

SUPREME COURT OF QUEENSLAND

REGISTRY: Brisbane
NUMBER: BS2246/20

Applicant: THE AUSTRALIAN INSTITUTE FOR
PROGRESS

AND

10 Respondent: ELECTORAL COMMISSION QUEENSLAND

NOTICE OF A CONSTITUTIONAL MATTER

1. The respondent gives notice that this proceeding may involve a matter arising under the
Constitution or involving its interpretation within the meaning of section 78B of the
20 *Judiciary Act 1903* (Cth).

NATURE OF CONSTITUTIONAL MATTER

2. The respondent apprehends that the matter gives rise to a question of whether in
resolving the proper construction of the impugned provisions of the *Electoral Act 1992*
(Qld),¹ the construction advanced by the applicant should be preferred because of the
30 implied freedom of political communication arising from the *Commonwealth*
Constitution.²

FACTS SHOWING THAT SECTION 78B OF THE *JUDICIARY ACT 1903* APPLIES

3. On 7 February 2020, the applicant wrote to the respondent outlining its activities
(including, among other things, conducting polling, advertising, and recommending a
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¹ *Electoral Act 1992* (Qld), ss 273-275, when read together with the definition of ‘electoral expenditure’ in s 197.

² *Clubb v Edwards; Preston v Avery* (2019) 93 ALJR 448, 462 [4] (Kiefel CJ, Bell and Keane JJ); Applicant’s Submissions (5 March 2020), [9]-[10] and [49]-[50].

Notice of a constitutional matter

Filed on behalf of the Electoral
Commission Queensland

Per Nathaniel Harris
PL3/ELE041/303/HNA

GR Cooper
CROWN SOLICITOR
11th Floor, State Law Building
50 Ann Street
Brisbane Qld 4000
Telephone 07 3031 5609
Facsimile 07 3031 5639

vote for or against a particular candidate) and asking whether the *Electoral Act* prevented ‘prohibited donors’ from donating to the applicant.³

4. On 20 February 2020, the respondent replied by drawing the relevant provisions of the *Electoral Act* to the attention of the applicant, and asking it to provide further information in relation to the funding they receive from prohibited donors.

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5. On 28 February 2020, the applicant filed an originating application in the Supreme Court of Queensland seeking various declarations under s 10 of the *Civil Proceedings Act 2011* (Qld), to the effect that the prohibition on receiving political donations from property developers does not apply to ‘third parties’ engaging in political communications on their own behalf.

20

6. The return date for the application is 12 March 2020.⁴ The application and supporting affidavit were uploaded to the applicant’s website on 1 March 2020.⁵

7. On 5 March 2020, the applicant served the respondent with an unfiled copy of its submissions in support of the application.⁶

8. At paragraphs [9]-[10] of those submissions the applicant submits that:

30

9. Thus, if the ECQ construction is correct, it would invite a reconsideration of the issues that were dealt with by the High Court of Australia in *Spence v The State of Queensland* (Spence) and invite a different basis for the challenge to this aspect of the laws on the ground of breaching the implied freedom of political communication.

40

10. As it is settled law that the anterior question before any issue of whether the implied freedom of political communication has been breached is to focus upon the proper construction of the legislation in question, the current proceedings do no more than focus on that inquiry. This is particularly so given, respectfully, the construction that would avoid any issue of the implied freedom arising appears compelling. Thus, the present application is an exercise of statutory construction only. It does not include any constitutional issue requiring the giving of any notices pursuant to section 78B of the *Judiciary Act 1983* (Cth) [sic]. Obviously, the law in relation to the implied freedom does bear upon the proper approach to statutory construction and the principle of legality just discussed. Nonetheless, the AIP has in correspondence reserved its rights, were it necessary, in the event its construction was not preferred, to challenge on implied freedom grounds. However, that is not presently before the Court.

(underlining added)

³ As defined by *Electoral Act 1992* (Qld), s 273.

⁴ Annexure A to this notice.

⁵ See <https://aip.asn.au/2020/03/aip-v-ecq/>.

⁶ Annexure B to this notice.


9. Further, the respondent considers that the effect of the applicant's submissions in paragraphs [49]-[50] to be that had the interpretation purportedly advanced by the respondent been before the Court in *Spence v State of Queensland* (2019) 93 ALJR 643; [2019] HCA 15, then the matter would have been decided differently. The implication is that the Supreme Court should not accept that interpretation because it would be contrary to the implied freedom.

10. On 6 March 2020, on receipt of the applicant's submissions, the respondent wrote to the applicant to express its view that the proceeding involved a matter arising under the *Constitution* or involving its interpretation in the sense described by s 78B of the *Judiciary Act 1903* (Cth).⁷

11. The applicant disavows their intention to raise a constitutional issue of this kind, and maintains the position that their submissions do not have this effect.

12. The respondent considers that the applicant's reliance upon the implied freedom of political communication to support their construction of the impugned provisions must necessarily raise a constitutional issue of the kind contemplated by s 78B of the *Judiciary Act*.

Dated 10 March 2020.


.....
for GR Cooper
Solicitor for the Electoral Commissioner
of Queensland

⁷ Letter from Crown Law to O'Donnell Legal (6 March 2020) (Annexure C to this notice).

TO: **The Applicant**
The Australian Institute for Progress
c/- O'Donnell Legal
PO Box 570
FORTITUDE VALLEY QLD 4006

10 AND TO: **Attorney-General for the Commonwealth of Australia**
The Hon Christian Porter
Robert Garran Offices
3-5 National Circuit
BARTON ACT 2600

AND TO: **Attorney-General for the State of Western Australia**
The Hon John Quigley
Level 5, Dumas House
2 Havelock Street
PERTH WA 6005

20 AND TO: **Attorney-General for the State of New South Wales**
The Hon Mark Speakman
GPO Box 5341
SYDNEY NSW 2000

AND TO: **Attorney-General for the State of Victoria**
The Hon Jill Hennessy
Level 26
121 Exhibition Street
MELBOURNE VIC 3000

30 AND TO: **Attorney-General for the State of South Australia**
The Hon Vickie Chapman
Level 11
45 Pirie Street
ADELAIDE SA 5000

AND TO: **Attorney-General for the Australian Capital Territory**
The Hon Gordon Ramsay
ACT Legislative Assembly
London Circuit
CANBERRA ACT 2601

40 AND TO: **Attorney-General for the Northern Territory**
The Hon Natasha Fyles
Parliament House
DARWIN NT 0800

AND TO: **Attorney-General for the State of Tasmania**
The Hon Elise Archer
Level 10/15 Murray Street
HOBART TAS 7000

ANNEXURE A

SUPREME COURT OF QUEENSLAND

REGISTRY:
BRISBANE
NUMBER: 2246/20

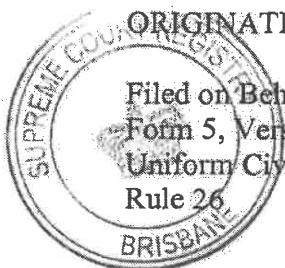
Applicant: The Australian Institute for Progress Ltd
(ACN 101 843 396)
AND
Respondent: The Electoral Commission of Queensland

ORIGINATING APPLICATION

To the respondent: TAKE NOTICE that the applicant is applying to the Court for the following orders:

1. Declarations pursuant to s 10 of the *Civil Proceedings Act (Qld) (2011)* that:
 - a) upon the proper construction of the expression "electoral expenditure" in its definition (b) in s 197 of the *Electoral Act (Qld) (1992) (EA)*, expenditure by a third party (within the meaning of that expression in s 197 of the *EA (Third Party)*) on the activities of that Third Party, including in relation to political communications or concerning an election for the Legislative Assembly, is not within its meaning;
 - b) upon the proper construction of s 274 of the *EA*, and in particular sub-s 274(1)(b), a gift to or for the benefit of a Third Party for that Third Party to pursue its activities, including in relation to political communications or concerning an election for the Legislative Assembly, is not within the meaning of the expression "political donation" in s 274 of the *EA*;
 - c) upon the proper construction of Part 11, Division 8, Subdivision 4 of the *EA*, a gift made to or for the benefit of a Third Party by a prohibited donor (within the meaning of that expression in s 273 of the *EA*) for that Third Party to pursue its activities, including in relation to political communication or concerning an election for the Legislative Assembly, does not engage the operation of ss 275 or 276 of the *EA*.
2. The respondent pay the applicant's costs of the application.

This application will be heard by the Court at Brisbane



ORIGINATING APPLICATION

Filed on Behalf of the Applicants(s)
Form 5, Version 1
Uniform Civil Procedure Rules 1999
Rule 26

Name: Australian Institute for Progress Ltd
Address: C/O Graham Young
9 Lucy St Greenslopes
Phone No: 0411 104801
Fax No:
Email: graham.young@aip.asn.au

12
on: 28 March 2020 at 10 am.

Filed in the Brisbane Registry on

28 FEB 2020



 Registrar: (Registrar to sign and seal)

If you wish to oppose this application or to argue that any different order should be made, you must appear before the Court in person or by your lawyer and you shall be heard. If you do not appear at the hearing the orders sought may be made without further notice to you. In addition you may before the day for hearing file a Notice of Address for Service in this Registry. The Notice should be in Form 8 to the Uniform Civil Procedure Rules. You must serve a copy of it at the applicant's address for service shown in this application as soon as possible.

On the hearing of the application the applicant intends to rely on the following affidavits:

1. Affidavit of Graham Young sworn 28 February 2020.

If you intend on the hearing to rely on any affidavits they must be filed and served at the applicant's address for service prior to the hearing date.

If you object that these proceedings have not been commenced in the correct district of the Court, you must apply to the Court for dismissal of the proceedings.ⁱ

THE APPLICANT ESTIMATES THE HEARING SHOULD BE ALLOCATED 2 hours

PARTICULARS OF THE APPLICANT:

Name: Graham Edward Young

Applicant's residential or business address: 9 Lucy Street, GREENSLOPES Q 4120

Address for service: 9 Lucy St Greenslopes QLD 4120

Telephone: 0411104801

E-mail address: graham.young@aip.asn.au

Signed:

Description: Applicant

Dated: 28.02.2020

This application is to be served on: The Electoral Commissioner
Of: Electoral Commission Queensland
Level 21 Eagle Street
Brisbane QLD 4000

i. This sentence may be omitted from a proceeding started in any central registry of the Supreme Court.

SUPREME COURT OF QUEENSLAND

REGISTRY:
NUMBER: 2246/20

Applicant: THE AUSTRALIAN INSTITUTE FOR
PROGRESS ACN Ltd 101 843 396
AND
Respondent: Electoral Commission of Queensland

AFFIDAVIT

GRAHAM YOUNG of 9 Lucy Street, Greenslopes, Executive Director, states on oath:

1. I am the Executive Director of the Australian Institute for Progress Ltd ACN 101 843 396 (the Institute).

The formation of the Institute

2. The Institute is a think tank based in Queensland. The Institute undertakes research and advocacy on both federal and state issues.
3. In or about September 13, 2013, I and former ALP MHR, Hon Gary Johns started to discuss the possibility of forming a centre-right think tank in Queensland based around the ideas of individual rights and responsibilities, which ultimately became the Institute.
4. We linked up with Dan Ryan, then a director of Hong Kong's Lion Rock Institute, a similar type of think tank, and Bob Tucker to achieve this through the vehicle of an existing not-for-profit company, limited by guarantee, The National Forum.

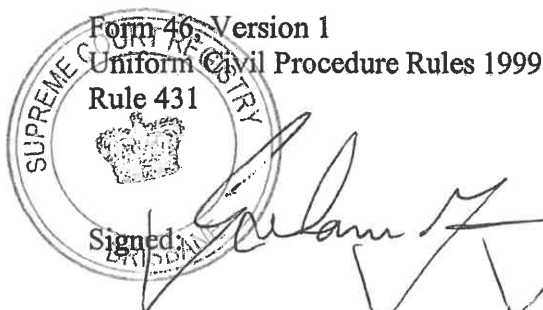
AFFIDAVIT
Filed on Behalf of the Applicant

Name: Graham Young
Address: 50 Logan Road,
Woolloongabba

Phone No: 0411 104 801

Email:
graham.young@aip.asn.au

Taken by:



5. In June 2014 it adopted a new constitution and a new name as the Australian Institute for Progress and we were elected directors.
6. A copy of the new constitution of the Institute as of June 26, 2014 is Exhibit GY-1 to this affidavit.

