HIGH COURT OF AUSTRALIA

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Details of Filing

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IN THE HIGH COURT OF AUSTRALIA
SYDNEY REGISTRY
BETWEEN:

MICHAEL RAVBAR
First Plaintiff

WILLIAM LOWTH
Second Plaintiff

and

COMMONWEALTH OF AUSTRALIA
First Defendant

ATTORNEY-GENERAL OF THE COMMONWEALTH
Second Defendant

MARK IRVING KC
Third Defendant

SUBMISSIONS OF THE PLAINTIFFS

PART I CERTIFICATION

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

PART II ISSUES

2. This case concerns amendments made to the *Fair Work (Registered Organisations) Act 2009* (Cth) (**FWRO Act**) and the *Fair Work Act 2009* (Cth) (**FW Act**) by the *Fair Work (Registered Organisations) Amendment (Administration) Act 2024* (Cth) (**Administration Act**) and the *Fair Work (Registered Organisations) (CFMEU Construction and General Division Administration) Determination* (**Scheme**) determined under s 323B(1) of the FWRO Act. Together, they operate to place the Construction and General Division (**C&G Division**) of the CFMEU into administration.

3. The plaintiffs allege the provisions are invalid on four bases, which give rise to four issues. First, whether the Administration Act is supported by a head of Commonwealth legislative power. Second, whether the Administration Act and Scheme infringe the implied freedom of political communication, by reason of their illegitimate purpose or unjustified burden on political communication. Third, whether s 323B of the FWRO Act involves the exercise of judicial power by the Minister or Parliament, because it imposes punishment on the C&G Division, its officers and its members otherwise than by a Ch III Court. Fourth, whether the impugned provisions effect an acquisition of property otherwise than on just terms, both

generally in the vesting of control of property in the Administrator, and by reason of the requirement that he be remunerated from the funds of the C&G Division.

PART III SECTION 78B NOTICE

4. The plaintiffs have served a s 78B notice.

PART IV FACTS

5. The CFMEU is a trade union, representing some 120,000 workers across Australia (SC [99.6] SCB1 152). Its objects include: (i) to uphold the right of combination of labour and to assist its members to obtain their rights under industrial and social legislation; (b) to do all things conducive to the welfare and organisation of the working class and take part in questions affecting or involving the wages and conditions of labour; (c) to secure legislation for safety or in connection with the industries of the union and for the general and material well-being of its members; (d) to raise political levies, donate, and/or affiliate with political parties (CFMEU Rules, Rule 4(a), (d), (i) and (y) SCB1 248-250).

6. The CFMEU has three Divisions being the C&G Division, the Manufacturing Division and the Maritime Union of Australia Division (CFMEU Rules, Rule 27(i) SCB1 277). A CFMEU member may belong to one Division only (CFMEU Rules, Rule 7(iv) SCB1 253). Each Division has its own rules, and the members in each Division elect their own officers (CFMEU Rules, Rule 27(ii)-(iii) SCB1 277 and see C&G Division Rules SCB2 864-949). Each Division has autonomy in relation to matters which do not directly affect the members of another Division, and with respect to its funds and property, which remain under the control of the Division (CFMEU Rules, Rules 27(ii)-(iii), 23(vi) SCB1 277, 274). Members of the C&G Division are members of the relevant State or Territory Divisional Branch where they are employed (C&G Rules, Rule 29 SCB2 890).

7. Decisions made by the CFMEU and by the C&G Division about the expenditure of funds (including political or electoral expenditure) and political positions are made by persons who are democratically elected by members of each Division, in accordance with the CFMEU Rules and the C&G Division Rules (CFMEU Rules, Rules 13 and 18 SCB1, 256-259, 270 and C&G Rules, Rule 8-9; SCB2 870-879, see also SC [78]-[88] SCB1 145-148).

8. The C&G Division has a history of communicating political messages, promoting particular candidates for election, and lobbying the government in the interests of its members (SC Part D SCB1 158-182). The C&G Division seeks to coordinate its political messages and campaigns with other unions with a common interest (SC Part D6 SCB1 168-170).

9. Commencing around 13 July 2024, news media outlets in Australia published articles alleging misconduct by officers and members of the C&G Division of the CFMEU (none of which arose out of or have led to convictions for offences or findings by a court) (SC [104], [105.1] SCB1 153-155). On 2 August 2024, the General Manager of the Fair Work Commission applied to the Federal Court under s 323 of the FWRO Act for orders that would approve a scheme in relation to the C&G Division and appoint the third defendant as administrator (SC [116] SCB1 157) (**FCA Proceeding**).

10. Between 29 July 2024 and 12 August 2024, the Minister for Employment and Workplace Relations (**Minister**) made a number of public statements between 29 July 2024 to the effect that: (a) the Government considered members of the CFMEU had engaged in criminal conduct and (b) if the CFMEU did not consent to the orders sought in the FCA Proceeding, then the Government would introduce legislation to effect the administration of the C&G Division (SCB3 1219-1272). On 12 August 2024, the Minister introduced the Fair Work (Registered Organisations) Amendment (Administration) Bill 2024 (Cth) (**the Bill**) into the Senate. In his second reading speech, he stated that "serious allegations" had come to light about the conduct of the members of the C&G Division, and that "administration … is the strongest action to take in these circumstances" (SCB3 963).

11. On 13 August 2024 the Liberal Party stated that amendments were required to the Bill, including "[t]hat political donations, political campaigns and advertising by the CFMEU should be explicitly banned during the period of Administration" (SCB3 1274). Liberal Party Senators similarly stated during the second reading debate that the Bill would not be supported unless it banned political activity by the CFMEU and/or the C&G Division (SCB3 1274). On 14 August 2024, the Minister stated in the Senate that "the scheme of administration that would be applied under this legislation would ban donations to any political party" (SCB3 994), and Senator Penny Wong of the Australian Labor Party confirmed that "donations to political parties" would be banned (SCB3 998). Similar comments were made outside the Senate (SCB3 1269). The Senate did not agree to the Bill.

12. On 19 August 2024 the Administrator wrote a letter to the Minister in which he stated that "the union [sic: Division] will not engage in will not engage in party politics during the administration: donations, positions at political party conferences; promotion of particular candidates" and that "I can advise you that I intend, should I be appointed as Administrator, to vary the rules of the Construction and General Division of the CFMEU to prohibit the making of party-political donations or the funding of party-political campaigns" (SCB3

1279). At around 3:20pm, Senator Cash (the Deputy Leader of the Opposition in the Senate) said she had been provided with the Administrator's letter and the opposition was "prepared to accept that" (SCB3 1282). The Senate agreed to the Bill on 19 August 2024. The House of Representatives debated the Bill on 20 August 2024. Members of the Opposition specifically referred to the fact that political donations and party politics would be prohibited during the Administration in explaining their reasons for supporting the Bill (SCB3 1010, 1015), and the Bill was agreed to later that day.

