

NOTICE OF FILING AND HEARING

Filing and Hearing Details

Document Lodged:	Notice of Appeal (Fee for Leave Not Already Paid) - Form 122 - Rule 36.01(1)(b)(c)
Court of Filing:	FEDERAL COURT OF AUSTRALIA (FCA)
Date of Lodgment:	25/09/2023 5:08:06 PM AEST
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File Number:	NSD1065/2023
File Title:	RALPH BABET & ANOR v ELECTORAL COMMISSIONER
Registry:	NEW SOUTH WALES REGISTRY - FEDERAL COURT OF AUSTRALIA
Reason for Listing:	To Be Advised
Time and date for hearing:	To Be Advised
Place:	To Be Advised



Sia Lagos

Registrar

Important Information

This Notice has been inserted as the first page of the document which has been accepted for electronic filing. It is now taken to be part of that document for the purposes of the proceeding in the Court and contains important information for all parties to that proceeding. It must be included in the document served on each of those parties.

The date of the filing of the document is determined pursuant to the Court's Rules.

Form 122
Rules 36.01(1)(b); 36.01(1)(c)



Notice of appeal

No. of 2023

Federal Court of Australia
District Registry: New South Wales
Division: General

On appeal from the Federal Court

Senator Ralph Babet and another named in the Schedule

Appellants

Electoral Commissioner

Respondent

To the Respondent

The Appellants appeal from the judgment as set out in this notice of appeal.

1. The papers in the appeal will be settled and prepared in accordance with the Federal Court Rules Division 36.5.
2. The Court will make orders for the conduct of the proceeding, at the time and place stated below. If you or your lawyer do not attend, then the Court may make orders in your absence. You must file a notice of address for service (Form 10) in the Registry before attending Court or taking any other steps in the proceeding.

Time and date for hearing:

Place: Level 17, Law Courts Building, 184 Phillip Street, Queens Square, Sydney NSW 2000

Date: 25 September 2023

Signed by an officer acting with the authority
of the District Registrar

Filed on behalf of (name & role of party) Senator Ralph Babet and Clive Frederick Palmer, Appellants

Prepared by (name of person/lawyer) Sam Iskander

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The Appellants appeal from the whole of the judgment of the Federal Court given on 20 September 2023 at Sydney [2023] FCA 1126 (J).

Grounds of appeal

1. The primary judge erred at J [43]-[47] in failing to decide whether the appellants' claim gave rise to a "matter" within the meaning of Chapter III of the *Constitution*, in circumstances where there was a controversy between the parties as to whether that requirement for the exercise of the judicial power of the Commonwealth was satisfied.
2. The primary judge erred in failing to find that the appellants, or in the alternative the first appellant, had standing to seek the relief in the originating application dated 7 September 2023.
3. The primary judge erred at J [40]-[41] in finding that a tick ("✓") written alone in the space provided on ballot papers in accordance with Form B in Schedule 1 of the *Referendum (Machinery Provisions) Act 1984* (Cth) (**RMP Act**) satisfies the requirement in s 93(8) that the ballot paper discloses a clear intention on the part of the voter to approve the proposed law because:
 - (a) the primary judge should have found, consistently with the standard his Honour applied at J [39] to a cross written alone, that a tick written alone is potentially attributable to the voter misunderstanding the nature and content of the question on the ballot paper, such that the voter's intention is insufficiently clear to satisfy the standard in s 93(8) of the RMP Act;
 - (b) Further, to the extent relied upon by the primary judge to derive certainty from the use of a tick (see J [38]):
 - i. the use of an assumption that a voter has intended to cast a formal vote (see Principle One set out at J [21]) is either impermissible, or alternatively, insufficient to establish that certainty; and
 - ii. the use of a principle of erring in favour of the franchise (see Principle Two set out at J [21]) only resolves doubtful questions of form and does not assist in resolving the uncertainty as to the meaning of a tick clearly written alone.



4. In the alternative to ground 3, the primary judge erred at J [39] in finding that a cross (“X”) written alone in the space provided on ballot papers in accordance with Form B in Schedule 1 of the RMP Act fails to satisfy the requirement in s 93(8) of the RMP Act that the ballot paper discloses a clear intention on the part of the voter not to approve the proposed law, because:
- (a) if (contrary to Ground 3(b) above) it is permissible and appropriate to use such principles or assumption when interpreting the ballot paper;
 - (b) then, the context in which the cross is used on the particular ballot paper containing only one question posing two choices and one “space provided”, when read with those principles or assumptions, is sufficient to establish with certainty that the voter was intending not to approve the proposed law.

Orders sought

1. Appeal allowed.
2. Orders 1 to 2 made on 20 September 2023 be set aside and in lieu thereof the following orders be made:
 - (a) A declaration that any ballot papers containing a tick (“√”) written alone in the space provided do not clearly demonstrate the voter’s intention for the purpose of section 93(8) of the RMP Act, and are to be treated as informal pursuant to section 93(1)(b) of the RMP Act.
 - (b) Alternatively, a declaration that, pursuant to section 93(8) of the RMP Act, effect shall be given to any ballot papers containing a cross (“X”) written alone in the space provided, by treating such ballot papers as clearly demonstrating the voter’s intention that he or she does not approve the proposed law.
 - (c) An order restraining the Respondent from instructing scrutineers or any other officer within the meaning of section 3 of the RMP Act other than in accordance with the declaration sought above.
3. The Respondent is to pay the Appellants’ costs of the appeal and of the hearing before the primary judge.

Appellants’ address

The Appellants’ address for service is:

Place: 4 Princess Street, Paddington QLD 6064

Email: sam@alaw.com.au



The First Appellant's address is Suite 2, 77 Victor Crescent, Narre Warren, Victoria 3805.

The Second Appellant's address is Level 17, 240 Queen Street, Brisbane, Queensland 4000.

Service on the Respondent

It is intended to serve this application on all Respondents.

Date: 25 September 2023

A handwritten signature in blue ink, appearing to read 'S. Morris Iskander'.

Signed by Sameh Morris Iskander
Lawyer for the Appellants



Schedule

No. of 2023

Federal Court of Australia
District Registry: New South Wales
Division: General

Appellants

Second Appellant: Clive Frederick Palmer

Date: 25 September 2023