Australian Pseudolaw Argumentation

by Robert R. Sudy

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As observed by ***Donald J. Netolitzky KC*** in *"A Rebellion of Furious Paper: Pseudolaw As a Revolutionary Legal System",* the pseudolaw memeplex has six core concepts**:**

1) Everything is a contract
2) Silence means agreement
3) Legal action requires an injured party
4) Government authority is defective or limited
5) The strawman duality
6) Monetary and banking conspiracy theories

The object of this article is to characterise 100 most commonly used individual Australian pseudolaw arguments or motifs, in order to group them into an identifiable indicia or species of pseudo legal thought, consistent with the format of these observations.

1. Everything is a contract

Pseudolaw adherents will interpret almost any direction by a police officer, or an invitation by a court for compliance with court procedure, as the formation of a ***contract***. Hence, they will refuse simple court directions and processes, such as to pass the bar, sit, stand, ***enter a plea***, or even acknowledge or confirm their identity. They do not wish to make joinder in contract, believing this is what gives authorities their jurisdiction. Authorities use *"statute law"* which to the adherent is "*Maritime Admiralty Law"*, (the law of the sea, of commerce and contracts). They believe that for a statute to be enforceable, either a contract must already exist, (through the shackled *strawman duality*) or the officer is merely offering them an invitation to joinder in contract right there.

Hence they become rather pedantic over the use of words and terms and even gestures, believing that certain commonly used words are also very serious legal terms or ***Legalese*** deceitfully intended to trick the unwitting denizen into this alleged joinder. Whenever police or court officers use the word *"understand"*, (eg: asking *"Do you understand?"*) they are talking in legal code for "Do you ***stand under*** our authority?" The adherent is not ever *"driving*" a "*vehicle"*, (these are legal terms) they are "*travelling"* in their *"automobile*" or "*private conveyance"*. So when asked, they reply that they are "***not driving only travelling***", expecting this response affords a reasonable excuse to unregistered and unlicenced fines. They do not register their vehicles with the appropriate state authority, as that *"****Regis****" -tration"* would mean the formation of a contract transferring the title of the *"automobile*" to the king. The word ***Includes*** holds special significance, as it is taken by the theory as having an exhaustive as opposed to expansive function, so adherents use it to attempt to create an exemption, claiming they are not whatever definition actually is in the statute, (eg: "*person"* or *"driver"* or *"vehicle*" etc.) If they find themselves *"under duress"* in signing bail agreements or other documents, they will add "*V.C.*" or "***vi coactus***" in a prepared attempt to later disregard and nullify the agreement.

"The overall result is that the perceived role of contracts is greatly expanded in the Pseudolaw Memeplex, to the point this concept permeates much of day-to-day life and interactions. Literally, everything is a contract."

2. Silence means agreement

This curious pseudolaw belief contends that a notarized document, sworn affidavit, "*notice of understanding intent and claim of right"* or other paperwork that is served by the offeror, becomes a valid contract or agreement of the parties after the expiry of an allotted time period. It is claimed that the terms are accepted by acquiescence, due to the offeree's silence, non-response or inability to rebut the contents of the document within the given time. The initial document is accompanied by a *"fee schedule"* outlining the prescribed penalty amounts for various breaches of particular parts of the proposed contract, which is then invariably followed by a "*notice of default*" announcing that the contract has been activated and the *"fee schedule"* now applies. This "***unrebutted affidavit***" strategy has no basis in law, as it is a century-old principle of the common law of contract that silence to an offeror's invitation to contract is not on its own sufficient to imply agreement. However, the associated 3-5 letters strategy has sometimes been successfully used to intimidate people not familiar with law into compliance, which has earned it the rather fitting title *"paper terrorism"*.

"Another consequence of the Silence Means Agreement rule is less benign for those who accept it. When coupled with the Invisible Contracts concept, pseudolaw practitioners perceive themselves as surrounded by innumerable potential contract offers, any of which may entrap an individual in onerous binding obligations. The result is a kind of legal nightmare, where one must obsessively seek out and positively reject every contract offer."

3. Legal action requires an injured party

As most pseudolaw adherents wilfully disregard the authority and enforceability of legislation, it necessarily limits the number of offences they believe they can be charged for, to common law offences and civil matters, both which require a victim or complainant to pursue legal action. Generally, those offences known as "victimless crimes" are statutory enactments codified into law. Pseudolaw theory teaches that there is only three ways to "break the law", and that is to: 1. cause harm to people, or 2. their property, or 3. breach a contract, each of which require a victim or complainant. So in a nutshell, as a result of this wilful ignorance of the applicability of legislation, adherents conclude that any acceptable legal action requires an "injured party", often using the Latin term "***corpus delicti***" (body of the crime) referring to the principle that a crime must be proved to have occurred before a person can be convicted of committing that crime.

"Thus, the No Injured Party rule means government, or, for that matter, anyone, has no legal right to interfere with another until someone or something has been actually harmed. This rule is the (purported) theoretical basis for why one could own dangerous goods such as explosives and narcotics, possess and use firearms, or drive while intoxicated. All these things are legal, until someone is hurt."

4. Government authority is defective or limited

"The next element of the Pseudolaw Memeplex is an explanation for why the legal authority of government is not as expansive or extensive as is conventionally communicated and taught. This element is the one component of the Pseudolaw Memeplex which shows marked variation between host communities. That is not a surprise since the details of the Defective Or Limited State Authority explanation usually derive from the history of the local jurisdiction, or the nature of the pseudolaw host group."

There are a variety of views in different Australian pseudolaw groups as to their reasoning why government authority is defective. Each strain of pseudo legal thought is accompanied by the notion that any legislation enacted past a certain point is invalid for varying reasons, or that it does not apply to the individual.

(1) Common Law supremacy

This is the most basic of the "government authority is defective" concepts, and also appears to run concurrent through many of the overseas phenomena. The argument proceeds on the premise that a form of "natural law" is superior to all other forms of law and authority. Adherents generally call this "***common law***" but it is not the body of judicial decisions we speak of when referring to the common law. It is a reference to the medieval times that produced the philosophical roots of the rule of law, such documents as ***Magna Carta and Bill of Rights***, enlightenment era intellectual thought surrounding unalienable individual rights, ***the consent of the governed*** instead being obtained individually, and the metaphysical concept of the ***social contract*** being an actual physical, binding contract.

Adherents draw a distinction between what they call "common law" and "statute law" and believe they are only subject to the former, since legislation requires the "consent of the governed" to be democratically valid. The argument follows that the enforceability of "statute law" is subject to a form of on-the-spot contractual arrangement requiring individual agreement, as opposed to already having force of law. This can be seen in the pointless terrified screams of *"I DO NOT CONSENT!"* when adherents attempting the freedom of travel and the "not driving just travelling" strategies are finally arrested by police. They also draw a distinction between the terms ***lawful and legal***, with "common law" being a "lawful" obligation, while "statute law" merely being a "legal" obligation, requiring their contractual agreement with authorities.

Common law adherents generally insist on "*a* ***trial before a jury*** *of their peers*" and that *"justice shall not be sold*" in refusing to pay court or filing costs. The concept of jury verdicts is very important to common law theorists, coexisting with the notion that whatever they consider to be "bad laws" can simply be erased by ***jury nullification***, and that individual laws are invalid without being first approved by a *"referendum of the people*". They see the magistrate as little more than a simple clerical scribe, and real law is set by juries. Consequentially, they ignore the doctrine of judicial immunity, often threatening to "***arrest the judge***" so they can be "***hung for treason***" or "***slavery***" for failing to uphold the "true law" by disregarding or striking out their frivolous motions for a jury trial. They will claim that a "***coram is not a judge***" and that they demand to be tried in a "***chapter III court***" *according to the Constitution*".

This is a remarkable position, considering they inherently disregard any reliance by the judge on ***previous judicial authority*** in their matter, despite it often being binding on the court, as equally as they disregard "*statute law*". The concept of common law supremacy is not consistent with established doctrines of constitutional law, such as the principles of ***Parliamentary Supremacy*** and ***Responsible Government***, both supported by the binding decisions of the High Court. To "*expose"* this *"judicial corruption*" adherents often record the hearing with their mobile phone ***camera or voice recorder*** either quite openly or discretely to avoid detection, and later upload it to social media or YouTube. This strain of pseudo legal thought is accompanied by the notion that any laws applied to them without their expressed consent are invalid.

(2) Original Sovereignty

Among the three methods of acquisition of foreign land recognised by British law, (*conquest, cessation and settlement*), the latter occurs when a colony is founded in a land in which there are no settled inhabitants or a settled system of law. In such a case, English law is immediately in force in the new settled colony, and only those laws are applicable. It was hence decided by the Privy Council that it was a *"settled*" colony under the doctrine of "*terra nullius*". While the doctrine was finally overturned In the historic *Mabo* decision in 1992, the question of Indigenous sovereignty was never engaged. The only outcome was the recognition of native title to the use of land for ceremonial or customary purposes, as the Crown's radical title only conferred sovereignty, and sovereignty did not extinguish native title by default. Similarly in *Walker (1994),* which rejected the coexistence of *Customary Aboriginal law*, and many other examples. Throughout the ***Aboriginal challenges to jurisdiction***, the common theme has been that *"sovereignty was never ceded",* and that the culture, language and connection with country *"exists, and is continuing*". While indisputable in fact, these arguments have never been successful in law, mainly due to the principle stated by Gibbs J. in *New South Wales v. The Commonwealth [1975] HCA 58* (at 14), that the acquisition of territory by a sovereign state for the first time is an act of state which cannot be challenged, controlled or interfered with by the courts of that state, and that the principle precludes any contest between the executive and the judicial branches of government as to whether a territory is or is not within the Crown's Dominions. Consistent with this principle, the High Court has consistently held that they lack the jurisdiction to enquire into the actual acquisition of Aboriginal sovereignty. Every other court in Australia simply refers to those binding authorities of the High Court in rejecting the argument. Several enactments and documents have also been unsuccessfully but continuously referred to in relation to self-determination, such as James Cook and Arthur Phillip's orders and journals, as well as the common ***Pacific Islanders Protection Acts*** and ***Letters Patent 1836 (SA)*** arguments. The 1967 Referendum was a huge moment for Indigenous Australia, however, certain myths also exist as to its effect, such as whether it gave Indigenous people the right to vote in federal elections, the right to Australian citizenship, the right to be included in the census, and whether, up until the referendum, Indigenous people were classed as fauna, ***governed under the Flora and Fauna Act.***

The introduction of imported pseudolaw concepts to Indigenous rights activists and their communities, (primarily by Mark McMurtrie of the "*Original Sovereign Tribal Federation*") created a unique variation on the concept that government authority is defective or limited, along with a strawman duality status of "*Original Sovereign*" as opposed to an "*Aboriginal*" or "*Indigenous*" citizen. The variation also turned the absence of any formal treaty with Indigenous people into a contractual notion, (or rather, the absence of it) concluding that without any such contract or treaty, no legislation can apply to Indigenous people. Also adopted were the foisted unilateral agreement strategy, requests to bring forward the injured party in simple offence matters, as well as monetary and banking conspiracy theories with their

recent commercial lien for zillions to a mining company. This group and doctrine was the driving force behind the protests in various cities, as well as in Canberra in January 2022, which tragically led to the doors and facia of the Old Parliament House being set alight and destroyed.

(3) 1919 Sovereignty

The *Institute of Taxation Research* and the *Institution for Constitutional Education and Research* compiled *"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".* In summary, the argument proceeded on the premise that Australia became a sovereign nation with the acceptance into the *League of Nations* in 1919 with the signing of the *Treaty of Versailles*, from which point the imposition of foreign law (such as the *Commonwealth Constitution*) on Australians was a breach of international law. A letter addressed to vexatious litigant John Wilson, allegedly attributed to former Chief Justice of the High Court ***Sir Harry Gibbs*** was used to gain support for the proposition. This strain of pseudo legal thought is generally accompanied by the notion that any legislation enacted past 1919 is invalid being contrary to ***International law***.

(4) The Crown as a body politic

There is a misconception in relation to the development of ***the Crown*** as a political entity, with many holding a 1600's *Calvin*-type perspective, (when real power was vested in the monarch directly, and allegiance was "owed in a personal sense"), as opposed to the later *Isaacson v Durant* view, (of the Crown as the monarch's body politic, and allegiance being "owed to that body politic"), which was understood by writers at the time of Federation. In contrast to the 1919 sovereignty argument, this pseudolaw contention seeks the restoration of a medieval interpretation of the Crown long passed into history. This can be seen in various forms, like vexatious litigant Brian Shaw's assertions that "***the Crown was removed***" from public office and judicial oaths, (and other provisions), as opposed to the amendments being entirely consistent with *Isaacson v Durant* and constitutional reality. Another would be demanding authorities show them a *"****proclamation certificate***" signed by the monarch. Ironically, with any Commonwealth legislation that has actually been reserved for Her Majesty's pleasure by the Governor General, it is noted that the ***Royal Sign Manual*** is placed on the top of the Bill, which to the adherent means the Act never received assent, as they claim it should be underneath, at the end of the Bill. These strains of pseudo legal thought are generally accompanied by the notion that any legislation enacted past these Victorian and Western Australian amendments, (as well as without the personal assent and proclamation by the monarch), is invalid being contrary to the Constitution.

(5) The development of Australian Nationhood

Similarly with adherents' understanding the evolutionary historical events that progressively led to the sovereign independent nation we see today, from a group of British colonies. I have grouped the following three areas together under this general subject matter: (a) The path to complete independence (b) The divisible Crown and (c) The Australia Act, as these concepts are usually combined as a single philosophy.

(a) The path to complete independence

Beginning with the ***Australian Constitutions Act 1850*** granting legislative power to the colonies, followed by the ***Colonial Laws Validity Act 1865*** to remove any doubts as to the validity of the legislation

passed by the colonial parliaments, came the ***Constitutional Conferences*** of the 1890's and Australia was born, then a dominion of the British Empire, with the former colonies becoming states of a federation, under the ***Commonwealth Constitution Act 1901***. Cracks appeared in the *British Empire* itself with the *Anglo-Irish treaty* of 1922, requiring a change in the titles of the Crown and of Westminster, with the *Royal and Parliamentary Titles Act* in 1927. Agreements reached during the *Imperial Conferences* resulting in the ***Balfour Declaration*** the prior year, were then brought into law with the *Statute of Westminster 1930*, adopted by Australia with the ***Statute of Westminster Adoption Act 1942***. This adoption ended all responsibilities of the United Kingdom in relation to the Commonwealth from 1939, but state ties remained until the passing of the ***Australia Acts* 1986**. The development of Australian nationhood did not require any change to the Constitution, but rather, the abolition of limitations on constitutional power that were imposed from outside the Constitution, such as the *Colonial Laws Validity Act 1865*, restricting what otherwise would have been the proper interpretation of the Constitution, by virtue of Australia's status as part of the British Empire. When the Empire ended and national status emerged, the external restrictions ceased, and constitutional powers could be given their full scope.

Also unlike the 1919 sovereignty argument, the pseudolaw contentions related to the development of Australian nationhood seek restoration of the British Empire, based on a denial of, or an inherent opposition to independence, and/or changes to the constitutional relationship with the United Kingdom. This can be seen in various forms, such as insisting on the significance of the ***Lion and the Unicorn Seal***, (as opposed to the 1973 *Great Seal* of Australia), the ***red ensign flag***, (as opposed to the *Flags Act 1954* blue ensign), and references to the ***preamble to the Constitution*** and the 1901 ***Quick and Garran's commentary*** as the most accurate guide to understanding current events. It invokes elements long passed into history, such as appeals to the ***Privy Council***. The significance of the existence of Old Parliament House is also relevant, as it is believed that when it closed, so did the "Commonwealth". Adherents question the constitutionality of the removal of the words "***The Commonwealth of..***" from currency and government departments since the 1970's, concluding that the *"Australia"* and *"Australian Government*" that exists in place of the "*Commonwealth of Australia"* is a completely separate new entity that was nefariously created to usurp the Commonwealth. They dub themselves "***Commonwealth Public Officials***" and stand to protect the Commonwealth from this tyranny. This strain of pseudo legal thought is generally accompanied by the notion that any legislation enacted past a certain point in time is invalid being contrary to the Constitution.

(b) The divisible Crown

Notions of allegiance as the factum upon which nationality laws and status turned were accommodated to international realities consequent upon the disappearance of the British Empire. The post-war legislation in both countries recognised that the metaphysical indivisibility of the Imperial Crown no longer made constitutional or political sense, and that the sovereign now had several and distinct politic capacities. Those realities were reflected in the *Royal Styles and Titles Act 1953* following an agreement reached at a meeting of British Commonwealth Prime Ministers that "*the Style and Titles appertaining to the Crown are not in accord with current constitutional relationships within the British Commonwealth.*" The notion of an indivisible Imperial Crown gave way to the recognition of the divisibility of the Crown, with recognised distinctions between the office and title ***Queen of Australia*** and the office and title "*Queen of the United Kingdom*". References to the sovereignty of the United Kingdom and the Church of England were subsequently removed with the *Royal Styles and Titles Act 1973*, leaving a discrete Australian monarchy. This strain of pseudo legal thought is generally accompanied by the notion that any

legislation enacted past 1973 is invalid being contrary to the Constitution, including the ***Governor General's Letters Patent***. Closely tied to this contention rejecting the amendments to the Royal titles, is the rejection of the ***Great Seal of Australia***, which was enacted at the same time.

(c) The Australia Act

The remaining ties with the Australian states to the United Kingdom were severed with the passing of the ***Australia Acts 1986***. The pseudolaw adherent views this legislation as replacing or subverting the *Commonwealth Constitution*, as opposed to its true purpose, to bring the states in line with the constitutional position already enjoyed by the Commonwealth since the *Statute of Westminster Adoption Act 1942*. It is insisted that a referendum should have been undertaken, despite the fact no provision of the *Commonwealth Constitution* required amendment to even invoke the use of section 128. There was argument that the *Australia Acts (Request) Act 1985* (Qld) was invalid, (and therefore also the *Australia Act 1986)* as its effect was alter the entrenched provisions relating to the ***Office of Governor*** of Queensland, which first required approval in a State referendum, and in the High Court in *Marquet*, Kirby J raised a minority dissent that the *Australia Act* was not a valid exercise of Commonwealth legislative power, as section 106 guarantees that a State constitution may be altered only in accordance with its own provisions. However, these arguments have never been successful, with the High Court concluding that it was sufficient that the Act had been passed in reliance on section 51(xxxviii), which gives the Commonwealth parliament power to legislate at the request of the State parliaments. This strain of pseudo legal thought is generally accompanied by the notion that any legislation enacted past 1986, (but is more often linked to the 1973 point), is invalid being contrary to the Constitution.

(6) Other Constitutional Misconceptions

There are a variety of common flawed constitutional arguments in relation to a number of provisions. ***Section 115*** is used to support the notion that fractional reserve banking is unconstitutional as debts must be paid in *"silver and gold",* despite the provision only applying to states. ***Section 92*** is used to support the right of freedom of travel unhindered across state borders, despite the plentiful case law defining the restriction. ***Section 100*** is used to support water rights despite the fact it only restrains the Commonwealth. Overlooking the words "***until the Parliament Otherwise Provides***", many provisions, including ***Section 3*** is used to wrongfully insist the Governor General must still be paid in British Pounds today. The words "***for the peace, order and good government***" are used to insist laws must prove to actually be beneficial for the peace, order and good government, or they are invalid, and a misreading of *Covering Clause 8* concludes that ***Australia has no State borders***. That ***speed cameras*** must be tested in compliance with the *National Measurement Act 1960*, that ***The Australian Tax Office is not a Legal Entity*** and therefore tax is voluntary, or that ***section 51(xxiiiA)*** protects against mandatory vaccination as it would be *"civil conscription*".

Similarly, a flawed understanding of the division of legislative powers in a federal structure, leads to misconceptions of the ***legislative powers of states***, with adherents often raising the premise of inconsistency under ***section 109***. A good example can be found in Wayne Glew's consistent argument that ***councils are unconstitutional***, and states cannot legislate regarding councils because local government is not recognised in the Commonwealth Constitution. David Walter's ***fee simple alienation*** argument identically ignores the plenary power of the state parliaments. Queensland in particular, has a number of state-based arguments, such as the ***abolition of the upper house*** of the Parliament being unlawful, that the ***Office of Governor*** was altered in breach of the entrenched provisions of the

Constitution Act 1867, and the government was replaced with a company called the ***Brigalow Corporation***. Similarly, a misunderstanding of two Victorian decisions led many to wrongfully claim the ***Police powers*** to request licence details from the driver of a vehicle was unlawful.

(7) Corporate Government

The US *Posse Comitatus* believed that the Federal Government was usurped by a British conspiracy around the time of the 13th Amendment (that ended slavery), and the 14th Amendment (that introduced federal US citizenship), replacing the original "de jure" American government with an illegitimate, tyrannical "de facto" *THE UNITED STATES*. It was contended that the Federal Government was a trading corporation, a *"British ship in dry dock in Washington DC."* who used a form of British Maritime Admiralty law to contract away the American people's God-given rights. *"They didn't free the slaves, they made everyone a slave..."* was the conclusion. For these "organic citizens", the US was peopled by two nations, there was a republic where whites enjoyed unalienable rights superior to those held by people of colour and Jews. The latter were denizens of a separate quasi-nation, a "corporation" created by the 14th Amendment, and all the while, legitimate Americans were also "tricked" into adopting this inferior legal status. Much of the theory surrounding the strawman duality relies on the premise that government is a corporation, and attaches a "corporate" legal person to physical humans, in order for government authority to have effect. The "corporate US government" concept was also adopted by Australian pseudolaw adherents, and repackaged to suit localised arrangements. The main concept currently circulating, is the belief that ***Australia is a foreign corporation*** registered on the US *Security and Exchange Commission*, which to those unfamiliar with laws regulating the offering of shares within the US appears to confirm the belief. There is also the fact that all government departments have an Australian Business Number (ABN) which adherents claim proves their corporate status. It is generally believed that this "corporation" was created by the Whitlam government, and came into existence around 1973. Consistent with the US school of thought, it is believed to have replaced the original de jure *"Parliament of the Commonwealth of Australia",* with an illegitimate, tyrannical de facto *"AUSTRALIAN GOVERNMENT"*, with a paper Queen and a corporate seal.

(8) Religious beliefs and conspiracies

There has been a tendency to link various pseudo legal schools of thought to Christian fundamentalism, which has led to some rather disturbing conclusions. Some groups believed the Papacy owns all of humanity through the Papal Bull ***Unam sanctam***, and more recent theories like those of Ross Bradley, refer to the significance of a decree made by Pope Francis concerning criminal law in the Vatican, *"Motu Proprio"* as superseding all government authority. Others such as *Ucadia* have taken the complete opposite approach, contending that the *"evil Papal cult"* controls the courts acting as priests in the abolition of sins, and one can simply "*change jurisdiction*" for their own protection. Many groups have inherent anti-Catholic and anti-Freemasonry beliefs. For example, Steven Spiers "*United Kingdom of Australia*" holds that the use of a "*Catholic* ***St. Edward's Crown***" by Elizabeth II meant she has no line of authority. Similarly, others claim the ratification of the Rome-based UNIDROIT treaty by the Australian Government was the unlawful imposition of "*Roman law*" on the people of a Protestant nation. The conspiratorial concepts are generally Protestant-based, invoking certain repealed provisions of the ***Act of Settlement 1700*** and the subsequent emancipation by the ***Roman Catholic Relief Acts***. According to this belief, the monarch made a promise in her ***Coronation Oath*** to "*uphold the laws of God*" and *"protect her subjects from popery"*, and contend the very basis of the nation was created "***humbly relying on the***

blessing of Almighty God", and therefore the ***Laws of God*** remain superior to any man-made laws. Linked to this notion, is a flawed interpretation of the "***religious freedoms***" afforded by section 116 of the Constitution. This strain of pseudo legal thought is generally accompanied by the notion that legislation can be disregarded as invalid for varying reasons, primarily being contrary to ones inspired interpretation of biblical instruction.

5. The strawman duality

As observed by ***Donald J. Netolitzky KC*** the strawman duality is comprised of the following six aspects.

> ***(1)*** *Physical humans are bound or linked to a non-physical legal person doppelganger: the "Strawman".*
> ***(2)*** *Government has inherent authority over the non-corporeal "Strawman" doppelganger, but not a human being. The link between the physical and legal parts of the duality is a channel for government authority.*
> ***(3)*** *The government attaches the "Strawman" to the physical human via a concealed contract that involves birth or identification documentation.*
> ***(4)*** *The "Strawman" is identified by an all upper-case letter name (e.g. JOHN SMITH), and that is why government and legal documentation capitalizes names. Those materials do not actually refer to the associated human being.*
> ***(5)*** *Government authority can be negated by denying you are the "Strawman", and/or by breaking the "Strawman" contract.*
> ***(6)*** *A human is only subject to "Common Law" once the "Strawman" is removed.*

The strawman doppelganger, said to be represented by ***all-capital letters*** is considered by the theory to be ***a corporate entity*** or juridical person, as opposed to a natural person, which is not a status a single individual can actually acquire, only groups of individuals. A natural person can create a company or juridical person, but this is an adjunct to, rather than a replacement for, the legal personality of the human being. As recently confirmed by Cash QC DCJ in *R v Sweet [2021]*, a human being is also a legal person, and the criminal law applies to a person regardless of their status in law, referring to the 1836 *Murrell* decision where it was held that the law applied to an Aboriginal man who, at the time, would have had no other legal rights. Cash QC DCJ further explained that the law has at times recognised categories of person who did not possess a legal personality, who could be bought and sold, and who had no rights under the law. Even women were thought not to possess a legal personality, and children were the property of their fathers. If it were possible today to renounce ones legal personality, they would become a human being without rights, mere property, and such an outcome is antithetical to our society and system of laws. The "***flesh and blood living man***" is both protected by law and liable under law, so neither renouncing legal status nor citizenship can protect an individual from criminal liability. In situations where at least one parent is an Australian citizen, babies born in Australia possess both legal personality and citizenship before their umbilical cord is cut. Pseudolaw adherents generally try to avoid any state contracts, including citizenship, and attempt to extinguish it with foisted unilateral agreements, which they call "***leaving the citizen ship***" But due to efforts to combat statelessness, most nations including Australia place conditions on the renunciation of citizenship, that approval only be granted upon a person's acquisition or possession of another nationality. The notion that government attaches the strawman to the physical human via birth documentation as a channel for government authority is based on a warped conspiratorial reading of the ***Cestui Que Vie Act 1666***, which compels a correction in legal status from being declared "lost at sea" after 7 years of age, without which most people

automatically become "wards of the state" in a type of indentured servitude offered by government. The US cases ***Penhallow v. Doane's Administrators and Cruden v Neale*** are also referred to by adherents to support the notion that government can only act against a physical human through their strawman. The UK-based *"Lose the Name*" group promoted a variant of the strawman duality claiming that due to Crown Copyright, "***it's Illegal to Use a Legal Name***".

Here in Australia, Romley Stewart Stover created a localised variant with the ***Glossa and Dog Latin*** concepts, asserting that the all-capital letter surname is a "symbol" created by the evil Justinian to enslave humanity. Steven Spiers promotes a cherry-picked biblical passage confirming that even God hates these legal fictions, as he is "***no respecter of persons***". Another localised variant appears to be forming in some groups contesting the development of Australian nationhood and the Crown, as described above. Particularly those of the Rod Culleton, Brian Shaw, Peter Gargan and Wayne Glew camps, in that they see themselves as *"British Subjects*" (to loosely apply the term) as opposed to "*Australian Citizens*" under the 1948 Act, believing that this former status affords them certain inalienable rights that the latter has contracted away, which has comparisons to the classic US *Posse Comitatus* position in relation to the introduction of federal citizenship by the 13th Amendment, seeking to return to the previous status of "*State Nationals*".

6. Monetary and banking conspiracy theories

There are basic three categories of this concept, the first is based on the notion that "real money is backed by gold, unlike worthless fiat currency". It is associated to fractional reserve banking, where banks lend more money than they actually hold on deposit, leading to a theory that banks "*create money from thin air",* and a borrower therefore has no obligation to repay the imaginary ***book-entry credit***. A variation on this contention claims that the borrower's signature creates the money, and therefore the same process could be used directly to pay debts. Another argument contends that the securitisation of some loans by banks means they will be repaid twice if the borrower continues repayments. The second relates to paying loans and debts paid with ***Promissory notes***, created by misinterpreting the legal operation of section 89 of the *Bills of Exchange Act 1909*. The third is commonly known as "*Accepted for Value*", (or "A4V"), which is linked to the strawman "*Birth Bond*" account, a secret government-operated bank account. A closely related financial attack is the Commercial lien, which is usually an attempt to secure "monies owed" due to foisted unilateral agreements. The ***Uniform Commercial Code*** is also occasionally used in material.

Conclusion

The Australian Pseudolaw Memeplex provides any anti-government group with an attractive mechanism that purports to both separate and immunize the adherent from government authority, while also providing a way to *"stick it to the man*" with the use of fee schedules and other foisted unilateral agreements. The details and nuances of the "*Defective Or Limited State Authority*" analysis allows the researcher to note the marked variation between localised pseudolaw host communities, that ultimately derive from either Australian historic political events, or the nature of the host group itself. The original, traditionalist, conservative position remains with certain Australian groups that demonstrate similarities with the US *Posse Comitatus* philosophies. That particular belief set is super-nationalist, patriots who seek to reform and restore a Commonwealth of Australia that lost its way. You can identify this aspect in groups like the Great Australia Party (GAP) who's main political goal was to *"Restore the*

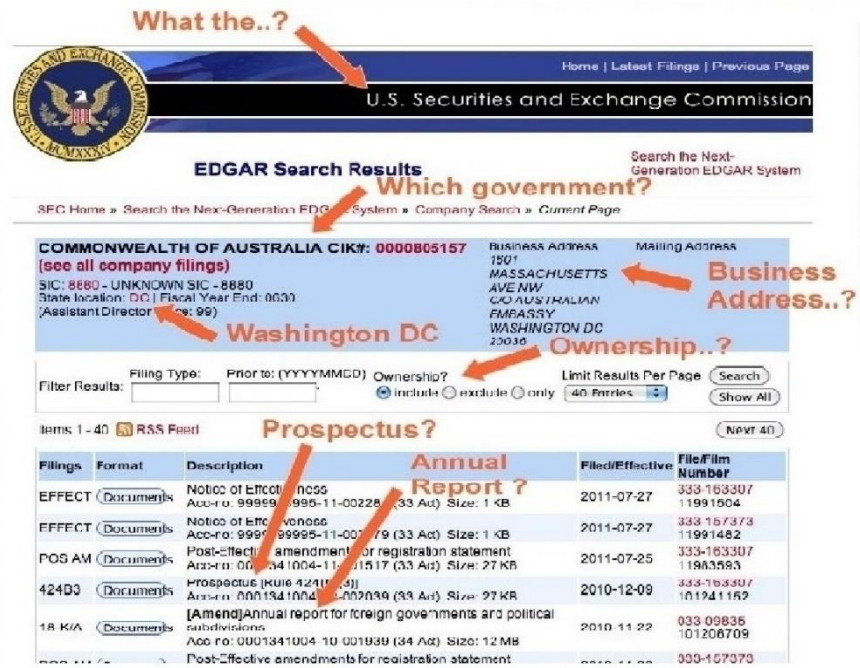
Commonwealth". Similarly with both the Indigenous and the religious-based pseudolaw groups, they have a goal of "restoring" the nation to what they perceive were better times, and they use pseudolaw concepts as a mechanism to cause legal and political reform, and/or legitimize revolutionary and reactionary activity. In contrast, other groups are more like a social parasite and criminal population who seek a life of "do as I please and take what I want". With the memeplex having long since evolved to suit localised environments and systems, it can no longer be linked to a specific political/social/cultural belief defined by the right-wing "*sovereign citizen*" ***nomenclature***, with the ideology having been purposefully repackaged to appeal to a largely left-wing population, but ultimately, certain concepts in the Pseudolaw Memeplex are attractive to individuals and groups anywhere on the political spectrum.

"Stupidity does not consist in being without ideas. Such stupidity would be the sweet, blissful stupidity of animals, molluscs and the gods. Human stupidity consists in having lots of ideas, but stupid ones."

– Henry de Montherlant *(1896-1972)*

Australia is NOT a Foreign Corporation Registered with the US SEC

Pseudolaw adherents in Australia often claim that our original government was hijacked, and the entity is now just a "*corporation posing as a government*" and hold as evidence of this fallacy, our registration details in the United States Security Exchange Commission.



The Great Seal of the United Kingdom, atop the Commonwealth of Australia Constitution Act 1900

The Great Seal of Australia, a trademark registered with United States Patent and Trademark Office.

The registrations of various bodies with the SEC in the US does not make them an American company.

Firstly, when the names of countries appear in EDGAR search results, it simply means that a foreign government that has issued securities for sale to U.S. investors, and has therefore registered those securities in accordance with section 12(b) and (c) of the *Securities Exchange Act 1934.*

Secondly, this registration with the S.E.C. does not establish or incorporate anything, even in the U.S. companies are created by registration with their state regulatory bodies, and this must occur before any SEC application. To register with the SEC the legal entity must already exist. (See ***Register with the S.E.C.***)

Thirdly, there are very distinct differences between the TYPE of SEC registration in comparison to an actual privately owned American company (*Form 10-k U.S. Company*) as well as a privately owned Australian company (*Form 6-k Australian Company*) and that of the Australian Government, (*Form 18-k annual report foreign governments*).

https://freemandelusion.com/wp-content/uploads/2018/06/sec.gov-_-the-laws-that-govern-the-securities-industry.pdf

The Securities Exchange Acts

Entities issuing stock, bonds, or others securities to investors in the United States must register the offering with the SEC under the ***Securities Act of 1933.*** Section 3(a)(2) exempts registration requirements for any securities issued or guaranteed:

"by the United States or any territory thereof, or by the District of Columbia, or by any State of the United States, or by any political subdivision of a State or territory, or by any public instrumentality of one or more States or territories...."

However, this does not include foreign governments and their political subdivisions. Similar to public companies, if such foreign governments offer securities publicly in the U.S., they have to register the securities with the SEC. When the foreign government registers its securities, the government's registration statements and other filings appear in the EDGAR database system.

Braysich v The Queen [2009] WASCA 178 (At 25)

> *"In the United States, federal regulation of securities transactions emerged from the ruins of the 1929 stock market crash. The Securities Act of 1933, 48 Stat 74, as amended, 15 USC chap 77a and following, was intended to provide investors with proper disclosure of material information in relation to public offerings of securities in commerce, to protect investors against fraud and to promote ethical standards of honesty and fair dealing. The* ***Securities Exchange Act 1934****,48 Stat 891, 15 USC chap 78j(b) was intended primarily to protect investors against manipulation of stock prices by regulating securities transactions and imposing regular reporting requirements on companies listed on national securities exchanges. See* ***Ernst & Ernst v Hochfelder (1976) 425 US 185****, at 194 - 195."*

https://freemandelusion.com/wp-content/uploads/2018/06/securities-act-of-1933.pdf

https://www.nyse.com/publicdocs/nyse/regulation/nyse/sea34.pdf

Put simply, the SEC registration allows the Australian Government access to what is called an *American Depository Receipt.* The A.D.R. evidences our home market security which trades in the U.S. and it is custodised with their local bank, called the Custodian. Basically, they represent our equity and debt. These US. Securities enable investors to trade freely on their major exchange in U.S. Dollars, pay dividends or interest in their currency, and settle, clear and transfer according to standard U.S. practices.

The type of SEC registration

Scenario One:

It is claimed that this is a “corporate version” of the real “Commonwealth of Australia” and it is now under U.S. Government control. Just the fact alone, that the Commonwealth of Australia, and every other foreign government offering securities in the U.S. uses Schedule B as the form of registration, and is required to lodge Form 18k for annual reports, clearly labelled "*For Foreign Governments and Political Subdivisions Thereof*" establishes that the entity involved is not a division of the U.S. Government. If they were, they would be exempt from any registration requirements, as explained above.

Secondly, none of the filings are for a "Registered Corporation" but clearly labelled as pertaining to a Foreign Government, an entity that actually is a Corporate Sole. This is not a uniquely Australian obligation either. Every other foreign government that has offerings in the U.S also lodges the same Form 18-k annually, and uses the same Schedule B form of registration, as it is required by the *Securities Act of 1934*, for all foreign issuers trading on the U.S. market.

This Form 18 application "*For Foreign Governments and Political Subdivisions Thereof*" sets out the reasons for the registration, and the following Form 18-K sets out the requirement for the Annual Reports.

https://freemandelusion.com/wp-content/uploads/2020/09/form18.pdf

https://freemandelusion.com/wp-content/uploads/2020/09/form18-k.pdf

Form 18-k annual report foreign governments Note that the ***Commonwealth of Australia Annual Report*** is Form 18-k:

FORM 18-K
For Foreign Governments and Political Subdivisions Thereof

UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D.C. 20549

ANNUAL REPORT
of
THE COMMONWEALTH OF AUSTRALIA

Scenario Two:

In comparison, if one were to contend the entity was a U.S. company or private U.S. corporation, (like McDonalds or KFC) they wouldn't be able to use Form 18-k. These entities are registered corporations formed in the U.S., and for those reasons they are required to use Form 10-K labelled *"ANNUAL REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE SECURITIES EXCHANGE ACT OF 1934."*

Form 10-k U.S. Company

UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
Washington, D.C. 20549

FORM 10-K

ANNUAL REPORT PURSUANT TO SECTION 13 OR 15(d) OF
THE SECURITIES EXCHANGE ACT OF 1934

Let's use ***KFC*** for example: Note that it is Form 10-k for Annual Reports, and Form 10-q for Quarterly Reports.

Scenario Three:

Let's contend that the entity is a foreign corporation, secretly set up in Australia first, and then registered with the SEC. These entities are foreign registered corporations, and for those reasons are required to

use Form 6-k labelled "*Report of foreign private issuer pursuant to Rule 13a-16 or 15d-16 under the Securities Exchange Act of 1934.*"

Form 6-k Australian Company

UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
Washington, D.C. 20549

Form 6-K

REPORT OF FOREIGN PRIVATE ISSUER PURSUANT TO RULE 13a-16 OR 15d-16 UNDER THE SECURITIES EXCHANGE ACT OF 1934

Lets use ***Barbeques Galore*** for example: Note that it is Form 6-k.

SECURITIES AND EXCHANGE COMMISSION
Washington, D.C. 20549

FORM 6-K

Report of Foreign Private Issuer
Pursuant to Rule 13a-16 or 15d-16
of the Securities Exchange Act of 1934

For the quarter ended April 30, 2005

Commission File No. 000-29512

Barbeques Galore Limited
ABN 92 008 577 759

327 Chisholm Road, Auburn, New South Wales, 2144, Australia

Checkout the complete ***SEC Forms List*** for clarification, and this ***SEC overview*** of the legislative requirements regarding all foreign entities offering securities to U.S. investors.

This contention has been raised in submissions countless times in Australian courts, mostly it isn't even responded to, the pleading is merely struck out as frivolous. (See cases in Tag "***Corporate Government***"). There are several judgements with responses though, like in ***Commonwealth Bank of Australia v Haughton [2020] SASC 135*** (at 72):

> *"Mr Haughton's argument then leapt to what he described as an "Edgar search result", being a search of the US Securities and Exchange Commission, which apparently showed that there was a "Commonwealth of Australia" which was a private corporation with shareholders and that this, therefore, proved that the "Commonwealth of Australia" referred to in Commonwealth legislation is "owned by the private political parties called Commonwealth of Australia". He then told me:*

> *The Constitution Act of 1900 which encompasses our human rights document, the Magna Carta and all those other things and our constitutional monarchy which forces us to vote for any changes in that constitution at s.106, 107 and 129. But this one here has no constitution the Commonwealth of Australia. Mr Haughton contended that there had been no election to "turn us from a company of living people into a corporation with shareholders of the political parties".*
>
> *The registration of the "Commonwealth of Australia" as a privately owned American company was explained some time ago by the Australian Treasury in response to a freedom of information request. Registration occurred in 2009 in connection with a guarantee issued under the Australian Government Guarantee Scheme for large deposits and wholesale funding..."*

The following correspondence explains these changes that occurred in 2009 following the Global Financial Crisis. It is an application to the SEC:

> *"...to permit the Commonwealth to use a shelf registration procedure for a registration statement on Schedule B, registering its guarantee of debt securities that may be offered and sold by eligible Australian deposit-taking institutions in SEC-registered offerings."*

https://freemandelusion.com/wp-content/uploads/2020/09/sec-021709-schb-incoming.pdf

Government bodies as legal entities

Nations and States, by their very structure are corporate entities, and are considered to be a single legal creature at law. They have a 'body' consisting of the citizens making up the group, and a 'head' consisting of the parliament or congress. They are juridical persons, able to sue and be sued, and possess certain rights and responsibilities under international law. This has been this way for centuries, the colonies themselves actually began as Chartered corporations, created by Royal Charter, and the Crown itself is a Corporation Sole.

Government Bodies as Legal Entities

The concept of legal entity. There are three types of legal entity: natural persons (that is, individuals), corporations and bodies politic.

Within the category of corporations (apart from foreign corporations) the principal types are corporations incorporated under the *Corporations Act 2001* (Cth), statutory corporations and corporations sole.

Extract from "***Government Contracts: Federal, State and Local***"; By Nicholas Seddon

What governments are not, is "corporations" in the sense that the term is commonly used today, as in MacDonald's, Kmart, or other trading companies registered with ASIC, (Australian Securities and Investments Commission) and subject to the provisions of the *Corporations Act 2001*. Trading companies are created merely by registration with a nations commercial regulatory body, whereas the following entities were created by statute, making them Statutory corporations.

