Freemarijuana and Australian Electoral Officer for Queensland [2001] AATA 917 (6 November 2001)

DECISION AND REASONS FOR DECISION [2001] AATA 917

ADMINISTRATIVE APPEALS TRIBUNAL

No Q2001/896

GENERAL ADMINISTRATIVE DIVISION

Re NIGEL FREEMARIJUANA

Applicant

And AUSTRALIAN ELECTORAL OFFICER FOR QUEENSLAND

Respondent

DECISION

Tribunal Mr K L Beddoe (Senior Member) Mr R G Kenny (Member)

Date 6 November 2001

Place Brisbane

Decision The Tribunal sets aside the decision under review and remits the matter to the respondent with the following directions: (a) The name *Nigel David Quinlan* be removed from the Roll; and (b) The name *Nigel Freemarijuana* be included on the Roll.

.....

Senior Member

Decision No: 917/2001

CATCHWORDS

ELECTORAL - STATUTORY INTERPRETATION - name change - whether name on electoral roll fictitious - whether name on electoral roll not in the public interest

Commonwealth Electoral Act 1918 s 98

Electoral and Referendum Amendment Act (No 1) 2001 item 81 in Part 2 of Schedule 1

Project Blue Sky Inc v ABA (1998) *194 CLR 355*

Cooper Brookes (Wollongong) Pty Ltd v FC of T (1981) 147 CLR 297

Attachment C

Sinclair v Mining Warden (1975) 132 CLR 458, 5 ALR 513

Lange v ABC (1997) 189 CLR 520, 145 ALR 96

O'Sullivan v Farrer (1989) 168 CLR 210, 89 ALR 71

Botany Bay City Council v Minister for Transport and Regional Development and Others (1996) 137 ALR 281

REASONS FOR DECISION

6 November 2001 Mr K L Beddoe (Senior Member) Mr R G Kenny (Member)

2. By a decision notified on 7 September 2001 to Nigel David Quinlan, the respondent removed the name *Nigel David Freemarijuana* from the Commonwealth Electoral Roll and replaced the deleted name with the name *Nigel David Quinlan.* The applicant sought review of that decision by an application for review lodged on 1 October 2001.

3. The matter came on for hearing on 11 October 2001. The Tribunal reserved its decision but made an order under section 41 of the *Administrative Appeals Tribunal Act 1975* ("AAT Act") which had the effect of requiring the respondent to restore the electoral roll to the situation as it was prior to the implementation of the decision under review.

4. Section 98A of the *Commonwealth Electoral Act 1918* ("the Act") applies to the inclusion in an Electoral Roll ("Roll") or transfer to a Roll of a person's name under Part VIII of the Act.

5. Sub-sections 98A(2) and 98A(3) read as follows:

"(2) A Divisional Returning Officer or Australian Electoral Officer may refuse to include in a Roll, or transfer to a Roll, a person's name if the Divisional Returning Officer or Australian Electoral Officer considers that the name:

(a) is fictitious, frivolous, offensive or obscene; or

(b) is not the name by which the person is usually known; or

(c) is not written in the alphabet used for the English language.

(3) A Divisional Returning Officer or Australian Electoral Officer may refuse to include in a Roll, or transfer to a Roll, a person's name if including the name in the Roll, or transferring it to the Roll, would be contrary to the public interest."

6. The *Electoral and Referendum Amendment Act (No 1) 2001* being Act No 34/2001 contains transitional provisions including item 81 in Part 2 of Schedule 1 of the Act which, so far as is relevant, reads as follows:

"81 (1) This item applies if:

(a) before sections 93A and 98A of the Commonwealth Electoral Act 1918 *(the CEA) commence, a person's name (the current name) is included in a Roll, or transferred to a Roll, under a provision of the CEA; and*

(b) a Divisional Returning Officer (the DRO) or Australian Electoral Officer (the AEO) is of the view that if he or she were considering, after sections 93A and 98A of the CEA commence, whether to cause the current name to be included in, or transferred to, the Roll under the same provision, the DRO or AEO would refuse, under either of those sections, to cause the name to be included or transferred.

(2) If:

(a) there is another name under which the person has been included in a Roll; and

(b) the DRO or AEO is of the view that if he or she were considering, after sections 93A and 98A of the CEA commence, whether to cause the other name to be included in the Roll or transferred to the Roll, the DRO or AEO would not *refuse, under either of those sections, to cause it to be included or transferred;*

the DRO or AEO must cause the person's current name to be removed from the Roll and replaced with the other name. If there is more than one other name to which paragraphs (a) and (b) apply, the current name must be replaced with the other name that was most recently included in the Roll."

7. At the hearing Mr Plunkett appeared for the applicant and Mr Swan appeared for the respondent. Documents lodged in the Tribunal pursuant to section 37 of the AAT Act were before the Tribunal as the T documents and further documents were tendered and marked as exhibits. Both the applicant and the respondent swore affidavits. Upon wide ranging objections by the respondent the Tribunal did not admit part of paragraphs 5 and 44 and all of paragraph 42 of the applicant's affidavit (Exhibit A). Oral Evidence was given by the applicant.

