IN THE COURT OF APPEAL OF THE COOK ISLANDS
HELD AT RAROTONGA

CA NO. 1439/2022

BETWEEN	**VAINETUTAI BOAZA** Appellant
AND	**TE-HANI ROSE ALEXANDRA BROWN** First Respondent
AND	**CHIEF ELECTORAL OFFICER** Second Respondent

CA NO. 1440/2022

BETWEEN	**NOOROA PARATAINGA** Appellant
AND	**VAINETUTAI ROSE TOKI-BROWN** First Respondent
AND	**CHIEF ELECTORAL OFFICER** Second Respondent

Coram:	White P, Fisher JA, Asher JA
Hearing:	2 November 2022
Counsel:	Ms SE Wroe (by Zoom), Mr N George and Ms M Tangimama for the Appellants Messrs ITF Hikaka and B Marshall for the First Respondents Mr D Greig for the Second Respondent
Judgment:	22 November 2022

JUDGMENT OF THE COURT OF APPEAL

A. The question of law in the case stated is answered No.

B. The allegations of treating in the two election petitions remain struck out.

C. The Appellant is to pay the First Respondent costs in a sum to be fixed following the receipt of further submissions if not agreed.

Introduction

[1] These are two appeals by way of case stated under s 102(2) of the Electoral Act 2004 challenging the decision of the Chief Justice delivered on 23 September 2022 striking out allegations of "treating" as defined in the Act in election petitions filed by the Appellants against the First Respondents on 18 August 2022 following the general election held in the Cook Islands on 1 August 2022.[1] The Chief Justice struck out the treating allegations because he considered they failed to comply with the requirement of s 92(4) of the Electoral Act to "allege the specific grounds on which the complaint" was founded.[2]

[2] Save for the names of the First Respondents, who were the successful candidates for the two Atiu Island constituencies at the election, the allegations of treating by the Appellants, who were the two unsuccessful candidates, were in identical form in both petitions so were heard together by the Chief Justice. As the question of law in the case stated for the opinion of this Court relates to both appeals they have also been heard together in this Court.

[3] By s 102(2) of the Electoral Act the right of appeal to this Court against a High Court election petition decision is limited to a question of law. In this case the question of law in the case stated reads:

> "Did the High Court err in granting the application to strike out the treating allegations in the petitions filed on 18 August 2022 because they did not comply with s 92(4) and, to the extent that s 92(4) and *Tapaitau v Rasmussen* invoke the terms of s 89, the terms of that section?"

[4] *Tapaitau v Rasmussen* is a 2004 decision of this Court in which allegations of treating in a petition relating to the election that year were similarly struck out on the ground of non-compliance with s 92(4).[3] Under s 89 of the Electoral Act treating is a criminal offence.

[5] The case stated also recorded that the petitioners, who are now the Appellants, had given notice that they wished to argue in the Court of Appeal for the first time that

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1 *Boaza v Brown* [2022] CKHC, 938/2022 and 940/2022, 23 September 2022.

2 At [32].

3 *Tapaitau v Rasmussen* [2004] CKCA 6, 10 November 2004.

Tapaitau v Rasmussen was incorrectly decided. The Chief Justice noted it would be for this Court to decide whether to entertain this point.

[6] By s 102(5) of the Electoral Act a decision of this Court in respect of a question of law in a case stated is "final and conclusive and without further appeal". As the issue of the approach this Court should adopt to its own previous electoral petition decisions when they are final decisions was not fully developed in the course of argument at the hearing of the appeal, the Court gave the parties the opportunity to make further brief written submissions on this issue taking into account the fact that the Cook Islands Parliament had not taken the opportunity to amend s 92(4) of the Electoral Act over the 18 years since the decision in *Taipaitau v Rasmussen*. The Court is grateful to Counsel for the parties for their further submissions.

[7] The Court is also grateful to Mr Greig who appeared for the Second Respondent, the Chief Electoral Officer, and provided the Court with helpful observations on the practical implications of the statutory time constraints for election petitions in the context of the different Cook Islands electorates.

