HIGH COURT OF AUSTRALIA

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IN THE HIGH COURT OF AUSTRALIA
BRISBANE REGISTRY No. B73 of 2024

BETWEEN:

RALPH BABET
First Plaintiff

NEIL FAVAGER
Second Plaintiff

and

COMMONWEALTH OF AUSTRALIA
Defendant

DEFENDANT'S SUBMISSIONS

Date of document: 28 January 2025

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PART I: CERTIFICATION

1. These submissions are in a form suitable for publication on the internet.

PART II: ISSUES

2. The issue is whether s 135(3) of the *Commonwealth Electoral* ***Act*** *1918* (Cth) is invalid on any of the bases set out in Questions 1 to 3 of the Special Case: SCB 39.

PART III: SECTION 78B NOTICE

3. Notice pursuant to s 78B of the *Judiciary Act 1903* (Cth) has been given: SCB 20-23.

PART IV: FACTS

4. The United Australia Party (**UAP**) was deregistered as a political party on 8 September 2022 pursuant to s 135(1) of the Act: SCB 33 [36]. That section, which is headed "Voluntary deregistration", requires the Electoral Commission to deregister a political party that applies for deregistration.

5. For the financial years in which it was a registered political party, the UAP made mandatory annual returns detailing receipts, expenditure and debts: SCB 37-38 [56]. The Transparency Register maintained under s 287N(1) of the Act discloses that, in each year from FY2018-19 to FY2022-23, the UAP received many millions of dollars from **Mineralogy** Pty Ltd and, in FY2022-23, $2.1m in public funding: SCB 419-426.

6. In consequence of its voluntary deregistration, the UAP was not registered for any part of FY2023-24. It therefore was not obliged to make an annual return for that year under s 314AB(1), and nor did s 305B(1) require disclosure by donors of gifts made to the UAP in that year.[1] Consistently with the above, neither the UAP nor Mineralogy made a return to the Electoral Commission for that year: SCB 38 [58]-[59]. Thus, when annual returns for FY2023-24 are published on the Transparency Register (in early February 2025: s 320(1), item 5) they will not include any return from the UAP. Similarly, when donor returns are published after polling day (s 320(1), item 4), they will not disclose gifts that might have been made to the UAP in FY2023-24 (including by foreign donors).

[1] Subject to whether the UAP was required to register as a "significant third party", discussed below. The UAP is not presently registered on the Transparency Register "as a political party or otherwise" (SCB 38 [60]) – ie it is not registered as a "significant third party" (s 287F(1)).

PART V: ARGUMENT

7. Section 135(3) is squarely within Parliament's ample powers to design and regulate the federal electoral system. It supports the integrity of a scheme which offers to all eligible political parties the opportunity to register, and thereby receive certain benefits (notably funding and differential treatment on the ballot paper) while also assuming obligations (notably as to transparency). The plaintiffs' argument is that the Constitution mandates that a political party be permitted to access the statutory benefits of registration but to excuse itself – in the period between elections – from the concomitant transparency obligations.

10 8. Of course, the plaintiffs do not challenge the validity of the provisions in the Act that confer benefits on registered political parties or that impose disclosure obligations upon them. Instead, on the eve of a federal election, and after the UAP voluntarily took the step that resulted in the loss of the benefits to which the plaintiffs now claim it is constitutionally entitled, they target the hinge which links the benefits with the obligations. That challenge should be rejected. Section 135(3), properly understood in the context of the registration scheme as a whole, promotes electoral choice and enhances political communication. It is constitutionally valid.

STATUTORY FRAMEWORK

9. The Act establishes a scheme by which an eligible political party may, by application
20 under s 126, apply to become a registered political party. Once a political party is entered on the Register of Political Parties maintained under s 125(1), it remains registered unless it deregisters voluntarily under s 135 or is mandatorily deregistered under ss 136 or 137.

10. The scheme for voluntary registration was introduced by the *Commonwealth Electoral Legislation Amendment Act 1983* (Cth) (**1983 Amendment Act**) as part of a comprehensive suite of reforms that commenced in 1984. Those reforms provided for the printing of party affiliations on ballot papers for candidates endorsed by registered political parties,[2] and enabled "above the line" voting in Senate elections.[3] The new

[2] Sections 58X, 58Z and 106C as inserted by the 1983 Amendment Act. See, now, ss 169 and 214 of the Act.

[3] Sections 72A, 104, 105A, 106 and 123 as amended or inserted by the 1983 Amendment Act; see, now, ss 168, 210, 239 and 272 of the Act. See also ***Ruddick*** *v Commonwealth* (2022) 275 CLR 333 at [34] (Gageler J).

system was intended to reduce a high level of informal voting that had been observed to result from the complexity of Senate ballot papers.[4] The reforms also introduced Part XVI,[5] "Election Funding and Financial Disclosure", which provided for the public funding of registered candidates and candidates endorsed by registered political parties (Div 3), coupled with a regime for the disclosure of donations and expenditures by political parties or in relation to elections (Divs 4 and 5).

11. A system of *optional* registration – and its corollary, *voluntary* de-registration – was a central feature of the new system.[6] Thus, since its enactment, the scheme has included s 135(3).[7] While registration is voluntary, a party that satisfies the requirements for registration and that chooses to register acquires particular benefits. In particular, a candidate of an unregistered party is not able to have a political affiliation alongside the candidate's name on the ballot paper, nor is the party of that candidate entitled to be in receipt of election funding payments.[8] Initially, disclosure obligations were not confined to registered political parties (though the mode of their application did recognise the distinct position of registered parties: ss 153J(3), 153Z inserted by the 1983 Amendment Act). But, as a matter of institutional design, disclosure was seen to be an "essential corollary" of public funding: they were "two sides of the same coin".[9]

12. A series of subsequent amendments to the disclosure regime imposed specific obligations on *registered* political parties:

(a) In 1991, a new division was inserted into the disclosure regime (by then renumbered as Part XX), requiring registered political parties and their State branches to furnish annual returns to the Electoral Commission disclosing income, expenditures and debts.[10] That obligation supplemented existing disclosure

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[4] Commonwealth of Australia, House of Representatives, *Hansard* (2 November 1983) at 2214 (Mr Beazley, **Second Reading Speech**); Commonwealth of Australia, First Report of the Joint Select Committee on Electoral Reform (September 1983) (**JSCER First Report**), [3.23], [3.27]-[3.32].

[5] See, now, Pt XX of the Act.

[6] JSCER First Report, [9.39], [12.1].

[7] Enacted as s 58N(3) and renumbered by the *Commonwealth Electoral Legislation Amendment Act 1984* (Cth), s 5.

