

MURPHY v ELECTORAL COMMISSIONER & ANOR (M247/2015)

Date Special Case referred to Full Court: 24 March 2016

The plaintiff is enrolled to vote for the Division of Wills in the State of Victoria and he intends to vote at the next federal election. He is challenging the constitutional validity of provisions of the *Commonwealth Electoral Act 1918* (Cth) ('the Act') which suspend the processing of claims for enrolment and transfer of enrolment of persons otherwise eligible to enrol to vote in the period from seven days after the issue of the writs for the election until after polling day. The basis of the challenge is that the suspension period is incompatible with and contrary to ss 7 and 24 of the *Constitution* and the mandate, as explained by this Court in *Roach v Electoral Commissioner* (2007) 233 CLR 162 and in *Rowe v Electoral Commissioner* (2010) 243 CLR 1 that Senators and members of the House of Representatives be 'directly chosen by the people'. (In *Rowe* this Court held that the suspension period of zero days (for enrolments) and three days (for transfers) after the issue of the writs was invalid). The plaintiff estimates that approximately 130,000 eligible people were disenfranchised in the 2013 federal election as a result of the operation of the suspension period.

The plaintiff is seeking a declaration that sections 94A(4), 95(4), 96(4), 102(4), 193A(5), 103B(5) and 118(5) of the Act are invalid; and the issue of a writ of prohibition directed to the first defendant prohibiting him from giving effect to, or taking any steps in reliance upon, those sections.

On 24 March 2016 Nettle J referred the Special Case for consideration by the Full Court.

Notices of Constitutional Matter have been served. The Attorney-General for the State of South Australia has filed a Notice of Intervention.

The questions in the Special Case include:

- Q2.** Are any or all of sections 94A(4), 95(4), 96(4), 102(4), 103A(5), 103B(5) and 118(5) of the *Commonwealth Electoral Act 1918* (Cth) contrary to ss 7 and 24 of the *Constitution* and therefore invalid?
- Q3.** If the answer to question 2 in relation to a section is yes, do sections 152(1)(a) and 155 of the Act have the same or substantially the same operation or effect as the impugned provisions or any of them and, if so, are sections 152(1)(a) and 155 invalid and of no effect?