The activities of the Institute

7. Since then the Institute has published papers and run campaigns on various issues including taxation, housing, free speech and electricity generation.
8. The Institute also runs regular seminars, and an annual dinner called the McIlwraith Lecture, which has featured speakers such as John Wagner, a prominent Queensland business identity whose family developed a private airport in Toowoomba recently, and Sir Leo Hielscher AC, who served for many years as the Under Treasurer of Queensland under governments of both political persuasions.
9. The Institute also publishes On Line Opinion, an online journal which publishes material from all points of view, not just our centre-right perspective, and which was part of the pre-existing business of The National Forum.
10. The Institute also conducts qualitative polling, and these form the basis for analysis pieces in the major media, and have done so since 2001, under the umbrella of the Institute, both under its previous and current names. At one stage this polling was even funded under a Discovery Grant from the Australian Research Council.
11. I am a recognised pollster and commentator on current affairs. In the latter occupation I may occasionally express an opinion as to how someone should vote.
12. While most of the Institute's board has a connection with the LNP, many of its members do not and the Institute stands ready to cooperate with any political parties, or its members or supporters who are prepared to support good policy.

Signed:



Taken by:



13. For example, the Institute's McIlwraith Lecture with Sir Leo Hielscher involved a number of former Labor and Liberal politicians who had worked with him, including every treasurer during his period in office.
14. The Institute frequently criticises the policies of political parties and at the last federal election criticised both the ALP opposition and the Morrison government.
15. As the Institute takes an ideological, rather than a political view, and is ideologically centre-right, the Institute's criticisms tend to favour parties of the right of politics.

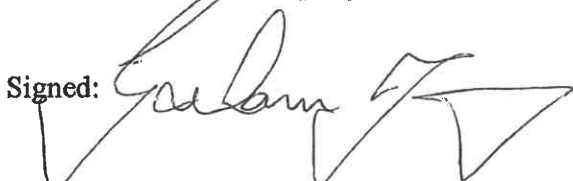
Funding of the Institute

16. As is typical of not for profit companies engaged in public issues, the Institute's funding sources are diverse, and therefore they do include some property developers who are prohibited donors for the purposes of the Electoral Act (Qld) (1992) (**Electoral Act**).
17. In particular the Institute shares office space with Brazil Enterprises, which is a donation in kind. Lyn and Bobbie Brazil are well-known philanthropists, and while they are principally farmers and investors, they have one property development on land that was inherited.

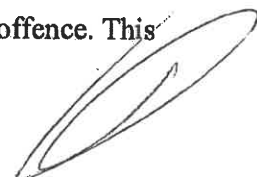
The position taken by the ECQ

18. It came to the Institute's attention in January, 2020 that the Electoral Commission of Queensland (**ECQ**) had asserted to the Property Council that it would be a breach of the Electoral Act and thereby illegal for the Property Council to give or receive donations from Prohibited Donors if it campaigned for or against a political party or parties.
19. The Institute's position has been that because the Institute is not a political party the Institute can receive funding from prohibited donors without breaching the Electoral Act, including if it recommended a vote for or against a particular political party or candidate for elected office.
20. If it is not the case then that means that any organisation that took money from a prohibited donor as a donation, and which subsequently campaigned against or for a political party or candidate, would commit a criminal offence. This

Signed:



Taken by:



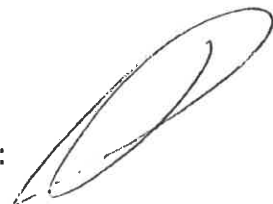
could be anything from a football club lobbying for a new stadium to a church lobbying for a rise to the Newstart allowance or against abortion law reform.

21. On the basis of this reading the Institute has also had discussions with a number of prohibited donors to look at funding programs and advocacy on issues like land tax and stamp duty, as well as the impact of donation laws in that they advantage organisations like trade unions who have a disproportionate impact on government decisions, and where there is a clear conflict of interest, compared to say the property industry, with virtually all Labor members of the parliament being union members.
22. Given that the Institute's offices are provided by a prohibited donor, and its desire to properly resource research and advocacy, and the immediacy of the next state election campaign, during which such issues are likely to be of interest to voters, the Institute decided it should ascertain the ECQ's views.
23. I wrote to the ECQ to the effect that the Institute was intending to undertake activities which might include the following:
 - Research
 - Seminars and public meetings
 - Surveys and opinion polling
 - Media
 - Assessment of candidate and political party attitudes to specific issues
 - Advertising
 - Potentially recommend a vote for or against a particular candidate or party
24. I informed the ECQ that the Institute was also considering several Queensland issues and intended to conduct research and run advocacy campaigns during the course of this year, including during the election period.
25. I requested the ECQ to provide its attitude on whether it would be legal for the Institute to receive donations from prohibited donors if the Institute conducted these activities.
26. A copy of the Institute's letter to the ECQ dated February 7, 2020 is Exhibit GY-2 to this Affidavit.

Signed:



Taken by:

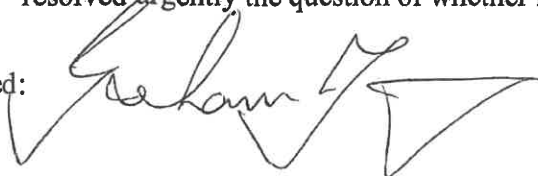


27. On 21 February 2020 the Institute received a letter from the ECQ dated 20 February 2020.
- (a) The ECQ has advised the Institute to the effect that the ECQ considers the Institute to be a "third party" for the purposes of the Electoral Act;
 - (b) that under the Prohibited Donors Scheme, gifts from a property developer, their close associates or industry representative organisations to a third party to incur electoral expenditure are prohibited; and
 - (c) that an entity would be likely to be commit an offence by accepting an unlawful donation and incurring electoral expenditure and the other entity would likely be committing an offence by making a gift.
28. A copy of the letter from the ECQ of 20 February 2020 is Exhibit GY-3 to this Affidavit.
29. The Institute has considered the matter and is of the view that the approach asserted by the ECQ is not consistent with the proper construction of the Electoral Act.

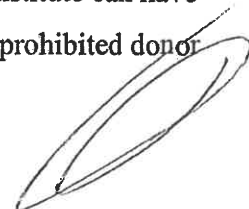
Circumstances of urgency

30. Consistent with the Institute's purpose, and its activities since 2014, it wishes to have security of tenure in its current accommodation, and to raise funds from all legitimate, like-minded sources so that it can pursue those issues that are important to it and political debate in Queensland and Australia.
31. The attitude taken by the ECQ in its letter, in particular the intimation that it considers the Institute may have committed an offence by accepting an unlawful donation and incurring electoral expenditure and the ECQ may take action, including seeking to recover such donations as a debt to the State, jeopardises the operation of the Institute in its present form.
32. It does so both from the point of view of the risk to the office bearers of the Institute itself and the willingness of property developer donors to continue to donate to the Institute.
33. Of particular concern is the fact that there are local government elections in March and a State election in October this year. Unless the Institute can have resolved urgently the question of whether it is caught by the prohibited donor

Signed:



Taken by:



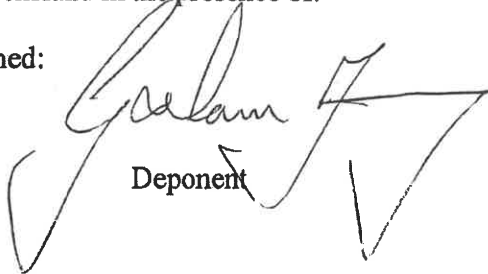
laws in the Electoral Act as asserted by the ECQ the Institute will be denied the opportunity to fully, and as meaningfully and effectively as it might, participate in those elections.

34. The Institute also considers that the position adopted by the ECQ raise serious issues of public policy.

35. A copy of an ASIC Search of the Institute is exhibit GY-4 to this affidavit.

Sworn by GRAHAM YOUNG on February 28, 2020 at Brisbane in the State of Queensland in the presence of:

Signed:



Deponent



Solicitor

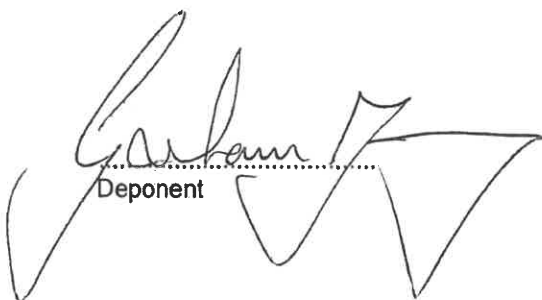
SUPREME COURT OF QUEENSLAND

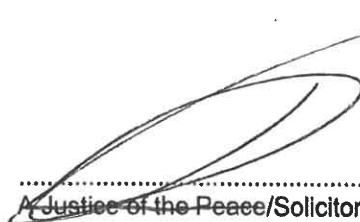
REGISTRY: Brisbane
NUMBER:

Applicant: **The Australian Institute for Progress Ltd
(ACN 101 843 396)**
AND
Respondent: **The Electoral Commission of Queensland**

CERTIFICATE OF EXHIBIT

Bound and marked "GY1" are the Exhibits to the Affidavit of Graham Young sworn 28.02.2020


.....
Deponent


.....
A Justice of the Peace/Solicitor

CERTIFICATE OF EXHIBIT
Filed on behalf of the Applicant
Form 47 Rule 435

The Australian Institute for Progress Ltd
9 Lucy Street, Greenslopes Q 4120

Phone: 0411 104 801
Email graham.young@aip.asn.au

Ref: 1812387 - 20602984_1

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Constitution

Australian Institute for Progress ACN 101 843 396

Constitution

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Constitution

Constitution of Australian Institute for Progress

Preliminary

The name of the Company is Australian Institute for Progress.

The Company is a public company limited by guarantee.

The replaceable rules in the *Corporations Act 2001* (Cth) do not apply to the Company.

Interpretation

1. Interpretation

1.1 Definitions

In this Constitution unless the context requires otherwise:

Board means the Directors for the time being of the Company or those of them who are present at a meeting at which there is a quorum.

Chairman means, for the purposes of general meetings, the person determined or appointed in accordance with Rule 15 and, for all other purposes, the person appointed in accordance with Rule 35.

Committee means a Committee to which the Board has delegated powers under Rule 37.

Company means Australian Institute for Progress.

Constitution means this Constitution as amended.

Director means a person appointed to the office of Director of the Company in accordance with this Constitution and where appropriate includes an alternate Director.

Founding Members means the founding members specified in the application to register the Company lodged under section 117 of the Law and who have consented to be Members.

Law means the *Corporations Act 2001* (Cth).

Managing Director means the managing director appointed by the Board under Rule 30.

Member means a member of the Company in accordance with the Law.

Members present means Members present at a general meeting of the Company in person or by duly appointed representative, proxy or attorney.

Office means the registered office of the Company.

person and words importing persons include partnerships, associations and corporations, unincorporated and incorporated by Ordinance, Act of Parliament or registration as well as individuals.

Register means the register of Members of the Company.

Constitution

registered address means the address of which the Member notifies the Company as a place at which the Member is willing to accept service of notices.

Rules means these Rules, as amended.

Secretary means a person appointed as, or to perform the duties of, a Secretary of the Company.

Tax Act means the *Income Tax Assessment Act 1997* (Cth).

writing and **written** includes printing, typing, lithography, facsimile and other modes of reproducing words in a visible form.

1.2 Interpretation

Headings are for convenience only and do not affect interpretation. The following rules apply unless the context requires otherwise.

- (a) The singular includes the plural and conversely.
- (b) If a word or phrase is defined, its other grammatical forms have a corresponding meaning.
- (c) A gender includes all genders.
- (d) A reference to a person, corporation, trust, partnership, unincorporated body or other entity includes any of them.
- (e) A reference to legislation or to a provision of legislation includes a modification or re-enactment of it, a legislative provision substituted for it and a regulation or statutory instrument issued under it.
- (f) A reference to **dollars** and **\$** is to Australian currency.

Purposes

2. Purposes

The Company is incorporated as an independent, not-for-profit, public policy think tank and research institution, committed to economic and political freedom, civil society and promoting the understanding of public policy for the benefit of all Australians.

3. Application of income and property to purposes

The income and property of the Company must be applied solely towards the promotion of the purposes of the Company set out in Rule 2 and no part of it is to be paid or transferred directly or indirectly by way of dividend, bonus or otherwise by way of distribution of profit to any Member except as bona fide compensation for services rendered to, or expenses incurred on behalf of, the Company.

4. Gift Fund

The Company must maintain a gift fund that complies with section 30-125 of the Tax Act.

