The Sir Harry Gibbs Letter

This letter is widely circulated online, and further conclusions drawn from it. Something that must be pointed out initially, is that the authenticity of this letter has never been established, so the attribution to Sir Harry Gibbs is itself doubtful, regardless of the contents.

https://freemandelusion.com/wp-content/uploads/2018/12/allleged-sir-harry-gibbs-letter.pdf

https://freemandelusion.com/wp-content/uploads/2018/12/alleged-sir-harry-gibbs-letter-1995-.pdf

I note the copy of the letter on *Treaty Republic* website comes with a disclaimer note stating the fact that nobody has been able to substantiate the authenticity of this letter. However most other websites do not even question the authenticity, but accept it as verified.

The source of this letter is linked with the *Institute of Taxation Research,* from a report prepared by the *Institution for Constitutional Education and Research,* a 1998 publication called *"Australia: the concealed colony!"* which purported to be *"…a report to the United Nations on the continuance of the application of British law within the territory of the independent sovereign nation Australia".* The *Institute of Taxation Research* ran a multi-level marketing scheme, paying commissions to those that brought them clients. Many prominent figures in the movement were involved with the group, such as barrister ***David Fitzgibbon***, solicitor ***Wayne Levick***, *and* ***Wolter Joosse***. They brought proceedings in hundreds of cases running this argument, none of which succeeded.

In *Deputy Commissioner of Taxation v Levick [1999] FCA 1580; 168 ALR 783*, Hill J. made an order imposing on Mr Levick, as the lawyer spruiking these concepts on his clients, personal liability for costs incurred by the Deputy Commissioner of Taxation. The same happened in at least a dozen further cases.

In *Australian Competition and Consumer Commission v Institute of Taxation Research Pty Ltd & Wayne Levick [2001] FCA 1366* the Federal Court declared that the respondents, the ***Institute of Taxation Research*** and solicitor Wayne Levick, engaged in misleading and deceptive conduct, regarding arguments that centered around the proposition that:

> *(a) the Australian legal system has no basis in law;*
> *(b) the Australian Constitution is invalid;*
> *(c) there is no basis in law for the exercise of the legislative powers of the state and federal Parliaments;*
> *(d) there is no basis in law for the exercise of the executive powers of Australian governments; and*
> *(e) Australian taxation legislation is invalid.*

The court further ordered that the respondents be restrained from:

> *"...making representations via the internet or for or on behalf of any corporation, in trade or commerce, to any person, expressly or by implication, to the effect that a former Justice of the High Court of Australia endorses or agrees with the conclusion of law that the Australian legal system has no basis in law and/or that the Australian Constitution is invalid."*

I personally think attributing the letter to Sir Harry Gibbs is an insult to his career, considering he had numerous times been cited in the Court as having a very clear understanding of the changes in constitutional relations with the UK. I prefer reading case law from the man himself than fake letters dishonouring his memory.

A study of the obiter and non-obiter decisions of Gibbs J. while Chief Justice of the High Court shows that his verified views are very inconsistent with the content of the letter, such as this statement by Gibbs J in ***Southern Centre of Theosophy Inc v South Australia (1979) 145 CLR 246*** (at 261):

> *"Finally, reliance was placed on the Royal Style and Titles Act 1973 (Cth) by which the assent of the Parliament was given to the adoption by Her Majesty for use in relation to Australia and its territories, of the following style and titles: "Elizabeth the Second, by the Grace of God Queen of Australia and Her other Realms and Territories, Head of the Commonwealth." It is right to say that this alteration in Her Majesty's style and titles was a formal recognition of the changes that had occured in the constitutional relations between the United Kingdom and Australia. For reasons already given those changes had no effect whatever on that part of the law of South Australia which confers a right of appeal to the Privy Council. The changes occurred as the result of an orderly development – not as the result of a revolution."*

