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Sharples v O'Shea & Anor [1999] QSC 190 (18 August 1999)

Last Updated: 19 August 1999

IN THE SUPREME COURT

OF QUEENSLAND

No 6318 of 1998

Brisbane

[Sharples v O'Shea & Anor]

BETWEEN:

TERRY PATRICK SHARPLES

Plaintiff

AND:

DESMOND J O'SHEA

First Defendant

AND:

PAULINE LEE HANSON as representative of

herself and all members of PAULINE HANSON'S

ONE NATION (as registered under the [Electoral Act](#)

1992 (Qld))

Second Defendant

REASONS FOR JUDGMENT - ATKINSON J

Judgment delivered 18 August 1999

**CATCHWORDS ADMINISTRATIVE LAW - STATUTORY APPEALS FROM
ADMINISTRATIVE AUTHORITIES TO COURTS - APPEALS FROM PARTICULAR**

AUTHORITIES - application for review of decision of Electoral Commission to register political party - whether applicant had standing to bring application - where application brought out of time - whether discretion to extend time should be exercised.

ADMINISTRATIVE LAW - ADMINISTRATIVE DECISION - procured by misrepresentation of fact or fraud - invalidity - consequences.

CONSTITUTIONAL LAW - THE NON-JUDICIAL ORGANS OF GOVERNMENT - THE LEGISLATURE - ELECTIONS AND RELATED MATTERS - QUEENSLAND - OTHER MATTERS - invalid administrative decision - whether obtained by fraud or misrepresentation - effect.

PROCEDURE - SUPREME COURT PROCEDURE - QUEENSLAND - PLEADING - STATEMENT OF CLAIM - where application for review brought under the [Electoral Act 1992](#) - whether questions posed at trial sufficiently raised on the pleadings.

ASSOCIATIONS AND CLUBS - GENERAL MATTERS - [CONSTITUTION](#), POWERS, LIABILITIES AND DISSOLUTION - INTERNAL MANAGEMENT - GENERALLY - political organisations - membership - whether people were members of the political party.

ASSOCIATIONS AND CLUBS - GENERAL MATTERS - [CONSTITUTION](#), POWERS, LIABILITIES AND DISSOLUTION - RULES AND MEETINGS - political organisations - whether political party properly registered by Electoral Commission - change to constitution - whether applicants for membership accepted as members.

[Associations Incorporation Act 1981](#) (Qld) [s.48](#)

Associations Incorporation Regulation 1982 (Qld)

[Commonwealth Electoral Act 1918](#) [s.141](#)

Corporations Law [s.360](#)

[Electoral Act 1992](#) (Qld) [ss.3, 7, 69-75, 84, 180](#), sch.

Allan v Development Allowance Authority [\(1998\) 152 ALR 439](#) referred to

Alphapharm Pty Ltd v Smithkline Pty Ltd [\[1994\] FCA 996](#); [\(1994\) 121 ALR 373](#) considered

Associated Provincial Picture Houses v Wednesbury Corporation [\[1948\] 1 KB 223](#) referred to

Attorney-General (NSW) v Quin [\(1990\) 170 CLR 1](#) referred to

Australian Broadcasting Corporation v Redmore Pty Ltd [\[1989\] HCA 15](#); [\(1989\) 166 CLR 454](#) referred to

Australian Conservation Foundation Inc v The Commonwealth [\(1980\) 146 CLR 493](#) followed

Australian Institute of Marine and Power Engineers v Secretary, Department of Transport [\[1986\] FCA 443](#); [\(1986\) 71 ALR 73](#) referred to

A'Hearn v Comcare [\(1993\) 18 AAR 22](#) referred to

Baldwin v Everingham [\[1993\] 1 Qd R 10](#) followed

Banque Commerciale SA en liquidation v Akhil Holdings Ltd [\[1990\] HCA 11](#); [\(1990\) 169 CLR 279](#) considered

Bateman's Bay Land Council v Aboriginal Fund [\[1998\] HCA 49](#); [\(1998\) 72 ALJR 1270](#) considered

Bollag v Attorney-General (Cth) [\(1997\) 149 ALR 355](#) referred to

Briginshaw v Briginshaw [\[1938\] HCA 34](#); [\(1938\) 60 CLR 336](#) at 363 followed

Burton v Murphy [\[1983\] 2 Qd R 321](#) referred to

Cameron v Hogan [\[1934\] HCA 24](#); [\(1934\) 51 CLR 358](#) at 384 considered

Chalk v Commissioner for Superannuation [\[1994\] FCA 1063](#); [\(1994\) 50 FCR 150](#) referred to

Chapman v Tickner [\(1995\) 55 FCR 316](#) referred to

Clayton v Heffron [\[1960\] HCA 92](#); [\(1960\) 105 CLR 214](#) referred to

Conservative and Unionist Central Office v Burrell [\[1980\] 3 All ER 42](#) referred to

Dare v Pulham [\[1982\] HCA 70](#); [\(1982\) 148 CLR 658](#) referred to

Edgar and Walker v Meade [\[1916\] HCA 70](#); [\(1916\) 23 CLR 29](#) followed

Federal Commissioner of Taxation v Bayly [\[1952\] HCA 31](#); [\(1952\) 86 CLR 506](#) considered

Fenlon v Radke [\[1996\] 2 Qd R 157](#) referred to

G v H [\[1994\] HCA 48](#); [\(1994\) 181 CLR 387](#) followed

Hoffmann v The Queensland Local Government Superannuation Board [\[1994\] 1 Qd R 369](#) considered

Hunter Valley Developments Pty Ltd v Cohen [\(1984\) 3 FCR 344](#) referred to

Krakowski v Eurolynx Properties Ltd [\[1995\] HCA 68](#); [\(1995\) 183 CLR 563](#) followed

Kuku Djungan Aboriginal Corporation v Christensen [\[1993\] 2 Qd R 663](#) considered

Lamb v Moss [\[1983\] FCA 254](#); [\(1983\) 49 ALR 533](#) referred to

Lazurus Estates Ltd v Beasley [\[1956\] 1 QB 702](#) referred to

Leung v Minister for Immigration and Multicultural Affairs [\(1997\) 150 ALR 76](#) considered

Lewis v Heffer [\[1978\] 1 WLR 1061](#) referred to

Lucic v Nolan [\(1982\) 45 ALR 411](#) referred to

Minister for Immigration and Ethnic Affairs v Wu Shan Liang [\[1996\] HCA 6](#); [\(1996\) 185 CLR 259](#) referred to

Onus v Alcoa of Australia Ltd [\[1981\] HCA 50](#); [\(1982\) 149 CLR 27](#) followed

Packer v Meagher [\(1984\) 3 NSWLR 486](#) referred to

Project Blue Sky Inc v Australian Broadcasting Authority [\[1998\] HCA 28](#); [\(1998\) 72 ALJR 841](#); 51 ALR 490 applied

R v Ashford, Kent, Justices; Ex parte Richley (No 2) [\[1956\] 1 QB 167](#) referred to

R v Commonwealth Court of Conciliation and Arbitration; ex parte Ozone Theatres (Aust) Ltd [\[1949\] HCA 33](#); [\(1949\) 78 CLR 389](#) considered

Rajski v Bainton [\(1990\) 22 NSWLR 125](#) referred to

Re Wilcox; ex parte Venture Industries Pty Ltd [\(1996\) 137 ALR 47](#) considered

Re Williams and Australian Electoral Commission [\[1995\] AATA 160](#); [\(1995\) 38 ALD 366](#) considered

Renowden v McMullin [\[1970\] HCA 24](#); [\(1970\) 123 CLR 584](#) referred to

Robertson v Knuth [\[1997\] 1 Qd R 95](#) referred to

Robinson v Western Australian Museum [\[1977\] HCA 46](#); [\(1977\) 138 CLR 283](#) referred to

Scarcella v Morgan [\[1962\] VR 201](#) referred to

Shop Distributive and Allied Employees Association v Minister for Industrial Affairs (SA) [\[1995\] HCA 11](#); [\(1995\) 183 CLR 552](#) referred to

Thorp v Holdsworth [\(1876\) 3 Ch D 637](#) referred to

Tooheys Ltd v Minister for Business and Consumer Affairs [\[1981\] FCA 121](#); [\(1981\) 54 FLR 421](#) referred to

Turner v King [\[1992\] 1 Qd R 307](#) referred to

Tyson v Brisbane Market Freight Brokers Pty Ltd [\[1994\] HCA 67](#); [\(1994\) 68 ALJR 304](#) referred to

United States Tobacco Co v Minister for Consumer Affairs [\(1988\) 20 FCR 520](#) referred to

Weissensteiner v The Queen [\[1993\] HCA 65](#); [\(1993\) 178 CLR 217](#) referred to

Woods v Bate [\(1987\) 7 NSWLR 560](#) applied

Woods v Beattie, ex parte Woods [\[1995\] 1 Qd R 343](#) referred to

Counsel: S J English for the plaintiff

P J Flanagan for the first defendant

P J Lyons QC and P J Roney for the second defendant

Solicitors: Crown Solicitor for the first defendant

Watkins Stokes Templeton for the second defendant

Hearing dates: 25-26, 29-30 March 1999, 7 April 1999 and 10 May 1999.

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[Sharples v O'Shea & Anor]

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Second Defendant

REASONS FOR JUDGMENT - ATKINSON J

Judgment delivered 18 August 1999

1 Terry Sharples is an accountant who lives on the Gold Coast in south east Queensland. Prior to his involvement with the political party known as Pauline Hanson's One Nation, he had twice contested a council ward in local government elections but had never been a member of a political party. On 20 May 1998, he met with Paul Trewartha whom he believed to be the national vice-president and national secretary of Pauline Hanson's One Nation. In fact Mr Trewartha was national vice-president and national secretary of Pauline Hanson Support Movement Inc, an incorporated association. On 22 May 1998 they agreed that Mr Sharples would stand as a candidate for Pauline Hanson's One Nation in the electorate of Burleigh and Mr Sharples filled out a membership application form for Pauline Hanson's One Nation^[1] and a candidate nomination application form which he handed to Mr Trewartha who faxed them to the Sydney office of Pauline Hanson's One Nation. At that time Mr Sharples intended to join the political party for whom he was standing as a candidate. Subsequently he came to the view that he had unwittingly applied to join another organisation which was a support movement but not a political party. Mr Sharples paid Mr Trewartha \$290.00 cash, being \$40.00 for membership application fees and \$250.00 for candidate party nomination fees. He also gave Mr Trewartha a \$250.00 cheque for electoral nomination fees. He added two conditions to his

application to the party:- firstly that in his electorate of Burleigh, no preferences would be given by Pauline Hanson's One Nation without Mr Sharples' written agreement; and secondly, that the Electoral Commission refund to candidates would be passed on by the party to Mr Sharples at the rate of 75% of his personal campaign expenditure. Mr Trewartha also gave Mr Sharples a document which Mr Trewartha signed which was headed "Draft Only" and which read:

"SUBJECT: QUEENSLAND STATE ELECTION REIMBURSEMENTS REFUND OF EXPENDITURES FOR STATE CANDIDATES ACHIEVING MORE THAN 4% OF THE PRIMARY VOTE.

WHERE APPROPRIATE DOCUMENTATION IS SUPPLIED TO THE QUEENSLAND ELECTORAL COMMISSION VIA THE STATE ELECTORAL PARTY AGENT, MICK CHAPMAN ... BOX 246 GYMPIE 4570 ... PH 0754866243 ...

APPROVED EXPENSES WILL BE REIMBURSED AT 75% OF CANDIDATES [*sic*] PERSONAL EXPENSES RELATING TO STATE CAMPAIGN.

ALSO, INDIVIDUAL CANDIDATES SHOULD APPOINT THEIR OWN AGENTS OT [*sic*] HANDLE ELECTORAL EXPENSES (WITH COPY TO MICK CHAPMAN.)"

2 On 22 May 1998, Mr Sharples signed an Electoral Commission form entitled "Endorsed Candidate's Consent and Declaration" stating that he was the candidate endorsed by Pauline Hanson's One Nation and nominated by the registered officer of that party for the electoral district of Burleigh and that he consented to being nominated.

3 Mr Sharples received a membership card in the post for Pauline Hanson's One Nation dated 4 June 1998. It showed his membership number as 6227 and his branch as "Gold Coast". The card recited "Members of Pauline Hanson's One Nation are dedicated to assisting candidates endorsed by Pauline Hanson to win seats in the next Federal Election". On the reverse were set out "Pauline's Political Goals":

"1. To stop all immigration except that related to investment until all Australia's unemployment is solved.

2. To treat all Australians equally and abolish divisive and discriminatory policies, such as those related to aboriginal and multicultural affairs.

3. To restrict foreign ownership of Australia, repeal the Native Titles Act [*sic*], abolish ATSIC and reverse WIK.

4. To restore tariff protection, revitalise Australian manufacturing and initiate financial support for small business and the rural sector.

5. To take positive action on such matters as taxation reform, education, health, unemployment, crime and the discrimination created by political correctness."

The "support movement" goals were set out as follows:

"1. To volunteer members [*sic*] time to assist endorsed candidates at the next election.

2. To assist with letterbox drops, staffing election booths, distributing and placing election material.

3. To conduct fundraising activities and functions to raise funds needed to fight the next election.

4. To recruit new support group members and promote the benefits of voting for Pauline Hanson's One Nation.

5. To remain a non-political organisation which exists only to support Pauline Hanson's One Nation."

4 Mr Sharples stood as a candidate for the seat of Burleigh in the Queensland State Election held on 13 June 1998 and received more than 4% of the valid first preference votes polled in the electorate. He was described on the ballot paper^[2] as Sharples, Terry, Pauline Hanson's One Nation. However, he had a disagreement with David Oldfield from Pauline Hanson's One Nation about the allocation of preferences. On the evening before election day Mr Trewartha rang Mr Sharples to tell him that "they were withdrawing all help" and that he was "on [his] own".

5 On 16 June 1998 Mr Sharples caused solicitors acting on his behalf to write to Mr King of Pauline Hanson's One Nation Queensland Electoral Campaign Committee saying that Mr Sharples had spent in excess of \$11,000.00 in the campaign, that he had not been paid any of his expenses to date and that he was entitled to a full reimbursement of the amount which would be paid by the Electoral Commission to the party for each primary vote cast for Mr Sharples. On 14 July 1998, Mr Sharples sent letters of demand for his election expenses to Mr Trewartha described in the address as "National Vice-President, National Secretary, Pauline Hanson's One Nation" and to Mr James described as "State Director, Pauline Hanson's One Nation". No reimbursement has been made to Mr Sharples. As a result he started investigating Pauline Hanson's One Nation to determine what entity to sue to recover his electoral expenses.

Nature of the proceedings

6 This matter was commenced by writ on 10 July 1998 and was set down for trial by jury. An injunction which had been granted on 29 July 1998 restraining the first defendant the electoral commissioner from paying electoral funding to Pauline Hanson's One Nation until the trial of the matter was discharged on 14 August 1998 and on 2 September 1998, the electoral commission paid \$225,071.07 and on 25 September 1998, \$273,566.24 in public funding to Pauline Hanson's One Nation after a decision in the Court of Appeal on 9 September 1998. That matter was not further pursued on the trial of the action.

7 Immediately before the date on which the trial was to commence, the plaintiff sought and was granted leave on 22 March 1999 to amend his case so that it became an application to review under [s.180](#) of the [Electoral Act 1992](#) (Qld). That section provides as follows:

"Review of certain decisions

180.(1) The decisions set out in the following table are reviewable under this section if an application for review is made under this section by the person set out in the table.

Reviewable decision	Person who may apply for review
1. A decision under section 58(4) regarding the inclusion of a person's address in the publicly available part of an electoral roll	The person
2. A decision under section 65 not to amend an electoral roll to give effect to a notice by a person	The person who gave the notice

3. A decision to take action, or not to take action, under section 67(5) to amend the electoral rolls	The person who objected under section 67 to the enrolment of another person or the other person
4. A decision under section 72 to register, or under section 73 to refuse to register, a political party	Any person affected by the decision
5. A decision under the Act that a person is a special postal voter	The person

(2) An application for review of a reviewable decision must -

(a) be in writing; and

(b) be made to -

(i) in the case of a reviewable decision mentioned in item 4 in the table - the Supreme Court; and

(ii) in any other case - a Magistrates Court; and

(c) be made within 1 month after the decision comes to the notice of the applicant or such further period as the court allows; and

(d) set out the grounds on which review is sought.

