

**A Submission in Two Volumes
by the Sovereign People of Australia**

AUSTRALIA

The Concealed colony!

Volume 2 of 2

Annexures 18 to 35

**The continuing use of BRITISH LAW
within the SOVEREIGN TERRITORY
of the INDEPENDENT NATION AUSTRALIA**

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ANNEXURE 18

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AUSTRALIA
The concealed colony

PART I.

THE COVENANT OF THE LEAGUE OF NATIONS.

THE HIGH CONTRACTING PARTIES

In order to promote international co-operation and to achieve international peace and security

by the acceptance of obligations not to resort to war,
by the prescription of open, just and honourable relations between nations,

by the firm establishment of the understandings of international law as
the actual rule of conduct among Governments, and

by the maintenance of justice and a scrupulous respect for all treaty
obligations in the dealings of organised peoples with one another,

Agree to this Covenant of the League of Nations.

ARTICLE 1.-

The original Members of the League of Nations shall be those of the Signatories which are named in the Annex to this Covenant and also such of those other States named in the Annex as shall accede without reservation to this Covenant. Such accession shall be effected by a declaration deposited with the Secretariat within two months of the coming into force of the Covenant. Notice thereof shall be sent to all other Members of the League.

Any fully self-governing State, Dominion or Colony not named in the Annex may become a Member of the League if its admission is agreed to by two-thirds of the Assembly, provided that it shall give effective guarantees of its sincere intention to observe its international obligations, and shall accept such regulations as may be prescribed by the League in regard to its military, naval and air forces and armaments.

Any Member of the League may, after two years' notice of its intention so to do, withdraw from the League, provided that all its international obligations and all its obligations under this Covenant shall have been fulfilled at the time of its withdrawal.

ARTICLE 2.

The action of the League under this Covenant shall be effected through the instrumentality of an Assembly and of a Council, with a permanent Secretariat.

ARTICLE 3.

The Assembly shall consist of Representatives of the Members of the League.

The Assembly shall meet at stated intervals and from time to time as occasion may require at the Seat of the League or at such other place as may be decided upon.

The Assembly may deal at its meetings with any matter within the sphere of action of the League or affecting the peace of the world.

At meetings of the Assembly each Member of the League shall have one vote, and may have not more than three Representatives.

ARTICLE 4.

The Council shall consist of Representatives of the Principal Allied and Associated Powers, together with Representatives of four other Members of the League. These four Members of the League shall be selected by the Assembly from time to time in its discretion. Until the appointment of the Representatives of the four Members of the League first selected by the Assembly, Representatives of Belgium, Brazil, Spain and Greece shall be members of the Council.

With the approval of the majority of the Assembly, the Council may name additional Members of the League whose Representatives shall always be members of the Council; the Council with like approval may increase the number of Members of the League to be selected by the Assembly for representation on the Council.

The Council shall meet from time to time as occasion may require, and at least once a year, at the Seat of the League, or at such other place as may be decided upon.

The Council may deal at its meetings with any matter within the sphere of action of the League or affecting the peace of the world.

Any Member of the League not represented on the Council shall be invited to send a Representative to sit as a member at any meeting of the Council during the consideration of matters specially affecting the interests of that Member of the League.

At meetings of the Council, each Member of the League represented on the Council shall have one vote, and may have not more than one Representative.

ARTICLE 5.

Except where otherwise expressly provided in this Covenant or by the terms of the present Treaty, decisions at any meeting of the Assembly or of the Council shall require the agreement of all the Members of the League represented at the meeting.

All matters of procedure at meetings of the Assembly or of the Council, including the appointment of Committees to investigate particular matters, shall be regulated by the Assembly or by the Council and may be decided by a majority of the Members of the League represented at the meeting.

The first meeting of the Assembly and the first meeting of the Council shall be summoned by the President of the United States of America.

ARTICLE 6.

The permanent Secretariat shall be established at the Seat of the League. The Secretariat shall comprise a Secretary General and such secretaries and staff as may be required.

The first Secretary General shall be the person named in the Annex ; thereafter the Secretary General shall be appointed by the Council with the approval of the majority of the Assembly.

The secretaries and staff of the Secretariat shall be appointed by the Secretary General with the approval of the Council.

The Secretary General shall act in that capacity at all meetings of the Assembly and of the Council.

The expenses of the Secretariat shall be borne by the Members of the League in accordance with the apportionment of the expenses of the International Bureau of the Universal Postal Union.

ARTICLE 7.

The Seat of the League is established at Geneva.

The Council may at any time decide that the Seat of the League shall be established elsewhere.

All positions under or in connection with the League, including the Secretariat, shall be open equally to men and women.

Representatives of the Members of the League and officials of the League when engaged on the business of the League shall enjoy diplomatic privileges and immunities.

The buildings and other property occupied by the League or its officials or by Representatives attending its meetings shall be inviolable.

ARTICLE 8.

The Members of the League recognise that the maintenance of peace requires the reduction of national armaments to the lowest point consistent with national safety and the enforcement by common action of international obligations.

The Council, taking account of the geographical situation and circumstances of each State, shall formulate plans for such reduction for the consideration and action of the several Governments.

Such plans shall be subject to reconsideration and revision at least every ten years.

After these plans shall have been adopted by the several Governments, the limits of armaments therein fixed shall not be exceeded without the concurrence of the Council.

The Members of the League agree that the manufacture by private enterprise of munitions and implements of war is open to grave objections. The Council shall advise how the evil effects attendant upon such manufacture can be prevented, due

regard being had to the necessities of those Members of the League which are not able to manufacture the munitions and implements of war necessary for their safety.

The Members of the League undertake to interchange full and frank information as to the scale of their armaments, their military, naval and air programmes and the condition of such of their industries as are adaptable to war-like purposes.

ARTICLE 9.

A permanent Commission shall be constituted to advise the Council on the execution of the provisions of Articles 1 and 8 and on military, naval and air questions generally.

ARTICLE 10.

The Members of the League undertake to respect and preserve as against external aggression the territorial integrity and existing political independence of all Members of the League. In case of any such aggression or in case of any threat or danger of such aggression the Council shall advise upon the means by which this obligation shall be fulfilled.

ARTICLE 11.

Any war or threat of war, whether immediately affecting any of the Members of the League or not, is hereby declared a matter of concern to the whole League, and the League shall take any action that may be deemed wise and effectual to safeguard the peace of nations. In case any such emergency should arise the Secretary General shall on the request of any Member of the League forthwith summon a meeting of the Council.

It is also declared to be the friendly right of each Member of the League to bring to the attention of the Assembly or of the Council any circumstance whatever affecting international relations which threatens to disturb international peace or the good understanding between nations upon which peace depends.

ARTICLE 12.

The Members of the League agree that if there should arise between them any dispute likely to lead to a rupture, they will submit the matter either to arbitration or to inquiry by the Council, and they agree in no case to resort to war until three months after the award by the arbitrators or the report by the Council.

In any case under this Article the award of the arbitrators shall be made within a reasonable time, and the report of the Council shall be made within six months after the submission of the dispute.

ARTICLE 13.

The Members of the League agree that whenever any dispute shall arise between them which they recognise to be suitable for submission to arbitration and

which cannot be satisfactorily settled by diplomacy, they will submit the whole subject-matter to arbitration.

Disputes as to the interpretation of a treaty, as to any question of international law, as to the existence of any fact which if established would constitute a breach of any international obligation, or as to the extent and nature of the reparation to be made for any such breach, are declared to be among those which are generally suitable for submission to arbitration.

For the consideration of any such dispute the court of arbitration to which the case is referred shall be the court agreed on by the parties to the dispute or stipulated in any convention existing between them.

The Members of the League agree that they will carry out in full good faith any award that may be rendered, and that they will not resort to war against a Member of the League which complies therewith. In the event of any failure to carry out such an award, the Council shall propose what steps should be taken to give effect thereto.

ARTICLE 14.

The Council shall formulate and submit to the Members of the League for adoption plans for the establishment of a Permanent Court of International Justice. The Court shall be competent to hear and determine any dispute of an international character which the parties thereto submit to it. The Court may also give an advisory opinion upon any dispute or question referred to it by the Council or by the Assembly.

ARTICLE 15.

If there should arise between Members of the League any dispute likely to lead to a rupture, which is not submitted to arbitration in accordance with Article 13, the Members of the League agree that they will submit the matter to the Council. Any party to the dispute may effect such submission by giving notice of the existence of the dispute to the Secretary General, who will make all necessary arrangements for a full investigation and consideration thereof.

For this purpose the parties to the dispute will communicate to the Secretary General, as promptly as possible, statements of their case, with all the relevant facts and papers, and the Council may forthwith direct the publication thereof.

The Council shall endeavour to effect a settlement of the dispute, and if such efforts are successful, a statement shall be made public giving such facts and explanations regarding the dispute and the terms of settlement thereof as the Council may deem appropriate.

If the dispute is not thus settled, the Council either unanimously or by a majority vote shall make and publish a report containing a statement of the facts of the dispute and the recommendations which are deemed just and proper in regard thereto.

Any Member of the League represented on the Council may make public a statement of the facts of the dispute and of its conclusions regarding the same.

If a report by the Council is unanimously agreed to by the members thereof other than the Representatives of one or more of the parties to the dispute, the

Members of the League agree that they will not go to war with any party to the dispute which complies with the recommendations of the report.

If the Council fails to reach a report which is unanimously agreed to by the members thereof, other than the Representatives of one or more of the parties to the dispute, the Members of the League reserve to themselves the right to take such action as they shall consider necessary for the maintenance of right and justice.

If the dispute between the parties is claimed by one of them, and is found by the Council, to arise out of a matter which by international law is solely within the domestic jurisdiction of that party, the Council shall so report, and shall make no recommendation as to its settlement.

The Council may in any case under this Article refer the dispute to the Assembly. The dispute shall be so referred at the request of either party to the dispute, provided that such request be made within fourteen days after the submission of the dispute to the Council.

In any case referred to the Assembly, all the provisions of this Article and of Article 12 relating to the action and powers of the Council shall apply to the action and powers of the Assembly, provided that a report made by the Assembly, if concurred in by the Representatives of those Members of the League represented on the Council and of a majority of the other Members of the League, exclusive in each case of the Representatives of the parties to the dispute, shall have the same force as a report by the Council concurred in by all the members thereof other than the Representatives of one or more of the parties to the dispute.

ARTICLE 16.

Should any Member of the League resort to war in disregard of its covenants under Articles 12, 13 or 15, it shall *ipso facto* be deemed to have committed an act of war against all other Members of the League, which hereby undertake immediately to subject it to the severance of all trade or financial relations, the prohibition of all intercourse between their nationals and the nationals of the covenant-breaking State, and the prevention of all financial, commercial or personal intercourse between the nationals of the covenant-breaking State and the nationals of any other State, whether a Member of the League or not.

It shall be the duty of the Council in such case to recommend to the several Governments concerned what effective military, naval or air force the Members of the League shall severally contribute to the armed forces to be used to protect the covenants of the League.

The Members of the League agree, further, that they will mutually support one another in the financial and economic measures which are taken under this Article, in order to minimise the loss and inconvenience resulting from the above measures, and that they will mutually support one another in resisting any special measures aimed at one of their number by the covenant-breaking State, and that they will take the necessary steps to afford passage through their territory to the forces of any of the Members of the League which are co-operating to protect the covenants of the League.

Any Member of the League which has violated any covenant of the League may be declared to be no longer a Member of the League by a vote of the Council concurred in by the Representatives of all the other Members of the League represented thereon.

ARTICLE 17.

In the event of a dispute between a Member of the League and a State which is not a Member of the League, or between States not Members of the League, the State or States not Members of the League shall be invited to accept the obligations of Membership in the League for the purposes of such dispute, upon such conditions as the Council may deem just. If such invitation is accepted, the provisions of Articles 12 to 16 inclusive shall be applied with such modifications as may be deemed necessary by the Council.

Upon such invitation being given the Council shall immediately institute an inquiry into the circumstances of the dispute and recommend such action as may seem best and most effectual in the circumstances.

If a State so invited shall refuse to accept the obligations of membership in the League for the purposes of such dispute, and shall resort to war against a Member of the League, the provisions of Article 16 shall be applicable as against the State taking such action.

If both parties to the dispute when so invited refuse to accept the obligations of membership in the League for the purposes of such dispute, the Council may take such measures and make such recommendations as will prevent hostilities and will result in the settlement of the dispute.

ARTICLE 18.

Every treaty or international engagement entered into hereafter by any Member of the League shall be forthwith registered with the Secretariat and shall as soon as possible be published by it. No such treaty or international engagement shall be binding until so registered.

ARTICLE 19.

The Assembly may from time to time advise the reconsideration by Members of the League of treaties which have become inapplicable and the consideration of international conditions whose continuance might endanger the peace of the world.

ARTICLE 20.

The Members of the League severally agree that this Covenant is accepted as abrogating all obligations or understandings *inter se* which are inconsistent with the terms thereof, and solemnly undertake that they will not hereafter enter into any engagements inconsistent with the terms thereof.

In case any Member of the League shall, before becoming a Member of the League have undertaken any obligations inconsistent with the terms of this Covenant, it shall be the duty of such Member to take immediate steps to procure its release from such obligations.

ARTICLE 21.

Nothing in this Covenant shall be deemed to affect the validity of international engagements, such as treaties of arbitration or regional understandings like the Monroe doctrine, for securing the maintenance of peace.

ARTICLE 22.

To those colonies and territories which as a consequence of the late war have ceased to be under the sovereignty of the States which formerly governed them and which are inhabited by peoples not yet able to stand by themselves under the strenuous conditions of the modern world, there should be applied the principle that the well-being and development of such peoples form a sacred trust of civilisation and that securities for the performance of this trust should be embodied in this Covenant.

The best method of giving practical effect to this principle is that the tutelage of such peoples should be entrusted to advanced nations who by reason of their resources, their experience or their geographical position can best undertake this responsibility, and who are willing to accept it, and that this tutelage should be exercised by them as Mandatories on behalf of the League.

The character of the mandate must differ according to the stage of the development of the people, the geographical situation of the territory, its economic conditions and other similar circumstances.

Certain communities formerly belonging to the Turkish Empire have reached a stage of development where their existence as independent nations can be provisionally recognised subject to the rendering of administrative advice and assistance by a Mandatory until such time as they are able to stand alone. The wishes of these communities must be a principal consideration in the selection of the Mandatory.

Other peoples, especially those of Central Africa, are at such a stage that the Mandatory must be responsible for the administration of the territory under conditions which will guarantee freedom of conscience and religion, subject only to the maintenance of public order and morals, the prohibition of abuses such as the slave trade, the arms traffic and the liquor traffic, and the prevention of the establishment of fortifications or military and naval bases and of military training of the natives for other than police purposes and the defence of territory, and will also secure equal opportunities for the trade and commerce of other Members of the League.

There are territories, such as South-West Africa and certain of the South Pacific Islands, which, owing to the sparseness of their population, or their small size, or their remoteness from the centres of civilisation, or their geographical contiguity to the territory of the Mandatory, and other circumstances, can be best

administered under the laws of the Mandatory as integral portions of its territory, subject to the safeguards above mentioned in the interests of the indigenous population.

In every case of mandate, the Mandatory shall render to the Council an annual report in reference to the territory committed to its charge.

The degree of authority, control, or administration to be exercised by the Mandatory shall, if not previously agreed upon by the Members of the League, be explicitly defined in each case by the Council.

A permanent Commission shall be constituted to receive and examine the annual reports of the Mandatories and to advise the Council on all matters relating to the observance of the mandates.

ARTICLE 23.

Subject to and in accordance with the provisions of international conventions existing or hereafter to be agreed upon, the Members of the League :

- (a) will endeavour to secure and maintain fair and humane conditions of labour for men, women, and children, both in their own countries and in all countries to which their commercial and industrial relations extend, and for that purpose will establish and maintain the necessary international organisations ;
- (b) undertake to secure just treatment of the native inhabitants of territories under their control ;
- (c) will entrust the League with the general supervision over the execution of agreements with regard to the traffic in women and children, and the traffic in opium and other dangerous drugs ;
- (d) will entrust the League with the general supervision of the trade in arms and ammunition with the countries in which the control of this traffic is necessary in the common interest ;
- (e) will make provision to secure and maintain freedom of communications and of transit and equitable treatment for the commerce of all Members of the League. In this connection, the special necessities of the regions devastated during the war of 1914-1918 shall be borne in mind ;
- (f) will endeavour to take steps in matters of international concern for the prevention and control of disease.

ARTICLE 24.

There shall be placed under the direction of the League all international bureaux already established by general treaties if the parties to such treaties consent. All such international bureaux and all commissions for the regulation of matters of international interest hereafter constituted shall be placed under the direction of the League.

In all matters of international interest which are regulated by general conventions but which are not placed under the control of international bureaux or commissions, the Secretariat of the League shall, subject to the consent of the Council and if desired by the parties, collect and distribute all relevant information and shall render any other assistance which may be necessary or desirable.

The Council may include as part of the expenses of the Secretariat the expenses of any bureau or commission which is placed under the direction of the League.

ARTICLE 25.

The Members of the League agree to encourage and promote the establishment and co-operation of duly authorised voluntary national Red Cross organisations having as purposes the improvement of health, the prevention of disease and the mitigation of suffering throughout the world.

ARTICLE 26.

Amendments to this Covenant will take effect when ratified by the Members of the League whose Representatives compose the Council and by a majority of the Members of the League whose Representatives compose the Assembly.

No such amendment shall bind any Member of the League which signifies its dissent therefrom, but in that case it shall cease to be a Member of the League.

Annex.

I. ORIGINAL MEMBERS OF THE LEAGUE OF NATIONS SIGNATORIES OF THE TREATY OF PEACE.

UNITED STATES OF AMERICA.	HAITI.
BELGIUM.	HEDJAZ.
BOLIVIA.	HONDURAS.
BRAZIL.	ITALY.
BRITISH EMPIRE.	JAPAN.
CANADA.	LIBERIA.
AUSTRALIA.	NICARAGUA.
SOUTH AFRICA.	PANAMA.
NEW ZEALAND.	PERU.
INDIA.	POLAND.
CHINA.	PORTUGAL.
CUBA.	ROUMANIA.
ECUADOR.	SERB-CROAT-SLOVENE STATE.
FRANCE.	SIAM.
GREECE.	CZECHO-SLOVAKIA.
GUATEMALA.	URUGUAY.

ANNEXURE 19

Documents relating to failure to register Acts of reciprocal legislation as either international Treaties or arrangements.

1. Copy of letter of request to Attorney-General.
2. Copy of response from Attorney-General.
3. Copy of response from Office of Legal Affairs, United Nations.
4. Copy of Statute of Westminster Adoption Act 1942 with Statute of Westminster 1931 as a schedule of the Act.
5. Copy of Australia Act 1986 (Commonwealth)

21 May 1999

The Commonwealth Attorney General
Attorney General's Department
Robert Garran Offices
National Circuit
BARTON
ACT 2600

Subject Matter of Letter: **Freedom Of Information Request**

Dear Mr Williams

On behalf of the Institute of Taxation Research I make a request under the Commonwealth Freedom of Information Act 1982.

Will you please provide **certified copies** of :-

1. The United Nations document of registration, required under the terms of Article 102, paragraph 1. of the Charter of the United Nations, of the international agreement, constituted by way of an Act of the Parliament of the Commonwealth of Australia being, Act No. 42 of 1985 which came into operation on March 3rd 1986 and which is known as the *Australia Act 1986* (Australia).

Or some other document which will serve to positively establish that registration with the UN Secretariat occurred.

2. The United Nations document of registration required under the terms of Article 102, paragraph 1, of the Charter of the United Nations of the international agreement enacted by the Parliament of the United Kingdom and is known as the *Australia Act 1986* (UK).

Or some other document which will serve to positively establish that the appropriate registration with the UN Secretariat occurred.

3. The League of Nations document of registration, required under the term of the Covenant of the League and specifically Article 18 of that Covenant, of the Act of United Kingdom Law known as the '*Statute of Westminster 1931*(UK)', which constitutes an international agreement.

Or some other document which will serve to positively establish that the appropriate registration with the League of Nations Secretariat occurred.

4. The League of Nations document of registration, required under the terms of the Covenant of the League and specifically Article 18 of that Covenant, of the Act of the Australian Parliament known as the '*Statute of Westminster Adoption Act 1942*' which constitutes an international agreement.

Or some other document which will serve to positively establish that the appropriate registration with the League of Nations Secretariat occurred.

Yours sincerely,

Peter Batten
ITR 7 Apsley Place
PO Box 9112 Seaford Mail Centre
SEAFORD
VICTORIA 3198



ATTORNEY-
GENERAL'S
DEPARTMENT

Office of International Law

OIL99/4625

25 June 1999

Mr Peter Batten
Institute of Taxation Research
7 Apsley Place
PO Box 9112
Seaford Mail Centre
SEAFORD VIC 3198

Dear Mr Batten

FREEDOM OF INFORMATION REQUEST

I refer to your letter of 21 May 1999 to the Attorney-General, the Hon Daryl Williams AM QC MP, requesting documents under the *Freedom of Information Act 1982*. As you are aware, your request has been transferred to the Attorney-General's Department.

The documents that you note within your letter are either Acts of Parliament of the Commonwealth of Australia or of the Parliament of the United Kingdom. As such these documents are either documents of another government or widely available public documents copies of which do not need to be provided in accordance with section 12 of the *Freedom of Information Act* (copy attached).

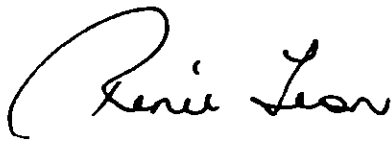
Additionally, Acts of either Parliament would not be classed as a 'treaty' or 'international agreement' for the purposes of Article 102(1) of the Charter of the United Nations and are accordingly not required to be registered with the Secretariat of the United Nations. This view applies equally to Article 18 of the League of Nations Charter. There are accordingly no documents within the class requested, that is, documents evidencing the registration of these Acts of Parliament with either the Secretariat of the United Nations or with the League of Nations.

Accordingly, pursuant to section 24A of the *Freedom of Information Act* (copy attached), I am denying your request on the basis that the documents do not exist. Information on your rights of review of this decision is attached.

However, you may like to note that the Department of Foreign Affairs and Trade makes available the text of treaties to which Australia is a party including through the Australasian Legal Information Institute which can be accessed at:

<<http://www.austlii.edu.au/au/other/dfat/>> This site also provides the text of domestic legislation such as the *Freedom of Information Act* and the *Australia Act 1986*.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Renée Leon'. The signature is fluid and cursive, with a large initial 'R' and a stylized 'L'.

Renée Leon
Assistant Secretary
Public International Law Branch

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POSTAL ADDRESS—ADRESSE POSTALE: UNITED NATIONS, N.Y. 10017
CABLE ADDRESS—ADRESSE TELEGRAPHIQUE: UNATIONS NEW YORK

REFERENCE

19 July 1999

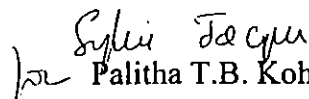
Dear Mr. Batten,

I refer to your letters of 21 May and 23 June 1999 regarding your query concerning the registration of the *Act to Constitute the Commonwealth of Australia 1900* and the *Australia Act 1986*.

As previously mentioned in our electronic message of 4 June 1999, no instruments entitled *Act to Constitute the Commonwealth of Australia 1900* or *Australia Act 1986* appear in our database as having been registered. In this respect it should be noted that internal domestic legislation is not subject to registration under the Charter.

Moreover, you conveyed in your letter the understanding that these instruments must be registered to legitimize the application of British domestic law in Australia. On this point, a clarification regarding the implications of registration under the Charter is required. **Registration of an instrument submitted by a Member State does not imply a judgement by the Secretariat on the nature of the instrument, the status of a party, or any similar question. It is the understanding of the Secretariat that its action does not confer on the instrument the status of a treaty or an international agreement if it does not already have that status and does not confer on a party a status which it would not otherwise have.** In other words, the legitimacy of a particular instrument must be found in the instrument itself. The issue of whether such an instrument is registered or not has no bearing upon the instrument's legitimacy.

Very truly yours,


Palitha T.B. Kohona
Chief, Treaty Section
Office of Legal Affairs

Mr. Peter Batten
Research Officer
Australian Institute of Taxation Research
7 Apsley Place
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Australia 3182

STATUTE OF WESTMINSTER ADOPTION ACT 1942

An Act to remove Doubts as to the Validity of certain Commonwealth Legislation, to obviate Delays occurring in its Passage, and to effect certain related purposes, by adopting certain Sections of the Statute of Westminster, 1931, as from the Commencement of the War between His Majesty the King and Germany.

Preamble

WHEREAS certain legal difficulties exist which have created doubts and caused delays in relation to certain Commonwealth legislation, and to certain regulations made thereunder, particularly in relation to the legislation enacted, and regulations made, for securing the public safety and defence of the Commonwealth of Australia, and for the more effectual prosecution of the war in which His Majesty the King is engaged:

AND WHEREAS those legal difficulties will be removed by the adoption by the Parliament of the Commonwealth of Australia of sections two, three, four, five and six of the Statute of Westminster, 1931, and by making such adoption have effect as from the commencement of the war between His Majesty the King and Germany:

BE it therefore enacted by the King's Most Excellent Majesty, the Senate, and the House of Representatives of the Commonwealth of Australia, as follows:

Short title

1. This Act may be cited as the *Statute of Westminster Adoption Act 1942*.¹

Commencement

2. This Act shall come into operation on the day on which it receives the Royal Assent.¹

Adoption of Statute of Westminster, 1931

3. Sections two, three, four, five and six of the Imperial Act entitled the Statute of Westminster, 1931 (which Act is set out in the Schedule to this Act) are adopted and the adoption shall have effect from the third day of September, One thousand nine hundred and thirty-nine.

Statute of Westminster Adoption Act 1942

THE SCHEDULE

Section 3

STATUTE OF WESTMINSTER, 1931.

An Act to give effect to certain resolutions passed by Imperial Conferences held in the years 1926 and 1930.

[11th December, 1931.]

WHEREAS the delegates of His Majesty's Governments in the United Kingdom, the Dominion of Canada, the Commonwealth of Australia, the Dominion of New Zealand, the Union of South Africa, the Irish Free State and Newfoundland, at Imperial Conferences holden at Westminster in the years of our Lord nineteen hundred and twenty-six and nineteen hundred and thirty did concur in making the declarations and resolutions set forth in the Reports of the said Conferences:

AND WHEREAS it is meet and proper to set out by way of preamble to this Act that, inasmuch as the Crown is the symbol of the free association of the members of the British Commonwealth of Nations, and as they are united by a common allegiance to the Crown, it would be in accord with the established constitutional position of all the members of the Commonwealth in relation to one another that any alteration in the law touching the Succession to the Throne or the Royal Style and Titles shall hereafter require the assent as well of the Parliaments of all the Dominions as of the Parliament of the United Kingdom:

AND WHEREAS it is in accord with the established constitutional position that no law hereafter made by the Parliament of the United Kingdom shall extend to any of the said Dominions as part of the law of that Dominion otherwise than at the request and with the consent of that Dominion:

AND WHEREAS it is necessary for the ratifying, confirming and establishing of certain of the said declarations and resolutions of the said Conferences that a law be made and enacted in due form by authority of the Parliament of the United Kingdom:

AND WHEREAS the Dominion of Canada, the Commonwealth of Australia, the Dominion of New Zealand, the Union of South Africa, the Irish Free State and Newfoundland have severally requested and consented to the submission of a measure to the Parliament of the United Kingdom for making such provision with regard to the matters aforesaid as is hereafter in this Act contained:

NOW, THEREFORE, be it enacted by the King's Most Excellent Majesty by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:—

Meaning of
"Dominion" in
this Act.

1. In this Act the expression "Dominion" means any of the following Dominions, that is to say, the Dominion of Canada, the Commonwealth of Australia, the Dominion of New Zealand, the Union of South Africa, the Irish Free State and Newfoundland.

Validity of laws
made by
Parliament of a
Dominion.
28 and 29 Vict. c.
63.

2.—(1) The Colonial Laws Validity Act, 1865, shall not apply to any law made after the commencement of this Act by the Parliament of a Dominion.

(2) No law and no provision of any law made after the commencement of this Act by the Parliament of a Dominion shall be void or inoperative on the ground that it is repugnant to the law of England, or to the provisions of any existing or future Act of Parliament of the United Kingdom, or to any order, rule or regulation made under any such Act, and the powers of the Parliament of a Dominion shall include the power to repeal or amend any such Act, order, rule or regulation in so far as the same is part of the law of the Dominion.

Power of
Parliament of
Dominion to
legislate extra-
territorially.

3. It is hereby declared and enacted that the Parliament of a Dominion has full power to make laws having extra-territorial operation.

Statute of Westminster Adoption Act 1942

4. No Act of Parliament of the United Kingdom passed after the commencement of this Act shall extend, or be deemed to extend, to a Dominion as part of the law of that Dominion, unless it is expressly declared in that Act that that Dominion has requested, and consented to, the enactment thereof.² Parliament of United Kingdom not to legislate for Dominion except by consent.
5. Without prejudice to the generality of the foregoing provisions of this Act, sections seven hundred and thirty-five and seven hundred and thirty-six of the Merchant Shipping Act, 1894, shall be construed as though reference therein to the Legislature of a British possession did not include reference to the Parliament of a Dominion. Powers of Dominion Parliaments in relation to merchant shipping. 57 and 58 Vict. c. 60.
6. Without prejudice to the generality of the foregoing provisions of this Act, section four of the Colonial Courts of Admiralty Act, 1890 (which requires certain laws to be reserved for the signification of His Majesty's pleasure or to contain a suspending clause), and so much of section seven of that Act as requires the approval of His Majesty in Council to any rules of Court for regulating the practice and procedure of a Colonial Court of Admiralty, shall cease to have effect in any Dominion as from the commencement of this Act. Powers of Dominion Parliaments in relation to Courts of Admiralty. 53 and 54 Vict. c. 27.
- 7.—(1) Nothing in this Act shall be deemed to apply to the repeal, amendment or alteration of the British North America Acts, 1867 to 1930, or any order, rule or regulation made thereunder. Saving for British North America Acts and application of the Act to Canada.
- (2) The provisions of section two of this Act shall extend to laws made by any of the Provinces of Canada and to the powers of the legislatures of such Provinces.
- (3) The powers conferred by this Act upon the Parliament of Canada or upon the legislatures of the Provinces shall be restricted to the enactment of laws in relation to matters within the competence of the Parliament of Canada, or of any of the legislatures of the Provinces respectively.
8. Nothing in this Act shall be deemed to confer any power to repeal or alter the Constitution or the Constitution Act of the Commonwealth of Australia or the Constitution Act of the Dominion of New Zealand otherwise than in accordance with the law existing before the commencement of this Act. Saving for Constitution Acts of Australia and New Zealand.
- 9.—(1) Nothing in this Act shall be deemed to authorize the Parliament of the Commonwealth of Australia to make laws on any matter within the authority of the States of Australia, not being a matter within the authority of the Parliament or Government of the Commonwealth of Australia. Saving with respect to States of Australia.
- (2) Nothing in this Act shall be deemed to require the concurrence of the Parliament or Government of the Commonwealth of Australia in any law made by the Parliament of the United Kingdom with respect to any matter within the authority of the States of Australia, not being a matter within the authority of the Parliament or Government of the Commonwealth of Australia, in any case where it would have been in accordance with the constitutional practice existing before the commencement of this Act that the Parliament of the United Kingdom should make that law without such concurrence.²
- (3) In the application of this Act to the Commonwealth of Australia the request and consent referred to in section four shall mean the request and consent of the Parliament and Government of the Commonwealth.²
- 10.—(1) None of the following sections of this Act, that is to say, sections two, three, four, five and six, shall extend to a Dominion to which this section applies as part of the law of that Dominion unless that section is adopted by the Parliament of the Dominion, and any Act of that Parliament adopting any section of this Act may provide that the adoption shall have effect either from the commencement of this Act or from such later date as is specified in the adopting Act. Certain sections of Act not to apply to Australia, New Zealand or Newfoundland unless adopted.
- (2) The Parliament of any such Dominion as aforesaid may at any time revoke the adoption of any section referred to in sub-section (1) of this section.²
- (3) The Dominions to which this section applies are the Commonwealth of Australia, the Dominion of New Zealand and Newfoundland.

Statute of Westminster Adoption Act 1942

Meaning of
"Colony" in future
Acts.
52 and 53 Vict.
c. 63.

11. Notwithstanding anything in the Interpretation Act, 1889, the expression "Colony" shall not, in any Act of the Parliament of the United Kingdom passed after the commencement of this Act, include a Dominion or any Province or State forming part of a Dominion.

Short title.

12. This Act may be cited as the Statute of Westminster, 1931.

NOTES

1. Act No. 56, 1942; assented to 9 October 1942.
2. Sections 4, 9 (2) and (3) and 10 (2) of the Statute of Westminster, 1931, in so far as they were part of the law of the Commonwealth, of a State or of a Territory, have been repealed by section 12 of the *Australia Act 1986*.
The Parliament of the Commonwealth of Australia has on three occasions passed Acts requesting and consenting to the enactment by the Parliament of the United Kingdom of Acts extending to Australia. The Acts of the Parliaments of the Commonwealth and of the United Kingdom, respectively, are as follows:

Australia	United Kingdom
<i>Australia (Request and Consent) Act 1985</i>	Australia Act 1986
<i>Christmas Island (Request and Consent) Act 1957</i>	Christmas Island Act, 1958
<i>Cocos (Keeling) Islands (Request and Consent) Act 1954</i>	Cocos Islands Act, 1955

AUSTRALIA ACT 1986

An Act to bring constitutional arrangements affecting the Commonwealth and the States into conformity with the status of the Commonwealth of Australia as a sovereign, independent and federal nation

WHEREAS the Prime Minister of the Commonwealth and the Premiers of the States at conferences held in Canberra on 24 and 25 June 1982 and 21 June 1984 agreed on the taking of certain measures to bring constitutional arrangements affecting the Commonwealth and the States into conformity with the status of the Commonwealth of Australia as a sovereign, independent and federal nation:

AND WHEREAS in pursuance of paragraph 51 (xxxviii) of the Constitution the Parliaments of all the States have requested the Parliament of the Commonwealth to enact an Act in the terms of this Act:

BE IT THEREFORE ENACTED by the Queen, and the Senate and the House of Representatives of the Commonwealth of Australia, as follows:

Termination of power of Parliament of United Kingdom to legislate for Australia

1. No Act of the Parliament of the United Kingdom passed after the commencement of this Act shall extend, or be deemed to extend, to the Commonwealth, to a State or to a Territory as part of the law of the Commonwealth, of the State or of the Territory.

Legislative powers of Parliaments of States

2. (1) It is hereby declared and enacted that the legislative powers of the Parliament of each State include full power to make laws for the peace, order and good government of that State that have extra-territorial operation.

(2) It is hereby further declared and enacted that the legislative powers of the Parliament of each State include all legislative powers that the Parliament of the United Kingdom might have exercised before the commencement of this Act for the peace, order and good government of that State but nothing in this subsection confers on a State any capacity that the State did not have immediately before the commencement of this Act to engage in relations with countries outside Australia.

Termination of restrictions on legislative powers of Parliaments of States

3. (1) The Act of the Parliament of the United Kingdom known as the Colonial Laws Validity Act 1865 shall not apply to any law made after the commencement of this Act by the Parliament of a State.

(2) No law and no provision of any law made after the commencement of this Act by the Parliament of a State shall be void or inoperative on the ground that it is repugnant to the law of England, or to the provisions of any existing or future Act of the Parliament of the United Kingdom, or to any order, rule or regulation made under any such Act, and the powers of the Parliament of a State shall include the power to repeal or amend any such Act, order, rule or regulation in so far as it is part of the law of the State.

Powers of State Parliaments in relation to merchant shipping

4. Sections 735 and 736 of the Act of the Parliament of the United Kingdom known as the Merchant Shipping Act 1894, in so far as they are part of the law of a State, are hereby repealed.

Commonwealth Constitution, Constitution Act and Statute of Westminster not affected

5. Sections 2 and 3 (2) above—

- (a) are subject to the Commonwealth of Australia Constitution Act and to the Constitution of the Commonwealth; and
- (b) do not operate so as to give any force or effect to a provision of an Act of the Parliament of a State that would repeal, amend or be repugnant to this Act, the Commonwealth of Australia Constitution Act, the Constitution of the Commonwealth or the Statute of Westminster 1931 as amended and in force from time to time.

Manner and form of making certain State laws

6. Notwithstanding sections 2 and 3 (2) above, a law made after the commencement of this Act by the Parliament of a State respecting the constitution, powers or procedure of the Parliament of the State shall be of no force or effect unless it is made in such manner and form as may from time to time be required by a law made by that Parliament, whether made before or after the commencement of this Act.

Powers and functions of Her Majesty and Governors in respect of States

7. (1) Her Majesty's representative in each State shall be the Governor.

(2) Subject to subsections (3) and (4) below, all powers and functions of Her Majesty in respect of a State are exercisable only by the Governor of the State.

(3) Subsection (2) above does not apply in relation to the power to appoint, and the power to terminate the appointment of, the Governor of a State.

(4) While Her Majesty is personally present in a State, Her Majesty is not precluded from exercising any of Her powers and functions in respect of the State that are the subject of subsection (2) above.

(5) The advice to Her Majesty in relation to the exercise of the powers and functions of Her Majesty in respect of a State shall be tendered by the Premier of the State.

State laws not subject to disallowance or suspension of operation

8. An Act of the Parliament of a State that has been assented to by the Governor of the State shall not, after the commencement of this Act, be subject to disallowance by Her Majesty, nor shall its operation be suspended pending the signification of Her Majesty's pleasure thereon.

State laws not subject to withholding of assent or reservation

9. (1) No law or instrument shall be of any force or effect in so far as it purports to require the Governor of a State to withhold assent from any Bill for an Act of the State that has been passed in such manner and form as may from time to time be required by a law made by the Parliament of the State.

(2) No law or instrument shall be of any force or effect in so far as it purports to require the reservation of any Bill for an Act of a State for the signification of Her Majesty's pleasure thereon.

Termination of responsibility of United Kingdom Government in relation to State matters

10. After the commencement of this Act Her Majesty's Government in the United Kingdom shall have no responsibility for the government of any State.

Termination of appeals to Her Majesty in Council

11. (1) Subject to subsection (4) below, no appeal to Her Majesty in Council lies or shall be brought, whether by leave or special leave of any court or of Her Majesty in Council or otherwise, and whether by virtue of any Act of the Parliament of the United Kingdom, the Royal Prerogative or otherwise, from or in respect of any decision of an Australian court.

(2) Subject to subsection (4) below—

- (a) the enactments specified in subsection (3) below and any orders, rules, regulations or other instruments made under, or for the purposes of, those enactments; and
- (b) any other provisions of Acts of the Parliament of the United Kingdom in force immediately before the commencement of this Act that make provision for or in relation to appeals to Her Majesty in Council from or in respect of decisions of courts,

and any orders, rules, regulations or other instruments made under, or for the purposes of, any such provisions,

in so far as they are part of the law of the Commonwealth, of a State or of a Territory, are hereby repealed.

(3) The enactments referred to in subsection (2) (a) above are the following Acts of the Parliament of the United Kingdom or provisions of such Acts:

The Australian Courts Act 1828, section 15
 The Judicial Committee Act 1833
 The Judicial Committee Act 1844
 The Australian Constitutions Act 1850, section 28
 The Colonial Courts of Admiralty Act 1890, section 6.

(4) Nothing in the foregoing provisions of this section—

- (a) affects an appeal instituted before the commencement of this Act to Her Majesty in Council from or in respect of a decision of an Australian court; or
- (b) precludes the institution after that commencement of an appeal to Her Majesty in Council from or in respect of such a decision where the appeal is instituted—
 - (i) pursuant to leave granted by an Australian court on an application made before that commencement; or
 - (ii) pursuant to special leave granted by Her Majesty in Council on a petition presented before that commencement,

but this subsection shall not be construed as permitting or enabling an appeal to Her Majesty in Council to be instituted or continued that could not have been instituted or continued if this section had not been enacted.

Amendment of Statute of Westminster

12. Sections 4, 9 (2) and (3) and 10 (2) of the Statute of Westminster 1931, in so far as they are part of the law of the Commonwealth, of a State or of a Territory, are hereby repealed.

Amendment of Constitution Act of Queensland

13. (1) The Constitution Act 1867-1978 of the State of Queensland is in this section referred to as the Principal Act.

(2) Section 11A of the Principal Act is amended in subsection (3)—

- (a) by omitting from paragraph (a)—
 - (i) “and Signet”; and
 - (ii) “constituted under Letters Patent under the Great Seal of the United Kingdom”; and

- (b) by omitting from paragraph (b)—
 - (i) “and Signet”; and
 - (ii) “whenever and so long as the office of Governor is vacant or the Governor is incapable of discharging the duties of administration or has departed from Queensland”.
- (3) Section 11B of the Principal Act is amended—
 - (a) by omitting “Governor to conform to instructions” and substituting “Definition of Royal Sign Manual”;
 - (b) by omitting subsection (1); and
 - (c) by omitting from subsection (2)—
 - (i) “(2)”; and
 - (ii) “this section and in”; and
 - (iii) “and the expression ‘Signet’ means the seal commonly used for the sign manual of the Sovereign or the seal with which documents are sealed by the Secretary of State in the United Kingdom on behalf of the Sovereign”.
- (4) Section 14 of the Principal Act is amended in subsection (2) by omitting “, subject to his performing his duty prescribed by section 11B,”.

Amendment of Constitution Act of Western Australia

14. (1) The Constitution Act 1889 of the State of Western Australia is in this section referred to as the Principal Act.

- (2) Section 50 of the Principal Act is amended in subsection (3)—
 - (a) by omitting from paragraph (a)—
 - (i) “and Signet”; and
 - (ii) “constituted under Letters Patent under the Great Seal of the United Kingdom”;
 - (b) by omitting from paragraph (b)—
 - (i) “and signet”; and
 - (ii) “whenever and so long as the office of Governor is vacant or the Governor is incapable of discharging the duties of administration or has departed from Western Australia”; and
 - (c) by omitting from paragraph (c)—
 - (i) “under the Great Seal of the United Kingdom”; and
 - (ii) “during a temporary absence of the Governor for a short period from the seat of Government or from the State”.
- (3) Section 51 of the Principal Act is amended—
 - (a) by omitting subsection (1); and
 - (b) by omitting from subsection (2)—

- (i) "(2)";
- (ii) "this section and in"; and
- (iii) "and the expression 'Signet' means the seal commonly used for the sign manual of the Sovereign or the seal with which documents are sealed by the Secretary of State in the United Kingdom on behalf of the Sovereign".

Method of repeal or amendment of this Act or Statute of Westminster

15. (1) This Act or the Statute of Westminster 1931, as amended and in force from time to time, in so far as it is part of the law of the Commonwealth, of a State or of a Territory, may be repealed or amended by an Act of the Parliament of the Commonwealth passed at the request or with the concurrence of the Parliaments of all the States and, subject to subsection (3) below, only in that manner.

(2) For the purposes of subsection (1) above, an Act of the Parliament of the Commonwealth that is repugnant to this Act or the Statute of Westminster 1931, as amended and in force from time to time, or to any provision of this Act or of that Statute as so amended and in force, shall, to the extent of the repugnancy, be deemed an Act to repeal or amend the Act, Statute or provision to which it is repugnant.

(3) Nothing in subsection (1) above limits or prevents the exercise by the Parliament of the Commonwealth of any powers that may be conferred upon that Parliament by any alteration to the Constitution of the Commonwealth made in accordance with section 128 of the Constitution of the Commonwealth after the commencement of this Act.

Interpretation

16. (1) In this Act, unless the contrary intention appears—

"appeal" includes a petition of appeal, and a complaint in the nature of an appeal;

"appeal to Her Majesty in Council" includes any appeal to Her Majesty;

"Australian court" means a court of a State or any other court of Australia or of a Territory other than the High Court;

"court" includes a judge, judicial officer or other person acting judicially;

"decision" includes determination, judgment, decree, order or sentence;

"Governor", in relation to a State, includes any person for the time being administering the government of the State;

"State" means a State of the Commonwealth and includes a new State;

"the Commonwealth of Australia Constitution Act" means the Act of the Parliament of the United Kingdom known as the Commonwealth of Australia Constitution Act;

"the Constitution of the Commonwealth" means the Constitution of the Commonwealth set forth in section 9 of the Commonwealth of Australia Constitution Act, being that Constitution as altered and in force from time to time;

"the Statute of Westminster 1931" means the Act of the Parliament of the United Kingdom known as the Statute of Westminster 1931.

(2) The expression "a law made by that Parliament" in section 6 above and the expression "a law made by the Parliament" in section 9 above include, in relation to the State of Western Australia, the Constitution Act 1889 of that State.

(3) A reference in this Act to the Parliament of a State includes, in relation to the State of New South Wales, a reference to the legislature of that State as constituted from time to time in accordance with the Constitution Act, 1902, or any other Act of that State, whether or not, in relation to any particular legislative act, the consent of the Legislative Council of that State is necessary.

Short title and commencement

17. (1) This Act may be cited as the *Australia Act 1986*.¹

(2) This Act shall come into operation on a day and at a time to be fixed by Proclamation.¹

NOTE

1. Act No. 142, 1985; assented to 4 December 1985 and came into operation on 3 March 1986 at 5.00 a.m. Greenwich Mean Time (see *Gazette* 1986, No. S85, p. 1). In addition to this *Australia Act 1986* an Australia Act 1986, in substantially identical terms, was enacted by the United Kingdom Parliament (1986 Chapter 2) pursuant to a request made and consent given by the Parliament and Government of the Commonwealth in the *Australia (Request and Consent) Act 1985* and with the concurrence of all the States of Australia (see the Australia Acts Request Act 1985 of each State).

ANNEXURE 20

1. Copy of Royal Styles and Titles Act 1973



ROYAL STYLE AND TITLES ACT 1973

Reprinted as at 31 July 1983

TABLE OF PROVISIONS

Section	
1.	Short title
2.	Assent to adoption of new Royal Style and Titles in relation to Australia

SCHEDULE

Royal Style and Titles

An Act relating to the Royal Style and Titles

WHEREAS, in accordance with the *Royal Style and Titles Act 1953*¹, Her Majesty, by Proclamation dated 28th May, 1953, adopted, as the Royal Style and Titles to be used in relation to the Commonwealth of Australia and its Territories, the Style and Titles set forth in the Schedule to that Act:

AND WHEREAS the Government of Australia considers it desirable to propose to Her Majesty a change in the form of the Royal Style and Titles to be used in relation to Australia and its Territories:

AND WHEREAS the proposed new Style and Titles, being the Style and Titles set forth in the Schedule to this Act, retains the common element referred to in the preamble to the *Royal Style and Titles Act 1953*:¹

BE IT THEREFORE enacted by the Queen, the Senate and the House of Representatives of Australia, as follows:

Short title

1. This Act may be cited as the *Royal Style and Titles Act 1973*.²

Assent to adoption of new Royal Style and Titles in relation to Australia

2. (1) The assent of the Parliament is hereby given to the adoption by Her Majesty, for use in relation to Australia and its Territories, in lieu of the Style and Titles set forth in the Schedule to the *Royal Style and Titles Act 1953*¹, of the Style and Titles set forth in the Schedule to this Act, and to the issue for that purpose by Her Majesty of Her Royal Proclamation under such seal as Her Majesty by Warrant appoints.

(2) The Proclamation referred to in sub-section (1) shall be published in the *Gazette* and shall have effect on the date upon which it is so published.²

SCHEDULE

Section 2

Royal Style and Titles

Elizabeth the Second, by the Grace of God Queen of Australia and Her other Realms and Territories, Head of the Commonwealth.

NOTES

1. Preamble and s. 2 (1)—The *Royal Style and Titles Act 1953* was repealed by the *Statute Law Revision Act 1973* (No. 216, 1973).
2. Act No. 114, 1973; reserved for Her Majesty's pleasure, 14 September 1973; Queen's Assent, 19 October 1973; Queen's Assent proclaimed, 19 October 1973 (*see Gazette* 1973, No. 152).

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ANNEXURE 21

1. Copy of Letters Patent relating to Office of Governor-General of Australia.
2. Copy of Commission of Appointment of Governor-General



ELIZABETH R



*Letters Patent
Relating to the Office of Governor-General
of the Commonwealth of Australia*

ELIZABETH THE SECOND, by the Grace of God Queen of Australia and
Her other Realms and Territories, Head of the Commonwealth,

Greeting:

WHEREAS, by the Constitution of the Commonwealth of Australia, certain powers,
functions and authorities are vested in a Governor-General appointed by the Queen to
be Her Majesty's representative in the Commonwealth:

AND WHEREAS, by Letters Patent dated 29 October 1900, as amended, provision
was made in relation to the office of Governor-General:

AND WHEREAS, by section 4 of the Constitution of the Commonwealth, the
provisions of the Constitution relating to the Governor-General extend and apply to
the Governor-General for the time being, or such person as the Queen may appoint to
administer the Government of the Commonwealth:

AND WHEREAS We are desirous of making new provisions relating to the office of
Governor-General and for persons appointed to administer the Government of the
Commonwealth:

NOW THEREFORE, by these Letters Patent under Our Sign Manual and the Great
Seal of Australia—

- I. We revoke the Letters Patent dated 29 October 1900, as amended, and Our
Instructions to the Governor-General dated 29 October 1900, as amended.

II. We declare that—

- (a) the appointment of a person to the office of Governor-General shall be during Our pleasure by Commission under Our Sign Manual and the Great Seal of Australia; and
- (b) before assuming office, a person appointed to be Governor-General shall take the Oath or Affirmation of Allegiance and the Oath or Affirmation of Office in the presence of the Chief Justice or another Justice of the High Court of Australia.

III. We declare that—

- (a) the appointment of a person to administer the Government of the Commonwealth under section 4 of the Constitution of the Commonwealth shall be during Our pleasure by Commission under Our Sign Manual and the Great Seal of Australia;
- (b) the powers, functions and authorities of the Governor-General shall, subject to this Clause, vest in any person so appointed from time to time by Us to administer the Government of the Commonwealth only in the event of the absence out of Australia, or the death, incapacity or removal, of the Governor-General for the time being;
- (c) a person so appointed shall not assume the administration of the Government of the Commonwealth—
 - (i) in the event of the absence of the Governor-General out of Australia—except at the request of the Governor-General or the Prime Minister of the Commonwealth;
 - (ii) in the event of the absence of the Governor-General out of Australia and of the death, incapacity or absence out of Australia of the Prime Minister of the Commonwealth—except at the request of the Governor-General, the Deputy Prime Minister or the next most senior Minister of State for the Commonwealth who is in Australia and available to make such a request;
 - (iii) in the event of the death, incapacity or removal of the Governor-General—except at the request of the Prime Minister of the Commonwealth; or
 - (iv) in the event of the death, incapacity or removal of the Governor-General and of the death, incapacity or absence out of Australia of the Prime Minister of the Commonwealth—except at the request of the

Deputy Prime Minister or the next most senior Minister of State for the Commonwealth who is in Australia and available to make such a request;

- (d) a person so appointed shall not assume the administration of the Government of the Commonwealth unless he has taken on that occasion or has previously taken the Oath or Affirmation of Allegiance and the Oath or Affirmation of Office in the presence of the Chief Justice or another Justice of the High Court of Australia;
- (e) a person so appointed shall cease to exercise and perform the powers, functions and authorities of the Governor-General vested in him when a successor to the Governor-General has taken the prescribed oaths or affirmations and has entered upon the duties of his office, or the incapacity or absence out of Australia of the Governor-General for the time being has ceased, as the case may be; and
- (f) for the purposes of this clause, a reference to absence out of Australia is a reference to absence out of Australia in a geographical sense but does not include absence out of Australia for the purpose of visiting a Territory that is under the administration of the Commonwealth of Australia.

