SHORT PARTICULARS OF CASES
APPEALS

FEBRUARY 2026

No. Name of Matter Page No

****

HOPPER & ANOR v STATE OF VICTORIA (M10/2025)

Date special case referred to Full Court: 27 October 2025

This proceeding concerns the validity of provisions of Part 12 of the *Electoral Act 2002* (Vic) ('the Electoral Act'). Part 12 was amended by the *Electoral Legislation Amendment Act 2018* (Vic) ('the 2018 Amendment Act') to introduce a scheme regulating political donations and political expenditure. The provisions in Pt 12 place a cap on political donations and a corresponding effective cap on political expenditure, with one 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 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.

Special case

The parties to this proceeding agreed the basis of a special case, which includes the agreed facts and questions of law upon which the matter proceeds.

The plaintiffs are independent candidates who contested the 2022 Victorian state election. The first plaintiff also contested the 2025 state by-election in the district of Werribee. 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 candidates in all of the western metropolitan districts of Melbourne in the 2026 state election. 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. The second plaintiff has publicly announced her intention to again be an independent candidate in the 2026 state election in the district of Hawthorn. Each plaintiff is accordingly a 'candidate' as defined in section 206(1) of the Electoral Act and is under an obligation to comply with Pt 12 of the Electoral Act.

There are three nominated entities entered on the Register of political parties, each of which was in existence when the 2018 Amendment Act was enacted and was appointed as a nominated entity 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').

The plaintiffs submit that the effect of the 2018 Amendment Act provides a source of uncapped funds that is able to be used for political expenditure, which is available only to the parties with the Nominated Entities. Those uncapped funds are not available to new RPPs, third party campaigners, or independent candidates. An RPP wishing to establish a nominated entity (not appointed before 1 July 2020)

may only do so by political donations that are subject to the general cap and the disclosure requirements.

Whether there is an impermissible burden on the freedom of political communication involves three considerations: 1) whether the provisions do impose a burden; 2) whether the provisions have a legitimate purpose; and 3) whether the provisions are reasonably appropriate and adapted to advance that purpose. The plaintiffs accept that the general cap, without the nominated entity exception, would be constitutionally permissible. They accept that the purpose of reducing the risk of corruption or undue influence is a legitimate purpose. However, they submit that because of the operation of the nominated entity exception, the burden imposed is discriminatory and so not for a legitimate purpose.

The defendant accepts that the time limitation in relation to the nominated entity exception (i.e. a nominated entity appointed before 1 July 2020) could be categorised as discriminatory. However, the defendant submits that those words are severable, and once severed would leave the nominated entity exception as reasonably appropriate and adapted.

A notice of a constitutional matter has been filed by the plaintiffs, and the Attorney-General of the Commonwealth has intervened in the proceeding.

Questions of law

The questions of law stated for the opinion of the Full Court in the special case are:

1. Is Part 12 of the Electoral Act, operating with the nominated entity exception in sub-paragraph (j) of the definition of ‘gift’ in s 206 (1) of the Electoral Act, invalid (in whole or in part and, if in part, to what extent) because it impermissibly burdens the implied freedom of political communication, contrary to the Commonwealth Constitution?

2. What, if any, relief should be granted to the plaintiffs?

3. Who should pay the costs of the special case?

CSL AUSTRALIA PTY LTD ACN 080 378 614 v TASMANIAN PORTS CORPORATION PTY LTD ACN 114 161 938 & ORS (S137/2025)

Court appealed from: Full Court of the Federal Court of Australia [2025] FCAFC 53

Date of judgment: 29 April 2025

Special leave granted: 4 September 2025

The appellant is the owner and operator of *MV Goliath,* a self-loading bulk cement carrier. The first respondent is the owner and operator of two Tugs**,** *York Cove* and *Campbell Cove,* which were moored alongside the wharf in Devonport, Tasmania. On 28 January 2022, the *MV Goliath*, whilst manoeuvring to berth in the Port of Devonport, allided with the Tugs, resulting in the Tugs being damaged, sunk and emitting diesel fuel and other hydrocarbons into the adjacent waters. The wharf was also damaged. The second to fourth respondents are non-active corporate respondents to this matter, and the fifth respondent refers to a class of people that are not required to be specifically named pursuant to rule 21 of the *Admiralty Rules 1988.*

The central issue in this appeal concerns the proper construction and application of the *Convention on Limitation of Liability for Maritime Claims, 1976*, as amended by both the *Protocol of 1996 to amend the Convention on the Limitation of Liability for Maritime Claims, 1976* and *Resolution LEG.5(99) (2012) of the Legal Committee of the International Maritime Organisation* (collectively, 'the 1976 Convention'). The provisions of the 1976 Convention (with the exception of Articles 2(1)(d) and (e)) have force of law in Australia pursuant to section 6 of the *Limitation of Liability for Maritime Claims Act 1989* (Cth) ('the LLMCA').