[8] The judgment proceeds under the following headings:

(a) The relevant provisions of the Electoral Act.
(b) The decision in *Tapaitau v Rasmussen*.
(c) The allegations of treating in the present case.
(d) The Chief Justice's decision.
(e) The question of law refined:
    i. Should this Court reconsider its earlier decision in *Tapaitau v Rasmussen*?
    ii. Was *Tapaitau v Rasmussen* correctly decided?
    iii. Did the treating allegations in the petitions in this case comply with the requirements of s 92(4) of the Electoral Act?
(f) Result.

The relevant provisions of the Electoral Act.

[9] The following are the relevant provisions which appear in Part 8 of the Electoral Act under the heading "DISPUTED ELECTIONS":

> 92. Election petitions - (1) Where any candidate or five electors are dissatisfied with the result of any election held in the constituency for which that candidate is nominated, or in which those electors are registered, they may, within seven days after the declaration of the results of the poll by the Chief Electoral Officer by petition filed in the Court demand an inquiry into the conduct of the election or any candidate or other person thereat.
>
> (2) Every petition shall be accompanied by a filing fee of $1,000.
>
> (3) The petition shall be in Form 14 and shall be heard and determined before a Judge of the Court.
>
> (4) The petition shall allege the specific grounds on which the complaint is founded, and no grounds other than those stated shall be investigated except by leave of the Court and upon reasonable notice being given, which leave may be given on such terms and conditions as the Court deems just:
>
> Provided that evidence may be given to prove that the election of any unsuccessful candidate would be invalid in the same manner as if the petition had complained of his or her election.
>
> …
>
> 95. Time for holding inquiry - The inquiry shall be commenced as soon as practicable after the filing of the petition, but not earlier than fourteen days after the day on which the poll was closed, and not less than seven clear days' public notice shall be given of the time and place at which the inquiry will be held.
>
> 96. Jurisdiction on inquiry - (1) Subject to this Act, the Court shall have jurisdiction to inquire into and adjudicate on any matter relating to the petition in such manner as the Court thinks fit.
>
> (2) For the purpose of the inquiry, the Court shall have and may exercise all the powers of citing parties, compelling evidence, adjourning from time to time and from place to place, and maintaining order that the Court would have in its civil jurisdiction, and, in addition, may at any time during the inquiry direct a recount or scrutiny of the votes given at the election.
>
> (3) Notwithstanding subsection (1), no petition may be filed or inquired into on the grounds that any person's name was or was not on a roll by reason of the presence or absence of that person in or from a particular constituency.[4]

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4 This subsection was declared to be *ultra vires* the Constitution by the Court of Appeal in *Puna v Woonton* [2004] CKCA, 10/04, 14 November 2004.

…

100. Report to police - Where on any inquiry conducted under this Part the Court is of the opinion that any -

(a) electoral offence; or
(b) corrupt practice; or
(c) wilful irregularity,

has been committed by any person, the Court shall refer the matter to the Commissioner of Police.

[10] Form 14 referred to in s 92(3) is contained in the Second Schedule to the Electoral Act and requires a "Petition for Inquiry" to contain various details including the names, occupations and addresses of the candidate or five electors demanding the inquiry under s 92(1) and to state "the facts and grounds on which the petitioners rely" as well as the relief sought, namely whether the candidate was or was not duly elected and whether the election was void.

[11] Several features of this statutory framework are significant:

(a) A petition must be filed "within seven days after the declaration of the results of the poll" and the inquiry must be conducted expeditiously. These provisions reflect Article 29(2) of the Cook Islands Constitution which prevents Parliament from sitting until all election petitions filed in the High Court have been finally determined by the High Court in the first instance or have been withdrawn or dismissed for want of prosecution.

(b) The requirements for a petition to be in Form 14 and to state the "facts and grounds" relied on are mandatory.

(c) The requirement that the "grounds" alleged in the petition must be "specific grounds" is also mandatory. Grounds which are not "specific" will not suffice.

