron, McHugh, Gummow, Hayne and Callinan JJ).

¹⁸ *Spence* (2019) 268 CLR 355 at [57] (Kiefel CJ, Bell, Gageler and Keane JJ), citing *Melbourne Corporation v Commonwealth* (1947) 74 CLR 31 at 79 (Dixon J).

¹⁹ *Spence* (2019) 268 CLR 355 at [57] (Kiefel CJ, Bell, Gageler and Keane JJ), quoting in part *New South Wales v Commonwealth* (2006) 229 CLR 1 (*Work Choices Case*) at [142] (Gleeson CJ, Gummow, Hayne, Heydon and Crennan JJ).

²⁰ *Spence* (2019) 268 CLR 355 at [58] (Kiefel CJ, Bell, Gageler and Keane JJ).

²¹ *Spence* (2019) 268 CLR 355 at [58]-[59] (Kiefel CJ, Bell, Gageler and Keane JJ), referring to *Cunliffe v Commonwealth* (1994) 182 CLR 272 at 317-322 (Brennan J) and *Leask v Commonwealth* (1996) 187 CLR 579 at 591, 593-594 (Brennan CJ).

²² *Spence* (2019) 268 CLR 355 at [59] (Kiefel CJ, Bell, Gageler and Keane JJ).

²³ *Ravbar* (2025) 99 ALJR 1000 at [203] (Edelman J). See also *Cunliffe* (1994) 182 CLR 272 at 294 (Mason CJ), referring to whether a law has “in its practical operation a substantial or sufficient connexion with the relevant head of power”.

²⁴ *Nationwide News Pty Ltd v Wills* (1992) 177 CLR 1 at 29-31 (Mason CJ), 93-94 (Gaudron J), 101 (McHugh J); *Cunliffe* (1994) 182 CLR 272 at 297 (Mason CJ); *Spence* (2019) 268 CLR 355 at [63] (Kiefel CJ, Bell, Gageler and Keane JJ); *McCloy v New South Wales* (2015) 257 CLR 178 at [3] (French CJ, Kiefel, Bell and Keane JJ); *Thoms v Commonwealth* (2022) 276 CLR 466 at [37]-[39] (Kiefel CJ, Keane and Gleeson JJ), [73] (Gordon and Edelman JJ); *Ravbar* (2025) 99 ALJR 1000 at [203]-[206] (Edelman J), [421] (Jagot J); *YBFZ v Minister for Immigration, Citizenship and Multicultural Affairs* (2024) 99 ALJR 1 at [150] (Edelman J); *EGH19 v Commonwealth* (2026) 100 ALJR 400 at [177] (Edelman J).

D.1 Section 90(1)(a) is not within the direct scope of the marriage or divorce powers

25. The subject matter of s 90(1)(a) is duties or charges that are imposed on “a deed or other instrument executed by a person for the purposes of, or in accordance with, an order made under this Part”. The legal effect of the provision is to destroy a liability of a transferee and a correlative right of a State that would otherwise have arisen upon the execution of an instrument for those purposes.²⁵ Contrary to the submissions of Agrinova (AS [51]-[56]) and the Commonwealth (Cth [52]), s 90(1)(a) does not have “a direct legal operation on the subject matter” of the marriage or divorce powers. Its operation in respect of things done “for the purposes of, or in accordance with” an order under Part VIII is insufficient to give it that character.
26. The operation of s 90(1)(a) is not confined to duties and charges that attach to marital property, or that are payable by the parties to a marriage. Instead, it applies to duties and charges of a general character that on occasion might “happen to encounter, quite randomly, a particular document which is in some way related to marriage or to divorce and matrimonial causes”: *Gazzo* at 241 (Stephen J).
27. For example, if the parties to a marriage sold the marital home to a third party in order to divide the proceeds “for the purposes of, or in accordance with” a Part VIII order, s 90(1)(a) would remove the purchaser’s liability to pay duty: similarly, see *Gazzo* at 233 (Gibbs CJ); NSW [42]. The order need not have required the transfer: it would be enough that the sale of the home was “for the purposes of” the order. The breadth of that phrase may be illustrated by the present case. Presumably, Agrinova could have claimed the exemption in s 90(1)(a) without the October 2019 orders being made at all, because — at least on the explanation that was given to the Family Court — the relevant transfers of property were made to fund the payment required by the January 2019 orders and would therefore have been made “for the purposes of” giving effect to those orders.
28. It may be accepted that property interests between parties to a marriage that arise from the marital relationship are within the scope of the marriage and divorce powers:

²⁵ *Gazzo* (1981) 149 CLR 227 at 267 (Aickin J): “It purports to destroy an obligation placed by State law on persons seeking to register transfers of land executed by them pursuant to an order of the Family Court and in that sense to destroy rights in a ‘third party’, i.e. the State of Victoria, having no connexion with the marriage or the divorce”. See also at 235 (Gibbs CJ).

eg **AS [45]-[48]**.²⁶ But it does not follow that modifying or destroying liabilities that arise only incidentally in relation to the transfer of those property interests are within the core scope of those powers (and nor is s 90(1)(a) limited to transfers of such property interests). That is particularly so where, as here, the liabilities are general in nature and have no necessary connection with the status of marriage itself.