13. On 23 August 2024, at around 12.21am, the Minister authorised the second defendant to act on his behalf and exercise his powers under s 323B of the FWRO Act. Then, at around 8.12am, the second defendant determined the Scheme (SC [1]-[2] SCB1 123) Clause 2(1) of the Scheme provided that the third defendant was to be appointed as administrator under s 323C of the FWRO Act. The effect of the Scheme was (inter alia) that the persons listed in Annexure B were removed from office and were divested of their powers under the CFMEU Rules and C&G Rules, and to the extent they were employed, had their paid employment terminated. Both plaintiffs lost their employment.

PART V ARGUMENT

A. HEAD OF POWER

14. The first step is to "construe the law and to determine its operation and effect (that is, to decide what the Act actually does)" and the second step is to determine the relation of the operation and effect of the Act to a subject matter in respect of which it is contended the Parliament has power to make laws to determine whether "in reality and substance" it is a law upon the subject matter.[1]

15. **Construction**. Section 323A of the FWRO Act effects the administration of the C&G Division and its branches, operating on and from the earliest time at which both a scheme is determined by the Minister under s 323B(1) and an administrator is appointed under s 323C. Not only do these provisions empower the Minister to determine a scheme but they, together with the balance of Part 2A, prescribe certain legislative consequences of the Minister doing so. The Minister's power to "determine a scheme for the administration of the [C&G] Division and its branches" is predicated on the Minister's satisfaction that, "having regard to the Parliament's intention" in enacting the FWRO Act (see s 5), "it is in

[1] *Bank of NSW v Commonwealth* (1948) 76 CLR 1 at 186 (Latham CJ) (***Bank Nationalisation Case***); *Spence v Queensland* (2019) 268 CLR 355 at [57] (Kiefel CJ, Bell, Gageler and Keane) (***Spence***).

the public interest for the Division and its branches to be placed under administration". Section 5(1) expresses an "intention in enacting this Act to enhance relations within workplaces between federal system employers and federal system employees and to reduce the adverse effects of industrial disputation". In determining a scheme under s 323B, the Minister is limited only by what he or she considers "appropriate" to be in it: s 323B(4A).

16. **No head of power.** Generally speaking, Part 2A deals with the administration of a voluntary association of people "whether because of their purposes and tendencies or for other reasons, and the disqualification of persons" from office and employment, which "does not in itself form part of any of the enumerated powers of the Parliament".[2]

17. More particularly, Part 2A delineates no requirements to connect any given state of affairs in the law with a head of power. The consequences prescribed by Part 2A are contingent upon the Minister determining a scheme, which is itself contingent upon his or her assessment of the "public interest". It is well known that this imports "a discretionary value judgment to be made by reference to undefined factual matters" (emphasis added).[3] The Minister must take into account s 5(1), but that is expressed in such general terms as to provide no assistance in tethering the statutory scheme to a head of power.

18. Part 2A stands apart from the FWRO Act in that a scheme and anything done under it have effect despite anything in the FWRO Act or Part 2-4 of the FW Act: ss 323F, 323G. Determination of a scheme cannot be disallowed by the Parliament: s 323B(2).[4] The Minister is empowered even to prescribe the effect of actions taken under the scheme for the purpose of (all) other laws: s 323G(2). A power to displace other statutory provisions in their operation on one named entity contingent upon the Minister's assessment of the "public interest" raises "more fundamental issues" of the kind adverted to by Hayne J (in dissent) in *Plaintiff M79/2012 v Minister for Immigration and Citizenship*.[5]

19. More particularly, a law that empowers the Minister to make an instrument that establishes the rights and liabilities of an entity by reference to the Minister's own assessment of the public interest and nothing else is, in reality and substance, to be characterised as a law with respect to empowering the Minister to create rights and liabilities: its connection to anything

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2 *Communist Party Case* (1951) 83 CLR 1 at 184 (Dixon J).
3 See, eg, *Pilbara Infrastructure Pty Ltd v Australian Competition Tribunal* (2012) 246 CLR 379 at [42] (French CJ, Gummow, Hayne, Heydon, Crennan, Kiefel and Bell JJ).
4 Cf *ADCO Constructions Pty Ltd v Goudappel* (2014) 254 CLR 1 at [61] (Gageler J).
5 (2013) 252 CLR 336 at [85]. See also at [86]-[89] (in dissent in the result); *Brown v Tasmania* (2017) 261 CLR 328 at [468] (Gordon J) (***Brown***).

else is tenuous and insubstantial.[6] The provisions grant power to the Minister without otherwise declaring the "content of a law as a rule of conduct or a declaration as to power, right or duty"[7] for anyone else with sufficient directness as to warrant any other characterisation of the provisions. This is why the hypothetical discretionary power to "make any decision respecting visas, provided it was with respect to aliens" discussed in *Plaintiff S157/2002 v Commonwealth* would not necessarily have been a law with respect to aliens, even though it would have operated on the persons the subject of that power indirectly via conferring power upon the appropriate Minister.[8]

20. **The CFMEU is not a constitutional corporation.** The plaintiffs understand the Commonwealth to contend that the Administration Act is supported by s 51(xx) because the CFMEU is a trading corporation. The plaintiffs submit that it is not. A corporation is a trading corporation if trading is such a "substantial" or "sufficiently significant" proportion of its overall activities as to merit that description.[9] The overwhelming majority of the revenue of the CFMEU is derived from its membership fees[10] (SC [32]-[36] SCB1 132-134), and its trading activities cannot be described as substantial or sufficiently significant in that context, particularly given those activities are carried out for the purpose of furthering one of the objects of the CFMEU (CFMEU Rules, Rule 4(w) SCB1 250). None of those objects are trading in nature. Providing services in pursuit of non-trading purposes and receiving payment for doing so is not necessarily (and is not here) sufficient to stamp a corporation as a trading corporation.[11]

21. A "trading corporation" is not simply a corporation that engages in trading activities,[12] otherwise a corporation that has yet to commence trading would not be a trading

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6 See *Victorian Stevedoring and General Contracting Co Pty Ltd v Dignan* (1931) 46 CLR 73 at 101 (Dixon J), 120 (Evatt J).

