HIGH COURT OF AUSTRALIA

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IN THE HIGH COURT OF AUSTRALIA
SYDNEY REGISTRY

BETWEEN:

MICHAEL RAVBAR
First Plaintiff

WILLIAM LOWTH
Second Plaintiff

and

COMMONWEALTH OF AUSTRALIA
First Defendant

ATTORNEY-GENERAL OF THE COMMONWEALTH
Second Defendant

MARK IRVING KC
Third Defendant

SUBMISSIONS OF THE FIRST AND SECOND DEFENDANTS

PART I: CERTIFICATION

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

PART II: ISSUES

2 The *Fair Work (Registered Organisations) Amendment (Administration) Act 2024* (Cth) inserted **Pt 2A** into Ch 11 of the *Fair Work (Registered Organisations) Act 2009* (Cth) (**FWRO Act**). Under that new Part, the **Determination**[1] was made (s 323B(1)) and the **Administrator** was appointed (s 323C). Those two events triggered s 323A(1), by force of which the Construction and General Division (**C&G Division**) of the Construction, Forestry and Maritime Employees Union (**CFMEU**), and its branches (**C&G Divisional**
10 **Branches**), were placed under administration. The Plaintiffs contend that Pt 2A: (1) is unsupported by a head of power; (2) infringes the implied freedom of political communication; (3) infringes Ch III of the Constitution; and (4) acquires property otherwise than on just terms. Each of those challenges must be rejected.

PART III: SECTION 78B NOTICES

3 The Plaintiffs gave notice pursuant to s 78B of the *Judiciary Act 1903* (Cth): **SCB 63**. The First and Second Defendants (**Commonwealth**) filed a further notice on 22 October 2024.

PART IV: FACTS

4 ***History of contraventions:*** The CFMEU is a registered "employee organisation" that plays an important role in "facilitating the operation of the workplace relations system".[2] But,
20 over the past 5 years, across 62 separate proceedings, the CFMEU and/or its officers have been found to have contravened federal industrial legislation on 1,163 occasions and to have incurred $10,628,861 in associated penalties: **SCB 149 [95]-[96]**.[3] The governing bodies of every C&G Divisional Branch, and of the C&G Divisional Executive, included one or more[4] officeholders found to have engaged in contraventions: **SCB 151-152 [97]**. The Federal Court has found that the CFMEU's "abuse of industrial power" "occurs so regularly, in situations with the same kinds of features, that the only available inference is

1 *Fair Work (Registered Organisations) (CFMEU Construction and General Division Administration) Determination 2024* (Cth).

2 FWRO Act, s 5(5).

3 To put this in perspective, of the ten largest registered organisations *excluding* the CFMEU, the organistion with the next most prolific history of proven industrial law contraventions (the CEPU) has a record of only 21 breaches and $255,800 in associated penalties over the same period: **SCB 151-152 [99]-[103]**.

4 C&G Divisional Executive: four officers (Kera, Buchan, Greenfield, Sutherland); ACT Divisional Branch: two officers (Bolitho, Smith); WA Divisional Branch: one officer (Buchan); NSW Divisional Branch: five officers (Parker, Gutierrez, Byrnes, Mallia, Greenfield); Qld-NT Divisional Branch: three officers (Ravbar, Ingham, Kupsch); SA Divisional Branch: two officers (Brook, Pare); Vic-Tas Divisional Branch: nine officers (Harris, Harkins, Hassett, McDonald, Travers, Perkovic, Simpson, Myles, Theodorou): **SCB 150-151 [97]**.

that there is a conscious and deliberate strategy employed by the CFMEU and its officers to engage in disruptive, threatening and abusive behaviour towards employers without regard to the lawfulness of that action, and impervious to the prospect of prosecution and penalties".[5]

5 ***July-August 2024 allegations:*** Although none of the recent allegations against officers and members of the C&G Division have yet led to convictions for offences or adverse findings by a court (**SCB 154 [105.1]**), various allegations are being investigated by or have been referred to police, and some have been the subject of criminal charges (**SCB 155 [105.2]-[105.3], 1119-1121, 1045, 1182-1184, 1198**). Further, Geoffrey Watson SC, who was engaged by the CFMEU before the Determination's commencement to investigate allegations directed at the Vic-Tas Divisional Branch, concluded in his Interim Report that the information he had uncovered "supported the accuracy of the allegations of criminal and corrupt conduct": **SCB 1203 [2]**. He also found that the Vic-Tas Divisional Branch had "been infiltrated by [Outlaw Motor Cycle Gangs] and by organised crime figures" (**SCB 1207 [24]**); that it had taken "inadequate" measures to remove such figures after the allegations were aired (**SCB 1208 [28]**); and that it did not have "a real intention to fix this problem" (**SCB 1209 [29]**).

6 ***CFMEU governance:*** The Interim Report also provides context for how the C&G Division was governed in practice. Mr Watson SC found that, although he was "told that there were democratic processes" (see **PS [7]**), his conversations with officials indicated that "the outcome was often determined (at least in substance) by undemocratic means" (**SCB 2124 [46]**). Separately, on 10 July 2024, the FWRO Act was amended to enable the Manufacturing Division of the CFMEU to apply to the Fair Work Commission for a ballot of members to withdraw from the CFMEU: **SCB 158 [120]**. The Manufacturing Division explained this to its members by stating: "the CFMEU is no longer a great union. It is dysfunctional; and the biggest Division – Construction – continues to attack members like you at every opportunity. As the smallest Division of the CFMEU, the leaders you chose no longer get a say in how the Union is run and are steamrolled on key issues": **SCB 1363**.

[5] *Director of the Fair Work Building Industry Inspectorate v CFMEU [No 2]* [2016] FCA 436 at [140] (Mortimer J), approved on appeal: (2018) 262 CLR 157 at [85] (Keane, Nettle and Gordon JJ). See also, eg, *ABCC v Parker [No 2]* [2017] FCA 1082 at [31] (Flick J) (the "conduct of [the CFMEU's] officers and employees has consistently shown a total contempt for … the constraints imposed by the law"); *ABCC v CFMMEU* [2020] FCA 202 at [21] (Anastassiou J) (the CFMEU's "systematic unlawfulness"); *Fair Work Ombudsman v CFMEU* [2024] FCA 655 at [78] (Snaden J), citing *ABCC v Pattinson* (2022) 274 CLR 450 at [21] (Kiefel CJ, Gageler, Keane, Gordon, Steward and Gleeson JJ) (the CFMEU's "record of contravening demonstrates a general disregard on its part of workplace laws").

PART V: ARGUMENT

A THE PURPOSE OF PT 2A

7 The Plaintiffs' submissions as to the purpose of Pt 2A infuse each of their four challenges: see, eg, **PS [17]-[19], [23]-[25], [28]-[31], [47], [52], [59]-[61]**.

8 ***Correct approach:*** Ascertaining the purpose of Pt 2A is assisted by the following principles. *First*, the purpose of a law is "what the law can be seen to be designed to achieve in fact".[6] Thus, the question is concerned with the Parliament's *end* in view, and not its *means* of getting there. Further, whilst "the effect of legislation is sometimes emblematic of its purpose", this "does not mean that the effect of the legislation is the same as its

10 purpose".[7] Put another way, "the intended aim of legislation exists at a higher level of generality than the meaning of its words".[8] Purpose is "ascertained objectively" from the "whole text and context".[9]

9 *Second*, the purpose of an amending Act must be ascertained recalling that "the principal Act is to be construed as a whole in the form in which it stands following the amendment".[10] Part 2A was inserted into the FWRO Act, which contains a statement of statutory object: s 5; cf **PS [28]**. That statement forms the starting point for the identification of purpose.[11]

10 *Third*, "in the face of an express statement of statutory objects, an additional object that is not only unexpressed but also constitutionally impermissible should not lightly be

20 inferred".[12] Certainly, no such inference can be drawn based on "what those who promoted or passed the legislation may have had in mind when it was enacted".[13] Thus, this Court

6 ***Spence*** *v Queensland* (2019) 268 CLR 355 at [60] (Kiefel CJ, Bell, Gageler and Keane JJ).

7 ***Clubb*** *v Edwards* (2019) 267 CLR 171 at [309] (Nettle J), noting for example that legislation restricting the availability of classified information may have the *effect* of reducing information available for a public debate about defence, but its *purpose* may be to protect national security. See also ***Brown*** *v Tasmania* (2017) 261 CLR 328 at [322] (Gordon J).

8 *Unions NSW v NSW* (2019) 264 CLR 595 ***(Unions NSW [No 2])*** at [171] (Edelman J); see also ***LibertyWorks*** *Inc v Commonwealth* (2021) 274 CLR 1 at [183] (Gordon J, dissenting in the result).

9 ***YBFZ*** *v Minister for Immigration, Citizenship and Multicultural Affairs* [2024] HCA 40 at [16] (Gageler CJ, Gordon, Gleeson and Jagot JJ), quoting ***Alexander*** *v Minister for Home Affairs* (2022) 276 CLR 336 at [104] (Gageler J). See also ***NZYQ*** *v Minister for Immigration, Citizenship and Multicultural Affairs* (2023) 97 ALJR 1005 at [40] (the Court)

10 Herzfeld and Prince, *Interpretation* (3rd ed, 2024) at [11.50], citing (relevantly) *Acts Interpretation Act 1901* (Cth), s 11B and *Comptroller General of Customs v Zappia* (2018) 265 CLR 416 at [6] (Kiefel CJ, Bell, Gageler and Gordon JJ).

11 *Unions NSW [No 2]* (2019) 264 CLR 595 at [79] (Gageler J). See also *Alexander* (2022) 276 CLR 336 at [117]-[119] (Gageler J).

