

# HIGH COURT OF AUSTRALIA

FRENCH CJ,  
KIEFEL, KEANE, NETTLE AND GORDON JJ

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WARRICK COVERDALE, VALUER-GENERAL OF  
THE STATE OF TASMANIA APPELLANT

AND

WEST COAST COUNCIL RESPONDENT

*Coverdale v West Coast Council*  
[2016] HCA 15  
14 April 2016  
H10/2015

## ORDER

*Appeal dismissed.*

On appeal from the Supreme Court of Tasmania

### Representation

M E O'Farrell SC, Solicitor-General of the State of Tasmania with S K Kay for the appellant (instructed by Acting Director of Public Prosecutions (Tas))

Submitting appearance for the respondent

S B McElwaine SC with R L A Munnings for the Attorney-General of the State of Tasmania, as contradictor (instructed by Crown Law (Tas))

Notice: This copy of the Court's Reasons for Judgment is subject to formal revision prior to publication in the Commonwealth Law Reports.



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## CATCHWORDS

### **Coverdale v West Coast Council**

Statutes – Interpretation – Meaning of "land" – Meaning of "Crown lands" – Whether "Crown lands" in s 11(1) of *Valuation of Land Act* 2001 (Tas) includes seabed and waters above it – Whether s 11(1) of *Valuation of Land Act* and s 2 of *Crown Lands Act* 1976 (Tas) *in pari materia*.

Words and phrases – "Crown lands", "*in pari materia*", "including", "land".

*Acts Interpretation Act* 1931 (Tas), s 46.

*Crown Lands Act* 1976 (Tas), ss 2, 29.

*Local Government Act* 1993 (Tas), Pt 9, s 87(1).

*Valuation of Land Act* 2001 (Tas), ss 3, 11.

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1 FRENCH CJ, KIEFEL, KEANE, NETTLE AND GORDON JJ. This is an appeal from a judgment of the Full Court of the Supreme Court of Tasmania. The question is whether the seabed and waters of Macquarie Harbour are lands or Crown lands within the meaning of s 11(1) of the *Valuation of Land Act 2001* (Tas) ("the VLA"). For the reasons which follow, that question should be answered, yes.

### The facts

2 The respondent ("the Council") seeks to levy rates on eight marine farming leases over parts of the seabed and waters within Macquarie Harbour on the west coast of Tasmania pursuant to Pt 9 of the *Local Government Act 1993* (Tas) ("the LGA"). To that end, it requested the appellant ("the Valuer-General") to value the leases in accordance with s 11(1) of the VLA. In substance, s 11(1) of the VLA provides that the Valuer-General must value all lands within each valuation district, including any Crown lands that are liable to be rated in accordance with Pt 9 of the LGA. The Valuer-General declined to value the leases on the basis that, in the Valuer-General's opinion, the leases are not over "lands" or "Crown lands that are liable to be rated" within the meaning of s 11(1).

3 The Council instituted proceedings in the Supreme Court of Tasmania for, among other relief, a declaration that the Valuer-General was obliged to value the leases. At first instance, Blow CJ held that the leases were not over lands within the meaning of s 11(1) of the VLA and, therefore, were not liable to be rated<sup>1</sup>. On appeal to the Full Court, Tennent and Estcourt JJ (Pearce J dissenting) held that the leases were over Crown lands that were liable to be rated in accordance with Pt 9 of the LGA<sup>2</sup>.

4 The present appeal is brought pursuant to a grant of special leave made on 11 September 2015<sup>3</sup>. The Council did not appear at the special leave application or on the hearing of this appeal. Pursuant to the condition upon which special leave to appeal was granted, the Attorney-General of the State of Tasmania appeared by Senior Counsel as contradictor.

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1 *West Coast Council v Coverdale* (2014) 203 LGERA 296.

2 *West Coast Council v Coverdale (No 2)* (2015) 325 ALR 751.

3 [2015] HCATrans 228 (Kiefel and Nettle JJ).

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### Relevant legislation

#### *Valuation of Land Act*

5 The Valuer-General has responsibility under s 5(2) of the VLA for the direction, control and management of the valuation of land in accordance with the VLA. Section 5(3) of the VLA provides that, without limiting those responsibilities, the Valuer-General's functions are, inter alia, to establish and maintain valuation rolls and enter valuations in the valuation rolls.