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Membership

5. Qualification

The members of the Company are:

- (a) the Founding Members; and
- (b) any others admitted to membership in accordance with this Constitution.

6. Application for membership

- 6.1 An application for membership must be in the form that the Board prescribes from time to time.
- 6.2 The Board may accept or reject any membership application at its absolute discretion and without the need to give reasons.
- 6.3 On payment of any applicable entrance and subscription fees, the applicants accepted by the Board shall be registered in the Company's register of members.

7. Fees

- 7.1 The Board may levy entrance, annual subscription and other fees at its discretion.
- 7.2 The Board may determine that different fees are payable by different categories of members as defined by them.
- 7.3 Founding Members are not liable to pay entrance, annual subscription or other fees.
- 7.4 The annual subscription period shall be computed from 1 July in each year, and annual subscriptions shall be due and payable on 1 July in each year in advance. The Board may determine that any member admitted to membership between 1 January and 30 June in any year shall pay only one-half of the annual subscription until that member's next annual subscription falls due.

8. Cessation Of Membership

- 8.1 A member may at any time, by giving notice in writing to the secretary, resign as a member of the company. The resignation shall be effective from the date of receipt of the notice by the secretary. That member's name shall be removed from the register of members.
- 8.2 If the subscription of a member remains unpaid for a period of 30 days after it becomes due, the Board must direct the secretary to give notice to the member of that fact. If the subscription remains unpaid 21 days after the date of the notice, the member's membership shall cease.
- 8.3 If any member:
 - (a) is in breach of the provisions of this Constitution; or

Constitution

(b) is guilty of any act or omission which, in the opinion of the Board, is unbecoming of a member or prejudicial to the interests of the Company,

the Board may expel the member from the Company and remove the member's name from the register of members.

8.4 The directors must not expel a member under Rule 8.3 unless at least 7 days' notice has been given to the member stating the date, time and place at which the question of expulsion is to be considered by the Board and the nature of the alleged misconduct and allowing the member an opportunity to be heard (personally or by written submission as the Board determines).

8.5 If the directors resolve to expel a member, the secretary must give notice of this to the member. The member then has the right, exercisable by notifying the secretary within 7 days after receipt of the notice (the "Notice Period"), to have the issue dealt with by the Company in general meeting. In that event, an extraordinary general meeting of the company must be called to consider a resolution that the member be expelled. If

(a) a resolution to expel the member is passed at an extraordinary general meeting by a majority of those present and voting; or

(b) the member does not notify the secretary on or before the expiration of the Notice Period that it wishes to have the issue dealt with by the company in general meeting,

the member shall cease to be a member and the member's name will be removed from the register of members.

8.6 A member's membership of the company shall automatically cease if :

(a) a liquidator is appointed in connection with the winding-up of the member; or

(b) an order is made by a court for the winding-up or deregistration of the member.

8.7 A person ceasing to be a member of the Company for any reason remains liable for:

(a) all annual subscription fees or other amounts owing by that person to the company which are due and unpaid as at of cessation of membership; and

(b) amounts which the person is or may become liable to pay the Company under Rule 50.

Register

9. Register of Members

The Register must be kept by the Secretary and must contain full names and addresses of the Members and such other particulars as the Board prescribes.

Constitution

10. Address of Members

Every Member must communicate any change in its address to the Company in writing and any such change of address must be entered in the Register. The latest address in the Register is deemed to be the Member's registered address.

General Meetings

11. General meetings

The Chairman or any 3 Directors may convene a general meeting of the Company whenever it or they think fit.

12. Notice of general meeting

A notice of a general meeting must specify the place and time of the meeting, the general nature of the business to be transacted at the meeting and any other matters required by the Law. The non-receipt of a notice of any general meeting by, or the accidental omission to give notice to, any person entitled to notice does not invalidate any resolution passed at that meeting.

13. Quorum

A quorum for a general meeting is one quarter of the Members from time to time or 5 Members, whichever is the lesser. No business may be transacted at any meeting, except the election of a Chairman and the adjournment of the meeting, unless a quorum is present at the commencement of the meeting.

14. Adjournment in absence of quorum

If there is not a quorum at a general meeting within 30 minutes after the time specified in the notice of meeting, the meeting is dissolved, unless the Board adjourns the meeting to a date, time and place determined by it. If no quorum is present at any adjourned meeting within 30 minutes after the time for the meeting, the meeting is dissolved.

15. Chairman

15.1 The Chairman will chair every general meeting.

15.2 If at any general meeting:

- (a) a Chairman has not been elected as provided by Rule 35;
 - (b) the Chairman is not present at the specified time for the holding of the meeting; or
 - (c) the Chairman is present but is unwilling to chair the meeting,
- the Members present may choose another Member to chair the meeting.

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16. General conduct of meeting

- 16.1 The general conduct of each general meeting of the Company and the procedures to be adopted at the meeting are as determined at, during or prior to the meeting by the Chairman.
- 16.2 At any time the Chairman considers it necessary or desirable for the proper and orderly conduct of the meeting, the Chairman may demand the cessation of debate or discussion on any business, question, motion or resolution being considered by the meeting and require the business, question, motion or resolution to be put to a vote of the Members present.
- 16.3 The Chairman may require the adoption of any procedures which are in the Chairman's opinion necessary or desirable for the proper and orderly casting or recording of votes at any general meeting of the Company, whether on a show of hands or on a poll.
- 16.4 Any determination by the Chairman in relation to matters of procedure or any other matter arising directly or indirectly from the business is fixed. Any challenge to a right to vote (whether on a show of hands or on a poll) may only be made at the meeting and may be determined by the Chairman whose decision is final.
- 16.5 A Director or Secretary who is not a Member shall be entitled to be present and to speak at any general meeting. Any other person (whether a member or not) requested by the Directors to attend any general meeting shall be entitled to be present and, at the request of the chair, to speak at that general meeting.

17. Adjournment

During the course of the meeting the Chairman may adjourn the meeting or any business, motion, question or resolution being considered or remaining to be considered by the meeting or any debate or discussion either to a later time at the same meeting or to an adjourned meeting. If the Chairman exercises a right of adjournment of a meeting under this Rule, the Chairman has the sole discretion to decide whether to seek the approval of the Members present to the adjournment and, unless the Chairman exercises that discretion, the Members present in respect of the adjournment may take no vote. No business may be transacted at any adjourned meeting other than the business left unfinished at the meeting from which the adjournment took place.

18. Voting

Each question submitted to a general meeting is to be decided in the first instance by a show of hands of the Members present and entitled to vote, unless a poll is demanded. In the case of an equality of votes, the Chairman has, both on a show of hands and at a poll, a casting vote in addition to the vote or votes to which the Chairman may be entitled as a Member or as a proxy or duly appointed representative of a Member. Unless a poll is demanded, a declaration by the Chairman that a resolution has been passed or lost is conclusive.

Constitution

19. When a poll may be demanded

A poll may be demanded by a Member in accordance with the Law (and not otherwise) or by the Chairman. Unless the Chairman otherwise determines, no poll may be demanded on the adjournment of a meeting. The demand for a poll may be withdrawn.

20. Taking a poll

- 20.1 If a poll is demanded as provided in Rule 19, it is to be taken in the manner and at the time and place as the Chairman directs, and the result of the poll is the meeting's resolution of the motion on which the poll was demanded. Any challenge to the admission or rejection of a vote may only be made at the meeting and may be determined by the Chairman, whose decision is final.
- 20.2 A demand for a poll does not prevent the continuation of a meeting for the transaction of any business other than the question on which a poll has been demanded. A poll demanded on any question of adjournment is to be taken at the meeting and without adjournment.

Votes of Members

21. Voting rights

Each Member has the right to one vote both on a show of hands and a poll. A Member may vote in person or by proxy.

22. Proxies

- 22.1 A Member who is entitled to attend and cast a vote at a meeting of the Company may appoint a person as a proxy to attend and vote for the Member in accordance with the Law but not otherwise. A proxy appointed to attend and vote in accordance with the Law may exercise the rights of the Member on the basis of and subject to the restrictions provided in the Law but not otherwise.
- 22.2 A form of appointment of a proxy is valid if it is in accordance with the Law or in any form that the Board may prescribe or accept.
- 22.3 The Secretary must, if requested, send a valid form of proxy to a Member.
- 22.4 The Secretary on the authority of the Board may complete any appointment of a proxy under Rule 22.2 that is incomplete insofar as the name of the proxy has been omitted by the insertion of the name of any Director as the person in whose favour the proxy is given.

23. Validity of vote

- 23.1 The validity of any resolution is not affected by the failure of any proxy to vote in accordance with instructions (if any) of the appointing Member.

Constitution

- 23.2 A vote given in accordance with the terms of an instrument of proxy is valid notwithstanding the previous death or mental incapacity of the appointing Member or revocation of the instrument of proxy, provided no notice in writing of the death, mental incapacity or revocation has been received at the Office before the meeting or any adjourned meeting.
- 23.3 A proxy is not revoked by the appointing Member attending and taking part in the meeting, unless the appointing Member actually votes at the meeting on the resolution for which the proxy is proposed to be used.

Directors

24. Number and qualifications of Directors

- 24.1 The number of Directors (not including alternate Directors) must not exceed 12.
- 24.2 Directors need not be Members.
- 24.3 The Members in general meeting may elect up to 6 directors.

25. Appointment of Directors

- 25.1 Notwithstanding Rule 24, the first Directors are the persons specified in the application to register the Company lodged under section 117 of the Law and who have consented to become Directors.
- 25.2 Subject to Rule 24, the Board may by resolution appoint any person to the office of Director, including a person to replace any Director elected by the Members who resigns, dies or becomes mentally incapacitated.

26. Term of appointment

Directors are appointed or elected (as the case may be) for 2 year terms and are eligible for reappointment or re-election. However, a Director appointed by the Board to replace a Director elected by the Members who has resigned, died or become mentally incapacitated is appointed only for the remainder of the term of the Director who they replaced (but is then eligible for election or reappointment).

27. Remuneration of Directors

No Director, other than the Chairman for as long as and subject to the conditions that the Board so determines from time to time, may be appointed to any salaried office of the Company or any office of the Company paid by fees. Nothing in this Rule prohibits the payment by the Company to a Director of:

- (a) out-of-pocket expenses incurred by a Director in the performance of any duty as a Director where the amount payable does not exceed an amount approved by the Board; or

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- (b) any salary or wage due to the Director as an employee of the Company where the terms of employment have been approved by the Board.

Alternate Directors

28. Alternate Directors

The Board may make such rules as it deems appropriate in relation to the appointment of alternate Directors.

Termination of Office of Director

29. Termination of office by Director

The office of a Director is terminated:

- (a) on the Director being absent from meetings of the Board during a period of three consecutive calendar months without leave of absence from the Board where the Board has not, within 14 days of having been served by the Secretary with a notice giving particulars of the absence, resolved that leave of absence be granted;
- (b) on the Director resigning office by notice in writing to the Company;
- (c) in the case of the Managing Director, on the Director ceasing to be the Managing Director for whatever reason;
- (d) on the Director being removed from office under the Law;
- (e) on the Director being prohibited from being a Director by reason of the operation of the Law; or
- (f) on the expiration of the term of office of that Director under Rule 26.

Managing Director

30. Appointment of a Managing Director

- 30.1 The Board may appoint a person to the office of Managing Director for such period and on such terms as it thinks fit and at a remuneration which may be by way of salary or otherwise on terms determined by the Board.
- 30.2 The Managing Director will not, while holding that office, be subject to Rule 27.
- 30.3 The Board may confer on and withdraw from the Managing Director any of the powers exercisable under this Constitution by the Board as it thinks fit and on any condition it thinks expedient but the conferring of powers by the Board on the Managing Director does not exclude the exercise of those powers by the Board.

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Proceedings of Directors

31. Procedures relating to Directors' meetings

The Board may meet together, adjourn and otherwise regulate its meetings as it thinks fit. The Board may at any time, and the Secretary must, on the request of any two Directors, convene a meeting of the Board. Notice of a meeting of the Board may be given by mail (electronic or otherwise), personal delivery, facsimile transmission to the usual place of business or residence of the Director or at any other address given to the Secretary by the Director or by any technology agreed by the Directors.

32. Quorum of meetings

Until otherwise determined by the Board, a quorum for meetings of the Board is one quarter of the Directors appointed from time to time or 3 Directors, whichever is the lesser.