The particular question arises as to whether certain wreck removal claims made by the first respondent against the appellant are limitable under Art 2(1)(a) of the 1976 Convention. Relevantly, following the commencement of proceedings by the first respondent against the appellant for breach of contract, in negligence and in public nuisance ('the Primary Proceeding'), the appellant commenced a 'Limitation Proceeding' in which it sought declarations that it was entitled to limit its liability, if any, for all claims arising out of the allision within the meaning of Art 2 of the 1976 Convention. In the Primary Proceeding, the first respondent made claims for loss and damage against the appellant totalling approximately $22 million, including the sum of approximately $17.5 million for 'costs of and associated with the containment, removal and disposal of hydrocarbons, and the removal and disposal of the Tugs', referred to in the primary judgment as the 'para 22(e) claims'. The first respondent submitted that the para 22(e) claims are not subject to limitation because of the effect of s 6 of the LLMCA.

Primary judgment and appeal

The primary judge (Stewart J) undertook an orthodox approach to the interpretation of the text of a treaty, consistent with the general principles of treaty interpretation set out in Arts 31 and 32 of the *Vienna Convention of the Law of Treaties, 1969*. That is, the 1976 Convention must be interpreted so as to give full effect to the ordinary meaning of the words used in their context and in light of the 1976 Convention's evident object and purpose, and that a court may have regard

to extrinsic sources, including *travaux preparatoires*, as a supplementary means of interpretation. The primary judge held in favour of the appellant that the first respondent's para 22(e) claims came within Art 2(1)(a) of the 1976 Convention, and were not excluded from being subject to limitation by Australia's exercise of its right of reservation not to implement Art 2(1)(d). The first respondent appealed to the Full Court of the Federal Court of Australia, who allowed the appeal and declared that the appellant was not entitled to limit its liability pursuant to the LLMCA.

This appeal

The appellant now seeks to overturn the Full Court's decision and submits that the Full Court erred in interpreting the relevant provisions of international convention with domestic law implementation, and that the para 22(e) claim is clearly within the express terms and thereby the ambit of Art 2(1)(a) of the 1976 Convention as given force of law in Australia, and is thereby limitable under the LLMCA, as the primary judge found. The first respondent submits that the interpretation advanced by the appellant would limit the scope of the right of reservation and would be a misconstruction of the 1976 Convention, and that the Full Court decision should be upheld.

The grounds of appeal are:

1. The Full Court erred in failing to find that the para 22(e) claim of the first respondent was:

    a) within Art 2(1)(a) of the 1976 Convention, as given force of law in Australia; and

    b) thereby subject to limitation under the LLMCA and the declaration as to limitation CSL Australia obtained in the limitation proceeding, as the primary judge found.

2. In particular, the Full Court erred:

    a) in failing to construe and apply Art 2(1)(a) in accordance with the ordinary meaning of its plain and wide express terms;

    b) in rejecting the primary judge's finding as to the scope of the non-overlapping operation of Art 2(1)(d) and thereby the scope of the reservation in Art 18(1);

    c) in adopting instead a construction of Art 2(1) under which all claims in respect of wreck removal expenses fall exclusively within Art 2(1)(d) and therefore do not fall within Art 2(1)(a) or (c) even where those claims are within the ordinary meaning of the express terms of paragraphs (a) and (c); and

    d) in thereby concluding that all claims in respect of wreck removal expenses (including claims within the terms of Art 2(1)(a) and (c)) are excluded from limitation under Australia law by reason of s 6 of the LLMCA.

MPWEREMPWER ABORIGINAL CORPORATION RNTBC (ICN 7316) v MINISTER FOR TERRITORY FAMILIES AND URBAN HOUSING AS DELEGATE OF THE MINISTER FOR THE ENVIRONMENT & ANOR (D14/2025)

Court appealed from: Court of Appeal of the Supreme Court of the Northern Territory
[2025] NTCA 6

