

IN THE MATTER OF QUESTIONS REFERRED TO THE COURT OF DISPUTED RETURNS PURSUANT TO SECTION 376 OF THE COMMONWEALTH ELECTORAL ACT 1918 (CTH) CONCERNING SENATOR RODNEY NORMAN CULLETON (C15/2016)

Date referred to a Full Court:

21 November 2016

On 21 November 2016 Chief Justice French, 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 which were 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(ii) of the Constitution there is a vacancy in the representation of Western Australia in the Senate for the place for which Senator Rodney Norman Culleton was returned;
- (b) if the answer to Question (a) is “yes”, by what means and in what manner that vacancy should be filled;
- (c) what directions and other orders, if any, should the Court make in order to hear and finally dispose of this reference; and
- (d) what, if any, orders should be made as to the costs of these proceedings.

Chief Justice French made orders that Senator Culleton and the Attorney-General of the Commonwealth be allowed to be heard on the hearing of the reference and shall be deemed to be parties to the reference pursuant to s 378 of the *Commonwealth Electoral Act 1918 (Cth)*.

The following facts are agreed between the parties for the purposes of the hearing of the reference:

1. On 2 March 2016, Senator Rodney Norman Culleton (“Senator Culleton”) was convicted in his absence by the Local Court of New South Wales at Armidale (“Local Court”) for an offence of larceny, property value less than \$2,000. However the Magistrate in convicting Senator Culleton as an absent offender was precluded by s 25 of the *Crimes (Sentencing Procedure) Act 1999 (NSW)* from making an order for a sentence of imprisonment.
2. The offence of larceny of which Senator Culleton was convicted was punishable under s 117 of the *Crimes Act 1900 (NSW)* as affected by s 268(1A) and (2)(b)(ii) and item 3 of Pt 2 of Table 2 in Sched 1 of the *Criminal Procedure Act 1986 (NSW)*.
3. On 2 March 2016, the Local Court issued a warrant for Senator Culleton’s arrest under s 25(2) of the *Crimes (Sentencing Procedure) Act 1999 (NSW)*.
4. On 16 May 2016, the Governor of Western Australia issued a writ for the election of Senators for Western Australia. The writ specified, among other things, that nominations of candidates for the Senate election would close on 9 June 2016.

5. On 7 June 2016, the Australian Electoral Officer for Western Australia received a group nomination for Pauline Hanson's One Nation party which included a nomination by Senator Culleton as a Senate candidate.
6. The polling day for the election was 2 July 2016.
7. On 2 August 2016, the poll for the Senate for Western Australia was declared and the writ returned. Senator Culleton was certified as duly elected as the eleventh out of twelve senators for Western Australia.
8. On 8 August 2016, the warrant issued by the Local Court on 2 March 2016 was executed.
9. On 8 August 2016, the Local Court granted an annulment of the conviction of 2 March 2016 pursuant to s 8 of the *Crimes (Appeal and Review) Act 2001* (NSW).
10. At no time was Senator Culleton sentenced in respect of the conviction.
11. As a result of the annulment granted on 8 August 2016, the Local Court proceeded to deal with the matter afresh in accordance with s 9 of the *Crimes (Appeal and Review) Act 2001* (NSW).
12. On 25 October 2016, Senator Culleton pleaded guilty in the Local Court to the offence of larceny. Without proceeding to conviction, the Court dismissed the matter pursuant to s 10(1)(a) of the *Crimes (Sentencing Procedure) Act 1999* (NSW).

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