IV. In pursuance of section 126 of the Constitution of the Commonwealth of Australia—

- (a) We authorize the Governor-General for the time being, by instrument in writing, to appoint any person, or any persons jointly or severally, to be his deputy or deputies within any part of the Commonwealth, to exercise in that capacity, during his pleasure, such powers and functions of the Governor-General as he thinks fit to assign to him or them by the instrument, but subject to the limitations expressed in this clause; and
- (b) We declare that a person who is so appointed to be deputy of the Governor-General shall not exercise a power or function of the Governor-General assigned to him on any occasion—
 - (i) except in accordance with the instrument of appointment;
 - (ii) except at the request of the Governor-General or the person for the time being administering the Government of the Commonwealth that he exercise that power or function on that occasion; and
 - (iii) unless he has taken on that occasion or has previously taken the Oath or Affirmation of Allegiance in the presence of the Governor-General, the Chief Justice or another Justice of the High Court of Australia or

the Chief Judge or another Judge of the Federal Court of Australia or of the Supreme Court of a State or Territory of the Commonwealth.

V. For the purposes of these Letters Patent—

- (a) a reference to the Oath or Affirmation of Allegiance is a reference to the Oath or Affirmation in accordance with the form set out in the Schedule to the Constitution of the Commonwealth of Australia; and
- (b) a reference to the Oath or Affirmation of Office is a reference to an Oath or Affirmation swearing or affirming well and truly to serve Us, Our heirs and successors according to law in the particular office and to do right to all manner of people after the laws and usages of the Commonwealth of Australia, without fear or favour, affection or illwill.

VI. We direct that these Letters Patent, each Commission appointing a Governor-General or person to administer the Government of the Commonwealth of Australia and each instrument of appointment of a deputy of the Governor-General shall be published in the official gazette of the Commonwealth of Australia.

VII. We further direct that these Letters Patent shall take effect without affecting the efficacy of any Commission or appointment given or made before the date hereof or of anything done in pursuance of any such Commission or appointment, or of any oath or affirmation taken before that date for the purpose of any such Commission or appointment.

VIII. We reserve full power from time to time to revoke, alter or amend these Letters Patent as We think fit.

GIVEN at Our Court
at Balmoral
on 21 August 1984



By Her Majesty's Command,

BOB HAWKE

Prime Minister



A handwritten signature in cursive script, reading 'Elizabeth II', with a horizontal line underneath.

COMMISSION

*Passed under the Royal Sign Manual and the
Great Seal of Australia appointing*

THE HONOURABLE SIR WILLIAM PATRICK DEANE, AC, KBE
to be the Governor-General of the Commonwealth of Australia

ELIZABETH THE SECOND, by the Grace of God Queen of Australia
and Her other Realms and Territories, Head of the Commonwealth: To
the Honourable Sir William Patrick Deane, Companion of the Order of
Australia, Knight Commander of the Order of the British Empire,

Greeting:

WE DO, by this Our Commission under Our Sign Manual and the Great Seal of Australia, appoint you, Sir William Patrick Deane, to be, during Our pleasure, Our Governor-General of the Commonwealth of Australia.

AND WE DO authorise, empower and command you to exercise and perform all and singular the powers and directions contained in the Letters Patent dated 21 August 1984 relating to the office of Governor-General or in future Letters Patent relating to that office, according to such instructions as Our Governor-General for the time being may have received or may in future receive from Us, and according to such laws as are from time to time in force.

AND WE DO declare that the powers conferred by this Our Commission include any further powers that may in future be assigned to the Governor-General in accordance with section 2 of the Constitution of the Commonwealth of Australia.

AND, so soon as you shall have taken the prescribed oaths and have entered upon the duties of your office, this Our present Commission shall supersede Our Commission dated 4 January 1989 appointing the Honourable William George Hayden to be Governor-General of the Commonwealth of Australia and Commander-in-Chief of the Defence Force of the Commonwealth of Australia.

Given at Our Court

at Sandringham

on 29 December 1995



By Her Majesty's Command,

A handwritten signature in black ink, appearing to read "Paul Keating".

Prime Minister



PROCLAMATION

WHEREAS Her Majesty Queen Elizabeth the Second has been graciously pleased by Commission under Her Royal Sign Manual and the Great Seal of Australia dated 29 December 1995 to appoint me, William Patrick Deane, Companion of the Order of Australia, Knight Commander of the Order of the British Empire, to be Governor-General of the Commonwealth of Australia:

NOW THEREFORE I proclaim that I have this day made the prescribed oath of allegiance and the prescribed oath of office of the Governor-General of the Commonwealth of Australia before the Honourable the Chief Justice of Australia, and that I have assumed that office accordingly.

Signed and sealed with the
Great Seal of Australia
on 16 February 1996.



A handwritten signature in cursive script, reading 'William Deane'.

Governor-General

By His Excellency's Command

A large, stylized handwritten signature in cursive script, reading 'Paul Keating'.

Prime Minister



ANNEXURE 22

1. Copy of Australia Act 1986 (Commonwealth)
2. Copy of Australia Act 1986 (United Kingdom)

AUSTRALIA ACT 1986

An Act to bring constitutional arrangements affecting the Commonwealth and the States into conformity with the status of the Commonwealth of Australia as a sovereign, independent and federal nation

WHEREAS the Prime Minister of the Commonwealth and the Premiers of the States at conferences held in Canberra on 24 and 25 June 1982 and 21 June 1984 agreed on the taking of certain measures to bring constitutional arrangements affecting the Commonwealth and the States into conformity with the status of the Commonwealth of Australia as a sovereign, independent and federal nation:

AND WHEREAS in pursuance of paragraph 51 (xxxviii) of the Constitution the Parliaments of all the States have requested the Parliament of the Commonwealth to enact an Act in the terms of this Act:

BE IT THEREFORE ENACTED by the Queen, and the Senate and the House of Representatives of the Commonwealth of Australia, as follows:

Termination of power of Parliament of United Kingdom to legislate for Australia

1. No Act of the Parliament of the United Kingdom passed after the commencement of this Act shall extend, or be deemed to extend, to the Commonwealth, to a State or to a Territory as part of the law of the Commonwealth, of the State or of the Territory.

Legislative powers of Parliaments of States

2. (1) It is hereby declared and enacted that the legislative powers of the Parliament of each State include full power to make laws for the peace, order and good government of that State that have extra-territorial operation.

(2) It is hereby further declared and enacted that the legislative powers of the Parliament of each State include all legislative powers that the Parliament of the United Kingdom might have exercised before the commencement of this Act for the peace, order and good government of that State but nothing in this subsection confers on a State any capacity that the State did not have immediately before the commencement of this Act to engage in relations with countries outside Australia.

Termination of restrictions on legislative powers of Parliaments of States

3. (1) The Act of the Parliament of the United Kingdom known as the Colonial Laws Validity Act 1865 shall not apply to any law made after the commencement of this Act by the Parliament of a State.

(2) No law and no provision of any law made after the commencement of this Act by the Parliament of a State shall be void or inoperative on the ground that it is repugnant to the law of England, or to the provisions of any existing or future Act of the Parliament of the United Kingdom, or to any order, rule or regulation made under any such Act, and the powers of the Parliament of a State shall include the power to repeal or amend any such Act, order, rule or regulation in so far as it is part of the law of the State.

Powers of State Parliaments in relation to merchant shipping

4. Sections 735 and 736 of the Act of the Parliament of the United Kingdom known as the Merchant Shipping Act 1894, in so far as they are part of the law of a State, are hereby repealed.

Commonwealth Constitution, Constitution Act and Statute of Westminster not affected

5. Sections 2 and 3 (2) above—

- (a) are subject to the Commonwealth of Australia Constitution Act and to the Constitution of the Commonwealth; and
- (b) do not operate so as to give any force or effect to a provision of an Act of the Parliament of a State that would repeal, amend or be repugnant to this Act, the Commonwealth of Australia Constitution Act, the Constitution of the Commonwealth or the Statute of Westminster 1931 as amended and in force from time to time.

Manner and form of making certain State laws

6. Notwithstanding sections 2 and 3 (2) above, a law made after the commencement of this Act by the Parliament of a State respecting the constitution, powers or procedure of the Parliament of the State shall be of no force or effect unless it is made in such manner and form as may from time to time be required by a law made by that Parliament, whether made before or after the commencement of this Act.

Powers and functions of Her Majesty and Governors in respect of States

7. (1) Her Majesty's representative in each State shall be the Governor.

(2) Subject to subsections (3) and (4) below, all powers and functions of Her Majesty in respect of a State are exercisable only by the Governor of the State.

(3) Subsection (2) above does not apply in relation to the power to appoint, and the power to terminate the appointment of, the Governor of a State.

Australia Act 1986

(4) While Her Majesty is personally present in a State, Her Majesty is not precluded from exercising any of Her powers and functions in respect of the State that are the subject of subsection (2) above.

(5) The advice to Her Majesty in relation to the exercise of the powers and functions of Her Majesty in respect of a State shall be tendered by the Premier of the State.

State laws not subject to disallowance or suspension of operation

8. An Act of the Parliament of a State that has been assented to by the Governor of the State shall not, after the commencement of this Act, be subject to disallowance by Her Majesty, nor shall its operation be suspended pending the signification of Her Majesty's pleasure thereon.

State laws not subject to withholding of assent or reservation

9. (1) No law or instrument shall be of any force or effect in so far as it purports to require the Governor of a State to withhold assent from any Bill for an Act of the State that has been passed in such manner and form as may from time to time be required by a law made by the Parliament of the State.

(2) No law or instrument shall be of any force or effect in so far as it purports to require the reservation of any Bill for an Act of a State for the signification of Her Majesty's pleasure thereon.

Termination of responsibility of United Kingdom Government in relation to State matters

10. After the commencement of this Act Her Majesty's Government in the United Kingdom shall have no responsibility for the government of any State.

Termination of appeals to Her Majesty in Council

11. (1) Subject to subsection (4) below, no appeal to Her Majesty in Council lies or shall be brought, whether by leave or special leave of any court or of Her Majesty in Council or otherwise, and whether by virtue of any Act of the Parliament of the United Kingdom, the Royal Prerogative or otherwise, from or in respect of any decision of an Australian court.

(2) Subject to subsection (4) below—

- (a) the enactments specified in subsection (3) below and any orders, rules, regulations or other instruments made under, or for the purposes of, those enactments; and
- (b) any other provisions of Acts of the Parliament of the United Kingdom in force immediately before the commencement of this Act that make provision for or in relation to appeals to Her Majesty in Council from or in respect of decisions of courts,

Australia Act 1986

and any orders, rules, regulations or other instruments made under, or for the purposes of, any such provisions,

in so far as they are part of the law of the Commonwealth, of a State or of a Territory, are hereby repealed.

(3) The enactments referred to in subsection (2) (a) above are the following Acts of the Parliament of the United Kingdom or provisions of such Acts:

The Australian Courts Act 1828, section 15

The Judicial Committee Act 1833

The Judicial Committee Act 1844

The Australian Constitutions Act 1850, section 28

The Colonial Courts of Admiralty Act 1890, section 6.

(4) Nothing in the foregoing provisions of this section—

(a) affects an appeal instituted before the commencement of this Act to Her Majesty in Council from or in respect of a decision of an Australian court; or

(b) precludes the institution after that commencement of an appeal to Her Majesty in Council from or in respect of such a decision where the appeal is instituted—

(i) pursuant to leave granted by an Australian court on an application made before that commencement; or

(ii) pursuant to special leave granted by Her Majesty in Council on a petition presented before that commencement,

but this subsection shall not be construed as permitting or enabling an appeal to Her Majesty in Council to be instituted or continued that could not have been instituted or continued if this section had not been enacted.

Amendment of Statute of Westminster

12. Sections 4, 9 (2) and (3) and 10 (2) of the Statute of Westminster 1931, in so far as they are part of the law of the Commonwealth, of a State or of a Territory, are hereby repealed.

Amendment of Constitution Act of Queensland

13. (1) The Constitution Act 1867-1978 of the State of Queensland is in this section referred to as the Principal Act.

(2) Section 11A of the Principal Act is amended in subsection (3)—

(a) by omitting from paragraph (a)—

(i) “and Signet”; and

(ii) “constituted under Letters Patent under the Great Seal of the United Kingdom”; and

- (b) by omitting from paragraph (b)—
 - (i) “and Signet”; and
 - (ii) “whenever and so long as the office of Governor is vacant or the Governor is incapable of discharging the duties of administration or has departed from Queensland”.
- (3) Section 11B of the Principal Act is amended—
 - (a) by omitting “Governor to conform to instructions” and substituting “Definition of Royal Sign Manual”;
 - (b) by omitting subsection (1); and
 - (c) by omitting from subsection (2)—
 - (i) “(2)”; and
 - (ii) “this section and in”; and
 - (iii) “and the expression ‘Signet’ means the seal commonly used for the sign manual of the Sovereign or the seal with which documents are sealed by the Secretary of State in the United Kingdom on behalf of the Sovereign”.
- (4) Section 14 of the Principal Act is amended in subsection (2) by omitting “, subject to his performing his duty prescribed by section 11B,”.

Amendment of Constitution Act of Western Australia

14. (1) The Constitution Act 1889 of the State of Western Australia is in this section referred to as the Principal Act.

(2) Section 50 of the Principal Act is amended in subsection (3)—

- (a) by omitting from paragraph (a)—
 - (i) “and Signet”; and
 - (ii) “constituted under Letters Patent under the Great Seal of the United Kingdom”;
- (b) by omitting from paragraph (b)—
 - (i) “and signet”; and
 - (ii) “whenever and so long as the office of Governor is vacant or the Governor is incapable of discharging the duties of administration or has departed from Western Australia”; and
- (c) by omitting from paragraph (c)—
 - (i) “under the Great Seal of the United Kingdom”; and
 - (ii) “during a temporary absence of the Governor for a short period from the seat of Government or from the State”.

(3) Section 51 of the Principal Act is amended—

- (a) by omitting subsection (1); and
- (b) by omitting from subsection (2)—

- (i) "(2)";
- (ii) "this section and in"; and
- (iii) "and the expression 'Signet' means the seal commonly used for the sign manual of the Sovereign or the seal with which documents are sealed by the Secretary of State in the United Kingdom on behalf of the Sovereign".

Method of repeal or amendment of this Act or Statute of Westminster

15. (1) This Act or the Statute of Westminster 1931, as amended and in force from time to time, in so far as it is part of the law of the Commonwealth, of a State or of a Territory, may be repealed or amended by an Act of the Parliament of the Commonwealth passed at the request or with the concurrence of the Parliaments of all the States and, subject to subsection (3) below, only in that manner.

(2) For the purposes of subsection (1) above, an Act of the Parliament of the Commonwealth that is repugnant to this Act or the Statute of Westminster 1931, as amended and in force from time to time, or to any provision of this Act or of that Statute as so amended and in force, shall, to the extent of the repugnancy, be deemed an Act to repeal or amend the Act, Statute or provision to which it is repugnant.

(3) Nothing in subsection (1) above limits or prevents the exercise by the Parliament of the Commonwealth of any powers that may be conferred upon that Parliament by any alteration to the Constitution of the Commonwealth made in accordance with section 128 of the Constitution of the Commonwealth after the commencement of this Act.

Interpretation

16. (1) In this Act, unless the contrary intention appears—

"appeal" includes a petition of appeal, and a complaint in the nature of an appeal;

"appeal to Her Majesty in Council" includes any appeal to Her Majesty;

"Australian court" means a court of a State or any other court of Australia or of a Territory other than the High Court;

"court" includes a judge, judicial officer or other person acting judicially;

"decision" includes determination, judgment, decree, order or sentence;

"Governor", in relation to a State, includes any person for the time being administering the government of the State;

"State" means a State of the Commonwealth and includes a new State;

"the Commonwealth of Australia Constitution Act" means the Act of the Parliament of the United Kingdom known as the Commonwealth of Australia Constitution Act;

"the Constitution of the Commonwealth" means the Constitution of the Commonwealth set forth in section 9 of the Commonwealth of Australia Constitution Act, being that Constitution as altered and in force from time to time;

"the Statute of Westminster 1931" means the Act of the Parliament of the United Kingdom known as the Statute of Westminster 1931.

(2) The expression "a law made by that Parliament" in section 6 above and the expression "a law made by the Parliament" in section 9 above include, in relation to the State of Western Australia, the Constitution Act 1889 of that State.

(3) A reference in this Act to the Parliament of a State includes, in relation to the State of New South Wales, a reference to the legislature of that State as constituted from time to time in accordance with the Constitution Act, 1902, or any other Act of that State, whether or not, in relation to any particular legislative act, the consent of the Legislative Council of that State is necessary.

Short title and commencement

17. (1) This Act may be cited as the *Australia Act 1986*.¹

(2) This Act shall come into operation on a day and at a time to be fixed by Proclamation.¹

NOTE

1. Act No. 142, 1985; assented to 4 December 1985 and came into operation on 3 March 1986 at 5.00 a.m. Greenwich Mean Time (*see Gazette* 1986, No. S85, p. 1). In addition to this *Australia Act 1986* an *Australia Act 1986*, in substantially identical terms, was enacted by the United Kingdom Parliament (1986 Chapter 2) pursuant to a request made and consent given by the Parliament and Government of the Commonwealth in the *Australia (Request and Consent) Act 1985* and with the concurrence of all the States of Australia (*see the Australia Acts Request Act 1985* of each State).



Commonwealth and
Other Territories: 26:4

Statutes in Force

Official Revised Edition

Australia Act 1986

CHAPTER 2

Complete text as at date of Royal Assent (17.2.1986)

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Australia Act 1986

CHAPTER 2

ARRANGEMENT OF SECTIONS

1. Termination of power of Parliament of United Kingdom to legislate for Australia.
2. Legislative powers of Parliaments of States.
3. Termination of restrictions on legislative powers of Parliaments of States.
4. Powers of State Parliaments in relation to merchant shipping.
5. Commonwealth Constitution, Constitution Act and Statute of Westminster not affected.
6. Manner and form of making certain State laws.
7. Powers and functions of Her Majesty and Governors in respect of States.
8. State laws not subject to disallowance or suspension of operation.
9. State laws not subject to withholding of assent or reservation.
10. Termination of responsibility of United Kingdom Government in relation to State matters.
11. Termination of appeals to Her Majesty in Council.
12. Amendment of Statute of Westminster.
13. Amendment of Constitution Act of Queensland.
14. Amendment of Constitution Act of Western Australia.
15. Method of repeal or amendment of this Act or Statute of Westminster.
16. Interpretation.
17. Citation and commencement.

ELIZABETH II



Australia Act 1986

1986 CHAPTER 2

An Act to give effect to a request by the Parliament and Government of the Commonwealth of Australia.
[17th February 1986]

WHEREAS the Parliament and Government of the Commonwealth of Australia have, with the concurrence of the States of Australia, requested and consented to the enactment of an Act of the Parliament of the United Kingdom in the terms hereinafter set forth:

Be it therefore enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:—

1. No Act of the Parliament of the United Kingdom passed after the commencement of this Act shall extend, or be deemed to extend, to the Commonwealth, to a State or to a Territory as part of the law of the Commonwealth, of the State or of the Territory.

Termination of power of Parliament of United Kingdom to legislate for Australia.

2.—(1) It is hereby declared and enacted that the legislative powers of the Parliament of each State include full power to make laws for the peace, order and good government of that State that have extra-territorial operation.

Legislative powers of Parliaments of States.

(2) It is hereby further declared and enacted that the legislative powers of the Parliament of each State include all legislative powers that the Parliament of the United Kingdom might have exercised before the commencement of this Act for the peace,

order and good government of that State but nothing in this subsection confers on a State any capacity that the State did not have immediately before the commencement of this Act to engage in relations with countries outside Australia.

Termination of restrictions on legislative powers of Parliaments of States.
1865 c. 63.

3.—(1) The Colonial Laws Validity Act 1865 shall not apply to any law made after the commencement of this Act by the Parliament of a State.

(2) No law and no provision of any law made after the commencement of this Act by the Parliament of a State shall be void or inoperative on the ground that it is repugnant to the law of England, or to the provisions of any existing or future Act of the Parliament of the United Kingdom, or to any order, rule or regulation made under any such Act, and the powers of the Parliament of a State shall include the power to repeal or amend any such Act, order, rule or regulation in so far as it is part of the law of the State.

Powers of State Parliaments in relation to merchant shipping.
1894 c. 60.

4. Sections 735 and 736 of the Merchant Shipping Act 1894, in so far as they are part of the law of a State, are hereby repealed.

Commonwealth Constitution, Constitution Act and Statute of Westminster not affected.
1900 c. 12.

5. Sections 2 and 3(2) above—

(a) are subject to the Commonwealth of Australia Constitution Act and to the Constitution of the Commonwealth; and

(b) do not operate so as to give any force or effect to a provision of an Act of the Parliament of a State that would repeal, amend or be repugnant to this Act, the Commonwealth of Australia Constitution Act, the Constitution of the Commonwealth or the Statute of Westminster 1931 as amended and in force from time to time.

Manner and form of making certain State laws.

6. Notwithstanding sections 2 and 3(2) above, a law made after the commencement of this Act by the Parliament of a State respecting the constitution, powers or procedure of the Parliament of the State shall be of no force or effect unless it is made in such manner and form as may from time to time be required by a law made by that Parliament, whether made before or after the commencement of this Act.

Powers and functions of Her Majesty and Governors in respect of States.

7.—(1) Her Majesty's representative in each State shall be the Governor.

(2) Subject to subsections (3) and (4) below, all powers and functions of Her Majesty in respect of a State are exercisable only by the Governor of the State.

(3) Subsection (2) above does not apply in relation to the power to appoint, and the power to terminate the appointment of, the Governor of a State.

(4) While Her Majesty is personally present in a State, Her Majesty is not precluded from exercising any of Her powers and functions in respect of the State that are the subject of subsection (2) above.

(5) The advice to Her Majesty in relation to the exercise of the powers and functions of Her Majesty in respect of a State shall be tendered by the Premier of the State.

8. An Act of the Parliament of a State that has been assented to by the Governor of the State shall not, after the commencement of this Act, be subject to disallowance by Her Majesty, nor shall its operation be suspended pending the signification of Her Majesty's pleasure thereon.

State laws not subject to disallowance or suspension of operation.

9.—(1) No law or instrument shall be of any force or effect in so far as it purports to require the Governor of a State to withhold assent from any Bill for an Act of the State that has been passed in such manner and form as may from time to time be required by a law made by the Parliament of the State.

State laws not subject to withholding of assent or reservation.

(2) No law or instrument shall be of any force or effect in so far as it purports to require the reservation of any Bill for an Act of a State for the signification of Her Majesty's pleasure thereon.

10. After the commencement of this Act Her Majesty's Government in the United Kingdom shall have no responsibility for the government of any State.

Termination of responsibility of United Kingdom Government in relation to State matters.

11.—(1) Subject to subsection (4) below, no appeal to Her Majesty in Council lies or shall be brought, whether by leave or special leave of any court or of Her Majesty in Council or otherwise, and whether by virtue of any Act of the Parliament of the United Kingdom, the Royal Prerogative or otherwise, from or in respect of any decision of an Australian court.

Termination of appeals to Her Majesty in Council.

(2) Subject to subsection (4) below—

- (a) the enactments specified in subsection (3) below and any orders, rules, regulations or other instruments made under, or for the purposes of, those enactments; and
- (b) any other provisions of Acts of the Parliament of the United Kingdom in force immediately before the commencement of this Act that make provision for or in

relation to appeals to Her Majesty in Council from or in respect of decisions of courts, and any orders, rules, regulations or other instruments made under, or for the purposes of, any such provisions,

in so far as they are part of the law of the Commonwealth, of a State or of a Territory, are hereby repealed.

(3) The enactments referred to in subsection (2)(a) above are the following Acts of the Parliament of the United Kingdom or provisions of such Acts:

1828 c. 83.	The Australian Courts Act 1828, section 15
1833 c. 41.	The Judicial Committee Act 1833
1844 c. 69.	The Judicial Committee Act 1844
1850 c. 59.	The Australian Constitutions Act 1850, section 28
1890 c. 27.	The Colonial Courts of Admiralty Act 1890, section 6.

(4) Nothing in the foregoing provisions of this section—

(a) affects an appeal instituted before the commencement of this Act to Her Majesty in Council from or in respect of a decision of an Australian court; or

(b) precludes the institution after that commencement of an appeal to Her Majesty in Council from or in respect of such a decision where the appeal is instituted—

(i) pursuant to leave granted by an Australian court on an application made before that commencement; or

(ii) pursuant to special leave granted by Her Majesty in Council on a petition presented before that commencement,

but this subsection shall not be construed as permitting or enabling an appeal to Her Majesty in Council to be instituted or continued that could not have been instituted or continued if this section had not been enacted.

Amendment of Statute of Westminster.
1931 c. 4 (22 & 23 Geo. 5).
12. Sections 4, 9(2) and (3) and 10(2) of the Statute of Westminster 1931, in so far as they are part of the law of the Commonwealth, of a State or of a Territory, are hereby repealed.

Amendment of Constitution Act of Queensland.
13.—(1) The Constitution Act 1867-1978 of the State of Queensland is in this section referred to as the Principal Act.
(2) Section 11A of the Principal Act is amended in subsection

(3)—

(a) by omitting from paragraph (a)—

(i) " and Signet "; and

- (ii) "constituted under Letters Patent under the Great Seal of the United Kingdom"; and
 - (b) by omitting from paragraph (b)—
 - (i) "and Signet"; and
 - (ii) "whenever and so long as the office of Governor is vacant or the Governor is incapable of discharging the duties of administration or has departed from Queensland".
 - (3) Section 11B of the Principal Act is amended—
 - (a) by omitting "Governor to conform to instructions" and substituting "Definition of Royal Sign Manual";
 - (b) by omitting subsection (1); and
 - (c) by omitting from subsection (2)—
 - (i) "(2)";
 - (ii) "this section and in"; and
 - (iii) "and the expression 'Signet' means the seal commonly used for the sign manual of the Sovereign or the seal with which documents are sealed by the Secretary of State in the United Kingdom on behalf of the Sovereign".
 - (4) Section 14 of the Principal Act is amended in subsection (2) by omitting "subject to his performing his duty prescribed by section 11B,".
- 14.—(1) The Constitution Act 1889 of the State of Western Australia is in this section referred to as the Principal Act. Amendment
of Constitution
Act of Western
Australia.
- (2) Section 50 of the Principal Act is amended in subsection (3)—
 - (a) by omitting from paragraph (a)—
 - (i) "and Signet"; and
 - (ii) "constituted under Letters Patent under the Great Seal of the United Kingdom";
 - (b) by omitting from paragraph (b)—
 - (i) "and Signet"; and
 - (ii) "whenever and so long as the office of Governor is vacant or the Governor is incapable of discharging the duties of administration or has departed from Western Australia"; and
 - (c) by omitting from paragraph (c)—
 - (i) "under the Great Seal of the United Kingdom"; and
 - (ii) "during a temporary absence of the Governor for a short period from the seat of Government or from the State".

(3) Section 51 of the Principal Act is amended—

(a) by omitting subsection (1); and

(b) by omitting from subsection (2)—

(i) “(2)”; and

(ii) “this section and in”; and

(iii) “and the expression ‘Signet’ means the seal commonly used for the sign manual of the Sovereign or the seal with which documents are sealed by the Secretary of State in the United Kingdom on behalf of the Sovereign”.

Method of
repeal or
amendment of
this Act or
Statute of
Westminster.
1931 c. 4 (22 &
23 Geo. 5).

15.—(1) This Act or the Statute of Westminster 1931, as amended and in force from time to time, in so far as it is part of the law of the Commonwealth, of a State or of a Territory, may be repealed or amended by an Act of the Parliament of the Commonwealth passed at the request or with the concurrence of the Parliaments of all the States and, subject to subsection (3) below, only in that manner.

(2) For the purposes of subsection (1) above, an Act of the Parliament of the Commonwealth that is repugnant to this Act or the Statute of Westminster 1931, as amended and in force from time to time, or to any provision of this Act or of that Statute as so amended and in force, shall, to the extent of the repugnancy, be deemed an Act to repeal or amend the Act, Statute or provision to which it is repugnant.

(3) Nothing in subsection (1) above limits or prevents the exercise by the Parliament of the Commonwealth of any powers that may be conferred upon that Parliament by any alteration to the Constitution of the Commonwealth made in accordance with section 128 of the Constitution of the Commonwealth after the commencement of this Act.

Interpretation.

16.—(1) In this Act—

“appeal” includes a petition of appeal, and a complaint in the nature of an appeal;

“appeal to Her Majesty in Council” includes any appeal to Her Majesty;

“Australian court” means a court of a State or any other court of Australia or of a Territory other than the High Court of Australia;

“the Commonwealth” means the Commonwealth of Australia as established under the Commonwealth of Australia Constitution Act;

1900 c. 12.

"the Constitution of the Commonwealth" means the Constitution of the Commonwealth set forth in section 9 of the Commonwealth of Australia Constitution Act, being 1900 c. 12. that Constitution as altered and in force from time to time;

"court" includes a judge, judicial officer or other person acting judicially;

"decision" includes determination, judgment, decree, order or sentence;

"Governor", in relation to a State, includes any person for the time being administering the government of the State;

"State" means a State of the Commonwealth and includes a new State;

"Territory" means a territory referred to in section 122 of the Constitution of the Commonwealth.

(2) The expression "a law made by that Parliament" in section 6 above and the expression "a law made by the Parliament" in section 9 above include, in relation to the State of Western Australia, the Constitution Act 1889 of that State.

(3) A reference in this Act to the Parliament of a State includes, in relation to the State of New South Wales, a reference to the legislature of that State as constituted from time to time in accordance with the Constitution Act, 1902, or any other Act of that State, whether or not, in relation to any particular legislative act, the consent of the Legislative Council of that State is necessary.

17.—(1) This Act may be cited as the Australia Act 1986.

(2) This Act shall come into force on such day and at such time as the Secretary of State may by order made by statutory instrument appoint.

Citation and
commence-
ment.

ANNEXURE 23

1. Copy of Letters Patent relating to Governor of South Australia.
2. Copy of Letters Patent relating to Governor of Tasmania.
3. Copy of Letters Patent relating to Governor of Victoria.
4. Copy of Letters Patent relating to Governor of Queensland.
5. Copy of Letters Patent relating to Governor of Western Australia.
6. Identification of individual responsible for signature OULTON.
7. Copies of Letters of Appointment of last three Governors appointed to serve in the State of New South Wales where Letters Patent do not appear to have been issued.

I certify that this is a true copy
of the original held at Government
House, Adelaide, S.A.

R. Jennings, AM
29th June 1999.

ELIZABETH THE SECOND, by the Grace of God of the United Kingdom of Great Britain and Northern Ireland and of Our other Realms and Territories Queen; Head of the Commonwealth, Defender of the Faith.

TO ALL TO WHOM THESE PRESENTS SHALL COME, GREETING!

Whereas by Letters Patent dated the 29th October, 1900 provision was made in relation to the office of the Governor of the State of South Australia:

And whereas by the Australia Act 1986 of the Commonwealth of Australia provision is made in relation to the office of the Governor of the State of South Australia and corresponding provision will also be made in the Act which is expected to result from the Australia Bill at present before Parliament in the United Kingdom (which Acts are hereinafter together referred to as "the Australia Acts"):

And whereas We desire to make new provisions relating to the office of Governor of the State of South Australia and for persons appointed to administer the government of the State:

Now Know Ye that We do hereby declare Our Will and Pleasure, and direct and ordain as follows:—

I. The Letters Patent dated the 29th October 1900 (as amended by Letters Patent dated the 2nd November 1934, Letters Patent dated the 10th January 1938 and Letters Patent dated the 2nd July 1970) relating to the office of Governor of the State of South Australia and Our Instructions to the Governor dated the 29th October 1900 are revoked.

II. There shall be a Governor of the State of South Australia.

III. The appointment of a person to the office of Governor shall be during Our Pleasure by Commission under Our Sign Manual.

IV. There shall be an Executive Council to advise the Governor in the government of the State.

V. The membership of the Executive Council shall be determined in accordance with the laws of the State.

Location of
the Letters
Patent and
Instructions.

Location of
the Governor.

Location of
the Governor.

Executive Council.

Location of
the Executive Council.

VI. The Governor shall preside at meetings of the Executive Council but if the Governor is unable to preside the member appointed by the Governor to preside, or in the absence of that member, the senior member in order of appointment actually present, shall preside.

Governor to preside over Executive Council.

VII. A meeting of the Executive Council shall not proceed unless it has been convened by the Governor and at least two members other than the Governor or any member presiding are present.

Quorum for Executive Council.

VIII. The Governor shall convene a meeting of the Executive Council if so advised by the Premier or Acting Premier.

Governor to convene meetings of Executive Council.

IX. There may be a Lieutenant-Governor of the State of South Australia.

Constitution of Office of Lieutenant-Governor.

X. In the event of—

- (a) a vacancy in the office of Governor;
- (b) the assumption by the Governor of the administration of the government of the Commonwealth of Australia; or
- (c) the Governor being on leave, absent from the State or incapacitated (not having appointed a deputy under Clause XVII),

Administration of government during vacancy, etc.

the Lieutenant-Governor shall assume the administration of the State as Administrator but if there is no Lieutenant Governor or if the Lieutenant-Governor is unable to act as Administrator or is incapacitated then the Chief Justice of South Australia or the next most senior Judge present in the State and able to do so shall act as Administrator.

XI. For the purposes of Clause X, there shall be a vacancy in the office of Governor if the Governor vacates the office.

Interpretation of Clause X.

XII. No person shall act as Administrator except at the request in writing of—

Administrator to act upon request.

- (a) the Premier of the State; or
- (b) if the Premier is not available to make such a request—the Minister of the Crown of the State next in order of seniority who is available to make such a request.

XIII. A person may not act as Administrator without having taken the Oath of Allegiance and the Official Oath in the presence of the Chief Justice of South Australia or another Judge of the Supreme Court of the State.

Oaths to be taken by Administrator.

XIV. While administering the government of the State an Administrator shall have and may exercise and perform the powers and functions of the Governor.

Powers and functions of Administrator.

XV. A person shall cease to hold the office of Administrator when (as the case requires)—

Administrator ceasing to hold office.

- (a) a person is appointed to fill the vacancy in the office of Governor and has taken the required oaths;

- (b) the Governor ceases to administer the government of the Commonwealth of Australia;
or
- (c) the Governor ceases to be on leave, absent from the State or incapacitated,

and the person holding office as Administrator is notified accordingly.

XVI. The appointment of a Lieutenant-Governor and of an Administrator shall be during Our Pleasure by Commission under Our Sign Manual.

XVII. In the event that—

- (a) the Governor is absent from the State or absent from the seat of government but not the State or is suffering from illness;
and
- (b) the Governor has reason to believe that the duration of the absence or illness will not exceed 4 weeks,

the Governor may, by instrument in writing, appoint the Lieutenant-Governor or another suitable person to be the Governor's deputy during the absence or illness and in that capacity to exercise and perform on behalf of the Governor such of the powers and functions of the Governor as are specified in the instrument during the period specified in the instrument.

XVIII. The Governor shall not appoint a deputy except with the concurrence of—

- (a) the Premier of the State;
or
- (b) if the Premier is not available to give such a concurrence—the Minister of the Crown of the State next in order of seniority who is available to give such a concurrence.

XIX. The appointment of a person as deputy may be revoked by the Governor at any time.

XX. The powers and functions of the Governor shall not be abridged, altered or in any way affected by the appointment of a person as deputy.

XXI. All existing Commissions in relation to the office of Governor, Lieutenant-Governor and Administrator and all existing appointments to the Executive Council shall continue in force subject to these Our Letters Patent until revoked.

XXII. These Our Letters Patent and every Commission or appointment given or made pursuant to these Our Letters Patent shall be published in the Government Gazette of South Australia.

XXIII. The power to revoke, alter or amend these Our Letters Patent is reserved.

XXIV. These Our Letters Patent shall come into operation at the same time as the Australia Acts come into force.

In Witness whereof We have caused these Our Letters to be made
Patent.

Witness Ourselves at Westminster the *fourteenth* day of *February*
in the Thirty-fifth year of Our Reign.

By Warrant under The Queen's Sign Manual

OULTON

These Letters Patent were issued and approved under the corresponding provisions of the Australia Act 1986 of the Commonwealth of Australia (Section 7) and the Australia Act 1986 of the United Kingdom. The Letters Patent came into operation with the formal Assent to the Australia Act 1986 of the Commonwealth of Australia which was given by The Queen on March 3, 1986. Subsequently, as required by Clause XIX of the Letters Patent, they were published in a special Tasmanian Government Gazette dated 14 March 1986.

ELIZABETH THE SECOND, by the Grace of God of the United Kingdom of Great Britain and Northern Ireland and of Our other Realms and Territories Queen, Head of the Commonwealth, Defender of the Faith.

TO ALL TO WHOM THESE PRESENTS SHALL COME, GREETING!

Whereas by Letters Patent dated 29th October 1900 provision was made in relation to the Office of the Governor of the State of Tasmania;

And whereas by the Australia Act 1986 of the Commonwealth of Australia provision is made in relation to the office of the Governor of the State of Tasmania and corresponding provision will also be made in the Act which is expected to result from the Australia Bill at present before Parliament in the United Kingdom (which Acts are hereinafter together referred to as "the Australia Acts");

And whereas We desire to make new provisions relating to the Office of Governor and for persons appointed to administer the Government of the State.

Now Know Ye that We do hereby declare Our Will and Pleasure, and direct and ordain as follows:—

Revocation of
existing Letters
Patent and
Instructions.

I. We revoke all earlier Letters Patent and amendments and Our Instructions relating to the Office of the Governor of the State of Tasmania.

Constitution of the
Office of Governor.

II. There shall be a Governor in and over Our State of Tasmania and its dependencies in the Commonwealth of Australia comprising Our Island of Tasmania, and all islands and territories lying to the southward of Wilson's Promontory, in the State of Victoria, in thirty-nine degrees twelve minutes of south latitude, and to the northward of the forty-fifth degree of south latitude, and between the one hundred and fortieth and one hundred and fiftieth degrees of longitude east from Greenwich, and also Macquarie Island lying to the south-east of the said Island of Tasmania (which said State of Tasmania and its dependencies are hereinafter called the State) and the appointment of the Governor shall be during Our Pleasure by Commission under Our Sign Manual.

- | | |
|--|--|
| III. Before assuming office a person appointed to be the Governor shall take the usual Oath or Affirmation of Allegiance and the usual Oath or Affirmation of Office before the Chief Justice of Tasmania or some other Judge of the Supreme Court of the State. | Oaths to be taken by Governor. |
| IV. The Governor shall keep the Public Seal of the State for sealing all instruments required to bear the Seal. | Public Seal. |
| V. There shall be an Executive Council to advise the Governor in the Government of the State. | Executive Council. |
| VI. The Members of the Executive Council shall be appointed by the Governor under the Public Seal of the State and shall hold office during the Governor's pleasure. | Appointment of Members of Executive Council. |
| VII. Before assuming office a person who has been appointed a Member of the Executive Council shall take the usual Oath or Affirmation of Allegiance and the usual Oath or Affirmation of Office before the Governor or the person then acting as Administrator or before the Chief Justice of Tasmania or some other Judge of the Supreme Court of the State. | Oaths to be taken by Members of Executive Council. |
| VIII. A meeting of the Executive Council shall be convened by the Governor upon the request of the Premier or the Acting Premier and the Council shall not proceed to the dispatch of business unless at least two Members other than the Governor or the Member presiding shall be present and assisting throughout the meeting. | Quorum of Executive Council. |
| IX. The Governor shall preside at meetings of the Executive Council but if the Governor is unable to do so the Member appointed by the Governor to preside or in the absence of such Member the most senior Member present shall preside. | Governor to preside over Executive Council. |
| X. The Governor with the consent of the Premier or the Acting Premier may appoint a Deputy Governor who may be the Lieutenant-Governor to perform some or all of the powers and functions of the Governor for a period not exceeding four weeks. | Appointment of Deputy Governor. |
| XI. An Administrator shall administer the Government of the State if and so long as there is a vacancy in the Office of Governor, or the Governor is administering the Government of the Commonwealth or is unable to act as Governor or, not having appointed a Deputy Governor, is on leave or is absent from the State. | Administration of Government during vacancy etc. |
| XII. For the purposes of Clause XI there shall be a vacancy in the Office of Governor if the Governor vacates the Office. | Interpretation of Clause XI. |
| XIII. For the purposes of Clause XI a Governor is not absent from the State whilst temporarily off the coast of the State or during his passage to or from the dependencies of the State. | Interpretation of Clause XI. |
| XIV. The Lieutenant-Governor shall be the Administrator but if there is no Lieutenant-Governor or if he is unable to act as Administrator then the Administrator shall be the Chief Justice of Tasmania or the next most senior Judge of the Supreme Court of the State who is present in the State and able to so act. | Administration. |

Appointment of
Lieutenant-
Governor and
Administrator.

Assumption of office
as Administrator.

Oaths to be taken by
Administrator.

Existing
Commissions to
continue in force.

Publication of
Letters Patent etc.

Reservation of
power to revoke
alter or amend.

Commencement of
Letter Patent.

XV. The appointment of a Lieutenant-Governor and of an Administrator shall be during Our Pleasure by Commission under Our Sign Manual.

XVI. No person shall assume office as Administrator unless required to do so by writing under the hand of the Premier or Acting Premier.

XVII. Before assuming office as Administrator a person entitled to act in that office shall take the usual Oath or Affirmation of Office before the Chief Justice of Tasmania or some other Judge of the Supreme Court of the State.

XVIII. All existing Commissions in relation to the Office of Governor, Lieutenant-Governor and Administrator and all existing appointments to the Executive Council shall continue in force until revoked.

XIX. These Our Letters Patent and every Commission appointing a Governor, Lieutenant-Governor or Administrator and every appointment given or made pursuant to these Our Letters Patent hereafter, shall be published in the Tasmanian Government Gazette.

XX. The power to revoke, alter or amend these Our Letters Patent is reserved.

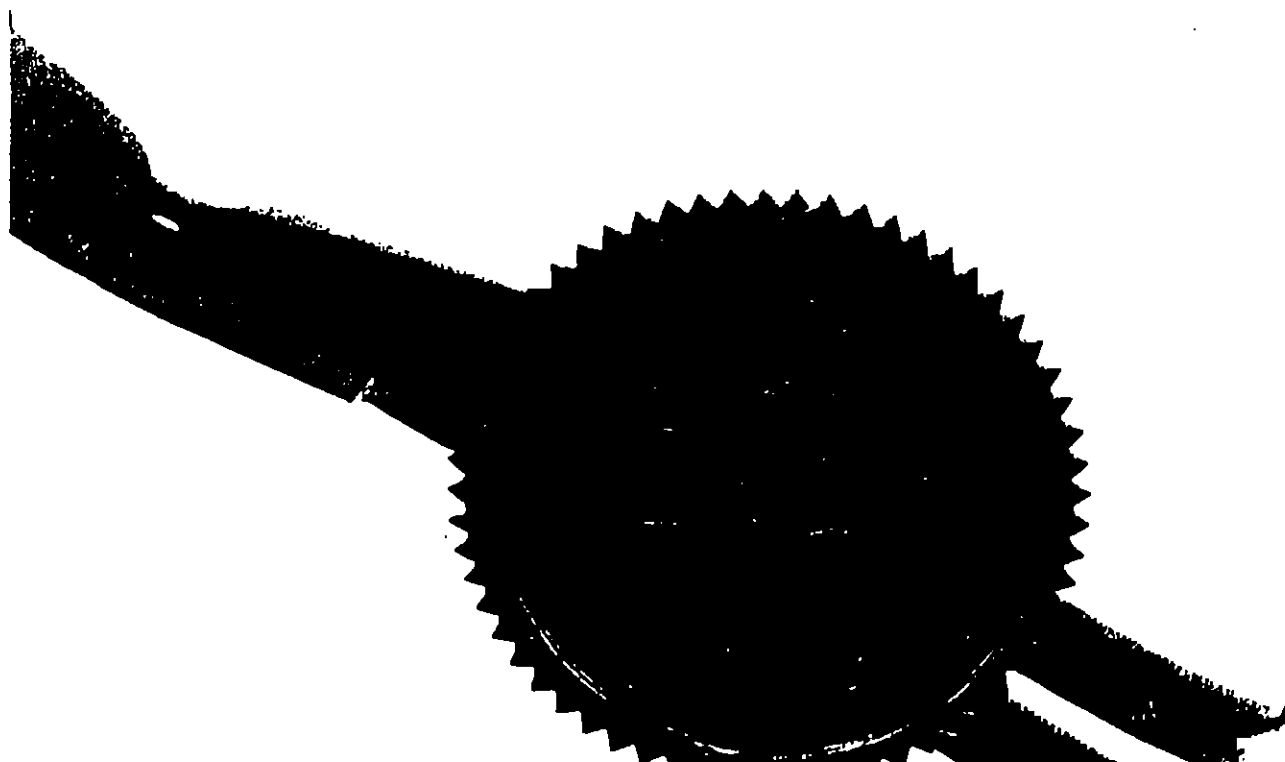
XXI. These Our Letters Patent shall come into operation at the same time as the Australia Acts come into force.

In Witness whereof We have caused these Our Letters to be made Patent.

Witness Ourselves at Westminster the *fourteenth* day of *February* in the Thirty-fifth year of Our Reign.

By Warrant under The Queen's Sign Manual 1986

OULTON



LETTERS PATENT RELATING TO THE OFFICE OF GOVERNOR OF
VICTORIA ISSUED BY HER MAJESTY THE QUEEN ON 14 FEBRUARY
1986 (Operative 3 March 1986)

Elizabeth the Second, by the Grace of God of the United Kingdom of Great Britain and Northern Ireland and of Our other Realms and Territories Queen, Head of the Commonwealth, Defender of the Faith.

To All to Whom these Presents shall come, Greeting!

Whereas by the Australia Act 1986 of the Commonwealth of Australia provision is made in relation to the office of the Governor of the State of Victoria and corresponding provision will also be made in the Act which is expected to result from the Australia Bill at present before Parliament in the United Kingdom (which Acts are hereinafter together referred to as "the Australia Acts"):

And whereas We desire to make new provisions relating to the office of Governor and for persons appointed to administer the government of the State.

Now know Ye that We do hereby declare Our Will and Pleasure, and direct and ordain as follows:

Constitution of Office of Governor.

Revocation of Existing Letters Patent and Instructions.

Executive Council.

Oaths to be taken by Governor, Administrator and Deputy Governor.

Administration of Government during vacancy, etc.

Administrator.

Administrator to act upon request.

Appointment of Deputy Governor.

Existing Commissions to continue.

Power to revoke, alter or amend.

Commencement of Letters Patent.

I. There shall be a Governor of the State of Victoria.

II. The Letters Patent dated the 29th October 1900, as amended by Letters Patent dated the 30th April 1913, relating to the office of Governor of the State of Victoria, and Our Instructions to the Governor dated the 29th October 1900, as amended by Our Instructions dated the 30th April 1913, are revoked.

III. There shall be an Executive Council to advise the Governor on the occasions when the Governor is permitted or required by any statute or other instrument to act in Council. The Premier (or in his absence the Acting Premier) shall tender advice to the Governor in relation to the exercise of the other powers and functions of Governor.

IV. No person shall act as Governor without first taking before the Chief Justice or another Judge of the Supreme Court the usual Oath or Affirmation of Allegiance and the usual Oath or Affirmation of Office.

V. An Administrator shall act as Governor if and so long as there is a vacancy in the office of Governor or the Governor is administering the Government of the Commonwealth or is unable or unwilling to act as Governor or not having commissioned a Deputy Governor is on leave or is out of the State.

VI. The Lieutenant-Governor shall be the Administrator but if there is no Lieutenant-Governor or if he is unable or unwilling to act as Governor then the Chief Justice shall be the Administrator and if there is no Chief Justice or if he is unable or unwilling to act as Governor then the next most senior Judge of the Supreme Court able and willing to act as Governor shall be the Administrator.

VII. A request in writing under the hand of the Premier (or in his absence the Acting Premier) that the person named therein (being one of the persons referred to in Clause VI) shall assume office as Administrator shall be sufficient authority for that person to do so.

VIII. The Governor with consent of the Premier (or in his absence the Acting Premier) may commission a Deputy Governor to perform and exercise for not more than two months some or all of the powers and functions of the Governor.

IX. The existing Commissions relating to the office of Governor, Lieutenant-Governor and Administrator and all existing appointments to the Executive Council shall continue in force until revoked.

X. The Governor in Council by Letters Patent may from time to time make alter or revoke any Letters Patent relating to the office of Governor.

XI. These Our Letters Patent shall come into operation at the same time as the Australia Acts come into force.

In Witness whereof We have caused these Our Letters to be made Patent.

Witness Ourself at Westminster the fourteenth day of February in the Thirty-fifth year of Our Reign.

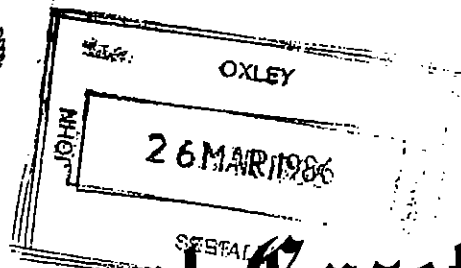
By Warrant under The Queen's Sign Manual

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OULTON

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Queensland Government Gazette

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SATURDAY, 8 MARCH, 1986

[No. 39]

PROCLAMATION OF LETTERS PATENT CONSTITUTING THE OFFICE OF GOVERNOR OF THE STATE OF QUEENSLAND

A PROCLAMATION

By His Excellency the Honourable Sir Walter Benjamin Campbell, one of Her Majesty's Counsel learned in the law, Governor in and over the State of Queensland in the Commonwealth of Australia.

[L.S.]

W. B. CAMPBELL,
Governor

WHEREAS by Letters Patent under the Great Seal of the United Kingdom, bearing the date at Westminster the fourteenth day of February, 1986, Her Majesty was graciously pleased to order and declare that there be a Governor in and over the State of Queensland in the Commonwealth of Australia, and that appointments to the said office be made by Commission under Her Majesty's Sign Manual and that the said Letters Patent be proclaimed at such place or places in the said State as the Governor of the said State shall think fit: Now, therefore, I, the Governor aforesaid, do, by this my Proclamation, proclaim and make known the said Letters Patent which are in the words following, that is to say:—

ELIZABETH THE SECOND, by the Grace of God of the United Kingdom of Great Britain and Northern Ireland and of Our other Realms and Territories Queen, Head of the Commonwealth, Defender of the Faith.

TO ALL TO WHOM THESE PRESENTS SHALL COME, GREETING!

Whereas Her late Majesty Queen Victoria did, by Letters Patent under the Great Seal of the United Kingdom of Great Britain and Ireland, bearing date at Westminster the sixth day of June 1859, erect certain territories therein described into a Colony by the name of the Colony of Queensland:

And whereas pursuant to Letters Patent under the said Great Seal, bearing date at Westminster the 30th day of May 1872, and Deed Poll and Proclamation, each bearing date at Brisbane in the said Colony the 22nd day of August 1872, made by the Governor of the said Colony all islands lying and being within sixty miles of the coasts of the said Colony were annexed to and became part of the said Colony:

And whereas pursuant to Letters Patent under the said Great Seal, bearing date at Westminster the 10th day of October 1878, and a law of the Legislature of the said Colony intituled The Queensland Coast Islands Act of 1879 and Proclamation, bearing date at Brisbane in the said Colony the 18th day of July 1879 made by the Governor of the said Colony certain islands in the Torres Straits and lying between the Continent of Australia and the Island of New Guinea were annexed to and became part of the said Colony:

And whereas upon the establishment of the Commonwealth of Australia (hereinafter called "the Commonwealth") on the First day of January 1901 the said Colony became the State of Queensland (hereinafter called "the State") within the Commonwealth:

And whereas by Letters Patent under the said Great Seal, bearing date at Westminster the 10th day of June 1925 His late Majesty King George the Fifth did constitute, order and declare that there should be a Governor in and over the State:

And whereas by the Australia Act 1986 of the Commonwealth of Australia provision is made in relation to the office of the Governor of the State of Queensland and corresponding provision will also be made in the Act which is expected to result from the Australia Bill at present before Parliament in the United Kingdom (which Acts are hereinafter together referred to as "the Australia Acts") and provision is made in relation to the said office in the Constitution Act of 1867, as amended, of the State of Queensland:

And whereas We are desirous of making new provision relating to the office of Governor of the State and to persons appointed to administer the Government of the State:

Now Know Ye that We do hereby declare Our Will and Pleasure, and direct and ordain as follows:—

Revocation of
existing Letters
Patent and
Instructions.

