



HIGH COURT OF AUSTRALIA

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Details of Filing

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**IN THE HIGH COURT OF AUSTRALIA
MELBOURNE REGISTRY**

BETWEEN:

PAUL HOPPER
First Plaintiff

MELISSA LOWE
Second Plaintiff

and

STATE OF VICTORIA
Defendant

10

SUBMISSIONS OF THE PLAINTIFFS

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PART I: CERTIFICATION

1 These submissions are in a form suitable for publication on the internet.

PART II: ISSUES

2 This proceeding concerns the validity of provisions of Pt 12 of the *Electoral Act 2002*
 (Vic) (**Electoral Act**) which place a cap on political donations and a corresponding
 effective cap on political expenditure. Those provisions have a significant exception:
 registered political parties with a “nominated entity” are able to receive unlimited funds
 from their nominated entity that are not subject to the cap on political donations. Those
 funds may be used for political expenditure and are therefore not subject to the effective
 10 cap on political expenditure. The Plaintiffs contend that Pt 12, in its operation with the
 nominated entity exception, is invalid on the basis that it impermissibly burdens the
 implied freedom of political communication.

PART III: SECTION 78B NOTICE

3 The Plaintiffs have given notice under s 78B of the *Judiciary Act 1903* (Cth).

PART IV: FACTS

4 The Plaintiffs are independent candidates who contested the 2022 Victorian State
 election. The First Plaintiff also contested the 2025 State byelection in the district of
 Werribee: SC [2]. He has established a political party, The **West Party** Inc, which aims
 to be registered as a registered political party (**RPP**) under the Electoral Act and to run
 20 candidates in all of the western metropolitan districts of Melbourne in the 2026 State
 election: SC [3]-[4]. His nomination as the West Party’s candidate in the district of
 Werribee in the 2026 State election has been accepted by the members of the West Party:
 SC [5]. The Second Plaintiff has publicly announced her intention to again be an
 independent candidate in the 2026 State election in the district of Hawthorn: SC [7]. Each
 Plaintiff is accordingly a “candidate” as defined in s 206(1) and is under an obligation to
 comply with Part 12 of the Electoral Act: SC [6], [7.3].

PART V: ARGUMENT

A PART 12 OF THE ELECTORAL ACT

5 Pt 12 of the Electoral Act was amended by the *Electoral Legislation Amendment Act 2018*
 30 (Vic) (**2018 Amendment Act**) to introduce a scheme regulating political donations and
 political expenditure. The key features of that scheme operate as follows.

A.1 The general cap

6 Pt 12 places restrictions and obligations on the following persons or entities (as defined in s 206(1)): registered political parties (meaning a political party registered under Pt 4: s 3); candidates; groups (of two or more candidates whose names are grouped on a ballot-paper for a Council election in accordance with s 69A); elected members; nominated entities; associated entities; and third party campaigners (being any other person or entity that receives political donations or incurs political expenditure exceeding a total of \$4000 (indexed) in a financial year) (together, described as **regulated persons or entities**).

7 The **general cap** on political donations in s 217D (within Div 3B) provides that “a
10 political donation made to, or for the benefit of” any of the regulated persons or entities “must not exceed the general cap for the election period”. The general cap is \$4000, which is indexed each year (such that the current general cap is \$4,850): ss 206(1), 217Q. The “election period” is the period commencing the day after each general election in Victoria and ending on the subsequent general election day: s 206(1). It is unlawful for a regulated person or entity to accept a political donation if the donation would, or would when aggregated with other donations made by the same donor to the same person or entity within the election period under s 217E, exceed the general cap: s 217D(2). Small contributions of \$50 (indexed) or less are to be disregarded: ss 206(1), 217D(9), 217Q. A political donation to a candidate or group endorsed by an RPP, or to a nominated entity
20 of an RPP, is to be included as a donation to the RPP for the purpose of the general cap: s 217D(6). A contribution by a candidate or elected member to their own election campaign is not included in the general cap: s 217D(5).

8 A person who knowingly makes or accepts a political donation that is unlawful is guilty of an offence: s 218(5A). A political donation that is accepted in contravention of Div 3B is forfeited to the State: s 217G(1).

9 A “**political donation**” is defined in s 206(1) to mean “a gift to” any of the regulated persons or entities (with a further qualification in respect of a gift to an associated entity or third party campaigner that the gift was used, or intended to be used, to enable the making of a political donation or to incur political expenditure). “Gift” is defined to mean
30 “any disposition of property otherwise than by will made by a person to another person without consideration in money or money’s worth or with inadequate consideration”, including “the provision of a service”, with exclusions in subparagraphs (e)-(m) of the definition. Subparagraph (j) excludes “a gift made by a registered political party to the

nominated entity of the registered political party or received by a registered political party from the nominated entity of the registered political party” (the **nominated entity exception**). There are also exclusions for annual subscriptions, affiliation fees or levies paid to RPPs (subparagraphs (g)-(i)), gifts made for Commonwealth electoral purposes that are not paid into the State campaign account (subparagraph (ja)), and the provision of volunteer labour (subparagraph (k)). “Disposition of property” is defined in s 206(1) and includes the making or forbearance of a loan or non-financial loan.

A.2 Disclosure of political donations

10 Political donations are also subject to a disclosure regime under Div 3 of Pt 12. Political
10 donations above the “disclosure threshold” of \$1000 (indexed) must be the subject of a disclosure return by both the donor and the recipient to the Victorian Electoral **Commission** within 21 days: s 216. Disclosure returns are to be published by the Commission on its website within 7 days: s 217.

A.3 State campaign account

11 The regulated persons or entities, by their registered officer or agent, must keep a **State campaign account** consisting of a separate account or accounts for the purpose of State elections: s 207F(1). Certain amounts are *required* to be paid into the State campaign account, including:

11.1 each political donation received under Div 3 (s 207F(2)); and

20 11.2 public funding in relation to political expenditure and electoral expenditure paid in accordance with Div 2 (s 212(4A)).

12 Certain amounts are *prohibited* from being paid into the State campaign account. They include any amount kept in any account for Commonwealth electoral purposes (s 207F(3)); policy development funding paid in accordance with Div 2A of Pt 12 (s 215A(6)); and annual subscriptions, affiliation fees and levies paid to RPPs (s 207F(4)-(5), being amounts that correspond to the exclusions in subparagraphs (g), (h) and (i) of the definition of “gift” in s 206(1)). There is no prohibition on the payment into the State campaign account of any amounts received by an RPP from its nominated entity.

13 No amount of money for political expenditure may be paid unless the amount is paid from
30 the State campaign account: s 207F(6). “**Political expenditure**” is defined in s 206(1) as “any expenditure for the dominant purpose of directing how a person should vote at an election, by promoting or opposing — (a) the election of any candidate at the election;

(b) a registered political party; or (c) an elected member” (excluding certain expenditure incurred by an associated entity or third party campaigner).