29. The Commonwealth appears to submit that, because orders made under Part VIII are within Commonwealth legislative power under s 51(xxi) and (xxii), it necessarily follows that s 90(1)(a) is also within the direct scope of those powers: **Cth [5], [49], [52]-[53]**. Agrinova makes a similar submission: **AS [74]**. The syllogism should be rejected. Given the breadth of the powers under Part VIII, it may be said that the marriage and divorce powers have been “stretched at least up to the limits of constitutional elasticity” in enacting those powers.²⁷ Indeed, the provisions must be read down so that they are within power: see **[9] above**. The immunity that is conferred by s 90(1)(a) constitutes a further and separate step, beyond the conferral of power to make the orders themselves. It must be assessed as such when determining whether s 90(1)(a) is within power.
30. These matters illustrate that s 90(1)(a) is not a law that “deals with” marriage or divorce: cf **AS [39]**.²⁸ It is a law that immunises against tax liabilities that happen to arise in the context of a divorce and which may have very little connection with the marriage or divorce itself.
31. Further, and contrary to **AS [52]**, s 90(1)(a) does not define “the legal incidents” of an order under Part VIII. The order will operate to require a party to take some step, such as to transfer or receive property. The taxation consequences that may follow are not legal incidents of the order, but of a step that is taken by the party and any relevant law that applies in respect of that step. Further, Agrinova’s submission fails to deal with the fact that s 90(1)(a) extends to things done “for the purposes of” a Part VIII order. On no view

²⁶ See *Gazzo* (1981) 149 CLR 227 at 232 (Gibbs CJ), observing that property may be held by the parties to a marriage and yet: “it may not arise out of, or be concerned with, the matrimonial relationship. For example, one former spouse may agree to buy from the other property which was never matrimonial property, and such transaction may have been purely a business transaction which had nothing to do with any obligation on the part of one spouse to maintain the other.” See also *Fisher v Fisher* (1986) 161 CLR 438 at 447 (Gibbs CJ): “Whether a law which in some way affects the property of the parties to a marriage or one of them is a law with respect to marriage will depend on the strength of the connexion between the law and the marital relationship”.

²⁷ *West v Commissioner of Taxation (NSW)* (1937) 56 CLR 657 at 686 (Evatt J).

²⁸ *Murphyores Inc Pty Ltd v Commonwealth* (1976) 136 CLR 1 at 20 (Mason J; Gibbs and Jacobs JJ agreeing).

can the legal consequences that follow from those things be described as “legal incidents” of the order.

32. The Commonwealth appears to criticise the majority’s reasoning in *Gazzo* on the basis that it is concerned with the characterisation of State laws that impose duties and charges, rather than with the characterisation of s 90(1)(a) itself: **Cth [28], [32]**. That ignores the fact that s 90(1)(a) is expressly addressed to “any duty or charge under any law of a State”. But in any event, in characterising a Commonwealth law, it can be relevant to have regard to its interaction (through s 109 of the *Constitution*) with a State law and to the character of that State law.²⁹ There was no “error at the stage of methodology” by the majority judges in *Gazzo* in that respect: **Cth [43]**. Section 90(1)(a) is properly characterised as a Commonwealth law that purports to exclude State laws whose connection with marriage and divorce is “wholly remote”.³⁰ That being so, it cannot be described as falling within the core subject matter of the marriage and divorce powers.
33. It may also be accepted that a general purpose of the FLA is to reduce the costs of divorce and that this is a purpose of s 90(1)(a): **AS [54]-[56]; Cth [8]**. But that does not establish that s 90(1)(a) has a direct legal operation on the subject matter of the relevant heads of power. To the contrary, to resort to the purpose and the asserted practical effect of s 90(1)(a) to determine whether it has a sufficient connection with them illustrates that the section is at best “peripheral” to those powers.
34. With respect to both marriage and divorce, s 90(1)(a) is “a measure which lies at the circumference of the subject or can at best be only incidental to it”.³¹ The real question is whether it is within the incidental scope of those powers.

D.2 Section 90(1)(a) is not within the incidental scope of the marriage or divorce powers

35. Even where the purpose or object of a law can be said to be associated with the subject matter of a head of power, the law may still not be a law “with respect to” that subject matter if it is “insufficiently adapted to achieve that purpose, having regard to the breadth and intensity of the impact of the law on other matters”.³²

²⁹ *G Global 120E T2 Pty Ltd v Commissioner of State Revenue (Qld)* (2025) 99 ALJR 1465 at [112] (the Court).