For example: the Commonwealth Scientific and Industrial Research Organisation, (CSIRO) the Australian Broadcasting Authority, (ABC) the Special Broadcasting Service, (SBS) the Australian Trade Commission, Australia Post, Airservices Australia, the Australian Rail Track Corporation, the Australian Egg Corporation, and the Grain Research and Development Corporation.

These publicly-traded Statutory corporations are creations of the Commonwealth and State Parliaments, many of them are traded internationally, and therefore also have registrations with the US SEC. Statutory corporations often conduct activities on a financial scale and with a labour force of a size that would easily place them within the category of the large proprietary company, had they been incorporated under corporations law.

Australian Business Number

At its core, this myth shows a flawed understanding of the nature of corporate entities, but is based on the premise that because the police, courts, councils and various government departments have an ABN, (Australian Business Number) *"....this makes them a corporation."*

Government departments having an ABN doesn't make them a corporation. If any type of department has staff that they have to allocate wages, or have expenditure which they would be subject to GST, they require an ABN number to pay wages as well as gain an exemption from the GST surcharges under the "new tax system". The *Australian Business Number Act 1999* specifically provides in section 5 that it applies to a *"government entity" AS IF IT WERE an "entity".*

> **5 Application to government entities, non-profit sub-entities, superannuation funds and certain RSE licensees**
>
> (1) This Act applies to a *government entity, a *non-profit sub-entity or a *superannuation fund as if it were an *entity *carrying on an *enterprise in *Australia.
>
> (2) This Act applies to an *RSE licensee, or an applicant for an *RSE licence, that is a group of individual trustees as if the group were an *entity *carrying on an *enterprise in *Australia.

In short, what is an *"entity" for the purposes of the Australian Business Number Act 1999 may not be a separate legal entity for wider purposes"*, as explained in ***Elston v Commonwealth of Australia [2013] FCA 108***. It specifically for the purposes of that particular Act, but not for the wider purposes, for example, of applying that definition to other Acts.

Williamson v Hodgson [2010] WASC 95 (at 43-46):

> *"A person or entity does not become a corporation because that person or entity has an ABN. An ABN is required for any organisation or individual who carries on an enterprise with a GST turnover above a certain sum. Further, anyone who wishes to claim GST credits or fuel tax credits needs an ABN. An ABN holder may be an individual, a corporation, a partnership or government entity. It is not necessary that the entity be engaged in a profit-making venture."*

The Corporations Act 2001

In fact, when it comes to the actual definition of a "corporation" for the purposes of the ***Corporations Act 2001, section 57A(2)*** states:

> *"Neither of the following is a corporation:*
>
> *(a) an exempt public authority;*
> *(b) a corporation sole."*

And section 3 states:

> *"exempt public authority" means a body corporate that is incorporated within Australia or an external Territory and is: a public authority; or an instrumentality or agency of the Crown in right of the Commonwealth, in right of a State or in right of a Territory."*

In ***Corica v Shire Of Mundaring [2016] WASC 356***, the appellants contended: *"...that various entities, including the respondent, the respondent's solicitors, this Court and the State of Western Australia, are 'trading corporations' within the meaning of s 51(xx) of the Commonwealth Constitution, which was said to have various consequences for the validity or efficacy of the proceedings against the appellants..."*

The court responded (at 94) that:

> *"These submissions are misconceived and wrong for reasons I will explain shortly. Apart from the flaws of such submissions as a matter of legal principle, submissions of a similar kind have already been rejected by this Court and by the Court of Appeal on numerous occasions: see, for example, Palmer v City of Gosnells [2014] WASCA 102 and the authorities therein cited. It is unfortunate that some litigants in this Court, and especially self-represented persons, continue to be seduced by these arguments and to run the risk of costs orders being made against them by repeating the arguments in litigation when they are doomed to failure.*
>
> *It is unnecessary to enter into the question whether any of the entities to which the appellants referred are trading corporations within the meaning of s 51(xx) of the Constitution. Even if they were, that fact would have no consequences in the context of these proceedings. Section 51(xx) confers on the Commonwealth Parliament power to make laws for the peace, order and good government of the Commonwealth with respect to 'foreign corporations, and trading or financial corporations formed within the limits of the Commonwealth'. The legislative power of the Commonwealth Parliament under s 51 is concurrent with that of the States. That is, it is entirely open to the States to legislate in respect of trading corporations, subject to the operation of s 109 of the Constitution. Section 109 deals with any conflicts between Commonwealth and State laws made in the exercise of concurrent legislative power by providing that, if a Commonwealth law and a State law are inconsistent, the former prevails and the latter is inoperative to the extent of any inconsistency. The appellants did not point to any Commonwealth law which was inconsistent with any State law engaged in these proceedings, nor could they have."*

https://freemandelusion.com/wp-content/uploads/2019/05/corica-v-shire-of-mundaring-2016-wasc-356.pdf

In ***Palmer v City of Gosnells [2013] WASC 446***, the appellants claimed (at 7) that: *"...the City of Gosnells is subject to the 'Corporations Law of the Commonwealth and as such is unable to claim from or prosecute the Defendants other than as a result of a contract..."* and (at 27) that *"...there were grounds for objection to his Honour's preliminary decision including a document which asserted that 'Australia has got an ABN number in America. They're owned by a corporation..."*

The court noted (at 107) that:

> *"Counsel for the Palmers on this appeal, Dr Walsh, had also represented Mr O'Connell last year in the Court of Appeal in O'Connell v The State of Western Australia [2012] WASCA 96. In that case, the Court of Appeal rejected a near-identical submission to the first two points made by Dr Walsh in this Court. Mazza JA (with whom Martin CJ and Buss JA agreed) described Dr Walsh's submission (at 88) as follows: since 'the Department of the Attorney General has an Australian Business Number (ABN), the courts in this State have effectively become corporations. Thus, it is said the judiciary is no longer a separate and independent arm of government'. It is not necessary to repeat the reasoning of Mazza JA. It suffices to set out his conclusion that this argument: "...is totally devoid of merit. The identical argument has been decided in this court in a number of cases including Glew v The Shire of Greenough [2006] WASCA 260; and Glew Technologies Pty Ltd v Department of Planning and Infrastructure [2007] WASCA 289. An application to the High Court for special leave to appeal against the first of those decisions was refused: Glew v Shire of Greenough [2007] HCATrans 520 (6 September 2007)."*

https://freemandelusion.com/wp-content/uploads/2020/10/palmer-v-city-of-gosnells-2013-wasc-446.pdf

The decision was appealed in ***Palmer v City of Gosnells [2014] WASCA 102***, where it was held that:

> *"None of the grounds of appeal, as elaborated on in the submissions, have a reasonable prospect of succeeding. The same issues have been repeatedly raised in the Supreme Court and dismissed. See for example Shaw v Jim McGinty in his capacity as Attorney General [2006] WASCA 231; Glew v Shire of Greenough [2006] WASCA 260 (special leave refused: Glew v Shire of Greenough [2007] HCATrans 520); Glew Technologies Pty Ltd v Department of Planning and Infrastructure [2007] WASCA 289; Glew v City of Greater Geraldton [2012] WASCA 94; Glew v Frank Jasper Pty Ltd [2012] WASCA 93; Krysiak v Hodgson [2009] WASCA 114; Glew v The Governor of Western Australia [2009] WASC 14; Glew v Frank Jasper Pty Ltd [2010] WASCA 87; O'Connell v The State of Western Australia [2012] WASCA 96 [92]. The grounds of appeal are devoid of any merit."*

https://freemandelusion.com/wp-content/uploads/2020/10/palmer-v-city-of-gosnells-2014-wasca-102.pdf

Feedback

Response from the US Security and Exchanges Commission

The assertion that Australia is a "private U.S. corporation" was raised with Nina Smallwood-Johnson (Attorney) ***Office of Investor Education and Advocacy, of the U.S. Securities and Exchange Commission*****.** She was asked why entire countries need to register their name with the SEC:

> *"The fact that names of countries appear in EDGAR does not mean that the entire country has registered its name with the S.E.C., it means that the country is a foreign government that has issued securities for sale to U.S. investors and has therefore registered those securities."*

Response from the Commonwealth Treasury

Many misunderstand the following response from The Treasury in relation to a Freedom of Information request, just because the request terms are reproduced. The request was:

"Documents relating to registration with the SEC of the Australian Government as a privately owned American company".

The wording in the request was reproduced verbatim in the search results, as it is with any Freedom of Information request.

It might of been: *"Documents relating to registration with the SEC of the Australian Government as a cafe operated by Mickey Mouse."* ...and that wording in the request would of likewise been reproduced in the identical search results. It doesn't confirm that Mickey Mouse is the CEO of a cafe franchise named the Australian Government, and neither does this confirm it is privately owned American company.

The results of the request is the most important factor, and that is merely: *"Documents relating to registration with the SEC of the Australian Government..."* and that is what was supplied...

Sadly, most never get past this point, and explore the documents, or the reason for the registration, and the very marked differences between the type of SEC registration in comparison to an actual *"...privately owned American company"*. Unfortunately that type of critical thought escapes those seeking confirmation of their preexisting beliefs. Those seeking the truth of the matter are not so easily convinced. It is quite obvious that these words were written by the applicant, and do not even constitute a reply from the Australian Government.

If you note the references in the scenarios described above, there are very distinct differences between the type of SEC registration in comparison to an actual privately owned American company (*Form 10-k U.S. Company*) as well as a privately owned Australian company (*Form 6-k Australian Company*) and that of the Australian Government, (*Form 18-k annual report foreign governments*) which clearly substantiates that the Australian Government is not a *"...privately owned American company"* at all.

On page 13 of the documents relating to Australia's registration with the SEC supplied by the Treasury under the Freedom of Information request, it states in no uncertain terms that Australia is a SOVEREIGN STATE, and that the registration does not have the effect of waiving any sovereign immunity, nor does it place Australia under the jurisdiction of US courts, nor does the registration create any attachment or execution against Australia's property or revenue in default of any obligations.

Enforcement of Civil Liabilities

The Commonwealth of Australia is a sovereign state. The Commonwealth of Australia has not agreed to waive any sovereign immunity or immunity from personal jurisdiction in respect to any action brought in the courts of the United States or elsewhere (except the courts of competent jurisdiction in Australia), nor has it appointed an agent in New York upon which process may be served for any purpose.

As a consequence, it may be that the Commonwealth of Australia's obligations under the Deed of Guarantee can only be enforced in an Australian court of competent jurisdiction. In any suit in an Australian court of competent jurisdiction relating to the Deed of Guarantee, the Commonwealth of Australia would not be entitled to any defence based on Crown or sovereign immunity. If investors are able to invoke the jurisdiction of a foreign court in respect of the Guarantee or any other claim against the Commonwealth of Australia under the Deed of Guarantee or otherwise, it may be difficult for investors to obtain or realise upon judgments of foreign courts against the Commonwealth of Australia. Furthermore, it may be difficult for investors to enforce in Australia or elsewhere the judgments of foreign courts against the Commonwealth of Australia. The Deed of Guarantee does not contain any submission to the jurisdiction of the courts of a foreign jurisdiction or any waiver of any immunity that might be available to the Commonwealth of Australia under the law of any foreign jurisdiction or in respect to any claim brought against the Commonwealth of Australia in any such foreign jurisdiction for any reason.

Under the applicable provisions of the *Judiciary Act 1903* (Cth), no execution or attachment may be issued against the property or revenues of the Commonwealth of Australia pursuant to the Guarantee. However, on receipt of the certificate of a judgment against the Commonwealth of Australia the Minister for Finance and Deregulation is obligated to satisfy the judgment out of moneys legally available. Payment could not be made by the Commonwealth of Australia in satisfaction of any judgment except from moneys appropriated by the Australian Parliament. The Australian Parliament has passed legislation appropriating the Consolidated Revenue Fund for the purposes of paying claims under the Deed of Guarantee in accordance with the Scheme Rules.

Also confirming that the status of the nation has not been altered by this registration, can be found on ***pages 15 to 18***, where it outlines the form of government in Australia, citing both the historical developments of federation and the constitutional arrangements in place.

Professor Sinclair Davidson, an expert in institutional economics from RMIT University in Melbourne, told ***AAP FactCheck*** that the title of the Treasury web page featuring the FOI request was misleading as the document did not show the government was a “privately owned American company” and that "it’s stated very clearly within that document Australia is a sovereign nation.”

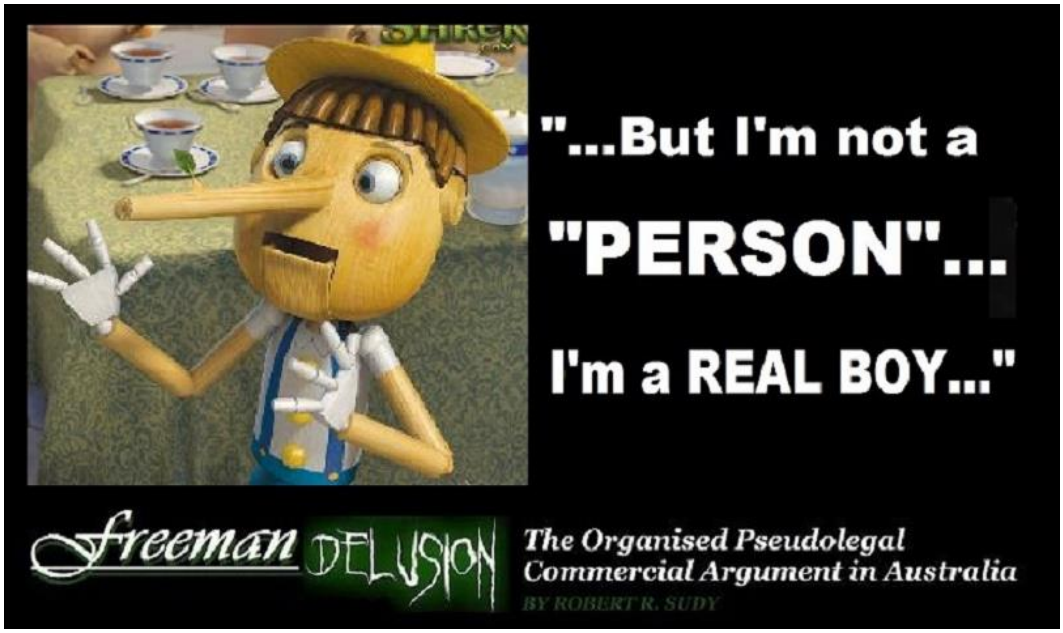
Dr Karen Alpert, a lecturer from the University of Queensland’s School of Business, said that it appeared Treasury had just used the FOI request wording for the title of the corresponding page on it’s site, “even though that does not describe what’s happening”.

A spokeswoman for Treasury replied in an email that “the Australian government is not a US corporation”. She said:

> *“The Australian government was registered with the US Securities and Exchange Commission for the purposes of guaranteeing ADI debt securities covered by the Guarantee Scheme for Large Deposits and Wholesale Funding, which ended in 2015”.*

https://freemandelusion.com/wp-content/uploads/2018/06/no-the-australian-government-isnt-a-privately-owned-us-company-australian-associated-press.pdf

Meet Your Strawman



"A man may imagine things that are false, but he can only understand things that are true, for if the things be false, the apprehension of them is not understanding." – Sir Isaac Newton

One particular pseudolaw motif has become all but universal — the split or double person *"Strawman."* Nearly every single guru identified in this work who is presently active advances some form of the "Strawman" motif in their materials. This misconception that a "legal person" is somehow distinct from a physical human being, and is then linked to the physical person as a kind of parasitic twin is ubiquitous in modern pseudolaw theory. The existence of the "Strawman" is explained with a specific pseudo-historic narrative that casts "government actors" in a very negative light. This idea is often expressed by ***p***seudolaw adherents as "I am not a person, but I have a person." The "Strawman" concept has no basis in law, it is simply a myth, a theoretic mechanism to remove state authority. Nevertheless, the "Strawman" is now a critical element of the theory and now has become integral to popular pseudolegal constructs.

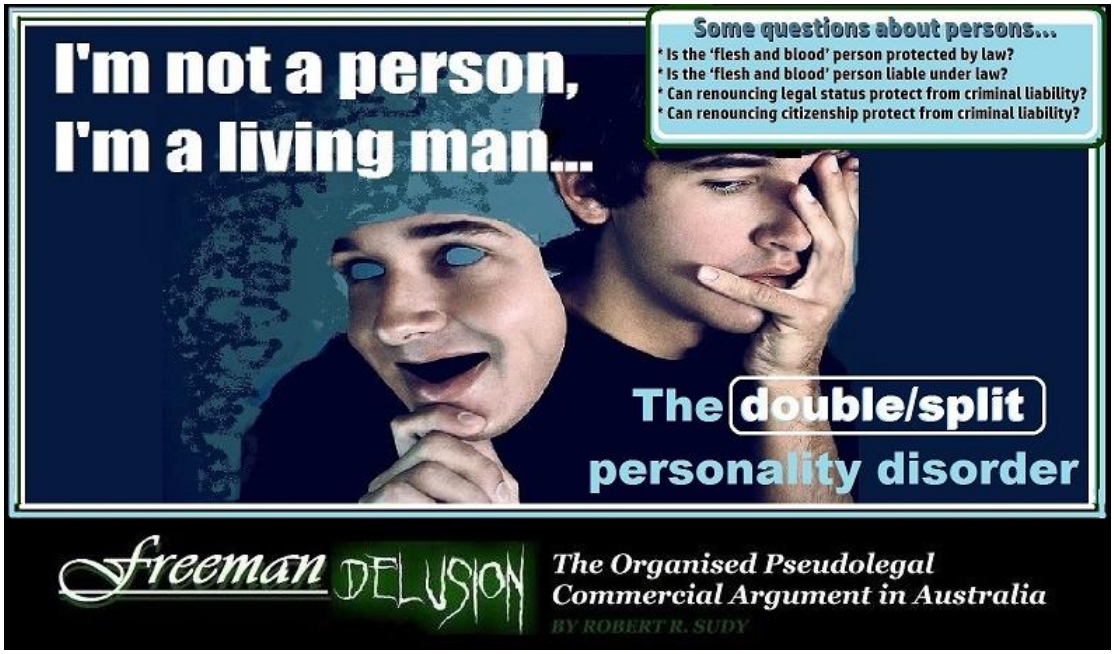
The "Strawman" concept reflects a curious belief that an individual, who is conventionally considered to be a single unit, is instead composed of two parts: a physical "man" only subject to natural law, who is linked to a legal person or "Strawman" doppelganger. This "Strawman" is a non-corporeal legal fiction that provides the mechanism by which state actors exert their otherwise illegitimate legislated authority over the physical "man."

Pseudolaw adherents argue that this is your name, rejecting your name will be a complete defense to liability because statute refers to a 'person' rather than 'man or woman'. There are many different "Strawman" variations but what is important is that these schemes always include a backstory with certain critical elements:

- Individuals are tricked into being associated with the "Strawman";

- The “Strawman” is a necessary conduit for government and court authority;
- The “Strawman” is a mechanism to take away natural or inherent rights;
- The existence of the “Strawman” is skillfully concealed from the public but is nevertheless known to all judges, lawyers, politicians, and many other government and law enforcement authorities;
- The “Strawman” can be unshackled or rejected, and to do so frees an individual from all government authority; and
- With the “Strawman” removed, an individual is only subject to some other kind of law.

Homo vocabulum est naturae; persona juris civilis (Latin: “Man is a term of nature, person of the civil law.") The law isn’t concerned with matters of nature, therefore it only recognizes the person, not the “man.



The question "what is a person, and where is it written?" is actually one that can easily stump police or anyone who is only concerned with statutory law because pseudolaw adherents in this case, are quite correct: in criminal law, ‘person’ isn’t really actually defined, it’s a common law term that isn’t written in statute. But what does the common law say?

The questions are:

- (1) Is the ‘flesh and blood’ person protected by law?
- (2) Is the ‘flesh and blood’ person liable under law?
- (3) Can renouncing legal status protect from criminal liability?
- (4) Can renouncing citizenship protect from criminal liability?

Pseudolaw adherents insist that a “legal person” is created by one’s birth registration, but did it really begin there?

Due to the extreme circumstances, the defense in homicide cases challenge the laws around liability by questioning if the client, in the case of a charge against a corporation, or a person if the victim could be classified as a person. It goes without saying the homicide requires one person causing the death of another (this isn't actually written in the Victorian Crimes Act, but you can check ***s 3A 'Constructive Murder'*** to see this in statute). But what is a person?

(1) Is the 'flesh and blood' person protected by law?

In the 1953 case of ***R v Hutty [1953] VLR 338*** a young woman fell pregnant and, after concealing her pregnancy from her parents, gave birth in an outhouse. When the baby started crying she in an emotional panic beat the newborn with her shoe. She was charged with murder. The defence argued that the newborn was still attached by the umbilical cord and the question was asked 'what is a person' and if a newborn still attached, with no certificate of birth, to its mother is a legal person.

> The court found that a legal person that can protected by law is:
>
> - 1. A human being, a person cannot be any other animal.
> - 2. Must have a separate and independent existence from their mother.

In that case, it was found that the newborn was a human that had left it's mother's body, and because it was crying it was obviously breathing and functioning independently, and the fact that it was still attached and had no certificate of birth, and didn't even have a name, did not change this. The law recognises and protects one's legal personality from the moment of birth, not from the moment one's parents lodge a birth certificate. One's legal personality exists prior to any government involvement.

The flesh and blood person is protected by law regardless of legal capacity.

"A "person" means a human being..." section 8, Victorian ***Charter of Human Rights and Responsibilities Act 2006***

R v Hutty [1953] VLR 338:

> *"Murder can only be committed on a person who is in being, and legally a person is not in being until he or she is fully born in a living state. A baby is fully and completely born when it is completely delivered from the body of its mother and it has a separate and independent existence in the sense that it does not derive its power of living from its mother. It is not material that the child may still be attached to its mother by the umbilical cord; that does not prevent it from having a separate existence. But it is required, before the child can be the victim of murder or of manslaughter or of infanticide, that the child should have an existence separate from and independent of its mother, and that occurs when the child is fully extruded from the mother's body and is living by virtue of the functioning of its own organs."*

https://freemandelusion.com/wp-content/uploads/2020/09/r.-v.-hutty.pdf

Similarly, in the U.S. in ***1 U.S. Code § 8 89 (a).***

> *"In determining the meaning of any Act of Congress, or of any ruling, regulation, or interpretation of the various administrative bureaus and agencies of the United States, the words "person", "human being", "child", and "individual", shall include every infant member of the species homo sapiens who is born alive at any stage of development. (b) As used in this section, the term "born alive", with respect to a member of the species homo sapiens, means the complete expulsion or extraction from his or h er mother of that member, at any stage of development, who after such expulsion or extraction breathes or has a beating heart, pulsation of the umbilical cord, or definite movement of voluntary muscles, regardless of whether the umbilical cord has been cut, and regardless of whether the expulsion or extraction occurs as a result of natural or induced labor, cesarean section, or induced abortion. (c) Nothing in this section shall be construed to affirm, deny, expand, or contract any legal status or legal right applicable to any member of the species homo sapiens at any point prior to being "born alive" as defined in this section."*

According to Cornell University's U.S. Code Collection a person includes a natural person (including an individual Indian), a corporation, a partnership, an unincorporated association, a trust, or an estate, or any other public or private entity, including a State or local government or an Indian tribe. (TITLE 28 > PART VI > CHAPTER 176 > SUBCHAPTER A > § 3002)

(2) Is the 'flesh and blood' person liable under law?

Does revoking legal capacity also remove any liability for criminal charges? To answer this question, bankrupts are a good example. A bankrupt has very limited, or no legal capacity.

A bankrupt cannot: Enter into a contract (without special permission). Sue or be sued for any breach of a contract entered into after the bankruptcy. The first place to look is what the legal basis is in sentencing, and this is found in the ***Sentencing Act 1991 (Vic) s5(2)*** which provides:

> *In sentencing an offender a court must have regard to: (g) The presence of any aggravating or mitigating factor concerning the offender or of any other relevant circumstances.*

Crimes Act 1914 s16A(2)(m) provides that age and antecedents are to be taken into account. ***The Victorian Sentencing Manual*** is one of the primary references of law for Victorian Judges. Chapter 10 gives the common law definitions of immunities and mitigating circumstances.

6.1.1 – Age

The age of an offender is a common law consideration. There are also special statutory considerations that apply in sentencing a child or a 'young offender'. This part looks only at sentencing mature or elderly offenders. The considerations raised in sentencing a child or a 'young offender' are discussed in the Children's Court Bench Book.

Age may be a mitigating factor where:

- imprisonment may adversely affect an elderly offender's health;[1046]
- the offender may be less likely to pose a danger to the community;[1047]
- the offender may be more likely to die in prison[1048] and so any period of imprisonment will represent a larger proportion of their remaining life expectancy;[1049] and
- imprisonment is likely to be more burdensome than on a younger offender.[1050]

Bankruptcy and lack of legal capacity is not an immunity. It may be a mitigating factor, but will not prevent criminal charges.

(3) Can renouncing legal status protect from criminal liability?

An infant has no legal capacity until the age of 18. A person under this age cannot sign contracts, and in most cases cannot sue or be sued. However, they are liable for criminal charges over the age of 10: ***Children Youth and Families Act 2005 (Vic) s 344***.

Even someone who cannot legally sign a contract due to mental impairment is not completely immune from criminal sanctions, although it can be taken into account in sentencing: ***R v Verdins; R v Buckley; R v Vo (2007) 16 VR 269***

Renouncing legal capacity will not grant immunity from criminal liability.

(4) Can renouncing citizenship protect from criminal liability?

It is argued that non-citizens have no legal capacity, and therefore by renouncing citizenship you are granted immunity. However, a few years ago the High Court held an injunction in the interests of protecting 150 non-citizens being held on a ship off the Australian coast. Obviously Australian law protects non-citizens. Non-Citizens can also be charged with criminal offenses, and may be deported if they commit a crime with a sentence of greater than one year: ***s 201 Migration Act 1958 (Cth)***. 'Unlawful' non-citizens are automatically detained: ***s 189 Migration Act***.

Renouncing your citizenship will not protect you from criminal liability.

Read the story of Australian woman ***Charmaine Webster***. She has no birth certificate and doesn't exist.

The Courier Mail

Queensland woman without birth certificate 'doesn't exist'

LIKE Sandra Bullock in The Net, Queensland has a real-life "invisible woman" who as far as official records are concerned doesn't exist.

Dot Whittington

3 min read July 5, 2014 -

MEET Charmaine Webster. She doesn't exist.

"I'm a non-person, the invisible woman, because I don't have a birth certificate," she said.

"That means I'm 40 years old and have never been able to get a driver's licence or passport."

And since the Immigration Act was tightened in 2012, she hasn't been able to work either.

"I've spent my life wondering who I am and where I came from. I can live without answers but not being able to work takes away my life. I don't care if I can't drive or travel but I want a job," she said.

She has been battling federal and state governments for a decade. The Immigration Department won't look at her because she has no evidence of where she was born. She doesn't tick any of their boxes – no licence, no passport, no UN refugee card, no national identity card. She told the department this meant she was an illegal immigrant.

"I dobbed myself in as an illegal and told them to find me. I wanted them to investigate me and tell me where I belong," she said. "The irony is that I am enrolled to vote and I have just been called up for jury duty but when I ask for citizenship I am told I don't exist."

Ms Webster's quest for an identity began in earnest about a decade ago but has been ramped up since she lost her right to work. She applies for identification papers only to be told she can't get them without proof of identity. And information about the parents who failed to register her birth is protected by privacy laws.

Ms Webster lists her date of birth as February 19, 1974, but has no idea where she was born. Her memories begin in Perth when she was three; she was added to her mother's social security card in 1977 and Medicare card in 1984; and she has found records that she attended school in Glenelg in South Australia in 1985.

She arrived in Queensland when she was 12 and has lived there since.

"My father was often in trouble with the law so we were always on the run and I grew up all over the country," she said. "My mother registered her previous children, even three that she handed over for adoption, but for some reason my birth was never recorded."

Ms Webster registered with Centrelink when she was a teen in the late '80s, a time when proof of identification wasn't a prerequisite.

In 2001, she married Cam Webster but the loophole she found in the legislation to get a marriage certificate was closed soon after.

Ms Webster graduated with a Bachelor of Human Services in 2011 and although she worked as a tutor while completing her studies, and had several job offers, she couldn't accept employment without proof of identity. Her problems continued in 2012 when the Migration Act was amended in the face of growing migration.

"They passed the law to protect Australians but they forgot there were Australians they already failed to protect," she said. "I went to uni to improve myself and put myself in a position to fix my situation but while I was busy doing that they took away my right to work."

Ms Webster has amassed a file of correspondence with state and federal departments, commonwealth and state ombudsmen, Freedom of Information, Medicare and other organisations in three states. Every lead has drawn a blank.

"I have a husband, three children and two grandchildren. I've never left the country. I'm an Australian through and through and I'm on the road to nowhere," she said. "I really just want to be able to work."

Beyond the fantasies of the “strawman” myth, understand the hard realities of living without evidence of birth or ***citizenship***.

news.com.au

Australian woman Charmaine Webster who legally doesn't exist due to unregistered birth, fights to prove her identity

CHARMAINE Webster can't get a driver's licence, a job or travel overseas. And, according to the government, she doesn't exist.

GRACE KOELMA

4 min read July 7, 2014 - 10:18AM news.com.au 0 comments

Charmaine (second from left) with her sister Ann-Marie (far left) and Charmaine's husband and teenage children

FORTY years ago Charmaine Webster was born. She doesn't know which hospital, or even whether she was born in Australia, because her birth went unregistered.

In fact, according to the Australian Government Ms Webster doesn't officially exist. Without a birth certificate she can't get a driver's licence or a full-time job.

Ms Webster has never set foot outside Australia. She's trapped in her own country because she can't prove her identity to obtain a passport.

For the last 20 years Ms Webster has fought with government agencies to prove her identity. But each time, she's been handed from one case manager to another, with no results.

Charmaine Webster shared her story with news.com.au.

As far as she can remember, Ms Webster has lived all her life in Australia, most of it in Queensland. She currently lives with her husband and two teenage children in Ipswich.

Ms Webster was born to Rexford and Jennifer Black on February 19, 1974. Growing up, birthdays weren't celebrated in the Black family. Ms Webster is the youngest of Ms Black's children, with four older siblings, all whose births were registered.

But everything else about Ms Webster's birth remains a mystery. Her sister Ann-Marie only has memories of Ms Webster from when she was three and older.

Charmaine (second from left) with her sister Ann-Marie (far left) and Charmaine's husband and teenage children.

In her early adult life, Ms Webster lost contact with what she called her “abusive” parents, and since then hasn't been able to obtain any information from them regarding her birth.

At first, she didn't realise the problems an unregistered birth carried with it. Ms Webster was able to get work in her late teens without too much trouble by registering for a Tax File Number at the post office.

But in the last decade laws have changed, and employers are now fined for hiring workers who cannot prove their Australian citizenship and could be illegal immigrants. Because Ms Webster can't provide evidence in the form of a passport or birth certificate, she can't get a job.

Ms Webster began approaching government agencies for assistance when she wanted to get married, in 2000. She searched the Births, Deaths and Marriages registers in each state, with no luck. Each state told her to try another state office.

Charmaine Webster does not legally exist. Pic Mark Calleja

Eventually she was able to get married through the help of an old friend and Justice of the Peace, who signed documents required for marriage registration.

Years passed, with little progress. Ms Webster would at times renew her search in earnest, and other times grow weary with the continual referrals.

“You keep believing in the next lead, like you're going to get somewhere,” she told news.com.au. “You break, you crumble, you spiral into terrible depression.”

In 2007 Ms Webster registered to study a Bachelor of Human Services part-time at Griffith University, hoping to examine Australian legislation and better understand the system that couldn't grant her an identity. She graduated in 2011, still no closer to achieving her goal.

The piece of paper to prove it.

Ms Webster graduating from Griffith University in 2011.

A decade later, with the internet her greatest aid, Ms Webster started her search again, this time keeping records of every interaction she had with government agencies.

The federal Department of Immigration and Citizenship in Brisbane informed her that they couldn't take her application without proof of Australian birth or a baptism record.

In 2012 Ms Webster began a Freedom of Information search with Centrelink, believing them to possess information about her birth. After more than a year of battling with her case workers, a heavily redacted file was released to her with evidence of her date of birth, February 19, 1974.

Centrelink records also showed that Ms Webster appeared on her mother's Medicare records in 1984, when she was 10 years old. Another Freedom of Information request revealed a school enrolment notice from Glenelg primary school dated 1985. But none of these documents could help Ms Webster get a passport or driver's licence.

Ms Webster was given heavily redacted information from Centrelink in 2012. Courtesy: Centrelink

Her search continued, proving largely fruitless as she was bounced from case worker to case worker.

In July 2012, Queensland's Attorney-General and Minister for Justice, Jarrod Bleijie, recommended that Ms Webster obtain an Order of the Court to have her birth registered. But when she followed that up with Queensland Births, Deaths and Marriages, they informed her that wasn't possible without documented evidence of her place of birth.

They recommended she contact the BDM in each state to confirm whether she was born there, a process which Ms Webster now must go through again in order to get the right paperwork.

“They're just sending me in circles,” she said. “And when you don't exist, you live in poverty.”

Ms Webster as a child.

Ms Webster with her daughter on her 40th birthday this year.

Justine Smith, spokeswoman and caseworker at Queensland Birth, Deaths and Marriages — the agency now handling her case — says unregistered births are rare. “We're quite aware of the problems she's going through and have told her we're not giving up,” Ms Smith told news.com.au.

But Ms Webster is exhausted with the battle she's been fighting for 20 years.

“I've watched my children get driver's licences and jobs, and I can't do it. You get another lead, you keep trying to go higher, stop dealing with the people at the counter or the call centre. You keep making noise,” she said.

“It's like a terrible hot potato. I just want to work and support my family. It's not fair on my husband and children. This is enough.”

Finally, simply being 'registered' by a birth certificate is not what makes you a 'person'. Cats and dogs are registered too, but that doesn't mean they can be charged with an offense, or sue.

From ***UK Births Deaths and Marriages***…

> "The registration of a birth does not involve a "contract", and such registration does not "contractually bind the individual to your society". A registration is a simple record that an event has taken place (ie a birth), and as such it is not possible to "de register". As indicated, there is no contract to void or renegotiate."

JURISDICTION

Pseudolaw adherents believe that it is through this "strawman" that authorities have jurisdiction, and they cannot have that jurisdiction without that legal personality. It follows that the effect of this supposed immunity status would necessarily mean different criminal sanctions applying to different persons for the same conduct. This is contrary to equality before the law, one of the most fundamental cornerstones of the rule of law. As stated by the High Court in ***Walker v New South Wales [1994] HCA 64*** (at):

> *"The proposition must be rejected. It is a basic principle that all people should stand equal before the law. A construction which results in different criminal sanctions applying to different persons for the same conduct offends that basic principle."*

As also held in *Walker*, jurisdiction comes from being physically present within the geographical territory of a sovereign state, which has plenary power to make laws that apply to every subject matter and person inside their territory. As stated:

> *"The rule extends not only to all persons ordinarily resident within the country, but also to foreigners temporarily visiting (Re Sawers; ex parte Blain (1879) 12 Ch D 522 at 526; Gold Star Publications Ltd. v. Director of Public Prosecutions (1981) 1 WLR 732 at 734). And just as all persons in the country enjoy the benefits of domestic laws from which they are not expressly excluded, so also must they accept the burdens those laws impose (Bennion, op. cit. at 260)."*

This has been a principle of law that has existed as far back as 1690, when John Locke wrote "***Two Treatises of Government***" which became the basis for the US notion of the consent of the governed. He stated in Chapter VIII; Sections 119 – 120:

> *"...that every man, that hath any possessions, or enjoyment, of any part of the dominions of any government, cloth thereby give his tacit consent, and is as far forth obliged to obedience to the laws of that government, during such enjoyment, as any one under it; whether this his possession be of land, to him and his heirs for ever, or a lodging only for a week; or whether it be barely travelling freely on the highway; and in effect, it reaches as far as the very being of any one within the territories of that government."*

It was a point recognised in Vattel's "***Law of Nations***" in 1760, which became the basis of international law, regarding the sovereignty of a nation state. §1, and in §2 is regarding the authority of the body politic over the members, and that by association each citizen subjects himself to the authority of the entire body, and that the authority of all over each member, therefore, essentially belongs to the body politic, or state.

"***Commentaries on the Law of England***" written around the same time by Sir William Blackstone, who considered by many scholars to be the father of the common law, also spoke of the principle of the supremacy of a parliament as the highest law-making body in England: *"The law of the land depends not upon the arbitrary will of any judge; but is permanent, fixed, and unchangeable, unless by authority of parliament."*

Albert Dicey in his classic work "***An Introduction to the Study of the Law of the Constitution***" *(1885)* wrote of the twin pillars of the British constitution, the principle of Parliamentary sovereignty and the rule of law. The former means that Parliament is the supreme law-making body, and *"…no person or*

body is recognized by the law of England as having a right to override or set aside the legislation of parliament."

The principle of parliamentary supremacy was inherited in Australia as part of the Westminster system, (See ***Kable v DPP (NSW) [1996] HCA 24*** (Dawson J. at 11-12), as with the principle of Responsible Government, a principle found to be explicit in the Constitution.

UNREGISTERED NEWBORNS

Then there is the absurd and pointless practice of neglecting to register a newborn. This is done in the hope of this making the child immune to any sort of state, (or primarily child services) involvement, because of the child not having a "corporate person" or citizenship. Count one regarding this theory has been covered in this article.

On the second count, the acquisition of citizenship in history has been by two methods: by blood *(jus sanguinis)* or by soil *(jus soli)*. If one of the parents is an Australian citizen, as is most often the case, then the child is automatically an Australian citizen by descent, especially since they were born on Australian soil. If they were born overseas they would have to apply for citizenship by descent. A child of a citizen born on Australian soil, covers both of these doctrines of law.

As you can see, the child both has a "person" and is an Australian citizen, even before the umbilical cord is cut, regardless of any birth certificate.

Re London Borough of Tower Hamlets [2019] EWHC 1572 (Fam) was in relation to a UK couple who refused to register their son's birth believing that it would cause the child to become controlled by a State. The Family Division of the High Court in London rejected the contention, defining the council involved is an "institutional parent" meaning they are entitled to step in and register the birth.

REVOKING CITIZENSHIP

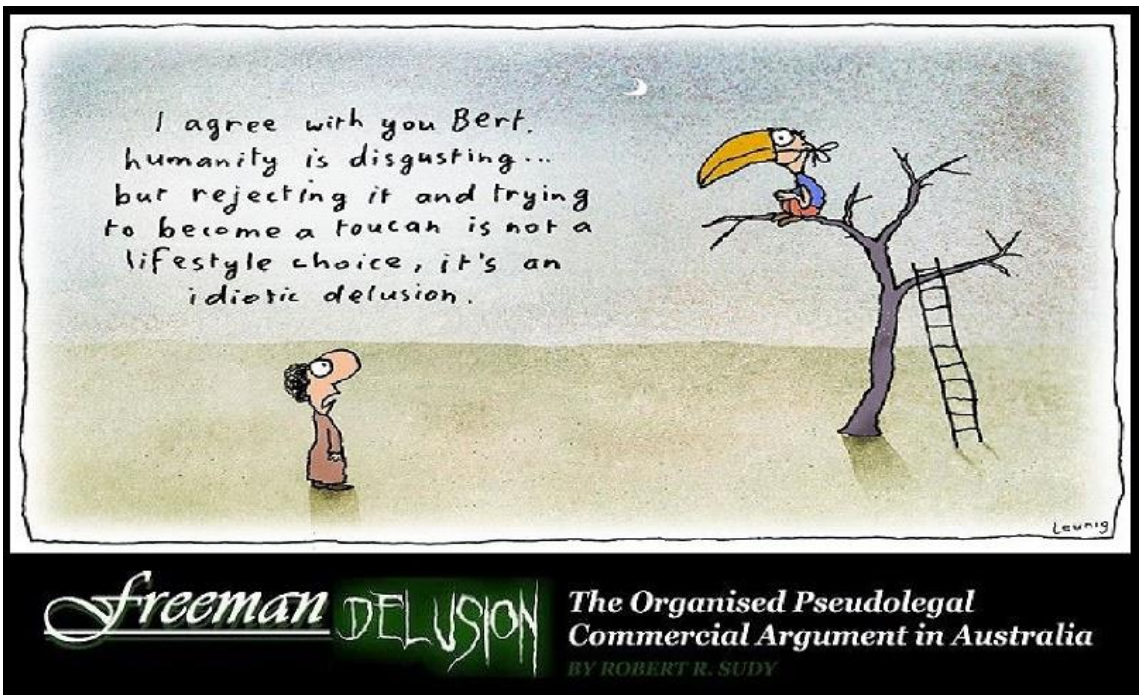
Revoking ones ***citizenship*** is a complicated process, and not as simple as sending in a notice. One glaring flaw in the theory is that one cannot renounce their citizenship without becoming a citizen of another nation. According to the ***Home Affairs website***:

> "We will not approve your application to renounce your citizenship if you do not have another foreign citizenship or it is not in Australia's interests."
>
> *"**Eligibility** – your application to renounce Australian citizenship will not be approved unless you are or will be a citizen of another country."*

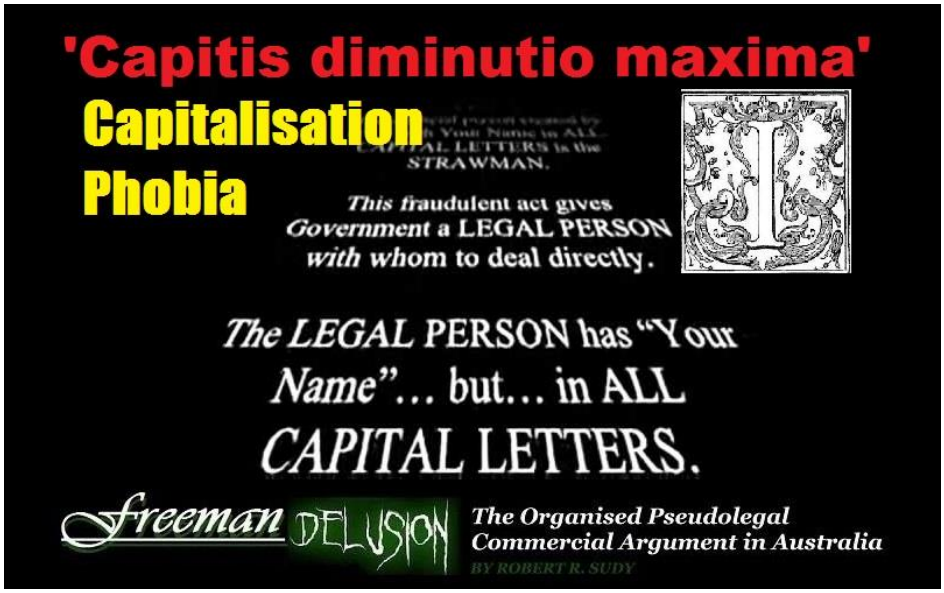
This is pursuant to Article 7 of the ***Convention on the Reduction of Statelessness***:

> *"Laws for the renunciation of a nationality shall be conditional upon a person's acquisition or possession of another nationality."*

So in answer to the questions above, the 'flesh and blood' person is protected by law, is liable under law, and neither renouncing ones citizenship nor legal status protects one from criminal liability.