(3) The court must review the decision and make an order -

(a) confirming the decision; or

(b) varying the decision; or

(c) setting aside the decision and making a decision in substitution.

(4) If an application for review of a decision has been made to a Magistrates Court, a party to the application or the Attorney-General may, before or at any stage during the hearing of the application, apply to a District Court or the Supreme Court for removal of the matter to the court.

(5) The court may, by order, grant the application.

(6) If an application for review of a decision is required to be made to a Magistrates Court, a person who may make the application may apply to a District Court or the Supreme Court for leave to make the application to the court instead of a Magistrates Court.

(7) The court may, by order, grant the leave.

(8) The Supreme Court or a District Court is to be constituted by a single judge for the purposes of this section.

(9) The Magistrates Court is to be constituted by a stipendiary magistrate for the purposes of this section."

This is the review of a reviewable decision under subsection 180(1) item 4 i.e. a decision pursuant to [s.72](#) to register a political party.^[3] Such an application for review can only be made to the Supreme

Court constituted by a single judge. Accordingly the plaintiff withdrew his request for a jury. The plaintiff has set out his grounds on which review is sought in his statement of claim and it is only those grounds as particularised which will be considered,^[4] i.e. that the procedure required by law to be observed in relation to the making of the decision was not observed; that the making of the decision was an improper exercise of the power conferred by the *Electoral Act 1992* under which it was purported to be made; that the decision involved an error of law; that the decision was induced or affected by fraud or misrepresentation;^[5] and that the decision was otherwise contrary to law.

8 The application for registration falls to be determined by the Electoral Commission of Queensland ("the commission") under [s.72](#) of the *Electoral Act 1992* which provides:

"Registration

72.(1) If the commission, after considering all statements and replies to the statements under [section 71](#), is satisfied that the application complies with the requirements of [section 70](#), the commission must, subject to subsection (3) and [section 73](#), register the political party.

(2) Registration is effected by entering or otherwise including in the register of political parties -

(a) the information set out in the application (other than under [section 70\(4\)\(e\)](#)); and

(b) any document accompanying the application as required by [section 70\(4\)\(f\)](#) and (g).

(3) The commission must not take any action in relation to the application during the election period in relation to an election.

(4) The commission must not register a political party other than in accordance with this section.

(5) On registration of the political party, the person whose name was set out in the application under [section 70\(4\)\(c\)](#) becomes the party's registered officer for the purposes of this Act.

(6) As soon as possible after it registers the political party, the commission must -

(a) give written notice to the registered officer that it has done so; and

(b) if any person made a statement to the commission under [section 71](#) in relation to the application - give written notice to the person stating that it has registered the party and setting out why the reasons in the person's statement were rejected; and

(c) notify the party's registration by gazette notice."

The commission in this Part of the Act is constituted solely by the electoral commissioner ("the commissioner"), Mr O'Shea, the first defendant in this matter.^[6]

9 The commissioner must not register a political party otherwise than in accordance with the procedures set out in [s.72](#). If the commissioner, after following those procedures, is satisfied that the applicant complies with [s.70](#), the commissioner, subject to subs.72(3) and [s.73](#), must register the political party. The commissioner, in addition, has a discretion to refuse the registration of a political party given by [s.73](#) of the *Electoral Act 1992* which provides:

"Refusal of registration

73.(1) In this section -

"application name" means a name for a political party, or the abbreviation of the name for a political party, set out in the party's application for registration.

"party body name" means the name, or an abbreviation or acronym of the name, of a prominent public body.

"party name" means the name, or an abbreviation or acronym of the name, of a parliamentary party or registered political party.

(2) The commission may refuse to register a political party if the commission believes on reasonable grounds that information set out in, or documents required to accompany, the application are incorrect.

(3) The commission must refuse to register a political party if the party's application name -

(a) has more than 6 words; or

(b) is obscene or offensive; or

(c) is a party name; or

(d) so nearly resembles a party name that it is likely to be confused with or mistaken for the party name; or

(e) includes the word 'independent'; or

(f) would otherwise be likely to cause confusion if registered.

(4) The commission may refuse to register a political party if the party's application name -

(a) is a public body name; or

(b) so nearly resembles a public body name that it is likely to be confused with or mistaken for the public body name.

(5) If the commission decides to refuse an application, it must give the person who was to be the registered officer of the political party written notice of -

(a) the refusal; and

(b) the reasons for the refusal; and

(c) the rights of the person to have the refusal decision reviewed."

10 [Section 70](#) sets out what is required to be contained in an application for registration as follows:

"Applications for registration

70.(1) An application for registration of a political party is to be made in accordance with this section.

(2) The application must only be made for the registration of a registrable political party.

(3) The application must be made by the secretary of the party.

(4) The application must be made to the commission in a form approved by the commission for the purposes of this section, and must -

- (a) state a name for the political party; and
- (b) if the political party wishes to use an abbreviation of its name on ballot papers for elections - set out the abbreviation; and
- (c) set out the name and address of the person who is to be the political party's registered officer for the purposes of this Act; and
- (d) if the application is for a Queensland parliamentary party - set out the name of 1 member of the party who is a member of the Legislative Assembly; and
- (e) if the application is for a party that is not a Queensland parliamentary party - set out the names and addresses of 500 members of the party who are electors; and
- (f) be accompanied by a copy of the party's constitution; and
- (g) set out any other prescribed information and be accompanied by a copy of any other prescribed document."

A "registrable political party"[\[7\]](#) is an organisation whose object or activity, or one of whose objects or activities, 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, that either is a parliamentary party or has at least 500 members who are electors and is established on the basis of a written constitution (however described) that sets out the aims of the party.

11 Ms Hanson who was the person named as the party's registered officer in the application for registration by Pauline Hanson's One Nation pursuant to subs.70(4)(c) is the second defendant in this matter in her capacity as representative of herself and all members of Pauline Hanson's One Nation (as registered under the [Electoral Act 1992](#) (Qld)).

12 After an application for registration is made, the commissioner must give members of the public the opportunity to object to the registration of the party. The procedure for doing so is set out in [s.71](#) of the [Electoral Act 1992](#):

"Publication of notice of application

71.(1) As soon as practicable after an application is made to the commission, the commission must publish a notice in relation to the application in -

- (a) the gazette; and
- (b) a newspaper circulating generally in the State.

(2) The notice must -

- (a) set out the information included in the application under [section 70\(4\)\(a\)](#) to (c); and
- (b) invite any persons who believe that the application -
 - (i) is not in accordance with [section 70](#); or
 - (ii) should be refused under [section 73](#);

to submit to the commission, within 1 month after the day of publication of the gazette notice, a statement under subsection (3).

(3) The statement must -

(a) set out in detail the grounds for the belief; and

(b) set out the address of the person; and

(c) be signed by the person.

(4) The commission must make the statement available at its office for public inspection, without fee.

(5) The commission must give the person who is to be the party's registered officer -

(a) a copy of the statement; and

(b) a notice inviting the person to give the commission a reply to the statement within such reasonable period as is specified in the notice.

(6) If the person gives the commission a reply within the period, the commission must, as soon as practicable, make the reply available at its office for public inspection, without fee."

13 The system of registration of political parties in Queensland was recommended by the Electoral and Administrative Review Commission ("EARC") in its report "The Review of the *Elections Act* 1983-1991 and Related Matters"[\[8\]](#) ("the EARC Report"). The EARC Report and the implementation of its recommendations recognise the important role of political parties in the public life of the State and underscore the political neutrality^[9] of the commissioner in overseeing the registration and funding of political parties. The EARC Report observes:

"Registration of political parties and candidates is a process whereby the central role of parties and candidates is given a more official electoral status. This formal recognition enables the electoral system to confer certain privileges and benefits on parties, candidates and electors. At the same time it provides a means of achieving greater accountability in the electoral system."[\[10\]](#)

"The registration process is designed to confer a level of electoral status and official recognition on a political party."[\[11\]](#)

Once a political party is registered the details of the party are entered into a public register of registered political parties,[\[12\]](#) the party may nominate its candidates centrally^[13] and thereby is entitled to have the name of the party or the abbreviation thereof after the candidate's name on ballot papers,^[14] the party is entitled to public funding rather than the individual candidates,^[15] and the party is required to lodge an annual return of receipts and expenditure.^[16]

14 [Section 180](#) of the *Electoral Act 1992* makes the decision to register a political party judicially reviewable. However the statutory recognition of political parties also means that other matters such as disputes concerning the rules of registered political parties are justiciable.^[17] As Dowsett J observed in *Baldwin v Everingham*,^[18] referring to registration of political parties under the *Commonwealth Electoral Act*:

"the Commonwealth Parliament, in conferring legislative recognition upon political parties has taken them beyond the ambit of mere voluntary associations".

The same applies to political parties registered under the Queensland *Electoral Act 1992*. Their rules are more than just a matter between the members of the political party as those rules are required to be registered.^[19] There is now a significant public interest in the enforcement of the rules of registered political parties.^[20]

Registration of Pauline Hanson's One Nation

15 The question of substance to be determined in this matter is whether or not Pauline Hanson's One Nation was properly registered as a political party under the [Electoral Act 1992](#). In the grounds of review as particularised the plaintiff essentially relies on three matters, and perhaps a fourth, to challenge the party's compliance with the requirements of the [Electoral Act 1992](#). The first three are that it did not have 500 members who were enrolled as electors in the State of Queensland;[\[21\]](#) that it did not have as one of its aims and objectives the election of candidates to the Queensland Legislative Assembly;[\[22\]](#) and thirdly, that the person who signed as secretary of the party was not in fact the secretary of the party.[\[23\]](#) The fourth consideration, which was not vigorously pursued at trial because of a lack of evidence, was that the political party's registered officer, Ms Hanson, did not give her correct residential address as her address as required.[\[24\]](#) There is, however, no statutory requirement to give a residential address. The plaintiff says that the second defendant, its servants and agents, knew that its application for registration did not comply with the requirements of the [Electoral Act 1992](#) and obtained its registration by fraud or misrepresentation.

16 In order to determine the questions of standing, extension of time and the merits of the action, it is necessary to look at the history of Pauline Hanson's One Nation and the organisations which were formed and how the plaintiff came to form the view that it had failed to satisfy any or all of the matters referred to above. This has necessitated a careful examination and evaluation of all of the evidence before the Court and any inferences that might properly be drawn. There are facts which are difficult to reconcile with one another and the rules of the party,[\[25\]](#) whether because of a lack of transparency or lack of care in drawing up the rules or in statements made, but the Court's role is to examine the evidence and come to a determination about the matters raised before it.[\[26\]](#)

Standing of the plaintiff

17 For the reasons given by Gibbs CJ in *Onus v Alcoa of Australia Ltd*,[\[27\]](#) I considered it appropriate to proceed to hear this case on its merits before determining the question of standing.

18 While it is important to guard against vexatious and illegitimate litigation, it is equally important not to unnecessarily deny those with a real interest in a question which also has great public interest from litigating such an issue on what might be seen as technical grounds. In *Bateman's Bay Land Council v Aboriginal Fund*,[\[28\]](#) the High Court referred with approval to the warning given by Brennan J in *Onus v Alcoa*[\[29\]](#) that to deny standing may be to "deny to an important category of modern public statutory duties an effective procedure for curial enforcement." The courts have attempted to reconcile these competing considerations by developing a flexible rule that a plaintiff has standing to prevent the violation of a public right if he or she has an interest in the subject matter beyond that of other members of the public.[\[30\]](#) As the High Court observed in *Bateman's Bay Land Council v Aboriginal Fund*:[\[31\]](#)

"Reasons of history and the exigencies of present times indicate that this criterion is to be construed as an enabling, not a restrictive, procedural stipulation."

19 The plaintiff's standing in this case is determined by whether he is a person affected[\[32\]](#) by the decision to register the political party.[\[33\]](#) This criterion of standing should not be given a narrow construction.[\[34\]](#) The legislation, in terms, gives a right to a person affected to seek judicial review of a decision in addition to the public objection procedure in [s.71](#) of the [Electoral Act 1992](#).[\[35\]](#) This gives an important statutory role to the Supreme Court to exercise curial supervision of the decisions of the commissioner to register political parties.

20 The real interest of the plaintiff is seen in the fact that he believed he had joined the political party,

Pauline Hanson's One Nation, and he had stood as a candidate for it in the State election held on 13 June 1998. The name of the party, Pauline Hanson's One Nation appeared next to his name only because it was a registered party^[36] and he was endorsed by that party.^[37] His expectation of a refund of his electoral expenses was based on his expectation that the political party was registered and would receive electoral funding^[38] from which his expenses or a part of them would be reimbursed. Thus his interest comes within the scope and purpose of the statute in issue because he was affected by the rights given to the political party by registration.

21 Mr Sharples has never resigned from the party believing that it was unnecessary in view of his belief that he did not become a member in the first place. On 17 February 1999 Mr Sharples received written notice of the forthcoming Annual General Meeting of Pauline Hanson's One Nation to be held on 28 February 1999 at the Rooty Hill RSL in Sydney. He showed his membership card but Mr Ettridge said words to the effect "that's just a bit of paper with your name on it" and he was refused entry to the Annual General Meeting. Mr Sharples gave evidence that Mr Ettridge said to him that he had never been "a member of the party Pauline Hanson's One Nation". Although Mr Sharples had it put to him in cross-examination that Mr Ettridge had not made these statements to him Mr Sharples was unshaken in his evidence. On the other hand Mr Ettridge failed to give any evidence. In all of the circumstances, I prefer Mr Sharples' recollection of the conversation. No reason was put forward by the second defendant as to why Mr Sharples' application for membership might have been dealt with any differently from any other application for membership when he applied to join.

22 Although Mr Sharples' credit was undermined by the fact that he gave oral evidence at the hearing about an indemnity from Mr Abbott MHR which apparently contradicted oral evidence given by him before Ambrose J on 21 September 1998 to the effect that he had not had any discussion with Mr Abbott about Mr Abbott's providing an indemnity for this action or any action he may bring, none of these findings are thrown into doubt by that and I have not been required to make any finding about whether or not there was an indemnity given by Mr Abbott MHR to the plaintiff for his costs in this action.

23 All of this seems to represent sufficient standing to challenge the registration of a party which was registered only a few months before Mr Sharples was issued with a membership card and became a candidate for Pauline Hanson's One Nation in the first State election after its registration as a State party. The question is whether he has standing when he commenced the action not whether he had standing at the time registration was effected on 4 December 1997. The matters which give him standing directly relate to the objects of the legislation and the consequences that flow to a political party from registration.^[39]

24 A decision that the plaintiff has standing is consistent with the view taken of standing by the Administrative Appeals Tribunal, constituted by the President Mathews J and Deputy Presidents Beaumont and Hill JJ in *Re Williams and Australian Electoral Commission*^[40] with regard to the equivalent section^[41] of the *Commonwealth Electoral Act 1918* that membership of the party or a related party is sufficient to give standing to challenge a decision made under the *Commonwealth Electoral Act* to change the name of the registered officer of the Greens Party. The plaintiff in that case was a person affected by the decision because, in the event of an election, any member of a political party which was related to the Greens would have had a legitimate interest in ensuring that any nomination of candidates to represent the Greens should be made by a person who was validly appointed to perform the function of registered officer.

Extension of time

25 The time within which an applicant must make an application for review is one month after the decision comes to his or her notice or such further period as the Court allows.^[42] This discretion is

unfettered but must be exercised judicially according to the circumstances of the case. The onus is on the applicant to show that time should be extended as the presumption is that it should not. As Moynihan J observed in *Kuku Djungan Aboriginal Corporation v Christensen*:[\[43\]](#)

"It seems to me that, prima facie, proceedings commenced outside the limitation period ought not to be entertained unless the applicant shows an acceptable explanation of the delay and that it would be fair and equitable in the circumstances to extend the time. Such considerations, in cases such as the present, extend beyond considerations applying as between the applicant and the respondent and to include a wider public interest. The same may be said of considerations of prejudice to the respondent and others consequent on the delay in bringing the application."

Although it was immediately before trial that the matter was reconstituted as an application for review, the matter was commenced by writ of summons on 10 July 1998, seeking, inter alia, "a declaration that Pauline Hanson's One Nation is not a validly registered party pursuant to the [Electoral Act 1992](#) (Qld)".