[8] As a consequence of the 1983 reforms, a candidate of an unregistered political party could separately register as a "registered candidate" (Pt IXB as it was immediately after the 1983 reforms, becoming Pt XII when the Act was renumbered in 1984) and thus be entitled to receive public funding in that capacity (see s 152, renumbered in 1984 as s 294). But the payment would be made direct to the candidate (via his or her agent), not the party (via its agent). See JSCER First Report at [9.36] for the advantages of payments direct to parties.

[9] Second Reading Speech at 2215.

[10] *Political Broadcasts and Political Disclosures Act 1991* (Cth), s 22.

obligations and was imposed only with respect to parties that were *registered*. The obligation to provide annual returns was extended in 2006, but only to require the disclosure of expenditure and gifts in respect of specific electoral purposes and where specific monetary thresholds were exceeded.[11] In its present form, the Act requires annual returns to be submitted by "third parties" (s 287(1)), but those returns are required only to provide details of electoral expenditure incurred during the financial year, and details of gifts above the disclosure threshold that were used during the year to enable the person to incur or to reimburse electoral expenditure.[12] The content of the obligations with respect to annual return was subsequently further increased[13] with respect to "political campaigners"[14] in 2018 and, in 2021, the concept of a "significant third party"[15] replaced that of "political campaigner".[16]

(b) In 1992, provision was made for the disclosure of gifts to a "political party", a candidate or member of a group, or another person or body as notified by *Gazette*.[17] However, in 1995 that obligation, as it applied with respect to political parties, was confined to *registered* political parties.[18] An equivalent disclosure requirement presently applies with respect to registered political parties (and their State branches), significant third parties,[19] individual candidates or members of a group,[20] members of Parliament,[21] and others specified by legislative instrument.[22]

(c) In 1995, s 314AEA was inserted into the Act, requiring "associated entities" to submit to the Electoral Commission annual returns setting out amounts paid and received and debts.[23] That obligation applied only to amounts paid or received

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[11] *Electoral and Referendum Amendment (Electoral Integrity and Other Measures) Act 2006* (Cth), s 3, Sch 1, item 84 (inserting ss 314AEB and 314AEC into the Act).
[12] Act, ss 314AEB(2) and 314AEC(1).
[13] The obligation is found in s 314AB.
[14] *Electoral Legislation Amendment (Electoral Funding and Disclosure Reform) Act 2018* (Cth), s 3, Sch 1, item 87.
[15] A "significant third party" is defined in s 287(1) as a person or entity required to register under s 287L (which in turn requires attention to s 287F, read in light of ss 4AA, 287AB).
[16] *Electoral Legislation Amendment (Political Campaigners) Act 2021* (Cth), s 3, Sch 2 items 23-25, Sch 3.
[17] *Commonwealth Electoral Amendment Act 1992* (Cth), s 8.
[18] *Commonwealth Electoral Amendment Act 1995* (Cth), s 3, Sch, items 20 to 22 (amending s 305A and inserting a new s 305B).
[19] Act, s 305B(1).
[20] Act, ss 304 and 305A.
[21] Act, s 306.
[22] Act, s 305A(1A).
[23] *Commonwealth Electoral Amendment Act 1995* (Cth), s 3, Sch, item 34.

while a person was an "associated entity", being an entity controlled by or operated wholly or mainly for the benefit of a registered political party.[24] The present definition of "associated entity" covers various forms of association with a political party that is registered, but also extends to entities operated wholly or to a significant extent for the benefit of a significant third party in relation to electoral activities (ss 287H(1)(g), 287H(4), 321B ("disclosure entity", para (aa)).

(d) In 2018, Div 3A of Pt XX commenced, restricting the receipt of foreign donations.[25] Section 302D(1) prevented retention of foreign donations of $1,000 or more by registered political parties and their State branches, candidates, or members of a group of candidates who had elected to have their names grouped in the Senate ballot papers in accordance with s 168 of the Act.[26] Separate prohibitions on the retention of foreign donations above the disclosure threshold (s 302E(1)), or on retaining foreign gifts intended to be used for the purpose of incurring electoral expenditure or for the dominant purpose of creating or communicating electoral matter (s 302F(1)), extended to *unregistered* political parties only for those financial years in which they incurred electoral expenditure above the disclosure threshold.[27] These obligations have subsequently been extended to "significant third parties" and "associated entities".[28]

13. Information required to be disclosed under Part XX is made public on the Transparency Register that is maintained by the Electoral Commission under s 287N(1) and that is available online: s 287Q of the Act; SCB 37 [55]. The Transparency Register was introduced in 2018 with the intent that it would be the "central repository for information disclosed under Part XX".[29] It contains the election returns lodged under Divs 4 and 5, and the annual returns lodged under Div 5A.[30] Annual returns must be published by early

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[24] *Commonwealth Electoral Amendment Act 1995* (Cth), s 3, Sch, item 1 (inserting into s 287(1) a definition of "associated entity").

[25] *Electoral Legislation Amendment (Electoral Funding and Disclosure Reform) Act 2018* (Cth), s 3, Sch 1, item 33.

[26] Act, ss 4(1) ("political entity"), 287(1) ("group" for the purposes of Part XX).

[27] Act, s 287(1) ("third party").

[28] Act, s 302D(1)(a)(ii). The concept of a "significant third party" replaced the concept of a "political campaigner": *Electoral Legislation Amendment (Political Campaigners) Act 2021* (Cth), s 3, Sch 2, items 16-18.

[29] Revised Explanatory Memorandum for the Electoral Legislation Amendment (Electoral Funding and Disclosure Reform) Bill 2018 (Cth), [9(a)].

[30] Act, ss 287N(2), 320(1).

February, and election returns within 24 weeks of the polling day to which they relate (s 320(1)).

14. In the result, while the Act "confers a number of benefits on registered political parties" (PS [30]), it does so in the context of a scheme that also imposes different and more stringent obligations (including transparency obligations) on political parties that choose to be registered.

15. The restriction imposed by s 135(3) on the ability of a voluntarily deregistered party to re-register within an election cycle must be understood as part of a coherent scheme involving the package of benefits and obligations summarised above. Absent s 135(3), a party could de-register between elections and would only be required to disclose its expenditure and donations that it received during the unregistered period if, in those mid-term years, it incurred electoral expenditure above the disclosure threshold or if, upon de-registration, it was required to register as a "significant third party" under s 287F(1):

(a) As to the first possibility, "electoral expenditure" is not expenditure at large, but only expenditure in relation to an election, or for the dominant purpose of creating or communicating "electoral matter.[31] Further, even if some disclosure obligations arose on this basis, the unregistered political party would no longer be subject to the requirement in s 314AB(1) to give general disclosure of its expenditure (whether or not "electoral expenditure"), but only to the more limited form of disclosure required of "third parties"[32] under ss 314AEB(1) and 314AEC(1).

