HIGH COURT OF AUSTRALIA

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IN THE HIGH COURT OF AUSTRALIA

SYDNEY REGISTRY **NO S151 OF 2021**

BETWEEN: **JOHN RUDDICK**
Plaintiff

AND: **COMMONWEALTH OF AUSTRALIA**
Defendant

COMMONWEALTH'S SUBMISSIONS

PART I FORM OF SUBMISSIONS

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

PART II ISSUES

2. The issues are whether sub-ss 129(3)-(6), 129A(2)-(3), 134A(1)(a)(iii) and 134A(1A)-(1B) (the **impugned provisions**) of the *Commonwealth Electoral Act 1918* (Cth) (**Electoral Act**)[1] are invalid because they impermissibly interfere with the implied freedom of political communication (Question 1) or are contrary to the requirement in ss 7 and 24 of the *Constitution* that senators and members of the House of Representatives be "directly chosen by the people" (Question 2): SCB 70 [116].

PART III NOTICE OF CONSTITUTIONAL MATTER

3. Notice has been given pursuant to s 78B of the *Judiciary Act 1903* (Cth): SCB 8.

PART IV MATERIAL FACTS

4. The phenomenon of voter confusion at the ballot box – in particular, electors mistakenly identifying one political party for a different political party with a similar name – has been reflected in various electoral results over the past decade and has been remarked upon on multiple occasions by the Joint Standing Committee on Electoral Matters (**JSCEM**). Voter confusion between the Liberal Party and the Liberal Democratic Party is one manifestation of that phenomenon.

[1] Inserted by the *Electoral Legislation Amendment (Party Registration Integrity) Act 2021* (Cth), Sch 1, items 7, 9, 11 and 14.

5. The plaintiff admits on the pleadings that, in the September 2013 elections for the Senate, some voters who intended to vote for the Liberal Party unintentionally voted for the Liberal Democratic Party because they were confused as to the party affiliation of Liberal Democratic Party candidates: Amended Defence, [25(a)] (SCB 38); Reply (SCB 41). In NSW, where the Liberal Democratic Party appeared above the line on the ballot paper in the left-hand most position, this manifested in an unprecedented first-preference vote-share for the Liberal Democratic Party of 9.5%: SCB 57-58 [64]-[66]. Commenting on that result, Senator-elect David Leyonhjelm acknowledged that "you can't deny that some people would have … mistaken us for the Liberals": SCB 60 [74]. Further, that confusion occurred despite the fact that the AEC, acting under earlier provisions of the Act intended to prevent such confusion, had rejected objections to the Liberal Democratic Party's registered name: SCB 62-63 [85]-[86].

6. There is no reason to think that the admitted confusion in 2013 has not also affected other elections. On the contrary, the agreed facts give rise to an inference that it has. Those facts reveal that the Liberal Democratic Party's polling results are closely tied to whether it appears to the left or the right of the Liberal Party on the ballot paper. From 2010 to 2019,[2] the Liberal Democratic Party polled better in *every* general election where it drew an above-the-line position on the ballot paper to the left of the Liberal Party than in *any* general election where it drew a position to the right of the Liberal Party – this is not the case for any other party: SCB 54 [57].[3] Where it appeared to the left of the Liberal Party, it polled an average of 3.95%: SCB 55 [59.1]. Where it appeared to the right, it polled an average of 1.13%: SCB 56 [59.2]. The same pattern is reflected in the results of the Democratic Labour Party vis-à-vis the Labor Party. The Democratic Labour Party has, in above-the-line federal and State elections in its traditionally strongest state of Victoria, polled better in *every* election where it has drawn a ballot position to the left of the Labor Party than in *any* election where it has drawn a position to the right: SCB 61-62 [81.1].

[2] This period covers the four general elections since the Liberal Democratic Party became registered under that name under the *Electoral Act*: see SCB 47 [19]. These elections are also those closest in time to the impugned legislative amendments and the JSCEM Report to which those amendments responded. They are not a "sample period", let alone a distorted one (cf PS [25]).

[3] In contrast, at the special election held in Western Australia in 2014 following *Australian Electoral Commission v Johnston* (2014) 251 CLR 463: SCB [70] the Liberal Democratic Party drew to the left of the Liberal Party and received 1.84% of the vote: SCB 56 [60]. That figure remains higher than the Liberal Democratic Party's result in any WA Senate election where it has drawn a ballot position to the right of the Liberal Party: SCB 56 [60.2].

7. These results cannot be attributed to a party's distance from the left-hand most position on the ballot paper. Irrespective of ballot paper position, no party other than the Liberal Democratic Party has consistently polled higher when it appeared to the left of the Liberal Party than when it appeared to the right: SCB 54 [57]. Furthermore, it is not open to the plaintiff to invite the Court to find facts or draw inferences concerning the alleged significance of ballot paper position from academic literature that is not part of the special case (cf PS [26]).[4] The special case, and any inferences that can properly be drawn from it, provide the sole factual foundation upon which his case must be determined. The extensive references in the plaintiff's submissions to academic literature concerning alleged factual matters should therefore be disregarded.

8. There is nothing in the special case that would support any inference that the "ballot order effect" explains the differences in the vote for the Liberal Democratic Party summarised in [6] above. Indeed, the special case shows that even drawing the first column in a Senate ballot paper does not of itself yield a material number of votes, as is demonstrated by the small vote shares achieved by the parties in that position in other recent NSW Senate elections: 0.56% in 2010 (Socialist Alliance), 1.18% in 2016 (Health Australia Party) and 0.71% in 2019 (Rise Up Australia): SCB 58 [66.4] (see also Mr Leyonhjelm's assessment at SCB 59 [74] lines 40-50). An equivalently small effect is evident in House of Representatives elections, where the first position on the ballot increases a candidate's vote share by on average 1 percentage point: SCB 59 [72].

9. Having regard to the foregoing facts, the Court should infer that the similarity in the names of the Liberal Party and the Liberal Democratic Party has led to voter confusion at the ballot box over a number of federal elections. Specifically, a material number of electors who intended to vote for the Liberal Party, on scanning the ballot paper from left to right, voted for whichever of the Liberal Party or the Liberal Democratic Party appeared first, owing to the presence of the word "Liberal" in both parties' names.

