HIGH COURT OF AUSTRALIA

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Details of Filing

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IN THE HIGH COURT OF AUSTRALIA

SYDNEY REGISTRY **No. S98 of 2022**

BETWEEN

Unions NSW

First Plaintiff

New South Wales Nurses and Midwives' Association

Second Plaintiff

10 **Public Service Association and Professional Officers' Association Amalgamated Union of New South Wales**

Third Plaintiff

New South Wales Local Government, Clerical, Administrative, Energy, Airlines & Utilities Union

Fourth Plaintiff

and

20 **State of New South Wales**

Defendant

PLAINTIFFS' SUBMISSIONS

Part I: Internet publication

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

Part II: Concise statement of issues

2. This case concerns the constitutional validity of two provisions of the *Electoral Funding Act 2018* (NSW) (**EF Act**) governing the conduct of "third-party campaigners" (**TPCs**) – broadly, any person other than a political party, candidate or elected member, who incurs over $2000 in "capped period" expenditure to influence voting at an election. Section 29(11) caps TPCs' electoral expenditure in the capped period before a State by-election to $20,000 indexed, in circumstances where candidates may spend $245,600 indexed and parties have no cap.
10 Section 35 creates an offence, applicable only to TPCs and punishable by 400 penalty units and/or two years' imprisonment (s143(1)), for "acting in concert" with another person to incur capped period expenditure for a NSW election (including State general elections and State by-elections) that jointly exceeds the cap otherwise applicable to the TPC alone.

3. Both ss29(11) and 35 markedly impair the capacity of TPCs to participate in the political discourse for elections in NSW. The provisions were enacted without any basis for considering that they allow TPCs a meaningful opportunity to present their political messages to voters. They are not appropriate and adapted to the purposes of providing a level playing field in political campaigns or preventing candidates and parties from being "drowned out" by the "distorting influence of money". Each of ss29(11) and 35 pursue the illegitimate purpose of
20 privileging the voices of candidates and parties. The provisions infringe the implied freedom of political communication, and are invalid.

Parts III and IV: Section 78B of the *Judiciary Act 1903* (Cth) and judgments below

4. The plaintiffs have served s78B notices. The matter is in the Court's original jurisdiction.

Part V: Facts

5. The material facts are set out in the Special Case (**SC**) at [1]-[105]. The plaintiffs are trade union bodies, each representing many thousands of members. The first plaintiff is a peak body consisting of certain unions or branches of unions with members in NSW and is the "State peak council" for employees for the purposes of the *Industrial Relations Act 1996* (NSW) (**IR Act**) (SC[1]). Its objects include: (i) to improve the conditions and protect the interest of all classes
30 of labour within the sphere of its influence; and (ii) to secure the direct representation of the Industrial Movement in Parliament (SC[6]). The second to fourth plaintiffs, affiliates of Unions NSW, are organisations of employees formed for the purposes of the IR Act (SC[3], [7], [17],

[19]). Their respective objects also include engaging in political action and debate to further members' interests: SC[8], [18], [20]).

6. The plaintiffs have a history of campaigning to communicate political messages to the public, election candidates and incumbent representatives, in the context of specific NSW elections and more broadly. Further, the plaintiffs, and other affiliated unions (see SC[3]), seek to coordinate their political messages and campaigns when common interests arise.

7. Past examples of the plaintiffs' joint political campaigns include: (i) "NSW Not For Sale" (2015 State election: SC[24]-[34]); (ii) "It's About Jobs" (2016 Orange by-election: SC[41]-[49]); (iii) "Keep Our Hospitals Public!" (2016, concerning State hospital policy: SC[38]); and
10 (iv) "Not Glad Gladys" (2019 State election: SC[69]-[72]). The advertisements disseminated for these campaigns, and photos of the campaign activities, reveal that Unions NSW and other TPCs have sought to amplify their political messages by expressly communicating their organisations' shared commitment to those messages. For example, they have issued advertisements featuring each of their logos (SC Annexures 129-130 in vol 7 of the Special Case Book, abbreviated using the convention **#129-130 7SCB**), and have held public rallies and vote-canvassing events at which representatives of various unions promoted the joint campaign's message whilst wearing uniforms or holding posters, or otherwise identifying themselves as members, of their respective individual organisations (eg #146 7SCB, #148 7SCB, #149 7SCB, #155 7SCB, #160 8SCB, #196 11SCB, #199 11SCB, #202 11SCB).

20 **Part VI: Argument**

The EFED Act

8. The purpose and operation of ss29(11) and 35 of the EF Act is informed by the statute the EF Act replaced: *Election Funding, Expenditure and Disclosures Act 1981* (NSW) (**EFED Act**). From 2011 until its repeal by the EF Act, the EFED Act capped certain expenditure incurred for the dominant purpose of promoting or opposing a party or candidate or influencing the voting at an election (electoral communication expenditure, **ECE**: ss87(1)-(2), 95F) during a fixed period preceding a State election (**capped period**: s95H).

9. ***Expenditure caps:*** Under s95F, different expenditure caps applied in State elections for political parties (ss 95F(2)-(4),(12)(a)), candidates for election (ss 95F(6)-(9)), independent
30 groups of candidates for election to the Council (s95F(5)), and TPCs (ss 95F(10), (11), (12)(b)). A TPC was relevantly defined in s4(1) to include any person or entity, not being a registered party, elected member, group or candidate, incurring ECE for a State election exceeding $2,000 during a capped period. In the capped period for a by-election for the Assembly (**State**

by-election), a TPC could incur ECE of up to $20,000 (s95F(11)), a candidate could incur ECE of up to $200,000 (s95F(9)), and there was no legislated cap for registered parties. The ECE caps were indexed (s95F(14)), such that by the time of the EFED Act's repeal, the TPC expenditure cap for State by-elections was $24,700, while the candidate cap was $245,600.[1]

10. ***Aggregation of party expenditure:*** The expenditure caps were subject to aggregation pursuant to s95G. Relevantly, the ECE of two or more "associated parties" was aggregated under a single shared cap (s95G(2)), as was the ECE of two or more candidates endorsed by the same party *or* associated parties in an Assembly electorate (s95G(3)). Registered parties were associated if, relevantly, they endorsed the same candidate for a State election or formed
10 a recognised coalition and endorsed different candidates (s95G(1)). In State general elections, ECE by a party and a Council candidate endorsed by that party (or associated party) was not to exceed the cap for the party alone (s95G(4)). In State by-elections, ECE by a party and an Assembly candidate endorsed by the party (or associated party) was not to exceed the applicable cap for ECE by a candidate alone (95G(5)).

