



HIGH COURT OF AUSTRALIA

6 August 2010

ROWE & ANOR v ELECTORAL COMMISSIONER & ANOR

On 26 July 2010, proceedings were commenced in the Melbourne Registry of the Court seeking a declaration that certain provisions of the *Commonwealth Electoral Act 1918* (Cth) effecting cut-off dates for consideration of applications for enrolment and transfers of enrolment as an elector are invalid. One of those provisions, s 102(4), prevents the Electoral Commissioner from considering claims for enrolment lodged after 8 pm on the date of the issue of writs for an election for the House of Representatives or the Senate until after the close of polling. Another provision, s 102(4AA), prevents consideration of claims for transfer of enrolment from one divisional roll to another from 8 pm on the date of the close of the rolls for an election until after the close of polling. A third provision, s 155, provides that the rolls close on the third working day after the date of the writs.

The challenged provisions had been introduced into the *Commonwealth Electoral Act* by the *Electoral and Referendum Amendment (Electoral Integrity and Other Measures) Act 2006* (Cth) ("the Amendment Act").

The application for the declaration and for writs of mandamus was referred to the Full Court by Justice Hayne on 29 July 2010 and argument on the application was heard by the Full Court on 4 and 5 August 2010. The application was amended at the hearing so that the declaration sought related to the validity of some other provisions of the Amendment Act.

Today the Court by majority declared that provisions of the Amendment Act which introduced the challenged provisions into the *Commonwealth Electoral Act* are invalid. The declaration also covered certain consequential amendments made by the Amendment Act including other provisions effecting cut-off dates relating to the enrolment of persons living outside Australia (s 94A(4)(a)) and itinerant electors (s 96(4)), and the eligibility of spouses, de facto partners or children of eligible overseas electors for enrolment (s 95(4)).

The orders of the Court were:

1. Declare that Items 20, 24, 28, 41, 42, 43, 44, 45 and 52 of Sched 1 to the *Electoral and Referendum Amendment (Electoral Integrity and Other Measures) Act 2006* (Cth) are invalid.
2. The second defendant to pay the plaintiffs' costs of the Further Amended Application for an Order to Show Cause.

The Court will publish its reasons for decision at a later date.

- *This statement is not intended to be a substitute for the reasons of the High Court or to be used in any later consideration of the Court's reasons.*