Date of judgment: 12 May 2025

Special leave granted: 4 September 2025

Singleton Station is a large property in the Western Davenport region of the Northern Territory. The appellant ('MAC') is the prescribed body corporate for the landholding groups who comprise the native title holders of the Singleton Station pastoral lease. The second respondent ('Fortune') is the lessee of the property under a Perpetual Pastoral Lease, and proposes developing about 3,500 hectares of the property for intensive irrigated horticulture. For the project, Fortune needs access to water. The only water available is groundwater in the underground aquifer which can be accessed by bores on the property. Access to groundwater in the Northern Territory is regulated by the provisions of the *Water Act 1992* (NT) ('the Water Act'). In August 2020, Fortune applied to the Controller of Water Resources ('the Controller') under the Water Act for a licence for a period of 30 years. In April 2021, the Controller decided to grant Fortune a water extraction licence subject to extensive conditions, including eight conditions precedent and staging conditions to take groundwater for the project. The licence allowed Fortune to potentially take up to 40 gigalitres of groundwater each year.

In May 2021, MAC (and other aggrieved parties) sought statutory review by the Minister for the Environment ('the Environment Minister') of the Controller's decision. MAC submitted that the decision should be set aside and the licence be refused, inter alia, on the basis that the Controller's decision failed to take into account the impact the licence would have on Aboriginal cultural values. In July 2021, the Environment Minister referred the matter to the Water Resources Review Panel ('the Panel') for advice under the Water Act. In September 2021, an amendment commenced which relevantly required the Controller (not the Environment Minister) to be satisfied that special circumstances existed before granting a licence for more than 10 years. After receiving submissions from various entities, including MAC, the Panel provided a report to the Environment Minister in October 2021. On 10 November 2021, the Department of the Environment invited Fortune to comment on the terms of proposed additional and amended licence conditions, including additional CP10 (which required Fortune to obtain a groundwater Aboriginal cultural values impact assessment). Fortune responded, accepting CP10 as proposed. On 11 November 2021, the Environment Minister delegated her powers relating to the application for review of the Controller's decision to the first respondent ('the Minister'). On 15 November 2021, the Minister granted a revised licence to Fortune in the same terms as the original licence, but amended relevantly by the inclusion of two further conditions precedent, including CP10, for a period of 30 years.

MAC (and another entity) each separately sought judicial review of the Minister's decision in the Supreme Court. In January 2024, the primary judge dismissed each of the proceedings. Barr J held that the Minister's decision was to be made according to section 60(4) (as in force at the time of the Controller's earlier decision), but that if he was wrong, the Minister had failed to comply with s 60(4) at the time of her decision, and to infer that the Minister was satisfied that special circumstances justified the licence period of 30 years would require 'conjecture'. His Honour also held that the protection of Aboriginal cultural values was not a mandatory relevant consideration, but that the Minister did consider it because she added CP10.

MAC appealed. The Court of Appeal ('the NTCA') held Barr J had erred in requiring compliance with s 60(4) as in force at the time of the Controller's decision. The NTCA concluded that the only reasonable interpretation of the Minister's reasons was that the Minister had complied with the section at the time of her decision, and had been satisfied that special circumstances existed for the granting of the licence for 30 years (upholding the Minister's notice of contention on that point). The NTCA held that the Minister was not obliged to have before her sufficient information about the protection of Aboriginal cultural values to consider how they would be affected by the grant of the Licence, and that her decision to impose CP10 showed she did consider the matter. The NTCA held that the fact MAC was alive to the possibility the Minister might require the preparation of a cultural values impact assessment meant it had no right to make further submissions. MAC's appeal was dismissed.

The grounds of appeal are:

1. The NTCA erred by holding it was permitted by *MZAPC v Minister for Immigration and Border Protection* to infer two critical matters about the first respondent's state of mind into her statutory reasons for granting the licence, being (a) she was aware of the need to find 'special circumstances' under s 60(4)(b) of the *Water Act 1992* (NT); and (b) she determined there were 'special circumstances', notwithstanding that was contrary to the principle confirmed in *LPDT v Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs* that a reviewing court does not rework or rewrite a decision-maker's reasons.

2. The NTCA erred in holding the first respondent took Aboriginal cultural values into account by imposing a condition on the licence, even though she did not form a view about the only information before her on those values and even though the statutory scheme required those values to be taken into account *before* the licence was granted, and did not permit their consideration to be deferred to a licence condition.

3. The NTCA erred in failing to hold the first respondent was obliged to give MAC, whose members held the Aboriginal cultural values the subject of a proposed licence condition, and which derived from their native title rights and interests, the same opportunity to be heard on the terms of the proposed condition as she gave to the second respondent.

