2026 UQ UNJUST ENRICHMENT MOOT

COLWORTHS v STATE OF QUEENSLAND

BRISBANE, AUSTRALIA

26 SEPTEMBER – 28 SEPTEMBER

Organised by the University of Queensland Law Society Incorporated and sponsored by Clayton Utz

IN THE HIGH COURT OF AUSTRALIA

BETWEEN:

Colworths
Applicant

and

State of Queensland
Respondent

SUMMARY OF AGREED FACTS

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1. The Queensland government passed the *Fuel Crisis Act 2026* (Qld) (the **Act**) in March 2026 in response to the unfolding crisis in the Middle East. The general purpose of the Act was to provide for the payment of subsidies to Queensland farmers, designed to offset their increased fuel costs. The costs of the scheme were to be met by raising additional revenue from supermarkets.

2. In implementing these ends, the Act required supermarket chains to pay a "fresh fee" to the Queensland government, calculated by reference to the metric tonnage of fresh produce those supermarket chains were purchasing from Queensland farmers. The Act required monthly payments of the fresh fee by supermarket chains to the consolidated fund of Queensland. The funds so collected were then used to provide farmers with subsidies calculated in the manner described below. Compliance with the Act was backed by financial penalties for non-payment of the fresh fee.

3. The subsidies paid out to farmers under the scheme were means-tested and did not therefore correspond exactly to the total amount collected from the supermarkets. Some farmers, even with the additional assistance, have become insolvent or declared bankruptcy.

4. From the outset, the supermarket chains protested the legality of the "fresh free".

5. They also passed on the majority of the economic burden of the "fresh fee" to their customers. Each of the supermarkets developed an algorithm which calculated the amount of the fee to be paid by each individual customer, based on the amount of fresh produce the customer was buying. The algorithm was automatically applied at check-out. The amount of the "fresh fee" to be paid by the customer appeared as a separate line item on each receipt. An example of how the fee appeared on a receipt appears below.



·COLWORTHS·
• FRESH IS BEST •
EST. 2023
78 BRIDGE ST, TOOWOOMBA QLD 4350
(02) 9876 5432

TAX INVOICE

TOMATOES 200g	$1.98
CARROTS 150g	$0.74
CELERY 1 BUNCH	$3.50
BEEF MINCE 500g	$9.50
TOMATO PASTE 150g	$1.25
FRESH FEE	$0.26
TOTAL	$17.23
TOTAL INCLUDES GST	$1.57

DATE: 15/05/2024 TIME: 14:35
STORE: 401 POS: 03
THANK YOU FOR SHOPPING AT COLWORTHS

6. Colworths, one of several large supermarket chains operating in Queensland, passed on approximately 92% of the "fresh fee" to its customers. On some products, Colworths absorbed the remainder of the charge for commercial or promotional reasons.

7. Colworths launched a challenge to the Act in the High Court of Australia on the basis that the fee being charged by the Queensland Government was, in reality, a duty of excise, and so contravened s 92 of the *Commonwealth Constitution*. It sought a declaration that the Act was invalid. An expedited hearing was sought and granted on the basis that the legislation was highly significant to a majority of Queensland residents who were bearing the cost of the "fresh fee". The challenge was successful and the Act was declared invalid in April 2026.

8. By the time the Act was struck down, the State had distributed 85% of the money collected as "fresh fees" to Queensland farmers. The remaining 15% remains in the consolidated fund of Queensland.

9. Off the back of its successful High Court challenge, Colworths commenced proceedings in the Supreme Court of Queensland seeking restitution of the amounts Colworths had paid to the Queensland government in respect of the fresh fee. At the same time, a consumer class action was commenced against Colworths seeking recovery of the "fresh fee" from Colworths. That proceeding has been stayed pending determination of this matter.

10. In May 2026, Greenthumb J dismissed Colworths' action for restitution of the "fresh fee". The relevant paragraphs of her Honour's reasons are as follows:

> [7] Colworths argues that it ought to be able to recover the amounts paid to the State by reason of *Woolwich Equitable Building Society v Inland Revenue Commissioners* [1993] AC 70 (HL). That case does not however form part of Australian law and therefore cannot provide a basis for restitution.

[8] I am also not satisfied that the amounts paid can be recovered on the basis of mistake, because they were not paid under a mistake – at all time Colworths protested the legality of the "fresh free" but paid regardless.

[9] Finally, in the absence of clear High Court authority, I am not prepared to hold that that the amounts paid can be recovered by reason of a failure of consideration or a failure of basis (see *Redland City Council v Kozik* (2024) 281 CLR 202 at [187]).

[10] The State is therefore not obliged to make restitution of the "fresh fee" to Colworths, and I would dismiss the proceedings on this basis. By reason of this conclusion, it is not necessary to go on and consider the other issues raised by the parties concerning passing on or change of position.

11. Colworths appealed to the Queensland Court of Appeal. In June 2026, the Court of Appeal dismissed the appeal, agreeing with the reasons of Greenthumb J.

12. Special leave to appeal was sought and granted on the following questions:

    a. Does *Woolwich Equitable Building Society v Inland Revenue Commissioners* [1993] AC 70 (HL) form part of Australian law, such that the State is prima facie obliged to make restitution of the "fresh fee" which it had no lawful public authority to demand?

    b. If not, is absence of basis a recognised restitutionary ground in Australian law, and does Colworths have a prima facie claim in unjust enrichment on that basis?

    c. If it can be said that the State is prima facie obliged to make restitution of the "fresh fee", should relief be denied or modified because Colworths passed on the economic burden of the "fresh fee" to its customers? (In this connection, the Court has specifically invited the parties to address the applicability of *Roxborough v Rothmans of Pall Mall Australia Ltd* (2001) 208 CLR 516, and whether this case ought to be re-opened and overruled).

    d. Does the State have a defence of change of position by reason of its distribution of the funds to Queensland farmers?

13. There is no dispute that the Act was invalid. The sole issues are those identified above.