33. Meetings by telephone or other means of communication

The Board may meet either in person, by telephone, on-line or by using any other technology consented to by all the Directors. A consent may be a standing one. A Director may only withdraw consent within a reasonable period before the meeting. A meeting conducted by telephone or other means of communication is taken to be held at the place agreed on by the Directors attending the meeting if at least one of the Directors present at the meeting was at that place for the duration of the meeting.

34. Votes at meetings

Questions arising at any meeting of the Board are decided by a majority of votes. In the case of an equality of votes, the Chairman has a second or casting vote.

35. Chairman

- 35.1 The Board must elect one of its numbers as Chairman.
- 35.2 The Chairman is appointed for a 2 year term and is eligible for reappointment.
- 35.3 Subject to Rule 35.2, if the Chairman is not present at the time specified for holding any meeting, the Directors present may choose one of their number to be Chairman of the meeting.

36. Powers of meetings

A meeting of the Board at which a quorum is present is competent to exercise any of the authorities, powers and discretions for the time being vested in or exercisable by the Board.

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37. Committees

- 37.1 The Board may delegate any of its powers to Committees consisting of a Director or Directors or any other person or persons as the Board thinks fit. Any Committee formed or person or persons appointed to the Committee must, in the exercise of the powers delegated, conform to any regulations that may from time to time be imposed by the Board.
- 37.2 The meetings and proceedings of any Committee are to be governed by the provisions of this Constitution for regulating the meetings and proceedings of the Board so far as they are applicable and are not superseded by any regulations made by the Board under Rule 37.1.
- 37.3 No power delegated to any Committee under this Rule may be sub-delegated unless authorised by the terms of the delegation.

38. Validity of acts

- 38.1 All actions at any meeting of the Board or by a Committee or by any person acting as a Director are, notwithstanding that it is afterwards discovered that there was some defect in the appointment of any of the Directors or the Committee or the person acting as a Director or that any of them were disqualified, as valid as if every person had been duly appointed and was qualified and continued to be a Director or a member of the Committee.
- 38.2 If the number of Directors is reduced below the number fixed under this Constitution the continuing Directors may act only for the purpose of increasing the number of Directors to the number fixed under this Constitution or of calling a general meeting of the Company. In any case the continuing Directors must act to increase the number of Directors as soon as is practicable.

39. Material personal interests

- (a) A Director is not disqualified by the Director's office from contracting with the Company or any related body corporate of the Company in any capacity by reason of holding of the office of Director.
- (b) In relation to a contract or arrangement in which a Director has a material personal interest:
- (i) the fact that the Director signed the document evidencing the contract or arrangement will not in any way affect its validity;
 - (ii) a contract or arrangement made by the Company or any related body corporate with a Director may not be avoided merely because the Director is a party to the contract or arrangement or otherwise interested in it; and
 - (iii) the Director will not be liable to account to the Company for any profit derived in respect of the contract or arrangement merely because of the Director's office or the fiduciary relationship it entails.

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- (c) Subject to paragraph (d), a Director who has a material personal interest in a matter that relates to the affairs of the Company must give the other Directors notice of his or her interest.
- (d) A Director with a material personal interest in a matter that relates to the affairs of the Company is not required to give notice in the following circumstances:
 - (i) if all of the following conditions are met:
 - (A) the Director has already given notice of the nature and extent of the interest and its relation to the affairs of the Company;
 - (B) if a person who was not a Director at the time the notice was given is appointed as a Director, the notice is given to that person; and
 - (C) the nature or extent of the interest has not materially increased above that disclosed in the notice; or
 - (ii) if the Director has given a standing notice of the nature and extent of the interest in accordance with the Law and that standing notice is still effective in relation to the interest; or
 - (iii) as otherwise permitted under the Law.
- (e) Notices of material personal interest given by Directors must:
 - (i) give details of the nature and extent of the Director's interest and the relation of the interest to the affairs of the Company;
 - (ii) be given at a Directors' meeting as soon as practicable after the Director becomes aware of their interest in the matter; and
 - (iii) be recorded in the minutes of the Directors' meeting at which the notice is given.
- (f) A Director who has a material personal interest in a matter that is being considered at a Directors' meeting must not be present while the matter is being considered at the meeting or vote on the matter, except in the following circumstances:
 - (i) if the material personal interest is a matter that is not required to be disclosed under this Clause or under the Law; or
 - (ii) if the Directors who do not have a material personal interest in the matter have passed a resolution that:
 - (A) identified the Director, the nature and the extent of the Director's interest in the matter and its relation to the affairs of the Company; and
 - (B) states that those Directors are satisfied that the interest should not disqualify the Director from voting or being present; or
 - (iii) as otherwise permitted under the Law.
- (g) Nothing in this Clause affects the duty of a Director:

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- (i) who holds any office or possesses any property whereby, directly or indirectly, duties or interests might be created in conflict with the Directors' duties or interests as a Director, to declare at a meeting of Directors, the fact and the nature, character and extent of the conflict; or
- (ii) to comply with the Law.

40. Resolution in writing

A resolution in writing signed by all the Directors entitled to vote on the resolution (not being less than the number required for a quorum at a meeting of the Board) is a valid resolution of the Board. The resolution may consist of several documents in the same form, each signed by one or more of the Directors. For the purposes of this Rule the references to *Directors* include any alternate Director for the time being present in Australia who is appointed by a Director not for the time being present in Australia but do not include any other alternate Director. A facsimile transmission or other document produced by mechanical or electronic means under the name of a Director with the Director's authority is considered to be a document in writing signed by the Director. For clarification, nothing in this Rule permits the making of any resolution unless proper notice of the proposed resolution is given to (or receipt of proper notice is waived by) all Directors entitled to vote on the resolution.

Powers of the Board

41. General powers of the Board

The management and control of the business and affairs of the Company are vested in the Board, which (in addition to the powers and authorities conferred on it by this Constitution) may exercise all powers and do all things as are within the power of the Company and are not by this Constitution or by law required to be exercised or done by the Company in general meeting.

42. Power to borrow, guarantee and give security

Without limiting the generality of Rule 41, the Board may from time to time, on behalf of the Company, borrow such amounts as it considers necessary for the purposes of the Company at such rate of interest and upon such terms as it considers proper and may execute mortgages, loan agreements or other securities in respect of such moneys and charge any property of the Company and may execute, create and issue such mortgages, loan agreements or securities as it considers appropriate.

43. Power to appoint patrons, friends and supporters

The Board may from time to time appoint any person as a patron, friend or supporter (or such description as the Board determines) of the Company on such terms as the Board

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sees fit and any such category of persons may (but not need be) Members of the Company. The Board may make by-laws that prescribe, vary or cancel the qualifications, rights, privileges and obligations of any category of persons appointed.

Seal

44. Seal

The Company may have a common seal and a duplicate common seal. If the Company has a common seal, the seal may be used only as determined by the Board.

Notices

45. Service of notices

A notice may be given by the Company to any Member personally, by leaving it at the Member's registered address or by sending it by prepaid post or facsimile transmission addressed to the Member's registered address or, in any other case, by other electronic means determined by the Board. If the notice is signed, the signature may be original or printed.

46. When notice taken to be served

Any notice sent by post is taken to have been served at the expiration of two business days after the envelope containing the notice is posted and, in proving service, it is sufficient to prove that the envelope containing the notice was properly addressed and posted. Any notice served on a Member personally or left at the Member's registered address is taken to have been served when delivered. Any notice served on a Member by facsimile transmission is taken to have been served on receipt by the sender of a transmission control report from the despatching machine showing the relevant number of pages and the correct destination fax machine number or name of recipient and indicating that the transmission has been made without error.

47. Member not known at registered address

Where a Member does not have a registered address or where the Company has a reason in good faith to believe that a Member is not known at the Member's registered address, all future notices are taken to be given to the Member if the notice is exhibited in the Office for a period of 48 hours (and is taken to be duly served at the commencement of that period) unless and until the Member informs the Company of a registered place of address.

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48. Calculation of period of notice

Where a given number of days' notice or notice extending over any other period is required to be given the day of service is not to be counted in the number of days or other period.

Liability of Members

49. Limited Liability

The liability of the Members of the Company is limited.

50. Members' liability on winding up

Each member of the Company undertakes to contribute to the assets of the Company in the event of it being wound up while he, she is a Member or within one year after he, she or it ceases to be a member for payment of the debts and liabilities of the Company (contracted before he, she or it ceases to be a Member) and of the costs, charges and expenses of winding up and for the adjustment of the rights of the contributories amongst themselves, such amounts as may be required not exceeding \$20.00.

Winding up

51. Winding Up

If upon the winding up or dissolution of the Company there remains, after satisfaction of all its debts and liabilities, any property whatsoever (including any property in the fund established under Rule 4), the property must not be paid to or distributed amongst the Members but must be given or transferred to some other organisation or organisations:

- (a) having purposes similar to the purposes of the Company set out in Rule 2;
- (b) which by its constitution is required to apply its profits (if any) or other income in promoting its purposes and is prohibited from paying any dividend to its members; and
- (c) eligible for tax deductibility of donations under subdivision 30-B, section 30-100 of the Tax Act,

such organisation or organisations to be determined by the Members or at before the time of dissolution or in default thereof by application to the Supreme Court of Queensland for determination.

52. Amalgamation

Whether it furthers the purposes of the Company to amalgamate with any one or more other organisations having similar purposes to the purposes of the Company, the other organisation or organisations must:

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- (a) have rules prohibiting the distribution of its or their assets and income to members; and
- (b) be eligible for tax deductibility of donations under subdivision 30-B, section 30-100 of the Tax Act.

Indemnity

53. Indemnity of officers, insurance and access

- 53.1 The Company is to indemnify each officer of the Company out of the assets of the Company to the relevant extent against any liability incurred by the officer in or arising out of the conduct of the business of the Company or in or arising out of the discharge of the duties of the officer.
- 53.2 Where the Board considers it appropriate, the Company may execute a documentary indemnity in any form in favour of any officer of the Company.
- 53.3 Where the Board considers it appropriate, the Company may:
- (a) make payments by way of premium in respect of any contract effecting insurance on behalf or in respect of an officer of the Company against any liability incurred by the officer in or arising out of the conduct of the business of the Company or in or arising out of the discharge of the duties of the officer; and
 - (b) bind itself in any contract or deed with any officer of the Company to make the payments.
- 53.4 Where the Board considers it appropriate, the Company may:
- (a) give a former Director access to certain papers, including documents provided or available to the Board and other papers referred to in those documents; and
 - (b) bind itself in any contract with a Director or former Director to give the access.
- 53.5 In this Rule:
- (a) **officer** means:
 - (i) a Director, Secretary, executive officer or employee; or
 - (ii) a person appointed as a trustee by, or acting as a trustee at the request of the Company,and includes a former officer.
 - (b) **duties of the officer** includes, in any particular case where the Board considers it appropriate, duties arising by reason of the appointment or nomination of an officer by the Company.
 - (c) to the relevant extent means:
 - (i) to the extent the Company is not precluded by law from so doing;

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- (ii) to the extent and for the amount that the officer is not otherwise entitled to be indemnified and is not actually indemnified by another person (including, in particular, an insurer under any insurance policy); and
 - (iii) where the liability is incurred in or arising out of the conduct of the business of another corporation or in the discharge of the duties of the officer in relation to another corporation, to the extent and for the amount that the officer is not entitled to be indemnified and is not actually indemnified out of the assets of that corporation.
- (c) **liability** means all costs, charges, losses, damages, expenses, penalties and liabilities of any kind including, in particular, legal costs incurred in defending any proceedings (whether criminal, civil, administrative or judicial) or appearing before any court, tribunal, government authority or otherwise.



February 7, 2020

Mr Pat Vidgen PSM
Electoral Commissioner of Queensland
Electoral Commission of Queensland
GPO Box 1393
Brisbane Q 4001

Dear Mr Vidgen,

RE: Electoral Act and the Prohibited Donors Scheme

The Australian Institute for Progress is a think tank based in Queensland. We do research and advocacy on both federal and state issues.

We frequently criticise political party policies and in the last federal election criticised both the ALP opposition and the government. As we take an ideological, rather than a political view, and describe ourselves as centre-right, our criticisms tends to favour parties of the right.

We are considering several Queensland issues, and intend to conduct research and run advocacy campaigns during the course of this year, including during the election period. Our funding sources are diverse, but do include some prohibited donors.

Our legal advice is that we are not a political party and are able to do this without breaching the Electoral Act, but some of our donors are aware of advice that you have given the Property Council which suggests this is not the case.

