



HIGH COURT OF AUSTRALIA

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Details of Filing

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Important Information

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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

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

PART II: PROPOSITIONS TO BE ADVANCED IN ORAL ARGUMENT

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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