



HIGH COURT OF AUSTRALIA

18 December 2013

UNIONS NSW & ORS v STATE OF NEW SOUTH WALES

[2013] HCA 58

Today the High Court unanimously held that ss 96D and 95G(6) of the *Election Funding, Expenditure and Disclosures Act* 1981 (NSW) ("the EFED Act") are invalid because they impermissibly burden the implied freedom of communication on governmental and political matters, contrary to the Commonwealth Constitution.

Section 96D of the EFED Act prohibits the making of a political donation to a political party, elected member, group, candidate or third-party campaigner, unless the donor is an individual enrolled on the electoral roll for State, federal or local government elections. The EFED Act also caps the total expenditure that political parties, candidates and third-party campaigners can incur for political advertising and related election material. For the purposes of this cap, s 95G(6) of the EFED Act aggregates the amount spent on electoral communication by a political party and by any affiliated organisation of that party. An "affiliated organisation" of a party is defined as a body or organisation "that is authorised under the rules of that party to appoint delegates to the governing body of that party or to participate in pre-selection of candidates for that party (or both)".

Each of the plaintiffs intends to make political donations to the Australian Labor Party, the Australian Labor Party (NSW Branch) or other entities, and to incur electoral communication expenditure within the meaning of the EFED Act. The second, third and sixth plaintiffs are authorised to appoint delegates to the annual conference of the Australian Labor Party (NSW Branch) and to participate in the pre-selection of that party's candidates for State elections. A special case stated questions of law for determination by the High Court.

The High Court unanimously held that ss 96D and 95G(6) burdened the implied freedom of communication on governmental and political matters. The Court held that political communication at a State level may have a federal dimension. The Court accepted that the EFED Act had general anti-corruption purposes. However, the Court held that the impugned provisions were not connected to those purposes or any other legitimate end.

- *This statement is not intended to be a substitute for the reasons of the High Court or to be used in any later consideration of the Court's reasons.*