A.4 Nominated entities

14 The “nominated entity” of an RPP means an entity entered on the **Register** of Nominated Entities maintained by the Victorian Electoral Commission pursuant to s 222E. Pursuant to s 222F(1), an RPP may appoint an entity as the nominated entity of the RPP. An independent candidate may not appoint a nominated entity. There are two alternative eligibility requirements for appointment as a nominated entity:

10 14.1 Under s 222F(2), an entity is eligible for appointment if it is an incorporated body that: (a) is *controlled*, within the meaning of s 50AA of the *Corporations Act 2001* (Cth),¹ by the RPP; (b) operates for the *sole benefit* of the members of the RPP, or is established and maintained, or is the trustee of a trust established and maintained, for the *sole benefit* of the members of the RPP; and (c) does not have voting rights in the RPP.

14.2 Under s 222F(3) – which was *only* available if the entity was first appointed as the nominated entity of an RPP before 1 July 2020 – an entity is eligible if it is an incorporated body that: (a) operates for the *principal benefit* of the members of the RPP, or is established and maintained, or is the trustee of a trust established and maintained, for the *principal benefit* of the members of the RPP; and (b) does not have voting rights in the RPP (the **legacy nominated entity qualification**). There is no requirement that the pre 1 July 2020 nominated entity be controlled by the RPP.

15 An RPP may provide written notice of the appointment of a nominated entity to the Commission under s 222G. The Commission must enter the name and address of the nominated entity as the nominated entity of the registered political party on the Register if the entity has provided written notice to the Commission under s 222G(2) that it consents to the appointment and is eligible to be appointed, and the Commission is satisfied that the entity is eligible to be appointed: s 222H(1). The Commission may, but is not required to, request an entity provide any evidence as to its eligibility: s 222G(3).

¹ Section 50AA(1) provides that “an entity controls a second entity if the first entity has the capacity to determine the outcome of decisions about the second entity’s financial and operating policies”. Section 50AA(2) provides that “the practical influence the first entity can exert (rather than the rights it can enforce) is the issue to be considered”, and any practice or pattern of behaviour affecting the second entity’s financial or operating policies is to be taken into account.

The appointment of an entity as the nominated entity of a registered political party ceases if the Commission removes the name and address of the entity from the Register of Nominated Entities (s 222I(1)), which the Commission may only do in the limited circumstances specified in s 222I(2).

16 The effect of the nominated entity exception is that uncapped funding may be given to an RPP by its nominated entity and may be placed in the RPP's State campaign account to be used accordingly for political expenditure. Those unrestricted amounts do not require disclosure by the RPP or the nominated entity under Div 3.

17 There are three nominated entities entered on the Register, each of which was in existence
10 when the 2018 Amendment Act was enacted and was appointed before 1 July 2020: **Cormack Foundation** Pty Ltd, as the nominated entity of Liberal Party of Australia (Victorian Division); **Labor Services & Holdings** Pty Ltd ATF Labor Services & Holdings Trust (**LSH Trust**), as the nominated entity of the Australian Labor Party – Victorian Branch; and **Pilliwinks** Pty Ltd, as the nominated entity of the National Party of Australia – Victoria (together, the **Nominated Entities**): SC [20]-[24]. The nominated entities were qualified for their registration by the operation of the legacy nominated entity qualification. Other than the Nominated Entities, no other entity has at any time been entered on the Register: SC [25]. At all material times each of the Nominated Entities had substantial assets and funds that can be given – and were in fact given – to
20 their respective RPPs.

18 The Cormack Foundation had net assets of \$89,656,938 as at 30 June 2024: SC [38]. In each of the 2018 to 2024 financial years, it had revenue of between \$3,073,409 and \$6,184,785, of which the majority was comprised of ordinary dividends: SC [39]. The Cormack Foundation donated substantial sums to the Liberal Party of Australia (Victorian Division): for example, in the 2023 financial year (encompassing the 2022 State election held on 26 November 2022), it donated \$1,500,000: SC [40], [75.2], see also [74]. The constitution of the Cormack Foundation does not refer to the Liberal Party of Australia (Victorian Division), and at most only one quarter of the shares in the Cormack Foundation are held on trust for the party: SC [33]-[37]. In the 2018 to 2024 financial
30 years, between zero and 47% of the Cormack Foundation's donations each year were made to the Liberal Party of Australia (Victorian Division): SC [42]-[43].

19 The LSH Trust, as at 30 June 2024, had a net asset value of \$3,125,665, including cash

of \$8,585,320 and liabilities including “unpaid distributions to beneficiaries” of \$6,159,170: SC [46.7]. The beneficiaries of the LSH Trust are all members of the Australian Labor Party – Victorian Branch, and the Trustee’s directors are required to be the President of the Australian Labor Party – Victorian Branch and others determined by the party: SC [44]-[45]. The LSH Trust had similarly substantial assets in each financial year between 2018 and 2024: SC [46]. In the 2023 financial year (encompassing the 2022 State election), the Australian Labor Party – Victorian Branch received amounts totalling \$4,598,000 from Labor Services & Holdings: SC [78.2].

20 Pilliwinks is governed by a memorandum of association that does not refer to the National
10 Party of Australia – Victoria: SC [47]-[48]. Pilliwinks is the trustee of the National Party Foundation trust: SC [52]. The beneficiaries of that trust are wide-ranging, including not only the National Party of Australia – Victoria, but nine other entities, “any charitable institutions, bodies or organisations”, and certain Victorian incorporated associations: SC [53]. In the 2018 to 2024 financial years, Pilliwinks had total receipts of \$2,583,799 from Morgan Stanley Wealth Management Australia Pty Ltd: SC [59]. In the 2022 financial year, the National Party of Australia – Victoria received \$200,000 from Pilliwinks: SC [81.1].

21 The Liberal, Labor and National parties of Victoria had recourse to existing, well-funded
20 corporations to appoint as their nominated entities (the **legacy parties**). The anti-avoidance provisions prevent an RPP without that legacy from establishing an entity with substantial financial resources with the intention of appointing that entity as its nominated entity. Section 218B(1) provides that it is an offence to “enter into, or carry out, a scheme, whether alone or with any other person, with the intention of circumventing a prohibition or requirement” under Pt 12. This is given specific application in relation to establishing a nominated entity by s 218B(2), which provides that a person commits an offence under s 218B(1) if the person enters into or carries out a scheme under which an entity received one or more gifts at a particular time; after receiving the gift(s), the entity becomes the nominated entity of an RPP; “the receiving of the gift or gifts by the entity would have constituted an offence against this Part if the entity had been the nominated entity of the
30 registered political party at the time the gift or gifts were received”; and “the person entered into the scheme with the intention of circumventing a prohibition or requirement under this Part”. Accordingly, a new RPP wishing to establish a nominated entity may only do so by political donations that are subject to the general cap.