(b) As to the second possibility, the definition of "significant third party" would capture a deregistered political party only if it incurred "electoral expenditure" of $250,000 or more in one of the previous 3 financial years (s 287F(1)(a)) or, for lower-spending parties,[33] only if its electoral expenditure in the previous financial year was at least one-third of its revenue: s 287F(1)(b). A party might also be

[31] Act, s 287AB. "Electoral matter" is in turn defined as "matter communicated or intended to be communicated for the dominant purpose of influencing the way electors vote in an election" (s 4AA(1)).

[32] See paragraph 12(a) above.

[33] Provided that their expenditure was still above the "disclosure threshold" of $13,800, indexed under s 321A.

caught by the definition if its dominant purpose became to raise funds for electoral expenditure above the disclosure threshold: s 287F(1)(c).

16. Even if a political party that has voluntarily deregistered were required to be registered as a significant third party, the disclosure obligations that would result cannot be equated with disclosures by registered political parties. The Act provides for a Register of Political Parties (s 125(1)), which may be included on the Transparency Register (s 125(2)). There is a qualitative difference between disclosure information being available to the public in respect of a registered political party *as such*, and being available in respect of the more obliquely identified "significant third party".

17. For the above reasons, while the purposes of disclosure and transparency are pursued in the Act in various overlapping ways, the highest level of obligations are imposed with respect to registered political parties.

PURPOSE OF SECTION 135(3)

18. The purpose of s 135(3) is relevant or potentially relevant to each of the questions of law raised by the special case. The purpose of the provision "resides in its text and structure", not in "some search for what those who promoted or passed the legislation may have had in mind when it was enacted".[34] Further, the text must be considered in light of the Act "in its amended form … read as an integrated whole",[35] having regard to the capacity for subsequent amendments to "alter the meaning which remaining provisions of the amended Act bore before the amendment".[36] The Act, as amended, must be read "as a combined statement of the will of the legislature".[37] That being so, the purpose of s 135(3) "must be determined at the time the section was enacted … with any modifications to that purpose that arose as a result of subsequent amendments to the statutory scheme".[38]

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[34] *Certain Lloyd's Underwriters v Cross* (2012) 248 CLR 378 at [25] (French CJ and Hayne J); *Deal v Kodakkathanath* (2016) 258 CLR 281 at [37] (French CJ, Kiefel, Bell and Nettle JJ).

[35] *Comptroller General of Customs v Zappia* (2018) 265 CLR 416 at [6] (Kiefel CJ, Bell, Gageler and Gordon JJ).

[36] *Commissioner of Stamps (SA) v Telegraph Investment Co Pty Ltd* (1995) 184 CLR 453 at 463 (Brennan CJ, Dawson and Toohey JJ); see also at 479 (McHugh and Gummow JJ).

[37] *Port of Newcastle Operations Pty Ltd v Glencore Coal Assets Australia Pty Ltd* (2021) 274 CLR 565 at [86] (the Court).

[38] *Unions NSW v New South Wales* (2023) 277 CLR 627 at [76] (Edelman J).

19. Contrary to the above principles, the plaintiffs rely on a singular subjective purpose said to have been expressed in parliamentary debates (concerning a version of the law that was not ultimately passed, given that the provision that is now s 136(3) had yet to be introduced into the amending Bill), being to avoid "frustration" of s 136: PS [26]-[27]. That statement of the purpose of s 135(3) is incomplete in important respects. In particular, it overlooks the operation of s 135(3) with respect to different parties, and also its significance with the overall scheme that regulates registered political parties.

20. ***Limitation on registration by a <u>different</u> party within the same electoral cycle***: where a party de-registers voluntarily, s 135(3) prevents another party, before the next election, from registering a name that so closely resembles the name of the de-registered party that it is likely to be confused with or mistaken for that name. This aspect of s 135(3) has featured in its operation since the provision was first introduced. The plaintiffs' expression of the purpose of s 135(3) is, for that reason, incomplete: cf PS [26]-[27]. It overlooks that, since its enactment, one purpose of s 135(3) has been avoiding voter confusion by preventing the registration of a party with a name liable to be confused with that of a recently deregistered party.[39] In that regard, it mirrors the language of s 136(2), which serves an equivalent purpose with respect to parties that are deregistered involuntarily.[40] In doing so, it seeks to strike a balance between releasing a party name "back into the general field so somebody else can use it"[41] and minimising the confusion that might arise if another party registers that name in close proximity to an election.

21. ***Limitation on re-registration by the <u>same</u> party within the same electoral cycle***: a further purpose of s 135(3) is to prevent a party from voluntarily de-registering, and then re-registering, within the same electoral cycle. This operation of the provision advances two purposes. The first is the anti-confusion purpose discussed above, because it will not necessarily be straightforward to ascertain whether a party seeking registration is the same party or a different party, given the complications that arise when seeking to fix the identity of an association that is, by definition, not registered and may well be

[39] See Commonwealth of Australia, Senate, *Hansard* (1 December 1983) at 3147 (Senator Macklin noting, in connection with de-registration, that there were "strict provisions to avoid confusion and so on, as there should be").
[40] See Commonwealth of Australia, Senate, *Hansard* (1 December 1983) at 3146.
[41] Commonwealth of Australia, Senate, *Hansard* (1 December 1983) at 3147.

unincorporated. Covering both possibilities—the same party and a different party—avoids those complications and supports the efficacy of the anti-confusion purpose.

22. The second purpose of preventing a party from de-registering, and re-registering, within the same electoral cycle is to protect the integrity of a registration scheme that not only confers benefits on registered political parties, but that also imposes significant correlative obligations (as outlined in paragraphs 10 to 14 above). The disclosure regime for political parties was introduced at the same time as the public funding of elections, and both sets of measures now appear side-by-side in Part XX of the Act. The disclosure regime has, since its inception, been designed to inform voters about the source of funding of, at least, registered political parties. Voters can, by accessing the Transparency Register, identify the donors that support a registered political party and thereby identify the spheres from which the party's policies and positions are liable to be influenced. The plaintiffs' arguments ignore the interaction of s 135 with these parts of the Act. They offer no explanation for why a political party might voluntarily deregister, only to seek re-registration within the same electoral cycle (including shortly before an election). Yet a possible explanation for a political party behaving in this way would be that it sought to obtain the benefits of registration (including the ballot paper benefits) whilst avoiding – for at least part of the election cycle – the funding restrictions and transparency obligations that apply to registered political parties. Once that is recognised, an important purpose of s 135(3) can be seen to be to discourage circumvention of the transparency regime by ensuring that a political party that voluntarily deregisters cannot take the benefits of registration at the next election.

