

SPENCE v STATE OF QUEENSLAND (B35/2018)

Amended special case filed: 24 January 2019

Date referred to the Full Court: 24 January 2019

The issue in this case is whether Queensland legislation, which prohibits the making of financial donations from property developers to political parties, is invalid.

The Plaintiff submits that Part 3 of the *Local Government Electoral (Implementing Stage 1 of Belcarra) and Other Legislation Amendment Act 2018* (Qld) (“the Amending Act”) is inconsistent with the implied constitutional freedoms of communication on government and political matters. Part 3 of the Amending Act restricts the funds available to political parties and candidates to meet the costs of political communications. The Plaintiff further submits that that part does not have a legitimate end, because there is nothing to show that donations to political parties, members or candidates for election to the Legislative Assembly of Queensland have had any effect on the integrity of Queensland’s political processes.

The Plaintiff also claims that each of Parts 3 and 5 of the Amending Act are invalid insofar as they do not differentiate between donations for the election of members of the Legislative Assembly, the election of local councillors or the election of members to the Commonwealth Parliament. It further submits that the Commonwealth has exclusive power to regulate the election of members of Parliament and that the Amending Act undermines that power.

The Plaintiff further argues that each of Parts 3 and 5 are invalid under s 109 of the Constitution as being inconsistent with the *Commonwealth Electoral Act 1918* (Cth) (“CE Act”).

Following the filing of Section 78B Notices, the Attorneys-General of the Commonwealth, New South Wales, Victoria, South Australia, Western Australia, Tasmania and the Australian Capital Territory all filed a Notice of Intervention in this matter.

Upon the filing of an amended special case, Justice Gageler referred this matter to the Full Court for its consideration on 24 January 2019.

The questions of law stated for the consideration of the Full Court include:

- Are the amendments made to the *Electoral Act 1992* (Qld) by Part 3 of the Amending Act invalid (in whole or in part and, if in part, to what extent) because they impermissibly burden the implied freedom of political communications on governmental and political matters, contrary to the Commonwealth Constitution?
- Are the amendments made to the *Electoral Act 1992* (Qld) by Part 3 of the Amending Act invalid (in whole or in part and, if in part, to what extent) because they are beyond the power of the Parliament of Queensland to

enact on the basis of an implied doctrine of intergovernmental immunities or on the basis that they impermissibly intrude into an area of exclusive Commonwealth legislative power?

- Is section 302CA of the CE Act invalid (in whole or in part and, if in part, to what extent) because it is beyond the Commonwealth's legislative power?