10. In any case, whether or not the Court draws that inference, Parliament was entitled to legislate on the basis that voter confusion was distorting the electoral system in a manner that warranted a response. In its *Report on the conduct of the 2019 federal election and*

[4] The academic articles discussed in *Palmer v Australian Electoral Commission* (2019) 269 CLR 196 (***Palmer***) at [32]-[36] formed part of the special case in that matter.

matters related thereto, JSCEM reiterated concerns, expressed in earlier reports,[5] about the phenomenon of voter confusion: see SCB 68 [107]. Specifically, JSCEM referred to frequent commentary "about how the Labor vote is impaired in some seats where the Democratic Labor Party is listed higher on the ballot paper, while the Liberal vote can be similarly depressed where the Liberal Democratic Party is listed higher". JSCEM observed that, in these cases, a party's position on the ballot could lead to voter confusion and make a few percentage points difference to the outcome. JSCEM expressed the view that "voter choices and election outcomes should not be distorted by duplicative names appearing on the register of political parties" and that "[t]here is enough variety in the English language, to warrant party name registrations being distinguishable". The Parliament was entitled to accept that view, and to legislate on that basis.

PART V ARGUMENT

11. The impugned provisions are within the scope of the Parliament's broad legislative power to design and regulate the federal electoral system. Those provisions facilitate and enhance electoral choice by reducing voter confusion about the party affiliation of candidates for election. They do not violate either of the constitutional limitations upon which the plaintiff relies.

STATUTORY SCHEME

12. The impugned provisions must be understood in their statutory and historical context. Part XI of the *Electoral Act* provides for and regulates the registration of political parties. The scheme for registration was introduced in 1984.[6] From the outset,[7] one of the benefits of registration was the entitlement of an endorsed candidate to have the party name, or abbreviated name, printed on ballot papers, and there is now also an entitlement to have a registered logo printed: ss 210A, 214 and 214A.

13. The scheme establishes eligibility requirements for registration: s 124. A political party is eligible for registration only if it is a Parliamentary party (having at least one member

[5] *Report of the Inquiry into the Conduct of the 2004 Federal Election and Matters Related Thereto* (SCB 375-377), [4.29]-[4.36]; *Advisory Report on the Commonwealth Electoral Amendment Bill 2016* (SCB 528), [4.19]-[4.20].

[6] Section 42 of the *Commonwealth Electoral Legislation Amendment Act 1983* (Cth). See also the history discussed in *Mulholland v Australian Electoral Commission* (2004) 220 CLR 181 (***Mulholland***) at [1]-[3] (Gleeson CJ), [53] (McHugh J), [120], [132]-[139] (Gummow and Hayne JJ).

[7] *Commonwealth Electoral Legislation Amendment Act 1983* (Cth), s 80 (inserting s 106C into the *Electoral Act*). See *Mulholland* (2004) 220 CLR 181 at [78] (McHugh J).

who is a member of Parliament) or a party with at least 1500 members, and only if it is established on the basis of a written constitution that sets out its aims: s 123(1).

14. The scheme also places limits around the party names that may be registered. A political party is not to be registered if, in the opinion of the AEC, the party name or abbreviation, among other things, comprises more than 6 words, is obscene, frivolous or vexatious, is the name of another recognised political party (as defined), comprises or contains the word "Independent" and the name, abbreviation or acronym of the name of another recognised political party, or so nearly resembles such a name as to be likely to be confused with or mistaken for that name, or is one that a reasonable person would think suggests that a connection or relationship exists with a registered party that does not in fact exist: see s 129(1).

15. The impugned provisions add another limit that is directed to the same concern as underlies the existing provisions in s 129(1). Sections 129(3)-(6) provide that a political party is not to be registered if the party's name or abbreviated name contains a word that is in the name or abbreviated name of a registered political party and the first registered party does not consent to the use. The other impugned provisions are s 129A(2)-(3), which place a similar limitation on registration of party logos, and ss 134A(1)(a)(iii) and 134A(1A)-(1B), which extend an equivalent limitation to that in s 129(3) to existing parties by way of an objection procedure.

QUESTION 2: DIRECT CHOICE BY THE PEOPLE

16. The Constitution leaves the design of the electoral process largely to Parliament, to be adapted in line with evolving community standards.[8] It makes Parliament responsible for "establishing an electoral system which balances 'the competing considerations relevant to the making of a free, informed, peaceful, efficient and prompt choice by the people'."[9] To that end, the Constitution allows Parliament a "wide range of choice"[10]

[8] *Mulholland* (2004) 220 CLR 181 at [9] (Gleeson CJ), [63]-[64] (McHugh J), [154] (Gummow and Hayne JJ), [229]-[231] (Kirby J). See also *Attorney-General (Cth); Ex rel McKinlay v Commonwealth* (1975) 135 CLR 1 (***McKinlay***) at 23-24 (Barwick CJ), 46 (Gibbs J),56-57 (Stephen J).

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

[10] *Mulholland* (2004) 220 CLR 181 at [26] (Gleeson CJ), [154] (Gummow and Hayne JJ), [344] (Heydon J); *Murphy* (2016) 261 CLR 28 at [182] (Keane J, listing matters left to Parliament to specify), [263]-[264] (Gordon J, noting that the "design was deliberate" in leaving Parliament with "broad choice").

and lays only the "bare foundations of the electoral law".[11]

17. Parliament's broad power to create and sustain the electoral system is subject to ss 7 and 24 of the Constitution, which require that the Parliament be composed of members "directly chosen by the people". Those provisions are, of course, central planks of the implied freedom of political communication.[12] However, this Court has regularly cautioned against "elevating a 'direct choice' principle to a broad restraint upon legislative development of the federal system of representative government".[13] As McHugh J put it in *Mulholland*, the Court "will not… substitute its determination for that of Parliament as to the form of electoral system, as long as that system complies with the requirements of representative government as provided for in the Constitution".[14] That accords with Stephen J's observation that "it is not for this Court to intervene so long as what is enacted is consistent with the existence of representative democracy as the chosen mode of government and is within the power conferred by s. 51(xxxvi)".[15] Applying that approach, and subject to the discussion below, unless the amendments made by the impugned provisions to the rules concerning the registration of political parties with duplicative names are not "consistent with the existence of representative democracy", the appropriateness of those measures is a matter for Parliament, not the Court.

Disenfranchisement

18. In considering the effect of ss 7 and 24 of the Constitution, there is an important distinction between a law which imposes an impediment to universal adult suffrage, either directly (as in *Roach v Electoral Commissioner* (2007) 233 CLR 162) or in its substantive effect (as in *Rowe v Electoral Commissioner* (2010) 243 CLR 1), and other laws that regulate the electoral system without excluding any electors from the franchise.

