IN THE HIGH COURT OF AUSTRALIA **No. C2 and C3 of 2011**
CANBERRA REGISTRY

BETWEEN: **QUEANBEYAN CITY COUNCIL**
Appellant

AND: **ACTEW CORPORATION LIMITED**
First Respondent

AND **THE AUSTRALIAN CAPITAL TERRITORY**
Second Respondent

SUBMISSIONS ON BEHALF OF THE ATTORNEY-GENERAL FOR THE STATE OF QUEENSLAND (INTERVENING)

CERTIFICATION

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

INTRODUCTION

2. The Attorney-General for the State of Queensland intervenes in these proceedings pursuant to s 78A of the *Judiciary Act 1903* (Cth) in support of the respondents.

3. The questions in these proceedings are whether water abstraction charges and a utilities network facilities tax imposed by the Australian Capital Territory ('ACT') are invalid because they are duties of excise within the meaning of s 90 of the Constitution.

4. The Attorney-General adopts the ACT's submissions with regard to the utilities network facilities tax. In summary, however, the Attorney-General submits that the water abstraction charges are not duties of excise because:

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Prepared by:
Gregory Richard Cooper
Crown Solicitor
11th Floor State Law Building
50 Ann Street
Brisbane Qld 4000

Tel: (07) 3239 6328
Fax: (07) 3239 6382
Ref: PL8/ATT110/2500/MAD

(a) the water abstraction charges are royalties; or

(b) the water abstraction charges are akin to charges for the acquisition of property;

(c) in any event, there is a discernible relationship between the value of the water abstraction charge and the value of the water supplied; and

(d) even if none of the foregoing apply, the water abstraction charges are matters of internal governmental administration rather than true taxes.

THE WATER ABSTRACTION CHARGE

5. The *Water Resources Act 1998* (ACT) ('the 1998 Act') vested the right to the use, flow and control of all water of the Territory in the ACT.[1] It provided for the grant of licences to take water[2] and made it an offence for a person to take water without a licence, subject to certain exceptions.[3]

6. The 1998 Act also allowed the Minister to determine fees, including fees that were taxes, under the Act.[4]

7. The *Water Resources Act 2007* (ACT) ('the 2007 Act') repealed the 1998 Act but introduced provisions with similar effect to those mentioned in paragraphs 5 and 6 above.[5]

8. Pursuant to provisions of the 1998 Act and the 2007 Act, the Minister set water abstraction charges. These were initially set at 10c per kilolitre in early 2000. By 1 July 2005, the charge had been increased to 25 cents per kilolitre.[6]

9. On 1 July 2006, however, the charge was increased by 30 cents per kilolitre to 55 cents per kilolitre. It was then reduced to 51 cents per kilolitre from 1 July 2008.[7]

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1 1998 Act, s 13.
2 1998 Act, s 35.
3 1998 Act, s 33.
4 1998 Act, s 78.
5 See ss 7 (vesting the right to the use, flow and control of all water of the Territory in the ACT); 11 (defining the 'taking' of water); 28 (requiring a licence before taking water), 30 (granting of licences); 31 (conditions on licences); and 107 (fees).
6 See *Australian Capital Territory v Queanbeyan City Council* (2010) 188 FCR 541 at 546 [20]-548 [29] (Keane CJ).
7 See *Australian Capital Territory v Queanbeyan City Council* (2010) 188 FCR 541 at 548 [32]-551 [38] (Keane CJ).

10. ACTEW, the second respondent, holds a number of licences from the ACT to provide water and sewerage services. It supplies potable water to the appellant. Its contractual agreements with the appellant allow it to pass on the cost of the water abstraction charges.

11. The latest agreements between ACTEW and the appellant, however, provide that if any government charge is found to be invalid, the appellant would cease to be obliged to pay it.

10 STATEMENT OF ARGUMENT

(a) Water abstraction charge is a royalty

12. Section 90 of the Constitution provides:

> On the imposition of uniform duties of customs the power of the Parliament to impose duties of customs and excise, and to grant bounties on the production or export of goods, shall become exclusive.

13. Excise duties are a type of tax; they are inland taxes on 'a step in the production, manufacture, sale or distribution of goods'.[8]

14. The appellant submits that the water abstraction charge is an excise because it has
20 a revenue raising purpose and there is no discernible relationship between the water abstraction charge and the value of the commodity (potable water).

