



HIGH COURT OF AUSTRALIA

15 April 2026

HOPPER & ANOR v STATE OF VICTORIA
[2026] HCA 11

Today, the High Court unanimously answered questions of law stated for its consideration in the special case to the effect that Pt 12 of the *Electoral Act 2002* (Vic) is invalid because that Part, operating with "the nominated entity exception" in para (j) of the definition of "gift" in s 206(1) of the *Electoral Act*, impermissibly burdens the implied freedom of political communication, contrary to the Commonwealth *Constitution*.

Part 12 of the *Electoral Act* places restrictions and obligations on certain "regulated persons or entities", including registered political parties and candidates. A "general cap" on political donations in s 217D provides that "[a] political donation made to, or for the benefit of", any regulated person or entity "must not exceed the general cap for the election period". A "political donation" is defined as a "gift" to a regulated person or entity. The definition of "gift" contains a list of exceptions, one of which, by para (j) of s 206(1), is "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" (effectively, "the nominated entity exception"). By the nominated entity exception, the funds flowing to a registered political party from its nominated entity are not subject to the general cap.

Section 222F(1) permits a registered political party to appoint an entity as its nominated entity. Under s 222F(2), an entity is eligible for appointment if it is an incorporated body that: (a) is controlled by the registered political party; (b) operates for the sole benefit of the members of the registered political party, or is established and maintained, or is the trustee of a trust established and maintained, for the sole benefit of the members of the registered political party; and (c) does not have voting rights in the registered political party. Under s 222F(3), which provides a second set of eligibility criteria that operates "[d]espite subsection (2)", an entity is eligible for appointment if it is an incorporated body that: (a) operates for the principal benefit of the members of the registered political party, or is established and maintained, or is the trustee of a trust established and maintained, for the principal benefit of the members of the registered political party; and (b) does not have voting rights in the registered political party. Eligibility under s 222F(3) is only available "if the first appointment of an entity as the nominated entity of a registered political party is made before 1 July 2020" ("the time limitation in s 222F(3)"). The only nominated entities that were appointed before 1 July 2020 were appointed by the Liberal Party of Australia (Victorian Division), the Australian Labor Party – Victorian Branch, and the National Party of Australia – Victoria.

Each of the plaintiffs is a candidate who intends to contest the 2026 Victorian State election. The plaintiffs contended that the provisions of Pt 12 that place the general cap on political donations and provide for its operation with the nominated entity exception are invalid because they impermissibly burden the implied freedom of political communication. The defendant, the State of Victoria, conceded that the time limitation in s 222F(3) could not be justified and is invalid.

The Court held, having regard to the State's concession, that the general cap in Pt 12 in its operation with the nominated entity exception impermissibly infringes the implied freedom. It not being permissible to sever any parts of provisions, provisions, Subdivisions or Divisions of Pt 12 to preserve its validity, Pt 12 is wholly invalid.

This statement is not intended to be a substitute for the reasons of the High Court or to be used in any later consideration of the Court's reasons.