



HIGH COURT OF AUSTRALIA

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Details of Filing

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IN THE HIGH COURT OF AUSTRALIA
MELBOURNE REGISTRY

No M61 of 2021

BETWEEN:

CHRISTOPHER VANDERSTOCK
First Plaintiff

KATHLEEN DAVIS
Second Plaintiff

and

THE STATE OF VICTORIA
Defendant

**OUTLINE OF ORAL SUBMISSIONS OF THE ATTORNEY GENERAL FOR NEW
SOUTH WALES, INTERVENING**

Part I Publication

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

Part II Outline of Oral Submissions

2. Even if this can be described as a “consumption tax”, it is not a tax on the vehicle as a good. It is a tax upon the owner for the time being of the vehicle calculated by the mileage covered by the vehicle during the relevant period of ownership. The ZLEV charge does not fall within the category of excise for the reasons given by Stephen J in Logan Downs Pty Ltd v Queensland (1977) 137 CLR 59 at 69 (**JBA Vol 5 Tab 28 p 1073**).
3. The “person taxed is not taxed by reference to, or by reason of, any relation between himself and any commodity as producer, manufacturer processor, seller or purchaser”: Browns Transport Pty Ltd v Kropp (1958) 100 CLR 177 at 129 per Dixon CJ, McTiernan, Fullagar, Kitto, Taylor, and Windeyer JJ (**JBA Vol 3 Tab 16 p 436**).
4. The question that arose in Dickenson’s Arcade Pty Ltd v Tasmania (1974) 130 CLR 177 was effectively whether the tax in question was a sales tax or a tax on

consumption: at 193 per Barwick CJ; 239, 243 per Mason J (**JBA Vol 4 Tab 21 p 706, 752, 756**). Five of the six members of the Court agreed that a tax would not fall within s 90 if it was a tax on consumption (**NSW WS [6]-[7]**).

5. The ZLEV charge bears no resemblance to the tax in Dickenson's Arcade (**NSW WS [37]-[39]**). Unlike a sales tax:

- a. the tax is not added to the price of the product;
- b. there is no direct effect on the demand for the ZLEVs in circumstances where the amount of tax paid will vary widely; and
- c. there is no correlation between the tax and the price of the vehicle. The tax is the same for all models, and for new and used vehicles, despite the differences in price between them.

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6. "Excise" was "intended to mean a duty analogous to a customs duty imposed upon goods either in relation to quantity or value when produced or manufactured, and not in the sense of a direct tax or personal tax": Peterswald v Bartley (1904) 1 CLR 497 at 509 per Griffith CJ, Barton and O'Connor JJ (**JBA Vol 6 Tab 34 p 1510**), adopted in Matthews v Chicory Marketing Board (Vic) (1938) 60 CLR 263 at 277 per Latham CJ (McTiernan J agreeing at 304) (**JBA Vol 5 Tab 29 p 1104, 1131**).

Date: 15 February 2023

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nb for

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