15. These submissions should be rejected.

16. The water abstraction charge is in the nature of a royalty rather than a tax. In *Stanton v Federal Commissioner of Taxation*, this Court explained the essence of a royalty in these terms:[9]

> In the case of monopolies and the like the essential idea seems to be payment for each thing produced or sold or each performance or exhibition
30 in pursuance of the licence. In the same way in the case of things taken from the land *the essential notion seems to be that the payment is made in respect of the taking of something which otherwise might be considered to belong to the owner of the land in virtue of his ownership*. In other words it is inherent in the conception expressed by the word that the payments should be made in respect of the particular exercise of the right to take the

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8 *Ha v New South Wales* (1997) 189 CLR 465 at 490 (Brennan CJ, McHugh, Gummow and Kirby JJ).

9 (1955) 92 CLR 630 at 641-642 (Dixon CJ, Wiliams, Webb, Fullagar, Kitto JJ).

> substance and *therefore should be calculated either in respect of the quantity or value taken or the occasions upon which the right is exercised.*

17. In *Yanner v Eaton* ('*Yanner*'), Gleeson, Gaudron, Kirby and Hayne JJ described a royalty as 'a fee exacted by someone *having property in a resource* from someone who exploits that resource'.[10]

18. It is not essential for a government to have beneficial ownership of a resource in order to charge royalties for its exploitation. *Yanner* itself demonstrates this. There the Court considered the effect of s 7 of the *Fauna Conservation Act 1974* (Qld), which provided:

> All fauna, save fauna taken or kept otherwise than in contravention of this Act during an open season with respect to that fauna, is the property of the Crown and under the control of the Fauna Authority.

19. The majority held that s 7 did not confer beneficial ownership of the fauna on the Crown and therefore did not extinguish all native title rights and interests to that fauna. Chief Justice Gleeson and Gaudron, Kirby and Hayne JJ construed s 7 as vesting in the Crown 'no more than the aggregate of the various rights of control by the Executive that the legislation created'.[11] Their Honours reached this conclusion after considering the relationship between s 7 and a royalty scheme provided for under s 67 of that Act and its predecessors. As they observed:[12]

> Provisions vesting property in fauna in the Crown were introduced into Queensland legislation at the same time as provisions imposing a royalty on the skins of animals or birds taken or killed in Queensland...[T]he drafter of the early Queensland fauna legislation may well have seen it as desirable (if not positively essential) to provide for the vesting of some property in fauna in the Crown as a necessary step in creating a royalty system. *Further, the statutory vesting of property in fauna in the Crown may also owe much to a perceived need to differentiate the levy imposed by the successive Queensland fauna statutes from an excise. For that reason it may well have been thought important to make the levy as similar as possible not only to traditional royalties recognised in Australia and imposed by a proprietor for taking minerals or timber from land, but also to some other rights (such as warren and piscary) which never made the journey from England to Australia.*

20. Chief Justice Gleeson and Gaudron, Kirby and Hayne JJ quoted approvingly from an article by Roscoe Pound on public ownership of certain resources:[13]

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10 (1999) 201 CLR 351 at [27] (emphasis added).
11 (1999) 201 CLR 351 at [30].
12 (1999) 201 CLR 351 at [27] (emphasis added).
13 Original emphasis.

> We are also tending to limit the idea of discovery and occupation by making res nullius (eg, wild game) into res publicae and to justify a more stringent regulation of individual use of res communes (eg, of the use of running water for irrigation or for power) by declaring that they are the property of the state or are "owned by the state in trust for the people". It should be said, however, that while in form our courts and legislatures seem thus to have reduced everything but the air and the high seas to ownership, in fact the so-called state ownership of res communes and res nullius is only a sort of guardianship for social purposes. It is imperium, not dominium. The state as a corporation does not own a river as it owns the furniture in the state house. *It does not own wild game as it owns the cash in the vaults of the treasury.* What is meant is that conservation of important social resources requires regulation of the use of res communes to eliminate friction and prevent waste, and requires limitation of the times when, places where, and persons by whom res nullius may be acquired in order to prevent their extermination. *Our modern way of putting it is only an incident of the nineteenth-century dogma that everything must be owned.*

21. Given the majority's findings about the nature of property vested in the Crown and the royalty scheme created by the *Fauna Conservation Act 1974* (Qld), *Yanner* supports the proposition that, in order to support a royalty, it is not necessary for a government to establish that it has beneficial ownership of a resource; a high degree of control or power over a resource will suffice.