6 So far as is relevant, s 11 of the VLA prescribes the duty of the Valuer-General to make valuations of land as follows:

"(1) The Valuer-General must, subject to this section, make valuations of the land values, capital values and assessed annual values of all lands within each valuation district, including any Crown lands that are liable to be rated in accordance with Part 9 of the *Local Government Act 1993*.

(1A) The Valuer-General may exempt land from the valuations to be made under subsection (1) if the Valuer-General considers that the land should not be included in those valuations."

7 Section 3 of the VLA defines "land" as including:

"(a) messuages, tenements and hereditaments, corporeal and incorporeal, of every kind and description (whatever may be the estate or interest in them), together with all structures, paths, passages, ways, waters, watercourses, liberties, privileges, easements, plantations, gardens, mines, minerals and quarries and all trees and timber on land or lying or being under land; and

(b) any structure which is above land but permanently anchored to, or otherwise kept in place above, the land; and

(c) a licence to enter or remain on land".

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8 The VLA defines "valuation district" as "the municipal area of a council"<sup>4</sup>. That definition impliedly incorporates the municipal areas of a council as prescribed by s 16 of the LGA. Section 16 provides:

- "(1) The State is divided into municipal areas.
- (2) A municipal area is an area specified in Column 1 of Schedule 3.
- (3) A municipal area includes –
  - (a) any accretion from the sea adjoining it; and
  - (b) any part of the sea-shore to the low-water mark adjoining it.

...

- (5B) Each municipal area is defined by reference to the relevant plan or plans specified in Column 1 of Schedule 3."

9 The boundaries of most municipal areas (and, therefore, "valuation districts") are so drawn as to exclude the sea<sup>5</sup>. Macquarie Harbour is, however, almost completely inland, with only a narrow opening to the sea, and the boundaries of the Council's municipal area are so drawn that Macquarie Harbour, including the opening to the sea, is within the Council's municipal area.

#### *Crown Lands Act*

10 "Crown land" is defined in s 2 of the *Crown Lands Act* 1976 (Tas) ("the CLA"). Section 2 provides that in the CLA, unless the contrary intention appears:

**"Crown land** means land which is vested in the Crown, and which is not contracted to be granted in fee simple; and includes land granted in fee simple which has revested in the Crown by way of purchase or otherwise".

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4 VLA, s 3.

5 LGA, Sched 3.

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Unlike in the VLA, "land" is expressly defined in the CLA to include the sea. It provides<sup>6</sup>:

**"land** includes land covered by the sea or other waters, and the part of the sea or those waters covering that land".

11 It was accepted that Macquarie Harbour is vested in the Crown in right of the State of Tasmania and that it is "Crown land" within the meaning of the CLA.

*Local Government Act*

12 Part 9 of the LGA, which is referred to in s 11(1) of the VLA, is directed to rates and charges that may be imposed by councils. In Pt 9, s 87(1) specifies that:

"All land is rateable except that the following are exempt from general and separate rates, averaged area rates, and any rate collected under section 88 or 97:

- (a) land owned and occupied exclusively by the Commonwealth;
- (b) land held or owned by the Crown that –
  - (i) is a national park, within the meaning of the *Nature Conservation Act 2002*; or
  - (ii) is a conservation area, within the meaning of the *Nature Conservation Act 2002*; or
  - (iii) is a nature recreation area, within the meaning of the *Nature Conservation Act 2002*; or
  - (iv) is a nature reserve, within the meaning of the *Nature Conservation Act 2002*; or
  - (v) is a regional reserve, within the meaning of the *Nature Conservation Act 2002*; or

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6 CLA, s 2.