(d) No grounds other than those stated in the petition "shall be investigated except by leave of the Court". There is no provision precluding parties from seeking or providing, or the Court from ordering, further

particulars of the "facts" stated in the petition, but the grounds may not be amended or altered or supplemented without the leave of the Court.

(e) If the Court is satisfied that an offence has been committed, the Court must refer the matter to the Commissioner of Police. The offence provisions are contained in Part 7 of the Electoral Act.

[12] The statutory provision making treating an offence is s 89 of the Electoral Act which provides:

> 89. Treating - Every person commits the offence of treating who, being a candidate at any election, by himself or herself or by any other person on his or her behalf, either before or during an election, directly or indirectly gives or provides or pays wholly or in part the expense of giving or providing any food, drink, entertainment, or other provision to or for any person -
>
> (a) for the purpose of corruptly influencing that person or any other person to vote or refrain from voting; or
>
> (b) for the purpose of procuring himself or herself to be elected:
>
> Provided that it shall not be an offence against this section for a candidate to provide at any time after the close of the poll, hospitality according to local custom or practice.

Tapaitau v Rasmussen.

[13] The two amended election petitions at issue in *Tapaitau v Rasmussen* alleged that the respective candidates:

> "committed the offence of corrupt practices pursuant to section 87 of the Electoral Act 2004 ('The Act') by way of bribery, treating and/or undue influence pursuant to sections 88, 89 and/or 90 of the Act."

[14] The High Court held that neither petition complied with the requirements of s 92(4) to state the "specific grounds" on which the petition was founded. On appeal by way of case stated the Court of Appeal decided that the High Court had not erred.

[15] The essence of the Court of Appeal's reasoning was:

> [12] In construing the words "specific grounds", it is necessary to look at the scope and object of s 92. It provides a mechanism for the early identification of the grounds upon which an enquiry can be launched. Once nominated, those grounds can only be added to by leave of the Court. The use of the word

"specific" is significant. Some colour can also be gained from reference to form 14 and its direction to include a recitation of facts, although that, of course, is by no means conclusive.

[13] The grounds upon which a challenge can be made are set out in the Act. Those include the commission of offences under the Act. To allege a named offence has been committed merely by reference to the relevant section and its heading is singularly uninformative and almost meaningless. It is at best a general description and in that sense quite unspecific. As was held in *Re Berrill*,[5] what is pleaded are really no more than conclusions of law resulting from unstated bases.

[14] In our view, the intention of the legislature is to ensure that, when instituted, the petition must provide a reasonable identification of the basis of the challenge. In the case of an alleged offence, for example, the substance of what is alleged must be reasonably discernible. This kind of approach was adopted in respect to similar words in *Re Net Book Agreement 1957* [1962] 3 All ER 751, a case under the Restrictive Trade Practices Act 1956, under which certain restraints were deemed restrictive unless their removal would deny specific benefits to the public. At p 774, Buckley J said:

> To satisfy the requirements of the subsection the alleged benefit must be 'specific'. We are content to adopt one of the interpretations of this word suggested by counsel for the registrar, and accepted by counsel for the respondents, that is to say that it means explicit and definable.

…

[16] It is unnecessary to list each and every fact being relied upon. What is required is the provision of reasonable information so that those concerned are aware of the nature of the challenge. If necessary, further particulars can always be sought.

[17] It is no answer for the appellants here to say that any prejudice is met by the provision of further particulars. Having regard to the very general nature of the grounds pleaded, it would be possible under that guise to allege a series of quite unrelated and distinct offences under, for example, s 88. In truth and in substance, each would then constitute a separate ground of challenge. It is that kind of result which is closed by s 92(4).

…

[19] As we understand it, the appellant did not contend that if the petition as filed did not meet the requirements of s 92(4), the defects could not be cured by any amendment after expiry of the statutory period. We agree that this is the position for the reasons set out in *Re Berrill*. To allow an amendment after the limitation period is effectively to permit an evasion of s 92(4). It would not be

5 *Re Berrill* (1978) 19 ALR 254 (HCA).