22. Water is a resource that governments in Australia have controlled for well over a hundred years,[14] and the degree of control that the ACT exercises over water in the Territory is very extensive.[15] As mentioned earlier,[16] under the 1998 Act, the rights to the use, flow and control of all water of the ACT (including underground

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14 In *ICM Agriculture Pty Ltd v Commonwealth*, French CJ, Gummow and Crennan JJ pointed out that pre-federation statutes had recognised that water was common property that was not especially amenable to private property and was best vested in a sovereign state: see (2009) 240 CLR 140 at [52]-[57]. For a survey of the position under common law and under earlier statutes in Queensland, see A Preece, 'Water Rights of Land Owners in Queensland' (2000) 20 *The Queensland Lawyer* 230.

15 It is noteworthy that water in and around the ACT has been regulated by various governments since at least the *Water Rights Act 1896* (NSW), which vested the right to the use and flow and to the control of water in all rivers and lakes in the Crown: s 1(I). Upon the Commonwealth's acceptance of the Australian Capital Territory from New South Wales, this law was continued in force with necessary changes until other provision was made: *Seat of Government Acceptance Act 1909* (Cth), s 6. Later pieces of legislation that vested in governments control of aspects of water in the area include the Lake Burley Griffin Ordinance, s 11; the *Canberra Water Supply (Googong Dam) Act 1974* (Cth), s 11; and the Lakes Ordinance 1976 (s 11). The 1998 Act and the 2007 Act represent a natural development from such legislation.

16 Paragraph 5.

water) were vested in the ACT[17] and it was an offence for a person to take water without a licence.[18] The 2007 Act has equivalent provisions.[19]

23. The water abstraction charge was payable by ACTEW as the holder of a water licence and was calculated on the amount of water used. In light of the ACT's control over water, the water abstraction charge satisfies the description of 'a fee exacted by someone having property in a resource from someone who exploits that resource'. It is a royalty, not a tax. It is thus not an excise.[20]

10 24. It is irrelevant to this conclusion that the water abstraction charge may be imposed to raise revenue. This Court has never suggested that a royalty cannot be for revenue raising.[21] Indeed, any other view would erase the distinction between royalties and taxes, since there would be few, if any, royalties set by a government that did not have revenue raising as a primary purpose. The possibility that the ACT was seeking to 'replenish the Treasury'[22] therefore does not convert the water abstraction charge into a tax.

25. Likewise, it is irrelevant to the character of a royalty that there may not be a discernible relationship between the amount of the royalty and the value of the
20 resource that is exploited. The appellant has cited no authority of this Court suggesting the need for such a relationship.

26. Furthermore, there is no reason in principle why the character of a royalty should depend on such a relationship. In the case of public resources such as water, there will seldom be an adequate means of determining value. It is telling that the appellant submits that, without any other suitable metric, an appropriate guide to value would be reasonable costs plus a reasonable rate of return.[23] Yet this would ignore all the non-economic matters which must be considered by a government in determining policy for a resource such as water and in setting a price for

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17 1998 Act, s 13. It is submitted that the effect of these provisions is to divest persons of all common law rights and native title rights and to vest them in the ACT: see *Hanson v The Grass Gully Gold Mining Co* (1900) 21 NSWR (L) 271; *ICM Agriculture Pty Ltd v Commonwealth* (2009) 240 CLR 140 at [54], [72] (French CJ, Gummow and Crennan JJ), [116] (Hayne, Kiefel and Bell JJ).

18 2007 Act, s 33.

19 The ACT Executive also has the right to use and dispose of water in the Googong Dam Area by virtue of s 11 of the *Canberra Water Supply (Googong Dam) Act 1974* (Cth). The Commonwealth has granted a lease over the Googong Dam Area to the ACT for 150 years: see *Queanbeyan City Council v ACTEW Corporation* (2009) 178 FCR 510 at 514 [11] (Buchanan J).

20 *Harper v Minister for Sea Fisheries* (1989) 169 CLR 314 (Brennan J).

21 By contrast, a revenue raising purpose is relevant to characterising an exaction as a fee for service or a tax: see *Airservices Australia v Canadian Airlines International Ltd* (1999) 202 CLR 133 at 178 [90] (Gleeson and Kirby JJ); *Lutton v Lessels* (2002) 210 CLR 333 at 343 (Gleeson CJ).