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[11] Reid and Forrest, *Australia's Commonwealth Parliament 1901-1988* (1989), p. 86, cited with approval in *McGinty v Western Australia* (1996) 186 CLR 140 (***McGinty***) at 283 (Gummow J) and in *Mulholland* (2004) 220 CLR 181 at [65] (McHugh J).

[12] *Australian Capital Television Pty Ltd v Commonwealth* (1992) 177 CLR 106 (***ACTV***) at 187 (Dawson J), cited in *Lange v Australian Broadcasting Corporation* (1997) 189 CLR 520 (***Lange***) at 560 and in *Mulholland* (2004) 220 CLR 181 at [73] (McHugh J), [154] (Gummow and Hayne JJ).

[13] *Mulholland* (2004) 220 CLR 181 at [156] (Gummow and Hayne JJ), approved on several occasions, including in *Roach v Electoral Commissioner* (2007) 233 CLR 162 (***Roach***) at [77] (Gummow, Kirby and Crennan JJ) and *Day v Australian Electoral Officer for SA* (2016) 261 CLR 1 (***Day***) at [19] (French CJ, Kiefel, Bell, Gageler, Keane, Nettle and Gordon JJ).

[14] (2004) 220 CLR 181 at [86].

[15] *McKinlay* (1975) 135 CLR 1 at 57-58 (Stephen J), quoted in *McKenzie v Commonwealth* (1984) 59 ALJR 190 (***McKenzie***) at 191 (Gibbs CJ).

19. The former kind of law prevents *any* electoral choice by the affected class of persons, thereby necessarily impacting upon the direct choice that is required by ss 7 and 24 of the Constitution. It is in that context that this Court has held that the disenfranchisement of any group of adult citizens will be valid only if there is a "substantial reason" for that disenfranchisement.[16]

20. By contrast, laws of the latter kind do not *prevent* any person from exercising *electoral choice*, although such laws may affect the making of such choices (including in very significant ways, such as by changing the system of voting). With respect to laws of that kind, Parliament is not constrained by any constitutional requirement that such laws will be valid only if they can be justified by a "substantial reason". That is likewise true of laws that affect choices that are *not* electoral choices, such as the choices of political parties as to their names or logos. There is no "judicially enforceable standard of representative democracy"[17] against which such laws could be assessed. Their appropriateness is for Parliament to determine in the context of the electoral system as a whole, it being important to "be sensitive to the inherent strengths and weaknesses of institutional structures".[18]

21. Accordingly, where a plaintiff relies upon *Roach* and *Rowe* in attacking the validity of an electoral law, the first question that must be asked is: does the law in its terms or effect "disentitle, disqualify or exclude"[19] from voting persons who are otherwise entitled to vote?[20] It is only if that question is answered affirmatively that the Court reaches the second question, being whether that law is justified by a substantial reason.

The plaintiff's competition law arguments

22. The plaintiff contends that Parliament is precluded from passing electoral laws that

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[16] *Roach* (2007) 233 CLR 162 at [7] (Gleeson CJ) and [82], [85] (Gummow, Kirby and Crennan JJ); see also *Rowe v Electoral Commissioner* (2010) 243 CLR 1 (***Rowe***) at [23]-[25] (French CJ).

[17] *Murphy* (2016) 261 CLR 28 at [178] (Keane J).

[18] *Murphy* (2016) 261 CLR 28 at [93] (Gageler J). See also [245] (Nettle J), [303] (Gordon J).

[19] *Murphy* (2016) 261 CLR 28 at [33]-[34] (French CJ and Bell J), [55]-[56] (Kiefel J); *Rowe* (2010) 243 CLR 1 at [3] (French CJ) and [384] (Crennan J) (as to "disentitle"), [160], [167] (Gummow and Bell JJ) (as to "disqualify") and [381] (Crennan J) (as to "exclude").

[20] *Murphy* (2016) 261 CLR 28 at [39] (French CJ and Bell J), [52], [54] (Kiefel J, noting that *Roach* and *Rowe* "recognised a limitation on legislative power with respect to the eligibility of persons to vote"), [84]-[87], [96] (Gageler J, referring to "exclusion(s) from the franchise" requiring substantial justification, and stating that *Roach* and *Rowe* "do not point to some broader judicial mandate"), [222]-[224] (Keane J), [244] (Nettle J), [306]-[307], [321] (Gordon J).

"impose a discriminatory burden on a political party or class of parties with anti-competitive effect": PS [10]. There is no authority for that proposition. Its juridical basis is unexplained. On this argument, a law is said to be "discriminatory" if in its form or practical effect "it subjects a political party or class of parties to a disability or disadvantage" (against an unspecified comparator): PS [10]. A disability or disadvantage is said to be anti-competitive if it "substantially lessens electoral competition": PS [10] fn 5. The content of that threshold is said to be supplied by competition law.[21] However, competition between firms in a market for the supply or acquisition of goods or services is radically different from competition for votes in an election. The plaintiff does not explain how competition law principles are properly to be adapted to the electoral context. Nor is there any doctrinal basis for applying legislated principles of antitrust law as if they supply content to a constitutional limit.[22] Further, the inaptness of the "substantial lessening of competition" standard as the touchstone of constitutional validity is obvious. Among other things, the argument adopts a form of illegitimate top-down reasoning because, contrary to settled authority,[23] it equates the constitutional conception of "direct choice" to a freestanding notion of "electoral competition", and then reads back into the Constitution incidents of competition drawn from outside it.

23. Elsewhere, the plaintiff adopts a different standard. A disability or disadvantage is said to be "anti-competitive" if it does not provide for "equal treatment of parties" during federal elections (PS [42]). However, discrimination is not the touchstone of validity in this context and, even if it were, it would not require "equal treatment" of all political parties. Indeed, this Court has on numerous occasions rejected contentions premised on notions of equality in electoral laws: eg that every candidate is entitled to have his or her party affiliation recorded on the ballot paper;[24] that permitting some candidates to be grouped "above the line" impermissibly disadvantages ungrouped candidates;[25] and that every vote should to the extent reasonably possible have the same value in electing

[21] See *Competition and Consumer Act 2010* (Cth), ss 45(1), 46(1), 47(10), 49(1), 50(1).
[22] *Cf* PS [29], [33]-[34] and [38].
[23] *McGinty* (1996) 186 CLR 140 at 169 (Brennan CJ), 231-232 (McHugh J); *Lange* (1997) 189 CLR 520 at 566-567 (the Court).
[24] *Mulholland* (2004) 220 CLR 181 at, in particular, [337] (Callinan J).
[25] *McKenzie* (1984) 59 ALJR 190. See also *Ditchburn v Australian Electoral Officer (Qld)* (1999) 165 ALR 147 and *McClure v Australian Electoral Commission* (1999) 163 ALR 734; [1999] HCA 31.

candidates to the House of Representatives.[26] Similarly, the Court has upheld measures that "privilege" incumbency (eg by allowing unaffiliated incumbent Senators to have their name appear above the line).[27] For the above reasons, competition law principles do not supply the content of any relevant constitutional limit.

