SUPREME COURT OF QUEENSLAND

CITATION:	*Queensland Taxi Licence Holders v State of Queensland* [2020] QCA 282
PARTIES:	**QUEENSLAND TAXI LICENCE HOLDERS (appellants)** **v** **STATE OF QUEENSLAND** (respondent)
FILE NOS:	Appeal No 5740 of 2020 SC No 2381 of 2019
DIVISION:	Court of Appeal
PROCEEDING:	General Civil Appeal
ORIGINATING COURT:	Supreme Court at Brisbane – [2020] QSC 94 (Bradley J)
DELIVERED ON:	11 December 2020
DELIVERED AT:	Brisbane
HEARING DATE:	13 October 2020
JUDGES:	Sofronoff P and Fraser and Philippides JJA
ORDER:	**Appeal dismissed with costs.**
CATCHWORDS:	PROCEDURE – CIVIL PROCEEDINGS IN STATE AND TERRITORY COURTS – ENDING PROCEEDINGS EARLY – SUMMARY DISPOSAL – SUMMARY JUDGMENT FOR DEFENDANT OR RESPONDENT: STAY OR DISMISSAL OF PROCEEDINGS – where the appellants are the holders of taxi service licences issued under s 69 of the *Transport Operations (Passenger Transport) Act* 1994 (Qld) – where the appellants brought a claim against the State of Queensland, the respondent to this appeal, for damages for breach of contract, equitable compensation and for damages under the *Australian Consumer Law* – where these claims were pleaded to arise from legislative amendments to the *Transport Operations (Passenger Transport) Act* which introduced a new form of public passenger service called the "booked hire service" – where the respondent sought, and was granted, summary judgment for the parts of the claim based on breach of contract and on equitable grounds – where the appellants were given leave to amend their claim based on the *Australian Consumer Law* – where the appellants now appeal against summary judgment – whether the learned primary judge erred in granting summary judgment *Transport and Other Legislation (Personalised Transport Reform) Amendment Act* 2017 (Qld), Chapter 7

Transport Operations (Passenger Transport) Act 1994 (Qld), s 23, s 24, s 27, s 68, s 69, s 70, s 71, s 72, s 73, s 74

Australian Woollen Mills Pty Ltd v The Commonwealth (1955) 93 CLR 546; [1955] UKPCHCA 3, considered
River Fishery Association Inc (SA) v South Australia (2003) 85 SASR 373; [2003] SASC 174, considered

COUNSEL: D M J Bennett QC, with J Ribbands, for the appellants
M Brennan QC, with D Marckwald, for the respondent

SOLICITORS: Maitland Lawyers for the appellants
Crown Law for the respondent

[1] **SOFRONOFF P:** The appellants are the holders of taxi service licences issued under s 69 of the *Transport Operations (Passenger Transport) Act* 1994 (Qld). They brought a claim against the State of Queensland, the respondent to this appeal, for damages for breach of contract, equitable compensation and for damages under the *Australian Consumer Law*. A statement of claim was delivered which pleaded the causes of action that were said to support those claims. Upon the basis of that pleading the respondent sought, and was granted, summary judgment for the parts of the claim based upon breaches of contract and upon equitable grounds. The appellants were given leave to amend their claim based upon the *Australian Consumer Law*. The appellants now appeal against summary judgment.

[2] Before considering the pleading it is necessary to set out the relevant parts of the relevant statutes. It is common ground that the relevant form of the legislation for this case was that which was referred to by Bradley J in his reasons at paragraph [29].[1]

[3] Section 69 of the *Transport Operations (Passenger Transport) Act* 1994 (Qld) relevantly defines a "taxi service licence" as a "licence issued by the chief executive under which the holder is required to provide a taxi service in an area". The Dictionary to the Act defines a "taxi service" to mean, relevantly, a "public passenger service … provided by a motor vehicle" under which the vehicle "is able, when not hired, to be hailed for hire by members of the public", which "provides a demand responsive service" by which "members of the public are able to hire the vehicle through electronic communication" and under which the vehicle "plies or stands for hire on a road". Section 68 provides that the "purpose of taxi service licences is to ensure that the communities served by taxis receive quality and innovative taxi services at a reasonable cost".