> adding new grounds by way of amendment, but elaborating on existing grounds which were neither specific nor particularised.

The allegations of treating in the present case.

[16] The allegations of treating contained in the two petitions in the present case claimed that each of the First Respondents:

> ... being a candidate at any election, representing herself as an Independent Candidate but supported and in association with the Cook Islands Party, by herself or by any other person on her behalf during an election on the 13th day of June 2022, directly or indirectly gives or provides any food for any person.
>
> (a) for the purpose of corruptly influencing that person or any other person to vote or refrain from voting; or
>
> (b) for the purpose of procuring herself to be elected.

The Chief Justice's decision in this case.

[17] In the High Court judgment in this case, the Chief Justice referred to the relevant statutory provisions, the pleaded allegations of treating and the further particulars ultimately provided by the Appellants relating to the factual background before turning to examine in some detail the decision of the Court of Appeal in *Tapaitau v Rasmussen* which he clearly accepted was a binding decision on the interpretation of s 92(4) and justified the striking out of the treating allegations in the election petitions in the two cases before him.[6]

[18] After referring to the further particulars provided by the Appellants,[7] the Chief Justice noted that on 19 September 2022 the Appellants had filed an "Amended Consolidated Petition for Inquiry".[8] There was no suggestion, however, that the Appellants had sought or obtained leave in a timely manner to amend the grounds in the petitions as required by s 92(4) before filing this document.

[19] The essence of the Chief Justice's reasoning is contained in the following paragraphs in his decision:

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6 At [15]-[17] and [23]-[25].

7 At [5]-[13].

8 At [14].

[23] Section 92(4), as construed in *Tapaitau v. Rasmussen*, is explicit in requiring a petition's "specific grounds" to be stated and requiring that "no grounds other than those stated" be investigated other than by leave. The thrust of Parts 7 and 8 of the Act is to provide those dissatisfied with the conduct of elections with a pathway to ensure they were properly run, but with the procedural aspects of their challenges being subject to a restrictive regime designed to avoid wholesale and generalised allegations, to confine that litigation within nominated limits by barring the investigation of extraneous issues and to result in that litigation being determined speedily to enable Parliament to sit. Colloquially put, the statutory regime requires petitioners to "put all their cards on the table" at the outset and debars investigation of other grounds not meeting that test, other than with leave and that, too, must comply with the statutory scheme.

…

[25] As *Tapaitau v. Rasmussen* says, the particulars of the grounds must "provide a reasonable identification of the basis of the challenge" to the extent that the "substance of what is alleged must be reasonably discernible". Even though not every fact requires to be pleaded, the reasonable information required must be sufficient to make "those concerned ... aware of the nature of the challenge".

…

[29] It is accepted that the petitioners have not sought to add any grounds to their original petitions, and that most, but not all, of the particulars on which they now wish to rely are set out in the consolidated petition but, as *Tapaitau v. Rasmussen* says, s 92(4) requires the pleading of "specific grounds", with reasonable particularisation of the way in such of the elements of s 89 as are claimed to have been breached being identified. Sufficiency or otherwise is judged on the terms of the original petition as at the expiry of the 7 day limitation period.

[30] In these petitions, mere recitation of the statutory wording coupled with the lack of particularised detail outlined above, significantly fails to meet the statutory requirements of s 92(4) pleading as construed in *Tapaitau v. Rasmussen*.

[20] He then added:

[31] In addition and for completeness, it needs to be noted that it is not enough for claimed pleading deficiencies to be sought to be met by the inclusion of additional material in submissions or memoranda. What s 92(4) and the rules as to pleading require is the inclusion of all the necessary material in an originating document, or one amended in accordance with the rules or with leave, in order that those facing or affected by the allegation, and those required to decide it, have one point of reference where all the allegations appear. The

> fact that those pleading requirements may now be satisfied – even over-satisfied – by the consolidated petition is of no assistance to the petitioners as it is the form of the original petitions which must be the focus.