QUESTION 1: DIRECT CHOICE BY THE PEOPLE

23. The Constitution, by "deliberate design", commits to the Parliament "a wide leeway of choice" to legislate for "every aspect" of the electoral process, "even concerning the fundamental features of the operation of elections".[42] The Constitution entrusts Parliament with responsibility for "establishing an electoral system which balances 'the

[42] *Ruddick* (2022) 275 CLR 333 at [149], [152] (Gordon, Edelman and Gleeson JJ). See also Reid and Forrest, *Australia's Commonwealth Parliament 1901-1988* (1989), p. 86-87, cited with approval in ***McGinty*** *v Western Australia* (1996) 186 CLR 140 at 283 (Gummow J) and in ***Mulholland*** *v Australian Electoral Commission* (2004) 220 CLR 181 at [26] (Gleeson CJ), [65] (McHugh J), [156] (Gummow and Hayne JJ), [344] (Heydon J); ***Murphy*** *v Electoral Commissioner* (2016) 261 CLR 28 at [182] (Keane J), [263]-[264] (Gordon J).

competing considerations relevant to the making of a free, informed, peaceful, efficient and prompt choice by the people'."[43]

24. The requirement that Senators and members of the House of Representatives be directly chosen by the people "must not be applied in an over-broad manner which would fail to respect the constitutional design".[44] The "high purpose" of the requirement of direct choice is "to ensure representative government by insisting that the Parliament be truly chosen in a democratic election by that vague but emotionally powerful abstraction known as 'the people'".[45] The Court should not "substitute its determination for that of Parliament as to the form of electoral system, as long as that system complies with the requirements of representative government as provided for in the Constitution."[46]

25. The references to direct choice in ss 7 and 24 of the Constitution imply that voters must have the ability to make an "informed choice".[47] That implication limits Parliament's power to constrain the extent to which the people may "convey and receive opinions, arguments and information concerning matters intended or likely to affect voting".[48] In determining whether a law violates the implication, the Court undertakes a two-step analysis, asking, *first*, whether the law burdens informed electoral choice, and *secondly*, whether any burden is justified (see PS [33]).[49] But that two-step inquiry provides no warrant to ignore the Court's repeated acceptance of Parliament's "wide leeway of choice" in designing the electoral system and its corresponding caution against "elevating a 'direct choice' principle to a broad restraint upon legislative development of the federal system of representative government".[50] The plaintiffs' contentions concerning Question 1 pay insufficient attention to that fundamental feature of the constitutional design.

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[43] *Palmer v Australian Electoral Commission* (2019) 269 CLR 196 at [8] (Kiefel CJ, Bell, Keane, Nettle, Gordon and Edelman JJ, quoting *Murphy* (2016) 261 CLR 28 at [184] (Keane J); see also [156], [158].

[44] *Ruddick* (2022) 275 CLR 333 at [152] (Gordon, Edelman and Gleeson JJ).

[45] *Murphy* (2016) 269 CLR 28 at [89] (Gageler J), quoting *Langer v Commonwealth* (1996) 186 CLR 302 at 342.

[46] *Mulholland* (2004) 220 CLR 181 at [86] (McHugh J). See also *Attorney-General (Cth); Ex rel* ***McKinlay*** *v Commonwealth* (1975) 135 CLR 1 at 57-58 (Stephen J).

[47] *Ruddick* (2022) 275 CLR 333 at [151] (Gordon, Edelman and Gleeson JJ); ***Lange*** *v Australian Broadcasting Corporation* (1997) 189 CLR 520 at 560 (the Court); ***McCloy*** *v New South Wales* (2015) 257 CLR 178 at [2], [42] (French CJ, Kiefel, Bell and Keane JJ).

[48] *Australian Capital Television Pty Ltd v Commonwealth* (1992) 177 CLR 106 (***ACTV***) at 232 (McHugh J), quoted in *Ruddick* (2022) 275 CLR 333 at [151] (Gordon, Edelman and Gleeson JJ).

[49] *Ruddick* (2022) 275 CLR 333 at [148] (Gordon, Edelman and Gleeson JJ); *Murphy* (2016) 261 CLR 28 at [42] (French CJ and Bell J), [181] (Keane J) and [306] (Gordon J).

[50] *Mulholland* (2004) 220 CLR 181 at [156] (Gummow and Hayne JJ), approved in ***Roach*** *v Electoral Commissioner* (2007) 233 CLR 162 at [77] (Gummow, Kirby and Crennan JJ) and *Day v Australian Electoral Officer for SA* (2016)

26. ***No burden on informed choice***: Whether a law burdens informed electoral choice should be considered, not by isolating the effect of a single provision, but by evaluating the operation of the impugned provision in the context of the whole statutory scheme.[51] The plaintiffs' submission that s 135(3) burdens informed choice (PS [35]-[36]) fixates narrowly on the effects on the UAP of s 135(3), without considering the counterfactual impact on informed choice if s 135(3) did not apply. The plaintiffs' analysis is therefore not a true or complete analysis of the effect of s 135(3).

27. The plaintiffs' submissions as to burden should be rejected for the same reasons that governed the result in *Ruddick*. There, the majority upheld the validity of provisions of the Act which required the de-registration of a political party whose name contained a word also included in the name of a political party registered earlier in time. Justices Gordon, Edelman and Gleeson, with whose reasons Steward J agreed, held that the impugned laws did not burden informed choice.[52] For three reasons, the same conclusion should be reached with respect to s 135(3).

28. *First*, s 135(3) does not impose any constraint on informed choice because it does not, of itself, prevent a candidate from having his or her party affiliation or logo printed on a ballot paper: cf PS [35]. A political party that seeks and obtains deregistration under s 135(1) must be taken knowingly to give up the opportunity to have a party affiliation or logo printed on a ballot paper pursuant to s 214 or 214A, that being an opportunity that the Act makes available only to *registered* political parties. Absent a voluntary application for deregistration, s 135(3) has no legal operation and therefore can impose no burden on electoral choices.

29. *Secondly*, s 135(3) enhances voters' ability to make informed choices by encouraging parties to comply with the disclosure obligations imposed on registered political parties and their donors by Part XX of the Act. It does so by ensuring that, if a political party wishes to receive the public funding and ballot paper benefits of registration at the next election, it must remain registered – and therefore subject to those disclosure obligations

261 CLR 1 at [19] (the Court).

[51] *Murphy* (2016) 261 CLR 28 at [181] (Keane J) and [321] (Gordon J).

[52] *Ruddick* (2022) 275 CLR 333 at [162]-[166] (Gordon, Edelman and Gleeson JJ; Steward J agreeing).