11. ***Offences:*** Section 95I(1) provided that it was unlawful for a party, group, candidate or TPC to incur ECE during the capped period exceeding the applicable cap. Under s96HA(1), a person who did an act that was unlawful under (inter alia) s95I(1), with knowledge of the facts rendering the act unlawful, was guilty of an offence punishable by 400 penalty units, imprisonment for two years or both (**cap offence**). Under s96HB(1), a person who entered into
20 or carried out a scheme for the purpose of circumventing a prohibition or requirement of (inter alia) the electoral expenditure provisions was guilty of an offence punishable by imprisonment for ten years (**circumvention offence**).

The EF Act

12. The EF Act was prepared in response to three reports (see Explanatory Note, #187 10SCB): the *Final Report on Political Donations* of December 2014 (**Final Report**), authored by a panel (**Panel**) appointed to report on options for long term reform of political donations in NSW (SC[57]; #183A 10SCB and #183B 10SCB); a report by the Joint Standing Committee on Electoral Matters (**JSCEM**) dated June 2016 (**First JSCEM Report**), addressing the Final Report and the government's response (SC[58]; #185 10SCB); and a further JSCEM Report
30 dated November 2016 (**Second JSCEM Report**), examining the administration of the 2015 State election (SC[59]; #186 10SCB). Key reforms effected by the EF Act were relevantly as follows.

[1] *Election Funding, Expenditure and Disclosures (Adjustable Amounts) Notice* (8 June 2018), Sch 1, item 2(8).

13. ***Candidate and party expenditure caps*:** The EF Act increased the legislated cap on relevant expenditure (now defined as "electoral expenditure") incurred by parties (ss 29(2)-(4), (12)(a)), candidates (ss 29(6)-(9)) and independent groups of candidates (s29(5)) in State elections. Relevantly, the legislated cap for electoral expenditure by a candidate for a State by-election was increased from $200,000 under the EFED Act to $245,600 (s29(9)) – although this matched the indexed cap under the EFED Act at the time of its repeal (see [9] above), such that in real terms there was no change. Electoral expenditure by parties in State by-elections again remained unrestricted under the EF Act.

14. ***Reduced TPC expenditure caps*:** By contrast, the EF Act more than halved the
10 expenditure caps for TPCs in State general elections (s29(10)), an amendment which was held invalid in *Unions NSW v NSW* (2019) 264 CLR 595 (***Unions No 2***): see [22] below. In respect of State by-elections, the cap on electoral expenditure by TPCs remained ostensibly unchanged at $20,000 (s29(11)), but in real terms this represented a 19% reduction on the indexed cap of $24,700 in force at the time of the EFED Act's repeal (see [9] above). Those changes were made notwithstanding the Panel's observation that "in real terms the costs of election campaigns have increased significantly" (#183A, 10SCB 2438), reiterating the earlier findings of the JSCEM (#182, 9SCB 2029 [1.132] and 2191 [7.23]). None of the relevant extrinsic material for the EF Act expressly addressed the by-election expenditure caps.

15. ***New local government election caps*:** The EF Act introduced caps on electoral
20 expenditure in local government elections for the first time. The applicable cap for a TPC is "the amount that is one-third of the applicable cap for a candidate for election as councillor (other than mayor) for the local government area or ward election concerned" (s31(5)).

16. ***Relaxation of aggregation provisions for candidates and parties*:** By operation of a new definition of "associated entity" (s4), the EF Act no longer aggregated the expenditure of parties that endorse the same candidates or form a recognised coalition (see ss30(3), (4)). That reform responded to the Panel's Recommendation 32(b), supported by the First JSCEM Report (#185, 10SCB 2685 [7.35]), which proposed that the new definition should "exclude organisations that…exist independently of parties and have their own constituencies and political views" (#183A, 10SCB 2540). The Panel "strongly agree[d] that political parties and
30 candidates should have a privileged position in election campaigns" (#183A, 10SCB 2533). Under s4 of the EF Act, "associated entity" is now defined as a corporation or entity that "operates solely for the benefit of one or more registered parties or elected members".

17. ***New offence applicable only to TPCs*:** Mirroring the EFED Act, the EF Act provides that it is unlawful to incur electoral expenditure for a State election campaign during the capped

period if it exceeds the applicable cap (s33(1)). It also maintains the generally applicable offences described at [11] above: the cap offence (s143(1)) and the circumvention offence (s144(1)).[2] However, it introduced a new offence, applicable only to TPCs, which proscribes "acting in concert" with another person to incur electoral expenditure exceeding the TPC's cap for a NSW election (s35(1)). "Acting in concert" is (s35(2)):

> act[ing] under an agreement (whether formal or informal) with the other person to campaign with the object, or principal object, of:
> (a) having a particular party, elected member or candidate elected, or
> (b) opposing the election of a particular party, elected member or candidate.

10 **18.** The Minister explained in the second reading speech that s35 implemented a recommendation of the Panel and the JSCEM, and continued (#188, 10SCB 2839):

> Third party campaigners should not be permitted to engage in conduct to circumvent spending caps. The anti-avoidance offence in clause 35 is important to maintain a fair and balanced electoral contest and to ensure the integrity of the expenditure caps.

19. In the Final Report, the Panel stated that the new offence would (#183A, 10SCB 2540):

> prevent a number of [TPCs] with common interests (e.g. unions, mining companies, packaging companies) from launching a coordinated campaign with a combined expenditure cap that would completely overwhelm parties, candidates and other third parties acting alone. The Panel considers that such a provision is important to maintaining a fair and balanced electoral contest and the
> 20 integrity of the expenditure caps generally.

20. The Panel recommended that "a [TPC] be prohibited from acting in concert with others to incur electoral expenditure that exceeds the [TPC's] expenditure cap" (#183A, 10SCB 2438 p14). The JSCEM supported the Panel's recommendation (#185, 10SCB 2685 [7.34]-[7.35]).

21. ***Political donations to parties*:** Under the EFED Act (s95B(1)) and then the EF Act (s24(1)), a party has been prohibited from accepting a political donation from a TPC or a candidate exceeding the applicable cap on political donations for that financial year. However, donations from candidates attract significant exemptions from that cap. Under the EF Act, a candidate who is a member of a registered party may: (i) pay an amount to the party, during the financial year of an Assembly general election/ by-election where the candidate stands for
30 that election, up to the amount of the party's expenditure cap under s29(12)(a) ($61,500 indexed) (s26(3)); (ii) make a self-funded contribution, in an amount up to the candidate's expenditure cap for the relevant election, to finance the party's expenditure on the candidate's election (s23(5)); and (iii) donate up to $50,000 to the party during the financial year of a periodic Council election where the candidate stands for that election (s26(5)). No such exemptions apply to TPC donations.

