

JOINT STANDING COMMITTEE ON ELECTORAL MATTERS
MATTERS RELATING TO SECTION 44 OF THE CONSTITUTION

ATTORNEY-GENERAL'S DEPARTMENT

Question No. 1

Mr Andrew Giles MP asked the following question at the hearing on 8 December 2017:

Are you presently providing advice to government on changes to section 44?

The answer to Mr Giles' question is as follows:

No.

Question No. 2

Senator Linda Reynolds CSC asked the following question at the hearing on 8 December 2017:

Has section 47 ever been examined by the High Court at all? Is there any case law in the High Court in relation to this?

The answer Senator Reynold's question is as follows:

Section 47 of the Constitution provides as follows:

Disputed Elections

47. Until the Parliament otherwise provides, any question respecting the qualification of a senator or of a member of the House of Representatives, or respecting a vacancy in either House of the Parliament, and any question of a disputed election to either House, shall be determined by the House in which the question arises.

The Department is unable to provide legal advice to the Committee. However, in broad terms, three High Court cases have examined section 47 of the Constitution in a significant way:

- *Sue v Hill* (1999) 199 CLR 462
- *Sykes v Cleary [No 1]* (1992) 66 ALJR 577; (1992) 107 ALR 577
- *In re Wood* (1988) 167 CLR 145.

Section 47 was also considered more briefly in:

- *R v Governor of South Australia* (1907) 4 CLR 1497 at 1508-1509, 1513
- *Attorney-General (Cth); Ex rel Mckinlay v Commonwealth* (1975) 135 CLR 1 at 42
- *Snowdon v Dondas* (1996) 70 ALJR 864
- *Re Culleton* (2017) 91 ALJR 302 at [1], [38].

The section is also under consideration in the High Court case *Alley v Gillespie* (HCA S190/2017), in which judgment is reserved.