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- (vi) is a State reserve, within the meaning of the *Nature Conservation Act 2002*; or
  - (vii) is a game reserve, within the meaning of the *Nature Conservation Act 2002*; or
  - (viii) is a forest reserve, within the meaning of the *Forestry Act 1920*; or
  - (ix) is a public reserve, within the meaning of the *Crown Lands Act 1976*; or
  - (x) is a public park used for recreational purposes and for which free public access is normally provided; or
  - (xi) is a road, within the meaning of the *Roads and Jetties Act 1935*; or
  - (xii) is a way, within the meaning of the *Local Government (Highways) Act 1982*; or
  - (xiii) is a marine facility, within the meaning of the *Marine and Safety Authority Act 1997*; or
  - (xiv) supports a running line and siding within the meaning of the *Rail Safety National Law (Tasmania) Act 2012*;
- (c) land owned by the Hydro-Electric Corporation or land owned by a subsidiary, within the meaning of the *Government Business Enterprises Act 1995*, of the Hydro-Electric Corporation on which assets or operations relating to electricity infrastructure, within the meaning of the *Hydro-Electric Corporation Act 1995*, other than wind-power developments, are located;
  - (d) land or part of land owned and occupied exclusively for charitable purposes;
  - (da) Aboriginal land, within the meaning of the *Aboriginal Lands Act 1995*, which is used principally for Aboriginal cultural purposes;
  - (e) land or part of land owned and occupied exclusively by a council."

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13 It is to be noted that none of the exemptions to land that is rateable in s 87(1)(b) of the LGA applies to marine farming leases granted pursuant to the *Marine Farming Planning Act 1995* (Tas).

14 It should also be noted that s 86 of the LGA contains a definition of "land" for the purposes of Pt 9:

"**land** means a parcel of land which is shown as being separately valued in the valuation list prepared under the *Valuation of Land Act 2001*".

As that definition requires the relevant land to have been valued under the VLA, it begs the question presented in this appeal.

#### *Acts Interpretation Act*

15 The *Acts Interpretation Act 1931* (Tas) also contains a definition of "land". Section 46 of that Act provides that "land" includes "messuages, tenements, and hereditaments, houses, and buildings of any tenure and any estate or interest therein". That definition applies to every Tasmanian Act except where otherwise expressly provided in an Act or where the provision or its interpretation would be inconsistent with or repugnant to the true intent and object or the context of a particular Act<sup>7</sup>.

#### "Crown lands"

16 In view of the foregoing legislative provisions, this appeal turns on whether the meaning of "Crown lands" in s 11(1) of the VLA is restricted by what is said to be the ordinary signification of "land", and as such excludes the seabed and waters above it, or whether "Crown lands" in s 11(1) means "Crown land" as defined in the CLA, and hence "includes land covered by the sea or other waters, and the part of the sea or those other waters covering that land"<sup>8</sup>.

#### The ordinary signification of "land"

17 The Valuer-General contended that the inclusive definitions of "land" in the VLA and the *Acts Interpretation Act* extended the meaning of "land" but not

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7 *Acts Interpretation Act*, s 4(1).

8 CLA, s 2.

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so as to exceed the ordinary signification of "land", which would not include the seabed or waters above it.

18 In *Risk v Northern Territory*<sup>9</sup>, Gleeson CJ, Gaudron, Kirby and Hayne JJ doubted that the word "land" would ordinarily be understood as encompassing the seabed. But, as their Honours appreciated, as with the meaning of any word, the meaning of "land" depends on the context and purpose of the legislation in which it appears. *Risk* was concerned with "land" in the context of an Aboriginal land rights claim and, in that context, there were powerful textual and extrinsic indications that the phrase "land in the Northern Territory" in s 3(1) of the *Aboriginal Land Rights (Northern Territory) Act 1976* (Cth) did not include the seabed below the low water mark of bays and gulfs within the limits of the Territory.

19 By contrast, *Goldsworthy Mining Ltd v Federal Commissioner of Taxation*<sup>10</sup> was concerned with the deductibility of expenditure incurred in dredging the seabed under a lease of the seabed; and, in that context, Mason J observed that, although the seabed may not answer the description of "land" in every sense, in general "land" in its legal signification includes "any ground, soil or earth". His Honour held that the long history of leases for mining purposes of strata of land under the sea supported the view that a lease of a portion of the seabed is ordinarily regarded as a lease of "land" within the general acceptance of that expression<sup>11</sup>. Mason J also remarked that a definition of "land" similar to that which appears in s 46 of the *Acts Interpretation Act* was sufficiently wide and general to enable it to comprehend a part of the seabed<sup>12</sup>.

20 In *Dampier Mining Co Ltd v Federal Commissioner of Taxation*<sup>13</sup>, Mason and Wilson JJ noted, in a similar context, that it was in one sense "somewhat

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9 (2002) 210 CLR 392 at 403-404 [26]; [2002] HCA 23; see also *Northern Territory v Arnhem Land Aboriginal Land Trust* (2008) 236 CLR 24 at 65 [56] per Gleeson CJ, Gummow, Hayne and Crennan JJ; [2008] HCA 29.