- 22 The assets and funds of the Nominated Entities significantly exceed what could realistically be lawfully raised by any entity through political donations up to the amount of the general cap. The total reported pool of political donations to all RPPs and independent candidates ranged between \$262,378 in the 2018-19 financial year, to \$11,243,599 in the 2022-23 financial year: SC [91]-[95]. Of those donations, the majority were made to the legacy parties: e.g. \$233,308 in 2018-19 and \$7,024,445 in 2022-23. That provides a measure of the size of the total supply of capped political donations in Victoria, and that measure is greatly exceeded by the uncapped funds available to be given to the legacy parties by their nominated entities. The effect of the 2018 Amendment Act is to provide a source of uncapped funds that is able to be used for political expenditure which is available *only* to the legacy parties. Those uncapped funds are not available to new RPPs, third party campaigners or independent candidates. The practical effect of that Act is that however well a challenger may campaign to attract donations away from the legacy parties, the legacy parties in pursuing their political objectives are permitted, without constraint, to outspend those challengers thereby entrenching their more dominant positions in the electorate.
- 10
- 23 Further, the utility of capped donations is demonstrably diminished by legacy parties' ability through uncapped spending to significantly outspend other RPPs, independent candidates and third party campaigners in the respective contests of ideas in the electorate.
- 20 24 The 2018 Amendment Act required an independent statutory review to be completed within 12 months after the 2022 State election (s 222DB), to be conducted by an expert panel (s 222DC). On 24 November 2023, the Electoral Review Expert Panel delivered its report (**Expert Panel Report**): SC [53]. It recommended that the Electoral Act be amended "to remove the power of an RPP to appoint a nominated entity" and remove references to nominated entities from the Act.² That was based on findings that those provisions "do not treat all RPPs equally". The Panel reported "some RPPs with significantly more funds that can be spent on political expenditure, creating a risk that those RPPs drown out other voices".³ Section 222DB(6) requires the Minister to use "best endeavours to ensure that the Act is amended in accordance with the recommendations" before the 2026 State election; no such amendment has occurred: SC [106].
- 30

² Expert Panel Report, SC-30, 1040, 1118.

³ Expert Panel Report, SC-30, 1116-1117.

B INVALIDITY OF PART 12 WITH THE NOMINATED ENTITY EXCEPTION

B.1 Freedom of political communication

25 The Constitution protects freedom of political communication to preserve and protect the prescribed system of representative and responsible government.⁴ The choice by electors of their elected representatives guaranteed by ss 7 and 24 of the Constitution is to be a free and informed choice. For that choice to be a “true” one necessarily requires “an opportunity to gain an appreciation of the available alternatives”.⁵

26 The protection of true electoral choice is fundamental because of “the great underlying principle” that “the rights of individuals [are] sufficiently secured by ensuring each an
10 equal share in political power”.⁶ “Equality of opportunity to participate in the exercise of political sovereignty is an aspect of the representative democracy guaranteed by our Constitution.”⁷ That equality of opportunity for participation has been described as a “level playing field for those who wish to engage in electoral discourse”.⁸ Electors are well-informed when “no one voice is overwhelmed by another”.⁹

27 These principles recognise that the majoritarian principle, upon which our system of representative and responsible government relies, carries an “inherent risk of legislative or executive impairment” of the capacity of, or opportunity for, the Australian people to form the political judgments required for the exercise of their constitutional functions.¹⁰
The “systemic risk” is that “political communications unhelpful or inconvenient or
20 uninteresting to a current majority might be unduly impeded”.¹¹ That ever-present risk

⁴ *Unions NSW v New South Wales* (2019) 264 CLR 595 (**Unions No 2**) at [40] (Kiefel CJ, Bell and Keane JJ); *Comcare v Banerji* (2019) 267 CLR 373 at [20] (Kiefel CJ, Bell, Keane and Nettle JJ); *Gerner v Victoria* (2020) 270 CLR 412 at [24] (Kiefel CJ, Gageler, Keane, Gordon and Edelman JJ); *Unions NSW v New South Wales* (2013) 252 CLR 530 (**Unions No 1**) at [135] (Keane J).

⁵ *Australian Capital Television Pty Ltd v The Commonwealth* (1992) 177 CLR 106 (**ACTV**) at 187 (Dawson J); **Lange** v *Australian Broadcasting Corporation* (1997) 189 CLR 520 at 560 (the Court); **McCloy** v *New South Wales* (2015) 257 CLR 178 at [303] (Gordon J).

⁶ **ACTV** (1992) 177 CLR 106 at 139-140 (Mason CJ), summarising Harrison Moore, *The Constitution of the Commonwealth of Australia* (1902), 329; **McCloy** (2015) 257 CLR 178 at [27] (French CJ, Kiefel, Bell and Keane JJ), [110]-[111] (Gageler J).

⁷ **McCloy** (2015) 257 CLR 178 at [45] (French CJ, Kiefel, Bell and Keane JJ), [271] (Nettle J); see also *Unions No 2* (2019) 264 CLR 595 at [40] (Kiefel CJ, Bell and Keane JJ).

⁸ **McCloy** (2015) 257 CLR 178 at [39], [42]-[45] (French CJ, Kiefel, Bell and Keane JJ), [245] (Nettle J). See also **ACTV** (1992) 177 CLR 106 at 146 (Mason CJ).

⁹ **McCloy** (2015) 257 CLR 178 at [44] (French CJ, Kiefel, Bell and Keane JJ), quoting *Harper v Canada (Attorney-General)* [2004] 1 SCR 827 at [62] (Bastarache J).

¹⁰ See **Farm Transparency International Ltd v New South Wales** (2022) 277 CLR 537 at [76] (Gageler J) and the authorities there cited.

¹¹ **Brown** v *Tasmania* (2017) 261 CLR 328 at [202] (Gageler J); **McCloy** (2015) 257 CLR 178 at [114]-[115] (Gageler J), see also [245] (Nettle J).

