SUBMISSION NO. 21

Miskin, Sarah (REPS)

From: G. H. SCHOREL-HLAVKA [INSPECTOR-RIKATI@SCHOREL-HLAVKA.COM]
Sent: Friday, 4 March 2005 4:37 PM
To: Committee, EM (REPS)
Cc: inspector-rikati@SCHOREL-HLAVKA.COM
Subject: SUBMISSION 4-3-2005

050304gh-amended .doc (321 KB)

SIR/MADAM,

EARLIER TODAY, I FAXED THE SUBMISSION ONLY TO BECOME AWARE AFTERWARDS THAT THE HEADING SHOWED IN ERROR 26-6-2004 ALBEIT THE FOOTER ON EACH PAGE SHOWS THE 4-3-2005 DATE.
I ENCLOSE HEREBY A CORRECTED VERSION, ALTERNATIVELY OR ALSO YOU MAY CORRECT THE 26-6-2004 DATE SHOWN ON THE FACSIMILE TO THE 4-3-2005 DATE.

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MR G. H. SCHOREL-HLAVKA

Mr G. H. SCHOREL-HLAVKA (GARY)

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I am the only person who dared to challenge John Howard on constitutional grounds in the courts about the unconstitutional murderous invasion into the sovereign nation Iraq!

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INSPECTOR-RIKATI® on PLEASE EXPLAIN
(Re Pauline Hanson's wrongful jailing)

INSPECTOR-RIKATI® on the battle SCHOREL-HLAVKA v BLACKSHIRTS For the quest of JUSTICE, in different ways. Book on CD. (4 members charged with stalking in regard of a 24-11-2001 demonstration got off the charges, read how the Office of Public Prosecution and others abused the system, where the Author assisted the members about legal issues concerned.

MAY JUSTICE ALWAYS PREVAIL®
ABN: 97144820620 E-mail: mayjusticealwaysprevail@schorel-hlavka.com Ph/Fax 0011-61-3-94577209 GM-211-01
From; *Mr G. H. SCHOREL-HLAVKA*, 107 Graham Road, Rosanna East, Victoria 3084, Australia

WITHOUT PREJUDICE

JSCEM (Joint Standing Committee in Electoral Matters) 4-3-2005
Ph; 02 6277 2374
C/o Fax 02 62734100

Re; **electoral matters**

SUBMISSION

AND TO WHOM IT MAY CONCERN

Sir/Madam,

Further to my previous correspondence, I wish to add the following;
To understand what "**POLITICAL LIBERTY**" is about, one must first consider what the Framers of the **Commonwealth Constitution Bill 1898** (***Constitution***) intended!

Hansard 17-3-1898

Mr. DEAKIN.-

. Speaking of the political provisions of the Bill, it appears to me that they may be fairly said, not only to mark a great advance on the Constitution of 1891, but to be vastly more liberal than any of the Constitutions under which we at present live.

And

Mr. DEAKIN.-

We must remember that this Federal Constitution is to be built up out of two quarries. The first quarry is the existing powers of the local Parliaments, which are called upon to make certain surrenders. By these surrenders, liberal electors will observe that we are taking powers in every case from a less liberal Constitution, and referring them to a more liberal Constitution. Every existing Constitution in Australia is less liberal from a political point of view in its framework and machinery than the Federal Constitution. Liberal electors will note, therefore, that whatever powers they sacrifice they are transferring to a more liberal Government, over which they have a readier control. As to the new powers with which the Federal Government is endowed-and that is the other quarry-liberal electors will note that not only in the future will they be endowed with powers which they have not at present, but that those powers will be exercised under a more liberal Government than they now enjoy. For my own part I have no hesitation and no fear in recommending the acceptance of this Constitution to the people of Victoria.

And

Mr. DEAKIN.-

In this Constitution, although much is written much remains unwritten,

And

Mr. DEAKIN.-

What a charter of liberty is embraced within this Bill-of political liberty and religious liberty-the liberty and the means to achieve all to which men in these days can reasonably aspire. A charter of liberty is enshrined in this Constitution, which is also

a charter of peace-of peace, order, and good government for the whole of the peoples whom it will embrace and unite.

Mr. SYMON (South Australia).-I wish to say one word or two before we part. I do not intend to enter into any detailed examination of, or any elaborate apology for, the Constitution which we have been engaged in framing. But, sir, no man can remain unmoved upon this momentous occasion. **We who are assembled in this Convention are about to commit to the people of Australia a new charter of union and liberty; we are about to commit this new *Magna Charta* for their acceptance and confirmation, and I can conceive of nothing of greater magnitude in the whole history of the peoples of the world than this question upon which we are about to invite the peoples of Australia to vote. The Great Charter was wrung by the barons of England from a reluctant king. This new charter is to be given by the people of Australia to themselves.**

Again;

This new charter is to be given by the people of Australia to themselves.

Hansard 2-3-1898 records;

Mr. Barton.- I did not say that. I say that our real status is as subjects, **and that we are all alike subjects of the British Crown.**

One then must question, why on earth the Commonwealth of Australia unconstitutionally interferes with this "**POLITICAL LIBERTY**" by seeking to force electors to vote in a certain manner or to vote at all?

When I am standing as a candidate I do so for a particular purpose, that is that I consider none of the other candidates worthy or competent to receive my vote or to be deemed suitable candidates. After all, if any of them were I would not need to stand as a candidate!

As such, if I were to vote, I would only vote for myself and not for any other candidate. However, in the manner the Commonwealth of Australia dictates electors how to vote, the very "**POLITICAL LIBERTY**" the Framers claimed to be provided is denied.

After all, if I were to vote just for myself, my ballot paper would be deemed invalid.
As such, I am left no choice but not to cast a vote. It makes not one of iota difference to the end result of vote counting if I were to lodge a blank ballot paper or a ballot paper with just my own name marked, as either way it would be deemed an invalid vote.

As such, one then has to question the validity of fining any elector who refuses to cast a vote formally, when in fact the same elector could merely lodge a blank ballot paper and the end result would be the same, in regard of vote counting.
Therefore, forcing electors to vote, is not producing any benefit other then pursuing that those who get the vote, if casted, get monies for such vote.

People who do not wish to have candidates being paid from consolidated Revenue for their vote, obviously may therefore desire to lodge a blank ballot paper.
I found that many people are still unaware that whom ever gets their number one vote gets money from Consolidated Revenue.

In my view, it should be noted on the ballot paper that whomever receives the number 1 vote may receive a certain amount of moneys (as may be applicable from time to time). This, so an elector can make an informed decision who they want, if any, the monies to go to.

After all, an elector may deem that the advertising by a certain candidate was worthy and for this failing any other reasons, or being a decisive reason may allocate his/her number one vote to that candidate.

My concern is however that the Framers made clear that no monies could be drawn from Consolidated Revenue, unless first allocated in the appropriation bills passed for that particular financial year, and as such, the payment per vote to candidates seems to be unconstitutional in that regard.

The Framers never intended any "payment per vote" system and as such never provided for any alternative then the appropriation Bills to draw monies from Consolidated Revenue.

While it might be possible, say to have had in the 2004-2005 Appropriation Bills monies set aside for an election in that financial year, what then if an election is suddenly held before that financial year? Clearly, there is no constitutional validity to authorise a "payment per vote"!

Further, it robs the "poor" person to have an equal chace in being elected versus a candidate standing for a political party, this, as the political party can embark upon a spending spree advertising strategy, not possible for the "poor" person to match. Meaning, that the very nature of "payment per vote" defeats the intentions of the Framers, who held that even a "poor" person should be able to be elected to Parliament.

We also have the "Deposit" of candidates, that are repaid to the candidate if a certain percentage of votes is obtained by the candidate. Just that again, the Framers made clear that all monies collected by the commonwealth of Australia must be placed in consolidated Revenue, and only by way of Appropriation Bill can any monies be drawn.
One then may ask, how on earth can the Australian electoral commissioner payout the "Deposit" lodged previously, where the deposit never was either lodged into consolidated Revenue, or if it was, it cannot be taken out without awaiting the next Appropriation Bill to the following financial year to authorise the drawing of the "deposit"!

The very reason the Framers wanted monies to be drawn by way of Appropriation Bills, was to ensure that no monies could be syphoned off inappropriately and all moneys are accounted for, and the Senate approve of this. Further, monies must be spend for the whole of the Commonwealth of Australia without discrimination. To make a deposit refundable upon having obtained a certain percentage of votes, in my view, interfered with the **"POLITICAL LIBERTY"** THE FRAMERS INTENDED, and denies DEMOCRATIC elections in that regard also..

We have the "deposit" and we have for example the square above the line that is another unconstitutional invasion into the rights of candidates.

Pauline Hanson, for example was robbed of her right to have a square above the line, not because she didn't lodge her nomination before the closure of nominations as Gazetted by the governor of the State of Queensland, but because of unconstitutional time frame by the Australian Electoral Commissioner to close nominations for a square above the line 48 hours earlier.
Hence, the last Federal election for this in regard of the Senate elections was floored, and a new election ought to be held without the imposition of unconstitutional provisions.

It ought always be remembered by those who condone such kind of unconstitutional practice, that whatever system they put in place may one day be used against them!

Also, the very system that may be used now could be used by others to set demands that might prevent their parties to be part of any election! Say, legislation was amended to demand that any person being a member of parliament has to obtain no less then 500 nominations and those nominations cannot be of members of their own party as it would be bias?
I see absolutely no difference in having such demand compared to the current absurd legislation that an candidate not being a sitting candidate and independent shall be required to have 50 nominations, where as a candidate belonging to a political party merely has to have one signature.

The Aged and Disability Pensioners Party, for whom I stood as a candidate, is a clear example of how this can be manipulated. To my knowledge it did not have 500 members, and members of the committee are not even appointed by the members, as no Annual General meeting are held. One of the members of the party simply appoint whomever he desires to be in the committee and they remain as long as they do what he demands them to do. If they don't then he simply makes known the person is out.
The same with funding the collected. Thousands of dollars collected by raffle tickets and as a Member and a candidate I was denied any information as to how the money was spend, other then being told it was used in the pubs!
The purported president, being unaware if he really is the president or not, as no general meeting appointed him, just that the founder of the party simply had stated he was president, and that is it. the same with some candidates. To my understanding one person was not even ever a member, neither a financial member, while standing as a candidate!
The Aged and Disability Pensioners Party even claiming that I am not a member of the party, even so it has my payment as a member, because it simply decided so! So, the at the time only financial member of the party is held not to be a member!
The AEC however did nothing to deal with these and numerous other issues!
What we have is that a genuine candidate is forced to obtain 50 nominations, where as candidates who use such kind of rot, are accepted regardless that there is no membership to justify their nomination as such!

As one person of another party made clear to me, his membership was non existing, and for so far he knew he was the Registered Officer of the party and not even a committee existed, and he simply endorsed his own nomination to enable him to continue the farce of having a political party!
Just consider also, if Unions in the work place were to conduct their elections similarly to those held by federal elections, that is that their committee members can do with merely one nomination while anyone else wanting to stand needs to have, say, 30% of the total of membership of the union to be nominated, then the Commonwealth of Australia could hardly build a case that this is an unfair practice where itself has pursued this kind of election system! The fact that 30% of total membership may seem unfair is hardly an issue as 50 nominations for a potential candidate residing in a remote part of the Commonwealth of Australia may equally be absurd.

One person even demanded from me that I would have him as a "running mate" as a candidate, because it would make a good impression for the jury, in a then pending criminal trial, as his lawyer allegedly had indicated to do so.
The correspondence regarding this will be published in my forthcoming book!

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Obviously I refused this, and afterward the criminal charges against the person were not proceeded with. But, what it did indicate was a disturbing issue, and that is that being a candidate was being manipulated for ulterior purposes and made easy for a person not even being a financial member to pursue because of how legislation enabled this kind of rot.

With the "PAYMENT PER VOTE" system, a candidate could merely stand for a political party, and in the process collect tens of thousands of dollars, without even bothering to campaign.
It has happened before!
As such, the "payment per vote" is in itself an attraction for dubious candidate nominations!
A candidate who is successful to be elected may have had little on primary votes but may have gotten over the line by preferences, and as such would have little to receive of the "payment per vote" system, still may have spend a small fortune in the election campaign. Yet, another candidate could received hundreds of thousands of dollars, and yet not be elected, and may have spend next to nothing on election campaign!
Clearly, the payment per vote has no sensible reason to be there other that political parties may have their political campaign funded by this to a great extend.
And for what?
Most advertising of political parties are not educational at all, it is an attack upon others, regardless being truthful in content or not.

Back to the voting or not.
As a candidate, I hold it my right not wanting to vote for those against whom I am standing! Indeed, I view it is totally absurd to contemplate voting for my opponents.

I am neither a Republican or a Monarchist, as quite simply, neither really know what they are talking about. My books so far published are dealing with numerous constitutional issues that neither monarchist of Republicans ever understood to be relevant to the issue if the Commonwealth of Australia ought to remain under the monarchy or become a Republic.
As such, I for one do not want to vote for candidates who profess either views, not knowing what they are talking about.
Yet, to be able to vote for myself, I am forced to vote for those kind of people or not vote at all!
Where is my "**POLITICAL LIBERTY**" in that regard?

Suppose one goes for a jo, and the prospective employer request that you fill out a ballot form as to who you consider who should have the position, and he then will decide by whatever votes were given by the applicants as to whom will get the job?
One would hold this would be absurd, if this required that a prospective employee has to vote not just for him/herself but also for all other applicants by way of preferences. Yet, with the election system this is the kind of nonsense we really have, where a candidate must vote for his/her opponents also.

Now, what we then have is a absurd system where the Commonwealth Electoral Commissioner then takes it upon him/herself as to determine if you have a reasonable excuse not having voted.
Again, an unconstitutional system.

As I have extensively set out in my book (Published on 30 September 2003);

INSPECTOR-RIKATI® on CITIZENSHIP

A book on CD about Australians unduly harmed.

The Framers made clear that it is to the State Courts to determine if it should nullify Commonwealth of Australia law it holds is undesirable to be enforced!

Hansard 31-1-1898

Mr. WISE (New South Wales).-

> It might be that a law passed by the Federal Parliament was so counter to the popular feeling of a particular state, and so calculated to injure the interests of that state, **that it would become the duty of every citizen to exercise his practical power of nullification of that law by refusing to convict persons of offences against it. That is a means by which the public obtains a very striking opportunity of manifesting its condemnation of a law, and a method which has never been known to fail, if the law itself was originally unjust**. I think it is a measure of protection to the states and to the **citizens** of the states which should be preserved, and that the Federal Government should not have the power to interfere and prevent the **citizens** of a state adjudicating on the guilt or innocence of one of their fellow **citizens** conferred upon it by this Constitution.

As such, the electoral law provisions that one must vote of be fined clearly is for the State Courts to decide, not for the Australian Electoral Commissioner to issue some "fine"!

Yet, people who are "deemed' not to have a justified excuse, are "fined' by the Australian Electoral Commission for an amount of $20.00 and then advised that if they do not pay it then legal action can be taken and court cost be applied also as well as a $50.00 fine.

Now where on earth did this unconstitutional nonsense come from?

How on earth can you have the AEC playing prosecutor, judge and jury and hangman, so to say?

While Members of Parliament on both sides of the political fence are debating about a Republic or Monarchy, they cannot even manage to conduct elections within the ambit of constitutional provisions and limitations.

How on earth can anyone contemplate to have a Republic to resolve what? The Monarchist argued that if it aint broken there is nothing to fix, well, the nonsense about Queen of Australia itself indicates we running a de facto Republic, as we are and remain to be subjects of the British Crown! Now, there is no such thing as creating a Australian monarchy, while being a subject of the British Crown. No kind of legislative provision by the federal Parliament can override constitutional limitations in that regard, not even the **purported *Australian Act*** can do so!
So, why on earth would I want to vote for opponent candidates who support some kind of utter nonsense and unconstitutional conduct?
Yet, somehow I am not entitled to have my vote counted as to vote just for myself unless I vote also as dictated by the Commonwealth of Australia in a certain preference.
To me, that is not what **POLITICAL LIBERTY** is about.

I am well aware of the ***Albert Lange*** High Court of Australia decision, but that was never considering what I have stated above!
The basis of that decision was because of Albert Lange being an elector but not being a candidate and hence the situation being starkly different, as well as that in the Albert Lange case the High Court of Australia never extensively addressed issues as I raised in my books

That by the provisions of the ***Australian Crimes Act 1914*** section 24AA, **"do any act or thing with intent to overthrow the Constitution"** it is **"Treachery"** and punishable by **"Imprisonment for life"**.
And, consider also,

"We the People are the rightful master of both congress and the courts - not to overthrow the Constitution, but to overthrow the men who pervert the Constitution."
Abraham Lincoln,

Hansard 17-3-1898
Mr. DEAKIN.-
In this Constitution, although much is written much remains unwritten,
As the Framers made clear, the Constitution had to be interpreted as to what was debated during the **Constitution Convention Debates**.

Hansard 2-3-1898 records;
Mr. Barton.- I did not say that. I say that our real status is as subjects, **and that we are all alike subjects of the British Crown.**

Those who swear alliance to a Queen of Australia, while being subjects of the British Crown, as is embodied in the Constitution, then I view commit **TREASON**.

TERRORISM is generally claimed to exist where some one or some group used fear or other improper inducements to seek to force others to subjects themselves to their demands.

In that regard, I see no difference with **TERRORISM** being conducted against electors, where they are forced to vote for people they do not want to vote for, or otherwise are being fined, contrary to the system intended by the framers, as a way to ensure they subject themselves to those unconstitutional and illegal demands.

TERRORISM can be as much pursued by those in official positions as by those who are not in elected government positions.

To me, to sow fear among electors that if you vote for some candidate you could suffer severely, is as much **TERRORISM** as that a person may do otherwise.

Sent: Wednesday, July 14, 2004 2:29 PM, **From:** Greg Tudehope

QUOTE

CRIMES ACT 1914 (Cth)
28 Interfering with political liberty
Any person who, by violence or by threats or intimidation of any kind, hinders or interferes with the free exercise or performance, by any other person, of any political right or duty, shall be guilty of an offence.
Penalty: Imprisonment for 3 years.

Greg T (QC)

END QUOTE

Sent: Tuesday, July 13, 2004 8:51 PM, **From:** Greg Tudehope

QUOTE

John,
I don't bother to vote for any of the dishonest grubs in Queensland either and as yet I have not been threatened with any offence for not doing so.

I have contacted the Electoral Commission and stated that if any person ever threatens me for not voting I will take advantage of the law that applies in Queensland but they claimed that they were unaware of what I was talking about.

The facts are that if I am threatened by any body for not voting it is a criminal offence and I believe it would be the same in NSW but I am unaware of what the state of the law is down there.

I have attached a copy of the section of the Criminal Code Qld that applies here.

s 102 81 s 103
Criminal Code Act 1899

102 Undue influence
Any person who—
(a) uses or threatens to use any force or restraint, or does or threatens to do any temporal or spiritual injury, or causes or **threatens to cause any detriment of any kind, to an elector** in order to induce the elector to vote or refrain from voting at an election, **or on account of the elector** having voted or **refrained from voting at an election;** or
(b) by force or fraud prevents or obstructs the free exercise of the franchise by an elector, or **by any such means compels or induces an elector to vote** or refrain from voting **at an election;**
is guilty of a misdemeanour, and is **liable to imprisonment for 1 year**, or to a fine of $400.

Greg Tudehope (QC) Qld Criminal

END QUOTE

As the Queensland legislation is dated 1899, prior to Federation! As such relevant to the issue.

Indeed, by the above, politicians bribing, so to say, electors, such as the unconstitutional $600.000 carers payment in June 20904, without having this as part of the appropriation bills for the financial year 2003-2004 also ought to be considered to have invalidated the elections being **FAIR AND PROPER**.

No good to argue about other countries if their elections are FAIR AND PROPER, where we cannot even manage our own elections to be so!
And considering,

Hansard 17-3-1898

Mr. DEAKIN.-

Every existing Constitution in Australia is less liberal from a political point of view in its framework and machinery than the Federal Constitution.

.
then it must be clear, that if Queensland could pass legislation within its Constitution that make it an offence to interfere with the right of any elector to vote or not to vote, then the later ***Australian Constitution Act 1900*** could not deny this kind of right and provision!

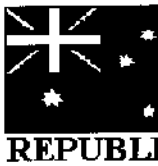
It does not matter if this was a Queensland Act, and not in the State of Victoria or elsewhere, as the Framers made clear that the **POLITICAL LIBERTY** within the Constitution was greater then under any of the States! Hence, if the ***Constitution*** is used by the federal Parliament to force an elector to vote, then irrespective if this elector is residing in Queensland or Victoria or elsewhere, the rights and obligations remains equal throughout the Commonwealth of Australia. Either it applies or does not apply.

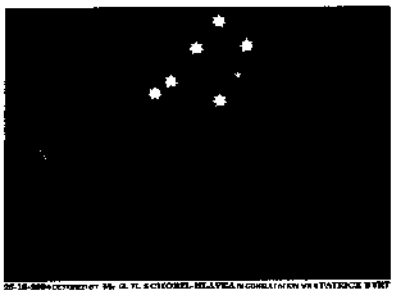
It is my understanding that the High Court of Australia never considered this either in the ***Albert Lange*** and other cases!

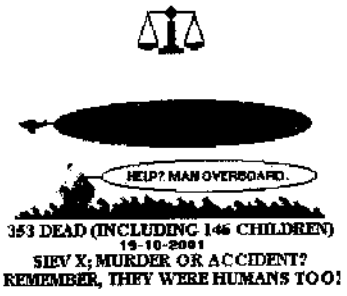
To avoid an extreme lengthy SUBMISSION, all kinds of quotations of the **Constitutional Convention Debates** have for this not been included, other then some limited quotations above, for this, this SUBMISSION must not be perceived and neither is intended to set out all relevant matters, but is merely a limited set out.

Obviously, I would like to compliment my SUBMISSIONS to present orally further matters when the JSCEM holds it hearings, and will await your invitation.