10 (1973) 128 CLR 199 at 210; [1973] HCA 7.

11 *Goldsworthy Mining* (1973) 128 CLR 199 at 210-211.

12 *Goldsworthy Mining* (1973) 128 CLR 199 at 215; cf *Risk* (2002) 210 CLR 392 at 418 [82] per Gummow J, 435 [121] per Callinan J.

13 (1981) 147 CLR 408 at 428; [1981] HCA 29.

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artificial" to speak of the seabed as "land". But, even then, there was no suggestion in *Dampier* that a lease of the seabed was not a lease of land for the purposes of the relevant legislation<sup>14</sup>.

21 Ultimately, therefore, as Gummow J observed in *Risk*, the question of whether the seabed and waters above it are "land" in the context of particular legislation must be resolved by "regard to the text of the statute as a whole, and the subject, scope and purpose of the statute and against the legislative history and antecedent circumstances"<sup>15</sup>.

### Constructional choice

22 By and large, Tasmanian Acts define "Crown land" in one of three ways. Some refer to Crown land without defining it but implying that it has the same meaning as in the CLA<sup>16</sup>. A second group expressly provide that "Crown land" has the same meaning as in the CLA<sup>17</sup>. The third group expressly define "Crown land" for the purposes of the particular legislation<sup>18</sup>.

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14 (1981) 147 CLR 408 at 428.

15 (2002) 210 CLR 392 at 418 [83]; see also at 435 [123] per Callinan J.

16 See, eg, *Boundary Fences Act* 1908 (Tas), s 4, definition of "owner"; *Highways Act* 1951 (Tas), s 3; *Limitation Act* 1974 (Tas), s 10; *Fire Service Act* 1979 (Tas), ss 57, 59, 66; *Land Titles Act* 1980 (Tas), ss 11, 19, 27; *Forest Practices Act* 1985 (Tas), s 44; *Port Arthur Historic Site Management Authority Act* 1987 (Tas), s 3(1), definitions of "adjacent area" and "pre-existing reserve"; *Public Land (Administration and Forests) Act* 1991 (Tas), s 135, definition of "World Heritage Area"; *Wellington Park Act* 1993 (Tas), ss 3(1), definition of "private right", 7(1), (2), 73; *Private Forests Act* 1994 (Tas), s 3, definition of "private commercial forest"; *Aboriginal Lands Act* 1995 (Tas), s 27(6); *Land Tax Act* 2000 (Tas), s 17; *Meander Dam Project Act* 2003 (Tas), s 8; *Litter Act* 2007 (Tas), s 4; *Macquarie Point Development Corporation Act* 2012 (Tas), ss 3(1), definition of "site", 53, 54; *Workplaces (Protection from Protesters) Act* 2014 (Tas), s 3, definition of "owner".

17 See, eg, *War Service Land Settlement Act* 1950 (Tas), s 3, definition of "Crown land"; *Closer Settlement Act* 1957 (Tas), s 3, definition of "Crown land"; *Mining (Strategic Prospectivity Zones) Act* 1993 (Tas), s 7(1), definition of "Crown land"; *Electricity Companies Act* 1997 (Tas), s 3, definition of "property"; *Vermin Control Act* 2000 (Tas), s 3, definition of "Crown land"; *Evidence Act* 2001 (Tas), s 177D(1); *Forest Management Act* 2013 (Tas), s 3, definition of "Crown land";  
 (Footnote continues on next page)

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23 In this case, the text of the VLA yields a constructional choice between a meaning of s 11(1) which embraces the definition of "Crown land" in the CLA, and so includes the seabed and waters above it, and a meaning which excludes them. Specifically, the word "including" in s 11(1) of the VLA is ambiguous. It is not clear from the text whether it is used in the phrase "all lands ... including any Crown lands" in a sense which restricts the definition of "Crown lands" to mean only those that fall within the ordinary signification of "land" or in a sense which extends the definition of "land" to Crown lands that fall outside of the ordinary signification of "land". Viewed, however, against the background of the VLA's legislative history and antecedent circumstances, the scope and purpose of the VLA dictate a constructional choice in favour of the adoption of the definition of "Crown land" in the CLA, which includes the seabed and waters above it.