[4] Section 70 makes it an offence for a person to provide a taxi service unless the person holds a taxi service licence.[2] Pursuant to s 71 the chief executive may fix the number of taxi licences "for a taxi service area", an expression that is defined to mean a geographical area declared under s 71. Section 71(4) states criteria which the chief executive must apply when fixing the number of licences for an area. Section 72 requires the chief executive to give public notice of the intention to issue new licences and to call for offers for such licences. Section 73 provides that licences are to be issued for five years on a renewable or on a non-renewable basis.

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1 Version of the *Transport Operations (Passenger Transport) Act* 1994 (Qld) current as at 23 September 2013.

2 Or a "peak demand taxi permit", referred to below.

A renewable licence must be renewed for successive further periods of five years provided that the conditions of the licence have been complied with. Non-renewable licences must not be renewed. Section 74 provides that a licence is subject to the conditions stated in it by the chief executive. These must include conditions relating to the type of vehicle that must be used, the area to which the licence applies, a condition about the amount of permissible fares and a condition about the display of a distinctive registration plate. The section allows for other kinds of conditions to be attached.

[5] Taxi drivers do not need to hold such a licence but ss 23 and 24 provide that a driver must hold a "driver authorisation", which may be issued to a driver who satisfies certain requirements. Section 27 makes it an offence for a person to operate a "public passenger vehicle", a term that includes a taxi, unless the person holds such an authorisation.

[6] The statement of claim underwent several amendments but the application for judgment proceeded upon the footing that the pleading which was current at the time of the application contained the best pleading possible to raise the disputed causes of action. During the hearing of the appeal the appellants' counsel suggested that the pleading might be amended in due course to improve it but no submission was made that the appellants wished to, or could, amend the pleading in order to meet the substantive arguments raised by the respondent.

[7] After pleading[3] that each plaintiff is the "owner of a taxi licence",[4] paragraph 10 of the statement of claim alleges that the "price paid" for each licence was "arrived at according to an open tender process". Paragraph 11A alleges that the conditions for the tender "usually included" informing the applicants about "five of the most recent prices for the sale of comparable licences" and that "a deposit … [of] 5% of the average prices" or a stipulated amount, whichever is higher, would be payable with the tender. By paragraph 13A the plaintiffs alleged that a person to whom a licence is issued has to pay "a significant fee, which was in practice comparable with market prices for licences, and usually in excess of $200,000.00" and "sometimes being in excess of $500,000.00". There then followed allegations which are crucial to the case.

[8] Paragraph 14 provided:

> "In accepting payment of the licence fee and in granting each original licence, the Defendant represented to each original licensee that they would only need to compete in the provision of their services with other persons who held licences entitling them to exercise the taxi licence privileges.
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> …
>
> **PARTICULARS**
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> The representation was partly in writing and partly to be implied.
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> i. Insofar as they were in writing they were contained in the terms of the licences granted to the original licensee Plaintiffs and the wording of the relevant legislation to the effect that the holder of a license [*sic*] must comply with the legislation by,

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3 Paragraphs 4 to 9.

4 Paragraph 1(a).

inter alia, ensuring driver authorisation and operator accreditation and that a person could not provide a taxi service in the absence of a licence.

ii. Further, they were contained in a letter dated 29 April 1994 from the agent of the Defendant, then Minister for Transport to taxi licence holders stating, inter alia, that:

- *"the Government's position has been consistent and clear. There will be no deregulation of the taxi industry in this State;"*
- *"the existing cap on taxi licences will be retained, thus preserving the general value of licences;"*
- *"I hope this clarifies the Government's preferred approach to taxi industry reform in Queensland, and puts to rest the fears in the industry that a policy of deregulation may be introduced".*

iii. Further, in an open message from the agent of the Defendant Minister for Transport published in the January/February 1994 edition of *Queensland Taxi* the then Minister of Transport on behalf of the Defendant said:

- *"it is stressed that the reforms applying to taxis do not include de-regulation. The number of operators entering the industry will continue to be controlled by government by the sale of taxi licences through open tender".*

iv. Further, in an address to a Queensland taxi conference which was published in the January/February 1994 edition of Queensland Taxi the then Minister for Transport on behalf of the Defendant said:

- *"the review highlighted the considerable debate about the number of taxi licences and the cost of them, varying last year from about $150,000 in Brisbane to almost $300,000 on the Gold Coast. In some cases, successfully winning a ballot for a new licence has been like winning the casket. These licences have been so undervalued by the department that new holders enjoyed windfall profits simply by winning a new licence ballot. In future, taxi service licences will be issued through open tender."*

v. And, in a Ministerial Statement issued in 2003, the Honourable Steve Bredhauer noted:

Queensland taxi industry not to be de-regulated

Mr Speaker the Beattie Government is committed to doing what is right for Queensland. Our decision last week to not de-regulate Queensland's taxi industry is about delivering the best for Queensland – and not simply following the line of

Canberra's economic rationalists. Other states have tried it and are now looking at ways to reverse deregulation – as waiting times climb and service standards decline. The Beattie Government is prepared to stick up for the interests of the industry and Queensland passengers. Through a regulated industry we can continue to ensure that Queensland taxis are safe and comfortable, they arrive at the time they are expected and are driven by drivers who know where they are going.

vi. The Plaintiffs rely, further, on the passages from the Strategic Plan for 2010-2015 as are extracted at paragraph 18 below.

vii. Insofar as they were to be implied, they were to be implied from the conduct of the Defendant calling for expressions of interest in the purchase of taxi licences, from the purchase price of such licences, from the payment of substantial amounts of money for a licence, from the financial and regulatory obligations imposed on the original licensees, from the terms of the legislation and from the transferability of the licence and from the conduct of the Defendant as is more particularly pleaded in the Statement of Claim herein.

viii. The Plaintiffs will provide further particulars after the completion of disclosure and of their own enquiries."[5]

[9] By paragraph 15 the plaintiffs alleged that "by reason of the representations" pleaded in paragraph 14, "the original licensee Plaintiffs had" or they "reasonably believed they had", subject to complying with the licence conditions, a "right to operate a taxi service" which was "coupled with an assumption or expectation that":

"a. only persons holding taxi licences would be permitted to exercise any or all of the taxi licence privileges, and the Plaintiffs, by virtue of their licences, would only need to compete with such person;

b. only licensed taxis would be permitted to carry passengers for reward by road;

c. the exclusive right to carry passengers for reward in the State of Queensland was, and would be, limited to licensed taxi owners;

d. any licences granted to any other person that would permit them to exercise all or any part of the taxi licence privileges would be granted in accordance with, and subject to, the controls and limitations provided for in the Act as they applied to the Plaintiffs…"

[10] Paragraph 16 alleged that these "assumptions or expectations" were:

"a. reasonably made by the original licensee;

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5 Paragraph 14A pleaded that the "references above to "*de-regulation*" were intended to refer to, and were understood, reasonably, to refer to, a regime where persons who did not hold taxi licences might be permitted to exercise one or more of the taxi licence privileges".

b. induced by the Defendant;

c. also made by the Defendant; and

d. known by each of the Plaintiffs and the Defendant that each other party was acting on that same assumption or expectation".

[11] The plaintiffs alleged that, in reliance upon these assumptions or expectations, "and in performance of the obligations" in their licences, they made significant expenditures of various kinds. Paragraph 18 of the pleading alleged that the defendant "was aware of, and/or intended to induce" the plaintiffs' pleaded beliefs, "continued to endorse" those beliefs so that the plaintiffs "continued with the same assumptions or expectations" and was also "aware of the scale of the expenditure".

[12] Paragraph 19 alleged that the plaintiffs and defendants "adopted an assumption that the taxi licence issued to [the plaintiffs] was a permanent asset of value recognised by the Defendant".

[13] By paragraphs 56A and 57, the plaintiffs alleged that from at least April 2014, to the knowledge of the defendant, persons who did not hold a taxi licence, provided a demand responsive taxi service by means of electronic communication and that the defendant "permitted … businesses to conduct" those services. Paragraph 59 alleged that the defendant "did not take any actions" against those businesses.