Awaiting your response, **G. H. SCHOREL-HLAVKA**







MAY JUSTICE ALWAYS PREVAIL®

ABN: 97144820620 E-mail: mayjusticealwaysprevail@schorel-hlavka.com Ph/Fax:0011-61-3-94577209 GM-211-01

From; *Mr G. H. SCHOREL-HLAVKA*, 107 Graham Road, Rosanna East, Victoria 3084, Australia

WITHOUT PREJUDICE

JSCEM (Joint Standing Committee in Electoral Matters) 5-3-2005
Ph; 02 6277 2374
C/o Fax 02 62734100

Re; **electoral matters**

SUBMISSION

AND TO WHOM IT MAY CONCERN

Sir/Madam,

Further to my previous correspondence, I wish to add the following;

To give a better understanding as to what this SUBMISSION is about, I will need to quote some parts of previous submissions;

To understand what "**POLITICAL LIBERTY**" is about, one must first consider what the Framers of the **Commonwealth Constitution Bill 1898** (***Constitution***) intended!

Hansard 17-3-1898
And

Mr. DEAKIN.-

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And

Mr. SYMON (South Australia).-

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Hansard 31-1-1898

Mr. WISE (New South Wales).-

> It might be that a law passed by the Federal Parliament was so counter to the popular feeling of a particular state, and so calculated to injure the interests of that state, **that it would become the duty of every citizen to exercise his practical power of nullification of that law by refusing to convict persons of offences against it. That is a means by which the public obtains a very striking opportunity of manifesting its condemnation of a law, and a method which has never been known to fail, if the law itself was originally unjust**. I think it is a measure of protection to the states and to the **citizens** of the states which should be preserved, and that the Federal Government should not have the power to interfere and prevent the **citizens** of a state adjudicating on the guilt or innocence of one of their fellow **citizens** conferred upon it by this Constitution.

As such, the electoral law provisions that one must vote of be fined clearly is for the State Courts to decide, not for the Australian Electoral Commissioner to issue some "fine"!

As an Attorney, (meaning I assist people in their litigation FREE OF CHARGE) I have the benefit not being corrupted by some doctrine pursued by others. I am FREE SPIRITED and OPEN MINDED about legal issues and can look matters from afresh.

While some people may consider my writing to be a handicap to me, in that I never had any formal education in the English language and neither is it my native language, I for one am mighty proud that I can read generally legal issues better then most if not any lawyer or judge in the entire Commonwealth of Australia.

Because I am self trained and had no formal education in legal matters, I have often defeated not just opponent lawyers but even judges as to the meaning of legal issues. This SUBMISSION is not some self congratulating submission, to slap myself on the back, rather it is to seek to drive home that unless committee members and others are open minded they will never resolve anything.

Lets have a look at the pamphlet titled 'ELECTORAL backgrounder No. 17 circulated by the Australian electoral commission about people not voting.

As soon as I commenced to read it, I for one realised that those who participated in the cases referred to, including the High Court of Australia judges since 1926 obviously never understood what their legal position were.
I can detect this immediately, then one may ask, why on earth has this nonsense gone on for about 80 years already?

For example, in ***Lubcke v Little*** *[*1970} VR807 the magistrate decided that Mr Little had a valid and sufficient reason for failing to vote. On appeal the Supreme Court of Victoria did not agree and reversed the decision. Likewise in the Krosh v Springell; ex parte Krosh [1974} once the magistrate had found that Mr Springgell had an excuse, then that was the end of it and no appeal could be possible by the prosecutor.

What is notable is that the Magistrate having decided in favour of the defendant in effect by this acted like a jury! That is correct, once the magistrate made a decision in favour of the defendant then that was the end of it, and no appeal could be possible.

Hansard 31-1-1898

Mr. **WISE** (New South Wales).-

> It might be that a law passed by the Federal Parliament was so counter to the popular feeling of a particular state, and so calculated to injure the interests of that state, **that it would become the duty of every citizen to exercise his practical power of nullification of that law by refusing to convict persons of offences against it. That is a means by which the public obtains a very striking opportunity of manifesting its condemnation of a law, and a method which has never been known to fail, if the law itself was originally unjust**. I think it is a measure of protection to the states and to the **citizens** of the states which should be preserved, and that the Federal Government should not have the power to interfere and prevent the **citizens** of a state adjudicating on the guilt or innocence of one of their fellow **citizens** conferred upon it by this Constitution.

As such, whenever a electors wins in the Court, then no appeal is possible, as the Court made a nullification and that is the end of the matter.If we were to do otherwise, then with a jury handing down a **NOT GUILTY** finding we could risk that the person could nevertheless be found guilty on appeal if the prosecutor were allowed to appeal. What ought to be understood is that the right to appeal in such case is only to the defendant, if the decision is against the defendant!

THE LEGAL PRINCIPLE:

> **The State Courts have every right to nullify any Commonwealth law it deems is not appropriate to be enforced against a citizen.**

If we were to allow appeals by the prosecutor, then in effect this very legal principle embodied in the ***Constitution*** would be defeated.
This, as ultimately the High Court of Australia could ignore State rights of nullification, and I understand it in fact has never applied this. Likely because judges of the High Court of Australia and others litigating before it never even knew about nullification being applicable.

To deny the defendant the benefit of this nullification is to in fact rob the State of its constitutional right to nullify Commonwealth law!

Because all decisions made by the Courts, including the High Court of Australia, to enforce compulsory voting was done without considering the intentions of the Framers of "**POLITICAL LIBERTY**", then all decision made must be ignored and finally matters decided upon the true construction of the intentions of the Framers.
To enforce past Court decisions, which were build upon misconceptions of what was constitutionally proper, would defy common sense.
Because lawyers and judges have been, so to say, brainwashed during legal studies to accept whatever nonsense, they are the once often unable to then being open minded about reality!
The ***Australian Citizenship Act 1948*** is a clear example, where even so the Framers made clear that "citizenship" was a State legislative powers, and they specifically refused to give the Commonwealth of Australia any legislative powers to define/declare "citizenship", nevertheless the Commonwealth of Australia continues its unconstitutional conduct.

Unless and until we can finally act within the frame work of the Constitution, we will continue to deny electors of **FAIR AND PROPER** elections, this as we are forced into some de facto election that has no resemblance to the kind of elections that was intended by the Framers of the Constitution.

I for one have noticed the harm coming from having to vote with preferences.
Where I was an **INDEPENDENT** CANDIDATE, I was often asked as to preferences I would give. I explained I never gave preferences.
Some people would argue something like; Surely you align with Labor or with the Coalition as to give one of them your first preferences! With other words, if they were given a preference then they would see you as some stooge for the political party you would give first preference to.
As a candidate, I cannot issue how to vote cards with merely marking my name only as then the How to vote card would be deemed in breach of law. As such, I am as a candidate robbed of my right to have people voting for me only. The moment I were to issue how to vote card with a preference it basically would align me with whomever gets my first preference.
Meaning, if I gave Labor my first preference, people who may otherwise vote for me might be offended if they were coalition voters normally, as they would see me as a Labor stooge. If I give the coalition my first preference, then the electors who otherwise may vote Labor may take me as a stooge for the coalition and again not want to vote for me. Technically, a candidate which may have second lowest number of voted upon an election nevertheless by preferences could still be deemed the successful candidate and so elected, because of how preferences apply. What this means is that not the electors decide who shall be elected, but that the candidates among each other may simply decide who shall be elected. If for example, people are voting above the line, they vote for a candidate A and B for a certain political party. Yet, their overflow of votes may in fact go to the opponent major political candidate by this system.

Say 30 thousand votes are required for each candidate for the Senate.
69 thousand people vote for Labor and 40 thousand electors vote for the coalition and 40 thousand vote for a range of other candidates where not one of them reach 9,000 votes in their own right. By distributing the votes, say, all votes of the other candidates are ending up with one of the candidates but with , say 5,00 votes going to Labor and 5 thousand votes going to the Coalition, and leaving Labor with 74 thousand votes and the Coalition with 45 thousand votes. Meaning that 9 thousand people having originally voted for Labor, their votes actually will be counted for the Coalition!

Most people would never even realise that this kind of FRAUD is going on with their votes.
After all, they voted for a specific candidate, and if they are a Labor supporter the least the want is their vote to assist their main rival , likewise with coalition electors, they would hardly want their votes being counted for Labor.
Yet, if people were having their votes counted for the candidate they voted for, then without preferences Labor votes would remain for Labor candidates.
In this example, I have used Labor and Coalition, but it could apply likewise in the same manner for different candidates.
What is so absurd is, that anyone can send in a blank ballot paper and be deemed to have voted.
Anyone can enter a poling booth and return with a blank ballot paper and deemed to have voted.
As such, where the criteria seems to be is not that one actually vote, but that one is recorded as having voted.
Section 245

(1) It shall be the duty of every elector to vote at each election.

(2) The Electoral Commission must, after polling day at each election, prepare for each Division as list of the names and addresses of the lectors who appeared to have failed to vote at the election.

As a candidate, I accompanied my wife into the polling station. My wife was asked to give her name, and I sat down on a chair near where my wife was giving her details.

No one bothered to ask my name, and this even so I was present for about 10 to 15 minutes that I was in the polling station. In fact, I pointed out to the manager there that how to vote pamphlets were on the floor and in the polling boots.
One then may ask, where is the sincerity of that a person has a duty to fill in a ballot paper, where people entering the polling booth can simply leave it blank or scribble some nasty message or picture on the ballot paper?

Clearly, what we have is an unenforceable piece of legislation, that no one could possibly enforce. After all, to have someone supervising that a person votes, without the electors consent, itself would be an offence. One may then ask, is the appearance in the polling station what constitute deemed to have voted? After all, could any elector be held accountable that a staff member of the AEC may inadvertently mark of an incorrect name?
If an elector collects the ballot paper and dumps it straight into the ballot box, then could anyone argue the elector did not vote, even so technically the name of the elector was marked of?

As such, is the marking of the name as to constitute an appearance only and does not imply that the person actually voted?
Could anyone be fined for collecting a ballot paper and dumping it in the ballot box unmarked without bothering to enter into a polling station? After all, if the criteria is to have ones name marked of as being deemed to have voted, then nothing comes from even accepting a ballot paper and just walk out straight after the name has been marked off.

It is remarkable that this No 17 pamphlet states;

> "the former Act was amended to make enrolment compulsory, and in 1924, in a bipartisan approach by the Australian parliament to increase voter turnout and reduce party campaign expenditure, the Electoral Act was amended to make voting in federal elections compulsory."

At that time, the high Court of Australia would not permit anyone to use the **Constitutional Convention Debates** Hansard records for litigation, hence the decision made then, and legislation enacted were upon considerable misconceptions.
However, in today's time, we have to look back, as to if the legislation for compulsory voting in fact was constitutionally valid. After all, now one can use the **Constitutional Convention Debates** Hansard records for litigation!

You then will find that the Framers made clear that there was **POLITICAL LIBERTY**, and referred to the fact that many electors may not bother to vote for referendums.
If one check Section 128 it refers to "majority of electors voting", which in fact leaves it open that even if , say, only 30% of eligible electors vote then the majority is 15% plus 1. This, as the Framers made clear that many people would not likely vote in a Referendum.
This underlines that the Framers intended that elections would not be compulsory to vote.

Hansard 17-3-1898

Mr. DEAKIN.-

In this Constitution, although much is written much remains unwritten,

As the Framers made clear, the ***Constitution*** had to be interpreted as to what was debated during the **Constitution Convention Debates**.

Hansard 17-3-1898

Mr. DEAKIN.-

Every existing Constitution in Australia is less liberal from a political point of view in its framework and machinery than the Federal Constitution.

Again the Queensland legislation, prior to federation made it very clear;

QUOTE

> s 102 81 s 103
> Criminal Code Act 1899
>
> **102 Undue influence**
> **Any person who—**
> (a) uses or threatens to use any force or restraint, or does or threatens to do any temporal or spiritual injury, or causes or **threatens to cause any detriment of any kind, to an elector** in order to induce the elector to vote or refrain from voting at an election, **or on account of the elector** having voted or **refrained from voting at an election;** or
> (b) by force or fraud prevents or obstructs the free exercise of the franchise by an elector, or **by any such means compels or induces an elector to vote** or refrain from voting **at an election;**
> is guilty of a misdemeanour, and is **liable to imprisonment for 1 year**, or to a fine of $400.
>
> Greg Tudehope (QC) Qld Criminal

END QUOTE

Then the Commonwealth could only provide for legislation that is more liberal then any legislation existing in the States. Hence, compulsory voting was and remains **ULTRA VIRES**, as it is unconstitutional.

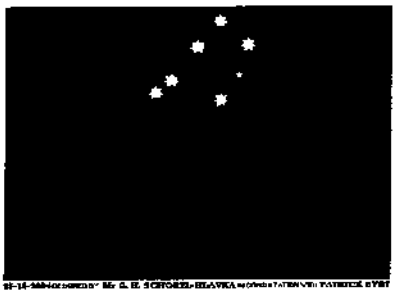
The High Court of Australia has no constitutional powers to override the constitution, it merely is entitled to hand down decision according to the intentions of the framers of the Constitution.. clearly, this they never did when it comes to enforcing compulsory voting where this defies the **POLITICAL LIBERTY** the Framers enshrined in the ***Constitution***.

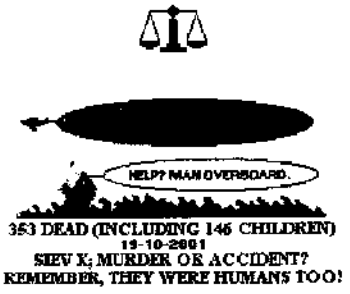
Why should ordinary electors have to be burdened with cost of litigation to obtain their constitutional rights, where the compulsory voting legislation should be scrapped as it offends constitutional limitations?

There can be no **FAIR AND PROPER ELECTIONS**, if electors seeking to pursue their **POLITICAL LIBERTY** then are terrorised with legal action, and huge legal bills!

What also is important is that lawyers (Those employed with the AEC also)must be better trained in certain constitutional issues, so a person like myself does not need to have to try to educate them as to how to appropriately consider legal matters.

Awaiting your response, **G. H. SCHOREL-HLAVKA**





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From; *Mr G. H. SCHOREL-HLAVKA*, 107 Graham Road, Rosanna East, Victoria 3084, Australia

WITHOUT PREJUDICE

JSCEM (Joint Standing Committee in Electoral Matters) 12-3-2005
Ph; 02 6277 2374
C/o Fax 02 62734100

Re; **electoral matters**

SUBMISSION

AND TO WHOM IT MAY CONCERN

Sir/Madam,

Further to my previous correspondence, I wish to add the following;

It is my view that the **supervision** of how the AEC conducts elections must be carried out by an independent body, not being the Commonwealth Ombudsman. This, as despite many complaints lodged with the Commonwealth Ombudsman, excuses such as the 12 month rule were used to deny an investigation, even so it was proven that complaints were lodged within about 8 months. Then the ombudsman carries on about not being able to interfere with judicial decisions, while this was never requested.

One of the "**ADMINISTRATIVE**" decisions that were ignored by the Commonwealth Ombudsman is where I made known that the Australian Government Solicitors advised that their instructions were (from the Australian Electoral Commission) not to pursue any cost in regard of the orders for cost granted by Marshall J on 7 November 2001. As such, the fact that a court made orders for cost, in itself does not mean that this results to a party actually having to pay cost, as this depends very much upon the party, in who's favour the cost was made in effect pursued this.

The appeal against the Marshall J orders were also about the cost ordered, and as such, where the AEC did not pursue the cost then this clearly in that regard validated the appeal, or must be seen to justify the appeal in regard of cost. Clearly, the AEC decision not to pursue cost as to the 7 November 2001 orders for cost is an **ADMINISTRATIVE** decision! While, had the AEC pursued cost by taxation, the Court then could have assessed any cost sought, it does not alter the fact that the decision to seek cost or not by a party is an **ADMINISTRATIVE** decision, and not at all a judicial decision. If however a taxation is done, then that becomes a **JUDICIAL** decision by the Court. As I indicated in previous correspondence, the AEC ought to have indicated at the time that it did not pursue cost as per orders of Marshall J, as after all, where the appeal was filed also in regard of cost ordered, then it is absurd for the AEC first to have litigation going on about this, and then having run up a huge legal bill then decide it is not going to pursue the original orders for cost. After all, I did at the time seek a settlement, but which was outright refused by the AGS.

One therefore ought to ask, why on earth was any kind of settlement refused, where as later at least part of this settlement is granted, or deemed to be granted? It also proves that even if there is an order for cost, the AEC is not bound to submit or otherwise pursue cost. It has the power to make an **ADMINISTRATIVE** decision not to pursue cost. One then have to ask, why on earth did it not pursue cost for the 7 November 2001 litigation but somehow pursue cost for the appeal? Considering that the AGS (for the AEC) filed a chamber summons which was never

JUSTICE IS IN THE EYE OF THE BEHOLDER AND CLOUDED BY HIS/HER SIGHT DEFICIENCY

served, and a Notice of Motion it withheld for nearly one year from me, then obviously, the conduct of the AEC is not without fault (as the AGS acts under instructions of the AEC).
Given also, that the AGS for the AEC never filed any appearance, I was well entitled to accept that my appeal was undefended.
While the AEC (through the AGS) may have used legal trickery, it nevertheless does not circumvent the issue that the AEC in its conduct acted in a very questionable manner.
As I understand it, the normal scenario would have been that once I filed my Appeal in November 2001, the AEC (through its lawyers) would have filed a Notice of Appearance as to indicate they contested the appeal. However, not until about 19 August 2003, so the High Court of Australia held, did they serve the Notice of Motion, which was before the Court on 3 October 2003! As such, while the AEC may have been using lawyers, it must be clear that it was their own deceptive and otherwise inappropriate conduct that caused considerable blow out of litigation.

The **ADMINISTRATIVE** decision, as it is **NOT AT ALL A JUDICIAL DECISION**, to pursue a certain cost, clearly is a matter that can be and should have been appropriately investigated by the Commonwealth Ombudsman. The 12 month rule cannot apply to this, in view that the complaint relating cost was made well within the 12 months of the orders made on 3 October 2003, and the subsequent demand for cost by the AEC.
It would be wrong to argue that taxation is to assess whatever cost the AEC may claim being appropriate. Taxation is to assess in principle that any reasonable cost claimed by a party is in fact reasonable and not excessive. For example; a lawyer may have done a custody case for a client at a cost of, say, $50,000.00, while the Court in taxation may determine that such kind of litigation normally would be merely about $20,000.00 cost. And may perhaps for this allow a taxable cost of $20,000.00 irrespective if the lawyer did in fact have a genuine $50,000.00 bill. This, as some lawyers could drag out a case time and again in an unreasonable manner.
However, if the said lawyer were to claim cost, in regard of a car accident case as part of the custody case, even so it is a separate issue, then clearly the cost about the car accident cannot be used for taxation purposes, where the orders for cost relates only to cost incurred for a specific issue, being the custody case. As such, taxation is not for the Court to wade through a pool of bills a lawyer may have against another party or client, but rather is that the party seeking cost must limit any bills for costing to be subjected for taxation to what is actual relevant to the order for cost. The Court then may also consider the conduct of the party seeking cost, if it acted appropriate in the circumstances. For example, if the party seeking cost and so granted pursues cost incurred that can be shown could have been avoided had the party accepted, say, a settlement, then the court may disregard any cost incurred after refusal of settlement and so merely allow a limited cost.
While the Court makes such taxation, the AEC (in this case) itself has a duty to make an ADMINISTRATIVE decision to ensure it acts honourable.
It already has ongoing refused to provide a set out of the cost it claimed through the AGS. Further, as my material extensively indicated, the AGS filed affidavit material in regard of the Chamber summons which not only was never proceeded with and never served, but in fact was exposed to contain false and misleading claims.
It must also be understood, that the AEC is a government body, and in particular having to conduct FAIR and PROPER elections, which does not adequate with some private company that may pursue damages for loss of business or loss of profits, etc.
In my view, the Commonwealth Ombudsman has the obligation and duty to investigate such kind of fraudulent cost claims, as if indeed the AEC manipulates its powers and by this unduly cause litigation then undermines the election processes.

QUOTE

Friday, 16 August 2002 JOINT EM 85
ELECTORAL MATTERS

Senator **ROBERT** RAY—You don't have to? This has two sides to it, in fact. It sometimes inhibits injunctions if you have those penalties.

END QUOTE

Clearly, if the AEC could manipulate the system to cause excessive legal cost, then no elector could avail himself or herself to challenge any matter, and by this embodies that there are no FAIR and PROPER elections being held. This, as electors could not be provided with a reasonable opportunity to dispute any irregularities, in regard of elections being held.
Further, as the Commonwealth Ombudsman himself acknowledges (through staff) the merits of my cases have never themselves been dealt with. then the **ADMINISTRATIVE** decisions by the AEC not to have appropriately dealt with those issues, regardless of any litigation before the Courts, also is a criteria that could not be ignored by the Commonwealth Ombudsman.
If electors cannot avail themselves to dispute before the Courts irregularities in elections, where the AEC itself refuses to appropriately deal with them, because of the horrendous cost that they may be burdened with, also because of the manipulation in litigation by the AEC to protract litigation and otherwise acting unreasonably, then this itself denies any elector to have a FAIR and PROPER election.

While the AEC declared the 2001 federal election, this however is not final, as unless and until my objections have been appropriately disposed of the finality of the election or purported election remains clouded. Likewise so, any subsequent election!
My view is, that the AEC has an obligation to conduct elections in a transparent manner, not to seek to hide behind legal tactics of lawyers to railroad any objection or pretend having disposed of them while in fact they remain on foot. There is a clear **CONFLICT OF INTEREST**, in the Australian Electoral Commission conducting elections as well as supervising it to be FAIR and PROPER elections. What has been proven is that where it fails to conduct FAIR and PROPER elections it uses all kinds of tactics and I may say lawyers incompetent in certain relevant constitutional issues, to avoid being exposed about this.
With the failure of the Commonwealth Ombudsman to appropriately investigate matters, it has resulted that there are no FAIR and PROPER elections.
One of the first things the Commonwealth Ombudsman ought to have done was to check out what are the duties and obligations of the AEC and what are the processes in place to ensure this to be complied with.
When we then have that one of the first thing required for an election to be held is that a Proclamation is published in the Gazette before any writs are issued, and this clearly never occurred on 8 October 2001, then there can be absolutely no doubt that the AEC cannot even manage to conduct elections according to legal requirements. Further, there is no supervision by the AEC that those conducting the election do so appropriately.
It is asking the Australian electoral commissioner Mr Becker to conduct elections and to supervise himself doing so appropriately. What a nonsense!
What came out of the JSCEM 16 August 2002 evidence by AEC Mr Becker was that he merely relied upon a "press release".
Now, if this is the kind of conduct a person appointed to conduct FAIR and PROPER election relies upon, then I hate anyone to publish all kinds of press release, with their percentage of errors or misstatements contained therein.
It ought to be clear, that the admission to have relied upon a "**press release**" in itself underlines that there was no competent supervision that the AEC conducts FAIR and PROPER elections.
On the one hand, the AEC argues all kinds of legal issues, but yet, ignores the very legal issues it is required to follow. In my view, there ought to be some modus operandi that is like a checklist of events that must occur.
For example;
!, check the proclamation to prorogue the parliament is published.
2. check the proclamation of the dissolution of the House of Representatives is published

3. check the election for the Senate is within the 12 months of vacancy occurring.
4. check that relevant proclamations are published in all States and Territories.
5. check that proclamation of the writs are published.
6. check that the writs are not issued prior to the proclamation having been actually published, and come into force.
7. check times and dates of all above mentioned proclamations when actually published.
8. check if all writs that ought to be issued are actually being issues.
9. .....