– throughout the electoral period. In that way, its "overall" effect is "to improve the clarity, and hence the quality, of electoral choice".[53]

30. *Thirdly*, by preventing the immediate re-registration by another party of a name which replicates, or nearly resembles, the name of a recently de-registered party, s 135(3) reduces the scope for voters to confuse one party with another (including among those segments of the voting population with limited literacy skills): see SCB 34 [41]-[42]. Again, the effect is to improve the clarity of electoral choice, rather than to burden it.

31. ***Alternatively, there is a substantial reason for the burden***: Even if a burden on informed electoral choice is established, Parliament will be justified in imposing that burden if it does so for a "substantial reason".[54] A substantial reason is a reason which is "reasonably appropriate and adapted to serve an end which is consistent or compatible with the maintenance of the constitutionally prescribed system of representative government".[55]

32. For the reasons outlined above, s 135(3) serves two important objectives, both of which are capable of justifying the provision as consistent with the constitutionally prescribed system of representative government. It minimises voter confusion by avoiding the use of similar or duplicative names, in close succession, by different political parties. It also promotes transparency, ensuring that voters are informed, on an ongoing basis, of the sources from which political parties derive their funding and, therefore, the private interests by whom they might be liable to be influenced. In that way, s 135(3) supports voters to make an informed electoral choice.

QUESTION 2: IMPERMISSIBLE DISCRIMINATION

33. ***No freestanding non-discrimination implication***: The Court should not recognise the asserted implication of "non-discrimination" between political parties. If a law burdens the franchise (Question 1) or the implied freedom (Question 3), then any discriminatory operation of the law may inform whether the law is justified or proportionate. Absent such a burden, "discrimination" is not a distinct ground of invalidity.

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[53] *Ruddick* (2022) 275 CLR 333 at [162]-[166] (Gordon, Edelman and Gleeson JJ; Steward J agreeing).

[54] *Ruddick* (2022) 275 CLR 333 at [148] (Gordon, Edelman and Gleeson JJ); *Roach* (2007) 233 CLR 162 at [7] (Gleeson CJ) and [82], [85] (Gummow, Kirby and Crennan JJ); *Rowe v Electoral Commissioner* (2010) 243 CLR 1 at [23]-[25] (French CJ).

[55] *Roach* (2007) 233 CLR 162 at [85] (Gummow, Kirby and Crennan JJ).

34. There is no structural necessity to recognise a further implication prohibiting "discrimination" in order to protect representative democracy. Indeed, this Court has on many occasions rejected constitutional challenges premised on asserted requirements of equality or non-discrimination in electoral laws. For example, it has rejected arguments to the effect that every candidate is entitled to have his or her party affiliation recorded on the ballot paper,[56] that permitting some candidates to be grouped "above the line" impermissibly disadvantages ungrouped candidates,[57] and that every vote in elections for the House of Representatives should to the extent reasonably possible have the same value.[58] The Court has also upheld measures that privilege incumbency by allowing unaffiliated incumbent Senators to have their name appear above the line,[59] or by providing for the de-registration of a political party whose name shares a word with another political party registered earlier in time.[60]

35. Against that background, the submission that ss 7 and 24 support a "general constitutional value of political equality" (PS [42]) should not be accepted. The authorities on which the plaintiffs rely do not support a free-standing conception of equality, independent of the well-established implications concerning informed choice and the implied freedom of political communication. The passage from *McCloy* cited at PS [42] was directed to whether it was a permissible purpose for a law to pursue equality of opportunity; it was in that context that the plurality described equality of opportunity as an aspect of representative democracy.[61] Similarly, Mason CJ's observation in *ACTV* that the impugned provisions did not introduce a "level playing field" (again cited in PS [42]) was a response to the Commonwealth's submission that the restrictions on political advertising were justified because they sought to create a level playing field in public discourse.[62] Finally, contrary to PS [42], none of the justices in *Mulholland* (2004) 220 CLR 181 found that there was a free-standing constitutional guarantee of equality.[63]

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[56] *Mulholland* (2004) 220 CLR 181.

[57] *McKenzie v Commonwealth* (1984) 59 ALJR 190.

[58] *McKinlay* (1975) 135 CLR 1; *McGinty* (1996) 186 CLR 140.

[59] *Abbotto v Australian Electoral Commission* (1997) 71 ALJR 675 at 678 (Dawson J), cited with approval in *Mulholland* (2004) 220 CLR 181 at [85] (McHugh J).

[60] *Ruddick* (2022) 275 CLR 333.

[61] at [45] (French CJ, Kiefel, Bell and Keane JJ).

[62] See *ACTV* (1992) 177 CLR 106 at 131 (Mason CJ) and 239 (McHugh J). See also *Mulholland* (2004) 220 CLR 181 at [329]-[330], [333] (Callinan J).

[63] The quotation from the reasons of McHugh J at [86] omits the beginning of the quoted passage, where McHugh J,

36. ***In any event, s 135(3) is not "discriminatory" in any relevant sense***: Section 135 applies equally to all registered political parties. Section 135(3) simply stipulates the consequences that follow if a party voluntarily decides to de-register. To the extent that s 135(3) treats voluntarily de-registered parties differently from new parties or parties deregistered for a reason under s 137, the different treatment is justified by the fact that the party chose to deregister. It is precisely the mischief of voluntary approbation and reprobation that is one purpose of s 135(3) to address. In contrast, it was open to Parliament to decide that new parties should be allowed to register at a point in time without giving historical disclosures, and that parties deregistered for a particular reason under s 137 should be allowed to re-register if they overcome that particular reason.

QUESTION 3: IMPLIED FREEDOM OF POLITICAL COMMUNICATION

37. ***Plaintiffs' submissions are inconsistent with Mulholland and Ruddick***: The present case is on all fours with *Mulholland*: cf PS [49]-[50]. There, the appellant challenged certain conditions on the eligibility of registration of political parties (the so-called "500 rule" and the "no overlap rule"), arguing that those conditions would lead to de-registration and thereby prevent a party and its candidates from communicating their affiliation to voters via the ballot paper. This Court unanimously rejected that challenge. A majority did so on the basis that the impugned conditions did not burden the implied freedom, because there is no right to have a party name printed on the ballot paper that arises independently of the Act itself.[64] Parliament could modify the conditions for party registration, with consequences for whether a candidate's affiliation with that party would appear on the ballot, without detracting from any existing capacity or liberty of communication. That reasoning is dispositive of the present case.