[2] The same prohibitions also apply in respect of local government elections: ss33(2), 143(1), 144(1).

Unions No 2 and subsequent developments

22. ***Unions No 2:*** On 29 January 2019, this Court delivered judgment in *Unions No 2,* in which it unanimously invalidated s29(10) of the EF Act for impermissibly burdening the implied freedom of political communication. Six Justices proceeded on the assumption that the purpose of the EF Act's expenditure capping provisions was to "prevent the drowning out of voices by the distorting influence of money", including by "providing something of a level playing field" (Kiefel CJ, Bell and Keane JJ [31]-[32], [38]; Gageler J [90]; Nettle J [109]-[110]; Gordon J [146]). The Court nonetheless held that the State could not justify s29(10) as *necessary* to achieve that purpose in circumstances where the JSCEM had
10 recommended further research into whether a TPC could reasonably present its case within a $500,000 limit and that research had not been carried out (Kiefel CJ, Bell and Keane JJ [26], [44], [53]; Gageler J [68], [99], [102]; Nettle J [117]-[118]; Gordon J [150]-[152]). "[N]o basis" was given in the Final Report for halving the TPC expenditure cap, and "no enquiry as to what in fact is necessary to enable [TPCs] reasonably to communicate their messages" was conducted before the reform was enacted (Kiefel CJ, Bell and Keane JJ [53]). Whilst six Justices declined to determine s35's validity, Edelman J concluded that the provision was invalid for pursuing an illegitimate purpose ([179]-[181]).

23. ***2019 Regulation:*** On 8 February 2019, the Government made the *Electoral Funding Amendment (Savings and Transitional) Regulation 2019* (NSW) (**2019 Regulation**) (SC[67],
20 #190 10SCB). By force of the 2019 Regulation: (i) for the 2019 State Election, the applicable TPC expenditure caps were those that applied immediately before the EF Act's commencement: $1,288,500 if the TPC was registered before the commencement of the capped period, and $644,300 otherwise; and (ii) s35 of the EF Act did not apply to that capped expenditure. The 2019 Regulation expired on 31 December 2019.

24. ***2020 JSCEM recommendations:*** In October 2020, the JSCEM published its report entitled "Administration of the 2019 State Election" (**2020 JSCEM Report**) (SC[95], #314 13SCB). It noted that TPCs had expressed concerns about the impact on them caused by expenditure caps imposed by the EF Act (13SCB 3782 [1.83]), s35 (13SCB 3787-3788 [1.105]-[1.110]) and the broad definition of "electoral expenditure" (13SCB 3793 [1.130]). In response,
30 the JSCEM recommended that the EF Act be amended to enshrine the TPC expenditure cap that was applicable under the 2019 Regulation (subject to inflation) (13SCB 3754-3755 Recommendation 6 and 13SCB 3793 [1.86]-[1.87]), and that Parliament consider amending the definition of "electoral expenditure" to exclude travel and accommodation expenses

(13SCB 3755 Recommendation 7 and 13SCB 3793-3795 [1.129]-[1.140])). The JSCEM said nothing further, and made no recommendation, concerning s35.

25. ***2021 Government Response:*** On 28 April 2021, the Government issued its response to the 2020 JSCEM Report (SC[96], #315 13SCB). In answer to Recommendation 6, it stated that "[a]ppropriate expenditure caps" for TPCs were "necessary to ensure that the voices of candidates and parties are not overwhelmed by the expenditure of [TPCs]" (13SCB 3947). In response to Recommendation 7, it accepted that "campaigning in regional electorates can involve significant travel and accommodation costs" (13SCB 3948).

26. ***2022 Bill:*** On 10 August 2022, the Electoral Legislation Amendment Bill 2022 was passed with amendments by the Assembly (SC[105], #323 13SCB). The amended Bill relevantly proposes to reinstate the TPC expenditure cap for State general elections that applied before the EF Act commenced (Sch 3 item 11), and remove travel and accommodation expenses from the definition of electoral expenditure (Sch 3 item 3). It leaves ss29(11) and 35 of the EF Act unchanged. The Bill has not yet been passed by the Council.

27. ***2023 State Election:*** The next State election is on 25 March 2023 (SC[97]). The capped State expenditure period for that election commenced on 1 October 2022 (SC[98]).

Chilling effect of the impugned provisions

28. The plaintiffs' campaigning activities of recent years illustrate the substantial chilling effect that the acting in concert offence (s35), and the TPC by-election cap (s29(11)), have had on TPCs' ability to disseminate their political messages during State elections.

29. *As to s35*: the joint campaigns run by Unions NSW and its affiliates during the capped periods for the 2015 State Election (costing approximately $1.3m in 2021 dollars: SC[24]-[34]) and Orange By-Election (costing approximately $39,700 in 2021 dollars: SC[46]-[50]) demonstrate the kinds of coordinated political communications that TPCs were able to conduct to influence voting in State elections before the EF Act was enacted.

30. Between the commencement of the capped State expenditure period and 29 January 2019, when this Court delivered judgment in *Unions No 2*, Unions NSW did not coordinate any political campaigning activities with affiliated unions for the purposes of the 2019 State Election (SC[75]). On 1 February 2019, Unions NSW held an emergency meeting with its affiliates to discuss campaigning for the upcoming election (SC[69]). Subsequently, Unions NSW co-ordinated campaign resources, events and advertisements with affiliated unions for that election (SC[70]-[72]), as was permitted by the 2019 Regulation. But that regulation did not alter the operation of s35 in respect of by-elections. For fear of contravening s35 (SC[84]),

Unions NSW ceased discussing campaign ideas with meetings of its Executive, managing or funding its campaign jointly with any other entity, or even providing briefings or updates to affiliates concerning Unions NSW's campaign, during the capped expenditure period for the Upper Hunter By-Election in May 2021 (SC[76]-[82]) and for the February 2022 by-elections (SC[83]).