26 From the time of delivery of the original statement of claim on 14 September 1998 it was apparent that the matter was similar to an application to review. Leave was given to so amend the statement of claim without objection on 25 March 1999. On the same date a request for further and better particulars by the first defendant, the particulars given in response by the plaintiff, and by leave amended defences of the first and second defences were tendered.

27 The time that the decision to register the party was made was 4 December 1997. The applicant must seek an order to review within one month after the decision comes to his or her notice or such further period as the court allows. Mr Sharples' uncontradicted evidence, which I accept, was that he knew from late April or early May 1998 that Pauline Hanson's One Nation was fielding candidates in the forthcoming State Election. That election was held on 13 June 1998. He gave evidence that if he had thought about it he would have understood that some registration process had occurred, but he did not think about it. He had not seen the relevant advertisements in the "Courier-Mail" or the "Queensland Government Gazette". It could be said that he knew of the decision at least constructively to register the party on 20 May 1998 when he met Mr Trewartha.

28 On 3 July 1998, after he had recovered from the aftermath of the State Election campaign, Mr Sharples contacted the commission to obtain a copy of the constitution that had been submitted by Pauline Hanson's One Nation. It was only then that the court can be certain that he had actual notice[\[44\]](#) that the party was registered under the [Electoral Act 1992](#). On 7 July 1998, Mr Sharples wrote to Mr O'Shea about the registration of Pauline Hanson's One Nation. This letter which was drafted by Tom Bradley, a solicitor, advised the commissioner of the following matters which Mr Sharples believed to be true:

"· Mr Briggs was involved in preparing the application for registration of Pauline Hanson's One Nation Party as a political party under the [Electoral Act](#) in September 1997.

· The body for which Mr Briggs believed the application was being prepared (and which he believed was seeking registration as a political party) was the Pauline Hanson Support Movement Inc, an association incorporated under the [Associations Incorporation Act \(Qld\)](#) and now known as the Pauline Hanson One Nation Members Inc.

· Mr Briggs supplied a copy of the constitution of the Pauline Hanson Support Movement Inc and the names and addresses of 530 members of that association for inclusion in the application.

· Before the application was submitted to the Commission, the constitution of the organisation known as Pauline Hanson's One Nation was substituted for the constitution of the Pauline Hanson Support

Movement Inc. (I have obtained a copy of the constitution of the Queensland registered party from your office and can confirm that this is not the constitution of the Pauline Hanson Support Movement Inc.)

- The persons whose names and addresses Mr Briggs supplied for inclusion in the application were not members of the organisation known as Pauline Hanson's One Nation.
- The Pauline Hanson Support Movement Inc is not part of the organisation known as Pauline Hanson's One Nation.
- The Pauline Hanson Support Movement Inc and the body known as Pauline Hanson's One Nation are not both parts of the same political party.
- The constitution of the Pauline Hanson Support Movement Inc (a copy of which is enclosed) does not include as an object or activity the promotion of the election to the Legislative Assembly of Queensland of a candidate or candidates endorsed by it (or by a body of which it forms a part).
- According to Mr Briggs, at the time of the application, the only members of the organisation known as Pauline Hanson's One Nation were Mrs Hanson, Mr David Oldfield and Mr David Ettridge.
- The persons who responded to the Commission's survey were not supplied with a copy of the constitution lodged as part of the application. They answered the Commission's question in ignorance of the identity of the entity whose constitution had been lodged. Like Mr Briggs they assumed that the organisation seeking registration was the one they had joined, namely the Pauline Hanson Support Movement Inc.
- The applicant represented to the Commission that the 530 persons whose names and addresses were included in the application were members of the organisation known as Pauline Hanson's One Nation. In fact, the 530 persons whose names were used in the application, were not members (and are not members) of the entity whose constitution was submitted. They have no rights under that constitution to take any part in the affairs of the body which has become the registered political party under the [Electoral Act](#).
- The person or persons responsible for the substitution of constitutions in the application intentionally deceived the Commission for the purpose of obtaining registration as a political party, contrary to the Act, for an organisation which at the time, according to Mr Briggs, had only three members and no Queensland parliamentary representative."

In the circumstances, he submitted to the commissioner that there were reasonable grounds for the Commissioner to suspect that the registration of Pauline Hanson's One Nation had been obtained by misrepresentation or fraud. He sought an investigation by the commissioner and requested the cancellation of the registration of Pauline Hanson's One Nation under [s.75](#) of the [Electoral Act](#) if the commissioner was so satisfied.

29 The commissioner took the view that the [Electoral Act 1992](#) did not expressly empower him to make such an investigation. However Mr O'Shea sent a copy of Mr Sharples' letter to Peter James as the Deputy Registered Officer of Pauline Hanson's One Nation and asked for his response in writing at the earliest opportunity.

30 On the following day, Mr Sharples wrote to the commissioner saying that he noted from a press report in that morning's "Courier-Mail" that the commissioner was still of the opinion that:

" `there are no reasonable grounds for consideration of cancelling' (the current registration of the

political party known as Pauline Hanson's One Nation, 'One Nation')."

He asked for a written response to his letter of the previous day and advised that he and other One Nation candidates in the state election would be applying to the Supreme Court as soon as practicable for a Mareva injunction to restrain the commissioner from paying the election funding reimbursement the subject of ss.294 and 294A of the [Electoral Act 1992](#) to the party's registered agent, Ms Hanson. On 8 July 1998, Mr O'Shea rang Mr James who denied Mr Sharples' allegations. By letter dated 9 July 1998, Mr O'Shea wrote to Mr Sharples saying that careful consideration had been given to the issues he had raised. However, he was satisfied that the registration was made in accordance with the provisions of the [Electoral Act 1992](#). Furthermore, he was not satisfied on reasonable grounds that the commission should cancel the registration of the party. On 10 July 1998, Mr James said that none of the accusations in Mr Sharples' letter of 7 July were valid.

31 On 13 July 1998, Mr Sharples attended the hearing of a chamber application where he was represented by Paul Everingham & Co and AJH Morris QC where an undertaking was given by the first defendant not to make any payment of monies pursuant to [Part 7](#) of the [Electoral Act 1992](#) until the hearing of the application. On 27 July 1998, counsel on behalf of the plaintiff stated to the Court the plaintiff was

"not challenging the decision of the Electoral Commissioner, Mr Desmond O'Shea to register Pauline Hanson's One Nation as a political party pursuant to the [Electoral Act 1992](#) (Qld) nor the decision of the Electoral Commissioner not to cancel the registration of Pauline Hanson's One Nation."

However on a further hearing before Ambrose J on 21 August 1998, the plaintiff stated that the concession was made without his knowledge or authority and that challenging the Electoral Commission was exactly what he was all about.^[45] The reasons for judgment of Ambrose J on 31 August 1998 show that the plaintiff's claim was that the registration of the political party on behalf of the second defendant was obtained by fraud or misrepresentation. On 5 August 1998, he had terminated the services of Paul Everingham & Co and was a litigant in person until represented by Mr English of counsel immediately prior to the commencement of the trial.

32 It may be relevant to the notice the second defendants had of the allegations to observe that the defendants to this application were respondents to an application apparently filed on 27 August 1998 by Barbara Hazleton and amended pursuant to an order of this court made on 31 August 1998 to add the original second defendant in this matter as the second respondent in that application. That application sought an order to review the decision made by the commissioner to register Pauline Hanson's One Nation as a political party on the grounds that the application to register it as a political party did not set out the names and addresses of 500 members of the party who were electors of Queensland but instead set out the names of and addresses of members of another legal entity, Pauline Hanson's Support Movement Inc; and that the application was not made by the secretary of the political party.

33 The factors^[46] which should be taken into account by the court in determining whether or not to allow a further period in which to commence an order for review are whether there is an adequate or acceptable explanation for any delay in commencing proceedings and any prejudice to the respondents or to third parties or to the public interest by the delay in commencing proceedings. Inevitably the merits of the application will be taken into account. In the end the court must give due weight to these matters and consider whether it is fair and equitable in all of the circumstances to exercise its discretion to extend the time.^[47] In this case, Mr Sharples engaged solicitors, Paul Everingham & Co who retained AJH Morris of Queen's Counsel to advise.^[48] It is hardly surprising that he relied upon their advice as to the manner in which the proceedings should be constituted. There can be no real suggestion that the plaintiff slept on his rights. There is an adequate explanation for any delay in

commencing proceedings.

34 No real prejudice to either defendant can be attributed to the delay. The writ was commenced before the payment of electoral funding to Pauline Hanson's One Nation and in any event that payment has been made. There is therefore no financial prejudice alleged. If the payment was induced by fraud or misrepresentation, then its repayment by the second defendant could not amount to relevant prejudice. It should be noted, however, that no such repayment was sought in these proceedings.

35 It was submitted that the application could have been brought before the State election on 13 June 1998, where eleven candidates nominated by Pauline Hanson's One Nation were elected to the Legislative Assembly and almost 440,000 voters^[49] gave candidates nominated by Pauline Hanson's One Nation their first preference vote. However as was conceded by all the parties, the decision in this case cannot affect the validity of that election and so there is no relevant prejudice caused by delay to the second defendant. The only way an election may be disputed is by petition to the Court of Disputed Returns in accordance with [Part 8](#) of the *Electoral Act 1992* and in no other way. If there was relevant prejudice to others, it was caused by the registration and not by any delay in seeking relief.

36 I am therefore persuaded that I should extend the time to the extent necessary to allow the plaintiff to bring this application.

Objections to evidence

37 Careful submissions by the defendants were made about the limitations of the pleadings in this case. The plaintiff has struggled to articulate his case clearly. A party is limited by its pleading in the conduct of its case unless the parties have deliberately chosen some other basis for the determination of their respective rights and liabilities.^[50] There was no acquiescence in any departure from the plaintiff's pleaded case by either the first or the second defendant except to any limited extent that can be deduced from their submissions to the Court.

38 In the end, in spite of the inadequacy of the pleadings, it would appear that the parties were able to put before the court the relevant issues for determination. It is not necessary to consider the objections to the evidence in great detail. Many objections to the form in which evidence was led by the plaintiff were raised during the course of the trial; the plaintiff almost invariably conceded that the evidence was in inadmissible form and the objections were allowed. As to the objections as to relevance, this judgment deals with the matters which I considered relevant on the pleadings. The statement of claim was amended to plead in accordance with the opening by the plaintiff of his case. It is important that arguments about pleadings should illuminate rather than obfuscate the real issues for determination.

Questions before the court

39 When the grounds of review, the particulars and the evidence are analysed, the three major questions which initially fall for determination are:

1. Did the written constitution lodged by Pauline Hanson's One Nation satisfy the requirements of the *Electoral Act 1992*?
2. Did the secretary of the party sign the application for registration?
3. Did the entity known as "Pauline Hanson's One Nation" have 500 members eligible to be electors in the State of Queensland when it applied for registration?^[51]

Did the written constitution lodged by Pauline Hanson's One Nation satisfy the requirements of the [Electoral Act 1992](#)?

40 A subsidiary question to this is did Pauline Hanson's One Nation have as an object or activity the election of candidates to the Queensland parliament?

41 A political party is required to include a copy of its constitution with its application for registration.^[52] Only a registrable political party is eligible for registration.^[53] The definition of "registrable political party"^[54] provides that such a party must be an organisation which is established on the basis of a written constitution (however described) that sets out the aims of the party. An object or activity of the political party must be the promotion of the election to the Legislative Assembly of a candidate or candidates endorsed by the organisation or a body or organisation of which it forms a part.

42 This legislation gives effect to a recommendation contained in the EARC Report:

"... Commonwealth legislation (s.126(2) of the CE Act) and most other States require that political parties have a written constitution and a statement of party objectives which is submitted with the application for registration. [EARC] believes that the Queensland system should also seek such documents from applicants for registration. They are a measure of the organisation's commitment to the task of seeking election."^[55]

EARC noted that all electoral administrations in Australia with registration requirements asked for a copy of the constitution or rules governing the operations of the party.

43 A requirement therefore of an organisation seeking registration as a political party is that:-

- (1) The organisation must have a written constitution; and
- (2) A copy of the [Constitution](#) must be included with the application for registration; and
- (3) The [Constitution](#) must set out the aims of the party; and
- (4) Either (a) an object of the organisation; or
(b) an activity of the organisation

must be the promotion of the election to the Legislative Assembly of a candidate or candidates endorsed by the organisation or a body or organisation of which it forms a part.

The [Electoral Act 1992](#) does not in terms require that the constitution set out as one of the aims of the party that it seeks to have candidates elected to the Legislative Assembly. So long as the organisation has a written constitution which contains whatever aims it has, it is sufficient if the promotion of the election of its candidates to the Legislative Assembly is one of its activities.

44 The plaintiff alleged that the commissioner allowed the first page of the constitution which was originally lodged to be replaced by a new page. Mr O'Shea gave evidence in this case which I am able to accept in its entirety. He impressed me as a person who has acted throughout this matter in a thoroughly professional, ethical and neutral manner.

45 It appears that on 13 October 1997, Mr O'Shea, the commissioner, received a phone call from Mr Ettridge who identified himself as an adviser to Ms Hanson and inquired whether an application had been received. Mr O'Shea informed him that an application had been made to register a party called One Nation of Queensland. Mr Ettridge told Mr O'Shea that the application was made without

the knowledge or consent of Pauline Hanson or her political organisation. Mr Ettridge said that the Pauline Hanson's One Nation party was registered under the provisions of the [Commonwealth Electoral Act 1918](#) and that a company was incorporated to operate nationally with the name Pauline Hanson's One Nation Ltd. Mr Ettridge indicated that he would vigorously defend their interest in the name "One Nation".

46 Later on the same day, Ms Hanson called in to the Commission's office and said that the persons who filed the application did so without her knowledge and consent and she claimed that the list of members was in fact a list of members of her party. The party applying for registration was not her party. She advised Mr O'Shea that she would be seeking to register her party under the provisions of the [Electoral Act 1992](#).

47 On 15 October 1997 Ms Hanson personally attended the commissioner's Brisbane office and lodged an application to register a political party called Pauline Hanson's One Nation. Those documents were personally received by Mr O'Shea. The application was accompanied by what appeared to be a list of members containing more than 1000 names and addresses and other relevant details and a document entitled "[Constitution](#) & Model Rules".

48 On 16 October 1997 Mr O'Shea wrote to Ms Hanson acknowledging receipt of her application and apologising for not noticing that she had not signed the relevant forms. It was also noted that the constitution submitted provided for the party to endorse candidates for the Senate and House of Representatives. His letter informed Ms Hanson that it would be necessary to amend the constitution to also provide for endorsement of candidates for the Legislative Assembly of Queensland. It appears that at the time the application was first made to register the political party in Queensland, there was no organisation then able to be registered as a political party in Queensland as there was no organisation whose object or activity, or one of whose objects or activities was the promotion of the election of candidates endorsed by it to the Legislative Assembly.

49 Mr O'Shea telephoned Ms Hanson during the afternoon of 15 October 1997 and informed her of those matters. These matters had been brought to his attention by Donald Schultz, a senior elections officer and a member of his staff whom he had requested to consult with Ms Libby Gladwin, principal projects officer, for the purpose of determining whether the provisions of the [Electoral Act 1992](#) had been complied with.

50 On or about 20 October 1997 Mr O'Shea received an amended application for registration signed by the proposed registered officer, Ms Hanson, and on the same date he received under cover of a letter dated 15 October 1997 an amended front sheet of the constitution which was attached to the application for registration. The new front page set out the objects as follows:

"The objects for which the association is established are:

To support Pauline Hanson's efforts to bring about the necessary changes for fair and equal treatment of all Australians, within a system of government which recognises and acts upon a need for all Australia to be truly One Nation."

The aims were said to be:

"To endorse persons for election as candidates to the Legislative Assembly of Queensland."

The front page of the constitution previously submitted contained the same objects but the aims were said to be:

"To endorse candidates for the Senate and House of Representatives to support Pauline Hanson in

accordance with the previously stated objects."