³⁰ *Gazzo* (1981) 149 CLR 227 at 241 (Stephen J).

³¹ *New South Wales v Commonwealth* (1948) 76 CLR 1 at 354 (Dixon J).

³² *Spence* (2019) 268 CLR 355 at [62] (Kiefel CJ, Bell, Gageler and Keane JJ). See also *Ravbar* (2025) 99 ALJR 1000 at [205] (Edelman J).

36. Agrinova and the Commonwealth contend that the main purpose of s 90(1)(a) is to reduce the expense of divorce “as far as possible”: **AS [55]-[56]; Cth [11]**. It may be accepted that reducing the expense of divorce is a purpose or object that is within the marriage and divorce powers. But adding “as far as possible” adds little to the analysis. The Commonwealth cannot, by stating an objective in that way, “recite itself” into the incidental scope of the marriage or divorce powers. The objective of reducing costs, whether “as far as possible” or not, does not mean that legislation which excludes any liabilities that *might* have *some* effect on the cost of divorce in *some* cases is therefore within power.
- 10 37. The question remains whether the measure selected by the Commonwealth Parliament is “appropriate and adapted” to objects that are within power.³³ For the reasons that follow, s 90(1)(a) is not reasonably appropriate and adapted, or proportionate, to the objects of reducing the costs of divorce or facilitating compliance with orders made under Part VIII.
38. **(1) Breadth of orders under Part VIII:** As already submitted, Parts VIII and VIIIAA of the FLA confer very broad powers on the court to make orders in “property settlement proceedings”: **[8]-[12] above**. Those orders need not be made in respect of marital property and need not require the transfer of property to or from parties to the marriage. Rather, they extend to requiring transfers of property between third parties.
39. The breadth of orders that may be made under Part VIII is only the starting point, not the
20 end point, for measuring the breadth of s 90(1)(a). This is because of the expansive language of s 90(1)(a) itself.
40. **(2) Lack of calibration:** By reason of the above matters, s 90(1)(a) is capable of applying to exclude tax liabilities that have no connection, or only a remote connection, with a marital relationship or the costs of a divorce. That will be so whenever property (marital or otherwise) is transferred to a third party that is then liable for duty, as the present case illustrates.
41. There are a number of ways in which s 90(1)(a) could have been better calibrated to achieve purposes that are within the marriage and divorce powers. For example, it could have been confined in a similar manner to the existing State exemptions: see **[15]-[19]**
30 **above**. Those exemptions are generally limited by reference to: (a) the nature of the property — marital property, not property owned by third parties; (b) the reason for the

³³ *Spence* (2019) 268 CLR 355 at [61] (Kiefel CJ, Bell, Gageler and Keane JJ), quoting *Cunliffe* (1994) 182 CLR 272 at 319 (Brennan J).

transfer — solely because of the breakdown of a marriage or domestic relationship; and (c) the identities of the transferor and/or transferee — a party to the marriage or their dependent child, including through a trust but not where other persons are also beneficiaries.³⁴

42. Alternatively, or in addition, provision could have been made for an exemption to be granted in circumstances where paying duty would cause hardship or otherwise hamper the making of or compliance with an order under Part VIII for the transfer of property. That would have met the “principal objective” that the Commonwealth assigns to s 90(1)(a), which is “to protect the integrity and practical efficacy” of orders under Part VIII: **Cth [49]**.

43. Any of those possible limitations would be appropriate and adapted to reducing economic barriers to divorce. But the exemption in s 90(1)(a) admits of no limitations whatsoever. The only precondition to its operation is the making of *any* order under Part VIII (including as extended by Part VIIIAA). It is not necessary for the order to direct a transfer of real property, nor even for that to have been contemplated by the court when the order was made: **NSW [40]**.

44. **(3) *Slight and speculative effect on marriage and divorce:*** The effect of s 90(1)(a) on facilitating the completion of a divorce is slight and speculative. The provision targets State duties on land transfers, which are relatively modest: **[15] above**. As Gibbs CJ said in *Gazzo*, “[t]he position might well be different if the State law constituted a practical barrier to the execution of instruments in accordance with such an order, for example if the amount of the impost equalled or exceeded the value of the property transferred by the instrument, but that is not the present case”.³⁵ This is another way of showing that s 90(1)(a) is not appropriate and adapted to the attainment of an objective that is within power. It does not target “practical barriers” to divorce, but excludes liability to pay *any* duty, whether or not the amount of the duty is a realistic barrier to the transfer of property in accordance with an order made under Part VIII.