I. We revoke the said Letters Patent dated the 10th day of June 1925 and the Instructions to the Governor in and over the State or to the Lieutenant Governor or other officer for the time being administering the Government of the State dated the 10th day of June 1925 from and after the proclamation of these Our Letters Patent as hereinafter provided.

Office of Governor.

II. We order and declare that—

- (a) there shall be a Governor in and over the State; and
- (b) the appointment of a person to the office of Governor in and over the State shall be during Our pleasure by Commission under Our Sign Manual and may be terminated only by instrument under Our Sign Manual, taking effect upon publication thereof in the Government Gazette of the State or at a later time specified therein in that behalf.

Authorities and
Powers of
Governor.

III. We authorise and command the Governor of the State to do and execute all things that belong to his office according to the tenor of these Our Letters Patent and of such Commission as may be issued to him under Our Sign Manual and according to such laws as are now or shall hereafter be in force in the State.

Publication of
Governor's
Commission;
Declaration of
Governor's
allegiance.

IV. Every person appointed to the office of Governor of the State, before entering on any of the duties of his office and with all due solemnity—

- (a) shall cause the Commission appointing him to be Governor to be read and published at the seat of government in the State, in the presence of the Chief Justice or the next senior Judge of the State and of at least two Members of the Executive Council of the State; and
- (b) thereafter, then and there take in the presence of the persons referred to in paragraph (a) of this Clause the Oath of Allegiance and the Oath of Office subject to and in accordance with the law and practice of the State,

and the Chief Justice or next senior Judge aforesaid shall administer those Oaths or, where permitted by law, take Affirmations in lieu of those Oaths.

V. There shall be an Executive Council for the State, which shall consist of— Executive Council.

- (a) the persons who immediately before the coming into operation of these Letters Patent, are Members of the Executive Council of Queensland;
- and
- (b) persons who may at any time be Members of the Executive Council of Queensland in accordance with a law enacted by the Legislature of the State and in force;
- and
- (c) such other persons as the Governor of the State shall, from time to time in Our name and on Our behalf and subject to any law enacted by the Legislature of the State and in force, appoint under the Public Seal of the State to be Members of the Executive Council of Queensland,

until their membership thereof be terminated by their resignation therefrom or their removal therefrom by the Governor of the State.

Seniority of members of the Executive Council shall be according to the order of their respective appointments as members thereof.

VI. The Governor of the State shall attend and preside at all meetings of the Executive Council unless he is prevented by some good and sufficient cause and, in his absence, such member of the Executive Council as he may appoint in that behalf or, in the absence of that member, the senior member of the Executive Council present at a meeting shall preside. Meetings of
Executive Council.

The Executive Council shall not proceed to dispatch business unless—

It has been duly summoned by authority of the Governor of the State;

and

two members thereof, at the least, exclusive of the Governor or member thereof presiding, are present and assisting throughout the whole of the meeting at which the business is dispatched.

VII. We authorise and empower the Governor of the State— Specific powers of
Governor.

- (a) so far as We may lawfully do, upon cause appearing to him sufficient, to remove or suspend from office any person holding any office or place by virtue of any appointment made in Our name or under Our authority;
- (b) in Our name and on Our behalf, as he shall see occasion, where an offender may be tried in the State in respect of an offence (not being an offence against the laws of the Commonwealth) to grant, either free or subject to lawful conditions, to the offender a pardon, a commutation of sentence, or a reprieve of execution of the sentence for such period as the Governor thinks fit, or a remission of any fine, penalty, forfeiture or other consequence of conviction of the offender:

Provided that, except where the offence is of a political nature unaccompanied by any other grave crime, the Governor shall not make it a condition of his exercising his authorities and powers under this subclause (b) that the offender shall absent himself or be removed from the State.

VIII. In the event of the office of Governor of the State becoming vacant;

or

in the event of the Governor of the State assuming the administration of the Government of the Commonwealth;

or

subject to Clause IX of these Letters Patent, in the event of the Governor of the State becoming incapable or being absent from the State,

the Lieutenant-Governor or, if there be no such officer in the State and able to act, such person or persons as We may appoint (either before or after the event) under Our Sign Manual shall, during Our Administration of
Government in
absence etc, of
Governor.

Pleasure, administer the Government of the State, first taking the Oaths or Affirmations hereinbefore directed to be taken by the Governor in the manner herein provided and otherwise complying with Clause IV of these Our Letters Patent; which being done, We authorise and command the Lieutenant-Governor and every other such Administrator as aforesaid to do and execute, during Our pleasure, all things that the Governor might do under and in accordance with these Our Letters Patent, any Commission issued under Our Sign Manual to such Administrator, and the laws enacted by the Legislature of the State and in force.

Appointment of
deputy for
Governor.

IX. If the Governor of the State has occasion to be temporarily absent for a short period from the State or from the seat of government but not from the State, except for the purpose of administering the Government of the Commonwealth;

or

if by reason of illness, which the Governor has reason to believe will be of short duration, the Governor considers it desirable so to do,

the Governor may by an Instrument under the Public Seal of the State constitute and appoint the Lieutenant-Governor or, if there be no such officer in the State and able to act, any other person appointed by Us as provided by Clause VIII aforesaid to administer the Government of the State or, if there be no such person so appointed in the State and able to act, any other person to be his deputy during his temporary absence or illness and in that capacity to exercise, perform and execute for and on behalf of the Governor during his absence or illness, and no longer, all such authorities and powers vested in the Governor of the State by these Our Letters Patent or otherwise as shall, in and by such Instrument, be specified and limited, and no other.

The authority and power of the Governor of the State shall not be abridged, altered or in any way affected by the appointment of a deputy as aforesaid, otherwise than as We may at any time hereafter think proper to direct.

Any such appointment as aforesaid of a deputy may be revoked by the Governor of the State at any time.

Interpretation
clause.

X. Where in the course of his passage from one part of the State to another part of the State the Governor is beyond the boundaries of the State he shall be deemed not to be absent from the State for the purposes of Clauses VIII and IX of these Our Letters Patent.

An illness or absence by reason of which the Governor is authorised to appoint and has appointed a person to be his deputy shall, for so long as the appointment subsists, be deemed not to constitute incapacity or absence from the State of the Governor for the purposes of Clause VIII of these Our Letters Patent.

Letters Patent not to
affect existing
commissions etc.

XI. We direct that these Our Letters Patent shall take effect without affecting in any way the efficacy of any Commission or appointment given or made before the coming into operation of these Our Letters Patent, or of anything done pursuant to any such Commission or appointment, or of any Oath taken before the coming into operation of these Our Letters Patent for the purpose of any such Commission or appointment.

Publication and
commencement of
Letters Patent.

XII. We direct and enjoin that these Our Letters Patent be read and proclaimed at such place or places in the State as the Governor of the State shall think fit and that these Our Letters Patent shall come into operation at the same time as the Australia Acts come into force.

In Witness whereof We have caused these Our Letters to be made Patent.

Witness Ourselves at Westminster the fourteenth day of February in the Thirty-fifth year of Our Reign.

By Warrant under The Queen's Sign Manual

OULTON

Given under my Hand and Seal, at Government House, Brisbane, this sixth day of March, in the year of our Lord one thousand nine hundred and eighty-six, and in the thirty-fifth year of Her Majesty's reign.

By Command, JOH BJELKE-PETERSEN

God Save the Queen!

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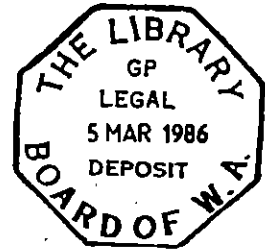
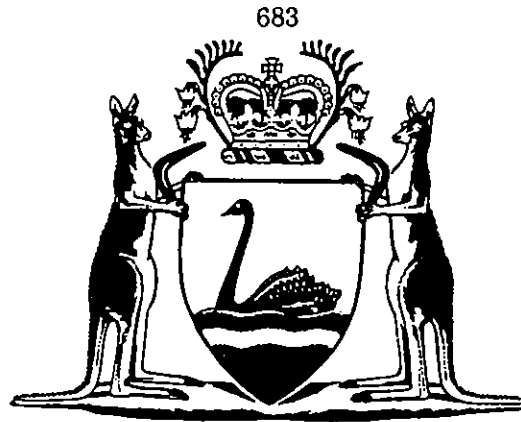
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Government Gazette

OF

WESTERN AUSTRALIA

(Published by Authority at 3.45 p.m.)

No. 25]

PERTH: FRIDAY, 28 FEBRUARY

[1986

SPECIAL NOTIFICATION

Her Majesty the Queen has been pleased to grant fresh Letters Patent which are set out below relating to the Office of Governor of the State of Western Australia. The Letters Patent will take effect at the same time as the Australia Acts 1986 of the United Kingdom and the Commonwealth of Australia come into force.

Brian Burke,
PREMIER.

N.B. The Australia Acts 1986 are to come into force at 5 a.m. Greenwich Mean Time, 3rd March 1986.

LETTERS PATENT RELATING TO THE OFFICE OF GOVERNOR OF THE STATE OF WESTERN AUSTRALIA.

Dated 14th February, 1986.

ELIZABETH THE SECOND, by the Grace of God of the United Kingdom of Great Britain and Northern Ireland and of Our other Realms and Territories Queen, Head of the Commonwealth, Defender of the Faith.

TO ALL TO WHOM THESE PRESENTS SHALL COME, GREETING:

Whereas, by Letters Patent dated the 29th October, 1900 and by the Constitution Act, 1889 of the State of Western Australia provision was made in relation to the office of Governor of the State of Western Australia and its Dependencies extending from the parallel of thirteen degrees thirty minutes South latitude, to West Cape Howe in the parallel of thirty-five degrees eight minutes South latitude, and from the Hartog's Island on the Western Coast, in longitude one hundred and twelve degrees fifty-two minutes to one hundred and twenty-nine degrees of East longitude, reckoning from the meridian of Greenwich, including all the islands adjacent in the Indian and Southern Oceans within the latitudes aforesaid of thirteen degrees thirty minutes South, and thirty-five degrees eight minutes South, and within the longitudes aforesaid of one hundred and twelve degrees fifty-two minutes, and one hundred and twenty-nine degrees East from the said meridian of Greenwich:

And whereas by the Australia Act 1986 of the Commonwealth of Australia provision is made in relation to the office of the Governor of the State of Western Australia and corresponding provision will also be made in the Act which is expected to result from the Australia Bill at present before Parliament in the United Kingdom (which Acts are hereinafter together referred to as "the Australia Acts");

And whereas We desire to make new permanent provisions relating to the office of Governor of the State of Western Australia and for persons appointed to administer the government of the State:

Now Know Ye that We do hereby declare Our Will and Pleasure, and direct and ordain as follows:—

Revocation of
existing Letters
Patent and In-
structions.

I. The Letters Patent dated the 29th October 1900, and Our Instructions to the Governor dated the 29th October 1900 are revoked.

Constitution of
Office of
Governor.

II. There shall be a Governor of the State of Western Australia who shall be Our representative in the State.

Powers and
functions of
Governor.

III. The Governor shall have and may exercise all the powers and functions which belong to the office of Governor or are to be performed by the Governor whether conferred by these Our Letters Patent, a law in force in the State or otherwise, including the power to constitute and appoint such Ministers, Judges, Magistrates, Justices of the Peace and other necessary officers as may be lawfully constituted or appointed by Us.

Public Seal.

IV. The Governor shall keep the Public Seal of the State for sealing all instruments required to bear the Seal.

Appointment of
Governor.

V. The appointment of a person to the office of Governor shall be during Our pleasure by Commission under Our Sign Manual.

Executive Coun-
cil.

VI. There shall be an Executive Council to advise the Governor in the government of the State.

Appointment of
Executive Coun-
cil.

VII. The members of the Executive Council shall be appointed by the Governor under the Public Seal of the State and shall hold office during the Governor's pleasure.

Governor to pre-
side over Exec-
utive Council.

VIII. The Governor shall preside at meetings of the Executive Council but if the Governor is unable to preside the member appointed by the Governor to preside, or in the absence of such member, the senior member in order of appointment actually present, shall preside.

IX. A meeting of the Executive Council shall not proceed unless it has been convened by the Governor and at least two members other than the Governor or any member presiding are present. The Governor shall convene a meeting of Executive Council if so advised by the Premier or Acting Premier.

Quorum for
Executive Coun-
cil.

X. There may be a Lieutenant-Governor of the State of Western Australia.

Constitution of
Office of
Lieuten-
ant-Governor.

XI. An Administrator shall administer the government of the State if and so long as there is a vacancy in the office of Governor or the Governor is administering the government of the Commonwealth of Australia or, not having appointed a deputy under Clause XVI, is unable to act as Governor or is on leave or is absent from the State.

Administration
of government
during vacancy,
etc.

XII. For the purpose of Clause XI—

Interpretation
of Clause XI.

- (a) there shall be deemed to be a vacancy in the office of Governor if the Governor vacates the office, and
- (b) the Governor is not absent from the State whilst temporarily off the coast of the State.

XIII. The Lieutenant-Governor shall be the Administrator, but if there is no Lieutenant-Governor or if the Lieutenant-Governor is unable to act as Administrator or is absent from the State then the Chief Justice of Western Australia or the next most senior Judge present in the State and able to act shall be the Administrator.

Administrator.

XIV. Whilst administering the government of the State the Administrator shall have and may perform and exercise the powers and functions of the Governor.

Powers and
functions of Ad-
ministrator.

XV. The appointment of a Lieutenant-Governor and of an Administrator shall be during Our Pleasure by Commission under Our Sign Manual.

Appointment of
Lieuten-
ant-Governor
and Adminis-
trator.

XVI. The Governor with the consent of the Executive Council may appoint the Lieutenant-Governor, or if there is no Lieutenant-Governor or if the Lieutenant-Governor is unable to act or is absent from the State then the Chief Justice of Western Australia or the next most senior Judge present in the State and able to act to be the deputy of the Governor and in that capacity to perform and exercise for a period not exceeding 6 weeks some or all of the powers and functions of the Governor. The appointment of a deputy of the Governor shall not affect the capacity of the Governor to exercise the powers and functions of the office of Governor.

Appointment of
deputy of the
Governor.

XVII. Before assuming office a person appointed to be Governor or Lieutenant-Governor, and before assuming the administration of the government of the State an Administrator who is not the Lieutenant-Governor, shall take the usual Oath or Affirmation of Allegiance and the usual Oath or Affirmation of Office. Such Oaths and Affirmations shall be taken before the Governor or the Chief Justice of Western Australia or another Judge of the Supreme Court of the State.

Oaths to be
taken by
Governor,
Lieuten-
ant-Governor
and Adminis-
trator.

XVIII. Before performing or exercising any power or function of the Governor a person, who is not the Lieutenant-Governor, appointed to be the deputy of the Governor shall take the usual Oath or Affirmation of Allegiance and the usual Oath or Affirmation of Office before the Governor or the Chief Justice of Western Australia or another Judge of the Supreme Court of the State.

Oaths to be
taken by deputy
of the Governor.

XIX. Before assuming office a person appointed a member of the Executive Council shall take the usual Oath or Affirmation of Allegiance and the usual Oaths or Affirmations of Office before the Governor or the Chief Justice of Western Australia or another Judge of the Supreme Court of the State.

Oaths to be
taken by mem-
bers of Execu-
tive Council.

XX. All existing Commissions in relation to the office of Governor, Lieutenant-Governor and Administrator and all existing appointments to the Executive Council shall continue in force subject to these Our Letters Patent until revoked.

Existing Com-
missions to con-
tinue.

Publication of
Letters Patent,
etc.

XXI. These Our Letters Patent, each Commission appointing a Governor, Lieutenant-Governor or Administrator and each appointment of a deputy of the Governor shall be published in the Government Gazette of Western Australia.

Reservation of
power to revoke,
alter or amend.

XXII. The Power to revoke, alter or amend these Our Letters Patent is reserved.

Commencement
of Letters
Patent.

XXIII. These Our Letters Patent shall come into operation at the same time as the Australia Acts come into force.

In Witness whereof We have caused these Our Letters to be made Patent.

Witness Ourselves at Westminster the fourteenth day of February in the Thirty-fifth year of Our Reign.

By Warrant under The Queen's Sign Manual

[L.S.]

OULTON

1982; *Pygmalion*, Shaftesbury, 1984; *Yvonne and the People Cart*, Haymarket, 1986; *Jeffrey Bernard is 11*, Our Song, Apollo, 1992. *Publications*: *How the Bank of England*, 1959; *The Savage*, 1963; *Lord Jim*, 1964; *White Noise*, 1966; *The Bible ... in the Beginning*, 1968; *The Year*, 1968; *The Lion in Winter*, 1968; *Goodbye Murphy's War*, 1975; *Under Milk Wood*, 1971; *ha*, 1972; *Rosebud*, 1975; *Man Friday*, 1975; *Le J'Etat*, 1977; *Zinn Dawn*, 1978; *Power Play*, 1981; *Supergirl*, 1983; *Class Paradise*, 1988; *Creation*, 1990; *King Ralph*, 1991; *...*, 1992; *television*, *Rogue Male*, 1970; *Stranger Pygmalion*, 1983; *Kim*, 1983; *Barbarians*, 1986; *Publications*: *Loitering With Intent in a Child the Apprentice*, 1996. *Address*: c/o William SDG, Club: Gamack.

1989; **Most Rev. Marcel Gervais**, b 2 Sept. 1916, Louise Beaudry. *Educ*: St Peter's Seminary, Pontifical Inst., Rome; Pontifical Biblical Inst., Université de Jérusalem. Ordained priest, 1958; *Curé*, London, 1962-76; *Dir of Divine Word*, London, 1974-80; *Auxiliary Bishop of London*, 1981-84; *Coadjutor Archbishop of a Conf. of Catholic Bishops*, 1984. *Address*: Place, Ottawa, Ont K1H 6K9, Canada. T: ...

John Arthur Baycroft, b 2 June 1933, s of ... in 1955, *Joan*, 1 of V. Lake, one of two d. ll., Cambridge (Sage Schol.) (BA 1954, MA Toronto (BD 1959)). Ordained deacon, 1955, 1955-57; *Asst Rector*, St Matthew's, Ottawa, St Matthias, Ottawa, 1967-84; *Cathedral Suffragan Bishop of Ottawa*, 1985-88; *Hon. S.* D.S.Litt. (*jur. ing.*) Thornloe Univ., 1991. *Publications*: *Eucharistic Way*, 1982; *The Way of Prayer*, 1982; *teatre, art, ballet*. *Address*: (office) 71 Bronson Club National Press (Ottawa).

AP. C. Croydon, South, since 1962 a Lord at Whip), since 1996; b 24 May 1935, s of ... VS and of Grace Ottaway; in 1982, *Norfolk E. School*, Somerset; *Bristol University*, LLB (1961); commissioned and entered R.N.C. fleet, HM Ships Bournemouth, North and sailed to Norton Rose Botterell & Roche, international, maritime and commercial law, 11-87; *Dir*, Coastal Europe Ltd, 1987-95; 21 Nottingham N., 1983-87; *PPS* in *Minister* 92-95, to *Dep. Prime Minister*, 1995; in *Asst Party Gp on Population and Development*, form, 1987; papers on combating crime in the environment. *Recreations*: ... *Address*: SW1A 2AA. *Club*: Royal Canadian

1989; *PhD*; *FRS* 1982; *FRSC*, *Leanne* ... *ow Emeritus*, *Senior Research Fellow*, 1996, d *Geraldine Roper*, one s one d. *Educ*: ... BSc 1948; *PhD* 1951; *Fitzwilliam Coll.*, ... Res., 1955-56; *Asst Dir of Res.*, 1956-58; *Bristol University*; *Lectr*, 1964-66; *Reader*, 1962; *Head of Dept of Physical Chem*, 1973; *L. Sch. of Chem.*, 1990-92; *Chm. SERC Faraday Soc.*, 1984 (Hon. Treas.), 1985-89; *der*, RACI, 1982; *Liversidge*, RSC, 1985-86; *gnieur*, ACS, 1988; *Rideal*, RSC, 1991; *SC*, 1972; *Welshman*, Oswald Med. K. Cold J. Collège de France, Paris, 1981; *Chm. and SC*, 1993. *Publications*: contribs to ... *Address*: Bristol BSS 175.

1 CB 1978; *Second Permanent Secretary*, 1979-86, retired; b 10 June 1927; *Educ*: John

of Ext. Affairs, 1970; *Minister of Health and Welfare*, 1971; 1972-84, *Departments of Post Office; Consumer and Corporate Affairs; State for Urban Affairs; Public Works; Labour; State for Regl Econ. Develp*; *Pres.*, *Privy Council and Govt Leader in H of C*, 1984. *Co-Chm.*, *Nat. Liberal Campaign Cttee*, 1992-. *Recreations*: tennis, ski-ing, reading, theatre. *Address*: Room 314, West Block, House of Commons, Ottawa, Ontario K1A 0A6, Canada. *Club*: Cercle Universitaire (Ottawa).

OUGHTON, John Raymond Charles, Under Secretary and Head, Prime Minister's Efficiency Unit, since 1993, *Director*, Efficiency and Effectiveness Group, since 1996, *Office of Public Service, Cabinet Office*; b 21 Sept. 1952. *Educ*: Reading Sch.; *University Coll.*, Oxford (BA Mod. Hist. 1974). *Joined MoD*, 1974; *Meml. UK Delegrn, UN Law of Sea Conf.*, 1978; *Asst Pvrte Sec. to Minister of State for Defence*, 1978-80; *Principal*, 1980; on secondment to Canadian Govt, 1980-81; *Sales Policy*, 1981-83; *Office of Personal Advr to Sec. of State for Defence*, 1984; *Pvrte Sec. to Minister for the Armed Forces*, 1984-86; *Sen. Principal, Directorate of Procurement Policy*, 1986-87; *Asst Sec., Dir of Procurement Policy*, 1988-89; *Head of Resources and Progs (Navy)*, 1990-93. *FRSA, Recreations*: squash, tennis, bridge, watching cricket and football. *Address*: Efficiency Unit, Office of Public Service, Cabinet Office, 70 Whitehall, SW1A 2AS. T: 0171-270 0257. *Clubs*: United Oxford & Cambridge University; Tottenham Hotspur Football, Middlesex CC.

OULTON, Sir (Antony) Derek (Maxwell), GCB 1989, KCB 1984; CB 1979; QC 1985; MA, PhD; *Permanent Secretary*, Lord Chancellor's Office, and Clerk of the Crown in Chancery, 1982-89; *barrister-at-law*; *Life Fellow*, Magdalene College, Cambridge, since 1995 (Fellow, 1990-95); b 14 Oct. 1927; s of late Charles Cameron Courtenay Oulton and Elizabeth, d of T. H. Maxwell, KC; m 1955, Margaret Geraldine (d 1989), d of late Lt-Col G. S. Oxley, MC, 60th Rifles; one s three d. *Educ*: St Edward's Sch., Oxford; King's Coll., Cambridge; scholar; BA (1st Cls), MA; PhD 1974). Called to Bar, Gray's Inn, 1952, *Bench*, 1982; in private practice, Kenya, 1952-60; *Private Sec. to Lord Chancellor*, 1961-65; *Sec.*, Royal Commission on Assizes and Quarter Sessions, 1966-69; *Asst Solicitor*, 1969-75. *Dep. Sec.*, 1976-82, and *Dep. Clerk of the Crown in Chancery*, 1977-82, Lord Chancellor's Office. *Vis. Prof. in Law*, Bristol Univ., 1990-91. *Chm.*, *Mental Health Foundn Cttee on the Mentally Disordered Offender*, 1989-92. *Trustee*, *Nat. Gallery*, 1989-96. *Pres.*, *Electricity Arbitration Assoc.*, 1990-. *Mem.*, *Adv. Council*, *Inst. of Criminology*, Cambridge, 1992-. *Publications*: (ed) *Legal Aid and Advice*, 1971; (ed) *Lewis, We the Navigators*, 2nd edn 1994. *Address*: Magdalene College, Cambridge CB3 0AG. T: Cambridge (01223) 332100.

OULTON, Air Vice-Marshal Wilfrid Ewart, CB 1953; CBE 1953; DSO 1943; DFC 1943; FEng; FRIN; FIEE; *Chairman*, Medsales Executive Ltd, since 1982; b 27 July 1911; s of Llewellyn Oulton, Monks Coppenhall, Cheshire; m 1st, 1935, Sarah (d 1990), d of Rev. E. Davies, Pitsea, Essex; three s; 2nd, 1991, Lenora Sara Malcolm. *Educ*: University Coll., Cardiff; Cranwell, Commissioned, 1931; *Director*, Joint Anti-Submarine School, 1946-48; *Joint Services Staff College*, 1948-50; *Air Attaché*, Buenos Aires, Montevideo, Asuncion, 1950-53; *ide* 1954; *Director of Operations*, Air Ministry, 1954-56; commanded Joint Task Force "Grapple" for first British megaton weapon tests in the Pacific, 1956-58; *Senior Air Staff Officer*, RAF Coastal Command HQ, 1958-60; *retd.* *Publications*: *Christmas Island Cracker*, 1987; *Technocrat*, 1995. *Recreations*: music, travel, grandchildren and great-grandchildren. *Address*: Farthings, Hollywood Lane, Lymington, Hants SO41 9HD. T: Lymington (01590) 673498. *Clubs*: Royal Air Force; Royal Lymington Yacht.

OUNSTED, John, MA Cantab; HM Inspector of Schools, 1971-81, retired; b London, 24 May 1919; s of late Rev. Laurence J. Ounsted, Dorchester Abbey, Oxon (ordained 1965; formerly with Sun Life Assurance); m 1940, Irene, 3rd s of late Rev. Alfred Newns; one s four d. *Educ*: Winchester (Scholar); Trinity College, Cambridge (Major Scholar). *Math. Tripos Part I*, 1st Class; *Science Tripos Part II*, 1st Class; *Senior Scholarship*, Trinity College. *Assistant Master*, King Edward's School, Birmingham, 1940-48; *Headmaster*, Leighton Park School, 1948-70. *First layman ever to be Select Preacher*, Oxford Univ., 1964. *Page Scholarship to visit USA*, 1965. *Vice-Pres.*, *Botanical Soc. of British Isles*, 1989-93. *Liverman*, *Worshipful Company of Mercers*. *Publications*: verses from various languages in the 2 vols of *Translation*, 1945 and 1947; contributions to *Watsonia*, *The Proceedings of the Botanical Society of the British Isles*, and various other educational and botanical periodicals. *Recreations*: botany, camping, being overtaken when motorcycling. *Address*: Apple Tree Cottage, Woodgreen Common, Fordingbridge, Hants SP6 2BD. T: Downton (01725) 512271.

See also Sir A. Foley Newns.

OUSBY, Dr Ian Vaughan Kenneth, writer and broadcaster; b 26 June 1947; s of Arthur Valentine Ousby and Betty Lettice Grace (née Green); m 1st 1969, Heather Dubrow (marr. Jiss, 1979); 2nd, 1984, Mary Dusan Turner (marr. Jiss, 1993). *Educ*: Bishop's Stortford Coll.; Magdalene Coll., Cambridge (BA 1965); Harvard Univ. (PhD 1973). *Temp. Lectr in English*, Univ. of Durham, 1974-75; *University of Maryland*; *Asst Prof. of English*, 1975-79; *Associate Prof.*, 1979-82; *John Simon Guggenheim Meml Foundn Fellow*, 1980-81. *Publications*: *Bloodhounds of Heaven: the Detective in English fiction from Godwin to Doyle*, 1976; *The Blue Guide to Literary Britain and Ireland*, 1985, 2nd edn 1990; (ed) *The Correspondence of John Ruskin and Charles Eliot Norton*, 1987; *The*



Government Gazette

EXTRAORDINARY

OF THE STATE OF

NEW SOUTH WALES

PUBLISHED BY AUTHORITY

No. 13]

TUESDAY, 20 JANUARY

[1981

PROCLAMATION

NEW SOUTH WALES,
to wit

(L.S.)

J. A. ROWLAND,
Governor.

By His Excellency Air Marshal Sir James Anthony Rowland, Knight Commander of the Most Excellent Order of the British Empire, upon whom have been conferred the decorations of the Distinguished Flying Cross and the Air Force Cross, Governor of the State of New South Wales and its Dependencies, in the Commonwealth of Australia.

WHEREAS Her Majesty has been graciously pleased, by Commission under Her Royal Sign Manual and Signet, bearing date at Saint James's, the fifteenth day of December, one thousand nine hundred and eighty, to appoint me, Air Marshal Sir JAMES ANTHONY ROWLAND, Knight Commander of the Most Excellent Order of the British Empire, upon whom have been conferred the decorations of the Distinguished Flying Cross and the Air Force Cross, to be Governor in and over the State of New South Wales and its Dependencies, in the Commonwealth of Australia: Now, therefore, I, the Governor aforesaid, do hereby proclaim and declare that I have this day taken the prescribed Oaths before the Honourable Sir Laurence Whistler Street, Knight Commander of the Most Distinguished Order of St Michael and St George, Knight of Grace of the Most Venerable Order of Saint John of Jerusalem, Chief Justice of the Supreme Court of the said State, and that I have assumed the said office of Governor accordingly.

Given under my Hand and Seal, at Sydney, this twentieth day of January, in the year of Our Lord, one thousand nine hundred and eighty-one, and in the twenty-ninth year of Her Majesty's Reign.

By His Excellency's Command,

N. K. WRAN.

GOD SAVE THE QUEEN!

Premier's Department, Sydney, 20th January, 1981.

HER Majesty's Commission appointing Air Marshal Sir JAMES ANTHONY ROWLAND, K.B.E., D.F.C., A.F.C., to be Governor of the State of New South Wales and its Dependencies, in the Commonwealth of Australia, is published for general information.

N. K. WRAN, Premier.

ELIZABETH R.

ELIZABETH THE SECOND, by the Grace of God of the United Kingdom of Great Britain and Northern Ireland and of Her other Realms and Territories, Queen, Head of the Commonwealth, Defender of the Faith, &c. &c. &c. To Our Trusty and Well-beloved Sir James Anthony Rowland, Knight Commander of Our Most Excellent Order of the British Empire, upon whom have been conferred the Decorations of the Distinguished Flying Cross and the Air Force Cross, Greeting.

I. We do, by this Our Commission under Our Sign Manual and Signet, appoint you, the said Sir James Anthony Rowland, to be, during Our pleasure, Our Governor in and over Our State of New South Wales and its Dependencies, in the Commonwealth of Australia, with all the powers, rights, privileges, and advantages to the said Office belonging or appertaining.

II. And We do hereby authorise, empower, and command you to exercise and perform all and singular the powers and directions contained in certain Letters Patent under the Great Seal, bearing date at Westminster the twenty-ninth day of October, 1900, constituting the office of Governor of the State of New South Wales and its Dependencies, and in certain other Letters Patent under the Great Seal, bearing date at Westminster the first day of December, 1909, the twenty-sixth day of February, 1935, the sixteenth day of November, 1938, and the fourteenth day of September, 1978, amending the same, or in any other Letters Patent adding to, amending, or substituted for the same, and according to such Orders and Instructions as the Governor of the said State for the time being hath already received, or as you may hereafter receive from Us.

III. And We do hereby appoint that so soon as you shall have taken the prescribed Oaths and have entered upon the duties of your Office, this Our present Commission shall supersede Our Commission under Our Sign Manual and Signet bearing date the thirty-first day of December, 1965, appointing Our Trusty and Well-beloved Sir Arthur Roden Cutler, upon whom has been conferred the Decoration of the Victoria Cross, Knight Commander of Our Most Distinguished Order of Saint Michael and Saint George, Knight Commander of Our Royal Victorian Order, Commander of Our Most Excellent Order of the British Empire, to be Our Governor of Our State of New South Wales and its Dependencies.

IV. And We do hereby command all and singular Our Officers, Ministers, and loving subjects in Our said State and its Dependencies, and all others whom it may concern, to take due notice hereof, and to give their ready obedience accordingly.

Given at Our Court at Saint James's this fifteenth day of December, 1980 in the twenty-ninth year of Our Reign.

By Her Majesty's Command,

CARRINGTON.

Commission appointing Air Marshal Sir JAMES ANTHONY ROWLAND, K.B.E., D.F.C., A.F.C., to be Governor of the State of New South Wales.



Government Gazette

EXTRAORDINARY

OF THE STATE OF

NEW SOUTH WALES

PUBLISHED BY AUTHORITY

No. 4]

FRIDAY, 20 JANUARY

[1989

PROCLAMATION

NEW SOUTH WALES,
to wit
(L.S.)
D. J. MARTIN,
Governor.

{ By His Excellency Rear Admiral Sir David James Martin,
Knight Commander of the Most Distinguished Order of
Saint Michael and Saint George, Officer of The Order of
Australia, Governor of the State of New South Wales in the
Commonwealth of Australia.

WHEREAS Her Majesty has been graciously pleased, by Commission under Her Royal Sign Manual and The Public Seal of The State, bearing date at Saint James's, the nineteenth day of December, one thousand nine hundred and eighty-eight, to appoint me, Rear Admiral Sir David James Martin, Knight Commander of the Most Distinguished Order of Saint Michael and Saint George, Officer of The Order of Australia, to be Governor in and over the State of New South Wales in the Commonwealth of Australia: Now, therefore, I, the Governor aforesaid, do hereby proclaim and declare that I have this day taken the prescribed Oaths before the Honourable Chief Justice of the Supreme Court of the said State, and that I have assumed the said office of Governor accordingly.

Given under my Hand and Seal, at Sydney, this twentieth day of January, in the year of Our Lord, one thousand nine hundred and eighty-nine.

By His Excellency's Command,

NICK GREINER.

GOD SAVE THE QUEEN!

(9079)

(9080) Premier's Department, Sydney, 20th January, 1989.

HER Majesty's Commission appointing Rear Admiral Sir DAVID MARTIN, K.C.M.G., A.O., to be Governor of the State of New South Wales, in the Commonwealth of Australia, is published for general information.

NICK GREINER, Premier.

ELIZABETH R.

ELIZABETH THE SECOND by the Grace of God Queen of Australia and Her other Realms and Territories, Head of the Commonwealth, To Our Trusty and Well-beloved Rear Admiral Sir David James Martin, K.C.M.G., A.O., Greeting.

I. We do, by this Our Commission under Our Sign Manual and the Public Seal of the State of New South Wales, appoint you, the said Rear Admiral Sir David James Martin, K.C.M.G., A.O., to be during Our pleasure, Our Governor in and over Our State of New South Wales, in the Commonwealth of Australia, with all the powers, rights, privileges and advantages to the said Office belonging or appertaining.

II. And We do hereby authorise, empower, and command you to exercise and perform all and singular the powers and functions appertaining to the said Office contained in the Constitution Act 1902, of the said State, the Australia Act 1986, of the Commonwealth of Australia, and the Australia Act 1986, of the United Kingdom.

III. Further We do hereby appoint that so soon as you shall have taken the Oaths prescribed by the said Constitution Act 1902, and have entered upon the duties of your Office, this Our present Commission shall supersede the Commission under Our Sign Manual and Signet, bearing date the fifteenth day of December, 1980, appointing Our Trusty and Well-beloved Sir James Anthony Rowland, Companion of Our Order of Australia and Knight Commander of Our Most Excellent Order of the British Empire, upon whom have been conferred the Decorations of the Distinguished Flying Cross and the Air Force Cross, to be Governor of Our State of New South Wales.

IV. And We do hereby command all and singular Our Officers, Ministers, and loving subjects in Our said State, and all others whom it may concern, to take due notice hereof and to give their ready obedience accordingly.

Given at Our Court of Saint James's, this nineteenth day of December, nineteen hundred and eighty-eight, in the thirty-seventh year of our Reign.

By Her Majesty's Command,

NICK GREINER, Premier of New South Wales.

Commission appointing Rear Admiral Sir DAVID JAMES MARTIN, K.C.M.G., A.O., to be Governor of the State of New South Wales. (9081)



Government Gazette

OF THE STATE OF
NEW SOUTH WALES

Number 28
Friday, 1 March 1996

Published under authority by the Government Printing Service

SPECIAL SUPPLEMENT

Proclamation

NEW SOUTH WALES,
to wit
(L.S)
G. Samuels,
Governor.

By His Excellency The Honourable Gordon
Samuels, Companion of the Order of Australia,
Governor of the State of New South Wales in the
Commonwealth of Australia.

Whereas Her Majesty has been graciously pleased, by Commission under Her Royal Sign Manual and The Public Seal of The State, bearing date at Saint James's the 20th day of January one thousand nine hundred and ninety six, to appoint me The Hon Gordon Samuels, Companion of the Order of Australia, to be Governor in and over the State of New South Wales in the Commonwealth of Australia: Now, therefore, I, the Governor aforesaid, do hereby proclaim and declare that I have this day taken the prescribed Oaths before the Honourable Chief Justice of the Supreme Court of the said State, and that I have assumed the said office of Governor accordingly.

Given under my Hand and Seal, at Sydney, this first day of March,
one thousand nine hundred and ninety six.

By His Excellency's Command,

BOB CARR

God Save the Queen!

Premier's Department, Sydney, 1st March, 1996

HER Majesty's Commission appointing the Honourable Gordon Samuels, AC, to be Governor of the State of New South Wales, in the Commonwealth of Australia, is published for general information.

Bob Carr, Premier.

ELIZABETH R.

ELIZABETH THE SECOND by the Grace of God Queen of Australia and Her Other Realms and Territories, Head of the Commonwealth,
To Our Trusty and Well-beloved,
The Honourable Gordon J Samuels, AC, QC.
Greeting;

I. We do, by this Our Commission under our Sign Manual and the Public Seal of the State of New South Wales, appoint you the said Honourable Gordon J Samuels, AC, QC, to be during Our pleasure, Our Governor of Our State of New South Wales in the Commonwealth of Australia, with all the powers, rights, privileges and advantages to the said position belonging or appertaining.

II. And We do hereby authorise, empower and command you to exercise and perform all and singular the powers and functions appertaining to the said Office contained in the Constitution Act, 1902 of the said State, the Australia Act, 1986, of the Commonwealth of Australia, and the Australia Act, 1986, of the United Kingdom.

III. Further We do hereby appoint that so soon as you shall have taken the Oaths prescribed by the said Constitution Act, 1902, and have entered upon the duties of your Office, this Our present Commission shall supersede the Commission under Our Sign Manual and the Public Seal of the State of New South Wales, bearing date the 2nd day of July, 1990, appointing Our Trusty and Well-beloved Rear Admiral Peter Ross Sinclair, Companion of Our Order of Australia, to be Governor of Our State of New South Wales.

IV. And We do hereby command all and singular Our Officers, Ministers and loving subjects in Our Said State, and all others whom it may concern, to take due notice hereof and to give their ready obedience accordingly.

Given at Our Court of St James's this 20th day of January, one thousand nine hundred and ninety six, in the Forty Fourth year of Our Reign.

By Her Majesty's Command,

Bob Carr, Premier of New South Wales,

COMMISSION appointing the Honourable Gordon J Samuels A C, Q C, to be Governor of the State of NEW SOUTH WALES

ANNEXURE 24

1. Copy of Commission of Appointment of Governor of South Australia.
2. Copy of Letter from Official Secretary to Governor of South Australia.
3. Copies of Letters from Governors of Queensland and Western Australia claiming immunity from accountability.
4. Copy of form letter constitution Freedom of Information request.

Elizabeth R



COMMISSION
passed under the Royal Sign Manual
appointing
Sir Eric James Neal, A.C., C.V.O.
to be Governor of the State of South Australia
in the Commonwealth of Australia.

Elizabeth the Second,

by the Grace of God Queen of Australia and

Her other Realms and Territories,

Head of the Commonwealth

To Our Trusty and Well-beloved Sir Eric James Neal,
Companion of the Order of Australia, Commander of the Royal
Victorian Order

Greeting

1. We do, by this Our Commission under Our Sign Manual, appoint you the said Sir Eric James Neal to be, during Our pleasure, Our Governor in and over Our State of South Australia in the Commonwealth of Australia with all the powers, rights, privileges and advantages belonging or appertaining to that Office.

2. And We do hereby authorise, empower and command you to exercise and perform the powers and functions appertaining to that Office.

3. And We do hereby declare that, so soon as you enter upon the duties of your Office, this Our present Commission will supersede the Commission appointing Our Trusty and Well-beloved Dame Roma Flinders Mitchell, Companion of the Order of Australia, Dame Commander of Our Most Excellent Order of the British Empire, to be Governor of Our State of South Australia.

4. And We do hereby command all Our Officers, Ministers and loving subjects in Our State of South Australia, and all others whom it may concern, to take due notice hereof and to give their ready obedience accordingly.

Given at Our Court of Saint James's,

BY HER MAJESTY'S COMMAND

COMMISSION appointing
Sir Eric James Neal, A.C., C.V.O.
to be Governor of the State
of SOUTH AUSTRALIA



GOVERNMENT HOUSE
ADELAIDE

8th June, 1999

Mr. P. Batten
PO Box 23A
SOMERS VIC 3972

Dear Mr. Batten,

Thank you for your letter of 30th May, 1999 requesting a copy of the original document of Appointment of His Excellency the Governor, Sir Eric Neal, AC, CVO, complete with seal/s affixed.

Please find enclosed a copy of the Appointment, the original being held personally by His Excellency, and on which there are no seals attached.

Yours sincerely,

Ms. Penny M. Stratmann
OFFICIAL SECRETARY



COMMISSION

passed under the Royal Sign Manual and the

Public Seal of the State of Tasmania

appointing

THE HONOURABLE SIR GUY GREEN AC, KBE

to be Governor of the State of Tasmania

and its Dependencies in the Commonwealth

of Australia.

Elizabeth the Second,

by the Grace of God Queen of Australia and

Her other Realms and Territories,

Head of the Commonwealth,

To Our Trusty and Well-beloved the Honourable Sir Guy Green, AC, KBE



By His Excellency The Honourable Sir Guy Stephen Montague Green, Companion of the Order of Australia, Knight Commander of the Most Excellent Order of the British Empire, Governor in and over the State of Tasmania and its Dependencies in the Commonwealth of Australia.

PROCLAMATION

WHEREAS Her Majesty The Queen of Australia has been graciously pleased, by Commission under Her Royal Sign Manual and Signet, bearing date at Saint James's the thirty first day of August, One Thousand nine hundred and ninety-five, to constitute and appoint me, THE HONOURABLE SIR GUY STEPHEN MONTAGUE GREEN, Companion of the Order of Australia, Knight Commander of the Most Excellent Order of the British Empire, Governor in and over the State of Tasmania and its Dependencies in the Commonwealth of Australia: Now I, the Governor aforesaid do hereby proclaim and declare that I have this day taken the prescribed Oaths before the Honourable Mr Justice William John Ellis Cox, Chief Justice of the Supreme Court of the said State, and that I have assumed the Administration of the Government accordingly.

GIVEN under my hand at Hobart in Tasmania aforesaid this second day of October One thousand nine hundred and ninety-five.

A.M. Green
GOVERNOR

By His Excellency's Command,

R. J. Froom
PREMIER

GOVERNMENT HOUSE
QUEENSLAND

20th July 1999

Mr Peter Batten
PO Box 23A
SOMERS VIC 3872

Dear Mr Batten

I am replying, on behalf of His Excellency the Governor, to your letter of 1 July 1999 requesting access to documents relating to "the Powers and Direction vested in ... the Office of the Governor of Queensland" under the *Freedom of Information Act* 1982. In response to your request I advise as follows.

Documents relating to the Office of the Queensland Governor do not fall within the jurisdiction of the Commonwealth *Freedom of Information Act* 1982 as it is not a Commonwealth office. Therefore, I directed my attention to the Queensland *Freedom of Information Act* 1992 (the FOI Act), which covers access to information held by the Queensland Government.

The FOI Act applies to 'documents of an agency'. The Office of the Governor is not an 'agency' pursuant to section 8(1) of the FOI Act as it is not a department, local government or public authority. Further, section 11(1)(a) of the FOI Act states that the FOI Act does not apply to the Governor. As such, the FOI Act does not apply to the Office of the Governor. Therefore, your letter is not a valid request under the FOI legislation.

The Office of the Queensland Governor is unable to assist you further in this matter. Accordingly, I return the documentation and cheque previously forwarded to this Office by you.

Yours sincerely


Justin O'Connor
OFFICIAL SECRETARY



GOVERNMENT HOUSE
PERTH

Our Ref: 0107

26 July 1999

Mr Peter Batten
PO Box 23A
SOMERS VIC 3927

Dear Mr Batten

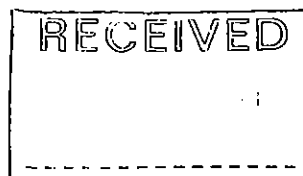
I acknowledge receipt of your letter dated 1 July 1999 addressed to the Governor of Western Australia.

The Freedom of Information Act in Western Australia does not apply to the Governor or Office of the Governor; an exclusion under Schedule 2 of the Act. Your cheque numbered 207 is therefore returned herewith.

Yours sincerely

Carol Buckley
ACTING OFFICIAL SECRETARY

Enc.



1st July 1999

Major General Peter M Arnison O.A.
The Governor of Queensland
Government House
BRISBANE
QUEENSLAND 4000

Subject Matter of letter: **Freedom of Information request**

Dear Governor Arnison

My requests have been made to you as Head of State. The information that I require is from you as Head of State. To refer me to the Department Premier and Cabinet is to evade the responsibilities of your public Office. Your correspondence of the 24th June is unacceptable. Accordingly I fully restate my request in the form of a request under the Freedom of Information Act 1982.

For the purposes of the research in which I am currently engaged I require certified copies of the **original documents** directly pertaining to your appointment to, and the exercising of powers as, the Office of Governor of Queensland

I stress, for my purposes reproductions of notices from Government Gazettes are insufficiently definitive and therefore will not suffice.

I further stress that this request is made of you as Head of State. Deflection of this request to, and any subsequent response from, the Head of Government or Department of Premier and Cabinet will not be acceptable.

The documents required will include:

- 1) A copy of the original Letters Patent bearing the date at Westminster 14th February 1986.
- 2) A copy of the original notice of the repeal of the 1986 Letters Patent if indeed they have been nullified.
- 3) A copy of the original replacement document/s of authority, **from whatever source**, if the 1986 Letters Patent have indeed been repealed.

Melbourne

4) A copy of the original document/s of your original Appointment.

5) If there has been an adjustment to your Appointment then I require a copy of the document of repeal of your original appointment as well as a copy of your current document of Appointment.

In other words, I require a complete statement appertaining to the totality of the Powers and Directions vested in your Office, that is the Office of the Governor of Queensland, together with the originating source of those Powers and Directions. By necessity this statement will define all changes that have occurred since your original appointment.

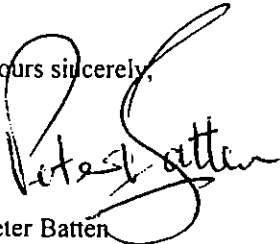
Please note that should it be that the reproduction of the seal/s affixed to these documents lack/s clarity then identification by way of description will be necessary.

All of the required Letters Patent/Royal Instruction, Documents of Authority and Document/s of Appointment associated with your public office constitute public property. It is therefore disappointing that it has been necessary to pursue my lawful request to this length.

I now look forward to prompt and satisfactory outcome in this matter.

To ensure that my requirements are fully met find enclosed cheque no.....209..... to the value of \$30 to formalise this Freedom of Information request.

Yours sincerely,



Peter Batten
Institute of Taxation Research
PO Box 9112
Seaford Mail Centre
SEAFORD
Victoria 3198

ANNEXURE 25

1. An illustration of bureaucracy out of control

AUSTRALIA
The concealed colony

PAY US FOR YOUR RAIN

VICTORIAN farmer Julian Kaye has been told he must pay \$30,000 as a result of a rural water authority's ruling that it owns the rain that falls on his property.

He has been slugged to use rainwater from his own dam.

Described by angry locals as an audacious attempt to privatise rain, Wimmera-Mallee Water's claim has been condemned as a deterrent to rural investment.

It has shocked Mr Kaye, who built the dam on his farm at Elmhurst, near Stawell, to provide water for new grapevines.

He has refused to pay, saying: "It is just ludicrous."

But the water authority insists the rain would have run into the river system, if not for the dam. And Mr Kaye would have paid for using it from the river.

Allowing Mr Kaye to have the dam without paying would be like allowing him free access to water from the Wimmera River, it has argued.

Mr Kaye's supporters say the rain should remain free.

Ararat council claims uncertainty on water rights has undermined developments worth \$20 million.

Report, Page 4

Cash for splash: Farmer Julian Kaye has been told to pay for what fills his rain gauge and dam. Picture: MATTY BOUWMEESTER

Kennedy Jr death fear

BOSTON: A small plane carrying John F Kennedy Jr to Martha's Vineyard was reported missing early today, sparking a search off New York's Long Island.

Jamie Gaspar, an operations specialist at Martha's Vineyard Airport, said the alarm was raised when Kennedy's plane failed to arrive at midnight, NY time, as scheduled.

It was thought Kennedy (pictured), son of the assassinated president, was piloting his wife, Carolyn, and one other person.

"I'm a little worried, because I know him personally," said Gaspar, who said he was told the plane took off from New Jersey.

NBC reported the Coast Guard had picked up a beeper signal from a beacon off Long

Island and was carrying out an intensive search.

Eddie Martin, a family friend, said he was told Kennedy was headed for Martha's Vineyard, an island east of New York, and was then to go to the wedding of a cousin, Rory, daughter of the late Sen. Robert F. Kennedy.

Continued, Page 2

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FRANKSTON The Ambassador
335 Nepean Highway (near Overton Rd) Mon 19 July or Wed 21 July 11.00AM, 1.00PM
FLEMINGTON Racecourse Motor Inn
at Ipsom & Ascot Vale Roads Mon 19 July or Wed 21 July 11.00AM, 1.00PM
DANDONG CHURCH
15/9 Heatherton Road (near Stud Rd) Tue 20 July or Thu 22 July 11.00AM, 1.00PM
GLADSTONE PARK HOTEL
Cnr. Nicholson Rd & Gladstone Park Ave Tue 20 July or Thu 22 July 11.00AM, 1.00PM
BULLEEN - Manmanning Club
1 Thompsons Road (near Bulleen Rd) Tue 20 July or Thu 22 July 11.00AM, 1.00PM
WINNOSBORO - Chapel Gate Medical Centre
at Chapel St (Lnr. Upenderson Rd) Tue 20 July or Thu 22 July 11.00AM, 1.00PM
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Police may seek inquiry

By SUE HEWITT

ABOUT 2000 police will debate a no-confidence motion in Chief Commissioner Neil Comrie today.

The members of the Police Association, meeting at Dallas Brooks Hall, will also consider setting up an inquiry into the force.

They will vote on appointing former senior police officers and retired members of the judiciary to lead an association-funded inquiry into the direction of the force.

The association's assistant secretary, Sen-

Sgt Paul Mullett, would not reveal the names of those approached to head the inquiry.

He said the association executive had set aside an undisclosed budget for the inquiry, but said it was up to the members to decide if it would go ahead.

He said if the inquiry proceeded, it would look at the core of the force's leadership.

Terms of reference included a review of management, the police board, the force's inde-



Neil Comrie

pendence and general direction.

"The no-confidence motion puts the Chief Commissioner and this government on notice that Victoria Police is a

very concerned and confused workforce," Sen-Sgt Mullett said.

He said no one had taken the association's concerns seriously and the police board, in preparing documents on restructuring the force, had not consulted the association.

The association's concerns included: police numbers, station closures and policies toward the association.

There was also concern about disciplinary powers which allowed the Chief Commissioner to dismiss officers in

whom he did not have confidence. Sen-Sgt Mullett said.

Victoria Police was facing its biggest crisis since the 1929 police strike. Opposition police spokesman Andre Haemeyer said.

"Police officers appear to no longer have confidence in their superiors and perceive the hierarchy to be much too close to the Kennett Government," he said.

A spokesman for Mr Comrie said the Chief Commissioner "was not concerned" about the meeting.

