SUPREME COURT OF QUEENSLAND

CITATION:	*Rapid Legal Solutions Pty Ltd v State of Queensland* [2026] QCA 227
PARTIES:	**RAPID LEGAL SOLUTIONS PTY LTD** (first appellant) **JOHN FRANCIS WINDRIDGE** (second appellant) **v** **STATE OF QUEENSLAND** (respondent)
FILE NO/S:	Appeal No 2397 of 2026 SC 2930 of 2025
DIVISION:	Court of Appeal
PROCEEDING:	General Civil Appeal
ORIGINATING COURT:	Supreme Court at Brisbane – [2026] QSC 88 (Treston J)
DELIVERED ON:	6 November 2026
DELIVERED AT:	Brisbane
HEARING DATE:	20 September 2026
JUDGES:	Bond JA, Doyle JA, Cooper J
ORDERS:	**1. Appeal dismissed.** **2. The appellants pay the respondent's costs of the appeal.**
CATCHWORDS:	CONSTITUTIONAL LAW – THE NON-JUDICIAL ORGANS OF GOVERNMENT – THE LEGISLATURE – LEGISLATION AND LEGISLATIVE POWERS – EXAMINATION OF VALIDITY OF LEGISLATION BY COURTS – where a person could be compelled under Part 5B of the *Motor Accident Insurance Act 1994* (Qld) to provide information that might tend to incriminate the person – where the compelled information could be used in proceedings against the person – whether Part 5B was invalid as incompatible with Ch III of the Constitution – whether the provisions giving rise to the constitutional challenge could be read down or severed without altering the legislative purpose – whether, applying the prudential approach, it was necessary to determine the constitutional challenge *Acts Interpretation Act 1901* (Cth), s 15A *Acts Interpretation Act 1954* (Qld), s 4, s 9 *The Constitution* (Cth), Ch III *Judiciary Act 1903* (Cth), s 44 *Motor Accident Insurance Act* 1994 (Qld), s 36A, s 36D,

s 36E, s 37AB, s 39A, s 41A, s 74, s 75, s 87A, s 87RS, s 87RT, s 87ZA, s 87ZC, s 87ZF, s 87ZH, s 87ZI, s 87J, s 87ZL, s 87ZM, s 87ZQ

Clubb v Edwards; Preston v Avery (2019) 267 CLR 171; [2019] HCA 11, cited
Deripaska v Minister for Foreign Affairs (2026) 100 ALJR 650; [2026] HCA 14, applied
Kable v Director of Public Prosecutions (NSW) (1996) 189 CLR 51; [1996] HCA 24, cited
Mineralogy Pty Ltd v State of Western Australia (2021) 274 CLR 219; [2021] HCA 30, cited
Spence v State of Queensland (2019) 268 CLR 355; [2019] HCA 15, cited

COUNSEL: A D Scott KC, with G F Perry, and E A Lynch for the appellants
G J D del Villar KC SG, with S J Hedge, and K J E Blore, for the respondent

SOLICITORS: Creevey Horrell Lawyers for the appellants
C E Christensen, Crown Solicitor for the respondent

[1] **BOND JA:** I agree with the reasons for judgment of Doyle JA and with the orders proposed by his Honour.

[2] **DOYLE JA:** This appeal concerns the validity of Part 5B of the *Motor Accident Insurance Act 1994* (Qld) (**the Act**). The appellants contend that by reason of certain specific provisions of Part 5B, the scheme of that Part operates to confer upon courts a role inconsistent with the recognition of their status under chapter 3 of the Constitution.

[3] It was common ground between the parties that the approach to be taken in respect of constitutional challenges of this kind is what is referred to as "the prudential approach". In effect this means that the Court should not determine a constitutional argument if it is not necessary to do so to resolve the justiciable controversy before the Court. In the present case the appellants accepted that their constitutional challenge was not directed at those provisions of Part 5B of the Act that have a direct bearing on them (vis ss 87ZF, 87ZH and 87ZI). Their contention was that other provisions of Part 5B gave rise to their constitutional challenge. The prudential approach means that the court ordinarily would not decide that challenge if satisfied that the provisions having a direct bearing on the appellants can have effect severed from or upon a reading down of the other provisions which are contended to give rise to the constitutional challenge. Only if that cannot be done does it fall for the court to determine the constitutional challenge.

