

FEDERAL COURT OF AUSTRALIA

Re: PATRICK LEO CUSACK

And: AUSTRALIAN ELECTORAL COMMISSION

No. QLD G127 of 1984

Administrative Law

COURT

IN THE FEDERAL COURT OF AUSTRALIA

QUEENSLAND DISTRICT REGISTRY

GENERAL DIVISION

Spender J.

CATCHWORDS

Administrative Law - application to review decision of Divisional Returning Officer to accept four nominations for 1 December House of Representatives election - valid nomination required to be accompanied by \$250 in legal tender or banker's cheque - whether applicant "a person who is aggrieved" - validity of currency and banking system in Australia - meaning of "legal tender" - "meaning of banker's cheque" - nominations properly accepted.
Commonwealth Electoral Act 1918 ss. 166, 170, 172

Administrative Decisions (Judicial Review) Act 1977 s. 5

Currency Act 1965 ss.9, 11, 16

Reserve Bank Act 1959 s.36

Bills of Exchange Act 1909 s.88A

HEARING

BRISBANE

29:11:1984

ORDER

1. Application G127 of 1984 be dismissed.
2. Applicant pay respondent's costs to be taxed including reserved costs, if any, unless otherwise agreed.

DECISION

The applicant seeks to review decisions made by Mr Phil Taylor, who is the Divisional Returning Officer for the division of Ryan, a federal electorate in the State of Queensland. The decisions which he seeks to have reviewed as particularised were, that the otherwise formally correct nominations of Messrs J.C. Moore, M.E. Foley, J.B.S.F. Peeters, and M.A. Crofts, for 1 December 1984 House of Representatives elections, were accepted as valid because individual deposits of \$250 in "forms of money" described as either legal tender or banker's cheque were lodged with those nominations and conformed with [ss.170](#) and [172\(2\)](#) of the [Commonwealth Electoral Act 1918](#) ("the Act").

2. The affidavit material of Mr Taylor indicates that he did in fact accept the nominations for those four candidates for the seat of Ryan and his affidavit asserts that those nominations complied with the requirements of [ss.166](#) and [170](#) of the [Act](#), and accordingly were accepted and not rejected. Mr Taylor further states that in respect of the candidates Moore and Foley, legal tender was tendered with respect to those nominations and that banker's cheques were tendered with respect to the nominations of Mr Peeters and Mr Crofts.

3. [Section 170](#) of the [Act](#) deems, amongst other things, that no nomination be valid unless it is accompanied, in the case of a person nominated as a member of the House of Representatives by \$250 in legal tender or in banker's cheque.

4. At the outset I was concerned as to whether Mr Cusack had standing to bring this application, but Mr Bickford, who appeared on behalf of the Australian Electoral Commission, took no point as to whether Mr Cusack could properly be described as a person aggrieved for the purposes of [s.5](#) of the [Administrative Decisions \(Judicial Review\) Act 1977](#). I referred in that regard to, first, [Tooheys Ltd v. Minister for Business and Consumer Affairs \[1981\] FCA 121; \(1981\) 36 ALR 64](#) and the observations by Ellicott J. at p 79, and further to the observations by Sir Nigel Bowen and Franki J. in [Ricegrowers Co-operative Mills Ltd v. Bannermann \[1981\] FCA 211; \(1981\) 38 ALR 535](#). In the light, however, of the attitude expressed by Mr Bickford, nothing further need be said as to Mr Cusack's standing.

5. The second matter of a preliminary nature that I wish to mention is that after Mr Cusack had concluded his submissions on Tuesday morning of this week and at which point I adjourned the further hearing of his application until this morning, I was concerned that if in fact anything were to be done by way of reviewing those decisions, each of the four persons named whose nomination were the subject of the decision ought properly to be made parties. In the light, however, of the decisions to which I have come, I have not had to consider the necessity of those persons having the right to be heard in respect of these applications.

6. The third matter by way of preliminary that I ought to mention is this: Mr Cusack and an associate of his, Mr Skyring, have in a number of proceedings, both in the Supreme Court, in the Federal Court, and in the Full Court of this court, sought, by one means or another, to pursue the validity of the currency and banking system in Australia. The methods by which that fundamental objective has been pursued have varied, and one might be pardoned for the view that each of them, in their own way, has been pursuing what might colloquially be called "bees in their bonnets" about the validity or otherwise of the method by which legal obligations are discharged in this country.

7. I have patiently listened to this and other applications, and it may be that others would view those applications as the applications of ratbags. Notwithstanding that possible view, I have addressed myself to the merits of this application.