Farmer ordered to pay for rain

By KATE ASHLEY-GRIFFITHS

A RURAL water authority says a farmer must pay almost \$30,000 for rain that falls on his Elmhurst property.

Grape-grower Julian Kaye said Wimmera-Mallee Water had declared his eroded paddock a waterway so it could claim ownership of rain collected in his new dam and charge him fees for the water.

Mr Kaye said the authority claimed the 45-megallitre dam would trap water destined to flow into its Wimmera River catchment, so it should be compensated.

It wants an upfront fee of \$636 a megallitre and yearly charges of \$4 a megallitre for water pumped from the dam.

But a defiant Mr Kaye, who built the dam to provide water for 10ha of grapevines on his property near Stawell in central Victoria, is refusing to pay.

Angry locals have backed his fight, accusing the water authority of a "Big Brother" attempt to privatise rain.

The State Government has demanded an urgent investigation to resolve the dispute.

Mr Kaye said the authority was using him as a guinea pig to test a new interpretation of the Water Act in a bid to raise revenue and undermine private water rights.

"In the past a waterway always looked like a river or stream," Mr Kaye said. "Now they've changed their interpretation to get us to pay for water running off our own place that we have caught in a dam."

"Their new definition of a waterway is everything that has water running off it."

"It is just ludicrous."

"It's not like we are asking for water out of the system. We are putting in our own infrastructure - they're not doing a bloody thing."



What a nerve: Julian Kaye with the dam on his property near Stawell. Picture: ROB LEESON

"I feel like I should bill them for the rest of the water that flows off my place into the Wimmera river."

Mr Kaye said he was struggling to earn an income and could not afford to spend almost \$30,000 on the dam.

Elmhurst publicans John and Marion Cooper, of the Pyrenees Hotel, said many people in the community were angry that the authority was trying to claim ownership of Victoria's rain.

"You are being asked to pay for something that falls from the sky," Mrs Cooper said.

Mr Cooper branded the authority's stance a "money-grabbing exercise".

But Wimmera-Mallee Water general manager John Konings said there was evidence of a well-defined depression and gullies" on Mr Kaye's property and therefore any rainwater that

washed over the paddocks belonged to the Crown.

Mr Konings said this meant the authority had the right to impose

have the dam without paying would be like allowing him to freely pump water directly out of the Wimmera River supply.

There had been an explosion of interest in vineyard developments in the region, a prime shiraz growing area, and the authority had to control dam construction to protect water supplies.

"There are others seeking many hundreds of megallitres for further development and the community is concerned about what effect that will have on the Wimmera river," Mr Konings said.

Ararat Council, which approved plans for Mr Kaye's dam in April, said uncertainty about water rights in the region in the past three months had cost Victoria \$20 million in lost investment.

The council's economic development manager Ivan Surridge said

the water authority's new interpretation of the Water Act had sent prospective vineyard developers interstate, where access to water was easier to secure.

Mr Surridge said Wimmera-Mallee Water's interpretation of a waterway "flies in the face of common law".

"Under the new interpretation, every small gully or shallow depression can be classified as a waterway," Mr Surridge said.

"If you have got a vegetable garden where water pools for a small amount of time, that could be a waterway."

A spokesman for Resources Minister Pat McNamara said a three-member panel would be set up to consider Mr Kaye's case and resolve the matter.

The spokesman said the panel would report to Mr McNamara "on an urgent basis".

Editorial, Page 42

Sunday

We urge the State Government to intervene to restore Mr Kaye's peace of mind and the confidence of an important rural industry.

Editorial, Page 42

Herald Sun Sunday



Dam angry: Julian Kaye is fighting on.

The sky is the limit

MORE than their city cousins, farmers value rain. They think about it, talk about it, plan for it, even regulate their lives by its cycles. Never do they take it for granted. It is too crucial to their livelihoods for that.

They expect to pay for the rain that is recycled to them through water channels, irrigation schemes and pipelines. They accept their obligation to buy water pumped from rivers the rest of us regard as little more than scenery.

In a sense, they also pay a premium for rainfall because rural property prices are greater in temperate regions than in those bordering deserts, reflecting superior crop yields or greater stock carrying capacities.

Water is not free — farmers and orchardists understand that better than most. But they balk at the financial consequences of bureaucrats seeking to reinterpret the laws of nature, and water authorities seeking to hijack that which does not belong to them. They object to audacious claims on resources.

High farce

For instance, it makes no sense to Elmhurst grape-grower Julian Kaye that he should be charged \$30,000 for the rain that falls from the clouds and lands, without intervention by any municipal authority or service provider, in a dam in his paddock.

It makes no sense to his neighbors, to the general farming community, nor to distressed bush families who suspect they will soon be slugged for rain running from their roofs to their water tanks.

It makes no sense to the *Sunday Herald Sun*, a supporter of rural Victoria, and we urge the State Government to intervene to restore Mr Kaye's peace of mind and the confidence of an important rural industry.

Wimmera-Mallee Water is out of line. Claiming ownership of the rain in his dam has the potential to ruin Mr Kaye, who is being punished for his wisdom in switching to new agricultural pursuits. It will also put a brake on investment in rural areas.

The water authority's demand for a licence fee, based on a legalistic view of the topography of Mr Kaye's property, on which an eroded section has been declared a waterway, is at best high farce. At worst, it is highway robbery.

In determining who owns the falling rain, Wimmera-Mallee Water may be better to hire philosophers than lawyers, for its argument so far is extremely wet.



LETTERS

How smart are we?

WHILE there is a shortage of apprentices ("Job-seekers fear dirty work", July 11), universities are crowded with students who should not be there. For various reasons, these students are allowed to graduate despite academic shortcomings.

Consequently, Australia will soon have a large number of young people with degrees and great expectations, but no useful skills.

The lucky few will join the public service. The rest will join the growing underclass of unemployables.

— C. Patak,
Upper Ferntree Gully

Don't blame kids

HOW are young people responsible for a society that directs them that their future is in "smart" jobs as opposed to trade-based positions? How are young people responsible for a political process that determines the structure of the labor market, training and education, employment opportunity and international trade impacts?

Is it any wonder young people hold our community in contempt when they are stereotyped with these sorts of pictures and words? Is it any wonder we have one of the highest youth suicide rates in the Western world?

— Tim Roberts,
Ballarat

Think skills

LAST week's story reflects the fact there is now an oversupply of people with useless university qualifications who shun physical work.

Our academic know-it-all politicians have much to answer for, encouraging young people to waste their time on courses that fail to prepare them for the world's realities.

It is a myth that university qualifications equate to glamor, fast cars and job security. The harsh reality is that skilled trades will be the recruitment forces of the future, as many academic employment opportunities will be made redundant by computer technology. I know many people who left school early and went into trades and



Graduation day: Not always a pointer to success.

now have better jobs than university graduates.

So much for former prime ministers Hawke and Keating encouraging/indoctrinating our youth to be the "clever" country. Did they stop to think we must become self-sufficient and practical, too?

— Martin McNiece,
Ormond

Image problem

IT is no wonder today's youth are "work shy". Constant negative images of unemployable youth take their toll.

With the persistent pessimistic reporting of the latest youth unemployment figures, or how employers are accusing young people to be lacking in motivation, it is no surprise my peers attend job interviews with little hope of success.

Admittedly, some job seekers would rather be on the dole, but it is the media coverage of this minority that implies to youth it is fruitless to apply for a job.

— Sherry Cusack,
Lethbridge

A new life

ATTENTION Deficit Hyperactivity Disorder (ADHD), also known as Attention Deficit Disorder (ADD), is real. My son, 4, has it and is on Ritalin.

Andrew Bolt's *Sunday Magazine* article, "Are we creating a generation of Stepford children?" (July 11), was damning and one-sided. Before my son began taking

Ritalin he would chase me around the house with knives, kicking in walls, destroying everything — even himself. Some nights I went to bed wishing I would not wake.

I am a good stay-at-home mother and have tried everything. Ritalin has given us a new lease on life. At kinder, my son can now sit on the mat long enough to hear a story.

— Keille Kemp,
Lilydale

Offensive report

AS a primary school principal and mother, I found Andrew Bolt's article offensive and a misrepresentation of fact.

He suggests there is almost overwhelming evidence that the disorder has no definite biological cause and that, in fact, children are being drugged because their parents are too rushed and impatient to either discipline them or find out what is really wrong.

My husband and I have watched our son's struggle for 17 years. Only after all else failed did we introduce Dexamphetamine and Ritalin.

By this time he was 14 and had attended two secondary

colleges, failing to such an extent his self-esteem was poor in spite of an IQ of 126.

— Sue Chamberlain,
Lower Templestowe

My challenge: 1

SIMPLY because an American psychologist writes a book, it does not mean he knows what he is talking about.

I challenge Andrew Bolt to spend time with my son, both on and off medication, so he can make his own judgment.

My son would not be attending a normal school if it was not for Ritalin. And he certainly is not a Stepford child.

We face alienation and ignorance daily because of his ADHD. Articles like yours set us back in educating people.

— Lorna Carroll,
Seaford

My challenge: 2

IT would seem Andrew Bolt has had no direct contact with children suffering ADD to experience the effects of Ritalin or Dexamphetamine.

I have twin 14-year-olds on these drugs — as he says, mother's little helpers. Without them, these boys do not know right from wrong.

I am willing to loan Mr Bolt my twin boys for a few weeks to educate him on the behavior of children with a genuine case of ADD.

— Andrew Burgess,
Park Orchards

Killer drugs

I SEE the dangerous and unsafe future we face as these purpose-made druggies come of age.

Each of the recent school massacres and irrational civil bombings have a common factor — the perpetrators were on Prozac, Ritalin or other hallucinogens.

— Merv Nash,
Eaglehawk

WRITE: Letters to the Editor,
Sunday Herald Sun, PO Box 14634, Melbourne City Mail Centre 8001

FAX: (03) 9292 2080

EMAIL: shsletters@hwtnewsld.com.au

Name and address and a daytime telephone number must be given, not necessarily for publication. Letters must be short and may be edited.

ANNEXURE 26

1. Copy of Judgement Master of Australian Capital territory Supreme Court No SCA 5 OF 1996

AUSTRALIA
The concealed colony

IN THE SUPREME COURT OF THE)
AUSTRALIAN CAPITAL TERRITORY)

No. SCA 5 OF 1996

BETWEEN: GEOFFREY DOUGLAS SKELTON
Plaintiff

AND: REGISTRAR OF MOTOR
VEHICLES
Defendant

ORDER

<u>Coram:</u>	:	Master T Connolly
<u>Date of Order:</u>	:	4 April 1996
<u>Where Made:</u>	:	Canberra ACT

THE COURT ORDERS THAT:

1. The appeal be struck out.
2. The appellant pay the respondent's costs of this application.

This is an application to strike out documents filed in this Court purporting to be an appeal from a decision of Magistrate Hardiman affirming a parking infringement imposed on Mr Skelton under authority of the Registrar of Motor Vehicles.

In documents filed in support of the appeal and in oral argument before me Mr Skelton made it clear that his ground of challenge is of a most fundamental kind. Mr Skelton contends that the Motor Traffic Act is invalid, because, he says, the Constitution of the Commonwealth of Australia is invalid. His argument is that the Motor Traffic Act, and the Constitution, are based on the authority of the British Parliament, and that as an Australian citizen he can not be subject to any law which traces its authority to the British Parliament. He concedes that it follows from this argument that all laws of the Commonwealth, the Australian Capital Territory and the States equally have no application. The inconvenience of this legal void he expects to be resolved when the United Nations hands down an "Interim Australian Constitution".

It is clear to me that this appeal has no possibility of success, and that I should strike out these proceedings. Mr Skelton does not present any case that is arguable. I indicated this to Mr Skelton at the outset of this hearing, and he has flagged his intention to pursue the issue through the forums of the United Nations.

The proposition that the structure of government and laws in Australia is invalid because it is now based on a foreign parliament is totally inconsistent with authority. The evolution of Australia from the status of a series of colonies of the British Crown to a sovereign independent nation has been extensively set out by learned authors (e.g. *The Evolution of Australia's International Personality* by D P O'Connell and James Crawford, K W Ryan (Editor) *International Law in Australia* (1984), *A Sovereign People, A Public Trust* by P D Finn In Finn (Editor) *Essays on Law and Government* (1995)) and has been recognised by the High Court in *Mabo v Queensland* (1992) 175 CLR 1.

The ultimate source of constitutional authority in Australia is now derived, not from the Parliament of the United Kingdom, but from the Australian people -

"the doctrine of representative government which the Constitution incorporates is not concerned merely with electoral processes. As has been said, the central thesis of the doctrine is that the powers of government belong to, and are derived from, the governed, that is to say, the people of the Commonwealth. The repositories of governmental power under the Constitution hold them as representatives of the people under a relationship; between representatives and represented, which is a continuing one"

(per Deane and Toohey JJ in *Nationwide News v Wills* (1992) 177 CLR 1 at 72).

This passage answers Mr Skelton's contentions. Mr Skelton is liable for prosecution if he parks his car illegally, not because a British Parliament said

so, but because the law that imposes the parking fine is a law passed by, and deriving its authority from, a democratic legislature. The "continuing" relationship between the people and their parliaments is the source of this authority - it is the reason we obey the law.

The clearest exposition of the present source of authority for Australian governance is set out in the judgment of Mason CJ in *Australian Capital Television v The Commonwealth* (1992) 177 CLR 106 at 137-8:

"The very concept of representative government and representative democracy signifies government by the people through their representatives. Translated into constitutional terms, it denotes that the sovereign power which resides in the people is exercised on their behalf by their representatives. In the case of the Australian Constitution, one obstacle to the acceptance of that view is that the Constitution owes its legal force to its character as a statute of the Imperial Parliament enacted in the exercise of its legal sovereignty; the Constitution was not a supreme law proceeding from the people's inherent authority to constitute a government, notwithstanding that it was adopted, subject to minor amendments, by the representatives of the Australian colonies at a convention and approved by a majority of the electors in each of the colonies at the several referenda. Despite its initial character as a statute of the Imperial Parliament, the Constitution brought into existence a system of representative government for Australia in which the elected representatives exercise sovereign power on behalf of the Australian people. Hence, the prescribed procedure for amendment of the Constitution hinges upon a referendum at which the proposed amendment is approved by a majority of electors and a majority of electors in a majority of the States (s.128). And, most recently, the *Australia Act 1986* (UK) marked the end of the legal sovereignty of the Imperial Parliament and recognized that ultimate sovereignty resided in the Australian people. The point is that the representatives who are members of Parliament and Ministers

of State are not only chosen by the people but exercise their legislative and executive powers as representatives of the people. And in the exercise of those powers the representatives of necessity are accountable to the people for what they do and have a responsibility to take account of the views of the people on whose behalf they act."

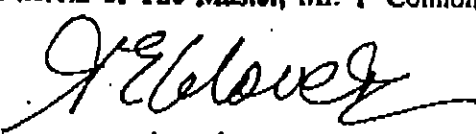
Mr Skelton's arguments must therefore fall.

But there is a further, and perhaps more fundamental reason why I must strike out this appeal. Mr Skelton's argument is premised on the invalidity of the Constitution - It is a challenge to the very order under which this Court derives its authority (*Spratt v Hermes* (1965) 114 CLR 226). A similar fundamental challenge to the source of sovereign authority of this country was rejected by Mason CJ in *Coe v Commonwealth* (1993) 118 ALR 193 at 200 citing Jacobs J in an earlier challenge (*Coe v Commonwealth* (1979) 24 ALR 118) where His Honour said of paragraphs in a statement of claim challenging the sovereignty of Australia that they were

"...not matters of municipal law but of the law of nations and are not cognisable in a court exercising jurisdiction under that sovereignty which is sought to be challenged (at 132).

I strike out this appeal and order that the appellant pay the respondent's costs of this Motion.

I certify that this and the three (3) preceding pages are a true copy of the Reasons for Judgment herein of The Master, Mr. T Connolly


Associate

Dated: 12 April 1996

ANNEXURE 27

1. Copy of evidence given in South Australian Magistrates Court.
2. Appellants presentation given in South Australian Supreme Court.
3. Justice Bleby's Judgement.
4. Copy of presentation given to second Magistrates court.
5. Documents establishing validity of argument.
6. Magistrate's ruling.
7. Appellants presentation by way of affidavit.
8. Respondents response.
9. Appellants presentation to the court.
10. Justice Debelle's Judgement.

EVIDENCE TO BE GIVEN AT TRIAL
SET DOWN FOR 10am January 15th 1998
in MAGISTRATES COURT CHRISTIES BEACH

Police -v- Batten
CASE REFERENCE: MCCHB -97- 6993

before.....

Complainant: A MEMBER OF THE POLICE FORCE of ADELAIDE
Defendant: PETER BATTEN of VICTOR HARBOR

INTRODUCTION

Because that which I have to present to the court is so totally contrary to the basis, indeed the very foundations of the politico/judicial system which has been in use in Australia since federation I fear the court may tend to dismiss my representation from the outset. However, I am hopeful that the court has become aware that very much more important people than me have presented similar evidence in much higher places both within Australia and in the international arena and so will accommodate my indulgence.

I am accused of committing an offence and under the Road Traffic Act and under the Expiation Act 1996, have been subjected to a penalty.

I do not intend to address the specific charge that has been brought against me.

Rather it is my intention to establish that the laws which the court has been established to interpret and/or administer are invalid and cannot be rectified by the current Commonwealth or State Parliaments or any other government elected under the current political system.

It was believed that after the presentation of a fairly detailed statement relating to the stance being adopted, the Court would have agreed that, on at least two grounds, it does not have the jurisdiction to proceed with the hearing and that because of this it was duty bound to adjourn the case.

However, since the Court has decided to proceed it is reminded that it is doing so in the face of historical facts and in contravention of the very law which the court has used to make the decision to proceed.

“The British Colonies Constitution Act 1900 was the basis for self government. It was never intended to be and is not suitable to be the basis for independence.

The right to repeal this act remains the sole prerogative of the Parliament of the United Kingdom. There is no means by which under United Kingdom or international law this power can be transferred to a foreign country or Member State of the United Nations . Indeed, the United Nations Charter precludes any such action.”

It is clear that the sovereign nation, Australia does not have superior control over its constitution. Since the States only exist in the context of the Australian Constitution it follows that all Australian municipal law remains dependent on United Kingdom law.

So it is that all laws being enforced by the court are dependent upon British law, in the form of the Commonwealth and State constitutions, for their validity.

However, under international law this colonial law ceased to have effect within the sovereign nation of Australia following its achievement of independent sovereign nation status on the signing of the Treaty of Versailles on the 28th June 1919 and when the Accessions to the League of Nations came into effect on the 10th January 1920.

A second international treaty which is in force, the United Nations Charter, which is also international law, is again superior to municipal law (High Court - Teoh Case 1994) and again prevents the application of colonial law to member states of the United Nations under Articles 2.1 and 2.4. The Australia Act 1986 is municipal law and not superior to this treaty.

‘The Queen of Australia and Her other Realms and Territories’ is not a sovereign recognised by the Commonwealth Constitution Act (UK) 1900 and in any case legislation passed by the Commonwealth Parliament without Prior approval at a referendum cannot alter the constitution contained in that Act to give recognition to such a sovereign.

Under the Immigration Act 1972-73 (UK) Australians are declared as “aliens” and citizens of a foreign power and that Australia is specifically excluded from the list of territories of the United Kingdom. It is therefore clear, that despite whatever the historical ties and appearances may be, the Queen of the United Kingdom no longer reigns over the sovereign nation of Australia.

AND YET-----

The Letters Patent appointing the Governor of South Australia and his deputies were issued by "*ELIZABETH THE SECOND, by the Grace of God of the United Kingdom of Great Britain and Northern Ireland.....*"

"Witness Ourselves at Westminster the fourteenth day of February in the Thirty-fifth year of Our Reign. (that is, 1986!)

By Warrant under The Queens Sign Manual" OULTON

These Letters Patent were signed by Sir Anthony Derek Maxwell Oulton QC, a British citizen, appointed under the British Civil Service Act and employed by the Government of the United Kingdom which is a foreign power! Not only that, but these Letters Patent are dependent on an especially prepared Act of the Parliament of the United Kingdom. The law of a foreign power. As established by the High Court - Woods case 1988. And, if that's not bad enough in itself, that Act had not even been passed at the time that these Letters Patent were signed!

Apart from all of that, these Letters Patent revoke the 1900 Letters Patent which remain the only ones referred to in the South Australian Constitution so effectively nothing deriving from the South Australian Constitution can be given Royal Assent.

Now as the Court is aware, Under UK and international law a Sovereign issues Letter Patent to one of her subjects imposing duties in relation to her citizens and/or Kingdom. It is a long time since a person serving as Governor of South Australia was a British citizen and even if these people were "Her" subjects, Australia is definitely no longer part of "Her" Kingdom, and those of us who live here are, almost without exception, not Her subjects!

And so we are confronted with a very serious question :-

What section in international law allows the Queen of the United Kingdom to issue Letters Patent to a foreigner, an Australian citizen, to act as Governor on her behalf, over citizens of Australia, an independent sovereign nation member state of the United Nations, in contravention of the United Nations Charter Article 2, paragraphs 2 and 4 ?

and:-

Since other Letters Patent for delegated appointments, such as judicial officers, are issued by the Governor so appointed a further serious question presents itself-----

Under what section of international law and what constitutional power do such Australian citizens derive their authority as officers of the Queen. a Queen who is the Monarch of a foreign power?

So, I have produced substantive arguments which have to be answered, but:

because international treaties and a breach of international law have been sighted as defence, the Court is again reminded that if it proceeds it will itself be in breach of article 36 of the Statute of the International Court of Justice.

And also, since the defendant is challenging the validity of both the Federal and State Constitutions as well as Letters Patent then, the court is once again reminded that under Section 78B of the Federal Judiciary Act 1903, the Court is obliged to not proceed in the face of such a challenge until notice of the cause, specifying the nature of the matter has been given to Attorneys-General of the Commonwealth and the States, for consideration by them, of the question of intervention in the proceedings or removal of the cause to the High Court.

THE COURT'S CONUNDRUM

If despite these dilemmas the Court chooses to proceed it seems it will be faced with something of a conundrum. It seems the Court will either have to rule that foreign law applies in an independent Australia or reach a decision which effectively rules itself out of existence.

If it is the wish of the Court, the defendant will proceed with a detailed presentation of his defence.

This will result in a conclusion that, all Australian municipal law remains British colonial law. That International Law is not only valid law but is the only valid law applicable in Australia. And that the Letters Patent under which the Court has been set up are invalid. They are in contravention of International law.

Municipal laws have no validity and even if they were, the court has no authority to administer or impose them on citizens of the sovereign independent nation of Australia.

Of course, if the Court finds that any of this is so it will have effectively ruled itself out of existence.

If on the other hand, the Court, under any circumstance rules that an offence has been committed and imposes a penalty and costs, or just costs, it will have applied foreign law in the sovereign nation of Australia. So in addition to the complaint to the Commonwealth Attorney General, an appeal will be lodged with the Supreme Court and a complaint will be made to the United Nations. This will be accompanied by a request for action to be taken by the appropriate body within that Organisation.

DETAILED PRESENTATION OF DEFENCE

It is my intention to draw the courts attention to the fact:

1. that International Law is Australian Law.

2. that Australia is an independent sovereign nation
3. that the United Kingdom of Great Britain and Northern Ireland is a foreign power and sees itself as such.
4. that the “British colony of the Commonwealth of Australia Constitution Act U.K. 1900” is and remains British law and that it ceased to have valid application when Australia achieved independent sovereign nation status on 10th January 1920.
 - 4a. and that because the State of South Australia only exists in the context of the Commonwealth, the Constitution of that state ceased to have valid application at the same time.
5. that the Statute of Westminster 1931 and the Australia Acts 1986 are both in contravention of International Law.
6. that the Queen of Australia is not an office recognised by the Australian Constitution.
7. that the Letters Patent 1984 appointing the Governor General are in breach of Article 2 paragraphs 1 and 4 of the United Nations Charter and the *Declaration on the Inadmissibility of Intervention in the Domestic Affairs of States and the Protection of their Independence and Sovereignty*(resolution 2131(XX) of 21 December 1965) , and the *Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States in Accordance with the Charter of the United Nations* (resolution 2625 (XXV) of 24 October 1970).
8. that the current Letters Patent 14th February 1986 appointing the Governor of South Australia have no legal standing because they have been issued by the Monarch of a foreign power and claimed, in contravention of both International and United Kingdom law, by Australian citizens, as their source of authority.
9. that even if these Letters Patent are ruled ‘valid’ they are not recognised by the South Australia Constitution Act 1934 (Reprint No. 6) and that having been issued by the Queen of the United Kingdom they are not recognised by the Australia Act 1986 either.
10. that since valid Letters Patent do not exist, and can’t exist, then traffic laws and expiation laws don’t exist either. So no offence has been committed.

1. International law is Australian law and is superior to municipal law.

If there was ever any question about this the Franklin Dam case and the Teoh case of 1994 put it beyond doubt. In its summation the high Court, amongst other things said, “ *Ordinary people have the right to expect government officials to consider Australia's international obligations even if those obligations are not reflected in specific Acts of Parliament: the rights recognised in international treaties are an implied limit on executive processes.* ”

Australia was a signatory to the Treaty of Versailles and became a foundation member of the League of Nations. Article X of that treaty, the Covenant of the League of Nations guarantees the political independence of all member states. the Covenant served to formalise international law. This occurred on the 10th January 1920.

Australia signed the United Nations Charter in 1945. Ratification gave the treaty force of law in Australia. Article 2.1 and 2.4 of this treaty also guarantees the independence and sovereignty of member states.

In answer to correspondence relating to the question of sovereignty, Paul Szasz, acting Director in the UN Office of Legal Affairs has responded:-

“The General Assembly of the United Nations has further developed this principle by proclaiming , inter alia, a duty of non-intervention in the internal and external affairs of other States. This duty has been spelled out in numerous declarations and resolutions, the most important of which are Declaration on the Inadmissibility of Intervention in the Domestic Affairs of States and the Protection of their Independence and Sovereignty (resolution 2131(XX) of 21 December 1965), and the Declaration on the Principles of International Law concerning Friendly Relations and Co-operation amongst States in Accordance with the Charter of the United Nations (resolution 2625 (XXV) of 24 October 1970) The latter declaration, in particular, provides inter alia that:-

“No State may use or encourage the use of economic, political or any other type of measures to coerce another State in order to obtain from it the subordination of the exercise of its sovereign rights, and to secure from it advantages of any kind”.

The Charter of the United Nations includes the Statute of the International Court of Justice. The Charter has been ratified by Australia and is therefore Australian law.

2. Australia is an independent sovereign Nation State.

State and Federal Governments, the United Nations and the High Court all say Australia is independent. In fact no legal authority is prepared to publicly argue that Australia is not independent. Australia's internationally recognised independence commenced on 28th June 1919 when it became one of the nation signatory to the Treaty of Versailles. This independent status was further confirmed on the 10th January 1920, the day that Australia became a foundation member of the League of Nations.

Opening addresses at the first session of the League of Nations welcomed the "four newly independent countries" as did speakers such as U.S. President Woodrow Wilson who commented on the noise being made by "that little independent country down there" bringing Billy Hughes' famous reposte, "I speak for 60,000 dead! who do you speak for?" This was a continuation of the sentiment that Hughes put into train in an address to the Commonwealth Parliament on the 10th September 1919 when he said "Australia has now entered into a family of nations on a footing of equality . Australia has been born in a blood sacrifice."

3. that the United Kingdom of Great Britain and Northern Ireland is a foreign power and sees itself as such.

It really cannot be doubted that the UK is a foreign power. But if an incident needs to be quoted to establish that this is so, the finding by the High Court in 1988 that the British citizen Wood could not serve as a senator for N.S.W. the Court ruled that the United Kingdom of Great Britain and Ireland is a foreign power, its citizens are foreigners not Australians.

The Immigration Act 1972 UK defines Australian Citizens as "Aliens." This, in itself, is a sufficient illustration to demonstrate Britain's perceived relationship to Australia.

4. that the "British colony of the Commonwealth of Australia Constitution Act U.K. 1900" is and remains British law and it ceased to have valid application when Australia achieved independent sovereign nation status during the events of 28th June 1919 and 10th January 1910.

The preamble to the Act remains as it has always been and includes the following clear statement as to who "owns" the Act.

" Be it therefore enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:-"

While the earlier reference drawn from the July 1995 statement of the Lord Chancellor in response to a parliamentary question about the Australian Constitution, viz:

“ The right to repeal this act remains the sole prerogative of the Parliament of the United Kingdom. There is no means by which under United Kingdom or international law this power can be transferred to a foreign country or a member state of the United Nations. Indeed, the United Nations Charter precludes any such action. ” is a clear confirmation that this Act remains solely the property of the United Kingdom. This of course is really just a confirmation of that which is clear from a full examination of the preamble and the eight covering clauses contained in the Act.

In a letter from the Federal Attorney-General's Office dated 21 October 1997 it is stated that the prior to the establishment of the Commonwealth *“Australia was merely a collection of self-governing British colonies and ultimate power over those colonies rested with the British Parliament.*

However, during the course of this century Australia has become an independent nation and the character of the Constitution as the fundamental law of Australia is now seen as deriving not from its status as an Act of British Parliament, which no longer has any power over Australia, but from its acceptance by the Australian People.

Nevertheless, the Constitution remains part of an Act of the British Parliament. That Act has not been repealed. ”

This attempt to state that all is in order fails on several counts. The most significant is the overlooking of the Acts conditional clauses and in particular, clause 8 : **“ After the passing of this Act the Colonial Boundaries Act, 1895, shall not apply to any colony which becomes a State of the Commonwealth: but the Commonwealth shall be taken to be a self-governing colony for the purposes of that act.”**

Clearly Australia, instead of being a number of self governing colonies became a single self-governing colony with the ultimate power still resting with the British Parliament. **And nothing has changed!**

A letter from the UK Foreign and Commonwealth Office dated 11 December 1997 states : *“ The continuing role of the Australia Constitution Acts as Australia's fundamental law is, of course, entirely a matter for Australia. There are at present no plans to repeal the Constitution Act.*

The Government of the United Kingdom would, however, give consideration to the repeal of the Commonwealth of Australia Constitution Act if a request to that effect were made by the Government of Australia. To date no such request has been made. ”

So there we have it. The Act itself, the Australian government and the UK government all confirm that the British Colony of Australia Constitution Act remains British law. And it is confirmed that it remains subject to the authority of the Government of the UK. Both of the government sources quoted also confirm that Australia is an entirely independent nation.

So the court must decide, is Australia an independent nation with no constitution? , or does Australia by continuing to use an Act of British law as its supreme law, remain a British colony ?

NO!

It is clear that it is an independent country being administered by illegal governments using a redundant constitution.

It is an independent nation in which, by circumstance of history, the only valid law is international law.

And this law clearly invalidates the Commonwealth of Australian Constitution Act UK 1900 as from 10th January 1920.

4a. and that because the state of South Australia only exists in the context of the Commonwealth, the Constitution of that state ceased to have valid application at the same time.

Any legal argument that the “states” of Australia are separate from the Commonwealth of Australia is extinguished by clause 6 of the conditional clauses of the Commonwealth of Australia Constitution Act (UK) 1900 which clearly defines the states to be part of the Commonwealth at its establishment. Continuance of state law depends on section 106 and 108 of this Act. Because this Act ceased to be applicable on the 10th January 1920 the States and all State laws, in the legal sense, disappeared on the same day!

5. that the Statute of Westminster 1931 and the Australia Acts 1986 are both in contravention of International Law.

Paragraph 4 of the Statute of Westminster Act 1931 contravenes Article X of the Covenant of the League of Nations. Paragraph 1 of the Australia Act 1986 contravenes Article 2 paragraphs 1 and 4 of the Charter of the United Nations. In addition, the Statute of Westminster Act 1931, The Statute of Westminster Adoption Act and the Australia Act 1986 were signed by Australian politicians using legislation (Commonwealth Constitution Act (UK) 1900) invalidated under international law some eleven and sixty six years earlier. The continued use of UK law in an attempt to validate an anomaly amounts to a compounding of the political interference by a foreign government in the affairs of a fellow Member State of the League of Nations/United Nations, contrary to Article X of the League of Nations Covenant and Article 2, paragraphs 1 and 4, of the United Nations Charter as well as a number of specific resolutions. Such usage contravenes all internationally accepted definitions of a sovereign State and, interestingly, falls within the legal definition of a “War Crime”

To maintain that these Acts allow the continued use of British law in contravention of Article X of the League of Nations Covenant, the United

Nations Charter and international law requires a legal authority superior to the United Nations Charter and the Treaty of Versailles. No such authority exists. Further both treaties require that any dispute relating to these matters can only be heard by the International Court of Justice. Reference to the International Court of these matters is compulsory under Article 36 of the Statute of the International Court. The Statute, part of the United Nations Charter, has been ratified by Australia and is therefore Australian law.

6. That the “Queen of Australia” is not an office recognised by The Australian Constitution Act (UK) 1900.

The preamble to the Act opens thus:

“WHEREAS the people of New South Wales, Victoria, South Australia, Queensland, and Tasmania, humbly relying on the blessings of Almighty God, have agreed to unite in one indissoluble Federal Commonwealth under the Crown of the United Kingdom of Great Britain and Ireland, and under the Constitution hereby established:”

Covering clause 2 states “ *The provisions of this Act referring to the Queen shall extend to Her Majesties heirs and successors in the sovereignty of the United Kingdom.*”

Clearly the Monarchy of the United Kingdom is the only one recognised by the Constitution.

7. That the Letters Patent 1984 appointing the Governor General are invalid and are in breach of Article 2 paragraphs 1 and 4 of the United Nations Charter and resolution 2131 (XX) of 21 December 1965 and resolution 2625(XXV) of 24 October 1970.

The greeting is from “*Elizabeth the Second, by the Grace of God Queen of Australia and her other Realms and Territories, Head of the Commonwealth.*”

The very next paragraph states: “ ***WHEREAS, by the Constitution of the Commonwealth of Australia, certain powers, functions and authorities are vested in a Governor-General appointed by the Queen to be Her Majesty’s representative in the Commonwealth.***”

As already established the only Monarch that can be recognised by the Constitution is Queen Victoria’s “ *heirs and successors in the sovereignty of the United Kingdom.*” (Conditional clause 2)

I have been informed that the Keeper of the Royal Seals, Lord Huntington, has advised that only the Queen of the United Kingdom can issue Letters Patent covering the Constitution of the Commonwealth of Australia. However, I must add that my request to Buckingham Palace for confirmation of this was deflected to the Australian Attorney-General who, in turn, has avoided offering a definitive answer

So these Letters Patent being issued by 'The Queen of Australia' can have no application for, as already established, the Commonwealth of Australia Constitution Act only recognises the Monarch of the United Kingdom of Great Britain and Northern Ireland.

Anyway from an examination of these instructions, it is clear that despite the greeting from the 'Queen of Australia' the second paragraph of the document (The Letters Patent to the Governor-General) vests authority "*by the Constitution*", ie, that is, vests authority in the monarch of the United Kingdom.

Clearly this is a situation which contravenes Article 2 paragraphs 2 and 4 of the Charter of the United Nations as well as various resolutions. In particular, Resolution 2625 of December 1970, in particular provides inter alia that: "No State may use or encourage the use of economic, political or any other type of measures to coerce another State in order to obtain from it the subordination of the exercise of its sovereign rights, and to secure from it advantages of any kind." (It is here that an interesting question presents itself. By issuing these Letters Patent along with those dealt with in 8. below, has the Queen of the UK committed a war crime?)

8. The Letters Patent (14th February 1986) to the Governor of South Australia have no standing in law.

These Letters Patent were issued by: "*ELIZABETH THE SECOND, by the Grace of God of the United Kingdom of Great Britain and Northern Ireland and of Our other Realms and Territories Queen, Head of the Commonwealth, Defender of the Faith*"

They were signed OULTON on the fourteenth day of February in the Thirty-fifth year of Our Reign. That is, February 13th 1986.

According to 'Who's Who 1997', OULTON is Sir Anthony Derek Maxwell Oulton QC, who was Permanent Secretary, Lord Chancellors Office and Clerk of the Crown Chancery from 1982 to 1989. When he signed these Letters Patent, Sir Derek was a British civil servant!

He like Queen Elizabeth II of the U.K. is a British citizen, not an Australian. They are both foreigners!

So even despite attempts by Whitlam to prop up the ailing colonial system in 1973, by creating a 'Queen of Australia' and attempts by Prime Minister Hawke to give legitimacy to the Governor General's 1984 Letters Patent by issuing a greeting in the name of the "Queen of Australia" here, two years later, is a blatant example of a State Government allowing a foreign government to interfere in the internal affairs of this independent sovereign country, my country, Australia.

The debacle surrounding the situation is heightened by the fact that under British and International Law a Sovereign may only issue Letters Patent to her Subjects, that is, British citizens and even then they can only have application in the United Kingdom and Her Territories . It is a long time since Governors of South Australia have been British citizens and of course Australia is specifically excluded from the list of Her Realms and Territories. By allowing this travesty to continue both the State and Federal governments as well as those individuals accepting an appointment as Governor of South Australia are surely guilty co-conspirators against the people of Australia.

The basis for all international law is that no sovereign country can be subject to the law of another sovereign country.

There can be no argument to the contrary. The current Letters Patent from which Dame Roma Mitchell drew her authority to give assent to the Expiation Act 1996 and on which Sir Eric Neal relied to make regulations have no standing in law.

9. that even if by some illogical twist these Letters Patent are ruled 'valid' they are then not recognised by the South Australian Constitution Act 1934 (Reprint No 6) and that having been issued by the Monarch of the United Kingdom they are not recognised by the Australia Act either.

Section 69 (2) of the South Australian Constitution Act states:-

" the Letters Patent" means the Letters Patent passed under the Great Seal of the United Kingdom of Great Britain and Ireland, bearing the date of October, 1900 whereby permanent provision was made for the office of Governor in the State of South Australia and its dependencies in the Commonwealth of Australia. "

Clause I of the current Letters Patent entirely revokes the Letters Patent of October 1900.

It is clear that since the issuing of the current Letters Patent appropriate measures have not been taken to amend the South Australian Constitution Act to accommodate them. So it is that the South Australian Constitution does not recognise these 1986 letters Patent!

But even if this is considered of no import and the argument that the Australia Act 1986 is invalid is rejected these Letters Patent still fall foul for clause 10 of that Act states, *" After the commencement of this Act Her Majesties Government in the United Kingdom shall have no responsibility for the government of any State. " !!!!!!!*

I repeat, the current Letters Patent were signed by a British public servant, one Sir Anthony Derek Maxwell Oulton QC, Permanent Secretary, Lord Chancellors Office and Clerk of the Crown Chancery from 1982 to 1989.

Clearly the Government of South Australia has allowed the Government of the United Kingdom to take ultimate responsibility for government in this State. Which ever scenario one cares to accept there is no doubt that what has occurred has been contrary to both Australian municipal law and international law and may well constitute a treasonable act against the people of sovereign, independent and federal nation of Australia.

!0. that since valid Letters Patent do not exist, and can't exist, then traffic and expiation laws don't exist either. So no offence has been committed.

United Kingdom law specifies that the writ of a Sovereign only exists during the lifetime of the sovereign who issued them.

So in revoking (by way of the Letters Patent 1986) the Letters Patent 1900 the Queen Of the United Kingdom has simply withdrawn a document which had, under United Kingdom law 'died' and was interred with Queen Victoria 97 years ago! This Queen Elizabeth II could validly do.

What she could not do, and the Government of South Australia was remiss in asking her to do was to issue new ones. And it must be remembered that under United Kingdom and International law that Monarch can only issue instructions to British subjects and then only for application within The United Kingdom and her territories. Australia is specifically excluded from this list. The Governor who assented to the Expiation Act 1996 and the Governor who made the regulation applicable to this act were not British Citizens. They assumed power with out the authority of the People. Without legitimate authority they created a law over the People. They have acted in contravention of municipal law (clause 10 of the Australia Act 1986, if it is that the court chooses to insist that it is valid) and international law (Charter of the United Nations Article 2 paragraphs 2 and 4 and various resolutions) .

So it is that all of the Acts under which I have been brought before this Court, including those used to establish the court are therefore invalid. And so no offence can possibly have been committed by the defendant.

APPELLANT'S PRESENTATION

MAGISTRATES APPEAL

File No SCCIV-98-183

to be heard in the

SUPREME COURT of SOUTH AUSTRALIA

on Wednesday, 11th March 1998 at 10. 15 am.

BEFORE Hon. Justice Bleby

APPELLANT Peter Batten

GROUND'S of APPEAL

It is alleged that the Magistrate presiding over case Court File No MCCHB-97-6993 erred in law by proceeding in the face of legal argument which clearly established that the court was under an obligation to refer the matter to the International Court of Justice.

And that even if the Magistrate chose to ignore this obligation his court was required to adjourn under conditions spelt out in the Judiciary Act 1903 (Commonwealth)

In essence, the defendant presented argument which established;

- * that, Australia is a sovereign independent nation member State of the United Nations.*
 - * that, the United Kingdom of Great Britain and Northern Ireland is a foreign power.*
 - * that, the Australian Constitution is but part of a current act of the UK Government*
 - * that, the Australian Constitution remains British law.*
 - * that, all Australian domestic law is dependent on the Australian Constitution.*
 - * that, because of this all Australian domestic law remains British colonial law.*
 - * that, sovereign nation status extinguishes colonial legislation is fundamental to the operation of the United Nations.*
 - * that, the UN Charter is international law and because Australia is a signatory to the Charter then,*
 - * international law deriving from the Charter is Australian law.*
 - * that, under international law the Australian Constitution became redundant at the same time that Australia achieved independence.*
 - * that all Australian domestic law is invalid,*
 - * and that, that includes the laws and procedures used to establish the court along with all of the laws that the court has been established to implement and administer.*
- THIS ARGUMENT IS REINFORCED THUS,***
- * the Governor of South Australia and the Governor-General's Letters Patent, being drawn from the authority of the Queen of the United Kingdom of Great Britain and Northern Ireland, a foreign power, clearly breach Article 2 paragraphs 1 and 4 of the United Nations Charter.*
 - * this renders the authority of these Offices invalid, in turn, this means the entire political and legal system is invalid.*
 - * So, there being no valid law, then no legally definable offence can have been committed.*

Clearly the situation is such that when the above argument is put to an Australian court it is faced with a conundrum----

Rule in favour and the court effectively rules itself out of existence.

Rule against and the court rules that foreign law is valid law in an independent Australia.

Clearly an adjournment 'sine die' is a wise magistrates alternative.

However, by choosing not to adjourn the Magistrate effectively placed the court under an obligation to abide by :-

Article 36, paragraphs (1) and (2) and Article 37 of the Statute of the International Court of Justice which states that the International Court of Justice has sole jurisdiction in any legal matters concerning the United Nations Charter or the Covenant of the League of nations. The Magistrate failed to respect this obligation.

This occurred despite the clear fact that no court(s) in Australia may hear a case which involves any legal argument with respect to the validity of the British Colony of the Commonwealth of Australia Constitution Act 1900 (UK) (full title).

This appeal is as the result of the alleged victimisation of an Australian citizen by a magistrate who presided over an incompetent court administering invalid laws and who failed in his obligations under international law.

Any Australian court at any level , will, by the same argument, not possess the competence to hear on this appeal.

Thus, by necessity of law, this appeal must be referred to the International Court of Justice.

To substantiate this bald assertion the following statement together with supporting and explanatory documents, presented initially to Mr Johansen's Court, is offered to this Court of Appeal.

BRIEF SUMMATION::

THE AUSTRALIAN CONSTITUTION AND INTERNATIONAL LAW

The Australian Constitution is the 9th clause of the 9 clause British Colony of the Commonwealth of Australia Constitution Act (UK) 1900 (full title). The preamble and the preceding 8 clauses set conditional limitations on the application of clause 9 - the Constitution. Section 128 of clause 9, the Constitution, permits limited amendment to the constitution. It does not give license to alteration of the preamble or any of the 8 conditional clauses.

The act permits limited self Government. It contains no element of sovereignty. Except for minor amendments to clause 9 , the Constitution, the Act remains exactly as it was when enacted in 1900.

It remain an Act of colonial law.

The appellant maintains that it is clear that, in contravention of the UN Charter and International Law, the sovereign independent and federal nation member state of the United Nations, Australia, continues to be governed under British colonial law. Because of this, under International Law the 'Australian Government' does not possess valid authority.

The Australian Government is not a legal entity.

Thus the victim claims 'The Australian Government' does not represent the State, that in fact, in the prevailing situation, the People constitute the State of Australia.

That the, British colony of the Commonwealth of Australia Constitution Act (UK) 1900 (full title) is current legislation of the Parliament of the United Kingdom of Great Britain and Northern Ireland is confirmed in correspondence to the victim from both the Office of the Australian Attorney-General,—— (21st October 1997)....

".. the Constitution remains part of an Act of the British Parliament. That Act has not been repealed."

and the Foreign and Commonwealth Office of the UK Government,— (11th December 1997)...

"The Commonwealth of Australia Constitution Act was enacted in the United Kingdom.. There are at present no plans to repeal the Constitution Act. The Government of the United Kingdom would, however, give consideration to the repeal of the Commonwealth Constitution Act if a request to that effect were made by the Government of Australia."

The Emeritus Professor I.M. Cumpston, Reader in Commonwealth History at the University of London and prolific writer on the history of the Commonwealth states in his book (History of Australian Foreign Policy 1901-1991 vol.1 P3, Uni. of London ISBN 0646245686)

"The legal and historical description of the Commonwealth of Australia Constitution Act 1900, is a statute of the British Parliament containing eight covering clauses with the ninth being the Constitution. The Commonwealth of Australia, as a colony of the UK had limited self-government in 1901"

The appellant holds correspondence (19th December 1997) from the Office of Legal Affairs within the Office of the Secretary-General of the UN which states,

"Australia's was an original Member of the United Nations having signed the Charter on 26 June 1945. Australia's status as of that date was obviously that of a sovereign State. The exact date that it assumed such status is not a matter on which this Office can pronounce." While in turn, the Office of the Secretary-General of the UN has offered, ***"Australia is a member State of the United Nations and as such is a sovereign nation under International Law. It became a sovereign nation under International Law as a foundation member of the League of Nations in 1919. The fact that sovereign nation status extinguishes colonial legislation is fundamental to the operation of the United Nations."***

The chief law officer of the United Kingdom, the Lord Chancellor has stated,

" In hindsight, there is no doubt that the International Court of Justice would declare The Commonwealth Constitution Act (UK) 1900 to be a colonial law of the UK and as such, usage of this law in Australia would be invalidated under both the League of Nations Covenant and the United Nations Charter. This International legal Position was recognised by the UK government when it presented the act to Australia as a piece of memorabilia in

1988 to celebrate the 200th anniversary of the landing of Captain Cook. This act always remains an act of the UK Parliament. The right of repeal is the sole prerogative of the UK Parliament. There is no means by which this act can be transferred from one country to another. The UK Parliament, International Law and the United Nations Charter precludes any such action."

On this quotation an interesting but pertinent response was offered in a letter to the appellant by the Foreign & Commonwealth office of the UK Government (11th Dec. 1997)

"We have been unable to locate the source of the quotation in your letter attributed to the Lord Chancellor. However, on a point of detail, the British gift of one of the original copies of the 1900 United Kingdom Act to Australia took place by special Act of Parliament in 1990 not in 1988, although the Act was on loan to Australia at this latter date..

The statement you mention in your letter is an accurate description of the power of the British Parliament in relation to its own legislation."

Further the appellant has been advised, the British Government states and has provided documentation with regard to the legislative powers of the Parliament of the United Kingdom.

"No act of parliament of the United Kingdom or Act that looks to the Parliament of the United Kingdom for its authority is valid in Australia or its territories in accordance with the laws of the United Kingdom and the Charter of the United Nations (Article 2 Paragraphs 1 and 4)."

When asked specifically about the validity of the following acts, the British Government referred to their previous reply as stated above.

- (1) The Commonwealth of Australia Constitution Act (UK) 1900.***
- (2) The Westminster Act of 1931 (UK).***
- (3) All Australian "State" constitutions.***
- (4) The Australia Bill 1986 (UK).***

Article 36, paragraphs (1) and (2) and Article 37 of the Statute of the International Court of Justice state the International Court of Justice has sole Jurisdiction in any legal matter concerning the United Nations Charter or the League of Nations Covenant.

Clearly no court(s) in Australia may hear a case which involves any legal argument with respect to the validity of the Commonwealth of Australia Constitution Act (UK) 1900, or the continuing application in Australia of other legislation that looks to the Parliament of the UK for its authority.

**The Appellant an AUSTRALIAN CITIZEN VICTIMISED AS THE RESULT OF
A BREACH OF THE COVENANT of the LEAGUE of NATIONS and the
CHARTER of the UNITED NATIONS**

IN GENERAL TERMS it is alleged by the appellant, the victim, that while serving as a magistrate, Mr Clynton A. Johansen, of the Magistrates Court of South Australia... 96 Dyson Road, Christies Beach, SOUTH AUSTRALIA, AUSTRALIA 5165 did, on the 15th day of January 1998, apply British colonial law to an Australian citizen in the sovereign independent and federal nation of Australia. A nation which is a member State of the United Nations.

The legal existence of the State of South Australia is dependent on conditional clause 6 of the Commonwealth of Australia Constitution Act (UK) 1900 and Chapter V sections 106 and 108 of clause 9 (the Constitution) of that Act.

At the time that the Australian Constitution became redundant so did those of the states.

Despite being presented with extensive argument together with substantial documentation and a formal objection to any action taken by his court (see documents 1- 43 pages and 2- 17 pages) Mr Johansen proceeded to hear, convict and subject the victim to penalty without even identifying the victim as being in control of the vehicle that was alleged to have been involved in the road traffic offence!.

Mr Johansen, without establishing that he possessed valid legal authority applied British colonial laws to victimise an Australian citizen.

It is interesting to note that amongst these was a law (EXPIATION OF OFFENCES ACT 1996) assented to as late as 2nd May 1996.

It was assented to ***"In the name of and on behalf of Her Majesty"*** by one Dame Roma Mitchell QC acting as Governor and holding a set of instructions, **Letters Patent, issued on the 14th February 1986 in the name of Queen Elizabeth the Second of the United Kingdom of Great Britain and Northern Ireland.** (document 1.28 to 1.32)

(It will be noted that here there was not even any pretence of the existence of a Queen of Australia 'a la' the Governor-General's 1984 Letters Patent!)

These instructions were signed ***"at Westminster" on 14th of February 1986
"By Warrant under The Queen's Sign Manual — OULTON".***

That is, they were signed by one Sir Anthony Derek Maxwell Oulton QC. MA. PhD. who, at the time was Permanent Secretary in the Lord Chancellor's Office of the Government of the United Kingdom of Great Britain and Northern Ireland.

In February 1986, at the time of signing these Letters Patent, Oulton was in the employ of the government of a power foreign to the sovereign independent nation of Australia.

Under both UK and International Law he, like the Queen, is a British citizen!

Clearly such Letters Patent had, and have, no validity in Australia, either to give, (in defiance of both British and International law), an Australian Citizen ("Governor" Dame Roma Mitchell, or any other Australian citizen) the authority to assent to legislation, or to appoint a magistrate (in particular Mr Clynton A. Johansen), or any Judge or any policeman to administer, or apply, any law dependent on any such legislation or for that matter any other legislation.

So it is maintained that all Domestic law in Australia, whether so pointedly colonial or not, is dependent on a current Act of the UK Parliament. That is the, British Colony of the Commonwealth of Australia Constitution Act 1900 (UK) and illegal Letters Patent. Considering these facts and the argument advanced, it is clear all domestic law currently applied in Australia is British colonial law which, under international law, cannot be valid in a sovereign, independent Australia.

SPECIFIC ALLEGATIONS RELATING TO BREACHES OF INTERNATIONAL LAW

It is alleged that Mr Johansen, did, on the 15th January 1998 illegally subject, convict and penalise an Australian citizen under laws which were properly British colonial laws and as such invalid in the independent sovereign nation of Australia. And that by so doing Mr Johansen offended;

Article X of the Covenant of the League of Nations ,
Article 2, Paragraphs 1 and 4 of the Charter of the United Nations and abused,
Article 14 of the International Covenant of Civil and Political Rights.

