



## HIGH COURT OF AUSTRALIA

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#### Details of Filing

File Number: M10/2025  
File Title: Hopper & Anor v. State of Victoria  
Registry: Melbourne  
Document filed: Form 27F - Defendant's Outline of oral argument  
Filing party: Defendant  
Date filed: 03 Feb 2026

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

No M10/2025

BETWEEN:

**PAUL HOPPER**  
First Plaintiff

**MELISSA LOWE**  
Second Plaintiff

and

**STATE OF VICTORIA**  
Defendant

**OUTLINE OF ORAL SUBMISSIONS OF THE DEFENDANT**

**PART I: INTERNET PUBLICATION**

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1. This outline is in a form suitable for publication on the internet.

**PART II: PROPOSITIONS TO BE ADVANCED IN ORAL ARGUMENT**

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2. The burden imposed by s 217D of the *Electoral Act 2002* (Vic), in its operation with the nominated entity exception (other than in respect of the time limitation in s222F(3): **VS [4], [48]**) is reasonably and appropriately adapted to a purpose that is compatible with the system of representative government for which the *Constitution* provides.
3. **Burden.** The general cap on political donations in s 217D (**donation cap**) imposes an effective burden on political communication. The level of justification required depends on the nature and extent of the burden: *Unions NSW (No 2)* (2019) 264 CLR 595 at [138] [**JBA v 9, Tab 31**].
  - 3.1. The burden is indirect: **VS [16]**; *Unions NSW (No 1)* (2013) 252 CLR 530 at [41] [**JBA v 9, Tab 30**].
  - 3.2. Its effect on political communication is ameliorated by: (a) various exceptions (eg, for personal contributions: s 217D(5)); and (b) increased public funding (including in advance): *Electoral Act*, Pt 12 Div 2: **VS [18]-[19], [26]**; Expert Panel Report [**SC-30 at 1188-1189**].

- 3.3. The **nominated entity exception** (s 206(1), definition of “gift”, para (j); and s 222F) results in the burden operating differently as between: (a) registered political parties (**RPPs**), which can appoint a nominated entity, and independent candidates and elected members, who cannot (s 222F(1)); and (b) by reason of s 222F(3), RPPs that first appointed a nominated entity before 1 July 2020, and RPPs that did not: **VS [21]-[26]**.
4. **Legitimate purpose.** Purpose is ascertained by reference to text and context.
  - 4.1. The purpose of the donation cap in s 217D is to enhance the integrity of the electoral process by reducing the risk of corruption or undue influence arising from the relationship between elected officials and large donors (**anti-corruption purpose**): **VS [28]-[30]**; *Electoral Legislation Amendment Act 2018* (Vic) (**2018 Amendment Act**), s 1(a)(ii) [**JBA v 2, Tab 10**]; Explanatory Memorandum at 35 [**SC-1 at 71**]; Second Reading Speech, Victoria, *Parliamentary Debates*, Legislative Assembly, 10 May 2018 at 1350 [**JBA v 12, Tab 42**].
  - 4.2. The plaintiffs’ submission (**PS [41]-[42]**) — that the entire apparatus of the donation cap, operating with the nominated entity exception, was designed to “privilege” the major RPPs relative to independents and new RPPs — should be rejected. It: (a) disregards the statutory and extrinsic indicia (above); and (b) wrongly assumes “a notion of want of justification” for the differential effect: *Unions NSW (No 2)* (2019) 264 CLR 595 at [138] [**JBA v 9, Tab 31**]; **VS [32]-[34]**.
5. In the circumstances, it is appropriate, consistently with *ACTV*, *Unions NSW (No 1)* and *Unions NSW (No 2)*, to accept the anti-corruption purpose (and its legitimacy) and to assess the justification for the differential effect at the next stage of the analysis: **VS [35]**.
6. **Reasonably appropriate and adapted.** The differential effect of the donation cap, operating with the nominated entity exception, is reasonably appropriate and adapted to the achievement of the anti-corruption purpose: **VS [37]-[48]**.
  - 6.1. A law may legitimately distinguish between RPPs and other electoral participants: **VS [39]-[40]**.
  - 6.2. The nominated entity exception recognises that RPPs may adopt (and have adopted) different legal forms and ways of structuring their operations: **VS [41]**.

- 6.3. The eligibility criteria (and contextual provisions) are such that nominated entities may be treated as an extension of their RPPs for the purposes of holding assets and funding activities: *Electoral Act*, ss 222F(2)-(3), 217D(6)(d). RPPs are thereby treated consistently with independents, who may use their own funds to support their campaigns: VS [42]-[46], [47].
- 6.4. The eligibility criteria (and contextual provisions) also ensure that the nominated entities exception does not undermine the anti-corruption purpose of the donation cap: VS [42]-[46], [47]; *Electoral Act*, ss 222F(2)-(3), 216(4), 217I.
- 6.5. The plaintiff's first reasonably available alternative — the donation cap operating without the nominated entity exception at all — would not be significantly less burdensome on the freedom: VS [54].
- 6.6. By their second reasonably available alternative — the donation cap operating with the nominated entity exception but confined to the eligibility criteria in s 222F(2) — the plaintiffs accepts that the differential treatment is, at least to that extent, reasonably appropriate and adapted: VS [55].

**Dated:** 3 February 2026



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