And this list could go on and on.
The above examples are some issues, I understood never have been canvassed by the AEC previously! Why not one may ask? Well, it seems there is a total disorganisation in that regard. For example, no one seems to check if the dates in the writs are actually appropriate versus constitutional and other legal requirements.
The closure of the nominations for Senators, 48 hours before the closure of the nomination stipulated in the writs, themselves underlines that the AEC is making election processes some wild process totally disorganised.

When then an elector or would be elector seeks to complaint, then the AEC has no proper process in place either to deal with objections lodged. Why not?
Take for example the Court of Disputed Returns, being in place AFTER and election having been held. Just that it prevents what the Framers of the ***Constitution*** pursued was that any disputed elections should be redressed before the parliament meets!
Yet, try to get this across to the AEC and it simply disregard this.
Nothing in its submissions to the JSCEM and other disputed issues are being placed before the JSCEM! Why not?
We have the AEC going about fining people, and while the legislation may provide for this, the truth is that the Framers of the Constitution made clear that there was

Hansard 31-1-1898

Mr. SOLOMON.-

We shall not only look to the Federal Judiciary for the protection of our interests, but also for the just interpretation of the Constitution:

And

Mr. SOLOMON.-

Most of us, when we were candidates for election to the Federal Convention, placed great stress upon it as affording a means of bringing justice within easy reach of the poor man.

Hansard 17-2-1898

Mr. DEAKIN.-

What a charter of liberty is embraced within this Bill-of political liberty and religious liberty-the liberty and the means to achieve all to which men in these days can reasonably aspire. A charter of liberty is enshrined in this Constitution, which is also a charter of peace-of peace, order, and good government for the whole of the peoples whom it will embrace and unite.

As author of various books in the **INSPECTOR-RIKATI®** books on CD series, on constitutional and other legal issues, it is obvious to me, that those who created the pamphlet no 17 (issued by the Australian Electoral Commission regarding court decision of people not voting) lacked any proper perception in certain constitutional issues, relevant to what they were on about. None, and I repeat, none of the judgments referred to seem to be applicable. In fact, some of the judgments were on appeal in defiance of the "**nullification**" rule! Meaning, that once a magistrate had made a ruling in favour of the defendant, then as like with a Jury decision it was beyond reproach, and could not be appealed against by the Commonwealth of Australia!

The fact that Court of Appeal were unaware of this, is not my problem. It is wrong to suggest that the High Court of Australia is the ultimate Court to hear and determine all matters.
For example,, if a accused has been found "**NOT GUILTY**" by a State Court by a Jury, then nothing provides for any kind of appeal to the High Court of Australia or any other Court for that matter, against the decision of the Jury. At the most, an appeal may lie against the judge having failed to act appropriately. But, the Jury decision itself is beyond reproach. It is never relevant to any Court of Appeal why a Jury has handed down a certain decision, as that is being in question. Only if the jury was misdirected, or otherwise deceived, there may lie an appeal, not to what the jury decided but as to how the jury decision may have been obtained by fraudulent or other deceptive conduct by one of the parties or by misdirection of the trial judge.
For example, in ***Lubcke v Little*** [1970} VR807 the magistrate decided that **Mr Little** had a valid and sufficient reason for failing to vote. On appeal the Supreme Court of Victoria did not agree and reversed the decision. Likewise in the ***Krosh v Springell; ex parte Krosh*** [1974} once the Magistrate had found that **Mr Springgell** had an excuse, then that was the end of it, and no appeal could be possible by the prosecutor. What is notable is, that the Magistrate having decided in favour of the defendant in effect by this acted like a jury! That is correct, once the Magistrate made a decision in favour of the defendant then that was the end of it, and no appeal could be possible. The Magistrate in that instance acted as like a Jury. Just that lectors in legal studies don't even know about the existence of this kind of decision making process and as such fail to teach upcoming lawyers, their law students, about this. I am therefore concerned, that the Australian Electoral Commission is issuing a pamphlet to people who allegedly failed to vote, as to seek to induce them to give up their legal right to fight (as I interpret this intention) by deceiving them (albeit not intentionally perhaps) with incorrect decisions of Courts.
Surely, the Australian Electoral Commission ought to have done better then just copy whatever, before releasing it to the general public?
Does it not have a single competent lawyer in certain constitutional issues that could have avoided this kind of deceptive presentation, as shown in pamphlet 17?
The moment I began to read the pamphlet, about the Court litigation referred to, I realised that there was something dramatically wrong. If I can do so, why not then the lawyers engaged by the Australian Electoral Commission? Surely, there should be lawyers there who prepare this kind of material and then other lawyers who check if the material in fact is correctly presenting the intentions of the Framers of the ***Constitution***?

The Australian Electoral Commission must not act, and must not be perceived to be some kind of a lapdog for a Government of the Day, or to be a lapdog for the Parliament. It is none of those things. It might be created by Statue, but ultimately its duties and obligations lies to the general public, to ensure that elections are conducted in a constitutional valid and otherwise legal valid manner.
The Parliament may for example pass any legislation that may rob, say, people over the age of 40 years of their franchise. It does not mean that then the AEC has to enforce such legislation without having the matters adjudicated before the High Court of Australia to clarify the constitutional validity of this. Regretfully, I have the understanding that the AEC lacks the skills to appropriately conduct elections, and itself is involved in fraudulent and deceptive practices to interfere with the rights of electors to have **FAIR AND PROPER ELECTIONS**.
Further, none to of the Court judgments referred to in pamphlet 17 seems to remotely refer to the position of a "CANDIDATE" NOT VOTING! The reasoning by the courts, albeit I view misconceived in any event, are about electors who were NOT candidates, as to not having voted.

I was a candidate in those elections and entitled not to vote, where my vote would be counted towards an opponent candidate!

The reason I stood as a candidate was that I held that none of the other candidates were suitable. Then, obviously, I for one would not want to vote for any of them, as to do so would defeat the very purpose I am standing as a candidate.
At the time of federation, State Constitutions did not provide for compulsory voting, and the Framers of the ***Constitution*** in fact questioned if there would be a sufficient turn out to vote on referendums.
Postal voting was introduced, prior to Federation, as to encourage people to vote.
Therefore, when the Framers made known that the Federal Constitution would be more liberal, then this clearly could not mean that one now has lost the liberty to vote or not to vote. Neither could it be held that as a candidate I can be forced to vote for another candidate!
POLITICAL LIBERTY is, in my view, that I and no one else decide how I desire to vote, or if to vote at all!
While the High Court of Australia has been dealing with cases about electors not voting, it did not deal with a candidate not voting, and this obviously drives home the absurdity of having to vote for an opponent!
As for the $20.00 penalty, that is unconstitutional, as there is no such constitutional powers to do so! At the very least learn what is constitutionally permissible before abusing position and powers to fine people! Federal laws that are unconstitutional are **ULTRA VIRES**!

Hansard 31-1-1898

> **Mr. HIGGINS**.-**No-the Parliament.** It will simply give Parliament the power to declare under what circumstances and in what cases there shall be a discretion to have the trial in any other state. The law as it stands in the present Bill **is that the trial, as a matter of constitutional law, shall be held in the particular state where the offence was committed.** I propose to enable the Federal Parliament to say that in certain cases and on certain Contingencies, and with certain restrictions and limitations, the trial may be held in some other place. I think that is simply another instance of trusting the Federal Parliament to put the matter on the best basis.
>
> **Mr. WISE** (New South Wales).-**The only class of cases contemplated by this section are offences committed against the criminal law of the Federal Parliament, [start page 354] and the only cases to which Mr. Higgins' amendment would apply are those in which the criminal law of the state was in conflict with the criminal law of the Commonwealth; in any other cases there would be no necessity to change the venue, and select a jury of citizens of another state.** Now, I do not know any power, whether in modern or in ancient times, which has given more just offence to the community than the power possessed by an Executive, always under Act of Parliament, to change the venue for the trial of criminal offences, and I do not at all view with the same apprehension that possesses the mind of the honorable member a state of affairs in which a jury of one state would refuse to convict a person indicted at the instance-of the Federal Executive. It might be that a law passed by the Federal Parliament was so counter to the popular feeling of a particular state, and so calculated to injure the interests of that state, **that it would become the duty of every citizen to exercise his practical power of nullification of that law by refusing to convict persons of offences against it. That is a means by which the public obtains a very striking opportunity of manifesting its condemnation of a law, and a method which has never been known to fail, if the law itself was originally unjust**

If however, we allow for the AEC to impose fines, by way of **ADMINISTRATIVE** decision, then this undermines the States right of "**nullification**" the Framers of the ***Constitution*** provided for.

Sure, to my knowledge not a single judge/lawyer might be aware of this State power of nullification, but that does not mean that it is not applicable.
I cannot help it if there is a deficiency in proper education in legal studies!
What we have however is that while the Federal government is having arguments about "democratic elections" to be held in other nations, even if this means to do a murderous invasion, it cannot manage to hold FAIR and PROPER elections within the Commonwealth of Australia.
"**Political Liberty**" as was referred to by the Framers of the ***Constitution*** based upon what was applicable at the time of Federation in all States, clearly included that no one can be forced to vote, as the 1899 Queensland ***Criminal Act*** made it an offence to influence any person to vote or not to vote.

QUOTE

---- Original Message ----

From: Greg Tudehope

To: John Wilson

Sent: Wednesday, July 14, 2004 2:29 PM

Subject: Re: $7,009.80 Bill of Costs for not voting.

John,
I also can't understand why Paulene Hanson and David Ethridge have not taken advantage of section 28 of the Commonwealth Crimes Act which is all they need to get at Tony Abbott in relation to the admitted persecution he was actively involved in with all of the other criminals that infect the Commonwealth and States Parliaments.

I published a notice in the local rag in relation to section 28 prior to receiving my clayton's conviction in our corrupt Qld Magistrate's Courts in the Cairns district.

Did not have a lot of effect but my day is coming to even up the score.

CRIMES ACT 1914 (Cth)
28 Interfering with political liberty
Any person who, by violence or by threats or intimidation of any kind, hinders or interferes with the free exercise or performance, by any other person, of any political right or duty, shall be guilty of an offence.
Penalty: Imprisonment for 3 years.

Greg T (QC)

END QUOTE
QUOTE

----- Original Message -----

From: Greg Tudehope

To: John Wilson ; JUSTICE GROUP ; Peter Gargan

Sent: Tuesday, July 13, 2004 8:51 PM

Subject: Re: $7,009.80 Bill of Costs for not voting.

John,
I don't bother to vote for any of the dishonest grubs in Queensland either and as yet I have not been threatened with any offence for not doing so.

I have contacted the Electoral Commission and stated that if any person ever threatens me for not voting I will take advantage of the law that applies in Queensland but they claimed that they were unaware of what I was talking about.

The facts are that if I am threatened by any body for not voting it is a criminal offence and I believe it would be the same in NSW but I am unaware of what the state of the law is down there.

I have attached a copy of the section of the Criminal Code Qld that applies here.

s 102 81 s 103
Criminal Code Act 1899

102 Undue influence
Any person who—
(a) uses or threatens to use any force or restraint, or does or threatens to do any temporal or spiritual injury, or causes or **threatens to cause any detriment of any kind, to an elector** in order to induce the elector to vote or refrain from voting at an election, **or on account of the elector** having voted or **refrained from voting at an election;** or
(b) by force or fraud prevents or obstructs the free exercise of the franchise by an elector, or **by any such means compels or induces an elector to vote** or refrain from voting **at an election;**
is guilty of a misdemeanour, and is **liable to imprisonment for 1 year**, or to a fine of $400.

Greg Tudehope (QC) Qld Criminal

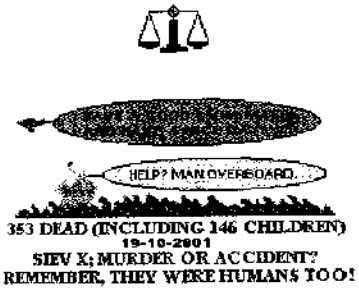
END QUOTE

In my view, the AEC having the burden to ensure that FAIR and PROPER elections are being held, then must take appropriate legal action to question the validity of any legislation that may be in conflict to what constitutionally is appropriate. Why not has the AEC placed the matter before the High Court of Australia as to have determined if the legislated requirements to vote is in breach with the intentions of the framers of the ***Constitution***? Is it that the AEC is itself incompetent to explore those issues and thousands upon thousands of electors simply do neither have the knowledge or the monies to pursue litigation to have matters appropriately redressed?
And, with the current way the Commonwealth Ombudsman , as I see it, railroad complaints made about **ADMINISTRATIVE** decision of the AEC, then clearly, the holding of elections can be grossly manipulated by the AEC, who can use public funds out of Consolidated Revenue to abuse the legal processes, and get away with the rot.
Where is the accountability by the AEC for having had **Mr Peter Hanks QC** going before the Courts making false and misleading and fraudulent statements?
Clearly, the powers of the AEC are extensively manipulated and where a person like myself comes along seeking to expose it, then the Commonwealth Ombudsman rather then to review those **ADMINISTRATIVE** decisions then seeks or is perceived to railroad the issues.

Despite an about 4 years campaign by me, not one of iota difference it made to the incompetent way elections are being conducted, not because of lack of effort by me, but because the Office of the Commonwealth Ombudsman seemed to spend its time to try to avoid investigating matters it ought to investigate, with nonsense like the 12 month rule, even so not applicable where my complaints were lodged well within the 12 month period, then to show real concern to what is going on and what needs to be redressed.

Sure, likely most issues raised by me were unknown to lawyers and judges because of the lack of proper legal training, but that doesn't excuse that once I made known the issues it wasn't appropriately addressed.
In my view, any complaints made against the AEC must be investigated by an INDEPENDENT body, and not that the AEC can continue its abuse of the legal processes and cover up its own wrongdoings in the process! In my view, any complaint against the AEC should be immediately placed before the commonwealth Ombudsman for investigation, or where this commonwealth Ombudsman is incompetent to provide unbias investigation a special body is created that supervises elections conducted by the AEC, and it also deals with the complaints against the AEC!
I for one do not find it proper for the AEC to supervise its own conduct of elections, and indeed its gross abuse of power and public funding to engage lawyers to abuse the legal processes underlines the needs for a separate supervising body to be created.
My right not to vote is embodied in the ***Constitution*** and my right not having to vote for an opposing candidate is common sense, and as such, the denial of this "**POLITICAL LIBERTY**" itself undermines FAIR and PROPER elections to be held.

Awaiting your response, **G. H. SCHOREL-HLAVKA**



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From; *Mr G. H. SCHOREL-HLAVKA*, 107 Graham Road, Rosanna East, Victoria 3084, Australia

WITHOUT PREJUDICE

13-3-2005

The Secretary
JSCEM (Joint Standing Committee in Electoral Matters)
PH: (02) 6277 2374
FAX: (02) 6277 4710
ore-mail: jscem@aph.gov.au

Re; **electoral matters**

SUBMISSION

AND TO WHOM IT MAY CONCERN

Sir/Madam,

Further to my previous correspondence, I wish to add the following;

Postal voting

While the Framers of the ***Constitution*** made clear we would have "**POLITICAL LIBERTY**" we are not just bombarded with political advertisements on television, radio, newspapers and other media, on the roads and by way of how to vote card but also by being send postal votes documentation. Just that the postal votes documents then also include political advertisements.

Considering that one or more candidates send this out at cost of the taxpayers, then why not have the AEC sending out postal vote documents to every registered elector, after closure of nominations?

How can elections be **FAIR** and **PROPER**, when political parties use their machinery to post at taxpayers cost (consolidated Revenue) their political propaganda with the postal vote document, where most INDEPENDENT candidates do not have this ability?

Hansard 31-1-1898

Mr. SOLOMON.-

> **Most of us, when we were candidates for election to the Federal Convention, placed great stress upon it as affording a means of bringing justice within easy reach of the poor man.**

My wife for example is upset getting all this political advertisement addressed to her personally, and then postal vote documents with political propaganda, as she views this as **STALKING**.

While she is aware that she could have non-disclosure of her address, her position is that it ought not occur in the first place. Once may in fact question if in view of the 2003 amended Section 21A of the ***Crimes Act*** (Victoria) the sending of mail to a person may amount to stalking!

After all, it is the targeting of a specific person to try to get them to vote for a certain candidate, even so the elector may resent doing so.

In my view, "**POLITICAL LIBERTY**" is not that one can be subjected to a bombardment of political claims, which may or may not be correct, but is that electors are left alone, so to say, and only if they specifically request for details they be provided with it.

s 102 81 s 103
Criminal Code Act 1899
102 Undue influence
Any person who—
(a) uses or threatens to use any force or restraint, or does or threatens to do any temporal or spiritual injury, or causes or **threatens to cause any detriment of any kind, to an elector** in order to induce

the elector to vote or refrain from voting at an election, **or on account of the elector** having voted or **refrained from voting at an election;** or
(b) by force or fraud prevents or obstructs the free exercise of the franchise by an elector, or **by any such means compels or induces an elector to vote** or refrain from voting **at an election;**
is guilty of a misdemeanour, and is **liable to imprisonment for 1 year**, or to a fine of $400.

Clearly, as the Constitution included **POLITICAL LIBERTY** at the time of Federation, then no legislation by the Commonwealth of Australia can override this right of **POLITICAL LIBERTY**, where also it was then already an offence to interfere with how a person may vote or may not desire to vote.
Also, it is a deceptive conduct to ask a elector to vote for "Jo Blow" (so to say), or for whom ever may be leading a political party, where this person is not a candidate in that electorate.
While we hear about the Howard government, the Hawke and Keating governments, etc. the truth is that constitutionally this is not possible, as the Governor-General administer the Commonwealth of Australia with the advise of the Ministers he has appointed. As such, it is deceptive to hold election campaigns as if a minister of the Crown himself or herself is the government. It is seeking to employ the USA style of election campaigns, even so our ***Constitution*** is totally different!
With having postal voting documentation send out by the AEC, to every registered elector, without any political advertising included then it may avoid people missing out on their postal vote documents and also may avoid others to get 2 or three of the same, albeit with different political messages.

Elections are not for candidates to get their best deal at cost of the taxpayers, but essentially it is for the benefit of electors as to elect a representative. It should be up to the candidate to bring his/her message across at their own cost, so that all things are equal for all candidates.
That was the principle embodied into the ***Constitution***, and anyone would be well aware of this if they had studied the **Constitutional Convention Debates** in that regard, as I did!

Postal votes were introduced prior to federation, as to encourage electors to vote, albeit the Framers of the ***Constitution*** acknowledged that many may still not want to vote.
A problem is that the AEC uses outdated information, as to what was decided by the Courts in 1926, and there after, even so at that time the Courts did not consider the **Constitution Convention Debates**, as now is being done. Hence, decision made then with ignorance to the true intentions of the Framers may now be found to be ill conceived. Yet, we have the AEC sending out pamphlets about ill conceived court decisions and by this basically inducing electors to pay some fine for not voting, regardless of the POLITICAL LIBERTY they are entitled upon.
Yet, people may desire to vote for one candidate only and not for others. And as such, postal vote documents ought to provide for a elector to vote for as many candidate he/she wishes to vote for.
In that way, a candidate who may vote 1,2 and 3 and not number other candidates, then the vote can only be counted for the number of candidates marked, and once those candidates are out of the count, then the postal vote or other vote no longer is counted. **POLITICAL LIBERTY** must be that without any inducement or other threat of action an elector can vote which ever manner he/she wishes to vote or does not wish to vote. Therefore, Postal vote documents ought to provide for this. Where then a person receives a postal vote document in the mail, the person can still wait until the polling day and then turn up at the poling station with the postal vote document and use it there to vote, having then the benefit of having the most recent information at hand, or may obtain from the officer in charge a ballot paper, making a declaration that the original postal vote document was lost.
Using a **barcode** scanning, any envelope entering the mail department of the AEC with the same electors details, then can be immediately taken out as to avoid double voting.

Posters

When my wife and I attended to the 2004 polling station in VIEWBANK along the fence of the school, there were about 10 or more large posters of one candidate, and so of others also. Likewise so, of other candidates, except that of myself as I do not post any posters!

With the AEC office, where people are voting in advance of the polling date, you can see that the polling booth is next to the glass door, and on the other side within 1 metre, still on the property of the AEC building, political parties are advertising their ware, so to say, with large posters.

In my view, this compromise the independence of the AEC, as at no time should its property be used for political advertisement. Further, no posters ought to be permitted directly outside the door of the AEC office, and neither how-to-vote pamphlets being given out at that location.

What we have is that elections are no longer for purpose of electors election their representatives but rather for political parties to con or otherwise seek to induce electors to vote for them being the better of the worse lot of politicians. Using posters is part of this process.

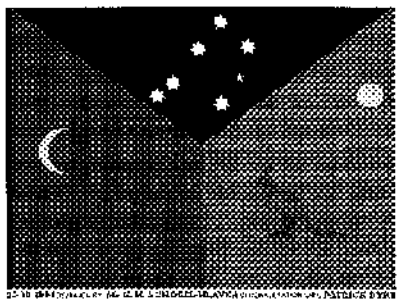
Basically, the rights and interest of electors is being hijacked for political purposes.