12 *Unions NSW [No 2]* (2019) 264 CLR 595 at [79], [81] (Gageler J).

13 *Certain Lloyd's Underwriters v Cross* (2012) 248 CLR 378 at [25] (French CJ and Hayne J). See also *Lacey v A-G (Qld)* (2011) 242 CLR 573 at [43] (French CJ, Gummow, Hayne, Crennan, Kiefel and Bell JJ). In this

has held that the "constitutional character" of a law "does not depend upon the motives or intentions of the Minister or individual members of the legislature", and "it does not advance the plaintiff's argument to attribute malevolent designs to the Minister or to other persons who promoted or supported the legislation".[14] The Court should therefore reject the Plaintiffs' attempt to conjure up a constitutionally impermissible purpose — "to suppress certain sources of political communication or political viewpoints" — from speeches made by opposition politicians, or from the alleged reliance of those politicians on statements made by the Administrator predating his appointment: **PS [10]-[12], [25], [28]-[29]**. Those materials have no legitimate role in ascertaining Parliament's purpose.

10 11 *Fourth*, there is no principle that Parliament must rely on evidence reaching a particular threshold of proof before it can enact legislation to pursue a particular object: cf **PS [8], [30]**. "Parliament may act prophylactically or in response to inferred legislative imperatives", and "[i]n such circumstances it would be unrealistic and inappropriate to view a lack of direct evidence as to the legislative imperative as decisive".[15] In any case, [4]-[6] above demonstrate that Parliament had ample basis to consider that officers of the C&G Division had repeatedly flouted the law (as determined by courts), that serious allegations of criminality by officers of the C&G Division had been made, and that the C&G Division as a whole had grave governance problems.

12 ***Purpose of Pt 2A:*** The FWRO Act provides that the object of that Act is "to enhance

20 relations within workplaces between federal system employers and federal system employees and to reduce the adverse effects of industrial disputation": s 5(1). Parliament "considers that those relations will be enhanced, and those adverse effects will be reduced, if associations of employers and employees are required to meet the standards set out in this Act in order to gain the rights and privileges accorded to associations" under the FWRO Act and *Fair Work Act 2009* (Cth) (**FW Act**): s 5(2). Those standards seek, amongst other things, to ensure that registered organisations "are representative of and accountable to their members, and are able to operate effectively": s 5(3)(a).[16]

context, it has also been observed that parliamentary speeches "can sometimes be motivated by forensic and political factors" and "occasionally stray into hyperbole": *Nominal Defendant v GLG Australia Pty Ltd* (2006) 228 CLR 529 at [82] (Kirby J), cited in *Harrison v Melham* (2008) 72 NSWLR 380 at [170] (Mason P).

14 ***Mineralogy*** *Pty Ltd v Western Australia* (2021) 274 CLR 219 at [83] (Kiefel CJ, Gageler, Keane, Gordon, Stewart and Gleeson JJ), quoting *H A Bachrach Pty Ltd v Queensland* (1998) 195 CLR 547 at [12] (the Court).

15 *Brown* (2017) 261 CLR 328 at [288] (Nettle J), citing ***McCloy*** *v NSW* (2015) 257 CLR 178 at [233] (Nettle J).

16 As to the "special and central role" of federally registered employee organisations in protecting the interests of workers, and therefore the importance of standards for the proper operation of such organisations, see, eg, *Elliot-Carde v McDonald's Australia Ltd* (2023) 301 FCR 84 at [102]-[111] (Lee J).

13 Within Pt 2A, ss 323A and 323B provide that a scheme for the administration of the C&G Division and its branches will take effect: (i) if the Minister is satisfied that, "having regard to the Parliament's intention in enacting this Act (see section 5), it is in the public interest" for that administration to occur; and (ii) when, following any determination under s 323B(1), the General Manager appoints an administrator. Once s 323A is enlivened, the administration lasts for a maximum of 5 years (s 323E), but may be varied or revoked earlier if (relevantly) the Minister is satisfied that doing so is in the public interest having regard to s 5 — and, in the 3 year period following the Scheme's commencement, where the administrator is satisfied that the relevant branch or the C&G Division is functioning lawfully and effectively (s 323D). The administrator has control of the property and affairs of the C&G Division (s 323K(1)(a)), but must act "in the best interests of the members" and must have regard to the objects of the CFMEU under its Rules (s 323L(5)).

14 Against this textual and contextual backdrop, the purpose of Pt 2A is best stated as follows: to enable the C&G Division swiftly to be returned to a state in which it is governed and operates lawfully and effectively in its members' interests, for the ultimate goal of facilitating the operation of the federal workplace relations system.

15 This identification of purpose is supported by the Explanatory Memorandum (**EM**) and Second Reading Speech. Relevantly, the EM: states that registered organisations "play an important role in Australia's workplace relations system" ([3]); summarises serious allegations raised about the C&G Division and certain officials and the CFMEU's history of contraventions of industrial laws ([7], [9]-[10]); and notes that the General Manager of the Fair Work Commission considered that "the majority of branches of the [C&G] Division were no longer able to function effectively, including in the interests of members, and that there were no effective means under the relevant rules to address the situation" ([6], see also [8]). The EM then said this ([11]; see also [29], [36], [51]):

> It is the Government's view that the legislative amendments proposed by the Bill are urgently required to ensure a decision can be made as swiftly as possible about whether to put a scheme of administration into place. The legislative amendments in the Bill seek to protect the interests of members of the [C&G] Division …. The proposed legislation is necessary to end ongoing dysfunction within the Division and to ensure it is able to operate effectively in the interests of its members.

The Minister made similar statements in the Second Reading Speech.[17]

[17] Commonwealth, *Parliamentary Debates*, House of Representatives, 20 August 2024, 2 (Mr Burke).

B HEAD OF POWER (QUESTION 1)

16 Whether a law is "with respect to" a head of power involves examining the legal and practical operation of the law, and then assessing whether there is a "sufficient connection" — being a connection that is not "insubstantial, tenuous or distant" — between what the law does and the subject matter of a head of power.[18] If such a connection exists, "the justice and wisdom of the law, and the degree to which the means it adopts are necessary or desirable, are matters of legislative choice".[19] Here, Pt 2A is supported by s 51(xx) for two independent reasons: *first*, because Pt 2A applies only to the CFMEU,[20] which is a "trading corporation"; and *second*, because it follows from ***Work Choices***.[21]

10

B.1 The CFMEU is a trading corporation

17 Part 2A is headed "Administration of the Construction and General Division of the CFMEU and its branches". As that heading suggests, Pt 2A solely concerns the C&G Division of the CFMEU. It empowers the Minister to determine a scheme for the administration of the C&G Division, being a part of the CFMEU: s 323B. If such a scheme is determined, Pt 2A specifies the rights, powers, duties and privileges that follow: eg, ss 323A, 323F, 323G, 323K. Part 2A therefore has a direct[22] connection with the CFMEU that is not "insubstantial, tenuous or distant".[23] If the CFMEU is a trading corporation, it necessarily follows that Pt 2A has a sufficient connection with s 51(xx).

18 The entity that is now named the CFMEU was formed within the limits of the

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Commonwealth: see **SCB 125-129 [8]-[22]**. It is legislatively conferred with capacity to own property, to contract and to sue: **SCB 129 [22]**. That is sufficient for it to be a "corporation" for the purposes of s 51(xx).[24] But, in any event, it has been a body corporate since 1988 (or, alternatively, 2003): **SCB 126 [11.2], 128 [18.3.1]**.

19 A corporation will be a "trading corporation" for the purposes of s 51(xx) if it engages in

18 *Spence* (2019) 268 CLR 355 at [57] (Kiefel CJ, Bell, Gageler and Keane JJ); ***Plaintiff S156****/2013 v Minister for Immigration* (2014) 254 CLR 28 at [22], [26] (French CJ, Hayne, Crennan, Kiefel, Bell and Keane JJ).

19 *Grain Pool of Western Australia v Commonwealth* (2000) 202 CLR 479 at [16] (Gleeson CJ, Gaudron, McHugh, Gummow, Hayne and Callinan JJ).

20 With limited exceptions: see Div 2 of Pt 2A. See also FW Act, s 177A. But those provisions are supported on the second basis.

21 *NSW v Commonwealth* (2006) 229 CLR 1.

22 Contary to **PS [23]**, that Pt 2A operates in part by conferring a discretionary power on the Minister to make a legislative instrument does not mean that its operation upon the CFMEU is "indirect": see *Plaintiff S156* (2014) 254 CLR 28 at [11], [24]-[25] (French CJ, Hayne, Crennan, Kiefel, Bell and Keane JJ).

23 *Spence* (2019) 268 CLR 355 at [57] (Kiefel CJ, Bell, Gageler and Keane JJ).