31. *As to s29(11)*: the evidence in the special case supports the proposition that TPCs are abandoning large parts of their campaigning activities to comply with s29(11). In the Orange By-Election, for example, Unions NSW initially developed a proposal to spend $35,800 over a 5-week period, without reference to the applicable expenditure cap (SC[42]). Due to that cap (which at that time was $24,700), Unions NSW significantly reduced the scope of its proposed campaign, with expenditure on certain campaign advertising and how-to-vote cards halved, and other printed materials and social media advertising cancelled altogether (SC[43]-[44]). Similarly, in the Upper Hunter By-Election, although Unions NSW refrained from conducting any advertising on TV, radio or print media and did not procure flyers or how-to-vote cards (SC[87a]; [87b]), it nonetheless incurred electoral expenditure approaching the $21,600 cap (SC[22]). In Unions NSW's campaign review, it concluded that the level of its expenditure cap meant its campaign for the Upper Hunter By-Election had "limited effect": #271 11SCB 3279. Indeed, Unions NSW did not even attempt to have its voice heard by the whole electorate. In a strategy document for the election, it listed goals of engaging 40% of Upper Hunter union members in a meaningful conversation about the issues at stake in the election, and contacting 40% of the electorate with digital advertising (#269 11SCB 3263).

32. The fact that TPC expenditure in certain State by-elections, or by certain campaigners, has been low (SC[22]) does not alter the position. Decisions as to whether and to what extent a TPC campaigns in any given by-election depend on a range of factors, including the nature of the TPC's interests in that region and whether the by-election will likely affect the balance of power in the Assembly. For that reason, not all by-election campaigns will involve expenditure close to the cap. Nonetheless, in by-elections where TPCs such as the plaintiffs have deemed it particularly important to their interests to have their political messages communicated to voters,[3] s29(11) has had a demonstrable chilling effect.

Freedom of political communication

33. The Constitution protects freedom of communication on political and governmental matters to give effect to the political sovereignty reposed in the people by the system of

[3] See, eg, #265 11SCB 3236 and 3240-3214; #269 11SCB 3272.

representative and responsible government established by it.[4] In *Lange v ABC,*[5] it was observed that "each member of the Australian community has an interest in disseminating and receiving information, opinions and arguments concerning government and political matters." From that context emerge the following principles.

34. *First,* the choice bestowed upon electors by ss7 and 24 cannot be a "true choice" unless it is "free and informed", accompanied by "an opportunity to gain an appreciation of the available alternatives".[6]

35. *Secondly,* the communications protected by the freedom include political communications "between all persons and groups in the community".[7] As this Court stated in

10 *Unions NSW v NSW* (2013) 252 CLR 530 (***Unions No 1***), those in the community who are not electors, but who are nonetheless affected by governmental decisions, may legitimately "seek to influence the ultimate choice of the people as to who should govern".[8] Accordingly, the implied freedom extends "to communication from the represented to the representatives and between the represented",[9] including TPCs – who "have a legitimate interest in governmental action and the direction of policy."[10]

36. *Thirdly,* given the interrelationship between governmental levels, issues common to State and federal government, and multiple levels at which Australian political parties operate, discussion at State level may bear upon the people's choices at federal elections or referenda, or in evaluating the performance of federal Ministers and departments.[11] In particular,

20 expressions of support for parties and candidates at State level are relevant to electoral choice under ss7 and 24, and protected by the freedom on that basis.[12]

37. *Fourthly,* where a law imposes a burden on the freedom, it must be justified.[13] The polity imposing the burden bears the persuasive onus of establishing that justification.[14] Although Parliament does not generally need to provide evidence to prove the basis for legislation which

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[4] *Unions No 1* at [135]; *Unions No 2* at [40].
[5] *Lange v Australian Broadcasting Corporation* (1997) 189 CLR 520 ***(Lange)*** at 571.
[6] *Lange* at 560.
[7] *Unions No 1* at [28]; see also *Australian Capital Television Pty Ltd v Commonwealth* (1992) 177 CLR 106 (***ACTV***) at 139.
[8] *Unions No 1* at [30].
[9] *ACTV* at 174, cited in *Unions No 2* at [40].
[10] *Unions No 2* at [137], citing *ACTV* at 139 and *Unions No 1* at [28].
[11] *Unions No 1* at [25], [151]-[152], [158]-[159]; *Theophanous v Herald and Weekly Times Ltd* (1994) 182 CLR 104 at 122, 164. Recently, see, eg, the discussion of NSW's ICAC, and its investigations relevant to the performance of NSW parliamentarians, in the context of debate over a proposed federal integrity commission.
[12] *Unions No 1* at [25], citing *Roberts v Bass* (2002) 212 CLR 1 at [73].
[13] *McCloy v NSW* (2015) 257 CLR 178 (***McCloy***) at [68]-[69]; *Brown v Tasmania* (2017) 261 CLR 328 (***Brown***) at [88], [92]; *Unions No 1* at [45]; *Comcare v Banerji* (2019) 267 CLR 373 at [29]; *LibertyWorks Inc v Commonwealth* [2021] HCA 18 (***LibertyWorks***) at [45].
[14] *McCloy* at [24].

it enacts, where the implied freedom is burdened, the Court must be satisfied of the existence of facts on which the justification offered by the proponent of the burden depends.[15] Ordinarily, the "domain of selections", or the range of legislative choice, available to Parliament comprises those provisions that fulfill the legislative purpose with the least harm to the implied freedom.[16] It has been held by a majority of the Court since *McCloy* that a law that burdens the freedom with a legitimate purpose must nonetheless satisfy the second limb of the *Lange* test through application of the structured method of proportionality analysis.[17] A law will satisfy the requirements of structured proportionality if it is suitable, necessary and adequate in its balance.[18]

10 **38.** *Fifthly,* the Court must "scrutinize very carefully [any] claim freedom of communication must be restricted in order to protect the integrity of the political process".[19] As Mason CJ explained in *ACTV,* "[a]ll too often attempts to restrict the freedom in the name of some imagined necessity have tended to stifle public discussion and criticism of government".[20]

39. *Sixthly,* where a law has a discriminatory *effect* on certain sources of political communication or political viewpoints, it requires a compelling justification[21] – at least where it imposes a substantial burden on the freedom.[22] The favouring of some viewpoints over others is "apt to distort the flow of political communication within the federation",[23] and to "mandate … an inequality of political power which strikes at the heart" of the "Australian constitutional conception of political sovereignty".[24] Relatedly, the basis for the law's selectivity must be
20 apparent, and justifiable.[25]

40. *Seventhly,* a law whose *purpose* is to favour, or suppress, certain sources of political communication or political viewpoints is incompatible with the maintenance of the constitutionally prescribed system of representative and responsible government. It may be legitimate for a law to pursue a purpose that involves creating a "level playing field" to ensure

