

BETWEEN: AUSTRALIAN ELECTORAL COMMISSION
Petitioner

AND DAVID JOHNSTON
First Respondent

JOE BULLOCK
Second Respondent

MICHAELIA CASH
Third Respondent

LINDA REYNOLDS
Fourth Respondent

WAYNE DROPULICH
Fifth Respondent

SCOTT LUDLAM
Sixth Respondent

ZHENYA WANG
Seventh Respondent

LOUISE PRATT
Eighth Respondent



ORDER

JUSTICE: Hayne J

DATE GIVEN: 13 December 2013

INITIATING PROCESS: Electoral Petition

APPEARANCES: J T Gleeson SC (Solicitor-General of the Commonwealth of Australia) with P Kulevski, counsel for the petitioner

S P Donaghue SC with D W Bennett, counsel for the 1st, 3rd and 4th respondents

T D Lang with E M Heenan, counsel for the 2nd and 8th respondents

J A Thomson SC with D B Shaw, counsel for the 5th respondent

R Merkel QC with F I Gordon, counsel for the 6th respondent

K A Barlow QC with T O Prince, counsel for the 7th respondent



THE COURT ORDERS THAT:

1. Leave be granted to the petitioner in each of proceedings C17 of 2013, P55 of 2013 and P56 of 2013 (**the three election petitions**) to file forthwith the respective amended petitions substantially in the form attached to the summons for directions in each proceeding.
2. Subject to any further or other order, the three election petitions be heard and determined together, with the evidence, findings of fact and decisions in one also being evidence, findings of fact and decisions in the others.
3. Without prejudice to the contentions of any party as to questions of relevance and admissibility, on or before 20 December 2013, the Australian Electoral Commission (**AEC**) make available for inspection during ordinary office hours at its office all records in its custody concerning the 1,370 missing ballot papers made by Assistant Returning Officers and the Divisional Returning Officer during the original scrutiny and the fresh scrutiny respectively, with leave granted to the legal representatives of the parties to inspect and copy such records.
4. The petitioners each publish as soon as reasonably practicable a copy of the amended petition in the Commonwealth Gazette and in the official Gazette of Western Australia and Rule 30.02.3 be taken to apply to the amended petitions as though they were a petition.
5. Subject to any further or other order, the following questions of law be set down for trial for two days on 29 and 30 January 2014 before a single Justice of the High Court of Australia sitting in Melbourne as the Court of Disputed Returns:
 - I. Did the loss of the 1,370 ballot papers between the fresh scrutiny and the re-count mean that the 1,370 electors who submitted those ballot papers in the poll were 'prevented from voting' in the Election for the purposes of s 365 of the *Commonwealth Electoral Act 1918* (Cth) (**Act**)?
 - II. Is the Court of Disputed Returns precluded by s 365 or otherwise from admitting the records of the fresh scrutiny, or original scrutiny, that bear on the 1,370 missing ballot papers as evidence of the way in which each of those voters intended to vote, or voted, in the Election for the purposes of each of the petitions filed in the matter, including in so far as those petitions seek relief under ss 360 and 362?

III. On a proper construction of the Act, including the re-count provisions, is any further inquiry regarding the manner in which the AEO dealt with the ballot papers reserved for decision pursuant to s 281:

(a) permitted under any, and if so which, provision of the Act;

(b) relevant to the disposition of any, and if so which, petitions before the Court of Disputed Returns;

(c) necessary to the disposition of any, and if so which, petitions before the Court of Disputed Returns?

6. Each petitioner shall forthwith give notice in accordance with r 32.04 of the High Court Rules 2004 of the day fixed for commencement of the trial of the petition and shall thereafter file in accordance with r 32.04.3 an affidavit proving the making of that publication.
7. On or before 12 noon on 17 December 2013, the parties are to file in the Court a document setting out agreed or assumed facts that are to be agreed or assumed for the purposes of determining the questions of law.
8. On or before 7 January 2014, the parties are to file an agreed bundle of documents (indexed and paginated appropriately) which is to be used for the purposes of determining the questions of law.
9. On or before 14 January 2013, the AEC is to file its submission on the questions of law of no more than 20 pages.
10. On or before 17 January 2014, all other parties in the three election petitions are to file and serve their submissions of no more than 20 pages.
11. On or before 20 January 2014, the AEC, and any other party who wishes to, is to file a strict reply of no more than 5 pages.
12. On or before 22 January 2014, the parties are to file in the Court an agreed list of authorities to be referred to on the hearing of the questions of law.
13. Grant liberty to any party to apply on not less than 24 hours' notice in writing to the other parties.

DATE AUTHENTICATED: 10 January 2014