24 See *Communications, Electrical, Electronic, Energy, Information, Postal, Plumbing and Allied Services Union of Australia v* ***Queensland Rail*** (2015) 256 CLR 171 at [38] (French CJ, Hayne, Kiefel, Bell, Keane and Nettle JJ), [67] (Gageler J). See also *Williams v Hursey* (1959) 103 CLR 30 at 52 (Fullagar J).

trading activity that is a "substantial", "sufficiently significant" or not "merely peripheral" part of its overall activities.[25] A trading activity denotes providing goods or services for reward.[26] An activity may bear this character even where no profit is earned or sought.[27]

20 Insofar as the Plaintiffs submit that a corporation is not a trading corporation merely because it engages in trading activities which are substantial, or because it "makes a lot of money through trading activities", that is contrary to authority: cf **PS [21]**.[28] It is likewise contrary to authority to contend that a corporation that engages in substantial trading activities is not a trading corporation because it engages in those activities for a non-trading purpose: cf **PS [22]**. If a corporation meets the activities test, the conclusion that it is a trading corporation is unaffected by the fact that the corporation was not formed for a trading purpose,[29] or that its trading activities are carried out for a primary or dominant undertaking that is not trading.[30]

21 The CFMEU's trading activities are substantial for one or both of the following reasons. *First*, the very substantial revenue the CFMEU generates from membership subscription fees is, at least in significant part, referable to the CFMEU engaging in trading activities with its members and/or with third parties in order to procure benefits for members. Thus:

21.1 The financial statements of the ACT, Qld-NT, SA and WA Divisional Branches, as well as the Manufacturing Division and the Maritime Union of Australia (**MUA**) Division, report "membership subscriptions" as revenue generated from "contracts with customers", being arrangements that are enforceable and which contain

[25] *R v Federal Court of Australia; Ex parte Western Australian National Football League* (1979) 143 CLR 190 (***Adamson***) at 208 (Barwick CJ), 233 (Mason J; Jacobs J agreeing), 239 (Murphy J); *Commonwealth v Tasmania* (1983) 158 CLR 1 *(**Tasmanian Dams**)* at 156 (Mason J), 179 (Murphy J), 240 (Brennan J), 292-293 (Deane J). See also ***State Superannuation Board*** *v Trade Practices Commission* (1982) 150 CLR 282 at 303-304 (Mason, Murphy and Deane JJ).

[26] *Hughes v Western Australian Cricket Association (Inc)* (1986) 19 FCR 10 at 20 (Toohey J).

[27] *Queensland Rail* (2015) 256 CLR 171 at [42] (French CJ, Hayne, Kiefel, Bell, Keane and Nettle JJ).

[28] The Plaintiffs rely on: (1) *R v Trade Practices Tribunal; Ex parte St George County Council* (1974) 130 CLR 533, which is no longer good law; (2) dissenting judgments of Gibbs CJ and Wilson J in *Adamson* and *State Superannuation Board*; (3) *Adamson* at 234 (Mason J), which does not support this proposition; and (4) passages from *Queensland Rail* which either contradict the Plaintiffs or do not determine the issue.

[29] Where a corporation has not yet engaged in any activities, the purpose for which it was formed may be of particular relevance in determining whether it is a trading or financial corporation: see *Fencott v Muller* (1983) 152 CLR 570 at 601-602 (Mason, Murphy, Brennan and Deane JJ).

[30] *Adamson* (1979) 143 CLR 190 at 208 (Barwick CJ), 233, 236-237 (Mason J; Jacobs J agreeing), 239 (Murphy J); *Tasmanian Dams* (1983) 158 CLR 1 at 155-156 (Mason J), 179 (Murphy J), 240 (Brennan J), 293 (Deane J); *Queensland Rail* (2015) 256 CLR 171 at [70] (Gageler J). See also *State Superannuation Board* (1982) 150 CLR 282 at 304, 306 (Mason, Murphy and Deane JJ); *United Firefighters' Union v Country Fire Authority* (2015) 228 FCR 497 at [133]-[138] (Perram, Robertson and Griffiths JJ); *E v Australian Red Cross Society* (1991) 27 FCR 310 at 342-345 (Wilcox J).

promises to transfer specific goods or services to the customer: **SCB 334 [1]**.[31] As part of the cost of membership of the CFMEU, members receive a range of benefits that the CFMEU has procured on members' behalf pursuant to agreements with third parties. These benefits vary between divisions and within the C&G Divisional Branches, but include benefits such as insurance, legal services and ambulance cover: **SCB 133-134 [36], 299-302**. The CFMEU's provision of these services to members is a trading activity.[32]

21.2 Further, even if CFMEU is not "trading" with its own members in this way, the CFMEU's entry into agreements with third parties in order to procure the relevant benefits for members is plainly trading activity.[33]

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22 *Second*, and in any event, the CFMEU generates substantial revenue from providing goods and services to third parties, including *inter alia* training services, leasing properties, advertising and sponsorship services, and merchandise sales: **SCB 134-136 [37]**. There can be no doubt that those activities are of a trading character. Illustrative examples of the CFMEU's engagement in those activities are set out in Annexures 5-10: **SCB 303-333**. The breadth and scale of those activities alone is sufficient for this Court to find that the CFMEU engages in substantial trading activities.

23 On either or both of the above bases, the CFMEU satisfies the activities test, and therefore is a trading corporation. It follows that Pt 2A is a law with respect to s 51(xx).

20

B.2 The corporations power: *Work Choices*

24 Part 2A is also supported by s 51(xx) on the independent basis that the CFMEU is an association of employees a majority of whom are employed, or usually employed, by a constitutional corporation: **SCB 137 [40]**. In *Work Choices*, the Court held that s 51(xx) supports laws to prescribe "the industrial rights and obligations of [constitutional] corporations and their employees and the means by which they are to conduct their

[31] The provision of goods and services pursuant to an enforceable contract is plainly trading activity. The reports of those divisions and branches of the CFMEU record very substantial amounts of revenue from "contracts with members". For example, in the 2023 financial year, the ACT, Qld-NT, SA and WA Divisional Branches recorded a combined $8,978,655 in revenue from contracts with members, while the Manufacturing and MUA Divisions recorded $5,173,244 and $20,792,897 respectively: **SCB 334-336**.

[32] Cf *ALDI Foods Pty Ltd v Transport Workers' Union of Australia* (2020) 282 FCR 174 at 196-197 (Besanko, Bromberg and O'Bryan JJ). The Full Court's decision may be in tension with *Adamson's Case* (1979) 143 CLR 190 at 236 (Mason J), but it is not necessary to resolve that issue given that, unlike in *ALDI*, the CFMEU provides various benefits in addition to industrial advocacy that are of a commercial character.

[33] Cf *ATC Insurance Solutions Pty Ltd v United Firefighters' Union of Australia* [2023] FCA 566 at [2], [43]-[44] (O'Callaghan J).

industrial relations".[34] It also held that s 51(xx) supports laws to "regulate employer-employee relationships and to set up a framework for this to be achieved"; to "authorise registered bodies to perform certain functions within that scheme of regulation"; and to "require, as a condition of registration, that these organisations meet requirements of efficient and democratic conduct of their affairs".[35] Those propositions led to the conclusion that Sch 1 ("Registration and Accountability of Organisations"[36]) to the *Workplace Relations Act 1996* (Cth) was supported by s 51(xx).[37] Through a process of amendment (including re-naming), that Schedule became the FWRO Act: **SCB 128 [20.4]**. *Work Choices* therefore establishes that the FWRO Act, in its operation with respect to the
10 CFMEU,[38] is supported by s 51(xx).

25 Part 2A does not "stand apart" from the balance of the FWRO Act: cf **PS [18]**. Rather, it adds another component to that part of the FWRO Act that requires registered organisations to "meet requirements of efficient and democratic conduct";[39] it ensures that the C&G Division can be swiftly returned to a state in which it is governed and operates lawfully and effectively in its members' interests and, thereby, facilitates the lawful and effective operation of the framework for the regulation of relationships established by the FW Act and the FWRO Act between constitutional corporations and their employees. On the basis of the reasoning in *Work Choices*, Pt 2A falls within s 51(xx).

26 That conclusion is reinforced by authorities concerning earlier industrial relations schemes,
20 which provided for the registration, incorporation and regulation of associations of employers and employees in reliance on the conciliation and arbitration power in s 51(xxxv).[40] In that context, this Court accepted that laws by which Parliament provides

[34] (2006) 229 CLR 1 at [198] (Gleeson CJ, Gummow, Hayne, Heydon and Crennan JJ), quoting *Re Pacific Coal Pty Ltd; Ex parte CFMEU* (2000) 203 CLR 346 at [83] (Gaudron J).

[35] *Work Choices* (2006) 229 CLR 1 at [322] (Gleeson CJ, Gummow, Hayne, Heydon and Crennan JJ).

[36] *Work Choices* (2006) 229 CLR 1 at [309] (Gleeson CJ, Gummow, Hayne, Heydon and Crennan JJ). As the majority explained at [36], much of the substantive content of the Schedule was the same as that which had appeared in the previous Act, when it was supported by s 51(xxxv).

[37] *Work Choices* (2006) 229 CLR 1 at [319] (Gleeson CJ, Gummow, Hayne, Heydon and Crennan JJ).

[38] See FWRO Act, ss 18-20. At the time of *Work Choices*, an association of employees could apply to be registered if it was itself a constitutional corporation, or a majority of its members were federal system employees: see [314]. Now an association of employees may apply for registration if it is a constitutional corporation or some or all of its members are federal system employees. For present purposes nothing turns on that distinction, because a majority of the members of the CFMEU are employed, or usually employed, by a constitutional corporation: **SCB1 137 [40]**.

[39] See *Work Choices* (2006) 229 CLR 1 at [322] (Gleeson CJ, Gummow, Hayne, Heydon and Crennan JJ).

[40] See, eg, *Jumbunna Coal Mine NL v Victorian Coal Miners' Association* (1908) 6 CLR 309; *Australian Boot Trade Employees' Federation v Commonwealth* (1954) 90 CLR 24 at 40 (Dixon CJ); *R v Bowen; Ex parte Amalgamated Metal Workers and Shipwrights' Union* (1980) 144 CLR 462 at 471 (Gibbs J).

for the cancellation of a particular association's registration in the public interest were supported by the same power pursuant to which the registration scheme was enacted.[41] By parity of reasoning, as s 51(xx) supports the FWRO Act, it also supports measures that Parliament considers in the public interest to ensure that organisations registered under that Act function lawfully and effectively.

