Certificate of Harry Hopes

Royal Style and Titles Act 1973

Understanding of a Commonwealth record - FOI finding

Process and Admissions

April 7 2016

I, the undersigned,

of 81 Shepparton Drive Butler Western Australia, hereby certify that a communication between myself and Mr Michael Thawley, as Secretary for the Department of the Prime Minister and Cabinet, sought to adduce the facts concerning the several FOI findings released, beginning in 2004, for the head of power for the ***Royal Style and Titles Act*** 1973 (CTH) is concluded and perfect that opportunity for denial is past due, being more than 28 days spent, this certificate attests.

The initiating letter, '*Understanding a Commonwealth record*' dated September 30 2015, required of Mr Thawley, for the Department, "*for response .... of correction for mistake, misunderstanding or otherwise error*" to that "*there is no mistake that the Department of the Prime Minister and Cabinet made a finding on the several occasions on the head of power for the RS&T Act 1973 and that finding, in that the head of power does not exist, extends to the fact that the RS&T Act 1973 is not valid Commonwealth law, which extends to the fact that the Queen of Australia does not exist in law and provides no right or force of application.*"

The responding letter of Peter Arnaudo, dated October 20 2015, written on Mr Thawley's behalf contended that the information put for his attention in my prior letter did not "*have any implications for the validity of the Royal Style and Titles Act 1973*" upon which a request was made by document, *'Request for further and better particulars'*, dated November 3 2015, to receive the reasons or facts supporting that position. That two reminders followed, without response from Mr Thawley or the department, a Notice of Non-Response was issued, as supported by the Affidavit of Non-Response, dated February 23 2016, that the stipulations therein, and of, the Memo of Admissions are taken to be the record.

Drawn from the record of correspondence between myself and Mr M Thawley, for the Department of the Prime Minister and Cabinet, from September 30 2015, for an understanding of a Commonwealth record concerning the head of power for the Royal Style and Titles Act 1973, it is taken that the following facts are admitted:

1. The Department of the Prime Minister and Cabinet (Dept PM&C) is responsible for the ***Royal Style & Titles Act 1973*** in its enactment and administration;
2. The Dept PM&C released several documents under the Department letterhead for due regard of a finding of the head of power for the ***RS&T Act*** beginning in 2004;
3. These documents are:
    1) An FOI answer by Mr Sanderson for the *Dept PM&C* in February 2004 to Mr Piccinin.
    2) An FOI answer by Mr Sanderson for the *Dept PM&C* in October 2004 to Mr Sempf.
    3) An FOI answer by Mr Sanderson for the *Dept PM&C* in August 2006 to Mr Piccinin.
    4) An FOI answer by Mr Rush for the *Dept PM&C* in February 2015 to Mr Rossi.
    5) An FOI answer by Mr Arnaudo for the *Dept PM&C* in August 2015 to Mr Teague.

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4. The evidence laws provide that such documents are exempt to the hearsay rule, *prima facie* for notice of a fact, in presentment to a court

5. The fact finding answer on each of the documents is such that there is no head of power for the ***RS&T 'Act*** as none could be found and as refused under section 24A(1)(b)(ii) of the ***FOI Act,*** "*does not exist*";

6. Official publications state a requirement of a valid Commonwealth law is that it be linked to a head of power drawn from the ***Constitution;***

7. Official publications state a requirement of a valid Commonwealth law is that it be consistent with the constitutional requirements of any other part as controlled by the preceding clauses;

8. It is apparent from a reading of the ***Commonwealth of Australia Constitution Act*** that Commonwealth law is that it be linked to a head of power drawn from the ***Constitution;***

9. ***Butterworths Australian Legal Dictionary*** provides several definitions to do with *'legislative validity'* and *'power'* as relevant to the validity of Commonwealth laws;

10. Case law and dictionary definitions of the ***Butterworths Australian Legal Dictionary*** state that for Commonwealth law, to be valid, a head of power ought to exist as the ***Commonwealth Parliament*** is not sovereign as is the ***Parliament of the United Kingdom*** and that sovereign status is reserved to the people, as reflected by section 128;

11. An article, from ***Parliamentary Education Office*** concerning the subject of law made within power, as emphasised in bold, provides in *'The Constitution and the High Court'* located at: http://www.peo.gov.au/learning/closer-look/the-australian-constitution/the-constitution-and-the-high-court.html