45. The majority in *Gazzo* did not consider that s 90 was “necessary to render the order effective”.³⁶ By contrast, Mason J considered there was a sufficient connection with power because “[t]here are situations in which the liability to pay stamp duty on the

³⁴ See, eg, NSW Duties Act, s 68(1); *Duties Act 2000* (Vic), s 44.

³⁵ (1981) 149 CLR 227 at 239.

³⁶ (1981) 149 CLR 227 at 239 (Gibbs CJ); see also 244 (Stephen J), 269 (Aickin J).

transfer of, for example, a matrimonial home, may impede the completion of court-ordered transfers and decrease the capacity of a party to discharge his obligation to maintain another party to the marriage (including a child)".³⁷

46. Whether or not a "close connexion" with the powers is required (AS [44], [64]; Cth [37], [44]; NSW [26]), the majority's reasoning should be preferred. The possibility of *some* "situations" in which duty "*may* impede" the completion of transfers in accordance with an order under Part VIII does not demonstrate that s 90(1)(a) is reasonably appropriate and adapted to addressing those possibilities. Mason J appeared to mark the outer limits of the marriage and divorce powers by observing that "the Commonwealth cannot remove disabilities or impose obligations *not in any way* arising out of the marriage relationship merely by applying laws to married persons".³⁸ But it does not follow from that observation (which is undoubtedly correct) that any law with a somewhat closer connection to "the marriage relationship" is within power.
47. Nor was the precise formulation of the required "connexion" determinative of the majority's reasoning in *Gazzo*. Gibbs CJ considered that s 90 was not "reasonably incidental to the power".³⁹ Stephen J applied a test of "reasonable connexion".⁴⁰ Aickin J held that s 90 had "neither a close nor a sufficient connexion" with the marriage and divorce powers.⁴¹ The differences between the majority and the minority turned on matters of substance, not terminology.
- 20 48. **(4) Discriminatory operation:** The lack of calibration discussed above is heightened by the fact that s 90(1)(a) operates inconsistently with respect to Commonwealth and State laws. Any Commonwealth tax law that does *not* apply "only to or in relation to a Territory" will apply in respect of a transfer of property effected "for the purposes of, or in accordance with" an order made under Part VIII. That would include capital gains tax and, in some cases, goods and services tax. Indeed, the *Income Tax Assessment Act 1997* (Cth) provides for a capital gains roll-over in the context of "marriage or relationship breakdowns", including where the "trigger event" happens because of a court

³⁷ (1981) 149 CLR 227 at 249; see also at 259 (Murphy J).

³⁸ (1981) 149 CLR 227 at 247 (emphasis in original).

³⁹ (1981) 149 CLR 227 at 239. His Honour accepted that "the 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 the exercise of the jurisdiction and powers conferred on it by legislation made under those paragraphs": at 236.

⁴⁰ (1981) 149 CLR 227 at 244.

⁴¹ (1981) 149 CLR 227 at 267.

order under the FLA, but the roll-over is engaged only where a spouse or former spouse is the transferee of the relevant property.⁴² Thus, Commonwealth tax law provides for an exemption that is narrower than the exemption s 90(1)(a) purports to create for State duties and charges.

49. The discriminatory operation of s 90(1)(a) undermines the Commonwealth's argument that the provision is within power because it seeks to ensure that an order made under Part VIII is "the final word" on how the assets of the parties to a marriage should be distributed: **Cth [49]**. It is not. There is no *general* exclusion of taxation liability for things done "for the purposes of, or in accordance with" an order under Part VIII. For instance,
 10 if an order required one party to transfer to the other party a sum of money, and required the second party to transfer an item of real property to the first party, it is entirely possible that Commonwealth tax would be payable on the first transfer but State duties and charges would be excluded from the second transfer. That difference cannot be justified by reference to objects that fall within the marriage and divorce powers.

50. Further, the FLA itself contains an obvious answer to the problem that the Commonwealth posits. Section 90AE(4)(a) requires the court to consider "the taxation effect (if any) of the order on the parties to the marriage" in deciding whether to make an order under that section. The court would have power to do the same when considering whether to make an order under s 79 or s 80.⁴³ Indeed, the Commonwealth acknowledges
 20 that as a possible solution: **Cth [51]**; also **NSW [49]**. The Commonwealth seeks to justify s 90(1)(a) by stating that it provides "more certainty", but that is true of any measure that is absolute rather than adapted to address a specific issue in particular cases: **Cth [51]**. Certainty of effect does not establish a proportionate connection with the marriage or divorce powers.

51. The Commonwealth does not explain why it is reasonably necessary to exclude all State duties and charges in order to "encourage property settlements between separating parties" while not excluding all Commonwealth taxes that may arise as an incident of those settlements: **Cth [50]**. The intrusion into the States' powers of taxation is significant, while the limitation on the Commonwealth's powers of taxation is minimal if
 30 not illusory. The Commonwealth has not identified any Commonwealth law that "applies

⁴² See *Income Tax Assessment Act 1997* (Cth), Subdiv 126-A; *Ellison v Sandini Pty Ltd* (2018) 263 FCR 460 at [175]-[183] (Jagot J; Siopis J agreeing).