27 None of the matters raised by the Plaintiffs detract from that conclusion. ***First***, this case is not akin to the *Communist Party Case*: cf **PS [16]**. Although the enumerated powers of the Parliament do not include a head of power to legislate with respect to the administration of voluntary associations generally, as *Work Choices* establishes, constitutional support for such a law may nevertheless be found within the scope of a specific head of power.[42]

28 ***Second***, no constitutional difficulty arises from the use of the term "public interest" in s 323B(1): cf **PS [17]-[19]**. There are many examples in Commonwealth legislation of statutory powers being conditioned on a decision-maker's satisfaction of the "public interest". It is "well established" that such provisions import "a discretionary value judgment to be made by reference to undefined factual matters".[43] But such powers are "neither arbitrary nor completely unlimited".[44] That is particularly so in s 323B(1), where the concept of "public interest" is not at large, the Minister being expressly required to consider whether placing the C&G Division into administration is in the public interest "having regard to the Parliament's intention" in enacting the FWRO Act as set out in s 5. Section 323B is far removed from the hypothetical law discussed in *Plaintiff S157/2002*.[45] The apparent suggestion that Parliament has not even made a "law" — because s 323B

[41] *R v Ludeke; Ex parte Australian Building Construction Employees' and Builders Labourers' Federation* (1985) 159 CLR 636 at 650 (Gibbs CJ, Wilson, Brennan, Deane and Dawson JJ). See also *Australian Building Construction Employees' and Builders' Labourers Federation v Commonwealth* (1986) 161 CLR 88 at 94 (the Court); *R v Sweeney; Ex parte Northwest Exports Pty Ltd* (1981) 147 CLR 259 at 272-274 (Mason J).

[42] See *Australian Communist Party v Commonwealth* (1951) 83 CLR 1 at 184 (Dixon J).

[43] ***Pilbara*** *Infrastructure Pty Ltd v Australian Competition Tribunal* (2012) 246 CLR 379 at [42] (French CJ, Gummow, Hayne, Crennan, Kiefel and Bell JJ). See also *Plaintiff M79/2012 v Minister for Immigration and Citizenship* (2013) 252 CLR 336 at [39] (French CJ, Crennan and Bell JJ), [127] (Gageler J).

[44] *Pilbara* (2012) 246 CLR 379 at [42] (French CJ, Gummow, Hayne, Crennan, Kiefel and Bell JJ), quoting *Water Conservation and Irrigation Commission (NSW) v Browning* (1947) 74 CLR 492 at 505 (Dixon J). Indeed, the Plaintiffs ask the Court to apply a higher standard than exists even in the United States under its "non-delegation" doctrine: cf *Grundy v United States*, 588 US 128 (2019) at 145, 152-158; *National Broadcasting Co v United States*, 319 US 190 (1943) at 216; *NY Central Securities Co v United States*, 287 US 12 (1932) at 24-25. That doctrine gives effect to a stricter separation of executive and legislative power than has been held to exist in the Constitution: cf *Victorian Stevedoring and General Contracting Co Pty Ltd v Dignan* (1931) 46 CLR 73 at 96-102 (Dixon J), 114-119 (Evatt J).

[45] (2003) 211 CLR 476 at [102]: "The inclusion in the Act of such provisions to the effect that, notwithstanding anything contained in the specific provisions of the statute, the Minister was empowered to make any decision respecting visas, provided it was with respect to aliens, might well be ineffective."

does not amount to a "rule of conduct or a declaration as to power, right or duty" (**PS[19]**) — is absurd. Its acceptance would have untold ramifications for the statute book.

29 ***Third***, Pt 2A is not beyond power by reason of anything said in *Spence*: cf **PS [23]-[24]**. For the purpose of conducting a head of power analysis, the majority drew a distinction between: (i) a law that operates "directly on the subject matter of a Commonwealth legislative power"; and (ii) a law that operates in an area that is "incidental" to the subject matter of the power.[46] For laws in the first category, there is no occasion to inquire into the "proportionality" (or "appropriateness or adaptedness") of the law.[47] The relevance of such an inquiry to laws in the second category is less well settled.[48] But, even if it is relevant,
10 the majority in *Spence* were simply acknowledging that "consideration of the purposes which the law is or is not appropriate and adapted to achieve may illuminate the required connection to the relevant head of power".[49] Their Honours were not inviting a free-standing "proportionality" analysis directed to the justice, wisdom, necessity or desirability of the law.[50] In any event, for the reasons outlined at [14] above, Pt 2A is appropriately characterised as a law to enable the C&G Division swiftly to be returned to a state in which it is governed and operates lawfully and effectively to advance the scheme for the regulation of relationships established by the FW Act and the FWRO Act. Accordingly, Pt 2A has a sufficient connection to the same power as supports the scheme as a whole. The existence of that connection does not depend upon the Court being persuaded of the
20 necessity or wisdom of Pt 2A.

C IMPLIED FREEDOM OF POLITICAL COMMUNICATION (QUESTIONS 2–3)

30 The Plaintiffs contend that Pt 2A is invalid because it infringes the implied freedom of political communication and, as a consequence, that s 177A of the FW Act is also invalid (Question 2). They also contend that the Determination is invalid by reason of the implied freedom of political communication (Question 3). Both contentions should be rejected.

C.1 The challenge to Pt 2A (Question 2)

31 Part 2A does not, in and of itself, burden political communication *at all*: cf **PS [27]; HS [25]**. For any burden to be imposed, the Minister must first make a determination under

[46] *Spence* (2019) 268 CLR 355 at [58]-[59] (Kiefel CJ, Bell, Gageler and Keane JJ).

[47] See, eg, *Plaintiff S156* (2014) 254 CLR 28 at [35]-[36] (the Court).

[48] *Spence* (2019) 268 CLR 355 at [63] (Kiefel CJ, Bell, Gageler and Keane JJ), [350] (Edelman J). Notably, in *Work Choices*, the majority did not undertake any such inquiry in concluding that Sch 1 to the WR Act was valid. And the majority in *Spence* confirmed (at [58]) that, at least in part, Sch 1 was supported by s 51(xx) because it operated directly upon corporations.

[49] *Spence* (2019) 268 CLR 355 at [63], see also [60], [62] (Kiefel CJ, Bell, Gageler and Keane JJ).

[50] See *Spence* (2019) 268 CLR 355 at [57] (Kiefel CJ, Bell, Gageler and Keane JJ).

s 323B(1). If the Minister does so, then the nature and extent of any burden arising from Pt 2A will depend: (a) on the terms of that determination; and (b) how the administrator exercises their powers and functions under s 323K(1) (as recognised in **HS [24]**).

32 The implied freedom of political communciation is a restriction on the scope of legislative power.[51] For that reason, where the exercise of a power conferred by statute is said to burden political communication, the starting point is ordinarily to test the validity of the authorising provision in the statute against the implied freedom (the **constitutional question**). If the authorising provision is valid without any need to read it down or partially disapply it to preserve validity, then no further constitutional issue arises, and the validity
10 of any particular exercise of power depends solely on whether that exercise of power falls within the scope of the authorising provision (the **statutory question**).[52]

33 However, some statutory provisions (including, for example, all general regulation-making powers) are "so broadly expressed as to require [them] to be read down as a matter of statutory construction to permit only those exercises of discretion that are within constitutional limits".[53] In such cases, "constitutional analysis at the level of the statute produces no useful answer".[54] Instead, in such cases, the statutory question "converges" with the constitutional question.[55] To determine whether a particular exercise of the power is valid, one can proceed by hypothesising whether a particular exercise of statutory power would directly infringe a constitutional limit.[56] If so, it will be invalid — not because it
20 actually directly infringes the constitutional limit, but because it will necessarily exceed the scope of the authorising provision (as construed conformably with that limit).[57]

34 Section 323B(1) is a law that should be analysed in this way: the breadth of the criterion for its exercise, and the range of possible variants of a determined "scheme" if the power

[51] *Comcare v **Banerji*** (2019) 267 CLR 373 at [20] (Kiefel CJ, Bell, Keane and Nettle JJ).

[52] *Commonwealth v **AJL20*** (2021) 273 CLR 43 at [43] (Kiefel CJ, Gageler, Keane and Steward JJ); ***Palmer** v WA* (2021) 272 CLR 505 at [63] (Kiefel CJ and Keane J), [119], [128] (Gageler J), [202], [208] (Gordon J).

[53] *Palmer* (2021) 272 CLR 505 at [122] (Gageler J). See also *YBFZ* [2024] HCA 40 at [19] (Gageler CJ, Gordon, Gleeson and Jagot JJ), [170]-[171] (Edelman J), [327] (Beech-Jones J); *Miller v TCN Channel Nine Pty Ltd* (1986) 161 CLR 556 at 613-614 (Brennan J); *Wotton v Queensland* (2012) 246 CLR 1 at [10], [21]-[22] (French CJ, Gummow, Hayne, Crennan and Bell JJ); ***Wainohu** v NSW* (2011) 243 CLR 181 at [113] (Gummow, Hayne, Crennan and Bell JJ).

[54] ***Cotterill** v Romanes* (2023) 413 ALR 360 at [86] (Emerton P, McLeish and Kennedy JJA).

[55] *Palmer* (2021) 272 CLR 505 at [122] (Gageler J); *Cotterill* (2023) 413 ALR 360 at [65], [82] (Emerton P, McLeish and Kennedy JJA).

