HIGH COURT OF AUSTRALIA

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Details of Filing

File Number:	S113/2024
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Important Information

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IN THE HIGH COURT OF AUSTRALIA S113 of 2024
SYDNEY REGISTRY

BETWEEN:

MICHAEL RAVBAR
Plaintiff

WILLIAM LOWTH
Second Plaintiff

and

COMMONWEALTH OF AUSTRALIA
First Defendant

ATTORNEY-GENERAL OF THE COMMONWEALTH
Second Defendant

MARK IRVING KC
Third Defendant

OUTLINE OF ORAL SUBMISSIONS OF THE ATTORNEY-GENERAL FOR THE STATE OF TASMANIA (INTERVENING)

Part I: Certification

1. This outline is in a form suitable for publication on the internet.

Part II: Outline of propositions to be advanced in oral argument

2. The Attorney-General relies upon his written submissions and adopts the submissions of the First and Second Defendants in relation to the implied freedom of political

communication and Chapter III of the Constitution. We intend to address the Court only on the following points.

Identification of purpose

3. The purpose of the legislation is not contained in statements made by Mr Irving SC (SCB) (**Tas [17],** cf **Reply [24]**). Just as the "words of a Minister must not be substituted for the text of the law" and "the function of the court is to give effect to the will of Parliament as expressed in the law" so too, commitments made by Mr Irving SC must not be taken to supply the purpose of the legislation (*Re Bolton; ex parte Beane* (1987) 162 CLR 514 at 518 **JBA 16 Tab 68; Tas [17]**).

4. Nor should the legislative purpose be found in any suggested reliance by members of Parliament on Mr Irving's goals and intentions (SCB 1282). The subjective views of members of Parliament are of no relevance (*Unions NSW v New South Wales* (2019) 264 CLR 595 at [169] **JBA 17 Tab 79; Tas [40]**). Similarly, any political bargaining in order to secure support for the passage of a Bill through Parliament is not a proper foundation for identifying the purpose of Part 2A (Supp SCB 20).

5. The Plaintiffs' suggestion that permitting political donations on a case by case basis is contrary to Part 2A (**Reply [24]**) therefore cannot be supported.

The purpose of the Determination is not punitive

6. The categories of "punishment" to which Ch III considerations apply do not encompass the types of detriments complained about by the Plaintiffs. It is well accepted that "legislative detriment cannot be equated with legislative punishment" (*Duncan v New South Wales* (2015) 255 CLR 388, [46] **JBA 9, Tab 39**). It is also accepted that Ch III does not "create a constitutional limit applying to every law that imposes a detriment on a person" (*YBFZ* v *Minister for Immigration, Citizenship and Multicultural Affairs* [2024] HCA 40 at [6] **JBA 20, Tab 98**).

7. This case is comparable to the circumstances in *Duncan* in which statutory entitlements (which were recognised as "valuable assets") were legislatively removed, yet doing so was not considered to be an exercise of judicial power.

8. The circumstances of this case are also comparable to those in *Visnic v Australian Securities and Investments Commission* (2007) 231 CLR 381 (**JBA 4, Tab 24**) and *Albarran v Companies Auditors and Liquidators Disciplinary Board; Gould v Magarey* (2007) 231 CLR 350 (**JBA 17, Tab 83**).

Dated: 10 December 2024

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