I agree with you Bert. humanity is disgusting... but rejecting it and trying to become a toucan is not a lifestyle choice, it's an idiotic delusion.
Leunig
freeman DELUSION
The Organised Pseudolegal Commercial Argument in Australia
BY ROBERT R. SUDY

The Evil Conspiracy to Capitalise Lettering



Because the titles of court cases identify the parties in all capital letters, the persons identified are theorised by pseudolaw adherents to be "fictitious entities" and "STATE v. JOHN Q. SMITH" has no authority over the defendant, "John Q. Smith" because the capitalization of the name means the court is addressing a person who does not exist. Similar arguments have also been raised unsuccessfully about things such as the presence or absence of punctuation, or of a middle name or middle initial.

A fundamental part of the "strawman concept" is that capital lettering implies "loss of status" due to the Ancient Roman doctrine of *"Capitis diminutio maxima, media, and minima"*. There were three rankings of legal status or recognition in Roman law, *"Capitis diminutio minima"* denoting the highest status, *"Capitis diminutio media"* the middle class, and *"Capitis diminutio maxima"* the lowest status, that of a slave.

This we know to be a historic fact, in an ancient empire, at a time when slavery was a commonly accepted practice throughout the known world, and every civilized society required laws to govern the keeping of slaves. Pseudolaw theory however… places a whole additional meaning on the doctrine of *"Capitis diminutio maxima, media, and minima".*

The theory insists that when writing the 'Roman persons' name, the "*Capitis maxima"* part implied CAPITAL or UPPER CASE LETTERING, while the *"minima"* implied LOWER CASE LETTERING.

This concept was obviously created in haste though, as they were desperately mining outdated law dictionaries for an obscure Latin phrase to suit the new conspiracy theory about capital lettering. There was a fundamental fact they overlooked completely, and it appears everyone that believes this theory also has, due to a complete absence of fact-checking.

FACT: When *"Capitis diminutio maxima, media, and minima"* existed in Roman law, **THERE WAS NO SUCH THING AS "LOWER-CASE" LETTERING** for any such difference to exist.

EVERYTHING was written in upper-case lettering in Ancient Rome, so *"Capitis diminutio maxima, media, and minima"* obviously had NOTHING to do with the case style!

The classical Roman Latin alphabet only has what we called "upper case", or majuscule, letters. By the 4th century CE, a semi-cursive style called uncial was being used for handwriting. Uncial is considered a majuscule style but with rounded letters. Eventually this evolved into the minuscule style by the 8th century CE.

Originally the two styles were used separately, majuscules for monumental inscription, and minuscules for manuscripts. However, during the reign of Charles the Great (early 9th century CE) the Carolingian Reform forced the merging of the two styles and the creation of the "dual alphabet". With this, our modern Roman alphabet was born.

The Latin alphabet started out as uppercase serifed letters known as roman square capitals. The lowercase letters evolved through cursive styles that developed to adapt the formerly inscribed alphabet to being written with a pen.

Roman cursive script, also called majuscule cursive and capitalis cursive, was the everyday form of handwriting used for writing letters, by merchants writing business accounts, by schoolchildren learning the Latin alphabet, and even by emperors issuing commands. A more formal style of writing was based on Roman square capitals, but cursive was used for quicker, informal writing. It was most commonly used from about the 1st century BC to the 3rd century AD, but it probably existed earlier than that.

The lower case (minuscule) letters developed in the Middle Ages from New Roman Cursive writing, first as the uncial script, and later as minuscule script. The old Roman letters were retained for formal inscriptions and for emphasis in written documents. The languages that use the Latin alphabet generally use capital letters to begin paragraphs and sentences and for proper nouns. The rules for capitalization have changed over time, and different languages have varied in their rules for capitalization. Old English, for example, was rarely written with even proper nouns capitalised; whereas Modern English of the 18th century had frequently all nouns capitalised, in the same way that Modern German is today.

Classical Latin was only ever written in uppercase letters without the letters J, U, or W. Lowercase was not invented until later and even then only one form of each letter was used. Two cases weren't used until even later, by which time Latin was no longer anybody's native language.

To unmask the origin of the capital letter we need to refer to a script derived from the Old Roman cursive called uncial. Uncial is a majuscule script, a synonym meaning "large or capital letter," commonly used by Latin and Greek scribes beginning around the 3rd century AD. The word is derived from the Latin uncialis meaning "of an inch, of an ounce."

The original twenty-one letters in the ***Latin alphabet*** are derived from the uncial style of writing. As the Latin alphabet was adapted for other languages over time, more letters were added that also incorporated the majuscule lettering thus giving us the Modern Latin alphabet from which the English alphabet is derived.

As the ***uncial script*** evolved, a smaller, more rounded and connected Greek-style lettering called minuscule was introduced around the 9th century AD. It soon became very common to mix miniscule and some uncial or capital letters within a word, the latter used to add emphasis. In contrast, many other writing systems such as the Georgian language and Arabic make no distinction between upper and lowercase lettering – a system called unicase."

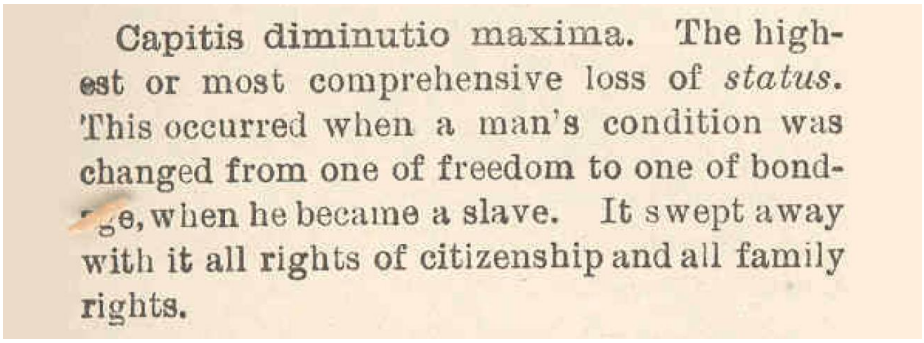
Designating, written in, or pertaining to a form of ***majuscule*** writing having a curved or rounded shape and used chiefly in Greek and Latin manuscripts from about the 3rd to the 9th century a.d." "majuscule [*muh-juhskyool, maj-uh-skyool*] adjective (of letters) *capital*. large, as either capital or uncial letters. written in such letters (minuscule)."

> *"There were no lower case letters in the Old Latin at first, and K, Y and Z used only for writing words of Greek origin. The letters J, U and W were added to the alphabet at a later stage to write languages other than Latin. J is a variant of I, U is a variant of V, and W was introduced as a 'double-v' to make a distinction between the sounds we know as 'v' and 'w' which was unnecessary in Latin. The modern Latin alphabet consists of 52 letters, including both upper and lower case, plus 10 numerals, punctuation marks and a variety of other symbols such as &, % and @. The lowercase letters developed from cursive versions of the **uppercase letters**."*

The evolution of the minuscule or lowercase letter

Simplified relationship between various scripts leading to the development of modern lower case of standard Latin alphabet and that of the modern variants ***Fraktur*** (used in Germany ***until 1940s***) and ***Gaelic*** (used in Ireland). Several scripts coexisted such as ***half-uncial*** and ***uncial***, which derive from ***Roman cursive*** and ***Greek uncial***, and ***Visigothic***, ***Merovingian (Luxeuil variant here)*** and ***Beneventan***. The ***Carolingian script*** was the basis for ***blackletter*** and ***humanist minuscule***. What is commonly called "Gothic writing" is technically called blackletter (here ***textualis quadrata***) and is completely unrelated to Visigothic script. The letter j is i with a ***flourish***, u and v are the same letter in early scripts and were used depending on their position in insular half-uncial and caroline minuscule and later scripts, w is a ligature of vv, in insular the ***rune*** ***wynn*** is used as a w (three other runes in use were the ***thorn*** (þ), 'fé' (ƿ) as an abbreviation for cattle/goods and maðr (ᛘ) for man). The letters y and z were very rarely used, in particular þ was written identically to y so y was dotted to avoid confusion, the dot was adopted for i only after late-caroline (protogothic), in beneventan script the ***macron abbreviation*** featured a dot above. Lost variants such as ***r rotunda***, ligatures and ***scribal abbreviation marks*** are omitted; ***long s*** is shown when no terminal s (the only variant used today) is preserved from a given script. ***Humanist script*** was the basis for Venetian ***types*** which changed little until today, such as ***Times New Roman*** (***a serifed typeface***).

Quite ironically, there is NO MENTION OF LETTERING in association with ***"Capitis diminutio maxima"*** where it all began from Blacks Law Dictionary either.



Capitis diminutio maxima. The highest or most comprehensive loss of *status*. This occurred when a man's condition was changed from one of freedom to one of bondage, when he became a slave. It swept away with it all rights of citizenship and all family rights.

> "In the law of persons, status depended upon liberty, citizenship, and family; and the corresponding losses of status were known respectively as ***capitis diminutio maxima, media, and minima***. The minima, by a fiction at least, was involved even when one became sui juris, although this is disputed."

The use of all capitals in text is considered proper drafting practice in headings and other special situations for typographical emphasis. YOUR NAME is often drafted as such for these reasons. It was the only way you could emphasise a word in a letter on an old typewriter. Using all caps in text is a common convention indicating that the writer should be envisioned as shouting, or speaking in a louder than normal voice. This use of all caps was popularized by users of online forums, where written language is often used to approximate verbal conversations. As such, the connotation is slightly different from that of italics and boldface, which indicate emphasis but are not necessarily intended to recall spoken language. ALL CAPS make it possible to provide tonal cues that would not otherwise be possible.

The following is a formal guide to the proper use of English and punctuation in Europe, (European Commission Directorate-General for Translation, ***English Style Guide***. A handbook for authors and translators in the European Commission). It states the effect of capitalization is EMPHASIS, there is

nothing about capitalization that establishes any hidden meaning. Capitalization is covered at pages 23 to 30.

4.23. *All capitals*. Using all capitals for words in running text has the effect of emphasising them, often excessively so, so should generally be avoided. Writing entire passages in block capitals has a similar over-emphatic 'telegram' effect. Use bolding or other devices instead to convey emphasis.

Upper case may also be employed for names used as codes or in a different way from usual, e.g. *VENUS* as a cover name for a person or for a computer server rather than the planet. Where confusion is unlikely, however, use just an initial capital, e.g. prefer *Europa* to *EUROPA* for the web server of the European institutions, since it is unlikely to be confused with the moon of the same name. For this use, see also Chapter 7 on abbreviations.

Personal names and titles

5.1. *General.* Surnames are not normally uppercased in running text (thus Mr Juncker not Mr JUNCKER), unless the aim is to highlight the names (e.g. in minutes).

At the end of EU legislation, the surname of the signatory appears in upper case.

Here in Australia, section 15AC of the *Acts Interpretation Act 1901 (Cth)* and section 14C of the *Acts Interpretation Act 1954 (Qld)* both provide that:

Changes in style or drafting practices do not affect the meaning of a provision.

Acts Interpretation Act 1954 (Qld) S 14C:

> *Changes of drafting practice not to affect meaning If— (a) a provision of an Act expresses an idea in particular words; and a provision enacted later appears to express the same idea in different words for the purpose of implementing a different legislative drafting practice, including, for example-*
>
> - *(i) the use of a clearer or simpler style; or*
> - *(ii) the use of gender-neutral language; the ideas must not be taken to be different merely because different words are used.*

Acts Interpretation Act 1901 (Cth) S 15AC:

> *Changes to style not to affect meaning Where:*
>
> - *(a) an Act has expressed an idea in a particular form of words; and*
> - *(b) a later Act appears to have expressed the same idea in a different form of words for the purpose of using a clearer style; the ideas shall not be taken to be different merely because different forms of words were used.*

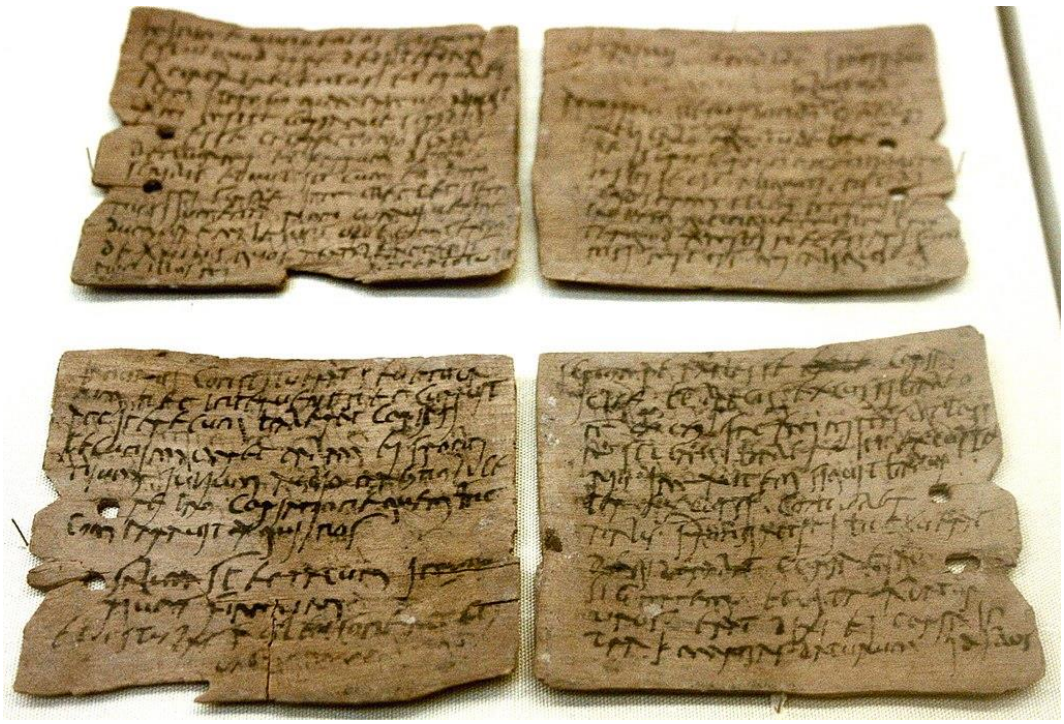
It should be noted that there is a legal principle known as *Idem sonans* (Latin for "sounding the same") which states that similar sounding names are just as valid in referring to a person. The relevant UK precedent is *R v Davis 1851:*

> *"If two names spelt differently necessarily sound alike, the court may, as matter of law, pronounce them to be idem sonantia; but if they do not necessarily sound alike, the question whether they are idem sonantia is a question of fact for the jury."*

Romley Stewart Stover's concept of "Glossa" also requires the alleged "loss of status" borrowed from the theory that Capitis Diminutio maxima, media and minima had something to do with lettering. Therefore the addition of this interpretation of what capital lettering could possibly represent is quite meaningless. Note the "Glossa's" at the bottom of this page written in lower-case lettering, and that Romley Stover is not writing hand signs for deaf people, so how American sign language is written is very irrelevant.

His severe misconceptions are further discussed in ***The Romley Stewart Deception by Justinian***. This is a good example of what can happen when an initial "false premise" is taken as gospel, it matters not how much logical reasoning one applies to subsequent related ideas, if the foundation of the premise is false to begin with, the conclusions reached are likewise false. In this case, total gobbledygook.

Rohan Lorian Hilder claimed that **The Vindolanda Tablets** is lowercase lettering in Ancient Rome, and I had to point out that the photo below is not lowercase or minuscule. It is called ***New Roman Cursive***. The Old Roman cursive, also called majuscule cursive and capitalis cursive, was the everyday form of handwriting used for writing letters. A more formal style of writing was based on Roman square capitals, but cursive was used for quicker, informal writing. It was most commonly used from about the 1st century BC. New Roman cursive, also called minuscule cursive or later Roman cursive, developed from old Roman cursive. It was used from approximately the 3rd century to the 7th century, and uses letter forms that are more recognizable to modern readers; "a", "b", "d", and "e" have taken a more familiar shape, and the other letters are proportionate to each other rather than varying wildly in size and placement on a line. These letter forms were in part the basis for the medieval script known as Carolingian minuscule. The first examples of lowercase lettering is the ***Carolingian minuscule***, in the late 8th century and early 9th. The lower case (minuscule) letters ***developed in the Middle Ages*** from New Roman Cursive writing, first as the uncial script, and later as minuscule script.



A Corporation can be a Person, but a Person is not a Corporation

Pseudolaw adherents contend that a "natural person" is a unregistered "living man" whereas a birth certificate creates a juristic, artificial or fictitious person, or "corporation".

Legal persons (Latin. persona juris) are of TWO kinds:

> ***(1) NATURAL PERSON*** (an individual person, or human being)
>
> ***(2) JURIDICAL PERSON***, also called juristic, artificial or fictitious persons, (Latin *persona ficta*) who are groups of individuals, (such as corporations) which are treated by law as if they were persons, being capable of certain rights and duties.

YOUR "person" is of the first category, not the second.

You are made up of one individual, not a group of individuals, such as a juridical person, or "corporation".

Juridical persons acquire their legal personhood when they are incorporated in accordance with law, whereas Natural persons do so as soon as they have a separate and independent existence from their mother by birth. (See ***R v Hutty [1953] VLR 338***)

The application of a birth certificate DOES NOTHING to change this status to that of a "juridical person". On the contrary, it is actually formal recognition of your status as a "natural person". One could even register their name under the Corporations Act, (Eg. Dick Smith, Harvey Norman) but the individual remains a natural person.

"Men in law and philosophy are natural persons. This might be taken to imply there are persons of another sort. And that is a fact. They are artificial persons or corporations..."

- Deiser, George F. (December 1908). "The Juristic Person." University of Pennsylvania Law Review and American Law Register. Page 131– 142.

Extract from ***"Government Contracts: Federal, State and Local"***; By Nicholas Seddon:

Government Bodies as Legal Entities

The concept of legal entity. There are three types of legal entity: natural persons (that is, individuals), corporations and bodies politic.

Within the category of corporations (apart from foreign corporations) the principal types are corporations incorporated under the *Corporations Act 2001* (Cth), statutory corporations and corporations sole.

"Besides men or "natural persons," law knows persons of another kind. In particular it knows the corporation, and for a multitude of purposes it treats the corporation very much as it treats the man. Like the man, the corporation is (forgive this compound adjective) a right-and-duty-bearing unit."

- H.A.L. Fisher, ed. (1911). "Moral Personality And Legal Personality 1". The Collected Papers of Frederic William Maitland. Cambridge University Press.

Van den Hoorn v Ellis, [2010] QDC 451 (at 14 / 40):

"Additionally, there was the puzzling contention that, before the lower court, the appellant was assumed to be a "corperation [sic]" by the fact of the court accepting the alleged "capitalisation of (his) family name" which so led to him being deemed to be a "corporative fiction of limited liability" when he was "a living/breathing soul … of full liability". Since "driver" in the Transport Operations (Road Use Management) Act 1995 is defined as meaning the "person" driving the vehicle (including the "rider" of a vehicle), the appellant is not a person who falls within the Act because, from the same definitions just referred to, a person "includes" a "corporation" and the appellant is not a "corporation". It is clear from the context of the definition – and reality - that a corporation could never drive or ride a vehicle. Such an interpretation is therefore absurd, and must be rejected. A similar fate follows from any argument that a "person" is only a fictitious legal entity."

Parker v Parker [2016] TASSC 41 (at 6):

"If there is jurisdiction to order security for costs in the present case, it can only arise under the general law. The Supreme Court Rules 2000, r 828(1)(g), expressly recognises the power to order security "under any law". There is no statutory law which can be called in aid by the defendant...

...as the plaintiff is not a corporation.

> *The basic rule is that a natural person cannot be ordered to provide security for costs because of poverty. There are exceptions. One such exception is where the party is a "nominal" plaintiff. An executor, administrator or a trustee, even if suing solely for the benefit of others, is not a nominal plaintiff."*

Human rights don't apply to corporations

There are limitations to the legal recognition of corporations, in many cases, fundamental human rights are implicitly granted only to natural persons. For example, the Nineteenth Amendment to the *United States Constitution*, which states a person cannot be denied the right to vote based on gender, or Section 15 of the *Canadian Charter of Rights and Freedoms*, which guarantees equality rights, apply to natural persons only.

The extent to which a legal entity can commit a crime varies from country to country. Certain countries prohibit a legal entity from holding human rights; other countries permit artificial persons to enjoy certain protections from the state that are traditionally described as human rights.

An example of the distinction between natural and legal persons is that a natural person can hold public office, vote, marry, and possess several other similar rights, such as the right to freedom of speech, right of equality etc, whereas a corporation does not. Legal entities do not have these basic human rights and functions, and in most jurisdictions there are certain governmental positions which they cannot occupy.

A corporation does, however, usually possess five legal rights...

- The right to a common treasury or chest (including the right to own property)
- The right to a corporate seal (i.e., the right to make and sign contracts)
- The right to sue and be sued (to enforce contracts)
- The right to hire agents (employees)
- The right to make by-laws (self-governance).

In reference to the Victorian ***Charter of Human Rights and Responsibilities Act 2006***, human rights are conferred on 'persons' only, with 'person' for the purposes of the Charter defined to mean human beings and so excluding corporations and other non-human legal persons *(ss 3, 6(1):*

> *"person" means a human being;"*

Note to s 6(1); see also Rossi Homes Pty Ltd v Dun and Bradstreet (Australia) Pty Ltd (Civil Claims) [2017] VCAT 1839 [at 39]

> *Despite the definition of 'person' in s 3, courts have differed on whether the reference to 'the rights and reputation of other persons' in s 15(3)(a) includes non-human persons. The most recent Supreme Court decision on this point follows the s 3 definition of 'person' and states that s 15(3)(a) refers only to the rights and reputation of human persons (Magee v Wallace (2014) 247 A Crim R 149; [2014] VSC 643 [47]; cf Magee v Delaney (2012) 39 VR 50; [2012] VSC 407 [117] – [112]).*

How can a corporation be a legal person?

The concept of a juridical person is now central to Western law in both common-law and civil-law countries, but it is also found in virtually every legal system. Corporations are treated as a 'person' in all forms of law to solve a legal problem that arose when corporations first came about. Before this, the law only dealt with the flesh and blood 'person', and it was very easy for a group to escape liability by denying that any particular individual had anything to do with it.

A corporation is formed out of legal convenience so that one or many people can have 'many hands' in many places at once and makes a group of people accountable. If an employee of a company commits a wrong, the company is vicariously liable: ***Hollis v Nabu (2001) 207 CLR 21***.

A corporation, in legal terms, is also a human entity and considered to be a single legal creature. It has a 'body' consisting of the individuals making up the group, and a 'head' consisting of the board of directors. The law is concerned with what the 'body' does after an instruction from the 'head': ***Universal Telecasters (Qld) v Guthrie (1978) 18 ALR 531***.

As a result, corporations are liable under law for both civil suits and criminal charges: ***Morgan v Babcock & Wilcox Ltd (1929) 43 CLR 163***.

A legal person is: (1) A human, or group of humans. (2) Functioning independently.

A legal person is both protected by law, and liable. Legal capacity and status of citizenship are irrelevant in terms of the legal definition of a 'person'.

> *"So far as legal theory is concerned, a person is any being whom the law regards as capable of rights and duties. Any being that is so capable is a person, whether a human being or not."*
>
> - McInerney J. (Green's case at p.18) Salmond on Jurisprudence (10th ed., ed. by Dr. Glanville Williams), (1947), p.318. See also Taff Vale Ry. Co. v. Amalgamated Society of Ry. Servants, (1901) AC 426, at p.429.

Legal theory distinguishes between two kinds of legal persons-natural and legal. Legal persons recognized by our system of law include corporations-corporations sole, corporations aggregate companies, institutions (e.g. universities), created either by charter or by Act of Parliament (e.g. companies under the Companies Act), and organizations (e.g. trade unions, employers' associations) incorporated e.g. under the Conciliation and Arbitration Act: see ***Williams v. Hursey [1959] HCA 51; (1959), 103 CLR 30***, at pp.51-3; per Fullagar, J.

> *"**Entity**, as a firm, that is not a single natural person, as a human being, authorized by law with duties and rights, recognized as a legal authority having a distinct identity, a legal personality. Also known as artificial person, juridical entity, juristic person, or legal person. Also refer to body corporate."*
>
> *"**Entity** (such as a firm) other than a natural person (human being) created by law and recognized as a legal entity having distinct identity, legal personality, and duties and rights. Also called artificial person, juridical entity, juristic person, or legal person. See also body corporate."*

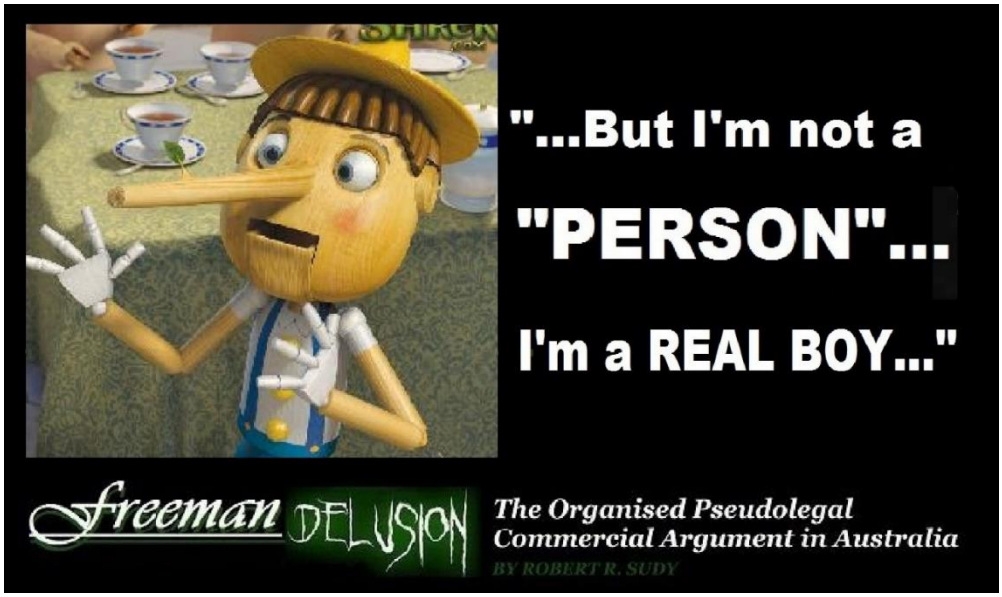
> *"**An entity** (as a partnership or corporation) that is given rights and responsibilities — compare natural person. The rights and responsibilities of a juridical person are distinct from those of the natural persons constituting it."*

To have legal personality means to be capable of having legal rights and duties within a certain legal system, such as to enter into contracts, sue, and be sued. Legal personality is a prerequisite to legal capacity, the ability of any legal person to amend (enter into, transfer, etc.) rights and obligations. In international law, consequently, legal personality is a prerequisite for an international organization to be able to sign international treaties in its own name.

In Section 38 of the Interpretation of ***Legislation Act 1984*** "entity" is defined to include a person (both a human being and a legal person) and an unincorporated body.

Some examples of juridical persons include: Cooperatives, Sole Corporations, Municipal corporations, Unincorporated associations, Partnerships, Companies, Temples and Churches, even Sovereign states and entities such as the United Nations.

I'm not a Citizen and I'm not a Person!



Most pseudolaw concepts revolve around ones legal personality or "Person" and the birth certificate "Strawman" which the adherent sees as a form of slavery. The "Strawman" concept reflects a curious belief that an individual, who is conventionally considered to be a single unit, is instead composed of two parts: a physical "man" only subject to natural law, who is linked to a legal person or "Strawman" doppelganger. This "Strawman" is a non-corporeal legal fiction that provides the mechanism by which state actors exert their otherwise illegitimate legislated authority over the physical "man." To find redemption from these imposed chains, the theory insists that one can "rescind the cont ract" that allegedly exists, by revoking their legal personality and renouncing their citizenship.

(1) The contract

Apparently, this can easily be done by serving on various government agencies a "claim of right" announcing their independence and cutting all ties to them. They insist this notarized document, sworn affidavit, notice of understanding intent and claim of right or other paperwork that is served by the offeror, becomes a valid contract or agreement of the parties after the expiry of an allotted time period. It is claimed that the terms are accepted by acquiescence, due to the offeree's silence, non-response or inability to rebut the contents of the document within the given time. Often a commercial lien process is undertaken in order to deal with any breaches of this alleged contract.

This is known as paper terrorism, it is a foisted and fraudulent contract and it has no legal effect. This deceitful process is not even recognised at law, in fact it is easily established in various sources around the world that silence does not imply agreement.

Felthouse v Bindley (1862) 142 ER 1037 is a universally accepted cornerstone of the common law of contract, but as cited more recently in ***Glenevan Pty Ltd [2015] NSWSC 201***:

> *"The repeated proposition that the affidavit, being unrefuted, "stood as law and fact" is nonsense. Unrebutted affidavits do not necessarily conclusively establish the facts deposed to in them. They are evidence of facts. They do not establish them conclusively. Even less do they establish law. The idea that somehow by serving the so-called commercial lien on the Deputy Commissioner or anyone else those parties become bound by it is equally nonsense. Mere receipt or notice of a document does not mean that the recipient acknowledges, accepts or becomes bound by it. In the course of legal proceedings, parties are served with statements of claim and affidavits on a regular basis. The receipt of those documents does not of itself mean that the party is bound by or party to it, any more than receipt of a letter by an addressee means the party accepts its truth or becomes bound by it."*

From ***UK Births Deaths and Marriages***…

> *"The registration of a birth does not involve a "contract", and such registration does not "contractually bind the individual to your society". A registration is a simple record that an event has taken place (ie a birth), and as such it is not possible to "de register". As indicated, there is no contract to void or renegotiate."*

Read more in the articles ***Everything is a contract*** and ***The Fraudulent Foisted Contract***.

(2) The legal personality

Another point which is overlooked here, is the fact one doesn't gain a legal personality from a birth certificate, it is granted at birth, as soon as the baby has "a separate and independent existence from their mother" as held in ***R v Hutty [1953] VLR 338***. In this 1953 case, a young woman fell pregnant and, after concealing her pregnancy from her parents, gave birth in an outhouse. When the baby started crying she in an emotional panic beat the newborn with her shoe. She was charged with murder. The defence argued that the newborn was still attached by the umbilical cord and the question was asked 'what is a person' and if a newborn still attached to its mother, with no certificate of birth, is a legal person.

The court found that a legal person that can protected by law is: 1. A human being, a person cannot be any other animal. 2. Must have a separate and independent existence from their mother.

In that case, it was found that the newborn was a human that had left it's mother's body, and because it was crying it was obviously breathing and functioning independently, and the fact that it was still attached and had no certificate of birth, and didn't even have a name, did not change this. The law recognises and protects one's legal personality from the moment of birth, not from the moment one's parents lodge a birth certificate.

> *"Murder can only be committed on a person who is in being, and legally a person is not in being until he or she is fully born in a living state. A baby is fully and completely born when it is completely delivered from the body of its mother and it has a separate and independent existence in the sense that it does not derive its power of living from its mother. It is not material that the child may still be attached to its mother by the umbilical cord; that does not prevent it from having a separate existence. But it is required, before the child can be the victim of murder or of manslaughter or of infanticide, that the child should have an existence separate from and*

> *independent of its mother, and that occurs when the child is fully extruded from the mother's body and is living by virtue of the functioning of its own organs."*

Similarly, in the U.S. in ***1 U.S. Code § 8 89 (a)***

> *"In determining the meaning of any Act of Congress, or of any ruling, regulation, or interpretation of the various administrative bureaus and agencies of the United States, the words "person", "human being", "child", and "individual", shall include every infant member of the species homo sapiens who is born alive at any stage of development."*

On that note, it must be realised that ones legal personality is not divisible from the living man. It has been ruled in many cases that the 'person' and the physical human are 'indivisible', including in ***Minister of National Revenue v. Stanchfield, 2009 FC 99 (CanLII)***:

> *"The whole notion of their being a second capacity distinct from the one of a natural person or human being is a pure fiction, one which is not sanctioned by law. One can describe nothing in any terms one wishes; it still remains nothing. Cory Stanchfield's attempt to argue before this Court that his body comprises two persons which act in different capacities is of one of two things: (1) an inadmissible division of his indivisible entity, or (2) an attempted creation of a second entity in a fashion which is not recognized by law, the result of which amounts to nothing in the eyes of the law. It is an attempt at the impossible and the respondent cannot do the impossible. Therefore, "Cory Stanchfield (the Respondent)" and "Cory Stanchfield, in his capacity as a natural person (the Witness)" is but one person, with one single capacity."*

Read more in the articles ***Meet your Strawman***, ***The Evil Conspiracy to Capitalise Lettering***, and ***A Corporation can be a Person, but a Person cannot be a Corporation***.

(3) The citizenship

A third flaw in this process, is regarding ones citizenship. It is argued that non-citizens have no legal capacity, and therefore by renouncing citizenship you are granted immunity. However, a few years ago the High Court held an injunction in the interests of protecting 150 non-citizens being held on a ship off the Australian coast. Obviously Australian law protects non-citizens. Non-Citizens can also be charged with criminal offenses, and may be deported if they commit a crime with a sentence of greater than one year: ***s 201 Migration Act 1958 (Cth)***. 'Unlawful' non-citizens are automatically detained: ***s 189 Migration Act***.

The acquisition of citizenship in history has been by two methods: by blood (jus sanguinis) or by soil (jus soli). If one of the parents is an Australian citizen, as is most often the case here, then the child is automatically an ***Australian citizen by descent***, especially since they were born on Australian soil. If they were born overseas they would have to apply for citizenship by descent. A child of a citizen born on Australian soil, covers both of these doctrines of law. As you can see from point (3) above, the child both has a "person" and is an "Australian citizen", even before the umbilical cord is cut, regardless of any birth certificate.

Revoking ones citizenship is a complicated process, and not as simple as sending in a notice. One glaring flaw in the theory is that one cannot renounce their citizenship without becoming a citizen of another nation. According to the ***Home Affairs website***:

> *"We will not approve your application to renounce your citizenship if you do not have another foreign citizenship or it is not in Australia's interests."*
>
> *"**Eligibility**- your application to renounce Australian citizenship will not be approved unless you are or will be a citizen of another country."*

This is pursuant to Article 7 of the ***Convention on the Reduction of Statelessness***:

> *"Laws for the renunciation of a nationality shall be conditional upon a person's acquisition or possession of another nationality."*

(4) The legal effect

> *"Mr Borleis, who was brought to Court from the prison today, was allowed to make some submissions himself. He submitted that the Magistrate had no authority to deal with him. He seemed to distinguish between himself as a man in two different capacities and suggested that the law did not bind him in one of those two capacities. This rather esoteric and spiritual argument does not find any reflection in any provision of our law." -**Borleis v Wacol Correctional Centre [2011] QSC 232***

Australian Competition & Consumer Commission v Rana [2008] FCA 374:

> *"On 19 November 2007, the Court commenced the hearing of the charges by seeking to establish whether the respondents including Paul Rana appeared. When asked whether he was Paul Rana, the following exchange occurred:*
>
> ***MR RANA:** Paul John, sir. Just for on the record…*
> ***HIS HONOUR:** No, no, Mr Rana. Are you Paul John Rana?*
> ***MR RANA:** No.*
> ***HIS HONOUR:** All right. Well, if you take a seat, I will issue a bench warrant to have Paul John Rana arrested and brought to the court. Just take a seat…*
> ***MR RANA:** That is fine. For and on the record, I would like to appoint the other side as fiduciary, and here are their instructions.*
> ***HIS HONOUR:** Take a seat, Mr Rana.*
> ***MR RANA:** You may address me as Paul John. I am here as a third party intervener, here only by special appearance under injury with a real interest in the matter and reserve all rights, powers and privileges. I am here with limited jurisdiction. I am here to assist the court to settle and close all real issues and find out the nature and cause of this action and there by – if there be any today and to stop and correct any leave all parties commercially whole. I thank you, your Honour.*
> ***HIS HONOUR:** Mr Rana, are you or are you not Paul John Rana?*
> ***MR RANA:** I have just explained that, sir.*
> ***HIS HONOUR:** Your explanation was, frankly, nonsense. The question I asked you is whether or not you are Paul John Rana. If you are not, I will have the police arrest Paul John Rana and bring*

him to the court as soon as possible.
MR RANA: *That is fine, sir. I am not the defendant. I am commonly known as Paul John of the family Rana.*
And later the following further exchange occurred:
HIS HONOUR: *There is really one issue and that is whether you are the person named in the summons.*
MR RANA: *Yes, well, I conditionally accept your offer to address me as Mr Rana on proof of claim that the answer to that name does not give me a disability.*
HIS HONOUR: *There is one question: are you or are you not Paul John Rana? If not, I will have the police …*
MR RANA: *I am not the defendant, your Honour.*
HIS HONOUR: *Yes. Well, I will have the police find the defendant and bring that person before me.*
MR RANA: *Fantastic.*

In view of the failure of Paul Rana to identify himself and the failure of Micheal Rana to appear, the Court issued warrants for the arrest of these two defendants and adjourned the hearing of the charges."

Read more in the article ***The Strawman in the Courts*** and you can locate further cases on this website under the Tags *"**Capital Letters**", "**Glossa/Dog Latin***", and *"**Legal Personality/ The Strawman**".*

The Cestui Que Vie Act 1666

The ***Cestui Que Vie Act 1666*** is totally misconceived by pseudolaw adherents. The theory implies that state ownership of their body applies via the birth registration process, and unless this presumption is lawfully refuted before the time period of seven years elapses after registration, they become the property of the state, having been declared legally dead, or "lost at sea".

This is quite a fantastical proposition, based on a ridiculous abstract speculation regarding the intention of the 1666 Act. It is the foundation for their mythical version of *"Maritime Admiralty Law"* which they claim is the jurisdictional reason for the enforceability of statute law.

At that particular time in history, many English people were *"over the seas"* mainly involved in the Anglo-Dutch wars. When they went missing overseas, presumably killed in battle or by piracy, and never returned, it caused a legal dilemma for their families back in England, mainly because of inheritance issues being stalled indefinitely. Often their estates and properties were declared abandoned, and handed to over the church, denying their descendants their rightful inheritance. It was for these reasons the *Cestui Que Vie Act 1666* was enacted, which was the first legislation pertaining to the presumption of death.

The Original Act now has a footnote that states...

> *"There are currently no known outstanding effects for the Cestui Que Vie Act 1666."*

This is because after being amended several times by the *Statute Law Revision Act 1886, Statute Law Revision Act 1888,* and the *Statute Law Revision Act 1948*, the *Cestui Que Vie Act 1666* was replaced completely by the *Presumption of Death Act 2013*.

A person may be legally declared dead despite the absence of direct proof of the person's death, such as the finding of remains (e.g., a corpse or skeleton) attributable to that person. Such a declaration is typically made when a person has been missing for an extended period of time and in the absence of any evidence that the person is still alive - or after a much shorter period but where the circumstances surrounding a person's disappearance overwhelmingly support the belief that the person has died (e.g., an airplane crash).

Different jurisdictions have different legal standards for obtaining such a declaration and in some jurisdictions a legal presumption of death may arise after a person has been missing under certain circumstances and a certain amount of time. However, if there is circumstantial evidence that would lead a reasonable person to believe that the individual is deceased on the balance of probabilities, jurisdictions may agree to issue death certificates without any such order.

For example, passengers and crew of the RMS *Titanic* who were not rescued by the RMS *Carpathia* were declared legally dead soon after *Carpathia* arrived at New York City. More recently, death certificates for those who perished in the September 11 attacks were issued by the State of New York within days of the tragedy. The same is usually true of soldiers missing after a major battle, especially if the enemy keeps an accurate record of its prisoners of war.