⁴³ See current s 79(5)(v), which permits the court to take into account "any other fact or circumstance which, in the opinion of the court, the justice of the case requires to be taken into account".

only to or in relation to a Territory” and imposes a “duty or charge” on “agreements, deeds and other instruments” of the kinds identified in s 90.⁴⁴ In any event, the example that the Commonwealth uses of a transfer *between* parties to a marriage does not grapple with the scope of orders that may be made under Part VIII (and Part VIIIAA), which are not confined to transfers of that kind.

52. **(5) Intrusion on State legislative power:** As Stephen J observed in *Gazzo*, that s 90 “reaches into the exercise of the constitutional powers of the States” requires “that its validity be carefully scrutinised”.⁴⁵ The Commonwealth Parliament “has no power to prohibit a State exercising its taxing power”.⁴⁶ A “bare attempt to exclude State power upon a subject as to which the Parliament has not chosen to legislate exhaustively” is impermissible.⁴⁷

53. In this context, it is relevant that s 90(1)(a) affects the power of taxation, which “may fairly be said to be an essential function of a State”.⁴⁸ Further, s 90(1)(a) specifically affects the States’ powers of taxation in respect of land. Radical title in the land of each State is vested in the Crown in right of each State.⁴⁹ The constitutional power “to dispose of waste lands of the Crown” lies with the States.⁵⁰ Each State has done so, by granting private interests in land the transfer of which is regulated by the Torrens system that is in force in each State. As Aickin J observed in *Gazzo*, speaking of the relevant Victorian legislation as then in force:⁵¹

... it is a characteristic of land, the title to which is registered under the *Transfer of Land Act*, that the legal estate therein is transferable only by an instrument of transfer in accordance with that Act. Such a transfer must under s 37 of the *Stamps Act* bear the appropriate duty stamp or

⁴⁴ Prior to the enactment of the *Stamp Duties and Taxes Act 1987* (ACT), duty was charged by the *Australian Capital Territory Stamp Duty Act 1969* (Cth). The 1969 Act has been repealed.

⁴⁵ *Gazzo* (1981) 149 CLR 227 at 244, quoting *Victoria v Commonwealth* (1957) 99 CLR 575 at 614 (Dixon CJ) (**Second Uniform Tax Case**). See also *Spence* (2019) 268 CLR 355 at [352] (Edelman J): “it will be relevant if a law has a purpose to restrict a State governmental power”.

⁴⁶ *South Australia v Commonwealth* (1942) 65 CLR 373 at 413 (Latham CJ) (**First Uniform Tax Case**).

⁴⁷ *Bayside City Council v Telstra Corporation Ltd* (2004) 216 CLR 595 at [38] (Gleeson CJ, Gummow, Kirby, Hayne and Heydon JJ), referring to *Wenn v Attorney-General (Vic)* (1948) 77 CLR 84 at 120 (Dixon J).

⁴⁸ *First Uniform Tax Case* (1942) 65 CLR 373 at 423 (Latham CJ). See also, eg, *Melbourne Corporation v Commonwealth* (1947) 74 CLR 31 at 52 (Latham CJ), 75 (Starke J); Andrew Inglis Clark, *Studies in Australian Constitutional Law* (1901) at 90: “If the Parliament of the Commonwealth had the power to control the Parliaments of the States in the matter of taxation, it would have the power to indirectly but effectually dictate the fiscal legislation of all the States, and thereby substantially control all the other legislation of the States and thus to change the whole character of the federal form of government established by the Constitution of the Commonwealth”.

⁴⁹ See *Mabo v Queensland [No 2]* (1992) 175 CLR 1 at 53-54 (Brennan J), 80-81 (Deane and Gaudron JJ).

⁵⁰ *Cadia Holdings Pty Ltd v New South Wales* (2010) 242 CLR 195 at [33] (French CJ).

⁵¹ *Gazzo* (1981) 149 CLR 227 at 275.

be denoted non-dutiable before it can be registered, and that too is a characteristic of the property itself.