22 *Fairfax v Federal Commissioner of Taxation* (1965) 114 CLR 1 at 19 (Windeyer J).

23 Appellant's Submissions on Water Abstraction Charge, para 74.

exploitation of the resource. It would exclude considerations such as the possible impact of climate change on anticipated flows into the catchment areas; the projected demand for water in the coming decades; the levels of water necessary to ensure the health of the environment; and the social impact of price increases. Given the inherent limitations of trying to allocate a value to a natural resource such as water, it is submitted that a royalty need not have a discernible relationship to value.[24]

27. Nor does the purpose of s 90 of the Constitution require a discernible relationship between the value of the resource exploited and the rate at which a royalty is set. The appellant contends that if a State or Territory levy on the sale of a resource goes beyond charging for the value of the resource, this will impact on sales of the commodity. This, it says, in turn will impede the creation of national markets and will undermine the Commonwealth's real control over the taxation of commodities and its ability to stimulate home production.[25] But s 90 is framed in terms of excise duties, not royalties. The framers of the Constitution were familiar with the difference between taxes and royalties. To give s 90 an operation that narrowed the concept of royalties would be to overlook this point.

28. In any event, these contentions ignore the fact that demand for a resource such as water will invariably be affected by a range of factors to which s 90 of the Constitution has no application. In the case of water in the ACT, for instance, the appellant's own case is that water restrictions imposed by the ACT in 2006 and 2007 restricted demand between 20% and 40%, whereas the water abstraction charge would have only reduced demand by 1.3%.[26] As this demonstrates, in comparison with other factors, the asserted lack of a relationship between the rate at which a royalty is set and the value of the resource exploited may have only a negligible impact on demand. Since that is so, s 90 of the Constitution does not mandate that a charge or fee for the exploitation of a resource should only remain a royalty if it has a discernible relationship to value.[27]

(b) Water abstraction charges are akin to charges for the acquisition of property.

29. Even if the water abstraction charge were not in fact a royalty, it would be akin to a charge for the acquisition of property. In *Harper v Minister for Sea Fisheries*,[28] this Court rejected a challenge to commercial abalone licence fees imposed by the State of Tasmania. It found that the licence fees were not royalties, because the

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24 Compare *Airservices Australia v Canadian Airlines International Limited* ('*Airservices Australia*') (1999) 201 CLR 133 at 240 [312] (McHugh J); *Australian Capital Territory v Queanbeyan City Council* (2010) 188 FCR 54 1 at [193(c)]-[194] (Perram J).

25 Appellant's Submissions on Water Abstraction Charge, para 62.

26 Appellant's Submissions on Water Abstraction Charge, para 96.

27 Compare *Hematite Petroleum Pty Ltd v Victoria* (1983) 151 CLR 599 at 617 (Gibbs CJ).

28 (1989) 169 CLR 314.

State did not have a proprietary interest in relation to all of the abalone in the relevant waters.[29] Despite this, the Court held that environmental and conservation considerations deprived the licence fee of its character as a tax. Justice Brennan stated that the State has power to regulate fishing in its waters and that as 'the amounts payable to obtain an abalone fishing licence are of the same character as a charge for the acquisition of property, they do not bear the character of taxes [and] are not duties of excise'.[30] Chief Justice Mason and Deane and Gaudron JJ generally agreed with these reasons and added:[31]

> Under [the] licensing system, the general public is deprived of the right of unfettered exploitation of the Tasmanian abalone fisheries. What was formerly in the public domain is converted into the exclusive but controlled preserve of those who hold licences. The right of commercial exploitation of a public resource for personal profit has become a privilege confined to those who hold commercial licences. This privilege can be compared to a profit à prendre. In truth, however, it is an entitlement of a new kind created as part of a system for preserving a limited public natural resource in a society which is coming to recognise that, in so far as such resources are concerned, to fail to protect may destroy and to preserve the right of everyone to take what he or she will may eventually deprive the right of all content.
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> In that context, the commercial licence fee is properly to be seen as the price exacted by the public, through its laws, for the appropriation of a limited public natural resource to the commercial exploitation of those who, by their own choice, acquire or retain commercial licences. So seen, the fee is the quid pro quo for the property which may lawfully be taken pursuant to the statutory right or privilege which a commercial licence confers upon its holder. It is not a tax. That being so, it is not a duty of excise.