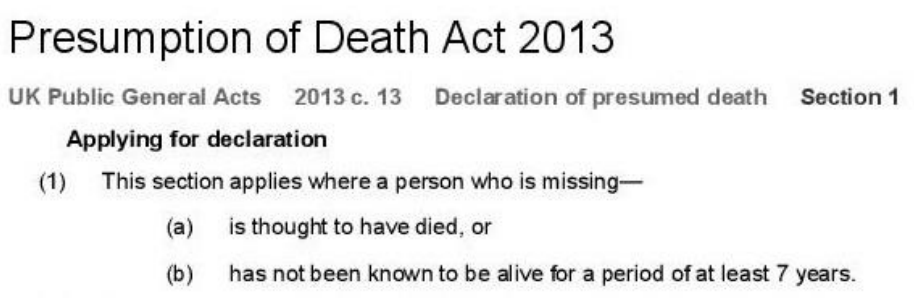
Most countries have a set period of time (seven years in many common law jurisdictions) after which an individual is presumed dead if there is no evidence to the contrary. However, if the missing individual is the owner of a significant estate, the court may delay ordering the issuing of a death certificate if there has been no real effort to locate the missing person. If the death is thought to have taken place in international waters or in a location without a centralized and reliable police force or vital statistics registration system, other laws may apply.

ENGLAND AND WALES...

English law generally assumes a person is dead if, after seven years, if there has been no evidence that they still live, the people most likely to have heard from them have had no contact, and inquiries made of that person have had no success.

This is a rebuttable presumption at common law—if the person subsequently appears, the law no longer considers them dead. The courts may grant leave to applicants to swear that a person is dead (within or after the seven-year period). For example, an executor may make such an application so they can be granted probate for the will. This kind of application would only be made sooner than seven years where death is probable, but not definitive (such as an unrecovered plane crash at sea),

These processes were not considered satisfactory, and so in 2013, the ***Presumption of Death Act 2013*** was passed to simplify this process.



Presumption of Death Act 2013

UK Public General Acts 2013 c. 13 Declaration of presumed death Section 1

Applying for declaration

(1) This section applies where a person who is missing—

(a) is thought to have died, or

(b) has not been known to be alive for a period of at least 7 years.

Death is taken to occur on:

(a) the last day that they could have been alive (if the court is satisfied that they are dead), or

(b) the day seven years after the date they were last seen (if death is presumed by the elapse of time)

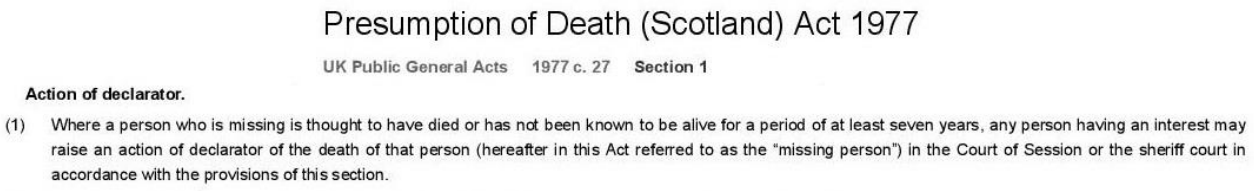
(1) This section applies where a person who is missing—

(a) is thought to have died, or

(b) has not been known to be alive for a period of at least 7 years.

(2) Any person may apply to the High Court for a declaration that the missing person is presumed to be dead.

SCOTLAND



Presumption of Death (Scotland) Act 1977

UK Public General Acts 1977 c. 27 Section 1

Action of declarator.

(1) Where a person who is missing is thought to have died or has not been known to be alive for a period of at least seven years, any person having an interest may raise an action of declarator of the death of that person (hereafter in this Act referred to as the "missing person") in the Court of Session or the sheriff court in accordance with the provisions of this section.

In Scotland, legal aspects of death in absentia are outlined in the ***Presumption of Death (Scotland) Act, 1977***. If a person lived in Scotland on the date they were last known to be alive, authorities can use this act to declare the person legally dead after the standard period of **seven years**.

(1) Where a person who is missing is thought to have died or has not been known to be alive for a period of at least seven years, any person having an interest may raise an action of declaration of the death of that person (hereafter in this Act referred to as the "missing person") in the Court of Session or the sheriff court in accordance with the provisions of this section.

UNITED STATES...

38 U.S. Code § 108.
Seven-year absence presumption of death

United States Code ss 108 calls people who disappear missing or absent. Several criteria affect declaring someone dead by assumption, a person's being missing from their home or usual residence for, typically, **seven years**, (the period varies from state to state) such absences being continuous and without explanation, being accompanied by a lack of long-distance communication with those most likely to hear from them, and after diligent but unsuccessful search for that person and inquiry into their whereabouts.

> *(b) If evidence satisfactory to the Secretary is submitted establishing the continued and unexplained absence of any individual from that individual's home and family for seven or more years, and establishing that after diligent search no evidence of that individual's existence after the date of disappearance has been found or received, the death of such individual as of the date of the expiration of such period shall be considered as sufficiently proved.*

ITALY...

Unfortunately for their families, it takes 20 years in Italy to declare a missing person dead. After ten years from somebody's disappearance, a motion to declare the person legally dead can be filed in a court of law. After that, another ten years must pass before the person can eventually be declared legally dead.

I have included the text from the *Cestui Que Vie Act 1666 (Chapter 11 18 and 19 Chapter 2)* for your interest and research, so the information I've given you can be compared to the Act to gain a better understanding of it's true intention.

Cestui Que Vie Act 1666

1666 CHAPTER 11 18 and 19 Cha 2

An Act for Redresse of Inconveniencies by want of Proofe of the Deceases of Persons beyond the Seas or absenting themselves, upon whose Lives Estates doe depend.

[X1]Recital that Cestui que vies have gone beyond Sea, and that Reversioners cannot find out whether they are alive or dead.

Whereas diverse Lords of Mannours and others have granted Estates by Lease for one or more life or lives, or else for yeares determinable upon one or more life or lives And it hath often happened that such person or persons for whose life or lives such Estates have beene granted have gone beyond the Seas or soe absented themselves for many yeares that the Lessors and Reversioners cannot finde out whether such person or persons be alive or dead by reason whereof such Lessors and Reversioners have beene held out of possession of their Tenements for many years after all the lives upon which such Estates depend are dead in regard that the Lessors and Reversioners when they have brought Actions for the recovery of their Tenements have beene putt upon it to prove the death of their Tennants when it is almost impossible for them to discover the same, For remedy of which mischeife soe frequently happening to such Lessors or Reversioners.

[I.] Cestui que vie remaining beyond Sea for Seven Years together and no Proof of their Lives, Judge in Action to direct a Verdict as though Cestui que vie were dead.

If such person or persons for whose life or lives such Estates have beene or shall be granted as aforesaid shall remaine beyond the Seas or elsewhere absent themselves in this Realme by the space of seaven yeares together and noe sufficient and evident proofe be made of the lives of such person or persons respectively in any Action commenced for recovery of such Tenements by the Lessors or Reversioners in every such case the person or persons upon whose life or lives such Estate depended shall be accounted as naturally dead, And in every Action brought for the recovery of the said Tenements by the Lessors or Reversioners their Heires or Assignes, the Judges before whom such Action shall be brought shall direct the Jury to give their Verdict as if the person soe remaining beyond the Seas or otherwise absenting himselfe were dead.

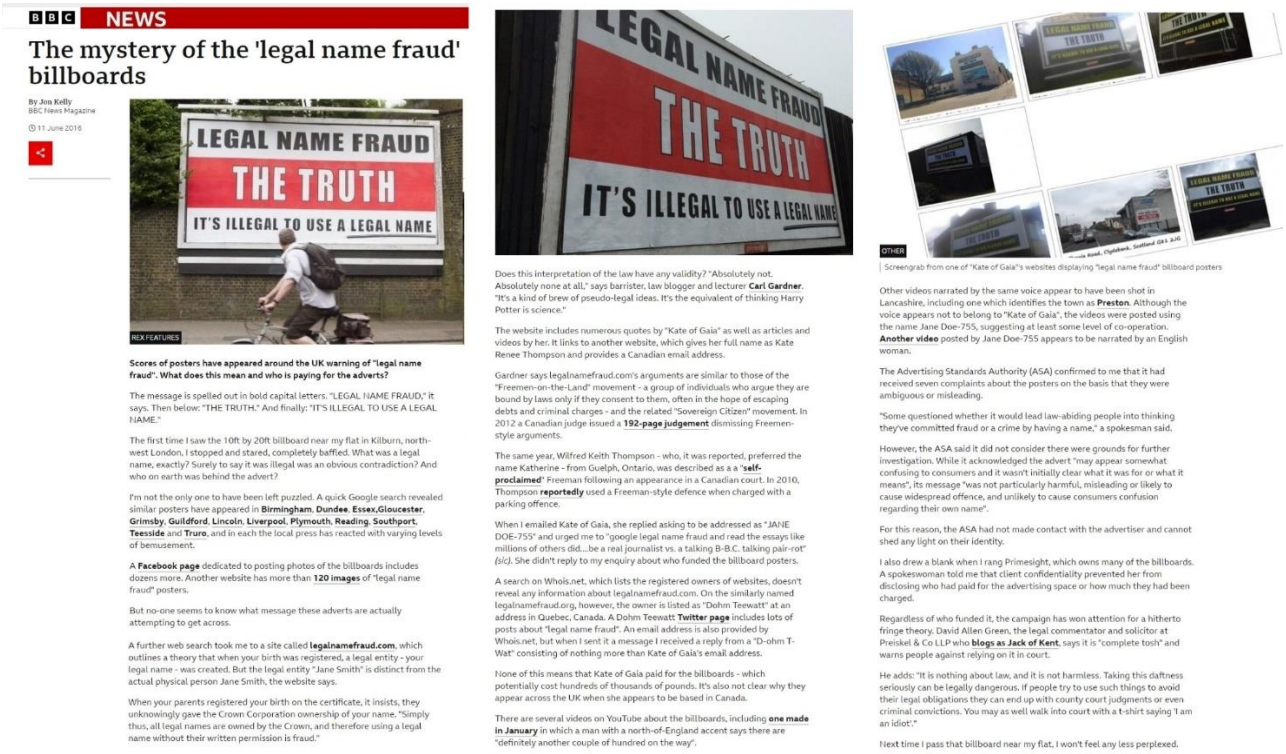
IV If the supposed dead Man prove to be alive, then the Title is revested. Action for mean Profits with Interest.

[[X2]Provided alwayes That if any person or [[X3]person or] persons shall be evicted out of any Lands or Tenements by vertue of this Act, and afterwards if such person or persons upon whose life or lives such Estate or Estates depend shall returne againe from beyond the Seas, or shall on proofe in any Action to be brought for recovery of the same [[X3]to] be made appeare to be liveing; or to have beene liveing at the time of the Eviction That then and from thenceforth the Tennant or Lessee who was outed of the same his or their Executors Administrators or Assignes shall or may reenter repossesse have hold and enjoy the said Lands or Tenements in his or their former Estate for and dureing the Life or Lives or soe long terme as the said person or persons upon whose Life or Lives the said Estate or Estates depend shall be liveing, and alsoe shall upon Action or Actions to be brought by him or them against the Lessors Reversioners or Tennants in possession or other persons respectively which since the time of the said Eviction received the Proffitts of the said Lands or Tenements recover for damages the full Proffitts of the said Lands or Tenements respectively with lawfull Interest for and from the time that he or they were outed of the said Lands or Tenements, and kepte or held out of the same by the said Lessors Reversioners Tennants or other persons who after the said Eviction received the Proffitts of the said Lands or Tenements or any of them respectively as well in the case when the said person or persons upon whose Life or Lives such Estate or Estates did depend are or shall be dead at the time of bringing of the said Action or Actions as if the said person or persons where then liveing.]

It's Illegal to Use a Legal Name

This pseudolaw concept is quite the assumption, yet one that is broadly perpetuated online. It was initially started by *Kate of Gaia*, (originally Keith Wilfred Thompson) who operates the *"**Lose The Name**"* website. The theory of a "Crown copyright" on a legal name is the basis of this assumption.

The theory claims government authority flows from its ownership of a person's name, that since there exists a Crown copyright on the layout of birth certificates and other official documentation, that this copyright also applies to the use of a person's name. For these reasons, they are instructed to refuse to give their name to police, as it doesn't belong to them and they would be in breach of copyright law by doing so.



BBC NEWS

The mystery of the 'legal name fraud' billboards

By Jon Kelly
BBC News Magazine

11 June 2016

Scores of posters have appeared around the UK warning of "legal name fraud". What does this mean and who is paying for the adverts?

The message is spelled out in bold capital letters. "LEGAL NAME FRAUD," it says. Then below: "THE TRUTH." And finally: "IT'S ILLEGAL TO USE A LEGAL NAME."

The first time I saw the 10ft by 20ft billboard near my flat in Kilburn, north-west London, I stopped and stared, completely baffled. What was a legal name, exactly? Surely to say it was illegal was an obvious contradiction? And who on earth was behind the advert?

I'm not the only one to have been left puzzled. A quick Google search revealed similar posters have appeared in **Birmingham**, **Dundee**, **Essex**,**Gloucester**, **Grimsby**, **Guildford**, **Lincoln**, **Liverpool**, **Plymouth**, **Reading**, **Southport**, **Teesside** and **Truro**, and in each the local press has reacted with varying levels of bemusement.

A **Facebook page** dedicated to posting photos of the billboards includes dozens more. Another website has more than **120 images** of "legal name fraud" posters.

But no-one seems to know what message these adverts are actually attempting to get across.

A further web search took me to a site called **legalnamefraud.com**, which outlines a theory that when your birth was registered, a legal entity - your legal name - was created. But the legal entity "Jane Smith" is distinct from the actual physical person Jane Smith, the website says.

When your parents registered your birth on the certificate, it insists, they unknowingly gave the Crown Corporation ownership of your name. "Simply thus, all legal names are owned by the Crown, and therefore using a legal name without their written permission is fraud."

Does this interpretation of the law have any validity? "Absolutely not. Absolutely none at all," says barrister, law blogger and lecturer **Carl Gardner**. "It's a kind of brew of pseudo-legal ideas. It's the equivalent of thinking Harry Potter is science."

The website includes numerous quotes by "Kate of Gaia" as well as articles and videos by her. It links to another website, which gives her full name as Kate Renee Thompson and provides a Canadian email address.

Gardner says legalnamefraud.com's arguments are similar to those of the "Freemen-on-the-Land" movement - a group of individuals who argue they are bound by laws only if they consent to them, often in the hope of escaping debts and criminal charges - and the related "Sovereign Citizen" movement. In 2012 a Canadian judge issued a **192-page judgement** dismissing Freemen-style arguments.

The same year, Wilfred Keith Thompson - who, it was reported, preferred the name Katherine - from Guelph, Ontario, was described as a a "**self-proclaimed**" Freeman following an appearance in a Canadian court. In 2010, Thompson **reportedly** used a Freeman-style defence when charged with a parking offence.

When I emailed Kate of Gaia, she replied asking to be addressed as "JANE DOE-755" and urged me to "google legal name fraud and read the essays like millions of others did...be a real journalist vs. a talking B-B.C. talking pair-rot" *(sic)*. She didn't reply to my enquiry about who funded the billboard posters.

A search on Whois.net, which lists the registered owners of websites, doesn't reveal any information about legalnamefraud.com. On the similarly named legalnamefraud.org, however, the owner is listed as "Dohm Teewatt" at an address in Quebec, Canada. A Dohm Teewatt **Twitter page** includes lots of posts about "legal name fraud". An email address is also provided by Whois.net, but when I sent it a message I received a reply from a "D-ohm T-Wat" consisting of nothing more than Kate of Gaia's email address.

None of this means that Kate of Gaia paid for the billboards - which potentially cost hundreds of thousands of pounds. It's also not clear why they appear across the UK when she appears to be based in Canada.

There are several videos on YouTube about the billboards, including **one made in January** in which a man with a north-of-England accent says there are "definitely another couple of hundred on the way".

OTHER

Screengrab from one of "Kate of Gaia"'s websites displaying "legal name fraud" billboard posters

Other videos narrated by the same voice appear to have been shot in Lancashire, including one which identifies the town as **Preston**. Although the voice appears not to belong to "Kate of Gaia", the videos were posted using the name Jane Doe-755, suggesting at least some level of co-operation. **Another video** posted by Jane Doe-755 appears to be narrated by an English woman.

The Advertising Standards Authority (ASA) confirmed to me that it had received seven complaints about the posters on the basis that they were ambiguous or misleading.

"Some questioned whether it would lead law-abiding people into thinking they've committed fraud or a crime by having a name," a spokesman said.

However, the ASA said it did not consider there were grounds for further investigation. While it acknowledged the advert "may appear somewhat confusing to consumers and it wasn't initially clear what it was for or what it means", its message "was not particularly harmful, misleading or likely to cause widespread offence, and unlikely to cause consumers confusion regarding their own name".

For this reason, the ASA had not made contact with the advertiser and cannot shed any light on their identity.

I also drew a blank when I rang Primesight, which owns many of the billboards. A spokeswoman told me that client confidentiality prevented her from disclosing who had paid for the advertising space or how much they had been charged.

Regardless of who funded it, the campaign has won attention for a hitherto fringe theory. David Allen Green, the legal commentator and solicitor at Preiskel & Co LLP who **blogs as Jack of Kent**, says it is "complete tosh" and warns people against relying on it in court.

He adds: "It is nothing about law, and it is not harmless. Taking this daftness seriously can be legally dangerous. If people try to use such things to avoid their legal obligations they can end up with county court judgments or even criminal convictions. You may as well walk into court with a t-shirt saying 'I am an idiot'."

Next time I pass that billboard near my flat, I won't feel any less perplexed.

> ***U.K. Barrister Carl Gardner***: *"It's a kind of brew of pseudo-legal ideas. It's the equivalent of thinking Harry Potter is science. It is nothing about law, and it is not harmless. Taking this daftness seriously can be legally dangerous. If people try to use such things to avoid their legal obligations they can end up with county court judgments or even criminal convictions. You may as well walk into court with a t-shirt saying 'I am an idiot'."*

Facts are usually accompanied by substantiation, which if you note, (like pseudolaw concepts) is glaringly absent here.

Firstly, if it was "illegal to use a legal name" surely one would be able to provide even one case of the prosecution of such an offense. Unfortunately none exists, because it is not illegal.

Secondly, if in fact the Crown did own my name, how is it possible that I can migrate to Russia or any other non-commonwealth nation and not only retain the use of my name, but that the Crown no longer has any part in that name on my behalf? Your legal personality and name is in fact your own intellectual property, and for these reasons you can transfer your property to any nation on earth, and do with it as you will. Only you are responsible for this name, and hold full liability to its actions.

Thirdly, as with all things copyrighted, a copyright is something that can easily be established by the copyright notice. So let's look at those verifiable facts and put all assumptions aside.

The ***UK National Archives website*** contains the ***"Crown Copyright Guidance"*** regarding the "Copying of Birth, Death, Marriage and Civil Partnership Certificates". It states:

> *"This guidance note sets out the arrangements for the reproduction of official birth, death, marriage and civil partnership certificates." ('extracts' in Scotland). Copyright in the layout of certificates is owned by the Crown."*

And then it goes on to make clear that the Crown DOES NOT assert any rights of ownership in the CONTENTS of the forms, (Eg. the names) only over the "layout and reproduction" of the documents...

> ***"...the Crown does not assert any rights of ownership in the contents of the forms."***

It is an offence to make a copy of a certificate and pass it off as the original certificate. The layout of these certificates is protected by Crown copyright, but the Crown does not assert any rights of ownership of the contents of the forms.

The copying of certificates is strictly controlled because of the potential for documents being used for the purposes of fraud.

In the U.S. copyright protection does not extend to titles, names, slogans or short phrases, the Copyright Office has made that much very clear. You can not copyright your name, the title of your post or any short phrase that you use to identify a work.

How do I copyright a name, title, slogan, or logo?

Copyright does not protect names, titles, slogans, or short phrases. In some cases, these things may be protected as trademarks. Contact the U.S. Patent & Trademark Office, TrademarkAssistanceCenter@uspto.gov or see Circular 33, for further information. However, copyright protection may be available for logo artwork that contains sufficient authorship. In some circumstances, an artistic logo may also be protected as a trademark.

According to the ***The Australian Copyright Council***, there have been a number of Australian cases in which courts have held that particular names, titles and slogans are not protected. As a result of these decisions, a name, title or slogan will not be protected by copyright. In these cases, the courts have generally arrived at their decisions because the name, title or slogan concerned is not an "original literary work" for copyright purposes. Factors that have influenced courts in reaching these decisions include: the word or phrase was not substantial enough to constitute a "work" for copyright purposes; or the phrase or sentence was commonplace, and therefore not original enough to be protected by copyright.

Names, Titles and Slogans

In this fact sheet, we give a brief overview of laws that may be relevant to the protection of names, titles and slogans.

The Copyright Act 1968 does not specifically exclude names, titles or slogans from being literary works in the context of copyright. However, there have been a number of cases in which courts have held that particular names, titles and slogans are not protected. This fact sheet explores how the courts have afforded copyright protection to names (such as names of people or companies), titles (such as book, film or song titles) and slogans (such as advertising or political slogans).

Penhallow v. Doane's Administrators and Cruden v Neale (US Cases)

(1) Penhallow v. Doane's Administrators

Penhallow v. Doane's Administrators, 3 U.S. 54, 3 Dall. 54, 1 L. Ed. 507 (1795) is often cited by pseudolaw adherents both in the United States and elsewhere in an attempt to substantiate the "***strawman***" narrative that governments cannot have jurisdiction over a natural person, only over a "***corporate entity***" allegedly created through their birth certificate. The passage that is relied on and attributed to the case, is the following:

> *"Inasmuch as every government is an artificial person, an abstraction, and a creature of the mind only, a government can interface only with other artificial persons. The imaginary, having neither actuality nor substance, is foreclosed from creating and attaining parity with the tangible. The legal manifestation of this is that no government, as well as any law, agency, aspect, court, etc. can concern itself with anything other than corporate, artificial persons and the contracts between them."*

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Interestingly, this passage appears nowhere in the judgement, a point that was recognised in another US case ***United States v. Heijnen, 375 F. Supp. 2d 1229, 1231 n.1 (D.N.M. 2005)***.

> *"Heijnen also submits that Penhallow v. Duoane's Administrators, 3 U.S. 54, 3 Dall. 54, 1 L. Ed. 507(1795), provides a more precise explanation and sets forth the following quotation:*
>
> *Inasmuch as every government is an artificial person, an abstraction, and a creature of the mind only, a government can interface only with other artificial persons. The imaginery, having neither actuality nor substance, is foreclosed from creating and affirming parity with the tangible. The legal manifestation of this is that no government, as well as any law, agency, aspect, court, etc, can concern itself with anything other than corporate artificial persons and the contacts between them.*
>
> *The Court was unable to locate this quotation in Penhallow v. Doane's Administrators, 3 U.S. 54, 3 Dall. 54, 1 L. Ed. 507(1795), or in any other source."*

https://freemandelusion.com/wp-content/uploads/2021/03/united-states-v.-heijnen-375-f.-supp.-2d-1229-e28093-courtlistener.com_.pdf

The contention itself was disposed of in a third US case, ***United States v. Mooney, 2017 WL 2352002; 119 A.F.T.R.2d 2017-2052*** citing the relevant authorities:

> *"As already noted, the exact arguments raised by the Mooney Defendants, as well as, numerous variations of these arguments have correctly been repeatedly rejected by the Eighth Circuit as "meritless," "absurd," and "entirely frivolous." See, United States v. Watson, 1 F.3d 733, 734 (8th*

*Cir. 1993) (finding defendant's assertion that he is a "free citizen of the State of Oklahoma" and not a United States citizen because he has never lived or worked in the District of Columbia or territories of the United States to be "meritless"); United States v. Kruger, 823 F.2d 587, 587-88 (8th Cir. 1991) (rejecting as "absurd" defendants' argument that the Thirteenth, Fourteenth, and Fifteenth Amendments of the United States Constitution unlawfully bestow citizenship upon "non-white races and other 'artificial statutory person'"); United States v. Schmitt, 784 F.2d 880, 882 (8th Cir. 1986) (finding appellants' arguments that the district court lacked personal jurisdiction over them because they are "Natural Freeman" to be "entirely frivolous"); United States v, Sileven, 985 F.2d 962, 970 (8th Cir. 1993) (finding similar arguments that defendant was not a federal citizen "plainly frivolous" and noting that further discussion was unnecessary); United States v. Gerads, 999 F.2d 1255, 1256 (8th Cir. 1993) (rejecting as "meritless" and "frivolous" appellants' assertions that they were not citizens of the United States, but instead "Free Citizens of the Republic of Minnesota" and that the district court had failed to establish "inland jurisdiction"); see, also, United States v. Garcia, No. 17-1012, 2017 WL 1521786, at *1 (8th Cir. Apr. 28, 2017) (rejecting defendant's challenge to the Court's jurisdiction based on his assertion that he is a "private, sovereign, flesh and blood man" and concluding that the challenge lacked merit); United States v. Benabe, 654 F.3d 753, 767 (7th Cir. 2011) ("Regardless of an individual's claimed status of descent, be it as a 'sovereign citizen,' a 'secured-party creditor,' or a 'flesh-and-blood human being' that person is not beyond the jurisdiction of the courts. These theories should be rejected summarily, however they are presented."); United States v. James, 328 F.3d 953, 954 (7th Cir. 2003) ("Laws of the United States apply to all person within its borders."); Schwagerl v. Fed. Nat'l Mortg. Ass'n, No. 11-cv-3578 (DWF/JJK), 2012 WL 2060636, at *4 (D. Minn. Apr. 11, 2012) (finding plaintiffs' argument "that the capitalized versions of their names are separate legal entities from themselves" is without basis or merit); United States v. Beale, No. 10-cv-4933 (ADM), 2011 WL 1302907, at *4 (D. Minn. Apr. 6, 2011) (rejecting similar arguments); United States v. Foster, No. 97-cr-7103 (JMR/RLE), 1997 WL 685371, at *7 (D. Minn. May 27, 1997) (finding defendants' assertion that they were citizens of the "Sovereign Republic County Minnesota State," and that the "United States consists of ten square miles, a/k/a District of Columbia" to be "patently frivolous under the settled law of this Circuit"); United States v. Alexio, No. 13-cv-1017 (JMS), 2015 WL 4069160, at *4 (D. Haw. July 2, 2015); Santiago v. Century 21/PHH Mortg., No. 1:12-cv-2792 (KOB), 2013 WL 1281776, at *5 (N.D. Ala. Mar. 27, 2013) (citing cases rejecting similar arguments); Paul v. New York, No. 13-cv-5047 (SJF/AKT), 2013 WL 5973138, at *3 (E.D.N.Y. Nov. 5, 2013) ("The conspiracy and legal revisionist theories of 'sovereign citizens' are not established in law in this court or anywhere in this country's valid legal system."); Rice v. Maryland, No. 9-cv-1947 (RWT), 2010 WL 2773575, at *3 n. 2 (D. Md. July 13, 2010) ("Such a ['flesh and blood' sovereign] defense has been repeatedly rejected and has been viewed by [the Fourth Circuit] as a 'self-defeating legal strategy.'") (citing United States v. Jenkins, 311 Fed. App'x 655, 656 (4th Cir. 2009))."*

https://freemandelusion.com/wp-content/uploads/2021/03/united-states-v.-mooney.pdf

The contention and the passage falsely attributed to *Penhallow v. Doane's Administrators, 3 U.S. 54, 3 Dall. 54, 1 L. Ed. 507 (1795)* has also been raised and rejected here in Australian courts, a good example is found in ***Deputy Commissioner Of Taxation v Cutts (No.4) [2019] FCCA 2866*** (From 96):

> *"The second case referred to by Mr Cutts was a judgment in the Supreme Court of the United States: Penhallow v Doane's Administrators(1795) 3 U.S. 54; (1795) 1 L. Ed. 507; (1795) 3 Dall. 54 ("Penhallow"), to which judgment was attributed the following specific quote:*
>
> *"Inasmuch as every government is an artificial person, an abstraction, and a creature of the mind only, a government can interface only with other artificial persons. The imaginary, having neither actuality nor substance, is foreclosed from creating and attaining parity with the tangible. The legal manifestation of this is that no government, as well as any law, agency, aspect, court, etc. can concern itself with anything other than corporate, artificial persons and the contracts between them."*
>
> *The specific quote attributed to Penhallow does not appear in the text of the judgment in Penhallow at any point: a fact confirmed in United States v. Heijnen, 375 F. Supp. 2d 1229, 1231 n.1 (D.N.M. 2005) and United States v. Mooney, 2017 WL 2352002; 119 A.F.T.R.2d 2017-2052..."*

https://freemandelusion.com/wp-content/uploads/2020/06/deputy-commissioner-of-taxation-v-cutts-no.4-2019-fcca-2866.pdf

(2) Cruden v Neale

Cruden v Neale 2 N.C. 338 (N.C. Super. 1796) is also consistently relied on by pseudolaw adherents in an attempt to substantiate this premise. The following quote from the case is repeated:

> *"There, every man is independent of all laws, except those prescribed by nature. He is not bound by any institutions formed by his fellowmen without his consent."*

As is often the case when adherents go quote mining, the fact that this cherry-picked passage is merely part of the submissions by the plaintiffs lawyer and does not form part of the judgment, completely escapes them.

https://freemandelusion.com/wp-content/uploads/2021/03/cruden-v.-neale.pdf

The plaintiff's attorney was not even trying to argue that a citizen of North Carolina would not be bound by laws of that state for which he refused to provide consent. The plaintiff was instead arguing that because he had been a British subject and had remained a British subject at the time of the American Revolution, he never become a citizen the United States of America. He was arguing that as a British subject, he had the right (as did every other British subject after the hostilities between the United States and Great Britain ended) to receive payment for a debt owed to him. (That right had been suspended while the war was going on, but the war was over.)

The Court itself concluded as follows:

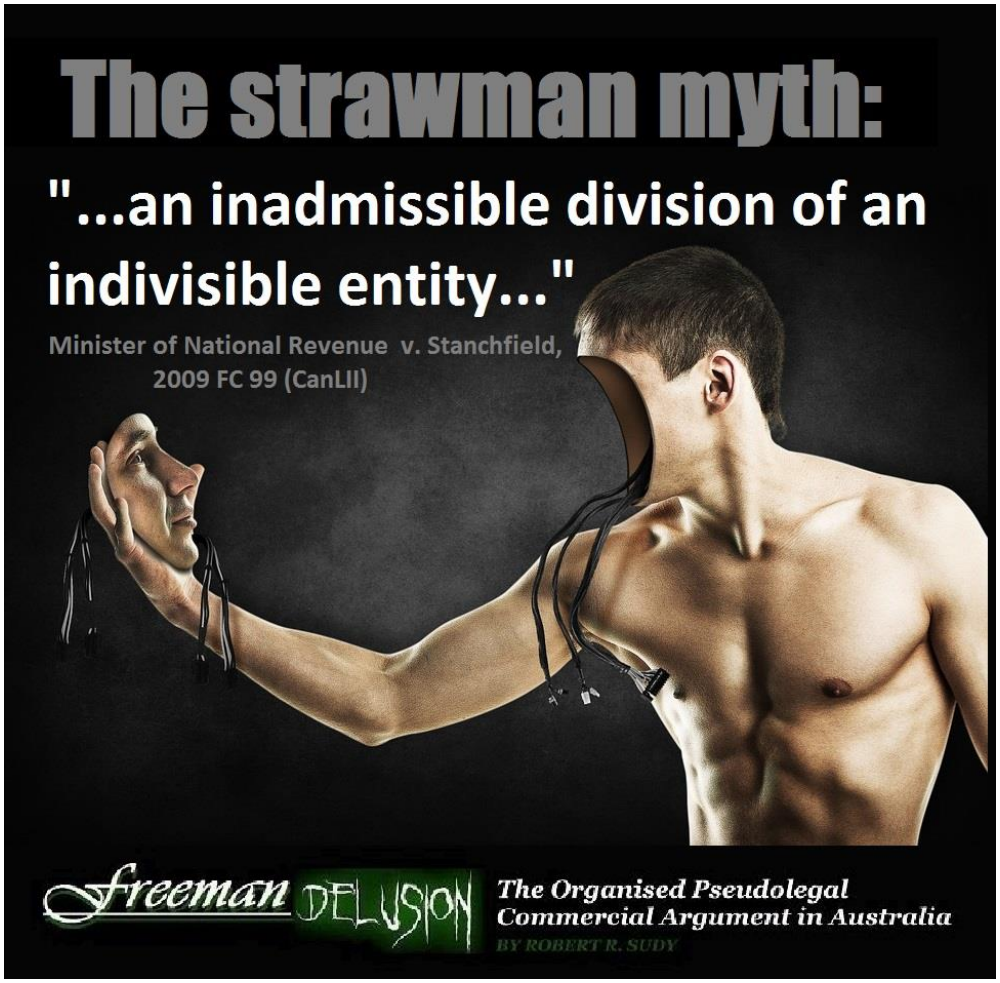
First, assuming that the plaintiff was wrong, and that the plaintiff had been a citizen of the United States who had "attached himself to the enemy" (Great Britain) during the Revolutionary War, any legal disability with which he had previously been burdened with respect to recovering a debt was removed by the effect of certain statutes cited by the Court.

Second, assuming that the plaintiff was right, and that the plaintiff had never become a citizen of the United States (i.e., that he had remained a British subject), his legal disability (previously preventing him from maintaining a suit to recover the debt) was removed by article 4 of a treaty cited by the Court.

The Court thus concluded that either way, the plaintiff was entitled to maintain the lawsuit.

Nowhere did either the plaintiff's attorney or the Court itself assert that a citizen of North Carolina would not be bound by laws of North Carolina to which that citizen did not give consent.

The Strawman in the Courts



Eddie Ray Kahn, a co-defendant of Wesley Snipes in his high-profile tax evasion case, *"made several missteps and peculiar motions. For example, he sought to be immediately freed because the indictment lists his name in all capital letters, and he claimed U.S. attorneys have no jurisdiction because Florida supposedly was never ceded to the federal government".* Of course, the court denied these motions, and in fact, no court has ever upheld such an argument.

In *United States v. Ford* it was argued that an IRS summons was invalid because the IRS capitalized all the letters in the taxpayer's name, which was ruled to be frivolous.

United States v. Frech:

> *"Defendant's' assertion that the capitalization of their names in court documents constitutes constructive fraud, thereby depriving the district court of jurisdiction and venue, is without any basis in law or fact..."*

United States v. Washington:

"Defendant contends that the Indictment must be dismissed because 'KURT WASHINGTON,' spelled out in capital letters, is a fictitious name used by the Government to tax him improperly as a business, and that the correct spelling and presentation of his name is 'Kurt Washington.' This contention is baseless..."

United States v Leaming (12th February 2013):

"Defendant is apparently a member of a group loosely styled "sovereign citizens." The Court has deduced this from a number of Defendant's peculiar habits. First, like Mr. Leaming, sovereign citizens are fascinated by capitalization. They appear to believe that capitalizing names has some sort of legal effect.

For example, Defendant writes that "the REGISTERED FACTS appearing in the above Paragraph evidence the uncontroverted and uncontrovertible FACTS that the SLAVERY SYSTEMS operated in the names UNITED STATES, United States, UNITED STATES OF AMERICA, and United States of America . . . are terminated nunc pro tunc by public policy, U.C.C. 1-103 . . . ." (Def.'s Mandatory Jud. Not. at 2.) He appears to believe that by capitalizing "United States," he is referring to a different entity than the federal government. For better or for worse, it's the same country.

The Court therefore feels some measure of responsibility to inform Defendant that all the fancy legal-sounding things he has read on the internet are make-believe. Defendant can call himself a "public minister" and "private attorney general," he may file "mandatory judicial notices" citing all his favorite websites, he can even address mail to the "Washington Republic." But at the end of the day, while sovereign citizens and Defendant cite things like "Universal Law Ordinances," they are subject to both state and federal laws, just like everyone else. For the reasons stated above, no response is required by the Government."

https://freemandelusion.com/wp-content/uploads/2018/07/ronald-b.-leighton-12th-february-2013-usa-v-leaming-12-cr-05039-wd-wa-dkt-102.pdf

Minister of National Revenue v Stanchfield [2009] FC 99 Justice Gauthier (at 17, 27, 340):

"Mr. Camplin in the above mentioned case seems to have argued, in the same fashion as the respondent, that he had two capacities, one which he characterised as being his "private capacity as a "natural person" for my own benefit" and the other as his capacity as "legal representative of the taxpayer". Here, the respondent characterises his purported capacities as being (1) as a natural person, and (2) as a taxpayer. The deletion of the words "legal representative" from the latter purported capacity does not render this case distinguishable from the one at bar.

The whole notion of their being a second capacity distinct from the one of a natural person or human being is a pure fiction, one which is not sanctioned by law. One can describe nothing in any terms one wishes; it still remains nothing.

Cory Stanchfield's attempt to argue before this Court that his body comprises two persons which act in different capacities is of one of two things: (1) an inadmissible division of his indivisible entity, or (2) an attempted creation of a second entity in a fashion which is not recognized by law, the result of which amounts to nothing in the eyes of the law. It is an attempt at the impossible

and the respondent cannot do the impossible. Therefore, "Cory Stanchfield (the Respondent)" and "Cory Stanchfield, in his capacity as a natural person (the Witness)" is but one person, with one single capacity."

https://freemandelusion.com/wp-content/uploads/2018/07/canada-national-revenue-v.-stanchfield-2009-fc-99-canlii.pdf

Crossroads-DMD Mortgage Investment Corporation v Gauthier, 2015 ABQB 703 (at 32-46):

"Gauthier argued is that he is "an individual human being, or man with inherent jurisdiction on the land commonly known as Canada", and "not a person as defined by Interpretations Act RSC 1985". He is "... the Beneficiary and Grantor of the account referred to as the juristic person ADAM CHRISTIAN GAUTHIER ...". This is obviously an attempt to invoke the OPCA double/split person or "Strawman" concept: individuals have two interlinked aspects, a physical "human" element and an attached or interlinked non-corporeal legal element, what Gauthier calls a "person" or "juristic person".

In Meads v Meads this concept is reviewed and rejected at paras 417-446. Rooke ACJ concludes that in Canadian law the double/split person concept is entirely unfounded in any sense, and has been systematically rejected every time anyone has ever raised it in a Canadian court. He then goes to evaluate the documents that the respondent, Dennis Larry Meads, had filed in the Meads v Meads action. Rooke ACJ explains at paras 432-439 that the Meads' documents are meaningless because they attempt to invoke the double/split person concept, and concludes at paras 438-439: [438] ... everything good and of value attaches to the physical person of Mr. Meads, while all obligation and debt is allocated to the unfortunate DENNIS LARRY MEADS, corporate entity. [439] Of course, that does not work. Mr. Meads is Mr. Meads in all his physical or imaginary aspects. He would experience and obtain the same effect and success if he appeared in court and selectively donned and removed a rubber Halloween mask which portrays the appearance of another person, asserting at this or that point that the mask's person is the one liable to Ms. Meads. Not that I am encouraging, or indeed would countenance, the wearing of a mask in my courtroom.

This means that ACJ Rooke's conclusion that the double/split person "Strawman" is a myth is not obiter. He used that conclusion of law to reach the result in Meads v Meads. As a consequence, that conclusion is binding on me. To be explicit, even if that were not the law I would come to exactly the same conclusion. Gauthier's claim that distinguishes an "individual human being" from the "person" is entirely meaningless. They are one and the same. Gauthier's apparent belief as to the legal meaning of the word "person" is entirely false and incorrect.

I note that the "Strawman" double/split person concept was also rejected by the Newfoundland and Labrador Court of Appeal in a recent judgment, Fiander v Mills, 2015 NLCA 31 (CanLII) at para 20: This notion of treating a named individual as an "estate" that is somehow separate from the person who is subject to the law and that is free from governmental regulation is also a concept unrecognized by the law of Canada. It is just nonsense. Chief Justice Green concludes the "Strawman" is so obviously and notoriously false that he directs that anytime a trial court encounters "... the fractionating of human personality to support claims of not being subject to law ..." that the litigant who made that argument should be presumed to have sued in a

vexatious and abusive manner and only is appearing in court for an improper and ulterior purpose: paras 39-40.

The "Strawman" is therefore not merely a myth. It is litigation poison."

https://freemandelusion.com/wp-content/uploads/2018/07/crossroads-dmd-mortgage-investment-corporation-v-gauthier-2015-abqb-703.pdf

Rothweiler v Payette, 2018 ABQB 288:

[1] ..... Reduced to its conceptual core, the 'Strawman' concept is one that alleges that the government exercises clandestine control over human beings via a non-corporeal legal entity, the 'Strawman'. The 'Strawman' is purportedly attached to a human being when parents are tricked into signing birth documentation. That documentation is (supposedly) a concealed contract with the government.

[2] Rothweiler called his 'Strawman' the "BRENDEN-RANDALL: ROTHWEILER ESTATE", while he is a "living man" and "the Creditor of the estate": Rothweiler #2, at paras 10-13. Rothweiler in his Statement of Claim complains he was injured when state actors engaged him, instead of his 'Strawman'. He demands $22 million in damages: Rothweiler #2, at para 2.