7 *Plaintiff S157/2002 v Commonwealth* (2003) 211 CLR 476 at [102], citing *Commonwealth v Grunseit* (1943) 67 CLR 58 at 82 (Latham CJ).

8 See also the argument put in *New South Wales v Commonwealth* (2006) 229 CLR 1 at [400] (Gleeson CJ, Gummow, Hayne, Heydon and Crennan JJ) (***Work Choices***).

9 *R v Federal Court of Australia; Ex parte Western Australian National Football League* (1979) 143 CLR 190 at 208 (Barwick CJ), 233 (Mason J; Jacobs J agreeing), 239 (Murphy J) (***Adamson***).

10 Cf *Adamson* (1979) 143 CLR 190.

11 *Williams v Commonwealth [No 2]* (2014) 252 CLR 416 at [51] (French CJ, Hayne, Kiefel, Bell and Keane JJ) (***Williams [No 2]***).

12 *R v Trade Practices Tribunal; Ex parte St George County Council* (1974) 130 CLR 533 at 543 (Barwick CJ), 546 (McTiernan J), 553-554 (Menzies J), 561-562 (Gibbs J), 572 (Stephen J); *Adamson* (1979) 143 CLR 190 at 213 (Gibbs J), 234 (Mason J; Jacobs J agreeing); *State Superannuation Board* (1982) 150 CLR 282 at 291 (Gibbs CJ and Wilson J); *CEPU v Queensland Rail* (2015) 256 CLR 171 at [40]-[43] (French CJ, Hayne, Kiefel, Bell, Keane and Nettle JJ), [68]-[73] (Gageler J).

corporation.[13] And as Mason J observed in *Adamson,* the trading activity of a corporation may be "so slight and so incidental to some other principal activity, viz. religion or education in the case of a church or school, that it could not be described as a trading corporation".[14] A trading corporation is not, therefore, simply a corporation that makes a lot of money through trading activities. It is notorious that religious institutions do so, yet Mason J (correctly) would not necessarily characterise them as a trading corporation.

22. The significance of the activities that are carried out for the purpose of characterising the nature of the corporation must therefore be assessed in all the circumstances. Those must include the purposes of the corporation (albeit that that is not the "sole or principal criterion").[15] That is why the authorities recognise that some corporations with particular purposes may not be trading corporations (seemingly despite potentially engaging in trading activities).[16] A trade union is one such corporation: the principal activity and purpose of which (in this case) is to "uphold the right of combination of labour, and to improve, protect and foster the best interests of the Union and its members, and to assist them to obtain their rights under industrial and social legislation" (CFMEU Rules, Rule 4(a) SCB1 248). Those activities are carried out only incidentally to its core function, and are proportionally very slight.[17]

23. **An insufficient connection to s 51(xx) even if the CFMEU is a trading corporation.** The direct operation of Part 2A is upon the Minister not the CFMEU, upon which it operates only indirectly. As explained in *Spence*, "[d]etermining whether a law is incidental to the subject matter of a power can be assisted by examining how the purpose of the law – what the law can be seen to be designed to achieve in fact – might relate the operation of the law to the subject matter of the power".[18] A law may not be regarded as a law with respect to the subject matter of the power where it is "insufficiently adapted to achieve that purpose, having regard to the breadth and intensity of the impact of the law on other matters".[19]

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13 Cf *Fencott v Muller* (1983) 152 CLR 570 at 588-589 (Gibbs CJ), 601-602 (Mason, Murphy, Brennan and Deane JJ), 611 (Wilson J), 623-624 (Dawson J); *CEPU v Queensland Rail* (2015) 256 CLR 171 at [72] (Gageler J).

14 *Adamson* (1979) 143 CLR 190 at 234 (Mason J; Jacobs J agreeing).

15 *State Superannuation Board (Vic) v Trade Practices Commission* (1982) 150 CLR 282 at 303 (Mason, Murphy and Deane JJ).

16 See *Work Choices* (2006) 229 CLR 1 at [86] (Gleeson CJ, Gummow, Hayne, Heydon and Crennan JJ) citing *Huddart Parker* (1909) 8 CLR 330 at 393. See also, referring to that issue as a "larger question left open in the *Work Choices Case*", *Williams [No 2]* (2014) 252 CLR 416 at [51].

17 *Adamson* (1979) 143 CLR 190 at 234 (Mason J).

18 *Spence* (2019) 268 CLR 355 at [60] (Kiefel CJ, Bell, Gageler and Keane JJ).

19 *Spence* (2019) 268 CLR 355 at [62] (Kiefel CJ, Bell, Gageler and Keane JJ).

24. Part 2A is insufficiently adapted to the regulation of a constitutional corporation. *First*, the public interest criterion in s 323B(1) is broad, as is the Minister's power to determine a scheme by reason of ss 323F and 323G. *Second*, Part 2A has an "intense" impact on other matters. It has a substantial purpose of precluding, and does preclude save at the behest of the Administrator, the C&G Division from engaging in political activity or making political donations (see Part B below).[20] It removes people from office and employment on suspicion of wrongdoing, thereby having an effect on democratic representation within the union and on livelihoods (see Part C below). It deprives the C&G Division of the control of property (see Part D below). The law has an "intense" impact on these matters. *Third*, Part 2A does not fall within the Parliament's power to require registered bodies within a framework of employer-employee relationships, "as a condition of registration" to "meet requirements of efficient and democratic conduct of their affairs", which are matters incidental to the subject matters in s 51(xx) and (xxxv).[21] Section 323B is not so confined and is "insufficiently adapted" to achieve any such claimed purpose.

B. IMPLIED FREEDOM

25. This case is a stark reminder that "you cannot do indirectly what you are forbidden to do directly".[22] The Bill passed the Parliament without any provision precluding political activity or donations by the C&G Division. Such a provision would have been patently invalid for having an illegitimate purpose. Hoping to avoid this problem, the Parliament passed the Bill with the assurance of the Administrator that he intended to preclude such activity and donations and without including any provision to curtail or stop him from doing so. The Parliament thus sought to escape its constitutional limits through this disingenuous device but regard to those aspects of the legislative history and mischief reveal the illegitimate legislative purpose. It is therefore invalid no less than had the Parliament proceeded in a more open and direct fashion.