“arises from the propensity of an elected majority to undervalue, and, at worst, to seek to protect itself against adverse electoral consequences resulting from political communication by a dissenting minority”.¹² A purpose of the implied freedom is to guard against that risk, and “ensure that even the smallest minority is not, without justification, denied by law an ability to be heard in the political process”.¹³

28 The representative character of the State Parliament carries an inherent risk to the maintenance of the constitutional system of representative and responsible government that is of the same nature.¹⁴ The concept of freedom to communicate on political governmental matters is indivisible.¹⁵ It recognises the “complex interrelationship between levels of government, issues common to State and federal government and the levels at which political parties operate”.¹⁶ Communications made by candidates or electors in a State election “concerning the record and suitability of a candidate for election to a State Parliament ... are at the heart of the freedom of communication protected by the Constitution”.¹⁷

29 Whether Pt 12 impermissibly burdens freedom of political communication, and so whether the restriction on State legislative power is transgressed, involves three questions: (1) do the provisions effectively burden freedom of political communication; (2) do the provisions have a purpose or purposes that are legitimate in the sense of being consistent with the maintenance of the constitutionally prescribed system of government; and (3) are the provisions reasonably appropriate and adapted to advance that purpose in a manner consistent with the maintenance of the constitutionally prescribed system of government?¹⁸ The degree of justification required at the third step, and accordingly the appropriate intensity of scrutiny involved, must be calibrated to the nature and extent of

¹² *Unions No 2* (2019) 264 CLR 595 at [66] (Gageler J); *McCloy* (2015) 257 CLR 178 at [14] (Gageler J).

¹³ *Tajjour v New South Wales* (2014) 254 CLR 508 at [145] (Gageler J); *Ravbar v Commonwealth of Australia* (2025) 99 ALJR 1000 at [33] (Gageler CJ).

¹⁴ *Unions No 2* (2019) 264 CLR 595 at [66] (Gageler J).

¹⁵ *ACTV* (1992) 177 CLR 106 at 142 (Mason CJ); *Theophanous v Herald and Weekly Times Ltd* (1994) 182 CLR 104 at 122 (Mason CJ, Toohey and Gaudron JJ), 164 (Deane J).

¹⁶ *Unions No 1* (2013) 252 CLR 530 at [25] (French CJ, Hayne, Crennan, Kiefel and Bell JJ), see also [158]-[159] (Keane J).

¹⁷ *Roberts v Bass* (2002) 212 CLR 1 at [73] (Gaudron, McHugh and Gummow JJ), referred to in *Unions No 1* (2013) 252 CLR 530 at [25] (French CJ, Hayne, Crennan, Kiefel and Bell JJ).

¹⁸ *McCloy* (2015) 257 CLR 178 at [2]; *Ravbar* (2025) 99 ALJR 1000 at [27] (Gageler CJ), [101] (Gordon J).

the burden that is imposed.¹⁹ That is so whether or not structured proportionality is employed as a “tool of analysis”.²⁰ Such calibration ensures that the analysis cleaves to the constitutional interest at stake and the necessity for the implication, being addressed to the “systemic risk” to the constitutional system of government.²¹

B.2 Burden

30 The first question is whether “the law effectively burden[s] freedom of communication about government or political matters either in its terms, operation or effect.”²² The effect of the law is “gauged by nothing more complicated than comparing” the “practical ability ... to engage in political communication” *with* the law and *without* the law.²³ There are
10 two related dimensions to the burden that Pt 12 imposes on freedom of political communication. While at this step no more is required than that the freedom is in fact burdened,²⁴ it is convenient here also to address the nature and extent of that burden.

31 *First*, the general cap in s 217D imposes a recognised form of burden by limiting political donations. A cap on political donations “effects a restriction upon the funds available to political parties and candidates to meet the costs of political communication by restricting the source of those funds”.²⁵

32 *Second*, s 207F imposes effective caps on political expenditure. That is because s 207F(6) prohibits political expenditure unless the amount is paid *from* the State campaign account, in circumstances where the amounts that may be paid *into* the State campaign account are
20 restricted by the “general cap” (and the related definitions of “gift” and “political donation” in s 206), as well as the further prohibitions on certain amounts being paid into

¹⁹ *Tajjour* (2014) 254 CLR 508 at [151]-[152] (Gageler J); *McCloy* (2015) 257 CLR 178 at [150]-[152] (Gageler J), [222] (Nettle J); *Brown* (2017) 261 CLR 328 at [118], [128] (Kiefel CJ, Bell and Keane JJ), [164], [200]-[201] (Gageler J), [291] (Nettle J); *LibertyWorks Inc v Commonwealth* (2021) 274 CLR 1 at [63] (Kiefel CJ, Keane and Gleeson JJ), [136] (Gordon J); *Farm Transparency* (2022) 277 CLR 537 at [26], [36] (Kiefel CJ and Keane J), [156], [175] (Gordon J), [254] (Edelman J); *Babet v Commonwealth of Australia*; *Palmer v Commonwealth of Australia* (2025) 99 ALJR 883 at [48] (Gageler CJ and Jagot J); *Ravbar* (2025) 99 ALJR 1000 at [337] (Jagot J); *Farmer v Minister for Home Affairs* [2025] HCA 38 at [57] (Gageler CJ, Gordon and Beech-Jones JJ).

²⁰ *Ibid.* See *Babet* (2025) 99 ALJR 883 at [49] (Gageler CJ and Jagot J), [72] (Gordon J), [242] (Beech-Jones J), [173]-[184] (Edelman J) and [210]-[211] (Steward J); *Ravbar* (2025) 99 ALJR 1000 at [28]-[29] (Gageler CJ), [213] (Edelman J), [291] (Steward J), [337], [343]-[344] (Jagot J), [427] (Beech-Jones J).

²¹ *McCloy* (2015) 257 CLR 178 at [118], [123]-[124], [150] (Gageler J).

²² *Lange* (1997) 189 CLR 520 at 567 (the Court).

²³ *Ravbar* (2025) 99 ALJR 1000 at [32] (Gageler CJ); *Brown* (2017) 261 CLR 328 at [181] (Gageler J).

²⁴ *Unions No 1* (2013) 252 CLR 530 at [40] (French CJ, Hayne, Crennan, Kiefel and Bell JJ).

²⁵ *Unions No 1* (2013) 252 CLR 530 at [38] (French CJ, Hayne, Crennan, Kiefel and Bell JJ); *McCloy* (2015) 257 CLR 178 at [24] (French CJ, Kiefel, Bell and Keane JJ).

the State campaign account in s 207F(3)-(4). As a result, “the donation cap effectively acts as a de facto expenditure cap”.²⁶ Further, the effective cap differs depending on the identity of the person or entity making the expenditure. The distinction in that regard is between the legacy parties – who may receive gifts of an unlimited amount of funds paid into their State campaign accounts from their nominated entities, by operation of the nominated entity exception – and all other RPPs, independent candidates, third party campaigners or other regulated persons and entities who or which do not have that entitlement.