Existing statutory provisions are not the constitutional baseline

24. The plaintiff submits that "whenever a proposed change to the already-existing federal electoral regulatory regime is challenged … it is the change that is to be assessed against the limiting words": PS [14], [42]. That submission, if intended to convey that the "already-existing" statutory law forms part of the constitutional baseline, is wrong. While the plaintiff's argument derives some support from the reasons of French CJ in *Rowe* (at [78]), his Honour's analysis in that regard was not supported by any other member of the majority,[28] and was expressly contradicted by two of the dissenting judges.[29] Further, French CJ was dealing with a law which the majority in *Rowe* treated as disenfranchising some voters, and his Honour's approach should not be extended to laws that do not diminish the franchise.

25. Registration of political parties under the *Electoral Act*, and the benefits that registration confers, are "entirely statutory" constructs that are susceptible to variation and revision by Parliament as it sees fit from time to time.[30] The federal Register of Political Parties was introduced in 1984 "in the context of the implementation of a scheme for election funding for registered political parties, the inclusion of party endorsement details on ballot-papers and the introduction of group voting tickets for Senate elections (also known as the 'list' system)".[31] The creation of that Register did not somehow give rise to a constitutional right to register a political party in accordance with the original provisions, or for a candidate "to have his party affiliation included in the ballot paper".[32]

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[26] *McKinlay* (1975) 135 CLR 1; *McGinty* (1996) 186 CLR 140. See also *Murphy* (2016) 261 CLR 28 at [178] (Keane J).

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

[28] See *Murphy* (2016) 261 CLR 28 at [310] (Gordon J).

[29] (2010) 243 CLR 1 at 66-67 [190]-[191] (Hayne J), 102 [310]-[311] (Heydon J).

[30] *Mulholland* (2004) 220 CLR 181 at [337] (Callinan J); *Kartinyeri v Commonwealth* (1998) 195 CLR 337 at [13]-[16] (Brennan CJ and McHugh J), [47] (Gaudron J), [57], [85] (Gummow and Hayne JJ).

[31] *Mulholland* (2004) 220 CLR 181 at [53] (McHugh J); Parliament of the Commonwealth of Australia, First Report of the Joint Select Committee on Electoral Reform, September 1983, p. 182 [12.1].

[32] *Mulholland* (2004) 220 CLR 181 at [337] (Callinan J).

Indeed, Parliament had prior to 1983 considered, but rejected, earlier proposals for party affiliation to be included on ballot papers.[33] That serves to illustrate the extent to which this topic was, and remains, one for parliamentary choice.

Application of principles

The impugned provisions do not require justification against the 'substantial reasons' limit

26. Following the commencement of the impugned provisions, registered parties enjoy the privilege of having their registered name printed on ballot papers, as has been the case since 1984. Further, as again has been the case since 1984, the entitlement to that privilege depends on satisfying eligibility requirements for registration, which include limitations on the party names that may be registered. As has been the case since 1998 (when s 134A was added), an earlier registered party may object to the continued use by a later registered party of a name or logo that is the same as, or relevantly similar to, that of the earlier registered party. And, finally, a registered party is liable to be deregistered, following objection, if it persists in using a name that includes a word in an earlier-registered party's name (and an unregistered party cannot register under such a name without the consent of the first-registered party).

27. As is apparent from that summary, the impugned provisions do not deprive any elector of an entitlement or practical opportunity to vote. They do not impair the quality of the choice to be exercised by electors at all. They therefore are not provisions of a kind that, according to *Roach* and *Rowe*, are valid only if they are justified by reference to a "substantial reason". Their appropriateness is a matter for the judgment of the Parliament.

Alternatively, a substantial reason for the impugned provisions exists

28. Alternatively, even if the impugned provisions do require justification, there is a substantial reason for them. The identified purpose of those provisions is to "minimise the risk that a voter might be confused or potentially misled in the exercise of their choice

[33] Clause 7 of the Commonwealth Electoral Bill 1939 (Cth) would have provided for the designation of Senate groups on ballot papers. The clause was ultimately omitted from the Bill: House of Representatives Hansard, 21 May 1940, p. 1066. Similarly, cl 21 of the Electoral Laws Amendment Bill 1974 (Cth) would have provided for the printing of registered party names on ballot papers in both the House and the Senate. The clause was, however, removed by amendment in the Senate (Senate Hansard, 16 April 1975, p. 1080) and, ultimately, the Bill did not pass.

at an election due to a political party having a registered name or abbreviation similar to that of an unrelated registered political party".[34] That objective is not only consistent with, but promotional of, the constitutional requirement for direct choice, because party endorsement on a ballot-paper is an important piece of information that many voters use when making a choice between candidates on their ballots.[35] The amendments promote an informed and genuine choice by electors by reducing the risk that voters will inadvertently vote for one party while intending to vote for another.

29. The "substantial reason" for the impugned provisions is particularly clear once it is recognised that, under the pre-existing law, objections to the name of the Liberal Democratic Party had failed, yet voters who intended to vote for the Liberal Party continued to vote for the Liberal Democratic Party by mistake. Thus:

29.1. In 2008, a delegate of the AEC considered that the question was "not completely without doubt", but was not satisfied that the name would be likely to be confused or mistaken, citing among other things a "lack of objective evidence offered" by the objecting parties (SCB 436).

29.2. In 2010, the AEC again concluded that the party names were not likely to be confused or mistaken, citing "the Australian experience" of words being commonly used in the names of different political parties "without causing significant problems", and crediting the "hypothetical reasonable person" with awareness that words such as "liberal" and "labor" are used by different parties (SCB 441-442).