54. That remains true today, including in New South Wales in which the payment of duty in accordance with the NSW Duties Act is a precondition to the registration of an interest in land: s 301.
55. Having regard to those matters, it may be said that s 90(1)(a) purports to exclude State law with respect to matters “the regulation of which is within the heartland of State legislative power”.⁵² Agrinova disputes this, but only by reference to “the narrow class of transaction” to which s 90(1)(a) applies: **AS [60]**. That ignores the “normative element” that is at play in this area of discourse, in which the effect of a Commonwealth law on State legislative power is judged “qualitatively” by reference to the importance of the relevant State functions and not only by reference to the “practical effects” of the Commonwealth law.⁵³
56. The present case bears a close resemblance to the *Second Uniform Tax Case*, in which a majority of this Court held invalid a provision that prohibited a taxpayer from paying State income tax until after paying federal income tax.⁵⁴ In a passage that was later quoted in *Spence*,⁵⁵ and also in *Gazzo*,⁵⁶ Dixon CJ said:⁵⁷

To support s 221(1)(a) it must be said to be incidental to the federal power of taxation to forbid the subjects of a State to pay the tax imposed by the State until that imposed upon them by the Commonwealth is paid and, moreover, to do that as a measure assisting to exclude the States from the same field of taxation. This appears to me to go beyond any true conception of what is incidental to a legislative power and, under colour of recourse to the incidents of a power expressly granted, to attempt to advance or extend the substantive power actually granted to the Commonwealth until it reaches into the exercise of the constitutional powers of the States.

57. The other judges in the majority made similar comments, with Taylor J observing that “the point which it is necessary to stress is that the sub-section is designed to apply to and, if valid, will apply to every taxpayer whatever his financial circumstances may be”.⁵⁸

⁵² *Spence* (2019) 268 CLR 355 at [80] (Kiefel CJ, Bell, Gageler and Keane JJ)

⁵³ *Clarke v Federal Commissioner of Taxation* (2009) 240 CLR 272 at [33] (French CJ). See also *Spence* (2019) 268 CLR 355 at [314] (Edelman J).

⁵⁴ *Income Tax and Social Services Contribution Assessment Act 1936* (Cth), s 221(1).

⁵⁵ (2019) 268 CLR 355 at [67] (Kiefel CJ, Bell, Gageler and Keane JJ).

⁵⁶ (1981) 149 CLR 227 at 240 (Gibbs CJ), 244 (Stephen J).

⁵⁷ *Second Uniform Tax Case* (1957) 99 CLR 575 at 614, 658 (Kitto J, agreeing).

⁵⁸ *Second Uniform Tax Case* (1957) 99 CLR 575 at 660; see also McTiernan J at 625-626: “If the utility of the provision in getting in federal revenue makes it a valid law of taxation, the same would be true of a law postponing, in a similar way, debts due to trades people. I cannot agree that the powers to make laws with respect to taxation extends so far as to interfere with the contractual rights of creditors *vis-a-vis* their solvent debtors.”

58. Those observations are applicable here. Section 90(1)(a) goes beyond “any true conception of what is incidental to” the marriage and divorce powers and “reaches into the exercise of the constitutional powers of the States”. It does not lay down a “positive rule”,⁵⁹ but purports to exclude the States from legislating effectively on a particular matter — the extent to which exemption from duty should be granted in respect of transfers of property that follow the making of an order under Part VIII of the FLA.
59. If the Commonwealth does not have power to make a law postponing payment of State income tax in the exercise of the head of legislative power in s 51(ii) with respect to (federal) “taxation”, s 90(1)(a) cannot be supported by the marriage or divorce powers.
- 10 Indeed, s 90(1)(a) is more extreme, because it purports to destroy entirely the liability to pay applicable State taxes. Properly characterised, the operation of s 90(1)(a) is “not to protect from State interference a ‘right’ acquired under federal law”, but to “supplement” that right “by conferring in addition an immunity from” State taxation.⁶⁰ Those principles cohere in Stephen J’s observation in *Gazzo* that “a law which provides such an advantageous immunity is not a law with respect to what is rendered immune”.⁶¹
60. It is also necessary to address this Court’s decision in *Bayside City Council v Telstra Corporation Ltd*,⁶² on which Agrinova and the Commonwealth rely: AS [59]; Cth [42]. That case is distinguishable from the present case.
61. *First*, the decision in *Bayside* turned on the particular head of power that was relied upon — s 51(v) — and the particular Commonwealth law that was challenged. Section 51(v) confers power to make laws with respect to “postal, telegraphic, telephonic, and other like services”. The Commonwealth law that was challenged provided that a State or Territory law had no effect to the extent to which the law discriminated against “carriers” operating in accordance with the *Telecommunications Act 1997* (Cth). Thus, the Commonwealth law applied to entities that were defined by reference to the “central conception”⁶³ of the relevant head of power.⁶⁴ There is no analogy to the present case, in which s 90(1)(a) operates, at best, at the periphery of the marriage and divorce powers.
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⁵⁹ *Work Choices Case* (2006) 229 CLR 1 at [370] (Gleeson CJ, Gummow, Hayne, Heydon and Crennan JJ).

⁶⁰ *Airlines of NSW Pty Ltd v New South Wales [No 2]* (1965) 113 CLR 54 at 119 (Kitto J).