33 The practical effect of the burden is demonstrated by the Second Plaintiff’s campaign in
 10 the 2022 State election. The Second Plaintiff incurred not more than \$181,104 in political expenditure.²⁷ The major part of her funding for political expenditure (75%) was made up of political donations subject to the general cap, including 15 donations at the maximum amount: SC [67]-[68]. Those capped donations included the provision of in-kind campaign support from Climate 200, valued at \$4,185 (being slightly below the general cap to provide a buffer to ensure the cap was not inadvertently exceeded, noting that the definition of “gift” includes the “provision of a service”²⁸): SC [71.9]. If lawfully permitted to do so, the Second Plaintiff would have received donations in excess of the general cap, including monetary donations and additional services from Climate 200 totalling between \$50,000 and \$200,000, and donations from individual donors: SC [72].
 20 By contrast, the Liberal Party of Australia (Victorian Division) was able to receive unlimited amounts – and in fact received at least \$1.7 million²⁹ – from the Cormack Foundation, and could expend those amounts on political expenditure. The Australian Labor Party – Victorian Branch likewise could, and did, receive very substantial sums from Labor Services and Holdings,³⁰ able to be used for its political expenditure.

34 The State in its Defence accepts that s 217D(1)-(2) imposes an effective burden, and that the burden imposed upon RPPs is different from that on other regulated persons and

²⁶ Expert Panel Report, SC-30, 1106 (quoting submission from the Australian Labor Party – Victorian Branch).

²⁷ SC [66]. Note that “electoral expenditure” is separately defined in s 206(1) of the Electoral Act, largely being advertising relating to an election; such expenditure can be expected to be a subset of the broader definition of “political expenditure”. See Expert Panel Report, SC-30, 1094, 1097.

²⁸ See also *Harris and Anor v Victorian Electoral Commission* (2020) 62 VR 460 at [75]-[77], as to the construction of “without consideration in money or money's worth or with inadequate consideration” in the definition of “gift”.

²⁹ SC [74] (in relation to the election period for the State election); compare also the disclosed amounts at SC [75.2]-[75.6] and SC [40].

³⁰ SC [78.2]-[78.6].

entities (at [59.1]-[59.3]). However, the differential burden is not only as between RPPs (who may appoint a nominated entity under s 222F(1)) and independent candidates or others (who may not). There is a different burden imposed as between RPPs *with an existing nominated entity* at the time the provisions commenced – in practical terms, the legacy parties – and all other RPPs, including those that did not have an existing nominated entity, and those that are new entrants (such as the West Party). That is so for two reasons. *First*, the effect of the anti-avoidance provision in s 218B is to prevent the establishment of an entity with substantial funds from any source with a view to its appointment as an RPP’s nominated entity. *Second*, the legacy nominated entity qualification (permitting the appointment of a significantly broader range of entities) was only available for the appointment of a nominated entity before 1 July 2020. The differential burden was recognised in the Expert Panel Report, which found that the provisions “do not treat all RPPs equally and significantly benefit RPPs that were established prior to the 2018 amendments over other RPPs”, providing them with “significantly more funds that can be spent on political expenditure”.³¹

35 The burden on freedom of political communication imposed by Pt 12 is accordingly *discriminatory* – it involves “legislated inequality or discrimination between participants in political discourse”.³² A burden of that kind “warrants close scrutiny to assess its justification”.³³ That is because a discriminatory burden warns of the systemic risk to the system of representative and responsible government (described at paragraph 27 above) that political communications unhelpful to a current majority may be suppressed. A restriction that operates by favouring some sources of political communication is “apt to distort the flow of political communication within the federation”.³⁴

36 The burden should also be characterised as *direct* and *substantial*. It has been observed that “a cap on electoral expenditure is a more direct burden on political communication than one on political donations”.³⁵ Here, the two are entwined. The definition of “political expenditure” in s 206(1), which may only be paid for from the State campaign account, is broadly framed, capturing any expenditure “for the dominant purpose of directing how

³¹ Expert Panel Report, SC-30, 1116.

³² *Babet* (2025) 99 ALJR 883 at [42] (Gageler CJ and Jagot J).

³³ *Babet* (2025) 99 ALJR 883 at [42] (Gageler CJ and Jagot J); *ACTV* (1992) 177 CLR 106 at 144-146 (Mason CJ); *Brown* (2017) 261 CLR 328 at [199], [206] (Gageler J).

³⁴ *Unions No 1* (2013) 252 CLR 530 at [140] (Keane J).

³⁵ *Unions No 2* (2019) 264 CLR 595 at [15] (Kiefel CJ, Bell and Keane JJ).

a person should vote at an election by promoting or opposing” an RPP, an elected member or the election of any candidate. The general cap, together with the effective expenditure cap in s 207F, are accordingly directed to “the conduct of elections for political office”.³⁶ They operate to restrict the making of communications that are “inherently political or a necessary ingredient of political communication”.³⁷ A burden of that nature demands close scrutiny,³⁸ requiring a “compelling justification”.³⁹ The persuasive onus is on the State to establish that justification.⁴⁰ The Court must be satisfied of the existence of facts on which the justification offered by the State depends.⁴¹

B.3 Purpose

- 10 37 The purpose of the law is “that which the law is designed to achieve in fact”,⁴² which is “akin to identification of the ‘mischief’ which the law is designed to address”.⁴³ Determination of legislative purpose is “a question to be answered objectively by reference to the text and context of the law.”⁴⁴ A law can have more than one purpose.⁴⁵ The appropriate level of generality or specificity of a particular purpose depends on what analysis is being undertaken and “ultimately on what constitutional value is at stake”.⁴⁶
- 38 The purposes asserted in s 1 of the 2018 Amendment Act included relevantly “to enhance the integrity of the electoral system by ... introducing a political donations and reporting

³⁶ *McCloy* (2015) 257 CLR 178 at [117], [153]-[155] (Gageler J); *Mulholland v Australian Electoral Commission* (2004) 220 CLR 181 at [40] (Gleeson CJ); *ACTV* (1992) 177 CLR 106 at 144 (Mason CJ).

³⁷ *Wotton v Queensland* (2012) 246 CLR 1 at [30] (French CJ, Gummow, Hayne, Crennan and Bell JJ). See also *Ravbar* (2025) 99 ALJR 1000 at [341] (Jagot J); *Clubb v Edwards* (2019) 267 CLR 171 at [176] (Gageler J), [480] (Edelman J); *McCloy* (2015) 257 CLR 178 at [117], [152] (Gageler J); *ACTV* (1992) 177 CLR 106 at 169 (Deane and Toohey JJ); *Mulholland* (2004) 220 CLR 181 at [40] (Gleeson CJ).

³⁸ *McCloy* (2015) 257 CLR 178 at [153]-[154] (Gageler J), see also at [70] (French CJ, Kiefel, Bell and Keane JJ); *Brown* (2017) 261 CLR 328 at [203] (Gageler J).

³⁹ *McCloy* (2015) 257 CLR 178 at [153]-[154] (Gageler J), see also at [70] (French CJ, Kiefel, Bell and Keane JJ); *ACTV* (1992) 177 CLR 106 at 143 (Mason CJ), 169 (Deane and Toohey JJ).