29.3. In the 2013 Senate election, the plaintiff *admits* that some voters confused the Liberal Democratic Party for the Liberal Party and that they unintentionally voted for the Liberal Democratic Party for that reason: Amended Defence, [25(a)] (SCB 38); Reply (SCB 41). It can be inferred that other elections were affected by the same confusion (see paragraphs 4 to 10 above). Thus, contrary to PS [7], the prior law evidently did *not* ensure that voters were not confused. On the contrary, despite those prior laws, they *were* confused. That confusion makes plain that the 2008 and 2010 conclusions of the AEC that are referred to above, which rested on forward-looking factual predictions, proved to be wrong. That, in turn, illustrates

[34] Explanatory Memorandum to the Electoral Legislation Amendment (Party Registration Integrity) Bill 2021, Schedule 1, [19]. See also [12], [24].

[35] *Mulholland* (2004) 220 CLR 181 at [74] (McHugh J).

the weaknesses in a scheme based on evaluative judgment and prediction rather than on objective criteria. It explains and justifies Parliament's preference in the impugned provisions for an objective rule, in order to achieve a higher degree of protection against the relevant mischief.[36]

30. Given the above, the plaintiff's contention that the pre-2021 provisions "already protect voters from possible confusion" (PS [16]) must be rejected on the facts. In any case, in substance that contention amounts to saying that Parliament had already struck an appropriate balance between competing policy interests in reducing voter confusion and in minimising regulation, and that it should not now be permitted to strike a different balance. As such, the submission "invite[s] the Court to depart from the borderlands of the judicial power and enter into the realm of the legislature".[37] It also wrongly assumes that, once the Parliament has enacted a set of provisions for the achievement of a legitimate purpose, "the Parliament is thereafter precluded from enacting further measures for the better achievement of the objective".[38]

31. For the sake of completeness, even if the Court were to apply the plaintiff's "substantial lessening of competition" test, the impugned provisions do not contravene that standard: cf PS [10]-[12], [29], [33]. That is so for three reasons.

31.1. *First*, the impugned provisions effect no reduction in the number of political parties. They simply constrain the name or abbreviation under which a political party may be registered. There is no impediment to the plaintiff registering under a different name and competing under that name. In that respect, the provisions are less "anti-competitive" than the 500-rule or the "no overlap" rule, the validity of which were unanimously upheld in *Mulholland*.

31.2. *Secondly*, and relatedly, the plaintiff has not pleaded or proved, as one would if alleging a substantial lessening of competition, any impairment of his party's ability or incentive to compete under a different party name, as it has done before when it contested the 2007 federal election with some 61 candidates as the Liberty and Democracy Party (SCB 47 [18]). In an attempt to prove this fact, the plaintiff refers to the Liberal Democratic Party's results in the 2013 Victorian Senate

[36] See an analogous analysis of the prohibition against using the word "bank" without APRA's consent in *APRA v TMeffect Pty Ltd* (2018) 125 ACSR 334 at [25]-[40] (Perry J).
[37] *Murphy* (2016) 261 CLR 28 at [39] (French CJ and Bell J).
[38] *Unions NSW v New South Wales* (2019) 264 CLR 595 (***Unions NSW (No 2)***) at [113] (Nettle J).

election (SCB 55 [59.1]; PS [35]) and invites the Court to infer that a name change above the line would result in the same magnitude of "competitive electoral detriment". Nothing in the agreed facts supports that inference, the results in the 2013 Victorian Senate election having occurred when the party did not appear above the line at all (that being a quite different situation to that which may result from the impugned provisions).

31.3. *Thirdly*, the Liberal Democratic Party achieved by far its greatest electoral success when, on its own admission, electors confused it for the Liberal Party. On average it records over three times as many votes when it appears on the ballot to the left of the Liberal Party as it records when it appears to the right of that party: SCB 55 [59]. That is not the outcome of a competitive market, but of a kind of *laissez-faire* which competition law abhors, and where incentives to invest are diminished by free-riding. Antitrust law would not require such an outcome in commercial markets. The Constitution most certainly does not require it in federal elections.

QUESTION 1: IMPLIED FREEDOM OF POLITICAL COMMUNICATION

32. The Commonwealth does not challenge the authorities that establish that the Constitution, including ss 7 and 24, impliedly protects "that freedom of communication between the people concerning political or government matters which enables the people to exercise a free and informed choice as electors".[39] The implied freedom protects the communication of the "information, ideas and arguments which are necessary to make an informed judgment as to how [the Australian people] have been governed and as to what policies are in the interests of themselves, their communities and the nation".[40]

33. It is now established[41] that whether a particular legislative measure infringes the implied freedom will be answered by adopting the three-part mode of analysis described in *McCloy v New South Wales*[42] and *Brown v Tasmania*,[43] which requires attention: *first*, to whether the law in question effectively burdens the freedom; *second*, the legitimacy of

[39] *Lange* (1997) 189 CLR 520 at 560 (The Court); cf *LibertyWorks Inc v Commonwealth* (2021) 95 ALJR 490 (***LibertyWorks***) at [249] (Steward J). See instead at [44] (Kiefel CJ, Keane and Gleeson J).
[40] *ACTV* (1992) 177 CLR 106 at 231 (McHugh J).
[41] *Libertyworks* (2021) 95 ALJR 490 at [46], [48] (Kiefel CJ, Keane and Gleeson JJ), [93], [119] (Gageler J), [194] (Edelman J), [247] (Steward J); *Comcare v Banerji* (2019) 267 CLR 373 (***Banerji***) at [33]-[35] (Kiefel CJ, Bell, Keane and Nettle JJ).
[42] (2015) 257 CLR 178 (***McCloy***).
[43] (2017) 261 CLR 328 (***Brown***).

the purpose of the law; and *third*, whether the law is reasonably appropriate and adapted to advance that purpose in a manner compatible with representative and responsible government, in the sense that it is suitable, necessary and adequate in its balance.

No effective burden

34. In *Mulholland*, this Court considered a challenge to provisions of the *Electoral Act* that could have made the Democratic Labour Party ineligible for registration as a political party. Part of the argument was that those provisions burdened the implied freedom of political communication because, if the DLP was deregistered, its name would no longer be printed on the ballot paper next to its candidates, thereby impairing their ability to communicate their party affiliation through the ballot paper.[44] A majority of this Court rejected that argument on the ground that the impugned provisions did not burden the implied freedom.[45] That followed because no right to communicate via the contents of the ballot paper existed independently of the *Electoral Act*, and under that Act such a right arose only if a party satisfied the conditions for registration. Accordingly, the challenged provisions, in altering the conditions for registration, did not burden any right that existed independently of satisfaction of those conditions. The plaintiff has not sought leave to re-open *Mulholland*. Instead, he relies (PS [46]) on the reasoning of Gleeson CJ and Kirby J in that case (and on reasoning in the Full Federal Court that was under appeal), that being reasoning that was contrary to that of the majority in this Court.

