



HIGH COURT OF AUSTRALIA

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Details of Filing

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Important Information

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IN THE HIGH COURT OF AUSTRALIA
MELBOURNE REGISTRY

ON APPEAL FROM
A SINGLE JUDGE OF THE HIGH COURT

BETWEEN:

FREDERICK CHETCUTI
Appellant

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and

COMMONWEALTH OF AUSTRALIA
Respondent

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**ATTORNEY-GENERAL FOR THE STATE OF SOUTH AUSTRALIA
(INTERVENING)
OUTLINE OF ORAL SUBMISSIONS**

Part I:

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

Part II:

2. The Submissions of the Attorney-General for the State of South Australia (Intervening) (SA) are directed to the question of how the division of the Crown, an event occurring at a point of time between 1901 and 1986, was effected consistently with the federal principles contained within the *Commonwealth Constitution*. (SA [5])

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3. It will be unnecessary for the Court to address this question unless the Court finds it necessary to decide the date on which Australia became independent from the United Kingdom such that the Queen of Australia divided from the Queen of the United Kingdom. (SA, [16], Respondent's Submissions in Reply to Submissions of the Attorney-General for the State of South Australia Intervening (CR), [7])
4. The Crown, as head of state, is a constituent element of the States. Accordingly, the identity of the Crown cannot have been altered by the unilateral exercise of the Commonwealth's ordinary legislative power without offending s 106 of the
10 *Constitution* or the *Melbourne Corporation* principle. (SA [1], [7])
5. However, s 106 and the *Melbourne Corporation* principle would not have presented an obstacle to the division of the Crown if it had been effected by paramount legislation of the United Kingdom Parliament (such as, the *Statute of Westminster 1931* (UK)) or by co-operative legislation passed with the concurrence of the States (such as, the *Australia Act 1986* (Cth)). (SA [6])
6. The division of the Crown may have been effected by the enactment of the *Statute of Westminster Adoption Act 1942* (Cth) if that legislative effect is understood as being
20 directly or indirectly drawn from a paramount source, namely the *Statute of Westminster*. (SA [33]; CR [4], [6])
7. South Australia does not accept that the *Statute of Westminster Adoption Act* may be supported, in the alternative, by the external affairs power or the nationhood power in so far as it has been said to have effected the division of the Crown. In any event, South Australia submits that if the *Statute of Westminster Adoption Act* was sourced in these powers then it could not have had the effect of dividing the Crown without offending s 106 or the *Melbourne Corporation* principle. (CR [5])

30 Dated: 11 May 2021

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M J Wait SC
Solicitor-General (SA)

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J F Metzger
Counsel for the Intervener