30. None of these four judges suggested that there was any requirement that there be a discernible relationship between the value of the resource taken and the level of the fee or charge. The reasoning of these judges in *Harper* is applicable to the water abstraction charge, as Keane CJ[32] recognised below. It supports the conclusion that the charge is not a tax and is therefore not an excise.

31. The appellant relies upon the remarks of Dawson, Toohey and McHugh in *Harper* to the effect that, even where an exaction is to conserve a public natural resource, it may be a tax if there is no discernible relationship between the exaction and the

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29 (1989) 169 CLR 314 at 334 (Brennan J). This outcome, however, may need to be reassessed in the light of the Court's reasoning in *Yanner*: see paragraphs 18 to 21 above.

30 (1989) 169 CLR 314 at 336.

31 (1989) 169 CLR 314 at 325.

32 (2010) 188 FCR 541 at 558 [65].

value of what is acquired.[33] They also rely on statements by three judges in *Airservices Australia* seemingly approving of those remarks in *Harper*.[34]

32. However, the reliance is misplaced. The remarks of Dawson, Toohey and McHugh in *Harper* did not represent the ratio decidendi of that case.

33. Furthermore, the statements in *Airservices Australia*, properly understood, do no more than indicate that *if* there is a discernible relationship between the value of providing a service and the charge, it is not a tax; they do not indicate that the lack of a discernible relationship between the value of the commodity and the charge means that the charge must be a tax. Justice McHugh made this clear.[35]

(c) Discernible relationship between the value of the water abstraction charge and the value of the water supplied.

34. In any event, there is a discernible relationship between value of water and the water abstraction charge. As Stone J recognised in the Full Court, a discernible relationship sets 'a very low threshold'.[36] It does not involve asking whether the charge in fact corresponds to the value of the resource taken. In *Harper*, for instance, this Court rejected a challenge to the commercial abalone licence fees as an excise although there was no apparent relationship between the value of what was acquired and the level of the fees for 1989.[37] The fee for the 1989 year was $40,000 for a licence authorising the taking of abalone in excess of 15,000 tonnes and $28,000 for a licence authorising the taking of a smaller quantity.[38] These fees were not referable to the value of abalone taken or (as the plaintiff point out)[39] the costs of providing any service. Despite this, Dawson, Toohey and McHugh JJ remarked:[40]

> Whilst the proper conclusion is that the amount paid for a commercial abalone licence is not a tax and, therefore, is not a duty of excise, that conclusion flows from all the circumstances of the case. Most important is the fact that it is possible to discern a relationship between the amount paid

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33 (1989) 169 CLR 314 at 336-337.

34 (1999) 201 CLR 133 at 191 [136] (Gaudron J), 233 [293], 234 [297] (McHugh J), 282-283 [445]-[447] (Gummow J).

35 (1999) 201 CLR 133 at 240 [312] (McHugh J). See also (1999) 201 CLR 133 at 191 [136] (Gaudron J).

36 (2010) 188 FCR 541 at 583 [174]. See also (2010) 188 FCR 541 at 561 [72] (Keane CJ) (holding that even 'the most exiguous relationship will...exclude the conclusion that there is "no discernible relationship"').

37 The challenge was to regulation 17A of the Sea Fisheries Regulations (Tas) as in force for the years 1987, 1988 and 1989 in respect of abalone licences held by the plaintiff.

38 (1989) 168 CLR 314 at 328 (Brennan J) (quoting regulation 17A).

39 (1989) 168 CLR 314 at 324.

40 (1989) 168 CLR 314 at 336.

> and the value of the privilege conferred by the licence, namely, the right to acquire abalone for commercial purposes in specified quantities. In discerning that relationship it is significant that abalone constitute a finite but renewable resource which cannot be subjected to unrestricted commercial exploitation without endangering its continued existence.

35. The water abstraction charge concerns a finite but renewable resource that, on any view, is in need of regulation. That resource is controlled solely by the ACT. One of the ACT's stated objects in increasing the charge was to more truly reflect water's economic value. The appellant accepted that this reflected a genuine assessment.[41] It is, moreover, difficult to allocate a value to water and indeed there was conflicting expert opinion about that subject (which was not admitted into evidence because the primary judge did not regard it as relevant).[42] In these circumstances, it cannot be said that there was an absence of a discernible relationship between the value of the resource acquired by ACTEW and the water abstraction charge. The relationship is at least as strong as that in *Harper*.

(d) Water abstraction charges are matters of internal governmental administration rather than through taxes.