⁴⁰ *McCloy* (2015) 257 CLR 178 at [24]; *Unions No 2* (2019) 264 CLR 595 at [45], [53] (Kiefel CJ, Bell and Keane JJ) and [96]-[102] (Gageler J).

⁴¹ *Unions No 2* (2019) 264 CLR 595 at [96] (Gageler J).

⁴² *NZYQ v Minister for Immigration, Citizenship and Multicultural Affairs* (2023) 280 CLR 137 at [40] (the Court).

⁴³ *Brown* (2017) 261 CLR 328 at [321] (Gordon J); see also [101] (Kiefel CJ, Bell and Keane JJ). See also *Unions No 2* (2019) 264 CLR 595 at [171] (Edelman J); *Ravbar* (2025) 99 ALJR 1000 at [173] (Edelman J), [459] (Beech-Jones J).

⁴⁴ *Brown* (2017) 261 CLR 328 at [208] (Gageler J); see also *Ravbar* (2025) 99 ALJR 1000 at [43] (Gageler CJ), [120] (Gordon J), [173], [238] (Edelman J), [370] (Jagot J).

⁴⁵ *Ravbar* (2025) 99 ALJR 1000 at [44] (Gageler CJ), see also [140] (Gordon J), [178] (Edelman J), [382] (Jagot J).

⁴⁶ *Alexander v Minister for Home Affairs* (2022) 276 CLR 336 at [104] (Gageler J); *Ravbar* (2025) 99 ALJR 1000 at [44] (Gageler CJ).

scheme”. That is a purpose expressed at a high level of generality, and requires that the Court “scrutinize very carefully [any] claim freedom of communication must be restricted in order to protect the integrity of the political process”.⁴⁷ The State identifies the purpose of s 217D in particular as being “to enhance the integrity of the State electoral system *by reducing the risk of corruption or undue influence* in the government of the State which can arise from elected office holders finding themselves beholden to those persons or entities whose funding, or whose withholding of funding, contributed to the office holders’ electoral success”.⁴⁸ Such a purpose is legitimate. As explained in *McCloy*, “[t]he *elimination of preferential access* to government which results from the making of political donations is a legitimate legislative objective”.⁴⁹

39 A purpose of reducing corruption and undue influence finds some support in the extrinsic materials.⁵⁰ But it is notable what from those materials has been omitted in the State’s characterisation of purpose. The Attorney-General’s second reading speech identified a general purpose of Pt 12 as being to “limit any improper influence of private donations in the political process”, as “voters have a right to know about who makes and receives political donations, and that political donations should not unfairly or improperly influence the political process”.⁵¹ The specific purpose of the general cap was then stated to be that “the cap will *ensure a level playing field and provide equal participation in the electoral process*, reducing the potential for those with ‘deep pockets’ to try and exert greater influence”.⁵² The explanatory memorandum identifies the purpose of Div 3B to “to minimise the influence of *single donors*”.⁵³ The statement of compatibility for human rights likewise links those purposes, stating that the general cap is “reasonable and demonstrably justified to reduce the risk and public perception of corruption and undue influence in the political process, and is necessary to *ensure equal participation* in the electoral process”.⁵⁴

40 A cap on political donations may be in pursuit of a purpose of reducing the risk of

⁴⁷ *ACTV* (1992) 177 CLR 106 at 145, cited in *Unions No 2* (2019) 264 CLR 595 at [146].

⁴⁸ Defence, [63.3] (emphasis added). See *Unions No 2* (2019) 264 CLR 595 at [71]; *McCloy* (2015) 257 CLR 178 at [8], [33] (where such an object was express); *Unions No 1* (2013) 252 CLR 530 at [8].

⁴⁹ *McCloy* (2015) 257 CLR 178 at [184] (Gageler J) (emphasis added).

⁵⁰ Second reading speech, SC-2, 83; Statement of compatibility with human rights, SC-3, 90.

⁵¹ Second reading speech, SC-2, 83.

⁵² Second reading speech, SC-2, 84.

⁵³ Explanatory memorandum, SC-1, 71 (emphasis added).

⁵⁴ Statement of compatibility with human rights, SC-3, 90 (emphasis added).

corruption or undue influence.⁵⁵ However, as the above statements in the extrinsic materials reflect, a general cap on political donations (as distinct, for example, from a cap on particular types of donations or donors identified as carrying a particular risk of corruption or undue influence⁵⁶) will do so only if it operates in way that is *fair* and ensures a *level playing field* and *equal participation*. That is the difficulty with ascribing that purpose to s 217D in its operation with the nominated entity exception: the legal operation of the law does not conform to its asserted purpose.⁵⁷ The general cap does not prevent the Nominated Entities – “single donors” with “deep pockets” – from making large, undisclosed donations to the legacy parties. By virtue of the legacy nominated entity qualification, those donors need not be controlled by, or operate for the sole benefit of, the RPP. As a distinct entity under distinct control, there is readily a risk of undue influence (the potential for which is only *increased* by limiting donations from other sources). The extrinsic materials are silent on this issue; the Bill that became the 2018 Amendment Act, as initially introduced, did not include the legacy nominated entity qualification, which was inserted by amendments made by the Legislative Council: SC [16]. The Expert Panel Report considered that “as existing RPPs were able to appoint a body as a nominated entity despite not having control over it, gifts from those nominated entities ... *create* a risk of real or perceived improper influence”.⁵⁸

41 The legal operation of the nominated entity provisions is such that their purpose – or, at
20 least, one purpose – is to place the legacy parties in a privileged position over independent candidates or new RPPs in respect of the sources of funds that are available to be used for political expenditure. That purpose is made clear because the provisions are “weighted in favour of the established political parties” as against “new and independent candidates” or new RPPs.⁵⁹ The law involves an “abuse of incumbency”,⁶⁰ operating to “assist those holding power to resist or suppress obstruction or opposition or attempts to displace them”.⁶¹ It is a purpose of “ensuring that the position of some is suppressed relative to

⁵⁵ *McCloy* (2015) 257 CLR 178 at [36]-[38], [46]-[47] (French CJ, Kiefel, Bell and Keane JJ).

⁵⁶ See *McCloy* (2015) 257 CLR 178 at [48]-[53] (French CJ, Kiefel, Bell and Keane JJ).

⁵⁷ *Brown* (2017) 261 CLR 328 at [215].

⁵⁸ Expert Panel Report, SC-30, 1117 (emphasis added).

⁵⁹ *Unions No 2* (2019) 264 CLR 595 at [85] (Gageler J), *ACTV* (1992) 177 CLR 106 at 146.

⁶⁰ *Unions No 2* (2019) 264 CLR 595 at [85] (Gageler J).