Mr O'Shea gave evidence that he was surprised by the short amount of time within which the constitution had been amended as he was under the impression that ordinarily constitutions provide that a constitution may only be amended at a general meeting. Accordingly he looked into the terms of the constitution and noted that cl.33 of the constitution provided that subject to the provisions of the [Associations Incorporation Act 1981](#), the rules may be amended by a special resolution carried at any management committee meeting. Clause 5 provides that initially the management committee should consist of only three members, the President, Vice President and Treasurer. Mr O'Shea was aware that he was dealing with an unincorporated association which appeared to have made use of the model rules prescribed under the [Associations Incorporation Act](#). He correctly took the phrase "subject to provisions of the *Associations Incorporations Act*" to be meaningless because the *Associations Incorporations Act* provision^[56] dealing with amendment to the constitution applies only to incorporated associations. The constitution makes other meaningless references to the body being incorporated but such references cannot make an unincorporated body incorporated. It was not an incorporated body. Mr O'Shea was therefore satisfied that the constitution could be amended within the time frame.^[57]

⁵¹ In 1995, Mr O'Shea had sought advice from the Crown Solicitor as to how he should apply the provisions of the [Electoral Act](#) in relation to the constitutions of political parties. The advice he had received was that political parties are largely private unincorporated organisations and therefore the commission should not be delving into their internal affairs. He was merely required to satisfy himself that the constitution was adequate for the purpose of registration under the [Electoral Act 1992](#). He had in his mind that EARC had recognised that the requirement for the constitution of the political party to accompany the application was to ensure a measure of the organisation's commitment to the task of seeking election. At the time of registration of Pauline Hanson's One Nation pursuant to the [Electoral Act 1992](#), he knew that Pauline Hanson's One Nation was registered federally with the Australian Electoral Commission. Mr O'Shea also says that he knew that it was intended that candidates for Pauline Hanson's One Nation would contest the next Queensland election.

⁵² Being conscious of the fact that any member of the party or of the public could make a submission to the commission on any matter of concern when the public notice was published in accordance with [s.71](#) of the [Electoral Act 1992](#), he substituted the new front page that he had received for the front page of the constitution which was attached to the application for registration. Mr O'Shea said he thought it would be excessively bureaucratic to require the rest of the pages to be produced a second time since the only change was to the front page.

⁵³ There was no reason for Mr O'Shea to think that the aims and objectives in the constitution had not been amended by the management committee in accordance with the constitution. However the situation was different before the court. The court has the advantage, that the commissioner did not have, of sworn evidence on which witnesses were fully cross-examined and of further documentation.

⁵⁴ The second defendant could have given evidence to the court of a constitutional change or of the election of people to the Legislative Assembly being one of the party's objectives or activities when it applied for registration but chose not to do so. I would therefore be inclined to draw the inference that the second defendant was not able to do so. This was entirely a matter within the second defendant's knowledge. However, in the end, I do not regard this as a matter of great moment as clearly, shortly after the application and before registration, the second defendant had as one of its activities the promotion of the election of its candidates to the Legislative Assembly. For example, on 24 October 1997, Ms Hanson issued a news release saying that Pauline Hanson's One Nation would contest the next Queensland state election and was calling for candidate nominations. Mr Trewartha gave evidence that on about 22 October 1997, he had a conversation with Ms Hanson where "she

confirmed that we were not going to the State election". Mr Lyons QC put it to Mr Trewartha that Ms Hanson was opposed to running candidates in the state election until early September but Mr Trewartha maintained that the first he knew of her change of mind was after the news release was issued. There was no evidence of any earlier time when this was an objective or activity of the party.

55 The plaintiff further submitted that the commissioner's act in receiving and temporarily attaching a replacement front page was in breach of the duty of the commissioner found in s.58(1)(a) of the *Libraries and Archives Act 1988* (Qld) to cause complete and accurate records of the activities of the public authority to be made and preserved. I am satisfied that there was no breach of s.58(1)(a) of the *Libraries and Archives Act 1988*. The commissioner caused complete and accurate records to be kept. It is not therefore necessary to consider this any further nor the specific power to amend information or replace documents given by s.74 of the *Electoral Act 1992*.

Did the secretary of the party sign the application for registration?

56 The allegation made by the plaintiff was that the application to register Pauline Hanson's One Nation was not made by the secretary of the party because Cheyenne Jennifer MacLeod was not the secretary of the party which was registered in Queensland. The definition of 'secretary' found in s.3 of the *Electoral Act 1992* is very broad and does not require the person to be called the secretary of the party. It provides:

"'secretary' of a political party means the person who holds the office (however described) whose duties involve responsibility for carrying out the administration, and dealing with the external correspondence of the party."

57 The application for registration is required to be made by the secretary of the political party seeking registration.^[58] EARC had received submissions supporting the lodging of the names and addresses of office bearers when a political party applied for registration. EARC saw the value in having sufficient information so that the commission could check the eligibility of the party for registration, to identify an accountable officer in the party, or to provide the commission with a point of contact for further dealings with the party organisation. However EARC did not recommend that the names of office bearers be supplied with applications for registration for the following reasons:

"The titles of offices vary among the parties making it difficult to define in legislation which particular offices should be included in applications. There is also the problem that the persons holding the various offices change regularly and the Register would be frequently inaccurate. Only the name of the registered officer should be required since this [is] the main point of contact between the electoral administration and the party organisation."^[59]

The requirement to nominate a registered officer, as Pauline Hanson's One Nation did, can in this context be seen as a requirement of more substance than the requirement that the application for registration be made by the secretary of the party whose identity is likely to change from time to time.

58 When Pauline Hanson's One Nation applied for registration under the *Commonwealth Electoral Act* on 12 March 1997, its secretary was shown as David Ettridge. When Pauline Hanson's One Nation applied for registration under the Queensland *Electoral Act* on 15 October 1997, Ms MacLeod filled in and apparently signed the section entitled "Secretary of the party to complete this section". She did not, however, complete the entry which sought the "formal title of position" held by her in the party.

59 Barbara Hazleton who was Ms Hanson's personal secretary in her electorate worked in the same office as Ms MacLeod. She gave evidence that Ms MacLeod opened the mail and entered it on the computer, answered the telephone and banked the donations that came in for Ms Hanson.

60 Ms Hazleton saw the application for registration before it left the office and noticed that it was being made by Ms MacLeod. Her evidence on this was:

"... I thought it was funny because it had - well, 'Secretary Cheyenne MacLeod' and I just - I had just had a bit of a laugh because I thought, 'Oh' - to me it was obvious it would have to be made by a person who was a secretary of the party, but Cheyenne was only a secretary in the office or, you know, a clerk in the office, but I just gathered that they had just made a mistake and thought, 'Oh, well, just any secretary can make this application'."

61 The plaintiff has certainly raised sufficient evidence particularly that given by Barbara Hazleton to suggest that Ms MacLeod was not the secretary of the party to require an answer by the second defendant particularly when its secretary had been shown as being David Ettridge in March 1997 and there was no evidence of his removal from that position. It is clearly within the knowledge of the second defendant whether or not Ms MacLeod is the secretary of Pauline Hanson's One Nation. It would have been a simple matter for the second defendant to call her to give evidence, if it were the case that she held that position. The only evidence led was an unsigned document purporting to be minutes of a meeting of the management committee of Pauline Hanson's One Nation conducted by a telephone conversation on 13 October 1997 between Ms Hanson and Mr Ettridge where it is said that the first matter raised for discussion and decision was:

"The need to appoint a Queensland resident as secretary for the Electoral Commission of Queensland registration. It was decided Cheyenne MacLeod would be asked to be secretary for the time being. Cheyenne accepted this position and will act as secretary in an honorary capacity until further notice."

Without sworn evidence by Ms Hanson, Mr Ettridge or Ms MacLeod, I am unable to give this document any weight. Accordingly I would be inclined to find that Ms MacLeod was not the secretary of the party.

62 What does this mean in terms of its registration? There is nothing which would put the Commissioner on enquiry as to the identity of the secretary or to require him to investigate whether or not Ms MacLeod was the secretary of the party. He did not regard it as a matter of great importance. The key contact in a political party is the registered officer. The second defendant's failure to comply with this provision does not render the commissioner's decision to register invalid. As McHugh JA held in *Woods v Bate*:[\[60\]](#)

"In recent times the courts have shown great reluctance to invalidate an act done pursuant to a statutory provision because of the failure to comply with an antecedent condition: see *Simpson v Attorney-General* [\[1955\] NZLR 271](#); *Clayton v Heffron*; *Samuel Montagu & Co Ltd v Swiss Air Transport Co Ltd* [\[1966\] 2 QB 306](#); *Ex parte Tasker*; *Re Hannan* [\[1971\] 1 NSWLR 804](#); *Attorney-General (NSW)*; *Ex rel Franklins Stores Pty Ltd v Lizelle Pty Ltd* [\[1977\] 2 NSWLR 955](#) reversed on another ground *sub nom Permewan Wright Consolidated Pty Ltd v Attorney-General (NSW) (Ex rel Franklins Stores Pty Ltd)* [\(1977\) 52 ALJR 218](#); [17 ALR 63](#); *Tasker v Fullwood* [\[1978\] 1 NSWLR 20](#); *Hatton v Beaumont* [\(1978\) 52 ALJR 589](#); [20 ALR 314](#). Speaking generally, I think that, at the present time, the proper approach is to regard a statutory requirement, expressed in positive language, as directory unless the purpose of the provision can only be achieved by invalidating the result of any departure from it, irrespective of the circumstances or resulting injustice: cf *Hatton v Beaumont* [\[1977\] 2 NSWLR 211](#) at 226 per Mahoney JA."

63 Similarly in *Project Blue Sky Inc v Australian Broadcasting Authority*[\[61\]](#) McHugh, Gummow, Kirby and Hayne JJ considered whether or not a breach of a statutory condition rendered the exercise of a power invalid. Their Honours said:

"An act done in breach of a condition regulating the exercise of a statutory power is not necessarily invalid and of no effect. Whether it is depends upon whether there can be discerned a legislative purpose to invalidate any act that fails to comply with the condition. The existence of the purpose is ascertained by reference to the language of statute, its subject matter and objects, and the consequences for the parties of holding void every act done in breach of the condition. Unfortunately, a finding of purpose or no purpose in this context often reflects a contestable judgment. The cases show various factors that have proved decisive in various contexts, but they do no more than provide guidance in analogous circumstances. There is no decisive rule that can be applied ..."[62]

In this case there are several reasons why the failure to provide the correct name of the secretary of party would not invalidate the subsequent registration of the party. Firstly it appears from the discussion of this matter in the EARC Report that it was not considered by EARC to be a matter of great importance but is merely a technical or logistical requirement. Secondly arguments that the technical requirements of electoral laws are mandatory as opposed to directory have generally failed.[63]

64 Further, a consideration of [ss.74](#) and [75](#) of the [Electoral Act 1992](#)[64] supports the submission that the requirement of [s.70\(3\)](#) is directory. [Section 74](#) permits an application to be made to the commissioner for the amendment of the registration or the replacement of documents in the register of political parties in relation to a registered political party. [Section 75](#) deals with cancellation of registration of a political party. The commissioner has the discretion to cancel the registration of a political party pursuant to [s.75\(2\)](#) only on certain grounds. These grounds include the question whether the party has at least 500 members who are electors or whether the registration was obtained by fraud or misrepresentation. The requirement to have 500 members who are electors and not to obtain registration by fraud or misrepresentation, are on the other hand, mandatory matters. Subject to the exercise of the court's discretion, failure to comply with these requirements would be likely to render the commissioner's decision to register invalid. The commissioner is not given a discretion to cancel the registration of a political party because the application was not made by the secretary of the party.

65 It follows that the validity of the registration of the party is not affected by the failure to state the correct name of the secretary of the party unless that amounts to fraud or misrepresentation.

66 In order to amount to fraud or misrepresentation one would have to see that Pauline Hanson's One Nation party or its officers had deliberately set out to deceive the commissioner. Given that there is no reason why it should and no reason put forward why the naming of Ms MacLeod as the secretary of the party is a significant matter, I am inclined to the view that it was just a convenience and not done to defraud or deceive the commissioner.[65] This is supported by the evidence of Ms Hazleton to which I have referred.

Did the entity known as "Pauline Hanson's One Nation" have 500 members eligible to be electors in the State of Queensland when it applied for registration?

67 At the time it applied for registration, Pauline Hanson's One Nation did not have a member who was a member of the Legislative Assembly. Accordingly it was not a Queensland parliamentary party[66] and it was therefore required to set out the names and addresses of 500 members of the party who were electors.[67] This requirement followed a recommendation of the EARC Report made after EARC considered comparable legislation.

"Commonwealth legislation requires that members be 'entitled to enrolment' (s.123(3)(b) of the CE Act[68]). Section 66A of the New South Wales PE & E Act[69] requires members to be enrolled voters. The New South Wales requirement is preferable as it would simplify the process of verifying

membership through checking the electoral roll.

[EARC] is more impressed with the New South Wales definition. It is important that political parties seeking registration in Queensland should have demonstrable support among Queensland electors prior to registration."[\[70\]](#)

EARC again noted that all electoral administrations in Australia with registration requirements asked for evidence, in the case of a non-parliamentary party, that the party's membership exceeded a prescribed minimum number.[\[71\]](#)

68 Upon proclamation of the [Electoral Act](#) in June 1992, Mr O'Shea introduced a system for checking the requirements for the registration of political parties. In particular, although he noted that the [Electoral Act](#) did not require the commissioner to conduct a survey of people listed on the list of members submitted with the application by a non-parliamentary party for registration, he introduced a procedure whereby once it had been established that at least 500 people listed on the list of members were eligible electors, a letter was sent to at least 250 of those people, chosen at random, asking them to confirm whether they were a member of the political party seeking registration. Of course, such a survey could only record the state of their belief.

69 On 6 November 1997, Donald Schultz, a senior elections officer in the Operations Division of the commission, whose duties included responsibility for the processing of applications for the registration of political parties in Queensland, caused a letter to be sent to 250 people chosen at random from the 530 names on the list provided with the application to register Pauline Hanson's One Nation who it had been determined were electors in the State of Queensland. The letter provided as follows:

"Re: Pauline Hanson's One Nation Party

Pauline Hanson, proposed Registered Officer and Cheyenne MacLeod, Secretary of the Pauline Hanson's One Nation Party, have applied to this office to have the party registered as a political party under the provisions of the [Electoral Act 1992](#).

To be eligible for registration the party must have at least 500 members who are electors in Queensland and the Electoral Commission must be satisfied that the party meets this criteria. We do this by undertaking a membership check.

With the application for registration, the applicants submitted a list of the party's members, which included your name. Your name was selected at random from the membership list. To enable the Commission to assess the party's eligibility for registration as a political party, please complete the certification below and return this letter in the reply paid envelope **to reach the Commission by 03 December 1997**.

Please note that all matters relating to members [*sic*] names and addresses are treated as confidential by the Commission.

Yours sincerely

for Electoral Commissioner

I am a member of the Pauline Hanson's One Nation Party.

? YES ? NO

Please ? the appropriate box."

70 On 2 December 1997 Mr O'Shea received a memorandum from Mr Schultz informing him of the process that he had undertaken in checking whether there were 500 members on the list of members who were also electors and which recommended that the application by Pauline Hanson's One Nation be approved and the party details be included in the register of political parties, that the secretary of Pauline Hanson's One Nation be notified of the approval and that a notice be published in the gazette of the approval.

71 The list of members attached to the application for registration set out over 1,000 names and commission staff had confirmed that at least 530 names listed on the list of members were electors on the Queensland Electoral Roll. Commission staff had sent 250 letters to persons on the list of members which yielded the following results. Letters were received from 217 people who said that they were members of Pauline Hanson's One Nation. Three letters were received from people who said they were not, four were incomplete, two were returned unclaimed and there was no response to 24 of the letters.

72 Christopher Bramwell gave evidence that he and his wife, Carmel Gallagher, were two of the people who did not respond. His evidence was that he believed they had joined Pauline Hanson's One Nation in April 1997. However in June 1997 he was told by Ms Hanson that there was no political party membership but only membership of the support movement. Mr Bramwell gave evidence that neither he nor his wife replied to the letter from the commissioner which asked them to tick a "yes" or "no" box to the statement, "I am a member of Pauline Hanson's One Nation Party" as they "knew full well at that time from previous conversations with Pauline Hanson and David Oldfield that [they] were in fact not members of the party and that the only members of the party were Pauline Hanson, David Oldfield and David Ettridge". They threw the letter in the bin and did not contact the commissioner to alert him to their concerns.