26. **Burden.** The first question is whether the law — "in its terms, operation or effect" — burdens the freedom of political communication.[23] "The application of funds for the support

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20 See the discussion of *Davis v Commonwealth* (1988) 166 CLR 79 in *Spence* (2019) 268 CLR 355 at [63] (Kiefel CJ, Bell, Gageler and Keane JJ).

21 *Work Choices* (2006) 229 CLR 1 at [322] (Gleeson CJ, Gummow, Hayne, Heydon and Crennan JJ).

22 *Wragg v New South Wales* (1953) 88 CLR 353 at 387-388; *Georgiadis v Australian and Overseas Telecommunications Corporation* (1994) 179 CLR 297 at 305 (Mason CJ, Deane and Gaudron JJ) (***Georgiadis***).

23 *Lange v Australian Broadcasting Corporation* (1997) 189 CLR 520 at 567; *McCloy v New South Wales* (2015) 257 CLR 178 at [24], [126]-[127], [220], [306].

of a political party is, as has been seen, a traditionally accepted means of "furthering or protecting the interests" of members of an association of workers or employees.[24] As the Court recognised in *Unions NSW v New South Wales,* those in the community who are not electors but are nonetheless affected by governmental decisions may legitimately "seek to influence the ultimate choice of the people as to who should govern".[25]

27. The Act effectively burdens the implied freedom in several ways. *First,* by removing officers of the C&G Division from their positions, members are not represented by their chosen or appointed representatives. Engagement in political communication by the C&G Division (by the Administrator or those persons that Parliament did not decide to depose) is less representative of the members. *Second,* by placing the C&G Division under the control of an Administrator, members are not free to engage in political activity in association with each other or as an association of people together unless the Administrator permits it. *Third,* the C&G Division is unable to use its property to engage in political communication, or to make political donations or incur expenditure except with permission of the Administrator. The burden is exemplified by the breadth of activity which was engaged in by the C&G Division and is now precluded.

28. **Purpose.** A law whose purpose is to suppress certain sources of political communication or political viewpoints is incompatible with the maintenance of the constitutionally prescribed system of representative and responsible government, and is illegitimate.[26] The legislative history reveals that to have been a substantial purpose of the Administration Act. The Bill only passed when it did because the Administrator indicated that he would not permit the C&G Division to make party-political donations, fund party-political campaigns, or make political donations. That is the inescapable conclusion to be drawn from the extrinsic materials. While it has been said that a constitutionally impermissible purpose "should not lightly be inferred" in "the face of an express statement of statutory objects",[27] there is no such express statement of statutory objects here.

29. In most cases, legislative history is a legitimate guide in identifying the mischief to which the Parliament was responding as part of the overall "exercise in attributing an objective

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24 *Williams v Hursey* (1959) 103 CLR 30 at 68 (Fullagar J, Dixon CJ and Kitto J agreeing).
25 (2013) 252 CLR 530 at [30] (French CJ, Hayne, Crennan, Kiefel and Bell JJ) (***Unions (No 1)***).
26 *McCloy v New South Wales* (2015) 257 CLR 178 at [31] (French CJ, Kiefel, Bell and Keane JJ); *Unions NSW v New South Wales* (2019) 264 CLR 595 at [101] (Gageler J) (***Unions (No 2)***).
27 *Unions (No 2)* (2019) 264 CLR 595 at [79] (Gageler J); *Ruddick v Commonwealth* (2022) 275 CLR 333 at [133] (Gordon, Edelman and Gleeson JJ).

intention to the outcome of a legislative process",[28] because it comprises part of the context in which legislative text must be understood. "The purpose can sometimes be found spelt out in the text of the law. More often than not, the purpose will emerge from an examination of its context."[29] In this case, the legislative history summarised above and in the plaintiffs' chronology is potent. On the one hand, the generality of the legislative text that was enacted (the "public interest") leaves what motivated the Parliament to enact these provisions entirely opaque. On the other hand, the constitutionally impermissible purpose of limiting political communication by the C&G Division and those it supports hides in plain sight on the face of the legislative history. That that was one of the things this law was "designed to achieve in fact"[30] leaps off the page.

30. This purpose cannot be rendered legitimate by reference to any unique factual feature of the C&G Division. There is nothing in the legislative record to suggest (a) that it is unlawful or otherwise improper for the C&G Division to have chosen to use the funds in that way; or (b) that any previous expenditure of funds for these purposes is tainted by any illegality at all. The special case contains no reports, findings, inquiries or recommendations of any kind, from any body, which raised any concerns about political donations or expenditure by the CFMEU having a corrupting or otherwise impermissible influence on politics in Australia. Had any such material existed, one would expect the Commonwealth to have brought it forward.[31] It has not. What the Court does have is the Royal Commission into Trade Union Governance and Corruption's conclusion that no restrictions should be placed on the use of trade union funds for the purposes of making political donations or incurring political expenditure.[32]

31. **The Commonwealth's suggested purpose.** The plaintiffs understand the Commonwealth to contend that the purpose of the Administration Act is "to enable the C&G Division to be placed into administration urgently if appropriate, so that an administrator can ensure that the Division, and each branch, functions lawfully and effectively (including within the framework of the FWRO Act)". A purpose stated at this level of generality does no more

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28 *Alexander* (2022) 276 CLR 336 at [114], [116] (Gageler J).
29 *Brown* (2017) 261 CLR 328 at [209] (Gageler J).
30 *Brown* (2017) 261 CLR 328 at [209] (Gageler J); *NZYQ v Minister for Immigration, Citizenship and Multicultural Affairs* (2023) 97 ALJR 1005 at [40].
31 *Blatch v Archer* (1774) 1 Cowp 63; 98 ER 969.
32 *Royal Commission into Trade Union Governance and Corruption* (Final Report, December 2015) Vol 5, 126-129 [186]-[192] (SCB ##).

than state what the legislation does.[33] And even if this can usefully be said to be a purpose of the provisions, it does not deny that the Administration Act also has a substantial purpose of the kind the plaintiffs impugn.

32. But even assuming this asserted purpose, Part 2A of the FWRO Act is invalid. The impugned provisions are not rationally connected to the Commonwealth's asserted purpose in so far as they preclude the participation of the C&G Division in political communication. In that operation, Part 2A does nothing to ensure its lawful or effective functioning.

33. Ordinarily, a constitutional difficulty of this kind might be overcome by reading down or severing or partially disapplying the provision so as not to apply to political communication. But any such technique cannot be applied here to save Part 2A. So much of what the C&G Division does is conceivably "political" in character that it is impossible for a court exercising judicial power to draw the appropriate line without rewriting the statute. And the legislative history is so eloquent as to the Parliament's will that to continue to allow the C&G Division's political activities in the face of it would again move beyond the judicial role. A carefully calibrated political compromise will have been replaced by a law made by this Court.