36. Finally, and in any event, the water abstraction charge is not a tax because ultimately it is no more than an internal financial arrangement between the ACT and an entity that it created and wholly owns and controls. In the Full Federal Court, Keane CJ opined:[43]

> When it is said that a tax is a compulsory exaction by a public authority for public purposes, what is in contemplation is an exercise of the power of the government lawfully to take from the governed, as opposed to the internal financial arrangements of the government. On this view, the imposition of the WAC upon ACTEW is not a tax because it is a governmental financial arrangement.

37. It is respectfully submitted that this view is correct. It is consistent with statements about the meaning of taxation that were well-known in the nineteenth century. In the United States, Thomas Cooley's treatise described taxes in these terms:[44]

> Taxes are defined as being the enforced proportional contribution of persons and property, levied by the authority of the state for the support of the government, and for all public needs.

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41 (2010) 188 FCR 541 at 549 [34] (Keane CJ).

42 See *Queanbeyan City Council v ACTEW Corporation* (2009) 178 FCR 510 at 528 [85]-530 [93] (Buchanan J).

43 (2010) 188 FCR 541 at 554 [51].

44 *A Treatise on the Law of Taxation, including Local Assessments*, Chicago, 1st ed, 1881, p 1.

> They are the property of the citizen, demanded and received by the government to be disposed of to enable it to carry into effect its mandates, and to discharge its manifold functions.

38. Likewise, Quick and Garran said:[45]

> Taxation may now be defined as any exaction of money or revenue, by the authority of a State, *from its subjects or citizens and others* within its jurisdiction, for the purpose of defraying the cost of government, promoting the common welfare, and defending it by different names.

39. In *People v McCreery*, the Supreme Court of California observed:[46]

> "Taxation" is a charge levied by the sovereign power upon the property of its subjects. It is not a charge upon its own property, nor upon property over which it has dominion.

40. While these statements need qualification in light of Australia's constitutional framework, which envisages that one government in the federation may tax another,[47] they nonetheless support Keane CJ's view that taxes do not include internal governmental arrangements.

41. ACTEW is a territory-owned corporation. It is not entitled to any of the privileges or immunities of the ACT solely because of that status, nor is it immune from taxes solely because of that status.[48] However, it is intimately connected to the ACT and cannot properly be described as independent of it. It has voting shareholders who are ministers of the ACT government,[49] and who hold their shares on trust for the ACT.[50] The shareholding ministers may require ACTEW to comply with directions and with government policies.[51] If ACTEW borrows money from any source, it is obliged to pay to the ACT any amounts that the Treasurer determines in writing.[52] Furthermore, ACTEW's main objectives are public in character; it must not only maximise Treasury's investment but must operate in accordance with the object of ecologically sustainable development and it show a sense of social responsibility.[53] In short, the relationship between ACTEW and the ACT is such that, if ACTEW had been established by a State, it

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45 *Annotated Constitution of the Australian Commonwealth*, 1901, p 550 (emphasis added).
46 34 Cal 432 at 456. See also *People v Austin* (1874) 47 Cal. 353 at 361; *Van Brocklin v Anderson* (1886) 6 Sup Ct 670 at 678.
47 See section 114 of the Constitution.
48 *Territory-owned Corporations Act 1990* (ACT), s 8(2).
49 See *Queanbeyan City Council v ACTEW Corporation* (2009) 178 FCR 510 at 513 [5] (Buchanan J) and *Territory-owned Corporations Act 1990* (ACT), s 13(4).
50 *Territory-owned Corporations Act 1990* (ACT), s 13(5).
51 *Territory-owned Corporations Act 1990* (ACT), ss 17, 17A.
52 *Territory-owned Corporations Act 1990* (ACT), s 31.
53 *Territory-owned Corporations Act 1990* (ACT), s 7.

would have been treated as 'the State' for the purposes of s 114 of the Constitution.[54]

42. Because of ACTEW's relationship with the ACT, the water abstraction charge is no different in character from the borrowing levy that may be imposed by the Treasurer. Accordingly, the water abstraction charge is properly as an internal financial arrangement of the ACT. It is not a tax, and is therefore not an excise.

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WALTER SOFRONOFF QC
Solicitor-General for Queensland
Tel: (07) 3237 4884
Fax: (07) 3210 6628

GIM DEL VILLAR
Murray Gleeson Chambers

54 *SGH Ltd v Commissioner of Taxation* (2002) 210 CLR 51.