Additionally it is alleged that, while in possession of no other authority than that drawn, via the Governor of South Australia from the Queen of the United Kingdom of Great Britain and Northern Ireland, a power foreign to Australia, Mr Johansen did, on the 15th day of January 1998, preside over a court which tried, convicted and penalised an Australian citizen. And that, in so doing Mr Johansen, an Australian citizen, contravened both British and international law, namely, Article 2 paragraphs 1 and 4 of the United Nations.

It is also alleged that, Mr Johansen by refusing, when requested by the victim, both verbally and in writing, to provide documentation which defined the basis for his authority and thus establish that his was a "competent court" which was legally established (under both municipal and international law) did commit an offence under Article 14 of the International Covenant on Civil and Political Rights.

(Since the ICCPR was ratified by Australia in 1980 and Australia having deposited its instrument of accession to the Optional Protocol in 1991 then Australian citizens can rightfully expect protection under that Covenant.)

Finally, in the light of the argument and supporting documents presented to Mr Johansen, he, to reach his finding, necessarily had to either ignore or make conscious decisions on matters relating to the interpretation of the UN Charter and International Law and that in so doing he contravened Article 36 of the Statute of the International Court of Justice.

NOTE OF CAUTION TO THE COURT:

Since all of the facts presented to the South Australian Magistrates Court at Christies Beach, (and represented here via 'supporting and explanatory' documents) have equal application to this Court of Appeal, the Court is advised that, if it chooses not to adjourn 'sine die' and if it proceeds to reach a finding other than to refer the case to the International Court of Justice then, the General Assembly, the Security Council and the International Crimes Commission of the United Nations will be so advised.

At the same time a complaint will be advanced with a request that it become an adjunct to the complaint relating to Mr Johansen's Christies Beach Court which has already been submitted to the Human Rights Committee of the UN.

DOMESTIC LAW

If by some twist of the facts as presented, this Appeals Court chooses to ignore international law and its place in the Australian judicial system, (as did Mr Johansen) and does not adjourn 'sine die' or refer the case to the International Court of Justice then it is asked to examine allegations that the very same domestic law that the appellant maintains is invalid was breached by Presiding Magistrate Johansen.

FIRSTLY

Under the preamble to Schedule 2 of the Human Rights And Equal Opportunities Commission Act 1986 (Commonwealth), and specifically the paragraph "*Realising that the individual, having duties to other individuals and to the community to which he belongs, is under a responsibility to strive for the promotion and observance of the rights recognised in the present Covenant*" and Article 14 of that Covenant, the appellant rightfully asked the Presiding Magistrate to provide documentation which identified the basis for the power that he was exercising. (document 3- 3pages) Such documentation being necessary to verify that, in fact, the court possessed valid and legal authority (that is, in the terms of the Covenant 'possessed competence') to hold an Australian citizen to trial.

This requirement was called for because of the knowledge that persons presiding over courts draw their warrant, commission, charter, instruction, or Letters Patent -- their authority, directly from the Governor of South Australia or the Governor in Council, and that the Governor in turn relies on Letters Patent issued under the Monarchy of the United Kingdom of Great Britain and Northern Ireland. A power as legally foreign to Australia as is Cuba. Under both British and International Law such Letters Patent only have application in the UK and her sovereign dependencies, and even then, can only be issued to British subjects who, in turn can only apply such instructions to British citizens. Australia is specifically omitted from the Schedule of British Administrative Divisions and Dependencies. (document 4- 1 page)

Advance notification of intent was given. Formal verbal, as well as a written request was made at the time of the trial. Mr Johansen refused to provide the information sought.

SECONDLY

Intrinsic to the argument presented are questions pertaining to the interpretation and validity of the Australian Constitution. From an examination of the material presented it will be clear that matters "*arising under the Constitution (and) involving its interpretation*" have been advanced and that under **78B of the Judiciary Act 1903 (Commonwealth)** (see document 1.43) "*it is the duty of the court not to proceed in the cause unless and until the court is satisfied that notice of the cause has been given to the Attorney s- General of the Commonwealth and of the States,*" etc.etc... Mr Johansen proceeded without allowing such communication to occur.

Despite Mr Johansen's attention being drawn to the existence of this Act he proceeded in the Cause.

SPECIFIC ALLEGATIONS OF BREACHES OF DOMESTIC LAW

It is alleged that by refusing a lawful request to identify the source of the authority that he was exercising to preside over a court, Mr Johansen breached Schedule 2 (the International Covenant on Civil and Political Rights) of the Human Rights and Equal Opportunities Act 1986 (Commonwealth). And that he thereby infringed the right of the appellant to an assurance that he was to be tried by a competent court.

It is alleged that Mr Johansen, through the rejection of the appellant's argument and the subsequent failure to adjourn to permit notification to, and the extension of an invitation to all of the State and the Federal Attorneys-General to intervene in proceedings resulted in a breach of the Judiciary Act 1903 (Commonwealth). And that by so doing he infringed on the right of the appellant to a fair trial under the law.

I declare that this document was presented at an appeal hearing presided over by Honourable Justice David Bleby in the South Australian Supreme Court , No 1 Gouger Street ADELAIDE, South Australia AUSTRALIA.
Postal Address, GPO Box 1068, ADELAIDE, South Australia, AUSTRALIA 5001

Peter Batten

Date

Appellant

SUPREME COURT OF SOUTH AUSTRALIA
(Magistrates Appeals: Criminal)

BATTEN v POLICE

Judgment of the Honourable Justice Bleby (ex tempore)

11 March 1998

**CONSTITUTIONAL LAW — THE NON-JUDICIAL ORGANS OF GOVERNMENT
— THE LEGISLATURE — GENERALLY — EXAMINATION OF VALIDITY OF
LEGISLATION BY COURTS**

Appellant convicted of exceeding designated speed - Road Traffic Act ss49(1)(a) and 79B - appeal against conviction - challenge to constitutional validity of Road Traffic Act - international law - jurisdiction of magistrate to hear the charge - no serious question arising under Judiciary Act - nothing requiring proceedings to be transferred to High Court - appeal dismissed.

Road Traffic Act 1961 ss49(1)(a), 79B; Summary Procedure Act 1921 s62ba; Judiciary Act 1903 (Cth) ss38, 40; Human Rights and Equal Opportunity Commission Act 1986 (Cth), referred to.

On Appeal from MAGISTRATES COURT (MR C A JOHANSEN SM)

Appellant PETER BATTEN: In Person

Respondent POLICE: Counsel: MS G L MARTIN - Solicitors: CROWN SOLICITOR FOR SOUTH AUSTRALIA

Hearing Date/s: 11/03/98.

File No/s: SCGRG-98-183

A2

Judgment No. S6588

BATTEN v POLICE

Magistrates' Appeal

Bleby J

HIS HONOUR: The appellant was charged on complaint dated 23 September 1997 with driving a vehicle at a speed greater than 60 kilometres per hour in a municipality contrary to s49(1)(a) and 79B of the *Road Traffic Act* 1961. The speed at which the vehicle was recorded was a speed of 78 kilometres per hour. The offence was detected by photographic device, namely, a speed camera which is provided for in s79B of the Act. The offence occurred on 14 July 1997 on Kenihan Road at Happy Valley.

The complaint was listed for hearing in the Magistrates Court of South Australia at Christies Beach on 27 October 1997. The appellant had been given notice that if he intended to plead not guilty the matter would not be dealt with on that day, but that it would be adjourned to another date to be fixed on that day. The appellant did not appear in the Magistrates Court on that day but had sent a letter to the Court dated 10 October 1997 in which he challenged the validity of the law under which he was charged, and claimed that the court possessed no jurisdiction to hear the charge. The learned magistrate properly took that as notice of an intention to plead not guilty, and did not proceed to hear the complaint. He adjourned it for trial on 15 January 1998 at 10.00am. The appellant was advised that he would have to appear on that date and that he would have to bring his witnesses if he proposed to call any.

On 15 January 1998, the appellant was present when the matter was called on at 10.30am. The appellant asked the magistrate to identify the source of his authority to hear the matter and continued to allege the invalidity of the law under which he was charged. When asked by the magistrate whether he drove the car, as alleged in the complaint, the appellant apparently gave no answer. The matter was left in the list to be dealt with later in the day as a plea of not guilty.

The matter was called on again at 11.30 that morning. The appellant, at that time, did not appear. The matter proceeded ex parte in his absence. The magistrate recorded a conviction and imposed a fine of \$180 with court fees of \$73, criminal compensation levy of \$28, and prosecution costs of \$100, a total of \$381 which he directed was payable within 1 month of that date.

The grounds of appeal alleged in the appellant's notice of appeal against both his conviction and sentence are:

"The Presiding Magistrate erred in law. In ignoring legal argument and proceeding to reach his finding he:

- (1) breached *The Human Rights & Equal Opportunities Act* (sic) (Commonwealth)
- (2) breached the *Judiciary Act* 1903 (Commonwealth)

- (3) ignored High Court rulings
- (4) breached Article 36 of the Statute of the International Court of Justice
- (5) breached Article 2 of the United Nations Charter (a legal treaty binding Australia."

The appellant conducted his own appeal before me and submitted a voluminous written submission which I read before the hearing commenced. He elaborated on that briefly with some oral submissions.

As I understand his argument, he suggests first that the Commonwealth and State Constitutions rely on United Kingdom law for their efficacy and validity. Secondly, that that law, for some reason, ceased to have effect when Australia signed the Treaty of Versailles on 26 June 1919, and that the charter of the United Nations, to which Australia is a signatory, also prevents the application of colonial law to member States of the United Nations.

His submission is that somehow that renders invalid the domestic law under which he was charged, as well as the Acts constituting the Magistrates Court and this Court, either because the State and Federal constitutions are invalid or because they are Acts of the United Kingdom Government. Any domestic law must also be so characterised and must be unable to be given effect to because of the effect to the treaties to which I have referred.

He further submits that the current Letters Patent to the Governor of South Australia, dated 14 February 1986, being exercised by the Queen of the United Kingdom are also invalid, and so therefore are the purported Acts of the Governor performed in that capacity.

He further suggests that the whole argument raises a question in which the learned magistrate was obliged to refer forthwith for hearing to the High Court under the provisions of the *Judiciary Act* 1903 (Cth), or that the matter should have been adjourned pending such removal. I presume that he relies on s38(a) of the *Judiciary Act* which confers exclusive jurisdiction on the High Court in matters arising directly under any treaty.

I do not believe that any serious question arises which under the *Judiciary Act* 1903 or the constitution requires removal of these proceedings, or which required removal of the Magistrates Court proceedings, to the High Court. In any event, any such application would have to be made to the High Court: s40 *Judiciary Act* (1903) (Cth).

Notwithstanding the written grounds of appeal, the written argument also suggested that the learned magistrate was obliged to refer the matter to the International Court of Justice. He suggested that I, of course, was required to do likewise in respect of this appeal.

I am not prepared to accede to any of Mr Batten's arguments. In my opinion they display a fundamental misunderstanding of Australian constitutional law and history, of the Constitution and the constitutional history of this State, and of the effect of laws validly passed both by the Commonwealth and State Parliaments which have effect in this State.

The argument also displays a lack of understanding of the nature and effect of international laws and treaties and their effect in this country.

There is no doubt in my mind of the validity of the law which Mr Batten broke or of the laws constituting the Magistrates Court of South Australia and this court. Nor is there any doubt in the appointment of Mr Johansen as a magistrate of the Magistrates Court, or of any appointment to this court.

I invited Mr Batten to make any further submissions he might wish to in relation to the learned magistrate's finding that the charge was proved and in his recording of a conviction. Apart from addressing some procedural matters to which I have referred, in respect to which I again consider there is no substance, he did not wish to elaborate further on the findings of the magistrate.

I also invited him to make any submissions he might wish to make on the question of the penalty imposed by the learned magistrate, but he chose to make no further submissions.

The appellant did not raise, either at the hearing or before me on this appeal, any of the possible statutory defences to the offence with which he was charged and which might have been available under s79B(2) of the *Road Traffic Act*.

The matter, as I indicated, was heard ex parte by the magistrate pursuant to s.62ba of the *Summary Procedure Act* 1921. In those circumstances, the allegations contained in the complaint and summons were sufficient evidence of the matters alleged: s62ba(1), *Summary Procedure Act* 1921.

It follows, in my opinion, there was no error on the part of the learned magistrate and the appeal will have to be dismissed.

Ms Martin, do you make any application?

MS MARTIN: I am instructed to seek costs.

HIS HONOUR: Mr Batten, Ms Martin has sought an order that you pay the costs of this appeal, normally those are fixed at \$150. Is there anything you wish to say about whether or not an order in those terms should be made?

MR BATTEN: Sir, you have ruled that your court is a valid forum, and because you have ruled so there is little point in me saying that I believe that under the material that I presented to you, and from the material I have presented to you, there is sufficient substantial evidence to raise a serious question over your ruling.

However, because anything that I may say in relation to the costs that have come from the Crown counsel, questions from the Crown counsel will obviously have no effect.

I repeat sir -

HIS HONOUR: They would not have no effect. Normally in this court costs of the proceedings follow the event. That is not an absolute rule. If there is some matter, some extraordinary matter you wish to put to me which might suggest that there needs to be some variation of that in these circumstances I will listen to you.

MR BATTEN: Yes, sir, there is an extraordinary matter, I am a poor man - no, not at all. I do not believe that I have sufficient knowledge of the fine detail of the domestic law to be dealing with it here sir, therefore there is not anything that I could say that would be of any advantage I think to my own position.

I would, seeing that you are allowing me to speak with you, indicate that it will be necessary for me to proceed on the matter that has occurred in the court here. Even if it is only under s75 of our Constitution, which is the fundamental law of the land which says that "In all matters arising under any treaty the High Court shall have original jurisdiction". Thank you very much for being tolerant and listening to me.

HIS HONOUR: The formal order of the court will be:

1. Appeal dismissed.
2. The appellant is to pay to the respondent the costs of the appeal fixed at \$150. I direct payment of that to be made to the Crown Solicitor within one month of today.

SOUTH AUSTRALIA

**IN THE MAGISTRATES COURT
MURRAY BRIDGE**

REF: MCMUB-97-1666

ON SUMMONS to appear before a
Magistrates Court at Murray Bridge
in the State of South Australia.

IN THE MATTER of a complaint
made on 19th day of June 1997
wherein **DARRYL KEITH
CROSSMAN** a member of the
Police Force of Adelaide is the
complainant and **PETER BATTEN**
of 31 George Main Road Victor
Harbor in the said State is the
defendant. Address for serving
notices P.O. Box 1333
RENMARK
South Australia 5341

BETWEEN :

DARRYL KEITH CROSSMAN
Complainant
and

PETER BATTEN
Defendant

I, **PETER BATTEN** of Victor Harbor in the said State of South Australia,
Citizen of the sovereign independent and federated nation of Australia, a
Member State of the **UNITED NATIONS**, do hereby under
INTERNATIONAL LAW solemnly declare and affirm as follows:

The open signalling of my defence, well in advance of the hearing, through
this declaration and presentation of wholly verifiable facts which together
result in an indisputable argument is made in the hope that involved
individuals will take heed of its content and act in a manner which will not

cause them to become the subject of complaint under any aspect of International law which Australia has made its law.

In offering this statement no overt threat or intimidation is intended. In fact this cannot be so because, when all is said and done, the presentation of truth cannot possibly be a threat to any court established to dispense justice.

The presentation of this defence is not primarily designed to avoid the payment of a nominal fine. Rather it is intended to establish that laws being applied in Australia are, under International law, (which is Australian law), invalid.

The Document 'An Explanatory Statement' (see annexure 1) is not offered as evidence in defence. It was prepared by an retired member of the High Court who desires to remain unidentified. It is offered by him as his attempt to provide protection to those of his colleagues who choose, as he has done, to test the substance, (rather than rely on the opinion of another) of the contention that *"the current legal and political system in use in Australia and its States and Territories has no basis in law."*

In relation to this statement it needs be noted that the existence of Letters Patent issued to the State Governors after 1900 was concealed from the learned Judge at the time that he conducted his research. Their existence came to light after he had completed his investigations and prepared the document.

HISTORY OF MATTER MCMUB-97-1666

1. On receipt of Expiation Notice C 1029851 served by Police Sergeant ID No. 031024 of Police Station Mannum in the State of South Australia on 30th April 1997, the Sergeant was informed that the matter would be contested and the grounds for doing so outlined. A letter dated 30th April 1997 was sent to 'The senior Officer in Charge, Expiation Notice Branch, GPO Box 2029, Adelaide 5001'.

This letter made a clear statement that if a summons was issued it would be argued that the law under which it was purported the offence occurred has no validity. This was accompanied by a brief outline of the grounds supporting this claim.

2. A summons was duly issued by Darryl Keith CROSSMAN. The conviction and penalty that eventuated were duly struck out by Presiding Magistrate Patrick who heard the appeal for a re-hearing.

Magistrate Patrick was clearly learned in the argument.

In referring to the 12 page submission which accompanied the written plea of, 'Not Guilty to Any Offence', he recognised and stated the argument it

contained meant that under section 78 B of the Judiciary Act 1903 he may not consider, or make judgement or even comment on the matter since his was not an appropriate court to hear the issues that would be raised in defence. And that to do so would result in him “over stepping my (his) jurisdiction.”

Without the defendant making any statement at all he duly adjourned the hearing recommending that “further negotiations” take place between the Prosecutor and the defendant. Magistrate Patrick then passed the complete court file to Assistant Police Prosecutor Peter Capper while at the same time seeking the defendant’s approval to do so.

3. The matter was adjourned till 10 am on the 15th December 1997.
4. On the 15th December the matter was again adjourned to the new date of 17th April 1998.

THE ARGUMENT

Through the presentation of a series of historical facts and/or legal opinion based on historical fact it will be established that the Australian Constitution was, under International law, extinguished as Australia’s fundamental law at the time Australia assumed independence. And as a consequence the political and legal system in current usage in Australia (and South Australia) does not possess validity. And that therefore law established through such a system is necessarily invalid. As is the authority assumed by individuals who are appointed to administer it.

1. THE STATUS OF THE COMMONWEALTH CONSTITUTION

The Australian Constitution is the 9th clause of the nine clause **British Colony of the Commonwealth of Australia Constitution Act UK 1900** (full title) the preceding 8 clauses are conditional to the 9th.

The Constitution is legally British law

- 1) On 21st October 1997 the defendant received a letter from the Office of the Attorney-General responding, at the request of the Governor-General who, in turn, had been requested by the Private Secretary to the Queen - Sir Robert Fellows, and the British High Commissioner to Australia - Sir Roger Carrick, to answer correspondence advanced by the defendant. This correspondence contained a series of questions pertinent to Britain’s relationship to Australia. A relationship which needed to be interpreted in the light of international law.

The following quote is from that letter, (Annexure 2. 1)

"You would be aware that the Commonwealth Constitution Act was passed as part of a British Act of Parliament in 1900. A British Act was necessary because before 1900 Australia was merely a collection of self-governing British colonies and ultimate power over these colonies rested with the British Parliament.

However, during the course of this century Australia has become an independent nation and the character of the Constitution as the fundamental law of Australia is now seen as deriving not from its status as an Act of (the) British Parliament, which no longer has any power over Australia, but from its acceptance by the Australia(n) people."

Nevertheless, the Constitution remains part of an Act of the British Parliament. That Act has not been repealed." (emphasis by affidavit author)

This has been mirrored by eminent constitutional authorities, Professor Cheryl Saunders and Sir Ninian Stevens in 'Fact Sheet 1.5' prepared by them for distribution by the Constitution Centenary Foundation, 155 Barry Street, Carlton, 5053. Tel: (03) 9349 1846 Fax (03) 9349 1779. Internet address <http://www.centenary.org.au> Email address cc2001@ibm.net

"In strictly legal term, the Australian Constitution gets its authority from the British Parliament, because the Constitution is part of the Commonwealth of Australia Constitution Act, a British Act. (emphasis by author of Affidavit)

There is also an argument which says that the power of the Constitution comes from the original and continuing agreement of the Australian people to be bound by it."

The claim that the Constitution has been accepted by the people is false.

2. Before proceeding, the claim by politicians, academics and judges that somehow the Australian people have, in some extra-parliamentary way, adopted the Constitution thereby making it a legal constitution, needs to be examined.

Clearly this interpretation represents nothing more than a politically convenient argument.

It is not legally sound because:-

The 1898 referendum was a referendum on federation not sovereignty.

The referendum vote out of a population of 3,773,801 (census figures) was 328,000 (split 2:1 in favour of federation. But Note: the number of votes does

not reflect the number of people involved since the franchise system used permitted individuals to cast multiple votes, some as many as six.)

By whatever system of analysis one might choose to adopt, how, with less than 8.69% of the population being involved in voting for something which the colonial office then modified and drafted into a piece of British legislation, can the resultant Constitution and its 8 conditional clauses possibly be transformed into something other than UK legislation.?

International law and the doctrine of informed consent cannot be ignored.

3. Claims that they can, ignore the reality of international law and also the fact that before valid assessment by the Australian people can be claimed the basic principle of informed consent must apply. The Australian people had to be informed of the legal truth of the Constitution and the illegality under international law of the imposition of imperial law in an ex-colony before informed consent could be made.

No such information has ever been made available to the Australian people and no such acceptance of the Constitution Act was ever given by the Australian people before, let alone since, Australia became an independent sovereign nation.

The 1898 referendum was a referendum on federation and not sovereignty and it is also patently ludicrous to claim that the people accepted the Constitution when well over 90% of Australians did not vote. In fact the franchise system used meant that by far the majority of Australians had no right to vote.

No proof exists of how, when and where the Australian people were informed of the legal truth of the Constitution Act, and of International law, and further, no proof exists that the Australian people have accepted such.

Mere assertion is insufficient to overturn international law.

Further confirmation that the Constitution remains British law

4. That the **British colony of the Commonwealth of Australia Constitution Act UK 1900** is current legislation of the Parliament of the United Kingdom of Great Britain and Northern Ireland is further confirmed by the chief law officer of the United Kingdom, the Lord Chancellor who has stated,

“ In hindsight, there is no doubt that the International Court of Justice would declare the Commonwealth Constitution Act (UK) 1900 to be a colonial law of the UK and as such, usage of this law in Australia would be invalidated under both the League of Nations Covenant and the United Nations Charter. This

international legal position was recognised by the UK Government when it presented the Act to Australia as a piece of memorabilia in 1988 to celebrate the 200th anniversary of the landing of Captain Cook. This Act always remains an Act of the UK Parliament. The right of repeal is the sole prerogative of the UK Parliament. There is no means by which this Act can be transferred from one country to another. The UK Parliament, International Law and the United Nations Charter precludes any such action."

On this quotation an interesting but pertinent response was offered on behalf of the Lord Chancellor in a letter to the defendant from the Foreign and Commonwealth Office of the UK Government (11th Dec. 1997-Annexure 2.2)

"We have been unable to locate the source of the Quotation in your letter attributed to the Lord Chancellor. However, on a point of detail, the British gift of one of the original copies of the 1900 United Kingdom Act to Australia took place by special Act of Parliament in 1900 not in 1988, although the Act was on loan to Australia at this latter date.

The statement you mention in your letter is an accurate description of the power of the British Parliament in relation to its own legislation.

....The statement does not, however, address the special status of the Constitution of the Commonwealth of Australia.

The Commonwealth of Australia Constitution Act was enacted in the United Kingdom at a time when Westminster was required to legislate on Australian issues; the measure was based on Australian Drafts and was endorsed at the time by a majority of Australians. The continuing role of the Australia (n) Constitution Act as Australia's fundamental law is, of course, entirely a matter for Australia. There are at present no plans to repeal the Constitution Act.

The Government of the United Kingdom would, however, give consideration to the repeal of the Commonwealth Constitution Act if a request to that effect were made by the Government of Australia. To date no such request has been made."

This statement presents, through its implications, many concerns.

However from the aspect of this presentation, it simply makes it absolutely clear that the Constitution is and remains the property of the UK.. And that the Australian people do not have superior control over the Constitution because they cannot alter or repeal the Act in which it is contained.

The Constitution and International law.

5. Article 2 paragraph 1 of the United Nations Charter states, (Annexure 2.3)

"The Organisation is based on the principle of the sovereign equality of all its Members."

and paragraph 4 states,

"All Members shall refrain in their international relations from the threat of use of force against the territorial integrity or political independence of any state, or in any manner inconsistent with the Purposes of the United Nations."

Clearly the present situation cannot exist if Australia is an independent sovereign nation and the UK is not its colonial master. The Schedule of British Sovereignty does not include Australia. (Annexure 2.4) Australia is clearly a sovereign nation. Therefore it must be concluded that the Australian Government is claiming power under a document which, under International law, is an invalid, illegal, source of authority. The result of this has to be the conclusion that under International law the Government of Australia is not a legal government.

The implications associated with this are profound.

For under such circumstances International law rules that the sovereignty of the State reverts to the People who then under Article 51 of the United Nations Charter have the right to defend themselves against such an illegal government and in doing so can expect support from the UN Security Council.

The illegal use of British law by an Australian Government to claim and retain power over the People is strengthened further when it is recognised that the British Government states and has provided documentation with regard to the legislative powers of the Parliament of the United Kingdom.

"No act of Parliament of the United Kingdom or Act that looks to the Parliament of the United Kingdom for its authority is valid in Australia or its territories in accordance with the laws of the United Kingdom and the Charter of the United Nations (Article 2 Paragraphs 1 and 4)"

When asked specifically about the validity of the following acts, the British Government referred to their previous reply as stated above,

"(1) The Commonwealth of Australia Constitution Act (UK) 1900

(2) The Westminster Act of 1931 (UK)

(3) All Australian "State" Constitutions

(4) The Australia Bill 1986 (UK)."

There can be no doubt that the British Colony of the Commonwealth of Australia Constitution Act UK 1900 is a current act of the UK Parliament. The UK Government has emphasised that it remains a current act of the UK Parliament and has confirmed that its usage is invalid under both British and International law.

Australia does not have superior control over the Constitution.

The people of Australia have never been given the opportunity to adopt it. And even if they had been, UK and International law would not permit its transfer. The continued use of a Constitution which was extinguished by independence, means that under International law Australia does not have legal government.

2. AUSTRALIA'S DECLARATION OF INDEPENDENCE

A politically convenient way of expressing the fact of Australia's independence is, *"during the course of this century Australia has become an independent nation"* --- Office of Attorney-General

or,

"Australia has long since achieved full independence, including international legal status. The process has been gradual. There is no single moment when it can be said that Australia became independent." --- the Constitutional Centenary Foundation.

Federation had nothing to do with independence.

1) Australia certainly did not become an independent sovereign nation in 1901.

No one knew more about the British Colony of the Commonwealth of Australia Constitution Act UK 1900 than those British citizens who happened to be living in Australia and prepared the draft,

Alfred Deakin: *"There is no pretence claiming the power of peace or war, or exercising power outside our territories."*

Samuel Griffith: *"We do not take anything away from the Parliament of Great Britain."*

John Forrest: *"If we were founding an independent nation it might be a very appropriate term. That, however, is not the case."* Forrest was objecting to using the name 'The Commonwealth of Australia'.

Henry Parks: *"Federation is not independence. It is a chance for the colonies more effectively to unite with the Mother-country in forming an Empire such as has never yet been formed."*

Charles Kingston: *"Federation must be consistent with allegiance to the Crown and the power of the Imperial Parliament to legislate for the whole Empire if it choose."*

J. Quick and R. Garren: Authors of: 'The Annotated Constitution of Australian Commonwealth' written in 1901. Both men played major roles in the actual drafting of the Commonwealth of Australia Constitution Act. The

work was reprinted by Legal Books in 1995. This Quote is taken from page 367.

“Imperial Relationship:- By the preamble the Government is declared to be “Under the Crown;” it is constitutionally a subordinate, and not an independent Sovereign community, or state. But its population is so great, its territory so vast, the obvious scope and intention of the scheme of union are so comprehensive, whilst its political organization is such a superior type, that it is entitled to a designation which, whilst not conveying the idea of complete sovereignty and independence, will serve to distinguish it from an ordinary provincial society.”

The source of these Quotations is a series of documents recording proceedings of committees in 1900 prior to dispatch of the draft constitution to the United Kingdom plus ‘The annotated Constitution of the Commonwealth of Australia’ written immediately following the passing of the Act by the Westminster Parliament and was published in 1901. This volume also contains a number of comments about the changes made during the passage of the bill through parliament. The documents are held by the Archives Section of the Department of Foreign Affairs and Trade.

When DID Australia attain independence?

2) The International Law Commission of the UN General Assembly has informed researchers that under International law any country signing a treaty is internationally recognised as independent from at least the date of signature onwards.

Hence Australia is regarded as having been recognised as an independent power from the 18th June 1919 when it signed the Treaty of Versailles. The Articles of the League of Nations are contained in this treaty. The Covenant of the League of Nations became International law on 10th January 1920. Only sovereign independent nations could be entered into membership.

The signing of the Washington Naval Treaty on 6th February 1922 provided additional confirmation of independent status. While the Office of Legal Affairs of the Secretary General of the UN documents the time as at the establishment of the League of Nations -- 10th January 1920, in a letter to the defendant that same office stated;

“In relation to your question we note that the Charter of the United Nations entered into force on 24 October 1945 and that Australia was an original Member of the United Nations, having signed the Charter on the 26th June 1945. Australia’s status as of that date was obviously that of a sovereign State. The exact date that it assumed such status is not a matter on which this Office can pronounce. (Annexure 2.5)

On making enquires relating to this last statement it was revealed that because the League of Nations is now a redundant organisation matters of law and definition relating to it can only be ruled on by the International Court of Justice and that, in fact, on this very issue the General Assembly is currently awaiting a definitive statement from that Court.

The 1929 report of the Royal Commission on the Constitution examined the Commonwealth of Australia Constitution Act and included at appendix C from 'The Report of the International Relations Committee, 1926' :-(Annexure 2.6)

"II Status of Great Britain and the Dominions

.....There is, however, one important element in which from a strictly constitutional point of view, has now, as regards all vital matters, reached its full development - we refer to the group of self-governing communities composed of Great Britain and the Dominions. Their position and mutual relation may be readily defined. They are autonomous communities within the British Empire, equal in status, in no way subordinate to one another in any aspect of their domestic or external affairs, though united by a common allegiance to the Crown, and freely associated as members of the British Commonwealth of Nations." (emphasis by author of affidavit)

Thus at least by 1926 it was fully recognised that Australia had become an independent sovereign nation. So from at least that date the Constitution, being the law of a foreign sovereignty, had been extinguished as a legal entity.

There is no question that Australia was independent in June 1945

3) In any case it has been formally confirmed that the signing of the UN Charter in June 1945 could only have occurred if Australia was an independent sovereign nation.

Even if independence didn't occur before, the signing of this charter unquestionably extinguished the British Colony of the Commonwealth of Australia Constitution Act the Statute of Westminster and any other law dependent on any act of the United Kingdom Parliament. It also extinguished any residual power which may have been claimed by or looked to by Australia for Westminster to legislate for Australia. Or Australia for The United Kingdom. The Australia Bill and the Australia Act of 1986 are, under International law, meaningless.

Independence extinguishes all colonial law.
The superiority of International law.

4) The International Law Commission of the UN General Assembly has stated;

"No laws of a Member State of the United Nations are valid within the sovereign territory of another Member State unless via a reciprocal treaty agreed between the two Member States. The Treaty may not infringe the sovereignty of either Member State."

No such reciprocal treaty between Australia and the United Kingdom exists.

Britain has protected herself.

The United Kingdom has adopted a Policy called 'The Doctrine of Transformation' which since 1991 has seen International law automatically accepted as a superior law to domestic British law in the event of conflict between the two.

Therefore when domestic UK Acts, are in conflict with International law, the domestic laws are rendered null and void in so far as they conflict with the International law.

Under this doctrine the **Statute of Westminster** no longer has any legitimacy in British law since it conflicts with Article 2 of the United Nations Charter. Since it is legislation for another Member State of the United Nations it may not legally be used by Australia unless a reciprocal treaty exists between Australia and the UK. Again no such treaty exists. The same argument can be applied to the **British Colony of the Commonwealth of Australia Constitution Act UK 1900**. It will be noted that the British Government have confirmed there is no conflict between British Law and International law. (Annexure 2.7)

3. LEGAL AUTHORITY OF THE SOUTH AUSTRALIAN MAGISTRATES COURT TO HEAR THIS CASE

South Australia remains a British colony!

Letters Patent to the Governor of South Australia remain colonial

1) The authority and independence of the court is ultimately dependent on the Letters Patent held by the Governor of South Australia.

These instructions remain entirely colonial.

They were issued by the Monarchy of the United Kingdom of Great Britain and Northern Ireland (a power foreign to Australia).

They are dependent on legislation that was before the Parliament of the United Kingdom at the time of signing. This action by the UK Parliament was clearly in contravention of Article 2 paras 1 & 4 of the UN Charter. (If that legislation was not illegal and/or meaningless in 1986, Britain's action in 1991 certainly has now rendered it null and void.

And on that count alone the Letters Patent are now null and void.

They repeal a part section of the S.A. Constitution Act 1934, which has not been effected so that Act still only recognises Queen Victoria's Letters Patent of 1900 which under British law were interred with her in 1901!. So there exists an argument that no legislation since the death of Queen Victoria is valid !.

If all of this can be overcome and if it can be argued that the 1986 Australia Act means anything, the 14th February 1986 instructions are still invalid because they clearly contravene clause 10 of that Act----. *"After the commencement of this Act Her Majesty's Government in the United Kingdom shall have no responsibility for Government of any State."*

The current letters Patent were signed in contravention of International law (UN Charter Article 2 Paragraphs 1 and 4 which were reinforced by Resolutions 2131 of 1965 and 2625 of 1970) by a British Citizen in the employ of the Government of the United Kingdom, viz. one Sir Anthony Derek Maxwell Oulton, Permanent Secretary Lord Chancellors Office 1982 - 89.

But there is more, under British and International law, authority via such Letters Patent can only be issued to a British Subject for applications in relation to matters involving British Subjects and then only in the United Kingdom and/or her dependencies. Its a long time since South Australian Governors have been British Subjects. Australia is not a British dependency and most of us are not British Subjects. The letters Patent 14th February 1986 are being used against both UK and International law, by non British subjects to exert power over Australian citizens within the territory of the sovereign independent nation of Australia. A Member State of the United Nations.

Clearly they are not valid.

COMMENT ON LETTERS PATENT SITUATION

Is it any wonder that their existence was concealed from the learned Judge and other researchers seeking the true nature and basis of Australia's Political and Judicial systems?

Clearly the answer is, no it is not, for, both political and judicial power is dependent on the authority of the State Governor. In 1973 an attempt was made to create a 'Queen of Australia'. In 1984 the 'Queen of Australia' issued Letters Patent to the Governor-General. These were signed by the Australian Prime Minister. A least he was an Australian.! Yet here two years later, State

Governors' Letters Patent are issued by the Queen of the UK and signed by a British Civil servant. One may very well ask, "What goes on, how come?"

However, despite Bob Hawke's valiant attempt, the 1984 Governor-General's Letters Patent have proven to be equally false. They were issued under the meaningless (in terms of the Australian Constitution) Great Seal of Australia on the authority of the purely titular 'Queen of Australia'. Unless the court so requests, matters relating to these instruction will not be enlarged on.

The debarcle in relation to the Letters Patent is so totally unbelievable that no summation could do justice to the situation. It is known that Queen Elizabeth II has been prevailed on to withdraw them.

The individual's right to trial by a competent court established by law.

2) A judgement of the International Court of Justice in the Namibia case of 1971 (legal reference ICJ 1971. 16) found that Sections 55 and 56 of the United Nations Charter impose a legal obligation on signatory Member States to implement civil and political rights contained in the UN Charter, the International Declaration of Human Rights and other UN documents.

3). Section 14 of the 1966 International Covenant on Civil and Political Rights gives individuals the right to be tried before a competent Court established under law. Under Section 47 of the Commonwealth Human rights and Equal Opportunities Act 1986 the 1966 Covenant is recognised as an international instrument adopted by Australia. It became Schedule 2 of the Act and as such has force of law in Australia.

4) The High Court of Australia has ruled in the Robert Woods Case (1988) that the United Kingdom is a foreign power, ***"Despite the historic link with the British Crown, the United Kingdom is still a foreign power."*** and in the Teoh case 1994 that government and courts must observe any restrictions on their actions created by treaties to which Australia is a signatory.

"Ordinary people have the right to expect government officials to consider Australia's international obligations even if those obligations are not reflected in specific Acts of Parliament: the rights recognised in international treaties are an implied limit on executive processes"

The matters raised in defence are beyond the jurisdiction of the court

5) Because of these superior court cases the South Australian Magistrates Court has no right to decide that the United Kingdom is not a foreign power and that any of its laws - and specifically the **British Colony of the Commonwealth of Australia Constitution Act and the Statute of Westminster** -- are null and void and that under International law they can not be legally applied in Australia.

6) The court also has no right to decide that treaties are not binding on the Australian Government. Further, section 75 of the Constitution reserves jurisdiction of matters concerning treaties to the High Court of Australia. As a matter of constitutional law no other court can proceed. This is confirmed and reinforced under 78B of the Judiciary Act 1903 (Federal).

7) It is clear that matters relating to the interpretation and application of the Covenant of the League of Nations and the Charter of the United Nations. Article 36 and 37 of the Statute of the International Court of Justice provide the means whereby such matters are to be decided by it.

STATEMENT IN CONCLUSION

Under International law, the invalidity of the Letters Patent renders the court incompetent and the extinguishment of the Constitution, renders all law invalid. Therefore if the court proceeds under challenge it will do so in breach of Article 2 paragraphs 1 and 4 and Articles 55 and 56 of the United Nations Charter. This will necessitate the advancement of a complaint to the Human Rights Committee of the United Nations: While The General Assembly, The Security Council and the International Crimes Commission, all of the UN, will each and separately be advised that the Breach has occurred.

Should the court decide that all is in order and proceed, it is maintained that- **Under section 75 of the Constitution and section 78 B of the Judiciary Act 1903 (Federal) the South Australian Magistrates Court does not possess the jurisdiction to hear and decide on matters raised by the defence.**

The court has no right to proceed in this case.

DECLARED AT this.....day of 19.....

BEFORE ME.....

EXPLANATORY STATEMENT.

I am a former member of the High Court and I wish to take this unusual method of informing you about a matter that is going to deeply affect us all. Unfortunately, a document such as this is too easily "lost" in the bureaucratic jungle in which we operate.

A group of Australian Citizens have taken it upon themselves to test the validity of our current political and judicial system. Like you, I have lived my entire legal career with the assumption that the basis for our legal and political system, state and federal, was written in stone. This group has undertaken to present this paper when they test the legal system.

The group is articulate, well educated and counts some of our best legal minds amongst its members. One of Australia's best known barristers is one of the group's leading lights. It is far better informed with regard to international law than most members of the judiciary or for that matter, the legal academe. It has better international contacts than I would have thought possible.

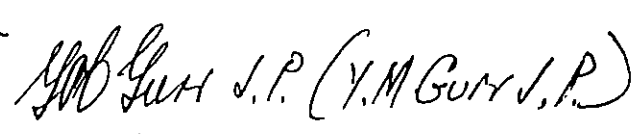
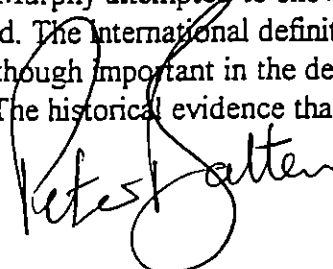
After spending some time with the group leader, I was able to elicit its primary intentions. It is the introduction of a totally democratic system of government devoid of party politics operated by the will of the people incorporating a system of debit taxation which should go a long way to eliminating the current unemployment problem and also addressing other pressing social issues. An A.B.S. financial model supports the proposal.

The group has so far concentrated on matters relating to taxation, state and federal, minor industrial and motor traffic while undertaking not to present a criminal defence using their current presentation. I challenged the leader of this group to present any evidence he had with regard to the above defence so I could use my legal expertise to play the part of the devil's advocate. It should be brought to your attention that the group has access to documentation that we members of the judiciary have little knowledge. I refer to the British Parliamentary Papers for the Colony of Australia for the years 1860 through to 1922.

These are photocopies of all documents, correspondence etc., between the states and later the Commonwealth of Australia, the British Crown and the British Government. They are very revealing documents and indicate the degree of chicanery in which the politicians of all shades were involved and as I can now see, at the expense of the legal academe and the judiciary. I present for your perusal the details of the group's presentation along with my comment on each major item. The group relies solely upon historical fact and rejects political rhetoric and legal opinion unless based upon historical fact.

1. "The Commonwealth of Australia Constitution Act 1900 (UK) is an act of the parliament of the United Kingdom. It did not contain any substance of sovereignty and was a colonial act centralising self-government of the six Australian Colonies. Australia remained a colony of the United Kingdom."

1A. Although the late Lionel Murphy attempted to show that there was an element of sovereignty in this act he failed. The international definition of sovereignty has been espoused at length and the above act although important in the development of Australia, did not have the authority of sovereignty. The historical evidence that Australia remained a British Colony post 1901 is overwhelming.



*A Justice of the Peace in and for
the State of South Australia.*

2. "Australia made an international declaration of its intention to become a sovereign nation when Prime Minister Hughes and his deputy Sir Joseph Cook signed the Treaty of Versailles on June 28, 1919. On its cognisance of signing this treaty, Australia was granted a "C" class League of Nations mandate over former German territories in the Pacific. In effect, Papua New Guinea became a colony of Australia achieving its own independence on 16 September 1975. The League of Nations became part of International Law on 10 January 1920 with Article X of the Covenant of League of Nations guaranteeing the sovereignty of each member."

2A. The significance of Australia joining the League of Nations as a foundation member has never been addressed in Australia before. Strangely, only one book has ever examined the question of Australian independence. Written by W.J.Hudson and M.P.Sharp in 1988 "Australian Independence" printed by Melbourne University Press. As both were members of the Department of Foreign Affairs and Trade at the time of authorship and had access to the British Parliamentary Papers, I find it most interesting they have avoided any mention of these papers in their book. Their conclusion that Australia became an independent nation via the Statute of Westminster in 1931 flies in the face of contradictory evidence within the above mentioned papers and readily available historical fact.

Prime Minister Hughes' address to the Commonwealth Parliament on 10 September 1919, "Australia has now entered into a family of nations on a footing of equality. Australia has been born in a blood sacrifice." demonstrates the politicians of the day were only too well aware of the change of status from a colony to that of a sovereign nation while attempting to remain within the Empire.

Prime Minister Bruce made this reply to the British Government in 1922 after a request for troops against Kemal Ataturk in the Chanak crisis.

Bruce's reply is contained in the British Parliamentary Papers: "We have to try to ensure there shall be an Empire foreign policy which, if we are to be in any way responsible for it, must be one to which we agree and have assented. If we are to take any responsibility for the Empire's foreign policy, there must be a better system, so that we may be consulted and have a better opportunity to express the views of the people of this country. We cannot blindly submit to any policy which may involve us in war." This is a far cry from the declaration of war against Germany made on behalf of the British Colony of Australia by George V of the United Kingdom in 1914.

I have re-produced Bruce's reply in full as I believe this reply contains clear historical evidence of a Prime Minister who was well aware of the change of status from a colony to a sovereign nation. The later Statute of Westminster 1931 was an acknowledgment of that status.

3. "Paragraph 4 of the Statute of Westminster Act 1931 contravenes Article X of the Covenant of the League of Nations. Paragraph 1 of the Australia Act 1986 contravenes Article 2 paragraphs 1 and 4 of the Charter of the United Nations."

3A. Paragraph 4 of the Statute of Westminster reads. "No act of Parliament of the United Kingdom passed after the commencement of this Act shall extend, or be deemed to extend, to a Dominion as part of the law of that Dominion, unless it is expressly declared in that Act that that Dominion has requested, and consented to the enactment thereof." Paragraph 1 of the Australia Act is very similar: "No Act of the Parliament of the United Kingdom passed after the commencement of this Act shall extend, or be deemed to extend, to the Commonwealth, to a State or Territory as part of the law of the Commonwealth, of the State or of the Territory."

I passed this one to the Federal Attorney General and asked him what was the source of this quite incredible authority that sought to overturn the authority legislated within the Covenant of the League of Nations in Article X and the Charter of the United Nations in Article 2 paragraphs 1 and 4. He is unable to provide any documentation to support these clauses. Article X of the Covenant of the League of Nations states: "The members of the League undertake to respect and preserve against external aggression the territorial integrity and existing political independence of all Members of the League. In case of any such aggression or in case of any threat or danger of such aggression, the Council shall advise upon the means by which this obligation shall be fulfilled."

It is appropriate that I now introduce a statement by Sir Geoffrey Butler KBE, MA and Fellow, Librarian and Lecturer in International Law and Diplomacy of Corpus Christi College, Cambridge author of "A Handbook to the League of Nations" used as a reference to the League by virtually all nations at that time. He refers to Article 1 of the Covenant of the League of Nations.

"It is arguable that this article is the Covenant's most significant single measure. By it the British Dominions, namely, New Zealand, Australia, South Africa, and Canada, have their independent nationhood established for the first time. There may be friction over small matters in giving effect to this internationally acknowledged fact, but the Dominions will always look to the League of Nations Covenant as their Declaration of Independence".

Article 2 paragraph 1 of the United Nations Charter states "The Organisation is based on the principle of the sovereign equality of all its Members."

Article 2 paragraph 4 of the Charter states "All members shall refrain in their international relations from the threat or use of force against the territorial integrity or political independence of any state, or in any other manner inconsistent with the Purposes of the United Nations."

In view of the above, the historical evidence for Australian Independence by 10 January 1920 when the League of Nations became part of International Law is overwhelming. When this evidence is reinforced with the contents of the Charter of the United Nations, the continued usage of any legislation that owes its very legitimacy to the parliament of an acknowledged foreign power cannot be supported by either legal opinion or indeed historical evidence.

I therefore have come to the conclusion that the current legal and political system in use in Australia and its States and Territories has no basis in law.

Following discussions with members of the British Government relating to the Letters Patent for the Governor General and State Governors I find that these documents no longer have any authority. Indeed, the Queen of the United Kingdom is excluded from any position of power in Australia by the United Nations Charter and is excluded under UK law from the issue of a Letters Patent to other than a British Subject. A Letters Patent must refer to an action to be taken with regard to British Citizens. The Immigration Act 1972 UK defines Australian Citizens as aliens.

The Governor General's Letters Patent is a comedy of errors. We are greeted in the name of the Queen of Australia who suddenly becomes the Queen of the United Kingdom in the next paragraph of the Letters Patent. This Queen then gives instructions to the Governor General

with reference to the Commonwealth of Australia Constitution Act 1900 UK. Here we have a clear breach of Article 2 paragraph 1 of the United Nation Charter. Under both UK and International law, the Queen is a British Citizen.

State Governors are in a worse position as their authority comes from the late Queen Victoria of the United Kingdom. Regardless of the validity of the Commonwealth of Australia Constitution Act 1900 UK, if the authority of Governor General and the State Governors is invalid, then so is the entire political and legal system of government.

When advised that the War Crimes Commission was taking an interest, I called them in Geneva. Under the 1947 Geneva Convention, they are empowered to look into cases here in Australia where it is alleged the law of a foreign country was enforced against a citizen of a member state of the United Nations. As they perceive that only the judiciary can actually enforce the law, the judiciary becomes their target. The group has already placed cases before them which they are currently investigating. If found guilty, the penalties are horrific and include the death penalty!

I could go on with more relevant information however I think now is the time for a summary. The group leader, a QC, states the obvious when he asked me how could a colony now acknowledged by all world nations to be a sovereign nation retain exactly the same legal and political system it enjoyed as a colony without any change whatsoever to the basis for law. This point alone requires an answer.

The High Court has already answered with regard to the position held by treaties signed by the Commonwealth Government in the Teoh case of 1994. "Ordinary people have the right to expect government officials to consider Australia's international obligations even if those obligations are not reflected in specific Acts of Parliament: the rights recognised in international treaties are an implied limit on executive processes."

My advice is to adjourn any case "sine die" that challenges the authority of the Letters Patent. Under no circumstances hear a case that challenges the validity of a State or the Federal Constitution. It is the politicians who are using us as pawns without them having to face the music. These matters are of concern to politicians, let them sort out these problems and accept any inherent risks themselves!

Article 36 of the Statute of the International Court of Justice is the correct reference for you to refuse to hear a matter when an international treaty is cited as a defence.



2.11
Office of
Attorney-General

21 OCT 1997

20/97071622

Mr Peter Batten
PO Box 1333
Renmark
South Australia 5341

Dear Mr Batten

I refer to your letter dated 17 July 1997 to Sir Robert Fellowes and to your letter to the British High Commission in which you requested information about the status of certain constitutional instruments and the Queen's role as Queen of Australia. Your letter have been forwarded to the office of the Attorney-General. I have been asked to reply on behalf of the Attorney-General.

The status of the Commonwealth Constitution

You would be aware that the Commonwealth Constitution was passed as part of a British Act of Parliament in 1900. A British Act was necessary because before 1900 Australia was merely a collection of self-governing British colonies and ultimate power over those colonies rested with the British Parliament.

However, during the course of this century Australia has become an independent nation and the character of the Constitution as the fundamental law of Australia is now seen as deriving not from its status as an Act of British Parliament, which no longer has any power over Australia, but from its acceptance by the Australia People.

Nevertheless, the Constitution remains part of an Act of the British Parliament. That Act has not been repealed.

Letters Patent

I am advised that Letters Patent constituting the office of Governor General of Australia were issued on 29 October 1900 under the Great Seal of the United Kingdom by Queen Victoria as Queen of the United Kingdom. Amendments to the Letters Patent issued in 1900, made on 4 December 1958, were approved by Queen Elizabeth II on the advice of the Australian Government. On 24 August 1984 the Letters Patent issued in 1900 were revoked and new Letters Patent were issued by Queen Elizabeth II as Queen of Australia under the Great Seal of Australia. The Letters Patent issued in 1984 have not been superseded.

The Queen's Role

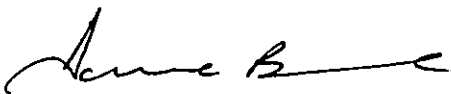
The Queen's role as Queen of Australia is, in legal terms, distinct from her role as Queen of the United Kingdom (as it is distinct from her role as Queen of Canada or of

New Zealand). The Queen of Australia, when acting in relation to Australia, acts on the advice of the Australian Government. I have not seen and therefore cannot comment on any advice from the 'Keeper of the Royal Seals' to the effect that the Queen of Australia cannot issue Letters Patent in relation to the office of the Governor-General on the advice of the Australian Government.

I am afraid I cannot say whether the Queen, when acting in her capacity as Queen of the United Kingdom under the laws of the United Kingdom, can issue Letters Patent to non-British subjects.

I hope you find these comments helpful.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Adele Byrne', with a stylized flourish at the end.

Adele Byrne
Adviser



2.2

Foreign &
Commonwealth
Office

Far Eastern and Pacific Department
London SW1A 2AP

Telephone: 0171-270 3266

11 December 1997

P Batten Esq
P.O. Box 1333
RENMARK
S.A. 5341
Australia

Dear Mr Batten

AUSTRALIAN CONSTITUTION

Thank you for your letter to the Lord Chancellor of 13 July. I have been asked to reply. I apologise for the delay in replying.

We have been unable to locate the source of the quotation in your letter attributed to the Lord Chancellor. However, on a point of detail, the British gift of one of the original copies of the 1900 United Kingdom Act to Australia took place by special Act of Parliament in 1990 not in 1988, although the 1900 Act was on loan to Australia at this latter date.

The statement you mention in your letter is an accurate description of the power of the British Parliament in relation to its own legislation. The statement does not, however, address the special status of the Constitution of the Commonwealth of Australia. Nor does it refer to the Australia Acts, which declared that no future Act of the British Parliament would extend to Australia.

The Commonwealth of Australia Constitution Act was enacted in the United Kingdom at a time when Westminster was required to legislate on Australian issues; the measure was based on Australian drafts and was endorsed at the time by a majority of Australians. The continuing role of the Australia Constitution Acts as Australia's fundamental law is, of course, entirely a matter for Australia. There are at present no plans to repeal the Constitution Act.