35. *Mulholland* is not distinguishable. It is true that the impugned provisions may have the consequences that some political parties cannot become, or cannot remain, registered, and that this will in turn have consequences for whether that party's name appears on the ballot paper. But that effect on political communication is exactly the same as that which was held in *Mulholland* not to burden the implied freedom. (Indeed, this effect of the impugned provisions is less pronounced than in *Mulholland*, because an affected party can become or remain registered by selecting an available name).

36. As the impugned provisions are concerned only with registration, they do not impose any burden on the names, abbreviations or logos that a political party may use in communicating with electors (otherwise than on the ballot paper). If it wished to do so,

[44] (2004) 220 CLR 181 at [104].

[45] (2004) 220 CLR 181 at [105]-[107], [110] (McHugh J), [186], [192] (Gummow and Hayne JJ), [337] (Callinan J), [354] (Heydon J). See also *Brown* (2017) 261 CLR 328 at [557]-[560] (Edelman J).

the Liberal Democratic Party could change its name (so as to avoid deregistration as a result of the impugned provisions), register the "LDP" as an abbreviation and/or logo (which could then appear on the ballot paper above the line as an approved abbreviation), and then communicate as it wished with the electorate using whatever name, abbreviation or logo it chooses. The impugned provisions would have no effect on any such communications. That a political party may choose to communicate using abbreviations or logos that are *not* registered is illustrated by the Liberal Democratic Party's use of two such logos for its website and promotional materials: SCB 67-68 [104]-[105].

37. Alternatively, if (contrary to *Mulholland*) the impugned provisions are held to burden the freedom, that burden is not substantial: cf PS [46]. Identification of the extent of the burden is important because it is only to the extent that a law imposes a burden that the Court's supervisory role is engaged.[46] In the present case, the extent of any burden arising from the impugned provisions involves, at most, the restriction under s 214(1) of the *Electoral Act* on the AEC printing party names, abbreviations or logos that contain duplicative words on ballot papers. A political party is otherwise free to communicate as it wishes, including if it chooses by using an unregistered name. The extent of any burden is further reduced by the fact that the impugned provisions are content neutral: they do not discriminate against a particular political viewpoint in either their form or practical effect.[47] That follows because the discrimen that determines whether a name, abbreviation or logo may be registered, or continue to be registered, is whether it contains a word that is already included in the name, abbreviation or logo of a party registered earlier in time. The regulation effected by the impugned provisions is of duplication *per se*, rather than of the expression of any ideology: cf PS [36].

Legitimate purpose

38. The purpose of the impugned provisions is the "mischief" to which they are directed.[48]

[46] *McCloy* (2015) 257 CLR 178 at [127] (Gageler J), see also at [68] (French CJ, Kiefel, Bell and Keane JJ); *Brown* (2017) 261 CLR 328 at [90] (Kiefel CJ, Bell and Keane JJ), [180] and [192]-[195] (Gageler J), [269] (Nettle J), [397] (Gordon J); *LibertyWorks* (2021) 95 ALJR 490 at [63] (Kiefel CJ, Keane and Gleeson JJ).

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

[48] *Brown* (2017) 261 CLR 328 at [101] (Kiefel CJ, Bell and Keane JJ), [208]-[209] (Gageler J), [321] (Gordon J); *Clubb* (2019) 267 CLR 171 at [257] (Nettle J); *Unions NSW (No 2)* (2019) 264 CLR 595 at [171] (Edelman J); *LibertyWorks* (2021) 95 ALJR 490 at [183] (Gordon J).

It is discerned through ordinary processes of statutory construction, having regard to text, context and, if relevant, the historical background of the impugned provisions.[49]

39. For the reasons given in paragraph 28 above, the impugned provisions pursue the purpose of minimising voter confusion. They facilitate the direct choice of the people by "assisting voters to make informed choices as to the person or party for whom they wish to vote".[50] This serves an "important state interest" in "avoiding confusion, deception and even frustration of the democratic process".[51] That is plainly a legitimate purpose.[52]

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40. The plaintiff's suggestion that the ostensible purpose of the impugned provisions disguise some other, illegitimate purpose should not be accepted: cf PS [29]. There is no factual foundation for that submission. The plaintiff contends that the purpose cannot have been to minimise voter confusion because the section of the JSCEM report that informed the legislative amendments ran for only half a page (PS [21]) or (somewhat contradictorily) that there was no parliamentary report into the issue at all (PS [23]). That submission is

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without substance. Laws can, and in practice often are, passed without any committee deliberation at all. In this case, by contrast, the JSCEM remarked upon the "frequent commentary" in the "[a]nalysis of election results" to the effect that voters are confused by parties with similar names: SCB 68, [107]. This is a topic with which parliamentarians, and JSCEM in particular, may be taken to be well familiar (including from its reports on previous elections, including the 2013 election). This is not a case like *Unions NSW (No 2)*, where the relevant committee saw a need for further inquiries

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to be undertaken to substantiate the law, but those inquiries were not undertaken.[53]

41. The plaintiff's criticism of the "minimal" explanatory memorandum is even more unpersuasive. The repeated references in the memorandum to reducing voter confusion leave no doubt that this is the purpose to which the impugned provisions were directed.[54]

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[49] *Brown* (2017) 261 CLR 328 at [96] (Kiefel CJ, Bell and Keane JJ), [208] (Gageler J); *Unions NSW (No 2)* (2019) 264 CLR 595 at [171] (Edelman J).

[50] *Mulholland* (2004) 220 CLR 181 at [71] (McHugh J).

[51] *Jenness v Fortson*, 403 US 431 (1971) at 442, cited with approval in *Mulholland* (2004) 220 CLR 181 at [21] (Gleeson CJ).

[52] *Mulholland* (2004) 220 CLR 181 at [22] (Gleeson CJ), [70]-[71] (McHugh J), [166] (Gummow and Hayne JJ, referring to *American Party of Texas v White*, 415 US 767 (1974) at 782), [292] (Kirby J).

