



HIGH COURT OF AUSTRALIA

NOTICE OF FILING

This document was filed electronically in the High Court of Australia on 16 Feb 2023 and has been accepted for filing under the *High Court Rules 2004*. Details of filing and important additional information are provided below.

Details of Filing

File Number: M61/2021
File Title: Vanderstock & Anor v. The State of Victoria
Registry: Melbourne
Document filed: Form 27F - ACT intervener - Outline of oral argument
Filing party: Interveners
Date filed: 16 Feb 2023

Important Information

This Notice has been inserted as the cover page of the document which has been accepted for filing electronically. It is now taken to be part of that document for the purposes of the proceeding in the Court and contains important information for all parties to that proceeding. It must be included in the document served on each of those parties and whenever the document is reproduced for use by the Court.

IN THE HIGH COURT OF AUSTRALIA
MELBOURNE REGISTRY

No M 61 of 2021

BETWEEN:

CHRISTOPHER VANDERSTOCK

First Plaintiff

KATHLEEN DAVIES

Second Plaintiff

and

THE STATE OF VICTORIA

Defendant

**OUTLINE OF ORAL SUBMISSIONS OF THE ATTORNEY-GENERAL OF THE
AUSTRALIAN CAPITAL TERRITORY (INTERVENING)**

Part I: Internet Publication

1. This outline is in a form suitable for publication on the internet.

Part II: Outline of Oral Submissions

Principle

2. There is a common thread woven through the case law on s 90: namely, the proposition that the concept of “duties of excise” is limited to inland taxes imposed on goods as the subjects of manufacture or production or as “*articles of commerce*” (ACT [4], [23]-[32], [34]).

Matthews v Chicory Marketing Board (Vic) (1938) 60 CLR 263 at 284, 304 (**JBA 5, Tab 29**)

Parton v Milk Board (Vic) (1949) 80 CLR 229 at 252-253, 260-261 (**JBA 6, Tab 33**)

Dennis Hotels Pty Ltd v Victoria (1960) 104 CLR 529 at 540-541, 559, 574, 588-590 (**JBA 4, Tab 20**)

Bolton v Madsen (1963) 110 CLR 264 at 273 (**JBA 3, Tab 15**)

Dickenson’s Arcade Pty Ltd v Tasmania (1974) 130 CLR 177 at 185, 193, 196, 204, 213, 222-223, 229-231, 239, 243 (**JBA 4, Tab 21**)

Logan Downs Pty Ltd v Queensland (1977) 137 CLR 59 at 61, 65, 69-70, 78 (**JBA 5, Tab 28**)

Philip Morris Ltd v Commissioner of Business Franchises (Vic) (1989) 167 CLR 239 at 430, 444, 479, 482-483, 485-486 (**JBA 6, Tab 35**)

Ha v New South Wales (1997) 189 CLR 465 at 496-497 (**JBA 4, Tab 23**)

3. A tax on the use or consumption of goods is not excluded *categorically* from constituting a duty of excise within the meaning of s 90 of the Constitution.
4. Once the goods pass through the chain of supply and into the hands of the consumer, it remains necessary to examine the substantial operation of the tax to ascertain whether the tax is imposed on goods as “articles of commerce”, that is, in respect of commercial dealings (ACT [33]).

Hematite Petroleum Pty Ltd v Victoria (1983) 151 CLR 599 (**JBA 5, Tab 25**)

5. The articulation by the Plaintiffs and the Commonwealth of the concept of goods as “articles of commerce” (**Transcript 14/02/23, p 11 line 415; p 90 line 4069**), robs that concept of any substantive operation.
6. The broader and hypothetical question of whether a tax on the consumption of goods imposes a duty of excise does not obviate the need to examine at a more fundamental level whether the tax in question is imposed on goods as “articles of commerce”.

The ZLEV Charge

7. The ZLEV Charge operates as a charge on the personal use of the ZLEV, and not in respect of any sale, supply or other commercial dealing with the ZLEV (**ACT [40]**).
8. The burden of the ZLEV Charge is borne periodically by the consumer of the ZLEV, but not as a static part of the purchase price of the ZLEV.

Dated: 16 February 2023



P J F Garrison

H Younan