8. We found the applicant to be both unresponsive and less than frank in the course of giving evidence. We were left with the impression that the applicant gave responses to questions which he perceived to be tailored to his advantage rather than respond to the actual question asked. Although little was made of the applicant's evidence, we have come to the view that where the applicant's evidence is not corroborated in some way we should prefer other material.

9. We make the following findings of fact:

(a) the applicant's given name is *Nigel David Quinlan;*

(b) in September 1993 he first became involved with an organisation called Help End Marijuana Prohibition;

(c) that involvement continued and, says the applicant, included a number of incidents of confrontation with police and convictions for possession of a dangerous drug;

(d) In 1996 the applicant became involved in another organisation known as Help Activate Student Hempsters but the applicant was unresponsive as to the activities of this organisation;

(e) throughout this period the applicant had been campaigning for drug law reform, had been arrested on a number of occasions, had lost his employment with the Queensland Government for sleeping on the job and had convictions for use of cannabis with the result that his campaigning had defined his life;

(f) the applicant became acquainted with a John Freemarijuana who had been a parliamentary candidate but was then under social and family pressure to change his name back to his given name and resulting in an agreement whereby the applicant would change his name to Freemarijuana;

(f) he said that a National Union of Students day of action for Help Activate Student Hempsters became the catalyst for changing his name from *Quinlan* to *Freemarijuana* - according to the applicant's evidence about the only action that took place on the day;

(h) by dropping the name *Quinlan* he disassociated his family from his campaign, identified his cause and empowered himself to continue his campaign but he denies the name change was done because of his intention to stand for public office or for electoral purposes;

(i) Document "NF1" exhibited with the affidavit is the Deed Poll executed and filed in the Supreme Court on 12 September 1996 whereby the applicant adopted the name *Nigel Freemarijuana;*

(j) authorities and organisations including the Australian Electoral Commission, Queensland Government, Centrelink, National Australia Bank, Griffith University, Brisbane City Council, University of Queensland Union, National Security Training Academy, Blockbuster Video, Queensland Tertiary Admissions Centre Ltd, Foxtel and others dealt with the applicant by using his adopted name after the name change although it seems to have taken up to two years for changes from *Quinlan* to *Freemarijuana* to be effected;

(k) the applicant has been a candidate for election to Parliament on five occasions under his adopted name;

(l) we accept that the applicant did not change his name for political advantage;

(m) the applicant has been on the electoral roll by the name of *Nigel David Quinlan* continuously from 26 September 1989 to 13 September 1996 and from 10 September 2001; and

(n) the applicant has been on the electoral roll by the name of *Nigel David (or Nigel) Freemarijuana* continuously from 13 September 1996 to 10 September 2001. (Nothing has been made of the use of *"David"* after the change of name on 12 September 1996).

The Applicant's Submissions

10. If the applicant's lawful name is removed from the electoral roll he would be unable to use his usual and lawful name to stand as a candidate for Parliament.

11. The applicant was denied procedural fairness in the making of the decision under review. The duty of this Tribunal is to decide the matter, de novo, on its merits.

12. The applicant's adopted name is not fictitious, frivolous, offensive or obsence but is his legal name regularly used by the applicant since 1996 and the name by which he is widely known.

13. The fourth limb of section 98A is not satisfied because the respondent notified *"Nigel David Quinlan"* of the decision. Whether inclusion of the applicant's name on the roll would be contrary to the public interest is to be determined according to the ordinary meaning of public interest. The third limb should be read in a way that harmonises with the other provisions of the

Act (*Project Blue Sky Inc v ABA* (1998) 194 CLR 355, and will achieve the purposes of the Act (*Cooper Brookes (Wollongong) Pty Ltd v FC of T* (1981) 147 CLR 297.

14. As to what *"contrary to the public interest"* means see *Sinclair v Mining Warden* (1975) 132 CLR 458, 5 ALR 513, where Barwick CJ observed that the interest, of course, must be the interest of the public and not mere individual interest which does not involve a public interest.

15. Stephen J observed that any consideration of the public interest for the purposes of deciding an application for a mining lease involved the weighing of benefits and detriments.

16. In construing the public interest test the Tribunal should construe the test so as to preserve and protect both the freedom of the universal franchise and the freedom of speech and in particular freedom of political communication *(Lange v ABC,* (1997) 189 CLR 520, 145 ALR 96).

17. Sub-section 98A(3) is not a general catch all provision and should be read so that matters that may be contrary to the public interest are to be *ejusdem generis* to the matters set out in sub-section 98A(2). The public interest exclusion should be confined to the most extraordinary and exceptional circumstances and exercised with extreme caution.