The Government of the United Kingdom would, however, give consideration to the repeal of the Commonwealth of Australia Constitution Act if a request to that effect were made by the Government of Australia. To date no such request has been made.

I hope this information is of help to you.

Yours sincerely
Mark Armstrong

Mark Armstrong
Far Eastern and Pacific Department



I, BRIAN ALEXANDER SLEE, Executive Officer, Department of Foreign Affairs and Trade, Canberra, hereby certify that the attached text is a true copy of the Charter of the United Nations, with the Statute of the International Court of Justice annexed thereto, done at San Francisco on the twenty-sixth day of June, one thousand nine hundred and forty-five, the original of which is deposited in the archives of the Government of the United States of America.

IN WITNESS WHEREOF I have hereunto set my hand and affixed the seal of the Department of Foreign Affairs and Trade of Australia.

SIGNED at Canberra on this sixteenth day of October, one thousand nine hundred and ninety-seven.

Brian Slee

Executive Officer
Treaties Secretariat

CHAPTER I

PURPOSES AND PRINCIPLES

Article 1

The Purposes of the United Nations are:

1. To maintain international peace and security, and to that end: to take effective collective measures for the prevention and removal of threats to the peace, and for the suppression of acts of aggression or other breaches of the peace, and to bring about by peaceful means, and in conformity with the principles of justice and international law, adjustment or settlement of international disputes or situations which might lead to a breach of the peace;
2. To develop friendly relations among nations based on respect for the principle of equal rights and self-determination of peoples, and to take other appropriate measures to strengthen universal peace;
3. To achieve international cooperation in solving international problems of an economic, social, cultural, or humanitarian character, and in promoting and encouraging respect for human rights and for fundamental freedoms for all without distinction as to race, sex, language, or religion; and
4. To be a center for harmonizing the actions of nations in the attainment of these common ends.

Article 2

The Organization and its Members, in pursuit of the Purposes stated in Article 1, shall act in accordance with the following Principles.

1. The Organization is based on the principle of the sovereign equality of all its Members.
2. All Members, in order to ensure to all of them the rights and benefits resulting from membership, shall fulfil in good faith the obligations assumed by them in accordance with the present Charter.
3. All Members shall settle their international

disputes by peaceful means in such a manner that international peace and security, and justice, are not endangered.

4. All Members shall refrain in their international relations from the threat or use of force against the territorial integrity or political independence of any state, or in any other manner inconsistent with the Purposes of the United Nations.

5. All Members shall give the United Nations every assistance in any action it takes in accordance with the present Charter, and shall refrain from giving assistance to any state against which the United Nations is taking preventive or enforcement action.

6. The Organization shall ensure that states which are not Members of the United Nations act in accordance with these Principles so far as may be necessary for the maintenance of international peace and security.

7. Nothing contained in the present Charter shall authorize the United Nations to intervene in matters which are essentially within the domestic jurisdiction of any state or shall require the Members to submit such matters to settlement under the present Charter; but this principle shall not prejudice the application of enforcement measures under Chapter VII.

CHAPTER II

MEMBERSHIP

Article 3

The original Members of the United Nations shall be the states which, having participated in the United Nations Conference on International Organization at San Francisco, or having previously signed the Declaration by United Nations of January 1, 1942, sign the present Charter and ratify it in accordance with Article 110.

UNITED NATIONS  NATIONS UNIES

POSTAL ADDRESS—ADRESSE POSTALE UNITED NATIONS, N.Y. 10017
CABLE ADDRESS—ADRESSE TELEGRAPHIQUE UNATIONS NEWYORK

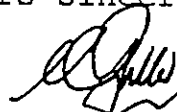
REFERENCE.

16 January 1998

Dear Mr. Batten,

Please be advised that we did not receive your letter of 7 November 1997. However, we received a similar request from Mr. W. Joosse dated 5 December 1997. Due to the fact that his query is similar to yours and thus probably related, please find attached, copy of our reply to Mr. Joosse.

Yours sincerely,



Anthony Miller
Principal Legal Officer
Office of the Legal Counsel
Office of Legal Affairs

Mr. Peter Batten
P.O. Box 1333
Renmark
South Australia
Australia 5341

cc: Mr. W. Joosse

UNITED NATIONS



NATIONS UNIES

POSTAL ADDRESS—ADRESSE POSTALE UNITED NATIONS, N. Y. 10017
CABLE ADDRESS—ADRESSE TELEGRAPHIQUE UNATIONS NEWYORK

REFERENCE.

19 December 1997

Dear Mr. Joosse,

This is in response to your memorandum of 5 December 1997 which asks us the date that the United Nations recognizes as "the legal date on which Australia ceased to be a colony of the United Kingdom and assumed sovereign nation status." You also allude to recent enquiries conducted by the Secretary-General and my office on this issue.

We are unaware of any enquiries being made on this issue in this Office.

In relation to your question we note that the Charter of the United Nations entered into force on 24 October 1945 and that Australia was an original Member of the United Nations, having signed the Charter on 26 June 1945. Australia's status as of that date was obviously that of a sovereign State. The exact date that it assumed such status is not a matter on which this Office can pronounce.

Yours sincerely,

A handwritten signature in dark ink, appearing to read 'Paul C. Szasz'.

Paul C. Szasz
Acting Director and Deputy to the
Under-Secretary-General
Office of the Legal Counsel

Mr. W. Joosse
Managing Director
David Keys Australia PTY.LTD.
6 Apsley Place
Seaford Victoria 3198
Australia

1929.

COMMONWEALTH OF AUSTRALIA.

REPORT

OF THE

ROYAL COMMISSION

ON THE

CONSTITUTION

TOGETHER WITH

APPENDIXES AND INDEX.

BY AUTHORITY,

L. F. JOHNSON, COMMONWEALTH GOVT. PRINTER.

APPENDIXES.

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COMMONWEALTH OF AUSTRALIA.

GEORGE THE FIFTH, by the Grace of God of Great Britain, Ireland and the British Dominions beyond the Seas King, Defender of the Faith, Emperor of India:

TO our trusty and well-beloved The Honorable JOHN BRENNER PEDER, K.C., M.L.C.; SEYMOUR PERCY PHIPPS ABNOTT, Q.M.G., V.J.; THOMAS RAMSDEN ASHWINN, Esquire; The Honorable PAUL KENDALL BOWEN, M.P.; The Honorable SIR HALL PATRICK COLLINGTON, K.B., Q.M.G.; MAURICE BOYCE DUFFY, Esquire, J.P.; The Honorable DANIEL LAURENCE MCKINLAY, M.L.O.

GREETING:

K NOW we that We do by these Our Letters Patent, issued in Our name by Our Deputy of Our Governor-General of Our Commonwealth of Australia, acting with the advice of Our Federal Executive Council, and in pursuance of the Constitution of Our said Commonwealth, the "Royal Commissions Act 1902-1912," and all other powers him thenceunto enabling, appoint you to be Commissioners to inquire into and report upon the powers of the Commonwealth under the Constitution and the working of the Constitution since Federation; to recommend constitutional changes considered to be desirable; and, in particular, to examine and report upon the following subjects from a constitutional point of view:—

- (i) Aviation.
- (ii) Compulsory law.
- (iii) Health.
- (iv) Industrial powers.
- (v) Interstate Commission.
- (vi) Judicial power.
- (vii) Navigation law.
- (viii) New States.
- (ix) Taxation, and
- (x) Trade and commerce.

AND WE APPOINT you the said JOHN BRENNER PEDER to be the Chairman of the said Commissioners:

AND WE DIRECT that, for the purpose of taking evidence, your Commissioners shall be sufficient to constitute a quorum, and may proceed with the inquiry under these Our Letters Patent:

AND WE REQUIRE you with as little delay as possible to report to Our Governor-General of Our said Commonwealth the result of your inquiries into the matters entrusted to you by these Our Letters Patent:

IN TESTIMONY WHEREOF We have caused these Our Letters to be made Patent, and the Seal of Our said Commonwealth to be thereunto fixed.

WITNESS our trusty and well-beloved the Honorable Sir WILLIAM HULL IREYNE, Knight Commander of Our Most Distinguished Order of Saint Michael and Saint George, Our Deputy of Our Governor-General and Commander-in-Chief in and over Our Commonwealth of Australia, this eighteenth day of August, in the year of our Lord One thousand nine hundred and twenty-seven, and in the eighteenth year of Our Reign.

By W. H. IRVINE,
"Grellenoy's Command,
S. M. THURGE.
Deputy of the Governor-General.

THE REVIEW OF THE INTER-IMPERIAL RELATIONS (COMMITTEE, 1926.—EXTRACTS.)

II. *Status of Great Britain and the Dominions.*

The Committee are of opinion that nothing would be gained by attempting to lay down a Constitution for the British Empire. Its widely scattered parts have very different characteristics, very different histories, and are at very different stages of evolution; while, considered as a whole, it defies classification and bears no real resemblance to any other political organization which now exists or has ever yet been tried.

There is, however, one most important element in it which, from a strictly constitutional point of view, has now, as regards all vital governing communities composed of Great Britain and the Dominions, their position and mutual relation may be readily defined. *They are autonomous communities within the British Empire, equal in status, in no way subordinate one to another in any aspect of their domestic or external affairs, though united by a common allegiance to the Crown, and freely associated as members of the British Commonwealth of Nations.*

A foreigner endeavouring to understand the true character of the British Empire by the aid of this formula alone would be tempted to think that it was devised rather to make mutual interference impossible than to make mutual co-operation easy.

Such a criticism, however, completely ignores the historic situation. The rapid evolution of the Oversea Dominions during the last fifty years has involved many complicated adjustments of old political machinery to changing conditions. The tendency towards equality of status was both right and inevitable. (Geographical and other conditions made this impossible of attainment by the way of federation. The only alternative was by the way of autonomy; and along this road it has been steadily sought. Every self-governing member of the Empire is now the master of its destiny. In fact, if not always in form, it is subject to no compulsion whatever.

But no account, however accurate, of the negative relations in which Great Britain and the Dominions stand to each other can do more than express a portion of the truth. The British Empire is not founded upon negations. It depends essentially, if not formally, on positive ideals. Peace, security, and progress are among its objects. Aspects of all these results have been discussed at the present Conference; excellent and most always genuine, the sole judge of the nature and extent of its co-operation, no common cause will, in our opinion, be thereby imperilled.

Equality of status, so far as Britain and the Dominions are concerned, is thus the real principle governing our inter-Imperial relations.

not universally extend to function. Here we require something more than immutable dogmas. For example, to deal with questions of diplomacy and questions of defence, we require also flexible machinery—machinery which can, from time to time, be adapted to the changing circumstances of the world. This subject also has occupied our attention. The rest of this report will show how we have endeavoured not only to state political theory but to apply it to our common needs.

F. *Relations with Foreign Countries.*

From questions specially concerning the relations of the various parts of the British Empire with one another, we naturally turned to those affecting their relations with foreign countries. In the latter sphere, a beginning had been made towards making clear those relations by the Resolution of the Imperial Conference of 1923 on the subject of the negotiation, signature, and ratification of treaties. But it seemed desirable to examine the working of that Resolution during the past three years and also to consider whether the principles laid down with regard to Treaties could not be applied with advantage in a wider sphere.

(a) *Procedure in Relation to Treaties.*

We appointed a special Sub-Committee under the Chairmanship of the Minister of Justice of Canada (the Honorable E. Lapointe, K.C.) to consider the question of treaty procedure.

The Sub-Committee on whose report the following paragraphs are based, found that the Resolution of the Conference of 1923 embodied on most points useful rules for the guidance of the Governments. As they became more thoroughly understood and established, they would prove effective in practice.

Some phases of treaty procedure were examined, however, in greater detail in the light of experience in order to consider to what extent the Resolution of 1923 might with advantage be supplemented.

Negotiation.

It was agreed in 1923 that any of the Governments of the Empire contemplating the negotiation of a treaty should give due consideration to its possible effect upon other Governments, and should take steps to inform Governments likely to be interested of its intention. This rule should be understood as applying to any negotiations which any Government intends to conduct, so as to leave it to the other Governments to say whether they are likely to be interested.

When a Government has received information of the intention of any other Government to conduct negotiations, it is incumbent upon it to indicate its attitude with reasonable promptitude. So long as the initiating Government receives no adverse comments, and so long as its policy involves no active obligations on the part of the other Governments, it may proceed on the assumption that its wishes to



2.7

Foreign &
Commonwealth
Office

Far Eastern and Pacific Department
London SW1A 2AP

Telephone: 0171-270

3263

29 October 1997

Mr W Joosse Esq
Chairman and Managing Director
Joosse Apparel Pty Ltd
6 Apsley Place
Seaford
Victoria 3198
Australia

Dear Mr. Joosse,

THE UK/AUSTRALIA CONSTITUTIONAL RELATIONSHIP

Thank you for your letter of 18 August to the Lord
Chancellor. I have been asked to reply.

We do not believe that there is anything in the
constitutional relationship between the United Kingdom and
Australia which is inconsistent with the international
obligations of either State.

I hope this letter is of assistance in addressing your
concerns.

Yours sincerely,

Damian Testa

Damian Testa
Far Eastern and Pacific Department

DH 1B

IN THE MAGISTRATES COURT

CRIMINAL JURISDICTION

MURRAY BRIDGE

BEFORE MR FIELD, S.M.

17 APRIL 1998

NO. MCMUB-97-1666

POLICE

V

PETER BATTEN

JUDGMENT ON PRELIMINARY HEARING

The defendant, Mr Batten, has raised by way of preliminary point an argument challenging the jurisdiction of the Court to hear the offence of exceeding the speed limit, under Section 49 of the Road Traffic Act.

The defendant argues that the Court is not validly constituted. The defendant argues that the State of South Australia is not a valid constitutional entity. The defendant argues further that the Constitution of Australia is not a valid constitution and furthermore is not a valid law of the British Parliament. The defendant argues that any status of nationhood which Australia possesses derives from it being a party to the treaty of Versailles 1919 and to its acceptance as a member (Nation State) of the League of Nations in 1920 and subsequently its membership as a Nation State of the United Nations in 1945. The defendant argues that as a result the only tribunal which can validly determine the charge is the World Court.

The defendant has not raised a matter of alleged conflict between a Law of the State and a Law of the Commonwealth. The defendant has not, on my interpretation of his argument which is in written form as well as in the form of oral submissions today, raised any argument which would involve the interpretation of provisions of the Australian Constitution.

I conclude therefore that this is not a case where it is necessary for me to give notice to the Attorney-General of the Commonwealth and the Attorney-Generals of the States under Section 78 (b) of the Commonwealth Judiciary Act.

I rule that the authority of this Court derives from the

Magistrates Court Act, 1991, an Act validly passed by the Parliament of the State of South Australia. My authority to sit as a Magistrate derives from my appointment under the Magistrates Act 1983 and the direction of the Chief Magistrate for me to sit as a Magistrates Court at Murray Bridge pursuant to Section 16 of the Magistrates Court Act, 1991. The authority of the State Parliament to pass both the Magistrates Court Act, 1991 and Magistrates Act, 1983 and subsequent amendments to those Acts derive from the powers given to the State legislature pursuant to the State Constitution and enabling legislation and letters patent from the Parliament and Sovereign of the United Kingdom. The powers to pass the Magistrates Court Act and Magistrates Act all form part of the residual power of the State legislature which exists after the commencement of the Australian Constitution. For those reasons, I rule that this trial should proceed.

SOUTH AUSTRALIA

Form No 44

IN THE SUPREME COURT

No. of

BETWEEN:

Peter BATTEN
(Appellant)

-and-

Darryl Keith CROSSMAN
(Respondent)

NOTICE OF APPEAL
Magistrates Court Act - Section 42

PURSUANT to s. 42 of the *Magistrates Court Act*, the above named appellant hereby appeals to the Supreme Court of South Australia, at the sittings of the said Supreme Court for hearing appeals under the *Magistrates Court Act 1991* commencing on the day of 19 against the judgement hereunder described.

1. Court Appealed From

Magistrates Court sitting at: **Murray Bridge.**

Magistrates Court File No.: **REF: MCMUB-97-1666**

Magistrates Court Telephone No.: **(08) 8535 6060**

Name of Presiding Officer(s): **Justice Field.**

Date of Conviction and/or Sentence appealed from: **17th April 1998.**

Particulars of Conviction and Sentence:

- (a) Give particulars of the charge/s upon which the appellant has been convicted (if more than one, give details of each):

Charge: that on April 30th 1997 at Mannum drove a vehicle on Adelaide Road within the town of Mannum at a speed greater than 60 kilometres an hour namely at about 81 kilometres an hour.

Conviction recorded, Fine \$174 Costs \$ 201.

2. Particulars of Appellant

Full Name: **Peter BATTEN**

Address: **P.O. Box 1333, RENMARK, South Australia 5341.**

Telephone No.: **018/813-437**

Name of Solicitor Acting:

N/A

Address for Service:

Telephone No:

Fax No.:

DX No.:

3. Particulars of Respondent:

Name: **Darryl Keith Crossman.**

Address: **c/o Police Headquarters, Adelaide. South Australia, 5000**

Telephone No.:

Fax No.:

Name and Address of Solicitor Acting (if known):

4. Nature of Appeal (Answer "Yes" or "No" to each question)

Is the appeal against the conviction only: **No.**

Is the appeal against sentence only: **No**

Is the appeal against both conviction and sentence: **Yes.**

Is an extension of time sought: **No**

5. Grounds of Appeal (If insufficient space, please attach separate page(s). Also, if an order for extension of time is sought, state the grounds relied upon.)

By citing as his authority, legislation which is dependant on Letters Patent, and the Letters Patent themselves issued by the Government and a Monarch of a power (i.e. the United Kingdom of Great Britain and Northern Ireland) which is foreign to the sovereign independent Member State of the United Nations, Australia :

It is alleged that, in the terms of Article 14 of the International Covenant on Civil and Political Rights the Magistrate presided over an 'incompetent Court' thereby illegally victimising an Australian citizen.

It is further alleged that, since the stated Covenant is Schedule 2 of the Human Rights and Equal Opportunity Commission Act 1986 (Commonwealth) it is also Australian law and that the Appellant can rightly expect protection under it.

Despite the presentation of indisputable evidence to the contrary, the presiding Magistrate ruled that, contrary to both and British and International law there exists residual powers derived from the 1856 British colony of South Australia Constitution which gives powers to the South Australian legislature which enables the giving of Letters Patent from the Parliament and the Sovereign of the United Kingdom of Great Britain and Northern Ireland. A power foreign to the sovereign independent nation of Australia.

It is alleged that in making this ruling the Magistrate contravened Article X of the Covenant of the League of Nations as well as Article 2, paragraphs 1 and 4 of the United Nations Charter. These treaties are binding on Australia.

In making this ruling the Magistrate needed to consider and make decisions in relation to the interpretation and application of International Treaties to which Australia is a signatory. Namely the Covenant of the League of Nations and the Charter of the United Nations.

In so doing it is alleged that the Magistrate exceeded the jurisdiction of his Court and that in so doing he contravened Article 36 of the Statute of the International Court of Justice. Also by so doing he ignored High Court rulings in relation to expectations of protection afforded to Australian citizens by treaties to which Australia is a signatory.

Additionally he contravened paragraph 75 of the Constitution.

This paragraph specifically states that "the High Court shall have original jurisdiction "... "In all matters " ... (I) arising under any treaty."

Extensive evidence was presented which established that the British Colony of the Commonwealth of Australia Constitution Act 1900 (UK) of which the 9th clause is the Australian Constitution remains an Act of the Parliament of the United Kingdom of Great Britain and that as such became invalid at the time Australia ceased to be a colony of the United Kingdom.

It is alleged that in considering and making decisions in relation to questions relating to the Constitution and its validity in terms of International law the Magistrate not only exceeded his jurisdiction in relation to International law , he also exceeded his jurisdiction under the same domestic law that the Appellant maintains is invalid. In proceeding he in fact breached Section 78B of the Judiciary Act 1903 (Commonwealth) which indicates that in relation to such matters it is the duty of the court not to proceed until notice has been given to the Federal and all of the States Attorneys-General in relation to the question of their intervention or the removal of the cause to the High Court.

6. Election Pursuant to S.42(3)

If this appeal relates to a minor indictable offence, the appellant elects, pursuant to s.42(3) of the *Magistrates Court Act*, to have the appeal heard by a single Judge of the supreme Court (answer "Yes or No):

Yes

Dated the day of 19

Appellant (or Solicitor)

N.B. This form is to be used by a party to a criminal action who wishes to appeal to the Supreme Court pursuant to s.42 of the Magistrates Court Act against a conviction or penalty imposed by a Magistrates Court. The procedures governing such appeals are set out in Rule 96C of the Supreme Court Rules.

SOUTH AUSTRALIA

IN THE SUPREME COURT

No. 630 of 1998

ON APPEAL from the Magistrates
Court at Murray Bridge in the State of
South Australia.

IN THE MATTER of a judgement on a
preliminary hearing and a conviction
made on the 17th day of April 1998 by
the said Magistrates Court on the
hearing of a certain complaint wherein
DARRYL KEITH CROSSMAN of
Police Headquarters Adelaide in the
said State was complainant and
PETER BATTEN of 31 George Main
Road Victor Harbor in the said State
was the defendant.

PETER BATTEN

Appellant

and

DARRYL KEITH CROSSMAN

Respondent

AFFIDAVIT

I, **PETER BATTEN** of Victor Harbor in the said State of South Australia,
Citizen of the sovereign independent and federated nation of Australia, a
Member State of the UNITED NATIONS, do hereby under
INTERNATIONAL LAW MAKE OATH AND SAY as follows:

The Appellant advises this Court of Appeal that:

- i. Proceedings in this appeal involves matters arising under the Constitution and/or involve its interpretation. These matters parallel matters cited in Notice of Motion Nos M34 and M35 of 1998 currently before the High Court of Australia.
- ii. In accord with the rules of the High Court the Federal, the States, the Australian Capital Territory and the Northern Territory Attorneys-General have been duly advised of these Notices of Motion.
- iii. Proceedings in this appeal involve matters arising under, and the interpretation of, international treaties. Under Section 75 of the Australian Constitution, in matters arising under any treaty the High Court has original jurisdiction and that this is supported by-
- iv. Clause 38(a) of the Judiciary Act 1903 (Commonwealth) which states that *'the jurisdiction of the High Court shall be exclusive of the jurisdiction of the several Courts of the States'* in matters arising under any treaty.
- v. Copies of this affidavit together with notice under 78B of the Judiciary Act 1903, has been forwarded to the Attorneys-General of the Commonwealth, States and Territories specifying the nature of the matters arising under the Constitution or involving its interpretation.
A request has been made to those Attorneys-General for them to intervene in proceedings and for the removal of the cause to the High Court for its possible consideration in conjunction with Notice of Motion M34 and M35 of 1998.
- vi. That, on advice received by the Appellant, he now states and declares that he will not willingly be involved in any procedure which may be in contempt of the High Court or any other Court of jurisdiction superior to this Appeals Court.

1. The following issues arising in this appeal involve conflicts arising between legislation enacted under the Constitution and the terms of the same. Such legislation forming part of this appeal being:-

- a. Road Traffic Act 1961
- b. Expiation of Offences Act, 1996
- c. Constitution Act, 1934 and all current Constitutional Amendment Acts listed in Reprint No. 7 of 17th December 1997

- d. Magistrates Court Act, 1991
- e. Magistrates Act, 1983
- f. Police Act 1952

2. The Nature of the Matter.

That the laws made in the State of South Australia have no basis in law. The Constitution of the State of South Australia consisting of the Constitution Act 1934 and some 62 Amendment Acts were all legislated under the Sovereignty of the United Kingdom of Great Britain and Northern Ireland. That is, under the sovereignty of a power which ceased to have legal effect within Australia upon the attainment of separate Australian legal sovereignty guaranteed by the international community under the terms of the Covenant of the League of Nations 1919. The attempt to overcome the effect of the treaty by the use of the Statute of Westminster 1931(UK) fails by reason that the Statute was not registered as a treaty or international arrangement as required. Further valid Royal Assent has not been given to any of the Acts listed.

3. The Constitutional Issues and Interpretations to be Resolved

a: The appellant submits that to effect a judgement on this appeal the Court needs determine on the following Constitutional issues relating to the Acts referred to above.

- i: that S106 of the Constitution was invalidated by a Treaty being the Covenant of The League of Nations Articles X, XVIII and XX, that by reason of the cessation of the sovereign authority of the Westminster Parliament and the Monarchy of the United Kingdom over the colony and state on the 10th January, 1920 in accordance with Article X and XX of this treaty it necessarily follows that the invalidation of S106 of the Constitution necessarily rendered invalid the 1855-6 Constitution of the Colony of South Australia which was later repealed and replaced by the Constitution Act 1934. However, since this Act and all subsequent Amendment Acts have been assented to in the name of and on behalf of the Monarch of the United Kingdom of Great Britain and Northern Ireland the Constitution of the State of South Australia has in remained colonial.
- ii: notwithstanding the aforementioned principal, on the 26th June, 1945, in fact S106 of the Constitution was invalidated by a Treaty being the Charter of The United Nations. Specifically, Articles 2, 102 and 103, that by reason of the cessation of the sovereign authority of the Westminster Parliament as well as the Executive power of the Monarchy of the United Kingdom over

the colony and state under Articles 2 and 103 of the Charter it necessarily follows that it rendered invalid the Constitution of the Colony of South Australia which has in effect continued as the Constitution of the State of South Australia.

b: A Ruling that the Statute of Westminster 1931 UK or the parts thereof as apply to allow the continued use within the sovereign territory of Australia Acts of the Imperial Parliament and the authority of that Parliament and its Head of State to continue to be the assenting authority to legislation of the Parliament of South Australia and specifically all legislation composing the Constitution of South Australia as authorised under the provisions of Section 106 of the Constitution of the Commonwealth of Australia contravenes the following:-

- i: Article XX of the Covenant of the League of Nations which under its terms reads:-

'The members of the League severally agree that this Covenant is accepted as abrogating all obligations or understanding inter se which are inconsistent with the terms thereof, and solemnly undertake that they will not hereafter enter into any engagements inconsistent with the terms thereof.'

In case any Members of the League shall, before becoming Members of the League, have undertaken any obligations inconsistent with the terms of this Covenant, it shall be the duty of a Member to take immediate steps to procure its release from such obligations.'

- ii: Article XVIII of the Covenant of the League of Nations by reason of the fact that that the Statute of Westminster 1931 UK being a treaty or international engagement require ratification by the Parliament of the Commonwealth of Australia was/is not entered upon the Register of Treaties established under Article XVIII of the Covenant and is therefore not a binding treaty or international engagement capable of recognition.
- iii: Article 103 of the Charter of the United Nations which in company with Article 2 of the said Charter prevents interference by another sovereign power with the internal affairs of the sovereign nation of Australia by reason of its term reads:-

'In the event of a conflict between the obligations of the Members of the United Nations under the Present Charter and their obligations under

any other international agreement their obligations under the present charter shall prevail'.

- iv: Article 102 of the Charter of the United Nations by reason of the fact that the Statute of Westminster 1931 UK being a treaty or international agreement requiring ratification by the Parliament of the Commonwealth of Australia was/is not entered upon the register of treaties established under Article 102 of the Charter and is therefore not a binding treaty or international engagement capable of recognition.
- c:** In so far as the Statute of Westminster Adoption Act 1942 is an International Agreement in the Terms of Article XVIII of the League of Nations Covenant and is/was not registered in the required terms of Article XVIII of the said Covenant, then such parts as are applicable to the continuation of the use of British Colonial Law in the form of the Constitution of the State of South Australia are invalid therefore, directly affecting the legislation being the subject of the appeal before this court.
- d:** A ruling that the Royal Styles and titles Act 1973 (Cth) did not alter and had no power to alter the provisions of Covering Clause 2 of the Commonwealth Constitution Act 1900 (UK) which defines the Queen in relation to all sections of the Constitution as follows:-
'The provisions of this Act referring to the Queen shall extend to Her Majesty's heirs and successors in the sovereignty of the United Kingdom'.
 That further S61 of the Constitution relating to The Executive power being vested in the Queen of the United Kingdom and the Governor General is appointed under S61 is by definition solely the representative of the Queen of the United Kingdom and under the provisions of Covering clause 2 therein.
- e:** That no head of power exists under the Constitution for the appointment of a sovereign and no referendum has been held pursuant to S128 of the Constitution to confer such power upon the Commonwealth or upon any Parliament.
- f:** A ruling that no Instrument exists which transfers the Executive power of the Queen of the United Kingdom embodied in the Commonwealth of Australia Constitution Act of the Imperial Parliament to any other Sovereign, therefore the Governors General and Governors appointed as representatives of the Queen of Australia, possess an honorary position only

as the representatives of a sovereign without Executive power under the Constitution.

It naturally follows, that Governors General and Governors appointed as Representatives of the Queen of Australia are not in fact empowered to assent to Bills enacted by Parliaments under the Constitution which place all executive power in the Hands of the Queen of the United Kingdom and not the Queen of Australia.

g: That this Court rule that the Charter of the United Nations including the Statute of the International Court of Justice being a Treaty and the lodgement of accessions under that Treaty accepting the compulsory jurisdiction of the International Court of Justice, in fact binds Australian Courts and officials under the decision of the said International Court of Justice in the Namibia Case ICJ 1971, 16, thereby requiring that all sections of the Universal Declaration of Human Rights and the Covenant on Civil and Political Rights 1966 have the Force of law within Australian Courts.

DECLARED BY THE APPELLANT.....

AT.....thisday of.....1998

BEFORE ME.....

SOUTH AUSTRALIA

IN THE SUPREME COURT

No: 630 of 1998

ON APPEAL from a Magistrates Court at Murray
Bridge in the State of South Australia

IN THE MATTER of conviction made on the
17th day of April 1998 by the said Magistrates
Court on the hearing of a certain complaint wherein
DARRYL KEITH CROSSMAN of Murray Bridge
in the said State, was complainant and **PETER**
BATTEN of PO Box 1333, Renmark in the said
State was defendant

BETWEEN:

PETER BATTEN

Appellant

and

DARRYL KEITH CROSSMAN

Respondent

RESPONDENT'S LIST OF AUTHORITIES

For hearing on 6th day of July 1998
Before the Honourable Justice Debelle

PART I - AUTHORITIES TO BE READ

1. *Batten -v- Police* Unreported judgment of Bleby J, 11 March 1998, JN S6588
2. *Bluett -v- Fadden* (1956) 56 SR(NSW) 254 at 261
3. *Dietrich -v- R* (1992) 177 CLR 292 at 305
4. *Minister for Immigration & Ethnic Affairs -v- Teoh* (1995) 183 CLR 273 at 286-287
5. *Narain -v- Parnell* (1986) 9 FCR 479 at 489
6. *Rogers -v- The Queen* (1994) 181 CLR 251

PART II - AUTHORITIES TO BE REFERRED TO

1. *Green -v- Jones* [1970] 2 NSWLR 812

PART III - STATUTES REFERRED TO

1. *Road Traffic Act 1961*
2. *Magistrates Court Act 1991*

THIS LIST OF AUTHORITIES is filed by Crown Solicitor for the State of South
Australia of Level 8, 45 Pirie Street, Adelaide SA 5000 (DX 336). Solicitor for the
Respondent. Telephone: (08) 8207 1510. Facsimile: (08) 8207 1794 L448

SOUTH AUSTRALIA

IN THE SUPREME COURT

No. 630 1998

ON APPEAL from a Magistrates Court at Murray Bridge in the State of South Australia

IN THE MATTER of a conviction made on the 17th day of April 1998 by the said Magistrates Court on the hearing of a certain complaint wherein **DARRYL KEITH CROSSMAN** of Murray Bridge in the said State, was complainant and **PETER BATTEN** of P.O. Box 1333, Renmark in the said State was defendant

BETWEEN:

PETER BATTEN

Appellant

and

POLICE

Respondent

RESPONDENT'S OUTLINE OF ARGUMENT

1. The appellant was charged with driving a vehicle at a speed greater than 60 kilometres per hour in a municipality, contrary to section 49(1)(a) of the *Road Traffic Act, 1961* (RTA), namely at about 81 kilometres per hour.
2. This offence was detected by a traffic speed analyser within the meaning of section 5 of the RTA, namely a hand operated laser speed device.
3. The appellant failed to raise any of the statutory defences to the offence, pursuant to section 79B (2) of the RTA.

4. The presiding Magistrate did not err in law in finding the elements of the charge proved beyond reasonable doubt.
5. As to the appellant's argument in paragraph 3 of his stated grounds that the Learned Magistrate erred by proceeding to hear the speeding charge, thus breaching section 78B of the Judiciary Act, it is submitted that his Honour correctly concluded that the case was not one which raised any argument involving the interpretation of the Australian Constitution. Accordingly, his Honour was not required pursuant to section 78B to refrain from proceeding directly to hearing the prosecution of the speeding charge pending sufficient notice of the cause being provided by the appellant to the Attorneys-General of the Commonwealth and of the States. Section 78B only operates when it is made clear to the court that the cause involves a matter arising under the Australian Constitution and not on the basis of a simple assertion by a party to the cause:
Narain -v- Parnell at 489; *Green -v- Jones* at 818.
6. As for the appellant's argument in paragraph 1 of his stated grounds of appeal that the Learned Magistrate presided over an incompetent court, it is submitted that his Honour was correct in stating that the authority of the Court to determine the matter derives from the *Magistrates Court Act 1991*, an Act validly passed by the Parliament of the State of South Australia.
7. The appellant asserted in paragraph 2 (page 3) of his affidavit of 18 June 1998 that South Australian statutes are invalid because they "were all legislated under the sovereignty of the United Kingdom of Great Britain and Northern Ireland". In *Batten -v- Police* (JN S6588) the appellant presented the same argument before the Honourable Justice Bleby (see page 6 of the appellant's affidavit of 10 March 1998 filed in SC

action no 138 of 1998). His Honour found that the appellant's arguments displayed "a fundamental misunderstanding of Australian constitutional law and history, of the Constitution and the constitutional history of this State, and of the effect of laws validly passed both by the Commonwealth and State Parliaments which have effect in this State": *supra* page 3. It is submitted that the decision of the Honourable Bleby J should be followed so as to reject the appellant's arguments about invalidity in this appeal. The RTA and all the laws referred to in paragraph I of the appellant's affidavit of 18 June 1998 are valid laws of South Australia.

8. It should be noted that, as this appeal is a part of criminal proceedings, it is not a case for applying the doctrine of issue estoppel:
Rogers -v- The Queen.
9. It is further submitted that *as a matter of fact* the appellant was accorded equal treatment before the court in the terms described in Article 14 of the International Covenant on Civil and Political Rights (the Covenant), that he was allowed "a fair and public hearing by a competent, independent and impartial tribunal established by law".
10. In any event, the Covenant cannot be said to apply at large to the appellant's cause. It only applies in so far as it has been introduced into Australian law:

Minister for Immigration & Ethnic Affairs -v- Teoh at 286-287.

The *Human Rights and Equal Opportunity Commission Act 1986* (Cth) (HREOC Act) has the Covenant annexed to it as schedule 2 and the rights and freedoms recognised in the Covenant are defined as "human rights" for the purposes of the HREOC Act and other Commonwealth legislation. Legislation relating to human rights derived from the Covenant has potential application to the appellant. The appellant can "rightly expect protection under [the Covenant]" but only in so far as the HREOC Act or other human

rights legislation applies to the appellant's circumstances. In relation to the matter of the appellant's speeding offence the HREOC Act does not apply so as to invoke the jurisdiction of the Human Rights and Equal Opportunity Commission.

11. It cannot be said that "the Covenant is Australian law". The incorporation of the Covenant into schedule 2 to the HREOC Act does not apply the Covenant directly to the appellant's cause. The speeding charge is not a matter which arises directly under the Covenant. The appellant's statement in paragraph 2 of his grounds that the High Court shall have exclusive jurisdiction "in all matters ... arising under any treaty" is inaccurate. Section 38(a) of the Judiciary Act provides for such exclusive jurisdiction in matters arising *directly* under a treaty. Matters arise directly where an Act empowers the Executive to take action in accordance with a treaty, or where an Act simply ratifies a treaty without transforming its words into the terms of the legislation, so that a question of the interpretation of the treaty itself arises: *Bluett -v- Fadden*.

It is submitted that section 49(1)(a) of the RTA is not a provision of this nature.

Section 38(a) of the Judiciary Act has no application to the appellant's cause.

12. In short, the Covenant neither applies directly nor indirectly to the appellant's cause.
13. It is submitted that there was no error on the part of the Learned Magistrate and that the appeal should be dismissed.

THIS OUTLINE OF ARGUMENT is filed by the Crown Solicitor for the State of South Australia of Level 8, 45 Pirie Street, Adelaide SA 5000 (DX 336). Solicitor for the Respondent. Telephone: (08) 8207 1630, Facsimile: (08) 8207 1794 L448

SUPREME COURT ACTION NO. 630 of 1998

Before Justice Debelle -- 10.30 am 13th July 1998

APPELLANT'S PRESENTATION

To be read to the Court

In her outline of argument the council for the respondent has ignored, shown a lack of understanding or has made a deliberate attempt to confuse the issues that are the subject of this appeal.

Either way she has not confronted the issues which are the subject of the affidavit filed by the appellant

In the argument she has presented she relies, amongst other confusions, on a judgement of Justice Bleby. A full examination of that judgement reveals that Justice Bleby appeared to have understood the arguments presented. But, without allowing counter argument or offering legal reason he simply stated, “I am not prepared to accede to any of Mr Batten’s arguments.” Justice Bleby’s subsequent subjective statements are no substitute for legal reason.

Like Ms Bradson, Justice Bleby attempted to confuse the issue. He did not confront them. Clearly Justice Bleby’s decision should not be followed.

As recorded on page 1 of the transcript of the appeal process to which Ms Bradson refers, Justice Bleby, as does Ms Bradson, displays confusion in relation to the International Covenant on Civil and Political Rights and the ‘Competency of the Court’ to hear on these matters.

The power exercised by Justice Bleby and Mr Field alike is drawn directly from the current set of Letters Patent, issued by the Monarchy of the United Kingdom of Great Britain and Northern Ireland, appointing the Governor of

South Australia. The UK is a power foreign to the sovereign independent nation of Australia. By claiming the right to, and exercising power deriving from such a source such individuals are definable, under international law, as international terrorists. No matter how ridiculous this may seem, this is so.

Even the Solicitor General of South Australia has stated in a publicly released paper entitled 'SOLICITOR GENERAL'S DISCUSSION PAPER NO 3 --A Minimal Republic and the Role of the Crown' that the Queen of the UK and the Queen of Australia possess separate legal identities -----Quote----- .

And of course the Royal Styles and Titles Act 1973 defines the Queen of Australia. The actions of both of these individuals as well as those of Mr Field are the subject of separate complaints before the Federal Attorney-General.

And in keeping with advice received from the UN Secretariat relating to individuals who continue to exercise British colonial law in Australia, Justice Bleby's actions have been made the subject of a complaint to each of the General Assembly, the Security Council, the International Crimes Commission and the Human Rights Commission of the UN.

In anticipation that Justice Bleby's, so called, Judgement would be used as Ms Bradson has here applied it, the submissions to those bodies were concluded by this statement -----quote-----.

I repeat, clearly decisions made by Justice Bleby should not be followed.

What I place before the Court is a simple fact:-

At midnight on the 9th of January 1920 Australia's status as a dependent colonial possession of the United Kingdom ceased and its status as a sovereign independent nation commenced.

The Parliament of Australia recognises this and has stated so in a report by the Senate Legal and Constitutional References Committee of November 1995, entitled "Trick or Treaty? Commonwealth Power to Make and Implement Treaties" -----quote-----Page 48, 49 and 43.

For a modern comparison one only has to look to midnight on the 30th June 1997 when, as the UK's Hong Kong New Territories 99 year lease expired, the UK Government chose to surrender its sovereignty over Hong Kong Island. Thus the whole of Hong Kong ceased to be a British colony and Imperial law ceased to have application in Hong Kong. The Hong Kong Constitution did not have to be rescinded, it simply became redundant.

Resolution 9 of the Imperial Conference and the foundation of the League of Nations and the International Labour Organisation are the instruments of Australia's sovereignty.

In keeping with international law, at midnight on the 9th January 1920 British colonial law ceased to have valid application in Australia. For it to be otherwise makes a mockery of national sovereignty. And, I add, the High Court has held, on no less than 11 occasions that British sovereignty does not apply in Australia.

So it is clear that we cannot argue about how and when Australia became a sovereign independent nation.

However, what has never been confronted and now needs to be resolved is the legal effect of this occurrence. And this Court is faced with this fact.

Unfortunately Australian trained lawyers are the only lawyers in the world that have been, and are even now prepared to argue that their countries transition from colonial possession to sovereign nation alters nothing, and thus makes no difference in law.

And of course in terms of simple logic as well as within the enactment of international law this is an absurdity.

My argument is that the State of South Australia only exists as a separate entity under covering clause 6 and sections 106,107 and 108 of the Constitution and that on achievement of independence these became redundant. Without them the transition from colony to States ceases to exist.

While it may be argued that South Australia has reverted to colonial status it is clear that, at least in the international forum, the UK government would not be a party to such an arrangement. So South Australia as a separate legal entity doesn't exist.

It follows that South Australian law doesn't exist.

Because the existence of the States depends entirely on the Federal Constitution and because the issues that are raised as a result of the effect of

when, and the effect of, the attainment of sovereignty itself involves the Constitution the cause before Mr Field's Magistrates Court and before this Court most obviously involves the Constitution. ----- And it cannot be argued otherwise!

What I am presenting is evidence of Australian sovereignty and that the instruments of that sovereignty are unquestionably international treaties --- a fact which Federal Parliament accepts.

Within the confines of the law, lawyers must now confront the legal effects of the attainment of sovereignty.

While the various Attorney's-General have declined to become involved in or to remove the cause to the High Court, their action is of little consequence since the High Court has been asked, by way of Notice of Motion Nos. M34 and M35 of 1998, to make a ruling on the matters contained in my cause, and clearly, they may be forced to become part of those proceedings. This now seem to be a certainty since just last evening I was advised that a further High Court challenge, specifically dealing with the continuation of State law in exactly the circumstances I am describing, is to be issued, this very morning, in the Brisbane Registry of the High Court.

However, in any event the decisions of the Attorney's-General not to become involved does not confer on this court the power to override Section 75(1) of

the Constitution or Section 38(a) of the Judiciary Act 1903 which is an Act of Federal law.

It is quite clear, from Resolution 9 of the Imperial conference of 1917, that the UK Government gave its consent to Australian independence and in fact reinforced that by signing the treaties which gave international recognition to Australia's independence. It is therefore clear that the treaties were the mechanism the UK Government chose to acknowledge Australian Sovereignty. And it is therefore clear that the Australian Governments and Courts must also recognise the treaties as the instruments of Australian sovereignty. From the outline of the D.P.P.'s solicitor's argument it is quite clear that she is ignorant of the international law mechanisms utilised. Consequently she has totally misconstrued the position in relation to section 38(a) of the Judiciary Act 1903.

In any case the decision of whether the issues are truly matters of treaty belong exclusively to the High Court and no other Court or individual can make that decision on its behalf. Through her assertion on this she has clearly attempted to usurp the rules of the High Court by submitting that this is not a treaty matter.

In stating this I in turn make no attempt to usurp the right of this Court to hear and rule on the stated matters, in fact I would be delighted to be able to argue on these, however, since the High Court makes it quite clear they have sole

jurisdiction on treaty matters to attempt to do so would be in contempt of the High Court - and I dare not do that.

Clearly the High Court will not produce a ruling on my cause but since they have been asked to make a ruling on the 'Matters' contained in my cause and, it is clear the direction this Court takes is limited by the High Court, I submit that this Court cannot proceed in this matter at this time.

I repeat I make no attempt to deny this Courts right to rule on these matters but I respectfully suggest that to do so the Court is obliged to wait on the High Court.

SCStmt

I PETER BATTEN certify and declare that this presentation was read to the appeals Court established to deal with Supreme Court action no.630 of 1998 conducted in Adelaide on 13th July 1998.

Signed -----

SUPREME COURT OF SOUTH AUSTRALIA

(Magistrates Appeals: Criminal)

BATTEN v POLICE

Judgment of the Honourable Justice Debelle (ex tempore)

13 July 1998

CONSTITUTIONAL LAW — THE NON-JUDICIAL ORGANS OF GOVERNMENT — THE LEGISLATURE — GENERALLY — EXAMINATION OF VALIDITY OF LEGISLATION BY COURTS

Appeal against conviction and penalty - appellant charged with exceeding designated speed contrary to Road Traffic Act, 1961 s49(1)(a) - challenge to constitutional validity of Road Traffic Act - international law - sovereignty of States and Commonwealth - whether South Australia a valid legal entity - whether issue arising under Commonwealth Constitution - Judiciary Act 1903, ss78A, 78B - appeal dismissed.

Road Traffic Act, 1961 s49(1)(a); Judiciary Act, 1903 ss78A, 78B, referred to.

On Appeal from MR FIELD SM

Appellant PETER BATTEN: In Person

Respondent SA POLICE: Counsel: MS J BRADSEN - Solicitors: CROWN SOLICITOR (SA)

Hearing Date/s: 13/07/98.

File No/s: SCGRG-98-630

B

Judgment No. S6778

BATTEN v POLICE

Magistrates Appeal

Debelle J (ex tempore)

On 17 April 1998 the appellant appeared in the Magistrates Court at Murray Bridge, charged with driving a motor vehicle at a greater speed than 60 kilometres an hour. It was alleged that on 30 April 1997 at Mannum, he had driven on the Mannum/Adelaide Road at a speed of 81 kilometres an hour.

Before the hearing began, the appellant raised a preliminary point challenging the jurisdiction of the court to hear and determine the question whether he had been guilty of the offence with which he had been charged. The appellant argued that the court was not validly constituted. He argued that the State of South Australia is not a valid constitutional entity. These arguments and others were derived from the appellant's view of the consequences of the Commonwealth of Australia being party to the Treaty of Versailles in 1919, its acceptance as a member of the League of Nations in 1920, and its subsequent membership of the United Nations.

He further submitted that constitutional issues existed which required the court to give notice to the Attorney General of the Commonwealth and to the Attorney Generals of the States and Territories, pursuant to s78B of the *Judiciary Act*, 1903 (Cth).

The magistrate overruled the submissions and proceeded to hear and determine the complaint. The prosecution led evidence. The appellant offered no evidence. He, in effect, relied on the arguments as to the constitutional propriety of the matter proceeding. The magistrate was satisfied that the offence had occurred. He convicted the appellant and ordered that he pay a fine of \$174 and other costs. The appellant appeals from that conviction.

In his notice of appeal, the appellant reiterates much of what he had put before the magistrate and on the face of it appears to have added some further grounds. The Notice of Appeal reads:

“By citing as his authority, legislation which is dependant on Letters Patent, and the Letters Patent themselves issued by the Government and a Monarch of a power (i.e. the United Kingdom of Great Britain and Northern Ireland) which is foreign to the sovereign independent Member State of the United Nations, Australia:

It is alleged that, in the terms of Article 14 of the International Covenant on Civil and Political Rights the Magistrate presided over an ‘incompetent Court’ thereby illegally victimising an Australian citizen.

It is further alleged that, since the stated Covenant is Schedule 2 of the Human Rights and Equal Opportunity Commission Act 1986 (Commonwealth) it is also Australian law and that the Appellant can rightly expect protection under it.

Despite the presentation of indisputable evidence to the contrary, the presiding Magistrate ruled that, contrary to both and (sic) British and International law there exists residual powers derived from the 1856 British colony of South Australia Constitution which gives powers to the South Australian legislature which enables the giving of Letters Patent from the Parliament and the Sovereign of the United Kingdom of Great Britain and Northern Ireland. A power foreign to the sovereign independent nation of Australia.

It is alleged that in making this ruling the Magistrate contravened Article X of the Covenant of the League of Nations as well as Article 2, paragraph 1 and 4 of the United Nations Charter. These treaties are binding on Australia.

In making this ruling the Magistrate needed to consider and make decisions in relation to the interpretation and application of International treaties to which Australia is a signatory. Namely the Covenant of the League of Nations and the Charter of the United Nations.

In so doing it is alleged that the Magistrate exceeded the jurisdiction of his Court and that in so doing he contravened Article 36 of the Statute of the International Court of Justice.

Also by so doing he ignored High Court rulings in relation to expectations of protection afforded to Australian citizens by treaties to which Australia is a signatory. Additionally he contravened paragraph 75 of the Constitution.

This paragraph specifically states that "the High Court shall have original jurisdiction"... "In all matters"... (I) arising under any treaty."

Extensive evidence was presented which established that the British Colony of the Commonwealth of Australia Constitution Act 1900 (UK) of which the 9th clause is the Australian Constitution remains an Act of the Parliament of the United Kingdom of Great Britain and that as such became invalid at the time Australia ceased to be a colony of the United Kingdom.

It is alleged that in considering and making decisions in relation to questions relating to the Constitution and its validity in terms of International law the Magistrate not only exceeded his jurisdiction in

relation to International law, he also exceeded his jurisdiction under the same domestic law that the Appellant maintains is invalid. In proceeding he in fact breached Section 78B of the Judiciary Act 1903 (Commonwealth) which indicates that in relation to such matters it is the duty of the court not to proceed until notice has been given to the Federal and all of the States Attorneys-General in relation to the question of their intervention or the removal of the cause to the High Court."

The appellant has also given notice of the proceedings pursuant to s78B of the *Judiciary Act* to the Federal Attorney General and to the Attorneys General of the States and Territories. The notice included a request that the Attorneys General intervene in the proceedings and remove the cause to the High Court for its consideration. In his affidavit proving those notices, the appellant reiterates the grounds upon which he relies and elaborates upon them.

The appellant has received a reply from the Australian Government Solicitor on behalf of the Federal Attorney General, advising that the Attorney General for the Commonwealth will not be intervening or applying to remove the cause to the High Court. The letter goes on to state that, if the matter is taken further on appeal the Attorney General might then intervene.

During the hearing of this appeal, the appellant also produced letters from the Attorneys General of all the States and Territories. All have replied that they do not wish to intervene. Those letters will remain on the court file. Even if the Attorneys General had not responded, I would have proceeded with this matter since the issues which arose in this appeal do not in any sense relate to a matter arising under the Constitution or involving its interpretation as those words are understood. There was no occasion for the service of s78B notices. The only issues in this appeal are whether the appellant has committed this offence; whether the Parliament of this State has the legislative competence to enact the Road Traffic Act as a valid law of this State; and whether the law is enforceable.

The appellant does not contest the alleged speed. No issue as to that is raised in this appeal. The only question in the appeal is as to the validity and the enforceability of the Road Traffic Act and the authority and competence of the Parliament of South Australia to enact such a provision.

The arguments which have been advanced by the appellant display, I regret to say, a fundamental misunderstanding of both constitutional and international law. He misunderstands the constitutional framework of the Federation, which is the Commonwealth of Australia. He misunderstands the constitutional arrangements as between the Commonwealth and the States. He misunderstands the constitutional arrangements whereby the Constitution was enacted. He misunderstands the constitutional arrangements which had prevailed, so far as the States were concerned, prior to the enactment of the Commonwealth Constitution. It is clear also, that he misunderstands the consequences of the Commonwealth of Australia being party to international treaties. While, of course, the fact that Australia signs international

treaties might, in certain circumstances, affect the municipal law of the country, that is not the situation in this case.

The effect of Mr Batten's argument is the mere fact that, by signing the Treaty of Versailles in 1919, Australia became party to an international treaty, with the consequence that it has somehow altered its nationhood, and has somehow altered the legislative competence, respectively, of the Commonwealth and the States.

In short, the arguments have the hallmarks of a latter day Mr Justice Boothby. Since the enactment of the *Colonial Laws Validity Act* in 1865, nothing has occurred which adversely affects the constitutional or legislative competence of the Parliament of South Australia to make laws relating to road traffic and their enforcement in the courts of this State.

The arguments which Mr Batten has so earnestly placed before the court, regrettably, display such a misunderstanding of the issues involved and are sufficiently confused that it is sufficient answer to say that he completely misunderstands the issues and his arguments must fail. It follows that the appeal must be dismissed.

