





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

Judgment Notes April 2020

#### **Background**

The Australian Institute for Progress (**the AIP**) is a Queensland think tank with funding sources which include property developers, being "prohibited donors" for the purposes of the Electoral Act 1992 (Qld) (**the Act**). Under s 275 of the Act, it is both unlawful for a "prohibited donor" to make a "political donation" and for a person to accept a "political donation" from a "prohibited donor".

Section 274(1)(a) of the Act provides that a political donation is a gift made to or for the benefit of a political party, an elected member or a candidate in an election. Section 274(1)(b) of the Act provides that a political donation is also a gift made to or for the benefit of another entity: (i) to enable the entity to make a gift mentioned in paragraph (a) or to incur electoral expenditure; or (ii) to reimburse the entity for making a gift mentioned in paragraph (a) or to incur electoral expenditure.

The AIP, intending to run an advocacy campaign in 2020, including producing and distributing material that advocates a vote for or against a registered political party, sought declarations from the Supreme Court against the Electoral Commission of Queensland, 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 \$ 274" of the Act.

# **Declarations**

Justice Applegarth declined to make the declarations sought stating "the proposed declarations lack precision and therefore are of doubtful utility. Their terms are divorced from specific facts found or agreed in relation to certain gifts, including the particular activities in respect of which the gifts were made or are to be made and the conduct and purpose of the proposed donor in making them" (at [54]).

In particular, Applegarth J found that the declaratory relief sought was "imprecise" and "hypothetical" and did not "engage with the issue of whether a gift to [the AIP] by a prohibited donor was made 'to enable' it to incur expenditure for the purposes of 'a campaign for an election'" (at [157]).

# Construction of s 274(1)(b)

Though his Honour's conclusions in respect of the declarations were sufficient to dismiss the application ([56]), his Honour went on to consider the AIP's submission 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) ([18]).

His Honour rejected this interpretation of s 274(1)(b) stating that the AIP's construction of s 274(1)(b) would "narrow the effect of s 275 and permit it 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. Such an interpretation is not one which best advances the purpose of the Act and its provisions in relation to political donations from property developers" (at [109]).

Furthermore, his Honour was not persuaded by the AIP's submission that a wider interpretation of s 274(1)(b) is inconsistent with the principle of legality (at [144]) or offended s 13(1) of the Human Rights Act 2019 (Qld) which requires that human rights only be subject to "reasonable limits that can be demonstrably justified in a free and democratic society based on human dignity, equality and freedom" (at [135]).

Scott McLeod QC and David Chesterman appeared on behalf of the respondent, instructed by Crown Law.

The judgment can be read <u>here</u> and the Supreme Court of Queensland judgment summary can be read <u>here</u>.

With thanks to Salwa Marsh for helping to prepare this summary.

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