18. The question to be answered under sub-section 98A(3) is not whether the name is inappropriate, as the respondent decided, but whether inclusion of a person's name on the electoral roll would be contrary to the public interest. That is the clear intention of sub-section 98A(3) and there is no necessity to resort to extrinsic materials because there is no ambiguity in the sub-section. Nor is it correct to resort to the extrinsic materials to identify the supposed mischief and then give the sub-section a meaning not apparent from the words of the sub-section.

19. It is not a matter of public interest that a person adopts a surname of choice that becomes their usual name. Cited examples include the British Royal Family which changed its name from a Germanic name to an English name.

20. The Act is to be read as a whole and in a way that harmonises the provisions of the Act. The public interest is that the applicant may exercise his democratic rights of enrolment and candidature for Parliament in the name by which he is known and with the right of free expression of identity and free speech.

The Respondent's Submissions

21. It is a matter of public interest that candidates in elections who do not have a politicised name will suffer a disadvantage of not having a political slogan on the ballot paper.

22. The applicant's name is a made up or fictitious name which is prohibited by sub-section 98A(2)(a).

23. The purpose of the amendments introduced by Act No 34 of 2001 was to give all voters and candidates equal opportunity.

24. The applicant changed his name for a purpose that included running for Parliament albeit that he did it initially for the purpose of being a candidate for election to the Queensland Parliament.

25. The applicant was evasive in his evidence about the name change, and was unable to recall recent events but gave a detailed account of events five years ago. It is clear that he adopted the surname to promote the cause of the Help End Marijuana Prohibition organisation.

26. The public interest provision is to be exercised to give effect to the purposes of the Act which necessarily import a discretionary value judgment. *(O'Sullivan v Farrer* (1989) 168 CLR 210, 89 ALR 71 and *Botany Bay City Council v Minister for Transport and Regional Development and Others* (1996) 137 ALR 281).

27. The respondent says that the applicant's democratic rights are untrammelled by the decision under review because his former name was restored to the Roll and he can nominate for Parliament under that name.

28. It is necessary to distinguish personal interest from public interest. In this case the maintenance of the applicant's name on the Roll is a matter of personal interest.

29. Paragraph 98A(2)(a) does not define the class of matters to be considered under subsection 98A(3). It is a separate test.

30. There is no issue before this Tribunal that section 98A is ultra vires the Constitution. Nor does the section interfere with individual rights.

31. Here the name is self evident advertising of a political slogan designed to promote a particular cause. On the applicant's own evidence the name was adopted for political reasons, and based on the applicant's personal beliefs.

Consideration

32. We are satisfied on the material before us that Freemarijuana is the applicant's legal last name and the name by which he is generally known. That is the name used by government departments and agencies and the name by which he is known in the community.

33. While the applicant and the respondent both see different political advantages in the name, we are not satisfied that there is any particular advantage in the adopted name other than self satisfaction on the part of the applicant.

34. As to the assertion that the name carries with it political advertising which transposes to ballot papers when the applicant stands for Parliament we think that either non-existent or de minimis. In any event it is of no consequence given that voters are permitted to take how to vote cards into a polling booth to assist them when voting.

35. The respondent puts its case on two grounds:

(a) the name is fictitious; or

(b) inclusion of the name on the Roll is contrary to the public interest.

36. Fictitious can include something which is assumed and there will undoubtedly be cases where an assumed name is not an appropriate name to be included on the roll because it is a fiction.

37. This is not such a case. The applicant changed his name by deed poll lodged in the Supreme Court and it is his legal name. It is also the name by which he is generally known in the community and in particular in relation to his political activity.

38. For something to be fictitious there must be some characteristic which indicates that it is not genuine, unreal, assumed or imaginary. A person may adopt an alias for certain purposes so as to disguise the persons identity. Such an alias may be able to be characterised as not genuine or assumed although it would not be unreal or imaginary. Another person may assume a name different to the given name for reasons of convenience or common usage eg Robert James Lee Hawke was universally known as *"Bob Hawke"* while he was Prime Minister. *"Bob Hawke"* is not a fictitious name although it could be characterised as an assumed name.

39. The collocation of words in paragraph 98A(2)(a) indicates to us that names that have a character of unreality or falsehood about them or are offensive or obscene are within the terms of the paragraph. In this case it is not suggested that the applicant's name is offensive or obscene.

40. We are satisfied that the applicant's name is his legal name and the name he uses from day to day. It is not an alias and does not have the character of an unreal or false name. It is not, in our view, a fictitious name. To suggest otherwise would be to contradict the Deed Poll.

41. Given that the applicant's name is his legal name which he uses in everyday affairs and by which he is known and recognised in the Community it would not be appropriate, in the Tribunal's view, that the name be removed from the Roll. The public interest test imports a value judgment into the decision making process which requires a positive finding that it would be contrary to the public interest for the applicant's name to be on the Roll.