[4] The particular provisions which were relied upon as giving rise to the constitutional invalidity were section 87ZM and section 87ZQ(3)(b) of the Act, with perhaps section 87ZI(2)(a) also being relied on though in a more incidental manner. The appellants accepted that if those provisions could properly be read down or severed in some way from the balance of Part 5B, they would fail on their application for a declaration as to the invalidity of Part 5B of the Act and on their appeal.

[5] On the other hand, they contended that those provisions cannot be read down or severed from the balance of Part 5B. In substance this was put on two closely related bases:

(a) first, that Part 5B without those provisions would be a fundamentally different scheme from that contemplated by the Act as a whole and that "severance" cannot be employed if to do so would be to alter the objective purpose of the enactment;

(b) second, Part 5B, if it is to be applied without giving effect to sections 87ZM and 87ZQ, would in substance achieve little beyond Part 5A of the Act, which is a further indication that Part 5B read without those provisions would be otiose and thus fundamentally different from that intended by Parliament.

Background

[6] It is unnecessary to recite much in the way of the factual background. The trial below proceeded on the basis of an agreed statement of facts and issues.

[7] The first appellant (**Rapid Legal**) is a law practice providing a range of legal services including in the area of Personal Injury law. The second appellant, John Windridge, is the legal practitioner director of Rapid Legal.

[8] At some point the government became concerned to prevent a practice described as "claim farming". This involved third persons (described as the claim farmers) contacting members of the public to encourage them to make motor vehicle claims. Having assembled information of potential claimants the claim farmer would provide that information to a legal practitioner (who would pay the claim farmer an introductory fee of some kind).

[9] The Act was amended in 2019 to legislate in relation to these practices. Section 74 prohibits a person paying or agreeing to pay a referral fee to another person, in respect of this kind of activity. Section 75 was introduced to make it an offence for the claim farmer to approach a potential client to advance a claim.

[10] Part 5A of the Act is entitled "Enforcement". It contemplates the appointment by the Commission of "authorised persons": s 87A. An authorised person is empowered to do a variety of things including, a power to give a notice requiring another person to provide information or produce documents within a reasonable time: s 87RS(2). That power is enlivened if the authorised person reasonably believes the other person has information relevant to certain specified matters including the commission of an offence under the Act.

[11] By s 87RT the person who receives such a notice must comply with it unless that person has a reasonable excuse. For an individual, exposure to the risk of self-incrimination is a reasonable excuse under s (2).

[12] Part 5B is headed "Special investigations". It contemplates that the Commission may appoint an investigator, inter alia, to investigate the relevant affairs of a law practice or lawyer: s 87ZC(2). Such an investigator may be appointed under that subsection if the Commission "reasonably suspects that section 74(1) or (2), or 75 may have been contravened by the investigated person or an associated person for the investigated person": s 87ZC(3). For these purposes Mr Windridge would be an associated person of Rapid Legal: s 87ZA.

[13] Section 87ZF confers upon an investigator a number of powers. Relevantly, an investigator may by written notice require an investigated person, or an associated person, to produce a document in that person's custody or control and to give the investigator reasonable assistance in connection with the investigation. The section also permits an investigator to require a person to attend for examination and to answer question on oath or affirmation.

[14] Section 87ZH makes it an offence, amongst other things, to fail to comply with a lawful requirement of an investigator to the extent that the person is able to comply with it, or knowingly to provide information which is false or misleading in a material particular.

[15] Section 87ZI provides that a person is not excused from complying with a requirement under s 87ZF on the ground that compliance might tend to incriminate the person or expose the person to a penalty, or on the ground of legal professional privilege. The privilege against self-incrimination would not in any case extend to a corporation. It was not contended that legal professional privilege of itself is constitutionally entrenched by the approach taken in *Kable v Director of Public Prosecutions (NSW)* (1996) 189 CLR 51.

[16] If a person fails to comply with a requirement of an investigator, s 87ZJ permits the investigator to give a certificate to the Supreme Court. If satisfied that the person has failed to comply without lawful excuse the Court may "punish the person in the same way as if the person had been guilty of contempt of the court": s 87ZJ(2)(b).

[17] Section 87ZL requires the investigator, on completion or termination of an investigation, to report to the Commission the investigator's opinion upon the matters investigated and the facts upon which that opinion is based. Section 87ZM provides that a certified copy of such a report is admissible in a legal proceeding as evidence of any facts stated in it. It is not deemed to be conclusive of those facts or to prevent the adducing of other and contrary material.