38. The plaintiffs' submission to the contrary (PS [50]) is also inconsistent with the reasoning of the majority in *Ruddick*, who expressly followed *Mulholland* in finding that there was no burden.[65] In analysing *Mulholland*, the majority in *Ruddick* explained that "Mr

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in rejecting the constitutional challenge, emphasised that "the Court will not – indeed cannot – substitute its determination for that of Parliament as to the form of electoral system, as long as that system complies with the requirements of representative government as provided for in the Constitution". Contrary to PS [42], Callinan J's reasons expressed significant doubt about the proposition that the Constitution required a "level playing field": see [329]-[330] and [333].

[64] *Mulholland* (2004) 220 CLR 181 at [105]-[107], [110] (McHugh J), [186]-[187], [192] (Gummow and Hayne JJ), [337] (Callinan J), [354] (Heydon J).

[65] *Ruddick* (2022) 275 CLR 333 at [171]-[172] (Gordon, Edelman and Gleeson JJ; Steward J agreeing at [174]).

Mulholland's challenge failed because the Democratic Labor Party had no right to be included in the ballot paper, independently of the provisions of the *Commonwealth Electoral Act*".[66] The plaintiffs have not challenged the correctness of *Ruddick*.

39. Contrary to PS [51], the reasoning of the majority in *Ruddick* at [165]-[166] did not turn on a finding that all of the provisions governing the registration of political parties are part of an inseverable scheme. No such finding was made. The plurality's point was that "[a]part from the content of the ballot paper", deregistration "would not preclude any communication with the public" (at [165]). That is, there was no burden because, apart from the ballot paper, political communication was unaffected by the registration provisions. As to the ballot paper, *Mulholland* established that a provision that altered the application of the Electoral Commission's statutory obligations under ss 214 and 214A with respect to the content of the ballot paper did not burden the implied freedom because it does not burden any existing capacity or liberty to engage in political communication. That is why the plaintiff failed on the "threshold" point that no burden was established (see [161]). That reasoning is directly applicable to s 135(3).

40. If it is necessary to go further, *Ruddick* confirms that it is appropriate to take into account that s 135(3) is an element of a larger, and otherwise unchallenged, scheme. The plaintiffs seek to identify a burden by focusing on the effect of s 135(3) on their capacity to take advantage of the statutory opportunity for party affiliation to appear on the ballot paper under ss 214 and 214A. But those provisions confer that opportunity as part of a package of benefits and obligations that apply to political parties that choose to become registered and to maintain that registration. In assessing whether s 135(3) burdens political communication, the relevant counterfactual is not an *unconditional* right to receive the benefits of registration without the corresponding obligations.

41. ***Mulholland should not be re-opened***: The Court applies a "strongly conservative cautionary principle, adopted in the interests of continuity and consistency in the law" in deciding whether to depart from its previous decisions.[67] The relevant factors do not favour re-opening *Mulholland*. Each of McHugh, Gummow, Hayne, Callinan and

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[66] *Ruddick* (2022) 275 CLR 333 at [172] (Gordon, Edelman and Gleeson JJ).

[67] *NZYQ v Minister for Immigration, Citizenship and Multicultural Affairs* (2023) 97 ALJR 1005 at [17] (the Court); ***John*** *v Commissioner of Taxation* (1989) 166 CLR 417 at 438 (Mason CJ, Wilson, Dawson, Toohey and Gaudron JJ).

Heydon JJ held that there was no burden on the implied freedom because there was no right or entitlement (or, it may be added, capacity or "liberty of communication which exists at common law"[68]) to communicate party affiliation on the ballot paper itself.[69] Information about party affiliation can be included on the ballot paper only in the circumstances in which the Act provides for the Electoral Commission to include that information. The statutory specification of those circumstances defines, rather than burdens, any statutory entitlement to communicate information on the ballot paper. Amending those circumstances amends the entitlement. That is why "the content of the freedom in respect of any political communication by means of a ballot-paper is commensurate with the scope of the entitlement granted by the provisions of the Act which regulate the making of the communication".[70] This reasoning was uniform. Accordingly, the "no burden" conclusion reached by five Justices in *Mulholland* did not depend on their Honours' views as to whether the inclusion of a party affiliation on the ballot paper was a form of political communication: cf PS [57(c)]. Nor was it affected by any differences in their analysis of the reasoning in *ACTV*: cf PS [57(a)-(b)].

42. As to the other *John* factors, the finding in *Mulholland* as to burden has stood for over twenty years. The Court should not infer that it has not been independently acted upon, given the regular amendments that are made to the registration provisions in the Act: cf PS [57(e)]. Further, the plaintiffs properly accept that *Mulholland* cannot be said to have caused significant inconvenience: PS [57(d)]. The suggestion that its approach is conceptually at odds with the approach to the implication of direct choice (PS [57(d)]) overlooks the reasoning in *Ruddick*, which treated "burden" as a threshold question to be addressed in the context of direct choice as well as the implied freedom.[71] Finally, there would be no utility in re-opening *Mulholland* where *Ruddick* is not challenged. For all those reasons, leave to re-open *Mulholland* should be refused.

43. ***No burden on political communication***: If leave is granted to reopen *Mulholland*, the Court should confirm the analysis adopted in that case (and in *Ruddick*) that is summarised above. It is not a "distraction" to ask whether, independently of the

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[68] *Ruddick* (2022) 275 CLR 333 at [78] (Gageler J).
[69] *Mulholland* (2004) 220 CLR 181 at [105]-[110] (McHugh J), [186]-[187] (Gummow and Hayne JJ), [337] (Callinan J) and [354] (Heydon J).
[70] *Mulholland* (2004) 220 CLR 181 at [106] (McHugh J); see also [187] (Gummow and Hayne JJ).
[71] *Ruddick* (2022) 275 CLR 333.

challenged law, the common law or statute recognise a freedom or capacity to communicate in the manner that is said to have been burdened: cf PS [59]. Rather, that question is an indispensable part of the three-part mode of analysis described in *McCloy*[72] and *Brown v Tasmania*.[73] Specifically, the first part of that analysis recognises that "the constitutional implication only constrains legislative power where that power is exercised to impede legal freedom to communicate about government and political matters".[74] In the absence of an independently existing freedom or capacity or liberty to engage in political communication *in the manner said to have been burdened*, the implied freedom could be relevant only if it created an affirmative right to engage in communication in that manner, which it is uncontroversial that it does not do.[75]

44. The UAP's authority to use trademarks owned by Mr Palmer is irrelevant to the validity of s 135(3), because it does not amount to an entitlement or ability to require the Electoral Commission to use those trademarks on the *ballot paper*: cf PS [54].