42. We do not confuse public interest with the applicant's interest and the interest of any group, which he supports at this time, which may have a particular political agenda. We have adopted the discussion of the authorities by Lehane J in the *Botany Bay City Council Case* 137 ALR 281 at 307 where his Honour said:

"Counsel for the applicants referred to authorities in which distinctions are drawn between the public interest on the one hand and individual interests on the other, or between the public interest and matters of public interest in the sense of those which attract the attention or concern of members of the public. Thus, counsel referred to Director of Public Prosecutions v Smith *[1991] 1 VR 63, particularly the following passage at 75:*

The Public interest is a term embracing matters, among others, of standards of human conduct and of the functioning of government and government instrumentalities tacitly accepted and acknowledged to be for the good order of society and for the well being of its members. The interest is therefore the interest of the public as distinct from the interest of an individual or individuals ... There are ... several and different features and facets of interest which form the public interest. On the other hand, in the daily affairs of the community events occur which attract public attention. Such events of interest to the public may or may not be ones which are for the benefit of the public; it follows that such form of interest per se is not a facet of the public interest.

Similarly, counsel referred to passages in the judgment of the Full Court of the Supreme Court of Queensland in R v Mining Warden at Maryborough; Ex parte Sinclair *(1975) Qd R 235 and the judgments of the members of the High Court on appeal, reversing the decision of the Full Court:* Sinclair v Mining Warden at Maryborough *(1975) 132 CLR 473; 5 ALR 513. In relation to the*

phrase "the public interest" *Barwick CJ (with whom Murphy J agreed) said at CLR 480; ALR 519;*

The interest, of course, must be in the interest of the public and not mere individual interest which does not involve a public interest.

I was referred to the following passage in the judgment of Jacobs J at CLR 487; ALR 525:

The warden appears not to have given weight to the fact that the evidence produced by the objectors should be regarded as evidence on the public interest generally and needed to be weighed in all the circumstances of the public interest whether or not the evidence and the views therein were put forward by a large or a small section of the public.

Counsel referred also to a passage in the judgment of Morling J in Re Control Investments Pty Ltd and Australian Broadcasting Tribunal *(1981) 39 ALR 281 at 357, 358.*

A number of comments may be made about this. First, to insist upon differentiating between the public interest and the interests of a section of the public may be to draw what is, at least in some contexts, a false distinction: see, for example, passages in the judgments of Barwick CJ and Jacob J in Sinclair *immediately following and preceding, respectively, the brief passages which I have already quoted. Secondly, there is the principle described by Mason CJ, Brennan, Dawson and Gaudron JJ in* O'Sullivan v Farrer *(1989) 168 CLR 210 at 216; 89 ALR 71 at 75:*

Indeed, the expression "in the public interest", *when used in a statute, classically imports a discretionary value judgment to be made by reference to undefined factual matters, confined only* "in so far as the subject matter and the scope and purpose of the statutory enactments may enable....given reasons to be [pronounced] definitely extraneous to any objects the legislature could have had in view": Water Conservation and Irrigation Commission (NSW) v Browning *(1947) 74 CLR at 505 per Dixon J."*

43. In our view the overall policy of the Act is to require eligible persons to be enrolled in the division in which they reside. Inherent in that policy is that those persons be enrolled under their correct name. We would suggest that an alias would not be a correct name. Nor, in our view, would a name that has been abandoned both legally and by common usage be a correct name to be on the roll.

44. The balance is, in our view, in favour of the correct name being on the roll and that is the name at law which is adopted for daily usage. It may be, for example, that a person such as RJL Hawke could be enrolled under the name *"Bob Hawke"* because that is the name by which he is generally known in the community. We do not have to decide that issue but we doubt enrollment of the former Prime Minister under the name *"Bob Hawke"* would be contrary to the public interest even though it is an assumed name.

45. As we have already said the public interest is having persons qualified for enrolment enrolled on the appropriate Roll under the name by which they are generally known in the community. A factor supporting that view is the requirement for a person nominating for Parliament to be entered as a candidate in the name that appears on the Roll (s166(2)). To require a person to be enrolled under a name by which they are not known could distort the electoral process. In our view there is a strong public interest in the applicant being enrolled in his legal name - the name he is generally known by. While the applicant's name might be thought to be controversial - we

doubt that it is - the public interest is in any event, on balance, in favour of the legal name which is the generally used name being on the Roll.

46. It follows that we are not satisfied that section 98A of the Act and item 81, Part 2, Schedule 1, *Electoral and Referendum Amendment Act (No 1) 2001* operate to require that the name *Nigel David Freemarijuana* be removed from the Roll and the name *Nigel David Quinlan* be placed on the Roll. In that regard, we note from the Deed Poll in Exhibit A that the applicant's assumed name is *Nigel Freemarijuana* and that, he swears, is the name he has been exclusively known by.

47. The Tribunal's decision will be to set aside the decision under review and to remit the matter to the respondent with the following directions:

(a) The name *Nigel David Quinlan be removed from the Roll; and*

(b) The name *Nigel Freemarijuana* be included on the Roll.