[14] Paragraph 60 is important:

> "Further, the Defendant, by the *Transport and Other Legislation (Personalised Transport Reform) Amendment* Act 2017 (2017 Act No. 18), amended the Act and/or the regulations thereunder to render lawful the actions of the ride-booking operators and the ride-booking drivers in carrying passengers by road for reward in Queensland, but did so without:
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> a. [deleted];
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> b. requiring the payment of a comparable licence fee; and
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> c. requiring the ride-booking drivers to comply with conditions of the nature stipulated for taxi licence holders."

[15] Paragraph 62 alleged that since the passing of the 2017 legislation the defendant "has not required the ride-booking drivers to pay for, or obtain, a taxi licence" or comply with the rules and regulations that apply to taxi service licence holders and has permitted ride-booking drivers to "exercise many of the rights previously held only by" the holders of taxi service licences.

[16] The appellants' equitable claim is based upon an allegation in paragraph 63 that it "would be unconscionable if the Defendant was permitted, without remedy to the Plaintiffs, to depart from" the pleaded representations because of the appellants' reliance upon the respondent's "assurances above that the industry would continue to be regulated" and because of the steps which the appellants have taken "in reliance on the assurances". Paragraph 63B alleged that the pleaded facts give rise to "an equitable promissory estoppel" by which, provided that the appellants:

> "… continue to meet their obligations under the terms of their licence/s and under the terms of the legislation, the Plaintiffs would only be required to compete in provision of their services with other persons who held licences, entitling them to exercise the taxi licence privileges".

[17] Paragraph 72 alleged that the facts pleaded and "the issue by the Defendant of a taxi licence … created a contract between the licensee Plaintiff and the Defendant".

[18] The appellants gave the following particulars of the contract:

> "The Taxi Licence Agreement was partly in writing and partly to be implied.
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> Insofar as it was in writing it was contained in the terms set out in the licences granted to the original licensees and the wording of the relevant legislation.
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> Insofar as it was to be implied, it was to be implied from the conduct of the Defendant calling for expressions of interest in the purchase of taxi licences, from the purchase price of those licences, from the financial and regulatory obligations imposed on the Plaintiff licensees, from the terms of the legislation and from the transferability of the licences.
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> Further, it was to be implied in order to give business efficacy to the Taxi Licence Agreement."

[19] Paragraph 72A pleaded the obligations which the contract imposed upon the appellants. All of them are obligations imposed as conditions of the licence or by the terms of the Act. The paragraph alleged that "in consideration of the same, the Defendant would permit the relevant Plaintiff as a licence holder (and only such Plaintiffs) to provide a taxi service and exercise the taxi licence privileges". Paragraph 73(c) alleged that it was an implied term of the contract that "a licence holder would only need to compete – in the course of exercising the taxi licence privileges – with other persons holding a taxi licence".

[20] Paragraph 74A alleged that the respondent breached the contract by engaging in the conduct pleaded in paragraph 74, namely, that they had:

> "a. not required the ride-booking drivers and/or the rideshare operators to pay for, or obtain, a taxi licence;
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> b. not required the ride-booking drivers and/or the rideshare operators to comply with the rules and regulations governing taxi licence holders;
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> c. allowed the drivers and/or the ride-booking operators to exercise rights previously held only by licenced taxi drivers and taxi licence holders without complying with the rules and regulations which fetter and control and regulate the owners of taxi licences…"

[21] Paragraph 66 alleged that the actions of "the State of Queensland" have caused the plaintiffs loss and damage, namely the loss in capital value of the licences, the loss

in capital value of their plant and equipment, their loss of earnings in the past and their future losses of earnings.

[22] The appellants claimed damages for breach of contract and equitable compensation.