[56] See *Palmer* (2021) 272 CLR 505 at [124] (Gageler J).

[57] *Palmer* (2021) 272 CLR 505 at [119], [122] (Gageler J); ***Wainohu*** (2011) 243 CLR 181 at [113] (Gummow, Hayne, Crennan and Bell JJ); ***Tajjour** v NSW* (2014) 254 CLR 508 at [171]-[172] (Gageler J); *Industrial Relations Act Case* (1996) 187 CLR 416 at 503 (Brennan CJ, Toohey, Gaudron, McHugh and Gummow JJ).

is exercised, mean that "the question whether a burden imposed through [its] exercise … is justified across the range of potential outcomes of the exercise of that discretion might not yield a ready answer".[58] Nonetheless, Pt 2A is valid in its entirety. It is valid because the powers that it confers are to be construed as not authorising the imposition of unjustified burdens on political communication. Thus, Question 2 must be answered "no".

35 The proposed intervener, Mr Hiscox, seeks to put before the Court evidence about how the Administrator has in fact exercised the power in s 323K(1) to give various directions: **HS [21], [44]**. That evidence would be relevant in a different case, involving a challenge to thoses exercises of power on the ground that they are *ultra vires* under Pt 2A. However, the Plaintiffs do not make any such challenge: this proceeding concerns only the validity of Pt 2A and the Determination. Evidence concerning particular exercises of power under s 323K is therefore irrelevant; it should not be received. Apart from raising matters based on that evidence, Mr Hiscox's submissions do not add to those of the (well-represented) Plaintiffs.[59] His application for leave to intervene should therefore be refused.

C.2 The challenge to the Determination (Question 3)

36 Question 3 asks whether the Determination is invalid because it is "not authorised" by Pt 2A "by reason of the implied freedom of political communication". The Plaintiffs' submissions concerning Question 3 comprise a single sentence, which simply asserts that the Determination is invalid for the same reasons as Pt 2A: **PS [37]**.

37 For the reasons addressed in [33] above, the validity of the Determination is appropriately tested by asking whether, had the Determination been enacted as legislation, it would have been compliant with the implied freedom.[60] Accordingly, whether the Determination infringes the implied freedom is to be answered by: *first*, determining whether it places an "effective burden" upon political communication; and *second*, determining whether that burden is "justified". The question of "justification" involves both an identification of the purpose of the law, and an assessment of whether the law is "proportionate" (or "reasonably appropriate and adapted") to achieve that purpose.[61]

[58] *Palmer* (2021) 272 CLR 505 at [123] (Gageler J), see also [227] (Edelman J).

[59] Cf *Unions NSW [No 2]* (2019) 264 CLR 595 at [56]-[57] (Kiefel CJ, Bell and Keane JJ); *Roadshow Films Pty Ltd v iiNet Ltd* (2011) 248 CLR 37 at [3] (the Court); *Levy v Victoria* (1997) 189 CLR 579 at 604 (Brennan CJ), quoting the ruling of the entire Court in *Kruger v Commonwealth* (1997) 190 CLR 1.

[60] See *Palmer* (2021) 272 CLR 505 at [124] (Gageler J); *YBFZ* [2024] HCA 40 at [19] (Gageler CJ, Gordon, Gleeson and Jagot JJ), [170]-[171] (Edelman J), [327] (Beech-Jones J).

[61] *Lange v Australian Broadcasting Corporation* (1997) 189 CLR 520 at 562 (the Court); *LibertyWorks* (2021) 274 CLR 1 at [45]-[46] (Kiefel CJ, Keane and Gleeson JJ), [93] (Gageler J), [134] (Gordon J).

38 ***Burden***: The question of whether and to what extent a law imposes an "effective burden" is a "qualitative" question to be answered by reference to the legal and practical operation of the law.[62] There will be such a burden if the "effect of the law is to prohibit, or put some limitation on, the making or the content of political communications".[63] The extent of the burden will often "assume some importance when considering what has to be justified and the questions to be addressed in that process".[64] For example, a burden that is "substantial" (as to the amount of communication restricted) or "direct" (in the sense of being targeted at political communication) will ordinarily require a greater justification than a burden that is "slight" or "incidental".[65] Similarly, a burden that is "discriminatory" (in the sense of
10 operating "more particularly against political communication expressive of a particular political view") may be more difficult to justify than one that is content-neutral.[66]

39 The Plaintiffs allege three ways by which Pt 2A burdens the implied freedom: **PS [27]**. They presumably allege that the Determination burdens the freedom in the same ways.

40 *First*, they contend that "by removing officers of the C&G Division from their positions, members are not represented by their chosen or appointed representatives". The Determination removes certain officers from their positions.[67] However, the facts reveal governance problems that at a minimum throw doubt on whether members have in fact freely chosen those officers by democratic processes: see [4]-[6] above. In those circumstances, the removal of certain officers from their positions does not necessarily
20 make political communication engaged in by the C&G Division "less representative" of members (cf **PS [27]**), and is not a significant burden on political communication. Particularly is that so given that members (and former officers) remain able to engage in political communication as they see fit (see immediately below).

41 *Second*, the Plaintiffs contend that "by placing the C&G Division under the control of an

[62] *Brown* (2017) 261 CLR 328 at [180] (Gageler J), see also at [84], [118] (Kiefel CJ, Bell and Keane JJ), [237] (Nettle J), [316], [326] (Gordon J), [484]-[488] (Edelman J).

[63] *Monis v The Queen* (2013) 249 CLR 92 at [108] (Hayne J); *Unions NSW v New South Wales* (2013) 252 CLR 530 at [119] (Keane J); ***Farm Transparency*** *International Ltd v NSW* (2022) 277 CLR 537 at [154] (Gordon J).

[64] *LibertyWorks* (2021) 274 CLR 1 at [63] (Kiefel CJ, Keane and Gleeson JJ), see also at [94] (Gageler J), [136] (Gordon J); *Farm Transparency* (2022) 277 CLR 537 at [26], [36] (Kiefel CJ and Keane J), [156], [175] (Gordon J).

[65] *Brown* (2017) 261 CLR 328 at [118], [128] (Kiefel CJ, Bell and Keane JJ), [164] (Gageler J), [291] (Nettle J), [478] (Gordon J).

[66] See *Brown* (2017) 261 CLR 328 at [199], see also at [202], [232] (Gageler J), [92]-[95] (Kiefel CJ, Bell and Keane JJ); *Clubb* (2019) 267 CLR 171 at [54]-[56], [102], [127] (Kiefel CJ, Bell and Keane JJ), [174], [183] (Gageler J), [372] (Gordon J).

[67] Determination, cl 3(1)(a), read with Annexure B. See also FWRO Act, s 323B(3)(b)-(c).

Administrator, members are not free to engage in political activity in association with each other or as an association of people together unless the Administrator permits it": **PS [27]**. But the Determination imposes no such burden. It contains no restriction on the ability of members to engage in political activity with each other or as an association of people. In fact, the special case shows that CFMEU members, including the First Plaintiff, have participated in protests, identifying themselves as the CFMEU and coordinating with other unions, since the administration commenced: **SCB 165-167 [148]-[151], 1379-1443**.

42 *Third*, the Plaintiffs contend that the C&G Division is "unable to use its property to engage in political communication, or to make political donations or incur expenditure, except with permission of the Administrator". It is true that, once the Determination was made and the administration came into force, s 323K(1)(a) gave the Administrator immediate "control of the property and affairs" of the C&G Division. But the extent to which that results in a burden on the implied freedom depends on how the Administrator actually exercises those powers. There are significant constraints on the Administrator's powers which at least go a considerable distance to ensure that the exercise of those powers does not unjustifiably burden the implied freedom.[68] And, critically, even if the Court were to conclude that those constraints do not ensure that s 323K is valid across the full range of its operations, that would mean only that the constitutional and statutory questions would again "converge" such that the Administrator's powers under s 323K would be properly construed as operating subject to any relevant constitutional limits. For that reason, whether any burden on political communication that may arise from the exercise of power by the Administrator is valid will depend on whether it can be justified in the event of a challenge to the exercise of that power (no such challenge being before the Court). Either way, that is not a burden that is attributable to the Determination, and so is irrelevant to Question 3.

43 None of those asserted burdens is properly described as either "direct" or "discriminatory". None involve the direct targetting of political communications by the C&G Division or any of its officeholders or members. The removal of officeholders by the Determination, and the enlivenment of the Administrator's control over property and affairs, are both incidents of the purpose sought to be achieved by Pt 2A: see [14] above. Nor does the Determination

[68] In exercising control over the property and affairs of the C&G Division, the Administrator must be satisfied he is acting in the best interests of members and have regard to the objects of the CFMEU as defined in its rules, so far as they are lawful: s 323K(5). Those objects include raising political levies, and donating to and/or affiliating with political parties, as well as other objects that may involve political communication: see CFMEU Rules, cl 4(y). See also cl 4(i), (n), (t): **SCB 249-250**. He must also act reasonably and for a proper purpose.

target any particular political viewpoint: cf **HS [41]**. The C&G Division and the C&G Divisional Branches have engaged in political communication across a range of public policy issues, and their position may vary from time to time: see **SCB 160-165**. For those reasons, to the extent that the Determination involves any burden on political communication, that burden is both slight and incidental to the pursuit of a purpose unrelated to restricting political communication.

44 ***Legitimate purpose:*** The purpose of Pt 2A, and the Determination made thereunder, is addressed at [14] above. That purpose is "legitimate", in the sense that it is "compatible with the maintenance of the constitutionally prescribed system of representative and

10 responsible government".[69] The Plaintiffs do not contend otherwise: see **PS [31]-[32]**.