[18] Section 87ZQ provides a qualified and limited immunity in respect of the use which can be made of information or documents compulsorily obtained. In the case of an individual, such material, and evidence directly or indirectly derived from it, is ordinarily not admissible against the individual to the extent that it tends to incriminate the individual or expose the individual to penalty: s 87ZQ(2). The immunity is expressed not to extend to a proceeding for an offence against sections 36A, 36D, 36E, 37AB, 39A, 41A, 74(1), 74(2), or 75: s 87ZQ(3)(b). The only offences the focus of the appeal were those concerning claim farming and so those arising under ss 74 and 75.

The Investigation

[19] On 3 March 2023 the Commission wrote to Mr Windridge. The Commission identified what it described as changes in the volume or types of claims lodged by Rapid Legal and invited discussion of those changes. Some discussions followed.

[20] On 3 October 2024 solicitors acting for the Commission wrote again, stating that the Commission held information, which if accurate, suggested that Rapid Legal may have had a referral arrangement or business development model which infringed s 74 and/or s 75. The Commission sought information addressing that concern on a voluntary basis.

[21] On 25 October 2024 the Commission appointed an investigator (Glen Rice KC) pursuant to s 87ZC(2) to investigate the relevant affairs of Rapid Legal. The instrument of appointment recorded that the Commission reasonably suspected that there had been a contravention of sections 74 and/or 75 by Rapid Legal or an associated person.

[22] On 20 November 2024 the investigator issued Rapid Legal with a notice under s 87ZF(1)(a) requiring the production of documents. The notice sought, amongst other things, documents relating to arrangements between Rapid Legal and a number of identified persons including Mr Michael Kemp and records of payments made to him, material concerning the manner in which Rapid Legal received instructions from six identified claimants, and communications concerning the referral of claimants or potential claimants. That notice has not been complied with.

[23] The only compulsory process presently directed to either appellant is the notice issued to Rapid Legal. Neither appellant has been charged with an offence under the Act.

The Proceeding Below[1]

[24] The appellants commenced proceedings in the original jurisdiction of the High Court challenging the constitutional validity of Part 5B. On 12 June 2025 Beech-Jones J remitted the proceeding to the Supreme Court pursuant to s 44(1) of the *Judiciary Act 1903* (Cth).

[25] As mentioned, the hearing below was conducted on a statement of agreed facts and issues. The agreed issue was whether Part 5B, or any part of it, was constitutionally invalid and, if so, what relief ought to be granted to the appellants: R [1].

[26] The appellants contended that Part 5B was wholly invalid because it impermissibly interferes with the capacity of state courts to exercise federal jurisdiction, contrary to the principle in *Kable v Director of Public Prosecutions (NSW)*: R [20].

[27] The State contended that the prudential approach was to be adopted in answering that issue, which approach the primary judge accepted. Her Honour reasoned:

(a) Only Rapid Legal had been served with a notice and neither appellant had been charged with an offence.

(b) The provisions presently engaged were limited to sections 87ZF, 87ZH and 87ZI: R [26]-[28].

(c) The prudential approach required the constitutional challenge to be confined to consideration of those provisions unless the other provisions were inseverable from them: R [30]-[31].

(d) Rapid Legal being a corporation, did not have available to it either the privilege against self-incrimination or the privilege against exposure to a penalty: R [32]-[34]. The operation of s 87ZI which was presently engaged was therefore in its operation limited to the abrogation of legal professional privilege. And as mentioned, that is not constitutionally entrenched by the *Kable* principle: R [51]-[52].

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1 *Rapid Legal Solutions Pty Ltd v State of Queensland* [2026] QSC 88 (**Reasons or R**).

[28] The appellants accepted that their appeal fails unless the provisions contended to be invalid as unconstitutional cannot be read down or severed from the remaining parts of Part 5B. The primary judge rejected the contention that they could not be: R [43].

The Nature of the Asserted Invalidity

[29] The gravamen of the appellants' challenge to Part 5 B is that it may lead to show or sham trials because a prosecution can be proved by admissions compulsorily extracted from a person's mouth and incorporated into the investigator's report which is to be taken as evidence of the facts it states. The court will be, it was urged, performing no real adjudicative role because while an offence under s 74 or s 75 will need to be proved, the Part 5B procedures mean the accused can mount no real defence.