To debunk the notion of sovereignty established in 1919, one only has to look no further than the fact that firstly, the *Colonial Laws Validity Act 1865* was still binding on all Australian laws until excluded by the *Statute of Westminster Adoption Act 1942*, section 2 of which provided that colonial laws were invalid if they were repugnant with UK law. This point was upheld by Gibbs J. himself in ***China Ocean Shipping Co. v South Australia (1979) 145 CLR 172*** (at 194):

> *"To accept this argument would be to abandon both authority and principle… Those dicta were not supported by any other member of the Court; they are contrary to settled authority and, with all respect, cannot be accepted as correct. I need not further discuss the first of those propositions."*

To submit to a court that all the laws after 1919 are null and void, unlawful and have no meaning or effect, while relying on the contents of a provably unsubstantiated mystery letter, is not at all logical. The relevant precedents form part of the common law, whereas this mystery letter does not. This was exactly the conclusion noted in ***Ulysses and Child Support Registrar [2007] FamCA 1395:***

> *"In his material the applicant relied on what he asserted the former Gibbs CJ to have said on an unspecified date in 1999 in some unidentified context. Accepting for the moment that, from somewhere, the applicant has accurately produced something which the former Chief Justice may have said, it would appear that the applicant would no doubt rely upon the words attributed to the former Chief Justice that "the current legal and political system used in Australia and its States and Territories has no basis in law" and that "…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"*
>
> *In what context any of this was said by the former Chief Justice, if in fact it was, is unclear. Absent far more than the applicant has placed before this Court, the extract upon which he relies does not advance his claim. There followed in the material another "Explanatory Statement" attributed*

to Gibbs CJ. When that statement was made and in what context is also unclear. The sentiments expressed in the document are consistent with those in the first document to which reference has been made. The document appears to be an opinion expressed by the former Chief Justice.

In the absence of any decision of the High Court, and the applicant has not referred this Court to any such decision, this Court does not accept, with all due respect to the former Chief Justice, that it is bound by the views he may have expressed in 1999."

https://freemandelusion.com/wp-content/uploads/2020/07/ulysses-and-child-support-registrar-2007-famca-1395.pdf

Likewise disregarded in ***Australian Securities Commission v White, Errol John [1998] FCA 790:***

"The series of documents which are contained in that exhibit contains, amongst other things, a statement said to emanate from Sir Harry Gibbs. It is attributed to Sir Harry that he said:

"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."

Later, this statement is attributed to him:

"The Governor-General's Letters Patent is a comedy of errors. We are greeted in the name of the Queen of Australia (titular title) who becomes the Queen of the United Kingdom in the next paragraph of the Letters Patent. This Queen 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 Nations Charter. Under both UK and international law, the Queen is a British Citizen."

The final sentence attributed to Sir Harry Gibbs is:

"We would have to plead "no contest" against the worst type of terrorism when our current legal and political system came under international scrutiny!"

In essence, Mr White submitted that the Acts of the Constitution and the Acts of the Australian Parliament and the institution of our Courts and the validity of appointment of our judicial officers are all invalid. I think I can summarise Mr White's point by quoting from page 5 of one of the documents in that statutory declaration where Mr White says:

"I think now is the time for a summary. 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."

I am not satisfied that there is any basis on which it has been established that the notices are invalid, that inquiry or investigation by the ASC is improper, or that there has been any reasonable excuse for the failure by Mr White to comply with the requirements of each of the two notices that I have earlier referred to."

https://freemandelusion.com/wp-content/uploads/2020/07/australian-securities-commission-v-white-errol-john-1998-fca-790.pdf

Batten v Police [1998] SASC 6778:

"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."

https://freemandelusion.com/wp-content/uploads/2020/06/batten-v-police-1998-sasc-6778.pdf

See also ***Buckingham Gate International Pty Ltd v Australia New Zealand Banking Group Limited [2000] NSWSC 946***, relying on the ratio set in *Joosse & Anor v Australian Securities and Investment Commission [1998] HCA 77* to reject the notion:

"The final proposition is however fallacious. It is that the Constitution, being one for a self-governing colony, is somehow rendered a nullity by the change in sovereign character of the Commonwealth of Australia into a fully sovereign state."

https://freemandelusion.com/wp-content/uploads/2020/06/buckingham-gate-international-pty-ltd-v-australia-new-zealand-banking-group-limited-2000-nswsc-946.pdf

In ***Joosse & Anor v Australian Securities and Investment Commission [1998] HCA 77***, Haynes J stated (at 18-19):

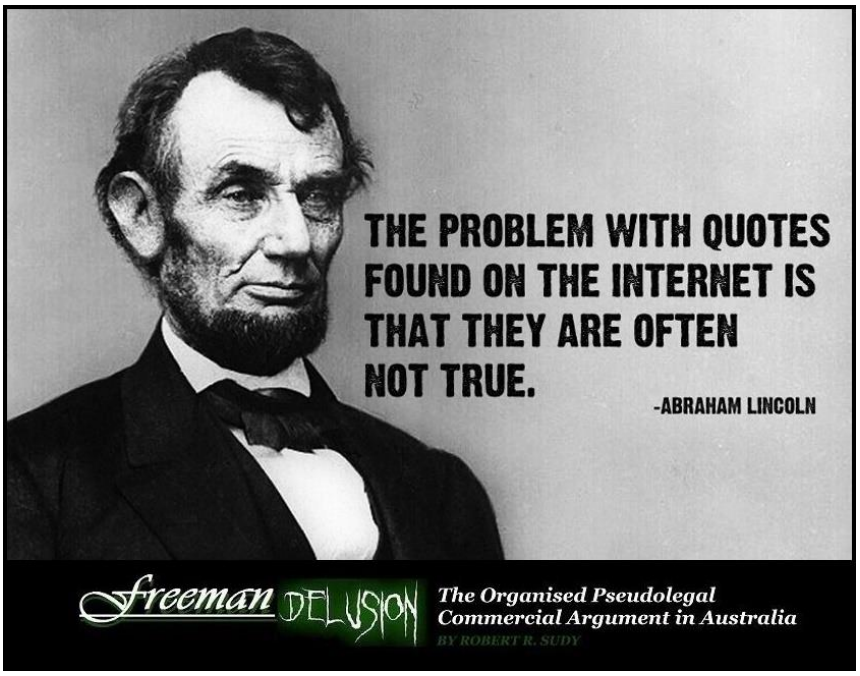
"...it may be that the Treaty of Versailles or some other international instrument can be seen as according Australia a place in international dealings which it may not have had before the instrument was signed. But what is significant for the disposition of the present applications is not whether the Westminster Parliament could now, or at some 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.

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."

https://freemandelusion.com/wp-content/uploads/2020/07/joosse-v-australian-securities-and-investment-commission-1998-hca-77.pdf



I often see this quote posted online, but have been unable to confirm its attribution or the existence of its alleged author:

> *"The continued usage of the Australian Constitution Act (UK) by the Australian Governments and the judiciary is a confidence trick of monstrous proportions played upon the Australian people with the intent of maintaining power. It remains an Act of the United Kingdom. After joining the League of Nations in 1919 Australia became a sovereign nation. It had no further legal power to use, alter or otherwise tamper with another nation's legislation. Authority over the Australian Constitution Act lies not with the Australian government nor with the Australian people, it rests solely with the UK. Only they have the authority to repeal this legislation." - Professor G. Clements (an eminent UK QC and emeritus Professor in law at Cambridge).*

(1) Self-governing colonies

The colonies became "self-governing" or "autonomous" from 1850, when Westminster passed the ***Australian Colonies Government Act 1850***, first granting the right of legislative power to each of the six Australian colonies. This is the basis for state legislative powers, and each of it's own constitutions. 50 years later, the colonies decided to form a confederacy, drafted a federal constitution in this capacity, and thereby created the Commonwealth in 1901, which was also approved by Westminster. The colonies which became states, and the federal body, were at that time *"self-governing dominions of the British Empire"*, and therefore relied upon, and were subject to, the supreme authority of Westminster as the head of the British Empire.