The sorts of activities that we intend to undertake would include:

- Research
- Seminars and public meetings
- Surveys and opinion polling
- Media
- Assessment of candidate and political party attitudes to specific issues
- Advertising
- Potentially recommend a vote for or against a particular candidate or party

Could you please advise whether it is legal for prohibited donors to donate to us if we conduct these activities?

Yours sincerely,

A handwritten signature in black ink, appearing to read 'Graham Young', with a stylized flourish at the end.

Graham Young
Executive Director

Unit 2B, 50 Logan Road
Woolloongabba Q 4102

P O Box 1365
Fortitude Valley Q 4006

www.aip.asn.au

The Australian Institute for Progress exists to advance the discussion, development and implementation of public policy for Australia's future, from its base in Brisbane. The future does not look after itself.



20 February 2020

Mr Graham Young
Executive Director
Australian Institute for Progress
PO Box 1365
FORTITUDE VALLEY QLD 4006
Email: graham.young@aip.asn.au

Dear Mr Young

Thank you for your letter dated 11 February 2020 seeking advice whether it is legal for "prohibited donors" to provide gifts to the Australian Institute for Progress (AIP).

Under the *Electoral Act 1992* and the *Local Government Electoral Act 2011*, an entity that participates in a state or local government election and incurs electoral expenditure is considered a third party. Electoral expenditure is expenditure incurred, whether during an election period or otherwise, on any of the following:

- broadcasting a political advertisement;
- publishing a political advertisement in a journal (e.g. newspaper, magazine or other periodical);
- publishing a political advertisement on the internet;
- displaying a political advertisement at a place of entertainment (e.g. a theatre);
- producing and distributing other material that advocates a vote for or against a candidate, group of candidates or registered political party, and is required to include an authorisation; or
- carrying out an opinion poll or other research relating to the election if the dominant purpose of the opinion poll or research is to, directly or indirectly –
 - promote or oppose the election of a candidate or group of candidates
 - promote or oppose a registered political party in relation to the election;or
- otherwise influence voting at the election.

You state in your letter that the AIP conducts research and runs advocacy campaigns, amongst other activities, and potentially recommends a vote for or against a particular candidate or party. On this basis, the ECQ considers the AIP to be a third party.

Under the Prohibited Donors Scheme (PDS), gifts from a property developer, their close associates or industry representative organisations to a third party to incur electoral expenditure are prohibited. As such, an entity would likely be committing an offence by accepting an unlawful donation and incurring electoral expenditure and the other entity would likely be committing an offence by making a gift.

You also state in your letter that the AIP receives funding from "some prohibited donors". To clarify this disclosure, could you please advise:

- when these gifts were made
- the name of the entities who provided the gifts
- the amount or value of the gifts?

The ECQ would appreciate a response in writing by **Monday, 2 March 2020** so that the ECQ can consider what action is appropriate, if any. Please note that appropriate action may include the ECQ recovering unlawful donations as a debt to the State.

For more information about third party disclosure obligations and the PDS, please refer to our website for fact sheets and guides for third parties in State and local government elections.

Should you require further information regarding this matter, please contact Ms Melanie Mundy, Director, Funding, Disclosure and Compliance, ECQ on 1300 881 665 or at fad@ecq.qld.gov.au.

Yours sincerely



Pat Vidgen PSM
Electoral Commissioner



ASIC
Australian Securities & Investments Commission

Current Company Extract

Name: AUSTRALIAN INSTITUTE FOR PROGRESS
ACN: 101 843 396

Date/Time: 28 February 2020 AEST 02:04:49 PM

This extract contains information derived from the Australian Securities and Investments Commission's (ASIC) database under section 1274A of the Corporations Act 2001.

Please advise ASIC of any error or omission which you may identify.

EXTRACT

| Organisation Details | Document Number |
|--|-----------------|
| Current Organisation Details | |
| Name: AUSTRALIAN INSTITUTE FOR PROGRESS | 028929092 |
| ACN: 101 843 396 | |
| ABN: 67101843396 | |
| Registered in: Queensland | |
| Registration date: 27/08/2002 | |
| Next review date: 27/08/2020 | |
| Name start date: 12/06/2014 | |
| Status: Registered | |
| Company type: Australian Public Company | |
| Class: Limited By Guarantee | |
| Subclass: Entitled To Omit 'Limited' Under S.150 | |

| Address Details | Document Number |
|--|-----------------|
| Current | |
| Registered address: 50 Logan Road, WOOLLOONGABBA QLD 4102 | 7EAH94110 |
| Start date: 29/01/2019 | |
| Principal Place Of Business address: 50 Logan Road, WOOLLOONGABBA QLD 4102 | 7EAH94110 |
| Start date: 22/01/2019 | |

| Contact Address |
|--|
| Section 146A of the Corporations Act 2001 states 'A contact address is the address to which communications and notices are sent from ASIC to the company'. |
| Current |
| Address: GPO BOX 389, BRISBANE QLD 4001 |
| Start date: 24/10/2007 |

| Officeholders and Other Roles | Document Number |
|--|-----------------|
| Director | |
| Name: ROBERT WALTER JOHN TUCKER | 1F0509855 |
| Address: Unit 131, 1 Newstead Terrace, NEWSTEAD QLD 4006 | |
| Born: 12/07/1943, ROCKHAMPTON, QLD | |
| Appointment date: 19/05/2014 | |
| Name: GRAHAM EDWARD YOUNG | 3E7555084 |
| Address: 9 Lucy Street, GREENSLOPES QLD 4120 | |
| Born: 02/04/1958, VANCOUVER, CANADA | |
| Appointment date: 27/08/2002 | |
| Name: DANIEL PATRICK RYAN | 1F0509855 |
| Address: 45 Atthow Avenue, ASHGROVE QLD 4060 | |
| Born: 09/08/1976, BRISBANE, QLD | |
| Appointment date: 15/05/2014 | |
| Name: GRAEME HAYCROFT | 030192761 |

Current Company Extract

AUSTRALIAN INSTITUTE FOR PROGRESS
ACN 101 843 396

| | |
|--|-----------|
| Address: 26 Tarwarri Crescent, MOOLOOLABA QLD 4557 Born: 02/06/1948, WARRAGUL, VIC Appointment date: 07/01/2018 | |
| Name: RODERICK SCHNEIDER Address: Level 1, 490 Adelaide Street, BRISBANE QLD 4000 Born: 31/10/1981, HAMILTON, VIC Appointment date: 02/01/2019 | 7EAH85104 |
| Name: CAMPBELL KEVIN THOMAS NEWMAN Address: 24 Rupert Street, WINDSOR QLD 4030 Born: 12/08/1963, CANBERRA, ACT Appointment date: 17/12/2018 | 7EAH85104 |
| Name: ROWENA CATHERINE MCNALLY Address: 'Yachting Tower', 16018 Macarthur Parade, MAIN BEACH QLD 4217 Born: 16/02/1958, PORT MORSEBY, PAPUA NEW GUINEA, PAPUA NEW GUINEA Appointment date: 16/12/2018 | 7EAH85104 |
| Secretary | |
| Name: GRAHAM EDWARD YOUNG Address: 9 Lucy Street, GREENSLOPES QLD 4120 Born: 02/04/1958, VANCOUVER, CANADA Appointment date: 27/08/2002 | 3E7555084 |
| Appointed Auditor | |
| Name: MOORE STEPHENS (BRISBANE) & PARTNERS Address: Level 25 71 Eagle Street BRISBANE QLD 4000 Start date: 21/09/2002 | 023613361 |

Financial Reports

| Balance date | Report due date | AGM due date | Extended AGM due | AGM held date | Outstanding | Document number |
|--------------|-----------------|--------------|------------------|---------------|-------------|-----------------|
| 30/06/2003 | 31/10/2003 | | | | no | 019938140 |
| 30/06/2004 | 31/10/2004 | | | | no | 020545589 |
| 30/06/2005 | 30/11/2005 | | | | no | 022852745 |
| 30/06/2006 | 30/11/2006 | | | 01/10/2006 | no | 023613361 |
| 30/06/2007 | 31/10/2007 | | | | no | 024640073 |
| 30/06/2008 | 31/10/2008 | | | | no | 025435839 |
| 30/06/2009 | 31/10/2009 | | | | no | 7E2650849 |

Documents

Note: Where no Date Processed is shown, the document in question has not been processed. In these instances care should be taken in using information that may be updated by the document when it is processed. Where the Date Processed is shown but there is a zero under No Pages, the document has been processed but a copy is not yet available.

| Date received | Form type | Date processed | Number of pages | Effective date | Document number |
|---------------|--|----------------|-----------------|----------------|-----------------|
| 18/09/2017 | 484A1 Change To Company Details Change Officeholder Name Or Address | 18/09/2017 | 2 | 18/09/2017 | 3E7555084 |
| 21/02/2018 | 484E Change To Company Details Appointment Or Cessation Of A Company Officeholder | 20/03/2018 | 3 | 21/02/2018 | 030192761 |
| 16/04/2018 | 370 Notification By Officeholder Of Resignation Or Retirement | 23/04/2018 | 2 | 16/04/2018 | 030306002 |
| 14/01/2019 | 484E Change To Company Details Appointment Or Cessation Of A Company Officeholder | 14/01/2019 | 2 | 14/01/2019 | 7EAH70354 |
| 20/01/2019 | 484E Change To Company Details Appointment Or Cessation Of A Company Officeholder | 20/01/2019 | 3 | 20/01/2019 | 7EAH85104 |
| 22/01/2019 | 484 Change To Company Details 484B Change Of Registered Address 484C Change Of Principal Place Of Business (Address) | 22/01/2019 | 2 | 22/01/2019 | 7EAH94110 |

End of Extract of 3 Pages

ANNEXURE B

SUPREME COURT OF QUEENSLAND

REGISTRY: Brisbane

NUMBER: BS2246/20

**Applicant: THE AUSTRALIAN INSTITUTE FOR PROGRESS LTD (ACN 101
843 396)**

AND

Respondent: THE ELECTORAL COMMISSION OF QUEENSLAND

OUTLINE OF ARGUMENT OF THE AUSTRALIAN INSTITUTE FOR PROGRESS

Introduction

1. The Australian Institute for Progress (**AIP**) seeks urgent declaratory relief¹ in relation to the proper construction of Part II, Division 8, Subdivision 4 of the *Electoral Act* (Qld) (1992) (**the Electoral Act**).
2. On 7 February 2020 the AIP wrote to the Electoral Commission of Queensland (**ECQ**) seeking the ECQ's attitude as to whether it was legal for "prohibited donors", within the meaning of that expression in the *Electoral Act*, to make donations to the AIP.²
3. The ECQ replied to the AIP on 20 February 2020 asserting that it was not legal for a prohibited donor to make donations to the AIP.³ That letter directed attention to "...more information about third party disclosure obligations and the PDS [on the ECQ] website [by way of] fact sheets and guides for third parties...". By way of illustration only, the Fact Sheets and guides on the ECQ website include those entitled "Application for determination that a person or another entity is not a prohibited donor"; "Fact Sheet 1 What Is A Political Donation?"; "Fact sheet 2 What Is Electoral Expenditure?". Each of those publications assert to the world at large to the effect that a third party may not

¹ The circumstances of urgency are deposed to in the affidavit of Graham Young sworn 28 February 2020 (**Young**) at 30 – 34.

² Young at 26 and ex p 21.

³ Young at 27 and ex pp 22 - 23.

receive a donations from a prohibited donor to incur its own electoral expenditure. A copy of those illustrative online publications is attached to these submissions. Each of the ECQ letter of 20 February 2020, relevant passages of which are extracted below, and the material on the ECQ website, make clear there is nothing hypothetical about the relief sought by the AIP by this originating application.

4. Respectfully, for the reasons articulated below, the ECQ is incorrect in its construction of the relevant provisions of the *Electoral Act*. In particular, the ECQ is wrongly reading the expression “another entity” which appears s 274(1)(b) of the *Electoral Act* as if it is synonymous with “third party”, an expression with a defined meaning in the *Electoral Act* and employed in other substantive provisions in the *Electoral Act*, and, in particular Part 11.
5. Moreover, the fact that the ordinary meaning of the language deliberately chosen by parliament is against the manner in which the ECQ seeks to enforce these provisions of the *Electoral Act* is powerfully reinforced by the principle of legality.⁴ In circumstances where the construction adopted by the ECQ would:-
 - (i) prohibit a property developer⁵ from participation in political discussion at all; and
 - (ii) prohibit any third party from engaging in activities for political purposes unless it could ensure it had not received a donation from a property developer;

only the clearest statutory language would suffice⁶. Not only is there no such clear language employed by parliament, but to arrive at the ECQ’s meaning involves disregarding the statutory definitions and their use in the *Electoral Act*.
6. Paradigm examples of (i) above is that the Property Council would be prohibited from expressing a view on the public debate about matters such as whether laws should be changed in relation to housing density, the requirement of developers to provide open space or how community housing might most

⁴ Spigelman CJ, "The Principles of Legality and Clear Statement", in Gotsis (ed), *Statutory Interpretation: Principles and Pragmatism for a New Age*, (2007) at 13.