[30] The core provisions said to lead to this are:

(a) Section 87ZQ(3)(b) which has the effect of not excluding use of self-incriminating answers given in proceedings for offences against inter alia, ss 74 and 75;

(b) Section 87ZM(1) by which a copy of the investigator's report is admissible in a legal proceeding as evidence of any facts stated in the report;

(c) Section 87ZI(2) which as mentioned, states a person is not excused from complying with the investigator's requirements, on the ground that compliance might tend to incriminate the person or expose the person to a penalty, or on the ground of legal professional privilege.

[31] That said, the respondent accepted (and it does not appear controversial) that properly construed Part 5B would not permit an accused to be questioned and compelled to answer questions on the subject matter of a charge once laid against that person. That is not directly relevant in this appeal as no charges have been laid.

Proceeding on an Assumption

[32] In *Mineralogy Pty Ltd v State of Western Australia* (2021) 274 CLR 219 the Court had occasion to restate the approach to be taken by Courts (the High Court, but the reasoning would apply equally to this court) to disputes which are said to involve some challenge to the constitutional validity of statutory provisions. The plurality stated the prudential approach in the following terms (footnotes omitted):

> "56 More than once in recent years, the Full Court giving judgment on a special case has had occasion to remind parties that they have no entitlement to expect an answer to a question of law they have agreed in stating in a special case unless the Full Court can be satisfied by reference to the facts and documents they have agreed in the special case that 'there exists a state of facts which makes it necessary to decide [the] question in order to do justice in the given case and to determine the rights of the parties'.
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> …
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> 58 Underlying the prudential approach is recognition that the function performed by the Full Court in answering a question of

> law stated for its opinion is not advisory but adjudicative. Underlying it also is recognition that performance of an adjudicative function in an adversary setting 'proceeds best when it proceeds if, and no further than is, warranted to determine a legal right or legal liability in controversy'. That is to say, 'the adjudicatory process is most securely founded when it is exercised under the impact of a lively conflict between antagonistic demands, actively pressed, which make resolution of the controverted issue a practical necessity'.
>
> 59 Two implications of the prudential approach repeatedly spelt out are that "a party will not be permitted to 'roam at large' but will be confined to advancing those grounds of challenge which bear on the validity of the provision in its application to that party" and that 'it is ordinarily inappropriate for the [Full] Court to be drawn into a consideration of whether a legislative provision would have an invalid operation in circumstances which have not arisen and which may never arise if the provision, if invalid in that operation, would be severable and otherwise valid'."

[33] This statement of the prudential approach is not expressed in absolute terms but rather as what ordinarily is to be done: cf *Clubb v Edwards* (2019) 267 CLR 171 at [34], [36]. Nonetheless, the last of the implications referred to in the above quoted passage informed the approach of the parties on this appeal. In one sense it might be said to itself involve an adjudication which is in part hypothetical as it invites the court to proceed on the assumption (the hypothesis) that certain impugned provisions might be constitutionally invalid and then determine if the controversy between the parties can be resolved without deciding the correctness of that assumption because the provisions can be read down or severed and that the dispute between the parties may be resolved having regard to the statutory scheme as it is with those provisions read down or severed. That, however, is an aspect of the prudential approach the courts have employed: see *Deripaska v Minister for Foreign Affairs* (2026) 100 ALJR 650 at [39], [97]; *Clubb v Edwards*, supra at [334] per Gordon J.

The Acts Interpretation Act

[34] Section 9 of the *Acts Interpretation Act 1954* (Qld) provides:

> "(1) An Act is to be interpreted as operating—
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> (a) to the full extent of, but not to exceed, Parliament's legislative power; and
>
> (b) distributively.
>
> …
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> (2) Without limiting subsection (1), if a provision of an Act would, apart from this section, be interpreted as exceeding power—
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> (a) the provision is valid to the extent to which it does not exceed power; and
>
> (b) the remainder of the Act is not affected.

> (3) Without limiting subsection (1), if the application of a provision of an Act to a person, matter or circumstance would, apart from this section, be interpreted as exceeding power, the provision's application to other persons, matters or circumstances is not affected."

[35] In addition it should be noted that s 4 of that Act states that the application of the *Acts Interpretation Act* may be displaced wholly or partly by a contrary intent appearing in any Act.