#### Legislative history of the LGA and the VLA

##### *Historical land rating legislation*

24 Early Tasmanian land rating statutes contained a general exemption from rates for land held by the Crown. Then, over time certain exceptions to the general exemption from rates for Crown land were introduced. From 1985, however, the approach became that all Crown land was liable to be rated subject only to a number of specific public purpose exemptions.

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*Forestry (Rebuilding the Forest Industry) Act* 2014 (Tas), s 3, definition of "Crown land"; *Launceston Flood Risk Management Act* 2015 (Tas), s 3, definition of "Crown land".

18 See, eg, *Local Government (Highways) Act* 1982 (Tas), s 3(1), definition of "Crown land"; *Mineral Resources Development Act* 1995 (Tas), s 3, definition of "Crown land"; *Threatened Species Protection Act* 1995 (Tas), s 3(1), definition of "Crown land"; *National Parks and Reserves Management Act* 2002 (Tas), s 3(1), definition of "Crown land"; *Nature Conservation Act* 2002 (Tas), s 3(1), definition of "Crown land".

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25 The earliest rating statutes empowered the municipal councils of Hobart<sup>19</sup> and Launceston<sup>20</sup>, and later also the councils of other areas<sup>21</sup>, to levy rates upon the occupiers of assessed lands and buildings but stipulated that the power to rate did not extend to lands or buildings the property of, or occupied on behalf of, Her Majesty<sup>22</sup>. In broad terms, that approach was maintained in subsequent enactments<sup>23</sup>.

26 In 1962, all provisions directed to the rating functions of all municipalities, including Hobart and Launceston, were consolidated in the *Local Government Act 1962* (Tas) ("the LGA 1962")<sup>24</sup>. At that stage, municipalities remained unable to rate land of Her Majesty or the Commonwealth<sup>25</sup>.

27 In 1985, the rating provisions in the LGA 1962 were repealed and substituted<sup>26</sup>. So far as is relevant, the amended Act had the effect that all land in

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19 *Hobart Town Corporation Act 1857* (Tas) (21 Vict No 14), ss 97, 104.

20 *Launceston Corporation Act 1858* (Tas) (22 Vict No 12), ss 97, 104.

21 *Rural Municipalities Act 1865* (Tas) (29 Vict No 8), ss 119, 136.

22 Buildings held by the Government for public purposes and other properties used for public purposes including hospitals, benevolent asylums, buildings for charitable purposes, churches and chapels were also exempted: *Hobart Town Corporation Act 1857* (Tas) (21 Vict No 14), s 104; *Launceston Corporation Act 1858* (Tas) (22 Vict No 12), s 104; *Rural Municipalities Act 1865* (Tas) (29 Vict No 8), s 136.

23 *Hobart Corporation Act 1893* (Tas) (57 Vict No 11), ss 103, 116; *Launceston Corporation Act 1894* (Tas) (58 Vict No 30), ss 115, 122; *Local Government Act 1906* (Tas), ss 159, 173; *Hobart Corporation Act 1929* (Tas), ss 105, 122; *Launceston Corporation Act 1941* (Tas), ss 106, 115; *Hobart Corporation Act 1947* (Tas), ss 101, 106.

24 LGA 1962, ss 2(1)(d), 5. Other valuation provisions also applied to Hobart and Launceston: *Hobart Corporation Act 1963* (Tas), ss 85-88; *Launceston Corporation Act 1963* (Tas), ss 90-100.

25 LGA 1962, s 243(1)(a); see also par (b), which also created an exemption from rates for "land occupied exclusively for public or charitable purposes".

26 *Local Government Amendment (Rates and Charges) Act 1985* (Tas), s 6.

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the valuation district became rateable including Crown land except land that was "owned by the Crown ... which is unoccupied or occupied exclusively for public purposes"<sup>27</sup>. Henceforth, there was no general exemption from rates for land owned by the Crown.

28 In 1994, the LGA 1962 was repealed and replaced by the LGA<sup>28</sup>. As enacted, s 87(1) of the LGA provided that "[a]ll land is rateable" except, relevantly:

"(b) land owned by the Crown which is unoccupied or occupied exclusively for public purposes (other than under the *Homes Act 1935*)".