73 Mr Edgeman, the director, funding and disclosure, of the Australian Electoral Commission, who was called as a witness by the plaintiff, has day-to-day responsibility for the registration of political parties under the *Commonwealth Electoral Act*. His evidence was that the Australian Electoral Commission telephones a sample of the persons said to be members of a political party. A telephone contact is made to avoid instances where there are "significant non-responses to a mail survey". Prior to 1997, the Commonwealth Electoral Commission's practice was to conduct mail surveys of a sample of 200-250 out of the 500 members. The practice changed because the response rates were sometimes very low and because there was a concern that some people might deny their membership, not because they were not members, but because they were concerned that a government department was contacting them querying them about their membership of a political party.

74 The Australian Electoral Commission regarded a mailout response rate of 75-80 per cent as a good response rate and Mr Edgeman gave evidence that the response received in this case, that is that there were 224 responses received to a mailout of 250 with 217 confirming that they were members of the party, was an excellent response.

75 Dr Wolff, an experienced statistician called on behalf of the first defendant, concluded that the conclusions drawn by the commissioner were independently verifiable. He concluded in his report:

"In terms of statistical procedure, the Electoral Commissioner carried out a standard inference methodology thoroughly and accurately. Therefore, the statistical methods he applied to help form a decision were sound and justifiable.

My discussion in this report can be considered to be a secondary analysis to verify at a more detailed level the calculations of the Electoral Commissioner. Indeed, my calculations support those of the Electoral Commissioner.

Conclusion

In my opinion, there is strong evidence that there were at least 500 members of Pauline Hanson's One Nation party who were also eligible voters, based on the information in the original sample and in the raw data used by the Electoral Commissioner."

76 In light of the fact that there were in excess of 1,000 names on the list of members of whom at least 530 could be identified as electors in Queensland and that 217 of the 224 responses of the 250 people surveyed stated that the person was a member of Pauline Hanson's One Nation, Mr O'Shea was satisfied that there were at least 500 members of the political party seeking registration. There was no reason for him to be concerned that persons on the list were not members.

77 The question remains as to whether those persons who believed themselves to be members of Pauline Hanson's One Nation were members of a political party of that name. The evidence on this is inconsistent and so I have had to weigh all of the evidence and assess the competing inferences in reaching my final conclusion.

78 It was opened by Mr English of counsel on behalf of the plaintiff that the membership application forms of the political party did not conform with the constitutional requirements. Mr English said,

"When one looks at the membership application form which people were asked to complete, it does not accord with the constitution for Pauline Hanson's One Nation being what the plaintiff says is the Queensland party. It says in that document at 7(3) that, 'The application form for membership shall be made in writing, signed by the applicant and the applicant's proposer and seconder shall be in such form as the Management Committee from time to time prescribes.' The membership application form which was distributed at the relevant times did not comply with that provision. Bearing in mind other than the first page of this document, the remainder is identical for what the plaintiff says is the Federal party. When one looks at the immediately preceding sub-clause, the application for membership is "shall be proposed by one member of the association and seconded by another member." No such documents have been disclosed in that regard."

But the case pleaded by the plaintiff at that time was that people who thought they were becoming members of the political party which was registered under the Queensland [Electoral Act 1992](#) in fact became members of the political party registered under the [Commonwealth Electoral Act](#) or the Supporters' Movement. The statement of claim was then amended to allege that those people did not validly become members of the political party registered under the [Commonwealth Electoral Act](#) or the [Electoral Act 1992](#) because of a failure to comply with cl.7 of the constitution.

79 Evidence was given by Andrew Carne, who set up the computer databases for the national office of Pauline Hanson's One Nation and who was an original subscriber to Pauline Hanson's One Nation Ltd, that between July and September 1997, David Ettridge said he needed to produce a list of 500 members to register Pauline Hanson's One Nation in Queensland. Mr Carne asked him how they could use the database which included people who were not members of the political party. Mr Ettridge said that it did not matter as "they are only public servants. They just want to see a list of names, they wouldn't check it out". This response was given in cross-examination and it was not put to him that Mr Ettridge had not made any such statement. Mr Carne printed out a full list of Queensland names which was given to Mr Ettridge who apparently then lost it and asked Mr Carne to explain by telephone to the office administrator, Claire Wright, in Sydney how to extract the Queensland names from the database. There was difficulty in extracting them so the entire Australian membership database was printed out.

80 In June 1997, Edward Briggs joined Pauline Hanson's One Nation. Soon afterwards he had a

conversation with Mr Ettridge about the Branch starter kit and the structure of Pauline Hanson One Nation Members Inc. Mr Ettridge told him that the structure had been designed with a number of safeguards in order to stop "whiteants". He said that the party was run by the company, Pauline Hanson One Nation Ltd, "which consisted of himself, Pauline Hanson and David Oldfield ... and that these people were the only members of the party." He said that Pauline Hanson Support Movement Inc was "designed to house people who wanted to support Pauline Hanson". He reiterated in a later telephone conversation that the political party only had three members. I did not find Mr Briggs a particularly reliable witness although I accept his explanation for contradictions between his affidavit sworn on 13 July 1998 and his affidavit sworn on 8 September 1998 that the former was drawn up for him by a firm of solicitors in haste and signed, not sworn, by him and that only when he later took the opportunity to read it did he realise it contained errors.

81 If this were the only evidence of these matters it would not be persuasive but it is consistent with the evidence of a number of other witnesses. Mr Briggs held a key position as the Treasurer of the Pauline Hanson Electoral Campaign Committee from 29 November 1997 until 28 February 1998 which suggests that he was likely to be knowledgeable about the organisation and its structure. Mr Briggs said a list of names had been given to him by Mr Jim Stewart, the South Brisbane area co-ordinator for Pauline Hanson Support Movement Inc, who told him he had been sent them by Mr Ettridge to assist in an application to register a Queensland political party. There is objective evidence that this list, containing names of members from throughout Australia, was faxed from the national office of Pauline Hanson's One Nation on 21 July 1997. The list is consistent with, and therefore adds credence to, the evidence given as to this list both by Mr Carne and Mr Briggs. Mr Stewart asked Mr Briggs to extract the names and addresses of all Queensland members and to compile a list for the purpose of the electoral registration on 15 October 1997 of a Queensland party. It would appear that the list given to the commissioner^[72] does contain the names of Queensland members who are found in the list of Australian-wide members faxed from the Manly office on 21 July 1997.^[73] Mr Briggs said that Mr Stewart then added some names to the list including that of Mr Briggs and that this list is the same as that produced to the commissioner.

82 It is necessary therefore to consider in some detail the organisations under the One Nation umbrella.

What are the relevant organisations?

83 Although a number of "members" appear to have been confused^[74] about whether they joined the political party or the support movement and that confusion would appear to have been exacerbated by a number of misleading or incorrect statements made by various people apparently with knowledge and control in the organisation including Pauline Hanson, David Ettridge and David Oldfield all of whom appeared to have authority to speak on behalf of Pauline Hanson's One Nation, it appears likely that at least 500 people believed themselves to be members of Pauline Hanson's One Nation. Neither Ms Hanson, Mr Ettridge nor Mr Oldfield gave evidence in this matter in spite of evidence being led by the plaintiff of statements made by them about membership of the organisations, whether the political party or the support movement. Where there is no reason to disbelieve the evidence given by those witnesses, uncontradicted as it is by any oral evidence on the part of the second defendant, I would of course be inclined to accept the evidence of those witnesses that those statements were made to them. The second defendant says that the reason for not calling those witnesses was because certain matters were not open on the pleadings, in particular that the plaintiff did not allege that an application was made to register the Federal party. But whether the application was to register the Federal party or the State party, statements as to whether there were any members of the political party which the second defendant sought to register under the Queensland *Electoral Act 1992* are relevant and admissible. It is my view open on the case pleaded to find that there was an application to register Pauline Hanson's One Nation, an unincorporated association, which did not have 500 members.

84 Where relevant statements have been made by the plaintiff or his witnesses in their evidence and it is uncontradicted the consequence referred to above will follow. As the High Court observed of the well-known rule in *Jones v Dunkel*^[75] in its recent decision in *G v H*;^[76]

"... it is well settled that, in the course of the ordinary processes of legal reasoning, an inference may be drawn contrary to the interests of a party who, although having it within his or her power to provide or give evidence on some issue, declines to do so. Thus, for example, there may sometimes be an inference in civil cases that the evidence, if called, would not assist that party's case. ... In other cases, the failure to give evidence may result in more ready acceptance of the evidence for the other party or the more ready drawing of an inference that is open on that evidence."^[77]

I would therefore be inclined to draw an inference that the evidence which is within the power of the second defendant to call to rebut evidence given by the plaintiff or his witnesses, would not assist the second defendant. However I have only done so where the evidence given by the plaintiff or in his case appears to be relevant and apparently credible.

85 From the evidence before the court it appears that there are at least three relevant organisations. The first is an incorporated association known originally as the "Pauline Hanson Support Movement Inc" ("the support movement") which later changed its name to Pauline Hanson's One Nation Members Inc ("One Nation Members"). Membership cost as little as \$5.00 and entitled members to membership of a non-political organisation which supported the aims and objectives of Pauline Hanson. As at 13 January 1997, it had 560 members and 28 branches. By 3 February 1997 it had 659 members. It was incorporated on 10 March 1997 with the model rules prescribed by the *Associations Incorporation Regulation* 1982 (Qld). It grew from an unincorporated association known as the Pauline Hanson Support Movement which was initiated on the Gold Coast in late 1996. Its original office bearers were Bruce Whiteside as President, Lindon Litchfield as Treasurer and Iris Whiteside as secretary. Shortly after incorporation its office bearers became Ms Hanson as President, Vice Presidents, Paul Trewartha and David Ettridge and Treasurer, Lindon Litchfield. Subsequently Mr Trewartha and Mr Litchfield resigned from their positions.

86 Its objects^[78] were then said to be:

1. To provide fund raising and advocacy support to the political endeavours of Pauline Hanson.
2. To provide localised human resources to support any candidate endorsed by Pauline Hanson for any election.
3. To assist any endorsed candidate with local fund raising and advocacy.
4. To remain a non political support organisation.
5. To identify from time to time and recommend suitable local candidates for endorsement by Pauline Hanson.
6. To discuss and put forward any ideas and issues for action and attention by Pauline Hanson and her endorsed candidates.
7. To remain inert in regard to Media and Media Interviews on any matters that are of a political nature.
8. To provide a system whereby the moods and the concerns of the people of an electorate can be measured and passed on to Pauline Hanson.

9. To avoid offering support or endorsement and or public association and or attachment to any person in his or her pursuit of a political or public office at any Federal, State or Local Government level; other than a candidate endorsed by Pauline Hanson.

10. To take every care to avoid any association with any person whose past history or current activities that would cause adverse effect to the interests of Pauline Hanson's political endeavours.

11. To avoid direct speaking to or other forms of communications with all forms of Media on behalf of Pauline Hanson. (All questions or enquiries to be directed to Pauline Hanson or her appointed advisor).

12. To follow the correct channels and procedures for maintaining communications within the organisation."

87 In the constitution, the only class of members was said to be ordinary members whose number was to be unlimited. There was no limitation on the membership as to voting or eligibility for election to management committee positions.

88 On 24 May 1997, there was a meeting of the Pauline Hanson Support Movement National Management Committee where the minutes record the presence of Pauline Hanson, Paul Trewartha, Lindon Litchfield and David Oldfield as observer. The minutes show that Mr Trewartha was nominated and appointed as secretary^[79] and that it was resolved that the new name of the organisation was Pauline Hanson One Nation Supporters Inc. It was resolved after being moved by Mr Ettridge that there would be two levels of membership.

"(1) One Nation members have full voting rights.

(2) Pauline Hanson One Nation Supporters have all rights of membership other than voting rights."

Another motion, moved by Mr Ettridge and seconded by Ms Hanson, was carried:

"That we move quickly to establish branches in each electorate of Australia and provide branch kits to create infrastructure"

The branches referred to are branches of the support movement. Mr Trewartha's evidence was that while he was secretary of the support movement, i.e. until 25 August 1997 there was only one membership application form to join the support movement but that there had always been two levels of support movement membership. However it should be noted that in early June 1997, Mr Trewartha filled out a membership application form for Pauline Hanson's One Nation and paid \$50.00 by cheque. On the application form, he described himself as the "Vice President PHSM National". When cross-examined about the application he gave the following evidence:

"Mr Trewartha, you thought it relevant, did you, that in stating previous relevant experience you were - your association with the unincorporated entity - sorry, with the support movement should be mentioned?-- No, it was purely a case of this was a rhetorical type request. This was asked by me by Lindon Litchfield who was the national treasurer who had been instructed by David Ettridge to get everybody to fill these in and sign their undated registrations, of which I did, and I forwarded him a cheque for \$50 and I put in there that I was the national vice president of Pauline Hanson Support Movement, which I am.

I see?-- Or was.

Mr Trewartha, you didn't seriously think, did you, that you were making another application to join a

body which you were already a member when you filled this in?-- All I was doing was paying my affiliation fee.

You paid a fee to join the -----?-- I wouldn't even be sure of that. We - I started this whole organisation, so why would I be paying a fee to myself? Maybe I would pay a fee of \$5. I can't remember. I probably did if we checked the records, but this was to - you have to pay \$40 in what was requested from the national management committee of Pauline Hanson Support Movement in the form of David Ettridge who requested these things be done of every member, so I automatically complied when requested by David - by Lindon Litchfield to do so."

89 It was noted in the minutes of the meeting of 24 May 1997 that the resolutions to change the name and to change the classes and rights of members would require a general meeting's confirmation for acceptance by the chief executive of Consumer Affairs. These resolutions could not be effective without a resolution passed by a general meeting of the organisation in accordance with its own constitution or Part 4, Division 3 and Part 5^[80] of the [Associations Incorporation Act 1981](#).

90 In any event, as the second defendant said in its submissions, the allegation as to two levels of membership of the support movement is in the end irrelevant in determining whether or not Pauline Hanson's One Nation had the requisite number of members.

91 On the same day, 24 May 1997, Ms Hanson, the political movement One Nation and Pauline Hanson's Support Movement Incorporated were parties to a licensing agreement, whereby Ms Hanson and One Nation agreed to allow Pauline Hanson's Support Movement Inc to use the words 'One Nation' in its new name which was then proposed to be Pauline Hanson's One Nation Supporters. It appears that this name was then used. A notice dated 11 September 1997 with regard to the Annual General Meeting of the association, for example, was on letterhead describing it as the Pauline Hanson Support Movement Inc to be known as Pauline Hanson One Nation Supporters.

92 A newsletter published in June 1997 described the organisation as Pauline Hanson Support Movement Inc to be known as Pauline Hanson One Nation Supporters. In the newsletter, membership was described as follows:

"GOLD COAST BRANCH

At the last committee meeting on the Gold Coast, we decided we should emphasize our identity as the Pauline Hanson Supporters. We also agreed to act as Coordinating Committee for the South East Queensland region of Pauline Hanson's ONE NATION. The Head Office of Pauline Hanson ONE NATION is situated in Sydney and David Ettridge has been appointed National Director, and our President, Paul Trewartha, has been appointed Vice President of the National Pauline Hanson Support Movement to be known as Pauline Hanson ONE NATION Supporters.

Those who have paid the \$5 registration to the Pauline Hanson Support Movement will be reclassified as members. However if you wish to become a member of Pauline Hanson's ONE NATION, please write to [PO Box 2000, Manly NSW 2095](#) for an Application Form or phone **1902 920001** for the cost of a local call.

We wish to remind Members that the revised annual fee is \$10.00 per couple, \$5.00 per single and is now due for the 1997 - 1998 year (see Membership Form attached)."

A membership form for Pauline Hanson Support Movement Inc - Gold Coast Branch was found on the second page of the newsletter. The newsletter clearly shows that there was a form for applying for membership of Pauline Hanson's One Nation but not necessarily that the form was adequate for its purpose or that there were any members.

93 On 1 July 1997, the Support Movement notified the relevant government department of a change of constitution to conform with the new model rules but did not notify of any change of name and any change in the classes or rights of members.

94 On 30 September 1997, Ms Hanson as President of the "Pauline Hanson Support Movement Incorporated" sent a letter to "all One Nation Branches" saying:

"Before the launch of One Nation, Pauline Hanson Support Movement Branches were forming all over Australia. The cost of joining the Support Movement was \$5.00. That \$5.00 membership fee, since the launch of One Nation on 11 April 1997, does not carry with it any voting rights. Only when a person becomes a member of One Nation do they have any voting rights.