Note: "***Self-governing***" is exercising control over and administering one's own affairs, similarly, "Autonomous" is having the freedom to govern oneself or control ones own affairs. "***Sovereignty***" on the other hand, is when supreme power or authority is not found outside oneself.

The concept of sovereignty was discussed in ***Joosse & Anor v Australian Securities and Investment Commission [1998] HCA 77*** (at 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 attained. 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". 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 (1979) 145 CLR 172** 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'". 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. 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."

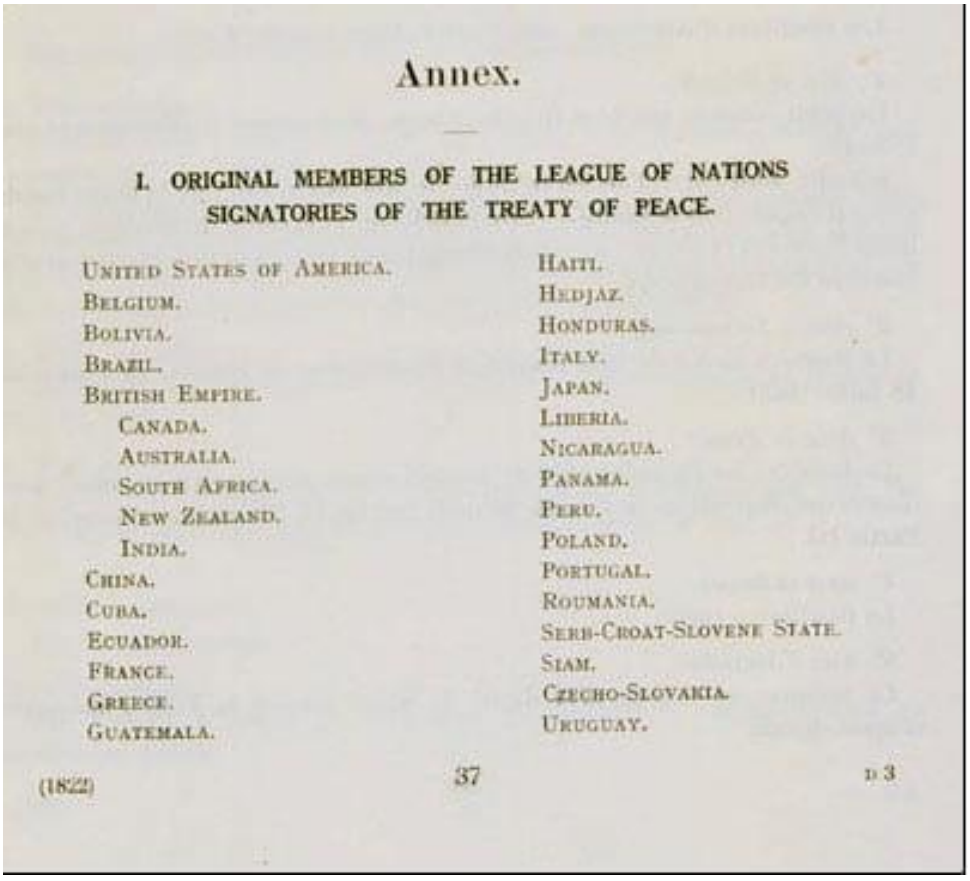
(2) Australia's entry to the League of Nations in 1919.

Article 1 of the Covenant of the League of Nations sets out its terms of membership, which does not imply we were required to be a sovereign nation. It states:

> *"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."*

In 1919, the Commonwealth could not have been a "sovereign" nation, but simply "self-governing", due to the supreme authority being found outside of Australia. This is demonstrated by the fact the ***Colonial Laws Validity Act 1865*** was still binding on the dominions, section 2 of which provided that colonial laws were invalid if they were repugnant with UK law.