The question of law refined.

[21] In order to answer both parts of the question of law in the case stated, we consider it needs to be refined to address the following separate issues:

i. Should this Court reconsider its earlier decision in *Tapaitau v Rasmussen*?

ii. Was *Tapaitau v Rasmussen* correctly decided?

iii. Did the treating allegations in this case comply with the requirements of ss 92(4) and 89?

[22] We address each of these questions in turn.

i. Should this Court reconsider its earlier decision in *Tapaitau v Rassmussen*?

[23] Unlike lower courts which are bound by the rules of precedent to accept and apply principles of law laid down by courts of higher authority, a final appellate court is not bound by the rules of precedent to follow its own previous decisions. At the same time, however, a final court will normally follow its own previous decisions unless, for good reason, it decides there are compelling reasons to depart from them.[9] The reasons for the rules of precedent based on principles of stability, certainty, predictability, reliance, legitimacy and efficiency apply equally to previous decisions of final courts.[10] Once a final Court has made a decision settling an issue, it should not normally be open to relitigation. Indeed it would be contrary to the rule of law and an anathema to the administration of justice to permit litigants to continue to relitigate every issue, especially one which has been settled by a final court and relied on by members of the community in the conduct of their affairs or by public officials over a period of time.

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9 *Willers v Joyce (No.2)* [2016] UKSC 44, [2018] AC 843, *Peninsula Securities Ltd v Dunnes Stores (Bangor) Ltd* [2020] UKSC 36 at [49], *R v Kirkpatrick* [2022] S.C.J. No 33 at [202]-[269], and *Couch v Attorney-General (No.2)* [2010] NZSC 27, [2010] 3 NZLR 149, at [32] per Elias CJ ("right to do so") and [104]-[105] per Tipping J ("compelling circumstances").

10 *"Originality or Obedience? The Doctrine of Precedent in the 21st Century"* (2019) 28 NZULR 653, at 671-674.

[24] When the issue that has been previously settled by the final court is one of statutory interpretation it has, however, been suggested that a later final court should be less reluctant not to follow it if satisfied the earlier court misconstrued the statute. If a final appellate court is convinced that an earlier interpretation is erroneous it must correct it: the court's fundamental responsibility is to give effect to the legislative intention.[11]

[25] In the case of a final decision involving an issue of statutory interpretation which has stood for many years and consequently been relied on without any Parliamentary response by way of an amendment there may be an argument it has received the tacit endorsement of Parliament. While this approach was described by Cooke P in *Dahya v Dahya* as "mystical", he also said:[12]

> "Yet it could not be right for this Court to overrule a prior decision of its own, even when sitting on a later occasion with five judges, merely on the ground that on a finely balanced point of statutory construction the later Bench preferred a different view. Some more cogent reason must be necessary to justify departure from such degree of certainty as the doctrine of stare decisis achieves. I do not think it would be wise to attempt in this case an exhaustive statement going beyond what is enough for deciding the present case. Obviously the length of time for which the earlier decision has stood (in this case six years, not a long period) is one relevant factor. Another must be the nature of the issue with which the decision is concerned."

[26] We agree a cogent reason is required to justify a departure from an earlier decision involving statutory interpretation. In the context of the present case, however, we consider the following factors are relevant and militate against departure:

(a) The fact that the 2004 decision in *Tapaitau v Rasmussen* has stood unchallenged[13] for 18 years which is a lengthy period.

(b) The importance of the interpretation of s 92(4) in *Tapaitau v Rasmussen* and its application to all election petitions filed following

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11 Ibid at 680-1 and *Clayton v Clayton (Claymark Trust)* [2016] NZSC 30, [2016] 1 NZLR 590, at [50] and n 100 where the Court departed from its previous decision in *Ward v Ward* [2009] NZSC 125, [2010] 2 NZLR 31 on the interpretation of s 182(3) of the Family Proceedings Act 1980, and *Attorney- General v Family First New Zealand* [2022] NZSC 80, at [106] and [125]-[132] where the Court departed from its previous decision in *Re Greenpeace of New Zealand Inc* [2014] NZSC 105, [2015] 1 NZLR 169 on the interpretation of the Charities Act 2005.