I certify that the 47 preceding paragraphs are a true copy of the reasons for the decision herein of Mr K L Beddoe (Senior Member), Mr R G Kenny (Member)

Signed: .....

Associate

Date/s of Hearing 11October 2001

Date of Decision 6 November 2001

Counsel for the Applicant Mr Plunkett

Counsel for the Respondent Mr Swan

Tonite and Australian Electoral Officer for Queensland [2002] AATA 514 (27 June 2002)

DECISION AND REASONS FOR DECISION [2002] AATA 514

ADMINISTRATIVE APPEALS TRIBUNAL

No Q2001/906

GENERAL ADMINISTRATIVE DIVISION

Re TAMARA TONITE

Applicant

And AUSTRALIAN ELECTORAL OFFICER FOR QUEENSLAND

Respondent

DECISION

Tribunal Senior Member KL Beddoe

Date 27 June 2002

Place Brisbane

Decision The Tribunal affirms the decision under review.

(Sgd) K L Beddoe

SENIOR MEMBER

Decision No: 514/2002

CATCHWORDS

ELECTORAL - STATUTORY INTERPRETATION - name change - whether name on electoral roll fictitious - whether name on electoral roll not in the public interest

Commonwealth Electoral Act 1918 s 93, 98

Electoral and Referendum Amendment Act (No 1) 2001 Item 81, Part 2 of Schedule 1

Sinclair v Mining Warden (1975) 132 CLR 458 at 480

Freemarijuana & Australian Electoral Officer for Queensland [2001] AATA 917

Botany Bay City Council v Minister for Transport and Regional Development and Others (1996) 137 ALR 281 at 307

Attachment C

REASONS FOR DECISION

27 June 2002 Senior Member KL Beddoe

1. The applicant seeks review of a decision by the Australian Electoral Officer for Queensland to remove the applicant's name from the Electoral Roll and substitute the name of *"Roderick Peter Paterson"*.

2. Sub-sections 98A(2) and 98A(3) of the ***Commonwealth Electoral Act 1918*** read as follows:

"(2) A Divisional Returning Officer or Australian Electoral Officer may refuse to include in a Roll, or transfer to a Roll, a person's name if the Divisional Returning Officer or Australian Electoral Officer considers that the name:

(a) is fictitious, frivolous, offensive or obscene; or

(b) is not the name by which the person is usually known; or

(c) is not written in the alphabet used for the English language.

(3) A Divisional Returning Officer or Australian Electoral Officer may refuse to include in a Roll, or transfer to a Roll, a person's name if including the name in the Roll, or transferring it to the Roll, would be contrary to the public interest."

3. The ***Electoral and Referendum Amendment Act (No 1) 2001*** being Act No 34/2001 contains transitional provisions including item 81 in Part 2 of Schedule 1 of the Act which, so far as is relevant, reads as follows:

"81(1) This item applies if:

(a) before sections 93A and 98A of the Commonwealth Electoral Act 1918 (the CEA) commence, a person's name (the current name) is included in a Roll, or transferred to a Roll, under a provision of the CEA; and

(b) a Divisional Returning Officer (the DRO) or Australian Electoral Officer (the AEO) is of the view that if he or she were considering, after sections 93A and 98A of the CEA commence, whether to cause the current name to be included in, or transferred to, the Roll under the same provision, the DRO or AEO would refuse, under either of those sections, to cause the name to be included or transferred.

(2) If:

(a) there is another name under which the person has been included in a Roll; and

(b) the DRO or AEO is of the view that if he or she were considering, after sections 93A and 98A of the CEA commence, whether to cause the other name to be included in the Roll or transferred to the Roll, the DRO or AEO would not refuse, under either of those sections, to cause it to be included or transferred;

the DRO or AEO must cause the person's current name to be removed from the Roll and replaced with the other name. If there is more than one other name to which paragraphs (a) and

(b) apply, the current name must be replaced with the other name that was most recently included in the Roll."

4. There is no dispute that the applicant is qualified for enrolment and for voting. The issue is only as to his enrolment on the electoral roll.

5. At the hearing Mr Watts represented the applicant and Mr Swan represented the respondent. The documents lodged in the Tribunal pursuant to Section 37 of the ***Administrative Appeals Tribunal Act 1975*** were before the Tribunal as the "T" Documents and further documents were tendered during the hearing. Oral evidence was given by the applicant and by Mr Longland, who was the Australian Electoral Officer and who made the decision under review.

6. The applicant is an entertainer. He was born 7 October 1959 and was given out for adoption by his parents for reasons which are unclear. His parents were married at the time, their surnames being *"Webb"*. His biological parents did not name him. The birth certificate is not in evidence but it is reasonable to infer from Exhibit A that it showed surname as *"Webb"* and *"Unnamed"* for other names.

7. Adoption was initially on an informal basis by a Mr and Mrs Paterson but that was formalised by an Order for Adoption made on 5 January 1962. In the meantime, the applicant had been baptised with the name *"Roderick Peter Paterson"* on or about 20 December 1959.