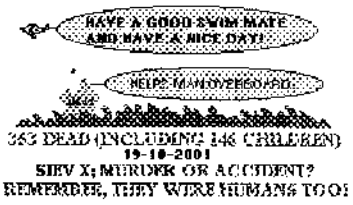
In my view, electoral officials who are in charge of a polling station should set out post markings an exclusion zone for political propaganda, near the entrance of the polling station, and anyone entering in the area with posters or how-to vote-card for purpose to induce electors to vote in a certain manner ought to be charged immediately. Not to do so leaves it open for ongoing abuse, as is now occurring.

POLITICAL LIBERTY must include that any elector wishing to enter an electoral office or polling station, for purpose to vote is not then subjected to all kinds of propaganda by political supporters seeking to force into their hands all kinds of political advertisement material. What ought to be done is to regulate that any candidate can have only one poster to a certain size at the designated area, declared by the official of the polling station, and that how-to-vote cards, and other political propaganda is to be provided on a fixture, such as a table, so that any elector wishing to obtain such item can collect it. others who do not wish to have it are not confronted with pushy supporters of a candidate trying to get them nevertheless to accept their political propaganda.

Electoral legislation has been developed over more then 100 years but disregarding the **Constitutional Convention Debates**, as to the intentions of the Framers. Now that the High Court of Australia finally does accept that the intentions of the Framers of the ***Constitution*** as expressed during the **Constitutional Convention Debates** is relevant, then what should be done is to re-assess the electoral legislation as to any conflict in legislation versus the intentions of the framers of the ***Constitution***, and then address any conflicts appropriately, regardless if this might be undesirable for the political intentions of those belonging to certain political parties!

Awaiting your response, ... Signature **G. H. SCHOREL-HLAVKA**





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ABN: 97144826520 E-mail: mayjusticealwaysprevail@schorel-hlavka.com Ph/Fax: 0011-61-3-94577209 GM-211-01
From; *Mr G. H. SCHOREL-HLAVKA*, 107 Graham Road, Rosanna East, Victoria 3084, Australia

WITHOUT PREJUDICE

The Secretary 14-3-2005
JSCEM (Joint Standing Committee in Electoral Matters)
PH: (02) 6277 2374
FAX: (02) 6277 4710
ore-mail: jscem@aph.gov.au

Re; **electoral matters**

SUBMISSION

AND TO WHOM IT MAY CONCERN

Sir/Madam,

Further to my previous correspondence, I wish to add the following;

In regard of a inquiry in to deadlocks I made a submission (No 115) to Constitutional Change Legal and Culture Branch, Department of the Prime Minister and Cabinet.
I am concerned however that some of the following comments were noted in the report;

> 112. Mr Harris, Clerk of the House of Representatives, on the other hand, stated in his submission that the deadlock provisions needed to be reconsidered because the Senate was now a house of political parties and not the States' chamber on which it was based. The concept of responsible government was being severely diluted by the Senate's ability to frustrate the legislative process. Either option was better than the existing system but Option Two was to be preferred because it allowed an element of voter input.

While no doubt the Senate is run more along political parties battle lines then Senators actually appropriately representing their relevant States, this however ought not mean that one then can ignore the intentions of the Framers of the ***Constitution***.
Here we have so much argument about **INDUSTRIAL RELATION**, and that people ought not be forced to be a member of a union, yet, when one were to use the same view as to unions (political parties) in the Parliament, then Professor Jack Richardson seems to want to have a 10 percent threshold vote for being eligible to be a candidate for the Senate.
This in itself meaning that an additional election would have to occur as to who may or may not stand as a candidate for Senate elections.

Additional comment by Professor Jack Richardson
Election of senators

> 9. As the Group was informed, in Tasmania there is on average one senator for every 39,500 people. In New South Wales the figure is one senator for every 551,000. The disparity becomes greater as the size of the House of Representatives increases to meet the needs of a growing national population, since any increase must be accompanied by an increase in the number of senators on a two to one ratio.

10. The Founders were most concerned to enshrine representative government as a constitutional principle and, further, to make it clear that the formation of governments should be in the hands of the House of Representatives. It sits oddly with these principles that New South Wales has 12 senators and 50 members of the lower house whilst the number of Tasmanian senators has necessarily increased from the original six to 12, yet the state can still only muster its constitutional minimum of five members of the House of Representatives. Such may be the price of federation and thought to be worth the cost.

And

17. Another suggestion is that Senate candidates should have to achieve a fixed threshold vote, for example of the order of 10 per cent, before being eligible for election. Various European electoral systems, including federal Germany, have such provisions.

I am unknown as to the qualifications of **Professor Richardson**, but it appears to me this person lacks totally any understanding of the intentions of the framers of the ***Constitution***.
No matter what changes may be pushed through today as to make the ***Constitution*** suitable to a particular political party, in time the same group may argue against it! The fact that **Mr Harris, Clerk of the House of Representatives** made known that Senators vote along party lines is a very serious acknowledgement of the deficiency within the Parliament. You do not fix this problem by ignoring constitutional duties and obligations and by trying to make the parliament a close union shop of political parties, but rather to address the issues and at the very least give Members of Parliament some form of education what is constitutionally appropriate. This is where the deficiency is!
Much has been litigated about the "**Deposit**" required to be a candidate, and somehow the High Court of Australia seems to have approved this unconstitutional conduct,, but in time one may find that people have enough of this kind of hijacking electors rights to be candidates without being burdened by absurd conditions, in particular for **INDEPENDENTS**, where I was standing for a political party different rules applied. If people in the work force were to be subjected to simular conditions, that if they were not a member of a union then they first must get approval, say, of 10 percent of employees already employed, versus a union member merely needing the endorsement of the union, then the Government of the Day would, so to say, scream blue murder that this is an abuse of union power. Yet, in effect this is being orchestrated in elections. I for one would like to see that every Member of Parliament has a certain education in constitutional provisions, not just non-lawyers, but specifically lawyers, as they are likely the worst in the parliament dealing with reality. Because they obtained some law degree, who knows for free when purchasing a packet of margarine, so to say, they seem to profess to understand constitutional law and talk their head of.

A recent argument is that the Sale of Telstra and then investing part in the stock market to make profits. I for one like to be told where is the constitutional powers for the Commonwealth of Australia to start gambling with moneys?
I for one, who spend his time to study what the Framers of the ***Constitution*** intended understands that there is no such constitutional powers. In fact, besides that the sale of Telstra would be unconstitutional, any funds obtained from any sale of any utility, etc, is to be placed in consolidated Revenue, and any monies left over from the budget, must be returned to the States!
As such, having this absurd system of 10% of nominations of the electors, would likely get any idiot standing for a particular political party getting elected, while people who might be indeed

very suitable to be in the Parliament but do not wish to betray their duties and obligations as a member of parliament if elected therefore do not wish to be a member of a union (political party) then basically are severely burdened to ever get into Parliament. It would be hijacking "**POLITICAL LIBERTY**" that all electors have a right to be a candidate without any special conditions other then those stated in the ***Constitution***. It is bad enough that we have judges sitting at the bench of the High Court of Australia who make judgments, such as in the ***Phil Cleary*** and the **Sue v Hill** case, in blatant conflict with the intentions of the Framers of the ***Constitution***. One only have to look at how the Parliament legislated, albeit unconstitutionally, for all kinds of political benefits, as to be aware that we ended in more rubbish then we can account for. Albeit, the ***Constitution*** does provide for "**allowance**" for Members of Parliament, this is merely for "compensation" of lost earnings and cost incurred, and not an avalanche of perks now applied.

The introduction of the compulsory voting system and the having to vote by preferences, all are unconstitutional, but because at the time of introduction of the legislation the **Constitutional Convention Debaters** were ignored, it went ahead anyhow.

Time and again one hear about Members of Parliament defrauding the Commonwealth of Australia, as such the taxpayers.

We hear about the ongoing lies and deception by politicians and members of the police force, yet, no one seems to understand that our youth growing up with being made aware that the Members of Parliaments basically are lying rotten scoundrels, so to say, is what is causing a lot of grievances and so loss of respect for law and order! Yet, if you carefully listen to the comments made by the young and others you can detect their the dishonesty they are growing up with is why they are rampaging, committing crimes, etc.

The Framers of the ***Constitution*** very much wanted to prevent crooks being in the Parliament, but conceded that only people with certain convictions could be denied to be a Member of Parliament. Yet, here we had *Heather Hill* being kicked out of parliament, not because she was a crook, or had wronged, but because of unconstitutional application of constitutional provisions.

The same with ***Phil Cleary***, who was duly and properly elected, but was kicked out, not because he was in breach of constitutional provisions either, but because it was pretended that he was in breach of constitutional provisions.

Then again, he was not a member of a major political UNION, neither was HEATHER HILL!

We look at the injustice of allowing a candidate belonging to a political party to be a candidate by having merely a nomination by the Register Officer of a political party. Well, as I discovered standing as a candidate for **The Aged and Disabled Pensioners Party**, there simply were no 500 members. There were no annual meetings. In fact I understood that the two Senate candidates were neither even financial members of the party!

They may have the Status as a non for profit organization, by being a political party, but surely this is an abuse of the electoral system and indeed infringes upon the very **POLITICAL LIBERTY** that was intended by the Framers of the ***Constitution***? As the Framers of the ***Constitution*** made clear, even the "poor" ought to be able to be a candidate. Indeed, as they made clear, the status of a person did not make a difference to the ability of the person to be a representative for the people. Yet, we have now purported political parties in existence that are a shell and have no real justification. One political party making known that I was a member, as I had become so when I became listed on their mailing records. So, not because I had signed some membership application form, or had paid any fees or had ever any intention to become a member. Simply, if you ended up on their mailing list, then you were deemed to be a member. With the **NO GST** party, I was given the understanding that the Registered Officer nominated himself as a candidate, and there were no known committee members or other members or any annual meetings, etc. We have one political party known to me as **Citizen Advice Council** selling books and then making you a member of their political party in the process without that the buyer is appropriately advised becoming a member of this party.

That is like that I send out books I publish about certain constitutional issues and then anyone who receives them by this becomes automatically a member of **MAY JUSTICE ALWAYS PREVAIL®**.

Parliamentarians of major political parties have caused the Parliament to become rotten to the core, as no longer the interest of the nation is what is the main object, but rather how they can manipulate their way through the system to gain political and financial advantage.

The usage of the square above the line is another clear example being unconstitutional as it denied FAIR and PROPER elections. Pauline Hanson is a clear example of this in the October 2004 elections, where despite having nominated within the time as stated in the writs, she was artificially robbed to have a square above the line.

Whereas I am loosing money, whenever standing as a candidate, those standing for a major political party generally do not have to spend a cent! Meaning, that the fake candidates are more likely those who stand as a candidate for a major political party! After all, they can make a hansom financial windfall for themselves with the "**payment per vote**" system, regardless of being elected.

Again, because of having judges at the High Court of Australia who lack competence in certain constitutional provisions this is allowed to go on and on.

Professor Richardson recommendation, in my view, is ill conceived and showing a total lack of understanding what the ***Constitution*** really is about. The *Constitution* was designed in such manner that every elector had an equal right to stand as a candidate provided he/she did not offend Section 44 of the ***Constitution***.

We have **Senator Coonan** going on about selling Telstra, which to me underlines she lacks any proper understanding about constitutional powers and limitations! If just she took some course in constitutional education regarding this particular issue!

Making it more difficult for the average elector to be a candidate and more over to be elected, is not going to clear up the Parliament.

This nation was created by convicts, and it seems to me that this is enshrined in how the Parliament conducts its affairs, rather then to keep it honourable.

No matter how much I may expose matters to any Committee, I have as yet to see any genuine attempt to address those issues! This is a very sad situation, where members of parliament seem to be more interested to, so to say, keep their own cosy nest warm then to accept their duties and responsibilities when taking up a seat in the Parliament.

POLITICAL LIBERTY obviously includes that any Member of Parliament could be a member of his party of his/her choice, however, it does not include draconic legislation to deny others equality! If **POLITICAL LIBERTY** is applied as intended by the Framers of the ***Constitution***, and people are entitled to vote in whatever way they desire, even if just marking one candidate, then the square above the line could be gotten rid of, and people would not be forced to fill in all squares below the line if they want to vote for a INDEPENDENT candidate who has no square above the line.

Many elderly were making known to me that they feel being robbed of their right to vote as they desire, because if they want to vote for someone who has no square above the line then it is very burdensome to them having to fill in every square. As such, they are forced to ensure to mark every square, and robbed of their **POLITICAL LIBERTY** to vote as they wish to do, just mark the square of their chosen candidate.

MANY MAKING ERRORS IN NUMBERING ALL SQUARES OR SIMPLY NOT WANTING TO VOTE AT ALL THEN.

What has been done is that the compulsory voting was not for the benefits of the electors, but for the benefits of the political UNIONS operating within the Parliament.

And this very parliament then seeks to argue that unions in other workplaces cannot force people to be a member of a union or not denying other employees the same rights, etc.

We have the system of Opposition ministers seemingly being paid handsomely for this also. I ask where on earth is this constitutional provision? It certainly ain't within the provision of "**allowances**" in the ***Constitution***.

As one young man during an interview with Mike Munro of Sixty minutes on Sunday 13 March 2005 put it, as I understood it, "**The Government robs us and so we get them back.**"

What Parliamentarians ought to set out to do is to address this issue, that they are generally perceived as lying rotten scoundrels and thief ripping of taxpayers who more and more are trying to deny ordinary electors to get into Parliament!

Not that all parliamentarians may be crooks or liars, but the general perception is that being a Politician means you are a lair and a crook. Making it more difficult for ordinary electors to be candidate for elections certainly is not going to improve what elections are about. If anything it makes it more and more a corrupt system, open to abuses.

What if by some fluke a majority of Members of Parliament were to be INDEPENDENTS and could force ahead a legislation that any person belonging to a political party (union) would require to have at least 500 nominations of their respective members? This kind of absurd requirement would be as absurd as the current 50 nominations required for INDEPENDENTS not being a sitting member).. Basically, an INDEPENDENT candidate needs to run a small election to get enough nominations just to stand as a candidate. Meaning, that a person residing in a very small community may be forced to travel for days to just try to get enough nominations signatures, and if anything robs the person of **POLITICAL LIBERTY** to have equal right of being a candidate. As the Framers of the ***Constitution*** made clear, that every elector, other then for Section 44, had all the same right to be a candidate.

Sure, the JSCEM and others can continue to ignore this, but slowly there is a groundswell of dissatisfaction among the people and one day it might boil over and then all I can say is; "You got what you deserved, as I told you so."

It never should be a policy to seek to deny any elector to have a opportunity to be a candidate. After all, that was the very issue the framers of the ***Constitution*** were aiming for, that every Australian, regardless of privileges being born with, were equally entitled to be a candidate in an election to represent those who elected him/her.

Albeit I do not consider that constitutionally anyone could be forced to undergo some test to be able to be a candidate, it would however be of benefit is the Australian Electoral Commission were to provide an opportunity to prospective candidates to learn about what are the rights and duties and obligations of being a Member of Parliament. The consequences of being required to attend meetings, etc. Also, that prospective candidates are given an opportunity to attend special courses in constitutional law. Obviously, one would need a competent person to devise such constitutional law courses, one who extensively studied the intentions of the Framers of the ***Constitution***, and not, so to say, being some judge who happened to be appointed to the High Court of Australia but know next to nothing about the true intentions of the Framers. It may very well be, that many a person who otherwise would stand as a candidate for an election may not desire to do so when they become aware of the duties and responsibilities associated with being a Member of Parliament. I gained the understanding of many candidates that they never had the slightest notion of what would be required of them if elected to the Parliament, and indeed what duties and obligations there are. Surely, this is clearly a gross failure of education, but one can hardly blame the candidate for this, as this ought to be a task of the Australian Electoral Commission to provide! Then again, where the AEC uses lawyers to hide and cover up its own errors and deceptive conduct, then that is the first point of call, so to say, to clean it up.

Getting back to the Professor Richardson comment about 10% of votes to be a candidate for the Senate., besides being a total absurdity, for exercise purposes let deal with this.,

When I resided in a rural town, there about 80% of people voted for the national party. Meaning, that to try to get 10% eligible electors for nomination is about sheer impossible.

One must for example understand that standing in the Mallee region, it is the largest in the state of Victoria, and as such trying to get 10% of electors to nominate would not only require to contact about every elector in the Mallee, but find those not voting for the National Party. Even during an election it would be nearly sheer impossible to get 10% of the votes unless there is a freak incident, and as such expecting more nominations then votes generally available is a absurdity!

If Professor Richardson intended to have some additional election, then the cost of that would be horrendous, and in fact would be in conflict with the **POLITICAL LIBERTY** of electors and candidates. How would one engineer a 10% voting?

Ask the electors to vote first for a selective number of candidates, and then ask them to vote again, perhaps for the same number of candidates that originally stood in the first place?

Anyone can make ridiculous and absurd recommendations and perhaps to those who never bothered to research the true intentions of the framers of the ***Constitution***, it might even sound credible, but I for one see is as sheer and utter nonsense.

Again, if we were to put in place simular conditions for people seeking employment, that belonging to a union you merely need the nomination of the union to be acceptable, where as a non union member would require to go around the company to get, say, 10 percent of the employees nominating the applicant for the job, then hate to think you seek a job with BHP and try to get 10% of their workers to nominate your application!

Unlikely would BHP want to allow you to go around to do so. Yet, for some strange way, Parliament had already dictated for 50 nominations, which in itself is an unconstitutional added burden to do some mini election just to get 50 nominations, hence, the deceptive conduct by some to have shell political parties to avoid having to conduct a mini election.

In my view, allowing people to vote as they desire, may in fact make voting more attractive. After all, people would not be forced to vote in a certain pattern, and could just enter one number and their vote would only be valid for counting for the number of places marked.

It would also place in the hands of the electors the true election result, as no longer could deals among candidates override electors wishes.

Basically, what we need to do is to go to the drawing board, so to say, and get elections conducted as the Framers of the ***Constitution*** intended., that being FAIR and PROPER elections without bias. Meaning no "payment per vote" as to unduly rob poorer candidates of equality of communication in the media. No preference votes being dictated. No square above the line. No compulsory voting, etc.

While members of political parties are accustomed to provide "preference voting" and how-to-vote cards, it is another system that denied FAIR and PROPER elections, this as a candidate seeks not just to induce an elector to vote for him/her but also seeks to induce the elector not to vote for another candidate unless in a certain manner.

While it might be one thing to seek an elector to vote for one self being a candidate, it is another thing to induce a elector to vote in a certain manner in regard of other candidates. In my view, this also denies a FAIR and PROPER election. After all, this system makes it that the candidate directing the preferences is, so to say, judge and jury about the other candidates.

For the record, I have never used "how to vote card" for elections I was a candidate in, and always refused to even indicate a preference!

While much is being argued about there being a mandate to sell of Telstra, I for one challenge any Member of Parliament to prove such mandate exist, where without a referendum

To alter the constitution the sale of Telstra is and remains unconstitutional.

Those who argue about some "mandate" obviously do not understand that elections are being held for electing representatives and has absolutely nothing to do with a referendum under Section 128.

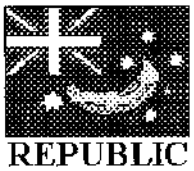
Any government of the day, may wish to pursue some political agenda, and the fact that it might have power in either or both Houses does not mean it has a "mandate" to push through something in an unconstitutional manner.

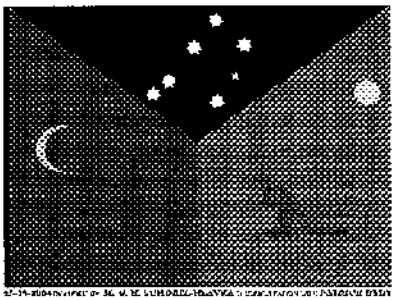
I am well aware that **INDUSTRIAL RELATIONS** will be another thing that might be intended to be pushed through, regardless that a lot of it might be unconstitutional. This again underlines that was we need is a better way of educating aspirant and current members of parliament, so we do not get this rubbish and unconstitutional legislation, but we finally get some credibility in Parliament in regard of legislation and other matters.

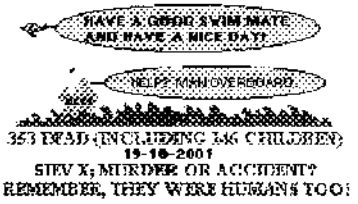
While much I write is about **POLITICAL LIBERTY**, that ought not compromise a successful candidates ability to serve in the Parliament. I for one, father of 9 children (including step children), do not hold it proper for babies to be fed in the Chamber during sittings of Parliament. No one in his/her right mind could accept that the Parliament is a place for this nonsense.
Legislative issues are a serious matter, where the livelihood if not the business of many can depend upon. The last we want is some personally crusade about misgivings of equality dominating the Chamber and by it perhaps sidetrack the other members and cause problems down the line where citizens can be out of pocket for hundreds of thousands of dollars on litigation to try to get some sense out of legislation, that was passed because those members required to vote had whatever on their mind but what the legislation is about.
Having been a single (male) parent, I know too well what it involves, and personally considers it "**child abuse**" to subject a tender age child to the noise of a Chamber!
Again, better form of education is needed for aspiring and other candidates standing in an election as to ensure that their personal lives are not dictating or otherwise interfering with the serious matters that needs to be attended to in a chamber.
If members of parliament are allowed to feed a baby, then the public could do the same and then where will it end. Sure, the rowdy conduct of many Members of Parliament make it sound as of there is some kindergarten fight going on, but we hardly would want to make it worse?

Elections needs to be done more professionally, with supervision upon the AEC how it conduct elections, how it advises candidates and the electors in general, etc. and member of parliament must have and display standards beyond reproach, so that the youth of today also can respect them!

Awaiting your response, ... Signature **G. H. SCHOREL-HLAVKA**







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From; *Mr G. H. SCHOREL-HLAVKA*, 107 Graham Road, Rosanna East, Victoria 3084, Australia

WITHOUT PREJUDICE

The Secretary
JSCEM (Joint Standing Committee in Electoral Matters)
PH: (02) 6277 2374
FAX: (02) 6277 4710
e-mail: jscem@aph.gov.au

15-3-2005

Re; **electoral matters**

SUBMISSION

AND TO WHOM IT MAY CONCERN

Sir/Madam,

Further to my previous correspondence, I wish to add the following;

Something what the Commonwealth Ombudsman seems to have neglected to investigate so far is the roll the Australian Electoral Commission playing in the past litigation.

