

HIGH COURT OF AUSTRALIA

GAUDRON J

IN THE MATTER OF AN APPLICATION BY NEVILLE GEORGE FORD FOR
LEAVE TO ISSUE A PROCEEDING

Application for leave to issue a proceeding; Neville George Ford
[1999] HCA 58
1 November 1999
M109/99

ORDER

Application refused.

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

1 GAUDRON J. Neville George Ford has filed an application for prerogative relief under s 75(v) of the Constitution. He seeks orders directed to The Electoral Commissioner ("the Commissioner") and Mr John Doherty, the Convenor of the Referendum '99 Task Force of the Department of Prime Minister and Cabinet ("the Convenor").

2 By his application, Mr Ford seeks to have the Referendum which is to be held on 6 November 1999 postponed and, also, seeks orders directing the Commissioner and the Convenor to carry out "corrective advertising" and to publish certain additional material in the official Referendum Pamphlet required by s 11 of the *Referendum (Machinery Provisions) Act* 1984 (Cth) ("the Act"). Pursuant to O 58 r 4(3) of the High Court Rules, Hayne J directed, on 25 October 1999, that Mr Ford's application not issue without the leave of a Justice. Mr Ford now seeks that leave.

3 Mr Ford seeks prerogative relief on the basis that the Commissioner has failed to comply with s 11 of the Act. Relevantly, s 11 requires that, in the event of a referendum to amend the Constitution, the Commissioner is to print and post a pamphlet to each elector containing "a statement showing the textual alterations and additions proposed to be made to the Constitution"¹. Where the referendum relates to more than one proposed law, the Commissioner may include a statement "setting out all the alterations and additions proposed"².

4 The Commissioner has prepared and posted a pamphlet with respect to two proposed laws to be submitted to referendum on 6 November 1999. The first is a proposed law "to alter the Constitution to establish the Commonwealth of Australia as a republic with the Queen and Governor-General being replaced by a President appointed by a two-thirds majority of the members of the Commonwealth Parliament"³. The second is a proposed law "to alter the Constitution to insert a preamble"⁴.

5 So far as concerns the first proposed law, the pamphlet contains the text of the Constitution with words which are proposed to be inserted being underlined and words which are proposed to be deleted being ruled through. With respect to the second proposed law, the pamphlet sets out the proposed preamble together with proposed s 125A of the Constitution which provides that the proposed preamble "has no legal force and shall not be considered in interpreting

1 Sections 11(1) and (2).

2 Section 11(3)(c).

3 *Constitution Alteration (Establishment of Republic)* 1999.

4 *Constitution Alteration (Preamble)* 1999.

[the] Constitution or the law in force in the Commonwealth or any part of the Commonwealth."

6 Mr Ford complains that the statements in the pamphlet do not comply with s 11 of the Act and are misleading and deceptive in that they do not include the Preamble to the *Commonwealth of Australia Constitution Act* 1900 (Imp) ("the Constitution Act"), an Act of the United Kingdom Parliament, and ss 1 to 8 of that Act. He also complains that there is no statement showing the way in which those provisions would be altered by the proposed preamble to the Constitution.

7 The proposed laws which are to be submitted to referendum on 6 November are laws to alter the Constitution, not to alter the terms of the Preamble to or ss 1 to 8 of the Constitution Act. Accordingly, s 11 of the Act does not require the inclusion of these latter provisions in the official referendum pamphlet. Nor does s 11 require a statement showing how they would be affected by the proposed preamble. Further, it cannot be said that, by reason of the matters of which Mr Ford complains, the official referendum pamphlet is misleading or deceptive.

8 The application for leave to issue proceedings is refused.