*[3] In **Fiander v Mills, 2015 NLCA 31 (CanLII)** at paras 20-21, 40, 368 Nfld & PEIR 80, the Newfoundland Court of Appeal concluded that anyone who uses the 'Strawman' motif in court is presumed to act in bad faith, and for a vexatious and abusive ulterior purpose. This decision provides that a court that encounters the 'Strawman' may act pre-emptively to terminate or restrict litigation abuse based on this notoriously false idea.*

*This rule from Fiander v Mills has been subsequently adopted in many Alberta cases, including **Re Boisjoli, 2015 ABQB 629 (CanLII)**, 29 Alta LR (6th) 334, **Gauthier v Starr, 2016 ABQB 213 (CanLII)**, 86 CPC (7th) 348; **Alberta v Greter, 2016 ABQB 293 (CanLII)**; **Pomerleau v Canada (Revenue Agency), 2017 ABQB 123 (CanLII)**, 98 CPC (7th) 249; and **Re Gauthier, 2017 ABQB 555 (CanLII)**, aff'd **2018 ABCA 14 (CanLII)**.*

https://freemandelusion.com/wp-content/uploads/2018/07/rothweiler-v-payette-2018-abqb-288.pdf

Fiander v Mills, 2015 NLCA 31

(at 20-21) *"The appellant also asserted in his statement of claim that he is the "grantor and sole beneficiary" of the "Estate" of the human being known as "Edward John Fiander" and that the government continues wrongfully to "administer" his estate in breach of trust by forcing him to pay licence fees and seizing his fish, amongst other things. This notion of treating a named individual as an "estate" that is somehow separate from the person who is subject to the law and that is free from governmental regulation is also a concept unrecognized by the law of Canada. It is just nonsense and has no basis for inclusion in a statement of claim. The appellant's assertion in the statement of claim that the issuance of a birth certificate, which merely records an historical fact and does not create identity, somehow nevertheless results in "the process of the creation of an Estate with the parents or guardians granting to the government, as Trustee, their offspring's*

(child) share of the earth over which it was given dominion by its creator, the earth and all things of it (Genesis 1:26-28)" is, quite apart from the incomprehensible nature of the assertion, unconnected to any basis for asserting a claim for damages against the respondents."

(at 40) *"In this case, this Court has now declared that arguments relating to opting out of legislation, the fractionating of human personality to support claims of not being subject to law and the fanciful use of arguments based on birth certificates to create notions of estates to advance submissions that would otherwise have no rational support in the jurisprudence, have no basis in the law in this jurisdiction. It would therefore be open to a trial court in the future, when made aware of such submissions in other proceedings, to treat those submissions as presumptively vexatious and abusive and to act preemptively to prevent such claims from improperly clogging up the legal system to the cost and prejudice of those who would otherwise have to face and deal with them. The court would not have to wait for a formal application to strike from an affected party but could also act on its own motion to deal with the issue, applying such procedural safeguards (such as a show-cause hearing initiated by the senior court official in the relevant judicial centre) as may be appropriate in the circumstances. It must be remembered that even rule 14.24(1), by its language, does not require a formal application by a party to initiate a consideration as to whether a pleading is an abuse of the process of the Court."*

https://freemandelusion.com/wp-content/uploads/2018/07/fiander-v.-mills-2015-nlca-31.pdf

Royal Bank of Canada v Anderson [2022] ABQB 354 Rooke ACJ (at 3-5):

"In her numerous appearances before the Alberta Court of Queen's Bench, Ms. Anderson calls herself many things, for example:

- *Sandra-Ann: Anderson*
- *i: woman: Sandra of the Anderson family*
- *Sandra of the Anderson family,*
- *Sandra Ann Anderson, Executor of the SANDRA ANN ANDERSON ESTATE*
- *SANDRA ANDERSON, WOMAN SANDRA OF THE ANDERSON FAMILY*

These variations of Ms. Anderson's name are meaningless in law, but, purportedly, serve to designate that, in this instance Ms. Anderson is self-identifying as a "flesh and blood" human being. Other times, Ms. Anderson refers to SANDRA ANN ANDERSON. This is the "Strawman", an illusionary shadow-self of Ms. Anderson that is purportedly an immaterial legal thing, that was (allegedly) created by Ms. Anderson's birth documentation, then chained to her as part of a nefarious government scheme. Persons who sell and teach pseudolaw claim that Strawman Theory allows one to operate in two aspects, and take all the benefits as Sandra-Ann: Anderson, while assigning any obligations and penalties to SANDRA ANN ANDERSON, which Ms. Anderson has called an "Estate", a "Trust", or a "Corporation". Academic commentary has also characterized Strawman Theory as a legal possession and exorcism ritual, that pretends to be law: Donald J Netolitzky, "Organized Pseudolegal Commercial Arguments as Magic and Ceremony" (2018) 55:4 Alta L Rev 1045 at 1069-1078. Ms. Anderson uses her Strawwoman SANDRA ANN ANDERSON as a kind of sock puppet, when that is convenient for her. [5] Like many other pseudolaw concepts engaged by Ms. Anderson, Strawman Theory is nonsense, and rejected universally by courts, worldwide. In Canada, Strawman Theory has been rejected on so many

> *occasions, and is so notoriously false, that simply employing Strawman Theory motifs creates a presumption that the pseudolaw litigant does so for abusive, ulterior motives: Fiander v Mills, 2015 NLCA 31 at paras 37-40; Rothweiler v Payette, 2018 ABQB 288 at paras 6-21; Unrau #2 at para 180. Ms. Anderson is perfectly well aware of this, because she has been repeatedly instructed that Strawman Theory is false, and that her using Strawman Theory is an abuse of the Court and opposing parties. Ms. Anderson was ordered in Canada v Anderson #1 that she only communicate with the Court via her legal name, "Sandra Ann Anderson", and not alternative name structures and/or pseudonyms. That was to stop her from using Strawman Theory, which promises her no benefits at all, and that just wastes court and litigant time. As will be very apparent, Ms. Anderson has paid no attention to that Order."*

https://freemandelusion.com/wp-content/uploads/2022/05/Royal-Bank-of-Canada-v-Anderson-2022-ABQB-354.pdf

Read more Canadian strawman cases in ***The Canadian Natural Person***

Australian strawman cases

Borleis v Wacol Correctional Centre [2011] QSC 232:

> *"Mr Borleis, who was brought to Court from the prison today, was allowed to make some submissions himself. He submitted that the Magistrate had no authority to deal with him. He seemed to distinguish between himself as a man in two different capacities and suggested that the law did not bind him in one of those two capacities. This rather esoteric and spiritual argument does not find any reflection in any provision of our law."*

https://freemandelusion.com/wp-content/uploads/2018/07/borleis-v-wacol-correctional-centre-2011-qsc-232.pdf

Bradley v Barber [2016] QCA 053:

> *"The respondent also submitted that, as to the question that the appellant sought to agitate that Crown Law and/or lawyers instructed by Crown Law could not represent the respondent in the appeal because of a "living man versus living woman" argument, the respondent correctly pointed out that the learned primary judge ruled against the point and the submission made in this Court should be rejected for the same reasons. I agree. There was no substance whatever in the appellant's argument on this point."*

https://freemandelusion.com/wp-content/uploads/2018/06/bradley-v-barber-2016-qca-53.pdf

Rangitaawa [2013] NZHC 4:

> *"Please find enclosed a previous copy of application filed in the District Court Dargaville also a Statutory Declaration declaring my Native Title as Natural Man of Aotearoa also in reference, details of the legal name to the artificial person GRAHAM COLIN RANGITAAWA CAPITALISE. I/we inform you that rangatira graham rangitaawa is not the person required to appear upon the*

subject matters schedule under adjournment to the Whangarei High Court date 4 February 2013."

"It appears the document may have been filed at Dargaville on 15 November 2012, together with other documents which are largely incomprehensible but which confirm that, despite assertions to the contrary in the letter received by the High Court today, the person signing himself as "rangatira. graham rangitaawa" is Graham Colin Rangitaawa. Appeal refused."

https://freemandelusion.com/wp-content/uploads/2018/07/rangitaawa-2013-nzhc-4.pdf

Australian Competition & Consumer Commission v Rana [2008] FCA 374:

"On 19 November 2007, the Court commenced the hearing of the charges by seeking to establish whether the respondents including Paul Rana appeared. When asked whether he was Paul Rana, the following exchange occurred:

MR RANA: Paul John, sir. Just for on the record…
HIS HONOUR: No, no, Mr Rana. Are you Paul John Rana?
MR RANA: No.
HIS HONOUR: All right. Well, if you take a seat, I will issue a bench warrant to have Paul John Rana arrested and brought to the court. Just take a seat…
MR RANA: That is fine. For and on the record, I would like to appoint the other side as fiduciary, and here are their instructions.
HIS HONOUR: Take a seat, Mr Rana.
MR RANA: You may address me as Paul John. I am here as a third party intervener, here only by special appearance under injury with a real interest in the matter and reserve all rights, powers and privileges. I am here with limited jurisdiction. I am here to assist the court to settle and close all real issues and find out the nature and cause of this action and there by – if there be any today and to stop and correct any leave all parties commercially whole. I thank you, your Honour.
HIS HONOUR: Mr Rana, are you or are you not Paul John Rana? MR RANA: I have just explained that, sir.
HIS HONOUR: Your explanation was, frankly, nonsense. The question I asked you is whether or not you are Paul John Rana. If you are not, I will have the police arrest Paul John Rana and bring him to the court as soon as possible.
MR RANA: That is fine, sir. I am not the defendant. I am commonly known as Paul John of the family Rana.
And later the following further exchange occurred:
HIS HONOUR: There is really one issue and that is whether you are the person named in the summons.
MR RANA: Yes, well, I conditionally accept your offer to address me as Mr Rana on proof of claim that the answer to that name does not give me a disability.
HIS HONOUR: There is one question: are you or are you not Paul John Rana? If not, I will have the police …
MR RANA: I am not the defendant, your Honour.
HIS HONOUR: Yes. Well, I will have the police find the defendant and bring that person before me.
MR RANA: Fantastic.

In view of the failure of Paul Rana to identify himself and the failure of Micheal Rana to appear, the Court issued warrants for the arrest of these two defendants and adjourned the hearing of the charges."

https://freemandelusion.com/wp-content/uploads/2018/07/australian-competition-consumer-commission-v-rana-2008-fca-374.pdf

Van den Hoorn v Ellis, [2010] QDC 451:

"Additionally, there was the puzzling contention that, before the lower court, the appellant was assumed to be a "corperation [sic]" by the fact of the court accepting the alleged "capitalisation of (his) family name" which so led to him being deemed to be a "corporative fiction of limited liability" when he was "a living/breathing soul … of full liability".

Since "driver" in the Transport Operations (Road Use Management) Act 1995 is defined as meaning the "person" driving the vehicle (including the "rider" of a vehicle), the appellant is not a person who falls within the Act because, from the same definitions just referred to, a person "includes" a "corporation" and the appellant is not a "corporation".

Besides misunderstanding about what "includes" means, it is clear from the context of the definition – and reality – that a corporation could never drive or ride a vehicle. Such an interpretation is therefore absurd, and must be rejected. A similar fate follows from any argument that a "person" is only a fictitious legal entity."

https://freemandelusion.com/wp-content/uploads/2020/09/van-den-hoorn-v-ellis-2010-qdc-451.pdf

Re Magistrate M M Flynn; Ex Parte McJannete [2013] WASC 372:

"The application to this court is vexatious and an abuse of process and must be dismissed. The applicant appears to be one of a group of individuals without legal training who continue to espouse theories of constitutional law that have no basis. Courts in this State and throughout Australia, indeed the common law world, have steadfastly so ruled.

"As a result of his continuing pre-occupation with discredited legal theory the applicant has sworn in his affidavit such nonsense as:

"I am a Man, a flesh and blood living soul created under God also known as a 'Human Being'. I am not a corporate entity and I do not consent to my body being transferred to a corporate entity for the purposes of commerce including commercial transactions in any court."

The applicant has attached his birth certificate to his affidavit which clearly shows his identity. If he wishes to play games about his identity while engaged in the serious business of court hearings involving criminal charges, he should expect magistrates to respond as did this magistrate. There is no room in a crowded Magistrates Court for time wasting by idiosyncratic litigants who believe in legal theories that are without merit.

Finally, judges administer justice according to law. They are not required to expend judicial time, a scarce public resource, on applications that have no legal foundation and involve a deluded understanding of the law."

https://freemandelusion.com/wp-content/uploads/2019/05/re-magistrate-m-m-flynn-ex-parte-mcjannete-2013-wasc-372.pdf

Queensland Police Service v Messer [2016] QDC 214:

"I am not a "person" when such term is defined in Statutes or Acts of Australia, or Statutes or Acts of the several states when such definition includes artificial entities or Cestui Que Vie Trusts. I refuse to be treated as a federally or state created entity which is only capable of exercising certain rights, privileges, or immunities as specifically granted by federal or state governments, unless with my express consent on a case by case basis.

HIS HONOUR: "As interesting and attractive as these arguments might seem to someone who propounds them, they have no basis in law or fact to exculpate a person's culpability for a traffic offence and being subject to the court's jurisdiction.

(See R v Stoneman [2013] QCA 209 (affirming Stoneman v The Commissioner of Police (unreported, 2012 District Court of Qld, 30 November 2012, Kingham DCJ)

The respondent's submissions have no bearing on any issue in this appeal."

https://freemandelusion.com/wp-content/uploads/2019/05/queensland-police-service-v-messer-2016-qdc-214.pdf

Smadu -v- Stone [2016] WASC 80:

"The appeal is grounded primarily on the notion that the appellant has separate legal personalities. It appears the appellant asserts that one such personality owned the motor vehicle and another held the appellant's driver's licence and drove the vehicle. The appellant says that the wrong legal person was charged and raises various arguments which appear to be based on the separate legal personality fiction. This is all nonsense. It would be a waste of judicial resources and an affront to the dignity of this court to answer the pseudo-legal arguments raised by the appeal in anything but a summary way.

Ground 12 asserts that the appellant's belief is that the incorrect legal identity was charged potentially in the incorrect jurisdiction. This is more pseudo-legal gibberish based upon the fiction of separate legal identities.

None of the grounds of appeal has a reasonable prospect of succeeding. If any of them otherwise had any merit, no substantial miscarriage of justice has occurred. The appellant does not allege that the prosecution failed to prove any element of the offence except for the assertion that the charge was brought against the wrong legal person or against the appellant in the wrong capacity. As I have said, that is nonsense."

https://freemandelusion.com/wp-content/uploads/2019/05/smadu-v-stone-2016-wasc-80.pdf

***Deputy Commissioner of Taxation v Casley [2017] WASC 161*:**

> *"Each of the defendants advances the pseudo legal straw man argument. The straw man argument has no legal merit or substance. In an affidavit filed by Leonard Casley he swore:*
>
> *"I am the Real Man, Leonard George Casley born at Kalgoorlie Western Australia on 27 August 1925. Upon the registration of my birth certificate, it is claimed that I became a ward of the state. Owing allegiance to the Monarch, under contract and the Monarch undertakes the protection of myself and my property. I am Leonard George Casley, a real man not a straw man. The Straw Man is a fictitious body, which does not exist, but is that which is controlled by the State, and the State's judiciary."*
>
> *An affidavit filed by Arthur Casley contains similar statements. This appears to be a variant of the strange pseudo-legal straw man theory. The theory holds that an individual has two personas, one of himself as a real flesh and blood human being and the other, a separate legal personality who is the straw man. The idea is that an individual's debts, liabilities, taxes and legal responsibilities belong to the straw man rather than the physical individual who incurred those obligations, conveniently allowing one to escape their debts and responsibilities. It is all gobbledygook."*

https://freemandelusion.com/wp-content/uploads/2019/05/deputy-commissioner-of-taxation-v-casley-2017-wasc-161.pdf

Conroy v Deputy Commissioner of Taxation [2005] QSC:

> *"There is a claim which I have had difficulty understanding, that because the respondent has issued a notice in the name Bevan Conroy in capital letters and whereas he has now (although there is no evidence in support of this) adopted the name Bevan-John: Conroy the proceedings are in some way invalid, it being said that his name has been capitalised and the notice refers to a body corporate or person. I reject this argument as it seems to me entirely without any basis."*

https://freemandelusion.com/wp-content/uploads/2019/06/conroy-v-deputy-commissioner-of-taxation-2005-qsc-206-.pdf

Adelaide City Council v Lepse [2016] SASC 66:

> *"The applicant appears to be one of a group of individuals without legal training who continue to espouse theories of constitutional law that have no basis. Courts in this State and throughout Australia, indeed the common law world, have steadfastly so ruled. As a result of his continuing pre-occupation with discredited legal theory the applicant has sworn in his affidavit such nonsense as:*
>
> *1. "I am a Man, a flesh and blood living soul created under God also known as a 'Human Being'. I am not a corporate entity and I do not consent to my body being transferred to a corporate entity for the purposes of commerce including commercial transactions in any court."*

2. "My name is Man or Robert Paul as per the 'Birth Certificate' extracted from my live birth record on 6 June 1961 annexed to this affidavit and marked RP 01 and of which Birth Certificate signifies the Cestui Que trust created by the State of Queensland without my consent."

After reproducing more of the same, his Honour concluded:

"It is not necessary to comment on these assertions. Mere quotation of these paragraphs is sufficient to explain why this action is vexatious and is dismissed."

https://freemandelusion.com/wp-content/uploads/2019/05/adelaide-city-council-v-lepse-2016-sasc-66.pdf

Corika v Throssell [2017] WASCA 209:

(at 6) *"The Appellant which is a Real Living Human Beings and not a Legal Fictitious 'Persons' 'treated at law as artificial' and – or fictitious persons, was brought before a 'CORAM' in the Magistrate Court of Western Australia by the Prosecutor the Shire of Mundaring, by a 'Person' a (Fictitious Person) issuing the Prosecution notice, that Person 'JONATHAN THROSSELL' the fictitious person, the Person in capital letters who's Official Title Chief Executive Officer and 'employee' of the Shire of Mundaring and witnessed by a Justice of the Peace, a Person and – or a private individual has no Lawful Jurisdiction under the Crown to sign a Prosecution Notice when the Person and – or the private individual is and 'Employee' of a Trading Corporation under the Fair Work Act 2009 and under Section 51 (xx) of the Commonwealth of Australia Constitution Act 1901.*

https://freemandelusion.com/wp-content/uploads/2019/05/corika-v-throssell-2017-wasca-209.pdf

K Sheridan v Colin Biggers & Paisley [2019] NSWSC 528:

"The reference to "i, a man" in the Plaintiff's Statement of Claim and other documents which he seeks to file, to which I refer below, appears to have something in common origin with the references to a "flesh and blood man", noted to have many variations, in Meads v Meads [2012] ABQB 571, where the Court of Queen's Bench of Alberta, Canada, undertook a comprehensive review of the characteristic features of what it described as "organized pseudolegal commercial argument". That decision has in turn been noted by the High Court of New Zealand in Meenken v Family Court at Masterton [2017] NZHC 2103 and in decisions of the Federal Circuit Court of Australia, including Ennis v Credit Union Australia [2016] FCCA 1705, Deputy Commissioner of Taxation v Woods [2018] FCCA 1815 and Lion Finance Pty Ltd v Johnston [2018] FCCA 2745, with reference to a class of arguments deployed by self-represented creditors in a different context, in order to seek to avoid payment of debts: see also T Bloy, "Pseudolaw and Debt Enforcement" [2013] NZLJ 47."

https://freemandelusion.com/wp-content/uploads/2020/05/k-sheridan-v-colin-biggers-paisley-2019-nswsc-528.pdf

Deputy Commissioner Of Taxation v Cutts (No.4) [2019] FCCA 2866:

(From 126) "Throughout the proceedings Mr Cutts appeared to adopt a form of legal argument referred to as 'strawman theory' or 'Organised Pseudo-legal Commercial Argument.' A comprehensive and exhaustive description of this concept can be found in Meads v Meads (2012) ABQB 571 ("Meads"), a 188 page judgment of Rooke ACJ, whereby the many types of arguments of pseudo-legal litigants was traversed. In Casley at [15] per Le Miere J the strawman theory was succinctly described as follows:

"The theory holds that an individual has two personas, one of himself as a real flesh and blood human being and the other, a separate legal personality who is the straw man. The idea is that an individual's debts, liabilities, taxes and legal responsibilities belong to the straw man rather than the physical individual who incurred those obligations, conveniently allowing one to escape their debts and responsibilities."

The Court observes each of Mr Cutts' affidavits filed in these proceedings, and his conduct at the hearings of this matter, carries notable characteristics of the "strawman theory" arguments."

https://freemandelusion.com/wp-content/uploads/2020/06/deputy-commissioner-of-taxation-v-cutts-no.4-2019-fcca-2866.pdf

Rossiter v Adelaide City Council [2020] SASC 61:

"Various terms have been used to describe "pseudolegal arguments".such as those advocated by the appellant in this case. (Adelaide City Council v Lepse [2016] SASC 66, [57] (Peek J). They have without reservation been rejected as involving both legal nonsense and an unnecessary waste of scarce public and judicial resources.

These include the "blood and bone" defence: in Meads v Meads, 2012 ABQB 571, [243] (Rooke ACJ) referred to a defendant insisting that "the court state whether it is addressing the litigant in one of two roles, such as whether this is to a "legal person" or a "corporation", vs. a "flesh and blood person", or a "natural person"". So too here. (Kosteska v Magistrate Manthey [2013] QCA 105, [17] (Martin J); Re Magistrate M M Flynn; Ex parte McJannett [2013] WASC 372.)

https://freemandelusion.com/wp-content/uploads/2020/05/rossiter-v-adelaide-city-council-2020-sasc-61.pdf

Bendigo and Adelaide Bank Limited v Grahame [2020] VSC 86 *(From 71):*

"At the outset, Ms Grahame seeks to draw a legal distinction between herself (whom she refers to as the living person, 'Heather Jean Grahame') on the one hand, and the named defendant in the proceeding (whom she refers to as the corporate entity 'HEATHER JEAN GRAHAME' (in capital letters)) on the other.

Ms Grahame refers to the two entities and elaborates on their respective status. She explains that the first entity, 'HEATHER JEAN GRAHAME' (all in capital letters), 'is a corporate entity that was created by the federal government at around the time of [her] birth.' The second entity is the living person, 'Heather Jean Grahame', whom she contends is the secured creditor and controller of the corporate entity 'HEATHER JEAN GRAHAME'.

Ms Grahame was unable to refer the Court to any decided cases, or propositions of law, that support her contention that there is in existence a corporate entity 'HEATHER JEAN GRAHAME', that is separate and distinct from her – the living person Heather Jean Grahame – that is the defendant as listed on the Bank's statement of claim, Loan Agreement, Mortgage and default notice. The position is that Ms Grahame is actively defending the present case. She acknowledges that she is the 'Customer' of the plaintiff and that she did sign the Loan Agreement and agreed to provide security, and that she received the default notice from the plaintiff.

In the circumstances, I am not satisfied that Ms Grahame has demonstrated any basis upon which the Court could reasonably find that the person listed on the Bank's statement of claim, Loan Agreement, Mortgage and default notice is other than the named defendant, Heather Jean Grahame, whether spelt in capital letters or a mixture of capital and lower case letters. In my view, her contention that there is relevantly in existence a corporate entity that is separate and distinct from her is untenable."

https://freemandelusion.com/wp-content/uploads/2020/06/bendigo-and-adelaide-bank-limited-v-grahame-2020-vsc-86.pdf

R v Sweet [2021] QDC 216:

"The essence of the applicant's argument is that he possesses two distinct personas. One the 'real live flesh and blood man' and the other a 'straw man' or 'dummy corporation'. The former is designated in the applicant's material as 'Kym-Anthony:' and the latter as KYM ANTHONY SWEET. According to the applicant's argument, the real person is not subject to the laws of Queensland, and the charges should be dismissed. Merely setting out the argument is sufficient to show it is nonsense. It is apparent that the applicant is one of a group of people who for some years have attempted, universally without success, to avoid the operation of laws with which they do not wish to comply.

The term 'organised pseudo legal commercial argument' litigants (OPCA) was coined by Rooke ACJ in Meads v Meads to describe adherents to these discredited theories. The ideas promoted by OPCA litigants emerged, of course, in the United States. They have since spread to most parts of the common law world, including Queensland. The 'straw man' argument has its origins in the premise that human beings do not inherently possess a legal personality. Instead, some separate legal identity is imposed upon them (through birth certificates and the like) by the government. This process creates a kind of contract, but one that can be repudiated by the human being, usually through a declaration or affidavit (in this case the applicant's 'Affidavit of the Truth') and 'surrendering' the birth certificate. The purported effect of such repudiation is to render the human being immune to the laws of the relevant polity. The processes adopted by OPCA litigants to achieve this repudiation can be arcane. Some of the language used, and documents relied upon, resemble spells or incantations.

In Australia, a human being is also a legal person. An adult human being with full capacity can sue and be sued. They are subject to the criminal laws of this state. These fundamental propositions cannot be doubted. It is true that a natural person can create a legal entity that has a distinct legal personality – such entities are commonly called companies – but this is an adjunct to, rather than a replacement for, the legal personality of the human being. One way of

illustrating why this must be so is to consider the consequences of the ability to 'renounce' legal personhood. The law has at times recognised categories of person who did not possess a legal personality. These categories included, before 1833, slaves, who were regarded as chattel property, could be bought and sold, and who had no rights under the law. At times women and children were thought not to possess a legal personality. Blackstone regarded children as the property of their fathers, and women have been regarded as chattels without a distinct legal personality. The fates of people who were in these categories were rarely pleasant. If the applicant were somehow able to renounce his legal personality, he would become a human being without rights. He would be mere property. Such an outcome would be antithetical to our society and system of laws.

Criminal liability attaches to a person where they 'do the act or one or more acts in a series which constitutes or constitute the offence'. On any view of the present allegations, that could not be the 'straw man' or 'dummy corporation' mentioned by the applicant. The applicant's own writings describe this purported alternate persona as 'an artificial person', a 'legal entity', 'an artificial legal person' and a 'legal fiction'. Even if it existed in law, it is not capable of doing the act or acts that attract criminal liability. Of the two entities claimed by the applicant to exist – the applicant as 'a real live flesh and blood man' and the 'straw man' – the only one who could have done the acts that constitute the offences is the applicant, constituted in the corporeal form of the person who appeared in court to make this application. That is the person who was charged by the police, committed to stand trial by a Magistrate and against whom the present indictment was presented. That person is subject to the criminal law of this State and may be found to be criminally liable for his own acts. Even if the applicant possesses a 'legal split-personality', a proposition I reject, it could not alter this reality.

There is no room for doubt or confusion as to who is said to have done the criminal acts and who is to stand trial in relation to the allegations. That is the applicant. His apparent wish to be identified by a name that is different to the name he was assigned at birth is of no moment at all. However he is known, and no matter how odd the punctuation, he remains the same person – the one alleged to have committed the offences charged in the indictment. While the so called 'straw man' argument may properly be described as nonsense or gobbledygook, it is in any event of no assistance to the applicant in present circumstances. It is to my mind clear that under the criminal law of Queensland the applicant's claim to possess or be associated with some separate legal entity is entirely irrelevant."

https://freemandelusion.com/wp-content/uploads/2022/03/R-v-Sweet-2021-QDC-216.pdf

Read more Strawman cases on this website under the Tag ***Legal Personality/ The Strawman***

Everything is a Contract

"If man were to live in a state of nature, unconnected with other individuals, there would be no occasion for any other laws, than the law of nature, and the law of God. Neither could any other law possibly exist: for a law always supposes some superior who is to make it; and in a state of nature we are all equal, without any other superior but him who is the author of our being. But man was formed for society; and, as is demonstrated by the writers on this subject, is neither capable of living alone, nor indeed has the courage to do it." - **Sir William Blackstone**

The pseudolaw adherent sees a charge as contractual or commercial in nature, and therefore treats it as one would any civil matter, despite the fact it is really a criminal matter. They employ a variety of theatrics with police, attempting to change this to a "correct jurisdiction", but it all inevitably fails in the courts. This OPCA behaviour and mindset exemplifies the "Commercial Argument" part of the moniker chosen by Justice Rooke, because the argument really does perceive everything as contractual.

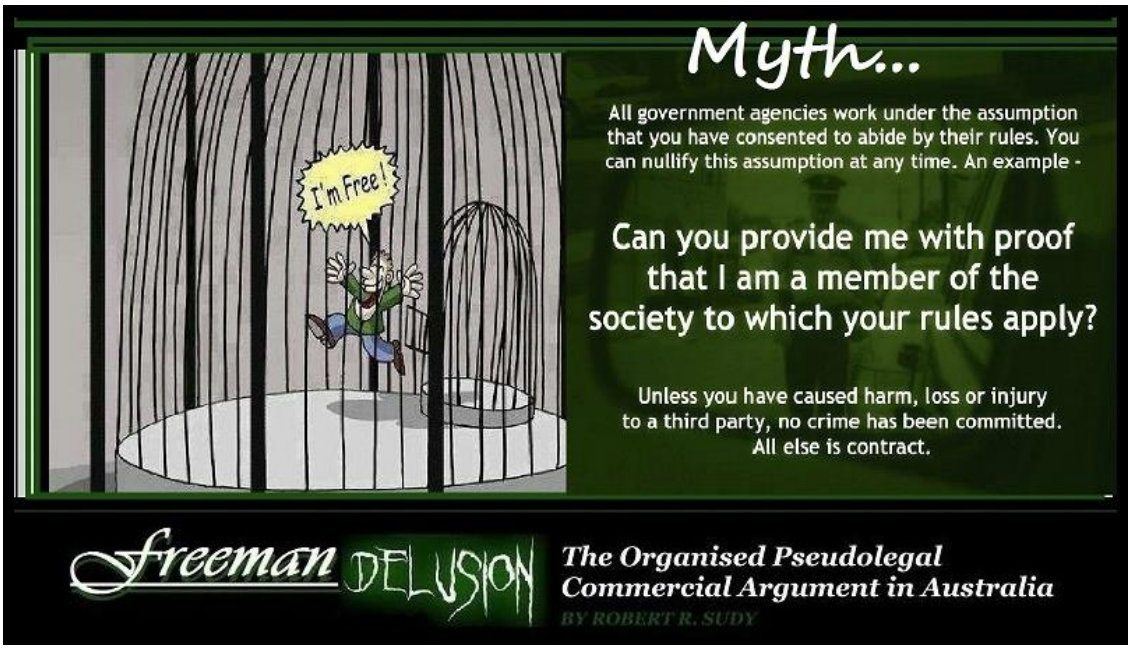
Despite the strength of the theorist's denial, a criminal matter will inevitably be adjudicated in a criminal court, and not a civil court, where matters of contract and commerce are litigated.

In ***Kuipers-Lloyd v Police [2013] SASC 137*** the defendant contended that the magistrate erred in failing to recognise the proceeding as a civil proceeding. It was submitted that the elements said to be necessary to constitute a criminal proceeding, including the identification of a relevant *mens rea* and *corpus delicti*, were absent. The court held that this submission was wholly without merit, and that the proceeding was a criminal proceeding and involved the hearing of a charge that the defendant had committed a summary offence against the Road Traffic Act. Similarly in ***Bradley v Barber [2016] QCA 053***, the applicant submitted that the matter should be regarded as civil not criminal, and the court ruled there was no substance in this complaint.

It was held in ***Woods v Australian Taxation Office & Ors [2016] QDC 198***, that the obligation to obey the laws laid down by parliament is statutory, not contractual. It was noted with concern in ***Adelaide City Council v Lepse [2016] SASC 66*** that:

> *"A particularly difficult category of OPCA litigant are those who adhere to the OPCA concept that all interactions between the state, courts, and individuals are contracts. As is later explained in greater detail, persons who adopt this concept will interpret almost any invitation by the court or compliance with court procedure as the formation of a contract. For example, members of this Court have observed that litigants who apply the OPCA 'everything is a contract' strategy will refuse simple court directions and processes, such as to pass the bar, sit, stand, or acknowledge their identity."*

The respondent in a civil matter doesn't require bail as a defendant often does, and unlike an applicant in a civil case, the prosecution has a statutory obligation to enforce the laws of parliament. There is no need to reach a contractual agreement seeking resolution of differences, or to compensate an injured or aggrieved party.



The meme above is typical of the confused mindset of pseudolaw adherents, who have trouble understanding basic concepts like jurisdiction, statutory obligation, and even national sovereignty. An interesting assertion, but not one carried in law. Collective consent is determined at the ballot in every democratic system, individual consent is not a constitutional provision, nor ever has been.

With physical presence within the geographical territory of a sovereign nation, along with the rights it affords, comes an obligation to its constitution and its laws. The constitution lays down the legal structure of a nation, assigns its legislative powers, and parliamentary procedures in enacting its laws. The elected representatives are bound to operate within its provisions, and cannot legislate outside of the respective legislative powers. To change this structure would require a referendum under section 128, carried by a double-majority of the population, not the whims of one individual.

The obligation to obey this body of law is statutory, not contractual. Using an RSL, sports or social club as an example, one can only enter and remain in the club if they are a member, and must abide by the rules of the club while they are inside it. If they are a non-member, they aren't even allowed inside unless they can find a member to vouch for their compliance with the rules, and sign them in. THE RULES apply to everyone within the territory, (or club premises) whether they're a member or not. The obligation to obey this body of law is statutory, not contractual.

Pseudolaw adherents generally believe this supposed "contract" originates in a birth certificate, apparently by ones legal personality. The registration of a birth is not a contract, as covered in a previous article "***Meet your Strawman***". From *UK Births Deaths and Marriages*:

> *"The registration of a birth does not involve a "contract", and such registration does not "contractually bind the individual to your society". A registration is a simple record that an event has taken place (ie a birth), and as such it is not possible to "de register". As indicated, there is no contract to void or renegotiate."*

The phrase *"law of the land"* in defined in West's Encyclopedia of American Law (edition 2) as:

> *"The designation of general public laws that are equally binding on all members of the community."*

As pseudolaw adherents believe that it is through this "contact" that authorities have jurisdiction, and they cannot have that jurisdiction without that contract, it follows that the effect of this supposed contract would necessarily mean different criminal sanctions applying to different persons for the same conduct. This is contrary to equality before the law, one of the most fundamental cornerstones of the rule of law. As stated by the High Court in ***Walker v New South Wales [1994] HCA 64*** (at 5):

> *"The proposition must be rejected. It is a basic principle that all people should stand equal before the law. A construction which results in different criminal sanctions applying to different persons for the same conduct offends that basic principle."*

As also held in *Walker*, jurisdiction comes from being physically present within the geographical territory of a sovereign state, which has plenary power to make laws that apply to every subject matter and person inside their territory. As stated:

> *"The rule extends not only to all persons ordinarily resident within the country, but also to foreigners temporarily visiting (Re Sawers; ex parte Blain (1879) 12 Ch D 522 at 526; Gold Star Publications Ltd. v. Director of Public Prosecutions (1981) 1 WLR 732 at 734). And just as all persons in the country enjoy the benefits of domestic laws from which they are not expressly excluded, so also must they accept the burdens those laws impose (Bennion, op. cit. at 260)."*

This has been a principle of law that has existed as far back as 1690, when John Locke wrote "***Two Treatises of Government***" which became the basis for the US notion of the consent of the governed. He stated in Chapter VIII; Sections 119 – 120:

> *"...that every man, that hath any possessions, or enjoyment, of any part of the dominions of any government, cloth thereby give his tacit consent, and is as far forth obliged to obedience to the*

> *laws of that government, during such enjoyment, as any one under it; whether this his possession be of land, to him and his heirs for ever, or a lodging only for a week; or whether it be barely travelling freely on the highway; and in effect, it reaches as far as the very being of any one within the territories of that government."*

It was a point recognised in Vattel's "***Law of Nations***" in 1760, which became the basis of international law, regarding the sovereignty of a nation state. §1, and in §2 is regarding the authority of the body politic over the members, and that by association each citizen subjects himself to the authority of the entire body, and that the authority of all over each member, therefore, essentially belongs to the body politic, or state.

> *§ 1. Of the state, and of sovereignty: A nation or a state is, as has been said at the beginning of this work, a body politic, or a society of men united together for the purpose of promoting their mutual safety and advantage by their combined strength. From the very design that induces a number of men to form a society which has its common interests, and which is to act in concert, it is necessary that there should be established a Public Authority, to order and direct what is to be done by each in relation to the end of the association. This political authority is the Sovereignty; and he or they who are invested with it are the Sovereign.*
>
> *§ 2. Authority of the body politic over the members: It is evident, that, by the very act of the civil or political association, each citizen subjects himself to the authority of the entire body, in every thing that relates to the common welfare. The authority of all over each member, therefore, essentially belongs to the body politic, or state; but the exercise of that authority may be placed in different hands, according as the society may have ordained."*

"***Commentaries on the Law of England***" written around the same time by Sir William Blackstone, who considered by many scholars to be the father of the common law, also spoke of the principle of the supremacy of a parliament as the highest law-making body in England: *"The law of the land depends not upon the arbitrary will of any judge; but is permanent, fixed, and unchangeable, unless by authority of parliament."*

Albert Dicey in his classic work "***An Introduction to the Study of the Law of the Constitution***" *(1885)* wrote of the twin pillars of the British constitution, the principle of Parliamentary sovereignty and the rule of law. The former means that Parliament is the supreme law-making body, and *"…no person or body is recognized by the law of England as having a right to override or set aside the legislation of parliament."*

The principle of parliamentary supremacy was inherited in Australia as part of the Westminster system, (See ***Kable v DPP (NSW) [1996] HCA 24*** (Dawson J. at 11-12), as with the principle of Responsible Government, a principle found to be explicit in the Constitution.

Pseudolaw adherents maintain that they can hold a statutory authority liable in a civil case, as a "corporation", for enforcing laws, because it breaches the alleged "contract" they have foisted. They do not comprehend, but refuse to concede to the hard realities of jurisdiction. The obligations are statutory, not contractual.

Corporations Act 2001 - Section 5E(1)

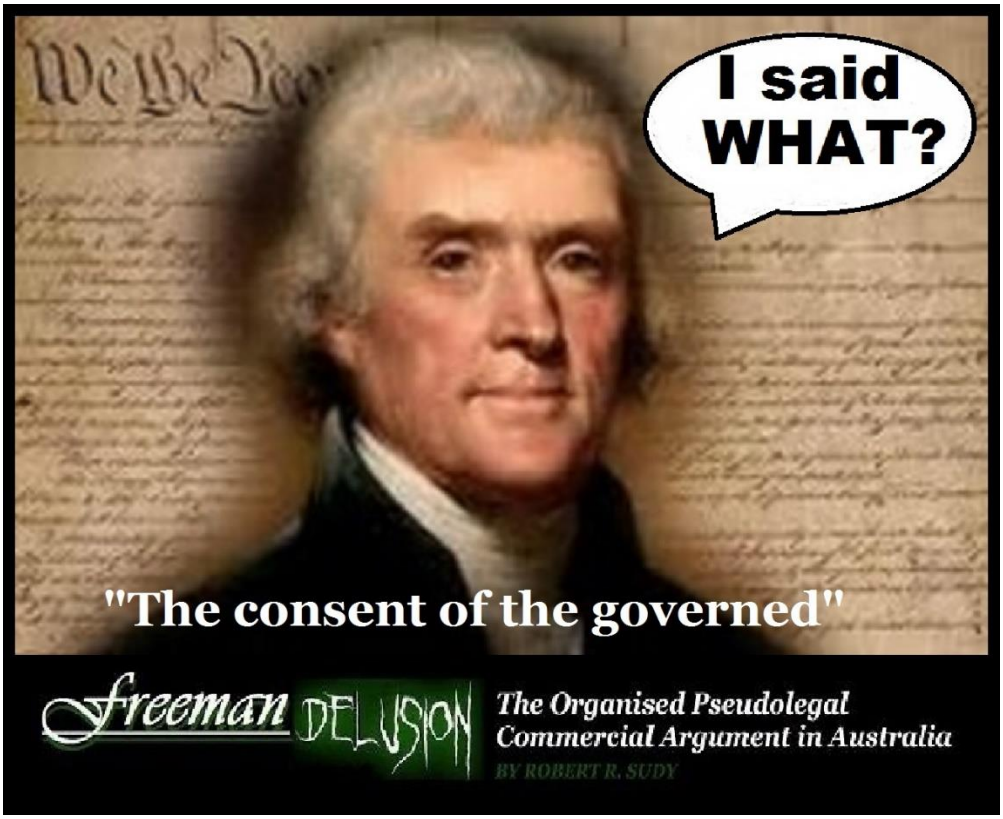
"The Corporations legislation is not intended to exclude or limit the concurrent operation of any law of a State or Territory."

Corporations Act 2001 - Section 57A(2)

"Neither of the following is a corporation:

- *(a) an exempt public authority;*
- *(b) a corporation sole.*
- *"exempt public authority" means a body corporate that is incorporated within Australia or an external Territory and is: a public authority; or an instrumentality or agency of the Crown in right of the Commonwealth, in right of a State or in right of a Territory."*

The Consent of the Governed



> *"We hold these truths to be self-evident, that all men are created equal, that they are endowed by their Creator with certain unalienable Rights, that among these are Life, Liberty and the pursuit of Happiness. That to secure these rights, Governments are instituted among Men, deriving their just Powers from the Consent of the Governed."*
>
> - *Declaration of Independence,* United States of America, 1776.

The historic political phrase ***"The consent of the governed"*** used in the U.S. *Declaration of Independence* is completely misunderstood by pseudolaw adherents. They theorize that this phrase implies a "human" or "living man" must give INDIVIDUAL CONSENT for legislation to be enforceable.

With the rise of democracy in it's infancy, this element of U.S. political theory, *"consent of the governed"* has always been understood as the expressed *"will of the people"* to be gained at the ballot, by rule of majority, not individually at random. The "governed" are a "collective". The "consent" is therefore "collective consent"

As long as a government is elected by the people, according to constitutional guidelines, they have legitimacy in governance. They have what theorists know as *"the consent of the governed"*.