[36] The High Court in *Deripaska* had occasion to consider the effect of s 15A of the Commonwealth *Acts Interpretation Act* which is expressed in terms similar to those in s 9. In describing the effect of s 15A, Gageler CJ, Gleeson and Jagot JJ said:

> "[24] Three features of s 15A of the *Acts Interpretation Act*, both in its primary application and in its derivative application to regulations through s 13(1)(a) and (c) of the *Legislation Act*, are apparent on its face and have been emphasised in cases that have considered its application.
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> [25] The first is that the section enacts a principle of statutory construction. That is to say, it is concerned with 'the process of attributing meaning to statutory text'. It explains in terms how legislation is to be 'read and construed'.
>
> [26] The second is that the principle of statutory construction the section enacts is 'contingent' or 'secondary'. Incorporating but going beyond the primary principle of statutory construction which requires choice of a construction in conformity with the *Constitution* if that construction is 'reasonably open', s 15A applies where legislation 'would, but for this section, have been construed as being in excess of that power'. In the event of that contingency, s 15A requires what might otherwise be 'an entirely artificial construction' to be placed on the legislation 'in order to save so much of it as might have been validly enacted'.
>
> [27] The third is that the principle of statutory construction enacted by the section, where applicable and capable of application, is imperative. The section states how legislation 'shall be' read and construed. Like any principle of statutory construction, the contingent principle yields to a contrary intention and is specifically subject to s 2(2) of the *Acts Interpretation Act*, which provides that 'the application of this Act or a provision of this Act to an Act or a provision of an Act is subject to a contrary intention'. The nature of the contingency means, however, that a contrary intention is not to be found in a 'legislative aspiration' that the legislation which has been construed as being in excess of power 'is to operate fully in the terms in which it is expressed'. A contrary intention is rather to be found, if at all, in 'a positive indication' that 'the legislature intended [the legislation] to have either a full and complete operation or none at all'." (citations omitted)

The Contrary Intention and Construction Issues

[37] There is nothing explicit in the Act which provides an indication that s 9 of the *Acts Interpretation Act* is not to apply to the interpretation of the Act. Nor does any such implication arise. Two broad matters were urged by the appellants.

[38] *First*, it was submitted that having regard to the Act and the extrinsic material, it was a fundamental part of the implementation of Part 5B that it would stamp out claim farming and that the new measures introduced would be so fundamentally different if ss 87ZI, 87ZM and 87ZQ were excised or read down, that Parliament cannot have intended that possibility to arise because of the operation of the *Acts Interpretation Act*. Accordingly, it is urged, that Act is by implication excluded.

[39] The explanatory notes for the amendment Bill identify the Bill's policy objective as stopping 'claim farming'. The explanatory note records:

> "To stop this practice, the Bill will amend the Act to:
>
> - create two new offences prohibiting claim farming;
> - require a supervising principal of the law practice acting for a claimant to complete a law practice certificate confirming compliance with new section 79 or section 347 of the Legal Profession Act 2007 (the '50/50 rule');
> - strengthen the Commission's enforcement and special investigation powers;
> - expand the Commission's functions for it to investigate and prosecute claim farming; and
> - expand the objects of the Act to encourage licensed insurers to act in a way that supports the integrity of, and promotes public confidence in, the scheme."

[40] The achievement of the objectives is then discussed under various headings including: Claim farming offences; Injunction to prevent or restrain claim farming conduct; Law practice certificate; and enforcement and special investigations. Under this last heading it is said:

> "In extending the Commission's power under new part 5B to investigate the relevant affairs of a law practice or lawyer, **it is crucial** to ensure a special investigation into a potential contravention of a claim farming offence is not impeded by claims from law practices that documents cannot be produced or information cannot be given because it would disclose a 'privileged client communication'; that is, a communication protected from disclosure by legal professional privilege that operates for the benefit of a client of an investigated person. If law practices use legal professional privilege as a shield it can prolong and, as a result, increase the cost of the investigation **or, worse**, defeat the investigation altogether. For the Commission to perform its statutory functions it is important that, in a special investigation into a potential contravention of the claim farming offences, it can obtain information from law practices about how the

> law practice received, gave or was referred instructions for a claim. For that reason, the Bill proposes to partially abrogate legal professional privilege in the case of an investigation of a law practice or lawyer. The Bill will also abrogate the privilege against self-incrimination for both licensed insurers and law practices or lawyers." (emphasis added)

[41] The discussion in the explanatory notes of the operation of the various sections does not add much meaningfully to the terms of the Bill.