34. Further, Part 2A was not necessary having regard to the existence of s 323 of the FWRO Act, which the General Manager of the Fair Work Commission had already sought to invoke when the Administration Act was enacted. Section 323 of the FWRO Act is less restrictive of the freedom, because an administrator appointed under that provision could only put an end to political communication by the C&G Division if permitted by the court's order to do so, which order could only be made if it would not cause substantial injustice to any person: s 323(4). Perhaps the Commownealth will say the Administration Act came into force more quickly than the Federal Court could act. That unquantified and unquantifiable difference does not show this legislation to have been necessary.

35. Finally, Part 2A is inadequate in its balance. Section 323B is not tailored to the Commonwealth's asserted purpose. The Minister does not even have to form a state of satisfaction that the C&G Division is not functioning lawfully or effectively in order to determine a scheme. A scheme imposes a direct and substantial burden on the freedom. Members of the C&G Division, as a lawful association of people, cannot engage in party

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[33] See generally *NZYQ v Minister for Immigration, Citizenship and Multicultural Affairs* (2023) 97 ALJR 1005 at [40]; *Alexander* (2022) 276 CLR 336 at [103] (Gageler J), [242] (Edelman J); *Brown* (2017) 261 CLR 328 at [209] (Gageler J).

political activities and political communication in lawful association with each other, represented by their chosen officers, without an administrator's permission.

36. The communication previously engaged in by the C&G Division prior to enactment is now precluded on pain of criminal penalty in s 323P(1)(b)(ii). The discriminatory burden on the freedom in respect of members of the C&G Division is a manifestly excessive response to the objective of ensuring its "lawful or effective" functioning. Accordingly, the burden imposed by the Part 2A of the FWRO Act cannot be justified and is invalid. Section 177A of the FW Act would also then be invalid.

37. **The Scheme**. The Scheme is invalid for the same reasons: due to the breadth of the discretion in s 323B(1), the statutory question of whether the Scheme is ultra vires s 323B on its proper construction "converges" with the constitutional question.[34]

C. CHAPTER III

38. The separation of powers in the Constitution prohibits the Parliament from conferring on the executive any part of the judicial power of the Commonwealth. Thus, the Minister cannot be given a power "to impose a measure that is properly characterised as penal or punitive", even if its terms "divorce" the measure from the adjudgment and punishment of criminal guilt,[35] because the Constitution requires "punishment to be imposed by a court if it is to be imposed at all".[36]

39. The power in s 323B, in the context of the provisions introduced by the Administration Act as a whole, is punitive in nature.

40. *First*, s 323B interferes with use of the CFMEU's property by the C&G Division and its branches to the extent that it grants the administrator power to control, manage and dispose of that property together with a prohibition in s 323P upon a person preventing action under the scheme. Legal title remains with the CFMEU but subject now to the administrator's direction. That diminishes what is a fundamental right.[37] The interference is not materially reduced by the requirement that the administrator exercise their functions in the best interests of members. Views can differ about what is in their best interests, or a range of

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34 *Palmer v Western Australia* (2021) 272 CLR 505 at [122] (Gageler J).

35 *Benbrika v Minister for Home Affairs* (2023) 97 ALJR 899 (***Benbrika (No 2)***) at [34]-[36] (Kiefel CJ, Gageler, Gleeson and Jagot JJ).

36 *Benbrika (No 2)* (2023) 97 ALJR 899 at [45] (Kiefel CJ, Gageler, Gleeson and Jagot JJ).

37 See *Benbrika (No 2)* (2023) 97 ALJR 899 at [21] (Kiefel CJ, Gageler, Gleeson and Jagot JJ), see also at [109], [112] (Edelman J), [141], [144] (Steward J); *Alexander* (2022) 276 CLR 336 at [166] (Gordon J); *Jones v Commonwealth* (2023) 97 ALJR 936 at [76] (Gordon J), [149] (Edelman J).

options could be in their best interests; s 323B, via ss 323K and 323P, gives the administrator control over these decisions.

41. *Second*, that deprivation of property may constitute punishment is consistent with history. Historically, forfeiture has been used as punishment for criminal offending and is recognised to have a penal or punitive character.[38]

42. *Third*, the appointment of an administrator is not a novel remedy. There is a long history of the Court of Chancery appointing receivers.[39] It is also familiar for creditors to exercise a power under a security to appoint a receiver. Section 323B is different, because it effects an administration which is pursuant to neither a court order nor a consensually entered into instrument. That administration is often the result of a court order contributes to the characterisation of the power in s 323B as judicial.[40]

43. *Fourth*, the power in s 323B permits the Minister to remove officers from their office, to empower the administrator to disqualify them on hitherto unexpressed grounds, and taints them as a "removed person" for the purpose of s 177A of the FW Act and s 323MA of the FWRO Act. This designation makes it more difficult for them in the future to be an officer or employee of a registered organisation or to be a bargaining representative. It is consistent with history to treat this singling out of individuals and branding them as ineligible to act in certain roles as a punishment. Disabilities and disqualifications have been used as punishment for criminal offending as a matter of history.[41]

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38 See, eg, *Attorney-General (NT) v Emmerson* (2014) 253 CLR 393. See also *Commentaries on the Laws of England,* Book 2 Chapter 18 (of Title by Forfeiture) at 267; Blackstone's *Commentaries on the Laws of England,* Book 4 Chapter 29 (of Judgment, and its Consequences) at 376; Maitland's *The Constitutional History of England* (1909) at 107, 303; Holdsworth's *History of English Law* (1909) at 303. See also 9 Geo.1, c. 15 (which provided that "and be it enacted that … the said John Plunket shall forfeit to his Majesty all his lands, tenements, hereditaments, goods and chattels whatsoever"); 12 Car. 2, c. 15 (which provided that "The manors, lands and hereditaments, chattels real and other things of [certain named persons] be forfeited"); 12 Car. 2, c. 30 ("An act for the attender of several persons guilty of the horrid murder of his late sacred majesty King Charles the First", by which the property Oliver Cromwell and fifty other named persons was forfeited to the King); 29 Hen. 6, c 1 (which provided that John Cade was "of these treasons attained" and that "by the same authority he shall forfeit to the King all his goods, lands and tenements, rents and possessions, which he had the said eight day of July"); Van Tyne, *The Loyalists in the American Revolution* (Macmillan & Co, Ltd), 1902) at Appendix B, 321, 323).

