

**IN THE HIGH COURT OF AUSTRALIA**

**BRISBANE REGISTRY**

**NO B 19 OF 2019**

**BETWEEN:**

**CLIVE FREDERICK PALMER**

First Plaintiff

**JAMES WILLIAM MCDONALD**

Second Plaintiff

**ROBERT JAMES FORSTER**

Third Plaintiff

**DANIEL ISAAC HODGSON**

Fourth Plaintiff

**AND:**

**AUSTRALIAN ELECTORAL COMMISSION**

First Defendant

**ELECTORAL COMMISSIONER**

Second Defendant

**AUSTRALIAN ELECTORAL OFFICER FOR QUEENSLAND**

Third Defendant

**AUSTRALIAN ELECTORAL OFFICER FOR NEW SOUTH WALES**

Fourth Defendant

**AUSTRALIAN ELECTORAL OFFICER FOR VICTORIA**

Fifth Defendant

**AUSTRALIAN ELECTORAL OFFICER FOR TASMANIA**

Sixth Defendant

**AUSTRALIAN ELECTORAL OFFICER FOR THE AUSTRALIAN  
CAPITAL TERRITORY**

Seventh Defendant

**AUSTRALIAN ELECTORAL OFFICER FOR THE NORTHERN  
TERRITORY**

Eighth Defendant

**AUSTRALIAN ELECTORAL OFFICER FOR SOUTH AUSTRALIA**

Ninth Defendant

**AUSTRALIAN ELECTORAL OFFICER FOR WESTERN AUSTRALIA**

Tenth Defendant



**JOINT SUBMISSIONS OF THE DEFENDANTS AND THE ATTORNEY-GENERAL  
OF THE COMMONWEALTH CONCERNING COSTS**

Filed on behalf of the Defendants and the  
Attorney-General of the Commonwealth by:

The Australian Government Solicitor  
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Date of this document: 9 May 2019  
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## PART I SUMMARY

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1. These submissions are in a form suitable for publication on the Internet.
2. On 7 May 2019, at the conclusion of the oral hearing in this matter, Kiefel CJ pronounced the unanimous order of the Court, being that the plaintiffs' application was dismissed.<sup>1</sup> The Court reserved its decision on the question of costs,<sup>2</sup> and permitted the defendants and the Attorney-General of the Commonwealth to file a note on costs, and the plaintiffs to file a reply to that note.<sup>3</sup>
- 10 3. For the following reasons, the defendants seek an order that the plaintiffs pay the defendants' costs of the application. The Attorney-General of the Commonwealth does not seek any order with respect to costs.

## PART II SUBMISSIONS ON COSTS

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4. Costs ordinarily follow the event.<sup>4</sup> In *Oshlack v Richmond River Council*, McHugh J explained the rationale of that rule in these terms:<sup>5</sup>

20 *The expression the "usual order as to costs" embodies the important principle that, subject to certain limited exceptions, a successful party in litigation is entitled to an award of costs in its favour. The principle is grounded in reasons of fairness and policy and operates whether the successful party is the plaintiff or the defendant. Costs are not awarded to punish an unsuccessful party. The primary purpose of an award of costs is to indemnify the successful party. If the litigation had not been brought, or defended, by the unsuccessful party the successful party would not have incurred the*

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<sup>1</sup> *Palmer v Australian Electoral Commission* [2019] HCATrans 088 at 68.2809.

<sup>2</sup> *Palmer v Australian Electoral Commission* [2019] HCATrans 088 at 68.2810.

<sup>3</sup> *Palmer v Australian Electoral Commission* [2019] HCATrans 088 at 68.2807, 68.2814-2815.

<sup>4</sup> See, eg, *Firebird Global Master Fund II Ltd v Republic of Nauru (No 2)* (2015) 90 ALJR 270 at 271 [6] (the Court) (referring to the principle in the context of successful appeals); *Oshlack v Richmond River Council* (1998) 193 CLR 72 at 91-92 [51] (McHugh J).

<sup>5</sup> (1998) 193 CLR 72 at 97 [67] (McHugh J, dissenting as to the result, but with whom Brennan CJ generally agreed: 75 [3]).

*expense which it did. As between the parties, fairness dictates that the unsuccessful party typically bears the liability for the costs of the unsuccessful litigation.*

5. In this matter:

5.1. the plaintiffs commenced the proceeding on 2 April 2019;

5.2. the Attorney-General of the Commonwealth intervened under s 78A of the *Judiciary Act 1903* (Cth) on 18 April 2019 (**Further Amended Application Book (AB) 95-96**); and

5.3. the defendants filed a submitting appearance in the proceeding, save as to costs, on 24 April 2019 (**AB 97-98**).

6. In accordance with the ordinary position that costs follow the event, the defendants seek an order for the costs that they incurred prior to filing a submitting appearance on 24 April 2019. Those costs include:

6.1. all costs incurred prior to the Attorney-General of the Commonwealth's intervention in the proceeding on 18 April 2019; and

6.2. the following costs incurred between 18 April 2019 and 24 April 2019, when the defendants filed a submitting appearance:

6.2.1. half of the costs incurred in preparing for, and appearing at, the directions hearing listed on 23 April 2019 (the other half of those costs to be borne by the Attorney-General of the Commonwealth, given that Counsel appeared on behalf of the defendants and the Attorney-General of the Commonwealth at that hearing);<sup>6</sup> and

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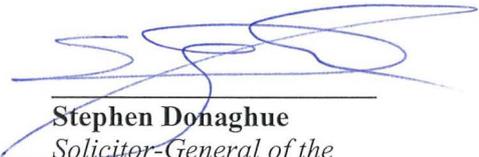
<sup>6</sup> *Palmer v Australian Electoral Commission* [2019] HCATrans 083.

6.2.2. the costs incurred in respect of the negotiation of the Amended Statement of Agreed Facts, which was negotiated between the plaintiffs and the defendants on 23 April 2019.

7. No special circumstances would warrant a departure from the ordinary position that costs follow the event. If the contrary is suggested, the defendants will seek leave to file submissions in response to that suggestion.

8. As noted in paragraph 3 above, the Attorney-General of the Commonwealth does not seek any order with respect to costs.

10 Dated: 9 May 2019



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