45. Similarly, s 135(3) does not burden the entitlement of Senator Babet and the UAP to "make effective use of the UAP name in the parliamentary process, broader political debate, and formal election campaigning": cf PS [55]. All of those things may be done by an unregistered party, and so are not limited by s 135(3). Even if it be the case that such campaigning would be more effective if the statutory provisions concerning the printing of party affiliation on the ballot were engaged (a factual claim which is not established by the special case), s 135(3) does not make the exercise of any liberty of communication that exists at common law less effective than it would otherwise be. That being so, it therefore does not burden political communication.

46. ***Alternatively, the burden is justified***: The relevant burden is the incremental effect of the impugned law on the ability of a person to engage in political communication.[76] If

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[72] (2015) 257 CLR 178.

[73] (2017) 261 CLR 328. See also *Comcare v* ***Banerji*** (2019) 267 CLR 373 at [33]-[35] (Kiefel CJ, Bell, Keane and Nettle JJ); ***Libertyworks*** *Inc v Commonwealth* (2021) 274 CLR 1 at [46], [48] (Kiefel CJ, Keane and Gleeson JJ), [93], [119] (Gageler J), [194] (Edelman J) and [247] (Steward J); ***Farm Transparency*** *International Ltd v New South Wales* (2022) 277 CLR 537 at [5] (Kiefel CJ and Keane J).

[74] ***Brown*** *v Tasmania* (2017) 261 CLR 328 at [557] (Edelman J).

[75] *Brown* (2017) 261 CLR 328 at [185] (Gageler J), and the cases there cited.

[76] *Levy v Victoria* (1997) 189 CLR 579 at 625-626 (McHugh J); *Brown* (2017) 261 CLR 328 at [109] (Kiefel CJ, Bell and Keane JJ), [181], [188] (Gageler J), [259] (Nettle J), [357], [393], [411], [420] (Gordon J), [557]-[558], [566] (Edelman J); *Farm Transparency* (2022) 277 CLR 537 at [37] (Kiefel CJ and Keane J), [158] (Gordon J) and [223] (Edelman J).

s 135(3) burdens political communication at all, that burden is at most slight. That subsection has no operation unless a political party has applied to be de-registered under s 135(1), thereby voluntarily assuming the consequences of deregistration. Further: s 135(3) has no effect on a political party's capacity to engage in most forms of political communication; its legal operation is strictly limited in time, enduring only until the next general election; it is content neutral, drawing no distinction between political parties on the basis of their viewpoints;[77] and it draws no distinction based on incumbency.

47. The justification analysis begins with identifying the purpose of the impugned provision, and assessing whether that purpose is compatible with the system of representative government for which the Constitution provides.[78] As explained above, the plaintiffs' conception of the purpose of s 135(3) – as being confined to preventing a party frustrating the operation of s 136 – is unduly narrow: cf PS [26]. So much is illustrated by the fact that, on the plaintiff's conception, the operation of s 135(3) with respect to Parliamentary parties can be explained only as a mistake (because, as the plaintiffs repeatedly emphasise, a Parliamentary party cannot be deregistered under s 136: s 136(3)).

48. In fact, the purpose of s 135(3) is not confined to preventing circumvention of s 136. As addressed above, it has two additional purposes. First, in its application to other parties the name of which resembles that of a deregistered party, it reduces the risk of voter confusion. Secondly, in the scheme of the Act as it now exists (and also in the various different forms it has taken since 1984), s 135(3) discourages registered political parties from deregistering in the period between elections in order to avoid the transparency requirements that the Act imposes with respect to such parties. Both of those additional purposes enhance electoral choice, and are therefore compatible with the system of representative government for which the Constitution provides. The plaintiffs have not submitted otherwise.

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[77] *Banerji* (2019) 267 CLR 373 at [90] (Gageler J); ***Clubb*** *v Edwards* (2019) 267 CLR 171 at [55], [123] (Kiefel CJ, Bell and Keane JJ) and [375] (Gordon J); cf *Brown* (2017) 261 CLR 328 at [95] (Kiefel CJ, Bell and Keane JJ) and [199] (Gageler J).

[78] *Lange* (1997) 189 CLR 520 at 561-562 (the Court), 567; *McCloy* (2015) 257 CLR 178 at [31] (French CJ, Kiefel, Bell, and Keane JJ); *Libertyworks* (2021) 274 CLR 1 at [45] (Kiefel CJ, Keane and Gleeson JJ); *Farm Transparency* (2022) 277 CLR 537 at [29] (Kiefel CJ and Keane J).

49. On the application of a structured proportionality analysis,[79] the Court would readily conclude that s 135(3) is reasonably appropriate and adapted to each of the above purposes. The plaintiffs' argument at PS [66]-[67] does not suggest otherwise. That argument assumes that the only purpose of s 135(3) is to prevent circumvention of s 136, and therefore that the plaintiffs can succeed simply by showing that this purpose does not justify the application of s 135(3) to Parliamentary parties (defined in s 123(1)) because s 136 has never applied to such parties. That argument obviously does not establish that s 135(3) is disproportionate to the other two purposes identified immediately above.

50. Suitability: s 135(3) has a "rational connection" to and is "capable of realising" the above purposes.[80] It discourages registered political parties from avoiding the transparency obligations that apply to registered parties by de-registering between elections, because if they do so, they will be unable to take the benefits of registration at the next election.

51. Necessity: s 135(3) is necessary, as there is no "obvious and compelling alternative which is equally practicable and available and would result in a significantly lesser burden" upon the implied freedom while achieving the above purposes to the same extent.[81] Courts must not "exceed their constitutional competence by substituting their own legislative judgments for those of parliament",[82] whose role it is "to select the means by which a legitimate statutory purpose may be achieved".[83] The plaintiffs have not proposed any alternative that would be equally effective in avoiding voter confusion and promoting transparency.[84] The suggestion that Parliamentary parties should be exempted from s 135(3) (PS [66(b)]) is manifestly ill-adapted to either of those purposes.

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[79] *Brown* (2017) 261 CLR 328 at [123] (Kiefel CJ, Bell and Keane JJ) and [278] (Nettle J); *Clubb* (2019) 267 CLR 171 at [70]-[74] (Kiefel CJ, Bell and Keane JJ), [266] (Nettle J), [408] and [463] (Edelman J); *Banerji* (2019) 267 CLR 373 at [32] (Kiefel CJ, Bell, Keane and Nettle JJ); *Farm Transparency* (2022) 277 CLR 537 at [29] (Kiefel CJ and Keane J) and [250]-[251] (Edelman J).

[80] *Banerji* (2019) 267 CLR 373 at [33] (Kiefel CJ, Bell, Keane and Nettle JJ); *McCloy* (2015) 257 CLR 178 at [80] (French CJ, Kiefel, Bell and Keane JJ); *Farm Transparency* (2022) 277 CLR 537 at [35] (Kiefel CJ and Keane J).