Pseudolaw adherents seem to always try to apply principles of courtroom law (civil contracts etc) to legal philosophy, in this case arguments in relation to consent to be governed, but for people to be governed

subject to the country's laws, including statute law, does not require their signature on a piece of paper. I completely understand why some people would say: *"Well, I didn't consent to this law; so why should I be governed by it?'* But consent is not required in relation to each and every individual law. Consent is only required insofar as the government needing general consent to its rule so that it is considered legitimate. If everyone rose up against the governments rule, it would not be considered legitimate and general consent would essentially be withdrawn. This is not something written down in the books; it is not a matter of black-letter law. This is quite simply the practical reality of our situation.

The term "sovereignty" is also misunderstood by theorists, in that, politically, it likewise doesn't exist on an individual level. In terms on the constitution, the sovereign is the Australian people, as a collective. To make it clear, it is not you individually as an Australian that is sovereign, the collective is sovereign. The individual is never sovereign, that concept ended painfully, beginning with the Magna Carta over 800 years ago. Sovereignty has nothing to do with monarchy, or even the original inhabitants of Australia. It represents legitimate rule, as opposed to actual power. In democratic countries like Australia, "*sovereignty*" is connected to the rule of the people, thus we can talk about the sovereignty of the people. As such, it also represents democratic legitimacy, and the right to govern, and includes the concept of national sovereignty.

The United States of America was the first modern state formed around the principle of "***The consent of the governed***". The term implies that the people of a country or territory have the right of self-rule and must consent, either in a direct referendum or through elected representatives, to the establishment of their own government. In most modern cases, the form of the state is a republic, or rule by voting citizens within an agreed-upon constitutional and legal framework. But some monarchies also operate with the consent of the governed, as in the United Kingdom, where over time the monarch has given up most political and administrative functions to elected officials and the government is formed through regular elections.

An original consent of the governed — the adoption of a new constitution or the formation of a new state — is usually achieved through direct democracy such as a referendum or plebiscite. But it may also be achieved through elected representative institutions, such as an existing legislature or a special constitutional assembly. In some cases, the establishment of a new governmental system requires a "supermajority," from three-fifths to three-quarters, to convey overwhelming popular assent, but often a simple majority suffices. (For example, the U.S. Constitution required the approval of ratifying conventions in at least nine of the thirteen states for it to take effect. An amendment to the constitution must be passed by three-quarters of the states either by a majority vote of their state legislatures or in ratifying state conventions. Yet, many countries have used simple popular majorities in national referenda to establish both national and supranational structures. What remains fixed is the principle that the people are sovereign and must provide their fundamental consent to be governed.

The most common form of democracy is a parliamentary system, in which the executive branch is controlled by the political party or coalition of political parties that wins a majority of seats in parliament and is able to form a government. Unlike in the American presidential system, parliamentary systems have few constitutional checks and balances between the executive and legislative branches. The system relies heavily on the oversight of the opposition party or parties in parliament. Once a form of democratic government is established, elections are the main vehicle for renewing the consent of the governed. Each election is an opportunity for the people to change their leaders and the policies of the state. When a particular government loses the people's confidence, they have the right to replace it. The

legislature may pass laws to reform the system within the bounds of the constitution; if laws are insufficient, the people and their representatives can choose to modify or replace the constitution itself.

Parliamentary systems provide a more direct consent of the governed through elections, whether in "first past the post" systems like the United Kingdom (where seats in parliament are won by the person with the most votes, whether or not it is a majority) or in proportional representation or mixed systems (where most seats are determined proportionally according to the national vote by party list). Oddly, the United States of America, the world's oldest continuous democracy, does not offer direct but indirect election for its national office through an Electoral College. While the Electoral College vote usually has coincided with the national vote, in 2016, for the second time in 16 years, the national vote winner (by 2.85 million) was denied the office of president in favor of the winner of the electoral college vote, which was achieved by several narrowly won victories in key states."

https://freemandelusion.com/wp-content/uploads/2018/06/the-consent-of-the-governed_-essential-principles-_-democracy-web.pdf

https://freemandelusion.com/wp-content/uploads/2018/06/consent-of-the-governed-john-locke-thomas-jefferson-_-walker-news-desk.pdf

More interesting references and definitions ***HERE:***

This is from the UK Government, defining what ***"Policing by consent"*** means:

> *"It should be noted that it refers to the power of the police coming from the common consent of the public, as opposed to the power of the state. It does not mean the consent of an individual. No individual can chose to withdraw his or her consent from the police, or from a law."*

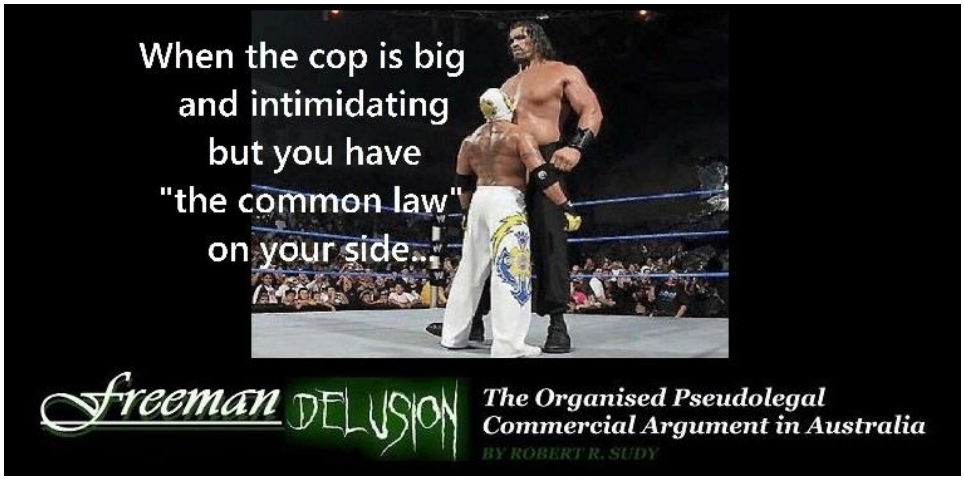
When saying 'policing by consent', the Home Secretary was referring to a long standing philosophy of British policing, known as the Robert Peel's 9 Principles of Policing. However, there is no evidence of any link to Robert Peel and it was likely devised by the first Commissioners of Police of the Metropolis (Charles Rowan and Richard Mayne). The principles which were set out in the 'General Instructions' that were issued to every new police officer from 1829 were:

1. To prevent crime and disorder, as an alternative to their repression by military force and severity of legal punishment.
2. To recognise always that the power of the police to fulfil their functions and duties is dependent on public approval of their existence, actions and behaviour and on their ability to secure and maintain public respect.
3. To recognise always that to secure and maintain the respect and approval of the public means also the securing of the willing co-operation of the public in the task of securing observance of laws.
4. To recognise always that the extent to which the co-operation of the public can be secured diminishes proportionately the necessity of the use of physical force and compulsion for achieving police objectives.
5. To seek and preserve public favour, not by pandering to public opinion; but by constantly demonstrating absolutely impartial service to law, in complete independence of policy, and without regard to the justice or injustice of the substance of individual laws, by ready offering of individual service and friendship to all members of the public without regard to their wealth or social standing, by ready exercise of courtesy and friendly good humour; and by ready offering of individual sacrifice in protecting and preserving life.
6. To use physical force only when the exercise of persuasion, advice and warning is found to be insufficient to obtain public co-operation to an extent necessary to secure observance of law or to restore order, and to use only the minimum degree of physical force which is necessary on any particular occasion for achieving a police objective.
7. To maintain at all times a relationship with the public that gives reality to the historic tradition that the police are the public and that the public are the police, the police being only members of the public who are paid to give full time attention to duties which are incumbent on every citizen in the interests of community welfare and existence.
8. To recognise always the need for strict adherence to police-executive functions, and to refrain from even seeming to usurp the powers of the judiciary of avenging individuals or the State, and of authoritatively judging guilt and punishing the guilty.
9. To recognise always that the test of police efficiency is the absence of crime and disorder, and not the visible evidence of police action in dealing with them.

Essentially, as explained by the notable police historian Charles Reith in his 'New Study of Police History 'in 1956, it was a philosophy of policing 'unique in history and throughout the world because it derived not from fear but almost exclusively from public co-operation with the police, induced by them designedly by behaviour which secures and maintains for them the approval, respect and affection of the public'.

It should be noted that it refers to the power of the police coming from the common consent of the public, as opposed to the power of the state. It does not mean the consent of an individual. No individual can chose to withdraw his or her consent from the police, or from a law.

The legal and lawful conundrum



Pseudolaw adherents insist that the term *"legal"* describes legislation, (though it is something that is unenforceable except by individual ***"consent"*** via contract, otherwise known as "joinder") whereas *"lawful"* denotes the "real law", which the theorist holds as *"the common law"*.

The theory is that *"lawful"* protects one's fundamental rights whereas *"legal"* attempts to "contract away" those fundamental rights through "joinder". This simplistic interpretation causes much confusion in understanding charges, and makes trying to stay out of trouble very difficult in general.

> *"Yeah it's legal alright, but it's not lawful..."*

Having understood the information in other chapters, regarding ***the supremacy of parliament***, "kings law" or legislation, and the ***interpretary role of the courts***, it is clear the particular *"common law"* pseudolaw adherents hold sacred, does not even exist, and so it follows, neither does this associated explanation of *"lawful"* and *"legal".*

By definition, the term *"lawful"* describes conduct that is permitted by law without sanction, and *"legal'* describes the process of study and reasoning. *"Unlawful"* means something that is not permitted by the court (E.g. an assault of a person without a lawful reason is unlawful) and *"illegal"* means something that cannot be supported by the courts (E.g. an illegal contract)

The existence of a court presupposes the rule of law and therefore precludes the court from entertaining any proposition incompatible with the rule of law. The existence of a constitution presupposes the rule of law and therefore renders unconstitutional any attempt to subvert the rule of law. Parliament cannot suspend the rule of law, because the legislative power is limited to the making of law, which by definition must be consistent with the rule of law. We are under a "government of laws", not a "government of men".

The constitution is the highest form of law in Australia, and all rights and duties that exist are provisions of, and within the limitations of, that body of law. Therefore the term lawful is more accurately described as what is *"constitutional"*. If something is found to be *"unconstitutional"* by the High Court, it is deemed

to be *"unlawful"*. If the legislation in question is created within constitutional guidelines, by legislative powers granted by the constitution, it cannot be *"unlawful"*.

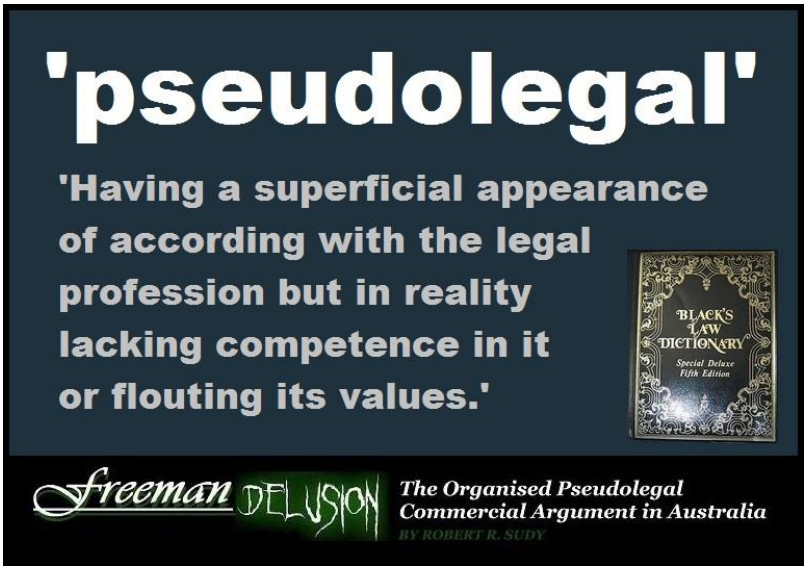
As stated in ***Durham Holdings Pty Ltd v New South Wales (2001) HCA 7***:

> *"...the duty [of a court] of obedience to a law made by a Parliament of a State derives from the observance of parliamentary procedures and the conformity of the resulting law with the State and federal Constitutions. It does not rest upon judicial pronouncements to accord, or withhold, recognition of the law in question by reference to the judge's own notions of fundamental rights, apart from those constitutionally established."*
>
> *"...subject to any constitutional invalidity, the judge has no authority to ignore or frustrate the commands of the lawmaker. To do so would be to abuse judicial power, not to exercise it."*

The "Australian legal system" isn't called the "Australian lawful system", because to call it such is basically just crap use of the English language. It's a distortion of terms based on a huge misconception regarding the hierarchy of sources of law, as explored in the chapter "***The Supremacy of Parliament***".

So if you claim a certain law is "unlawful", do you have a constitutional argument?

Interpreting Legalese



Unusually, non-American pseudolaw adherents revere the U.S.-centric Black's Law Dictionary, obsessively mining it for obscure Latin phrases scarcely used in modern courtrooms. Although very popular in pseudolaw circles, *"Blacks Law Dictionary"* cannot be used to interpret the meanings of Australian legal terms, and is therefore invalid in any Australian court.

Law dictionaries are not often used by a court, they are a general reference tool, and not applied to the interpretation of terms in legislation. There are clear rules and procedure for the interpretation of terms in legislation. This is divided into what is known as intrinsic evidence and extrinsic evidence.

Intrinsic evidence

"Intrinsic evidence" is information contained WITHIN the Act itself, namely the definition section or glossary of the Act. This is relied upon before ALL ELSE whenever a court finds that to apply the ordinary meaning of words in a statute would lead to an absurdity or an ambiguity.

Extrinsic evidence

"Extrinsic evidence" is information which is obtained from OUTSIDE of the Act itself, an example would be a publication called *Hansard*. This publication, which does not form part of the Act itself, is a record of debates in parliament concerning that legislation.

The Interpretation Acts allow the courts to refer to these parliamentary records whenever a court believes that it is necessary to find out the intention of parliament in enacting a statue. However, these Acts only allow the courts to use parliamentary records when all else has failed.

Another important aspect of the *Interpretation Acts* is that they create standard meanings for certain words. For example, a reference to one gender includes the other, so that whenever the work 'he' is used in a section of a statute, it includes the feminine gender (ie 'she'), unless the section quite clearly

indicates that it is meant to apply only to males. Similarly, the singular of a word includes the plural, unless the contrary is clearly indicated in the language of the statute. Modern forms of drafting now generally do away with the use of the masculine gender to denote both genders, so you will usually find examples of the masculine 'he' becoming increasingly rare these days.

The ***Acts Interpretation Act (1901)*** (Cth) gives courts some assistance in interpreting federal Acts. For example, Section 15AA of the Act directs courts to prefer an interpretation that gives effect to the purpose and policy of the act. This has formalised the purpose approach mentioned above, as the preferable approach to the interpretation of statutes.

https://freemandelusion.com/wp-content/uploads/2018/07/unit-1-the-australian-legal-system_-topic-6-role-of-the-courts-reading.pdf

A matter of substance, not form.

Following the constitutional technique which has been approved in the ***Engineers Case (1920) 28 CLR 129***, PLAIN ENGLISH should be used. It is also important to use connotation rather than denotation (See Engineers at 142-3 and 151; and also see ***Grain Pool of Western Australia v Commonwealth (2000) 202 CLR 479*** at 493). I believe it was Galdron J who made the very good point that the Constitution should be read as if it is being read for the very first time, and to apply a modern meaning.

Homo vocabulum est naturae; persona juris civilis. "Man is a term of nature, person of the civil law." The law is not concerned with matters of nature, therefore it only recognizes the person, and not the man. As constitutional scholar Sir Ivor Jennings once stated... *"If Parliament enacted that all men should be women, they would be women so far as the law is concerned".*

..a 'man' is not a question of law, but of fact

(i) The question whether a person is a woman or man is not a question of law but of fact. It cannot be asserted that the arbitrary selection of satisfaction as to the existence of two factual requirements, viz `core identity' and `sexual reassignment surgery' thereupon necessarily determines as a matter a law the sex of a transsexual.

View stated that it is wrong to say that the question whether a person is a woman or a man is a matter of law because it affects status. `Status' among natural persons arises from a variety of causes. It is a term without precise connotation and judicial decisions throw little light upon its meaning. Its primary characteristic is that of belonging to a particular class of persons upon whom the law confers rights or imposes duties or incapacities.

(ii) A criminal attempt is committed when a person has at all material times a guilty intent to commit a recognised crime and does acts sufficiently proximate to the commission of that crime and not merely preparatory of it. In respect of a charge of assault with intent to commit the crime of rape, whether the victim was a man or a woman or a person who had the physical appearance or the physical attributes of a man or a woman are not relevant to determining whether in the circumstances the crime has been committed: the intent is with respect to a real and not an imaginary crime and the fact that the person assaulted was not a woman with a vagina, if that were the fact, is not to the point. The same is true of the crime of detaining with intent sexually to penetrate.
Corbett v Corbett [1971] P 83; R v Tan [1983] QB 1053, not followed. Britten v Alpogut [1987] VR 929, applied.

[130 VIC 5]
R v Cogley — Court of Criminal Appeal, Vic — 21 Apr 1989 232/88

An example

Is cannabis really a narcotic plant? ***Section 70(1) of the Drugs, Poisons and Controlled Substances Act 1981*** defines "narcotic plant" to mean:

> *“any plant the name of which is specified in column 1 of Part 2 of Schedule Eleven [of the Drugs Act] and includes a cutting of such a plant, whether or not the cutting has roots;"*

This includes cannabis, as well as two types of coca plant and two types of opium poppy. The coca plant is likewise listed as a *narcotic plant* but cocaine is not a narcotic, it is a "non-narcotic central nervous system stimulant" (as found in *US v. Stieren*) but it is only *"defined as a narcotic for penalty and regulatory purposes."*

More broadly defined, you could say it is considered a *"narcotic plant"* if it is *"subject to restriction or illegal"*, which is identical to the second usage of the term in common dictionary definitions.

> Sense of ***"any illegal drug"*** was first recorded as a second usage of the term *"narcotic"* in 1926, nearly 100 years ago.
>
> "2: a drug (as marijuana or LSD) subject to restriction similar to that of addictive narcotics ***whether physiologically addictive and narcotic or not***"

The question of fact (whether or not it is technically a "narcotic") is completely irrelevant, if the classification was only for penalty and regulatory purposes. It was the intention of the parliament that the cultivation of this plant be made illegal, regardless it was at the time, (perhaps wrongly in "fact") included into a group of other plants labelled "narcotics".

Criminal Charge Book, 7.7.2.2.1 – Cultivation of Narcotic Plants (3 December 2012) Judicial College of Victoria:

> *"To summarise, before you can find NOA guilty of cultivation of narcotic plants, the prosecution must prove to you beyond reasonable doubt:*
>
> - *One – that [he/she] intentionally cultivated a plant; and*
> - *Two – that the plant that [he/she] allegedly cultivated was a narcotic plant, in this case [insert name of plant].*
>
> *If you find that either of these elements have not been proved beyond reasonable doubt, then you must find NOA not guilty of cultivation of narcotic plants.*
>
> *However, even if you decide that these elements have been proven, NOA will not be guilty if the defence has proven, on the balance of probabilities, that s/he did not know or suspect, and could not reasonably have been expected to have known or suspected, that the plant s/he was cultivating was a narcotic plant."*

The word "Includes"

Pseudolaw adherents often search for a restrictive meaning in the word "includes", attempting to limit it to a particular stated example. This seems to originate in the Latin maxim *"Expressio unius est exclusio alterius"* meaning *"expression of one thing is the exclusion of another"***.** This can be seen in *Black's Law Dictionary* (6th edition at page 538, and 9th edition at page 831):

> *"Expressio unius est exclusio alterius. A maxim of statutory interpretation meaning that the expression of one thing is the exclusion of another. Burgin v. Forbes, 293 Ky. 456, 169 S.W.2d 321, 325; Newblock v. Bowles, 170 Okl. 487, 40 P.2d 1097, 1100. Mention of one thing implies exclusion of another. When certain persons or things are specified in a law, contract, or will, an intention to exclude all others from its operation may be inferred. Under this maxim, if statute specifies one exception to a general rule or assumes to specify the effects of a certain provision, other exceptions or effects are excluded."*

Pseudolaw adherents use this interpretation widely in every circumstance the term *"includes"* appears in legislation, for example, in ***Van den Hoorn v Ellis [2010] QDC 451*** (at 14, 37, 40):

> *"Additionally, there was the puzzling contention that, before the lower court, the appellant was assumed to be a "corperation [sic]" by the fact of the court accepting the alleged "capitalisation of (his) family name" which so led to him being deemed to be a "corporative fiction of limited liability" when he was "a living/breathing soul … of full liability". ... Since "driver" in the Transport Operations (Road Use Management) Act 1995 is defined as meaning the "person" driving the vehicle (including the "rider" of a vehicle), the appellant is not a person who falls within the Act because, from the same definitions just referred to, a person "includes" a "corporation" and the appellant is not a "corporation". Besides misunderstanding about what "includes" means, it is clear from the context of the definition – and reality – that a corporation could never drive or ride a vehicle. Such an interpretation is therefore absurd, and must be rejected. A similar fate follows from any argument that a "person" is only a fictitious legal entity."*
>
> *"Include" is contended by the appellant, by reference to Black's Law Dictionary (5th ed), to mean to "shut in" or "keep within" and therefore "limiting" the subject to the specified objects: cf (9th ed) at p 831. Hence, the interpretation advanced by the appellant is that "transport" is limited to the transport of goods and that, in turn, means that the only objects that are vehicles are those that transport goods. The argument must fail. First, it is clear that the actual definition of the word "transport" is limited to defining such "in relation to" dangerous "goods". Secondly, both in the definition of "vehicle" and of "transport", "includes" is not intended to be an exhaustive definition: see Statutory Interpretation in Australia (6th ed) (Pearce & Geddes) at [6.56] – [6.59]. The limitation of "vehicle" to being one of transportation must be rejected."*

Another example is with ***Romley Stewart Stover***'s misconception that the definition of "*Australia*" is limited to *"Norfolk Island, the Territory of Christmas Island and the Territory of Cocos (Keeling) Islands"* as Part 2B of the ***Acts Interpretation Act 1901*** (Cth) provides:

> *"Australia means the Commonwealth of Australia and, when used in a geographical sense,* ***includes*** *Norfolk Island, the Territory of Christmas Island and the Territory of Cocos (Keeling) Islands, but does not include any other external Territory."*

This was seen in ***O'Hagan v Commissioner of Taxation [2020] QDC 288*** where Morzone QC, DCJ noted (at 10):

> *"...the appellant has a deep rooted but apparent genuine and firm belief that, amongst other things, the Australian Government and it subordinate bodies and beings are illegitimate, the laws of Australia are confined to Norfolk Island being the only place uninhabited at the time of federation and terra nullius..."*

The distinction between an expansive and exhaustive function:

Epic Energy (Pilbara Pipeline) Pty Ltd v Commissioner of State Revenue [2011] WASCA 228: (from 139):

> *"The word 'include' primarily has an expansive function. Usually, a definition which states that a word includes specified matters reveals a Parliamentary intention to add the meanings given in the definition to the ordinary meaning of the word. Often, the added meaning is not otherwise within the ordinary meaning. The ordinary meaning is amplified to the extent specified. See* ***Sherritt Gordon Mines Ltd v Federal Commissioner of Taxation [1977] VR 342****, (McInerney J. at 353).*
>
> *Sometimes, however, 'includes' has been taken to have an exhaustive function where it appears from the context that the Parliamentary intention was to confine the ordinary meaning of the word to the meaning conveyed by the matters specified in the definition."*

In ***Hook v Rolfe (1986) 7 NSWLR 40***, (at 49-50) Samuels JA said:

> *'Includes' is a word of extension and not of restrictive definition. In* ***R v Hermann (1879) 4 QBD 284*** *(at 288), Lord Coleridge CJ observed: "The words "shall include" are not identical with, or put for "shall mean". The definition does not purport to be complete or exhaustive. By no means does it exclude any interpretation which the sections of the Act would otherwise have, it merely provides that certain specified cases shall be included."*

Hence 'includes' denotes a legislative intention to enlarge the ordinary meaning of the word defined, unless, perhaps, the items included in the definition would fall within it. In that case the definition, though introduced by the word 'includes', might be regarded as exhaustive; ***YZ Finance Co Pty Ltd v Cummings (1964) 109 CLR 395*** and ***R v McN [1963] SR (NSW) 186; 80 WN 608*** are cases in which different results followed the application of Lord Watson's latitudinarian test in ***Dilworth v Commissioner of Stamps [1899] AC 99*** (at 105-106). Dr D C Pearce in his *Statutory Interpretation in Australia*, 2nd ed (1981) at 115 - 118, favours the view that 'includes' should not generally be regarded as introducing an exhaustive definition, and quotes from Lord Selborne LC in ***Robinson v Barton-Eccles Local Board (1883) 8 App Cas 798*** (at 801):

> *"An interpretation clause of this kind [ie one which uses the word "includes"] is not meant to prevent the word from receiving its ordinary, popular, and natural sense whenever that would be properly applicable; but to enable the word as used in the Act, when there is nothing in the context or the subject matter to the contrary, to be applied to some things to which it would not ordinarily be applicable."*

See also ***R v Tkacz [2001] WASCA 391; (2001) 25 WAR 77*** (Malcolm CJ. at 45-58).

BGC Contracting Pty Ltd v Cliffs Asia Pacific Iron Ore Pty Ltd [2019] WASC 248 (from 64):

"The meaning of the word 'including' depends upon the context in which it is used. The word 'including' in a definition can be interpreted to be inclusive but not exhaustive if it is intended to enlarge the ordinary meaning of a word or words."

(See ***Sherritt Gordon Mines Ltd v Federal Commissioner of Taxation [1977] VR 342; (1976) 10 ALR 441*** (McInerney J. at 353). This was applied in ***Hagipantelis v Legal Services Commissioner of New South Wales [2010] NSWCA 79; (2010) 78 NSWLR 82*** (at 20, Spigelman CJ; Allsop P & Handley AJA agreeing):

> *"In any event, s 85(1) goes on to identify "advertising by a barrister or solicitor" as falling within the scope of the regulation making power in s 85(1) by reason of the words "including (without limitation) …" in the chapeau to s 85(1). The word "including" is often used by way of enlargement or, alternatively, by way of clarification. (See Dilworth v Commissioner of Stamp Duties [1899] AC 99 at 105; Sherritt Gordon Mines Ltd v Commissioner of Taxation (Cth) [1977] VR 342 at 353.8.) In my opinion, pars (a)-(d) were inserted to make it clear that advertising fell within the regulatory scheme."*

The word 'including' can also, in some contexts, be interpreted to reduce the ambit of a defined term; that is, to limit a defined term.

In ***YZ Finance Co Pty Ltd v Cummings (1964) 109 CLR 395***, the High Court was called upon to determine whether s 24(2) of the *Money-lenders and Infants Loans Act 1941* (NSW) exhaustively prescribed the ambit of the word 'security' which was defined to include certain transactions which did not list a promissory note among the inclusions. In this context, Kitto J observed (at 6):

> *"I agree in the conclusion that sub-s (2) of s 24 exhaustively prescribes the ambit of the word 'security' for the purposes of the section. It is expressed as a statement of what the word 'security' in the section 'includes'. Unlike the verb 'means', 'includes' has no exclusive force of its own. It indicates that the whole of its object is within its subject, but not that its object is the whole of its subject. Whether its object is the whole of its subject is a question of the true construction of the entire provision in which the word appears. The well-known statement of Lord Watson in **Dilworth v Commissioner of Stamps [1899] AC 99** should not be taken so literally as to reduce the inquiry in a case like the present to an inquiry into the meaning of the word 'includes'. Strictly speaking, that word cannot be equivalent to 'means and includes'. But a provision in which it appears may or may not be enacted as a complete and therefore exclusive statement of what the subject expression includes. A provision which is of that character has the same effect as if 'means' had been the verb instead of 'includes'. The question whether a particular provision is exclusive although 'includes' is the only verb employed is therefore a question of the intention to be gathered from the provision as a whole."*

In ***Credit Suisse AG, Sydney Branch v Springsure Property Holdings Pty Ltd (in liq) [2017] QSC 142*** (at 35), Bond J had regard to the observations made by Kitto J in *YZ Finance Co Pty Ltd*, and pointed out:

*(b)In **Urica Library System BV v Sanderson Computers Pty Ltd [1997] NSWSC 454**, Sheller JA (with whom Mason P and Meagher JA agreed), observed that the word 'including' can serve a number of different functions:*

(i)one is to 'extend the meaning of the word defined beyond its ordinary meaning';

(ii)another is 'not merely to add to the natural significance of the word defined, but to afford an exhaustive explanation of the meanings to be attached to that word in the particular document'; and

(iii)a third might be 'not so much to extend the ordinary meaning of the defined term as to specify as falling within the definition that which might otherwise have been in doubt.

I don't stand under that law!

A popular myth with pseudolaw adherents is the *"stand under"* phobia, when replying to an officer's question: *"do you understand?"* The pseudolaw interpretation is that answering "YES" would create joinder in contract with the officer.

The concept also implies that only if one individually ***"consents"*** to legislation, it then becomes enforceable, so they emphatically and frantically want to make the point that they don't ***"Stand under or consent"*** to any of the little rules concocted by that evil club the ***BAR Society,*** to avoid joinder.

https://freemandelusion.com/understand-mp4/

But "Understand" does not mean to '"stand under"**.** Do you stand under me? Not literally, of course. ***Understanding 'Understand' Ain't Easy.*** You might feel like you're *'under attack'* from the word *'under'* and for good reason. A police officer may not be acting *under* statutory authority, and you'd have to *understand* what provision requires it. How then do you differentiate the *'under'* you know from this impostor?

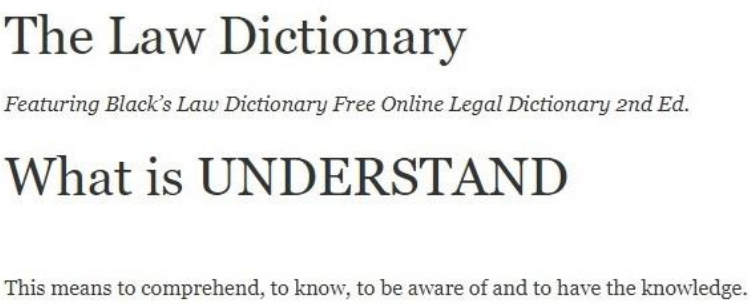
After all, there are numerous *'unders'* that make perfect sense: when you are *underage*, you will most likely *underachieve* in the purchase of alcoholic beverages. You may find yourself *under arrest* when an *undercover* officer finds you;

When you reply that you don't *"stand under that law", y*ou appear to be *under the influence* of a substance, or possibly should be assessed *under* the Mental Health Act. It could be a sign you are *undereducated*; that you *underestimated* the importance of school. But you cannot say in your defence that you *stand under* mathematics, or that you *stand under* the obesity problem in the country. You certainly cannot say you like the way the minister *stands under* the education system.

You simply understand that ‘understand’ means to comprehend, to have knowledge, to see, to realize, to grasp and to perceive.

Law Insider: "***Understand Definition***":

Black's Law Dictionary: "***What is UNDERSTAND? definition of UNDERSTAND***":



Online Etymology Dictionary:

understand (v.)

Old English *understandan* "to comprehend, grasp the idea of, receive from a word or words or from a sign the idea it is intended to convey; to view in a certain way," probably literally "stand in the midst of," from **under** + *standan* "to stand" (see **stand** (v.)).

If this is the meaning, the *under* is not the usual word meaning "beneath," but from Old English *under*, from PIE **nter-* "between, among" (source also of Sanskrit *antar* "among, between," Latin *inter* "between, among," Greek *entera* "intestines;" see **inter-**). Related: *Understood*; **understanding**.

That is the suggestion in Barnhart, but other sources regard the "among, between, before, in the presence of" sense of Old English prefix and preposition *under* as other meanings of the same word. "Among" seems to be the sense in many Old English compounds that resemble *understand*, such as *underniman* "to receive," *undersecan* "examine, investigate, scrutinize" (literally "underseek"), *underðencan* "consider, change one's mind," *underginnan* "to begin."

It also seems to be the sense still in expressions such as *under such circumstances*. Perhaps the ultimate sense is "be close to;" compare Greek *epistamai* "I know how, I know," literally "I stand upon."

Similar formations are found in Old Frisian (*understonda*), Middle Danish (*understande*), while other Germanic languages use compounds meaning "stand before" (German *verstehen*, represented in Old English by *forstanden* "understand," also "oppose, withstand"). For this concept, most Indo-European languages use figurative extensions of compounds that literally mean "put together," or "separate," or "take, grasp" (see **comprehend**).

The range of spellings of *understand* in Middle English (*understont, understounde, unþurstonde, onderstonde, hunderstonde, oundyrston, wonderstande, urdenstonden*, etc.) perhaps reflects early confusion over the elements of the compound. Old English *oferstandan*, Middle English *overstonden*, literally "over-stand" seem to have been used only in literal senses.

By mid-14c. as "to take as meant or implied (though not expressed); imply; infer; assume; take for granted." The intransitive sense of "have the use of the intellectual faculties; be an intelligent and conscious being" also is in late Old English. In Middle English also "reflect, muse, be thoughtful; imagine; be suspicious of; pay attention, take note; strive for; plan, intend; conceive (a child)." Also sometimes literal, "to occupy space at a lower level" (late 14c.) and, figuratively, "to submit." For "to stand under" in a physical sense, Old English had *undergestandan*.

This is a matter of substance, not form. Following the constitutional technique which has been approved in the ***Engineers Case (1920) 28 CLR 129***, plain English should be used. It is also important to use connotation rather than denotation (See Engineers at 142-3 and 151; and also see ***Grain Pool of Western Australia v Commonwealth (2000) 202 CLR 479*** at 493). I believe it was Galdron J who made the very good point that the Constitution should be read as if it is being read for the very first time, and to apply a modern meaning. Under common law an arrest requires a belief an offense had been committed, (Note: 'Belief' is an 'assentation of mind' and different to 'suspicion': See ***George v Rockett Slaveski v State of Victoria [2010] VSC 411***) ...informing the person they are under arrest, *and* why they are under arrest, physical contact and the person *"understanding"* why they are under arrest: (see eg ***George v Rockett (1990) 170 CLR 104***, ***Collins v Wilcock [1984] 1 WLR 1172***, ***DPP v Hamilton [2011] VSC 598***)

Corpus Delicti

How the state can be an injured party

By reference to so-called "victimless crimes" (like speeding through a school zone driving an unregistered vehicle, while unlicenced, sipping rum, and smoking a fat joint) pseudolaw adherents often use the Latin term "c*orpus delicti*" ("body of the crime") referring to the principle that a crime must be proved to have occurred before a person can be convicted of committing that crime.

In ***Kuipers-Lloyd v Police [2013] SASC 137*** the defendant was convicted of a speeding offence via a speed camera and appealed against the conviction. The defendant's notice of appeal advanced several contentions, including compliance with the *National Measurements Act 1960 (Cth).*

> *"The defendant first contended that the Magistrate erred in failing to recognise the proceeding as a civil proceeding. It was submitted that the elements said to be necessary to constitute a criminal proceeding, including the identification of a relevant mens rea and corpus delicti, were absent.*
>
> *This submission is wholly without merit. The proceeding was a criminal proceeding and involved the hearing of a charge that the defendant had committed a summary offence against section 79B of the Road Traffic Act 1961 (SA)."*

Remembering of course, that according to pseudolaw theory, the only three ways you can "break the law", and that is harm to others, harm to their property, or fraud or mischief in contracts. Since there is no victim or "injured party" relating to the charge, theorists frequently raise the question: "Where is the *corpus delicti*?"

The answer is very simple really, the charge is not lacking in *corpus delicti*, it is actually the basis for the complaint. As the State is obliged to act on behalf of the collective, the state can also be an injured or aggrieved party.

In democratic countries like Australia, the parliament is considered the voice of the people, as the people elect representatives to govern according to the constitution. For example: often a political party will promise the introduction of certain laws, or the repeal of others, as part of their election campaign platform. When elected, these laws are then created in accordance with legislative powers and parliamentary procedures established by the constitution.

When someone breaches laws created by representatives that were duly elected by the people, the cases are called "The Crown v Smith" or "R v Smith" etc. R stands for *regina,* although the "Crown" or "The people" have the same meaning in constitutional theory. See *"the meaning of the Crown in constitutional theory"* as held in ***Sue v Hill [1999] HCA 30***. In the US, it is often "The People v Smith" which is the literal meaning.

In Vattel's "***Law of Nations***" (1760), which became the basis of international law, regarding the sovereignty of a nation state, §1, and in §2 is regarding the authority of the body politic over the members, and that by association each citizen subjects himself to the authority of the entire body, and that the authority of all over each member, therefore, essentially belongs to the body politic, or

state. Vattel also describes the substance of the entity which is the State. It is the public authority, which was created and established by THE COLLECTIVE ACTING IN CONCERT. Similarly, corporate structures such as governments are, in legal terms, an entity considered to be a single legal creature. It has a 'body' consisting of the people or citizens making up the group, and a 'head' consisting of the public authority or parliament.

So ultimately, it is THE PEOPLE AS A COLLECTIVE that are the "injured party" in these matters. And in this situation, this public authority is acting on behalf of the collective, as in every democratic nation.

Signing "Vi Coactus"

Although relied upon in pseudolaw circles, signing "VI COACTUS" regarding due process in a criminal matter is unintelligible, since it is not a contractual relationship. Enforcing the states legislative requirements regarding the granting of bail cannot be held as DURESS, it is governed entirely by statute, the obligation to these requirements is statutory. As held in ***R v Stoneman [2013] QCA 209***:

> *"As to the breach of bail, her Honour noted that the applicant claimed to have signed his bail undertaking under duress; that it was implicit in the police officer's behaviour towards him that unless he signed the bail undertaking he would not be released. Her Honour rightly held that the proper use of legal process could not constitute duress."*

https://freemandelusion.com/wp-content/uploads/2020/09/qca13-209.pdf

St. George and Ian Craig Press engaged in a mediation regarding a loan and mortgage. At the conclusion of the mediation, a settlement deed was executed by the parties. Unbeknownst to St. George, Ian Press included the letters "V.C" in small type next to his signature – apparently an abbreviation for the Latin phrase - vi coactus - by which he alleged that he meant that he was signing the deed under duress.

In St George Bank – A Division of Westpac Banking Corporation v Ian Craig Press (Supreme Court (NSW), Fagan J, 9 June 2017, unrep)., the defendant sought to resist the force of the deed entered into by himself and St George. Under cross-examination, the defendant agreed that he had read the deed before signing it and understood that he could "walk away from the deal" during the cooling off period under the deed. He determined that the defendant would have likely exercised his right to rescind within the cooling off period if he had been subject to any illegitimate pressure during the mediation. In addition, his Honour found that the defendants ongoing promises to repay the debt by 31 March 2017 and the fact that he complied with a number of his other obligations under the deed were inconsistent with the alleged duress. Further, his Honour found that where an allegation of duress is made, it is necessary to describe the action and words of the person who is making unlawful threats or acting in an unlawful manner. It is not enough to simply state that a person "was under duress". To sustain a finding of duress, it is necessary to put into evidence details of the unlawful conduct.

The decision affirms that conduct capable of constituting duress is limited to threatened or actual unlawful conduct. Financial pressure does not amount to duress. The pressure must be one of a kind which the law does not regard as legitimate.

From ***St George Bank - a Division of Westpac Banking Corporation v Ian Craig Press [2017] NSWSC 1129*** (at 3):

> *"His Honour rejected the second ground of resistance on the basis that circumstantial evidence, not least of which was the behaviour of Mr Press himself, showed that he had not been the subject of duress when he entered into the deed. To give but one example, the proffering of the so-called promissory notes showed that Mr Press accepted that he was liable pursuant to that document. ... As for duress, the judgment of his Honour is compelling indeed, with respect, with regard to all of the factors that tell powerfully against that proposition."*

https://freemandelusion.com/wp-content/uploads/2022/03/St-George-Bank-—-A-Division-of-Westpac-Banking-Corporation-v-Ian-Craig-Press-2017-NSWSC-1129.pdf

Refusing to enter a Plea

Peine forte et dure

Peine forte et dure was a method of torture formerly used in the common law legal system, in which a defendant who refused to plead ("stood mute") would be subjected to having heavier and heavier stones placed upon his or her chest until a plea was entered, or he/she died. Many defendants charged with capital offences would refuse to plead in order to avoid forfeiture of property. If the defendant pleaded either guilty or not guilty and was executed, their heirs would inherit nothing, their property escheating to the Crown. If they refused to plead their heirs would inherit their estate, even if they died in the process.