[53] (2019) 264 CLR 595 at [26], [53] (Kiefel CJ, Bell and Keane JJ), [99] (Gageler J), [117] (Nettle J), [152] (Gordon J).

[54] Explanatory Memorandum to the Electoral Legislation Amendment (Party Registration Integrity) Bill 2021 (Cth), Schedule 1, [12], [19], [24].

42. The plaintiff's submission that there was no basis for Parliament "even to infer an apprehended risk" of voter confusion (PS [23]) is entirely at odds with the history of legislative reforms directed at addressing this very risk. Prior to the commencement of the impugned provisions, the *Electoral Act* contained a number of provisions which, on the plaintiff's own account, had been introduced for the purpose of addressing voter confusion: PS [7]. For example, the *Commonwealth Electoral Amendment Act 2016* (Cth) inserted s 214A into the *Electoral Act*, providing for party logos to be printed on ballot papers. The stated purpose of that reform was to address "the confusion that arises when political parties with similar names appear on ballot papers, which may result in the true intent of the voter not being reflected in the outcome".[55] Those amendments were, like the impugned provisions, informed by JSCEM analysis of voter confusion at the 2013 federal election.[56] Against that background, the suggestion that neither Parliament nor JSCEM had a basis to be concerned about any risk of voter confusion is untenable. Further, it is noteworthy that the existing measures on which the plaintiff places much emphasis (the "confusion provisions" listed in PS [7]) were introduced *prior* to the 2016 federal election, yet the pattern of voters confusing the Liberal Democratic Party and the Liberal Party continued at the 2016 election (with the Liberal Democratic Party consistently performing better where it featured to the left of the Liberal Party on the Senate ballot paper: see paragraph 6 above). In those circumstances, it was clearly open to Parliament to conclude that further measures were required.

43. The plaintiff's submission is ultimately reduced to the complaint that the available evidence in support of the phenomenon of voter confusion is statistically "simplistic" (PS [25]) or that the special case does not exclude the possibility that other factors may have contributed to the Liberal Democratic Party consistently receiving a higher proportion of votes when it appears on the Senate ballot to the left of the Liberal Party than it does when it appears to the right of that party (PS [27]). Those complaints go nowhere. Parliament is not required to justify laws by reference to statistical analysis. Nor is it required to exclude, through evidence, the possibility that any other factors may contribute to a phenomenon to which it chooses to respond. To condition legislative

[55] Revised Explanatory Memorandum to the Commonwealth Electoral Amendment Bill 2016 (Cth), p. 3.

[56] Revised Explanatory Memorandum to the Commonwealth Electoral Amendment Bill 2016 (Cth), p. 2, referring to JSCEM's *Interim report on the inquiry into the conduct of the 2013 Federal Election* (May 2014) and its *Inquiry into and report on all aspects of the conduct of the 2013 Federal Election and matters related thereto* (April 2015).

power in either way would be directly contrary to the well-established principle that Parliament may respond, even prophylactically, to inferred legislative imperatives.[57] In this case, a response to the voter confusion that the plaintiff admits occurred in the 2013 Senate election would *by itself* have justified the impugned provisions.

Reasonably appropriate and adapted

44. If the final stage of analysis is reached, it is appropriate to apply the analytical tool of structured proportionality to assess whether the impugned provisions are reasonably appropriate and adapted to the legitimate purpose of reducing voter confusion.[58]

45. Suitability: the impugned provisions are suitable for achieving the purpose of reducing voter confusion, in the sense that they have a "rational connection" to and are "capable of realising that purpose".[59] Contrary to PS [48(a)], affording the power of objection to an earlier-registered party is not irrational. In circumstances where the object is to prevent duplication, some objective criterion must be selected for determining which of two or more parties' names is to be regarded as duplicative. The point in time when a party was registered is a fact which is readily ascertainable, and therefore administratively workable. Moreover, it was open to Parliament to conclude that a party registered earlier in time would be more likely to have acquired greater "reputational capital" (to use the plaintiff's terminology) and would therefore be disadvantaged the most by a duplication in party names. This was undoubtedly the case in respect of both the Labor Party and the Liberal Party, those being the two parties identified by JSCEM as most significantly affected by voter confusion as a result of other parties having similar names (SCB 68 [107]). Further, the decision to accord priority to the first entity to register is familiar in other regulatory contexts,[60] as well as in earlier versions of the *Electoral Act* which the plaintiff embraces (PS [7]; see below at [48]). It also avoids the perverse incentives that would be created by the plaintiff's hypothesised alternatives of last-in-time (endless registrations to remain last in time) or second-in-time (registration of two parties rather than one, the first being a dummy, in order to achieve the desired second place). In any

[57] *Spence v Queensland* (2019) 268 CLR 355 at [96] (Kiefel CJ, Bell, Gageler and Keane JJ); *McCloy* (2015) 257 CLR 178 at [197] (Gageler J), [233] (Nettle J); *Brown* (2017) 261 CLR 328 at [288] (Nettle J).

[58] See, eg, *Libertyworks* (2021) 95 ALJR 490 at [46], [48] (Kiefel CJ, Keane and Gleeson JJ), [93], [119] (Gageler J), [194] (Edelman J), [247] (Steward J).

[59] *Banerji* (2019) 267 CLR 373 at [33] (Kiefel CJ, Bell, Keane and Nettle JJ); see also *McCloy* (2015) 257 CLR 178 at [80] (French CJ, Kiefel, Bell and Keane JJ).

[60] Eg *Corporations Act 2001* (Cth) s 147 and *Business Names Registration Act 2011* (Cth) ss 25, 31.

event, even if the Court were to be persuaded that other criteria could reasonably have been chosen, that would be irrelevant to the "suitability" inquiry, because it would not demonstrate that the criterion selected by the Parliament did not rationally advance the purpose of reducing voter confusion.

