

CASE NOTE

MPs AND GOLD PASSES: *CUNNINGHAM V COMMONWEALTH*

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I INTRODUCTION

The *Constitution of the Commonwealth of Australia* ('the Constitution') contains express guarantees of individual rights, one of which is a right to just compensation if the Commonwealth compulsorily acquires property under s 51(xxxi). This section serves a dual purpose. It is an enabling provision as it confers legislative power on the Commonwealth Parliament to compulsorily acquire property for certain purposes.¹ However, it also contains an important prohibition on Commonwealth power, because such property can only be acquired on just terms.² Three elements must be satisfied to attract the operation of s 51(xxxi): first, it must involve laws with respect to 'property'³; second, there must be an 'acquisition' which provides some form of benefit to the Commonwealth⁴; and third, there must be an arrangement for compensation to be paid on just terms⁵.

The case of *Cunningham v Commonwealth*⁶ ('Cunningham') examined whether amendments to legislation, and the related tribunal determinations varying the annual allowances payable to retired members of Parliament, constituted the acquisition of property, other than on just terms. This case note will examine the High Court's decision in relation to s 51(xxxi) of the *Constitution*, specifically whether the annual allowances payable to the retired members of Parliament amounted to property and whether there was an acquisition other than on just terms.

II CUNNINGHAM V COMMONWEALTH

A Background Facts

The first plaintiff, Barry Cunningham,⁷ and the second plaintiff Anthony Lamb,⁸ were members of the House of Representatives and they also held parliamentary offices. The third plaintiff, John Moore, was a member of the House of Representatives and he also held the position of a Minister.⁹ The fourth plaintiff, Barry Cohen, was a member of the House of Representatives, he held a parliamentary office and he also held the position of a Minister.¹⁰ Whilst serving as members of Parliament the plaintiffs were entitled to, and received, a parliamentary allowance, a parliamentary office holder allowance and/or a ministerial salary

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¹ Sarah Joseph and Melissa Castan, *Federal Constitutional Law* (Thomson Reuters, 4th ed, 2014) 426.

² *Ibid.*

³ Melissa Castan, *Lawbrief: Constitutional Law* (Thomson Reuters, 1st ed, 2016) 216: Property includes all property recognised under general property law. Common law *choses in action* and intangible rights under contract and tort are forms of property capable of attracting the operation of s 51(xxxi) of the *Constitution*.

⁴ *Ibid* 217 – 18: Generally, mere deprivation or taking of property are not sufficient, there must be a corresponding acquisition by the Commonwealth to attract the operation of s 51(xxxi) of the *Constitution*.

⁵ *Ibid* 219: Payment of just terms is concerned with fairness rather than with strict compensation, or a financial equivalence, and providing for a market value will not always be the correct formula.

⁶ (2016) HCA 39; (2016) 90 ALJR 1138; 335 ALR 363.

⁷ *Ibid* [255].

⁸ *Ibid* [257].

⁹ *Ibid* [259].

¹⁰ *Ibid* [262].

pursuant to various statutes as amended from time to time. Whilst in receipt of these allowances, the plaintiffs paid a proportion of what they received to the Commonwealth as required by a superannuation legislative scheme.¹¹ In addition, the plaintiffs also received certain other entitlements for travel, accommodation and office facilities.¹² On ceasing to serve in these positions, whether they were not re-elected or had resigned, each of the plaintiffs became entitled to a retiring allowance. The third and fourth plaintiffs were also entitled, upon retirement, to the use of a Life Gold Pass for domestic travel at Commonwealth expense.¹³

B Legislation

Before discussing the specific issues in this case, the constitutional provisions must be considered. Section 48 of the *Constitution*¹⁴ addresses parliamentary allowances, whilst s 66 of the *Constitution*¹⁵ addresses salaries of Ministers. Sections 48 and 66 must be read in conjunction with s 51(xxxvi) of the *Constitution*.¹⁶ Read together, these sections empower the Parliament to legislate for the payment of allowances to members of Parliament and the payment of salaries to Ministers. It is important to note that it is for Parliament to decide the form and incidents of any such allowances, including whether the scheme extends to retiring allowances and, if so, the form and incidence of the retirement scheme, indicated by the use of the words ‘until the Parliament otherwise provides’ in each section.¹⁷