[23] As can be seen, the appellants are aggrieved because, having expended substantial sums of money upon the acquisition of licences as well as the equipment necessary to run a taxi, Chapter 7 of the Act was repealed and a new Chapter 7 was enacted by the *Transport and Other Legislation (Personalised Transport Reform) Amendment Act* 2017 (Qld), and this new Chapter 7 introduced a new form of public passenger service called the "booked hire service". Section 72 now provides that such a service was one by which a person arranges for "the person or another person to drive a motor vehicle to provide a booked hire service". Such a booking may be made "in person", "by telephone or other telecommunication device" or "by using an electronic booking system".[6] The amendments continued the monopoly enjoyed by taxi licence holders to provide a "taxi service"[7] but ss 91J to 91U of the Act now provide for a person to obtain "booked hire service licence" which authorises the provision by the licensee of the service defined by s 72. Thus, the amendments permitted persons who did not hold a taxi service licence to provide passenger transport services similar to the services offered by taxi service licensees. The new form of licence did not confer all of the privileges granted by a taxi service licence, such as plying for hire or the right to await custom at a taxi rank but it also did not cost as much. In substance, taxi service licensees now faced competition within the core area of their business, namely the transportation of passengers by car.

[24] The statement of claim has many problems which, as will appear, are a concomitant of the legal incoherence of the appellants' case. Paragraph 5 alleged that the "Defendant", that is to say, the State of Queensland, "introduced a bill in the Queensland State Parliament". Paragraph 60 alleged that the State of Queensland "amended the Act". These allegations are constitutionally incomprehensible for the reasons which Bradley J gave.[8] The particulars to paragraph 14 of the statement of claim allege the making of statements by the State of Queensland in the form of statements made by certain Ministers in January, February, and April 1994, in 2003 and by the publication of a "Strategic Plan for 2010-2015" on a date that is not specified. In paragraph 15 these statements are said to constitute representations that the appellants would only ever have to compete in the provision of taxi services against other licensees yet none of these representations are alleged to have been made before the licences were issued. Paragraph 15 also pleads that the appellants were led to believe that "only licenced taxis would be permitted to carry passengers for reward" and that the "exclusive right to carry passengers" would permanently be "limited to licensed taxi owners". Yet even before it was amended, the Act permitted the issue of licences to carry passengers to holders of other kinds of licence, namely Chapter 7A which concerns "peak demand taxi permits" and Chapter 8 which concerns limousine service licences.

[25] In substance the statement of claim alleges:

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6 Section 72(4).
7 Section 74.
8 Reasons of Bradley J at [152] to [153].

(a) The appellants obtained licences in accordance with the provisions of the statute, including the payment of a licence fee in an amount required by the legislation;

(b) The statute conferred upon taxi licence holders the monopoly right to provide passenger transportation services by car (leaving aside limousines and peak demand permits);

(c) In order to run a taxi business, the appellants incurred not only the expense of a substantial licence fee but also other substantial costs;

(d) The licences had substantial market value as a result of the form of statutory regime under which they were issued;

(e) The government made public statements that the statutory framework for the provision of taxi services would not change;

(f) The appellants incurred their expenditure in the belief that their monopoly would remain secure indefinitely;

(g) The Queensland Parliament amended the Act to change the statutory regime for the provision of passenger services in a way that ended the appellants' monopoly and with the result that the licences now had a substantially lower market value and the appellants' earnings have been substantially reduced; and

(h) The appellants' obtaining of their licences in the way in which the Act permitted and required, and their expenditure of money to exploit the economic benefit of their licences, gave rise to a contract between a licensee and the State (or some kind of estoppel) which *forever* prevented Parliament changing the legislation in a way that reduced the potential of their licences to earn revenue.

[26] This is not the first time that holders of a licence conferring a right to carry on an economic activity that is otherwise prohibited have faced economic devastation by a change of legislation nor is it the first time when persons affected in that way have sought a legal remedy. Sometimes, if the legislation is Commonwealth legislation, the amendment to the law is said to have resulted in an acquisition of property that requires the payment of compensation.[9] In the sphere of State legislation, sometimes it is argued that a change in legislation has been effected made without affording procedural fairness to an affected licensee.[10]

[27] Sometimes, as in this case, the affected parties allege that there is a contract between the State and the licensee which prohibits the passing of legislation which would impinge upon the rights conferred by the licence. *River Fishery Association Inc (SA) v South Australia*[11] was such a case.[12]

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9 See eg. *Commonwealth v WMC Resources Ltd* (1998) 194 CLR 1 which concerned an exploration permit the scope of which was reduced by an amendment; *JT International SA v Commonwealth* (2012) 250 CLR 1 which concerned a law that required the packaging on cigarette packets to conform to strict requirements that affected the utility of certain trademarks that would otherwise have been printed on the packets.