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[15] *Unions No 2* at [96].
[16] *Unions No 2* at [47].
[17] *Brown* at [123]-[127], [278]; *Unions No 2* at [42], [110], [161]-[167]; *Clubb v Edwards* (2019) 267 CLR 171 at [96]-[102], [270]-[275], [491]-[501]; *Comcare v Banerji* at [38]-[42], [202]-[206]; *LibertyWorks* at [48].
[18] *McCloy* at [2]-[4]; *Brown* at [123], [278]; *Clubb v Edwards* at [70]-[74], [266], [408], [463]; *Comcare v Banerji* at [32]; *LibertyWorks* at [46].
[19] *ACTV* at 145, cited in *Unions No 2* at [146].
[20] *ACTV* at 145.
[21] *ACTV* at 144-146, 172-174, 235-239; *McCloy* at [222], [251], [255]; *Brown* at [202]-[203].
[22] *Brown* at [94].
[23] *Unions No 1* at [140]; see also *ACTV* at 174.
[24] *McCloy* at [271] (Nettle J, relevantly dissenting in the result).
[25] *Unions No 1* at [53]-[59], [144].

"balance in the presentation of different points of view".[26] But a law that aims to confer advantages or disadvantages in political discourse such that certain voices dominate over others is not aimed at "ensuring each an equal share in political power".[27] A law of that kind impedes the functioning of representative democracy and is illegitimate.[28]

41. *Eighthly*, it follows that a law with the *purpose* of affording candidates and political parties a privileged position in political debate is not compatible with the constitutionally prescribed system of government.[29] As the plurality in *Unions No 2* observed, "nothing in the authorities…supports the submission that the *Constitution* impliedly privileges candidates and parties over the electors as sources of political speech".[30] Indeed, there is an "ever-present risk"
10 within the Australian governmental system, inhering in the "nature of the majoritarian principle which governs… electoral choice"; namely, that: [31]

> communication of information which is either unfavourable or uninteresting to those currently in a position to exercise legislative or executive power will, through design or oversight, be impeded by legislative or executive action to an extent which impairs the making of an informed electoral choice and therefore undermines the constitutive and constraining effect of electoral choice.

42. In election campaigns, parties promote candidates for election, many of whom may be sitting members of Parliament. Interest groups that are independent from the field of candidates are uniquely placed to hold candidates and their parties to account in the political discourse. Conversely, given that information about the competence of those candidates, and about the
20 policies pursued by them in office, may be "unfavourable or uninteresting" to the candidates and their parties, laws with the purpose of affording those candidates or parties privileged access to the public debate risk the entrenchment of incumbents. If a law's purpose is to "silence the voices of part of the citizenry…for the very reason of ensuring the position of some is suppressed relative to others", [32] the law will have the illegitimate goal of undermining the freedom and will not be compatible with the system of representative and responsible government prescribed by the Constitution.

The expenditure cap in s29(11) of the EF Act is invalid

Section 29(11) burdens the implied freedom

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[26] *ACTV* at 175; see also at 146; *McCloy* at [43]-[44] (emphasis added), quoting *ACTV* at 130; *Unions No 1* at [136]; *Unions No 2* at [101].
[27] Harrison Moore, *The Constitution of the Commonwealth of Australia*, 2nd ed (1910), p 616; *ACTV* at 139-140; *McCloy* at [27], [111].
[28] *McCloy* at [31].
[29] *Unions No 2* at [177]-[181].
[30] *Unions No 2* at [40].
[31] *McCloy* at [114]-[115].
[32] *Unions No 2* at [181].

43. Section 29(11), read with s33(1), prohibits TPCs from incurring electoral expenditure exceeding the $20,000 indexed cap. Plainly, s29(11) restricts the capacity of TPCs to participate in political discourse during the capped period for a State by-election, which is a recognised category of burden on the implied freedom.[33] It follows that the provision also burdens the freedom of electors to receive the diversity of political communication necessary to make a free and informed choice under ss7 and 24 of the Constitution.

Section 29(11) has an illegitimate purpose

44. Several contextual features disclose that s29(11), when read with s33(1), has been enacted in pursuit of an illegitimate purpose. *First, s*29(11) forms part of an expenditure
10 capping scheme for State by-elections that is facially discriminatory, allocating a legislated cap of $245,600 on electoral expenditure by a candidate (s29(9)) and no cap on electoral expenditure by a party, while imposing a legislated cap of just $20,000 on TPCs. The enactment of the EF Act exacerbated that discrimination by preserving the indexed cap for candidates at the time of the EFED Act's repeal but not that for TPCs (see [13]-[14] above).

45. *Secondly,* subject only to limited exceptions, s29(11) is part of a regime that permits two or more parties endorsing the same candidate, or otherwise forming a recognised coalition, to promote the same electoral objectives and messages and to incur electoral expenditure up to each party's cap without aggregation (or, in the case of a State by-election, unlimited electoral expenditure). The limited exceptions arise only where one party is controlled by (s9(1)(d)) or
20 "operates solely for the benefit of" another (s30(4) and s4, definition of "associated entity"). By contrast, under the EFED Act, a party that was associated with another, in that the parties relevantly endorsed the same candidate for a State election or formed a recognised coalition and endorsed different candidates (s95G(1)), was required to adhere to an aggregated cap for each of those parties and any Assembly candidates endorsed by them in a State by-election (s95G(5)).

46. *Thirdly*, unlike a party or candidate, a TPC commits an offence under s35 if it "acts in concert" with others to incur electoral expenditure exceeding the cap for that TPC alone.

47. *Fourthly,* the impermissible purpose of the EF Act's scheme for expenditure caps, including s29(11), was expressly confirmed in the extrinsic material. The Panel "strongly
30 agree[d] that political parties and candidates should have a privileged position in election campaigns" (#183A, 10SCB 2533). The Final Report noted that TPCs "should have sufficient scope to run campaigns to influence voting at an election – just not to the same extent as parties

[33] *Unions No 1* at [61], [161]-[163].

or candidates" (#183A, 10SCB 2536). The Panel also observed that TPCs should not have a voice that was significant enough to "work against reformist governments pursuing difficult and controversial issues" (#183A, 10SCB 2564) echoing the language of the proscribed purpose described by Keane J in *Unions No 1* at [146], being the partial suppression of political communication "by reference to political agenda".[34]

48. This context reveals the true purpose of s29(11): to ensure that TPCs are "suppressed relative to others".[35] That purpose, the pursuit of which realises the "ever-present risk" alluded to by Gageler J ([41] above), is incompatible with the maintenance of the constitutional system of government.