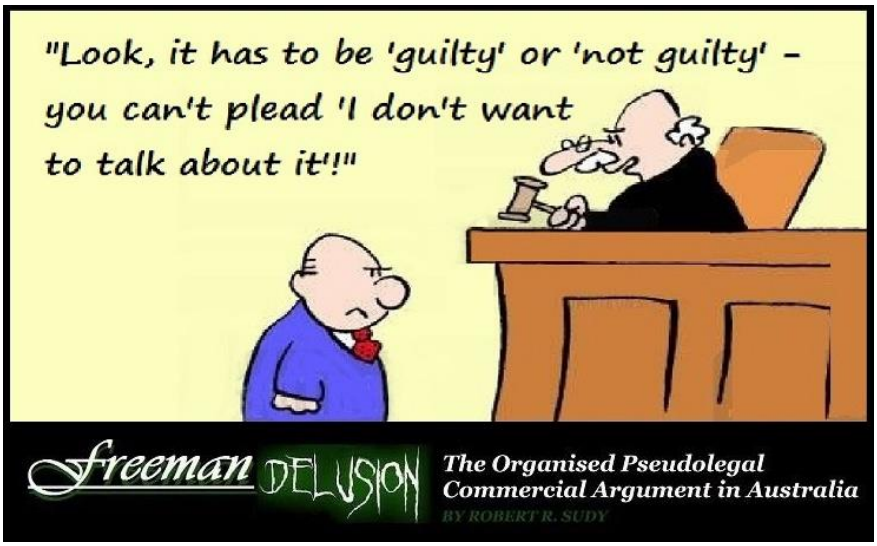
Peine forte et dure was abolished in Great Britain in 1772, with the last known actual use of the practice having been in 1741. From 1772 refusing to plead was deemed to be equivalent to pleading guilty, but this was changed in 1827 to being deemed a plea of not guilty – which is now the case in all common law jurisdictions.

These days things are much more humane, despite the fact that many pseudolaw adherents think refusing to enter a plea will prevent the court from proceeding with a trial.

Denying joinder...

Theorists insist that entering a plea is contractual, and therefore, if one does acquiesce to the courts authority, it gives the court jurisdiction. The obligation to follow due process and court procedures is

statutory not contractual. The magistrates, court staff, prosecution, and defendant, are all likewise equally bound by the same statutory obligations to follow rules of evidence and procedure as directed by the provisions of the relevant legislation.



If you refuse to enter a plea, it is simply taken as a plea of not guilty, and the case proceeds to trial. The magistrate is empowered to enter this plea on your behalf by the relevant states criminal procedures legislation.

In New South Wales, it is ***Section 155 of the Criminal Procedures Act 1986***:

> *"Refusal to plead: If an accused person who is arraigned stands mute, or will not answer directly to the indictment, the court may order a plea of "not guilty" to be entered on behalf of the accused person, and the plea so entered has the same effect as if the accused person had actually pleaded "not guilty".*

In Queensland, it is ***Section 601 of the Criminal Code 1899***

> *"Standing mute: If an accused person, on being called upon to plead to an indictment, will not plead or answer directly to the indictment, the court may, if it thinks fit, order a plea of not guilty to be entered on behalf of the accused person. A plea so entered has the same effect as if it had been actually pleaded."*

In South Australia, it is ***Section 129(2) of the Criminal Procedure Act 1921***

> *"If any person, being so arraigned, refuses or fails to enter a plea to the information, it is lawful for the court to order a plea of not guilty to be entered on the person's behalf and the person will be treated as if the person had pleaded not guilty."*

In Victoria it is ***Section 64 of the Criminal Procedure Act 2009***

> *"(1) If, when an accused is asked to plead to a charge, the accused will not answer directly to the charge, the Magistrates' Court may order that a plea of not guilty be entered on behalf of the accused. (2) A plea of not guilty entered under subsection (1) has the same effect as if the accused in fact had pleaded not guilty."*

In Tasmania, it is ***Section 59 of the Justices Act 1959***

> *"(2) If the defendant, on being asked to plead under section 55 or 58 , stands mute or refuses to, or does not, answer directly to the charge, he or she is taken to plead not guilty. (3) If the defendant, on being asked to make an election under section 55 or 58 , stands mute or refuses to, or does not, make a definite election, he or she is taken to elect for the charge to be determined by justices."*

In the Northern Territory, it is ***Section 345 of the Criminal Code 1983***

> *"Standing mute - If an accused person who has been committed for trial or proceeded against by way of section 300, on being called upon to plead to an indictment, will not plead or answer directly to the indictment the court may, if it thinks fit, order a plea of not guilty to be entered and a plea so entered has the same effect as if it had been actually pleaded."*

In the Australian Capital Territory, it is ***Section 282 of the Crimes Act 1900 (ACT)***

> *"Refusal to plead: If any person being so arraigned stands mute, or will not answer directly to the indictment, the court may order a plea of not guilty to be entered on behalf of the person, and the plea so entered shall have the same effect as if he or she had actually pleaded not guilty."*

Rossiter v Adelaide City Council [2020] SASC 61 (from 15):

> *"It has long been recognised that a defendant's right to attend a criminal trial is a right capable of being waived, with the result that a trial judge has a discretion, to be "exercised with great care" in the case of unrepresented defendants, to proceed ex parte, (See Stusser v Police [2013] SASC 73, [13] (Gray J).) whether the absence is due to the misconduct of the defendant in the courtroom, or a deliberate refusal to attend at, or participate in, the trial. (See R v Hayward [2001] QB 862, [6] (Rose LJ), citing R v Jones, Planter and Pengelly [1991] Crim LR 856.)*
>
> *According to Archbold, the English practice requires that a jury be empanelled to determine in a hearing whether the defendant was "mute of malice or by the visitation of God", because this cannot be determined by the court. (See Mark Lucraft (ed), Archbold: Criminal Pleading, Evidence and Practice (Sweet & Maxwell, 2019) [4-228], citing R v Scheleter (1866) 10 Cox 409.) If the finding is that the defendant is "mute of malice", the court may, under the relevant statute, direct that a plea of "not guilty" be entered, otherwise, if "mute by visitation of God" (perhaps because of deafness), (See R v Halton (1824) Ry & M 78, or deaf and dumb, R v Pritchard (1836) 7 C & P 303.) the court must then determine whether there exists a disability that prevents the defendant from being tried. (See R v Governor of His Majesty's Prison at Stafford; Ex parte Emery [1909] 2 KB 81.)*

In 1971 in R v Hall [1971] VR 293, 294 (Winneke CJ, Little and Gowans JJ). the Full Court of the Supreme Court of Victoria described the direction of a trial judge that a plea of "not guilty" be entered, after the defendant said that he could not plead, as a "well-established practice". [12] In South Australia, the issue is addressed by the Criminal Procedure Act 1921 (SA), portions of which were known as the Summary Procedure Act 1921 (SA) until 2018. (See Summary Procedure (Indictable Offences) Act 2017 (SA), s 5, commencing 5 March 2018.) Section 129 of the Act, which is found in Part 5 "Indictable offences", Division 6 "Pleas and proceedings on trial in superior court," provides:

129—Plea of not guilty and refusal to plead

(1) A person arraigned on an information who pleads not guilty will, by that plea, without any further form, be taken to have put themself on the country for trial (and the court must, in the usual manner, proceed to the trial of that person accordingly).

(2) If any person, being so arraigned, refuses or fails to enter a plea to the information, it is lawful for the court to order a plea of not guilty to be entered on the person's behalf and the person will be treated as if the person had pleaded not guilty.

Thus, where the defendant remains "mute" it is lawful for the superior court to order that a plea of "not guilty" be entered. If the defendant is under a mental impairment this is separately addressed by the provisions of Part 8A in the Criminal Law Consolidation Act 1935 (SA).

*In summary proceedings, where it is proved that the defendant has had notice of the proceeding, and a reasonable opportunity to attend and participate, the trial may proceed. (See **Adelaide City Council v Lepse [2016] SASC 66**, [51]-[52] (Peek J): in the Magistrates Court, the procedure for trying defendants on criminal charges in their absence is governed by ss 62(1)(b) and 62BA of what was then the Summary Procedure Act 1921 (SA). The procedure is, as one might expect, simplified so that where the defendant does not respond, the adjudication may proceed "as fully and effectually … as if the defendant had personally appeared" and, indeed, the Magistrates Court may "in so doing regard any allegation contained in the summons, or information and summons, (as served upon the defendant) as sufficient evidence of the matter alleged". (See **Re Magistrate M M Flynn; Ex parte McJannett [2013] WASC 372**, [14] (McKechnie J)*

Whilst it is not made explicit by s 62BA(1) of the Criminal Procedure Act 1921 (SA), it appears that the trial may proceed as if the Magistrate has ordered that a plea of "not guilty" be entered. I was told by the respondent on the hearing of this appeal that this is often done in Magistrates Court trials in this State.

In this case, the Magistrate directed that a plea of "not guilty" be entered after the appellant refused to participate in the trial. As might be clear from the terms of s 62BA(1), and what appears to be long-established practice, the decision to proceed in the absence of any plea from the appellant did not, therefore, detract from the Magistrate's power to adjudicate the question of guilt.

The prosecution then proceeded to prove guilt beyond reasonable doubt at the trial in the ordinary way, with the assistance of statutory aids to proof, rather than utilising the assistance

of s 62BA(1) of the Criminal Procedure Act 1921 (SA), which treats the allegations "as sufficient evidence of the matter alleged". That the Magistrate's adjudication in this case proceeded with the benefit of the calling of evidence was, if anything, a precaution which merely reinforced the absence of any miscarriage of justice to the appellant.

Whilst the respondent suggested on this appeal that the Magistrate required that the matter proceed on evidence, that is not how I read the transcript. The summary trial can be considered in terms of three distinct steps. The first concerned the procedure to be applied when the appellant refused to participate. The Magistrate saw that the appellant was in the courtroom and, after questioning him, exercised the first discretion conferred by s 62BA(1) and decided to proceed, effectively ex parte. It is primarily that discretion which it has been said should be exercised "with caution", (See Kyriacou v Police [2007] SASC 341, [74] (Gray J).) as Bray CJ explained in Walker v Eves (1976) 13 SASR 249, 255:

… the vital word is "may", not "shall". It is not mandatory for a court of summary jurisdiction to proceed ex parte under this section whenever a complaint has been made by a police officer and the summons is served as authorized by the Act and the defendant does not appear. It should not automatically do so. It should consider the seriousness of the offence and the possibility of a satisfactory explanation for the failure to appear. Requests for adjournment should not be lightly refused.

The second step involved the taking of a plea. As I have explained, in the absence of participation from the appellant, the Magistrate directed that a plea of "not guilty" be entered, as was appropriate. It is for that reason that this first appeal ground must be rejected.

The third step involved the form in which the trial would proceed. There was in fact no argument on that point at trial, and the Magistrate was not invited to proceed in accord with the second discretion conferred by s 62BA(1), on the basis that he could treat the allegations "as sufficient evidence of the matter alleged". As Bray CJ went on to explain in Walker v Eves (1976) 13 SASR 249, 2556

The Court has not only a discretion whether to hear the case ex parte at all, but another discretion once it has been decided to hear it ex parte whether or not to regard the allegations in the complaint or summons as sufficient evidence of the matter alleged.

Whilst there may in some cases be good reason to be cautious and proceed with proof in the ordinary way, that inevitably involves time spent on matters that may not genuinely be in issue. In the circumstances of this case, where the appellant was present but refusing to participate, there seems to have been no good reason not to take advantage of this statutory aid."

https://freemandelusion.com/wp-content/uploads/2020/05/rossiter-v-adelaide-city-council-2020-sasc-61.pdf

There are many cases in which the defendant has refused to enter a plea, you can find them on this website under the Tag "***Refusal to Enter a Plea***".

Cameras in Court

Videos from pseudolaw adherents court interactions often go viral on social media, usually they are seeking validation of their OPCA efforts online from other enthusiasts. Unfortunately the use of recording devices in NSW Courts is prohibited under ***section 9*** of the *Court Security Act 2005* (NSW) and carries a $22,000 fine or imprisonment for 12 months (or both).

Saying *"This does not apply to me..."* will not save the adherent from prosecution. Express permission from the magistrate is required to make any recording.

COURT SECURITY ACT 2005 - SECT 9 Use of recording devices in court premises

COURT SECURITY ACT 2005 - SECT 9

Use of recording devices in court premises

9 USE OF RECORDING DEVICES IN COURT PREMISES

(1) A person must not use a recording device to record sound or images (or both) in court premises.

: Maximum penalty--200 penalty units or imprisonment for 12 months (or both).

Note : This subsection only prohibits the use of a recording device to record sound or images (or both) and not any other use of the device. For example, this subsection would not prohibit a person from using a mobile phone with recording capabilities to make a telephone call, but would prohibit the use of the phone to record court proceedings.

(2) Subsection (1) does not apply with respect to any of the following--

(a) the use of a recording device that has been expressly permitted by a judicial officer,

(b) the use by a lawyer of a recording device to record the lawyer's own voice in a part of court premises other than a room where a court is sitting,

(c) the use of a recording device by a person for the purpose of transcribing court proceedings for the court,

(d) the use of a recording device by a journalist while exercising a right referred to in section 6 (2),

(e) the use of such recording devices in such other kinds of circumstances as may be prescribed by the regulations.

The provision involving journalists in ***section 6(2)*** of the *Court Security Act 2005* (NSW) only provides for areas outside of a court in session:

COURT SECURITY ACT 2005 - SECT 6

Right to enter and remain in open areas of court premises

6 RIGHT TO ENTER AND REMAIN IN OPEN AREAS OF COURT PREMISES

(2) Without limiting subsection (1), a journalist has a right to enter and remain in an area of court premises open to the public that is located outside of a building in which the court is housed or is sitting for the purpose of making a media report if the journalist is not obstructing or otherwise impeding access to the building.

Similarly in Victoria and other States. The offence of recording a proceeding is found in ***section 4A(1)*** of the *Court Security Act 1980* (Vic). It likewise provides several exceptions, one being in section 4A(2) for an employee of the Court to enable the preparation of an official transcript, 4A(3)(a) a journalist for the purpose of preparing a media report, and (b) a lawyer for the purposes of legal representation, and 4A(4)(a) if express written permission is given by a judicial officer.

At the start of the hearing in ***Kyriazis v County Court of Victoria (No 1) [2017] VSC 636***, Vasilios Kyriazis sought permission to audio-record the proceeding, and Bell J gave reasons for granting that permission. His Honour considered that the applicable provisions of the *Court Security Act* do not override a judicial officers function of ensuring a fair hearing or trial, and due assistance to an applicant who appears as a litigant in person, seeking to audio-record a proceeding in which he was a party. It was noted that in that hearing, the other party was legally represented by a solicitor and barrister having standing permission under section 4A(3)(b) to audio-record the proceeding, and granting permission would help to ensure "equality of arms". His Honour considered that if no suppression, confidentiality or like orders had been made in a proceeding and making an audio-recording would not otherwise be unlawful or restricted under specific legislation, it would not be necessary to refuse permission to prevent frustration of the administration of justice.

https://freemandelusion.com/wp-content/uploads/2022/05/Kyriazis-v-County-Court-of-Victoria-No-1-2017-VSC-636.pdf

This wasn't the first time Vasilios Kyriazis had tested the ability to record his own proceeding. In ***Kyriazis v The Magistrates' Court of Victoria at Heidelberg [2014] VSC 411*** he had applied for orders that charges determined in his absence be re-heard, after he left the Court due to the magistrate refusing to grant him permission to audio-record, claiming he left because he was threatened and intimidated. The Registrar had informed him that he was not authorised to record the proceedings under section 130 of the *Evidence (Miscellaneous Provisions) Act 1958* and that his purported reliance on the *Listening Devices Act 1969* as the source of his power to record was inappropriate, and that the matter would continue in his absence if he did leave. He sought judicial review "on points of law" claiming the Registrar breached the rules of natural justice and displayed bias against him, by refusing to appropriately determine the issue of lawfully recording in the courtroom to ensure his common law right to protect his lawful interests.

Vasilios Kyriazis was granted a re-hearing of the charges, and he again attempted to make his own recording of the hearing and again left the court when told that he could not do so, and again the hearing proceeded ex parte. He then applied for orders setting aside the decision for similar grounds of bias and the hearing not being fair and impartial. This second application for re-hearing was refused. At the Supreme Court, Williams J considered there would be no utility in making the order sought quashing the second decision, as the charges have been re-heard, convictions and penalties imposed and an application for a subsequent re-hearing refused. Further, that in effect he is challenging the existence of a discretion as to whether he be permitted to make the recording.

https://freemandelusion.com/wp-content/uploads/2022/05/Kyriazis-v-The-Magistrates-Court-of-Victoria-at-Heidelberg-2014-VSC-411.pdf

Similar Commonwealth legislation can be found in ***Section 17 of the Court Security Act 2013*** (Cth)

The fraudulent foisted contract

According to pseudolaw theory, a notarized document, sworn affidavit, notice of understanding intent and claim of right or other paperwork that is served by the offeror, becomes a valid contract or agreement of the parties after the expiry of an allotted time period. It is claimed that the terms are accepted by acquiescence, due to the offeree's silence, non-response or inability to rebut the contents of the document within the given time. It appears to have originated in a misunderstanding of several maxims in *Blacks Law Dictionary*, which merely apply to procedures in a court.

Black's Law Dictionary, 4th Edition, 1968 Page 1414.

QUI TACET, CONSENTIRE VIDETUR. He who is silent is supposed to consent. The silence of a party implies his consent. Jenk. Cent. p. 32, case 64; Broom, Max. 138, 787.

QUI TACET CONSENTIRE VIDETUR, UBI TRACTATUR DE EJUS COMMODO. 9 Mod. 38. He who is silent is considered as assenting, when his interest is at stake.

QUI TACET NON UTIQUE FATETUR, SED TAMEN VERUM EST EUM NON NEGARE. He who is silent does not indeed confess, but yet it is true that he does not deny. Dig. 50, 17, 142.

Applying this to an out-of-court process through an unrebutted affidavit strategy is known as a foisted unilateral contract, or "paper terrorism", and it has no legal effect. This deceitful process is not even recognised at law, in fact it is easily established in various sources around the world that silence does not imply agreement. The common law's concern with the protection of freedom is opposed to the notion that a person must take action to reject an uninvited offer or be bound by contractual obligations. It does not permit the imposition of a positive obligation to reject an offer to avoid a contract coming into effect.

In ***Millington v Police [2015] SASC 52*** the appellant had served a number of documents, attempting a foisted contract, such as a "*Notice of understanding and intent, claim of right*" and then later a "*Notice of Default*" when it was "*unrebutted*" within the stated period. Parker J said (at 18):

> *"The purported legal effect of this series of documents is most unclear. The best I can understand is that D3 purports to relate to a unilateral contract formed on the basis of the earlier correspondence between Mr Millington and the police. It certainly has no relevance to a prosecution for an offence under the Road Traffic Act and I very much doubt that it would have any legal effect in any context. Be that as it may, it clearly does not operate to preclude a summary prosecution. Regrettably Mr Millington may have been misled by documents that are from time to time published on the internet."*

Similarly in ***Australia and New Zealand Banking Group Ltd v Evans; Evans v Esanda Finance Corporation Ltd [2016] NSWSC 1742*** to which Garling J responded (at 53 and 154):

> *"Silence or inaction on the part of a party cannot, where no consideration passes, transform a unilateral demand into a contract. Even less can it constitute a breach of some self-invented contract by Mr Evans. .. The entirety of the Statement of Claim in the Evans proceedings is based on an irrational and legally untenable premise. The irrational premise is that a person or party can unilaterally impose a contract upon one or more other parties by producing a five page written document, full of gibberish and legal nonsense, sending it to the other party or parties and then asserting that when the recipients ignore the document, they fall to be bound by its terms."*

https://freemandelusion.com/wp-content/uploads/2020/10/australia-and-new-zealand-banking-group-ltd-v-evans-evans-v-esanda-finance-corporation-ltd-2016-nswsc-1742.pdf

The strategy is also used to foister a contract on parties, followed by a lien, caveat or other encumbrance on their property for penalties that result from the breach of the alleged contract. As seen in ***Living Word Outreach Inc v Deputy Sheriff of Victoria [2014] VSC 454*** where McMillan J noted (at 29 and 58):

> *"Mr Field asserted in addition that there existed a commercial lien between the appellant and the VGSO. Mr Field submitted that the appellant had 'issued' commercial liens against the VGSO containing claims that the VGSO failed to rebut and so must be held to have accepted. … As submitted on behalf of the respondents, there is no basis for the assertion of a commercial lien. A lien is the personal right to withhold to property as security for the performance of an obligation or payment of a debt. The appellant has not established any obligation or debt on the part of the VGSO, with the result that there can be no lien."*

https://freemandelusion.com/wp-content/uploads/2020/10/living-word-outreach-inc-v-deputy-sheriff-of-victoria-2014-vsc-454.pdf

And ***Glenevan Pty Ltd [2015] NSWSC 201***, where Brereton J stated (from 20):

> *"The repeated proposition that the affidavit, being unrefuted, "stood as law and fact" is nonsense. Unrebutted affidavits do not necessarily conclusively establish the facts deposed to in them. They are evidence of facts. They do not establish them conclusively. Even less do they establish law. The idea that somehow by serving the so-called commercial lien on the Deputy Commissioner or anyone else those parties become bound by it is equally nonsense. Mere receipt or notice of a document does not mean that the recipient acknowledges, accepts or becomes bound by it. In the course of legal proceedings, parties are served with statements of claim and*

affidavits on a regular basis. The receipt of those documents does not of itself mean that the party is bound by or party to it, any more than receipt of a letter by an addressee means the party accepts its truth or becomes bound by it. The "affidavit/commercial lien" demonstrates no defence whatsoever to the winding-up proceedings."

https://freemandelusion.com/wp-content/uploads/2020/10/in-the-matter-of-glenevan-pty-ltd-2015-nswsc-201.pdf

Similarly in ***McKenzie v New South Wales [2017] NSWSC 661***, where the plaintiffs sought declarations that their "unrebutted affidavit" strategy was legally valid, and the failure of the Department to respond constituted acceptance by acquiescence. Parker J responded:

30. Accordingly, it seems to me that, to the extent that the Notices proceed on the assumption that the State was under some sort of obligation to explain itself, they were misconceived.

31. As to the question of contract, an essential element of any contract is that the parties exchange mutual promises supported by consideration, namely, some act, or forbearance, which the law regards as valuable. It is possible to make or vary contractual obligations by silence, but only if the context of the silence is such as to show that the silent party is promising to undertake the action in question. Even then, there must be a promise supported by consideration. The facts alleged by the plaintiffs in their Statement of Claim fall far short of establishing any such arguable contractual obligation. Silence cannot be converted into a promise by the simple expedient of making a peremptory demand for someone to agree to something, or to do something, or else they would be deemed to have agreed.

32. There is no context of previous dealings between the State, on the one hand, and the plaintiffs, on the other, which could plausibly support the conclusion of an agreement in the terms alleged by the plaintiffs. In making that statement, I, of course, take into account the nature of the alleged contract and the extravagant figures given by the plaintiffs in their schedule of fees including what the plaintiffs would characterise as services rendered in the form of reading documents which the State might send them, and the like. The Notices, in my opinion, amount to a futile unilateral attempt to impose a liability on the State without any arguable basis for asserting that, in the objective circumstances of the case, the State has assented to the terms proposed.

33. I also fail to see how the plaintiffs' inaction after the Notices were served could properly be considered as consideration, which would be sufficiently valuable in the eyes of the law to support a contract. The relevant actions had all taken place before the Notices by the plaintiffs were served and, so far as I can see, there is nothing which was done thereafter which would amount to consideration which would be recognised by the law so as to make any promise by the State binding.

https://freemandelusion.com/wp-content/uploads/2022/05/McKenzie-v-New-South-Wales-2017-NSWSC-661.pdf

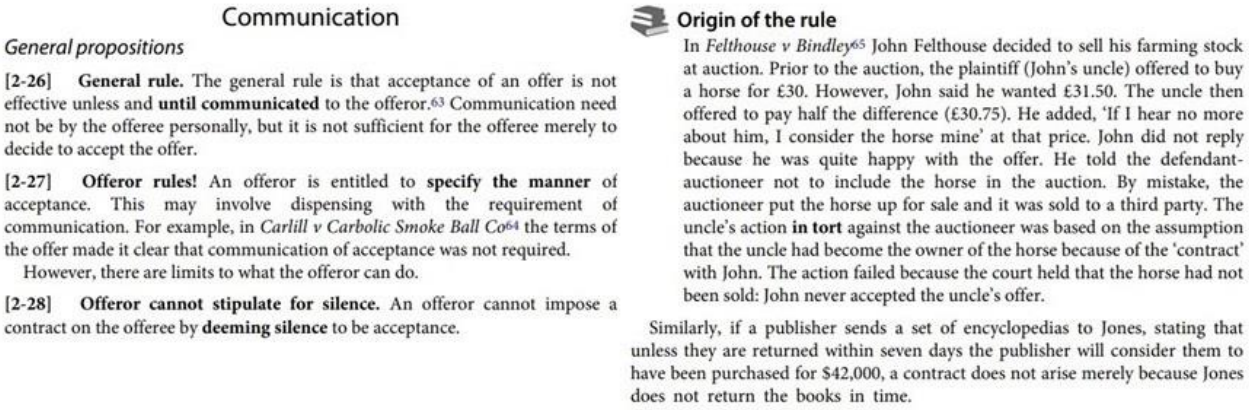
Felthouse v Bindley (1862) 142 ER 1037 is a universally accepted cornerstone of the common law of contract that silence, in itself, cannot constitute acceptance.

Paul Felthouse offered to buy a particular horse from his nephew and stated (in a written offer) that *"...if I hear no more about him, I consider the horse mine at £30 15s".* His nephew did not reply but instructed the auctioneer, Bindley, not to sell the horse. Bindley mistakenly sold the horse. Felthouse sued the auctioneer for conversion. To succeed in an action for conversion Felthouse needed to demonstrate that he owned the horse at the time of the sale; to do this he needed to prove that there was a contract between himself and his nephew for the sale of the horse. Felthouse could not impose a sale of the horse on his nephew by requiring him to notify Felthouse if he did not wish to sell on those terms. There was no communication of acceptance before the sale; consequently the nephew was not bound to sell

Felthouse the horse on the day of the auction. Upon appeal before Justice Willes, Justice Byles and Justice Keating, it was ruled that:

> *"There was no complete bargain at the time of the conversation between uncle and nephew, nor was there a complete bargain when the uncle wrote to the nephew stating, in part, "If I hear no more about him, I consider the horse mine at 30l. 15s." The uncle had "no right to impose upon the nephew a sale of his horse for 30l. 15s. unless he chose to comply with the condition of writing to repudiate the offer. ... As between the uncle and the auctioneer, the only question we have to consider is whether the horse was the property of the plaintiff at the time of the sale on the 25th of February. It seems to me that nothing had been done at that time to pass the property out of the nephew and vest it in the plaintiff. A proposal had been made, but there had before that day been no acceptance binding the nephew."*

See also ***Carter's Guide to Australian Contract Law*** (3rd Editon) at page 123:



Communication

General propositions

[2-26] General rule. The general rule is that acceptance of an offer is not effective unless and **until communicated** to the offeror.[63] Communication need not be by the offeree personally, but it is not sufficient for the offeree merely to decide to accept the offer.

[2-27] Offeror rules! An offeror is entitled to **specify the manner** of acceptance. This may involve dispensing with the requirement of communication. For example, in *Carlill v Carbolic Smoke Ball Co*[64] the terms of the offer made it clear that communication of acceptance was not required.

However, there are limits to what the offeror can do.

[2-28] Offeror cannot stipulate for silence. An offeror cannot impose a contract on the offeree by **deeming silence** to be acceptance.

Origin of the rule

In *Felthouse v Bindley*[65] John Felthouse decided to sell his farming stock at auction. Prior to the auction, the plaintiff (John's uncle) offered to buy a horse for £30. However, John said he wanted £31.50. The uncle then offered to pay half the difference (£30.75). He added, 'If I hear no more about him, I consider the horse mine' at that price. John did not reply because he was quite happy with the offer. He told the defendant-auctioneer not to include the horse in the auction. By mistake, the auctioneer put the horse up for sale and it was sold to a third party. The uncle's action **in tort** against the auctioneer was based on the assumption that the uncle had become the owner of the horse because of the 'contract' with John. The action failed because the court held that the horse had not been sold: John never accepted the uncle's offer.

Similarly, if a publisher sends a set of encyclopedias to Jones, stating that unless they are returned within seven days the publisher will consider them to have been purchased for $42,000, a contract does not arise merely because Jones does not return the books in time.

The concept of a foisted unilateral contract is discussed in ***Meads v Meads ABQB 571*** (from 447)**.** I like how Rooke ACJ explained it (at 463):

> *"Many OPCA foisted unilateral agreements feature language that demands its recipient respond or rebut an obligation by a certain deadline. If not, then the agreement proclaims the recipient is bound by its terms. A moments consideration shows it is absurd that the law would respect that requirement. What if a document was received, but not read within the deadline? What if the document was received by an illiterate person, or one who did not understand the documents meaning? Could they have a "meeting of the minds"? Of course not, no more than handing a document to a sheep and saying "By not repudiating this agreement, I may eat you" establishes a mutual and common intent."*

[463] This alone provides a basis for why the stereotypical foisted unilateral agreement cannot bind its recipient. An objective person knows that he or she cannot usually be held bound in contract by simple receipt of an offer. Many OPCA foisted unilateral agreements feature language that demands its recipient respond or rebut an obligation by a certain deadline. If not, then the agreement proclaims the recipient is bound by its terms. A moment's consideration shows it is absurd that the law would respect that requirement. What if a document was received, but not read within the deadline? What if the document was received by an illiterate person, or one who did not understand the document's meaning? Could they have a 'meeting of the minds'? Of course not, no more than handing a document to a sheep and saying "By not repudiating this agreement, I may eat you." establishes a mutual and common intent.

[464] Instead, the common law in most cases requires that the recipient of an offer (if that's what these OPCA documents represent) must take a positive step to accept that offer, acknowledge its terms and benefits, *and communicate that fact*. Harris C.J.B.C. in ***Cypress Disposal Ltd. v. Inland Kenworth Sales (Nanaimo) Ltd.*** (1975), 54 D.L.R. (3d) 598, [1975] 3 W.W.R. 289 expressed the rule as :

> ... I do not think that to be an acceptance creating a contract. It is communication of the acceptance that creates the contract between the parties. One must distinguish between the act of deciding to accept or reject an offer and the act of communicating acceptance or rejection. [Emphasis added.]

[465] This requirement is not some recent legal innovation, but relates to the U.K. case of ***Felthouse v. Bindley*** (1862), 11 C.B. (N.S.) 869, 142 E.R. 1037 (Ex. Ch.), part of the "common law" so dear to OCPA gurus and litigants. In that decision a man attempted to enforce a price for sale of a horse. He was in negotiation with his nephew over the purchase of a horse, and wrote: "... you said the horse is mine ... If I hear no more about [the horse], I consider the horse mine at £30 and 15s." The horse was inadvertently sold by an auctioneer to a third party, and the uncle sued.

[466] The nephew had, in fact, intended his uncle have the horse, *but he had taken no steps to communicate that fact*. Justice Willes concluded:

> ... It is clear, therefore, that the nephew in his own mind intended his uncle to have the horse at the price which he (the uncle) had named, £30 and 15s.: but he had not communicated such his intention to his uncle, or done anything to bind himself. Nothing, therefore, had been done to vest the property in the horse in the plaintiff down to the 25th of February, when the horse was sold by the defendant. It appears to me that, independently of the subsequent letters, there had been no bargain to pass the property in the horse to the plaintiff, and therefore that he had no right to complain of the sale. [Emphasis added.]

[467] ***Felthouse v. Bindley*** is a universally accepted cornerstone of the common law of contract. Citing only a few of many possible similar authorities:

> An offeror may not arbitrarily impose contractual liability upon an offeree merely by proclaiming that silence shall be deemed consent.
>
> (M. P. Furmston, *Cheshire, Fifoot and Furmston's Law of Contract*, 15th ed. (Oxford: Oxford University Press, 2007) at p. 61)
>
> ... the silence of the offeree, his failure to reject an offer, cannot amount to acceptance without more. ... Although the offeror can dictate the time, place, and manner of acceptance ... it seems clear that this will not cover the situation where the offeror says that silence will be enough ... Indeed the Supreme Court of Canada has said that something more than a failure to reject an offer is required to constitute a binding contract.
>
> (G.H.L. Fridman, *The Law of Contract in Canada*, 5th ed. (Toronto: Thomson Carswell, 2006) at p. 54.)
>
> ... As a general rule, it is not enough for one to whom an offer is made to assent inwardly; the offeree must communicate acceptance to the offeror ...
>
> Ordinarily, therefore silence will not operate as an acceptance even though the offeree should prove an intention to accept. This is not a technicality but part of the requirement of a bargain. No reasonable person, on receiving a proposal that looks for a reply, considers the bargain concluded until the manifestation of assent. Nor will a reasonable offeror ordinarily consider that silence on the part of the offeree manifests the latter's acceptance. It would plainly be an imposition for an offeror to write to a stranger offering to sell an encyclopedia and adding that the latter's silence will be considered an acceptance. ...
>
> (S. M. Waddams, *The Law of Contracts*, 6th ed. (Toronto: Canada Law Book, 2010) at p. 67-68)
>
> The requirement that there has to be an acceptance cannot be avoided or waived by the offeror's saying that the offeree will be assumed to have accepted the offer if no rejection is received by the offeror. This rule is a reflection of the very general principal that people are not to have obligations thrust upon them without their consent and that, in general, people have to indicate their consent by some positive action. The principle is expressed in the statement that "silence cannot be consent".
>
> (Angela Swan, *Canadian Contract Law*, 2nd ed. (Markham: LexisNexis, 2009) at p. 234.)

A warning to Notaries

Noting the sense of endorsement that can result in an pseudolaw adherent from a Justice of the Peace witnessing affidavits that are intended for pseudo legal purposes, in ***Adelaide City Council v Lepse [2016] SASC 66*** (from 64) Peek J sounded a warning to Notaries and Justices of the Peace that it is irresponsible to witness such documents, and to be vigilant in taking "reasonable care" that they are not being used for nefarious purposes:

"Witnessing" of documents by Justices of the Peace and others

64. In the present case, a Justice of the Peace has been prepared to append her signature and stamp to documents which falsely purport to be affidavits and, to a lay person, might well be presumed to be affidavits. However, it is quite clear that these documents have in no way been sworn of affirmed. I consider this to be a serious matter.

65. However, the matter does not stop there. The content of documents may be so clearly redolent of an abuse of legal process that a person such as a Justice of the Peace should play no part in the advancing of such documentation, quite irrespective of whether they actually purport to be affidavits.

66. This is not the first time that this matter has been addressed. In *Meads v Meads*, Rooke ACJ addressed the duties of practitioners in such a context thus:[26]

> [642] Like the judge, a lawyer who represents the target of an OPCA litigant faces a difficult task. However, as an officer of the court each lawyer has certain duties not only to the client, but also to the justice system as a whole.
>
> a. *Notarization of OPCA Materials*
>
> [643] One duty is to not participate in or facilitate OPCA schemes. During preparation of these Reasons, I reviewed a large number of OPCA litigation files in our Court. I was very disturbed and profoundly disappointed to see the number of occasions where an OPCA document was notarized by a practicing lawyer. Certain of Mr Meads' materials were marked in that manner, by two different members of the Alberta Bar.
>
> [644] Alberta Justice has instructed lay notaries to not endorse documents of this kind: *Papadopoulos v Borg*, 2009 ABCA 201 at para 3.
>
> [645] This Court has, on previous instances, drawn to the attention of the Law Society of Alberta that this kind of action is inappropriate for an officer of the court. It assists implementation of vexatious litigation strategies. In my view, a lawyer has a positive duty not to engage in a step that would 'formalize' (though typically in a legally irrelevant manner) an OPCA document. I have previously noted that certain OPCA gurus place a peculiar and mythical authority in a notary's hands. A lawyer should not, directly or indirectly, reinforce, or support that purpose.

67. I consider his Honour's comments apply equally in this jurisdiction. Justices of the Peace, or others, who purport to witness documents which on their face appear to be associated with meritless pseudolegal arguments may be seen to be giving support to such arguments. It is disappointing to see that documents of that sort in this case have been given what might appear to be some verisimilitude by appearing to have been formalised by a Justice of the Peace.

The silence of an offeree in conjunction with the other circumstances of the case may indicate that he has accepted the offer, as found in ***Rust v Abbey Life Assurance Co Ltd [1979] 2 Lloyd's Rep 334*** (at 340), but merely a failure to reject an offer made is generally insufficient to create any contract.

Kirby P in ***Empirnall Holdings Pty Ltd v Machon Paull Partners Pty Ltd (1988) 14 NSWLR 523*** (at 528 and 531) explained that in some circumstances an acceptance can be inferred, despite the absence of specific assent to an offer, from an objective consideration of all the relevant facts and circumstances and described this process as one of *"implied acceptance"*. Those circumstances include those where the offeree has exercised a choice and taken the benefit of an offer, knowing the terms of the offer and the offeror's intentions to contract, so that the offeree will be bound despite the offeree's silence. Referring to the formulation cited with approval in *Laurel Race Course Inc v Regal Construction Company Inc 333 A 2d 319 (1975)* (at 329 per Judge Levine, a decision of the Court of Appeal of Maryland.) McHugh JA said (at 535):

> *"This formulation states acceptance in terms of a rule of law. However, the question is one of fact. A more accurate statement is that where an offeree with a reasonable opportunity to reject the offer of goods or services takes the benefit of them under circumstances which indicate that*

they were to be paid for in accordance with the offer, it is open to the tribunal of fact to hold that the offer was accepted according to its terms. … The ultimate issue is whether a reasonable bystander would regard the conduct of the offeree, including his silence, as signaling to the offeror that his offer has been accepted."

In ***P'Auer AG & Anor v Polybuild Technologies International Pty Ltd & Anor [2015] VSCA 42***, Whelan JA, with whom Ferguson JA agreed, set out the principles to be applied where what is alleged is a contract in the absence of clear offer and acceptance (from 8):

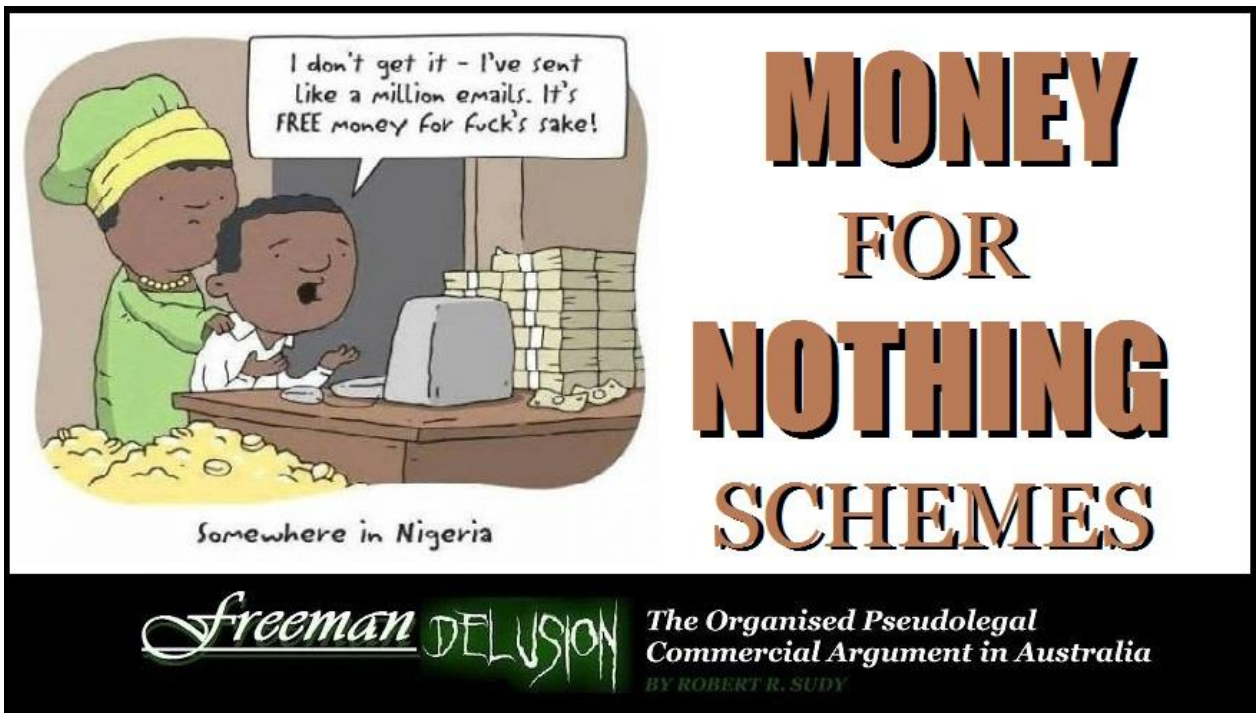
"The relevant starting point in a case of this kind is the principle that a contractual obligation cannot be imposed by an offeror upon an offeree merely by reason of a failure to reject an offer made. Silence, in itself, cannot constitute acceptance. Nevertheless, leaving to one side cases of estoppel, cases where there is an historic relevant course of dealing, and cases where the events are so obscure or so far in the past that direct evidence is not available, there are circumstances where acceptance of an offer can be inferred in the absence of express consent. This will be the case if an objective bystander would conclude from the offeree's conduct, including his silence, that the offeree has accepted the offer and has signaled that acceptance to the offeror.

Further, and more generally, it is now accepted that the existence of a contract can be established or inferred where a manifestation of mutual assent must be implied from the circumstances. It is important to emphasise that the circumstances in which a contract will be inferred, otherwise than by the traditional analysis of offer and acceptance, will be rare. It seems to me that the position was well summarised by Sundberg J in ***Adnunat Pty Ltd v ITW Construction Systems Australia Pty Ltd [2009] FCA 499*** *when he said:*

"A contract may in certain circumstances be inferred from conduct, even where no offer and acceptance can be identified … However the existence or otherwise of an enforceable agreement depends ultimately on the manifest intention of the parties, objectively ascertained … Where mutual promises are sought to be inferred, the conduct relied upon must, on an objective assessment, evince a tacit agreement with sufficiently clear terms. It is not enough that the conduct is consistent with what are alleged to be the terms of a binding agreement. The evidence must positively indicate that both parties considered themselves bound by that agreement."