This has created confusion in many branches and with members.

It is also my concern that One Nation will not make an impact at the next election unless we have sufficient financial funding.

This is to inform you that, upon receiving this letter; the \$5.00 membership fee must cease. Members can only be signed up as members of One Nation at -

\$50.00 per couple, \$40.00 single; and

\$25.00 per couple, \$20.00 single (pensioners and self-funded retirees)

From these membership fees, the branches are to retain 20%. The remaining 80% is to be forwarded to One Nation in Sydney. All membership cards will be issued and receipted by the National office. Membership names for your area can be accessed by postcode as required.

Please ensure that everyone who has paid \$5.00 in the last year has this amount deducted in full from their One Nation membership if they choose to upgrade.

I hope this meets with your approval. If you have any concerns, please get in touch with One Nation office in Sydney on (02) 9976 0283. This matter will be discussed in full at the Annual General Meeting being held on 4 October 1997."

95 At the next meeting of the National Management Committee of Pauline Hanson Support Movement Inc held on 4 October 1997, Mr Trewartha and Mr Litchfield moved a motion which was carried revoking the motions passed on the 24 May meeting changing the name and creating two levels of membership. The minutes record:

"President Pauline advised the meeting she had requested David Ettridge to advise Branches as far back as six weeks prior to raise the question of discontinuing \$5.00 membership fees as the amount was out of balance with the political party fees and was causing much confusion and that she was seeking a resolution to the problem.

Discussion ensued in the vane [*sic*] of the need to perhaps wind up PHSM INC. advise [*sic*] was tabled that this would require the calling of a general meeting with a minimum of 14 days notice.

David Ettridge advised that he had already mailed out a letter to Branches setting out the President's concerns.

Ron Paddison spoke of the need to proceed with the AGM set down for four o'clock to day as the elected office bearers would be the people responsible for winding up if that decision was taken.

The meeting agreed that President Pauline would make a statement in lieu of putting the motion on the AGM agenda for a name change."

In addition, the question of fielding candidates in Queensland was discussed.

96 On 15 October 1997 Ms Hanson lodged the application to register Pauline Hanson's One Nation under the [Electoral Act 1992](#).

97 On 28 November 1997 Ms Hanson sent a notice to all branches of the support movement referring to a restructure of the support movement to bring it under the umbrella of One Nation. The notice said inter alia:

"The changes proposed will allow for all membership to be contained in the PHSM Inc which will be renamed as Pauline Hanson's One Nation (Membership) Inc. Other plans such as the appointment of Liaison [*sic*] Officers will improve and localise administration and communications. Also we will formalise agreements between the several legal entities which will strengthen and provide clear understandings and responsibilities of each. This will result in removing any confusion that exists so you will all have a clear understanding of the structures that have been created to protect us from our opponents."

98 A notice of special general meeting for 14 December 1997 was tendered which listed the following items of business:

"1. Consider Name change from PAULINE HANSON SUPPORT MOVEMENT Inc. to PAULINE HANSON'S ONE NATION Members Inc.

2. Consider variation of membership fees to align with Pauline Hanson's One Nation Political Party membership fees including concessional fees.

3. Confirm criteria for Branch Office Bearers Eligibility.

4. Confirm National Management Committee's decision to appoint regional liaison officers in lieu of establishing State Divisions.

5. Authorise the National Management Committee to negotiate an agreement with PAULINE HANSON'S ONE NATION (Political Party) and PAULINE HANSON'S ONE NATION Limited (Company)"

At that special general meeting a resolution:

"that application be made to the Consumer Affairs Chief Executive Officer to change the name of the association from the current name to "PAULINE HANSON'S ONE NATION Members INC"

was carried unanimously. Another resolution was carried that, "Branch Office Bearers must be Financial Members of Pauline Hanson's One Nation Political Party".

99 This was not only after the application to register Pauline Hanson's One Nation was made;[\[81\]](#) but also after it was registered[\[82\]](#) as a political party in Queensland. It does not assist in showing that the political party had members but it does assist in showing that written and oral statements made prior to 14 December 1997 that office bearers of the support movement (later One Nation Members) had to be members of the political party, Pauline Hanson's One Nation, were made and that those statements were incorrect.

100 The support movement's name was changed to Pauline Hanson's One Nation Members Inc on

3 February 1998. It is a registrable Australian body[83] under the *Corporations Law* s.360(1), which enabled the use of the name of the association incorporated under the *Associations Incorporation Act 1981* to be used nationally. The change of name was registered with the Australian Securities Commission on 24 February 1998. It is hard to understand why the support movement's name was changed to Pauline Hanson's One Nation Members Inc unless that organisation contained the members of Pauline Hanson's One Nation.

101 This association had a constitution and detailed by-laws setting out the structure of the association, membership, branches and rules. I shall refer to these in greater detail later.

102 The second relevant organisation is a political party called "Pauline Hanson's One Nation" ("the political party"). This political party was originally a body styled a political movement known as One Nation which was launched in Ipswich on 11 April 1997. As I have already noted, this organisation was still referred to as One Nation by David Ettridge in a legal document to which it was a party[84] on 24 May 1997.

103 The annual membership fees for the political party were said to be \$40.00 for a single membership and \$50.00 for a couple, and \$20.00 for a single pensioner or self-funded retiree membership and \$25.00 for a couple. However, no member with authority to speak on behalf of the party came forward to give evidence that the payment of such a fee resulted in actual membership of the political party, when it was clearly within their power to do so. The application form for membership of Pauline Hanson's One Nation with which the fee was paid asked for the person's name and address but not for a nominator and seconder as required under its rules.[85]

104 On 13 April 1997, Mr Carne applied to join Pauline Hanson's One Nation and was issued with a membership card dated 14 April 1997. In May 1997, he was appointed by Mr Ettridge, styling himself National Director of Pauline Hanson's One Nation, as honorary "Branch Convenor in Victoria for the Pauline Hanson Support Movement". From about April until June 1997, Mr Carne set up a four station computer network at the headquarters of Pauline Hanson's One Nation at Level One, 15 The Corso, Manly in New South Wales. He also created a membership data base which included the sequence number, membership number, full name and address, status, telephone number, post code, State, membership fees paid and anniversary date. He was responsible for the maintenance of the data base until February 1998.

105 In June 1997, Mr Ettridge said to Mr Carne words to the effect:

"Let me explain to you the true nature of the structure of Pauline Hanson's One Nation. All the `members' who pay a fee are not really members of the political entity. The only `true members' who have voting rights or any position in the `political entity' are the `elected candidates' only. This means we have full control of the organisation. If an elected candidate does not go along with what we say or direct them to do, we shall simply disendorse them."

Mr Ettridge drew him a diagram giving effect to this view. This was repeated by Mr Oldfield on the following day. Mr Ettridge and Mr Oldfield scoffed at the idea that members of the Chinese community would be able to join Pauline Hanson's One Nation in sufficient numbers to have her removed because they had total control and no-one would be able to remove them or Ms Hanson.

106 It is certainly clear that apart from any question of the membership of Pauline Hanson's One Nation, its management committee exercised strict control over the organisation. Clause 16 of the [Constitution](#) of Pauline Hanson's One Nation provides:

"Membership of Management Committee

16(1) The Management Committee of the association shall consist of a President, Vice President and Treasurer, all of whom shall be members of the association, and such number of other members at any time elected by a majority of the Management Committee.

(2) At the general meeting of the association, all members of the Management Committee for the time being shall retire from office, but shall be eligible upon nomination for re-election.

(3) The election of officers and other members of the Management Committee shall take place in the following manner:

(a) any 2 members of the Management Committee shall be at liberty to nominate any other member to serve as an officer or other member of the Management Committee;

(b) the nomination, which shall be in writing and signed by the member and the member's proposer and seconder, shall be lodged with the secretary at least 14 days before the annual general meeting at which the election is to take place;

(c) a list of the candidates' names in alphabetical order, with the proposers' and seconders' names, shall be posted in a conspicuous place in the office or usual place of meeting of the association for at least 7 days immediately preceding the annual general meeting;

(d) balloting lists shall be prepared (if necessary) containing the names of the candidates in alphabetical order, and each member present at the annual general meeting shall be entitled to vote for any number of such candidates not exceeding the number of vacancies;

(e) should, at the commencement of such meeting, there be an insufficient number of candidates nominated, nominations may be taken from the floor of the meeting."

In this way, the only people with control over the political party were the members of the management committee, Ms Hanson, Mr Oldfield and Mr Ettridge. It is they alone who had the power to admit members to the political party.[\[86\]](#)

107 Mr Ettridge often said to Mr Carne:

"We are not a political party; a party is where you wear funny hats and have balloons and streamers, and that is what makes us different."

108 Mr Carne gave evidence that he printed off a copy of a letter from the database apparently written by Mr Ettridge to a Daryll Kelly which stated:

"One Nation is structured as follows:

1. We have been registered by the Australian Electoral Commission as a political party. Pauline is the President and I am the Secretary. The only members of this structure are Pauline and all elected candidates.

2. We also have a Company structure called Pauline Hanson's One Nation Limited which administers the activities of the political party through the National office. I am the National Director. Neither Pauline or David Oldfield are paid by this Company.

3. We also have the Support Movement which is being renamed 'Pauline Hanson's One Nation (Membership) Incorporated'. This Company contains all the branches, membership and membership activities. Branches select candidates, conduct campaigning, contribute to policy development, conduct fundraising and election support for the candidate.

The above structure is confidential and is not for distribution. It is constructed in this manner to provide protection for the political party and make each module a self contained entity, which if attacked by unfriendlies will not contaminate the other modules.

Please be discreet in conveying this information to anyone who does not need it and do not photocopy it for distribution.

Thanks for your continuing support."[\[87\]](#)

There is no evidence other than its appearance that the letter was written by Mr Ettridge but on the other hand he did not take the opportunity to give evidence to deny it. It is consistent, at least in part, with the letter under the hand of Pauline Hanson sent to "all One Nation branches" by Mr Ettridge on 30 September 1997. Mr Kelly was not certain that this was the letter he received but he did receive a similar letter about the structure of the party from Mr Ettridge in about November 1997. At that time Mr Kelly was "president of the Ipswich branch of the One Nation party." In the circumstances, I accept that the letter was written by Mr Ettridge.

109 Meanwhile in Queensland, Alfred Dennis, a retired member of State Parliament, organised a public meeting in the Hervey Bay region on 3 April 1997 where Ms Hanson addressed 1000 people. At Ms Hanson's request, Mr Dennis became a regional organizer and formed branches at Hervey Bay, Burrum Heads and Maryborough. At the first meeting of the Hervey Bay branch held on 8 May 1997, Ms Hanson addressed the meeting by speaker phone and congratulated those present for joining the first branch of the One Nation party. Prior to that meeting, Mr Ettridge sent Mr Dennis a bundle of membership application forms for Pauline Hanson's One Nation. Shortly after the meeting, Mr Ettridge telephoned Mr Dennis and said that Ms Hanson had misinformed the meeting and that the membership that people had subscribed to was that of the Pauline Hanson Support Movement Inc and not the political party. His evidence was, "Mr Ettridge told me that the executive never intended to form any branches of the political party as the party was not going to be a democratic organization and only had three members, Pauline Hanson, David Oldfield and David Ettridge ..." Mr Dennis wrote a letter of complaint about this matter to Ms Hanson on 27 June 1997. I accept Mr Dennis's uncontradicted evidence of the conversation he had with Mr Ettridge.

110 In New South Wales, Peter Archer, who gave evidence in the plaintiff's case, organised a well-attended public meeting in Newcastle on 30 May 1997 to raise support for Ms Hanson. All of Mr Archer's affidavit was objected to by the second defendant on the grounds of relevance but, with the exception of all of paragraph 11 (except the last sentence) which was ruled inadmissible at the trial, I regard the rest as relevant. I should say, however, that I attached no weight to paragraph 7 or the annexure PA3 as the information in PA3 did not appear to be reliable. It said, for example, that membership of "Pauline Hanson's One Nation Support Movement" did not carry voting rights at branch meetings and did not entitle recipients to be nominated as office bearers. For reasons I have set out, this does not appear to have been true. It was submitted by the second defendant that Mr Ettridge's action in returning the document in the form in which it was returned was not the conduct of someone who considers that there was no party, or that the party has only one or only three members. However if this was the case, he could easily have given evidence to that effect.

111 On 25 June 1997, Mr Ettridge, styling himself the National Director of Pauline Hanson's One Nation, confirmed by letter the appointment of Mr Archer as honorary regional liaison officer in the Newcastle-Hunter region of Pauline Hanson's One Nation. Part of his role was said to be to assist new branches to start up. He was then sent a branch starter kit for Pauline Hanson's One Nation Supporters Inc. It should be noted that this was never the name of the organisation but was the name proposed to be used after the licensing agreement was signed in May 1997. The branch starter kit contains instructions entitled "[t]he first steps to starting a new branch". One of the objectives was said to be to

recruit members both of the Support Movement and Pauline Hanson's One Nation.

112 Paragraph 10 of the Branch Starter Kit^[88] used prior to the application for registration of Pauline Hanson's One Nation tendered in evidence and relied upon by the second defendant in its submissions, explained two forms of membership which were membership for One Nation or membership for the Pauline Hanson Support Movement as follows:

"The TWO forms of membership are:

ONE NATION

This membership is of the political party and entitles members to full voting rights at branch meetings. Although One Nation membership is processed and managed by the National Office the income will be devoted to the conduct of the National Office and the Federal election campaign. Some of this income will be redirected at election time to support local candidates.

The One Nation database and membership renewals will be managed by the National Office.

PAULINE HANSON SUPPORT MOVEMENT @ \$5.00

This level of membership allows entry to branch meetings and all activities of the branch but will not allow voting rights. This membership database and renewals are managed at branch level."

113 There is no basis in the constitution of either organisation to believe this was the case. The constitution of Pauline Hanson's One Nation says nothing about the support movement. There is nothing in its constitution or rules to suggest it has a branch structure. It is reasonably clear when paragraph 10 is read as a whole that "branch meetings" is intended to refer to branch meetings of the support movement. I was not referred to any section of the constitution or by-laws of the support movement which carried on such restriction on voting rights nor could I find any. There is nothing to that effect in the model rules. Attached to the model rules put in evidence there was a document entitled "By-Laws - Pauline Hanson Support Movement to be interpreted in conjunction with rules".

By-Law 1 says that:

"The Association comprises members who are registered with the association by payment of a membership fee. The Association is incorporated in Queensland and registered with the Australian Securities Commission."

There are no classes of members but according to clause 4 of the constitution, there are only ordinary members. Clauses 3-6 deal with the formation of branches of the support movement. They provide:

"3. The Association will establish Branches throughout Australia as required to service and administer the members of the Association in a particular locality and the members in that locality will be assigned to that Branch.

4. All Branches will operate according to the Rules of the Association and the By-Laws (Branch) as in Chapter 3 below.

5. The Association will, from time to time, devolve certain of its powers and functions to the Branch which will be specified in the By-Laws (Branch).

6. A Management Committee, elected from among the members in the Branch in accordance with the By-Laws (Branch), will administer and manage the Branch, its funds, assets and property subject to those rules and the requirements of the National Management committee."

114 Chapter 2 of the by-laws deals with branches. Clause 8 of [\[89\]](#) Chapter 2 deals with membership of the management committee of branches and provides:

"8. The Management Committee shall consist of a President, not more than three Vice-Presidents, a Secretary, a Treasurer, comprising the officers of the Branch, and such number of the Branch Management Committee members as a general meeting of the Branch may appoint or elect. The President of the Association will be ex officio members [*sic*] of the Management Committee and the immediate past President will be an ex officio member for the period of a year after presiding. All elected members of the Management Committee must be members of the Branch. All ex officio members will be full members of the Management Committee and have full voting rights."

115 There is no provision that membership of Pauline Hanson's One Nation entitles members to full voting rights at Branch meetings or that membership of Pauline Hanson Support Movement Inc allows entry to branch meetings and all activities of the Branch but will not allow voting rights. The only change to that occurred on 14 December 1997 (after Pauline Hanson's One Nation was registered) when, as I have previously found, Pauline Hanson's Support Movement Inc in general meeting resolved that "Branch office bearers must be Financial Members of Pauline Hanson's One Nation Political Party." The statement contained in Ms Hanson's letter of 30 September 1997 that the \$5.00 membership fee does not carry with it any voting rights and that only when a person becomes a member of One Nation do they have any voting rights, does not set out the true position.