Page 18 of this ***document*** lists of names of nations who signed the *Treaty of Versailles* signed on June 28 1919, in the Hall of Mirrors. Note how the dominions were signed under the British Empire, not in their own right.



Annex.

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

United States of America.
Belgium.
Bolivia.
Brazil.
British Empire.
Canada.
Australia.
South Africa.
New Zealand.
India.
China.
Cuba.
Ecuador.
France.
Greece.
Guatemala.
Haiti.
Hedjaz.
Honduras.
Italy.
Japan.
Liberia.
Nicaragua.
Panama.
Peru.
Poland.
Portugal.
Roumania.
Serb-Croat-Slovene State.
Siam.
Czecho-Slovakia.
Uruguay.

(1822) 37 b 3

(3) Can the UK repeal the Constitution Act, and if so, would it be binding on Australia? If not, when did this change occur?

No the UK cannot. This changed occurred with the adoption of the *Statute of Westminster 1931* by Australia in 1942, when Westminster declared they would no longer legislate for the dominions.

Section 2 of the Statute of Westminster Adoption Act 1942 relates to the *"Validity of laws made by Parliament of a Dominion (28 and 29 Vict. c. 63)* It states:

> *(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."*

Previously to this adoption, the Commonwealth was still a colony of the British Empire, due to the provisions of the *Colonial Laws Validity Act 1865*. Afterwards we were independent from England on a federal level, though UK ties to the States remained. The States were not sovereign states until later, as they were still subject to UK laws they had no powers to alter, and neither did the Commonwealth. State sovereignty was finally achieved with the passing of the *Australia Act 1986 (UK)*, which completely removed any effect of the *Colonial Laws Validity Act 1865.*

Section 3 of the Australia Act 1986 relates to the termination of restrictions on legislative powers of Parliaments of States:

> *(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."*

From ***Volume 1 of the Final Report of the Constitutional Commission 1988***:

> *"The sovereign status of Australia resulted in the rejection of earlier colonial restrictions on the interpretation of the powers of the Commonwealth. The development of Australian nationhood did not require any change to the Australian Constitution. It involved, in part, the abolition of limitations on constitutional power that were imposed from outside the Constitution, such as the Colonial Laws Validity Act 1865 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.

Sir Garfield Barwick has described the result, in relation to the Framers' purpose in drafting the Constitution as follows: "The Constitution was not devised for the immediate independence of a nation. It was conceived as the Constitution of an autonomous Dominion within the then British Empire. It s founders were not to know of the two world wars which would bring that Empire to an end. But they had national independence in mind. Quite apart from the possible disappearance of the Empire, they could confidently expect not only continuing autonomy but approaching independence. This came within 30 years. They devised a Constitution which would serve an independent nation. It has done so, and still does."

(4) Can Australia completely repeal the Constitution Act without any sort of "permission" from the UK?

Yes we can, as we are a fully autonomous, self-governing sovereign nation. Constitutional sovereignty, that is the power to amend the constitution, lies with the Australian people under section 128, and the Australian people have the power to reject a constitutional amendment proposed by Parliament. In 1999 it was proposed that we become a republic, but the referendum was not carried by the Australian people, and therefore it did not occur. If it was carried, it would obviously imply the drafting of a new constitution and the extinguishment of the Constitution Act. Queen Elizabeth II responded by saying:

"I respect and accept this result. I have always made it clear that the future of the Monarchy in Australia is an issue for the Australian people and them alone to decide, by democratic and constitutional means."

Treaty of Versailles 1919 (including Covenant of the League of Nations):

https://freemandelusion.com/wp-content/uploads/2022/04/Treaty-of-Versailles-1919-including-Covenant-of-the-League-of-Nations.pdf

Robert R. Sudy (author) Website: **Freeman Delusion: The Organised Pseudolegal Commercial Argument in Australia** Email: **robertsudy@freemandelusion.com** * Like the page on **Facebook** Public group **Australian Pseudolaw** * Follow me on **Twitter** * Subscribe on **YouTube**.