[42] The Minister in her second reading speech to parliament stated:

> "To ensure the effectiveness of these reforms, it is essential that any potential instances of claim farming can be thoroughly investigated **and prosecuted**. As such, the bill expands the Motor Accident Insurance Commission's functions and bolsters its enforcement and special investigation powers. These expanded powers largely reflect those in existing Queensland legislation – namely, the Fair Trading Inspectors Act 2014.
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> One of the **most notable provisions** in part 5B of the bill, which deals with special investigations, is the partial abrogation of legal professional privilege and the abrogation of the privilege against self-incrimination. The abrogation of the privilege against self-incrimination already exists in relation to insurers and the bill extends its application to law practices and lawyers. This ensures any potential investigation into a breach of the new offences is not hampered by claims of legal professional privilege. Without these provisions, any investigation into claim farming **is likely to prove futile**.
>
> The legal profession and its clients should, however, take comfort that the bill has relevant safeguards and limitations to ensure that full and frank discussions between lawyers and clients are not prevented. This power is only enlivened to deal specifically with the claim-farming offence and is limited to how a law practice received or was referred instructions for a claim and how it gave or referred instructions for a claim. It does not extend any communications between the lawyer and client regarding the merits of the claim itself or the prospects of success. Therefore, an injured claimant should not be concerned that these amendments will affect their access to justice or confidential discussions with their lawyers about the prospects of their claim." (emphasis added)

[43] The severance altogether of the impugned provisions here might make the investigation and prosecution of claim farming offences more difficult. But this falls far short of pointing to an intention "the legislature intended [the legislation] to have either a full and complete operation or none at all."

(a) The Commission would remain able to appoint a special investigator who would be able to investigate claim farming.

(b) The investigator could demand production of documents and the provision of information. As far as corporations are concerned, that demand could not be resisted on the basis of a claim of self-incrimination.

(c) The documents and information so obtained from Rapid Legal would be available to be led in proof of any offence quite apart from s 87ZM.

(d) If section 87ZQ(3) was read down by removing subsection (b) (or at least the references in it to sections 74 and 75) the investigator would retain the power to demand documents and information from individuals despite any claim of privilege. What would be lost would seem to be the ability to use the information obtained, or indirectly obtained, in formulating and proving the claim farming charge.

(e) While this might represent something of a set back to the achievement of the objectives of Part 5B it falls far short of leading to the inference that Parliament would intend the abandonment of the rest.

(f) What remains is the uninhibited investigation of the claim farming activities, the power to compel the production of documents and other information (without an excuse afforded by a claim of legal professional privilege or a privilege against self-incrimination). A failure to comply would be potentially punishable as a contempt. The proof available against an individual would be less extensive than if section 87ZQ was not read down, but the ability to demand documents and to be able to deploy them against a corporate claim farmer or law practice would be unaffected. The investigator's report would remain admissible as evidence of facts disclosed in it other than those which are directly or indirectly drawn from an individual to the extent that it tends to incriminate that individual (within the scope of s 87ZQ (2)).

(g) The Minister's second reading speech identifies the importance of prosecution for claim farming offences. Reading down Part 5B in the way being discussed does not prevent prosecutions even if to some extent the prosecution is made more difficult. The Minister also identified the importance of ensuring that any potential investigation into a breach of the new offences is not hampered by claims of legal professional privilege. The reading down of s 87ZQ would not hamper the investigation at all as distinct from the proof of the offence once investigated.

[44] Second, it is said that if ss 87ZI, 87ZM and 87ZQ were read down the result would be that Part 5B added very little materially to Part 5A and that cannot have been Parliament's intention. Accordingly this is said to give rise to the implication that the *Acts Interpretation Act* was not to apply to the Act. This too should be rejected.

(a) Part 5A and Part 5B call for the appointment of differently designated persons enlivened by differently expressed threshold tests. The former allows the appointment of an authorised person (s 87A), while the latter allows for the appointment of an investigator (s 87ZC). The authorised person can require information to be provided if that person "reasonably believes a person has" relevant information: s 87RS. The investigator's power to require information is not dependent on the investigator having any such view (s 87ZF) and indeed the threshold is that the Commission have a reasonable *suspicion* that claim farming has occurred: s 87ZC.

(b) Under Part 5A, a person does not commit an offence for failing to comply with a requirement under s 87RS if the information or document sought is not relevant to a matter mentioned in s 87RS(1). There is no express limit on the categories of information or documents which can be the subject of a requirement made by the investigator: s 87ZF; s 87ZJ.