⁶¹ *Unions No 2* (2019) 264 CLR 595 at [63] (Gageler J), quoting *Australian Communist Party v The Commonwealth* (1951) 83 CLR 1.

others”.⁶² The pursuit of that purpose manifests the very “systemic risk” which the freedom serves to guard against. That purpose is not consistent with the maintenance of the constitutionally prescribed system of government – to the contrary, it “impede[s] the functioning of that system and all that it entails”.⁶³ It is antithetical to the freedom and is illegitimate.

42 It may be accepted that “an additional object that is not only unexpressed but also constitutionally impermissible should not lightly be inferred”,⁶⁴ here the legal operation of the provisions with the nominated entity exception provides greater textual and contextual support for that purpose than the purpose asserted by the State. That legal
10 operation makes clear that placing the legacy parties in a privileged position is at least an outcome that the law was “designed to achieve in fact”. Given the disconformity between the nominated entity exception and the purposes asserted by the State in its Defence, the Court can more comfortably conclude that the illicit purpose is the purpose of the law read as a whole. Alternatively, it is sufficient to support a conclusion of invalidity that the provisions have a purpose that is illegitimate, even if it is accepted that the provisions also have another, legitimate purpose.⁶⁵

B.4 Not reasonably appropriate and adapted

43 Assuming the provisions have a legitimate purpose (and do not additionally pursue an illegitimate purpose), then the provisions are not reasonably appropriate and adapted to
20 advancing that end in a manner compatible with the constitutionally prescribed system of representative and responsible government.

44 This step of the inquiry requires consideration of whether the *means* employed by the law are legitimate.⁶⁶ Even if it is not accepted that a purpose of the provisions is to place RPPs with an existing nominated entity in a privileged position over other RPPs and independent candidates, that is the legal operation and practical effect of the provisions. The means employed by the law are “inimical to equal participation by all the people in

⁶² *Unions No 2* (2019) 264 CLR 595 at [181] (Edelman J).

⁶³ *McCloy* (2015) 257 CLR 178 at [31] (French CJ, Kiefel, Bell and Keane JJ); see also *Clubb v Edwards* (2019) 267 CLR 171 at [44] (Kiefel CJ, Bell and Keane JJ), [454] (Edelman J); *LibertyWorks* (2021) 274 CLR 1 at [203]-[204] (Edelman J); *Unions No 2* (2019) 264 CLR 595 at [173] (Edelman J).

⁶⁴ *Unions No 2* (2019) 264 CLR 595 at [79] (Gageler J); *Ravbar* (2025) 99 ALJR 1000 at [59] (Gageler CJ).

⁶⁵ *Ravbar* (2025) 99 ALJR 1000 at [177]-[179] (Edelman J), see also [58], [66] (Gageler CJ), [140] (Gordon J); cf [392]-[394] (Jagot J); *Farmer* [2025] HCA 38 at [107] (Edelman J).

⁶⁶ *Farmer* [2025] HCA 38 at [1] (Gageler CJ, Gordon and Beech-Jones JJ); *Babet* (2025) 99 ALJR 883 at [38] (Gageler CJ and Jagot J); *Brown* (2017) 261 CLR 328 at [103]-[104] (Kiefel CJ, Bell and Keane JJ).

the political process”, and that is fatal to its validity.⁶⁷ The identified legitimate purpose – which can be understood in the sense of reducing “unequal access to government based on money”⁶⁸ – is pursued by means that create a more fundamental inequality, one that impedes the exercise of the true electoral choice that is the very means of accountability for ensuring the government serves the interests of the people. It “so burdens the freedom that it may be taken to affect the system of government for which the Constitution provides and which depends for its existence on the freedom”, and is invalid.⁶⁹

45 That conclusion also follows from the application of a structured proportionality analysis.

46 **Suitability.** The law is not rationally connected to its asserted purpose because it is
10 selective in a way that lacks evident justification.⁷⁰ A law that limits the value of political donations that can be made is capable of serving to reduce unequal access to government based on money, if it operates equally. But the nominated entity exception means that Pt 12 does not do so. It places the nominated entities of RPPs in a position that they alone may make uncapped donations, and that those donations are not subject to public disclosure under Div 3. That creates the very risk of “clientelism” – “the danger that officeholders will decide issues not on the merits or the desires of their constituencies, but according to the wishes of those who have made large financial contributions valued by the officeholder”⁷¹ – that the asserted purpose of the provisions is to address.

47 It is no answer to that problem that the nominated entities may not receive donations from
20 foreign donors, must disclose political donations they receive, and that donations they receive from a donor are aggregated with donations made to the RPP (cf Defence [67.2.2(d)-(g)]). The risk of undue influence arises in respect of the nominated entities – themselves a third party – which by virtue of the legacy nominated entity qualification, need not be controlled by the RPP. The requirement that the Commission be satisfied that a nominated entity meet the criteria in s 222F(2) or (3) for appointment does not add any relevant safeguard because the difficulty arises from the statutory criterion (cf Defence [67.2.2.(b)]) and, in any event, the statute contemplates that the Commission may be so satisfied on the basis only of RPP’s notice of appointment and the nominated entity’s own

⁶⁷ *McCloy* (2015) 257 CLR 178 at [45], describing *ACTV* (1992) 177 CLR 106.

⁶⁸ *McCloy* (2015) 257 CLR 178 at [183] (Gageler J).

⁶⁹ *Unions No 1* (2013) 252 CLR 530 at [19] (French CJ, Hayne, Crennan, Kiefel and Bell JJ).

⁷⁰ See *Unions No 1* (2013) 252 CLR 530 at [53] (French CJ, Hayne, Crennan, Kiefel and Bell JJ), [144] (Keane J).

⁷¹ *McCloy* (2015) 257 CLR 178 at [181] (Gageler J).

declaration of eligibility (ss 222G, 222H(1), (3)). Nor does the requirement that the Register be published provide any meaningful transparency; only the name of the nominated entity is published, and no other information (including information about the relationship between the RPP and the nominated entity, or which persons or entities control the nominated entity) is required to be disclosed (cf Defence [67.2.2(c)]). The requirement that an RPP's annual return under s 217I include the sum of all amounts received from a person or entity at the end of a financial year is no substitute for the disclosure of political donations at the time they are made (as is reflected by the enactment of Div 3⁷²). Further, the requirement to report "amounts received" will not encompass all forms of political donation as defined in s 206(1), such as the provision of services.

48 **Necessity.** Part 12 is not proportionate in the means it employs to achieve its asserted object because there are alternative and reasonably practicable means of doing so that would involve a lesser burden on the freedom.⁷³ It is an obvious and compelling alternative for Pt 12 to operate *without* the nominated entity exception. That would involve a lesser burden on the freedom, because independent candidates, third party campaigners and RPPs other than the legacy parties would not then be placed at a comparative disadvantage in their ability to make effective political communications. The provisions may then create a "level playing field" where all voices have an equal opportunity to be heard, rather than making an unlevel playing field that hinders challenges to the incumbent players. That alternative would be *more* effective in achieving the asserted purposes, by addressing the risk of undue influence from all large, secret donations, including donations by nominated entities.

