



**SUPREME COURT
OF QUEENSLAND**

JUDGMENT SUMMARY

The Australian Institute for Progress Ltd v The Electoral Commission of Queensland
[2020] QSC 54

NOTE: This summary is necessarily incomplete. It is not a substitute for the Court’s reasons or to be used in any later consideration of the Court’s reasons. The only authoritative pronouncement of the Court’s reasons and conclusions is that contained in the published reasons for judgment.

The Australian Institute for Progress (“AIP”) is a “think tank” based in Queensland. The AIP’s funding sources include some property developers who are “prohibited donors” for the purposes of the *Electoral Act* 1992 (Qld).

It is unlawful for a “prohibited donor” to make a “political donation” as defined in the Act. Also, 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”. The legislation aims to minimise the corruption and undue influence that political donations from property developers have the potential to cause at both a State and local government level.

The AIP intends to conduct research and run advocacy campaigns this year, including during the election period. It would like to participate in the State election to be held later this year. This includes producing and distributing material that advocates a vote for or against a registered political party. The AIP’s various activities include seminars and public meetings. In February 2020 the AIP asked the Electoral Commission of Queensland “whether it is legal for prohibited donors to donate to us” if it conducted its various activities. The Commission advised that “an entity would likely be committing an offence by accepting an unlawful donation and incurring electoral expenditure”. It also sought further information from the AIP.

The AIP sought declarations from the Supreme Court, including that “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 the Act.

The Commission submitted that the declarations sought take a vague form and are so imprecise that they would not quell any controversy between the parties. It submitted that the declarations raise only hypothetical questions which are not the function of the Court to answer.

The Court found that the AIP failed to establish that declarations in the form sought should be made. Declarations in the form sought would not accord with the principles governing the circumstances in which the Court will grant declaratory relief.

The Court did, however, decide an issue of statutory interpretation in dispute between the AIP and the Commission.

The AIP submitted that s 274(1)(b) of the Act is concerned with the incurring of electoral expenditure “on behalf of” any one of the three entities referred to in s 274(1)(a), namely a political party, an elected member or a candidate in an election. The Commission submitted that such a reading is inconsistent with the language of the section, and is also inconsistent with its purpose and context. It contended that if the section had the confined operation for which the AIP contends, then the prohibitions on prohibited donors making a “political donation” could readily be thwarted.

The Court found (at [82]) that the construction of s 274(1)(b) urged by the AIP is not supported by the text and structure of the section.

The Court found (at [99]) that the word “campaign” in the definition of “electoral expenditure” may describe the campaign of a third party or a group of third parties whose organised activities are aimed at achieving the election of a political party or a candidate or the defeat of a political party or candidate at an election.

The Court found (at [109]) that an interpretation of s 274(1)(b) which construed it as if it read “to incur electoral expenditure on behalf of any of the parties mentioned in subparagraph (a)” would narrow the prohibitions on political donations from prohibited donors in 275, and permit them to be easily avoided by the simple step of making a gift to “another entity” to enable the entity to incur electoral expenditure which is used to recommend a vote for or against a political party or candidate.

On the issue of whether the interpretation argued by the Commission was “compatible with human rights” under the *Human Rights Act 2019* (Qld) (“HRA”) the Court concluded (at [135]) that:

“...the limitations on the human rights contained in the *HRA* are reasonable limits that can be demonstrably justified in a free and democratic society based on human dignity, equality and freedom. The purpose of the limitations is consistent with a free and democratic society based on those values. The provisions seek to prevent corruption and undue influence in the government of the State. They enhance our democratic system. The nature and extent of the limitations on freedom of expression and the right of individuals to participate in public life does not preclude prohibited donors from participating in public affairs, including election campaigns, by direct and open means, including by incurring expenditure on activities which they undertake in order to influence the outcome of an election, including advertising which urges electors to vote for or against political parties and candidates.”

The Court concluded (at [153]) that whether or not a gift falls within the definition of “political donation” in s 274(1)(b) depends on the circumstances in which the gift was made. It depends on the purpose of the particular donor and the particular gift: was it “to enable”

the entity to incur expenditure “for the purposes of a campaign for an election” for the Legislative Assembly?

The issue of whether the making of a gift engages the prohibition in s 275 was said (at [153]) to be fact-specific. The matter being fact-specific, the declarations sought by the AIP lacked utility, and it would be inappropriate to grant them, or even declarations which referred to the AIP rather than any “Third Party” (at [155]).

The Court concluded (at [157]):

“The form of declaratory relief sought by the AIP is imprecise and does not engage with the issue of whether a gift to it by a prohibited donor was made “to enable” it to incur expenditure for the purposes of “a campaign for an election” for the Legislative Assembly. The evidence does not establish that such a gift has been made. The Court should not grant a declaration on the basis of an assumption that such a gift has been made. To do so would be to make a declaration that is hypothetical in the sense of being divorced from facts which are found or agreed.”

The AIP’s application to grant declaratory relief in the form sought was dismissed.

30 March 2020