For example, the Australian Government Solicitors did not file any Appearance, after having been severed in November 2001 with a Notice of Appeal. It obviously then must be asked why not? Was it that the AEC did not instruct them or otherwise approve to file an appearance?

Then we also come to the Chamber Summons. The AGS clearly can only act upon the instructions of the AEC. It cannot file applications upon its own desire. Therefore, the question is why, if at all, did the AEC instruct the AGS to file a Chamber Summons and why was it then never served, albeit other documents in support of the Chamber Summons were? Why was it then withdrawn more then a year later. Clearly, the AEC made decisions that were ADMINISTRATIVE decisions it ought to be held accountable for.

Also, why did it instruct, if at all, the AGS to file a Notice of motion even so the Chamber Summons was already on foot?

Is this a way the AEC is squandering taxpayers moneys, to have lawyers doing applications not needed? Why indeed was it needed to file the Notice of Motion even so the Chamber summons was already on foot?

The AEC uses its own lawyers, such as Michael, and then when **Mr Peter Hanks QC** in his documentation refers to;

> **The researches of counsel have been unable to find provisions using simular language ("not less that" or "at least" a number of days) where the language is as clear and specific as found in ss156(1) and 157.**

one then should ask, "Who are the researches?"

After all, it is sheer and utter nonsense for a barrister to make claims about incompetence of "researches" as if they are having the conduct of the proceedings!

One also has to consider that the term ""not less that" ought to have been "not less than" but in any event, if one were to log into the High Court of Australia website and do a search for "not less that' one would achieve the same number of responses, in the thousands, as doing a search for "not less than". As such, one ought to ask what were the instructing lawyers of the AEC doing about this? Surely, they knew or should have known what was applicable in their long experiences in litigation?

Surely, the AEC ought to have had the final say in matters to instruct the Australian Government Solicitors and as such, if indeed Mr Peter Hanks QC was unable to find any relevant details, through his researches or otherwise, then the onus was to report back to the instructing lawyers of the AEC and to then consult them about it?

It would be a negligence of duty to ignore this background theatre, where ultimately the AEC was the instructor to have certain legal proceedings and as such was required to approve of each application to be filed.
Was it the AEC who perhaps instructed Mr Peter Hanks QC not to proceed with the Chamber summons, even so already made known to the JSCEM it relied upon it?
And so, when was the decision not to serve the Chamber summons made? Was it when the instructions were given to file the Chamber summons, or when the Notice of motion was lodged?
One ought to be well aware that the AEC had to instruct the AGS to file a Notice of Motion, and then would or should have been advised that there was already a Chamber Summons pending and this had not been served, and it would be an abuse of the legal processes to file then a Notice of motion without using the Chamber summons first.
One also have to attend to the change in wording of statement quoted as purportedly made by a judge.

Take for example his argument in point 22 and 22.1 of the OUTLINE filed by Mr Peter Hanks QC on 7 November 2001 in the Federal Court of Australia before Marshall J;

QUOTE

22 In ***Foster v Jododex Australia Pty Ltd*** (1972) 127 CLR 421 at 445, Gibbs J referred to the general rule that "not less than" so many days refers to clear days – "unless the context or the **statutory intention** reveals a contrary intention".

22.1 The context of s156(1) of the Act does, it is submitted, reveals a contrary intention. The provision refers to "date fixed", which is to be fixed after another date, and is to be fixed within the parameters of 10 days and 27 days. In that context, the words "not ...less than" and "nor more than" simply fix the outer limits of the period during which the date for nomination may be fixed – and do not demand that there be clear days before the date.

END QUOTE

Mr Peter Hanks QC quoted of the judgment the following;

"unless the context or the **statutory intention** reveals a contrary intention"

This ought to be;

"unless the context or the **subject matter** reveals a contrary intention"

Clearly, that is a gross deception. In legal terms, there can be a significant difference in a case for the Court to deal with a "**statutory intention**" versus "**subject matter**".
For example, in litigation in the Family Court of Australia, a person '**subject matter**' could be "property settlement" but the "**statutory intention**" might not allow the Court to address that issue, due to lack of legal jurisdiction, if the parties before the Court have no matrimonial position!
If they have then the "statutory intention" can be explored as to how it is applicable.

Mr Peter Hanks QC, albeit perhaps unaware of it, happens to refer to the ***AUSTRALIAN CONSERVATION FOUNDATION v. THE COMMONWEALTH (1980) 146 CLR 493 case*** that happens to include a reference to "**subject matter**". Clearly, nothing to do with "**statutory intention**".

AUSTRALIAN CONSERVATION FOUNDATION v. THE COMMONWEALTH (1980) 146 CLR 493

> 7B. The said area of Farnborough the **subject matter** of the proposal comprises both privately owned and public lands over which members of the public, including some members of the Plaintiff, have access and rights of access and use which would be detrimentally affected by the implementation of the proposal.

As such, a **"subject matter"** may or may not fall within the legislative provisions of the Court and so the **"statutory intention"** may or may not be relevant to the "particular subject matters" pending on the facts before the Court.

As I stated before, the usage of the word '**shall**' in the legislation leaves no doubt, **that it is mandatory/compelling to be followed**, and not then for the AEC to change election timetables to a mere 9 clear days, rather then to apply "**shall not be less than 10 days**", or "**shall not be less than 11 days**", as provided for in the various legislations."

In paragraph 22.1 he took out on contest the reference by omitting the word '**shall**'. I view it was a gross abuse of the legal processes, and an utter disgrace for any lawyer to do, certainly for a Queens Counsel.

What is however very much relevant is that the Australian electoral commission, knew or ought to have known what was going on and it should never have authorised litigation to be proceeded and continued on behalf of itself using false and misleading indeed fraudulent claims.

Because the lawyers of the AEC were dealing originally with this case, well before the Australian Government Solicitors were getting involved, it must be clear that we then have that purportedly first the AEC own lawyers made a blunder to take a wrong assumption, and somehow we are to believe that subsequently the AGS and Mr Peter Hanks QC then followed suit, so to say, to make the same blunders?
Surely, for the AEC to instruct the AGS to conduct the case its own lawyers must have assessed the legal issues first, and clearly, must have done so using incorrect facts.
Why should an objector having to face litigation because the AEC and its own lawyers cannot manage to appropriately assess matters?

With the recent federal election Pauline Hanson was denied a square above the line because the AEC allegedly closed enrolments 48 hours earlier for those wanting a square above the line.
Yet, it seems no one bothers to ask where is the constitutional powers for the AEC to close nominations 48 hours earlier for those wanting a square above the line?
In this case, where the difference is the balance of power in the Senate by political p[arties, it is a major difference, and hence the Senate election was not a FAIR and PROPER election and a fresh Senate election should be held.

HANSARD Constitutional Convention 16 March 1898 [pages 2445-2448]

> **Mr. SYMON** (South Australia)
> **The Parliament of the Commonwealth will prescribe the manner and everything incidental to the manner, whilst the Parliament of the state, in relation to the same work, will prescribe the times and places of elections.**
>
> **Mr. BARTON.**-Yes. There was a general expression of opinion. **Then, as to time and place, we say that, having amended clause 10, we have widened the area of the laws in**

force in each state, and that was done at a previous stage, making all the electoral laws apply with the exception of the time and place. With regard to the alteration from "manner" to "method," we thought that was a matter of detail, which might safely be left to the states, who will really know the most convenient way to arrange the times and places of elections. This will alter the times and places. This alteration crept in since 1891. In 1891 the power of the Parliament of the Commonwealth was simply to deal with a uniform manner of election. Since then there has been an alteration as to time and place; but that was at a time when the operations of the electoral law which were to apply in the election of the Senate were strictly defined and enumerated. We thought it wiser at the previous stage to open up new ground by making all the electoral laws applicable. **As time and place were ordinary incidents of the election laws, and would not be within the knowledge of the Parliament of the Commonwealth, we thought it better that that power should be left to the states. I forgot to mention that the great difference between the Bill of 1891 and this Bill is that in the Bill of 1891 the election was to be by the Parliaments of the states.**

Again;

Mr. BARTON.-Yes. There was a general expression of opinion. **Then, as to time and place, we say that, having amended clause 10, we have widened the area of the laws in force in each state, and that was done at a previous stage, making all the electoral laws apply with the exception of the time and place.**

As such, where the writs do specify a certain closure of nominations then the Australian electoral commission has absolutely no constitutional or other legislative power to override this. And, even if the Commonwealth of Australia had legislated for the AEC to close nominations earlier for those wanting a square above the line, it would in that regard be **ULTRA VIRES**, as the parliament cannot override the ***Constitution*** Hence, the 2004 Senate election was unconstitutional in that regard and a new election to be held.

While the High Court of Australia in ***Sue v Hill*** did argue that not the wording but the meaning had changed, below clearly shows otherwise;

*"However, the judiciary **has no power to amend or modernise** the Constitution to give effect to what Judges think is in the best public interest. The function of the judiciary, including the function of this Court, is **to give effect to the intention of the makers of the Constitution** as evinced by the terms in which they expressed that intention. That necessarily means that decisions, taken almost a century ago by people long dead, **bind the people of Australia today even in cases where most people agree that those decisions are out of touch with the present needs of Australian society** ... The starting point for a principled interpretation of the Constitution **is the search for the intention of its makers**"*

Gaudron J (Wakim, HCA27\99)

*"...But in the interpretation of the Constitution the connotation or connotations of its words should remain constant. **We are not to give words a meaning different from any meaning which they could have borne in 1900**. Law is to be accommodated to changing facts. **It is not to be changed as language changes.**"*

Windeyer J (Ex parte Professional Engineers' Association)

Victoria No. 6365 Senators Elections Act 1958 ***Limits within which dates may be fixed;***

The date fixed for the close of the Rolls shall be seven days after the date of the writ. Subject to sub-section (1B), the date fixed for the nomination of the candidates shall not be less than **eleven days** nor more than 28 days after the date of the writ.

In Queensland, the Senate elections are not less than 10 days. In any event, being it 10 or 11 days, the closure of nominations for those wanting a square above the line in 8 days (as was in 2001) clearly offended each State Senate legislative provisions. And even in 2004 it offended the requirements of each writ!

WATSON v LEE (1979) 144 CLR 374;

Such as:

> **To bind the citizen by a law, the terms of which he has no means of knowing, would be a mark of tyranny.**

Such as:

> **In my opinion,**
> **this provision means that copies of the regulation must be available at the place nominated in the Gazette on the date of the publication of the notice in the Gazette.**

Applies this to the writs, which clearly were not available until, in Victoria, on 10 October 2001. Likewise, the writs were issues on 8 October 2001 where as the Proclamation to prorogue the parliament and to dissolve the House of Representatives was not published until at the earliest on 9 October 2001. meaning that the 2001 general election was unconstitutional and invalid for this also. Likewise so, any subsequent federal election held.

Fullagar J in **Associated Dominions Assurance Society Pty Ltd v Balford (1950) 81 CLR 161**

> The notice actually served did not "specify" such a period: it "specified" a period which was too short by one day, and the Acts Interpretation Act does not affect this position. The two statutory provisions, read together, mean simply this: the notice must specify a period not less than fourteen days from service of the notice within which the thing must be done, and, if the last day of the period so specified falls on a Sunday, the thing may be done on the following Monday. The notice simply did not specify such a period, and it is, therefore, bad. (at p187)
>
> 13. In my opinion, the appeal should be allowed, and there should be judgment in the action for the plaintiff in the form of a declaration that the notice is invalid and void, and an injunction to restrain the respondent from instituting an investigation into the affairs of the company. (at p187)

Below are some quotations of transcripts of the Framers of the ***Commonwealth Constitution Bill 1898***, which were representatives of the State and expressed matters relevant to States issues also.

Hansard 31 March 1897

> **Mr. BARTON:** I am glad to hear that, because I had a strong suspicion that it was so. Whether or not it is in all the colonies a provision of law that **no judge shall sit on appeal from his own decision**, it ought very speedily under the powers given by the Constitution to be a provision of law for the Commonwealth, and if it once becomes so I should like to know what capacity, what adequacy, for this work will be left amongst the half-dozen Chief Justices who will at their sittings have to decide on appeals from half a dozen States. And, when we bear in mind [start page 369] that in every appeal from a colony the Chief

Justice of that particular State must not take part in the hearing, there would be still less chance of forming a court that would be acceptable or satisfactory as a Federal Court of Final Appeal.

Again;

no judge shall sit on appeal from his own decision,

Yet, what we have is that the Australian Electoral Commission make decisions and sit in judgment then over its own unconstitutional/illegal conduct and then employs lawyers to get them out of the mess using all kinds of legal tactics and abusing the legal processes to defeat anyone who may expose this rot.
Clearly, the AEC should not supervise its own conduct of holding elections, as it is by this sitting in judgment of its own decisions.
What has been shown also is that the is no appropriate system in place to deal with complaints.
Legislative provisions are circumvented/railroaded by the AEC by using its lawyers and that of the Australian Government Solicitors to pervert the course of justice, by false and misleading and fraudulent statements.

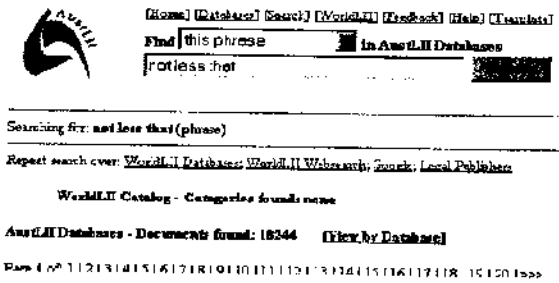
No one in his right mind could argue that what I exposed were accidental errors. Altering the wording of what a judge stated as to have it applied in my view is a very serious issue, in particular where this is done to undermine objections against improper conduct by the AEC, and to pervert the course of justice and deny a FAIR and PROPER election.

What we seem to have is a deliberate ongoing manipulation by the AEC to prevent objectors to succeed, being it to deny proper consideration and/or abuse the legal processes, by perverting the course of justice.
While judicial decisions may be handed down in the process, if they are the product of having perverted the course of justice, then the judicial decisions themselves are worthless.

Where the AEC goes about suborning false evidence to pervert the course of justice, then it has already by this implicitly admitted it had no case.

http://www.hcourt.gov.au/legal_o4.htm then select "**Publication**" then "**Judgments**" and then "**Global search**". Enter "**this phrase**" in the "**find**" location and then type in "**not less that**" in "**Search**" and press it.

Results; 18.244



When searching for "**not less than**" instead of "**not less that**" remarkably the same results; 18244

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Find this phrase in AustLII Databases

not less than

Searching for: **not less than** (phrase)

Repeat search over: WorldLII Databases; Google; Legal Publishers

WorldLII Catalog - Categories found: none

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Page 1 of: 1 | 2 | 3 | 4 | 5 | 6 | 7 | 8 | 9 | 10 | 11 | 12 | 13 | 14 | 15 | 16 | 17 | 18 | 19 | 20 | 21 | >>>

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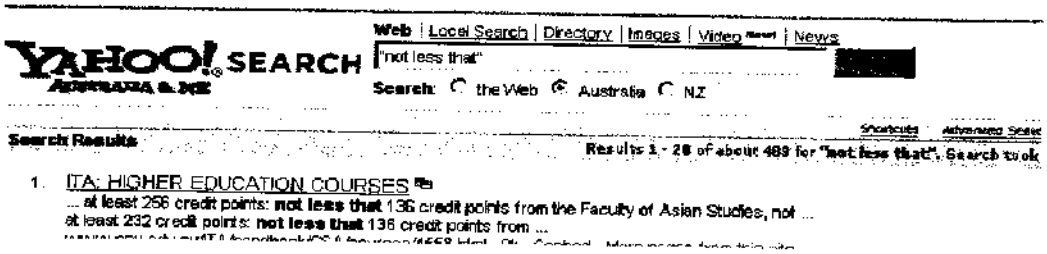
Having done both, we get the following results;
"**not less that**" Yahoo Australia only search result; **483**



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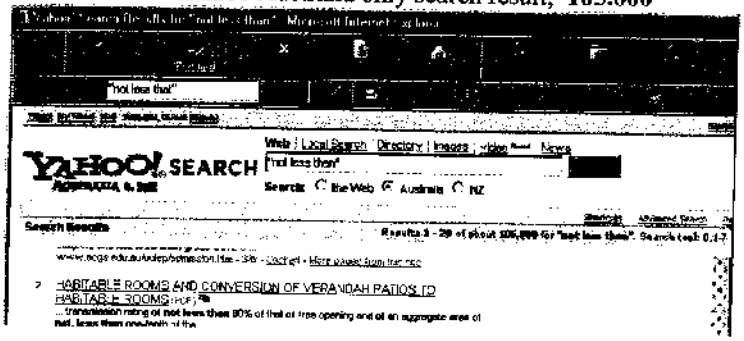

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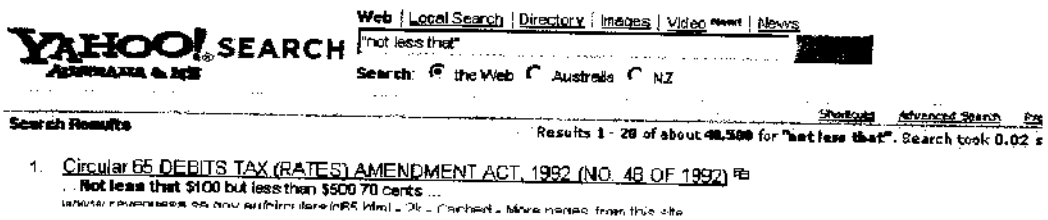

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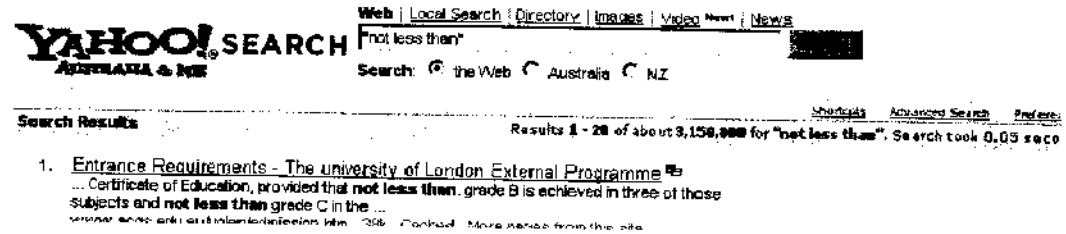

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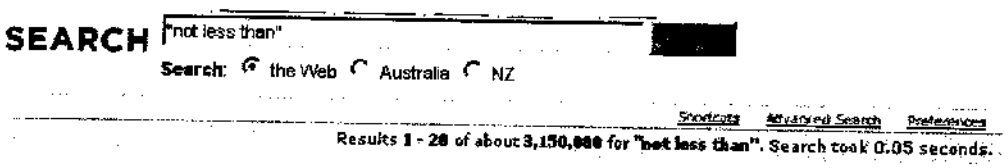


Just in case it was missed;

It took Yahoo search engine 0.05 seconds to find 3,500.000 references of "**not less than**"

As I assist many a person as "translator", when they are attending to their lawyer and I then basically explain what the lawyer is saying to the client and what the client is saying to the lawyer, even so both are using the English language, because of that what a client understands his/her lawyer to be stating and what the lawyer understands his/her client is stating is often different, I am too well aware what is going on.

It also has enabled me to observe lawyers to log into the High Court of Australia website to search for a particular case. Hence, I am well aware that lawyers do use the High Court of Australia search machine as well as other search machines such as Yahoo.

As it is shown above that the search engine takes about **0.02** to **0.05** seconds then this is virtually no time at all compared with the time it would take to type in the words "**not less than**" or "**not less that**".

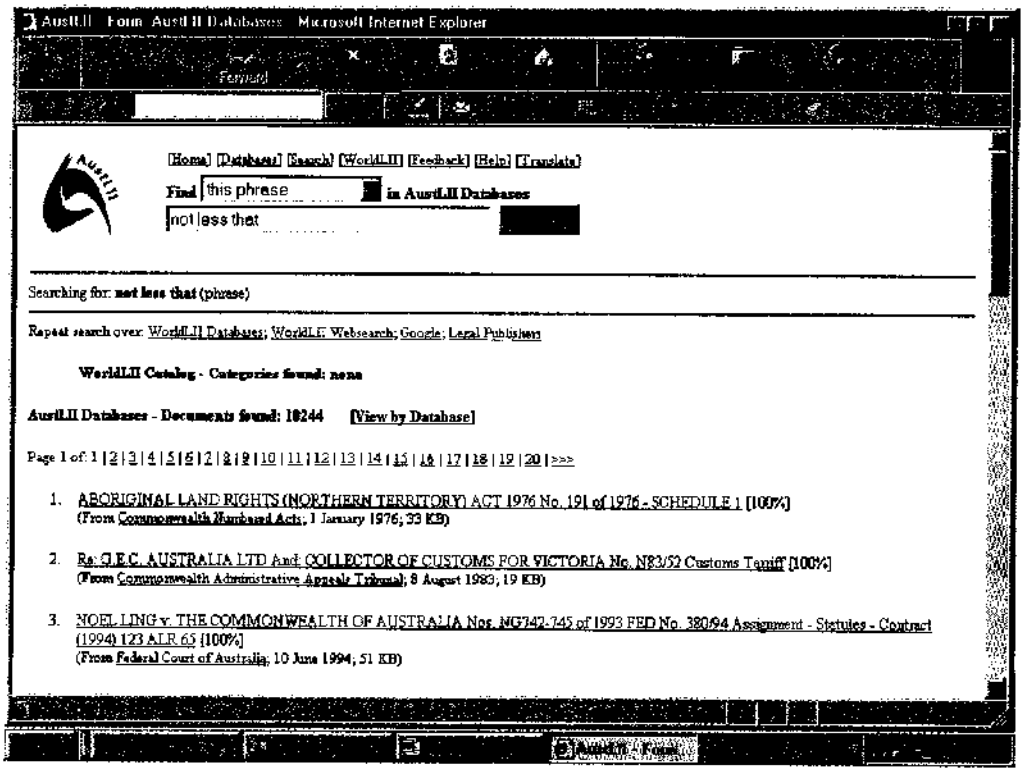
In view of the considerable time lawyer spend on preparing the cases, filing applications and drafting other documents, then the time of 0.02 to 0.05 seconds would be neglectable in the overall time used otherwise. Hence, one must then ask, why on earth Mr Peter Hanks QC claimed;

> **The researches of counsel have been unable to find provisions using simular language ("not less that" or "at least" a number of days) where the language is as clear and specific as found in ss156(1) and 157.**

This, as the language is used time and again, not just as to hours but also as to number of days, etc. Hence, I view the conduct was to deliberately pervert the course of justice by making claims that could not be sustained.