⁵ in the expansive defined meaning of that expression in the *Electoral Act*.

⁶ See *Plaintiff S157/2002 v Commonwealth* [2003] HCA 2; (2003) 211 CLR 476; 195 ALR 24 at [30] per Gleeson CJ and *Pyneboard Pty Ltd v Trade Practices Commission* [1983] HCA 9; (1983) 152 CLR 328 at 341; 45 ALR 609 at 617 per Mason ACJ, Wilson and Dawson JJ

efficiently be provided.

7. Paradigm examples of (ii) above is that a church or secular charity could not participate in the political debate about matters such as laws to alleviate poverty, eg increasing the New Start allowance, or contentious social issues such as the reach of anti-discrimination laws, unless it could ensure that no congregant (who might put money in the collection plate) or donor was a property developer.
8. Unsurprisingly, in none of the line of cases in the High Court dealing with these provisions and their New South Wales analogues, has it ever been argued or suggested that these laws operate in this way, a matter dealt with below.
9. Thus, if the ECQ construction is correct, it would invite a reconsideration of the issues that were dealt with by the High Court of Australia in *Spence v The State of Queensland*⁷ (**Spence**) and invite a different basis for the challenge to this aspect of the laws on the ground of breaching the implied freedom of political communication.
10. As it is settled law that the anterior question before any issue of whether the implied freedom of political communication has been breached is to focus upon the proper construction of the legislation in question, the current proceedings do no more than focus on that inquiry. This is particularly so given, respectfully, the construction that would avoid any issue of the implied freedom arising appears compelling. Thus, the present application is an exercise of statutory construction only. It does not include any constitutional issue requiring the giving of any notices pursuant to section 78B of the *Judiciary Act* 1983 (Cth). Obviously, the law in relation to the implied freedom does bear upon the proper approach to statutory construction and the principle of legality just discussed. Nonetheless, the AIP has in correspondence reserved its rights, were it necessary, in the event its construction was not preferred, to challenge on implied freedom grounds. However, that is not presently before the Court.⁸

AIP

11. The AIP is a public company limited by guarantee⁹, operating as a think-tank¹⁰

⁷ (2019) 93 ALJR 643; [2019] HCA 15.

⁸ Letter O'Donnell Legal to Crown Law dated 4 March 2020; Letter Crown Law to O'Donnell Legal dated 5 March 2020.

⁹ Constitution of AIP preliminary (Young ex p 4).

¹⁰ AIP constitution cl2 (Young ex p 5).

based in Brisbane.¹¹

12. In June 2014, the AIP (formerly The National Forum) commenced operations with Graham Young, former ALP MHR the Hon Gary Johns, Bob Tucker and Dan Ryan as board members.¹² Some of AIP's board has connections with the LNP however many of its members do not.¹³ The AIP, is ideologically centre-right focused and says that it cooperates with any political party it considers supports good policy.¹⁴
13. The AIP's activities include polling, conducting the McIlwraith Lecture series, publishing papers (on all ideologies not just centre-right) and running campaigns, which can include criticising a political party on the basis of specific policies.¹⁵ At the 2019 federal election, the AIP criticised both the ALP and LNP parties.¹⁶ Given the AIP's centre-right ideologies its criticism tend to favour parties of the right of politics.¹⁷

Critical Provisions of the *Electoral Act*

14. Relevant to the disposition of the questions raised by the originating application, the *Electoral Act*¹⁸ critically provides as follows:

"Part 1

...

2 Definitions

...

agent for part 11, see section 197.

...

candidate, in relation to an election—

- (a) means a person who has become a candidate under section 93(3); and
 (b) for part 11, includes an elected member or other person who has announced or otherwise indicated an intention to be a candidate in the election.

...

disclosure period, for an election, for part 11—

- (a) for a candidate in the election—see section 198(1); or
 (b) for a third party to which section 263(1) or 264(1) applies for the election—see section 198(3).

¹¹ See generally Young paras 2 – 15.

¹² Young paras 3 – 4.

¹³ Young para 12.

¹⁴ Young paras 12 and 15.

¹⁵ Young para 8 - 13.

¹⁶ Young para 14.

¹⁷ Young para 8-13.

¹⁸ Where appropriate a footnote reference to an analogue provision in the *Election Funding, Expenditure and Disclosures Act (1981) (NSW) (the EFED Act)* is given, as that gives some relevant context.

...
elected member for part 11, see section 197.

...
election means an election of a member or members of the Legislative Assembly.

...
electoral matter means a matter relating to elections.

...
electoral expenditure, for part 11, see section 197.

...
political donation, for part 11, division 8, subdivision 4, see section 274.

political party means an organisation whose object, or 1 of whose objects, is the promotion of the election to the Legislative Assembly of a candidate or candidates endorsed by it or by a body or organisation of which it forms a part.

...
registered, for part 11, see section 197.

...
registered political party means a political party that is registered in the register of political parties.

register of agents, for part 11, see section 197.

register of candidates means the register kept under section 101.

register of political parties means the register kept under section 70.

...
third party, for part 11, see section 197.

...
Part 11 Election funding and financial disclosure

Division 1 Interpretation

197 Definitions

In this part—

...
agent means an agent of a registered political party, candidate or third party appointed under division 2.

...
disclosure period, for an election—
 (a) for a candidate in the election—see section 198(1); or
 (b) for a third party to which section 263(1) or 264(1) applies for the election—see section 198(3).

...
elected member means a member of the Legislative Assembly.

electoral expenditure—
 (a) for division 4—see section 222; or

- (b) for division 8, subdivision 4—means expenditure incurred for the purposes of a campaign for an election, whether or not the expenditure is incurred during the election period for the election; or
- (c) for division 10—see section 282A.

...
political donation, for division 8, subdivision 4, see section 274.

prohibited donor, for division 8, subdivision 4, see section 273.

...
registered, for an election, means registered under part 6.

...
register of agents means the register kept under section 211.

...
third party means an entity other than a registered political party, an associated entity or a candidate.¹⁹

...

201A Meaning of gift threshold amount

The "gift threshold amount" , for the amount or value of a gift or loan, is \$1,000.

... **Division 4 Electoral funding**

Subdivision 1 Preliminary

222 Interpretation

- (1) In this division, "electoral expenditure" , by a registered political party or a candidate for an election, means expenditure incurred by the political party or candidate for the purposes of a campaign for the election, whether or not the expenditure is incurred during the election period for the election.
- (2) For this division, if a registered political party and a candidate endorsed by the registered political party both claim to have incurred the same item of electoral expenditure, the electoral expenditure is taken to be electoral expenditure incurred by the party.

...

Division 7 Disclosure of gifts

...

Subdivision 2 Disclosure of gifts generally

261 Disclosure by candidates of gifts

- (1) If, during the disclosure period for an election, a candidate in the election receives a gift, other than an exempt gift, equal

¹⁹ C.f. EFED s 54 definition of third-party campaigner.

to or more than the gift threshold amount, the candidate's agent must give the commission a return about the gift.

...
263 Disclosure of gifts by third parties that incur expenditure for political purposes

- (1) This section applies to a third party if, during the disclosure period for an election, the third party incurs expenditure for political purposes equal to or more than the gift threshold amount.
- (2) The third party must give the commission a return stating the relevant details of any gift received by the third party during the disclosure period that—
 - (a) has an amount or value equal to or more than the gift threshold amount; and
 - (b) the third party has used, in whole or part—
 - (i) to enable the third party to incur expenditure for a political purpose; or
 - (ii) to reimburse the third party for incurring expenditure for a political purpose.
- ...
 - (5) For this section—
 - (a) a third party incurs expenditure for a political purpose if the third party incurs expenditure for or by the way of—
 - (i) publication in any way (including radio or television) of electoral matter; or
 - (ii) any other ways publicly expressing views on an issue in an election; or
 - (iii) the making of a gift to a political party; or
 - (iv) the making of a gift to a candidate in an election; or
 - (v) the making of a gift to a person on the understanding that the person or someone else will apply, either directly or indirectly, the whole or a part of the gift as mentioned in subparagraph (i), (ii), (iii) or (iv); and
 - (b) the relevant details of a gift are the amount or value of the gift, the date on which the gift was made and the relevant particulars of the entity that made the gift.
 - (6) For subsection (2), 2 or more gifts made, during the disclosure period for an election, by the same entity to another entity are taken to be 1 gift.

...
264 Disclosure by third parties of gifts to candidates

- (1) This section applies to a third party that makes, during the disclosure period for an election, a gift to a candidate in the election.
- (2) The third party must, by the day prescribed by a regulation, give the commission a return, in the approved form, stating the required details of the gift.

...
265 Gifts to political parties

- (1) This section applies to an entity that makes a gift, or made a gift before the commencement, to a registered political party (the recipient party) in a reporting period.

- (2) If the amount or value of the gift is equal to or more than the gift threshold amount, the entity must, by the day prescribed by a regulation, give the commission a return, in the approved form, stating—
- (a) the amount or value of the gift; and
 - (b) the date on which the entity made the gift; and
 - (c) the name and address of the recipient party.

...

- (7) If—
- (a) 2 or more political parties are related to each other; and
 - (b) at least 1 of the parties is a registered political party;

subsections (1) to (4) apply as if—

- (c) those parties together constituted a single registered political party (rather than being separate political parties); and
 - (d) a gift made by an entity to any of those parties were a gift made by the entity to the recipient party.
- (8) If an entity makes a gift to a person or body with the intention of benefiting a particular political party, the entity is taken for this section (including subsection (7)(d)) to have made that gift directly to the political party.

...

- (11) This section does not apply to gifts made by any of the following—
- (a) a registered political party;
 - (b) an associated entity;
 - (c) a candidate in an election.

...

Division 8 Rules about particular gifts and loans

...

Subdivision 4 Political donations from property developers

273 Meaning of prohibited donors²⁰

- (1) For this subdivision, prohibited donor -
- (a) means-
 - (i) a property developer; or
 - (ii) an industry representative organisation, a majority of whose members are property developers; but
 - (b) does not include an entity for whom a determination is in effect under section 277.

...

274 Meaning of political donation²¹

- (1) For this subdivision, each of the following is a **political donation**—
- (a) a gift made to or for the benefit of—
 - (i) a political party; or
 - (ii) an elected member; or
 - (iii) a candidate in an election;
 - (b) a gift made to or for the benefit of another entity—

²⁰ See EFED ss 96(G)(1) and (3).

²¹ See EFED s 85.

- (i) to enable the entity (directly or indirectly) to make a gift mentioned in paragraph (a) or to incur electoral expenditure; or
 - (ii) to reimburse the entity (directly or indirectly) for making a gift mentioned in paragraph (a) or incurring electoral expenditure;
 - (c) a loan from an entity other than a financial institution that, if the loan were a gift, would be a gift mentioned in paragraph (a) or (b).
- (2) If a gift is made by a person in a private capacity to an individual (the **recipient**) for the recipient's personal use and the recipient does not intend to use the gift for an electoral purpose—
- (a) the gift is not a political donation when it is made; but
 - (b) if any part of the gift is used for an electoral purpose, then, for the purposes of section 275(3)—
 - (i) that part of the gift is a political donation; and
 - (ii) the recipient is taken to accept that part of the gift at the time it is used for an electoral purpose.
- (3) A reference in subsection (2) to using a gift for an electoral purpose is a reference to using the gift to incur electoral expenditure or for the recipient's duties as an elected member.
- (4) Despite section 201(4)(a) and (b), a reference in this section to a gift includes a fundraising contribution, to the extent the amount of the contribution forms part of the proceeds of the fundraising venture or function to which the contribution relates.
- (5) Despite section 201(4)(d), a reference in this section to a gift includes any of the following amounts paid by a person to a political party, to the extent the total amount of the person's payments in a calendar year exceeds \$1,000—
- (a) an amount paid as a subscription for a person's membership of the party;
 - (b) an amount paid for a person's affiliation with the party.

