



BETWEEN THE COMMISSIONER OF TAXATION OF  
THE COMMONWEALTH OF AUSTRALIA  
Appellant

AND: MARTIN ANDREW THOMAS  
Respondent

BETWEEN THE COMMISSIONER OF TAXATION OF  
THE COMMONWEALTH OF AUSTRALIA  
Appellant

AND: MARTIN ANDREW PTY LTD  
ACN 063 933 055  
Respondent

**ORAL OUTLINE OF THE ATTORNEY-GENERAL OF THE COMMONWEALTH**

**PART I PUBLICATION**

---

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

**PART II PROPOSITIONS TO BE ADVANCED IN ORAL ARGUMENT**

---

**Section 118 of the Constitution**

2. Whatever the position may be with respect to “laws”, the authorities do not support the view that the requirement to give full faith and credit to the judicial proceedings of every State is merely evidentiary.
  - *Lipohar v The Queen* (1999) 200 CLR 485 at 533-534 [119]-[120]
3. Section 118 requires judgments or orders of State courts to be recognised as having the same degree of finality and conclusiveness as they would be given in the State in which they were pronounced, but no more: **CWS [34]**. Accordingly:
  - 3.1 effect must be given “throughout the Commonwealth” to an order of a superior court of a State even if made without jurisdiction, unless and until that order is set aside: **CWS [44]**.

3.2 if an order is not binding upon a non-party within the State where it was made, it does not acquire any greater binding force by operation of s 118: **CWS [28]**.

4. Section 51(xxv) of the Constitution authorises the Parliament to enact laws to facilitate the operation of s 118, as it did by enacting s 18 of the *State and Territorial Laws and Records Recognition Act 1901* (Cth) and its replacement, s 185 of the *Evidence Act 1995* (Cth). Those provisions are in some respects wider than, and in other respects narrower than, s 118 of the Constitution. However, where both the statutory and constitutional provisions apply, their effect is the same.
5. That understanding of the operation of s 118, and its relationship with s 185 of the *Evidence Act 1995* (Cth), is supported by authority: **CWS [14]-[21]**.
  - *Rowe v Silverstein* [1996] 1 VR 509 at 511
  - *Harris v Harris* [1947] VLR 44
  - *Re DEF* (2005) 192 FLR 92 at [49]-[57]
6. It follows that s 118 has nothing to say about the effect of the orders of the Supreme Court of Queensland (QSC) on the Appellant (**Commissioner**): **CWS [22]-[26]**.

#### **The character of the jurisdiction exercised by the QSC**

7. The character of the jurisdiction exercised by the QSC is not determinative of any issue in this appeal (cf. **QS at [44]**): **CWS [40]**.

7.1 If the QSC exercised state jurisdiction, the effect of s 118 is as submitted above.

7.2 If the QSC exercised or purported to exercise federal jurisdiction, its orders had national effect without any need to invoke s 118, the language of which (i.e. “judicial proceeding of [a] State”) is not apt to apply to proceedings in federal jurisdiction in any event.

8. In either case, the determinative question remains the effect of *Executor Trustee v Deputy Federal Commissioner of Taxes (SA)* (1939) 62 CLR 545: **CWS [45]**.

**Dated: 10 April 2018**

**Stephen Donaghue**  
Solicitor-General of the  
Commonwealth

**Kathleen Foley**

**Rowan Minson**