Because they were dealing with a person who was not a lawyer, they may have underestimated my drive to pursue **JUSTICE**, and my understanding of legal issues. As I view it, they may have calculated on that once the case was over they would get away with their elaborate deceit.

Below the full screen pictures of searches, as shown on computer.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AustLII Databases - Documents found: 18244 [View by Database]
Page 1 of: 1 | 2 | 3 | 4 | 5 | 6 | 7 | 8 | 9 | 10 | 11 | 12 | 13 | 14 | 15 | 16 | 17 | 18 | 19 | 20 | >>>
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(From Commonwealth Numbered Acts; 1 January 1976; 33 KB)
2. Re: G.E.C. AUSTRALIA LTD And: COLLECTOR OF CUSTOMS FOR VICTORIA No. N83/52 Customs Tariff [100%]
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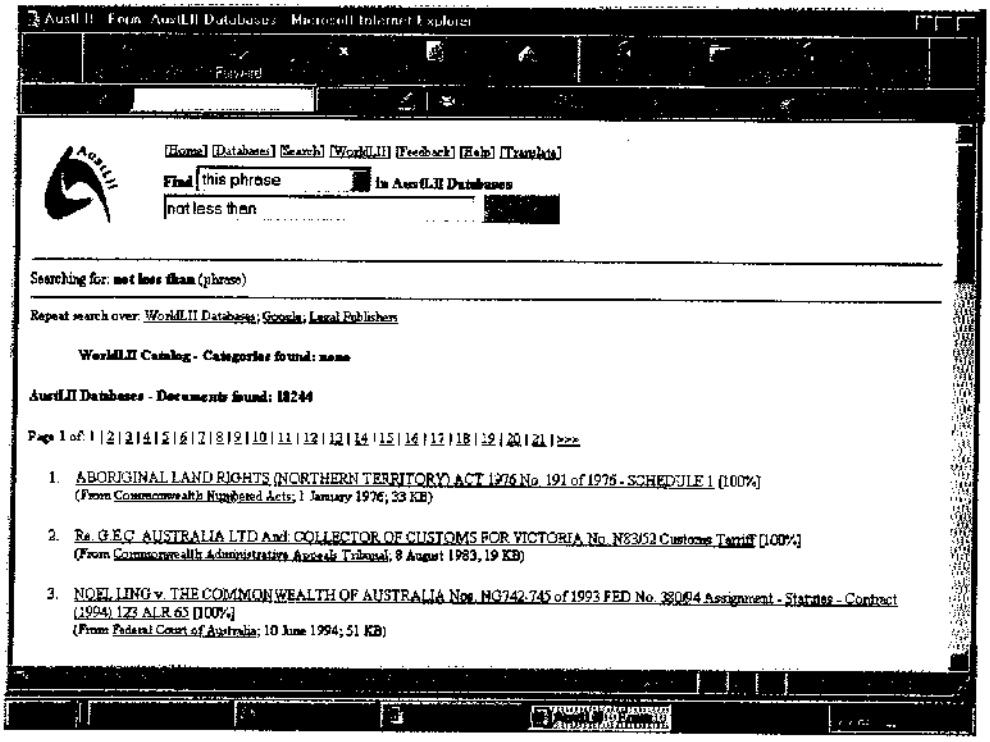
(From Federal Court of Australia; 10 June 1994; 51 KB)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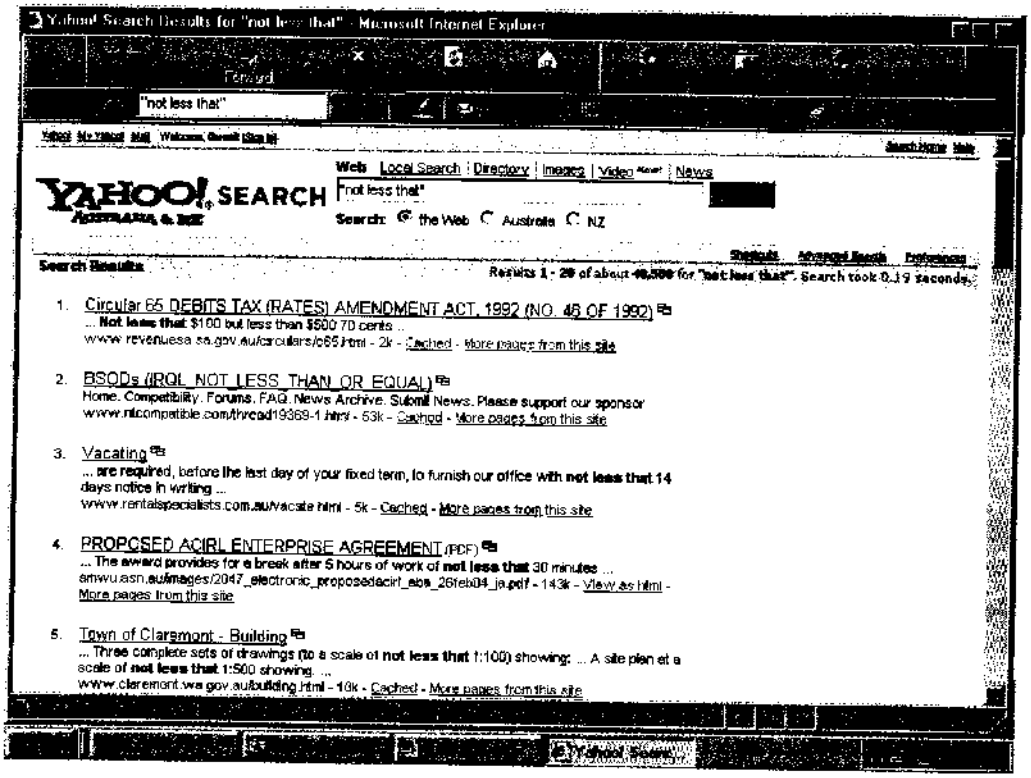

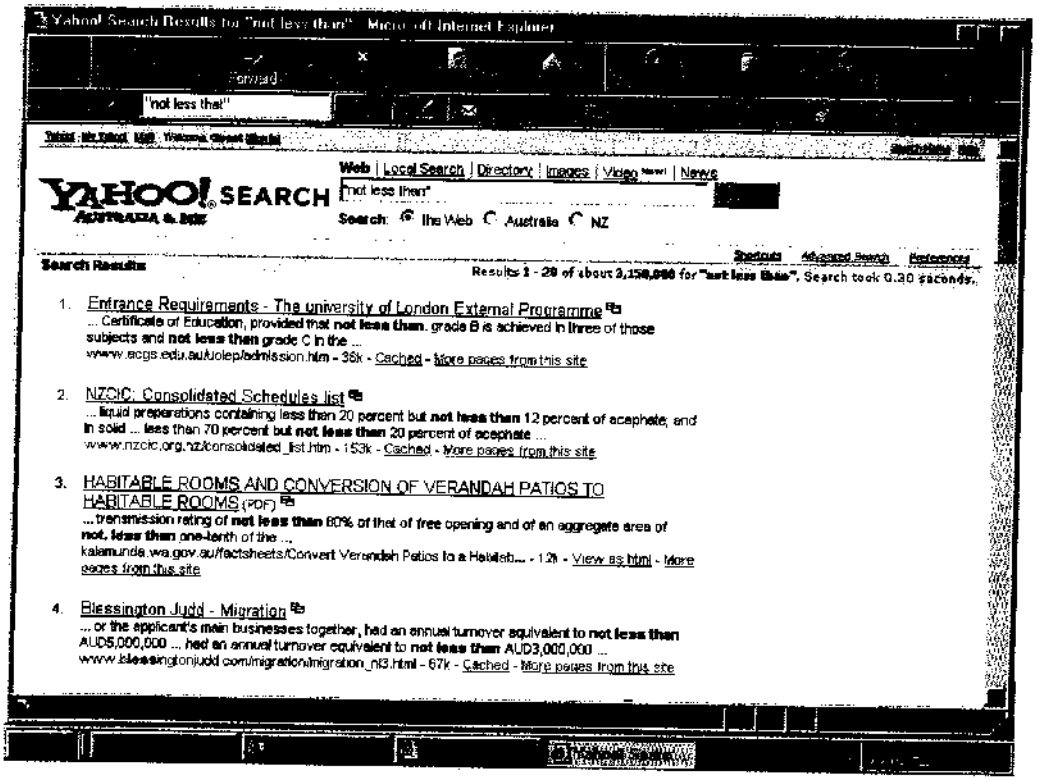

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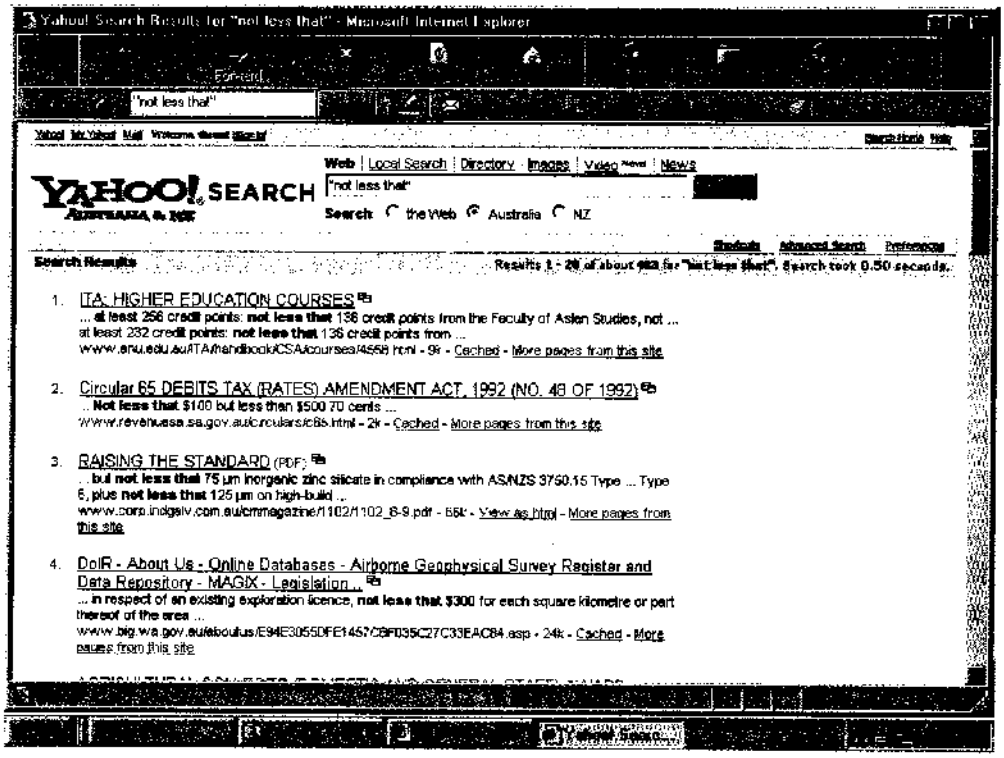

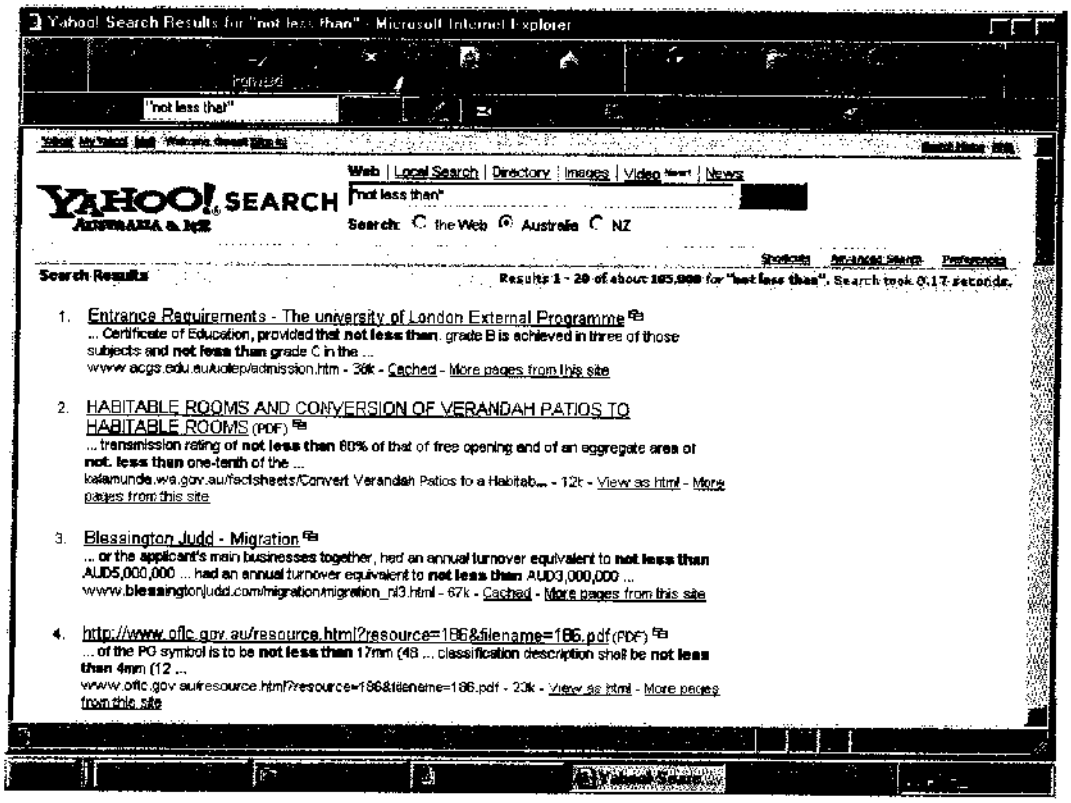

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I understand that in the case of MORIATY **v LONDON, CHATMAM & DOVER** RY Queen's Bench 1870 L.R. 5 Q.B. 314;39 L.T.Q.B. 109;22 L.T. 163;34 J.P. 692;18 W.R. 625 in which the plaintiff sued a railway company for personal injuries sustained and this plaintiff has gone about suborning false evidence and it was held by the Court that even so the plaintiff would have had a genuine and justify to case to sue normally, **by the plaintiff conduct to suborn false evidence this was seen by the Court that this conduct amounted to an admission that he had no case.**

Unlike myself, most electors would not have the ability or the desire to pursue matters extensively, and so, the AEC can get away with it illegal conduct, and other rotten conduct.
To the world at large, it appears to conduct FAIR and PROPER elections, because the judgments it obtains are obtained by fraud, perverting the course of justice, etc.
This standard of litigation is very much relevant to if elections are held FAIR and PROPER, but there is really no one and no organization that bothers to deal with this. Hence, the AEC can conduct its conduct as it likes unchecked.

The Commonwealth Ombudsman is either incompetent or unwilling to investigate matters, even if they are within its legal powers to investigate.

The JSCEM has its policy that where a matter is before the Courts it will not deal with them. As such, the AEC has the free hand to do as it likes and avoid any scrutiny.
There is no follow up system by the JSCEM, that it will subsequently attend to matters if may have refused to attend to earlier, due to then outstanding legal proceedings preventing it to do so.
It means that there is no accountability for the AEC as to its illegal conduct and the misuse of Consolidated Revenue and legal processes to mount its cases to at all cost defeat any objector, no matter how valid the objectors objections claims may be.
It is very clear, that what we need is an independent body that can and will investigate every facet of complaints made about the conduct of the AEC, and is not restrained from doing so because of pending litigation.
It is appalling that after more then 3 years of numerous complaints, the AEC has done absolutely nothing to rectify any of its illegal conduct and more over portray to the world at large they are doing nothing wrong. This is why it is so dangerous, as this is what often corruption is about. It is the use and abuse of power to cover up wrongdoings. In the end it can bring down governments, and then it is too late to ask questions that ought to have been done from onset.
Because I can and do present unquestionable facts that can be checked there can be no argument that it is my allegation against that of the AEC. The whole manner of litigation by the AEC I view was to deceive the Courts to every extend as to prevent matters to be adjudicated upon their **MERITS!**
THAT IS NOT WHAT THE AEC OUGHT TO PURSUE, AS TO LITIGATE IN A MANNER AS IF IT WAS SOME PRIVATE PERSON LOOKING AFTER ITS OWN PERSONAL INTEREST AND THE HELL WITH THE INTEREST OF THE "GENERAL COMMUNITY"!
We also must consider that the fraudulent usage of a judicial decision ought never form part of the AEC conduct to seek to defeat an objector!
As set out above; Mr Peter Hanks QC quoted of the judgment the following;

"unless the context or the **statutory intention** reveals a contrary intention"

This ought to be;

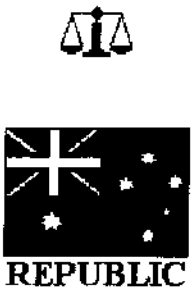
"unless the context or the **subject matter** reveals a contrary intention"

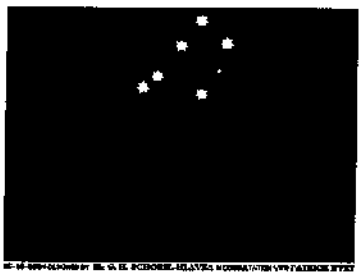
This is not some typing error, but a considerable change in wording!

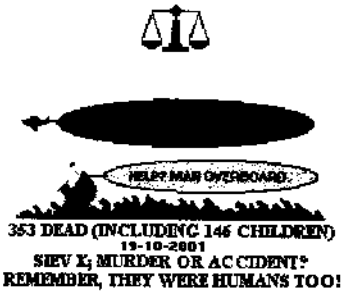
Again, likely the AEC and its lawyers never suspected that I would detect their fraudulent presentation of what a judgment was about. And, this was not the only problem with the litigation.
It must therefore be questioned that if the AEC is to provide FAIR and PROPER elections, then why on earth is it using illegal and other improper conduct to, so to say, railroad objections?
Where the Prime Minister relies upon what the AEC published being applicable as to election time table and where the Governor-General and governors relies upon this also, then surely it is absurd for the AEC to publish incorrect time tables and to manipulate its powers otherwise without being held accountable? What ought to be questioned also is that if the AEC had not perverted the course of justice with using false and misleading and fraudulent claims and the proceedings then would have proceeded to have been heard upon the **MERITS** of the case, then would this not have been the appropriate conduct to settle objections regarding elections?
While the AEC may seek to pass the buck upon the Australian Government Solicitors, in the end the AEC is the one who instructs the AGS and who therefore is holding control of litigation. It would be absurd to argue that the lawyers employed by the AEC who instruct the AGS in turn would be unaware of what is legally appropriate. No doubt in any litigation some kind of error can be made, but what we are dealing with is that the manner the AEC conducted litigation is not just some error but rather a litany of questionable conduct which all seemed to be designed as to railroad objections made against how it conducts elections.

The Parliament made specific provisions for objectors to pursue certain problems, and then this system set up must not be allowed to be abused by the AEC by engaging lawyers who are willing to pervert the course of justice by using false and misleading and fraudulent statements, as to prevent an objector to pursue the very legal process provided for in legislation.
If the JSCEM and/or the Commonwealth Ombudsman was to investigate each and every complaint made regarding the conduct of the AEC, it would have a horrific end result. Yet, despite this, nothing is being done because no proper investigation ever was occurring.
What is the use to have legislation in place if the AEC can manipulate the system, to avoid its wrongdoings being exposed?
In my view, we have a **cancer** within the Australian Electoral Commission and unless appropriate action is taken without delay we may soon discover that this cancer has spread too far to be remedied. No one should accept the nonsense of shifting responsibilities from one to another and ignoring to address the real issues in the process. The AEC is responsible for holding FAIR and PROPER elections and clearly it has not only failed to do so, but used all kinds of illegal and other improper tactics to cover up its wrongdoings. Because elections are the pillar of a democratic society no one can ignore this kind of deceptive conduct and it must be stopped. Those who are failing to take appropriate action themselves then place their own conduct in question!

Awaiting your response, **G. H. SCHOREL-HLAVKA**







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From; *Mr G. H. SCHOREL-HLAVKA*, 107 Graham Road, Rosanna East, Victoria 3084, Australia

WITHOUT PREJUDICE

The Secretary
JSCEM (Joint Standing Committee in Electoral Matters)
PH: (02) 6277 2374
FAX: (02) 6277 4710
e-mail: jscem@aph.gov.au

29-3-2005

Re; **electoral matters**

SUBMISSION

AND TO WHOM IT MAY CONCERN

Sir/Madam,

Further to my previous correspondence, I wish to add the following;

The electoral process has been set up[that the Australian electoral commission can refer matters to the Commonwealth Ombudsman for an independent (what else) investigation.
Also, any person having a problem with a government department clearly also can make a complaint with the Commonwealth Ombudsman, where the relevant Department fails to resolve the matter to the satisfaction of the person filing the complaint.
The problem however is that, for example with elections, the Courts may not be the appropriate venue to lodge any legal action with, as it is cumbersome and expensive and legal trickery can railroad any case, no matter how justified the case might be upon its **MERITS**!
Take for example a person that is denied to be accepted for nomination. The Courts already in the past made clear that such a person then has no standing in law within Section 383 & 353 to seek an injunction. As such, the AEC can rob any elector wrongfully of nomination and basically that is the end of it. the same with a person wrongfully denied enrolment.
In my view, once you facilitate/permit such kind of system to operate then there can be no **FAIR** and **PROPER** election! After all, it allows the AEC to manipulate the system and wrongly denies any person to particulate in an election.
Ordinaire electors do not want to be plunged into some litigation game where only the lawyers are winning as they get paid no matter what, and the AEC can hide behind legal trickery.
What is required is legislative provisions that spill out in precise terms who has jurisdiction in what situation, so that a person having a grievance with the AEC is not fooled around and in the end denied any proper resolution of complaints made.

No election can be deemed **FAIR** and **PROPER** where complaints made remain unresolved! While much was argued about Zimbabwe, reality is that the Commonwealth of Australia has no better election conducted, just that it is pretended to be better.
Just ask Pauline Hanson having been robbed of having a square above the line, even so nominating within the time provided for by legislative provisions! Ask Heidi Holtz, who previously was wrongfully denied nomination. And, I could list many others.