The specific legislation that dealt with the retiring allowances and other benefits (such as the Life Gold Passes) was quite complex¹⁸. The *Parliamentary Contributory Superannuation Act 1948* (Cth) (‘*Superannuation Act*’) provided for the payment of certain allowances to retired members of Parliament¹⁹ and the payment of additional allowances to former parliamentary office holders²⁰ and to former Ministers of State²¹. Prior to 2011, the method of calculating retiring allowances was by a reference to a fixed percentage of the parliamentary allowance for the time being payable to members of Parliament.²² In 1973 the Remuneration Tribunal, created under s 7(1) of the *Remuneration Tribunal Act 1973* (Cth) (‘*Remuneration Tribunal Act*’), was given the power to determine parliamentary allowances.²³ In 2011, amendments²⁴ were made to the *Superannuation Act* and the *Remuneration Tribunal Act*, which enabled the Remuneration Tribunal to determine that a proportion of the amount paid to members of Parliament would be excluded from the amount of parliamentary allowance for the purpose of

¹¹ Ibid [2].

¹² Ibid.

¹³ Ibid [3].

¹⁴ Section 48 of the *Constitution* provides that: *Until the Parliament otherwise provides*, each Senator and each member of the House of Representatives shall receive an allowance of four hundred pounds a year, to be reckoned from the day on which he takes his seat (emphasis added).

¹⁵ Section 66 of the *Constitution* provides that: There shall be payable to the Queen, out of the Consolidated Revenue Fund of the Commonwealth, for the salaries of the Ministers of State, an annual sum which, *until the Parliament otherwise provides*, shall not exceed twelve thousand pounds a year (emphasis added).

¹⁶ Section 51(xxxvi) of the *Constitution* provides that: The Parliament shall, subject to the Constitution, have the power to make laws for the peace, order, and good government of the Commonwealth with respect to matters in respect of which this Constitution makes provision *until the Parliament otherwise provides* (emphasis added).

¹⁷ *Cunningham v Commonwealth* (2016) HCA 39, [268].

¹⁸ Ibid [5] – [30], [75] – [116], [137] – [194], [198] – [221], [298] – [326].

¹⁹ *Parliamentary Contributory Superannuation Act 1948* (Cth) s 18(1).

²⁰ Ibid s 18(9)(b).

²¹ Ibid s 18(10).

²² *Cunningham v Commonwealth* (2016) HCA 39, [18].

²³ Ibid [9].

²⁴ *Remuneration and Other Legislation Amendment Act 2011* (Cth).

calculating the retiring allowance.²⁵ The outcome of these amendments was that the rights previously held by the members of Parliament had been modified so that the quantum of their retiring allowances could be reduced.²⁶

Another benefit historically provided to eligible retired members of Parliament was the Life Gold Pass, which provided for domestic travel at Commonwealth expense.²⁷ In 1976, the Minister requested that the Remuneration Tribunal enquire into the matter of the Life Gold Pass.²⁸ Subsequently, the Remuneration Tribunal altered the benefits conferred by the Life Gold Pass a number of times.²⁹ Finally, in 2002 the *Members of Parliament (Life Gold Pass) Act 2002* (Cth) (*Life Gold Pass Act*) was enacted. It restricted a holder of a Life Gold Pass to 25 domestic return trips per annum, while a 2012 amendment³⁰ reduced the number of trips to 10 per annum.³¹

C *The Parties' Arguments*

The plaintiffs' submission were that the Parliament may only lawfully reduce their retiring allowance if the Parliament observes the requirements of s 51(xxxi) of the *Constitution* to provide just terms for the reduction in the value of those entitlements.³² The plaintiffs accepted that the determinations by the Remuneration Tribunal did not extinguish their property completely, but that the determinations may operate to reduce the payments which otherwise would have been made to them and that those reductions would provide a corresponding benefit to the Commonwealth. It would therefore constitute an acquisition of property within the meaning of s 51(xxxi).³³ The Commonwealth argued that the plaintiffs' entitlements to receive retiring allowances under the *Superannuation Act* and the travel benefits under the *Life Gold Pass Act* were not 'property' within the meaning of s 51(xxxi) and that the relevant statute provisions were not laws with respect to the acquisition of property. The Commonwealth also argued that, although statutory rights such as retiring allowances and travel benefits may, in some cases, be characterised as property for the purposes of s 51(xxxi), the rights to payment in this case could not be so characterised. On the contrary, the retiring allowances and travel benefits were, by reason of the legislative terms under which they were created, susceptible to alteration as the Parliament sees fit, and could therefore not fall within the meaning of 'property' for the purposes of s 51(xxxi).³⁴