39 *Hopkins v Worcester & Birmingham Canal Proprietors* (1868) LR 6 Eq 437 at 447 (Giffard VC).

40 *Jones v Commonwealth* (2023) 97 ALJR 936 at [45] (Kiefel CJ, Gageler, Gleeson and Jagot JJ)

41 See 29 U.S.C. § 504 held to be a bill of attainder in *United States v Brown,* 381 US 437 (1965); Act of January 24, 1865 (13 Stat. 424) held to be a bill of attainder in *Ex parte Garland*, 71 US 333 (1866), the preclusions in Constitution of Missouri adopted in June 1865 held to be a bill of attainder in *Cummings v Missouri*¸ 71 US 277 (1867), § 304 of the Urgent Deficiency Appropriation Act of 1943 held to be a bill of attainder in *United States v Lovett*, 328 US 303 (1946); 21 Rich 2, c. 6 described as a "bill of pains and penalties" by the Supreme Court of the United States in *United States v Brown* 381 US 437 (1965)

44. *Fifth*, the power in s 323B permits the Minister to terminate the employment of people employed by the C&G Division and its branches, which taints them from future employment by a registered organisation absent a certificate from the Fair Work Commission. This interferes with contractual rights. Limiting future employment opportunities has historically been a form of punishment.[42]

45. *Sixth*, the power in s 323B permits the Minister to vacate offices and stipulate when, if ever, elections are to occur, disenfranchising officers and members. Disenfranchisement has historically been used as a form of punishment for criminal offending.[43]

46. *Seventh*, s 323B is ad hominem in that the Amending Act as a whole is concerned only with the C&G Division.[44]

47. *Eighth*, s 323B was enacted because the Parliament had determined one or more of the following: that the C&G Division and its branches had ceased to function effectively within the meaning of s 323; that they had contravened civil penalty provisions; and that they had or may have engaged in criminal and other unlawful conduct. The Parliament fastened upon these actual or alleged breaches by the C&G Division of some antecedent standard of conduct, which is a characteristic of the exercise of judicial power. Necessarily (and impermissibly) that involves a punitive purpose.

48. The revised explanatory memorandum referred to the C&G Division's history of civil penalty contraventions and allegations that had been made against it of criminal and other unlawful conduct.[45] It also said that the object of the Administration Act was to "seek to help return the Division to a position where it is democratically controlled by those who promote and act in accordance with Australian laws, including workplace laws",[46] which assumes that compliance with the law is not already occurring.

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at 441. See also Van Tyne, *The Loyalists in the American Revolution* (Macmillan & Co, Ltd, 1902) at Appendix B (318-319, 323), Appendix C (330).

42 See *United States v Brown,* 381 US 437 (1965); *Ex parte Garland*, 71 US 333 (1866); 21 Rich 2, c. 6.

43 See 11 Geo. 3, c. 55 (precluding certain persons accused of bribery from voting, and described by the Supreme Court of the United States in *United States v Brown* 381 US 437 (1965) as a "bill of pains and penalties" (at 441), see also Wooddeson, *A Systematical View of the Laws of England: As Treated of in a Course of Vinerian Lectures, Read at Oxford, During a Series of Years, Commencing in Michaelmas Term, 1777* (Vol 2, 1792) at 640). See also Van Tyne, *The Loyalists in the American Revolution* (Macmillan & Co, Ltd, 1902) at Appendix B (319), Appendix C (330).

44 See *Mineralogy Pty Ltd v Western Australia* (2021) 274 CLR 219 at [157], [159] (Edelman J).

45 Revised Explanatory Memorandum, Fair Work (Registered Organisations) Amendment (Administration) Bill 2024 (Cth) at [9]-[10] (**Revised EM**).

46 Revised EM at [11].

49. In his second reading speech, Minister Watt drew attention to "serious allegations have come to light about the conduct of some members and associates of the Construction and General Division of the Construction, Forestry and Maritime Employees Union". He affirmed that "[t]he Australian government takes these allegations seriously. There is no place for criminality or corruption in the construction industry, and bullying, thuggery and intimidation are unacceptable in any workplace". He repeated that "[t]he allegations about the behaviour of some Construction and General Division members and associates are serious, and unlawful behaviour in any workplace is unacceptable".

50. *Ninth*, the authorities support characterisation of this power as punitive. In *Victorian Chamber of Manufacturers v Commonwealth*, Latham CJ and Starke J each held that an executive power to direct that certain premises not be used until lighting equipment conformed to regulations upon the Minister forming an opinion that the regulations had been contravened purported to confer judicial power upon the Minister.[47] A direction to close premises was treated in that case as penal.

51. In the *Communist Party Case*, the plaintiff unsuccessfully challenged, as inconsistent with Ch III, "the recitals, the declaration that the Australian Communist Party is unlawful and the provision for declarations in the case of certain other bodies, corporate and unincorporate, and individuals, the dissolution of such party and bodies and the appointment of receivers and forfeiture of their property, and the permanent disqualification of declared persons from Commonwealth offices and employment and from holding office in industrial organizations associated with vital industries".[48] There is some echo of those provisions here. Only three members of the Court (Latham CJ, Webb and Fullagar JJ) considered the issue, and each rejected the challenge on the basis that the Act on its face did not indicate the Australian Communist Party's guilt of an offence. As Zines recognised, this was "rather formalistic" and more modern jurisprudence would be "likely to produce a more careful analysis of the issue in the future".[49] Winterton described their Honours' reasoning as "excessively formalistic" and a "generally cursory treatment" which "contrasts strongly with the current Court's greater sensitivity on such matters".[50] The record shows

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47 (1943) 67 CLR 413 at 416-417 (Latham CJ), 422 (Starke J).
48 (1951) 83 CLR 1 at 234.
49 Stellios, *Zines and Stellios's The High Court and the Constitution* (7th ed, Federation Press, 2022) at 336 (***Zines***).
50 Winterton, "The Separation of Judicial Power as an Implied Bill of Rights" in Lindell (ed), *Future Directions in Australian Constitutional Law: Essays in Honour of Professor Leslie Zines* (Federation Press, 1994) 185 at 192.

that "the disabilities were imposed on persons and [the C&G Division] because of the view of Parliament and the government regarding their actions and propensities".[51]