46. Necessity: the impugned provisions are necessary, in the sense that there is no "obvious and compelling alternative which is equally practicable and available and would result in a significantly lesser burden" upon the implied freedom.[61] In assessing the necessity of a measure, this Court has emphasised that "it is the role of the legislature to select the means by which a legitimate statutory purpose may be achieved"[62] and that courts must not "exceed their constitutional competence by substituting their own legislative judgments for those of parliament".[63] A measure will not be "equally effective" unless it is "as capable of fulfilling [the] purpose as the means employed by the impugned provision, 'quantitatively, qualitatively, and probability-wise'".[64]

47. Neither of the two alternatives posited by the plaintiff is a compelling and equally effective alternative to the impugned provisions. The first alternative is a series of provisions of the *Electoral Act* as they stood prior to the 2021 amendments, referred to in PS [7] as the "confusion provisions". The plaintiff offers no evidence to support his assertion at PS [7] and [16] that those provisions already "ensure" that registered party names are not confused. To the contrary, as discussed in paragraphs 29 to 30 above, the prior provisions were not effective at eliminating voter confusion. The plaintiff does not explain why (on his case) the JSCEM was wrong to identify evidence of voter confusion in its reports into successive, more recent elections.[65] Further, the persistence of voter confusion is amply demonstrated by the facts summarised at paragraphs 4 to 9 above.

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

[62] *McCloy* (2015) 257 CLR 178 at [82] (French CJ, Kiefel, Bell and Keane JJ); see also *Unions NSW (No 2)* (2019) 264 CLR 595 at [47] (Kiefel CJ, Bell and Keane JJ); *Clubb* (2019) 267 CLR 171 at [267]-[269] (Nettle J).

[63] *McCloy* (2015) 257 CLR 178 at [58] (French CJ, Kiefel, Bell and Keane JJ); see also *Tajjour v New South Wales* (2014) 254 CLR 508 (***Tajjour***) at [36] (French CJ), [115] (Crennan, Kiefel and Bell JJ); *Unions NSW (No 2)* (2019) 264 CLR 595 at [47] (Kiefel CJ, Bell and Keane JJ), [113] (Nettle J); *LibertyWorks* (2021) 95 ALJR 490 at [202] (Edelman J).

[64] *Tajjour* (2014) 254 CLR 508 at [114] (Crennan, Kiefel and Bell JJ).

[65] JSCEM, *Interim report on the inquiry into the conduct of the 2013 Federal Election* (May 2014), [1.13] (SCB 60 [75]); JSCEM, *Inquiry into and report on all aspects of the conduct of the 2013 Federal Election* (April 2015), [4.93]-[4.97] referred to in JSCEM, *Advisory Report on the Commonwealth Electoral Amendment Bill 2016* (March 2016) (SCB 525 [2.41], 526 [3.37]); JSCEM, *Report on the conduct of the 2019 federal election* (December 2020) (SCB 68 [107]).

48. The plaintiff's second alternative is "varying the ballot randomisation among different locations", akin to the "Robson Rotation" method adopted in Tasmania and the ACT: PS [48(b)], referring to SCB 53 [54]. The plaintiff makes no real attempt to establish this as a compelling and equally practicable alternative. Critically, this measure would be equally effective *only* if voter confusion operated symmetrically. That is, it would be effective only if the same number of voters mistakenly voted for the Liberal Democrats instead of the Liberals as those who mistakenly voted for the Liberals instead of the Liberal Democrats. The Court could not be satisfied of that fact: cf PS [28]. To the contrary, the Court would readily infer that confusion over similar names is more likely to disadvantage major parties, who consistently poll a much higher proportion of votes.

49. Adequacy in the balance: a law is to be regarded as adequate in its balance unless the benefit sought to be achieved is "manifestly outweighed by the adverse effect on the implied freedom".[66] A law should be invalidated at this stage only in "extreme cases", as it "will often mean that Parliament is entirely precluded from achieving its legitimate policy objective".[67] The plaintiff addresses adequacy in only a cursory way and the submission should not be accepted: PS [48(c)]. Addressing voter confusion is an important policy objective, which is not only consistent with, but facilitative of, the promotion of voter choice. The benefit to democracy of avoiding mistakenly cast votes is not manifestly outweighed by any burden that the impugned provisions impose.

PART VI ESTIMATE OF TIME

50. Approximately 2 hours is sought to present the Commonwealth's oral argument.

Dated: 24 January 2022

……	……..	……..
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[66] *LibertyWorks* (2021) 95 ALJR 490 at [85] (Kiefel CJ, Keane and Gleeson JJ); *Banerji* (2019) 267 CLR 373 at [38] (Kiefel CJ, Bell, Keane and Nettle JJ); *Clubb* (2019) 267 CLR 171 at [6], [66]-[69] and [102] (Kiefel CJ, Bell and Keane JJ), [270]-[275] (Nettle J), [497]-[498] (Edelman J).

[67] *LibertyWorks* (2021) 95 ALJR 490 at [201] (Edelman J). See also [292] (Steward J).

IN THE HIGH COURT OF AUSTRALIA
SYDNEY REGISTRY

BETWEEN: **JOHN RUDDICK**
Plaintiff

AND: **COMMONWEALTH OF AUSTRALIA**
Defendant

ANNEXURE TO THE SUBMISSIONS OF THE COMMONWEALTH

Pursuant to paragraph 3 of the *Practice Direction No 1 of 2019*, the Commonwealth sets out below a list of the particular constitutional provisions and statutes referred to in its submissions.

No.	Title	Provision(s)	Version
1.	*Business Names Registration Act 2011* (Cth)	ss 25, 31	Current (Compilation No. 5, 4 April 2021 – present)
2.	*Commonwealth Electoral Act 1918* (Cth)	ss 123(1), 124, 129(1), (3)-(6), 129A(2)-(3), 134A(1)(a)(iii), 134A(1A)-(1B), 210A, 214 and 214A	Current (Compilation No. 72, 14 December 2021 – present)
3.	*Commonwealth Electoral Amendment Act 2016* (Cth)	Sch 1, item 89	As made (21 March 2016)
4.	*Commonwealth Electoral Legislation Amendment Act 1983* (Cth)	ss 42, 80	As made (22 December 1983)
5.	*Competition and Consumer Act 2010* (Cth)	ss 45(1), 46(1), 47(10), 49(1), 50(1)	Current (Compilation No. 139, 5 October 2021 – present)
6.	*Constitution*	ss 7, 24, 51(xxxvi)	Current (Compilation No. 6, 29 July 1977 – present)
7.	*Corporations Act 2001* (Cth)	s 147	Current (Compilation No. 112, 8 December 2021 – present)
8.	*Electoral Legislation Amendment (Party Registration Integrity) Act 2021* (Cth)	Sch 1, items 7, 9, 11 and 14	As made (2 September 2021)

9.	*Judiciary Act 1903* (Cth)	s 78B	Current (Compilation No. 48, 1 September 2021 – present)

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