116 There were different application forms to join Pauline Hanson's One Nation [\[90\]](#) and Pauline Hanson's One Nation Supporters. [\[91\]](#) The significant difference in the membership application forms was the membership fees. The membership fee to join Pauline Hanson's One Nation Supporters was \$5.00 per person, while the annual membership fee for Pauline Hanson's One Nation was said to be:

"· Single \$40.00 Couple \$50.00

· Pensioner and Self-funded Retiree - Single \$20.00 Couple \$25 per annum"

117 In late June 1997, Ms Hanson told Christopher Bramwell and his wife, Carmel Gallagher, who believed they had joined Pauline Hanson's One Nation on the evening of its launch without filling in application forms, that she would always be leader of the party and the members would only be part of a supporters' group so they would not be able to vote her out. She said that she, Mr Oldfield and Mr Ettridge were in control of the party. Mr Bramwell was not cross-examined on this evidence although objection was taken as to its relevance. This evidence, however, is relevant to the case pleaded by the plaintiff. It shows the belief of Ms Hanson who was the President of Pauline Hanson's One Nation as to membership of that political party. It rebuts the inference the second defendant asked the Court to draw that the auction of a membership card of Pauline Hanson's One Nation at its launch in April 1997 is inconsistent with the notion that there were only three members of the political party.

118 On 19 July 1997, Mr Ettridge told David Graham, who was employed as Media Liaison Officer in Victoria and worked full time for what he believed was the party organisation and who believed himself to be a member of Pauline Hanson's One Nation as he had completed a membership application form and paid \$40.00 in membership fees, that there was no party, there was only the support movement and if people who were ringing wanting a copy of the constitution of the party they thought they had joined, then "these people will never be members of the party and if anyone doesn't like that they can get stuffed". On the same date Mr Oldfield told Mr Graham that they had been in a hurry to set up and they didn't have a proper constitution but they would be fixing that up soon. In August 1997 Mr Graham said he was told by Mr Carne that there was a political party, but members did not belong to it and never would because they would try to overthrow Ms Hanson and run their agenda. He said they were only members of the supporters' group. Mr Lyons QC, for the second

defendant suggested to Mr Graham that he wasn't told there was no party and that people would not be members of the party. He disagreed with that suggestion. I find that these statements attributed to Mr Oldfield, Mr Ettridge and Mr Carne by Mr Graham were made and represented what they believed to be the true situation with regard to membership. The rest of Mr Graham's evidence is not relevant to the matters in issue.

119 Mr Archer had a conversation with Mr Ettridge on 7 July 1997 about the structure of Pauline Hanson's One Nation. Mr Ettridge told Mr Archer that Pauline Hanson's One Nation consisted only of himself, Mr Oldfield and Ms Hanson, that there were only members and branches of the Pauline Hanson Supporters Movement and not of the political party and that there would never be branches of the political party. On 9 July 1997, Mr Ettridge told Mr Archer that even persons who paid the membership fees of \$40.00 single or \$50.00 a couple, did not become members of the political party but were members of the support movement only. When Mr Archer opined that the party structure was not democratic, Mr Ettridge replied that he did not believe in democracy. I accept for the reasons given previously that these statements were made by Mr Ettridge.

120 Before he resigned his membership in August 1997, Mr Trewartha was told by Mr Ettridge that:

"we could not become members of One Nation. The only members of One Nation, the political party, would be Pauline, David Ettridge and Mr X, which became David Oldfield, and all members of the State and Federal - elected to State and Federal parliament ..."

In his letter of resignation he stated that he was not a member of Pauline Hanson's One Nation, in spite of the fact that he had wanted to be.

121 Brian McDermott, who resides in Queensland, believed he became a member of both the Pauline Hanson Support Movement Inc and Pauline Hanson's One Nation in May 1997. He attended a meeting in October 1997 where Mr Oldfield in answer to questions about the structure of Pauline Hanson's One Nation said that everyone who was a member was only a member of Pauline Hanson Supporters Movement Inc and that the political party had one member only and that was Pauline Hanson. While I accept that Mr Oldfield made those statements, and indeed this evidence was not challenged on cross-examination, I do not accept that the political party only had one member. I agree with the submission made by Mr Lyons QC that the rest of the material in Mr McDermott's affidavit is irrelevant.

122 What do the minutes of meetings of Pauline Hanson's One Nation reveal about its membership? Minutes of meetings of Pauline Hanson's One Nation were tendered by the second defendant. There was no explanation as to why only these minutes and no others were tendered. These minutes record as follows:

· A meeting on 2 March 1997. No attendance is noted. The minutes, which were signed by Mr Ettridge as Chairman, say:

"Consistent with the discussions and agreement made at the meeting held on February 23rd, 1997 at Sydney Airport, David Oldfield has prepared a constitution that describes the management committee of the newly formed Pauline Hanson's One Nation political party.

Pauline Hanson as the founding member of the party has appointed David Ettridge and David Oldfield to be committee members as described in the constitution of the party.

This constitution is to be lodged with the Australian Electoral Commission as a required part of the application to register the party.

David Ettridge is to attend to this registration as soon as possible."

There would not appear to be any other members of Pauline Hanson's One Nation at this point.

· A meeting on 2 April 1997 which records a telephone conversation with regard to the opening of a Pauline Hanson's One Nation bank account. The minutes signed by Mr Ettridge record:

"D. Ettridge advised P. Hanson that at the earliest opportunity he would open a bank account for Pauline Hanson's One Nation at the ANZ Bank, The Corso Manly, NSW, for regular banking/cheque purposes.

Both Pauline Hanson and D. Ettridge would be signatories [*sic*] and D. Ettridge may sign cheques as a sole signature for the time being and until further notice temporarily waiving the requirement of clause 35(4) of the parties [*sic*] constitution. This being a temporary solution to the impractical problem of distance for P. Hanson and the lack of another trusted and easily available signatory [*sic*].

Full accounting details are to be available for inspection at any time and are to be kept up to date and reported as required to the management committee.

Annual audits will be undertaken in accordance with the rules and requirements of the Australian [Electoral Act](#) when party registration is completed.

An accountant and auditor will be appointed to provide the appropriate tax and reporting requirements of the Government and the AEC."

· A meeting on 13 October 1997 which records a telephone conversation between Ms Hanson and Mr Ettridge. The unsigned minutes record:

"The following matters were raised for discussion and decisions:

1. The need to appoint a Queensland resident as secretary for the Electoral Commission of Queensland registration. It was decided that Cheyenne MacLeod would be asked to be secretary for the time being. Cheyenne accepted the position and will act as secretary in an honorary capacity until further notice.
2. The One Nation constitution to be lodged in Queensland would also require that we include a clause that provides for a committee and a procedure of candidate selection. It was agreed that such a procedure would be created and added to the constitution as soon as possible."

No other minutes of Pauline Hanson's One Nation or its management committee were tendered in spite of the constitution of Pauline Hanson's One Nation having the provisions set out below with regard to the management committee and membership.

123 It is usual for the rules or constitution of such an organisation to regulate matters such as the objects and purposes of the organisation, admission to and expulsion from membership, management of its affairs and control of its property.^[92] These rules in the constitution of Pauline Hanson's One Nation are as follows:

"FORMATION OF MANAGEMENT COMMITTEE

5. At the inaugural meeting of Pauline Hanson's One Nation those, who at that time, have been accepted as members by the founding member, Pauline Hanson, are eligible to be elected to the management committee.

Initially the Management Committee will consist of three members, President, Vice President and Treasurer.

The number of members of the Management Committee may be increased at any time by a majority vote of the members of the Management Committee.

CLASSES OF MEMBERSHIP

6. (1) The membership of the Association shall consist of the following classes of members:

- (a) Management Committee Members
- (b) Committee Members
- (c) Affiliate Members
- (d) Patron
- (e) Donor
- (f) Joint (Married/Defacto)
- (g) Single
- (h) Pensioner/Self Funded Retiree - also available as a joint membership

(2) The number of members shall be unlimited.

Initially the Management Committee will consist of three members; President, Vice President and Treasurer

The number of members of the Management Committee may be increased at any time by a majority vote of the members of the Management Committee.

7. (1) Every member of the association who previously to agreeing to become a member of the association has paid their subscription on or before the date fixed by the Management Committee for the purpose, as a member of the unincorporated association, shall not be liable to pay any further sum by way of annual subscription to the association for the period before the date fixed by the Management Committee as the date the next annual subscription becomes due.

(2) Following the formation of the Management Committee, every applicant for any class of membership of the association (other than the members of the unincorporated association referred to in sub-rule (1)) shall be proposed by 1 member of the association and seconded by another member.

(3) The application for membership shall be made in writing, signed by the applicant and the applicant's proposer and seconder and shall be in such form as the Management Committee from time to time prescribes."

124 The organisation Pauline Hanson's One Nation is not incorporated, so the unincorporated association referred to in clause 7(1) is Pauline Hanson's One Nation. Mr Ettridge and Mr Oldfield became members under clause 5 in addition to its founding member, Ms Hanson. The evidence shows that those applicants who applied to join Pauline Hanson's One Nation did not do it in accordance with the requirements of sub-clauses 7(2) and 7(3). The membership application form contained no provision for the applicant to be proposed or seconded by members of the association.

"MEMBERSHIP FEES

8. (1) The membership fees for each class of membership shall be such sum as the members of the Management Committee shall from time to time at any Management Committee meeting so determine.

(2) The membership fees for each class of membership shall be payable at such time and in such manner as the Management Committee shall from time to time determine.

ADMISSION AND REJECTION OF MEMBERS

9. (1) At the next meeting of the Management Committee after the receipt of any application and the fee applicable for any class of membership, such application shall be considered by the Management Committee, who shall thereupon determine upon the admission or rejection of the applicant.

(2) Any applicant who receives a majority of the votes of the members of the Management Committee present at the meeting at which such application is being considered shall be accepted as a member to the class of membership applied for.

(3) Upon acceptance or rejection of an application for any class of membership the secretary shall forthwith give the applicant notice in writing of such acceptance or rejection."

As the second defendant clearly has it within its power to produce such minutes, i.e. those which show the admission or rejection of applicants for membership, the failure to do so suggests such minutes did not exist and the list of members dated on its face 19 March 1999 tendered^[93] by the second defendant as a:

"List of Members - Pauline Hanson's One Nation

Prepared by Claire Wright for annexure to register Pauline Hanson's One Nation a Political Party under the Queensland [Electoral Act](#)"

is no such thing. Indeed it is not even the same as the list of purported members supplied to the commissioner.^[94] The disparity between the date on the list of members and the earlier date of the application for registration went unexplained.

125 There is no evidence that the Management Committee considered any applications for membership or admitted anyone to membership of the organisation except themselves. There is no suggestion that the rules governing membership and the management committee's non-compliance with them were known to those who thought they had joined the party or that non-compliance with these rules was an "established and well known and unquestioned practice in use in the association".^[95] In any event, the rules of Pauline Hanson's One Nation formed the basis of its public registration and "there is now a significant public interest in the enforcement of the rules of registered political parties".^[96]

126 I cannot agree with the second defendant's submission that it is abundantly clear from the Starter Kit, the application forms, the minutes of the annual general meeting of the Support Movement of 4 October 1997, and the minutes of the special general meeting of the Support Movement in December 1997, that in the period prior to December 1997 those who paid the higher level of fee were made members of the political party.

127 I conclude that there is a political party, that it was first registered under the [Commonwealth Electoral Act 1918](#) on 27 March 1997 and later sought and was granted registration under the

[Electoral Act 1992](#) in Queensland. The constitution filed in support of the application for registration of the political party under the [Commonwealth Electoral Act 1918](#) on 12 March 1997 is the same as the constitution originally filed in support of the application for registration under the [Electoral Act 1992](#). From its constitution, it can be seen that it was completely controlled by Ms Hanson, Mr Ettridge and Mr Oldfield and no other person. There were no other members.

128 Thirdly, there is a corporation called Pauline Hanson One Nation Ltd ACN 079 986 913 ("the company"). It was incorporated on 5 September 1997 as a company limited by guarantee. The limit of the guarantee by each of its members is \$1.00. There were five subscribers to the Memorandum and Articles of Association, Pauline Hanson, David Ettridge, David Oldfield, Andrew Carne and Stephen Menagh. There is no suggestion that this company has increased its membership beyond the original five subscribers. One of its objects is: "to manage and conduct an [*sic*] Political Party". A company limited by guarantee is an effective, if perhaps now slightly anachronistic^[97] way of incorporating a non-profit association such as a political party.^[98]

129 I accept after considering all the evidence that at the time of registration of Pauline Hanson's One Nation as a political party in Queensland those who controlled Pauline Hanson's One Nation Ltd intended to restrict membership of the organisations under their control as follows:

- only the original five subscribers were members of Pauline Hanson's One Nation Limited.
- only Pauline Hanson, David Ettridge, David Oldfield and perhaps other elected members of Parliament (when that occurred) were or would be members of the political party known as Pauline Hanson's One Nation.
- all other members of the public who sought to join, no matter what level of fee they paid, would become members of the incorporated support group, at that time called Pauline Hanson Support Movement Inc and after 3 February 1998, Pauline Hanson's One Nation Members Inc.

130 At the time of seeking and being granted registration, therefore, the political party known as Pauline Hanson's One Nation did not have 500 members although the evidence shows that it had more than 500 people who believed themselves to be members.

131 Ms Hanson, Mr Ettridge and Mr Oldfield knew that the political party did not have 500 members and knew therefore that it was not entitled to registration.

132 As I am satisfied on the evidence that Pauline Hanson's One Nation did not have at least 500 members at the time it was registered by the commissioner, the plaintiff has succeeded in proving the case pleaded in particular in paragraph 3D(xvii)(b) and (xviii) of the Amended Statement of Claim delivered 5 April 1999, that the Commission's decision to register Pauline Hanson's One Nation was induced or affected by fraud or misrepresentation. Contrary to the provisions of the [Electoral Act 1992 s.70\(2\)](#) and [70\(3\)](#) the second defendant by its servant or agent caused to be lodged with the first defendant an application to register Pauline Hanson's One Nation, which was not then a parliamentary party in the State of Queensland or which did not have at least 500 members as required by the [Electoral Act 1992](#) and the application to register was made either knowing it was false and untrue or recklessly not caring whether it was true or false. The membership application form did not contain any provision for a proposer and seconder, nor were applicants proposed or seconded by members of the party, nor were the applicants accepted as members by the management committee in accordance with clause 9(1) of the constitution of Pauline Hanson's One Nation. Those members of management committee involved in the application for registration, being Ms Hanson and Mr Ettridge, must have known that Pauline Hanson's One Nation had no members except themselves and Mr Oldfield and so they induced the registration by their fraud and misrepresentation. As was submitted by the second

defendant in paragraph 14 of its written submissions:

"It is clear that the representation alleged to be untrue is a representation that the persons whose names accompanied the application for registration, were not members of the Queensland Party. It is a matter of indifference to the Plaintiff's case as pleaded, whether those persons were members of the Federal party or the Support Movement."

The second defendant intended the first defendant to rely and act upon the false information given by it to register the political party.[\[99\]](#)

133 There is nothing to suggest that the commissioner on the evidence before him was or should have been alert to such fraud or misrepresentation in this case.

134 On 4 December 1997 the commission registered Pauline Hanson's One Nation as a political party under the [Electoral Act 1992](#). In doing so, he did not act arbitrarily or capriciously[\[100\]](#) or so unreasonably that no reasonable person in the position of the commissioner could have so exercised the power;[\[101\]](#) nor did he fail to take into account relevant considerations or take into account irrelevant considerations;[\[102\]](#) nor did he act at any person's direction.

135 However the registration of the party was induced by fraud or misrepresentation in that Ms Hanson and Mr Ettridge as the management committee members of Pauline Hanson's One Nation who were responsible for the registration application well knew that it did not have 500 members. This is not an insignificant matter as it is the basis for the registration of a non- parliamentary party as Pauline Hanson's One Nation was at that time.

136 An administrative decision can be set aside on the basis that it was induced by fraud or misrepresentation and had the true facts been known it would not have been made. As Finklestein J said in the leading judgment in *Leung v Minister for Immigration and Multicultural Affairs*:[\[103\]](#)

"There is a good deal to be said for the view that an administrative decision which is plainly erroneous should not stand."