12 *Dahya v Dayha* [1991] 2 NZLR 150 (CA), at 155-156. See also *Couch v Attorney-General (No 2)* [2010] NZSC 150, [2010] 3 NZLR 149 at [104] and [211] and *Singh v New Zealand Police* [2021] NZCA 91 at [14]-[15].

13 cf *Peninsula Securities Ltd v Dunnes Stores (Bangor) Ltd* [2020] UKSC 36 where the precedent in question had been consistently criticised for 50 years.

the five subsequent general elections and three by-elections apparently without difficulty or dissatisfaction. Indeed, other than the petitions in this case, none has been struck out for failure to comply with s 92(4).

(c) The absence in the context of Parliamentary elections of any suggestion that Parliament itself has considered it necessary or desirable to amend the Electoral Act in order to reverse the effect of the decision and did not take the opportunity to do so when in 2007 it amended the Act to add new Part 9A.

[27] In our view these factors mean we should adopt a particularly cautious approach to the Appellants' challenge to the decision in *Tapaitau v Rasmussen*. We would need to be satisfied that the decision was plainly wrong. It would not be sufficient to find "a finely balanced point of statutory construction" on which we preferred a different view. We therefore turn to reconsider the decision in that case on this basis.

ii. Was *Tapaitau v Rasmussen* correctly decided?

[28] We have no doubt that the approach adopted by the Court of Appeal in *Tapaitau v Rasmussen* to the interpretation of s 92(4) of the Electoral Act was correct. The interpretation was neither plainly wrong nor "finely balanced".

[29] First, the phrase "specific grounds" is clear: the "grounds" required by Form 14 must be "specific" not "general". The inclusion of the adjective "specific" requires the "grounds" to be clearly identified when the petition is filed. In other words, a valid petition must at the outset identify clearly and with precision the grounds on which the complaint is founded.

[30] Second, the importance of providing adequate "specific grounds" at the outset is confirmed by s 92(4) itself because it expressly precludes any grounds "other than those stated" in the petition from being investigated except by leave of the Court.

[31] Third, this interpretation is consistent with and reinforces the purpose of the requirement which is to ensure that the recipients of the petition as well as the Court are fully and fairly informed of the complaint. The recipients are entitled to know

from the outset the complaint they face and the Court needs to know the scope of the inquiry it is required to conduct. In this respect the requirement to provide "specific grounds" is similar to the requirement in a criminal case for a charge to provide "sufficient particulars to fully and fairly inform the defendant of the substance of the offence that it is alleged the defendant has committed".[14] To interpret s 92(4) in this way does not involve "adding a gloss" to the words of the provision as Ms Wroe submitted. Nor is it "a step too far". It simply gives meaning to the phrase "specific grounds" in the context of the Electoral Act.

[32] Fourth, this interpretation is also consistent with the scheme of the Electoral Act which involves a judicial inquiry into the complaint raised by the petition, the prospect of criminal offences and the need for expedition so Parliament can be called as soon as practicable. A time-consuming adversarial civil process is not envisaged. We do not accept Ms Wroe's submission that the constraints of a short and strict timeframe under the Cook Islands Electoral Act required a "more forgiving" approach to "the specification of the grounds if the spirit and intent of the Act is to be upheld". On the contrary, the scheme of the Act requires strict compliance with the provision of adequate "specific grounds" at the outset. We note it is a requirement which was met without undue difficulty in the outer island 2018 Rakahanga Petition which also alleged treating and led to the leading decision of this Court in *Browne v Hagai*.[15]

[33] Finally, this is a fair, large and liberal interpretation as well as a practical and common sense one which enables the Act to be applied as Parliament intended.[16] It avoids arguments such as those raised by the Appellants in this case which suggested that inadequacies in the "grounds" should be able to be remedied by the provision of further particulars. This argument overlooked the distinction between the grounds and the facts required by Form 14 and the need for leave on a timely basis before the grounds may be amended or supplemented. Further particulars of the facts may be sought and provided or ordered, but they will not remedy retrospectively any failure to provide adequate "specific grounds".