⁶¹ (1981) 149 CLR 227 at 243.

⁶² (2004) 216 CLR 595.

⁶³ *Bank of NSW v Commonwealth* (1948) 76 CLR 1 at 381 (Dixon J).

⁶⁴ See *Bayside* (2004) 216 CLR 595 at [26] (Gleeson CJ, Gummow, Kirby, Hayne and Heydon JJ).

62. *Second*, the Commonwealth law in *Bayside* conferred immunity only in respect of State laws that imposed “discriminatory burdens” on those carriers.⁶⁵ Section 90(1)(a) applies to all State laws, not only those that “discriminate” against transfers of property that are effected “for the purposes of, or in accordance with” an order under Part VIII. *Bayside* was distinguished on precisely this basis in *Spence*.⁶⁶
63. *Third*, the law in *Bayside* did not purport to modify the effect of State law for Commonwealth purposes, nor intrude into core areas of State legislative competence, which are features of the present case. Those features mark s 90(1)(a), by contrast with the law in *Bayside*, as “an attempt to dictate the content” of State laws.⁶⁷
- 10 64. Finally, contrary to the Commonwealth’s submissions, the “intrusion” of s 90 into an area of State legislative competence was not the *only* basis for the reasoning of the majority in *Gazzo*: Cth [33]-[34], [41]. It was *a* factor in the reasoning of each judge in the majority, in addition to other factors including whether the provision was reasonably necessary to protect the efficacy of orders under Part VIII. In any event, in *Spence* (at [69]), a majority of this Court stated there was “no reason to doubt the veracity” of the statement made in *Gazzo* “that in considering whether a law is incidental to the subject matter of a Commonwealth power it is not always irrelevant that the effect of the law is to invade State power” (Gibbs CJ at 240). Accordingly, insofar as the Commonwealth submits that this aspect of the reasoning in *Gazzo* provides a reason to reopen and overrule it, the
- 20 submission should be rejected.
65. **(6) Purported modification of State legislative scheme:** As Gibbs CJ and Aickin J each observed in *Gazzo*,⁶⁸ s 90 has an operation that is relevantly similar to that of a provision that was held invalid in the *Royal Metals Case*.⁶⁹ That provision stated that a State Registrar of Titles was to register a notification of compulsory acquisition of land by the Commonwealth “as if it were a grant or conveyance or memorandum or instrument of transfer of the land to the Commonwealth duly executed under the laws in force in that State”. The provision was invalid because the Commonwealth was not “entitled to insist

⁶⁵ (2004) 216 CLR 595 at [24] (Gleeson CJ, Gummow, Kirby, Hayne and Heydon JJ).

⁶⁶ (2019) 268 CLR 355 at [73]-[74] (Kiefel CJ, Bell, Gageler and Keane JJ).

⁶⁷ (2004) 216 CLR 595 at [30] (Gleeson CJ, Gummow, Kirby, Hayne and Heydon JJ).

⁶⁸ (1981) 149 CLR 227 at 239-240 (Gibbs CJ), 277-280 (Aickin J).

⁶⁹ *Commonwealth v New South Wales* (1923) 33 CLR 1. The provision was s 20 of the *Lands Acquisition Act 1906* (Cth).

upon the State registration of its title to the land acquired unless upon compliance by the Commonwealth with the conditions imposed by State law”.⁷⁰

66. The present case is closely analogous.⁷¹ State legislation requires duty to be paid as a condition of registration. Section 90(1)(a) purports to destroy the liability to pay duty, with the effect that States are required to register transfers effected pursuant to an order made under Part VIII without compliance with that requirement. But “[t]he price of the advantage of having the rights and the protection accorded by registered title under State law is compliance with the requirements of that law”: *Gazzo* at 280 (Aickin J).⁷² By seeking to take advantage of State land registration systems for Commonwealth purposes, while removing an essential precondition to registration, s 90(1)(a) places a substantial imposition on States that is a further reason to conclude that it is not reasonably proportionate to purposes within the marriage and divorce powers.

D.3 Section 90(1)(a) is invalid

67. For the reasons given above, s 90(1)(a) is not properly characterised as a law with respect to “marriage”, “divorce” or “matrimonial causes”. It goes “beyond any true conception of what is incidental” to the subject matter of those legislative powers and instead “reaches into the exercise of the constitutional powers of the States”.⁷³ It is properly characterised as a law with respect to State taxation, which is not within Commonwealth legislative power.
68. Section 90(1)(a) is, accordingly, wholly invalid in its application to State duties and charges: **NSW [54]**. In the alternative, the Commissioner proposes four ways in which the provision would need to be read down if it were to have any valid operation: **NSW [54]**. While Victoria agrees that s 90(1)(a) could not validly operate in at least those ways, s 15A of the *Acts Interpretation Act 1901* (Cth) does not authorise the Court to give a provision a “piecemeal application”.⁷⁴ The constitutional problems with s 90(1)(a) are sufficiently numerous and significant that reading it down would “require the Court to

⁷⁰ (1923) 33 CLR 1 at 28 (Knox CJ and Starke J; Gavan Duffy J agreeing); see also at 53-54 (Isaacs J).