    People are allowed to test the meaning and application of the Australian Constitution. ..... The High Court, established in 1903, has the power to consider Commonwealth or state legislation and determine whether ***such legislation is within the powers granted in the Constitution*** *to the relevant tier of government. The High Court can* ***invalidate any legislation*** *or parts of legislation that* ***it finds to be unconstitutional.***

    Sometimes the High Court is asked to decide whether it is ***the Commonwealth Government*** *or a state government which* ***has the authority*** *and responsibility* ***to deal with a matter.*** *At other times, because the Constitution provides specific limits to what the Commonwealth Government is empowered to do, the High Court may be asked to decide whether* ***a law made by the Commonwealth Government is within that power.***

12. The High Court judgement, known as the Uniform Tax Case of 1942 states the doctrine for the Parliament as to law-making powers and compliance, as emphasised in bold, taken from the Austlii website, http://www.austlii.edu.au/au/cases/cth/HCA/1942/14.html

    *Nature of the Problem.—..... **the Commonwealth Parliament,** unlike the Parliament at Westminster, **depends** for its existence and **for its powers on a written Constitution.** The Constitution says that the Commonwealth Parliament shall have power to make laws with respect to certain subjects ..... **If either the Commonwealth Parliament** or a State Parliament **attempts to make a law which is not within its powers, the attempt fails, because the alleged law is unauthorized and is not a law at all.** .....*

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Common expressions, such as: "The courts have declared a statute invalid," sometimes lead to misunderstanding. ***A pretended law made in excess of power is not and never has been a law at all.*** *Anybody in the country is entitled to disregard it. Naturally he will feel safer if he has a decision of a court in his favour—but such* ***a decision is not an element which produces invalidity in any law.*** *The law is not valid until a court pronounces against it—and thereafter invalid.* ***If it is beyond power it is invalid ab initio.***

13. The ***Butterworths Australian Legal Dictionary*** provides references for the standard interpretation of terms for the Australian courts, as emphasised in underline, on the subject of *'power'* and the validity of ***Commonwealth*** laws. The references for need of *'power'*, an authority for the ***Commonwealth Parliament*** to make law, are numerous:

- **Enumerated power** Legislative power conferred expressly by and subject to a statute, usually a constitution. The Commonwealth's enumerated powers are subject to the Commonwealth Constitution as a whole, including the express and implied limitations on legislative power: *Nationwide News Pty Ltd v Wills* (1992) 177 CLR 1; 108 ALR681 at 720-121. These powers are primarily found in the Constitution at s 51 but also in Commonwealth Constitution ss 52, 67, 77, 78, 96, 121, 122, 123. Unlike the State parliaments, which have plenary legislative power, the Federal Parliament is limited in its legislative capacity by the enumerated powers: Commonwealth Constitution s 107.
- **Enumerated powers doctrine** The doctrine that, where the Commonwealth seeks to support the validity of its legislation, it is necessary for the Commonwealth to point to an enumerated power given to it in the Commonwealth Constitution: *R v Burgess; Ex Parte Henry (Aviation case)* (1936) 55 CLR 31; [1947] ALR 377. If a Commonwealth law can be fairly described both as a law with respect to a matter left for the States, the law is still a valid law: *Actors and Announcers Equity Assn of Australia v Fonatana Films Pty Ltd* (1982) 150 CLR 169; 40 ALR 609.
- **Legislative validity** Legislation that has a legitimate or an authorised source of power and therefore is valid and *intra vires*. *Cuncliffe v Commonwealth* (1994) 124 ARL 120. The crux of characterisation is to determine legislative validity. The validity of the Australian States is tested by asking whether the legislation satisfies any relevant manner and form requirements; the legislation is invalid for breaching provisions (including implications) of the Commonwealth Constitution; or the legislation is invalid for illegitimately regulating rights implied from the express words of, or institutional structures created by, the State Constitution.
- **Legislation** The instruments embodying the creation and promulgation of laws by the Commonwealth and State legislatures. Law made by the Parliament, that is, statute law or Acts of Parliament. Law made by other bodies under the authority of Parliament is termed delegated legislation. Delegated legislation includes regulations, rules, and by-laws. Under the principle of parliamentary sovereignty, statute law prevails and can override common law and judge-made law: *British Railways v Pickin* [1974] AC 765 at 798, 793, 798. The courts have no power to declare legislation to be invalid except on constitutional grounds, namely where Parliament has no power to enact the legislation under the relevant Constitution. Subordinate legislation can be declared invalid if the enabling Act is constitutionally invalid or if the subordinate legislation is *ultra vires*.
- **Sufficient connection** The link that must be established if the Commonwealth legislation is to be characterised as a law with respect to a head of power in the Commonwealth Constitution s 51. It is the test that determines the degree of connection between the Commonwealth legislation and s 51, and it must be satisfied to establish a source of power and, consequently, legislative validity.