FARRUGIA v THE KING (S139/2025)

Court appealed from: Court of Criminal Appeal of the Supreme Court of New South Wales
[2025] NSWCCA 49

Date of judgment: 9 April 2025

Special leave granted: 4 September 2025

This appeal concerns the issue of whether a barrister jointly representing two co-offenders in a sentencing proceeding has a conflict of duty in circumstances where a favourable submission on the issue of parity (which would produce arguable differences between the sentences for each) for one co-offender cannot be made because doing so would adversely affect the interests of the other co-offender, and whether such a conflict results in a material irregularity in the sentencing process.

On 8 December 2023, the appellant and a co-offender were sentenced in the District Court of New South Wales following their pleas of guilty each to a single charge of conspiring to traffic a commercial quantity of border-controlled drugs (with a further charge of dealing with proceeds of crime taken into account). The appellant was sentenced to 11 years' imprisonment (with a non-parole period of seven years and six months), while his co-offender was sentenced to nine years' imprisonment (with a non-parole period of six years and six months).

The appellant and co-offender were represented by the same senior counsel at the sentencing hearing, who made submissions on the issue of parity, or which offender should be punished more severely.

The respondent's written submissions argued that considering the larger quantity involved for the drug offence, and the higher quantum involved in the proceeds of crime offence, the co-offender should receive a more substantial penalty than the appellant. The written submissions of the barrister representing the two co-offenders did not squarely address the issue of parity. At the sentencing hearings held on 27 October 2023 and 23 November 2023, counsel for the two offenders contradicted the respondent's written submission, and argued that the appellant was more culpable than his co-offender for various reasons concerning their respective roles in the criminal enterprise.

The appellant appealed his sentence to the Court of Criminal Appeal of the Supreme Court of New South Wales ('the CCA'), arguing that there was a miscarriage of justice because he and his co-offender were not separately represented. The appellant did not waive legal professional privilege, so his instructions were not disclosed, but instead sought to rely on the record of proceedings, arguing that an independent lawyer acting for him would not have contradicted the respondent's submission on parity, and thus he would have received a less severe sentence.

On 9 April 2025, the CCA dismissed his appeal, finding that the appellant had not established a practical injustice and that without evidence of the appellant's instructions, there was no evidence to say that counsel had a conflict of interest. The CCA found there is no rule of practice or ethics that one counsel cannot act for two co-offenders in sentencing proceedings whether (or not) a parity issue will arise,

and a conflict of duty will not be established merely because different counsel can conjure different submissions that 'could' have been made. The CCA concluded that on the material before the sentencing judge, the sentence was within an appropriate discretionary range and the difference between the co-offenders was not such as to engender a justifiable sense of grievance in the appellant.

In this appeal, the appellant submits that determining whether a barrister has a conflict is not merely a matter for proof by evidence, but rather inquiry should be made on an objective standard of a fair-minded, reasonably informed member of the public, focusing on what is required by the proper administration of justice (taking into consideration the core duties of a barrister to their client and the court). The appellant further submits that he suffered a practical injustice because there would have been a different outcome if his barrister did not have to decide whether to accept the respondent's submissions on parity, and argues that the matter should be remitted to the trial court for resentencing.

The respondent counters that the appellant has not discharged his onus of establishing a breach of the conflict duty, and failed to establish that he did not give fully informed consent to any conflict, because the CCA was told that the Court could assume he gave instructions in accordance with the submissions made to the sentencing judge. The respondent concludes that even if there was an irregularity, the appellant has failed to establish that irregularity could have realistically affected the sentence imposed. The Director of Public Prosecutions (NSW) has intervened in support of the respondent.

The grounds of appeal are:

1. The CCA erred by failing to apply the correct test in determining whether counsel appearing for both the appellant and a co-offender in a sentencing proceeding had a conflict of interest which gave rise to a material irregularity, and a significant possibility of such irregularity adversely affecting the sentence imposed on the appellant, where:

    a) The Crown made a submission on the issue of parity that the co-offender 'should receive a more substantial penalty than that of [the appellant]', which counsel appearing for both offenders disputed contrary to the appellant's interest which was to adopt the Crown submission.

    b) The CCA ought to have found, based on the record of the court below, that this irregularity affected the outcome of the sentencing proceeding adversely to the appellant, and that adopting the Crown submission on the parity issue could realistically have resulted in a different outcome.

    c) In the circumstances, the appellant suffered 'practical injustice' through 'loss of an opportunity to make representations' and loss of an 'opportunity to advance his case' *(Re Minister for Immigration and Multicultural and Indigenous Affairs; Ex parte Lam* [2003] HCA 6; 214 CLR 1 at [37]-[38] per Gleeson CJ).

