SUPREME COURT OF QUEENSLAND

CITATION:	*Mowen v Electoral Commission of Queensland* [2015] QSC 16
PARTIES:	**BEVAN ALAN MOWEN** (applicant) **v** **ELECTORAL COMMISSION OF QUEENSLAND** (respondent)
FILE NO/S:	62 of 2015
DIVISION:	Trial Division
PROCEEDING:	Application
ORIGINATING COURT:	Supreme Court of Queensland
DELIVERED ON:	30 January 2015 (*ex tempore*)
DELIVERED AT:	Brisbane
HEARING DATE:	30 January 2015
JUDGE:	Daubney J
ORDER:	**1. Application dismissed.** **2. Applicant pay respondent's costs of and incidental to the application.**
CATCHWORDS:	EQUITY – EQUITABLE REMEDIES – INJUNCTIONS – INJUNCTIONS FOR PARTICULAR PURPOSES – OTHER CASES – whether injunctive relief should be granted to restrain the Queensland State election on 31 January 2015 based on the construction by the applicant of the Commonwealth Constitution. CONSTITUTIONAL LAW – THE NON-JUDICIAL ORGANS OF GOVERNMENT – THE LEGISLATURE – ELECTIONS AND RELATED MATTERS – OTHER MATTERS – where the applicant argues that the franchise age stated in the Commonwealth Constitution is 21 years of age. *Electoral Act* 1992 (Qld), s 64. *Electoral Act* 1918 (Cth), s 93. *Commonwealth Constitution*, s 34, s 8, s 30, s 128, s 109. *Judiciary Act* 1903 (Cth), s 78B.

COUNSEL: The applicant appeared in person
A D Scott for the respondent

SOLICITORS: Crown Law for the respondent

[1] **HIS HONOUR:** The form in which the present application was filed purported to be an "ex parte originating application" by the applicant, Bevan Mowen, seeking, in effect, an injunction to restrain the holding of the State election tomorrow, the 31 January 2015. Notice of the application was, in fact, given to the Electoral Commission of Queensland and counsel for the Electoral Commission appeared before me this morning, initially seeking to appear as amicus curiae. But after raising with the applicant the patent technical defect in the form of his application in that it had not named any respondent but rather purported to seek an injunction at large with no dispute and no contradictor, Mr Mowen sought and was granted leave to name the Electoral Commission of Queensland as a respondent. Counsel for the Electoral Commission then formally appeared for the respondent and provided me with an affidavit in response to the application and with written submissions addressing the matters raised by the applicant.

[2] Central to the relief sought by the applicant, as appears from paragraph 1 of the originating application, is the contention that the franchise age stated in the Commonwealth Constitution is 21 years. The issues raised on the face of the application clearly concern matters of interpretation and construction of the Constitution of the Commonwealth of Australia and normally would require notices to be given to the Attorneys-General of the states and territories pursuant to section 78B of the *Judiciary Act* 1903. I am, however, able to deal with the matter now without such notices having been given pursuant to section 78B because, for the reasons that I will shortly address, the contentions advanced on the originating application are plainly unarguable and the application must be dismissed.

[3] The reason why the matters raised on the originating application are plainly unarguable can be stated shortly. As I have already noted, central to the applicant's case is the notion that section 34 of the Commonwealth Constitution mandates that the age of enfranchisement under the Commonwealth Constitution is 21 years. Section 34 says no such thing. Section 34 is clearly concerned with the qualifications for persons to become members of the House of Representatives. One of those qualifications is that a person who would seek to become a member of the House of Representatives must be of the full age of 21 years. Section 34 has nothing to do with the qualification of electors for those persons.

[4] I was directed to a number of other sections of the Constitution in the course of argument. Section 8 of the Constitution provides, in effect, that the qualification of electors of senators in the Commonwealth Parliament shall be the same as the qualification for electors of members of the House of Representatives. In order to follow that through, one then goes to section 30 of the Constitution which provides to the effect that the qualification of electors of members of the House of Representatives shall, in each State, be that which is prescribed by the law of the State as the qualification of electors of the more numerous Houses of Parliament of the State. Clearly enough, the Constitution then calls up, both for the qualification

of electors for member of the House of Representatives and for members of the Senate, the qualifications which apply in respect of electors under State law

[5] The qualification for electors under state law in Queensland, namely the *Electoral Act* 1992, is found in section 64. It relevantly provides that a person is entitled to be enrolled for an electoral district if the person is entitled to be enrolled under the Commonwealth *Electoral Act*. When one then turns to the Commonwealth *Electoral Act* 1918, one finds, in section 93 (1)(a), that the age of entitlement for enrolment as elector under the Commonwealth *Electoral Act* is 18 years of age. Accordingly, there is nothing in the Constitution of the Commonwealth of Australia which mandates or prescribes that the franchise age for electors in the Queensland state election is 21 years of age. Rather, by reference to the provisions of the *Electoral Act* of Queensland and the Commonwealth *Electoral Act*, it is clear beyond any argument that the age of entitlement to be enrolled to vote in Queensland is 18.

[6] Further arguments were alluded to in the originating application. One concerned section 128 of the Constitution in respect of an argument that any alleged reduction in the qualification age involves an alteration to the Constitution. That argument simply cannot be countenanced, not least because of the express terms of the Constitution in section 30 and the express terms of both the state and federal legislation to which I have already referred. Similarly, section 109 of the Constitution which concerns inconsistencies between state and federal legislation has no application to the present case.

[7] In all the circumstances, as I say, the case sought to be advanced by Mr Mowen is simply unarguable. It is unnecessary, in those circumstances, for notices to be given pursuant to section 78B of the *Judiciary Act*. The application is dismissed.

[8] …

[9] **HIS HONOUR:** There will be a further order that the applicant pay the respondent's costs of and incidental to the application**.**