III CUNNINGHAM V COMMONWEALTH

A *The Joint Judgment of Chief Justice French, Justice Kiefel and Justice Bell*

Chief Justice French et al rejected the plaintiffs' argument that the retiring allowance was 'property' for the purpose of s 51(xxxi). The plaintiffs had argued that their statutory right pursuant to the *Superannuation Act* to receive a retiring allowance was a presently existing debt and was thus property in the form of a vested *chose in action* to recover that debt. It was

²⁵ *Cunningham v Commonwealth* (2016) HCA 39, [21].

²⁶ *Ibid* [24].

²⁷ *Ibid* [25].

²⁸ *Ibid* [27].

²⁹ *Ibid* [28].

³⁰ *Members of Parliament (Life Gold Pass) and Other Legislation Amendment Act 2012* (Cth).

³¹ *Cunningham v Commonwealth* (2016) HCA 39, [29].

³² *Ibid* [122].

³³ *Ibid* [123].

³⁴ *Ibid* [124].

therefore captured by s 51(xxxi).³⁵ They further argued that the 2011 and 2012 amendments and the determinations effected a substantial modification to their statutory rights that could result in a reduction of the amount payable in retiring allowances, which at the same time, gave the Commonwealth a corresponding benefit since it reduced the Commonwealth's liability as a debtor.³⁶ However, this implied that their retiring allowances were at all times of a fixed and certain kind.³⁷ Their Honours rejected this argument, stating that the retiring allowance at all relevant times was payable 'in accordance with' and 'subject to' the *Superannuation Act*, which reflected that the retiring allowance and the method of calculating it, may be altered over time.³⁸ It was then held that a right that has a basis in statute only (as apposed to a right based in common law) was more liable to variation and may even be extinguished by legislative action.³⁹ Statutory remuneration, and therefore entitlement to a retiring allowance fell into this category, considering the context and purpose of the statute creating it, namely the *Superannuation Act*.⁴⁰ With regard to the Life Gold Pass Their Honours held that, while the same reasons relating to the retiring allowance also applied⁴¹, the plaintiffs' main argument focussed on the Life Gold Pass as an *allowance*, meaning that the Remuneration Tribunal could make determinations with respect to it.⁴² Their Honours rejected the plaintiffs' characterisation of the Life Gold Pass as an allowance, holding that the Remuneration Tribunal dealt with it as an existing entitlement, better described as a gratuity, that could be modified or extinguished at any time and would therefore not be captured by s 51(xxxi).⁴³

B *The Judgments of Justice Keane, Justice Nettle and Justice Gordon*

Justices Keane, Nettle and Gordon, in three separate judgments, agreed in essence with the joint judges, but for slightly different reasons. Justice Keane held that the right to a retiring allowance under s 18(1) of the *Superannuation Act* was a statutory right held by the plaintiffs to receive money from the Commonwealth and of the same character as the right of serving members of Parliament to receive remuneration whilst in office.⁴⁴ His Honour further noted that this right was necessarily dependant on the ongoing authority of Parliament on legislative terms that may be amended from time to time.⁴⁵ The plaintiffs had argued that s 22T of the *Superannuation Act* was intended to maintain the level of the retiring allowance, protecting the retiring allowance from downward adjustment.⁴⁶ Justice Keane however, rejected this argument, and held that s 22T instead established the boundary beyond which the plaintiffs' entitlements may not be reduced and was distinctly not concerned with *maintaining* the level of the retiring allowance.⁴⁷ Finally, Justice Keane rejected the plaintiffs' argument that the retiring allowance was vested in them as a right earned by virtue of their service. His Honour held that the plaintiffs were not employees of the Commonwealth who could earn an entitlement to a life pension calculated on a basis specified in a contract of employment. Instead, the plaintiffs were duty bound to serve as members of Parliament as a result of being

³⁵ Ibid [33].

³⁶ Ibid [34].

³⁷ Ibid [36].

³⁸ Ibid [38] – [39].

³⁹ *Attorney-General (NT) v Chaffey* (2007) HCA 34; (2007) 231 CLR 651, 664 [23].