8. On the material before me I am satisfied that the applicant used the name *"Roderick Peter Paterson"* for all purposes until 1993. I am satisfied that the name on the Memorandum for Registration of Order of Adoption of *"Unnamed (to be Roderick Peter)"* does not mean that the applicant was at anytime after the time proximate to birth known as *"Unnamed Webb"*. Further, I am satisfied that from a time prior to the baptism the applicant was known formally as *"Roderick Peter Paterson"*, and informally as *"Rod Paterson"*.

9. In August 1993 the applicant became a member of a *"drag show"* known as *"Joanies Follies"*. At the time he was given the name *"Miss No-Name"* because he did not have what is commonly referred to as a drag queen name i.e. an assumed female name.

10. Eventually, and for reasons which are irrelevant, the applicant adopted the name *"Tamara"* to which was subsequently added *"Pon"* - a name selected for him.

11. In April 1996 the applicant joined the cast of a television program called the *"Lucy Lockjaw Show"*. The show was hosted by Lucy Lockjaw, formerly known as Michael Gill. In January 1997 the applicant took over hosting that show which was then known as *"Not the Lucy Lockjaw Show"* because Lucy Lockjaw was no longer the host. The credits for the show included *"Tamara dressed by Lifeline"*.

12. The applicant renamed the television show as *"Tamara Tonite"* in March 1997. The evidence establishes that *"Tonite"* referred to the fact that the show was telecast at night and not to the name of the applicant who was merely known as *"Tamara"* or *"Tam"* or *"Tammy"*.

13. Apparently the show has continuing popularity with a claimed audience in South East Queensland in excess of 100,000 viewers.

14. The applicant says, and I accept, that he became widely known as *"Tamara Tonite"* rather than *"Tamara Pon"*. The applicant began adopting the name *"Tamara Tonite"* between March

1997 and February 1998. He says in Exhibit A that he adopted *"Tamara Tonite"* as his legal name and is known almost universally by that name.

15. Oral evidence before the Tribunal, given by the applicant, establishes to my satisfaction that the applicant has lodged one or more income tax returns in the name *"Tamara Tonite"* but the following continue to be in the name *"Roderick Peter Paterson"*:-

(a) Lease on home

(b) Motor car

(c) Electricity account

(d) Driver's Licence

(e) Passport

(f) Registered trade name *"Tamara Tonite"*.

16. I make no finding in relation to the applicant's Medicare Card.

17. The applicant was unsure about the Post Office box but in view of the general practice of Australia Post to require identification of box holders it is more likely than not that the box is held in the name of *"Paterson"*.

18. There is no evidence but I note that the telephone number appearing on the application for review is shown by the Brisbane telephone directory to be in the name R.P. Paterson at the applicant's home address. In relation to the television show *"Tamara Tonite"* the applicant is shown in the credits as follows:

(a) Executive in charge of production - Tamara Tonite

(b) Camera operator - Rod Paterson

(c) Editor - Rod Paterson

19. At the hearing the applicant was dressed as Tamara Tonite but he said that he only dresses that way for shows. Mostly he dresses *"out of costume"*. He was not asked, and did not explain, why he was so dressed for the hearing but nothing turns on the point.

20. The applicant formalised his use of the name *"Tamara Tonite"* on 19 January 2000 by deed poll, changing his name from *"Roderick Peter Paterson"* to *"Tamara Tonite"*. That was caused by the applicant's decision to be a candidate in the Brisbane City Council elections in 2000 and his desire to be known as *"Tamara Tonite"* for that purpose. Whether the applicant was required to so formalise his adoption of the name *"Tamara Tonite"* before he could be entered on an electoral roll is something I do not need to decide.

21. On 28 January 2000 the applicant completed an application to change his name on the electoral roll from *"Roderick Peter Paterson"* to *"Tamara Tonite"*. The enrolled address remained the same. That application was given effect on 28 January 2000 so that the applicant was enrolled by the name *"Tamara Tonite"* from 28 January 2000 until 10 September 2001 when the respondent deleted the name and substituted *"Robert Peter Paterson"*.

22. The Tribunal subsequently made an Order under Section 41 of the ***Administrative Appeals Tribunal Act 1975*** staying the implementation and operation of the decision under review.

The Applicant's case

23. The applicant had assumed and used the name *"Tamara Tonite"* well before the formal deed poll change in January 2000. That change was not politically motivated. Roderick Peter Paterson is not the applicant's usual or lawful name and he is not known by that name.

24. The name *"Tamara Tonite"* is not fictitious, frivolous, offensive or obscene.

25. "Roderick Peter Paterson" may never have been the applicant's legal name because his birth name was *"Unnamed Webb"* and there was no formal change to *"Paterson"*, the surname of the applicant's adoptive parents.