10 *Section 29(11) read with s33(1) of the EF Act is not reasonably appropriate and adapted*

49. Even if it were accepted that s29(11)'s purpose is legitimate, the provision is nonetheless not reasonably appropriate and adapted to advancing its end in a manner compatible with the constitutionally prescribed system of representative and responsible government.

50. ***Extent of the burden****:* The burden effected by the s29(11) expenditure cap on TPCs is direct and substantial. It is direct because the cap limits the only practical means by which political communications may be effectively disseminated to the public: spending money for the broad range of campaigning activities encompassed by the defined term "electoral expenditure". The cap is substantial because it: (i) is discriminatory, disfavouring TPCs relative to the position of parties and candidates; (ii) applies during a critical time before a State

20 by-election when "electors are consciously making their judgments as to how they will vote",[36] and "political communications by persons who are not candidates or political parties are likely to be most important and effective;"[37] and (iii) is so low that it permits in practice only limited activities that will reach limited numbers of voters (see [31] above).

51. The cap also directly targets electoral expenditure in State by-elections, which are a fundamental element of the political process. By-elections occur relatively frequently (SC[21]) and can change the balance of power in the Assembly. They are often contested by parties that also endorse candidates in State general elections (compare, e.g., parties listed in SC[74] with SC[92]) and federal polls, and their conduct and outcomes may have considerable influence on the perceptions of those parties in wider spheres. By-elections can thus be critical forums for

30 TPCs to engage in political discourse, and a law which restricts the capacity of those

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[34] See *Unions No 2* at [207].
[35] *Unions No 2* at [181].
[36] *ACTV* at 146.
[37] *ACTV* at 173.

campaigners so to engage places a substantial burden on the freedom. The magnitude of the burden calls for a compelling justification.

52. ***Suitability***: The s29(11) expenditure cap is not rationally connected to any of the purposes asserted by the State (Defence [134], particulars (ii)-(iv)). So much is clear on the face of the legislation, given the vast disparity between the TPC cap versus the position of parties and candidates. Equally, the relative expenditure of TPCs vis-à-vis parties and candidates in recent State by-elections suggests that there is no risk of the latter being "swamped" by the former. In the Upper Hunter By-Election, for example, the National Party candidate (Layzell) and the Labor Party candidate (Drayton) respectively incurred $198,173
10 and $67,948 in electoral expenditure during the capped State expenditure period (SC[90]), while the Shooters, Fishers and Farmers Party incurred $166,006.48 (SC[92]). Layzell's capped period expenditure on TV advertising alone was more than three times the total TPC expenditure cap, and Drayton spent slightly less than double the entire TPC expenditure cap on flyers, how-to-vote cards and other printing (SC[90]). By contrast, Unions NSW incurred just $18,648 during the same period, and spent nothing on TV, radio or print advertising or printed materials (SC[90]). Five years previously, in the Orange By-Election, the National Party candidate incurred $238,587.61 in electoral expenditure during the capped period (SC[52]), close to ten times the applicable cap for TPCs.

53. More broadly, it is relevant to note that the Government is free to spend an unlimited
20 amount on "issue advertising" in the capped period for a State by-election so long as the expenditure is not incurred between 27 January and the date of a State general election (see *Government Advertising Act 2011* (NSW), s10 and SC[93]-[94]).

54. Nor is s29(11) rationally connected to the purpose of reducing demand for donations to candidates and political parties. Severely capping the amount that TPCs may spend in pursuit of legitimate campaigning activities is not logically capable of influencing demand for donations, particularly given that there already are strict limitations on donations by TPCs to parties (see [21] above). Indeed, a far more rational means of reducing such demand would be to limit the numerous opportunities under the EF Act for candidates to make political donations to parties exceeding the applicable donations caps for those parties (as detailed in [21] above).
30 Concerns about the escalating costs of campaign spending are, similarly, not capable of being resolved by s29(11) in circumstances where candidates are permitted to spend more than ten times the expenditure cap of TPCs, and spending by parties remains unlimited. Indeed, the cap in s29(11) is "so low in relative or absolute terms that it is incapable of being explained as a

legislative attempt to promote the statutory objects… in the manner propounded by the State".[38]

55. ***Necessity*:** The burden of justifying the expenditure cap in s29(11) falls on the State ([37] above). There is no material before this Court to suggest that the State considered "whether there [i]s sufficient evidence that a third-party campaigner could reasonably present its case within that expenditure limit".[39] The State can identify no evidence or analysis justifying the $20,000 legislated cap, or its reduction of the by-election cap applicable to TPCs under the EFED Act by 19% in real terms (see [14] above). In these circumstances, the State cannot assert that there are no obvious and compelling, reasonably practicable means of achieving the
10 asserted purposes of s29(11) with less restrictive effect on the freedom. Alternative measures satisfying that test would include a TPC cap at least equal to the candidate cap under s29(9), or otherwise set by reference to a realistic calculation of the likely costs of conducting a campaign in which TPCs have a meaningful opportunity to present their case to voters.

56. ***Adequacy in balance:*** The expenditure cap's direct, substantial and discriminatory restriction on the freedom is grossly disproportionate to, or goes far beyond, what can reasonably be conceived as justified. Ensuring fair election campaigns in which all participants may be heard is a legitimate goal. But s29(11), understood in the legislative context described above, subjects TPCs to such a significant disadvantage relative to candidates and parties in the political discourse for by-elections that it can only be described as a "manifestly excessive
20 response"[40] to that objective.

The "acting in concert" offence in s35(1) of the EF Act is invalid

Standing and "matter"

57. The offence in s35(1) applies to TPC expenditure in State general elections, State by-elections and local government elections. The plaintiffs, who have campaigned and intend to campaign in those elections, challenge s35 in all its operations. However, the State denies that the plaintiffs have standing, or that there is a "matter", insofar as the plaintiffs impugn the provision's application to expenditure in State general elections (Defence [125](d)). Presumably, this is because s35's operation for those elections is in suspense, as no TPC expenditure cap for general elections is presently in force.

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[38] *Unions No 2* at [80].
[39] *Unions No 2* at [26].
[40] *Brown* at [290].