[81] *Banerji* (2019) 267 CLR 373 at [35] (Kiefel CJ, Bell, Keane and Nettle JJ); *Farm Transparency* (2022) 277 CLR 537 at [46] (Kiefel CJ and Keane J). See also ***Tajjour*** *v New South Wales* (2014) 254 CLR 508 at [114] (Crennan, Kiefel and Bell JJ).

[82] *McCloy* (2015) 257 CLR 178 at [58] (French CJ, Kiefel, Bell and Keane JJ); see also *Tajjour* (2014) 254 CLR 508 at [36] (French CJ), [115] (Crennan, Kiefel and Bell JJ); ***Unions NSW*** *v New South Wales* ***(No 2)*** (2019) 264 CLR 595 at [47] (Kiefel CJ, Bell and Keane JJ), [113] (Nettle J); *LibertyWorks* (2021) 274 CLR 1 at [202] (Edelman J).

[83] *McCloy* (2015) 257 CLR 178 at [82] (French CJ, Kiefel, Bell and Keane JJ); see also *Unions NSW (No 2)* (2019) 264 CLR 595 at [47] (Kiefel CJ, Bell and Keane JJ).

[84] See *McCloy* (2015) 257 CLR 178 at [59] (French CJ, Kiefel, Bell and Keane JJ), [335] and [379] (Gordon J).

52. Adequacy in the balance: a law is regarded as adequate in its balance unless the benefit sought to be achieved is "manifestly outweighed by the adverse effect on the implied freedom".[85] A law is invalidated at this stage only in "extreme cases", as invalidation "will often mean that Parliament is entirely precluded from achieving its legitimate policy objective".[86] Section 135(3) effects only a modest intrusion upon the ability of a registered political party to de-register, and then re-register, at will. The benefits sought to be achieved by the provision are considerable, and are directed to supporting voters to make informed electoral choices. The important objectives pursued by the provision are on no view manifestly outweighed by any adverse effects on the ability of a political party to communicate with voters via the ballot paper following its choice to de-register.

PART VI: ORDERS SOUGHT

53. The questions should be answered: (1) No; (2) No; (3) No; (4) None; (5) The plaintiffs.

54. While the plaintiffs seek a declaration that s 135(3) is wholly invalid, the arguments that they have advanced go no further than impugning its validity in relation to Parliamentary parties (their argument depending at multiple points on the non-application of s 136 to Parliamentary parties). Accordingly, at most, the plaintiffs could obtain only the alternative relief that they seek: Statement of Claim [32(b) and (c)] (SCB 18); s 287AC.

55. It is estimated that up to 2 hours will be required for the defendant's oral argument.

Dated: 28 January 2025

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[85] *LibertyWorks* (2021) 274 CLR 1 at [85] (Kiefel CJ, Keane and Gleeson JJ); *Banerji* (2019) 267 CLR 373 at [38] (Kiefel CJ, Bell, Keane and Nettle JJ); *Clubb* (2019) 267 CLR 171 at [6], [66]-[69] and [102] (Kiefel CJ, Bell and Keane JJ), [270]-[275] (Nettle J), [497]-[498] (Edelman J); *Farm Transparency* (2022) 277 CLR 537 at [55] (Kiefel CJ and Keane J).

[86] *LibertyWorks* (2021) 274 CLR 1 at [201] (Edelman J). See also [292] (Steward J).

IN THE HIGH COURT OF AUSTRALIA
BRISBANE REGISTRY No. B73 of 2024

BETWEEN:

RALPH BABET
First Plaintiff

NEIL FAVAGER
Second Plaintiff

and

COMMONWEALTH OF AUSTRALIA
Defendant

ANNEXURE TO DEFENDANT'S SUBMISSIONS

No	Description	Version	Provisions	Reasons for providing this version	Applicable dates (to what events, if any, this version applies)
1.	*Commonwealth Constitution*	Version 6 (29 July 1977 to current)	ss 7, 24		N/A
2.	*Commonwealth Electoral **Act** 1918* (Cth) (vol 1 and vol 2)	Version 78 (7 Jan 2025 to current)	ss 4, 4AA; Pt XI; ss 168-169, 210, 214-214A, 239, 272; Pt XX	Applies to the UAP's application for registration.	
3.	*Commonwealth Electoral Amendment Act 1992* (Cth)	As made (11 June 1992 to current)	s 8	Amended the Act, including by amending s 305A.	N/A

No	Description	Version	Provisions	Reasons for providing this version	Applicable dates (to what events, if any, this version applies)
4.	*Commonwealth Electoral Amendment Act 1995* (Cth)	As made (15 June 1995 to current)	s 3; sch, items 1, 20-22, 34	Amended the Act, including by amending ss 287 and 305A, and inserting ss 305B and 314AEA.	N/A
5.	*Commonwealth Electoral Legislation Amendment Act 1983* (Cth)	As made (22 Dec 1983 to 20 Feb 1984)	ss 42, 54, 78-80, 98, 113	Amended the Act, including by amending ss 72A, 104, 105A, 123; inserting ss 58A-58ZD; and repealing and inserting a new s 106, Pt XVI.	N/A
6.	*Commonwealth Electoral Legislation Amendment Act 1984* (Cth)	As made (21 Feb 1984 to 9 Dec 2015)	s 5	Amended the Act, including re-numbering it.	N/A
7.	*Electoral and Referendum Amendment (Electoral Integrity and Other Measures) Act 2006* (Cth)	As made (22 June 2006 to 14 Mar 2007)	s 3; sch 1, item 84	Amended the Act, including by inserting ss 314AEB-314AEC.	N/A
8.	*Electoral Legislation Amendment (Electoral Funding and Disclosure Reform) Act 2018* (Cth)	As made (30 Nov 2018 to current)	s 3; sch 1, items 33, 87	Amended the Act, including by inserting Div 3A into Pt XX and providing for the Transparency Register.	N/A

No	Description	Version	Provisions	Reasons for providing this version	Applicable dates (to what events, if any, this version applies)
9.	*Electoral Legislation Amendment (Political Campaigners) Act 2021* (Cth)	As made (13 Dec 2021 to current)	s 3; sch 2, items 16-18, 23-25; sch 3	Amended the Act, including by inserting Div 5A into Pt XX.	N/A
10.	*Judiciary Act 1903* (Cth)	Version 51 (11 Dec 2024 to current)	s 78B	Applies to present proceeding.	N/A
11.	*Political Broadcasts and Political Disclosures Act 1991* (Cth)	As made (19 Dec 1991 to current)	s 22	Amended the Act, including by inserting Div 5A of Pt XX.	N/A