26. Insofar as the applicant's submissions refer to examples of name change by royalty and others, I have not found any assistance from those submissions and need not repeat them here.

27. Excluding the name *"Tamara Tonite"* on the electoral roll is not contrary to the public interest. *"Contrary to the public interest*" has the same meaning as given by Barwick CJ in ***Sinclair v Mining Warden*** (1975) 132 CLR 458 at 480 where the Chief Justice said:

"The interest, of course, must be the interest of the public and not mere individual interest which does not involve a public interest."

28. There is no evidence of any commercial gain from the use of the name *"Tamara Tonite"*.

29. Section 98(3) should be confined to the most extraordinary and exceptional circumstances and exercised with extreme caution so as to protect the universal franchise, freedom of speech and political communication. Matters that may be considered contrary to the public interest are matters of the same kind or nature as those set out in Section 98(2).

30. The provisions are unambiguous. Extrinsic materials should not be referred to so as to give a meaning contrary to the plain words of the Section. The applicant should not be forced to use a name which he has renounced and which is not in fact his real name. The name *"Tamara Tonite"* is a neutral name which does not offend Section 98A. The Tribunal should follow its decision in ***Re Freemarijuana and Australian Electoral Officer for Queensland*** [2001] AATA 917.

The Respondent's case

31. The only issue under Section 98A(2) is whether the name *"Tamara Tonite"* is fictitious. Also, whether including the name on the electoral roll is contrary to the public interest [Section 98(3)].

32. The Shorter Oxford English Dictionary gives several meanings for *"fictitious"*. In this context the relevant meaning is *"feigned, assumed, not real"*. The Macquarie Dictionary (Revised) gives the relevant meaning as *"pertaining to or consisting of fiction; imaginatively produced or set forth; created by the imagination"*.

33. The name *"Tamara Tonite"* is the name of the television show and the name was subsequently conferred on the applicant by others and adopted by him because it identified him with the show. The fact of being usually known by a particular name does not prevent Section 98A having operation.

34. If Section 98A is inconsistent with laws of Queensland that give the applicant the right to use the name *"Tamara Tonite"*, then to the extent of the inconsistency, Section 98A must prevail.

35. The Explanatory Memorandum relating to Act No 34 of 2001 includes the following indication of Parliament's intent:

"The placement of enrolled electors on the electoral roll, or candidates names on ballot papers, was never intended to give electors or candidates free publicity for the particular cause they espouse or business that they run."

36. The only formal documents adopting the name *"Tamara Tonite"* are the deed poll and income tax returns. All other documents are in the name of *"Roderick Peter Paterson"* even though the applicant has had ample opportunity to change the name. The lease of the applicant's name has been renewed in the name of *"Paterson"* after the date of the deed poll. The name has not been adopted for everyday purposes.

Consideration

37. The issue here has not been the subject of any previous decision that I am aware of. The present case differs from the ***Re Freemarijuana case*** because here there is an ambivalence about the use of two names in stark contrast to each other. In everyday living, including formal matters (excluding income tax returns), the applicant uses the name *"Roderick Peter Paterson"*. I gained the distinct impression that the use of *"Paterson"* is consistent with the applicant being *"out of costume"*. He told me that when he travels by air he does so under the name of *"Paterson"*. It is clear enough that the reason is that his documents which identify him are in the name of *"Roderick Peter Paterson"* and he therefore uses that name in everyday life.

38. The name *"Tamara Tonite"* is identified with the television show of the same name and of which the applicant is now the presenter and executive in charge of production. However, there is even an ambivalence about the television show because the applicant also uses the name *"Rod Paterson"* in the credits for his work as editor and camera operator. I accept the applicant's explanation as to why there should be an appearance of independence between producer and editor but that does not alter the fact that the applicant uses the name *"Paterson"* when it suits his purpose.

39. Because the applicant identifies with the television show and members of the public also identify him with the television show, he has adopted the name *"Tamara Tonite"* both informally and formally for purposes which are connected with the show, in particular, and when he is *"in costume"*, generally.

40. I am satisfied that the name *"Tamara Tonite"* is the applicant's recognised name as an entertainer.

41. I am not satisfied that the name *"Tamara Tonite"* is recognised as the applicant's name in his capacity as a citizen. He uses *"Paterson"* in his day-to-day dealings with others albeit that those who recognise him when he is not *"in costume"* refer to him as *"Tamara Tonite"*.

42. Given that *"Tamara Tonite"* is the name of the television show, it might be argued, as the respondent does, that the name adopted by the applicant is a fiction. The fact of the applicant adopting the name of the show does support the contention but it does not follow, in my view, that it must be accepted that such an adoption of name thereby creates a fiction.

43. A stage name can become a real name if formalised. The applicant has done so in this case.

44. The problem here is the use of *"Roderick Peter Paterson"* in everyday life. I am far from satisfied that it can be accepted that the name *"Tamara Tonite"* is the name he uses from day-to-day. Further, because of the evidence about his everyday affairs and his maintenance of *"Roderick Peter Paterson"* in relation to his everyday personal affairs, I cannot be satisfied that *"Tamara Tonite"* is the name by which the applicant is generally known in the community in which he resides and in relation to which he is enrolled on the roll for the division in which he resides.