10 *Tubbo Pty Ltd v Minister Administering the Water Management Act 2000; Harvey v Same* (2008) 302 ALR 299; [2008] NSWCA 356.

11 (2003) 85 SASR 373.

[28] The members of the Association and Warrick, who was also a plaintiff in the proceeding, held licences issued under the *Fisheries Act* 1982 (SA). The Act prohibited persons from engaging in commercial fishing on the River Murray without a licence. The licence held by each of the appellants permitted each of them to fish for, among other things, cod and callop, and to use mesh nets, gill nets and bait nets.

[29] Such licences had been issued as part of an arrangement reached with the appellants by the Minister for Primary Industries. By this agreement the State undertook to reduce the number of licences by effecting a "buy-back" using funds, some of which had been contributed by the remaining licensees. Pursuant to the arrangement the regulations were altered to make licences transferable in aid of giving licensees "financial security" and to ensure that a licence was "an asset with a commercial value" and also to provide a basis for licensees to "adequately invest in upgrading their operation". Licence holders spent about $450,000 each to fund the buy-back scheme.

[30] New regulations then limited the activities permitted by a licence so that it was no longer lawful to use mesh nets, gill nets or bait nets or to fish for cod or callop. These changes rendered the rights conferred by the licences uneconomical. The licence holders sued alleging that the arrangement upon which they had relied to spend substantial sums of money was binding upon the State and that it prevented the Governor of the State from adopting regulations that adversely affected their rights.

[31] Doyle CJ held that a court would be slow to infer an intention on the part of a Minister, in circumstances like these, to enter into a legally binding contract and it was doubtful whether the Minister had the capacity to bind himself or the State to any such contract.[13] His Honour held that the steps taken by the licensees and the State to give effect to the arrangements that had been agreed were not transactions that were undertaken by individuals under the law of contract or the law of property. They were steps taken by a Minister in the exercise of available statutory powers and in promoting the amendment of regulations made under an enactment. His Honour said that it was always implicit that the policies of the Government may change.[14]

[32] Doyle CJ concluded:[15]

> "Ministers exercising statutory powers are subject to scrutiny by the courts to ensure that their conduct is lawful. They are subject to scrutiny publicly and in Parliament with reference to the soundness and appropriateness and general fairness of decisions they make. But it is of the essence of our system of government that, usually, the statutory powers can be exercised to the disadvantage of individuals

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12 See also *Reilly v The King* [1934] AC 176 (statutory abolition of lucrative office; no contract to continue such office); *Perpetual Executors & Trustees Association of Australia Ltd v Commissioner of Taxation* (1948) 77 CLR 1 (statutory change to terms of payment of government bonds; no contractual right breached).

13 S*upra*, at [33].

14 *Ibid*, at [90].

15 *Ibid*, at [92].

> affected, and even though the exercise of power represents a distinct change of policy."

[33] Any person who purchases a licence granted pursuant to statute and delegated legislation is likely to do so in the hope and expectation that the licensing scheme will not be altered to that person's disadvantage, however, the fact that a person has spent money on that basis cannot limit the power to alter a statutory scheme and nor can the fact that a Minister, expounding policy, encourages expenditure on the faith of the statutory scheme.[16]

[34] That decision is consistent with longstanding authority. In *Australian Woollen Mills Pty Ltd v The Commonwealth*[17] the appellant argued that a statutory scheme, pursuant to which it purchased wool under conditions that attracted a Commonwealth subsidy, created contractual rights in its favour. The appellant relied upon the content of a series of letters from the Commonwealth exhorting the appellant to purchase wool under the scheme. The Privy Council rejected the submission that the letters evidenced a contract and held that they merely contained statements of policy. Their Lordships said that the whole of the arrangements were undertaken upon an administrative basis and not upon a contractual basis.[18] An arrangement between a government and a private individual may well consist of mutual promises and genuine expectations but that is not enough to create a contract unless it was the common intention of the parties to enter into legal relations.[19]