Any application for costs?

MS BRADSEN: Yes. We seek the usual costs. However, could I say that, the usual costs are minimal in these matters to reflect the justice of the matter. The Crown has treated the appellant's argument seriously and given a considerable amount of time to it. This is the second time that the appellant has put such arguments to this court. It is the Crown's position, that if it were to happen again it would appear very much as an abuse of process, either by a back door attempt to appeal a previous judgment, or to find a forum for ideas which should be put elsewhere. So that, I would like to make those remarks but ask for no more than the usual costs.

HIS HONOUR: As I understand it Ms Bradsen, the effect of your submission is, you seek the usual order of \$150, which is, as I always understood to be a nominal amount?

MS BRADSEN: Yes.

HIS HONOUR: Because these are appeals from magistrates.

MS BRADSEN: Yes.

HIS HONOUR: But, the leniency is being extended because there is a lot of work involved in this matter will not be repeated on a future occasion?

MS BRADSEN: Indeed.

HIS HONOUR: Mr Batten, Ms Bradsen correctly summarizes the position, namely, that a nominal order to costs is made of \$150. She seeks no more than that on

this occasion. Have you any argument that you wish to advance in opposition to her applications?

MR BATTEN: None whatsoever.

HIS HONOUR: I make the usual order, that the appellant pay the respondent's cost, which I fix in the sum of \$150.

Orders:

1. Appeal dismissed.
2. The appellant shall pay the respondent's costs which I fix at \$150.

ANNEXURE 28

1. Copy of the Hayne judgement - High Court of Australia.

512 1.7.98

HIGH COURT OF AUSTRALIA

HAYNE J

JOOSSE & ANOR

APPLICANTS

AND

AUSTRALIAN SECURITIES AND
INVESTMENT COMMISSION

RESPONDENT

*Josse v Australian Securities and Investment Commission; Burke v The
Queen; Bowers v Askin; Young v Deputy Commissioner of Taxation;
David Keys Australia Pty Ltd v Textile Clothing and Footwear Union of
Australia [1998] HCA 77*

Date of Order: 15 December 1998

Date of Publication of Reasons: 21 December 1998

M35/1998

ORDER

1. *Application dismissed.*
2. *Certify for counsel.*

Representation:

W Josse appeared in person for the applicants

D M J Bennett QC, Solicitor-General for the Commonwealth with
P J Hiland for the respondent (instructed by Australian Securities and
Investment Commission)

Notice: This copy of the Court's Reasons for Judgment is
subject to formal revision prior to publication in the
Commonwealth Law Reports.

fm 75

HIGH COURT OF AUSTRALIA

HAYNE J

BURKE

APPLICANT

AND

THE QUEEN

RESPONDENT

21 December 1998
M63/1998

ORDER

1. *Application dismissed.*
2. *Certify for counsel.*

Representation:

S Gillespie-Jones for the applicant

J D McArdle QC for the respondent (instructed by Solicitor for Public Prosecutions (Victoria))

Notice: This copy of the Court's Reasons for Judgment is subject to formal revision prior to publication in the Commonwealth Law Reports.

HIGH COURT OF AUSTRALIA

HAYNE J

BOWERS

APPLICANT

AND

ASKIN & ANOR

RESPONDENTS

21 December 1998
M65/1998

ORDER

- 1. Application dismissed with costs.*
- 2. Certify for counsel.*

Representation:

The applicant appeared in person

W J Martin QC with T S Monti for the respondents (instructed by Berrigan & Doube)

Notice: This copy of the Court's Reasons for Judgment is subject to formal revision prior to publication in the Commonwealth Law Reports.

HIGH COURT OF AUSTRALIA

HAYNE J

YOUNG

APPLICANT

AND

DEPUTY COMMISSIONER OF TAXATION

RESPONDENT

21 December 1998
M93/1998

ORDER

- 1. Application dismissed with costs.*
- 2. Certify for counsel.*

Representation:

The applicant appeared in person

D M J Bennett QC, Solicitor-General for the Commonwealth with
G L Ebbeck for the respondent (instructed by Australian Government
Solicitor)

Notice: This copy of the Court's Reasons for Judgment is
subject to formal revision prior to publication in the
Commonwealth Law Reports.

Unif of Australia

HIGH COURT OF AUSTRALIA

HAYNE J

DAVID KEYS AUSTRALIA PTY LTD & ANOR APPLICANTS

AND

TEXTILE CLOTHING AND FOOTWEAR
UNION OF AUSTRALIA

RESPONDENT

21 December 1995
M95/1998

ORDER

1. *Application dismissed with costs.*
2. *Certify for counsel.*

Representation:

I S Henke, a Director of each applicant, appeared in person for the applicants

D C Langmead for the respondent (instructed by Maurice Blackburn & Co)

Notice: This copy of the Court's Reasons for Judgment is subject to formal revision prior to publication in the Commonwealth Law Reports.

High Court Docs

CATCHWORDS

Joosse & Anor v Australian Securities and Investment Commission

Burke v The Queen

Bowers v Askin & Anor

Young v Deputy Commissioner of Taxation

David Keys Australia Pty Ltd & Anor v Textile Clothing and Footwear Union of Australia

High Court - Practice and procedure - Removal of causes - Points raised in application not arguable.

Constitutional Law - Sovereignty - Whether certain legislation invalid due to a "break in sovereignty".

Constitutional Law - Whether certain legislation invalid because royal assent not validly given.

International Law - Sovereignty - Whether certain legislation made pursuant to treaties invalid because treaties not registered as international arrangements.

Words and phrases - "sovereignty".

Constitution, covering cl 5, s 58.

Judiciary Act 1903 (Cth), s 40.

Royal Style and Titles Act 1973 (Cth).

Statute of Westminster Adoption Act 1942 (Cth).

1 HAYNE J. Application is made in each of five separate proceedings for an order removing the cause into this Court pursuant to s 40 of the *Judiciary Act* 1903 (Cth). It is said that each of the causes arises under the Constitution or involves its interpretation.

2 I have heard the five applications together because they raise similar issues. It is as well to say something briefly about the proceedings that give rise to the present applications.

Joosse & Anor v Australian Securities and Investment Commission (M35 of 1998)

3 The applicants were directors of a company, Bellechic Pty Ltd, that is now in liquidation. On 2 April 1998, the Australian Securities and Investment Commission began proceedings in the Magistrates Court at Melbourne against both applicants alleging breaches of ss 475(1), 530A(1)(a) and (2)(a) of the Corporations Law. The applicants allege that certain Acts - described as "*The Magistrates Court Act, The County Court Act & The Supreme Court Act, The Police Act, The Corporations Law (Cth), The Workplace Relations Act 1996 and The Taxation Administration Act 1953 (Cth)*" are invalid or inoperative.

Burke v The Queen (M63 of 1998)

4 This application relates to a criminal proceeding pending in the County Court of Victoria. The applicant has been presented on a presentment alleging three counts of using a false document, three counts of attempting to obtain a financial advantage by deception and two counts of obtaining a financial advantage by deception. The applicant has been arraigned but no jury has been empanelled. The trial is presently fixed to begin in April 1999. It would seem that the legislation that is attacked is the *Statute of Westminster Adoption Act* 1942 (Cth), *Australia Act* 1986 (Cth), *Judiciary Act* 1903 (Cth), *County Court Act* 1958 (Vic), *Legal Profession Practice Act* 1958 (Vic), *Police Regulation Act* 1958 (Vic), *Magistrates' Court Act* 1989 (Vic) and the *Supreme Court Act* 1986 (Vic).

Bowers v Askin & Anor (M65 of 1998)

5 In 1990, the respondents commenced an action in the County Court of Victoria against the applicant claiming damages for negligence in relation to veterinary care allegedly given by the applicant to a racehorse. The action proceeded through interlocutory stages until 1996 when it was struck out. It has since been reinstated and fixed for trial. The applicant contends that the *Magistrates' Court Act* 1989 (Vic), *County Court Act* 1958 (Vic), *Supreme Court Act* 1986 (Vic) and what he describes as "the Rules of Tort, Contract, Negligence and damages as arising from the Common Law of the United Kingdom as affects Australia" are invalid or inoperative.

Young v Deputy Commissioner of Taxation (M93 of 1998)

- 6 The material that has been filed reveals little about the underlying proceeding. It seems, however, that it is a proceeding instituted by the Deputy Commissioner and is pending in the Federal Court in its bankruptcy jurisdiction. The legislation said to be in issue is the *Magistrates' Court Act* 1989 (Vic), *County Court Act* 1958 (Vic), *Supreme Court Act* 1986 (Vic), "*Income Tax Assessment Act* 1936/42 (Cth)", *Income Tax Assessment Act* 1997 (Cth), *Taxation Administration Act* 1953 (Cth), *Crimes (Taxation Offences) Act* 1980 (Cth), *Fringe Benefits Tax Assessment Act* 1986 (Cth), *Fringe Benefits Tax (Application to the Commonwealth) Act* 1986 (Cth), *Commonwealth Electoral Act* 1918 (Cth) and the *Bankruptcy Act* 1966 (Cth).

David Keys Australia Pty Ltd & Anor v Textile Clothing and Footwear Union of Australia (M95 of 1998)

- 7 Little about the underlying proceeding is revealed by the material filed in this application other than that it concerns companies in some way associated with the applicants in the first matter (M35 of 1998) and is pending in the Federal Court of Australia. The legislation said to be in issue is the *Federal Court of Australia Act* 1976 (Cth), the *Workplace Relations Act* 1996 (Cth), the *Commonwealth Electoral Act* 1918 (Cth), the *Occupational Superannuation Standards Act* 1987 (Cth) and the *Occupational Superannuation Standards Regulations* 1987 (Cth).
- 8 In those cases where I have said little is known about the underlying proceeding, the fact that so little is known would, itself, be reason enough to refuse the application. It is not demonstrated in those cases that the cause, or any part of the cause, arises under the Constitution or involves its interpretation.
- 9 In the case of *Burke v The Queen* there is a different but no less important difficulty in the way of granting the application to remove the cause. To grant that application would lead to the fragmentation of the criminal process and that is reason enough to refuse it. This Court has said repeatedly that the criminal process should not be interrupted by testing interlocutory rulings that may be given in the course of proceedings¹.

¹ See, for example, *R v Iorlano* (1983) 151 CLR 678 at 680 per Gibbs CJ, Murphy, Wilson, Brennan and Dawson JJ; *Re Rozenes; Ex parte Burd* (1994) 68 ALJR 372 at 373 per Dawson J; 120 ALR 193 at 195; *R v Elliott* (1996) 185 CLR 250 at 257 per Brennan CJ, Gummow and Kirby JJ.

3.

10 It is as well, however, to say something about the substance of the points raised in each of the applications.

11 In all five proceedings the applicants contend that there has been an unremedied, perhaps even irremediable, "break in sovereignty" in Australia that leads to the conclusion that some (perhaps much) legislation apparently passed by the Parliament of the Commonwealth, or one or more State Parliaments, is invalid. The written arguments that have been submitted (and supplemented orally) are not always articulated clearly and logically. Nevertheless, the following elements can be identified in the various submissions.

12 First, the Constitution is an Act of the United Kingdom Parliament. Yet it has been held in this Court that sovereignty rests with the people of Australia². This is said to lead to the invalidating of certain of the provisions of the Constitution or, perhaps, to those provisions no longer operating. It is also said to lead to the invalidating of some State or Commonwealth legislation. Why this should be so was not spelled out clearly. Secondly, the references in the Constitution to the Queen were intended as references to the Queen in the sovereignty of the United Kingdom³, yet since the *Royal Style and Titles Act* 1973 (Cth) the Queen has been the Queen of Australia and there has been no alteration to the Constitution. Accordingly, so the argument goes, the Royal Assent has not been validly given to a number of Acts of the Commonwealth Parliament. Thirdly, Australia attained international recognition of its independent and sovereign identity when it signed the Treaty of Versailles or when it became a founding member of the International Labor Organisation. Yet treaties made by Australia, including in particular the arrangements reflected in the *Statute of Westminster Adoption Act* 1942 (Cth), were not registered as international arrangements as was required by those parts of the Treaty of Versailles establishing the League of Nations. Again this is said to lead in some unspecified way to the invalidating of some legislation.

13 These three principal themes were developed to varying degrees and in various ways in each of the applications now under consideration. Some, but not all, also sought to develop two other points: first that the *Commonwealth Electoral Act* being affected by the earlier mentioned difficulties, no legislation passed after a particular date was valid for the want of valid election of members

2 *Nationwide News Pty Ltd v Wills* (1992) 177 CLR 1 at 70 per Deane and Toohey JJ; *Australian Capital Television Pty Ltd v The Commonwealth* (1992) 177 CLR 106 at 138 per Mason CJ; *Theophanous v Herald & Weekly Times Ltd* (1994) 182 CLR 104 at 172-173 per Deane J.

3 Constitution, covering cl 2.

of parliament and second that some international treaties concerning human rights have direct operation in Australian domestic law.

14 Whether or not it is strictly open to me to do so, I am content to deal with the applications on the basis that each advances all of the various points that have been urged in support of any of the particular applications to remove.

15 Nevertheless, each application should be dismissed. None of the applicants identifies a point having sufficient merit to warrant removal of the cause concerned into this Court. The points that it is sought to agitate are not arguable.

16 "Sovereignty" is a concept that legal scholars have spent much time examining. It is a word that is sometimes used to refer to very different legal concepts and for that reason alone, care must be taken to identify how it is being used. H L A Hart said of the idea of sovereignty that⁴:

"It is worth observing that an uncritical use of the idea of sovereignty has spread similar confusion in the theory both of municipal and international law, and demands in both a similar corrective. Under its influence, we are led to believe that there *must* in every municipal legal system be a sovereign legislator subject to no legal limitations; just as we are led to believe that international law *must* be of a certain character because states are sovereign and incapable of legal limitation save by themselves. In both cases, belief in the necessary existence of the legally unlimited sovereign prejudices a question which we can only answer when we examine the actual rules. The question for municipal law is: what is the extent of the supreme legislative authority recognised in this system? For international law it is: what is the maximum area of autonomy which the rules allow to states?"

For present purposes, what is critical is: what is the extent of the supreme legislative authority recognised in this system and what are the rules for recognising what are its valid laws⁵?

4 H L A Hart, *The Concept of Law*, (1961) at 218. See also Wade, "The Basis of Legal Sovereignty", (1955) 13 *Cambridge Law Journal* 172; Heuston, "Sovereignty", in Guest (ed), *Oxford Essays in Jurisprudence*, (1961) at 198-222; Winterton, "The British Grundnorm: Parliamentary Supremacy Re-examined", (1976) 92 *Law Quarterly Review* 591.

5 Hart, *The Concept of Law*, (1961) at 97-120.

5.

17 When one examines the history of Australia since 1788 it is possible to identify the emergence of what is now a sovereign and independent nation. Opinions will differ about when sovereignty or independence was attained⁶. Some steps along that way are of particular importance - not least the people of the colonies agreeing "to unite in one indissoluble Federal Commonwealth under the Crown of the United Kingdom of Great Britain and Ireland, and under the Constitution"⁷. But when it is said that Australia is now a "sovereign and independent nation" the statement is in part a statement about politics and in part about what Stephen J in *China Ocean Shipping Co v South Australia*⁸ called "the realities of the relationship this century between the United Kingdom and Australia". What those realities were in 1900 can be gauged from the fact that the delegates negotiating with the Imperial authorities in 1900 about the terms in which the Imperial Parliament was to enact the Constitution were well content to seek to persuade the Colonial Office that the "Commonwealth appears to the Delegates to be clearly a 'Colony'"⁹. As the century moved on, further attention was given to the place of Imperial legislation in the self-governing dominions. The Imperial Parliament enacted the *Statute of Westminster* in 1931 but it was not until 1942 that the Commonwealth Parliament enacted legislation adopting the *Statute of Westminster*¹⁰. And then in 1986 the *Australia Acts* were passed. All these Acts deal with the place of Imperial legislation in Australia. Each can be seen as reflecting the then current view of the relationship between Australia and the United Kingdom. In large part, then, each deals with an aspect of political sovereignty.

18 Similarly, the way in which Australia has engaged in international dealings can be seen to have changed since federation. And it may be that the Treaty of Versailles or some other international instrument can be seen as according Australia a place in international dealings which it may not have had before the instrument was signed. But what is significant for the disposition of the present applications is not whether the Westminster Parliament could now, or at some

6 *China Ocean Shipping Co v South Australia* (1979) 145 CLR 172 at 181 per Barwick CJ, 194 per Gibbs J, 208-214 per Stephen J, 240 per Aickin J; *Nolan v Minister for Immigration and Ethnic Affairs* (1988) 165 CLR 178 at 184 per Mason CJ, Wilson, Brennan, Deane, Dawson and Toohey JJ, 191-192 per Gaudron J.

7 Constitution - Preamble.

8 (1979) 145 CLR 172 at 209.

9 Quick and Garran, *Annotated Constitution of the Australian Commonwealth*, (1901) at 352.

10 *Statute of Westminster Adoption Act* 1942 (Cth).

earlier time might have been expected to, pass legislation having effect in Australia. Neither is it whether Australia is treated by the international community as having a particular status. The immediate question is what law is to be applied in the courts of Australia. The former questions about the likelihood of Imperial legislation and of international status can be seen as reflecting on whether Australia is an independent and sovereign nation. But they do so in two ways: whether some other polity can or would seek to legislate for this country and whether Australia is treated internationally as having the attributes of sovereignty. Those are not questions that intrude upon the immediate issue of the administration of justice according to law in the courts of Australia. In particular, they do not intrude upon the question of what law is to be applied by the courts.

19 That question is resolved by covering cl 5 of the Constitution. It provides:

"This Act, and all laws made by the Parliament of the Commonwealth under the Constitution, shall be binding on the courts, judges, and people of every State and of every part of the Commonwealth, notwithstanding anything in the laws of any State".

It is, then, to the Constitution and to laws made by the Parliament of the Commonwealth under the Constitution that the courts must look. And necessarily, of course, that will include laws made by the States whose Constitutions are continued, the powers of whose parliaments are continued, and the existing laws of which were continued (subject, in each case, of course, to the Constitution) by ss 106, 107 and 108 of the Constitution. It is not relevant to the inquiry required by covering cl 5 to inquire how Australia has been treated by other nations in its dealings with them or to inquire whether the Westminster Parliament could or could not pass legislation that has effect in Australia. Covering cl 5 provides that the Constitution and the laws made by the Parliament of the Commonwealth under the Constitution are binding on the courts, judges, and people of every State and of every part of the Commonwealth. None of the points that the applicants seek to make touches the validity of any of the laws that are in question or would make those laws any the less binding on the courts, judges, and people.

20 As I have noted earlier, the second of the three themes identified by the applicants relies on the *Royal Style and Titles Act*. As I understand it, the principal burden of the argument is that an Act of Parliament, changing the style or title by which the Queen is to be known in Australia, worked a fundamental constitutional change. The fact is, it did not. So far as Commonwealth legislation is concerned, it is ss 58, 59 and 60 of the Constitution that deal with the ways in which the Royal Assent may be given to bills passed by the other elements of the Federal Parliament. So far as now relevant, s 58 governs. It provides that the Governor-General "shall declare, according to his discretion, but subject to this Constitution, that he assents in the Queen's name". And there

7.

is no material that would suggest that has not been done in the case of each Commonwealth Act that now is challenged.

21 The third element in the submissions made by the applicants, and the one to which greatest significance was given in oral argument, asserts that significance is to be attached to certain of Australia's international dealings. These contentions fail to take account of certain basic principles. First, provisions of an international treaty to which Australia is a party do not form part of domestic law unless incorporated by statute¹¹. It follows that what one of the applicants referred to as various human rights instruments do not of themselves give rights to or impose obligations on persons in Australia. Similarly, the Charter of the United Nations does not have the force of law in Australia¹². Next, in so far as this limb of the argument sought to make some point about "sovereignty" it is again necessary to note the distinction between sovereignty in international law and sovereignty in the sense described by Hart as "the supreme legislative authority recognised in this system"¹³. The points which the applicants seek to make are points touching the first of these matters, not the second. It is the second that is the critical question in the courts and it is the second that is resolved by having regard to covering cl 5.

22 Lastly, it is necessary to deal with the contentions about the *Commonwealth Electoral Act*. These contentions depend entirely upon acceptance of one or other of what I have earlier called the three main themes of argument. Because I consider that they are not arguable, no separate question arises about the *Commonwealth Electoral Act*. Nevertheless, it may be noted that it was established very early in the life of the federation that if there are any defects in the election of a member of a house of the Parliament the proceedings of that house are not invalidated by the presence of a member without title¹⁴. Moreover, there are at least some circumstances in which invalidating defects in

11 *Minister for Immigration and Ethnic Affairs v Teoh* (1995) 183 CLR 273; *Victoria v The Commonwealth (Industrial Relations Act Case)* (1996) 187 CLR 416 at 480-481 per Brennan CJ, Toohey, Gaudron, McHugh and Gummow JJ.

12 *Bradley v The Commonwealth* (1973) 128 CLR 557 at 582 per Barwick CJ and Gibbs J.

13 Hart, *The Concept of Law*, (1961) at 218.

14 *Vardon v O'Loghlin* (1907) 5 CLR 201 at 208 per Griffith CJ, Barton and Higgins JJ.

the *Commonwealth Electoral Act* will not invalidate the elections held under it¹⁵.

- 23 For these reasons, the points which it is sought to agitate in this Court have insufficient merit to warrant the orders that are sought. Each application is dismissed. In each of matters M65 of 1998, M93 of 1998 and M95 of 1998 the applicants will pay the respondents' costs. I make no order for costs in either M35 of 1998 or M63 of 1998 as each arises out of a criminal or quasi-criminal matter. I certify for counsel.

15 *Attorney-General (Cth); Ex rel McKinlay v The Commonwealth* (1975) 135 CLR 1 at 43 per Gibbs J. (See also the statement as to the effect of the order in these matters recorded at (1975) 7 ALR 593 at 651.)

ANNEXURE 29

1. Copy of writs of certiorari presented and rejected.

IN THE HIGH COURT OF AUSTRALIA
AT CANBERRA

AFFIDAVIT IN SUPPORT OF APPLICATION FOR CERTIORARI

I, IAN HENKE of 7 Apsley Place, Seaford in the State of Victoria, Company director, make oath and say as follows;

1. I am a director of the fourth named applicant herein and duly have the authority of the the first named, second named and third named applicants to make this affidavit on their behalf for their benefit and am duly authorised to make this application on behalf of the fourth named applicant.
2. I was personally present on the 15th. Day of December 1998 at the High Court of Australia at Melbourne when I made oral submission on behalf of the fourth named applicant with the express permission of his Honour Mr. Justice Hayne.
3. I respectfully submit that His Honour, Mr Justice Hayne did take to himself the powers and authority to override a Superior Court being the Parliament of the Commonwealth of Australia, did take to himself the powers and authority to override the Parliament of the United Kingdom and did take to himself the power and authority to override international law in relation to six matters.
 - a) The issue of sovereignty itself and the existence of domestic sovereignty;
 - b) The unanimous vote of both Houses of the Parliament on a motion to be bound by, ratify and accept the Treaty of Versailles and the Act of Parliament No 20 of 1919; being the Treaty of Peace Act which enacted the said Treaty into Australian domestic law.
 - c) By the removal of domestic sovereignty His Honour overrode the National Citizenship Act 1948 conferring upon the executive Government the right to create Australian citizens and to issue documents of identity for use overseas. Such Act required as a basic premise domestic and international sovereignty from the 26 January 1949.
 - d) The overriding of Imperial Law, being the Immigration Act 1972 (UK) which specifically removes Australian citizens from any position under British Law.
 - e) The overriding of the findings of the 1929 report of the Royal Commission of the Constitution
 - f) In contravention of international law he reinstated the continuing sovereignty of the previous Imperial Power.

4. Listed hereunder are my respectful submissions with regard to this application for certiorari for consideration by this Honourable Court prior to considering a final order for certiorari.

SUBMISSIONS MADE IN ANSWER TO THE JUDGEMENT OF HIS HONOUR MR. JUSTICE HAYNE AS CONTAINED IN THE OFFICIAL HIGH COURT TRANSCRIPT DATED 15TH.DECEMBER 1998 AT MELBOURNE

PART ONE

Pursuant to Section 4 of the Constitution Act, the Commonwealth was created as a legal entity (Refer Messrs Quick and Garran, - Annotated Constitution of the Australian Commonwealth 1901) under the Crown of Great Britain and Ireland, a legal authority which disappeared upon the ratification on 15th. January, 1922 of the Anglo-Irish treaty of December 1921 when Ireland ceased to exist as a legal entity. The Government of the Republic of Eirre can attest to this.

Since the Crown of the United Kingdom is held under an Act of the Imperial Parliament, being the Act of Settlement of 1701 it is therefore clear that continuing Imperial Authority over Australia carries with it the continuing political authority of the Parliament of the United Kingdom.

At the time of independence, whenever this may be held to have occurred, sovereign Authority over the Commonwealth passed to the people of Australia such power still residing with the people and not modified.

His Honour Justice Hayne has exceeded his authority by ruling that this defunct Imperial Power is still applicable in Australia in all of its assets thereby in effect ruling that Australia is still in thrall to the political power of the Parliament of the United Kingdom..

PART TWO

Section 9 of the Constitution Act is a subordinate Section dependant upon the eight antecedent Clauses and defines only the manner in which the Government of the legal entity established under Section 4 will be carried out. (Ref Quick and Garran)

Under Section 71 of the Constitution jurisdiction of the High Court extends only to the powers of the Commonwealth as expressed under the Constitution, it explicitly does not extend beyond those limitations.

No further Act has been passed nor can be passed extending the jurisdiction of the High Court beyond the above limitations. The Constitution confers no right upon the High Court to exercise superior jurisdiction over the Parliament of the Commonwealth of Australia.

The High Court does not have an unlimited capacity. This capacity is limited by Law within the aforesaid terms of Section 71 of the Constitution and "The judicial powers of the Commonwealth shall be vested in the High Court". The legislative power is with Parliament under Article 1 of Section 9 of the Constitution such legislative power is not limited to the passing of Acts but may encompass Declarations or any decision made by the Parliament in the proper exercise of the members powers as representatives of the sovereign people of Australia.

The original jurisdictions conferred on the High Court by Sections 71, 73, 74, 75, 76, and 77 specifically do not include any power whatever to overrule the Parliament on a matter which it has duly passed or voted on within the jurisdiction given to Parliament under the Constitution Act.

Under Section 52, the Parliament has exclusive power to make laws for peace, order and good Government. Any decision of the High Court in relation to the actions of Parliament can only override the parliament if the original actions of Parliament were outside of the Parliament's Constitutional Powers.

The activities of the Parliament do not consist of legislation alone. The Parliament as "The Court of the People" may vote to accept, reject, debate and be bound by any issue, treaty, agreement or other document which is placed before it in accordance with the rules of the Parliament. The aforesaid rules of Parliament are purely the prerogative of the Parliament and are not subject to review by the High Court.

There is no provision for the High Court to have any jurisdiction over such activities of the Parliament. Therefore, in accordance with this principal Mr Justice Hayne did err at Law in that he exceeded his authority by overruling a unanimous decision on 1 October 1919 of the House of Representatives and the Senate of the Parliament of the Commonwealth of Australia being in fact a Superior Court to the High Court. Parliament being a manifestation of the sovereign power of the people. (Refer to Barwick J in *Bonser-v-LaMachia* 1969.43.ALJR 275).

The unanimous decision of the High Court in the Bonser Case decided that a sovereign state of Australia existed in control of its territory and territorial waters irrespective of when it occurred. It had in fact been transferred from Imperial sovereignty.

It is submitted that Parliament made decisions as recorded in Hansard during September of 1919 and that it was beyond the jurisdiction of His Honour, Mr Justice Hayne to override or interpret that decision.

The decision by Barwick CJ, does not exclude this decision by the Parliament as being part of the transfer of sovereignty. It remains within the possibilities envisaged by the Court.

By separate deliberation, the Parliament in 1995 affirmed that the decision taken by the House of Representatives and the Senate in September 1919 was binding and was in fact

the date of Australia's Independence. These two decisions by the Parliament in 1919 and 1995 constitute rulings of a Superior Court which are not within the jurisdiction of any other Australian Court to overturn.

Therefore it is submitted, His Honour, Mr Justice Hayne has overridden without judicial power or confidence, the Commonwealth Parliament and the rulings by the said Parliament thereby entitling the granting of a Writ of Certiorari per se.

PART THREE

The position of the Monarch within the Australian Legal and Political System is defined by the territory over which sovereignty exists.

On attainment of the throne in 1952, Queen Elizabeth II did not automatically assume the titles of her father and previous monarchs. The Westminster Parliament passed the Royal Style & Titles Act 1953 UK conferring on Her Majesty a different title to that of previous Monarchs. The Style & Title granted is "Elizabeth II by the Grace of God of the United Kingdom, Great Britain and Northern Ireland and her other Realms and Territories, Queen."

Since the Imperial Parliament no longer has sovereign authority over the Dominions it could not grant Titles over the Dominions within the exercise of its legal authority. It therefore requested that Dominions make their own laws in relations to Her Majesty. The Act explicitly eliminates the question of Title over the self-governing dominions from the Realms and Territories mentioned in the Title confirmed. It required that the self-governing dominions who wished to retain the link with the Crown should pass their own legislation accepting the Queen. Therefore, under British Legislation, any interpretation of Queen of the United Kingdom does not allow for a Title which is excluded under the original Imperial Act 1953 (UK).

The Parliament of the Commonwealth of Australia passed the Royal Style & Titles Act 1953. This Act conferred upon Her Majesty a Title which included both the United Kingdom and Australia. However, the later Royal Styles & Titles Act 1973 by design of the Parliament repealed the Schedule of the 1953 Act and thereby removed any reference to the United Kingdom in relation to Australia and conferred upon Her Majesty the new Style & Title of "Elizabeth II, by the Grace of God Queen of Australia and her other Realms and Territories, Head of the Commonwealth".

However since the Queen of the United Kingdom holds Her throne solely under the authority of an Act of Parliament, the Act of Settlement 1701, and not under the untrammelled Royal Right of Succession, then it necessarily follows that the ultimate authority for the current sovereign is the authority of a foreign parliament and therefore imposes the sovereign authority of the United Kingdom Parliament on and over the sovereign people of Australia.

It is respectfully submitted that His Honour, Mr Justice Hayne erred at Law and exceeded his jurisdiction by overruling an Act of the Parliament which had been personally assented to by Her Majesty. His Honour, in fact reinterpreted the Act to reinstate a Title which the Commonwealth Parliament had by its deliberations specifically excluded by repealing the Schedule to the Royal Style & Titles Act 1953.

Since Parliament repealed the Schedule to the 1953 Act it shows Parliament's intention in relation to using the wording 'Queen of the United Kingdom'. Parliament clearly decided the Queen was the Queen of Australia, which was not open to be interpreted in a way which negates the meaning of the Act. The only reason for the 1973 passing of the later Royal Styles & Titles Act 1973 was for the purposes of repealing the Schedule and Title granted to Her Majesty by the 1953 Act. The action taken by the Parliament was in response to legislative action taken by the Imperial Parliament declaring Australians to be aliens to the United Kingdom.

PART FOUR

The jurisdiction of the High Court extends only to matters arising within the terms Section 9 of the Constitution Act under S71 and embodies no authority whatever over acts, actions or documents which depend upon the sovereign authority of the Imperial Parliament, except, within that narrow range permitted by Section 9

.By Declaration of the Joint Committee the House of Lords and the House of Commons of 27 March 1935, the Imperial Parliament rejected attempts by the State of Western Australia to secede and in the process ruled that the Westminster Parliament alone had jurisdiction over and legal competence to alter and amend Sections 1-8 of the Constitution Act. The foreign office of the United Kingdom Government in 1997 in writing to an associate of the applicants reaffirmed the capacity of the Westminster Parliament to repeal the said Act.

It further pointed out that no provision was embedded in the Act to vary the Preamble or these first eight sections.

It is submitted that jurisdiction of the High Court relates only to Section 9 of the Act. In other words, the High Court can not exercise jurisdiction over matters over which the Commonwealth does not hold sovereignty, ie Acts of the Imperial Power.

In assuming this jurisdiction for himself His Honour, Mr Justice Hayne ruled Section 2 of the Constitution which referred to the Queen of the United Kingdom etc, could be interpreted in a way which had been explicitly excluded by legislation of the Australian Parliament

None of the precedents quoted by His Honour examined the question of either the repeal of titles by the Commonwealth Parliament thereby removing the basis of significant sections of his Honour's judgement or the decision of the Imperial Parliament which

excluded Australians from the jurisdiction of Imperial Law thereby invalidating the operation of the Imperial Laws Application Act..

PART FIVE

That in effect His Honour, Mr Justice Hayne wrongly and improperly overruled the 1929 Commonwealth of Australia Report of the Royal Commission on the Constitution. Such ruling being contained in Appendix C of the Report of the Inter-Imperial Relations Committee, 1926 – Extracts Paragraph 2, quote “They are autonomous communities within the British Empire, equal in status, in no way subordinate one to another in any aspect of their domestic or external affairs, though united by a common allegiance to the Crown, and freely associated as members of the British Commonwealth of Nations”.

Mr. Justice Hayne also presumed to not only override decisions and Acts of the Commonwealth Parliament but also overrode a joint decision of the Government of the United Kingdom and the Government of the Commonwealth as expressed in the Balfour Declaration of 1926 listed above as Schedule C of the Royal Commission Report.

5. In view of the material presented herein to this Honourable Court I submit that he major conflicts created by the judgement of His Honour Justice Hayne have the capacity to disrupt every aspect of national life, to prevent overseas travel and commerce by Australian citizens, to cause every election result to be challenged and to even cast doubt upon the existence of the High Court itself thereby causing severe disruption to the proper rule of law, order, peace and good government of the Commonwealth.

SWORN BY the said IAN HENKE at

This day 1999

Before Me ..

Prepared by Waters O'Brien
 Solicitors
 164 High St.
 Cranbourne 3977

Solicitors Code 1622

ANNEXURE 30

1. Copy of extracts (Para 49 and 96) Full Bench of High Court of Australia Judgement.

AUSTRALIA
The concealed colony



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Sue v Hill [1999] HCA 30 (23 June 1999)

Last Updated: 23 June 1999

HIGH COURT OF AUSTRALIA

GLEESON CJ,

GAUDRON, McHUGH, GUMMOW, KIRBY, HAYNE AND CALLINAN JJ

Matter No S179/1998

HENRY (NAI LEUNG) SUE PETITIONER

AND

HEATHER HILL & ANOR RESPONDENTS

Matter No B49/1998

TERRY PATRICK SHARPLES PETITIONER

AND

HEATHER HILL & ANOR RESPONDENTS

Sue v Hill [1999] HCA 30

23 June 1999

S179/1998 and B49/1998

ORDER

1. Answer the questions reserved in each stated case as follows:

(a) Does s 354 of the Act validly confer upon the Court of Disputed Returns jurisdiction to determine the issues raised in the Petition?

Answer: Yes

citizen or entitled to the rights and privileges of a subject or citizen. That is, the inquiry is not about whether Australia's relationships with that power are friendly or not, close or distant, or meet any other qualitative description. Rather, the words invite attention to questions of international and domestic sovereignty[50].

49. Further, because the question is whether, at the material time, the United Kingdom answered the description of "a foreign power" in s 44(i), it is not useful to ask whether that question could have been easily answered at some earlier time, any more than it is useful to ask whether it is easily answered now. No doubt individuals will be directly affected by the answer that is given and, to that extent, their rights, duties and privileges may be affected. But any difficulty in deciding whether the United Kingdom did answer the description at the material time, or in deciding when it first answered that description, does not relieve this Court of the task of answering the question that now is presented.

Constitutional interpretation

50. In *Bonser v La Macchia*, Windeyer J referred to Australia having become "by international recognition ... competent to exercise rights that by the law of nations are appurtenant to, or attributes of, sovereignty"[51]. His Honour regarded this state of affairs as an instance where "[t]he law has followed the facts"[52]. It will be apparent that these facts, forming part of the "march of history"[53], received judicial notice[54]. They include matters and circumstances external to Australia but in the light of which the Constitution continues to have its effect and, to repeat Windeyer J's words[55], "[t]he words of the Constitution must be read with that in mind".
51. There is nothing radical in doing as Windeyer J said; it is intrinsic to the Constitution. What has come about is an example of what Story J foresaw (and Griffith CJ repeated[56]) with respect to the United States Constitution[57]:

"The instrument was not intended to provide merely for the exigencies of a few years, but was to endure through a long lapse of ages, the events of which were locked up in the inscrutable purposes of Providence."

52. The changes to which Windeyer J referred did not require amendment to the text of the Constitution. Rather, they involved[58]:

"in part, the abolition of limitations on constitutional power that were imposed from outside the Constitution, such as the *Colonial Laws Validity Act 1865* (Imp) and restricting what otherwise would have been the proper interpretation of the Constitution, by virtue of Australia's status as part of the Empire. When the Empire ended and national status emerged, the external restrictions ceased, and constitutional powers could be given their full scope."

Changes in the United Kingdom

53. So also with respect to changes in the constitutional arrangements in the United Kingdom itself. The condition of those arrangements at any one time may be difficult to perceive by reason of the lack of any single instrument answering the description of a written constitution. Nevertheless, it is readily apparent from judicial decisions in the United Kingdom that the

constitutional arrangements of that country have changed since 1900 in at least two respects which are relevant to the issues debated in argument in the present litigation.

54. The first concerns the identity of "the Crown of the United Kingdom of Great Britain and Ireland" which is identified in the preamble to *The Commonwealth of Australia Constitution Act 1922* ("the Constitution Act")^[59] and "the United Kingdom", the sovereignty of which determines, under covering cl 2 thereof, the identity of the person identified throughout the Constitution itself as "the Queen".
55. The United Kingdom of Great Britain and Ireland had come into existence in 1801. In *Earl of Antrim's Petition*, Lord Reid explained the position as follows^[60]:

"Prior to 1707 the Kingdoms of England, Scotland and Ireland were separate kingdoms. In 1707 the Kingdoms of England and Scotland were united to form the Kingdom of Great Britain but Ireland remained a separate Kingdom. In 1801 the Kingdoms of Great Britain and of Ireland were united to form the United Kingdom of Great Britain and Ireland."

His Lordship went on to refer to the *Irish Free State (Agreement) Act* (UK) which established the Irish Free State with "Dominion Status" and to the *Ireland Act 1949* (UK) which declared the Irish Free State to have ceased to be part of "[h]is Majesty's dominions"^[61]. The result was twofold, that "Ireland as a whole no longer exist[ed] politically"^[62] and the right of Irish peers to elect representatives from among their number no longer existed.

56. The result cannot be that, because the present sovereign has never been Queen of Great Britain and Ireland, the Australian Constitution miscarries for the reason, in Lord Reid's language, that "the state of things on which its existence depended has ceased to exist"^[63]. Rather, and consistently with the reasoning of Windeyer J in *Bonser v La Macchia*, at least since 1949 the text of the Constitution, in referring to "the Queen", has to be read so as to follow these changed constitutional circumstances in the United Kingdom. Those circumstances may change again^[64], and with similar consequences.
57. The second matter is that in 1982 it was settled in the United Kingdom by the decision of the English Court of Appeal in *R v Foreign Secretary; Ex parte Indian Association*^[65] as a "truism" that, whilst "there is only one person who is the Sovereign within the British Commonwealth ... in matters of law and government the Queen of the United Kingdom, for example, is entirely independent and distinct from the Queen of Canada"^[66]. In addition to those remarks by May LJ, Kerr LJ observed^[67]:

"It is settled law that, although Her Majesty is the personal sovereign of the peoples inhabiting many of the territories within the Commonwealth, all rights and obligations of the Crown - other than those concerning the Queen in her personal capacity - can only arise in relation to a particular government within those territories. The reason is that such rights and obligations can only be exercised and enforced, if at all, through some governmental emanation or representation of the Crown."

It is to be noted that these conclusions were expressed in the United Kingdom even before the enactment by its Parliament of the *Canada Act 1982* (UK) and the *Australia Act 1986* (UK)

("the 1986 UK Act").

58. The construction of provisions of the Constitution is a matter for Australian courts, in particular this Court. However, the position of the United Kingdom as seen by its courts is a relevant matter to which regard has been had by this Court in construing legislative power with respect to "aliens" in s 51(xix)[68]. So also with respect to the provisions of s 44(i). In effect, the submissions for Mrs Hill seek to have this Court ascribe to the United Kingdom, for the purposes of Australian constitutional law, a character which the United Kingdom courts themselves deny to the United Kingdom for the purposes of its constitutional law.

United Kingdom institutions and the Constitution

59. It may be accepted that the United Kingdom may not answer the description of "a foreign power" in s 44(i) of the Constitution if Australian courts are, as a matter of the fundamental law of this country, immediately bound to recognise and give effect to the exercise of legislative, executive and judicial power by the institutions of government of the United Kingdom. However, whatever once may have been the situation with respect to the Commonwealth and to the States, since at least the commencement of the Australia Act 1986 (Cth) ("the Australia Act") this has not been the case. The provisions of that statute make it largely unnecessary to rehearse what are now the matters of history recounted in the judgments in *New South Wales v The Commonwealth*[69], *Kirmani v Captain Cook Cruises Pty Ltd [No 1]*[70] and *Nolan v Minister for Immigration and Ethnic Affairs*[71].

Legislative power

60. As to the further exercise of legislative power by the Parliament of the United Kingdom, s 1 of the Australia Act states:

"No Act of the Parliament of the United Kingdom passed after the commencement of this Act shall extend, or be deemed to extend, to the Commonwealth, to a State or to a Territory as part of the law of the Commonwealth, of the State or of the Territory."

61. The recital to the Australia Act indicates that it was enacted in pursuance of s 51(xxxviii) of the Constitution, the Parliaments of all the States having requested the Parliament of the Commonwealth to enact the statute. Section 51(xxxviii) empowers the Parliament, subject to the Constitution, to make laws for the peace, order and good government of the Commonwealth with respect to:

"[t]he exercise within the Commonwealth, at the request or with the concurrence of the Parliaments of all the States directly concerned, of any power which can at the establishment of this Constitution be exercised only by the Parliament of the United Kingdom or by the Federal Council of Australasia".

The Australia Act was enacted before s 51(xxxviii) had been construed in *Port MacDonnell Professional Fishermen's Assn Inc v South Australia*[72]. Apparently out of a perceived need for abundant caution, legislation of the Westminster Parliament was sought and passed as the 1986 UK Act 1973 [73].

96. The point of immediate significance is that the circumstance that the same monarch exercises regal functions under the constitutional arrangements in the United Kingdom and Australia does not deny the proposition that the United Kingdom is a foreign power within the meaning of s 44(i) of the Constitution. Australia and the United Kingdom have their own laws as to nationality[132] so that their citizens owe different allegiances. The United Kingdom has a distinct legal personality and its exercises of sovereignty, for example in entering military alliances, participating in armed conflicts and acceding to treaties such as the Treaty of Rome [133], themselves have no legal consequences for this country. Nor, as we have sought to demonstrate in Section III, does the United Kingdom exercise any function with respect to the governmental structures of the Commonwealth or the States.
97. As indicated earlier in these reasons, we would give an affirmative answer to the question in each stated case which asks whether Mrs Hill, at the date of her nomination, was a subject or citizen of a foreign power within the meaning of s 44(i) of the Constitution.
98. GAUDRON J. In each of these matters a case has been stated for the consideration of the Full Court pursuant to s 18 of the *Judiciary Act 1903* (Cth)[134]. Each matter arises out of the 1998 election for the return of six Senators for the State of Queensland to serve in the Parliament of the Commonwealth. The writ for the election was issued on 31 August 1998. Pursuant to the writ, nominations were made on or before 10 September and the election was held on 3 October 1998. Following the counting of votes, the Governor of Queensland certified, on 26 October 1998, that Mrs Heather Hill, the first respondent in each matter, was duly elected as the third Senator. Messrs Ludwig, Mason and Woodley were certified as duly elected as the fourth, fifth and sixth Senators respectively.
99. The cases have been stated in separate proceedings commenced by the petitioners, Mr Sue and Mr Sharples. They invoke the jurisdiction purportedly conferred on this Court by s 354 of the *Commonwealth Electoral Act 1918* (Cth) ("the Act"). I say "purportedly conferred" because question (a) in each of the cases stated asks:

"Does s 354 of the Act validly confer upon the Court of Disputed Returns jurisdiction to determine the issues raised in the Petition?"

Necessarily, that question must be answered first. Before turning to that question, however, it is convenient to refer to the nature of the challenge made by the petitioners and the facts by reference to which each challenge is made.

Nature of the challenge

100. Each petitioner challenges Mrs Hill's election on the basis that, at the time of her nomination, she did not satisfy the requirements of s 44(i) of the Constitution. Section 44 relevantly provides:
- " Any person who:
- (i) is under any acknowledgment of allegiance, obedience, or adherence to a foreign power, or is a subject or a citizen or entitled to the rights or privileges of a subject or a citizen of a foreign power; ...

to give its response. This Court may not do so on a petition addressed to it under s 353 in Div 1 for it has no jurisdiction to try that petition under s 354 in the same Division. The scheme of the Act should be followed at this stage. Not least is this necessary because the scheme of the Act reflects that of the Constitution itself[384].

Costs

284. A question arises as to the costs of the proceedings in this Court. Those proceedings are before the Court pursuant to the two references made to the Court under the *Judiciary Act*. By s 26 of that Act, the Court has jurisdiction to award costs in all matters brought before the Court, including matters dismissed for want of jurisdiction. It is pursuant to that provision and not s 360 of the Act that costs must be provided[385]. The special provisions of s 360(4) by which the Court of Disputed Returns may "order costs to be paid by the Commonwealth where the Court considers it appropriate to do so" are unavailing in the view which I take of the nature of this Court's jurisdiction and the lack of jurisdiction of the Court of Disputed Returns. Ordinarily, because the petitioners have invoked a jurisdiction which does not belong to the Court of Disputed Returns, they would be ordered to pay the costs occasioned by their error.

285. However, before this Court the Attorney-General for the Commonwealth intervened in support of the interests of the petitioners. The ambiguities and uncertainties of the Act have been drawn to attention in the past. The issues litigated involve constitutional and statutory questions of general application and of fundamental importance to the operation of federal electoral law. In such circumstances, I consider that it is just that the costs of the petitioners in each case stated in this Court and of the first respondent should be borne by the Commonwealth. The second respondent should bear its own costs.

Orders

286. The questions in the case stated should be answered, and the orders for costs made, as McHugh J has provided.

287. CALLINAN J. I agree with McHugh J that, given the structure of the *Commonwealth Electoral Act* (Cth), the specific reference to bribery, corrupt practices, undue influence and illegal practices, the omission of any reference in Div 1 to the constitutional qualification of a member (except the special case of a s 15 appointment) and the enactment of Div 2 which deals exclusively with the qualification of members, the best interpretation of the *Commonwealth Electoral Act 1942* is that a petition on the bare ground of an allegation of a breach of s 44 of the Constitution is not within the jurisdiction of the Court of Disputed Returns.

288. There is only one other matter to which I wish to refer.

289. The petitioners (and the Commonwealth which supports them) acknowledge that at the time of Federation the United Kingdom was unquestionably not a foreign power. One of their primary arguments on the central question whether the United Kingdom is a foreign power is that, as time has passed, circumstances have changed, and the United Kingdom, by a process of evolution has now become a power foreign to Australia (the "evolutionary theory"). It is upon that argument that I wish to comment.

290. The evolutionary theory is, with respect, a theory to be regarded with great caution. In

propounding it, neither the petitioners nor the Commonwealth identify a date upon which the evolution became complete, in the sense that, as and from it, the United Kingdom was a foreign power. Nor could they point to any statute, historical occurrence or event which necessarily concluded the process. There were, they asserted, a series of milestones, for example, Federation itself, the *Statute of Westminster Adoption Act* (Cth), the *Royal Style and Titles Act 1973* (Cth) and the *Australia Acts*[386] but neither the last of these nor any other enactment was said to be the destination marker of the evolution.

291. The great concern about an evolutionary theory of this kind is the doubt to which it gives rise with respect to peoples' rights, status and obligations as this case shows. The truth is that the defining event in practice will, and can only be a decision of this Court ruling that the evolutionary process is complete, and here, as the petitioners and the Commonwealth accept, has been complete for some unascertained and unascertainable time in the past. In reality, a decision of this Court upon that basis would change the law by holding that, notwithstanding that the Constitution did not treat the United Kingdom as a foreign power at Federation and for some time thereafter, it may and should do so now.
292. There was no evidence before the Court as to the consequences of the renunciation of British citizenship; whether, for example, entitlements to United Kingdom pensions or social services might be adversely affected; or whether any rights of children of a person renouncing citizenship to seek employment in the United Kingdom or Europe might be affected. However, plainly a person who renounces United Kingdom citizenship will be forgoing a right to hold a United Kingdom passport which confers at least some advantages in travel to the United Kingdom and in Europe. Any person should be entitled to know at what point in time the United Kingdom has come to be, if it is to be so regarded, a foreign power, so that that person may make an informed choice or election, to enjoy whatever benefits (including to stand for election to an Australian Parliament) renunciation of United Kingdom citizenship may confer, in exchange for the forgoing of such benefits as United Kingdom citizenship may bestow. The operation of an evolutionary theory in this context would deny a person such as the first respondent the opportunity of making an informed choice or election until such time as this Court or, if appropriate, Parliament, determine that the evolution is complete.
293. The Court was not taken to any statutes in which the term "foreign power" is used. However there are statutes which do use that term and whose application might perhaps be different if this Court were to hold that the United Kingdom is a foreign power. One such statute is the *Australian Security Intelligence Organization Act 1979* (Cth). Section 4 of that Act defines "foreign power" to mean a foreign government, an entity directed or controlled by a foreign government or a foreign political organization. Section 4 also defines "acts of foreign interference" to mean activities carried on by a "foreign power" that are "clandestine or deceptive", "carried on for intelligence purposes", "carried on for the purpose of affecting political or governmental processes", "otherwise detrimental to the interests of Australia" or "involve a threat to any person". Section 4 also defines "security" to include the protection of the people of Australia from, inter alia, "acts of foreign interference".
294. A number of sections of the *Australian Security Intelligence Organization Act 1914* define the powers and obligations of ASIO officers in terms of "security". One of the primary functions of ASIO is to provide "security assessments" to government agencies. Such assessments are statements by ASIO to the relevant organization whether it is consistent with "security" to take prescribed administrative action against a particular person (see Pt IV of the *Australian*

ANNEXURE 31

1. Copy of letter from Australian Parliament confirming obligatory nature of the Oath and Affirmation required of all members and Senators in the Australian Parliament.



110 JUN 1999

Mr Peter Batten
PO Box 23A
SOMERS
Vic 3927

Dear Mr Batten

Your letter dated 31 May 1999 to the Australian Electoral Commission on the subject of Members' oaths or affirmations of allegiance was referred to the Department of the House of Representatives for answer in respect of Members of the House.

An oath or affirmation of allegiance by Members and Senators is a requirement of the Australian Constitution. No provisions of the *Commonwealth Electoral Act 1918* are involved. Section 42 of the Constitution states:

42. Every senator and every member of the House of Representatives shall before taking his seat make and subscribe before the Governor-General, or some person authorised by him, an oath or affirmation of allegiance in the form set forth in the schedule to this Constitution.

The wording of the oath or affirmation is set out in the schedule to the Constitution, as follows:

OATH

I, *A.B.*, do swear that I will be faithful and bear true allegiance to Her Majesty Queen Victoria, Her heirs and successors according to law. SO HELP ME GOD!

AFFIRMATION

I, *A.B.*, do solemnly and sincerely affirm and declare that I will be faithful and bear true allegiance to Her Majesty Queen Victoria, Her heirs and successors according to law.

(NOTE - *The name of the King or Queen of the United Kingdom of Great Britain and Ireland for the time being is to be substituted from time to time.*)

There is no provision for any deviation from this constitutional requirement. No Member may take part in proceedings of the House until sworn in.

