

# Johnston Withers High Court Win

Former State MP Ralph Clarke, represented by Johnston Withers (Richard Bradshaw, ably assisted by Mark Jappe and law clerk Ben Hancock), had a big win in the High Court in September. Mr Clarke challenged the constitutional validity of a superannuation contributions surcharge that applied to South Australian MPs and senior public servants.

After losing in the Federal Court, Mr Clarke was successful on appeal, with the High Court deciding, six judges to nil, that the special Federal laws imposing this surcharge were invalid as they applied to Mr Clarke and other State MPs.

South Australian barristers Paul Heywood-Smith QC and Andrew Tokley (briefed by Johnston Withers) argued in the High Court that the surcharge was invalid as it placed an impermissible burden on the capacity of SA to function as an independent government. This ability is required by the federal nature of the Constitution of Australia. They were supported in this argument by the Attorneys-General of all the mainland States. The ATO and the Commonwealth Attorney General argued that the laws did not affect the States enough to be invalid.

After almost six months of deliberation, the High Court concluded that the method and amount of remuneration of State Parliamentarians formed such an important part of the constitutional functioning of the States that any Federal statute which singles out people at the highest levels of State Government for different treatment from that applicable to the rest of the population will likely be invalid.

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