⁴⁰ *Cunningham v Commonwealth* (2016) HCA 39, [43].

⁴¹ Ibid [50] – [51].

⁴² Ibid [51].

⁴³ Ibid [53] – [55].

⁴⁴ Ibid [155].

⁴⁵ Ibid [167].

⁴⁶ Ibid [168].

⁴⁷ Ibid [169].

elected by the people.⁴⁸ With regard to the Life Gold Pass, Justice Keane held that a statutory framework regulated the payment of the benefit and that this framework also determined the content of the benefit, which the Remuneration Tribunal may vary from time to time as it deems necessary under s 7(1) of the *Remuneration Tribunal Act*⁴⁹, and that for this reason, the requirements of s 51(xxxi) did not have to be observed.⁵⁰

Justice Nettle rejected the plaintiffs' argument that they acquired a vested statutory right or *chose in action* against the Commonwealth to be paid a retiring allowance⁵¹, and held that the continued existence and content of each plaintiff's right to be paid a retiring allowance was, by the statutory terms by which it was created, subject to the will of the legislature from time to time.⁵² His Honour also stated that, where a right is inherently defeasible, diminishing that right would not result in the acquisition of property.⁵³ However, Justice Nettle did not accept the Commonwealth's submission that every allowance created by statute was inherently defeasible.⁵⁴ Whilst the expression 'subject to this Act' was ordinarily taken to mean subject to this Act as it may be amended from time to time, those words alone may not be sufficient to render it subject to amendment. His Honour held that it would depend on the nature of the provision and the right thereby created, as well as the context and the apparent purpose of the legislation.⁵⁵ The long and varied legislative history of the superannuation scheme with the many legislative changes made to the benefits payable under the scheme were indicative of a legislative intention that the retiring allowance may be amended from time to time.⁵⁶ In considering the Life Gold Pass, the plaintiffs argued that the Life Gold Pass became in effect an allowance capable of being determined by the Remuneration Tribunal and therefore a statutory entitlement which was proprietary in nature and could not be reduced, or extinguished otherwise than in accordance with s 51(xxxi).⁵⁷ Justice Nettle, agreeing with the joint judges, rejected this argument and characterised the Life Gold Pass as an executive entitlement. His Honour held further that the power conferred on the Remuneration Tribunal⁵⁸ was a power to determine allowances from time to time and as such was necessarily subject to change and therefore not captured by s 51(xxxi).

Justice Gordon rejected the plaintiffs' argument that they had a right to a retiring allowance calculated as a certain proportion of the parliamentary allowance received whilst in office. Although the plaintiffs accepted that the underlying parliamentary allowance was subject to variation from time to time, they argued that neither the proportion nor the underlying reference point could be amended without attracting the operation of s 51(xxxi).⁵⁹ Her Honour held that, at the time the plaintiffs became eligible to receive a retiring allowance, they received only a right governed by the *Superannuation Act* as amended from time to time. The content of the right depended on the will of the legislature. The inherent variability of the right was reflected in the features of the superannuation scheme and the retiring allowance was always expressly

⁴⁸ *Ibid* [170] – [173].

⁴⁹ *Ibid* [189] – [191].

⁵⁰ *Ibid* [193].

⁵¹ *Ibid* [215].

⁵² *Ibid* [222].

⁵³ *Ibid* [235].

⁵⁴ *Ibid* [223] – [233].

⁵⁵ *Ibid* [237].

⁵⁶ *Ibid* [238] – [239].

⁵⁷ *Ibid* [243].

⁵⁸ *Remuneration Tribunal Act 1973* (Cth) s 7(1).

⁵⁹ *Cunningham v Commonwealth* (2016) HCA 39, [274].

stated to be ‘subject to this Act’.⁶⁰ Similarly, the method of calculating the retiring allowance was not fixed in permanent form.⁶¹ With regard to the Life Gold Pass the plaintiffs had argued that the provisions in the *Life Gold Pass Act* resulted in the acquisition of property within the meaning of s 51(xxxi) because it reduced the number of free annual domestic trips to which a holder was entitled.⁶² Justice Gordon rejected this argument and held that the statutory provisions, including their recent administrative and legislative history, demonstrate that the right to a Life Gold Pass suffered from a ‘congenital infirmity’. Her Honour went further and stated that, not only was the administrative origin inherently unstable, but its continued existence, scope and incidents were (and remain) unstable.⁶³ This inherent instability was reflected in the Remuneration Tribunal’s power to determine allowances to be paid to serving members of Parliament.⁶⁴ While these plaintiffs were retired their right depended on the statutory scheme and the will, from time to time, of the legislature that created the right.⁶⁵ The right to the Life Gold Pass could be (and was) amended from time to time and it was therefore not property within the meaning of s 51(xxxi).⁶⁶