45 ***Suitability***: A law will be "suitable" if it "exhibits a rational connection to its purpose, and a law exhibits such a connection if the means for which it provides are *capable* of realising that purpose".[70] The Determination meets that requirement: placing the C&G Division under administration (and removing certain office-holders) is capable of enabling it to be swiftly returned to a state in which it is governed and operates lawfully and effectively in its members' interests, for the ultimate goal of facilitating the operation of the federal workplace relations system.

46 ***Necessity***: A law will be "necessary" if there is no "obvious and compelling" alternative, which is equally practicable and available and which would result in a significantly lesser

20 burden on the implied freedom.[71] An alternative will not be "equally practicable" unless it is "as capable of fulfilling [the] purpose as the means employed by the impugned provision, 'quantitatively, qualitatively, and probability-wise'".[72] When the Minister made the Determination, there was no such alternative: cf **PS [34]**.

47 *First*, placing only specific parts of the C&G Division under administration would not have been "equally practicable": cf **HS [54]-[55]**. Parliament had ample basis to be concerned about the lawful and effective operation of the C&G Division *as a whole*: see [4]-[6] and [11]. Moreover, the various branches are governed by a common "supreme governing body" (the C&G Divisional Conference) and a common executive (the C&G Divisional Executive), and some officeholders (including those who have been found to have breached

[69] See *Clubb* (2019) 267 CLR 171 at [5] (Kiefel CJ, Bell and Keane JJ).

[70] *Banerji* (2019) 267 CLR 373 at [33] (Kiefel CJ, Bell, Keane and Nettle JJ) (emphasis added).

[71] *Banerji* (2019) 267 CLR 373 at [35] (Kiefel CJ, Bell, Keane and Nettle JJ).

[72] *Tajjour* (2014) 254 CLR 508 at [114] (Crennan, Kiefel and Bell JJ). See also *Farm Transparency* (2022) 277 CLR 537 at [46] (Kiefel CJ and Keane JJ).

industrial laws since 2019) hold offices both at the C&G Division level and within C&G Divisional Branches: **SCB 139-140 [56]-[57]**, **SCB 150 [97]**, cf **HS [57]**.

48 *Second*, the existing mechanism under s 323 of the FWRO Act was also not equally practicable for at least two reasons: the General Manager's application would have taken significant time to determine; and it is at least doubtful whether s 323 empowers the Federal Court to make an order placing a registered organisation under external administration.[73] Parliament took the view that, in light of the history of the C&G Division and the recent serious allegations, it was imperative that the C&G Division could be *swiftly* placed into *external* administration. There was a basis for that conclusion, external to its own recitals:
10 see [4]-[6] above; cf **PS [51]**, invoking the *Communist Party Case*. Given the seriousness of the allegations, it was neither an obvious nor compelling alternative merely to impose additional reporting requirements or accounting requirements on particular officeholders, or to divest them only of specific powers: cf **HS [58]**. The Determination reflects a flexible approach, divesting officeholders of their powers for the duration of the scheme "or until otherwise agreed by the Administrator" (cl 3(1)(f)), and may be brought to an end generally or in respect of a particular branch within the first three years of the administration where the Administrator notifies the Minister that the C&G Division or a particular branch is functioning lawfully and effectively, and the Minister considers it to be in the public interest, having regard to Parliament's intention in enacting the FWRO Act, to do so
20 (s 323D(2A)).

49 ***Adequacy in balance***: A law will be "adequate in its balance" unless the benefit sought to be achieved by the law is manifestly outweighed by the adverse effect on the implied freedom.[74] The hurdle imposed by this final step is "very high".[75] The benefit which Pt 2A aims to achieve in restoring the lawful and effective functioning of the C&G Division is not manifestly outweighed by any burden the Determination may have upon the implied freedom (which, as noted above, is neither direct nor discriminatory, but merely an incidental effect of the pursuit of a legitimate purpose): cf **PS [35]**. In particular, the benefit is not outweighed by any burden on the implied freedom occasioned by the removal of

[73] Section 323(2) allows the Court to "approve a scheme for the taking of action by a collective body *of the organisation*, or by an officer or or officers *of the organisation*" (emphasis added); cf *Brown v Health Services Union* (2012) 205 FCR 548 at [114] (Flick J).

[74] *Banerji* (2019) 267 CLR 373 at [38] (Kiefel CJ, Bell, Keane and Nettle JJ); *LibertyWorks* (2021) 274 CLR 1 at [85] (Kiefel CJ, Keane and Gleeson JJ), [201] (Edelman J); *Farm Transparency* (2022) 277 CLR 537 at [55] (Kiefel CJ and Keane J).

[75] *LibertyWorks* (2021) 274 CLR 1 at [292] (Steward J).

officeholders: see [40] above. The Determination effects any such burden in circumstances where a majority of branches of the C&G Division have engaged in unlawful behaviour on an unprecedented scale and over a prolonged period, in which on many occasions the removed officers have participated, and which in all cases they have failed to prevent.

50 If the Administrator exercises powers during the administration in a way that burdens political communication, those exercises of power will be *ultra vires* unless that burden can be justified as suitable, necessary and adequate in its balance. But the possibility that particular exercises of power by the Administrator may be invalid on this basis is irrelevant to the validity of the Determination. Question 3 should therefore be answered "no".

10

D CHAPTER III (QUESTION 4)

51 The Parliament is prohibited by Ch III from conferring upon the legislative and executive branches any part of the "judicial power of the Commonwealth". That power cannot be exhaustively defined, but there are some functions which "have become established as essentially and exclusively judicial", one of which is the "adjudgment and punishment of criminal guilt".[76] As a result, a law will infringe Ch III if it confers on the executive a power "to impose a measure that is properly characterised as penal or punitive".[77] A law will be so characterised if it is: (a) prima facie punitive; and (b) not reasonably capable of being seen as necessary for a non-punitive and legitimate purpose.[78]

52 The Plaintiffs' Ch III case is confined to the validity of s 323B(1): **PS [39]**. That case confronts the immediate difficulty that s 323B(1) does not, by itself, have any punitive effect. It is only when the Minister actually exercises that power to make a determination that Pt 2A has any effect on rights, duties or liabilities. Further, as a statutory power that is expressed in broad terms, s 323B(1) must be construed "to permit only those exercises of discretion that are within constitutional limits": see [33] above.[79] Accordingly, as a matter of statutory construction, s 323B(1) does not authorise the making of a determination that would be prima facie punitive but not reasonably capable of being seen as necessary for a legitimate and non-punitive purpose.[80] So construed, s 323B(1) clearly is not contrary to

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[76] *Chu Kheng Lim v Minister for Immigration, Local Government and Ethnic Affairs* (1992) 176 CLR 1 at 27 (Brennan, Deane and Dawson JJ).

[77] *Benbrika v Minister for Home Affairs* (2023) 97 ALJR 899 (***Benbrika [No 2]***) at [34]-[36] (Kiefel CJ, Gageler, Gleeson and Jagot JJ). See also *YBFZ* [2024] HCA 40 at [16] (Gageler CJ, Gordon, Gleeson and Jagot JJ).

[78] See ***Jones*** *v Commonwealth* (2023) 97 ALJR 936 at [43] (Kiefel CJ, Gageler, Gleeson and Jagot JJ), [78] (Gordon J), [153] (Edelman J); *NZYQ* (2023) 97 ALJR 1005 at [39] (the Court); *YBFZ* [2024] HCA 40 at [18] (Gageler CJ, Gordon, Gleeson and Jagot JJ).

[79] *Palmer* (2021) 272 CLR 505 at [122] (Gageler J).

[80] *YBFZ* [2024] HCA 40 at [18] (Gageler CJ, Gordon, Gleeson and Jagot JJ).

Ch III. Of course, a plaintiff could raise a *statutory question* as to whether any particular determination purportedly made under s 323B(1) is invalid because it is prima facie punitive and not reasonably capable of being seen as necessary for a non-punitive and legitimate purpose.[81] But no such question is presently before the Court. For the above reasons, the challenge that is advanced must be rejected, and Question 4 answered "no".

D.1 The detriments authorised by s 323B(1) are not prima facie punitive

53 Even if it is thought necessary to assess the validity of s 323B(1) against Ch III without reference to the rule of construction identified above, the Court should hold that s 323B(1) does not infringe Ch III across the range of its potential operations because it does not
10 confer power to impose any measure that is prima facie punitive in the relevant sense.

54 In *YBFZ*, the entire Court accepted that Ch III does *not* create a constitutional limit that applies to every law that imposes hardship or detriment.[82] The widest statement of the reach of Ch III was made by the plurality, who identified the kinds of detriment that may engage the limit by referring to laws concerned with "the protection of human life (from arbitrary capital punishment), limb, now called bodily integrity (from arbitrary corporal punishment) and liberty (from arbitrary detention)".[83] The Plaintiffs identify four distinct types of detriment that they contend may be imposed by an exercise of the power in s 323B(1): **PS [40]-[41], [43]-[45]**. None involve interference with human life, bodily integrity or liberty.[84] That suggests that the power to impose the kinds of detriment upon which the
20 Plaintiffs rely is not even prima facie punitive.

55 Further, even if Ch III is concerned with power to impose detriments unrelated to life, bodily integrity or liberty, none of the detriments upon which the Plaintiffs rely are of a kind that "ordinarily" constitute punishment.[85] Nor are they comparable in "nature and severity" to the detriments that have to date been found to be punitive in the relevant sense.[86] Indeed, the detriments imposed upon the CFMEU (as a registered organisation) and Plaintiffs (as former officers thereof) primarily affect their participation in the federal

[81] See *Jones* (2023) 97 ALJR 936 at [41] (Kiefel CJ, Gageler, Gleeson and Jagot JJ), [78] (Gordon J), [153] (Edelman J); *NZYQ* (2023) 97 ALJR 1005 at [39] (the Court).

