

BENNETT & ORS v COMMONWEALTH OF AUSTRALIA (S111/2006)

Writ of Summons: filed 12 April 2006

Special Case: filed 4 September 2006

This Special Case involves the extent of the Commonwealth's powers in respect of the external territory of Norfolk Island and arises from recent amendments to the Island's electoral laws inserting a requirement of Australian Citizenship to be included on the electoral roll and to stand as a candidate for the Local Assembly.

The plaintiffs filed a Writ of Summons in the Court alleging that Norfolk Island is a "*territory placed by the Queen under the authority of and accepted by the Commonwealth*" within the meaning of s.122 of the Constitution but is not relevantly part of the Commonwealth, and that the amendments are not "*laws for the Government of*" Norfolk Island within the meaning of s.122.

The plaintiffs claim that historically Norfolk Island never became part of the Commonwealth in any relevant sense and was placed under the authority of the Commonwealth on the footing that it was a "distinct and separate settlement". This, it is said, places limits on the power contained in s.122 in that the "government" of Norfolk Island, as vested in the Commonwealth, is the government of the Island as a distinct and separate settlement, and does not extend to the alteration of that status or character. It is conceded that this result would be inconsistent with *Berwick Ltd v Gray* (1976) 133 CLR 603.

The Special Case reserves the following questions for consideration by the Full Court:

- Is s.3 of the *Norfolk Island Amendment Act 2004* (CTH) insofar as it gives effect to:
 - a) Items 1, 3 and 4 in Part 1 of Schedule 1 to that Act; and
 - b) Item 5 in Part 1 of Schedule 1 to that Act to the extent that that item inserts into the Principal Act the following new provisions:
 - (i) paragraph 39A(1)(b)
 - (ii) paragraph 39A(2)(a)
 - (iii) s.39C and
 - (iv) the definition of Returning Officer in s.39D

valid ?

- Who should pay the costs in respect of the Special Case

Notice of a Constitutional Matter has been given as required by s.78B of the *Judiciary Act*.