58. The plaintiffs have a sufficient interest to agitate their claim in the State general election context. Before the decision in *Unions No 2*, the plaintiffs' campaigns for the 2019 State Election were conducted under the shadow of s35. The Government has long made clear its intention to reinstate the TPC expenditure cap for State general elections, but rejected Unions NSW's requests of October 2021 and following to address the issue in time to enable a challenge to s35 before the 2023 State election (#315 13SCB 3947, #316 13SCB, #317 13SCB, #319 13SCB, #320 13SCB). A Bill to reinstate the cap has recently passed the Assembly (SC[105], #323 13SCB). And as soon as a cap is reinstated, s35 will immediately govern TPC expenditure during the capped period – which, for the 2023 State election, has already
10 commenced. In other words, the plaintiffs must now undertake their campaigning activities for the next election against the backdrop of the overwhelming likelihood that they will, at some point before that election, be subject to an expenditure cap and the acting in concert offence. Thus, s35 is now imposing real restrictions on the plaintiffs' entitlements to participate in the political process,[41] and they are entitled to know whether they are required to adhere to it.[42] There is a controversy between a polity and interested persons who assert that the polity's law is invalid.[43] Declaratory relief in such circumstances is neither abstract nor hypothetical.[44]

59. In any event, the US Supreme Court has recognised that an exception applies to Article III's requirement of an actual controversy between the parties at the time of judicial review where: (i) the restrictions imposed by impugned laws are temporally limited, such that the
20 immediate harm caused by them passes before litigation is completed; and (ii) there is a real risk that the laws will inflict harm on the plaintiffs again in the future.[45] Matters fulfilling these conditions have been held justiciable on the ground that they give rise to "wrongs capable of repetition, yet evading review".[46] This case fits neatly within that rubric, as s35 will almost inevitably return to its fullest operation, but at such a late stage that the plaintiffs' challenge cannot feasibly be determined before the 2023 State Election.

Proper construction of s35

60. The only sensible construction of s35 is that it prohibits a TPC from incurring electoral expenditure pursuant to a joint campaign to support or oppose a party or candidate's election to the extent that the *joint campaign's total expenditure* would exceed *the TPCs cap*. The

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[41] *Croome v Tasmania* (1997) 191 CLR 119 (***Croome***) at 126-7.
[42] *Croome* at 137-8.
[43] *Croome* at 125.
[44] *Croome* at 132, 138.
[45] E Chemerinsky, *Federal Jurisdiction* (6th ed, Wolters Kluwer, 2012), pp. 137-138.
[46] See, e.g., *Federal Election Commission v Wisconsin Right to Life, Inc*, 551 US 449 (2007) at 462-463.

conduct prohibited is to "act in concert with another person" to incur "electoral expenditure in relation to an election campaign" that "exceeds the applicable cap for the TPC for the election". A "person" is not restricted to a person who would otherwise be subject to an expenditure cap under the EF Act. It follows that the electoral expenditure referred to in s35 is that of campaigners "acting in concert", rather than each campaigner's individual expenditure. That construction also aligns with former s205H of the *Electoral Act 1992* (ACT), which the Panel and Parliament used as a model for s35.[47] Any alternative reading of s35(1), e.g., that it requires only that each TPC remain within its own cap when acting in concert, strains the provision's language and leaves it no work to do beyond the cap offence and circumvention offence.

10 *Section 35 of the EF Act burdens the freedom*

61. The "acting in concert" offence burdens the freedom in three interrelated ways. The most obvious way is to increase the disparity between the capacity of TPCs to fund election campaigns and that of candidates and parties. Taking as an illustration the "It's About Jobs" campaign during the Orange By-Election (SC [46]-[49]): s35 would prevent *any* of the 6 participating campaigners from undertaking a co-ordinated campaign of that kind unless its *total* cost was $20,000 or less (see s29(11)).

62. *Secondly,* s35 imposes further burdens due to its "substantial deterrent effects" and the inherent uncertainty surrounding the conduct to which the provision applies.[48] The test of "act[ing] under an agreement" (s35(2)) with another person to "incur electoral expenditure"

20 that "exceeds the applicable cap for the third-party campaigner" (s35(1)) is broad and nebulous. Once a "formal or informal" agreement to campaign in support of or against a party or candidate is reached, the prohibition appears to apply to any conduct by the TPC, or the other person with whom agreement has been reached, broadly consistent with that object even in the absence of any other coordination. Thus, for example, a TPC might informally agree with another person to campaign for a candidate. Each may then carry out its own separate campaigning activities in furtherance of that object. However, merely by virtue of having both "agreed" to campaign for the same candidate, and despite then carrying out separate campaigns with no coordination between them, s35 would limit the total election expenditure for both the TPC and the other person to, for example, $20,000 in a State by-election (before indexation).

30 Moreover, the burden for exceeding this cap would fall disproportionately on the TPC and not on the other person. While the TPC might be unaware of the other person's unilateral electoral

[47] See s35 heading; #183A 10SCB 2540, recommending the introduction of "a provision similar to section 205H".

[48] See *Brown* at [144]-[145].

expenditure exceeding the collective cap, it is the TPC and *not* the other person who is liable under s35.

63. *Thirdly*, the test is continuously operative: conduct under an agreement to conduct a joint campaign might commence compliantly with s35 but develop into unlawful conduct once initial cost forecasts are exceeded or campaign costs are revised upwards to meet contingencies. A TPC may not know in real time how much the other person has spent. In circumstances where a TPC risks 2 years' imprisonment and/or a $44,000 fine by contravening s35,[49] the prohibition discourages large swathes of otherwise lawful political communications: agreements between TPCs and others to promote their joint political views during the capped period; preliminary discussions between TPCs and others to ascertain whether they hold shared political aims and desire to coordinate their campaign messages; and, logically, the political discourse facilitated by those communications. This chilling effect is an indicator of the law's practical impact on political debate.[50]

Section 35 of the EF Act has an illegitimate purpose

64. The purpose of s35 is incompatible with the maintenance of the constitutionally prescribed system of representative and responsible government. As well as the matters identified at [44]-[47] above, various considerations show that the provision's purpose is not to "prevent third-party campaigners from combining their expenditure caps [and] overwhelming the expenditure of parties, candidates and other [TPCs] acting alone", or to promote and support the purposes of ss29(11) and 33(1) (cf Defence [139], particular (i)).

65. *First*, s35 in its terms operates to target the conduct of TPCs *exclusively*. Indeed, the extent of the discrimination against TPCs is so great that, as noted above, even where a TPC falls foul of s35 by reason of acting in concert with "another person", it is only the TPC and not the other person who has acted "unlawfully" under the provision.

