

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 (C14/2016)

Date referred to a Full Court:

12 December 2016

On 12 December 2016 Justice Gordon, sitting as the Court of Disputed Returns, referred to a Full Court, pursuant to s 18 of the *Judiciary Act 1903 (Cth)*, the following questions transmitted by the Senate on Tuesday, 8 November 2016 pursuant to s 377 of the *Commonwealth Electoral Act 1918 (Cth)*:

- (a) whether, by reason of s 44(v) of the Constitution, or for any other reason, there is a vacancy in the representation of South Australia in the Senate for the place for which Robert John Day was returned;
- (b) if the answer to Question (a) is “yes”, by what means and in what manner that vacancy should be filled;
- (c) whether, by reason of s 44(v) of the Constitution, or for any other reason, Mr Day was at any time incapable of sitting as a Senator prior to the dissolution of the 44th Parliament and, if so, on what date he became so incapable;
- (d) what directions and other orders, if any, should the Court make in order to hear and finally dispose of this reference; and
- (e) what, if any, orders should be made as to the costs of these proceedings.

An issue raised by the reference is whether Mr Day had a direct or indirect pecuniary interest, of a kind prohibited by s44(v) of the Constitution, in a lease agreement between the owner of his electorate office premises in South Australia, as lessor, and the Commonwealth, as lessee.

On 21 November 2016 Chief Justice French made orders that Mr Robert Day, the Attorney-General of the Commonwealth and Ms Anne McEwen be heard on the hearing of the reference and be deemed to be parties to the reference pursuant to s 378 of the *Commonwealth Electoral Act 1918 (Cth)*.

The Attorney-General of the Commonwealth has filed a notice pursuant to s 78B of the *Judiciary Act 1903 (Cth)* in relation to the Full Court hearing.