(c) For Part 5A, a claim of legal professional privilege will excuse compliance with the requirement of the authorised person: s 87RT. The position is otherwise under Part 5B (and as mentioned the right to assert that privilege is not constitutionally entrenched).

(d) Part 5A has no analogue to s 87ZJ (to deal with a person for contempt).

[45] Parliament has established a second and alternative enforcement regime in Part 5B. In some respects it could be said that similar powers were available under Part 5A. But one cannot view that as an indication that s 9 of the *Acts Interpretation Act* is not to apply to the construction of Part 5B.

[46] The excision of those sections said to give rise to the constitutional challenge would make the operation of Part 5B arguably less effective in achieving the objectives Parliament had in mind. Moreover, doing so would diminish the scope of the differences between Parts 5A and 5B. But, returning to the discussion in *Deripaska*:

(a) Section 9 of the *Acts Interpretation Act* explains and directs how the Act is to be construed. It operates where otherwise the process of construction would mean that a provision is in excess of power (unconstitutional). Its function is to preserve the statutory provisions as far as is possible within power and this is even though (indeed necessarily even though) the objectively ascertainable intention of Parliament was to give the statutory provision a different or wider operation. To conclude Part 5B will be less effective to achieve the purposes for which it was enacted is no reason to conclude that Parliament intended that s 9 of the *Acts Interpretation Act* was not to apply so that Part 5B can make no contribution to the achievement of those purposes.

(b) As stated in *Deripaska* provisions like s 9 require what might otherwise be "an entirely artificial construction" to be placed on the legislation "in order to save so much of it as might have been validly enacted".

(c) The features pointed to by the appellants fall short of establishing (or as expressed in *Deripaska*, provide "a positive indication") that Parliament must have intended to displace the operation of the *Acts Interpretation Act* so that Part 5B either stands or falls in its entirety.

[47] It follows that in my view Part 5B is to be construed taking into account the terms of s 9 of the *Acts Interpretation Act* and that it is possible to read Part 5B down to exclude the operation of the asserted constitutionally invalid provisions.

[48] What remains on that assumption can and does operate in relation to the only steps which have been taken this far: which have only been against Rapid Legal.

[49] As against this the appellants suggested that s 9 of the *Acts Interpretation Act* could not be employed in this way because the result of its application would be to produce a substantially different law to that expressed by Parliament in Part 5B itself. Reliance was placed on the reasoning of Edelman J in *Mineralogy* supra at [114] where his Honour said:[2]

> "In relation to the severance provision in s 8(5), there would be a powerful argument that s 8(5) would be invalid, at least in so far as

[2] See to like effect *Spence v Queensland* (2019) 268 CLR 355 at [87].

> it purported to permit severance, particularly by a court exercising federal jurisdiction, if 'the Statute with the invalid portions omitted would be substantially a different law as to the subject matter dealt with by what remains from what it would be with the omitted portions forming part of it'. To permit severance in such circumstances would be 'in effect making a new law' and would cross the divide between adjudicating and legislating. One circumstance in which this divide will have been crossed is where the objective purpose of the legislation changes after the provisions are severed. If the removal of some provisions would change the objective purpose of the legislation then the judiciary would be creating a new law by severing the provisions to the extent of invalidity. Parliament could not, by the device of a severance provision, confer such legislative power upon a court, at least when the court is exercising federal jurisdiction." (citations omitted)

[50] In these obiter remarks his Honour was addressing whether the severance provision itself could be constitutionally invalid because it would permit a court to exercise legislative power to create a new law. That is not the issue in this Appeal where no issue as to the validity of any part of the *Acts Interpretation Act* arises. But in any event, it is not possible, in my view, to conclude that severing from Part 5B sections 87ZM and 87ZQ(3)(b) would change the legislative purpose or create a new law. Doing so may make the means of achieving the objective purpose of Part 5B less effective, but the objective of investigating and prosecuting claim farming remains the same.

[51] In those circumstances, as mentioned, it was conceded by senior counsel for the appellants that its claim for relief and appeal fail.

[52] There is no reason costs should not follow the event.

[53] Accordingly, in my view the appropriate orders are:

1. Appeal dismissed.

2. The appellants pay the respondent's costs of the appeal.

[54] **COOPER J:** I agree with the reasons of Doyle JA.