29 In 2003, s 87 of the LGA was amended by the *State and Local Government Financial Reform Act 2003* (Tas) ("the Financial Reform Act") whereby the rating provisions of the LGA assumed a form close to that in which they now appear<sup>29</sup>. Importantly, the evident object and effect of that alteration was to revoke the general exemption applicable to Crown land which was unoccupied or occupied exclusively for public purposes and to subject all Crown land to liability to being rated subject only to a number of specific public purpose exemptions.

#### *Historical land valuation legislation*

30 Likewise, while early valuation statutes contained a general exemption from valuing Crown land, over time the general exemption was replaced with provisions which required all Crown land to be valued subject only to a number of specific public purpose exemptions.

31 The first separate land valuation statute was the *Property Valuation Act 1857* (Tas)<sup>30</sup>. That Act and subsequent separate valuation statutes from the

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27 LGA 1962, ss 232, 243(1) (as amended by the *Local Government Amendment (Rates and Charges) Act 1985* (Tas)). Land owned by the Commonwealth or owned and occupied exclusively for public or charitable purposes was also exempted from rates and charges.

28 LGA, s 350, Sched 9.

29 Financial Reform Act, s 11.

30 21 Vict No 19.

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middle of the 19th century to the middle of the 20th<sup>31</sup> made only limited reference to Crown land, no doubt because land of Her Majesty was exempt from liability to be rated<sup>32</sup>.

32 Beginning with the *Land Valuation Act* 1950 (Tas), and subsequently the 1971 iteration of that Act<sup>33</sup> ("the LVA 1971"), the Chief Valuer and the Valuer-General respectively were required to make a valuation of "all lands (other than Crown lands) within each valuation district, and of such Crown lands within each valuation district as the [Chief Valuer or Valuer-General] thinks proper to include in the valuation"<sup>34</sup>. Like the current legislation, those Acts did not contain a definition of "Crown lands". Until the LVA 1971 was repealed and replaced by the VLA in 2001<sup>35</sup>, the duty in s 12 remained largely as just described, subject only to certain irrelevant amendments<sup>36</sup>.

33 As first enacted, s 11(1) of the VLA had a similar structure and effect to s 12(1) of the LVA 1971 prior to its repeal. Once again, there was no definition of "Crown lands".

34 In 2003, the Financial Reform Act, which also amended the LGA<sup>37</sup>, substituted s 11(1) as follows<sup>38</sup>:

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31 *Assessment Act* 1900 (Tas) (64 Vict No 4); *Land Valuation Act* 1909 (Tas); *Annual Values Assessment Act* 1911 (Tas).

32 See above at [25]. Cf *Property Valuation Act* 1857 (Tas) (21 Vict No 19), s 35; *Assessment Act* 1900 (Tas) (64 Vict No 4), s 4, definition of "Annual value"; *Land Valuation Act* 1909 (Tas), s 2, definition of "Improvements"; *Annual Values Assessment Act* 1911 (Tas), s 6, definition of "Annual value".

33 *Land Valuation Act* 1971 (Tas).

34 *Land Valuation Act* 1950 (Tas), s 14; LVA 1971, s 12.

35 VLA, s 66(1).

36 See, eg, *Land Valuation Amendment Act* 1980 (Tas), s 2; *Land Valuation Amendment (Relocatable Homes) Act* 1999 (Tas), s 4.

37 See above at [29].

38 Financial Reform Act, s 21.

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"The Valuer-General must, subject to this section, make –

- (a) valuations of the land values, capital values and assessed annual values of all lands within each valuation district and Crown lands liable to be rated in accordance with Part 9 of the *Local Government Act 1993*; and
- (b) valuations of the assessed annual values of such Crown lands and lands held by or on behalf of statutory authorities within the outer islands, and leased for grazing or agricultural purposes, as are liable to be rated in accordance with Part 9 of the *Local Government Act 1993*."

35 Finally, in 2007, s 11(1) of the VLA was further amended to read as it now does<sup>39</sup>:

"The Valuer-General must, subject to this section, make valuations of the land values, capital values and assessed annual values of all lands within each valuation district, including any Crown lands that are liable to be rated in accordance with Part 9 of the *Local Government Act 1993*."

"And" and "including"

36 The Solicitor-General of the State of Tasmania, appearing for the Valuer-General, contended that use of the participle "including" in the clause "including any Crown lands" in s 11(1) of the VLA as so amended implied that the "Crown lands" referred to are limited to lands of the Crown which come within the ordinary conception of "land" and hence exclude land under the sea.