52. *Tenth*, even if one accepts that s323B serves a non-punitive purpose of the kind identified at [31] (ensuring that the Division, and each branch, functions lawfully and effectively), that would not be a "legitimate" purpose. To the extent one can meaningfully disentangle that purpose from a punitive purpose,[52] it goes no further than a very high-level purpose of prevention, the breadth and vagueness of which is exemplified by the inherent elasticity in the notion of "function[ing]… effectively". The matters identified at [40]-[49] above and the nature and severity of the consequences that flow from s 323B demand constitutional justification. Those same matters (and the well-recognized tendency for the "preventative function of government" to "be abused, to the prejudice of liberty") point to the "stringency of the justification required".[53] As with other measures of that kind, the cases that will meet that stringent standard will be exceptional.[54] Yet, acceptance of the legitimacy of a purpose stated at the level of generality proposed by the Commonwealth would permit the legislature so much latitude that the exceptions would become the rule.[55]

53. *Finally*, even if s 323B could be said to serve a legitimate non-punitive purpose, it is not capable of being seen as reasonably necessary for such a purpose. That is for several reasons. *First*, the deprivation of property effected by s 323K extends to the property of the entire Division and all of its branches by reason of the breadth of s 323A, even if not every branch is the subject of a scheme under s 323B. *Second*, the record before the Parliament to justify the necessity of these provisions was very weak. It appears to have been based entirely on unsubstantiated allegations in media reporting.[56] *Third*, Part 2A gives the C&G Division little opportunity to review the administration. The Minister does not need to comply with the natural justice hearing rule in making a scheme under s 323B, and once the administrator is appointed in accordance with the scheme the property and affairs of the C&G Division will be within the control of the administrator under s 323K. *Fourth*, the criterion for the making of a scheme in s 323B(1) is very broad and not at all narrowly

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51 *Zines* at 336.
52 See *Alexander* (2022) 276 CLR 336 at [110]-[112] (Gageler J).
53 *Minister for Home Affairs v Benbrika* (2021) 272 CLR 68 at [73], [74] (Gageler J).
54 See eg *Benbrika [No 2]* (2023) 97 ALJR 899 at [42] (Keifel CJ, Gageler, Gleeson and Jagot JJ) [70]-[75] (Gordon J).
55 See, by way of analogy, *Garlett* (2022) 277 CLR 1 at [148] (Gageler J).
56 Revised EM at [7], [10].

tailored.[57] So too is the scope of the Minister's power to craft a scheme under s 323B(3) and (4A), having regard also to s 323F.

D. SECTION 51(xxxi)

D.1 Section 323K(1) authorises and effects an acquisition of property

54. Section 323K(1) authorises and effects an acquisition of property. Whereas the C&G Division and its branches previously had control over their property, and could manage and dispose of it as they saw fit,[58] by reason of s 323K(1) that power and control is now vested in the administrator. That control is reinforced by the anti-avoidance provision in s 323P. Any attempt to use the property in a manner that was at odds with the administrator's preference may contravene that provision.

55. This loss and corresponding acquisition of control constitutes an "acquisition" of "property". It is well established that those terms are understood liberally.[59] Acquisition of an interest in property that is but "slight or insubstantial"[60] is nonetheless sufficient, and the acquisition here is much more than that. Some analogy can be made to the *Bank Nationalisation Case*,[61] where the statute purported to replace the existing bank directors with nominees of the Treasurer and the Commonwealth Bank. While the bank continued to own its assets, "[t]he company and its shareholders are in a real sense, although not formally, stripped of the possession and control of the entire undertaking".[62] "Property" includes not only the thing itself but also "innominate and anomalous interests"[63] and "legally endorsed concentration of power over things and resources".[64] Of course, s 323K authorises or effects an acquisition of property even though the acquisition is only for the duration of the administration; a temporary acquisition is still an acquisition.[65]

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57 *Vella v Commissioner of Police (NSW)* (2019) 269 CLR 219 at [171] (Gageler J) (in dissent).
58 CFMEU Rules, Rules 27(ii)-(iii), 23(vi) (SCB1 277, 274) and see C&G Rules, Rules 9(15), 14(ii), (iii), (v), 35(a)-(c), (e), (k) (SCB1 877, 883-884, 899, 900).
59 See, eg, *Georgiadis* (1994) 179 CLR 297 at 303 (Mason CJ, Deane and Gaudron JJ).
60 *Tasmanian Dam Case* (1983) 158 CLR 1 at 145 (Mason J).
61 *New South Wales v Commonwealth* (1948) 76 CLR 1 (*Bank Nationalisation Case*).
62 (1948) 76 CLR 1 at 349; see also at 348. See also *Minister of State for the Army v Dalziel* (1944) 68 CLR 261 at 286 (Rich J).
63 *Bank Nationalisation Case* (1948) 76 CLR 1 at 349 (Dixon J); *Georgiadis* (1994) 179 CLR 297 at 303 (Mason CJ, Deane and Gaudron JJ).
64 *Telstra Corporation Ltd v Commonwealth* (2008) 234 CLR 210 at [44].
65 See *Minister of State for the Army v Dalziel* (1944) 68 CLR 261 at 290 (Starke J).

D.2 Section 323K(1) is a law with respect to the acquisition of property within s 51(xxxi)

56. "[T]o characterise certain exactions of government (such as levying of taxation, imposition of fines, exaction of penalties or forfeitures, or enforcement of a statutory lien) as an acquisition of property would be incompatible with the very nature of the exaction".[66] This will be so if acquiring property without just terms is a necessary or characteristic feature of the means chosen that are appropriate and adapted to achieving some other objective within power.[67] That is not the case here.

57. *First*, where a company is placed into administration, control over its property vests in the administrator because the mischief which led to the administration is the company's lack of property. It is appropriate and adapted to meeting that mischief to acquire the company's remaining property, and it would be incongruous to provide the company with compensation for acquiring it. Here, by contrast, none of the allegations which prompted the Amending Act concerned a misuse of property or any deficiency in property.

58. *Second*, historically, legal entities have been placed in administration either by court order or by virtue of some consensual agreement (classically, a security permitting a receiver or receiver and manager to be appointed). This Act is different, in that administration can be effected by executive decision based only on the "public interest". Giving the executive the discretion to decide, based on the "public interest", that an entity should be under administration is not a necessary or characteristic feature of administration and is not appropriate and adapted to the regulation of industrial organisations.