[34] While the legislative history of s 92(4) and decisions in other jurisdictions relied on by the Appellants are of interest, they do not in our view alter the

14 NZ Criminal Procedure Act 2011, s 174, and Cook Islands Criminal Procedure Act 1980-81, s 16.

15 *Browne v Hagai* [2018] CKCA, CA 9/18, 14 December 2018.

16 Interpretation Act 1924, s 5(j), and *Bullivant v R* [2022] CKCA, CA 1/2022, 19 May 2022, at [24].

straightforward interpretation of the provision adopted by the Court in *Tapaitau v Rasmussen* and in turn by the Chief Justice.

iii. Did the treating allegations in this case comply with the requirements of ss 92(4) and 89?

[35] It will be recalled that the treating allegations in the petitions in this case simply recited the text of s 89 of the Electoral Act with a reference to "food" and the addition of the names of the candidates and the date on which the offence was alleged to have occurred (13 June 2022). In our view there is little doubt that these allegations did not constitute "specific grounds" as required by s 92(4).

[36] First, as the Chief Justice held,[17] the recitation of the statutory provision defining the offence of treating will not suffice on its own. Reciting the terms of s 89 with the addition of the name of the candidate and a date does not identify clearly the grounds on which the complaints in the election petitions were founded so as to fairly and fully inform the recipients of the substance of the complaints they faced or the Court of the scope of the inquiry.

[37] Second, the petitions did not disclose where the treating was alleged to have occurred, the time when it was alleged to have occurred, any identification of the persons who were the given the food, the nature of the food, or any clarification of any other persons who gave food on behalf of the candidates or the ambiguous allegation that the supply was either direct or indirect. The allegation of agency was not explained in any way.

[38] Third, to adopt the approach of *Tataipau v Rasmussen* which the Chief Justice followed,[18] the absence of this essential information meant that the petitions did not provide "a reasonable identification of the basis of the challenge" to the extent that the "substance of what is alleged must be reasonably discernible" and sufficient to make "those concerned .. aware of the nature of the challenge". It is significant that in this

17 At [30].

18 At [25].

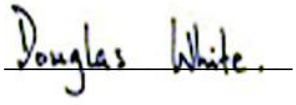
context the Appellants took no issue with this summary by the Chief Justice of the ratio of *Tataipau v Rasmussen*.[19]

[39] For completeness, we note we do not accept the submission by Mr Hikaka for the First Respondents that the petitions should have also identified all the electors who were alleged to have received the food. It would have been sufficient to have identified the electors who were given the food by stating that they were among the persons who attended the event or function on 13 June 2022 when the food was provided. Without providing a prescriptive list of essential items of information for every case involving allegations of treating, we consider that to comply with s 92(4) the "specific grounds" should include at least the time and place where the alleged offending occurred, the nature of the "food, drink, entertainment, or other provision", the names of those giving or offering the relevant provision or if their names are not known some description sufficient to indicate their identity, and a sufficient description of those attending the particular event or function.

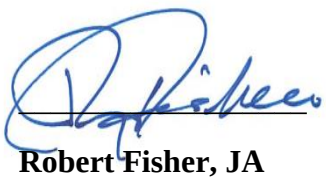
Result.

[40] For these reasons we answer the question of law in the case stated No. The allegations of treating in the two election petitions therefore remain struck out.

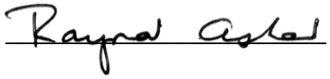
[41] Costs should follow the event. If the quantum is not agreed, the First Respondent is to file short submissions not exceeding four pages within 14 days of the issue of this judgment and the Appellant is to respond within a further seven days.



Douglas White, P



Robert Fisher, JA



Raynor Asher, JA

19 Appellant's written submissions on appeal at [28].