



HIGH COURT OF AUSTRALIA

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Details of Filing

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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

THE STATE OF VICTORIA
Defendant

**OUTLINE OF ORAL SUBMISSIONS OF THE ATTORNEY-GENERAL OF THE
COMMONWEALTH (INTERVENING)**

PART I INTERNET PUBLICATION

This outline of oral submissions is in a form suitable for publication on the internet.

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

1. **Burden: CS [14], [16]-[19]:** The burden on political communication imposed by Part 12 is indirect. The general cap (s 217D) restricts the funds available to regulated actors to pay for political communication. The payment of money is not itself political communication: *McCloy v New South Wales* (2015) 257 CLR 178 at [25] (French CJ, Kiefel, Bell and Keane JJ), [162] (Gageler J) (**JBA Vol 7, Tab 22**).
2. Part 12 does not impose an effective expenditure cap (*cf PS [32], [51]*). It only restricts the availability of one source of funds, with three features: (a) political donations; (b) which exceed the general cap for the election period; and (c) which fall outside the various exceptions to the general cap (**JBA Vol 1, Tab 3**). Other sources of funds may be paid to
20 a regulated actor to be spent on political communication without limit.
3. The practical effect of the burden is ameliorated by the exceptions to the general cap. In addition to the nominated entity exception, these include the exceptions for small

contributions (s 217D(9)-(10)), personal contributions (s 217D(5)), and contributions excluded from the definition of “gift” in s 206(1), including public funding (s 206(1)(e)).

4. The nominated entity exception reduces the overall burden, because it increases funds available to regulated actors with nominated entities to pay for political communication. So too, do the other exceptions. However, the nominated entity exception also gives the remaining burden a differential operation. So too, do certain other exceptions. The question at the justification stage becomes whether the burden with its differential operation is justified, having regard to the scheme as a whole.
- 10 5. **Legitimate purpose: CS [25]-[33]:** The purpose of Part 12 generally, and the general cap imposed by s 217D in particular, is to reduce the risk of corruption and undue influence which can arise if elected officials become beholden to political donors.
6. That purpose aligns with the text and context of Part 12, and the express statement of purpose in s 1(a)(ii) of the *Electoral Legislation Amendment Act 2018* (**JBA Vol 2, Tab 10**). That purpose is legitimate: it is compatible with the constitutionally prescribed system of representative and responsible government.
7. Part 12 has no additional illegitimate “privileging” purpose (*cf* **PS [41], PR [5]**).
8. *First*, the purpose of the law is to be ascertained objectively from its whole text and context, at the level suited to the constitutional analysis being undertaken. So too, is its legal operation. Here, the burden imposed on political communication is that which flows
20 from the general cap together with all relevant exceptions in Part 12, within the scheme as a whole; and not only from the general cap together with the operation of the nominated entity provisions, as the Plaintiffs contend: *cf* **PS [41], [42]**.
9. *Second*, no illegitimate purpose arises from the Plaintiffs’ asserted disconformity of the purpose with the legal operation of the law. Where the asserted purpose is plausible (as it is here), that comparison should be left to the justification stage.
10. *Third*, there are relevant differences between registered political parties and other regulated actors, including that political parties have historically been unincorporated associations which cannot hold property for themselves and have therefore relied on closely related entities to hold, manage, and invest their funds.
- 30 11. *Fourth*, the exceptions indicate that Parliament understood the risk of corruption and undue influence to be posed by donations that are especially likely to make elected

officials *beholden* to private political donors. The Parliament focussed on donations with three features: they are made in the **future**, in **large amounts**, and by private donors **not closely related** to the regulated actor. That is an available conception of the risk of corruption and undue influence. That Part 12 does not go further, by pursuing a different and more expansive conception of the risk of corruption and undue influence, or by addressing the relevant conception of the risk more restrictively, does not indicate any illegitimate purpose.

12. *Fifth*, the asserted operation of the law on a newly formed political party does not indicate an illegitimate purpose (*cf* **PR [5]**) because: (1) it is orthodox for Parliament to legislate prospectively (rather than strip persons of access to lawfully accumulated funds); (2) perfect calibration of the electoral “playing field” is not a condition of validity; (3) Parliament has a wide “leeway of choice” in designing electoral law; (4) even if an *effect* of the law were to entrench incumbency, that would not establish that as its *purpose*; and (5) that Parliament did not impose a further burden by restricting access to accumulated funds, does not demonstrate an illegitimate purpose.
13. **Justification: CS [20]-[24], [34]-[35]:** The indirect, differential burden effected by Part 12 may be appropriate and adapted to relevant differences, including between registered political parties and other political actors. A law which operates on different actors and accounts for the differences between those actors need not be discriminatory.
14. Political parties in Australia are relevantly different to other political actors, including because they have typically been unincorporated associations, and have lawfully held and invested party funds in related entities. The nominated entity exception recognises that difference, albeit in a confined way: the exception is available only to a single entity with a sufficiently close relationship to the registered political party: s 222F(2)-(3) read with s 222F(4)(a), (c) (**JBA Vol 1, Tab 3**) (*cf* **PR [13]-[14]**).
15. Otherwise, the Commonwealth makes no submission as to whether Part 12 is justified.

Dated: 3 February 2026



30 Ruth Higgins

Naomi Wootton

Joshua Forrest