49 That alternative is reasonably practicable. The State asserts that the nominated entity exception "accommodates the organisational functions and structures of registered political parties, which are ordinarily unincorporated associations and cannot hold property in their own name" (Defence, [67.2.1]). A need for such accommodation is not established by the facts in the special case. RPPs may choose to be unincorporated or incorporated associations: SC [10]. Of the 23 RPPs who ran candidates in the 2022 State election, it is only the three legacy parties that have a nominated entity: SC [65], [25].

30 The Expert Panel considered that "nominated entities are not required for RPPs to

⁷² See explanatory memorandum, SC-1, 69; second reading speech, SC-2, 84.

⁷³ *Unions No 1* (2013) 252 CLR 530 at [44] (French CJ, Hayne, Crennan, Kiefel and Bell JJ); *Lange* (1997) 189 CLR 520 at 568, referring to *ACTV* (1992) 177 CLR 106.

function”, noting that “RPPs would still be able to invest funds and use investment proceeds” (and that the legacy parties already do so).⁷⁴

50 A further obvious and compelling alternative is the provisions without the legacy nominated entity qualification. That was the initial design, before the amendment made to the Bill in the Legislative Council without explanation. In practice, the legacy nominated entity qualification particularly advantaged the Liberal Party. Even if, contrary to our submission, it is accepted that the nominated entity exception has a function of accommodating the arrangements of unincorporated RPPs in holding their assets in a separate incorporated entity, that explanation does not hold for the legacy nominated
10 entity qualification, which allows the appointment of an entity that is not controlled by the RPP and does not operate for its sole benefit. An entity of that description is a distinct third party. There is no reason apparent from the provisions, the extrinsic materials, or the facts in the special case, why it would not be a reasonably practicable alternative for Pt 12 to operate without the legacy nominated entity qualification.

51 **Adequacy in balance.** Recalling the nature and extent of the burden, the balancing to be undertaken in determining whether there is a compelling justification requires that the means employed by the provisions are “closely tailored to the achievement” of the identified legitimate purpose.⁷⁵ That close fit is lacking. The donation cap is set at a low level of \$4,000 (indexed) in a four-year election period, and by the broad definition of
20 “gift” includes the provision of services (such as the campaign support provided by Climate 200 to the Second Plaintiff). The effect is to impose a stringent de facto cap on political expenditure from the State campaign account. In that setting, there is *no limit* on the amount the legacy parties may receive from their nominated entities. The ability to take advantage of that exception is limited to RPPs with an existing nominated entity – only the legacy parties. The result is that, in legal and practical effect, the legacy parties are not subject to *any* effective cap on their expenditure. It allows their wealthy voices to drown out others,⁷⁶ and to compound that dominance over time. The provisions create an inequality of political power – preventing independent candidates and newer RPPs from contesting elections on a level playing field, and so working to protect incumbency – in

⁷⁴ Expert Panel Report, SC-30, 1117.

⁷⁵ *Brown* (2017) 261 CLR 328 at [204]-[206] (Gageler J).

⁷⁶ *McCloy* (2015) 257 CLR 178 at [5] (French CJ, Kiefel, Bell and Keane JJ); *Unions No 2* (2019) 264 CLR 595 at [5], [31] (Kiefel CJ, Bell and Keane JJ).

a manner that strikes at the heart of the system of representative government. The “price is too high”⁷⁷ for the means employed by Pt 12 to be seen as justified.

C SEVERANCE

52 The constitutional problems with Pt 12 advanced by the Plaintiffs arise as a result of the operation of the provisions with the nominated entity exception. In accordance with s 6 of the *Interpretation of Legislation Act 1984* (Vic), the nominated entity exception in subparagraph (j) of the definition of “gift” in s 206(1) is severable. The “operation of the remaining parts of the law remains unchanged”.⁷⁸ The effect of severance of the nominated entity exception is that political donations from a nominated entity to an RPP will be subject to the general cap, and require disclosure in accordance with Div 3 (as would be the case for a political donation to an RPP from any associated entity or third party campaigner).

53 Alternatively, Div 3B of Pt 12 providing for the general cap is invalid and severable on donations. It is the general cap which constrains RPPs, third party campaigners and independent candidates from raising funds enabling them to effectively compete with the resources or assets of the Nominated Entities, and which serves as a de facto expenditure cap by its operation with s 207F. The balance of Pt 12 is capable of operating validly without Div 3B. In the further alternative, if Div 3B cannot be severed, Pt 12 is invalid.

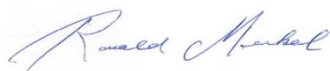
PART VI: ORDERS SOUGHT

54 The questions of law (SC 32 [107]) should be answered: (1) Yes, subparagraph (j) of the definition of “gift” in s 206(1) of the Electoral Act is invalid and severable; (2) the declaration sought at paragraph 75(1)(i) of the Statement of Claim; (3) the Defendant.

PART VII: ESTIMATE OF TIME

55 It is estimated that up to 2.5 hours will be required for the Plaintiffs’ oral argument.

Dated: 24 October 2025



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⁷⁷ *Farm Transparency* (2022) 277 CLR 537 at [82] (Gageler J).

⁷⁸ *Victoria v The Commonwealth* (1996) 187 CLR 416 at 502-503 (Brennan CJ, Toohey, Gaudron, McHugh and Gummow JJ).

**IN THE HIGH COURT OF AUSTRALIA
MELBOURNE REGISTRY**

BETWEEN:

PAUL HOPPER
First Plaintiff

MELISSA LOWE
Second Plaintiff

10

and

STATE OF VICTORIA
Defendant

ANNEXURE TO THE SUBMISSIONS OF THE PLAINTIFFS

No.	Description	Version	Provisions	Reason for providing this version	Applicable date or dates (to what event(s), if any, does this version apply)
1.	<i>Commonwealth Constitution</i>	Current	ss 7, 24	Currently in force	All relevant dates
2.	<i>Electoral Act 2002 (Vic)</i>	Version 65 (10 February 2025 to present)	ss 3, 69A, Pt 4, Pt 12	Currently in force	All relevant dates
3.	<i>Electoral Legislation Amendment Act 2018 (Vic)</i>	As made	ss 1, 2, Pt 3, Pt 4, Pt 5	Amended Pt 12 of the Electoral Act	-
4.	<i>Interpretation of Legislation Act 1984 (Vic)</i>	Version 131 (6 September 2023 to present)	s 6	Currently in force	-

20