275 Political donations by prohibited donors²²

- (1) It is unlawful for a prohibited donor to make a political donation.
- (2) It is unlawful for a person to make a political donation on behalf of a prohibited donor.
- (3) It is unlawful for a person to accept a political donation that was made (wholly or in part) by or on behalf of a prohibited donor.
- (4) It is unlawful for a prohibited donor to solicit a person to make a political donation.
- (5) It is unlawful for a person to solicit, on behalf of a prohibited donor, another person to make a political donation.

²² See *EFED* s 96GA.

276 Recovery of prohibited donations²³

- (1) If a person accepts a prohibited donation, the following amount is payable by the person to the State—
 - (a) if the person knew it was unlawful to accept the prohibited donation—an amount equal to twice the amount or value of the prohibited donation;
 - (b) otherwise—an amount equal to the amount or value of the prohibited donation.
- (2) The amount may be recovered by the State as a debt due to the State from—
 - (a) if the recipient is a registered political party that is not a corporation the party's agent; or
 - (b) if the recipient is a candidate—the candidate or the candidate's agent; or
 - (c) otherwise—the recipient.
- (3) The imposition of liability to pay an amount to the State under this section—
 - (a) is not a punishment or sentence for an offence against section 307A or any other offence; and
 - (b) is not a matter to which a court may have regard in sentencing an offender for an offence against section 307A or any other offence.
- (4) In this section—

prohibited donation means a political donation that was unlawfully made or accepted under section 275.

recipient means the entity to whom, or for the benefit of whom, the prohibited donation was made.

...
Division 10 Disclosure of expenditure

282 Interpretation

A reference in this division to a participant in an election is a reference to—

- (a) a registered political party or a candidate; or
- (b) any other person by whom or with the authority of whom electoral expenditure for an election was incurred.

282A Meaning of electoral expenditure

In this division, **electoral expenditure** means expenditure incurred (whether or not incurred during the election period for an election) on, or a gift in kind given that consists of—

- (a) the broadcasting, during the election period for the election, of an advertisement that advocates a vote for or against a candidate or for or against a registered political party; or
- (b) the publishing in a journal, during the election period for the election, of an advertisement that advocates a vote for or against a candidate or for or against a registered political party; or

²³ See *EFED* s 96J.

- (c) the publishing on the internet, during the election period for the election, of an advertisement that advocates a vote for or against a candidate or for or against a registered political party, even if the internet site on which the publication is made is located outside Queensland; or
- (d) the display, during the election period for the election, at a theatre or other place of entertainment, of an advertisement that advocates a vote for or against a candidate or for or against a registered political party; or
- (e) the production of an advertisement that advocates a vote for or against a candidate or for or against a registered political party, being an advertisement that is broadcast, published or displayed as mentioned in paragraph (a), (b), (c) or (d); or
- (f) the production of any material (other than material mentioned in paragraph (a), (b), (c) or (d)) that—
 - (i) advocates a vote for or against a candidate or for or against a registered political party; and
 - (ii) is required under section 181 to include the name and address of the author of the material or of the person authorising the material; and
 - (iii) is used during the election period for the election; or
- (g) the production and distribution of material that—
 - (i) advocates a vote for or against a candidate or for or against a registered political party; and
 - (ii) is addressed to particular entities; and
 - (iii) is distributed during the election period for the election; or
- (h) the carrying out, during the election period for the election, of an opinion poll or other research relating to the election if the dominant purpose of carrying out the opinion poll or research is—
 - (i) to promote or oppose, directly or indirectly, a registered political party or the election of a candidate; or
 - (ii) to influence, directly or indirectly, voting at the election.”

Important relevant statutory concepts contained in the *Electoral Act*.

15. The following may be observed from the extracts of the *Electoral Act* above.
16. First, when it comes to the participants in the electoral process in Queensland for the election of members to the Legislative Assembly the parliament has

selected, by specific definitions, 4 relevant categories:

- (a) political parties²⁴;
- (b) candidates²⁵;
- (c) elected members²⁶ (which sometimes overlaps with candidates); and
- (d) third parties²⁷.

17. The *Electoral Act* uses these defined expressions carefully, selectively and advisedly in ways calibrated to regulate those participants within such definitions to achieve discernable legislative purposes.
18. Secondly, the regulation in relation to donations, the disclosure of donations and expenditure, demonstrate the dichotomy between; on the one hand, political parties and candidates (including elected members) which are seeking their members or themselves be elected members of the Legislative Assembly; and on the other hand, third parties whose interests and activities are more diverse than seeking the election of one or more individuals to the Legislative Assembly, and may in fact participate in the political process in ways that do not urge the election of any particular person or party to the Legislative Assembly.
19. Thirdly, this dichotomy finds its most obvious distinction in the varied meaning, according to whom is applied to, of the conception of "electoral expenditure". As may be seen in ss 228 and 274 of the *Electoral Act*, the statutory definitions applicable to those provisions pursuant to s 197 are narrow and focused on persons concerned with being elected or electing members of the Legislative Assembly. On the other hand, the definition that applies to "electoral expenditure" in s 282A is broader to capture more diverse ways in which, amongst others, third parties are permitted to participate in the electoral process in Queensland, eg urging votes against a person being elected or the

²⁴ See section 2 of the *Electoral Act*.

²⁵ See section 2 of the *Electoral Act*.

²⁶ See sections 2 and 197 of the *Electoral Act*.

²⁷ See sections 2 and 197 of the *Electoral Act*.

agitation of issues more generally.

The ECQ letter of 20 February 2020

20. Relevantly, the ECQ letter of 20 February 2020 was in the following terms:

“...You state in your letter that the AIP conducts research and runs advocacy campaigns, amongst other activities, and potentially recommends a vote for or against a particular candidate or party. On this basis, the ECQ considers the AIP to be a third party.”

Under the Prohibited Donors Scheme (PDS), gifts from a property developer, their close associates or industry representative organisations to a third party to incur electoral expenditure are prohibited. As such, an entity would likely be committing an offence by accepting an unlawful donation and incurring electoral expenditure and the other entity would likely be committing an offence by making a gift.

You also state in your letter that the AIP receives funding from “some prohibited donors”. To clarify this disclosure, could you please advise:

- when these gifts were made
- the name of the entities who provided the gifts
- the amount or value of the gifts?

The ECQ would appreciate a response in writing by **Monday, 2 March 2020** so that the ECQ can consider what action is appropriate, if any. Please note that appropriate action may include the ECQ recovering unlawful donations as a debt to the State.

For more information about third party disclosure obligations and the PDS, please refer to our website for fact sheets and guides for third parties in State and local government elections....” (emphasis added)

21. The following should be noted about this assertion by the ECQ.

22. First, for reasons developed below, it is submitted that the ECQ is correct to consider the AIP as a third party for the purpose of the *Electoral Act*.

23. Second, there is no such thing as the “Prohibited Donors Scheme (PDS)”. A conspicuous feature of the position taken by the ECQ both in its correspondence with the AIP and on its website is that it asserts the existence and operation of such a scheme in a way not reflected in the statute. Rather there are a series of prohibitions on donors of a particular character to donees of a particular character.

24. Third, Part 11, Division 8, Subdivision 3 of the *Electoral Act*, by its terms, does not proscribe gifts from property developers to third parties. It does, in terms,

proscribe gifts to certain identified persons within defined meanings within the *Electoral Act*, and those terms do not include within their reach third parties.

25. The fact that both in its 20 February 2020 letter to the AIP, and in the publications mentioned above on its website, the ECQ substitutes the statutory language “third party” for the statutory language of “another entity” is emblematic that its error as to the proper construction of these provisions is at a fundamental level.

The nature of the prohibition under the *Electoral Act*

26. Essentially the Electoral Act prohibits the making of a “political donation” by a “prohibited donor”; s 275.
27. A prohibited donor is a property developer, being a corporation regularly engaged in the residential and commercial development of land for the ultimate purpose of the sale or lease of the land for profit, or a close associate of such a person; s 273.
28. The concept of a political donation is in s 274, and is in essence a gift made to or for the benefit of a political party, elected member or candidate in an election, or a gift to another for the purpose of that other making a gift to one of the three categories just mentioned.
29. The meaning of the expression “incur electoral expenditure” in s 274(1)(b) of the *Electoral Act* is dealt with below, to the effect that it does not extend the 3 categories just identified. Rather, it is concerned with the incurring of electoral expenditure on behalf of any one of those three categories.
30. The definition of political party is as follows “... means an organisation whose object, or 1 of whose objects, is the promotion of the election to the Legislative Assembly of a candidate or candidates endorsed by it or by a body or organisation of which it forms a part.”²⁸
31. It may therefore be seen that before the prohibition in s 275 of the *Electoral Act* is engaged there will need to be the gift passing from a donor of a particular characteristic, viz a “prohibited donor”, to a donee of a particular characteristic,

²⁸ A candidate being a person who has become a candidate under section 93(3) and for the purposes of part 11, includes an elected member or other person who has announced or otherwise indicated an intention to be a candidate in the election. An “elected member” means a member of the Legislative Assembly. See *Electoral Act* ss 2 and 197.

viz a political party, elected member or candidate for election.

The reach of the expression “incur electoral expenditure” in s274(1)(b) of the Electoral Act

32. Electoral expenditure for the purposes of s 274 of the *Electoral Act* carries the meaning ascribed to it by s197 of the *Electoral Act*²⁹, and in particular sub-definition (b) within the definition of electoral expenditure in s197 of the *Electoral Act*.³⁰ That definition is that electoral expenditure “...means expenditure incurred for the purposes of a campaign for an election, whether or not the expenditure is incurred during the election period for the election”. (emphasis added)³¹
33. In this regard it is illuminating to compare this definition with the other definitions of “electoral expenditure “ in s 197, viz those found in section 222 and 282A of the *Electoral Act*.
34. Section 222 is, unsurprisingly, concerned with the position of political parties or candidates and thus also employs the expression “campaign for an election”, it having a like operation to electoral expenditure in Division 8, Subdivision 4. Contrast that with the much broader definition in section 282A of the *Electoral Act* that is clearly intended to operate in a diverse way and thereby pick up third parties as well.

What then does this expression denote in its statutory setting?

35. The expression “campaign” or “campaigning” is not defined in the *Electoral Act*, although the expression itself is used on a number of occasions within the *Electoral Act*, in addition to the definition of electoral expenditure with which there is present concern.³² In the circumstances, campaign thus bears its normal grammatical meaning, which in the context of the *Electoral Act* is the activities of political candidates and organisations aimed at gaining support for

²⁹ See also the definition of “electoral expenditure” in s2 of the *Electoral Act*.

³⁰ The very different definition in (b) compared to the other definitions of the expression in the *Electoral Act* is important.

³¹ The *Electoral Act* thus does not adopt the specific statutory definition of electoral expenditure of the kind found in s 87(1) of the EFED Act, although even if it did it would not justify the ECQ view. The difference does however serve to reinforce the error of the ECQ attitude.

³² See ss 222(1), 409(2)(a) and (b), (3) and (4).

themselves or their policies at an election or in a referendum, etc.³³

36. The expression “election” is defined in s 2 of the *Electoral Act*, as “...an election of a member or members of the Legislative Assembly.”
37. Thus, the composite expression of “campaign for an election” within the meaning of “electoral expenditure”, and in the context of how it is employed for the purpose of the meaning political donation in s 274 of the *Electoral Act*³⁴, means expenditure incurred for the purpose of activities of political candidates and organisations aimed at gaining support for having one or more of themselves or their members elected to the Legislative Assembly.
38. It is immediately apparent that electoral expenditure has a different and more limited meaning and operation in the prohibited donor context³⁵ than when it is used elsewhere in the *Electoral Act*. In particular, the definition of the same expression in s 282A, which beyond expenditure for seeking to have one or more persons elected to the Legislative Assembly, also covers advocating a vote against a candidate or registered political party or the conducting of polling or research to influence a vote.
39. Consequently, the electoral expenditure that is being referred to in s 274 of the *Electoral Act* is not some notion of electoral expenditure at large, but electoral expenditure for one of the nominated donees prohibited from receiving a donation from a prohibited donor in s 274, viz, a political party, an elected member or a candidate for election.
40. Other matters point firmly to this construction. The structure, text and context of s 274(1) of the *Electoral Act* demonstrates this as follows.
41. First, were the expression “incur electoral expenditure” to mean the incurring of any electoral expenditure then that would make the first half of the words in s 274(1)(b)(i) and (ii) surplusage, because the prohibition on the incurring of electoral expenditure generally would mean that the gifts to another entity for the purpose of making a gift of the kind in s 274(1)(a) of the *Electoral Act* would simply be a sub-set of the prohibition on incurring electoral expenditure generally. That is not an orthodox approach to statutory construction.
42. Second, the ECQ seems to base its reasoning on, respectfully, conflating the

³³ e.g. Macquarie Dictionary, 7th Edition, 2017.