C The Judgment of Justice Gageler

In a separate judgment, Justice Gageler also rejected the plaintiffs’ argument that the 2011 and 2012 amendments Parliament made in relation to their statutory rights to receive a retiring allowance resulted in an acquisition of property otherwise than on just terms.⁶⁷ His Honour noted that s 18(6) of the *Superannuation Act* provided for the calculation of the retiring allowance to which a former member of Parliament was entitled as a specified percentage of a member’s parliamentary allowance. The calculation under s 18(6) was also constrained by s 22T of the *Superannuation Act*, which ‘sets a floor’, meaning that the amount of retiring allowance could increase if parliamentary allowances increased. However, it could not decrease if parliamentary allowances decreased.⁶⁸ His Honour then held that, whilst the 2011 amendments did change the method of calculation,⁶⁹ it did not effectively reduce the amount actually received. The plaintiffs were still protected by s 22T, and did not in fact receive an amount of retiring allowance which was less than they received before the 2011 amendments.⁷⁰ His Honour further held that the plaintiffs were not deprived of any property and that the 2011 amendments did not result in a financial benefit to the Commonwealth capable of being captured by s 51(xxxi).⁷¹ Justice Gageler however, did dissent in regard to the Life Gold Pass. His Honour held that the Remuneration Tribunal had no power to alter rights attaching to the Life Gold Pass of a *retired* member of Parliament as its jurisdiction⁷² was limited to determining the allowances to be paid to current serving members of Parliament.⁷³ Consequently, the Life Gold Pass rights were not ‘inherently variable’ and could therefore not

⁶⁰ Ibid [328].

⁶¹ Ibid [329].

⁶² Ibid [339].

⁶³ Ibid [352].

⁶⁴ Ibid [353].

⁶⁵ Ibid [355].

⁶⁶ Ibid [358].

⁶⁷ Ibid [73]; see also *Cunningham v Commonwealth* (2016) HCA 39, [85] – [87] for a discussion on the calculation of the retiring allowance under s 18 of the *Parliamentary Contributory Superannuation Act 1948* (Cth).

⁶⁸ Ibid [87], [93].

⁶⁹ Ibid [90] – [92].

⁷⁰ Ibid [100] – [103].

⁷¹ Ibid [103] – [105].

⁷² *Remuneration Tribunal Act 1973* (Cth) s 7(1).

⁷³ *Cunningham v Commonwealth* (2016) HCA 39, [109] – [110].

be amended or reduced.⁷⁴ The reduction was an acquisition of property other than on just terms, with an obvious financial benefit to the Commonwealth and was therefore invalid under s 51(xxxi).⁷⁵

IV CONCLUSION

Four former members of Parliament approached the High Court to decide a constitutional matter to determine whether amendments to legislation, and the related tribunal determinations varying the annual allowances payable to retired members of Parliament, constituted the acquisition of property, other than on just terms. In *Cunningham* the High Court unanimously held, for slightly different reasons, that the amendments to the retiring allowances were not laws with respect to the acquisition of property and were therefore not captured by s 51(xxxi). Chief Justice French and Justices Kiefel and Bell, with whom Justices Keane, Nettle and Gordon agreed, held that the right to be paid a retiring allowance was a statutory right, ‘subject to’ the *Superannuation Act* as amended from time to time. The right was therefore liable to variation subject to the will of the legislature and thus could not be property for the purposes of s 51(xxxi). Justice Nettle, qualifying statutory rights further, held that not all statutory rights are necessarily subject to amendment. His Honour held that it would depend on the context and purpose of the legislation that created the right. Justices Keane and Gageler further held that s 22T of the *Superannuation Act* protected the retiring allowance from downward adjustment and was never intended to maintain a certain level of retiring allowance as the plaintiffs argued. The plaintiffs were therefore not deprived of any property and the Commonwealth did not receive any corresponding benefit. Justice Keane held that the right to a retiring allowance did not vest in the plaintiffs by virtue of a contract of employment with the Commonwealth; they were bound by a duty to serve as a result of being elected by the people.

