



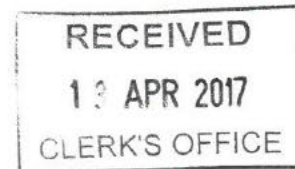
HIGH COURT OF AUSTRALIA

Parkes Place
CANBERRA ACT 2600

Chief Executive &
Principal Registrar

13 April 2017

Mr Richard Pye
Acting Clerk of the Senate
Parliament House
CANBERRA ACT 2600



Dear Mr Pye

**Questions referred to the Court of Disputed Returns pursuant to section 376 of the
Commonwealth Electoral Act 1918 (Cth)
Re: Mr Robert John Day AO**

I write to advise that the High Court of Australia, sitting as the Court of Disputed Returns, made orders in this matter on 11 April 2017.

I enclose a copy of the sealed order of the Court.

Yours sincerely

Andrew Phelan

Encl. Copy Order

10 IN THE MATTER OF QUESTIONS REFERRED TO
THE COURT OF DISPUTED RETURNS PURSUANT
TO SECTION 376 OF THE *COMMONWEALTH*
ELECTORAL ACT (1918) (CTH)
CONCERNING
MR ROBERT JOHN DAY AO

ORDER



20 JUSTICE: Gordon J
DATE GIVEN 11 April 2017
INITIATING
PROCESS: Summons
30 APPEARANCE: Mr N J Williams SC and Mr C L Lenehan, counsel
for the Attorney-General of the Commonwealth
Mr J L Whittington, counsel for Mr Day
Ms S Gory, counsel for Ms McEwen

THE COURT ORDERS THAT:

- 40 1. The Australian Electoral Officer for the State of South Australia cause to be undertaken a special count of the ballot papers cast for candidates for election for the Senate pursuant to the writ issued by the Governor of South Australia dated 16 May 2016 for the election of 12 Senators for the State of South Australia for the purpose of determining the candidate entitled to be elected to the place for which Robert Day was returned.

50 Filed on behalf of the Attorney-General of the Commonwealth by:

The Australian Government Solicitor
Level 42, MLC Centre
19 Martin Place
SYDNEY NSW 2000
DX 44 Sydney



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2. The special count of the ballot papers be conducted in accordance with the directions set out in the Schedule hereto.
3. There be liberty to apply to a justice of the Court in respect of any further questions which may arise as to the method of counting of the ballot papers.
4. Upon completion of the special count, the Australian Electoral Officer for the State of South Australia report to the Court the twelve (12) candidates who, in order, would be elected upon application of the rules for counting set out in s 273 of the *Commonwealth Electoral Act 1918* (Cth) (**CEA**).

DATE AUTHENTICATED: 12 April 2017

A circular blue ink seal of the High Court of Australia. The outer ring contains the text "THE HIGH COURT OF AUSTRALIA" at the top and "THE STATES OF AUSTRALIA" at the bottom, separated by a star. The center features a coat of arms with a kangaroo and an emu. A blue ink signature is written across the seal. Below the seal, a horizontal dotted line is drawn, and the text "Senior Registrar" is printed to the right of the signature.

Senior Registrar

SCHEDULE OF DIRECTIONS

1. A vote indicated on a ballot paper opposite the name of Robert Day be counted to the candidate next in the order of the voter's preference and the numbers indicating subsequent preferences be treated as altered accordingly.
2. The special count be conducted, subject to direction (1), as nearly as practicable in accordance with s 273A CEA as if there were 12 vacancies to be filled.
3. The special count identify which candidate is entitled to be elected to the place left unfilled by the ineligibility of Robert Day.
4. The special count identify which of the candidates other than Robert Day would be elected upon application of the rules for counting set out in s 273 CEA.
5. Notwithstanding direction (1) any ballot paper ruled to be informal during the 2016 scrutiny be treated as informal in the special count.
6. Notwithstanding direction (1) any ballot paper ruled to be formal during the 2016 scrutiny be treated as formal in the special count.
7. Notwithstanding direction (1) any ballot paper showing the same preference for Robert Day and one or more other continuing candidates be set aside as exhausted in accordance with subsection 273(26) CEA at the point in the count at which it would have been set aside had Robert Day been a candidate eligible for election.
8. The special count be open to the inspection of scrutineers.