[82] *YBFZ* [2024] HCA 40 at [6] (Gageler CJ, Gordon, Gleeson and Jagot JJ), [135] (Edelman J), [181]-[183] (Steward J), [240] (Beech-Jones J). See also *Re Woolley; Ex parte Applicants M276/2003* (2004) 225 CLR 1 at [17] (Gleeson CJ); ***Duncan*** *v NSW* (2015) 255 CLR 388 at [46] (the Court).

[83] *YBFZ* [2024] HCA 40 at [12], see also [9], [14], [15] (Gageler CJ, Gordon, Gleeson and Jagot JJ).

[84] Of course, the CFMEU itself (as a corporate entity) has no such rights.

[85] Cf *NZYQ* (2023) 97 ALJR 1005 at [28], [40] (the Court).

[86] *Benbrika [No 2]* (2023) 97 ALJR 899 at [21] (Kiefel CJ, Gageler, Gleeson and Jagot JJ), see also at [109], [112] (Edelman J), [141], [144] (Steward J); *Alexander* (2022) 276 CLR 336 at [166] (Gordon J); *Jones* (2023) 97 ALJR 936 at [76] (Gordon J), [149] (Edelman J).

workplace relations scheme. It is orthodox for Parliament to determine (or empower the Minister to determine) an entity's fitness to participate in such a scheme, including by reference to past breaches of law.[87]

56 ***Property of the CFMEU*: ** The *first* detriment identified by the Plaintiffs concerns the effect on the CFMEU's property. But, in *Duncan*, the Court held that legislative deprivation of valuable assets did not constitute punishment in the sense relevant to judicial power.[88] Further, it is relevant that at Federation[89] legislatures could authorise the compulsory acquisition of property (usually upon the payment of compensation).[90] That position is reflected in s 51(xxxi) of the Constitution. If detrimental effects on property are punitive

10 in the sense relevant to Ch III even when they are not linked to the adjugment and punishment of criminal guilt,[91] that would cut across the constitutional design because it would require those detrimental effects to be justified according to a constitutional standard going far beyond the provision of just terms.[92]

57 Contrary to **PS [41]**, there is no analogy between s 323B and forfeiture laws. A determination under s 323B does not involve forfeiture of the CFMEU's property. The better analogy is with the appointment of receivers. The Plaintiffs' attempt to diminish the significance of that analogy hinges on their claim that a receiver is ordinarily appointed by court order or by consent: **PS [42]**. But to focus on the mode of appointment is to miss the point (although, if it be relevant, there are precedents for involuntary external

20 administration effected by the executive[93]). The important point is that the appointment of a receiver has an equivalent effect on property to the appointment of an administrator, and yet such appointments are not treated as punitive.[94]

58 ***Offices and employment:*** The *second* detriment identified by the Plaintiffs is that office-

[87] See, by analogy, *YBFZ* [2024] HCA 40 at [137] (Edelman J); *Australian Communications and Media Autority v Today FM (Sydney) Pty Ltd* (2015) 255 CLR 352 at [33] (French CJ, Hayne, Kiefel, Bell and Keane JJ).

[88] (2015) 255 CLR 388 at [46] (the Court).

[89] See *Smethurst v Commissioner of Police (Cth)* (2020) 272 CLR 177 at [239] (Edelman J); *ICM Agriculture v Commonwealth* (2009) 240 CLR 140 at [183] (Heydon J).

[90] See *R & R Fazzolari Ltd v Parramatta City Council* (2009) 237 CLR 603 at [41] (French CJ).

[91] Cf *Palmer v WA* (2021) 274 CLR 286 (***Palmer (Mineralogy)***) at [15] (Edelman J).

[92] See *YBFZ* [2024] HCA 40 at [94] (Edelman J).

[93] See, eg, *Corporations Act 2001* (Cth), s 489EA (ASIC-ordered winding up and appointment of interim liquidator), Pt 7.3B (Reserve Bank can place the holder of a CS facility licence under statutory management); *Private Health Insurance (Prudential Supervision) Act 2015* (Cth), ss 51-52 (APRA may appoint an external manager to a health benefits fund); *Banking Act 1959* (Cth), s 13A(1) (APRA may appoint a statutory manager to an ADI).

[94] See *Palmer v Ayres* (2017) 259 CLR 478 at [85]-[87] (Gageler J).

holders of the C&G Division (and the C&G Divisional Branches) may have their offices vacated (**PS [43]-[44]**); the *third* is that employees of the CFMEU may have their employment terminated[95]: **PS [44]**. These detriments may, at most,[96] involve interference with a person's contractual rights. But the legislative nullification of contractual rights (even where they have been vindicated in arbitral awards[97]) has been held not to be incompatible with Ch III (including on the basis that it is not "punitive").[98]

59 ***"Disenfranchisment":*** The *fourth* alleged detriment is that officers and members of the C&G Division may be "disenfranchised", in the sense that the power may be exercised in a way that vacates offices of the C&G Division and empowers the administrator to

10 determine if and when elections for those offices may be held: **PS [45]**. However, any "right" to elect the office-holders of an organisation would, at most, be contractual.[99] There is no basis to treat legislative variation of a legislative right (or a contractual right) as punitive. While the Plaintiffs assert that "[d]isenfranchisement has historically been used as a form of punishment for criminal offending" (**PS [45])**, the examples they cite concern voting in public elections, not voting for office-holders within an organisation. There is no basis to treat that lesser form of "disenfrachisment" as exclusively within the purview of courts.

D.2 Section 323B(1) is justified

60 Even if any of the four detriments identified by the Plaintiffs can be characterised as prima

20 facie punitive, s 323B(1) nonetheless "escape[s] characterisation as punishment"[100] because: ***first***, the purpose of the power is both "non-punitive" and "legitimate";[101] and

[95] There are no facts in the Special Case that identify any individual who has had their employment terminated, or the terms on which that occurred.

[96] It is not clear that the rules of the CFMEU create a contract between officers and the union (there being no equivalent in the FWRO Act to s 140 of the *Corporations Act 2001* (Cth), which deems a company's constitution to operate as a contract between the company, its directors and its members). Further, s 164 of the FWRO Act provides non-contractual remedies for non-performance, by empowering the Federal Court (on application by a member) to direct the performance or observance of the rules. In general, the termination of a statutory right cannot be described as punitive: see *Duncan* (2015) 255 CLR 388 at [41] (the Court).

[97] See *Mineralogy* (2021) 274 CLR 219 at [20]-[26], [33] (Kiefel CJ, Gageler, Keane, Gordon, Steward and Gleeson JJ), [95] (Edelman J).

[98] See *Palmer (Mineralogy)* (2021) 274 CLR 286 at [7] (Kiefel CJ, Gageler, Keane, Gordon, Steward and Gleeson JJ), [13]-[16] (Edelman J).

[99] The rules of an organistion must provide for elections: FWRO Act, s 143. But, again, that statutory limitation is superseded by Pt 2A: see s 323F.

[100] *Jones* (2023) 97 ALJR 936 at [49] (Kiefel CJ, Gageler, Gleeson and Jagot JJ).

[101] See *NZYQ* (2023) 97 ALJR 1005 at [40] (the Court).

second, the power is "reasonably capable of being seen as necessary" for that purpose.[102]

61 The purpose of s 323B(1) is the same as the purpose of Pt 2A: see [14] above. It is both non-punitive and legitimate, for the reasons already addressed. For completeness, while Pt 2A was enacted in a context of allegations that some officers of the C&G Division "may have engaged" in criminal conduct (**PS [47]**), its operation does not depend on the correctness of those allegations. It "does not adopt, and does not fasten upon"[103] any actual or alleged breaches of some "antecedent of standard of conduct": cf **PS [47]**. Nor is it any part of its purpose to exact "retribution" for any conduct of the C&G Division or any of its officers.[104] For those reasons, it is not open to characterise s 323B(1) as authorising the
10 imposition of punishment consequent upon a legislative determination of breach.[105]

62 As to whether s 323B is reasonably capable of being seen as necessary for its purpose, if that question is reached it must follow that the Court has concluded that s 323B may not be valid across the full range of its operations (if, for example, some potential exercises of power under s 323B may be prima facie punitive). However, it would be difficult to undertake a "means and ends" analysis at the level of the statute, because the "means" will be indeterminate unless and until the power conferred by s 323B(1) is actually exercised by making a Determination. For that reason, if the Court reaches this step in the analysis, it should complete the analysis at the level of the exercise of statutory power (see [33] above): ie, by asking whether *the Determination* is prima facie punitive and, if so, whether
20 it is reasonably capable of being seen as necessary for the purpose identified above. As the Plaintiffs chose not to challenge the Determination at that level (in contrast with their choice concerning the implied freedom), if the Court reaches this point it should conclude that Question 4 is inappropriate to answer. To avoid doubt, however, the Commonwealth's primary position is that Question 4 can and should be answered "no", on either the basis identified in [52] or that identified in [53] above.

E ACQUISITION OF PROPERTY (QUESTIONS 5 AND 6)

E.1 Section 323S provides "just terms" and a complete answer to the Plaintiffs' case

63 The short answer to both Questions 5 and 6 of the Special Case is that, even if ss 323K(1)

[102] *NZYQ* (2023) 97 ALJR 1005 at [40]-[41] (the Court). See also *Jones* (2023) 97 ALJR 936 at [38]-[39] (Kiefel CJ, Gageler, Gleeson and Jagot JJ), [63] (Gordon J), [148]-[149] (Edelman J), [188] (Steward J).