ZIP CO LIMITED & ANOR v FIRSTMAC LIMITED (S140/2025)

Court appealed from: Full Court of the Federal Court of Australia [2025] FCAFC 30

Date of judgment: 19 March 2025

Special leave granted: 4 September 2025

In 2004, the respondent obtained the registration of Trade Mark 1021128 ('the Firstmac Mark') for the word 'ZIP' in respect of 'financial affairs (loans)' in trade mark class 36. Since 2018, the respondent has offered ZIP home loan products, after also offering such products from 2005 to 2014.

In 2013, the appellants launched a retail credit facility called Zip Money, and in 2015, they launched a similar facility called Zip Pay. This was after their principal had independently conceived of using the word ZIP and had undertaken internet searches which did not reveal the use of ZIP on any product of the respondent's. However, between the time of first making presentations to merchants and deciding (in June 2013) to use the terms ZIP and ZIP MONEY for the proposed business, and the time of first partnering with a retail merchant (in November 2013) for the use of the Zip Money facility, in October 2013, the second appellant received adverse reports from IP Australia on trade mark applications it had made for the logos 'zipMoney' and 'zip'. The reports stated that the proposed trade marks were identical to, or closely resembled, the Firstmac Mark and their use would likely cause confusion. However, busy with other matters in the establishment of their business, the appellants did not obtain legal advice on the issue or respond to the reports, and the trade mark applications subsequently lapsed.

In 2019, the respondent commenced Federal Court proceedings against the appellants, alleging infringement of the Firstmac Mark under section 120(1) of the *Trade Marks Act 1995* (Cth) ('the Act'). On 6 June 2023, the primary judge (Markovic J) dismissed the respondent's application. This was after finding that, to the extent of any infringement of the Firstmac Mark, infringement could not be held, because defences raised by the appellants had been made out. One of those defences was honest concurrent use, based on an assessment that the appellants would be able to obtain their own registration of a ZIP trade mark, under s 122(1)(f) and/or (fa) of the Act. Her Honour also ordered the cancellation of the Firstmac Mark under s 88(2)(c) of the Act, finding that confusion would be caused were the respondent to commence using ZIP in the provision of retail credit and payment services (as distinct from its use for home loan products), and ordered the removal of the Firstmac Mark from the Register of Trade Marks, under s 92(4)(b) of the Act, based on three years' of non-use by the respondent. This was after her Honour had reviewed the relevant circumstances and declined to exercise a discretion not to order cancellation or removal.

An appeal by the respondent was unanimously allowed by the Full Court of the Federal Court (Perram, Katzmann and Bromwich JJ), who found that the appellants had infringed the Firstmac Mark. Their Honours held that the primary judge had erred in finding honesty, for the purpose of the defence of honest and concurrent use, by focusing on the time at which the appellants first decided to use ZIP and ZIP MONEY, rather than the time of the appellants' first use of Zip Money as a trade mark in November 2013. The assessment of honesty had an objective element, and an honest trader who was on notice of the Firstmac Mark by having

received adverse reports from IP Australia would be expected to do more than the appellants did. The appellants therefore had not discharged their onus of establishing honest and concurrent use. The Full Court also held that the order for cancellation of the Firstmac Mark must be set aside. This was in view of the appellants' failure to prove honest and concurrent use, of the respondent's having been without fault, and the public interest in the protection of traders' valuable property rights against infringement and in not allowing infringers to take advantage of their wrongdoing. Their Honours also set aside the order for removal of the Firstmac Mark from the Register of Trade Marks, finding that the respondent had rebutted the appellants' assertion of non-use throughout the relevant period of three years.

The grounds of appeal are:

1. The Full Court erred in finding that the appellants had not established the honest concurrent use defence to trade mark infringement under s 122(1)(f) or (fa) of the Act.

2. The Full Court erred in finding that the date for assessing the honest concurrent use defence is the date of first infringement, rather than a later date such as the date the defence is raised.

3. The Full Court erred in dismissing the appellants' claim for cancellation of the Firstmac Mark under s 88(2)(c) of the Act.

By notice of contention, the respondent seeks to raise the following grounds:

1. The Full Court should have found that the judge erred in holding that the ground in s 88(2)(c) of the Act was made out on the basis of notional or hypothetical use and should further have found that, as at 15 August 2019 when the application for rectification was filed, the respondent's use of its registered trade mark ZIP was not likely to deceive or cause confusion such that the ground in s 88(2)(c) was not made out.

2. Regardless of the outcome of the appellants' defence in reliance on s 122(1)(f) and (fa), the Full Court should have exercised the discretion in s 89(1)(c) of the Act not to remove the respondent's registered trade mark.