The standing orders of the House state in relation to a new Parliament that Members shall 'be sworn, or make affirmation, as prescribed by the Constitution'. Although no more detailed procedures are specified, either in the standing orders or elsewhere, the traditional practice is as follows.

The oath or affirmation of allegiance taken by newly elected Members at the beginning of a Parliament is administered by a person authorised to do so by the Governor-General. This is traditionally a Justice of the High Court. The judge is escorted into the Chamber and to the Speaker's Chair by the Serjeant-at-Arms. The Clerk reads to the House the commission from the Governor-General authorising the judge to administer the oath or affirmation and then tables the returns to the writs for the general election, showing the Member elected for each electoral Division. Members are called by the Clerk in turn and approach the Table in groups of approximately ten to twelve, make their oath or affirmation, sign (subscribe) the oath or affirmation form and then return to their seats. The Ministry is usually sworn in first, followed by the opposition executive and then other Members.

Members not sworn in initially may be sworn in later in the day's proceedings or on a subsequent sitting day by the Speaker. The Speaker receives, after his or her appointment, a commission from the Governor-General to administer the oath or affirmation. Those Members elected at by-elections during the course of a Parliament are also sworn in by the Speaker.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Robyn Webber', with a long horizontal line extending to the right.

Robyn Webber
Director
Chamber Research Office

ANNEXURE 32

1. Copy of judgement Justice Hayne of the High Court of Australia finding counter to the decision of the Full Bench handed down just one day earlier..



High Court of Australia

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McClure v Australian Electoral Commission [1999] HCA 31 (24 June 1999)

Last Updated: 24 June 1999

HIGH COURT OF AUSTRALIA

HAYNE J

MALCOLM McCLURE PETITIONER

AND

THE AUSTRALIAN ELECTORAL COMMISSION RESPONDENT

AND

PHILIP JONES & ORS PARTIES JOINED

McClure v Australian Electoral Commission [1999] HCA 31

24 June 1999

M119/1998

ORDER

Petition dismissed with costs.

Representation:

Petitioner appeared in person

S J Gageler for the respondent (instructed by Australian Government Solicitor)

J T Shiels (instructed by GSM Lawyers) for Kelly Buzza (a party joined)

Notice: This copy of the Court's Reasons for Judgment is subject to formal revision prior to publication in the Commonwealth Law Reports.

CATCHWORDS

Parliament because (in effect) there was no proper signification of the Royal Assent to the bills by which those sections were inserted in the Act. Either in amplification of or in addition to this contention the petitioner sought to allege that Australia became a sovereign and independent nation at or after the time of its execution of the Treaty of Versailles. Accordingly (so the argument went) the signification of Royal Assent to legislation by, or on behalf of, a person who is the sovereign of the United Kingdom was of no effect.

7. I heard argument in support of the application for leave to amend but indicated that I would give my decision on that application at the same time as giving my reasons in relation to the respondent's application. The application for leave to amend is refused.

8. Leave to amend in the terms proposed would be futile. For the reasons I gave in *Joosse v Australian Securities and Investment Commission*[4], I consider the arguments that the proposed amendment seeks to found are arguments that must fail. The immediate question presented by arguments of this kind is what law is to be applied by the courts. That question is resolved by covering cl 5 of the Constitution:

(ANNEXURE 28).

"This Act, and all laws made by the Parliament of the Commonwealth under the Constitution, shall be binding on the courts, judges, and people of every State and of every part of the Commonwealth, notwithstanding anything in the laws of any State".

In so far as the petitioner relies on some alleged deficiency in the signification of Royal Assent, it is ss 58, 59 and 60 of the Constitution that deal with the ways in which the Royal Assent may be given to bills passed by the other elements of the Parliament. So far as now relevant, s 58 governs. It provides that the Governor-General "shall declare, according to his discretion, but subject to this Constitution, that he assents in the Queen's name". There is nothing to suggest that this was not done in the case of the Acts that introduced s 211 and s 211A into the Act. The history of international dealings to which the petitioner referred is not to the point.

9. It is, in these circumstances, not necessary to consider whether ss 355(e) and 358 of the Act preclude the amendment[5] because it is sought more than 40 days after the return of the writ. The respondent's reliance on those provisions assumes that they are valid. The petitioner's proposed amendment might appear to attempt to cast doubt on that validity. But, as I have indicated earlier, the arguments against validity must fail and the amendments proposed would be futile.

The petition

10. In his petition, the petitioner makes two kinds of complaint. The first is a complaint about the lack of media coverage of his candidacy in the election and of his platform of policies. The second is a complaint that he was disadvantaged by the application of those provisions of the Act that govern group and individual voting tickets in a Senate election[6], and what has become known as voting above or below the line[7]. He seeks declarations that the half Senate election for Victoria was void and that none of the six candidates returned was duly elected.
11. In addition, he seeks four other kinds of relief: first, the return of the lodgment fee of \$700 that he paid on his nomination as a Senate candidate (a claim that I will call the "deposit claim"); second, that the Court "instruct" the respondent to make provision for ticket voting for

ANNEXURE 33

1. Correspondence demonstrating that the Australian Government is prepared to condone malpractice by the courts.

**The Federal Attorney General
Mr Darryl Williams
Parliament House
CANBERRA
A.C.T. 2600**

February 7th 1998

Dear Mr Williams,

I lodge a complaint relating to the conduct of Magistrate, Mr Clinton A. Johanson in proceeding, in the face of legal argument and defence,(presented verbally and in full written form), to hear and find in Case MCCHB-97-6993 on the 15th January 1998 in the Christies Beach Magistrates Court of South Australia.

It is held that by so doing Mr Johanson offended the same law that he has undertaken to interpret and administer. It is contended that he:-

- 1) breached *the Human Rights and Equal Opportunities Act 1986 (Commonwealth)*
- 2) breached *Section 78B of the Judiciary Act 1903 (Commonwealth)*
- 3) ignored *High Court Rulings.*
- 4) breached *Article 36 of the Statute of the International Court of Justice.*
- 5) breached *Article X of the Covenant of the League of Nations.*
- 6) breached *Article 2.1 and 2.4 of the United Nations Charter.*

It is contended that while acting as presiding magistrate Mr Clinton A. Johanson erred in law by failing to respond to a verbal as well as a formal written request that he present documentation which identified the basis for the authority that he was exercising. As a consequence he failed to establish that he was presiding over a competent court which was in possession of valid legal authority.

By refusing to respond to a rightful request it is contended that Mr Johanson offended Schedule 2 (International Covenant on Civil And Political Rights) of the Human Rights and Equal Opportunities Commission Act 1986 (Commonwealth).

Mr Johanson was presented with a full argument that established that the laws of South Australia and the Commonwealth remain British Colonial laws under the authority of the Parliament of the United Kingdom and as such they ceased to have lawful authority in Australia after Australia's legal attainment of sovereign nation status on the 10th January 1920. The argument presented centred on the confirmed fact that the British Colony of the Commonwealth of Australia Constitution Act 1900(UK) remains an Act of the Parliament of the United Kingdom. That is, the Australian Constitution remains but part of an Act of UK law. And that any argument to the contrary may prove politically convenient but not legally valid.

As a graphic illustration that Australian governments continue to permit the United Kingdom to interfere in Australia's internal affairs, in contravention of Article 2.1 and 2.4 of the Charter of the United Nations, Mr Johanson was presented with of a number of documents.

These included a copy of the 1986 Letters Patent issued to the Governor of South Australia by ELIZABETH the SECOND, of the United Kingdom of Great Britain and Northern

Ireland. These Letters Patent were signed by a senior British civil servant in the employ of the Lord Chancellor.

By choosing to proceed in the face of substantive arguments involving questions relating to the authority of Letters Patent and the validity of the Constitutional Mr Johanson clearly acted outside of the jurisdiction of his court. Despite being so advised he chose to ignore his obligation under section 78B of the Judiciary Act 1903.

Mr Johanson was presented with arguments which called on High Court rulings and the status of international law in relation to Australia's obligations under international treaties. He was presented with argument that Section 4 of the Statute of Westminster 1931 is in contravention of Article X of the Covenant of the League of Nations and paragraph 1 of the Australia Act of 1986 contravene Articles 2.1 and 2.4 of the Charter of the United Nations. Again, to proceed to hear and deliver a finding on this matter Mr Johanson necessarily had to either ignore the arguments or in deliberation, reach a decision contrary to High Court findings. In addition, to proceed and to reach a finding he had to either ignore or make interpretations in relation to international treaties.

This occurred despite Mr Johanson's attention being drawn to the Franklin Dam case and to Teoh as well as Article 36 of the Statute of the International Court of Justice. By choosing to proceed Mr Johanson offended the Statute of the International Court of Justice. Again he moved into an area which was outside the jurisdiction of his court.

You are asked to act, without delay, on this complaint.

You are advised that:-

- an appeal against Mr Johanson's finding has been lodged with the South Australian Supreme Court.
- the Chief Magistrate of South Australia has been directly advised of the actions being taken in this matter.
- the South Australian Attorney General has been likewise advised.
- a complaint under the optional Protocol to the International Covenant on Civil and Political rights to be lodged with the Human Rights Committee of the United Nations is in the process of preparation.

Yours sincerely,

Peter Batten
P.O. Box 1333
REMARK
South Australia 5341

enclosure:-

- 1) Statement read and presented to the court asking the Magistrate to provide evidence that he was presiding over a competent court.
- 2) Statement partly read and presented to the court establishing that in the light of the facts to be presented the Magistrates only viable option was to adjourn the trial hearing. (Note: the 12 documents submitted in support of this statement have not been included)
- 3) Evidence, including 'International Law Statutory Declaration For Australian Citizens' and Declaration of objection to any action to be taken by the court, as presented to the court.

docat CbCT5



**Office of
Attorney-General**

96074576 / 177984:RC

24 MAR 1998

**Mr Peter Batten
P O Box 1333
RENMARK
S A 5341**

Dear Mr Batten

I refer to your letter dated 7 February 1998 to the Attorney-General complaining of the conduct of the Magistrate in the Christies Beach Magistrates Court of South Australia. The Attorney-General has asked me to reply on his behalf.

I note from your letter that you are not happy with the decision of the Magistrate and have appealed against his findings to the South Australian Supreme Court. Since this matter is now the subject of further judicial proceedings, I am not in a position to comment further.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Nicholas Grono'.

**Nicholas Grono
Adviser**

**The Federal Attorney-General
Mr Darryl Williams
Parliament House
CANBERRA
A.C.T. 2600**

May 8th 1998

My last correspondence re this matter - February 7th 1998
Your response ref. no: 96074567 / 177984:RC March 24th 1998

Dear Mr Williams,

As the protector of the laws of the Commonwealth it is believed that you are charged with the responsibility of ensuring that Commonwealth laws are upheld.

Accordingly the complaint that Mr Clinton A. Johanson while serving as a Magistrate of the Magistrates Court of South Australia contravened Commonwealth law, is restated. There now exists an expectation that you will, without further delay, take appropriate action in the matters that are the subject of the unsatisfied complaint of February 7th 1998.

It is now further expected that you will deal expeditiously with a similar complaint which is here lodged against the conduct of one Justice David Bleby of the Supreme Court of South Australia.

On the 11th March 1998 Justice Bleby by proceeding to hear and dismiss an appeal against Magistrate Clinton A. Johansen's conduct and finding of 15th January 1998 has also offended Commonwealth law as well as International law.
Justice Bleby has offended the same laws that he has undertaken to interpret and administer.

He has,

- 1) breached Article 14, Schedule 2 of the Human Rights and Equal Opportunity Act 1986 (Commonwealth)
- 2) breached Section 75 of Clause 9 of the Commonwealth of Australia Constitution Act
- 3) breached Section 78B of the Judiciary Act 1903 (Commonwealth).
- 4) breached Article 36 of the Statute of the International Court of Justice.
- 5) breached Article X of the Covenant of the League of Nations.
- 6) breached Article 2.1 and 2.4 of the United Nations Charter.

These offences occurred in the face of substantial argument and documentation offered by way of affidavit as well as in direct presentation to the Court.

They occurred despite the Appellant stressing that all of the arguments presented to Mr Johansen had equal application to Justice Bleby's Supreme Court.

Copies of all written argument and supporting documents presented to the Magistrates Court were presented by way of affidavit to Justice Bleby's Appeal Court.

1) In stating that he drew his authority from Letters Patent issued by the Government of the United Kingdom and from legislation dependent on these same Letters Patent, Justice Bleby failed to satisfy the Article 14 of the International Covenant on Civil and Political Rights definition of a "Competent Court". This Covenant is Schedule 2 of the Human Rights and Equal Opportunities Act 1986 (Commonwealth). The appeal was not heard by a "competent court". Commonwealth law was not upheld. The Appellant's rights were abused.

Justice Bleby failed to present counter argument and offered no explanation as to why the Appellant's presentation was rejected.

However what is clear is that in rejecting, out of hand, the arguments advanced and proceeding as he did, he, on a number of counts, exceeded his jurisdiction and in so doing broke Commonwealth law as well as International law.

2) He chose to ignore the Appellant's reference to Section 75 of the Constitution. He proceeded to consider and made decisions relating to international treaties and he thus usurped the jurisdiction of the High court.

In so doing he abused the fundamental law of the nation, the Constitution.

3) From an examination of his finding it will be observed he has chosen to ignore the Appellants citation of section 78B of the Judiciary Act 1903. Instead he has made reference to sections 38(a) and 40 neither of which were referred to, at any time, by the Appellant. He failed in his obligation to the Federal and State Attorneys-General to not proceed in the matter.

4) The basis of the appellant's objection to being required to explain his behaviour in Australian Courts lies in the fact that all Australian law remains British colonial law and that as such its application in an independent sovereign Australia is contradictory to both the Covenant of the League of Nations and the United Nations Charter. Both treaties are binding on Australia. Under Article 36 of the Statute of the International Court of Justice (which is part of the UN Charter) matters involving the interpretation of these treaties is reserved for the International Court of Justice. Clearly Justice Bleby has usurped the authority of that Court.

5&6) By Justice Bleby's own definition he has represented the Monarch and Government of the United Kingdom of Great Britain and Northern Ireland, a power foreign to Australia. There being no reciprocal treaty between Australia and the UK which permits the use of the laws of one, within the territory of the other, he has applied laws which have indisputably been established as colonial, within the territory of the sovereign nation of Australia, a Member State of the United Nations.

Such actions are contradictory of both British and International law as set out in Britain's 1991 "Doctrine of Transformation", in Article X of the Covenant of the League of Nations and in Article 2, paragraphs 2 and 4 of the United Nations Charter.

Full documentation is available.

For the purposes of justifying this complaint the included "Appellants Presentation" (offered to Justice Bleby by way of an annexure to an affidavit), the Court transcript (as inaccurate as it is), together with Justice Bleby's finding is considered to be ample.

It is also considered these documents constitute ample evidence to justify my request for, and your undelayed actions to ensure that Justice Bleby will not again offend in the face of such argument.

Yours sincerely,

Peter Batten
P.O. Box 1333
RENMARK
South Australia 5341

Enclosure:-

- 1) "Appellants Presentation"
- 2) Court transcript
- 3) Justice Bleby's finding

**The Federal Attorney-General
Mr Darryl Williams
Parliament House
CANBERRA
A. C. T. 2600**

June 7th 1998

**COMPLAINTS RELATING TO THE CONDUCT OF PERSONS
PRESIDING OVER COURTS IN SOUTH AUSTRALIA.**

My last correspondence re this matter 8th May 1998

Your last correspondence March 24th 1998 Ref. No: 96074567/ 177984:RC

Dear Mr Williams,

I repeat my statement of May 8th;

"As the protector of the laws of the Commonwealth it is believed that you are charged with the responsibility of ensuring that Commonwealth laws are upheld."

Accordingly the unsatisfied complaints relating to Mr Clinton A. Johansen and Mr David Bleby tended on February 7th and May 8th respectively are, yet again, restated.

Through direct experience it now seems abundantly clear that court officials hold an attitude that, if it suits, they can safely ignore their obligation under the fundamental law of the nation the Constitution.

From the point of view of the complainant who maintains that the Constitution is invalid, this is ironic indeed!

And so, to these complaints is now added a further complaint.

This concerns one **Mr Field, Magistrates Court, 7 Bridge Street, Murray Bridge, SA 5253** who, while serving as a magistrate in the South Australian Magistrates Court at Murray Bridge, clearly behaved in contempt of the fundamental law of the nation, the Constitution.

To establish for himself the power to proceed, convict and penalise the complainant Mr Field delivered a judgement on argument involving Australia's standing in the world community of nations which involved the examination of international treaties to which Australia is a signatory.

In so doing he maintained, contrary to the very conditions necessary to the ratification of those treaties, (and contrary, as well, to the law of the United Kingdom), that it is valid for the Parliament and Sovereign of the United Kingdom of Great Britain and Northern Ireland to legislate and issue Letters Patent to provide the power necessary to the passing of legislation by the Parliament of South Australia.

After an examination of the copy of the affidavit presented and Mr Field's judgements (See included documents) it will be seen that **Mr Field has knowingly acted in contempt of Section 75 (i) of the fundamental law of the nation, the Constitution.**

It will also be observed that in arriving at, and in the presentation of, his judgement on the Preliminary Hearing Mr Field clearly was not in possession of a full understanding of the argument advanced.

This complaint is now extended to include,
Police Complainant , **Darryl Keith Crossman, Police Headquarters, Adelaide, SA 5000**
Assist. P.P. Phil Capper, Police Station, Bridge Street, Murray Bridge, SA 5253
and **Lawrence Barbalet, Police Station, Mannum, SA 5238** each of whom, while in full possession of facts and in full knowledge of the potential consequences chose to require the matter to proceed to the court.

Thus they collectively and individually assisted in the contempt of Section 75 (i) of the fundamental law of the nation, the Constitution.

By way of explanation:

Some two weeks before the trial each of these named individuals were presented, in person, with a copy of the argument by way of the affidavit. In addition they were presented with a notification that they would be required to identify the ultimate source of the power that they were exercising. (See the included documents) And, in addition, considerable discussion and explanation took place between the defendant/complainant and each of these individuals.

This matter is listed for appeal to be heard before Justice DeBelle of the Supreme Court of South Australia on Tuesday 30th June 1998.

Despite this, it is emphasised that the and outcome of this appeal has no bearing whatsoever on this complaint concerning the conduct of each of these named individuals.

Therefore you are requested to act, without delay, in this matter.

Yours faithfully,

Peter Batten,
P.O. Box 1333
RENMARK
South Australia 5341

Documents included:

- 1) Affidavit. Ref: MCMUB-97-1666 Magistrates Court Murray Bridge (exclusive of supporting documents) - 14 pages.**
- 2) Request to court officials for identification of the ultimate source of the power that they exercise. - 6 pages.**



Office of
Attorney-General

26 JUN 1998

96074576/181007:RC

Mr Peter Batten
P O Box 1333
RENMARK
S A 5341

Dear Mr Batten

I refer to your letter of 8 May 1998 to the Attorney-General in which you complained of the conduct of Magistrate Mr Clinton A. Johanson of the Magistrates Court of South Australia and the conduct of Justice David Bleby of the Supreme Court of South Australia. The Attorney-General has asked me to reply on his behalf.

I note from your letter that you are not happy with the decisions of the Magistrate and the Judge of the Supreme Court.

The materials provided indicate, that you were charged under sections 49(1)(a) and 79B of the South Australian *Road Traffic Act 1961*. Since you were charged under South Australian law, this is a matter for the South Australian Government and it would not, therefore, be appropriate for the Attorney-General to intervene in this matter.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Nicholas Grono', written over a horizontal line.

Nicholas Grono
Adviser

**The Federal Attorney-General
Mr Darryl Williams
Parliament House
CANBERRA
A.C.T. 2600**

6th July 1998

*** IMPORTANT: This correspondence for the eyes of Mr Williams-**
COMPLAINTS RELATING TO THE CONDUCT OF PERSONS
PRESIDING OVER COURTS IN SOUTH AUSTRALIA.
Response to letter written on behalf of the Attorney-General

Dear Mr Williams,

I have complained, on three separate occasions, that three separate, named, individuals, two Magistrates and a Judge, while presiding over Courts of law in South Australia, have knowingly chosen to act in contempt of Commonwealth law.

You have been provided with extensive documentation which conclusively establishes the substance of these complaints.

The difficulties associated with satisfying these complaints are fully recognised.

However, as the ultimate protector of Commonwealth Law you, without question, carry the responsibly, the authority and an obligation to see that that law is upheld.

The matter of these complaints relating to contempt of Commonwealth law is not, and never was one to be presented, by me, to the Government of South Australia.

For your adviser to attempt to reduce and confine the matter to one of State law which I should take up with the State Government is seen as an evasion of responsibility made on your behalf.

As I expect the appropriate organs within the United Nations to deal with the complaints presented to them relating to wilful breaches of International law by these same named individuals, so I expect you to deal with those of their actions which are in contempt of the Australian Constitution and in breach of Commonwealth law.

This is a matter which is seen as demanding of your personal, direct and prompt attention.

Yours faithfully,

**Peter Batten
P.O. Box 1333
RENMARK**

6th July 1998

FAX TO (02) 6273 4102

**THE FEDERAL ATTORNEY-GENERAL
MR DARRYL WILLIAMS
PARLIAMENT HOUSE
CANBERRA 2600**

**FROM FAX NO (08) 8595 8066
TELEPHONE 018/813-437**

**PETER BATTEN
P.O. BOX 1333
RENMARK
SOUTH AUSTRALIA 5341**

NUMBER OF PAGES- including this one - 2

LETTER FOLLOWS

**The Federal Attorney-General
Mr Darryl Williams
Parliament House
CANBERRA
ACT 2600**

18th August 1998

**COMPLAINTS RELATING TO THE CONDUCT OF PERSONS
PRESIDING OVER COURTS IN SOUTH AUSTRALIA.**

- **Your last correspondence re this matter 26 June 1998 ref.no. 96074576/181007:RC**
My last correspondence 6th July 1998

Dear Mr Williams,

I have not received a response to my letter of 6th July 1998.

Nor have you responded to my letter of complaint relating to the conduct of Mr Field of the Magistrates Court Murray Bridge dated June 7th 1998.

You are reminded that this letter also registered complaints against three named policemen.

You are further reminded that the complainant has previously stated that it is held that, as the protector of Commonwealth Law, you are charged with the responsibility of ensuring that that Law is upheld.

It would appear that due to lack of action, in relation to the separate complaints lodged against the actions of Mr Clinton Johansen, Justice Bleby, Mr Field and the three named policemen, court officials, including Supreme Court Judges, continue to believe they can safely abuse the Australian Constitution and Commonwealth law at will.

You are now asked to act, without delay, in relation to the actions of yet another South Australian Court official. This time one Mr Justice DeBelle also of the Supreme Court of South Australia.

On the 13th July 1998, he too offended against the Australian Constitution and Commonwealth Law. In addition he acted in contempt of the High Court.

Even the casual reader of the enclosed documents will conclude that Justice DeBelle contravened section 75(1) of the Australian Constitution and 38(a) of the Judiciary Act 1903. In proceeding, and ultimately dismissing an appeal in the face of knowledge that matters before him were the subject of Notices of Motion M34 and M35 of 1998 which were (and are) currently before the High Court, he clearly usurped the Authority of the High Court.

It will be observed that Justice DeBelle was, by way of affidavit, presented with certain information and with a number of verifiable statements and issues which involve conflict arising between legislation enacted under the Constitution and the terms of the Constitution itself.

In short he had to deal with the issue of a serious challenge to the continuation of State law.

During the hearing it was clearly indicated to Justice Debelle that the appellant was not attempting to deny his Courts right to rule on the matters presented, but that to do so it was also clearly necessary for him to wait for the High Court to make its ruling.

To proceed, Justice Debelle necessarily had to either effectively make rulings which were clearly beyond his jurisdiction or dismiss, without consideration, that which the appellant presented to him.

Either way, in proceeding as he did, he was remiss in his role as a Judge and so, if the law has any meaning at all, he must be dealt with accordingly.

I point out, quite bluntly, Justice Debelle has broken Commonwealth law, he has contravened High Court rules and so has acted in contempt of the High Court. As indeed have those other individuals whose actions have been brought to your attention.

As this appeal to the Justice Debelle's Supreme Court, irrespective of its outcome, does not absolve Magistrate Field of his offence, so, any outcome of any subsequent appeal against Justice Debelle's dismissal cannot validate or excuse the actions of Justice Debelle. Such is the seriousness of this complaint, as indeed is that of the others, it is made directly to you, the Federal Attorney-General, that is to you Mr Darryl Williams, in person, and accordingly it is expected that you will deal with it personally.

The potential ramifications associated with a continuation of the application of any policy designed to avoid facing and resolving the fundamental issues which have precipitated this series of complaints are thoroughly understood by the complainant.

Yours sincerely,

Peter Batten
P. O. Box 1333
RENMARK
South Australia 5341

Enclosed 1) Appellant's affidavit
2) Respondent's outline of argument
3) Appellant's presentation to the court
4) Justice Debelle's Judgement

ATCBCT1 I

The South Australian Attorney-General
Mr Trevor Griffin
Parliament House
North Terrace
ADELAIDE 5000

February 9th 1998

Dear Mr Griffin,

I advise that the conduct of Presiding Magistrate Mr Clinton A. Johanson and his actions in proceeding to hear and find in case MCCHB-97-6993 in the Christies Beach Magistrates Court on January 15th 1998 is the subject of complaint to the Federal Attorney-General.

The matter of Mr Johanson's alleged breach of domestic law has been made the subject of a complaint lodged with the Federal Attorney-General.

The matter of Mr Johanson's alleged breach of international treaties and international law is the subject of a complaint being prepared for lodgement with the United Nations Human Rights Committee.

Find attached a copy of the letter containing the complaint made to the Federal Attorney-General.

Yours sincerely,

Peter Batten
P.O. Box 1333
RENMARK
South Australia 5341



THE HON K TREVOR GRIFFIN LL.M, MLC

ATTORNEY-GENERAL
MINISTER FOR JUSTICE
MINISTER FOR CONSUMER AFFAIRS

Reference: AGD297-93
Correspondence ID No.: 23894
AGO\K0298064:slc

18 FEB 1998

Mr Peter Batten
~~PO Box 1333~~
RENMARK SA 5341

[Handwritten signature]
I refer to your letter dated 9 February, 1998 in relation to a decision made by a Magistrate, Mr A Johanson, SM.

I have had inquiries made into the matter of MCCHB-97-6993. This is a matter wherein you were detected exceeding the speed limit. It would seem that you failed to expiate the offence and were duly summonsed by the Police.

It seems that the matter was listed for trial in the Christies Beach Magistrates Court and on 15 January, 1998 you failed to enter a plea in relation to the offence and the Magistrate recorded a conviction and proceeded to impose a penalty.

The authorities upon which you rely (as stated in your letter to the Federal Attorney-General) failed to persuade the Magistrate that the charge against you was not properly brought. It was a matter for the Magistrate alone to rule on and given the independence of the Magistracy in such matters, I have no legal power or authority to vary the decision.

I am advised that you have lodged an appeal to the Supreme Court from that decision. It will be for that Court to rule on the relevance of your authorities in the proceedings. The Supreme Court can, if it finds that the Magistrate erred in his decision, quash the conviction, set aside the penalty and remit the matter back to the Magistrate's Court for a fresh hearing.

I understand that at the time of writing to you a date has not been set for the hearing of the appeal.

Yours sincerely

[Handwritten signature]
K Trevor Griffin
ATTORNEY-GENERAL

**Registrar
High Court of Australia
CANBERRA ACT 2600**

18th August 1998

Dear Registrar,

In mounting two separate appeals from convictions by Magistrates, I have recently chosen to challenge the validity of the politico/legal system and the continuation of State law in South Australia.

I believe that an examination of the documents included will confirm that Justice Bleby and Justice DeBelle, both of the Supreme Court of South Australia, in proceeding to hear and dismiss appeals in the face of the information and questions presented to their respective courts acted, in one instance, in contempt of the High Court while in both instances Commonwealth law was abused.

As a layman it may well be that I could be mistaken. However, the included judgements clearly indicate that both Justice Bleby and Justice DeBelle relying as they do, on subjective denigration of the appellant while ignoring the arguments presented erred in a most serious way.

I appeal to you to make a thorough examination of the conduct of both of these Judges. If their conduct is found to be wanting then please take some action which will ensure that they, and their fellow Judges, abide by, and uphold the very laws which they are entrusted to adjudicate.

Yours sincerely,

**Peter Batten
P.O. Box 1333
RENMARK
South Australia 5341**

- Enc. 1) Justice Bleby's Judgement
2) Appellant's presentation . (Supporting documents not included)
3) Justice DeBelle's Judgement
4) Appellant's Affidavit relevant to that judgement
5) Appellants presentation to Justice DeBelle's Court
6) Notice of Appeal



HIGH COURT OF AUSTRALIA

TEL: (02) 6270 6885
FAX: (02) 6270 6868
DX5755 CANBERRA
<http://www.hcourt.gov.au>
PARKES PLACE
CANBERRA ACT 2600

CHIEF EXECUTIVE
& PRINCIPAL REGISTRAR

21 August 1998

Mr Peter Batten
PO Box 1333
Renmark SA 5341

Dear Mr Batten

I refer to your letter of 18 August 1998.

The High Court of Australia does not have the power to do what you have asked.

If you wish to appeal against decisions made by Justices Bleby and Debelle, it will be necessary for you to formally follow the relevant appeal procedures. Mr Joe Serafini in the Registry of the Supreme Court of South Australia can advise you of those procedures. He can be contacted by telephone on 08-8204 0495.

The materials which accompanied your letter are returned herewith.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Christopher M Doogan'.

(CHRISTOPHER M DOOGAN)

ANNEXURE 34

1. Copy of Notice of Motion filed with the High Court appertaining to the High Court judgement that the United Kingdom is a power foreign to Australia and the fact that all parliamentarians have sworn an oath to that foreign power and therefore are disqualified from taking part in proceedings.

**IN THE HIGH COURT OF AUSTRALIA
BRISBANE OFFICE OF THE REGISTRY**

No B 45 of 1999

In the matter of an Application under Section 40 of the Judiciary Act 1903.

BETWEEN:

LEQUANT COMPUTER SERVICES (QLD) PTY LTD
(ACN 010 641 844)

Applicant

-and-

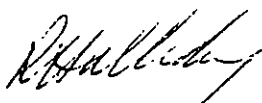
SUNCORP METWAY LIMITED
(ACN 010 831 722)

Respondent

AFFIDAVIT

I. ROBERT JOHN HALLIDAY of Suite 216 421 Brunswick Street Fortitude Valley in the State of Queensland, Director, MAKE OATH AND SAY as follows:

1. I am a Director of the Appellant Company and am duly authorised to make this Affidavit on its behalf, I do so from my own knowledge.
2. The Applicant's High Court Application relates to proceedings numbered 5428 of 1999 brought by the Respondent against the Applicant as an Application to wind up a Company under Section 459P of the Corporations Law.
3. To the best of my knowledge information and belief the history of this matter may be summed up as follows:
 - a) A demand was received on 5th of May 1999 for arrears of interest and term deposit break fee. The compliance time for this demand was 25th May 1999.
 - b) The applicants borrowed the sum of \$1,850,000 from the respondent and in ~~the~~ or about July 1998 the applicants repaid the said amount, and sought a discharge from this obligations under various loan agreements.
 - c) The Respondents refused to discharge the Applicants from their obligations under the various loan agreements earlier than the due date of discharge and has continued to claim interest.
4. That all the current members of the House of Representatives and of the Senate, having duly sworn the oath as prescribed in the Schedule to the Constitution are thereby under allegiance to a foreign power and are thereby rendered incapable of taking a seat in either House of the Parliament without being in breach of S44(i) of the Constitution.

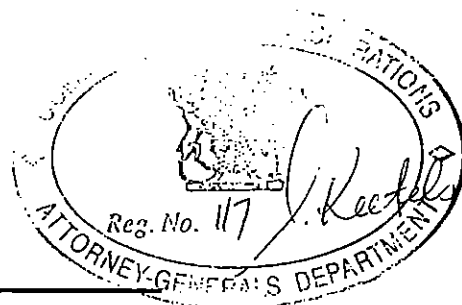


5. The Applicant makes this Application in the genuine belief that the Respondent is making demands illegally upon the Applicant and in fact the Applicant has genuine Constitutional grounds for challenging the validity of the laws on which the Respondent relies in the bringing of this Application. Further the applicant was a candidate in the last Federal Election and during the course of the election raised the issue of the validity of any laws purportedly passed by persons who are in fact disqualified from sitting in Government. Accordingly, I ask that the Applicant be given the proper opportunity to raise the issues in the Notice of Motion and Notice of Constitutional Matter before this Honourable Court.
6. That the issues raised in the Notice of Motion before this Honourable Court are in, the widest public interest and fit and proper matters to be considered by this Honourable Court.

SWORN by the said Robert John Halliday)
at Brisbane in the said State of
Queensland)
This 13th day of July 1999)

Before me: SHARON KREIBERS

Solicitor C. Dec.



Date of Document: day of July 1999
Filed on behalf of: The Applicant
Prepared by: Peter Brooke and Company
 Solicitors
 4 Seaview Street
 Kingscliffe 2487
 New South Wales
Solicitors Code: Not applicable

DATED the 13th day of July 1999


Applicant

TO: The Respondent

**IN THE HIGH COURT OF AUSTRALIA
BRISBANE OFFICE OF THE REGISTRY**

No B 45 of 1999

In the matter of an Application under Section 40 of the Judiciary Act 1903.

BETWEEN:

LEQUANT COMPUTER SERVICES (QLD) PTY LTD
(ACN 010 641 844)

Applicant

-and-

SUNCORP METWAY LIMITED
(ACN 010 831 722)

Respondent

NOTICE OF CONSTITUTIONAL MATTER

I, ROBERT JOHN HALLIDAY hereby issue notice under the provisions of S78b of the Judiciary Act 1903 that the Full Court of the High Court of Australia will be moved by the Applicant or Counsel on behalf of the Applicant for an order that that part of the cause in proceedings No: 5428 of 1999 Suncorp Metway Limited V Lequant Computer Services (Qld) Pty Ltd pending in the Supreme Court of Queensland which involves the following submissions be removed into the Honourable Court pursuant to Section 40 of the Judiciary Act 1903 on the ground that they arise under the Constitution or involve its interpretation between conflicts arising between legislation enacted under the Constitution and the terms of same. Such legislation forming part of this Notice being but not limited to:-

a: The Corporations Law (Cth)

1: THE NATURE OF THE MATTER

The laws referred to being dependent on Imperial legislation from whose sovereign authority and jurisdiction all Australian citizens were removed by superseding Imperial legislation are null and void having no basis in Australian law and that irrespective of the domestic legislative procedures followed are not and can not be valid laws within the sovereign nation of Australia.

CONSTITUTIONAL CONFLICTS AND ISSUES FOR RULING

1. The Applicant submits that this Honourable Court pursuant to its powers of original jurisdiction contained in S75 of The Constitution of the Commonwealth of Australia determine the following Constitutional issues relating to the Acts referred to in this Notice of Motion herein arising out of rulings made by the Full Bench of this Honourable Court on 23rd. June 1999, *Sue v Hill HCA30 of 1999*.

2. That this Honourable Court having ruled in the aforementioned matter of Sue v Hill that for the purposes of S44(1) of the Constitution the United Kingdom is a foreign power then a ruling is requested from this Honourable Court that any member of the Parliament of the Commonwealth who is under oath of allegiance to the said foreign power is thereby disqualified and is incapable of being chosen as a member of the said parliament.

3. That all the current members of the House of Representatives and of the Senate, having duly sworn the oath as prescribed in the Schedule to the Constitution are thereby under allegiance to a foreign power and are thereby rendered incapable of taking a seat in either House of the Parliament without being in breach of S44(1) of the Constitution.

4. That all the current members being under oath of allegiance to a foreign power the Applicant requests this Honourable Court order that all the current members of the Parliament under the terms of S46 of the Constitution as amended by the Parliament pay to the Applicant the sum of \$200 per day for every day they have so occupied seats in the Parliament whilst under oath of allegiance to the Queen of the United Kingdom as prescribed by the Schedule a foreign power as defined by this Honourable Court..

5. Any other orders and directions as that this Honourable Court shall deem fit.

Date of Document:

day of July

1999

Filed on behalf of: The Applicants
Prepared by: Peter Brooke and Company
Solicitors
4 Seaview Street,
Kingscliffe 2487
New South Wales
Solicitors Code: Not applicable

DATED the day of July 1999

On behalf of the Applicant

TO: The Respondent

AND TO: The Attorneys General of the Commonwealth, of the States, of
the Australian Capital Territory, and of the Northern Territory.

The Attorney General of the Commonwealth
Attorney General's Department
Robert Garran Offices
National Circuit
BARTON ACT 2600

The Attorney General for South Australia
C/- Crown Solicitors Office
GPO Box 464
ADELAIDE SA 5000

The Attorney General for New South Wales
8-12 Chifley Square
SYDNEY NSW 2001

The Attorney General for Western Australia
Crown Solicitors Office
GPO Box F317
PERTH WA 6001

The Attorney General for the State of Victoria
55 St. Andrews Place
EAST MELBOURNE VIC 3002

The Attorney General for Queensland
C/- Crown Solicitors Office
State Law Building
50 Ann Street
BRISBANE QLD 4000

The Attorney General for Tasmania
C/- Crown Solicitors Office
15 Murray Street
HOBART TAS 7000

The Attorney General for the A.C.T.
P.O. Box 260
CIVIC SQUARE ACT 2608

The Attorney General for the N.T.
P.O. Box 1722
DARWIN NT 0801

ANNEXURE 35

1. Copy of Notice of intention to apply for an International Criminal Tribunal served on Prime Minister, Leader of the Opposition and the Attorney-General of the Commonwealth.

AUSTRALIA
The concealed colony



Institute of Taxation Research Pty Ltd

www.institutetr.com.au

ACN 086 352 329

8th June 1999

Hon. John Howard, M.P.
Prime Minister
House of Representatives
Parliament House,
CANBERRA ACT 2601

Subject: Notice of Intention to apply for I.C.T

This notice is presented by a number of Australian Citizens on behalf of the sovereign people of Australia.

The continued use of United Kingdom law in Australia contravenes a number of significant treaties to which Australia and the United Kingdom are parties as well as contravening Resolutions of the United Nations General Assembly and fundamental sections of international law. A comprehensive report for the United Nations has been prepared documenting these contraventions as well as the change of sovereignty over Australia from the United Kingdom to the people of Australia, a change acknowledged by the High Court.

Many Australian citizens have sought legal relief from the imposition of foreign colonial law in Australia via the courts of the States and the courts of the Commonwealth but found a legal system which is unwilling to relinquish its colonial basis in both law and procedure and continues to apply colonial law with no regard whatever to the change in status of the Commonwealth of Australia from self governing colony to independent nation. They have also unsuccessfully sought the elections of government under laws, terms, and conditions deriving from the application of legal Australian sovereignty.

The common demand of these citizens has been that judges should carry out their sworn duty to uphold and apply the law to causes brought before them, including law deriving from treaties and international law. Instead they have found a judiciary which, despite the enactment into Commonwealth law of international law via the Charter of the United Nations Act 1945 and the Treaty of Peace Act 1919, still denies that Australian courts are subject to international law.



Attempts were therefore made to bring issues of sovereignty and necessity of compliance with international law before the country's Supreme Court, the High Court of Australia.

However when the basic issue of the application within a sovereign Commonwealth of Australia of United Kingdom domestic law, created solely under the now foreign sovereign authority of the Westminster Parliament, were presented to Justice Kenneth Hayne of the High Court of Australia on 15th December 1998, he did contravene international law and breached the United Nations Charter by ruling that foreign domestic law was applicable to Australian citizens. In addition he ignored the fact that another section of the United Kingdom law, namely the Immigration Act 1972 UK, decrees that Australians are neither British citizens, nor British subjects and have no entitlements under British law.

By such a ruling, and contrary to both principles and letter of the Universal Declaration of Human Rights as well as the 1966 Covenant on Civil and Political Rights, Justice Hayne therefore applied force of British law to Australian citizens who are not recognized and who have no right of redress under British law.

During the course of delivering his judgement Justice Hayne declared that it was his duty to "protect the current system". He acknowledged no requirement to dispense justice according to law.

Attempts by the affected citizens to have this extraordinary decision and its motivations reviewed by the Full Bench of the High Court by means of a Writ of Certiorari were denied by the High Court which refused the citizens the right to even file documents on the grounds that High Court judges were not subject to this remedy. The implied ruling is that the jurisdiction of High Court judges is totally unlimited even though the framers of the Constitution applied distinct limits upon them.

Further Justice Mary Gaudron of the High Court on Thursday 22nd April 1999 did concur with Justice Hayne and committed the same offences under international law and treaties.

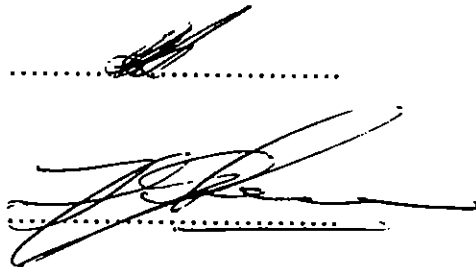
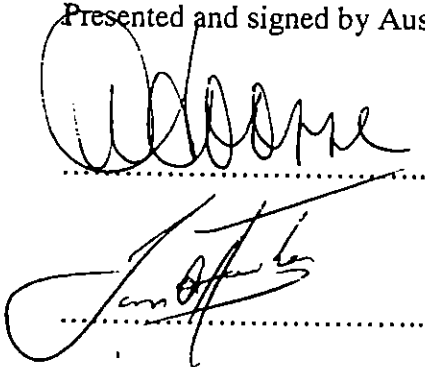
Additionally Mr. Michael Carmody, Commissioner of Taxation, on Monday 3rd May 1999 did knowingly cause to be issued a public statement designed to conceal from the Australian people the invalidity of the continued application of taxation laws and associated coercive powers contrary to the provisions of the U.N. Charter, the Universal Declaration of Human Rights and the 1966 Covenant on Civil and Political Rights with the purpose of the statement also being to prevent the Australian people from challenging illegal acts by the Commissioner and his staff.

We therefore give notice that 60 days from the date of this Notice citizens of a sovereign Australia will file a formal request with the Security Council of the United Nations for the establishment by the United Nations under Statute of an International Criminal Tribunal Australia, for the express purpose of securing the trial of the above named Justices of the High Court of Australia for their deliberate and sustained breaches of international law and to bring to trial before the Tribunal all other officials within Australia acting as defacto servants of a foreign nation, the United Kingdom of Great Britain and Northern Ireland.

At the same time we will also request that the United Nations declare Australia's seat at the United Nations to be vacant and the current Australian delegation to the United Nations to be *persona non grata* since their appointment stems from the sovereign authority of the United Kingdom and not from the sovereign authority of the Australian people.

The 60 days of this Notice is to allow ample time for the Attorney General of the Commonwealth to take action before the Full Bench of the High Court to set aside the rulings of Hayne and Gaudron JJ and to commence action to ensure that the only law applied within Australia is in no way dependent on the unlawful application of the sovereign authority of the United Kingdom government and parliament.

Presented and signed by Australian citizens on behalf of the Australian people.



Contact Address

P O BOX 9112
Seaford Delivery Centre
SEAFORD. VIC. 3198

Fax 03 8796 3322

cc. Attorney General
dd. The Leader of The Opposition.



lan

8th June 1999

Hon. Kim Beasley, M.P.
Leader of the Opposition
House of Representatives
Parliament House,
CANBERRA ACT 2601

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Many Australian citizens have sought legal relief from the imposition of foreign colonial law in Australia via the courts of the States and the courts of the Commonwealth but found a legal system which is unwilling to relinquish its colonial basis in both law and procedure and continues to apply colonial law with no regard whatever to the change in status of the Commonwealth of Australia from self governing colony to independent nation. They have also unsuccessfully sought the elections of government under laws, terms, and conditions deriving from the application of legal Australian sovereignty.

The common demand of these citizens has been that judges should carry out their sworn duty to uphold and apply the law to causes brought before them, including law deriving from treaties and international law. Instead they have found a judiciary which, despite the enactment into Commonwealth law of international law via the Charter of the United Nations Act 1945 and the Treaty of Peace Act 1919, still denies that Australian courts are subject to international law.

Attempts were therefore made to bring issues of sovereignty and necessity of compliance with international law before the country's Supreme Court, the High Court of Australia.

However when the basic issue of the application within a sovereign Commonwealth of Australia of United Kingdom domestic law, created solely under the now foreign sovereign authority of the Westminster Parliament, were presented to Justice Kenneth Hayne of the High Court of Australia on 15th December 1998, he did contravene international law and breached the United Nations Charter by ruling that foreign domestic law was applicable to Australian citizens. In addition he ignored the fact that another section of the United Kingdom law, namely the Immigration Act 1972 UK, decrees that Australians are neither British citizens, nor British subjects and have no entitlements under British law.

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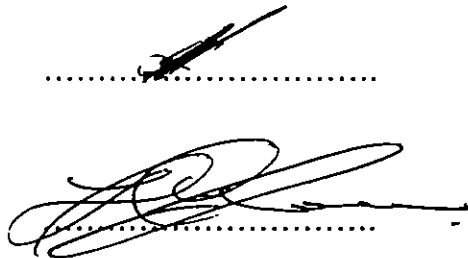
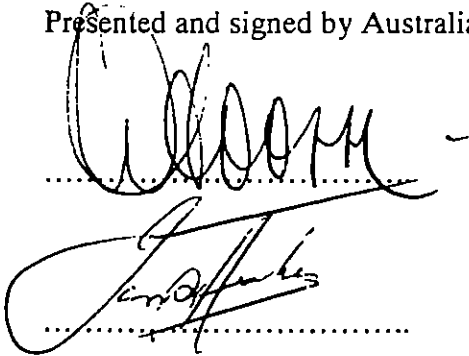
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Presented and signed by Australian citizens on behalf of the Australian people.



Contact Address

P O BOX 9112
Seaford Delivery Centre
SEAFORD. VIC. 3198

Fax 03 8796 3322

cc. Attorney General
dd. The Prime Minister.



8th June 1999

Hon. Daryl Williams, Q.C. M.P.
Parliament House,
CANBERRA ACT 2601

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The common demand of these citizens has been that judges should carry out their sworn duty to uphold and apply the law to causes brought before them, including law deriving from treaties and international law. Instead they have found a judiciary which, despite the enactment into Commonwealth law of international law via the Charter of the United Nations Act 1945 and the Treaty of Peace Act 1919, still denies that Australian courts are subject to international law.

Attempts were therefore made to bring issues of sovereignty and necessity of compliance with international law before the country's Supreme Court, the High Court of Australia.

However when the basic issue of the application within a sovereign Commonwealth of Australia of United Kingdom domestic law, created solely under the now foreign sovereign authority of the Westminster Parliament, were presented to Justice Kenneth Hayne of the High Court of Australia on 15th December 1998, he did contravene international law and breached the United Nations Charter by ruling that foreign domestic law was applicable to Australian citizens. In addition he ignored the fact that another section of the United Kingdom law, namely the Immigration Act 1972 UK, decrees that Australians are neither British citizens, nor British subjects and have no entitlements under British law.

By such a ruling, and contrary to both principles and letter of the Universal Declaration of Human Rights as well as the 1966 Covenant on Civil and Political Rights, Justice Hayne therefore applied force of British law to Australian citizens who are not recognized and who have no right of redress under British law.

During the course of delivering his judgement Justice Hayne declared that it was his duty to "protect the current system". He acknowledged no requirement to dispense justice according to law.

Attempts by the affected citizens to have this extraordinary decision and its motivations reviewed by the Full Bench of the High Court by means of a Writ of Certiorari were denied by the High Court which refused the citizens the right to even file documents on the grounds that High Court judges were not subject to this remedy. The implied ruling is that the jurisdiction of High Court judges is totally unlimited even though the framers of the Constitution applied distinct limits upon them.

Further Justice Mary Gaudron of the High Court on Thursday 22nd April 1999 did concur with Justice Hayne and committed the same offences under international law and treaties.

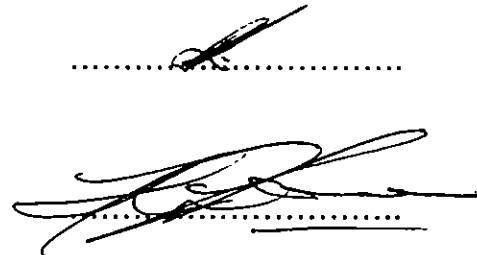
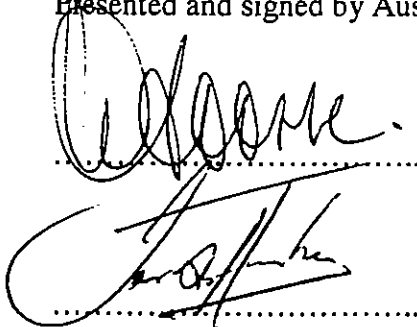
Additionally Mr. Michael Carmody, Commissioner of Taxation, on Monday 3rd May 1999 did knowingly cause to be issued a public statement designed to conceal from the Australian people the invalidity of the continued application of taxation laws and associated coercive powers contrary to the provisions of the U.N. Charter, the Universal Declaration of Human Rights and the 1966 Covenant on Civil and Political Rights with the purpose of the statement also being to prevent the Australian people from challenging illegal acts by the Commissioner and his staff.

We therefore give notice that 60 days from the date of this Notice citizens of a sovereign Australia will file a formal request with the Security Council of the United Nations for the establishment by the United Nations under Statute of an International Criminal Tribunal Australia, for the express purpose of securing the trial of the above named Justices of the High Court of Australia for their deliberate and sustained breaches of international law and to bring to trial before the Tribunal all other officials within Australia acting as defacto servants of a foreign nation, the United Kingdom of Great Britain and Northern Ireland.

At the same time we will also request that the United Nations declare Australia's seat at the United Nations to be vacant and the current Australian delegation to the United Nations to be *persona non grata* since their appointment stems from the sovereign authority of the United Kingdom and not from the sovereign authority of the Australian people.

The 60 days of this Notice is to allow ample time for the Attorney General of the Commonwealth to take action before the Full Bench of the High Court to set aside the rulings of Hayne and Gaudron JJ and to commence action to ensure that the only law applied within Australia is in no way dependent on the unlawful application of the sovereign authority of the United Kingdom government and parliament.

Presented and signed by Australian citizens on behalf of the Australian people.



Contact Address

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cc. The Prime Minister
dd. The Leader of The Opposition.



Office of
Attorney-General

97037870

27 JUL 1999

Institute of Taxation Research Pty Ltd
PO Box 9112
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SEAFORD VIC 3198

Dear Sir/Madam

I refer to your letter of 8 June 1999 in which you notify your intention of filing a formal request with the United Nations to establish an International Criminal Tribunal to secure the trial of Justices of the High Court and other officials for alleged breaches of international law. The Attorney-General has asked me to respond on his behalf.

Your letter refers to issues relating to the sovereignty of Australia and the application of colonial law as the basis for alleged breaches of international law. Although Australia is now a fully independent nation, this has been achieved through an evolutionary process throughout this century. The nature of the relationship between the United Kingdom and Australia has changed, but this does not mean that Imperial laws ceased to have any force, but rather that these laws have been adopted as Australian law by the Australian people through the elected representatives of the Australian Parliament and have been amended or repealed where appropriate.

In relation to international law issues, Hayne J in *Joosse and Anor v Australian Securities and Investment Commission* (1998) 159 ALR 260 (the case to which I presume you refer) applied Australian law not foreign law. Furthermore, the High Court has decided that international law which affects or creates rights or imposes obligations on individuals is not applicable to Australians unless domestic legislation is passed implementing those agreements which affect or create individual rights or obligations. The *Charter of the United Nations Act 1945* (Cth) to which you refer, merely approves the Charter without binding Australians as part of the law of the Commonwealth and therefore cannot be relied upon as a justification for otherwise unjustifiable executive acts (see *Bradley v The Commonwealth* (1973) 128 CLR 557.).

Accordingly there is no reason why the rulings of Hayne and Gaudron JJ should be set aside nor would it be appropriate for the Attorney-General to purport to do so.

Yours sincerely

Paul Bolster
Adviser