[35] At the hearing of the appeal the parties accepted that the contract asserted by the appellants is an implied contract. The facts alleged in the statement of claim are incapable of giving rise to any such contract. The governmental statements relied upon in the pleading were, as pleaded, statements of intended government policy. They were not capable of amounting to statements of contractual intent or having contractual significance. The conduct of the appellants in applying for and being granted a taxi service licence was conduct authorised by the statute and, likewise, no contractual significance could be given to those steps. The pleaded obligations imposed upon the appellants are obligations imposed by statute and not by the law of contract. The corresponding obligations of the State are also those imposed by statute. Nothing in the pleaded facts is capable of giving rise to an implication that the State adopted a contractual obligation to maintain in perpetuity the appellants' rights under the current licences. It is not necessary to consider the respondent's arguments about the inability of the State to fetter the legislature's ability to pass legislation as it thinks fit as a reason to hold that the statutory amendments were effective in their terms to destroy any contractual rights. However, one of the ramifications of the appellants' case is that the alleged contract impinges upon the freedom of the legislature to enact laws to amend an existing statutory regime for the regulation of taxi services in Queensland. That alone is a powerful factor against inferring the existence of a contract between the parties.

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16 *Ibid*, at [94].

17 (1955) 93 CLR 546.

18 *Australian Woollen Mills Pty Ltd v The Commonwealth*, *supra*, at 555; this was an appeal from the High Court which had held that there was no contract because there was no request by the Commonwealth that could be construed as an offer: (1954) 92 CLR 424. The Privy Council observed that even the presence of a request does not necessarily establish a contract: at 550; *Milne v A-G (Tas)* (1956) 95 CLR 460 (administration of scheme for settlement of former defence service members did not give rise to contractual rights).

19 *cf. Administration of Territory of Papua and New Guinea v Leahy* (1961) 105 CLR 6, at 11 per McTiernan J.

[36] For these reasons I respectfully agree with Bradley J that the appellants fail to satisfy the established tests for the implication of terms.[20]

[37] These considerations also constitute an answer to the appellants' claim in equity. Bradley J's exposition of the history of the statutory regulation of taxis in Queensland demonstrates that, as social conditions change over time, so too does legislation that affects taxis. One of these changes was the provision that was made for "limousines". Another was the provision made for "peak demand permits". Each of these amendments detracted from the rights of licence holders and it would have been irrational for licensees to think that their rights would never be altered as the public's expectations in relation to transport services evolved over time. As Bradley J has explained, reasonable persons holding a taxi licence in April 2014 would have known that they did so under circumstances in which there could be changes to the law affecting their rights. Nothing that was pleaded could alter that. In particular the expenditure of money to exploit the licence cannot do so for that much is common to almost all businesses for which a licence is required.[21]

[38] Mr Bennett AC QC, who appeared for the appellants, submitted candidly that the authorities were against the appellants' case and that it was for that reason that summary judgment should not have been granted. This was because, as I understood the argument, the appellants wished to mount a challenge in the High Court against the correctness of the authorities that stand in the appellants' way and that it would be more efficient to permit a trial on this unwinnable case to take place first so that the matter could afterwards be determined by the High Court. There was no submission that an investigation of facts at trial might lead to a different legal outcome. Consequently, the appellants have not demonstrated that an effective challenge cannot now be mounted based, as it must be, entirely upon questions of law in relation to assumed facts.

[39] I would dismiss the appeal with costs.

[40] **FRASER JA:** I agree with the reasons for judgment of Sofronoff P and the order proposed by his Honour.

[41] **PHILIPPIDES JA:** I agree with the order proposed by Sofronoff P for the reasons given by his Honour.

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20 Reasons of Bradley J at [80] to [88].

21 Reasons of Bradley J at [174] to [176].