66. *Secondly*, s35 compounds the discriminatory effect of the differential caps on electoral expenditure, particularly in relation to State by-elections where that disparity is already extreme. While parties and candidates are free to act in concert with each other in incurring electoral expenditure up to each of their individual caps (subject to s144(1)), TPCs acting in concert are restricted to the cap applicable to a single TPC.

67. *Thirdly,* the aggregation provisions previously applicable to candidates and parties under the EFED Act have been relaxed under the EF Act (see [10], [16] above).

[49] Section 143(1) of the EF Act and s17 of the *Crimes (Sentencing Procedure) Act 1999* (NSW).
[50] *Brown* at [78], [150]-[151], [269]; cf [168].

68. *Fourthly, s*144(1), which stipulates that a person who enters into or carries out a scheme (alone or with others) for the purposes of circumventing a prohibition or requirement of, inter alia, the electoral provisions is guilty of an offence, performs the role of a general anti-avoidance provision.[51] The lack of alignment between ss 35 and 144[52] only serves to highlight the illegitimate purpose of the former. To take the example of State by-elections (whilst noting that s35's reach is broader): although s144 prevents ten TPCs from developing a scheme to spend $200,000, or ten candidates from developing a scheme to spend $2,456,000 to circumvent their individual caps for State by-elections, s35 precludes ten TPCs from coordinating to spend more than $20,000 collectively, does not require a "scheme", and has no operation with respect to candidates and parties. Moreover, s35 "prohibits the force of some political communications that reveal that a message is being sent by multiple third parties jointly rather than individually"[53] while doing nothing to prevent parties and candidates from issuing similarly amplified joint messages – such as occurred when the then NSW Premier, a member of the Liberal Party, campaigned for the National Party candidate in the Upper Hunter By-Election (SC[88(d)]; #276 11SCB).

69. Viewed through this prism, the purpose of s35 is not to avoid the drowning out of parties and candidates, but to "quieten the voices of third parties in contrast with parties or candidates for election".[54] Section 35 thus fails the compatibility test.

Section 35 of the EF Act is not proportionate to a legitimate end

70. Even if the purpose of s35 were legitimate, the provision is not reasonably appropriate and adapted to advancing that end consistently with the second *Lange* inquiry.

71. ***Extent of the burden:*** Section 35 imposes a direct and substantial burden on the freedom. It expressly prohibits conduct facilitating or constituting State election campaigning. It discriminates against TPCs. It severely restricts the flow of political communication between TPCs, other persons with similar political views, and the public ([29]-[30] above).

72. ***Suitability:*** Section 35 is rationally connected to neither of the State's asserted purposes.[55] Its discriminatory operation makes that connection impossible. Neither rationale explains s35's selectivity in proscribing conduct by TPCs *only* – entities which, no differently from political parties and their associates, may exist independently of each other and have their

[51] *Unions No 2* at [186].
[52] Defence [140], particular (ii).
[53] *Unions No 2* at [188].
[54] See *Unions No 2* at [188], [222].
[55] Defence [135], particular (i).

own constituencies and political views. More broadly, "[i]mplicit in the notion of circumvention" is that s35 "is concerned with expenditure derived in fact by a single source, notwithstanding that it may be made by two legally distinct entities",[56] but much like former s95G(6) of the EFED Act, the criteria for s35's operation do not reveal why a TPC and another person should be treated as the same source for the purposes of the expenditure caps.[57] The fact that they share at least one political view, motivating them to coordinate certain campaigning activities, does not make them the same organisation. Thus, s35's "wide, but incomplete, prohibition"[58] cannot contribute to the realisation of key statutory purposes on which the State relies.[59]

10 **73.** ***Necessity***: An alternative, reasonably practicable means of achieving the equal opportunity object or preventing avoidance of the EF Act's expenditure caps is the anti-avoidance mechanism in s144(1). That provision has a less restrictive effect on the freedom: it is of general application and expressly targets circumvention of the expenditure caps, rather than conduct facilitating or constituting political communication. There is no suggestion in the Final Report, JSCEM Reports or second reading speech that the predecessor to s144(1) under the EFED Act failed to promote compliance with the expenditure regime.

74. ***Adequacy in balance:*** Finally, s35 is not adequate in its balance. As evidenced by the chilling effect of the provision on election campaigning by TPCs, s35's discriminatory burden on the freedom is a manifestly excessive response to the objectives of ensuring equal access to
20 the political process and preventing circumvention of the expenditure caps.

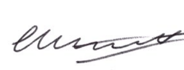
75. Accordingly, s35 imposes a burden on political communication that cannot be justified.

Part VII: Orders sought

76. The SC Questions should be answered: (1) Yes. (2) Yes, in its entirety. (3) The defendant.

Part VIII: Estimated time for oral argument

77. The plaintiffs estimate that they will require 3 hours in chief and 45 minutes in reply.



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Dated: 7 October 2022

[56] *Unions No 1* at [62].
[57] *Unions No 1* at [63].
[58] *Unions No 1* at [59].
[59] *McCloy* at [80].

IN THE HIGH COURT OF AUSTRALIA
SYDNEY REGISTRY

No. S98 of 2022

BETWEEN:

Unions NSW
First Plaintiff

New South Wales Nurses and Midwives' Association
Second Plaintiff

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Public Service Association and Professional Officers' Association Amalgamated Union of New South Wales
Third Plaintiff

New South Wales Local Government, Clerical, Administrative, Energy, Airlines & Utilities Union
Fourth Plaintiff

and

20

State of New South Wales
Defendant

ANNEXURE TO PLAINTIFFS' SUBMISSIONS

Pursuant to paragraph 3 of *Practice Direction No 1 of 2019*, the particular constitutional provisions and statutes referred to in the plaintiffs' submissions are as follows.

No	Description	Version	Provision(s)
1.	Commonwealth Constitution	Current	7, 24
2.	*Electoral Act 1992* (ACT)	Current	205H
3.	*Electoral Funding Act 2018* (NSW)	Current	4, 9, 23, 26, 29, 30, 31, 33, 35, 143, 144
4.	*Election Funding, Expenditure and Disclosures Act 1981* (NSW)	As repealed on 1 July 2018	87, 95B, 95F, 95G, 95I, 95H, 96HA, 96HB
5.	*Government Advertising Act 2011* (NSW)	Current	10
6.	*Industrial Relations Act 1996* (NSW)	Current	215
7.	*Judiciary Act 1903* (Cth)	Current	78B

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