The unanimous decision in *Cunningham* was constitutionally sound in that it conformed to a line of judgments handed down by the High Court reaffirming that certain rights are inherently susceptible to variation and therefore do not attract the operation of s 51(xxxi).⁷⁶ Justice Nettle’s judgment also reaffirmed previous decisions of the High Court rejecting any broad proposition that statutory rights are *always* inherently susceptible to modification and thus incapable of forming the basis of an acquisition for the purposes of s 51(xxxi).⁷⁷

In *Cunningham*, the High Court also held (by a majority) that the Remuneration Tribunal’s determinations in relation to amendments to the Life Gold Pass benefit did not constitute an acquisition of property for the purposes of s 51(xxxi). Chief Justice French and Justices Kiefel and Bell with whom Justice Nettle agreed, held that the right to a Life Gold Pass was not an allowance, but a gratuity or executive entitlement and therefore subject to modification. Justices Keane and Gordon held that the Life Gold Pass benefit was regulated by statute and capable of amendment by the Remuneration Tribunal, which rendered the benefit inherently unstable. In a dissenting judgment on this issue, Justice Gageler held that the Remuneration Tribunal had no jurisdiction to determine the Life Gold Pass benefit of a *retired* member of Parliament. The benefit was therefore not inherently unstable and could not be reduced without

⁷⁴ *Ibid* [111] – [113].

⁷⁵ *Ibid* [114].

⁷⁶ *Georgiadis v Australian and Overseas Telecommunications Corporation* (1994) 179 CLR 297; *Health Insurance Commission v Peverill* (1994) 179 CLR 226; *Commonwealth v WMC Resources Ltd* (1998) 194 CLR 1.

⁷⁷ *Newcrest Mining (WA) Ltd v Commonwealth* (1997) 190 CLR 513; *Attorney-General (NT) v Chaffey* (2007) 231 CLR 651; *Telstra Corporation Ltd v Commonwealth* (2008) 234 CLR 210.

adhering to the requirements of s 51(xxxi). The majority judgment is clearly sound, reaffirming *Pools & Staff Pty Ltd v Commonwealth*⁷⁸ on the issue of gratuitous statutory entitlements. Justice Gageler's dissenting judgment could arguably be distinguished as focussing on a jurisdictional issue, rather than a purely constitutional one.

Cunningham has constitutional significance in that it reaffirmed the principles as set out in a line of High Court decisions. However, it not only addressed the constitutional issues of the case, but also focussed attention on the basic principles of Australia's legal system. It has been argued that the plaintiffs in this case did not campaign for their entitlements; instead they asked the High Court to restrain the Parliament, the democratically elected body in Australia's system of government, implying that it was unable to arrange its own affairs in determining the payment of benefits to retired members.⁷⁹ Should the question then be asked why Australia has a legal system where four former members of Parliament were able to mount a legal challenge against restrictions placed on their taxpayer-funded lifestyles?⁸⁰ Or should every Australian citizen have the right under the *Constitution* to approach a court seeking protection of his or her perceived rights. In the words of Sir Owen Dixon: 'In this country men have come to regard formal guarantees of life, liberty and property against invasion by government, as indispensable to a free constitution'.⁸¹

⁷⁸ (1994) 179 CLR 155, 259 - 63: Justice McHugh emphasised that not all acquisitions of property by the Commonwealth fall within s 51(xxxi) of the *Constitution*, especially if they are 'an inevitable consequence of a power conferred by s 51'. His Honour said that, although the right to payment was 'property' the amendment was in the nature of an alteration of a gratuitous statutory entitlement created by Parliament which, consistent with the United States case law, was not in the nature of a vested right, and could be subject to change by Parliament.

⁷⁹ Mark Fletcher, *Monday Morning Small Talking on the Avenue...Property and Cunningham v Commonwealth* (9 October 2016) 4, Only the Sangfroid <<https://www.onlythesangfroid.wordpress.com>>

⁸⁰ *Ibid* 5.

⁸¹ Dan Meager et al, *Hanks Australian Constitutional Law, Materials and Commentary* (Lexis Nexis Butterworths, 10th ed, 2016) 1032.