His Honour considered that an "invalid decision" i.e. an administrative decision which could "be impugned for jurisdictional error or for a failure to observe procedural fairness or one that is brought about by fraud or misrepresentation", could be ignored or revoked. The original decision, having been obtained by a misrepresentation, is not a decision made in the true exercise of the power conferred by the statute and can be treated as having no effect.[\[104\]](#)

137 Whether or not an invalid decision can be ignored or must formally be revoked[\[105\]](#) as held by Heerey J in *Leung*,[\[106\]](#) that a decision is invalid because induced by fraud or misrepresentation is a proper ground of judicial review.[\[107\]](#)

138 There may in certain cases be factors applicable[\[108\]](#) to any discretion the Court might have to refuse to grant relief in an application of this type even where the conditions precedent to the exercise of the court's power to grant relief are fulfilled.[\[109\]](#) Any discretion to refuse relief is not found in the statute under consideration and so could only be found in the exercise of the inherent jurisdiction of the court. This is not such an unusual or exceptional[\[110\]](#) case as to warrant the exercise of a discretionary power.

139 There is a public interest that the registration of political parties should not be obtained on the basis of such crucial information known by those providing it to be incorrect. The integrity of the electoral process would otherwise be undermined and any inconvenience of the result is not a reason in this case for withholding relief. The delay itself in seeking relief is not this case a sufficient reason

to withhold relief.

140 The second defendant has not satisfied the Court that there are circumstances which make it just that a remedy should be withheld.^[111] Importantly, as I have said earlier, and as accepted by the parties, the decision cannot affect the result of the election held in June 1998. This is because the only method of disputing an election is by petition to the Court of Disputed Returns and in no other way.^[112] I am not satisfied that the plaintiff had as the predominant object of the proceedings some ulterior or collateral motive or purpose other than to show that the political party for which he stood as a candidate was registered by fraud or misrepresentation.^[113] This he has succeeded in doing.

141 In particular, it is not a ground to refuse relief that, from the return of the election writ after the election in 1998, the requirement for 500 members no longer exists as the party had parliamentary members. There was no evidence put forward by the second defendant that they were in fact members of Pauline Hanson's One Nation, again a matter peculiarly within the knowledge of the second defendant. The matter is different from registration under the *Commonwealth Electoral Act* as there is no doubt that when it was registered, it did have a parliamentary member, i.e. Ms Hanson. I would not therefore exercise any such discretion to refuse relief.

Conclusion

142 After reviewing the decision of the commission, I am satisfied that the decision to register Pauline Hanson's One Nation under the *Electoral Act 1992* was induced by fraud or misrepresentation.

143 The order sought by the plaintiff is the setting aside of the decision of the commissioner and making a decision in substitution thereof. I set aside the decision of the commissioner made on 4 December 1997 and decide that Pauline Hanson's One Nation was not entitled to registration as a political party in Queensland as it did not satisfy the requirement of *s.70* of the *Electoral Act 1992*.

144 I will hear argument as to costs.

^[1] A copy of the application form is Exhibit 35. The failure to produce the original was never satisfactorily explained by the second defendant.

^[2] Exhibit 31.

^[3] Second Reading Speech, Hansard, 29 April 1992, p.4716.

^[4] Odgers on *Pleading and Practice* 19th Ed p. 74. The causes of action on which a plaintiff relies are to be ascertained exclusively by reference to the statement of claim without regard to the endorsement on the writ: *Renowden v McMullin* ^{[1970] HCA 24}; ^{(1970) 123 CLR 584}.

^[5] Fraud must be pleaded distinctly and with particularity and clearly proved: *Krakowski v Eurolynx Properties Ltd* ^{[1995] HCA 68}; ^{(1995) 183 CLR 563} at 573; *Briginshaw v Briginshaw* ^{[1938] HCA 34}; ^{(1938) 60 CLR 336} at 363.

^[6] *Electoral Act 1992 s.7(3)*.

^[7] *Electoral Act 1992 s.3*.

^[8] Report No. 7 of 1991.

^[9] Second Reading Speech, Hansard, 29 April 1992 p.4715.

^[10] Clause 4.1.

[11] Clause 4.28.

[12] [Electoral Act 1992 s.69](#).

[13] [Electoral Act 1992 s.84\(1\)\(a\)](#).

[14] [Electoral Act 1992 s.97\(2\)\(g\)](#).

[15] [Electoral Act 1992 Part 7](#) and the Schedule.

[16] [Electoral Act 1992](#) Schedule cl.314AB.

[17] cf *Cameron v Hogan* [\[1934\] HCA 24](#); [\(1934\) 51 CLR 358](#) at 384.

[18] [\[1993\] 1 Qd R 10](#) at 20.

[19] *Edgar and Walker v Meade* [\[1916\] HCA 70](#); [\(1916\) 23 CLR 29](#) at 43-44; *Baldwin v Everingham* (supra) at 19-20.

[20] *Baldwin v Everingham* (supra) at 24.

[21] [Electoral Act 1992 ss. 3, 70\(4\)\(e\)](#).

[22] [Electoral Act 1992 ss. 3, 70\(2\)](#).

[23] [Electoral Act 1992](#) subs.70(3).

[24] Subs.70(4)(c) requires the person who is to be the political party's registered officer to give his or her name and address.

[25] cf *Baldwin v Everingham* (supra) at 23.

[26] *Minister for Immigration and Ethnic Affairs v Wu Shan Liang* [\[1996\] HCA 6](#); [\(1996\) 185 CLR 259](#) at 282 per Brennan CJ, Toohey, McHugh and Gummow JJ.

[27] [\[1981\] HCA 50](#); [\(1982\) 149 CLR 27](#) at 38; see also *Robinson v Western Australian Museum* [\[1977\] HCA 46](#); [\(1977\) 138 CLR 283](#) at 302-303.

[28] [\[1998\] HCA 49](#); [\(1998\) 72 ALJR 1270](#) at 1280.

[29] (supra) at 73.

[30] *Australian Conservation Foundation Inc v The Commonwealth* [\(1980\) 146 CLR 493](#) at 530-531, 537, 547-548; *Onus v Alcoa of Australia Ltd* (supra) at 36, 43, 49-50, 73-74; *Australian Institute of Marine and Power Engineers v Secretary, Department of Transport* [\[1986\] FCA 443](#); [\(1986\) 71 ALR 73](#) at 81 per Gummow J; *Shop Distributive and Allied Employees Association v Minister for Industrial Affairs (SA)* [\[1995\] HCA 11](#); [\(1995\) 183 CLR 552](#) at 558; *Allan v Development Allowance Authority* [\(1998\) 152 ALR 439](#) at 443, 446-447, 457.

[31] (supra) at 1281 per Gaudron, Gummow and Kirby JJ.

[32] *Alphapharm Pty Ltd v Smithkline Pty Ltd* [\[1994\] FCA 996](#); [\(1994\) 121 ALR 373](#) at 395.

[33] [Electoral Act 1992](#) subs.180(1) item 4; cf *Re McHattan* [\(1977\) 18 ALR 154](#) at 157.

[34] *Tooheys Ltd v Minister for Business and Consumer Affairs* [1981] FCA 121; (1981) 54 FLR 421 at 437; *United States Tobacco Co v Minister for Consumer Affairs* (1988) 20 FCR 520 at 527.

[35] cf *Alphapharm Pty Ltd v Smithkline Pty Ltd* (supra) at 403 per Gummow J.

[36] *Electoral Act 1992* s.97(2)(g).

[37] *Electoral Act 1992* s.84(1)(a).

[38] *Electoral Act 1992* Part 7.

[39] cf *Alphapharm Pty Ltd v Smithkline Pty Ltd* (supra) at 388.

[40] [1995] AATA 160; (1995) 38 ALD 366 at 372.

[41] Section 141.

[42] *Electoral Act 1992* subs.180(2)(c).

[43] [1993] 2 Qd R 663 at 665.

[44] *Woods v Beattie, ex parte Woods* [1995] 1 Qd R 343 at 345.

[45] *Sharples v O'Shea* (unreported, Supreme Court of Queensland, CA No. 6318 of 1998, 31 August 1998) at p. 7.

[46] See *Hunter Valley Developments Pty Ltd v Cohen* (1984) 3 FCR 344 at 348-349; *Chalk v Commissioner for Superannuation* [1994] FCA 1063; (1994) 50 FCR 150.

[47] *Hoffmann v The Queensland Local Government Superannuation Board* [1994] 1 Qd R 369; *Lucic v Nolan* (1982) 45 ALR 411; *A'Hearn v Comcare* (1993) 18 AAR 22 at 24 per Hill J.

[48] *Hoffmann v The Queensland Local Government Superannuation Board* (supra) at 373.

[49] See Affidavit of D J O'Shea, paragraph 21.

[50] *Thorp v Holdsworth* (1876) 3 Ch D 637 at 639; *Dare v Pulham* [1982] HCA 70; (1982) 148 CLR 658 at 664; *Banque Commerciale SA en liquidation v Akhil Holdings Ltd* [1990] HCA 11; (1990) 169 CLR 279 at 286-287, 288, 302-303; *Tyson v Brisbane Market Freight Brokers Pty Ltd* [1994] HCA 67; (1994) 68 ALJR 304 at 310-311.

[51] 15 October 1997

[52] *Electoral Act 1992* subs. 70(4)(f).

[53] *Electoral Act* s.70(2).

[54] *Electoral Act 1992* s.3.

[55] The EARC Report clause 4.30.

[56] Section 48.

[57] The incorporated body was Pauline Hanson's Support Movement Inc which had a different constitution from Pauline Hanson's One Nation and which did not apply for registration as a political

party.

[58] [Electoral Act 1992 s.70\(3\)](#).

[59] Clause 4.51.

[60] [\(1987\) 7 NSWLR 560](#) at 567.

[61] [\[1998\] HCA 28](#); [\(1998\) 72 ALJR 841](#) at 859; 51 ALR 490 at 515. See also *Clayton v Heffron* [\[1960\] HCA 92](#); [\(1960\) 105 CLR 214](#) at 247.

[62] See also *Australian Broadcasting Corporation v Redmore Pty Ltd* [\[1989\] HCA 15](#); [\(1989\) 166 CLR 454](#).

[63] See *Turner v King* [\[1992\] 1 Qd R 307](#) at 312 per Macrossan CJ as regards security of ballot papers; *Fenlon v Radke* [\[1996\] 2 Qd R 157](#) as regards failure to comply with [s.116\(3\)](#); *Robertson v Knuth* [\[1997\] 1 Qd R 95](#) as regards non-compliance with [s.336](#) of the [Local Government Act 1993](#) and *Scarcella v Morgan* [\[1962\] VR 201](#).

[64] *Project Blue Sky Inc v Australian Broadcasting Authority* (supra) at paragraph [93].

[65] *Krakowski v Eurolynx Properties Ltd* (supra) at 576.

[66] [Electoral Act 1992 s.3](#).

[67] [Electoral Act 1992 s.70\(4\)\(e\)](#).

[68] [Commonwealth Electoral Act 1918](#).

[69] [Parliamentary Electorates and Elections Act 1912](#).

[70] Clauses 4.31, 4.32.

[71] Clause 4.48(e).

[72] Part of Exhibit 1.

[73] Exhibit 28.

[74] That confusion is referred to in a letter dated 24 September 1997 by Claire Wright, described as Branch Co-ordinator, written on Pauline Hanson's One Nation letterhead. That letter stated:

"It has come to our attention that there is some confusion over the membership books and receipt books included in the kit. A receipt and card is ONLY issued to \$5 support members joining your branch. If people fill out the One Nation joining forms included in your kit they MUST be sent to head office so we can process them correctly. Some branches have been issuing cards to full paying members and keeping the joining forms as a record. We need the joining forms in Sydney so they can issued with an official One Nation membership card which is different to the supporters card. Their information also needs to be entered on the database otherwise we do not know that they are a member and they will not receive any mail outs and we will not know our correct membership levels. This is a very important matter and I hope every branch is clear on this if not please feel free to give me a call."

This letter was tendered by the second defendant whose counsel on its tender said, "There will be some evidence about it from Ms Wright." No such evidence was called.

[75] [\[1959\] HCA 8; \(1959\) 101 CLR 298.](#)

[76] [\[1994\] HCA 48; \(1994\) 181 CLR 387](#) at 402 per Deane, Dawson and Gaudron JJ.

[77] See also *Weissensteiner v The Queen* [\[1993\] HCA 65; \(1993\) 178 CLR 217](#) at 227.

[78] Exhibit 9 PA2 p. 24.

[79] The application to register Pauline Hanson's One Nation as a political party for House of Representatives and Senate Elections shows that David Ettridge was its secretary.

[80] [Part 5](#) Division 2 [s.48](#) specifies that an incorporated association may, by special resolution, amend its rules. [Section 2](#) defines "special resolution" to mean "a resolution passed at a general meeting of the association by the votes of 3/4 of the members who are present and entitled to vote on the resolution".

[81] 15 October 1997.

[82] 4 December 1997.

[83] It was registered on 15 July 1997.

[84] The licensing agreement between Ms Hanson, One Nation and Pauline Hanson Support Movement Incorporated.

[85] Clause 7(2).

[86] Clause 9(1).

[87] Exhibit 17.

[88] Exhibit 9 PA2 p. 10.

[89] By-laws p. 20: Exhibit 9 PA2.

[90] Exhibit 19.

[91] Exhibit 20.

[92] *Conservative and Unionist Central Office v Burrell* [\[1980\] 3 All ER 42](#) at 54-55 per Vinelott J; *Halsbury's Laws of Australia* paragraph 435 - Voluntary Associations, (2) Formation and [Constitution](#) of Non Profit Associations (c) [Constitution](#) and Rules of Unincorporated Associations.

[93] Exhibit 48 Item 7.

[94] Exhibit 1 Item 1(a).

[95] cf *Lewis v Heffer* [\[1978\] 1 WLR 1061](#) at 1076; *Burton v Murphy* [\[1983\] 2 Qd R 321](#) at 348.

[96] *Baldwin v Everingham* (supra) at 24; cf *Cameron v Hogan* [\[1934\] HCA 24; \(1934\) 51 CLR 358](#) at 370, 378.

[97] McQueen R and McGregor-Lowndes M, "The Company Limited by Shares and Guarantee" (1991) 9 C & SLJ 248.

[98] Sievers AS, "Associations and Clubs Law in Australia and New Zealand", 2nd ed, Federation Press, 1996 at p. 76.

[99] *Krakowski v Eurolynx Properties Ltd* (supra).

[100] cf *Federal Commissioner of Taxation v Bayly* [1952] HCA 31; (1952) 86 CLR 506 per Williams J.

[101] *Associated Provincial Picture Houses v Wednesbury Corporation* [1948] 1 KB 223; *Chapman v Tickner* (1995) 55 FCR 316 at 368; *Attorney-General (NSW) v Quin* (1990) 170 CLR 1 at 36, 37 per Brennan J.

[102] Except the considerations he took into account which were infected by fraud or misrepresentation.

[103] (1997) 150 ALR 76 at 85.

[104] *Leung v Minister for Immigration and Multicultural Affairs* (supra) at 76, 90.

[105] The power of revocation is given by *Acts Interpretation Act 1954*, s.24AA.

[106] See discussion in Campbell E, "Effect of Administrative Decisions Procured by Fraud or Misrepresentation" (1998) 5 AJ Admin L 240.

[107] *Lazurus Estates Ltd v Beasley* [1956] 1 QB 702 at 712-713, 722; *R v Ashford, Kent, Justices; Ex parte Richley (No 2)* [1956] 1 QB 167; cf *Judicial Review Act 1991* s.20(2)(g).

[108] *Bollag v Attorney-General (Cth)* (1997) 149 ALR 355 at 373.

[109] *Lamb v Moss* [1983] FCA 254; (1983) 49 ALR 533 at 546.

[110] *Re Wilcox; ex parte Venture Industries Pty Ltd* (1996) 137 ALR 47 at 67.

[111] *R v Commonwealth Court of Conciliation and Arbitration; ex parte Ozone Theatres (Aust) Ltd* [1949] HCA 33; (1949) 78 CLR 389 at 400.

[112] *Electoral Act 1992 Part 8*.

[113] cf *Packer v Meagher* (1984) 3 NSWLR 486 at 492-493; *Rajski v Bainton* (1990) 22 NSWLR 125 at 131.