³⁴ see also the allied way the same expressions are used in section 222 of the Electoral Act.

³⁵ And also part 11, Division 4, subdivision 1, section 222

expression “another entity” in s 274(1)(b) of the *Electoral Act* with the expression “third party” so they are synonymous. Again, respectfully, that is not orthodox. If parliament had meant to pick out “third party” in the same way “political party”, “candidate” and “elected member” are, it would be expected to use the defined expression of third party in s 274(1) of the *Electoral Act* – but it did not.³⁶

43. Moreover, it is clear from the references to “third party” in the extracted provisions of the *Electoral Act* above, and also ss 2 (definition of “disclosure period”), 197 (definition of “agent” and “disclosure period”), 198(3), 307D and 409 that the conception of “third party” has other, specific work to do in the *Electoral Act*.
44. Third, for the expression “incur electoral expenditure” to have that wide connotation it would mean that it would silence a prohibited donor from any involvement in matters of political discussion. One would expect to see so significant a matter the subject of a separate, dedicated section, not the last few words of an alternate in a particular sub-section. The principle of legality discussed in the beginning of this outline, demands no less. This is also supported by an approach to statutory construction consonant with the requirements of ss 21 and 23 of the *Human Rights Act 2019* (Qld).
45. Fourth, even if the ECQ approach were to be accepted and “another entity” could be read as “third party” in s 274(1)(b), it would still not operate in the way the ECQ contends. For s 274(1)(b) to be engaged the gift by the prohibited donor would need to be for the third party to actually incur expenditure on electoral matters. The words “... to enable the entity (directly or indirectly) ... to incur electoral expenditure...” requires such a connection. It would not suffice if, as here, some donors were prohibited donors and the third party spent some of its overall resources on political communications, but the 2 were not correlated. Put another way provided that the third party received sufficient donations from non prohibited donors for the purposes of its political expenditure, even if section 274 did apply to it, it would not breach it because the donations from the prohibited donors would not have been needed to incur

³⁶ See for example *Scott v Commercial Hotel Merbein Pty Ltd* [1930] VLR 25 at 30 (Irvine CJ); *Bayley v R* (2013) 43 VR 335 at [48] per Warren CJ, Neave and Coghlan JJA; *Priest v West* [2010] VSC 449 at 66 per Ross J; *NSW Minister for Health v Brauer* [2015] NSWSC 863 at [85] per Adamson J.

the political expenditure.

46. Fifth, it is inconsistent with the fact that for the prohibition to operate there needs to be a donor of a particular characteristic and a donee of a particular characteristic.
47. Finally, the purpose of the legislation is to prevent undue influence of prohibited donors on political parties and elected members or aspirant elected members of the Legislative Assembly. Its purpose is not to completely preclude prohibited donors from any participation in the political process, nor practically to preclude third parties unable to ensure they do not receive gifts from prohibited donors from participating in the political process. Consequently, a construction consonant with that is to be preferred.
48. The proper approach to statutory construction in Australia, particularly in relation to the use of definitional sections, was the subject of consideration by the Queensland Court of Appeal recently in *Vickers v Queensland Building and Construction Commission*³⁷ by Morrison JA, with whom Holmes CJ and Gotterson JA agreed³⁸, in the following terms:

"[20] As to the proper approach to construction of a statutory provision, the principles are made clear by the High Court in *Project Blue Sky Inc v Australian Broadcasting Authority*:

"[69] The primary object of statutory construction is to construe the relevant provision so that it is consistent with the language and purpose of all the provisions of the statute. The meaning of the provision must be determined 'by reference to the language of the instrument viewed as a whole'. In *Commissioner for Railways (NSW) v Agalinos*, Dixon CJ pointed out that 'the context, the general purpose and policy of a provision and its consistency and fairness are surer guides to its meaning than the logic with which it is constructed'. Thus, the process of construction must always begin by examining the context of the provision that is being construed.

[70] A legislative instrument must be construed on the prima facie basis that its provisions are intended to give effect to harmonious goals. Where conflict appears to arise from the language of particular provisions, the conflict must be alleviated, so far as possible, by adjusting the meaning of the competing provisions to achieve that result which will best give effect to the purpose and language of those provisions while maintaining the unity of all the statutory provisions. Reconciling conflicting provisions will often require the court 'to determine which is the leading provision and which the subordinate provision, and which must give way to the other'. Only by determining the hierarchy of the provisions will it be possible in many cases to give each provision the meaning which best gives effect to its purpose and language while maintaining the unity of the statutory scheme.

³⁷ [2019] QCA 66.

³⁸ At [1] and [2].

[71] Furthermore, a court construing a statutory provision must strive to give meaning to every word of the provision. In *The Commonwealth v Baume* Griffith CJ cited *R v Berchet* to support the proposition that it was ‘a known rule in the interpretation of Statutes that such a sense is to be made upon the whole as that no clause, sentence, or word shall prove superfluous, void, or insignificant, if by any other construction they may all be made useful and pertinent.’

...
 [78] However, the duty of a court is to give the words of a statutory provision the meaning that the legislature is taken to have intended them to have. Ordinarily, that meaning (the legal meaning) will correspond with the grammatical meaning of the provision. But not always. The context of the words, the consequences of a literal or grammatical construction, the purpose of the statute or the canons of construction may require the words of a legislative provision to be read in a way that does not correspond with the literal or grammatical meaning. ...”.

[21] The principles in *Project Blue Sky* were affirmed in *Lacey v Attorney-General (Qld)*, where the plurality said, concerning the applicable rules of statutory construction:

“[44] The application of the rules will properly involve the identification of a statutory purpose, which may appear from an express statement in the relevant statute, by inference from its terms and by appropriate reference to extrinsic materials. The purpose of a statute is not something which exists outside the statute. It resides in its text and structure, albeit it may be identified by reference to common law and statutory rules of construction.

[45] In this context, reference should be made to s 14A(1) of *the Acts Interpretation Act 1954* (Qld), which requires a purposive construction of Queensland statutes and is in the following terms: “Interpretation best achieving Act’s purpose

(1) In the interpretation of a provision of an Act, the interpretation that will best achieve the purpose of the Act is to be preferred to any other interpretation.” The term ‘purpose’ is defined to include ‘policy objective’. ...

[46] Section 14A requires preference to be given to that interpretation which will best achieve the purpose of the Act. ... Assuming that s 14A is not intended to displace common law rules outside its sphere of operation, the interpretations from which the selection which it mandates is to be made must be those which comply with the requirements of those rules, none of which is antagonistic to purposive construction.”

[22] In *Red Hill Iron Ltd v API Management Pty Ltd* Beech J referred to the proposition that definition clauses do not have operative effect:

“[127] As mentioned earlier in section 2, both the Farm-in Agreement and Joint Venture Agreement make extensive use of defined terms. Definitions do not have substantive effect. They are not to be construed in isolation from the operative provision(s) in which a defined term is used. Rather, the operative provision is to be read by inserting the definition into the provision: *Kelly v The Queen* [2004] HCA 12; (2004) 218 CLR 216 [84], [103]; *Epic Energy (Pilbara Pipeline) Pty Ltd v Commissioner of State Revenue* [2011] WASCA 228 [62], [150], [218]. Those cases dealt with statutory interpretation; the same principle applies in interpreting contracts: *Vincent Nominees Pty Ltd v Western Australian Planning Commission* [25].” (footnote excluded)

49. It is the case that when *Spence* was argued in the High Court, including on the implied freedom ground, there was never any suggestion that the prohibited donor laws would prevent a prohibited donor from participating in the electoral process other than that the prohibited donor could not donate to a political party, elected member or candidate. It is unlikely that if there was any force in the contrary argument it would not have been alluded to by one of the members of the Court or the parties. This is particularly so given that the implied freedom argument was also in play in the High Court. Plainly, if prohibited donors were prevented from participating in any way in the electoral process, it would have made the argument in relation to implied freedom entirely different.
50. The judgements in *Spence* bear this out; at [19] – [21] per Kiefel CJ, Bell, Gageler and Keane JJ; [243] – [247], [257] (c.f [260] and [270]) per Gordon J; [278] and [286] per Edelman JJ.
51. There is no basis for construing the prohibition in s 274 as extending any further than that a prohibited donor may not incur electoral expenditure, viz, spend money on campaigning for getting somebody elected to the Legislative Assembly, in respect of a political party, an elected member or a candidate for the legislative assembly, but not otherwise.

Is the AIP an entity prohibited by the *Electoral Act* from receiving donations from a prohibited donor?

52. Critical for the disposition of this question, once the correct statutory construction is settled, are the purposes or objects of the AIP, which in clause 2³⁹ of its Constitution are recorded as "... an independent, not-for-profit, public policy think tank and research institution, committed to economic and political freedom, civil society and promoting the understanding of public policy for the benefit of all Australians".
53. The AIP plainly does not have as one of its "... objects [being] for promotion of the election to the Legislative Assembly of a candidate ... endorsed by it .." and nor is it part of a body which is a "political party".⁴⁰
54. Consequently, prima facie, the making of a donation by a person who is a prohibited donor for the purpose of the *Electoral Act* does not in fact engage the prohibition on donations because the AIP is not a donee that the prohibited

³⁹ Young ex p 5.

⁴⁰ cf the definition of "Political Party" in s 2 of the *Electoral Act*.

donor is prohibited from donating to. That is, a donation, even by a prohibited donor, is not a “political donation” within the meaning of s 274 of the *Electoral Act*, and thereby does not engage s 275 of the *Electoral Act*.

Peter Dunning QC

Angela Hellewell

Counsel for the AIP

ANNEXURE C

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Crown Law

Department of
Justice and Attorney-General

6 March 2020

Mr Tom O'Donnell
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By email: tom@odonnelllegal.com.au

Dear Mr O'Donnell

The Australian Institute for Progress v Electoral Commission Qld - App No. BS2246/20

I refer to your client's submissions provided by email yesterday evening.

Requirement for s 78B notices to issue

I note your client's disavowal of the need for s 78B notices to be issued under the *Judiciary Act 1903* (Cth) in paragraph [10] of those submissions. However, the apparent effect of your client's submission in paragraph [9] is that if the purported construction advanced by Electoral Commission Queensland (ECQ) is right, then the High Court's decision in *Spence v The State of Queensland*¹ is wrong, and the provisions infringe the implied freedom.

Further, paragraphs [49] – [50] have the apparent effect of submitting that *Spence* may have been decided differently had the interpretation advanced by the ECQ been before the Court in that proceeding. The implication being that the Supreme Court should not accept that interpretation because it would be contrary to the implied freedom.

With respect, advancing the contention that the ECQ is wrong because their interpretation of the impugned provisions is contrary to the Constitution, that is, that the AIP's construction ought to be preferred because of the implied freedom, necessarily raises a constitutional issue.

¹ (2019) 93 ALJR 643.

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Human Rights Act

In addition to my client's view that s 78B notices need to issue, I note your client's reliance on ss 21 and 23 of the *Human Rights Act 2019* (the HR Act) in paragraph [44] of the submissions.

Section 52(1) of the HR Act provides that a party to a proceeding **must** give notice in the approved form to the Attorney-General and the commission in a proceeding in the Supreme Court if '... a question of law arises that relates to the application of [the HR Act] or a question arises in relation to the interpretation of a statutory provision in accordance with [the HR Act].'

Relying upon the HR Act in support of your client's construction necessarily raises a question of the kind referred to by s 52(1).

Next steps

It is clear to my client that notices under s 78B of the *Judiciary Act* and s 52 of the HR Act need to issue before this matter can proceed.

I invite your client, as the moving party, to prepare the requisite notices and issue them by **4:00 pm on 9 March 2020**. If this does not occur, I hold instructions to draw the requisite notices and issue them as soon as possible thereafter.

Notwithstanding your client's submission that the matter is urgent, in light of the need for notices to issue, my client considers that the matter cannot proceed to be finally determined on 12 March 2020. My client is prepared to consider an adjournment by consent in order to provide the Attorneys-General of the Commonwealth and the States a reasonable time to consider the question of intervention in the proceedings.

I look forward to your urgent response.

Yours sincerely



Nathaniel Harris
Senior Lawyer
for **Crown Solicitor**