



HIGH COURT OF AUSTRALIA

15 December 2010

ROWE & ANOR v ELECTORAL COMMISSIONER & ANOR [2010] HCA 46

On 6 August 2010, the High Court declared, by majority, that certain provisions that amended the *Commonwealth Electoral Act 1918* (Cth) were invalid. Today, the Court published the reasons for its decision.

The provisions that were declared invalid related to the cut-off dates for consideration of claims for enrolment and for transfer of enrolment as an elector. The provisions prevented 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. They also prevented consideration of claims for transfer of enrolment from one divisional roll to another from 8 pm on the third working day after the date of the issue of the writs until after the close of polling.

In separate judgments, Chief Justice French, Justices Gummow and Bell, and Justice Crennan held that these provisions contravened the requirement, contained in ss 7 and 24 of the Constitution, that members of both Houses of the Commonwealth Parliament be "directly chosen by the people". The Chief Justice considered that the adverse legal and practical effect of the challenged provisions upon the exercise of the entitlement to vote was disproportionate to their advancement of the requirement of direct choice by the people. Justices Gummow and Bell, with whom Justice Crennan broadly agreed, held that the provisions operated to achieve a disqualification from the entitlement to vote and that the disqualification was not reasonably appropriate and adapted to serve an end compatible with the maintenance of the system of government prescribed by the Constitution. Justice Crennan held that the democratic right to vote is supported and protected by the Constitution.

In separate dissenting judgments, Justices Hayne, Heydon and Kiefel each held that the provisions did not contravene any limitation imposed by the Constitution on the legislative power of the Commonwealth to fix the date and time after which claims for enrolment or transfer of enrolment may not be considered before an election. Their Honours considered that the requirement of direct choice by the people was not infringed by the provisions challenged.

- *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.*