The single biggest error is that the AEC has been made the all powerful arbitrator who can use taxpayers monies to defeat anyone who may have a complaint, no matter how genuine such complaint might be.
The Commonwealth Ombudsman clearly lacks appropriate powers and also seems to be railroading complaints, and when caught out then seek to use any excuse to cover it up.

For example, it used the 12 month rule to refuse to investigate. Meaning that it was claimed that the complaint was filed beyond the 12 month period. When however it was shown that this was wrong, as the complaints were filed well within the 12 month period, then the Commonwealth Ombudsman simply stuck by its original refusal to investigate even so admitting that the complaint had been filed within time.

Most people would give up very soon, however I am persistent and was determined to pursue every avenue as to show that no matter what effort was given each and every complaint would in the end be railroaded by any excuse.
Also, that by this the real complaints about improper and **UNFAIR** and **IMPROPER** elections being held remains the same.
So, despite extensive attempt to seek matters to have addressed, in the end it all remains the same, regardless the Commonwealth Ombudsman acknowledging that the **MERITS** of the complaints were never dealt with.

What is then the purpose of having legislative provisions for litigation if in the end the system can be manipulated to such extend by the AEC that complaints can and are railroaded?
Because the balance of powers hinges upon if the election was FAIR and PROPER, in view of the denial such as a square above the line for Pauline Hanson, it becomes more noticeable that the elections are defective.

One of the most common problems are that I come across many lawyers/judges/politicians who all are arguing that it is done because the legislation provides for it. As such, they cannot comprehend that the legislation being in breach of constitutional limitations and therefore being ULTRA VIRES then cannot be applied and issues ought to be considered considering the real constitutional provisions!
ABC, televsion March 2005;

> JOHN HOWARD: If we were starting Australia all over again, I wouldn't support having the existing state structure. I would actually support having a federal government, a national government and perhaps a series of regional governments having the power, say, of the Brisbane City Council.

PERHAPS IS HERE WHERE THE DANGER LIES AS TO PURSUING A CONFEDERATION RATHER THEN A FEDERATION?
I for one, strongly pursue to retain State powers and jurisdictions. This correspondence does not allow to set it out extensively, but at least if we have some **jack-in-office** in the Commonwealth of Australia (**Hansard** 10-3-1898; "**Mr. SYMON.-A written Constitution is not exhaustive.**" "**If the Commandant was a kind of Jack-in-office**"), at least under the current constitutional existence States can take appropriate action, regardless they are actually doing so. As such, states are a protection of civil liberty and other liberties in that regard.
What we see however is already that the manipulation of elections, regardless of constitutional provisions to protect State rights regarding Senate elections, are but one of numerous issues that undermines constitutional provisions.

"The world is a dangerous place to live; not because of the people who are evil, but because of the people who do nothing about it." - A.E.

in my view, a new Senate election ought to be held, regardless of cost, as clearly the Senate election was floored.
Not that the House of Representative elections were any better, but at least the Senate election can still be done without any problems as to who is already sitting in the Senate since the election having been held.

Obviously, the likelihood of having a proper Senate election is zero, as I for one can not see members of the committee supporting the coalition willing to stand up for the constitution and by this risk not to get the majority in the Senate.

So, what is then the JSCEM about? Seemingly to deal with matters that do not affect the Committee members themselves or their personal interest?

It brings up the argument again that what we need is the creation of the **OFFICE OF THE GUARDIAN**, a constitutional council that can advice the Government, the people, the Parliament and the Courts as to constitutional powers and limitations!
After all, then and only then we may get advise of one centralised body that would have no self interest one way or another as to how the advise is applied.

Below, I will set out why the Commonwealth Ombudsman also has shown to be bias, where a complaint against this office was dealt with as if it never even was made, and dealt with by the very person subject to the complaint!

QUOTE

Commonwealth Ombudsman
Level 10, Casselden place
2 Lonsdale Street, Melbourne, Vic., 3000
Phone 1300 362 072
Facsimile 9654 7949

12-3-2005

Ref; 2004-2188761

Re;**Complaint against Commonwealth Ombudsman conduct & Administrative decisions, etc.**

END QUOTE

Hansard 15-9-1897

> **The Hon. E. BARTON:**
> You have two parties to this dispute. Now we have a maxim which is as applicable to our ordinary concerns as it is applicable in law, and it is that nobody should be allowed to be a judge in his own cause.

Again;

> **it is that nobody should be allowed to be a judge in his own cause.**

Hansard 4-3-1898

> **The Hon. E. BARTON:**
> I strongly object to any one being a judge in his own cause, but in this case you do not allow one of the parties to determine his own cause, because the Parliament of the Commonwealth will not be a party to the transaction, but a body in which all the states will be represented.

Again;

I strongly object to any one being a judge in his own cause

As I did state;

Complaint against Commonwealth Ombudsman conduct

My complaint of 12-3-2005 was directed against the Office of the Commonwealth Ombudsman, and here we have that **Dr Geoff Airo-Furulla**, who did the review I complained about not having been done appropriate then rejects my complaint against this review!

No wonder we have such utter constitutional mess where those dealing with complaint appears to be acting self serving, so to say, rather then to apply legal principles as the Framers of the ***Commonwealth Constitution Bill 1898*** (the forerunner of the Constitution) provided for.

One of the numerous issues I have complained about regarding the AEC is the unconstitutional manner of forcing people to vote under threat of fines, etc.

Hansard 17-3-1898

> **Mr. BARTON.-**
>
> **so that no adult person who, at the establishment of this Constitution, or [start page 2468] at any time afterwards, acquires the right to vote for the Legislative Assembly in his own colony or state can be deprived of that right by any law passed by the Federal Parliament.**

Again;

by any law passed by the Federal Parliament.

Yet, despite my complaints, nothing is being done, and all I find is my complaints (regardless to which authority) being railroaded. People have been denied their franchise rights unconstitutionally.

What then is the use of having a Commonwealth Ombudsman which clearly disregard what is constitutionally appropriate and cause undue hardship and suffering to numerous Australian electors as well as to people unconstitutionally robbed of their constitutional right to be an elector?

I can admit, that for purpose of publishing my coming book it serve me that the Commonwealth Ombudsman proved to ignore constitutional rights to be observed and respected, as after all this add to my claims that we are under a **DE FACTO DICTATORSHIP** in a **BANANA REPUBLIC** where no matter which authority one complain to one will fall on deaf ears, so to say.

However, for purpose of seeking **JUSTICE** (if you know and understand the meaning of that word) then it is utterly deplorable that a Commonwealth Ombudsman disregard the intentions of the Framers of the ***Constitution***, as I see it, to shield others to be exposed of their wrongdoings.

When the High Court of Australia commenced to deal with cases where people didn't vote, it simply then never considered the intentions of the Framers of the constitution, because of the prohibition of using the **Hansard** records of the **Constitutional Conventions Debate**. However, since 1992 the High Court of Australia (albeit wrongly) asserting certain constitutional powers regarding environment, using the **Constitutional Convention Debates** records, then, so to say, opened up the flood gates. What no one seemed to have been aware of was, that the Framers of the ***Constitution***, specifically stated that the ***Constitution*** was to be interpreted using the **Constitution Convention Debates** records, as such every decision by the High Court of Australia floored because it failed to use the principles of the intentions of the Framers of the ***Constitution*** as expressed during the **Constitutional Convention Debates**, therefore are worthless, so to say.

Sure, it might be a considerable humiliation that a person like myself, who never had any formal education in legal studies, never had any formal education in the English language and neither had English as his native language can turn out to write books about certain constitutional issues exposing the rot for so long having gone on. However, if you lacked proper education in legal studies or for that matter never had any formal education in certain constitutional issues, and therefore unable or incompetent, or whatever, to appropriately deal with constitutional matters then don't blame the messenger for bringing the news, but blame yourself and others who failed to provide appropriate and competent legal studies.

Hansard 1-3-1898

> **Mr. HIGGINS.-Suppose the sentry is asleep, or is in the swim with the other power?**
>
> **Mr. GORDON.-There will be more than one sentry. In the case of a federal law, every member of a state Parliament will be a sentry, and, every constituent of a state Parliament will be a sentry. As regards a law passed by a state, every man in the Federal Parliament will be a sentry, and the whole constituency behind the Federal Parliament will be a sentry.**

As a person belonging to the Australian community, you have as much as I have an obligation to full fill your duties as a sentry!

Hansard 8-2-1898

> **Mr. OCONNOR.**-I do not think so. We are making a Constitution which is to endure, practically speaking, for all time. **We do not know when some wave of popular feeling may lead a majority in the Parliament of a state to commit an injustice by passing a law that would deprive citizens of life, liberty, or property without due process of law.** If no state does anything of the kind there will be no harm in this provision, but it is only right that this protection should be given to every citizen of the Commonwealth.

Again;

> **We do not know when some wave of popular feeling may lead a majority in the Parliament of a state to commit an injustice by passing a law that would deprive citizens of life, liberty, or property without due process of law.**

Hansard 1-3-1898

> **" I say it ought to be upset at once and at the very earliest point. As soon as ever you find it has gone beyond the bounds you ought to say-"This thing is illegal." Otherwise you will leave to the Ministry of the day these powers of which you are so careful, giving them to a majority of the States and to a majority of the people. You would allow the Ministry of the day to exercise a suspending power as to whether it would enforce a law or not, which is most dangerous.**

Hansard 1-3-1898

> **Mr. HIGGINS.-But suppose they go beyond their power?**

Mr. GORDON.-It is still the expression of Parliament. Directly a Ministry seeks to enforce improperly any law the citizen has his right.

Hansard 31-1-1898

Mr. WISE (New South Wales).-

It might be that a law passed by the Federal Parliament was so counter to the popular feeling of a particular state, and so calculated to injure the interests of that state, **that it would become the duty of every citizen to exercise his practical power of nullification of that law by refusing to convict persons of offences against it. That is a means by which the public obtains a very striking opportunity of manifesting its condemnation of a law, and a method which has never been known to fail, if the law itself was originally unjust**. I think it is a measure of protection to the states and to the citizens of the states which should be preserved, and that the Federal Government should not have the power to interfere and prevent the citizens of a state adjudicating on the guilt or innocence of one of their fellow citizens conferred upon it by this Constitution.

Again;

that it would become the duty of every citizen to exercise his practical power of nullification of that law by refusing to convict persons of offences against it.

The power of nullification cannot be applied if a federal court uses its judgment against a citizen, as it then can hand down a decision in favour of a Commonwealth of Australia legislation, even so the State Court may have applied "nullification".
Therefore any decision, such as a person not to vote, charges having been dismissed by a Magistrate, then this was beyond appeal, as to protect the State right of "**nullification**"!

Hansard 2-3-1898

Mr. BARTON.-Yes; and here we have a totally different position, **because the actual right which a person has as a British subject-the right of personal liberty and protection under the laws-is secured by being a citizen of the States.** It must be recollected that the ordinary rights of liberty and protection by the laws **are not among the subjects confided to the Commonwealth**.

Hansard 1-3-1898

[start page 1683]

Mr. SYMON.-It is not a law if it is *ultra vires*.

Mr. GORDON.-It would be law by acquiescence. It would remain a law until it was attacked.

And

Mr. GORDON.-

Once a law is passed anybody can say that it is being improperly administered, and it leaves open the whole judicial power once the question of *ultra vires* is raised. Under the clause, as I have amended it, it will not prevent the plea of *ultra vires* being raised where it is accompanied with the plea of a conflict of law. If there is a state law and a Commonwealth law on the same subject, every citizen is entitled to know which be should obey. **If he joins a plea of *ultra vires* with a plea of conflict of law, that ought to be heard.**

I did place the matter before the Australian Electoral Commission and it refused to deal with complaints appropriately, advising I could go to the Federal Court of Australia as provided for by legislation. Albeit, my complaints nevertheless were not defeated, as I do not need to take the matter before any courts, as once made they are on foot, regardless of any litigation, I did however take the matters before both the High Court of Australia and the Federal Court of Australia and both refusing to deal with matters upon their merits. I did take the matter before the **JSCEM** (Joint Standing Committee on Electoral Matters) and it to refused to deal with matters upon their merits. I took the matter to the Commonwealth Ombudsman and it too has refused to deal with matters and in fact even sit in judgment upon itself!
In the mean time, what ever the numerous complaints were I made to whomever still remains to occur, and as such it is evidently clear we do not have **FAIR AND PROPER** elections, as we have no proper system to deal appropriately with the **MERITS** of complaints made.

I cannot help it that we have incompetent lawyer/judges/politicians, who lack proper competence in dealing with certain constitutional issues, what is of concern however is that despite the avalanche of evidence supporting what I am claiming, each and every authority seems to pursue to railroad my cases rather then to deal with matters appropriately upon the **MERITS** of my cases.
This is the kind of conduct that often results in revolutions, civil war or other civil unrest, as the Framers of the ***Constitution*** then already pointed out.

The Commonwealth Ombudsman at the very least could have recommended for the Commonwealth of Australia to create the **OFFICE OF THE GUARDIAN** a constitutional council to advise the Government, the people, the parliament and the Courts as to the proper application of constitutional provisions and their limitations. After all, what my cases have shown is that we are having some kind of **DE FACTO DICTATORSHIP**, and soon or later there will be civil unrest, and then it might be too late to resolve it peacefully.
It may even result to the Federation to be no more! After all, if the unconstitutional demands by Mr Peter Costello and Mr John Howard upon the States as to withhold funding (regarding the unconstitutional GST deal) were to eventuate, then we may find a groundswell of State citizens that we are better of to be individual States in particular where numerous other unconstitutional conduct, such as superannuation, education, industrial relations, etc are going on.

There is clearly no authority in place that deals appropriate with the numerous issues I raise.
Basically, it is complaining to the thief that the robbery is illegal! As if that is going to make a difference.
As the Office of the Commonwealth Ombudsman has acknowledged no Court has made a decision against the constitutional issues I raised, about elections, yet nothing is done about resolving it, as each and every authority seems to be afraid to face the truth! Call them cowards, or whatever, to me they should not be in a job when allowing this kind of unconstitutional conduct to flourish!
Everyone allowing this kind of unconstitutional conduct to flourish is as guilty by association, so to say, as those perpetrators who committee the unconstitutional conduct in the first place.
Hansard 2-3-1898

> **Mr. REID.-I suppose that money could not be paid to any church under this Constitution?**
>
> **Mr. BARTON.-No; you have only two powers of spending money, and a church could not receive the funds of the Commonwealth under either of them.**

[start page 1773]

Again;

Mr. BARTON.-No; you have only two powers of spending money, and a church could not receive the funds of the Commonwealth under either of them.

Yet, since I complained to the Tax Office, other then an acknowledgement no further response was received about the unconstitutional payment by treasurer Mr Peter Costello to the Catholic Church of about 2½ million dollars!

Hansard 31-3-1891

Sir SAMUEL GRIFFITH:

There must be some method, and we suggest that as a reasonable one. With respect to amendments of the constitution, it is proposed that a law to amend the constitution must be passed by an absolute majority of both the senate and the house of representatives; that, if that is done, the proposed amendment must be submitted for the opinion of the people of the states to be expressed in conventions elected for the purpose, and that then if the amendment is approved by a majority of the conventions in the states it shall become law, subject of course to the Queen's power of disallowance. Otherwise the constitution might be amended, and by a few words the commonwealth turned into a republic, which is no part of the scheme proposed by this bill.

Again;

Otherwise the constitution might be amended, and by a few words the commonwealth turned into a republic, which is no part of the scheme proposed by this bill.

As such the GST agreement, the Australian Act and numerous other kind of agreements are and remain unconstitutional. Where the hell is there any authority that deals with those issues and to appropriately investigate matters and have matters corrected if so justified? There simply is none!

Hansard 10-3-1898

Mr. BARTON (New South Wales).-

Of such is the power to summon and dissolve Parliament, to which no one who understood these matters would dream of adding the words "in Council." But yet these rights can never be exercised without the advice of a responsible Minister, and if that advice is wrongly given it is the Minister who suffers. Then, again, there is the prerogative right to declare war and peace, an adjunct of which it is that the Queen herself, or her representative, where Her Majesty is not present, holds that prerogative. No one would ever dream of saying that the Queen would declare war or peace without the advice of a responsible Minister. Wherefore, we all came to the conclusion, as constitutional writers have long come to the conclusion, that the prerogative is given in trust for the people, and is, therefore, only exercised at the instance of a responsible Minister. I should like to know whether there would not be a revolution in England if the Queen chose to declare war or to make peace without the sanction or advice of a responsible Minister? That would be as absolutely gross an infraction of the Constitution as an attempt to abolish the House of Commons, as the advent

of a second Protector, not only taking away the bauble, but taking all those who surrounded it. **Do we not then come to this conclusion, that the Constitution is absolutely safe in this form as we understand it, that you can not have a prerogative of the Crown in these modern days which can be exercised without the advice of a responsible Minister if a responsible Minister chooses to advise?**

Yet, even so no declaration of war was ever gazetted by the Governor-General to invade Iraq, we had Mr John Howard authorising such unconstitutional murderous invasion and no authority is prepared to deal with this, not even the Australian Federal Police!
It is idiotic that we persecute a person for a parking violation, yet committing **mass murder**, by invading another sovereign nation, is or is deemed to be sanctioned by all Authorities by their refusal to deal with matters upon their **MERITS**.

Mr. BARTON.-

Of course, neither in England nor here would an interference with the prerogative in that respect be tolerated. **But the Minister is responsible for the administration of the department as the person under whose control it is, within the Executive arrangement, and he is responsible for all expenditure upon it. Having this responsibility, he is entitled to tender the advice which will enable him to exercise his responsibility fearlessly.**

And

Mr. BARTON.-That is so. An endeavour has been made in drafting the Bill to use the words "in Council" where by statute law *in pari materia* the Governor-General in Council has been the authority to exercise the power. Where there has been no omission of the prerogative the ordinary words of description importing the prerogative-the Governor or Governor-General-are used with the perfect knowledge that the powers of the prerogative are really now the people's powers.

Mr. SYMON.-It is just the same as the command of the army being vested in the Queen.

Mr. BARTON.-Yes. **The Queen is the Commander-in-Chief of the British Army. She has the sole power of making peace and war. According to constitutional assumption it is her army. But who exercises the control of the Imperial Army? Is it not the adviser of the Queen? Would there not, as I said before, be a revolution if the Queen exercised her powers without consulting her Ministers?**

Mr John Howard clearly never was the Minister in charge of the Department, and as such neither had any constitutional powers to authorise warmongering conduct!

While the Commonwealth of Australia may have been saved of any severe backlash regarding the Iraq issue, what might have to be considered is that any other nation may one day just decide to deal with the Commonwealth of Australia in simular manner and then we will be no more!
That is why it is important to deal with matters and to ensure that we develop some kind of system that will ensure that constitutional issues like the numerous issues I have presented to the various Authorities do get a proper consideration as to their **MERITS** and appropriate action then is taken to deal with those issues, where such action is warranted.

Using lawyer at taxpayers cost to thwart any citizen to deny the opportunity to have matters heard upon their **MERITS** is in itself unconstitutional as the Framers of the ***Constitution*** made clear that we are all a "**sentry**"!
Hansard 2-3-1898

Mr. HIGGINS.-The particular danger is this: That we do not want to give to the Commonwealth powers which ought to be left to the states. The point is that we are not going to make the Commonwealth a kind of social and religious power over us. We are going into a Federation for certain specific subjects. **Each state at present has the power to impose religious laws. I want to leave that power with the state; I will not disturb that power; but I object to give to the Federation of Australia a tyrannous and over-riding power over the whole of the people of Australia as to what day they shall observe for religious reasons, and what day they shall not observe for that purpose. The state of Victoria will be able to pass any Sunday law it likes under my scheme.**

And

Mr. HIGGINS (Victoria).-

The Commonwealth shall not make any law prohibiting the free exercise of any religion, or for the establishment of any religion, or imposing any religious observance, and no religious test shall be required as a qualification for any office or public trust under the Commonwealth.

And

Mr. BARTON.-

. If we, in these communities in which we live, have no right whatever to anticipate a return of methods which were practised under a different state or Constitution, under a less liberal measure of progress and advancement; if, as this progress goes on, **the rights of citizenship are more respected; if the divorce between Church and State becomes more pronounced;**

And

Mr. HIGGINS.-Then all crimes should be left to the Commonwealth?

Mr. BARTON.-No; because you do not give any power with regard to punishing crime to the Commonwealth,

Yet, we find that both Houses of Parliament dictate a "**prayer**", this, even so the Houses can only make its own rules within the provisions of the constitution! Many a Member of Parliament not being of the Christian belief are by this unconstitutionally robbed of their right of **RELIGIOUS LIBERTY!** We have the Commonwealth of Australia dictating when its employees is to have religious public holidays, such as Christmas (and New Year), regardless of this being offensive tom other religious people or non religious people who desire to celebrate or not to celebrate what is applicable to their particular religion.

Likewise, the unconstitutional detention of people by the Commonwealth of Australia! We have judges who do not even comprehend all relevant constitutional provisions deciding the faith of people. Surely, at the very least judges ought to be appropriately trained in the relevant constitutional issues they are dealing with?

Take for example the R Excell (paedophile convict) issue. The man, regardless of his crimes, is and remains an Australian citizen as he obtained this **AUTOMATICALLY** when as a 10 year old child coming to reside in a State and by this obtained State citizenship. It is not that I like him to roam around my grandchildren, but that we must deal with him in a constitutional proper manner.

Yet, where are the judges trained to have even a basic knowledge/understanding about what "citizenship" really is? They do not even understand/comprehend that "Australian citizenship" has got absolutely nothing to do with Australian nationality! Different legal jurisdictions!

See also my book, published on 30 September 2003:

INSPECTOR-RIKATI® on CITIZENSHIP

A book on CD about Australians unduly harmed.

ISBN0-9580569-6-X

This book sets out extensively what "**citizenship**" is, and this include any person who, regardless of being an alien, resides in a State legal jurisdiction.

The argument that some federal authority can take over and denies a person his liberty and property is just utter and sheer nonsense!

Hansard 2-3-1898

> **Mr. BARTON**.-Yes; and here we have a totally different position, **because the actual right which a person has as a British subject-the right of personal liberty and protection under the laws-is secured by being a citizen of the States.** It must be recollected that the ordinary rights of liberty and protection by the laws **are not among the subjects confided to the Commonwealth**.