⁷¹ See *Gazzo* (1981) 149 CLR 227 at 251 (Mason J): “Section 90 would not prevent a Registrar-General from refusing to register a transfer for failure to satisfy criteria provided by State laws, *except those relating to the nonpayment of duties or charges such as stamp duties or registration fees*” (emphasis added).

⁷² See also *Momcilovic v The Queen* (2011) 245 CLR 1 at [260] (Gummow J), observing that a head of federal legislative power may “be exercised to exclude the rights or duties *which the federal law creates* from qualification, wholly or partly, by State laws of a particular description” (emphasis added).

⁷³ *Second Uniform Tax Case* (1957) 99 CLR 575 at 614 (Dixon CJ).

⁷⁴ *Deripaska v Minister for Foreign Affairs* (2026) 100 ALJR 650 at [28] (Gageler CJ, Gleeson and Jagot JJ); *Farm Transparency International Ltd v New South Wales* (2022) 277 CLR 537 at [102] (Gageler J).

perform a feat which is in essence legislative and not judicial”.⁷⁵ Accordingly, the appropriate conclusion is that s 90(1)(a) is invalid insofar as it applies to a “law of a State”.

E. Answers to questions in the Special Case

69. Question 1 should be answered “no”. Victoria makes no submissions on Questions 2-4.

PART V: ESTIMATED TIME

70. It is estimated that 30 minutes will be required for Victoria’s oral argument.

Dated: 9 September 2026



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⁷⁵ *Farm Transparency* (2022) 277 CLR 537 at [100] (Gageler J), quoting *Pidoto v Victoria* (1943) 68 CLR 87 at 109 (Latham CJ).

**ANNEXURE TO THE SUBMISSIONS OF THE ATTORNEY-GENERAL FOR
VICTORIA (INTERVENING)**

No.	Description	Version	Provisions	Reason for providing this version	Applicable date or dates
1.	<i>Constitution</i>	Current	ss 51, 109	Currently in force	All relevant times
Commonwealth statutes					
2.	<i>Acts Interpretation Act 1901</i> (Cth)	Current	s 15A	Applicable principle of construction	All relevant times
3.	<i>Family Law Act 1975</i> (Cth)	1 August 1979 – 3 March 1982	s 90	In force on the date of orders in <i>Gazzo v Comptroller of Stamps (Vic)</i> (1981) 149 CLR 227	24 December 1981
4.	<i>Family Law Act 1975</i> (Cth)	22 November 2018 – 9 March 2019 (Comp No 87)	s 4, s 39, Pt VIII, Pt VIII AA	In force on the date of the 31 January 2019 orders	31 January 2019
5.	<i>Family Law Act 1975</i> (Cth)	25 April 2019 – 26 November 2020 (Comp No 89)	s 4, s 39, Pt VIII, Pt VIII AA	In force on the date of the 23 October 2019 orders and the transfers of real property to Agrinova	23 October 2019; December 2019

6.	<i>Income Tax Assessment Act 1997</i> (Cth)	Current	Subdivision 126-A	Illustrative purposes	N/A
New South Wales statutes					
7.	<i>Duties Act 1997</i> (NSW)	1 July 2019 – 23 June 2020	ss 8, 19, 32, 68, 301	In force on the date of the transfers of real property to Agrinova	December 2019
Other statutes					
8.	<i>Duties Act 1999</i> (ACT)	Current	s 232F	Illustrative purposes	N/A
9.	<i>Duties Act 2000</i> (Vic)	Current	ss 7, 9-12, 16, 18, 28, 43, 44, 269	Illustrative purposes	N/A
10.	<i>Duties Act 2001</i> (Qld)	Current	ss 420, 421, 424	Illustrative purposes	N/A
11.	<i>Duties Act 2001</i> (Tas)	Current	s 56	Illustrative purposes	N/A
12.	<i>Duties Act 2008</i> (WA)	Current	ss 128, 129, 131	Illustrative purposes	N/A
13.	<i>Stamp Duties Act 1923</i> (SA)	Current	s 71CA	Illustrative purposes	N/A
14.	<i>Stamp Duty Act 1978</i> (NT)	Current	s 91	Illustrative purposes	N/A
15.	<i>Stamps (Matrimonial Settlements) Act 1982</i> (Vic)	As made	s 2	Illustrative purposes	N/A

16.	<i>Transfer of Land Act 1958 (Vic)</i>	Current	s 40	Illustrative purposes	N/A
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