37 That contention should be rejected. Apart from the difficulty that "land" in its ordinary legal signification may include land under the sea<sup>40</sup>, the history of the legislation implies that "including" is used in its accepted expansive sense of adding to the scope of "lands" earlier referred to in the provision<sup>41</sup>.

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39 *Valuation of Land Amendment Act 2006* (Tas), s 11.

40 See [17]-[21] above.

41 *YZ Finance Co Pty Ltd v Cummings* (1964) 109 CLR 395 at 401-404 per Kitto J, 405-406 per Menzies J; [1964] HCA 12; *Favelle Mort Ltd v Murray* (1976) 133 CLR 580 at 589 per Barwick CJ; [1976] HCA 13; *Federal Commissioner of* (Footnote continues on next page)

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38 As already noticed, when first enacted in 2003<sup>42</sup>, s 11(1) of the VLA was split into two paragraphs. Relevantly, par (a) referred to "all lands within each valuation district *and* Crown lands liable to be rated in accordance with Part 9 of the *Local Government Act 1993*" (emphasis added). In that form, the use of the conjunction "and" implied that the scope of "Crown lands" was broader than, and added to, the scope of "land" as ordinarily understood. When s 11(1) was in that form it would have been difficult to contend that "Crown lands" in s 11(1)(a) was confined by the meaning of "land" defined in the VLA.

39 Then, in 2007<sup>43</sup>, pars (a) and (b) of s 11(1) were combined into a single sub-section which refers to "all lands within each valuation district, *including* any Crown lands that are liable to be rated in accordance with Part 9 of the *Local Government Act 1993*" (emphasis added). The Solicitor-General submitted that, upon the latter change taking effect, the use of "including" in place of "and" confined the term "Crown lands" to land of the Crown falling within the notion of "land" as ordinarily understood and so as excluding Crown land under the sea.

40 That submission should also be rejected. Among other problems that it faces, there is no suggestion in the 2007 amending legislation<sup>44</sup> or in any relevant extrinsic materials<sup>45</sup> of a purpose of confining "Crown lands" to "land" or of otherwise excluding Crown land under the sea from the term "Crown lands". On the contrary, as already observed, the apparent purpose of exposing all Crown land to liability to be rated (except for Crown land that is applied to one of the specified public purposes in s 87(1)(b) of the LGA) is to subject to liability to be rated all forms of Crown land applied to what might be described as commercial

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*Taxation v St Hubert's Island Pty Ltd (In liq)* (1978) 138 CLR 210 at 216 per Stephen J; [1978] HCA 10; *R v Gray; Ex parte Marsh* (1985) 157 CLR 351 at 364-365 per Gibbs CJ; [1985] HCA 67; *Zickar v MGH Plastic Industries Pty Ltd* (1996) 187 CLR 310 at 329-330 per Toohey, McHugh and Gummow JJ; [1996] HCA 31.

42 Financial Reform Act, s 21.

43 *Valuation of Land Amendment Act 2006* (Tas), s 11.

44 *Valuation of Land Amendment Act 2006* (Tas).

45 Tasmania, House of Assembly, *Parliamentary Debates* (Hansard), 2 November 2006; Tasmania, House of Assembly, *Valuation of Land Amendment Bill 2006*, Clause Notes at 2.

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purposes (including Crown lands comprised of State waters which are leased for marine farming and other cognate commercial activities<sup>46</sup>).

41 Consequently, the more rational and thus probable explanation of the use of "including" in place of "and" is that it is calculated to emphasise that the requirement that lands be within a valuation district applies equally to "Crown lands that are liable to be rated in accordance with Part 9 of the *Local Government Act*" as to "all lands" (and thereby emphasises that the Valuer-General is required to value only those Crown lands which are liable to be rated under Pt 9 of the LGA that are within a valuation district). That is consistent with "including" being used in the current iteration of s 11(1) in the same expansionary sense as "and" was used before the change of structure and, therefore, with it remaining that "Crown lands" in s 11(1) is not restricted to land of the Crown falling within the meaning of "lands" referred to earlier in the provision.