And

> **Mr. BARTON**.-
>
> **I took occasion to indicate that in creating a federal citizenship, and in defining the qualifications of that federal citizenship, we were not in any way interfering with our position as subjects of the British Empire. It would be beyond the scope of the Constitution to do that. We might be citizens of a city, citizens of a colony, or citizens of a Commonwealth, but we would still be, subjects of the Queen.**

And;

> **If we are going to give the Federal Parliament power to legislate as it pleases with regard to Commonwealth citizenship, not having defined it, we may be enabling the Parliament to pass legislation that would really defeat all the principles inserted elsewhere in the Constitution, and, in fact, to play ducks and drakes with it. That is not what is meant by the term "Trust the Federal Parliament."**

Dang, Ex parte - Re MIMA M118/2001 (18 April 2002) High Court of Australia I noticed some of the following comments;

> KIRBY J: **There is no mention of citizenship in the powers of the Federal Parliament.**
>
> GLEESON CJ: **What is the source of the Parliament's power to make laws about citizenship?**
>
> GLEESON CJ: **How does the power to make laws with respect to naturalisation sustain section 10 of the Citizenship Act, which says that:**
>
> KIRBY J: **My recollection is that the powers of the Congress do extend to citizenship.**

The US congres has absolutely nothing to do with the issue of Australian citizenship, this as the US constitution has "**citizenship**" and "**Naturalization**" together, while the framers of the **Commonwealth Constitution Bill 1989** (***Commonwealth of Australia Constitution Act***) held that the powers to define/declare citizenship rested with the States and was and remained their sovereign powers, while the powers of naturalization was provided to the Commonwealth, upon federation.

Mr. DEAKIN

What a charter of liberty is embraced within this Bill-of political liberty and religious liberty-the liberty and the means to achieve all to which men in these days can reasonably aspire. A charter of liberty is enshrined in this Constitution, which is also a charter of peace-of peace, order, and good government for the whole of the peoples whom it will embrace and unite.

Mr. SYMON (South Australia).-I wish to say one word or two before we part. I do not intend to enter into any detailed examination of, or any elaborate apology for, the Constitution which we have been engaged in framing. But, sir, no man can remain unmoved upon this momentous occasion. **We who are assembled in this Convention are about to commit to the people of Australia a new charter of union and liberty; we are about to commit this new *Magna Charta* for their acceptance and confirmation, and I can conceive of nothing of greater magnitude in the whole history of the peoples of the world than this question upon which we are about to invite the peoples of Australia to vote. The Great Charter was wrung by the barons of England from a reluctant king. This new charter is to be given by the people of Australia to themselves.**

Again;

What a charter of liberty is embraced within this Bill-of political liberty,

Political liberty is not one where a person is forced to attend to a polling station and/or forced to vote so those who get the first preference will make money out of it.

Neither can it be "**political liberty**" be used to force a person to vote for one may utterly dislike. Albeit I stood as a candidate in federal elections, I really do not campaigning in elections, as I take the view, it is the lost of the electors if they do not vote for me.

By now, if you have bothered to read this entire correspondence, you may start to realise that the Commonwealth of Australia is operating far to often outside constitutional powers and as such, it is time someone with backbone dares to stand up and appropriately deal with this rot, regardless of whatever political fall out there may result from.

I can do no more but to place details before a person! You may realise that I might have given you ample of material you never knew exited, and it is, so to say, only the tip of the iceberg.

I have so far spend my time to prepare a case, so that in the event the people are getting sick of how they are denied their constitutional rights, I have in place the evidence to prove matters.

The people then may ask, what the hell did you do about matters that were made to your attention? No good to bring up excuses, as the only response that might be acceptable is something like; I made the appropriate reports setting out matters and pursued appropriate action to be taken by those in Authority! Anything less may not be acceptable, as after all, ignorance is no excuse.

No one can expect any Authority to act beyond its legal powers, and no one seeks to pursue this, however, it can be held accountable and should so, where if it has no legal powers itself, it ignores the issues raised rather then to bring it to the attention of the relevant authorities who may have the appropriate powers, with providing also relevant recommendations. And, where there is no alternative authority to deal with the matters, then it should make a recommendation for such Authority to be created as to deal with matters in an appropriate manner.
Ignorance is no excuse.

As the Framers of the ***Constitution*** made very clear, we are all a "**sentry**" and hence we all are obligated to pursue that matters are appropriately attended to. Disregarding matters, without pursuing alternative appropriate action, in my view, is a failure of once duty as a sentry!

My complaint of 12-3-2005 against the Office of the Commonwealth Ombudsman clearly was not appropriately dealt with!
While **Dr Geoff Airo-Furulla**, claimed to have read my material and nothing new was in there, the fact that it was headed "**Complaint against Commonwealth Ombudsman conduct**" and was disregarded by **Dr Geoff Airo-Furulla** in itself indicates to me that his consideration is far from reliable and appropriate. I would take it that a complaint against the Office of the Commonwealth Ombudsman was a significant issue, not one to be disregarded!

In my view, at the very least, the Office of the Commonwealth Ombudsman ought to report to the Parliament the numerous constitutional and other legal issues I had raised and that some system ought to be in place that they can be appropriately dealt with, if the office of the Commonwealth Ombudsman does not itself have the powers to do so or is not provided additional powers to be able to deal with matters appropriately.

I have no doubt that most committee members of the JSCEM may themselves never have been aware of some of the quotations I have stated above of the **Constitutional Convention Debates,** and while I can accept this to happen as few people within the Commonwealth of Australia may be aware of it, there is however no excuse for the JSCEM not to explore what I have submitted and to appropriately deal with those issues, without political bias.

The worst possible outcome would be for the JSCEM to ignore and/or disregard my submissions and to present a report that basically omits to address the real issues, as it would demonstrate that the JSCEM by its political motives is not the body to appropriately deal with any inquiry.
After all, what is the sense of holding an inquiry, if the AEC can manipulate its data and make false and misleading statements and the report of the JSCEM fails to expose this and by this allows the rot to continue?

Let the JSCEM show which particular complaint, of the numerous complaints I made regarding the AEC unconstitutional/illegal conduct in holding elections have been appropriately addressed! Not a single one of them were, meaning that the entire system simply isn't working.

Again;
Hansard 17-3-1898

> **Mr. BARTON.-**
>
> **so that no adult person who, at the establishment of this Constitution, or [start page 2468] at any time afterwards, acquires the right to vote for the Legislative Assembly in his own colony or state can be deprived of that right by any law passed by the Federal Parliament.**

Again;

> **by any law passed by the Federal Parliament.**

Yet, numerous Australian electoral, who hold franchise in the state they are enrolled nevertheless are still ongoing denied franchise while overseas because of some purported (albeit unconstitutional) federal legislation!
Then what is the sense to have legislation, to have the Office of the Commonwealth Ombudsman, to have the JSCEM, etc when in the end, since I commenced to complain in 2001, nothing and I mean absolutely nothing has been done to address this problem?
Again, it underlines the need of the creation of the **OFFICE OF THE GUARDIAN** as to ensure that constitutional issues are based upon a common understanding, and not that for example the High court of Australia makes some ridiculous decision by judges who do not even have any competence in the particular constitutional issue they are dealing weith, making some decision to purport these is some constitutional power.
The statement;

> **by any law passed by the Federal Parliament**

clearly could not be more clearly then that. It means that no matter what the High Court of Australia may pretend there simply is no constitutional powers for the federal parliament to legislate in any way, such as to rob electors who travel overseas of their franchise. As I have extensively canvassed in my books, once a person obtains State franchise, then **AUTOMATICALLY** this person has Federal franchise and it cannot be limited by any kind of Federal legislation! Hence, no elector needs to advise the AEC of travelling abroad to retain some kind of federal franchise. Neither can the Federal parliament legislate to give someone franchise where they do not have it from a State.
Federal franchise is derived from Australian citizenship, and this in turn is **AUTOMATICALLY** obtained from having State citizenship.

There is absolutely no definition for Australian citizenship, as the Framers of the ***Constitution*** (**Hansard** 2 and 3 March 1898 **Constitution Convention Debates**) made clear it is obtained **AUTOMATICALLY** by obtaining State citizenship.

Now, I am well aware that this can be continued to be ignored for some time, but if in the end there finally will be admission that indeed the Commonwealth of Australia has no constitutional powers to define/declare "citizenship, then it will also underline that despite my ongoing effort to put this to the JSCEM and other, they ongoing ignored this.

So much then for a "system", that seems to be depending upon the political interest of those in the committee rather then upon the oath of a Member of Parliament!

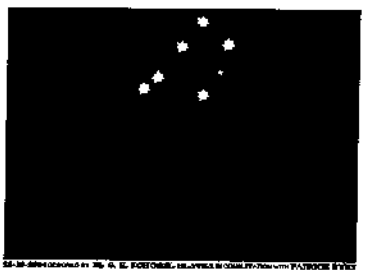
Those members of parliament that had some kind of education in legal manmtters ought to read for themselves the Constitution convention Debates, and then be free minded and consider how what the framers discussed applies.

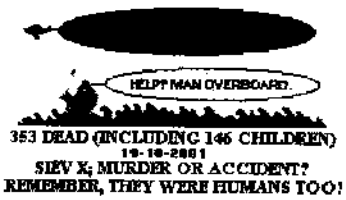
What the problem is that the judges of the High court of australia never had themselves any proper education in constitutional matters governing certain constitutional issues and yet are making decisions and handing down judgements that I for one reading those judgment would hold they are utter nonsense.
The ***Sykes v Cleary***, the ***Sue v Hill***, the 1976 Senate issue judgment, the Franklin Dam, the ***Mobo*** decision and numerous others are all in defiance of constitutional provisions and the intentions of the Framers.

For example, a simple example, the ***Aboriginal and Torres Strait Islanders Act*** in itself is unconstitutional because it deals with more then one race! As I have extensively canvassed in my published books, the Framers of the Constitution made clear that within Section 51(xxvi) the parliament could only legislate for one particular race at the time! Hence, legislating for two races is unconstitutional. Likewise the Racial discrimination Act being against the "general community" is unconstitutional as Section 51(xxvi) only allows legislation against a particular race, and not against the general community! Further, when legislation is passed against a particular race then each person of that race will be this lose their citizenship! Meaning, that while the legislation is on foot each person of that race is barred from any kind of State (and so Federal) citizenship, and no longer has the right of franchise.
Meaning, any Member of Parliament of **Aboriginal** or **Torres Strait Islanders** decent has no constitutional right to be a member of parliament for as long as any such legislation is on foot.
Again, where is the system that allows for issues like these to be appropriately addressed?

Note; A copy of this correspondence will also be emailed as to enable an electronic copy to exist, albeit the signature will be omitted from the electronic version as to avoid abuse of the signature.

Awaiting your response, **G. H. SCHOREL-HLAVKA**





MAY JUSTICE ALWAYS PREVAIL®

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From; *Mr G. H. SCHOREL-HLAVKA*, 107 Graham Road, Rosanna East, Victoria 3084, Australia

WITHOUT PREJUDICE

The Secretary,
Joint Standing Committee in Electoral Matters)
PH: (02) 6277 2374
FAX: (02) 6277 4780
e-mail: jscem@aph.gov.au

31-3-2005

Re; **electoral matters**

SUBMISSION

AND TO WHOM IT MAY CONCERN

Sir/Madam,

Further to my previous correspondence, I wish to add the following;

Below is a email I received from the USA, and this deals with the issue of judges and constitutional provisions. Albeit, this is a USA matter, it has however simular problems within the Australian system.

For example, the AEC in its pamphlet no 17 refers to past Court decisions, which were made without any consideration as to "**POLITICAL LIBERTY**" as the Framers of the Constitution referred to during the **Constitutional Convention Debates**, as records in the **Hansard**, such as 17-3-1898.

What the retired judge set out below is much what has happened with numerous constitutional issues, where the true constitutional provisions and limitations have been prostituted for pretended constitutional provisions and limitations.

What we have seen is that, as so extensively set out in previous submissions, the High Court of Australia has taken over the powers from the parliament and has now used "case law" not just to bypass the Parliament in legislation but in effect to override constitutional provisions and limitations.

A clear example is the application of Section 41. the High Court of Australia is even on record to argue that section 41 no longer is applicable.

Hansard 17-3-1898

Mr. BARTON.-

so that no adult person who, at the establishment of this Constitution, or [start page 2468] at any time afterwards, acquires the right to vote for the Legislative Assembly in his own colony or state can be deprived of that right by any law passed by the Federal Parliament.

Again;

or at any time afterwards

Clearly the wording "**or at any time afterwards**" rejects any claims by the high Court of Australia that Section 41 was limited in application!

What we now have is that ordinary Australians are robbed of any proper opportunity to pursue their constitutional rights, as they will be drawn into an very expensive protracted legal battle where the judges determining who is right or wrong often haven't got any proper education in certain constitutional issues as to understand how constitutional powers and limitations are to apply.
They are making decisions which are undermining the holding of FAIR and PROPER elections, because they have the power to do so.

While it may suit Members of parliament to have this kind of cosy arrangement where otherwise they may have to fight another election if the election they were purportedly elected in was to be declared invalid, on the other hand, the Members of Parliament may face that one day the High Court of Australia may make a decision against members of parliament and then it will be too late to seek to hold the damages as it has simply stood by for too long to allow this, so to say, bolted horse to do as it like.
As a recent statement I received expressed;

QUOTE

Date: Mon, 28 Mar 2005 08:33:29 -0500
From: Jerome E Heinemann <jerryh15@juno.com>
Subject: [AMOJ_MAIN] WHO WILL SPEAK OUT?
To: AMOJ_MAIN@yahoogroups.com, jrogins@crosslink.net

Greetings Everyone...it's time to take sides...

"First they came for the unborn, and I did not speak out ~
because I was no longer in the womb and my children were grown;
Then they came for the infirm, and I did not speak out ~
because I was not sick in a hospital or hospice;
Then they came for those on Social Security, and I did not speak out ~
because I was not yet over sixty-five;
Then they came for their political enemies, and I did not speak out ~
because I was a registered 'Republican', one of the two major parties;
Then they came for me for expressing my opinion at work against the war ~
and there was no one left to speak out for me – everyone was afraid!"
– Reform Party USA-Action Group Staff (USA 2005)
< www.reformpartyusa-ag.org >

"We shall either be ruled by God or we shall be ruled by tyrants." **– William Penn**

RRT Reference: V94/01511 (11 May 1995)

END QUOTE

Upon homecoming I detected that I had 2 interstate calls of a man on my answering service. Even so it was just after 11 PM I decided to call back. The man was very pleased I had called back, regardless of the time, and he explained he had heart problems and just left hospital (where he was in for three weeks) and now released wanted to know how I was going with submissions to the JSCEM!

Excuse me, a man nearly dying first issue is to seek to find out how submissions are going?

As he gave me the understanding, he fears that unless matters are appropriately addressed regarding the denial of peoples constitutional rights we may soon face a civil war or other problem of that nature.

Again, we have a man who was close to death, and is concerned about the nation!

I would urge that members of the committee of the JSCEM, as well as others, may show an equal interest in protecting the constitutional rights of Australians and do not permit to have hijacked FAIR and PROPER elections by judges taking the power to override constitutional limitations.

The JSCEM at the very least ought to acknowledge that my arguments contain a hell of a lot of quotations of the Framers of the ***Constitution***! That in itself ought to warrant that the issues raised by me are appropriately attended to and that any report does set out these matters!

If however we leave the Courts to determine what is applicable day by day, then why have a ***Constitution*** at all?
Judges are to "interpret" the intentions of the Framers of the constitution, and no more! The JSCEM should not allow any court to take for granted its powers and persist with enforcing judgments made long ago, in error, rather then to allow matters to be redressed.

It is therefore also essential that legal challenges regarding elections must be ensured to be without cost to the challenger. Not to ensure this would mean that no election can be deemed FAIR and PROPER as the AEC can use its legal muscle to prevent any of its wrongdoings to be exposed in Court, by using legal trickery.

I for one, having given extensive effort to expose matters found that despite this, not the Constitution and so constitutional rights prevailed, but rather that a ratbag like Mr peter Hanks QC, making false, misleading and fraudulent claims in Court ultimately ensures the case is not heard upon its MERITS!

If the JSCEM stands by and allow this kind of litigation to be sanctioned by it, by not taking appropriate action, then no matter what the JSCEM may seek to accomplish otherwise, the notion of there being FAIR and PROPER election is nonsense and does not exist!

QUOTE

Date: Tue, 29 Mar 2005 10:53:33 -0500
From: "Themis" <justice96@msn.com>
Subject: [AMOJ_MAIN] Law loses its way -- By former Arizona Justice
To: <victimsoflaw@yahoogroups.com>, <AMOJ_MAIN@yahoogroups.com>, <victimsoflaw_discuss@yahoogroups.com>

Law loses its way

http://www.azcentral.com/arizonarepublic/viewpoints/articles/0328molloy0327.html
By John F. Molloy
Mar. 27, 2005 12:00 AM
When I began practicing law in 1946, justice was much simpler. I joined a small Tucson practice at a salary of $250 a month, excellent compensation for a beginning lawyer. There was no paralegal staff or expensive artwork on the walls.

In those days, the judicial system was straightforward and efficient. Decisions were

handed down by judges who applied the law as outlined by the Constitution and state legislatures. Cases went to trial in a month or two, not years. In the courtroom, the focus was on uncovering and determining truth and fact.

I charged clients by what I was able to accomplish for them. The clock did not start ticking the minute they walked through the door.

Looking back

The legal profession has evolved dramatically during my 87 years. I am a second-generation lawyer from an Irish immigrant family that settled in Yuma. My father, who passed the Bar with a fifth-grade education, ended up arguing a case before the U.S. Supreme Court during his career.

The law changed dramatically during my years in the profession. For example, when I accepted my first appointment as a Pima County judge in 1957, I saw that lawyers expected me to act more as a referee than a judge. The county court I presided over resembled a gladiator arena, with dueling lawyers jockeying for points and one-upping each other with calculated and ingenuous briefs.

That was just the beginning.

By the time I ended my 50-year career as a trial attorney, judge and president of southern Arizona's largest law firm, I no longer had confidence in the legal fraternity I had participated in and, yes, profited from.

I was the ultimate insider, but as I looked back, I felt I had to write a book about serious issues in the legal profession and the implications for clients and society as a whole. *The Fraternity: Lawyers and Judges in Collusion* was 10 years in the making and has become my call to action for legal reform.

Disturbing evolution

Our Constitution intended that only elected lawmakers be permitted to create law.

Yet judges create their own law in the judicial system based on their own opinions and rulings. It's called case law, and it is churned out daily through the rulings of judges. When a judge hands down a ruling and that ruling survives appeal with the next tier of judges, it then becomes case law, or legal precedent. This now happens so consistently that we've become more subject to the case rulings of judges rather than to laws made by the lawmaking bodies outlined in our Constitution.

This case-law system is a constitutional nightmare because it continuously modifies Constitutional intent. For lawyers, however, it creates endless business opportunities. That's because case law is technically complicated and requires a lawyer's expertise to guide and move you through the system.

The judicial system may begin with enacted laws, but the variations that result from a judge's application of case law all too often change the ultimate meaning.

Lawyer domination

When a lawyer puts on a robe and takes the bench, he or she is called a judge. But in reality, when judges look down from the bench they are lawyers looking upon fellow members of their fraternity. In any other area of the free-enterprise system, this would be seen as a conflict of interest.

When a lawyer takes an oath as a judge, it merely enhances the ruling class of lawyers and judges. First of all, in Maricopa and Pima counties, judges are not elected but nominated by committees of lawyers, along with concerned citizens.

How can they be expected not to be beholden to those who elevated them to the bench?

When they leave the bench, many return to large and successful law firms that leverage their names and relationships.

Business of law

The concept of "time" has been converted into enormous revenue for lawyers. The profession has adopted elaborate systems where clients are billed for a lawyer's time in six-minute increments. The paralegal profession is another brainchild of the fraternity, created as an additional tracking and revenue center. High-powered firms have departmentalized their services into separate profit centers for probate and trusts, trial, commercial, and so forth.

The once-honorable profession of law now fully functions as a bottom-line business, driven by greed and the pursuit of power and wealth, even shaping the laws of the United States outside the elected Congress and state legislatures.

Bureaucratic design

Today the skill and gamesmanship of lawyers, not the truth, often determine the outcome of a case. And we lawyers love it. All the tools are there to obscure and confound. The system's process of discovery and the exclusionary rule often work to keep vital information off-limits to jurors and make cases so convoluted and complex that only lawyers and judges understand them.

The net effect has been to increase our need for lawyers, create more work for them, clog the courts and ensure that most cases never go to trial and are, instead, plea-bargained and compromised. All the while the clock is ticking, and the monster is being fed.

The sullying of American law has resulted in a fountain of money for law professionals while the common people, who are increasingly affected by lawyer-driven changes and an expensive, self-serving bureaucracy, are left confused and ill-served.

Today, it is estimated that 70 percent of low- to middle-income citizens can no longer afford the cost of justice in America. What would our Founding Fathers think?

This devolution of lawmaking by the judiciary has been subtle, taking place

incrementally over decades. But today, it's engrained in our legal system, and few even question it. But the result is clear. Individuals can no longer participate in the legal system.

It has become too complex and too expensive, all the while feeding our dependency on lawyers.

By complicating the law, lawyers have achieved the ultimate job security. Gone are the days when American courts functioned to serve justice simply and swiftly.

It is estimated that 95 million legal actions now pass through the courts annually, and the time and expense for a plaintiff or defendant in our legal system can be absolutely overwhelming.

Surely it's time to question what has happened to our justice system and to wonder if it is possible to return to a system that truly does protect us from wrongs.

John F. Molloy was elected to the Arizona Court of Appeals, where he served as chief justice and authored more than 300 appellate opinions. Molloy wrote the final Miranda decision for the Arizona Supreme Court.

END QUOTE

Again, the JSCEM has the duty and obligation that not "case law" substitute constitutional provisions and limitations, but that no citizen is denied his constitutional rights, in particularly not where it related to electoral matters.

I look forwards to being invited by the JSCEM as to make my personal appearance before it, when it is due to hold hearings in Melbourne.

(Note; the copy of this letter will be send by email, but without signature as to seek to avoid misuse of the signature, while a faxed copy will contain a signature.)

Awaiting your response, **G. H. SCHOREL-HLAVKA**