[103] *Duncan* (2015) 255 CLR 388 at [44] (the Court).

[104] Cf *Benbrika No 2* (2023) 97 ALJR 899 at [23] (Kiefel CJ, Gageler, Gleeson and Jagot JJ); *YBFZ* [2024] HCA 40 at [137] (Edelman J).

[105] See *Duncan* (2015) 255 CLR 388 at [43]-[50] (the Court). This also distinguishes s 323B from the various bills of pains and penalties and bills of attainder referred to in **PS fnn 38**, **41** and **43**. See also *Kariapper v Wijesinha* [1968] AC 717 at 736.

and 323M(1)-(2) are laws with respect to an "acquisition of property" within the meaning of s 51(xxxi), "just terms" are provided by s 323S.[106]

64 Any "property" affected by s 323K(1) or s 323M(1)-(2) is property of the CFMEU, being the legal entity that has the "power to purchase, take on lease, hold, sell, lease, mortgage, exchange and otherwise own, possess and deal with, any real or personal property": **SCB 129 [22.2.3]**. The C&G Division does not have separate legal personality (**SCB 138 [51]**) and, therefore, cannot itself hold or be deprived of any property. Accordingly, even if ss 323K(1) or 323M(1)-(2) effected an acquisition of property, the acquisition would be from the CFMEU, and the CFMEU is the "person" that would be entitled to compensation under s 323S(1). There is no basis, within the CFMEU Rules or elsewhere, for the Plaintiffs' assertion that the CFMEU would have "legal title to the compensation but no ability to use it contrary to the administrator's wishes": **PS [67]**. It is true that the funds of the CFMEU are under the "control of the body which receives such funds pursuant to the [CFMEU Rules]": **SCB 148 [89.1]**.[107] But there is no basis to infer that any compensation received by the CFMEU under s 323S would be received by the C&G Division, as opposed to that part of the CFMEU responsible for claiming any compensation (such as the National Office). Questions 5 and 6 can therefore be answered "no" without any further analysis.

E.2 Control of property: s 323K

65 In any event, ss 323K(1)(a)-(c) do not effect any acquisition of property. At least generally speaking, if a body corporate owns property, and there is a change in the persons who control that body corporate (whether, for example, as a result of a change in directors or the appointment of a receiver), the property remains property of the body corporate. The former directors are not "deprived" of property by reason of their loss of capacity to control the property of the body corporate, and similarly the new directors do not "acquire" the property of the body corporate because they now control it.

66 In the present case, it is true that, for the period of the administration, the Administrator has a statutory power to control the property and affairs of the C&G Division and its Divisional Branches (s 323K(1)). But, as the terms of that power recognise, the property remains that of the Division (in the particular sense explained in s 323K(6)). Further, the Administrator possesses that power only in his capacity *as the administrator*: ie, as a

[106] See *Telstra Corporation Ltd v Commonwealth* (2008) 234 CLR 210 at [41]-[42] (the Court); *Wurridjal v Commonwealth* (2009) 237 CLR 309 at [108] (French CJ), [195]-[197] (Gummow and Hayne JJ), [324] (Heydon J), [461]-[466] (Kiefel J).

[107] CFMEU Rules, r 23(vi).

representative of, and fiduciary for, the administered entities. So much is confirmed by the limitations in s 323K(5). The Administrator does not acquire any rights or interests in the relevant property that would allow any dealing with the property independently of the statutory power in s 323K (eg, as owner). It follows that, whether or not anyone has been deprived of property (which is far from clear), the Administrator has not "acquired" any property, meaning that s 51(xxxi) is not engaged.[108] The statutory powers of the Administrator, which can be exercised only in the interests of the members and having regard to the objects of the CFMEU, distinguish this case from the *Bank Nationalisation Case*, where the provisions permitting the assumption of control by nominee directors were components of an overall scheme to "take command of the undertaking of the banking company and carry it on in the public, as opposed to private, interests": cf **PS [55]**.[109]

67 Finally, s 323K is not properly characterised as a law with respect to the "acquisition of property" within the meaning of s 51(xxxi). It would be "incompatible with the very nature of the exaction"[110] to require the payment of "just terms" — or, put another way, the acquisition is not "consistent or congruent with provision of compensation or rehabilitation".[111] There is a strong analogy between the Administrator being granted control of certain property under s 323K(1)(a)-(c) (as an incident of the C&G Division being placed under administration) and "the sequestration of the property of a bankrupt and its vesting in the Official Receiver".[112] Neither provision can be described "with any semblance of accuracy as a law for the acquisition of property".[113] The Court can reach that conclusion without undertaking any inquiry into the "proportionality" of s 323K(1)(a)-(c): cf **PS [56]-[58]**. What is critical is the "subject matter" of s 323K(1)(a)-(c).[114]

E.3 Administrator's remuneration: s 323M

68 Section 323M(1) and (2) operate to take "property" from the CFMEU (namely, money[115])

[108] ***Mutual Pools** & Staff Pty Ltd v Commonwealth* (1994) 179 CLR 155 at 185 (Deane and Gaudron JJ).

[109] *Bank of NSW v Commonwealth* (1948) 76 CLR 1 at 348 (Dixon J).

[110] *Theophanous v Commonwealth* (2006) 225 CLR 101 at [60] (Gummow, Kirby, Hayne, Heydon and Crennan JJ), quoted in *Attorney-General (NT) v **Emmerson*** (2014) 253 CLR 393 at [77] (French CJ, Hayne, Crennan, Kiefel, Bell and Keane JJ), see also at [110]-[112] (Gageler J).

[111] *Cunningham v Commonwealth* (2016) 259 CLR 536 at [58] (Gageler J). See also *Mutual Pools* (1994) 179 CLR 155 at 187 (Deane and Gaudron JJ).

[112] *Mutual Pools* (1994) 179 CLR 155 at 170 (Mason CJ). As to the historical relationship between bankruptcy and corporate insolvency, see Chief Justice Bathurst, "The Historical Development of Insolvency Law" (Speech, Francis Forbes Society for Australian Legal History, 3 September 2014) at [9]-[11], [55]-[63], [86].

[113] *Mutual Pools* (1994) 179 CLR 155 at 170 (Mason CJ), see also 178 (Brennan J), 188 (Deane and Gaudron JJ).

[114] *Emmerson* (2014) 253 CLR 393 at [80] (French CJ, Hayne, Crennan, Kiefel, Bell and Keane JJ).

[115] *Australian Tape Manufacturers Association Ltd v Commonwealth* (1993) 176 CLR 480 at 509 (Mason CJ, Brennan, Deane and Gaudron JJ).

and confer a corresponding proprietary benefit on the Administrator. But, again, the provisions are not properly characterised as laws with respect to an "acquisition of property" within s 51(xxxi). Again, it would be incongruent with the nature of the exaction to require the payment of "just terms" to the CFMEU — the legal entity which is responsible for the C&G Division's past conduct, and which will ultimately receive, in return, the benefit of the Administrator's work in fulfilling his role under Pt 2A.

F COSTS (QUESTION 7)

69 No order as to costs.

PART VI: ORDERS SOUGHT

10 70 The Questions in the Special Case should be answered: (1) No; (2) No; (3) No; (4) No; (5) No; (6) No; (7) No order as to costs.

PART VII: ESTIMATE OF TIME

71 It is estimated that 3.5 hours will be required for the Commonwealth's oral argument.

Dated: 18 November 2024

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IN THE HIGH COURT OF AUSTRALIA
SYDNEY REGISTRY

BETWEEN:

MICHAEL RAVBAR
First Plaintiff

WILLIAM LOWTH
Second Plaintiff

and

COMMONWEALTH OF AUSTRALIA
First Defendant

ATTORNEY-GENERAL OF THE COMMONWEALTH
Second Defendant

MARK IRVING KC
Third Defendant

ANNEXURE TO THE SUBMISSIONS OF THE FIRST AND SECOND DEFENDANTS

Pursuant to Practice Direction No 1 of 2019, the First and Second Defendants sets out below a list of the constitutional provisions, statues and statutory instruments referred to in these submissions.

No.	Description	Version	Provisions
Constitutional provisions			
1.	*Commonwealth Constitution*	Current	ss 51(xx), 51(xxxi), 51(xxxv), Ch III
Statutory provisions			
2.	*Acts Interpretation Act 1901* (Cth)	Current	s 11B
3.	*Banking Act 1959* (Cth)	Current	s 13A
4.	*Corporations Act 2001* (Cth)	Current	ss 140, 489EA, Pt 7.3B

No.	Description	Version	Provisions
5.	*Fair Work (Registered Organisations) Act 2009* (Cth)	Current	ss 5, 18-20, 143, 164, 323, 323A-323G, 323K, 323L(5), 323M(1)-(2), 323S, Ch 11, Pt 2A
6.	*Fair Work (Registered Organisations) Amendment (Administration) Act 2024* (Cth)	Current	Entirety
7.	*Fair Work Act 2009 (Cth)*	Current	s 177A
8.	*Judiciary Act 1903*	Current	s 78B
9.	*Private Health Insurance (Prudential Supervision) Act 2015* (Cth)	Current	ss 51-52
10.	*Workplace Relations Act 1996* (Cth)	As made	Sch 1
Statutory instruments			
11.	*Fair Work (Registered Organisations) (CFMEU Construction and General Division Administration) Determination 2024* (Cth)	Current	cll 3(1)(a), 3(1)(f), Annexure B