

HIGH COURT OF AUSTRALIA

HAYNE J

IN THE MATTER OF AN APPLICATION BY GRAHAM FREEMANTLE
FOR LEAVE TO ISSUE A PROCEEDING

*In the matter of an application by Graham Freemantle for leave to issue a
proceeding*

[2011] HCA 6
25 March 2011
S89/2011

ORDER

Leave to issue the proposed proceeding is refused.

Notice: This copy of the Court's Reasons for Judgment is subject to formal revision prior to publication in the Commonwealth Law Reports.

CATCHWORDS

In the matter of an application by Graham Freemantle for leave to issue a proceeding

High Court – Practice and procedure – Leave to issue proceeding – No question arises differing in any material respect from questions arising in another application – Applicant adopts submissions made in that other application – Leave refused in that other application.

High Court Rules 2004, r 6.07.

1 HAYNE J. On 27 October 2010, the applicant (Mr Graham Freemantle) filed in
this Court, as the Court of Disputed Returns, an election petition in relation to the
election for the Electoral Division of Robertson held on 21 August 2010. The
petition was filed on behalf of Mr Freemantle by the same solicitor who had the
carriage of the petition filed on behalf of Mr Andrew Green in respect of the
Electoral Division of Lindsay that is considered in the reasons for judgment for
refusing Mr Green leave to issue a proceeding published at the same time as
these reasons.

2 These reasons are to be read in conjunction with those published in respect
of Mr Green's application for leave to issue a proceeding.

3 Mr Freemantle's petition, like Mr Green's, was referred for trial to the
Federal Court of Australia, New South Wales District Registry, by order of
Gummow J made on 25 November 2010. In all respects that are now relevant,
Mr Freemantle's petition was identical with that of Mr Green.

4 On motion by the third respondent to the petition, the Australian Electoral
Commission ("the AEC"), and the first respondent to the petition, Ms Deborah
O'Neill (the candidate declared elected for the Division of Robertson), Emmett J
ordered, on 3 February 2011, that no proceedings be had on the petition and that
the petition be dismissed¹. In his reasons for judgment, Emmett J recorded² that
Mr Freemantle's complaints "mirror, to a substantial degree, the complaints
made" by Mr Green in his petition. Emmett J said³ that, having regard to the
conclusions he had reached in relation to Mr Green's petition, no additional
argument could be advanced on behalf of Mr Freemantle that would distinguish
the results in the two proceedings.

5 Mr Freemantle sought to begin fresh proceedings in this Court. He sought
to have issued an application for an order to show cause in which the Judges of
the Federal Court of Australia would be named as first defendant, Ms O'Neill as
second defendant, and the AEC as third defendant. On 16 February 2011,
Heydon J directed the Registrar, pursuant to r 6.07 of the High Court Rules 2004,
to refuse to issue or file the application for an order to show cause without the
leave of a Justice first had and obtained. Mr Freemantle now seeks that leave.

1 *Freemantle v O'Neill* [2011] FCA 72.

2 [2011] FCA 72 at [8].

3 [2011] FCA 72 at [8].

6 As in Mr Green's case, Mr Freemantle seeks leave to issue an application which differs from that considered by Heydon J by the addition of a claim for a declaration that s 368 of the *Commonwealth Electoral Act* 1918 (Cth) is invalid.

7 Written submissions of counsel in support of the application for leave to issue the application for an order to show cause are exhibited to the affidavit of Mr Freemantle's solicitor filed in support of the application. Those written submissions adopt those filed in Mr Green's application. No question arises in this application which differs in any material respect from those that arose in Mr Green's application.

8 For the reasons given in Mr Green's application, Mr Freemantle's application for leave to issue a proceeding is refused.