42 That construction of s 11(1) of the VLA is also reinforced by the consideration that the CLA is the Act that makes provision generally "with respect to the management, sale, and disposal of the lands of the Crown"<sup>47</sup> and provides directly or indirectly for all of the purposes for which Crown land may be used (including those public purposes specified in s 87(1) of the LGA). In particular, s 29 of the CLA provides expressly for the issue of leases of areas of State waters under the *Marine Farming Planning Act* 1995 (Tas) and it treats such leases as leases of Crown land<sup>48</sup>. Those provisions emphasise that marine farming leases are leases of Crown land and in turn that strengthens the implication that they are to be understood as "Crown lands" in s 11(1) of the VLA<sup>49</sup> that are not the subject of an exemption in s 87(1) of the LGA.

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46 See, eg, *Marine Farming Planning Act* 1995 (Tas), s 59; *Living Marine Resources Management Act* 1995 (Tas), Pt 4.

47 CLA, long title.

48 CLA, s 29(1), (2A).

49 Cf *Federal Commissioner of Taxation v ICI Australia Ltd* (1972) 127 CLR 529 at 540-542 per Walsh J, 581 per Gibbs J; [1972] HCA 75.

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43 Perhaps the CLA and the VLA cannot aptly be described as parts of an overlapping legislative scheme<sup>50</sup>. But, inasmuch as s 11(1) of the VLA applies to "Crown lands" and the CLA is the ultimate statutory enablement of all forms of holdings of and dealings with "Crown land"<sup>51</sup>, the VLA and the CLA are *in pari materia*. Absent any compelling contrary indication, it is to be inferred that reference to "Crown lands" in s 11(1) of the VLA is a reference to "Crown land" within the meaning of the CLA, and so includes Crown land under the sea and so much of the sea as lies above it as defined in the CLA.

44 It remains to observe that, for so long as there was a general rating exemption applicable to lands of the Crown, it may not generally have been conceived of that "Crown lands" in the VLA or its antecedents included land under the sea. Since all of the sea below the low water mark was vested in the Crown<sup>52</sup> and all Crown land (subject to limited exceptions) was exempt from liability to be rated, there was no obligation on the Valuer-General to value Crown land under the sea. But, once the general exemption of Crown land from liability to be rated was removed, with the result that Crown land became exposed generally to liability for rates (subject only to the specific public purpose exemptions provided for in s 87(1) of the LGA), any reason that there might have been to suppose that Crown land under the sea was not liable to be rated ceased to apply. Thenceforth, the replacement of the general exemption of "land owned by the Crown which is unoccupied or occupied exclusively for public purposes"<sup>53</sup> with the specific public purpose exemptions for "land held or owned by the Crown" provided for in s 87(1) of the LGA bespoke a purpose of rendering liable to be rated all Crown land within a municipal area except Crown land being used for one or more of the public purposes described in s 87(1). The fact that one

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50 Cf *Sweeney v Fitzhardinge* (1906) 4 CLR 716 at 726 per Griffith CJ; [1906] HCA 73.

51 *Gale v Federal Commissioner of Taxation* (1960) 102 CLR 1 at 11-12 per Fullagar J (Dixon CJ agreeing at 7); [1960] HCA 18.

52 See *Coastal Waters (State Powers) Act* 1980 (Cth); *Coastal Waters (State Title) Act* 1980 (Cth); see also *New South Wales v The Commonwealth* ("the Seas and Submerged Lands Case") (1975) 135 CLR 337; [1975] HCA 58.

53 Financial Reform Act, s 11.

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purpose provided for in s 87(1) encompasses the use of Crown land covered by the sea gives further emphasis to that conclusion<sup>54</sup>.

45 Contrary to the submissions of the Valuer-General, that construction of s 11(1) of the VLA does not impose an onerous burden on the Valuer-General. Under s 11(1A), the Valuer-General may exempt land from the valuations to be made under s 11(1) if the Valuer-General considers that the land should not be included in those valuations. For example, the Valuer-General may consider that Crown land in Macquarie Harbour which is not the subject of exploitation should not be included in the valuations to be made under s 11(1).

#### Conclusion

46 In the result, it is to be concluded that "Crown lands" in s 11(1) of the VLA means "Crown land" within the meaning of the CLA and so includes the seabed and so much of the sea as lies above it. It follows that the appeal should be dismissed.

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54 Section 87(1)(b)(xiii) of the LGA provides that "a marine facility, within the meaning of the *Marine and Safety Authority Act 1997*" is "exempt from ... rates".