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- **Ultra vires** *Lat* – beyond the power. An ultra vires act is beyond the legal power or authority of a person, institution, or legislation, and therefore invalid. The opposite of ultra vires is *intra vires*.

  Constitutional law A term used to describe legislative, executive, or judicial acts that are not authorised by the Constitution, or in the case of regulation, by the law that authorised the making of such regulation.
- **Unconstitutional** A legislative, judicial, or executive act that is not authorised by a Commonwealth or State Constitution. The effect of unconstitutionality is unclear. An earlier approach reflecting the declaratory theory of adjudication was that unconstitutional acts were void *ab initio*, but the modern approach is to suggest that the unconstitutionality in many cases only has effect after the judicial declaration of unconstitutionality: for example *Peters v A-G* (NSW) (1988) 16 NSWLR 24; 84 ALR 319.
- **With respect to** A phrase appearing in the opening words of the Commonwealth Constitution s 51. In this context, it means that a Commonwealth legislation must have a 'sufficient connection' with a head of power in s 51. In relation to the core aspect of a subject matter power, a 'sufficient connection' is established by showing that the direct legal effect of the legislation operates on the subject matter. In relation to the core aspect of a purposeful power and the incidental aspect to a head of power, it means that the legislation must represent proportionate means for achieving an objective or purpose within power: for example *Cunliffe v Commonwealth* (1994) 124 CLR 120.

14. The reference, '**Enumerated power**' provides "*The Commonwealth's enumerated powers are subject to the Commonwealth Constitution* ***as a whole****, including the express and implied limitations on legislative power*" where *"as a whole"* refers to every other provision of the ***Constitution***;

15. The several provisions of the Constitution that refer to the Queen and those provisions are controlled by the second clause as to the identity, and capacity, of the Sovereign makes evident that the reference of an enumerated power is to give concern, in its application it does not conflict with other constitutional provisions;

16. The implied limitations of the provisions of the ***Constitution*** are expressed in the second clause, that is, that the ***Queen*** is bound to constitutional application, in ***Her*** capacity as the ***Queen*** *of the* ***Parliament*** of the ***United Kingdom***, that establishes the liability referred to in the ***Preamble***, *"under the Crown of the United Kingdom"*. The following extract of the second clause is emphasised, by underline, for attention to compulsion of office in that it does not include any capacity that excludes the liability of the ***United Kingdom***.

> **COMMONWEALTH OF AUSTRALIA CONSTITUTION ACT**
> **CLAUSE 2 - Act to extend to the Queen's successors**
> 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.

17. The fifth clause as emphasised, by underline, in that it provides for the force of its application to the second clause

> **CLAUSE 5 - Operation of the Constitution and laws**
> 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, ...

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18. The statement by Mr Arnaudo's attempted to deny the outcome of its findings:

    "we do not consider the Department's decisions under the Freedom of Information Act 1982 have any implications for the validity of the Royal Style and Titles Act 1973".

19. S The statement by Mr Arnaudo's for the Dept PM&C failed to subsequently maintain the statement of denial in providing facts or reason:

    "... as no new or changed information has become, we have nothing further to add to our previous correspondence."

20. There is no mistake that the Dept PM&C made a finding on the several occasions on the head of power for the ***RS&T Act*** 1973 and that finding, in that the head of power does not exist;

21. There is no mistake that the finding, in that the head of power does not exist, extends to the fact that the ***RS&T Act*** 1973 is not valid ***Commonwealth*** law, which extends to the fact that the ***Queen of Australia*** does not exist in law and provides no right or force of application.

With due respect of the law at the fifth clause of the Commonwealth of Australia Constitution Act the above numbered facts, as admitted, is taken as to be regarded.

HRH

Harry Hopes

This Certificate, bearing the above signature and preceding page initials and date,

was solemnly acknowledged by the declarant before me at NAMBUCCA

this day 7.4.16

Justice of the Peace:

Alan Bates J.P.

Alan Bates
Justice of the Peace
JP (WA) 198