45. "Tamara Tonite" is, in my view, a stage name only applicable to the applicant when he is *"in costume"*. That he changed his name by deed poll can clearly be attributed, on the evidence, by his desire to contest the Brisbane City Council election under his stage name. That was the name he was known by as presenter of the television show and he wanted to take advantage of those circumstances for the purposes of the election.

46. In day-to-day life away from the entertainment industry the applicant does not use *"Tamara Tonite"*. I am satisfied that it cannot be said to be in the public interest that a stage name be entered on the roll if the person does not use that name in everyday life.

47. The test is whether it is contrary to the public interest that the stage name (also the legal name) be on the roll. The name by which a person is known in the community should, prima facie, be the name enrolled. The exceptions to this prima facie position are in Section 98A. While I do not accept that *"Tamara Tonite"* is a fictitious name. I am satisfied that it is contrary to the public interest that a stage name be included on the electoral roll.

48. In ***Botany Bay City Council v Minister for Transport and Regional Development and Others*** (1996) 137 ALR 281 at 307 Lehane J discussed the authorities in relation to public interest and private interests as follows:-

"Counsel for the applicants referred to authorities in which distinctions are drawn between the public interest on the one hand and individual interests on the other, or between the public interest and matters of public interest in the sense of those which attract the attention or concern of members of the public. Thus, counsel referred to Director of Public Prosecutions v Smith [1991] 1 VR 63, particularly the following passage at 75:

The Public interest is a term embracing matters, among others, of standards of human conduct and of the functioning of government and government instrumentalities tacitly accepted and acknowledged to be for the good order of society and for the well being of its members. The interest is therefore the interest of the public as distinct from the interest of an individual or individuals.... There are....several and different features and facets of interest which form the public interest. On the other hand, in the daily affairs of the community events occur which attract public attention. Such events of interest to the public may or may not be ones which are for the benefit of the public; it follows that such form of interest per se is not a facet of the public interest.

Similarly, counsel referred to passages in the judgment of the Full Court of the Supreme Court of Queensland in R v Mining Warden at Maryborough; Ex parte Sinclair (1975) Qd R 235 and the judgments of the members of the High Court on appeal, reversing the decision of the Full Court: Sinclair v Mining Warden at Maryborough (1975) 132 CLR 473; 5 ALR 513. In relation to the

phrase 'the public interest' Barwick CJ (with whom Murphy J agreed) said at CLR 480; ALR 519:

The interest, of course, must be in the interest of the public and not mere individual interest which does not involve a public interest.

I was referred to the following passage in the judgment of Jacobs J at CLR 487; ALR 525:

The warden appears not to have given weight to the fact that the evidence produced by the objectors should be regarded as evidence on the public interest generally and needed to be weighed in all the circumstances of the public interest whether or not the evidence and the views therein were put forward by a large or a small section of the public.

Counsel referred also to a passage in the judgment of Morling J in Re Control Investments Pty Ltd and Australian Broadcasting Tribunal (1981) 39 ALR 281 at 357, 358.

A number of comments may be made about this. First, to insist upon differentiating between the public interest and the interests of a section of the public may be to draw what is, at least in some contexts, a false distinction: see, for example, passages in the judgments of Barwick CJ and Jacob J in Sinclair immediately following and preceding, respectively, the brief passages which I have already quoted. Secondly, there is the principle described by Mason CJ, Brennan, Dawson and Gaudron JJ in O'Sullivan v Farrer (1989) 168 CLR 210 at 216; 89 ALR 71 at 75:

Indeed, the expression 'in the public interest', when used in a statute, classically imports a discretionary value judgment to be made by reference to undefined factual matters, confined only 'in so far as the subject matter and the scope and purpose of the statutory enactments may enable...given reasons to be [pronounced] definitely extraneous to any objects the legislature could have had in view'" Water Conservation and Irrigation Commission (NSW) v Browning (1947) 74 CLR at 505 per Dixon J."

49. So instructed, I am satisfied, on the facts of this case, that it would be contrary to the public interest that the applicant's name when he is *"in costume"* is the proper name to be included on the electoral roll. He should be enrolled under the name *"Roderick Peter Paterson"*, the name he uses from day-to-day as a citizen living in the relevant electoral division.

50. For these reasons the decision under review will be affirmed.

I certify that the 50 preceding paragraphs are a true copy of the reasons for the decision herein of Senior Member KL Beddoe

Signed:

Associate

Date/s of Hearing 5 June 2002

Date of Decision 27 June 2002

Solicitor for the Applicant Mr P Watts, Watts & Company, Solicitors

Counsel for the Respondent Mr M Swan

Attachment C

Solicitor for the Respondent Australian Government Solicitor