



HIGH COURT OF AUSTRALIA

12 October 2016

CUNNINGHAM & ORS v COMMONWEALTH OF AUSTRALIA & ANOR

[2016] HCA 39

Today the High Court unanimously held that amendments to the *Parliamentary Contributory Superannuation Act* 1948 (Cth) ("the Superannuation Act") and the *Remuneration Tribunal Act* 1973 (Cth) ("the Remuneration Tribunal Act") and certain Determinations made by the Remuneration Tribunal did not constitute an acquisition of property otherwise than on just terms within the meaning of s 51(xxxi) of the Constitution. The Court further held, by majority, that the enactment of and subsequent amendment to the *Members of Parliament (Life Gold Pass) Act* 2002 (Cth) ("the Life Gold Pass Act") also did not constitute an acquisition of property otherwise than on just terms.

The Superannuation Act provides for the payment of certain "retiring allowances" to retired members of Parliament. Prior to 2011, the method of calculating retiring allowances was by reference to a fixed percentage of the parliamentary allowance for the time being payable to members of Parliament. Another benefit historically provided to retired members of Parliament was the "Life Gold Pass", which provided for domestic travel at Commonwealth expense. In 1976, the relevant Minister requested the Remuneration Tribunal enquire into the matter of the Life Gold Pass. Since that time, the Remuneration Tribunal has altered the benefits conferred by the Life Gold Pass a number of times.

Each of the four plaintiffs served as a member of the House of Representatives of the Commonwealth Parliament for not less than eight years between 1969 and 2001. Three of the plaintiffs also held parliamentary offices and two were Ministers of State. On ceasing to serve as a member of Parliament, each of the plaintiffs became entitled to various retiring allowances under the Superannuation Act. Two of the plaintiffs were also entitled to a Life Gold Pass.

In 2011 and 2012, amendments 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 current members of Parliament would be excluded from the amount of "parliamentary allowance" for the purposes of calculating the retiring allowances ("retiring allowance amendments"), and the Remuneration Tribunal subsequently did so ("the Determinations"). In 2002 the Life Gold Pass Act was enacted, which restricted a holder of a Life Gold Pass, other than a former Prime Minister, to 25 domestic return trips per annum, and an amendment in 2012 reduced the number of trips to 10 per annum.

The parties stated a special case and questions of law arising for the opinion of the Full Court. The questions of law included whether the retiring allowance amendments, the Determinations, and the enactment of and amendment to the Life Gold Pass Act, constitute or authorise an acquisition of property otherwise than on just terms, within the meaning of s 51(xxxi) of the Constitution.

The High Court unanimously held that the retiring allowance amendments were not laws with respect to the acquisition of property, nor did the Determinations constitute an acquisition of property. A majority of the Court held that the entitlements to retiring allowances were inherently liable to variation, because the rights stipulated in the Superannuation Act depended for their content upon the will of the Parliament as exercised from time to time. As such, the variation effected by the amendments and the Determinations could not properly be described as an acquisition of property. The High Court further held, by a majority, that the Life Gold Pass Act and its subsequent amendment were similarly not laws with respect to the acquisition of property.

- *This statement is not intended to be a substitute for the reasons of the High Court or to be used in any later consideration of the Court's reasons.*