59. *Third*, some heads of power contemplate the making of particular laws which acquire property: bankruptcy, taxation, customs, state railways and fisheries are key examples.[68] Any head of power relied upon by to support the Administration Act is not in this category. The transfer of power over property cannot be said to be "subservient and incidental to or consequential upon the principal purpose and effect sought to be achieved by the law so that the provision respecting property had no recognizable independent character".[69]

60. That this law is properly to be characterised as a law with respect to the acquisition of property is further informed by the following. *First*, none of the allegations which prompted

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66 *Theophanous v Commonwealth* (2006) 225 CLR 101 at [60].
67 See *Mutual Pools & Staff Pty Ltd v Commonwealth* (1994) 179 CLR 155 at 179-180 (Brennan J) (***Mutual Pools***); *Airservices Australia v Canadian Airlines International Ltd* (1999) 202 CLR 133 at [98]-[99]; *Cunningham v Commonwealth* (2016) 259 CLR 536 at [59] (Gageler J).
68 See *Mutual Pools* (1994) 179 CLR 155 at 169-170 (Mason CJ), 187 (Deane and Gaudron JJ).
69 *Mutual Pools* (1994) 179 CLR 155 at 171 (Mason CJ).

the Administration Act concerned a misuse of property or any deficiency in property. The evidentiary foundation for the statutory judgment that the property used by the C&G Division should be controlled by someone else is especially weak. Vesting control over all that property in the administrator is not reasonably appropriate and adapted to regulating the conduct of the Division.

61. *Second*, the Court can find that a purpose of the regime was to sterilise the C&G Division's use of funds for political donations and political expenditure: see [28] above. The only purpose apparent is to control the C&G Division's funds so that the administrator and not the C&G Division can decide what to do with it.

62. *Third*, the power in s 323B(1) is conditioned upon the Minister's satisfaction that a scheme is in the "public interest" having regard to nothing more than the broadly expressed intention in s 5 of the FWRO Act. That statutory criterion, with that legislative guidance, is not so closely tailored to any legislative object otherwise within power as to warrant the conclusion that this is not an acquisition of property within s 51(xxxi). It cannot be said that the CFMEU's property was acquired as a necessary incident of dealing with a dysfunctional entity, because that is not an appropriate way to characterise what the provisions are doing given the breadth of the "public interest" criterion and the fact that the allegations referred to in the explanatory memorandum do not include misuse of union property.

63. *Fourth*, that Part 2A is specific to the C&G Division reinforces that s 323K is a law with respect to the acquisition of its property. Had it been applicable to registered organisations generally, it might more readily have been regarded as a law outside of s 51(xxxi).[70]

64. *Fifth*, merely having a "regulatory" purpose does not mean that a law is not with respect to the acquisition of property.[71] And as Quick and Garran said:[72]

> Whenever any business, franchise, or privilege becomes obnoxious to the public health, manners or morals, it may be regulated by the police power of the State even to suppression; individual rights being compelled to give way for the benefit of the whole body politic. But when, in the exercise of this police power, private property or private vested rights must be taken for public use, in order to carry out improvements or regulations, or to carry on business or public works, looking to the benefit of the public health, manners or morals, compensation must be made for the property taken.

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70 See *Georgiadis* (1994) 179 CLR 297 at 308 (Mason CJ, Deane and Gaudron JJ).
71 *Trade Practices Commission v Tooth & Co Ltd* (1979) 142 CLR 397 at 428 (Mason J).
72 *The Annotated Constitution of the Australian Commonwealth* (1901) at 641-642 (citation omitted).

65. If the Parliament decides that the C&G Division is "obnoxious" to the public interest, it may regulate it within the scope of its powers; but doing so does not necessarily involve the acquisition of property, and acquiring property requires just terms.

D.3 Section 323M(1)-(2) of the FWRO Act

66. Section 323M(1)-(2) entitles the administrator to be remunerated from the funds of the CFMEU. This take property from the CFMEU and effects and authorises an acquisition of that property by the administrator. Common law property rights are not inherently susceptible to adjustment in the same way that statutory rights. And it is not incongruous to require someone else (viz the Commonwealth) to remunerate an administrator who is appointed according to the Minister's assessment of the "public interest".

D.4 Section 323S is ineffective to ensure just terms

67. Section 323S does not ensure that just terms are provided, because any compensation for the administrator's acquisition of property that is received by the Division will simply come back under the administrator's control due to s 323K. The CFMEU will have legal title to the compensation but no ability to use it contrary to the administrator's wishes. That will remain the case until the end of the administration. This sets this case apart from previous cases where a historic shipwrecks clause has been held to be sufficient to ensure compliance with s 51(xxxi).[73] In none of those cases did the impugned law operate so as to give the person who initially acquired the property control over the compensation to be paid under that clause. It is no answer that the Division will have control over the property at the end of the administration years in the future.[74]

PART VI ORDERS SOUGHT

68. The questions reserved should be answered: (1)-(6): Yes, (7) No order as to costs.

PART VII ESTIMATE OF TIME

69. The plaintiffs estimate they will require 3.75 hours in chief and 45 minutes in reply.

Dated: 21 October 2024

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[73] See, eg, *Telstra Corporation v Commonwealth* (2008) 234 CLR 210; *Commonwealth v Western Australia* (1999) 196 CLR 392 at [188]-[199]; *Wurridjal v Commonwealth* (2009) 237 CLR 309.

[74] See, eg, *Tasmanian Dam Case* (1983) 158 CLR 1 at 291 (Deane J); *Minister for Primary Industry and Energy v Davey* (1993) 47 FCR 151 at 167-168 (Black CJ and Gummow J).

IN THE HIGH COURT OF AUSTRALIA
SYDNEY REGISTRY
BETWEEN:

MICHAEL RAVBAR
First Plaintiff

WILLIAM LOWTH
Second Plaintiff

and

COMMONWEALTH OF AUSTRALIA
First Defendant

ATTORNEY-GENERAL OF THE COMMONWEALTH
Second Defendant

MARK IRVING KC
Third Defendant

ANNEXURE TO THE PLAINTIFFS' SUBMISSIONS

Pursuant to paragraph 3 of *Practice Direction No 1 of 2019*, the plaintiffs sets out below a list of the particular statutes referred to in these submissions.

No	Description	Version	Provision(s)
1.	Commonwealth Constitution	Current	s 51(xx), (xxxi), (xxxv), Ch III.
2	*Fair Work Act 2009* (Cth)	Current	s 177A, Part 2-4
3	*Fair Work (Registered Organisations) Act 2009* (Cth)	Current	s 5, Part 2A
4	*Fair Work (Registered Organisations) Amendment (Administration) Act 2024* (Cth)	Current	Entirety