

IN THE MATTER OF QUESTIONS
REFERRED TO THE COURT OF DISPUTED
RETURNS PURSUANT TO SECTION 376 OF
THE COMMONWEALTH ELECTORAL ACT
1918 (CTH) CONCERNING
MR ROBERT JOHN DAY AO

ORDER

JUSTICE: French CJ

DATE GIVEN: 21 November 2016

INITIATING PROCESS: Directions hearing

APPEARANCES: Mr A S Bell SC, counsel for Robert John Day AO

Mr N J Williams SC with Mr C Lenehan, counsel for the
Attorney-General of the Commonwealth of Australia

Mr J K Kirk SC with Ms S Gory, counsel for Anne McEwen



THE COURT ORDERS THAT:

1. The following documents are to be evidence on the hearing of the reference:
 - 1.1 Letter from the President of the Senate to the Chief Executive and Principal Registrar of the High Court dated 8 November 2016 (not including attachments).
 - 1.2 The writ issued by the Governor of South Australia dated 16 May 2016 for the election of twelve senators for the State of South Australia with an endorsement by the Acting Australian Electoral Officer for the State of South Australia dated 4 August 2016 certifying and returning the persons duly elected, as tabled in the Senate on 30 August 2016.
 - 1.3 Journals of the Senate No 1, 30 August 2016, p 4, entry no 4.
 - 1.4 Copy of the letter of resignation of Robert John Day dated 1 November 2016, tabled in the Senate on 7 November 2016.

1.5 Letter from the President of the Senate to the Governor of South Australia dated 1 November 2016, tabled in the Senate on 7 November 2016.

1.6 Journals of the Senate No 12, 7 November 2016, p 372, entry no 6.

1.7 Letter from the Special Minister of State to the President of the Senate dated 6 November 2016, tabled in the Senate on 7 November 2016.

1.8 Statement of Facts — Senator Day matter — tabled in the Senate on 7 November 2016 as an attachment to the letter from the Special Minister of State to the President of the Senate, as evidence of the apparent basis upon which the reference to this Court was made.

1.9 Fifteen attachments to the Statement of Facts as evidence of the trust's transactions, communications and public records they purport to evidence or record.

2. In the absence of any contrary contention, questions (a) and (c) of the questions referred by the Senate to the Court of Disputed Returns on 7 November 2016 shall be read as referring to s 44(v) of the Constitution only and not any other reason for the vacancy referred to in those paragraphs.
3. The Attorney-General of the Commonwealth to file and serve on or before 23 November 2016 a statement of contentions of fact and law upon which he intends to rely on the hearing of the reference.
4. Ms Anne McEwen to file and serve on or before 25 November 2016 a statement of contentions of fact and law upon which she intends to rely on the hearing of the reference.
5. Mr Robert John Day to file and serve on or before 5 December 2016 a statement of contentions of fact and law upon which he intends to rely.
6. Any reply contentions to be filed and served by 8 December 2016.
7. Any application for leave to issue subpoenas and for further directions is to be made on 12 December 2016 at 10.15am.
8. Any subpoena issued pursuant to leave granted to be returnable on 19 December 2016 or such other date as may be fixed.
9. The Attorney-General of the Commonwealth will file and serve on or before 22 December 2016 an affidavit by an officer of the Australian Electoral Commission, a statement of such facts relevant to the reference as have been agreed upon between the parties, including such facts set out in the Statement of Facts as can be agreed and a list of documents which it is agreed should be evidence on the hearing of the reference.



10. If the parties have been unable to agree by 22 December 2016 a statement of all the facts and documents which are relevant to the reference, the hearing and determination of the facts will be heard by a single Justice at a date to be fixed with a view to a referral to the Full Court thereafter.
11. If the parties are able to agree a statement of all the facts and documents relevant to the reference, they may file a consent order on 22 December 2016 for referral of the reference to a Full Court pursuant to s 18 of the Judiciary Act 1903 (Cth).
12. Upon an order referring the reference to a Full Court, the Senior Registrar shall settle an Index for a Court Book to include the agreed facts and documentary evidence received pursuant to the preceding directions.
13. The Attorney-General of the Commonwealth is to prepare, file and serve such number of copies of the Court Book as are directed by the Senior Registrar and according to a timetable fixed by the Senior Registrar.
14. The parties will file and serve written submissions in accordance with a timetable and directions given by the Senior Registrar.
15. Upon referral to a Full Court, the reference will be listed for hearing on a date to be fixed.

DATE AUTHENTICATED: 22 November 2016