8. At the core of Mr Cusack's application is the assertion that no valid method exists by which the requirements of [s.170](#) of the [Act](#) can be complied with. I have, in another application, dismissed an objection to the validity of [s.170](#) which was argued on the basis of some claimed inconsistency with rights guaranteed either by Magna Carter or

by the Great Charter of Liberties (see *Cusack v. Australian Electoral Commissioner* unreported judgment delivered 6 November 1984).

9. This application is concerned solely with an objection which is said to be based on the requirements of [ss.9, 11](#) and [16](#) of the [Currency Act 1965](#) as amended, and the conclusions to be drawn as to the validity of the nominations in the light of those provisions.

10. Fundamental to this application by Mr Cusack is a misapprehension as to the purpose of [Part IV](#) of the [Currency Act 1965](#), and, I apprehend, also a misunderstanding as to what is meant by "legal tender". Legal tender is nothing more than the tender or offer of payment in a form which a creditor is obliged to accept. The [Currency Act](#) provides for the existence of copper, nickel and bronze coins for relatively small amounts.

11. [Part IV](#) of the [Currency Act](#), says, in [s.16](#):-

"(1) A tender of payment of money is a legal

tender if it is made in coins that are made

and issued under this [Act](#) and are of current

weight up ..."

to certain defined amounts. This provision simply means that a person can discharge an obligation up to those defined amounts by the tendering of coins. He is not able, for instance, to discharge a debt for \$250 by tendering 25,000 one cent coins: any such purported tender is not a tender that the person would be obliged to accept. On the other hand, a tender of a bus fare of 20 cents by 20 one cent coins would be a legal tender.

12. When one deals with the question of bank notes as legal tender, [s.36](#) of the [Reserve Bank Act 1959](#) provides in sub-s.(1):-

"(1) Australian notes are a legal tender

throughout Australia.

And then in sub-s.36(2):-

"(2) For the purposes of the last preceding

sub-section, an Australian note of a

denomination specified in the first column of

the following table has the value of the

currency provided for by the [Currency Act](#)

1965 that is set out in the second column of
the table opposite to the denomination of
that note."

That table, when one looks at it, is simply a transitional provision enabling the conversion of notes expressed in shillings and pounds to be expressed in dollars and cents, and so sub-s.(2) merely has a transitional character. 13. Section 36 therefore clearly provides that Australian notes are a legal tender throughout Australia. It follows that it is possible to discharge obligations by paying coins up to the defined limit provided for by [Part IV](#) of the [Currency Act](#), or by notes of whatever denominations.

14. I might also mention that generally the position in law is that a creditor is not obliged to give change. The exact sum due must be tendered; that is the primary obligation.

15. But in any event, if one has to discharge an obligation of \$250 as [s.170](#) of the [Act](#) requires, that can be done by paying that sum by Australian bank notes to the value of \$250 or by Australian bank notes to a lesser sum with some coins to the difference in accordance with the [Currency Act](#).

16. So far as the requirements of [s.170](#) of the [Act](#) are concerned as to a banker's cheque, what [s.170](#) does is to enable the obligation required by the section to be discharged in one of two ways; that is to say, by the tender of legal tender, which may be Australian notes exclusively or Australian notes with some coins; and the second method is by the tender of the sum of \$250 by banker's cheque.

17. The [Bills of Exchange Act 1909](#), in Division 2 contains a provision which specifically refers to cheques drawn by a bank on itself.

18. [Section 88A](#) of that [Act](#) provides:-

"For the purposes of this division, cheque
includes a banker's draft payable on demand
drawn by or on behalf of a bank upon itself,
whether payable at the head office or at some
other office of the Bank."

That is to say, payment by a banker's cheque is a payment which is recognised by the [Bills of Exchange Act](#) and is a method for which [s.170](#) provides as a sufficient discharge of the obligation for which that section calls.

19. In those circumstances, the decisions by Mr Taylor to accept the nominations, which Mr Cusack concedes are formally correct in their compliance with the requirements of [ss.170](#) and [172\(2\)](#) of the [Act](#), are decisions which are lawfully open to Mr Taylor, and, indeed, in the light of the obligations created by sub-[s.172\(1\)](#), are, decisions that he is required by that statutory provision to make.

20. It follows, therefore, that the decisions of Mr Taylor to accept the nominations of each of the four candidates for the division of Ryan are decisions which, assuming that Mr Cusack has standing to challenge them, are decisions which are not reviewable on the grounds that he has advanced.

21. In those circumstances, the application by Mr Cusack is dismissed.

22. With regard to costs and applying the ordinary principles on which costs are to be awarded, that is to say, they ought properly and ordinarily to follow the event, I order the applicant to pay the respondent's costs, such costs to be taxed, if not agreed, those costs to include reserved costs, if any.