In determining if an agreement has been made in this way regard must be had to the entirety of the relevant conduct. The precise point in time at which the agreement comes into existence may not be clear, and the relationship between the parties themselves may be dynamic in such a way that the terms of the agreement might be added to or superseded over time. In this context the absence of non-essential terms, or a lack of agreement on non-essential terms, will not invalidate the existence or effective operation of a binding contract."

Making money out of thin air



Pseudolaw adherents have employed a number of what may be called "money for nothing" schemes that purport to provide a mechanism by which the adherent can obtain unconventional benefits. These are the proverbial caves of hidden treasure. Gurus who advance these concepts claim that, with the correct combination of documents, one can open a secret path to vast riches. One needs only know the spell!

The most common "money for nothing" schemes are: "*Redemption*", "*Accepted for Value*" (A4V), "*Bills of Exchange*" and "*Promissory Notes*", and these are closely linked to "*Securitization*" via UCC, and the "***Book-entry Credits***" concept in the US Credit River decisions.

Guru promoters claim that each person is associated with a secret government bank account which contains millions of dollars. The bank account's number is usually related to some identification number assigned to a person by the state, such as a Social Security Number, a Social Insurance Number, or a birth certificate number. The specific details of that relationship also vary between schemes.

Proponents claim that the government maintain these bank accounts to monetize the state after it abandoned the gold standard. Put another way, the theory is that people are property of the state that it uses to secure its currency. This is often expressed as some form of "slavery". The exact form of a scheme and associated "unlocking spell" varies from guru to guru, but there are common motifs that indicate an pseudolaw adherent is attempting to use these processes:

- A reference to the UCC, or any UCC filing documents;
- The language "accept for value" and "return for value";
- A claim that a government bank account exists that is linked to a personal identification number;

- Mention of the gold or precious metal standards for money, and the dates those standards were abandoned;
- A claim by a litigant that they are not a slave; this relates to the idea that the state uses people as collateral;
- A reference to a Cestui Que Vie Account or a Cestui Que Vie Trust. (Most of the theory behind the alleged existence of this account, is a follow-on from the abstract speculations drawn from the Cestui Que Vie Act 1666.)

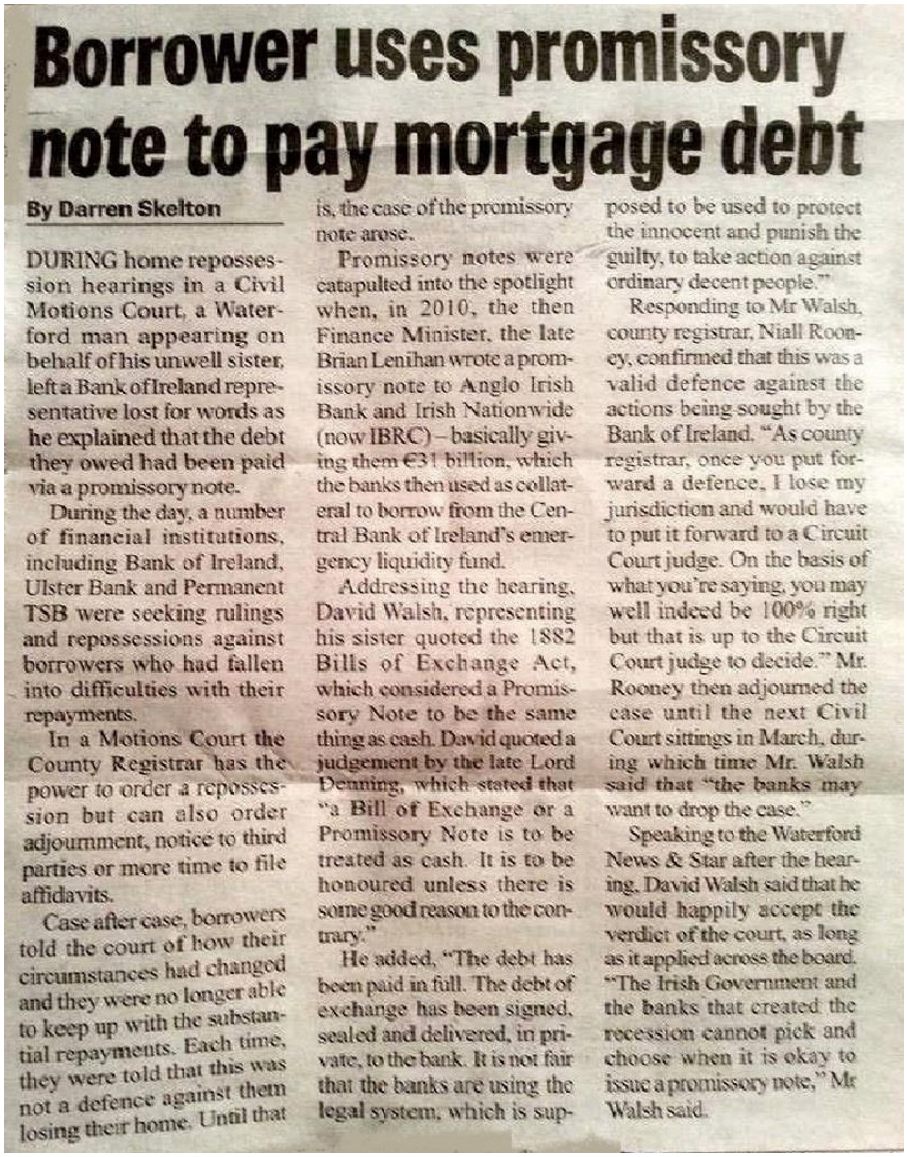
They sometimes claim that the Court should make an order to discharge obligations by payment from the secret government account. When an litigant writes or stamps a notation, according to the mythology, it transforms a bill or court order into a cheque drawn from the secret account. The pseudolaw adherent's obligation is gone once the modified document is returned to its source.

The Courts have also seen this concept expressed as a mechanism to negate criminal charges or an arrest warrant. For example: *"..perform the offset, adjust and close the account and provide the original blue ink WARRANT FOR ARREST to us..."*

These concepts originated in the United States namely by such gurus as ***Winston Shrout*** but Australian, ***Canadian*** (Mary Croft) and other versions have since emerged, which are basically distorted views of the Bills of Exchange Acts.

In Ireland, this scheme was rejected in ***Irish Bank Resolution Corporation Ltd -v- Peacock [2015] IEHC 86***

https://freemandelusion.com/wp-content/uploads/2018/07/irish-bank-resolution-corporation-ltd-v-peacock-2015-iehc-86.pdf



Borrower uses promissory note to pay mortgage debt

By Darren Skelton

DURING home repossession hearings in a Civil Motions Court, a Waterford man appearing on behalf of his unwell sister, left a Bank of Ireland representative lost for words as he explained that the debt they owed had been paid via a promissory note.

During the day, a number of financial institutions, including Bank of Ireland, Ulster Bank and Permanent TSB were seeking rulings and repossessions against borrowers who had fallen into difficulties with their repayments.

In a Motions Court the County Registrar has the power to order a repossession but can also order adjournment, notice to third parties or more time to file affidavits.

Case after case, borrowers told the court of how their circumstances had changed and they were no longer able to keep up with the substantial repayments. Each time, they were told that this was not a defence against them losing their home. Until that is, the case of the promissory note arose.

Promissory notes were catapulted into the spotlight when, in 2010, the then Finance Minister, the late Brian Lenihan wrote a promissory note to Anglo Irish Bank and Irish Nationwide (now IBRC) – basically giving them €31 billion, which the banks then used as collateral to borrow from the Central Bank of Ireland's emergency liquidity fund.

Addressing the hearing, David Walsh, representing his sister quoted the 1882 Bills of Exchange Act, which considered a Promissory Note to be the same thing as cash. David quoted a judgement by the late Lord Denning, which stated that "a Bill of Exchange or a Promissory Note is to be treated as cash. It is to be honoured unless there is some good reason to the contrary."

He added, "The debt has been paid in full. The debt of exchange has been signed, sealed and delivered, in private, to the bank. It is not fair that the banks are using the legal system, which is supposed to be used to protect the innocent and punish the guilty, to take action against ordinary decent people."

Responding to Mr Walsh, county registrar, Niall Rooney, confirmed that this was a valid defence against the actions being sought by the Bank of Ireland. "As county registrar, once you put forward a defence, I lose my jurisdiction and would have to put it forward to a Circuit Court judge. On the basis of what you're saying, you may well indeed be 100% right but that is up to the Circuit Court judge to decide." Mr. Rooney then adjourned the case until the next Civil Court sittings in March, during which time Mr. Walsh said that "the banks may want to drop the case."

Speaking to the Waterford News & Star after the hearing, David Walsh said that he would happily accept the verdict of the court, as long as it applied across the board. "The Irish Government and the banks that created the recession cannot pick and choose when it is okay to issue a promissory note," Mr Walsh said.

It was also addressed in ***Freeman & anor -v- Bank of Scotland (Ireland) Limited & ors [2013] IEHC 371***: 'The 'creation of currency' (at 29)

> *"At para. 10 of the statement of claim, the plaintiffs allege that the "first named defendants misled and deceived the plaintiffs by offering what the plaintiffs understood to be a 'loan of money', when in fact the first named defendants did not 'lend' the funds, they instead created the funds with the Plaintiff's signatures on a loan application". In support of this argument the plaintiffs seek to rely on the affidavit of a Mr. Walker F. Todd which discusses what he calls "a common misconception about the nature of money" and states – "In a fractional reserve banking system like the United States banking system, most of the funds advanced to borrowers (assets of the banks) are created by the banks themselves and are not merely transferred from one set of depositors to another set of borrowers."*

> *The Court accepts the submission by counsel for the defendants that this 'creation of currency' argument resembles the so-called 'money for nothing schemes' discussed in Meads v. Meads 2012 ABQB 571. Such arguments are coming before the Courts in numerous jurisdictions with increasing frequency since the economic and property market collapse. In Meads, Associate Chief Justice Rooke stated that such arguments are often advanced by a particular type of vexatious litigant which he termed 'Organised Pseudolegal Commercial Argument (OPCA) litigants'. He described these arguments as 'fanciful' and 'completely devoid of merit' and said they are often made by distressed litigants, particularly those who find themselves in financial difficulty, acting under pressure and on the instruction of organised groups or individuals who have a vested interest in disrupting court operations and frustrating the legal rights of governments, corporations and individuals."*

https://freemandelusion.com/wp-content/uploads/2018/07/freeman-anor-v-bank-of-scotland-ireland-ltd-ors-2013-iehc-371.pdf

In Canada, the numerous cases where these schemes have been rejected is in part E of ***Meads v. Meads 2012 ABQB 571 (CanLII)***.

https://freemandelusion.com/wp-content/uploads/2019/09/meads-v-meads.pdf

In ***Bank of New Zealand v Debra Donaldson [2016] NZHC 1225*** the appellant argued that the Bank was validly paid with the "promissory notes"; and did not heed the conditions appearing on the covering letters and therefore agreed to accept the "promissory notes" as satisfaction of the debt, and it had created an estoppel by acquiescence preventing it from now seeking payment of the debt.

> *"Ms Donaldson accepted at the hearing that there is no evidence before the Court that "Private Prepaid Treasury Account #18237199 c/o Minister of Finance, Hon. Bill English" exists. She suggested that the New Zealand government would in this case pay the Bank, but when I asked her why the New Zealand government would do that she was unable to offer any clear answer. For the same reason that Ms Donaldson could not provide a satisfactory answer to that question, a creditor receiving documents such as the "promissory notes" in this case would not consider that it had received the equivalent of cash. Ms Donaldson could not point to any document or oral agreement by which the Bank actively agreed to accept payment by promissory note."*

https://freemandelusion.com/wp-content/uploads/2018/07/bank-of-new-zealand-v-debra-donaldson-2016-nzhc-1225.pdf

The main scheme in Australia and other Commonwealth nations is the "*promissory note*", that has been submitted in many cases, notably in an attempt to discharge debts to banks.

Although their basis of theory is the *Bills of Exchange Act*, it is, however, apparent that the documents do not even slightly resemble genuine bills of exchange. Furthermore, signing for the registered mail that contained the documents does not amount to an "acceptance" of any legitimate bill of exchange that might be in the envelope. "Acceptance" in the *Bills of Exchange Act* is a technical term, and is not the same as acknowledging physical receipt of the envelope.

To ensure this “acceptance” proponents are informed to use registered mail, and hold that a "contract" has been created by "tacit agreement" due to the recipient’s failure to respond or "rebut" the contents of served documents. This is technically a ***foisted contract*** that has no legal effect.

In various cases proponents have described the "promissory note" theory. They have stated that the banks do not have money. Rather, they create money out of "thin air", a concept referred to as "***Book-entry Credits***". They often ask, *"where did that money come from"*, and answer *"it came from us"*, stating, *"it is not like the old days, when people used to go to the bank and, in the back room, count out dollars. There is no law that allows the banks to create dollars out of thin air. The banks also charge interest on nothing and that is a criminal rate of interest because interest is charged on nothing."*

They further explain that it is you that "creates" this value when you apply for a loan, receive funding from the government, and other sources. *"You are the only one who can make "money" and guarantee its payment by your authorization, your signature. The government in its fiduciary position arranges or "guarantees" it, and the payment is processed through your trust or tax account. It's basically a running tab. No other party can sign for it only you."* This assertion leads the proponent to believe they can create their own "money" themselves, through the issue of a promissory note.

Mike Palmer from "Know Your Rights Group" tried unsuccessfully to explain this concept in ***Permanent Custodians Ltd v Virgin Investments Pty Ltd [2009] VSC 429*** citing two obscure US decisions *First National Bank of Montgomery v Daly* and *Jerome Daly v Savage State Bank & Anor* (the Credit River decisions) along with a booklet called "*Modern Money Mechanics*" describing the U.S. banking system.

https://freemandelusion.com/wp-content/uploads/2020/06/permanent-custodians-ltd-v-virgin-investments-pty-ltd-2009-vsc-429.pdf

The creation of money is solely within the legislative powers of the Federal Parliament in the constitution, under section 51(xiii) *banking, and the issue of paper money,* and (xvi) *bills of exchange and promissory notes.* In Australia, banknotes issued by the Reserve Bank of Australia, and coin up to certain amounts have the status of "legal tender". (See ***section 36 Reserve Bank Act 1959***, and ***section 16 Currency Act 1965***)

LEGAL TENDER

The Concise Oxford Dictionary defines legal tender as "currency that cannot legally be refused in payment of debt (usually up to a limited amount for coins, etc.)".

It is the Bank's understanding that, although Australian currency has legal tender status, it does not necessarily have to be used in transactions and that refusal to accept payment in legal tender notes and coins is not unlawful.

This is the case even where an existing debt is involved. However, a refusal to accept legal tender in payment of an existing debt, where no other means of payment or settlement has been specified in advance, conceivably could have consequences in legal proceedings, i.e. the creditor may be unable to enforce payment in any other form.

It appears that the provider of goods or services is at liberty to set the commercial terms upon which payment will take place before the "contract" is entered into. For example, some toll collection points indicate by signs that they will not accept low denomination coins. If a provider of goods or services specifies other means of payment prior to the contract, then there is usually no obligation for legal tender to be accepted as payment.

According to the Reserve Bank Act 1959, Australian notes are legal tender. According to the Currency Act 1965, coins are legal tender for payment of amounts, which are limited as follows:

* not exceeding 20c if 1c and/or 2c coins are offered (however, it should be noted that these coins have been withdrawn from circulation but are still legal tender);

* not exceeding $5 if any of 5c, 10c, 20c and 50c coins are offered;

* not exceeding 10 times the face value if coins in the range 50c to $10 inclusive are offered; and

* to any value if coins of value greater than $10 are offered.

These general comments are offered only as a guide and should not be taken as legal advice.

A promissory note made by an individual does not have "legal tender" status. A *Freedom of Information Request* from the Bank of England regarding the definition of "legal tender" in reference to promissory notes:

BANK OF ENGLAND

Finally, you also mentioned legal tender. Within the United Kingdom only banknotes issued by the Bank of England and coin up to certain amounts have the status of 'legal tender'. A promissory note made by an individual would not have legal tender status.

Yours sincerely

Sandra Collins

Sandra Collins
Public Information and Enquiries Group

Promissory notes have a legitimate purpose, there is no reason in principle why a debtor cannot create a promissory note payable to a specific institution (a creditor) for a specific amount due from the debtor to the creditor. However, that does not mean that the creditor is obliged to accept the note in undertaking of the debt, since the method of payment is a matter of agreement between the parties to the transaction. In other words, unless the creditor has agreed to accept the note in lieu of payment of the debt, it would not be required to do so.

A legitimate promissory note is defined in ***section 89 of the Bills of Exchange Act 1909***...

> *(1) A promissory note is an unconditional promise in writing made by one person to another, signed by the maker, engaging to pay, on demand or at a fixed or determinable future time, a sum certain in money, to or to the order of a specified person, or to bearer.*
> *(2) An instrument in the form of a note payable to maker's order is not a note within the meaning of this section unless and until it is indorsed by the maker.*
> *(3) A note is not invalid by reason only that it contains also a pledge of collateral security with authority to sell or dispose thereof.*
> *(4) A note which is, or on the face of it purports to be, both made and payable within Australasia is an inland note. Any other note is a foreign note.*

To break down the many obvious errors in the theories regarding promissory notes, firstly, as in subsection (1), a promissory note is not legal tender, it is a "promise to pay". It doesn't "pay" the debt, the debt must still be paid at the agreed time.

Secondly, the note is unconditional, and not subject to conditions by the issuer, as also in subsection (1) which usually accompanies the documents.

Thirdly, a promissory note isn't valid unless it is *also* backed by collateral, so the pledged collateral can be sold or disposed of in default, as in subsection (3).

It is very unfortunate that any person would be so gullible as to believe that free money can be obtained by these theatrics, but nevertheless some appear unable to resist the temptation of wealth without obligation. One can only hope that in the future pseudolaw gurus will find these schemes less attractive, and their risk-loving customers instead invest in alternative forms of speculation, such as lottery tickets, which provide infinitely better prospects for return.

Woods v Australian Taxation Office & Ors [2016] QDC 198

> *"In the present case, an attempt was made to distinguish the procedure from that in Atkinson and Walsh by resort to promissory notes rather than the stratagem of a bill of exchange. However, I do not accept that the delivery of the notes was a valid exercise. The notes sent to the third defendant were not truly promissory notes within the meaning of the Act. A promissory note is defined in s 89(1) of the Act as an unconditional promise in writing made by one person to another, signed by a maker, engaging to pay, on demand or at a fixed or determinable future time, a sum certain in money, to or to the order of a specified person, or to the bearer. ...the notes were not unconditional promises in writing to pay on demand nor were they to pay at a determinable future time."*

https://freemandelusion.com/wp-content/uploads/2019/05/woods-v-australian-taxation-office-ors-2016-qdc-198.pdf

This decision in the Southport District Court was appealed in early March 2017 to the Supreme Court of Queensland, in ***Woods v Australian Taxation Office [2017] QCA 28***:

> *"In my view, no arguable error, or misapplication, of law on the part of the learned primary judge with regard to that finding is identified in the applicant's written submissions. Moreover, his Honour's finding is consistent with decisions of the Full Court of the Federal Court of Australia in Atkinson & Anor v Commissioner of Taxation and Wilmink v Westpac Banking Corporation with respect to comparable documentation. As these decisions illustrate, the notion that, upon delivery of the documents to the ATO, there arose a legally binding contract or contracts between the applicant and any of the defendants containing the terms and conditions alleged, is without any legal merit. It is truly fanciful.*

https://freemandelusion.com/wp-content/uploads/2019/05/woods-v-australian-taxation-office-2017-qca-28.pdf

In ***Atkinson v Commissioner of Taxation [2014] FCA 1217*** the applicant sought a declaration that $112,500.00 in outstanding income tax had been paid by a bill of exchange.

> *"None of the propositions make sense. The statement of account is not a bill of exchange as defined in s 8(1) of the Act. The first applicant was not authorised to do anything with the statement of account under the Act. Writing and putting various stamps on the statement of account had no legal effect under the Act. Nor did delivering that statement of account back to the ATO. The Act is simply not engaged at all by the facts of this case. The notion that a person who owes the ATO money for non-payment of tax can transform the ATO's statement of account into a bill of exchange and then deliver the statement of account back to the ATO and, in so doing, discharge the person's own indebtedness for some nominal amount ($1) and render the ATO liable to pay the original amount owed to the ATO plus interest and other charges is some form of fantasy, unconnected to the operation of the Act."*

https://freemandelusion.com/wp-content/uploads/2020/10/atkinson-v-commissioner-of-taxation-2014-fca-1217.pdf

In ***Wilmink (Trustee) v Westpac Banking Corporation, [2014] FCA 872*** the appellant explained that he had paid the $325,000 owing by way of a "bill of exchange" and alleged default by Westpac, seeking damages in the amount of $1,3000,000, plus interest and costs. The court dismissed the application, and the decision was appealed numerous times,. Read more in the article ***Wilmink***.

https://freemandelusion.com/wp-content/uploads/2020/10/wilmink-as-trustee-for-the-bangarra-trust-v-westpac-banking-corporation-2014-fca-872.pdf

As held in ***ACM Group Ltd v Jenner [2014] QMC 7***:

> *"The A4V notice and the "certified agreement" are unilateral "quasi-agreements" unsupported by valuable consideration. Neither is binding on the involuntary party. The documents do not create*

formal legal relations or contractual consequences with or for anyone. In fact despite its misuse of Latin maxims and bizarre make believe legal babble the A4V notice is not worth the paper it's written.

The plaintiff claims that Ms Wales is an emerging breed of vicarious vexatious litigants known in Canada as organised pseudo legal commercial argument litigants (OPCA Litigants) characterised and distinguished by the use of muddled legal concepts and terms calculated to frustrate the legitimate legal rights of others and disrupt court proceedings (See Meads v Meads [2012] ABQB 571) OPCA litigants, according to Rooke ACJ, belongs to a group unified by specific but irrelevant formalities and language they appear to believe to be (or portray as) legally significant and "…will only honour (agreements and legal obligations) if they feel like it. And typically they don't" (Meads at [4]).

According to A4V mythology OPCA adherents are associated with the secret government bank account with millions of dollars in it which can be unlocked and accessed by special stamps and notations that convert the original document into a bill of exchange drawn on the secret government account in favour of a nominated payee. The A4V document here closely resembles those used by OPCA Litigants in Canada in "money for nothing schemes" discussed in Meads at [199] – [244]. As Counsel for the plaintiff points out the defence and counter claim here also bear a striking similarity to the OPCA modus operandi generally and, in particular, to the uses of unilateral agreements (eg A4V notice) and the fiction of quadruple counter claims (see Meads 473, 531, 483). A similar situation arose in Boughan v HSBC Bank Australia Ltd [2009] FCA 1007 where a litigant asserted an implied agreement that the account was "settled and closed" [23-29] because a bank officer did not sign and return a document within a specified time.

Graham J held: "It is apparent that the applicant's case against the bank well and truly earns the description of being unmeritorious and unsustainable. The applicant has no recall or prospect of successfully prosecuting any part of his proceeding against the bank. In relation to his claim for summary 5 judgment against the bank it is totally without foundation, it proceeds on the premise that, because the bank did not reply to his rather odd communication to it, by its silence the bank agreed to make a gift to the applicant of $666,000. The A4V concept was also reviewed and rejected in Underworld Services Ltd v Money Inc [2012] ABQC 327. When a filed defence is irregular or deficient in some way judges should, nonetheless, do their best to ensure that poorly expressed or unstructured pleadings of unrepresented litigants are not peremptorily struck out when they may raise genuine triable issues and with proper amendment or permissible assistance from the court could be put in to proper form (Coronis v Jilt Pty Ltd (2013) 1 Qd R 104 at 107 per McMurdo P). Accordingly, the defendant will be given the opportunity to re-plead free from interference by the unmeritorious arguments presently being advanced."

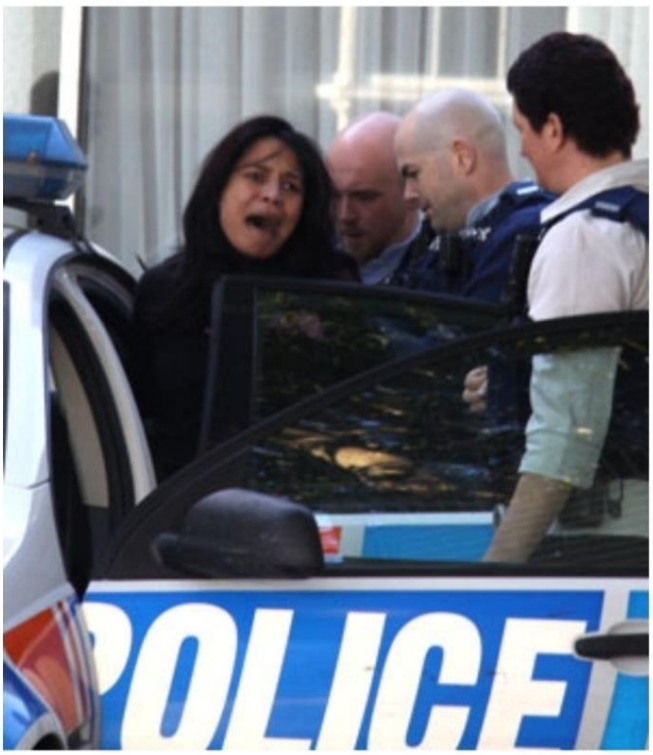
https://freemandelusion.com/wp-content/uploads/2019/05/acm-group-ltd-v-jenner-2014-qmc-7.pdf

A ***One Peoples Public Trust*** adherent, NZ woman Kirri Campbell, being arrested for fraud after attempting to deposit fake bills of exchange. StuffNZ: "***Alleged fraudster remanded***":

stuff

Alleged fraudster remanded

Laird Harper · 16:22, Jul 31 2013



Kiri Campbell screams out to supporters as she is bundled into a police car yesterday

A Hawera woman at the centre of an online debate over allegedly banking a fraudulent $15 million cheque has been remanded without plea.

Kiri Campbell, 32, is charged with five counts of using a document to gain a pecuniary advantage.

She appeared before Judge Allan Roberts at the Hawera police station yesterday after a group of supporters temporarily shut down the court house.

Campbell's plight has gained traction over the past few days on social media and has been associated with the Maori sovereignty movement.

According to websites supporting her, Campbell deposited $15m "of her own value" into a TSB Bank account as a way of "revealing the fraud of the current banking and monetary system".

Hawera police prosecutor Steve Hickey told the Taranaki Daily News that Campbell was remanded in custody by consent until she could get legal advice before her bail hearing.

Mr Hickey said she would appear in the New Plymouth District Court at another date, but would not elaborate further.

Earlier in the day, about 40 people packed the public gallery, shutting down proceedings.

A man waving the Maori flag of the United Tribes would not stop when asked, saying: "I do not consent to what you say, sir," whenever he was approached by a court officer. Judge Roberts refused to begin until the flag was removed.

Campbell was subsequently whisked away by police and could be heard screaming as she was bundled into a police car.

Media were also asked to leave the area for their "own safety" shortly after 10am when police began to move the group on.

Outside the court, Campbell's representative, Larni Healey, said they do not recognise the authority of the court.

Campbell was also an administrator of The One People Aotearoa-New Zealand Facebook page, which is linked to a "sister site" called Mortgage Terminators.

In ***ACM Group Limited v McClymont [2014] FCCA 2581*** the appellant argued that Westpac should account to him for the amount it received for the debt from the petitioning creditor because it was Mr McClymont's signature on the credit contract that created the asset that Westpac sold or assigned to the petitioning creditor. Having created the asset by his signature via "*Book-entry credits*", it was his asset and Westpac was not entitled to sell it.

https://freemandelusion.com/wp-content/uploads/2020/10/acm-group-limited-v-mcclymont-2014-fcca2581.pdf

As held in ***Living Word Outreach Inc v Deputy Sheriff of Victoria [2014] VSC 454***:

> *"Mr Field asserted in addition that there existed a commercial lien between the appellant and the VGSO. Mr Field submitted that the appellant had 'issued' commercial liens against the VGSO containing claims that the VGSO failed to rebut and so must be held to have accepted. As submitted on behalf of the respondents, there is no basis for the assertion of a commercial lien. A lien is the personal right to withhold to property as security for the performance of an obligation or payment of a debt. The appellant has not established any obligation or debt on the part of the VGSO, with the result that there can be no lien."*

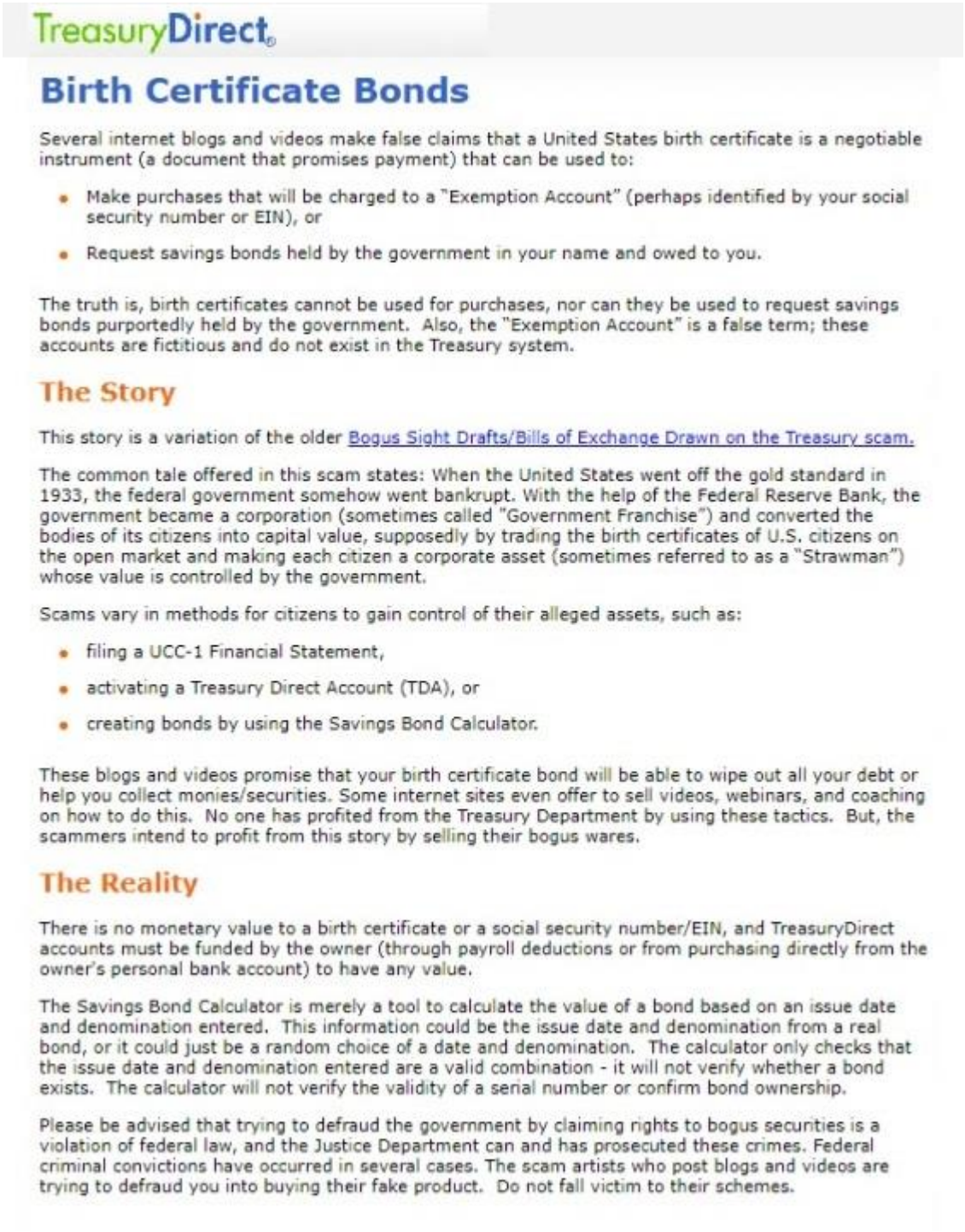
https://freemandelusion.com/wp-content/uploads/2020/10/living-word-outreach-inc-v-deputy-sheriff-of-victoria-2014-vsc-454.pdf

In ***Australia and New Zealand Banking Group Ltd v Evans; Evans v Esanda Finance Corporation Ltd [2016] NSWSC 1742*** the court thought it appropriate to strike out or summarily dismiss the pleadings regarding promissory notes.

> *"It is illogical and incorrect as a matter of legal principle to take the statement that a promissory note "is to be treated as cash" out of the context in which it appeared, and apply it, as Mr Evans seeks to do here, in circumstances where Mr Evans creates a promissory note, which is not drawn on any reputable or substantial financial institution, and which is not a recognised form of payment under the loan documentation, and then proffers it entirely voluntarily in circumstances where the ANZ is required to attend at a remote rural village, at a specific time, in order to collect payment. Mr Evans' assertion that, in those circumstances, he is excused from repaying his substantial liability to ANZ is, simply put, a nonsense. .. Here there is no doubt that ANZ received the promissory notes and did not return them within the specified three days. Silence or inaction on the part of a party cannot, where no consideration passes, transform a unilateral demand into a contract. Even less can it constitute a breach of some self-invented contract by Mr Evans. .. The entirety of the Statement of Claim in the Evans proceedings is based on an irrational and legally untenable premise. The irrational premise is that a person or party can unilaterally impose a contract upon one or more other parties by producing a five page written document, full of gibberish and legal nonsense, sending it to the other party or parties and then asserting that when the recipients ignore the document, they fall to be bound by its terms."*

https://freemandelusion.com/wp-content/uploads/2020/10/australia-and-new-zealand-banking-group-ltd-v-evans-evans-v-esanda-finance-corporation-ltd-2016-nswsc-1742.pdf

The U.S. Treasury published a warning to inform the public of these scams, titled "***Birth Certificate Bonds***"



TreasuryDirect

Birth Certificate Bonds

Several internet blogs and videos make false claims that a United States birth certificate is a negotiable instrument (a document that promises payment) that can be used to:

- Make purchases that will be charged to a "Exemption Account" (perhaps identified by your social security number or EIN), or
- Request savings bonds held by the government in your name and owed to you.

The truth is, birth certificates cannot be used for purchases, nor can they be used to request savings bonds purportedly held by the government. Also, the "Exemption Account" is a false term; these accounts are fictitious and do not exist in the Treasury system.

The Story

This story is a variation of the older Bogus Sight Drafts/Bills of Exchange Drawn on the Treasury scam.

The common tale offered in this scam states: When the United States went off the gold standard in 1933, the federal government somehow went bankrupt. With the help of the Federal Reserve Bank, the government became a corporation (sometimes called "Government Franchise") and converted the bodies of its citizens into capital value, supposedly by trading the birth certificates of U.S. citizens on the open market and making each citizen a corporate asset (sometimes referred to as a "Strawman") whose value is controlled by the government.

Scams vary in methods for citizens to gain control of their alleged assets, such as:

- filing a UCC-1 Financial Statement,
- activating a Treasury Direct Account (TDA), or
- creating bonds by using the Savings Bond Calculator.

These blogs and videos promise that your birth certificate bond will be able to wipe out all your debt or help you collect monies/securities. Some internet sites even offer to sell videos, webinars, and coaching on how to do this. No one has profited from the Treasury Department by using these tactics. But, the scammers intend to profit from this story by selling their bogus wares.

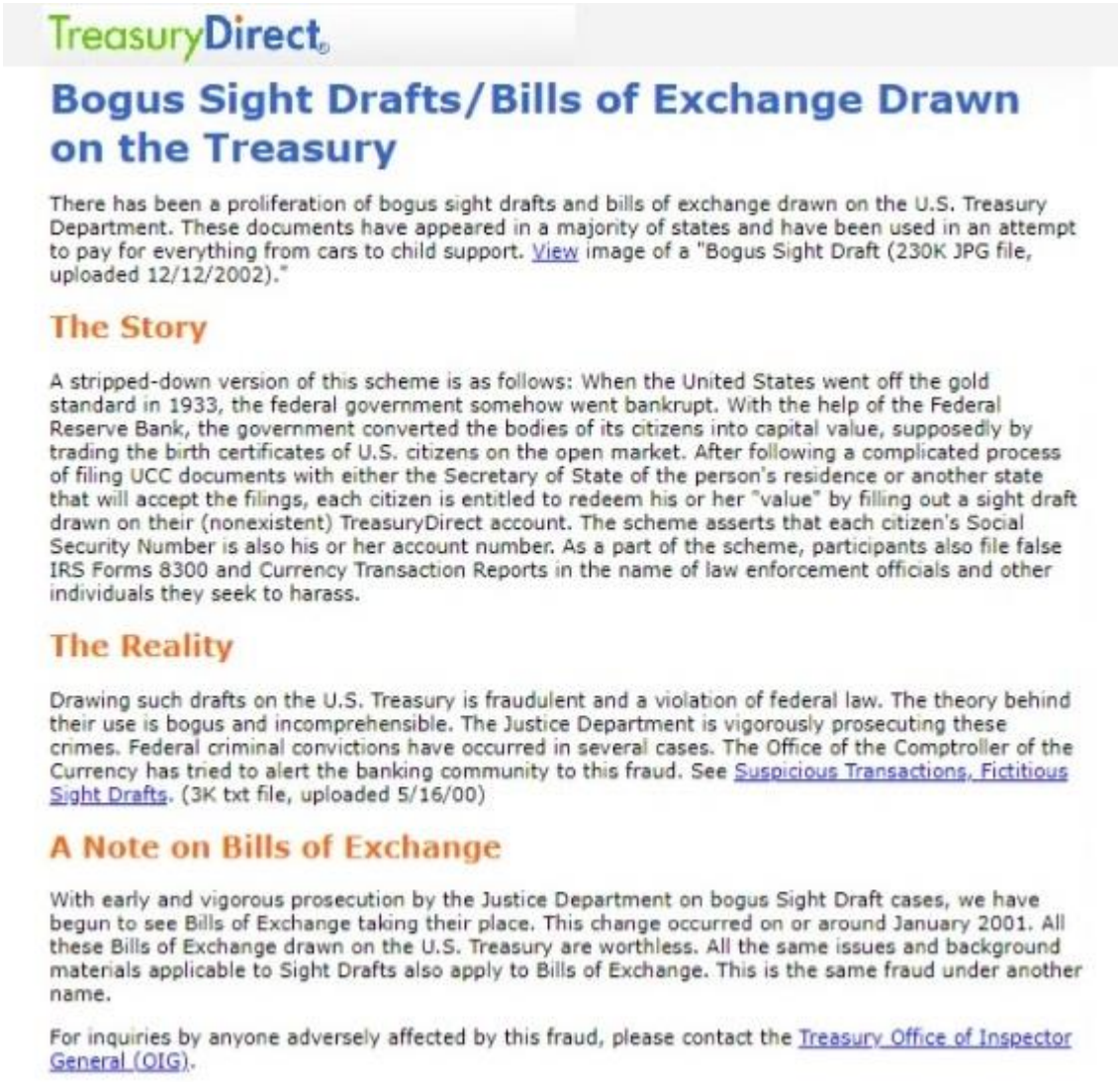
The Reality

There is no monetary value to a birth certificate or a social security number/EIN, and TreasuryDirect accounts must be funded by the owner (through payroll deductions or from purchasing directly from the owner's personal bank account) to have any value.

The Savings Bond Calculator is merely a tool to calculate the value of a bond based on an issue date and denomination entered. This information could be the issue date and denomination from a real bond, or it could just be a random choice of a date and denomination. The calculator only checks that the issue date and denomination entered are a valid combination - it will not verify whether a bond exists. The calculator will not verify the validity of a serial number or confirm bond ownership.

Please be advised that trying to defraud the government by claiming rights to bogus securities is a violation of federal law, and the Justice Department can and has prosecuted these crimes. Federal criminal convictions have occurred in several cases. The scam artists who post blogs and videos are trying to defraud you into buying their fake product. Do not fall victim to their schemes.

As noted by the U.S. Treasury, it is a variation of the older **Bogus Sight Drafts/Bills of Exchange** Drawn on the Treasury scam created by the ***Posse Comitatus***.



TreasuryDirect

Bogus Sight Drafts/Bills of Exchange Drawn on the Treasury

There has been a proliferation of bogus sight drafts and bills of exchange drawn on the U.S. Treasury Department. These documents have appeared in a majority of states and have been used in an attempt to pay for everything from cars to child support. View image of a "Bogus Sight Draft (230K JPG file, uploaded 12/12/2002)."

The Story

A stripped-down version of this scheme is as follows: When the United States went off the gold standard in 1933, the federal government somehow went bankrupt. With the help of the Federal Reserve Bank, the government converted the bodies of its citizens into capital value, supposedly by trading the birth certificates of U.S. citizens on the open market. After following a complicated process of filing UCC documents with either the Secretary of State of the person's residence or another state that will accept the filings, each citizen is entitled to redeem his or her "value" by filling out a sight draft drawn on their (nonexistent) TreasuryDirect account. The scheme asserts that each citizen's Social Security Number is also his or her account number. As a part of the scheme, participants also file false IRS Forms 8300 and Currency Transaction Reports in the name of law enforcement officials and other individuals they seek to harass.

The Reality

Drawing such drafts on the U.S. Treasury is fraudulent and a violation of federal law. The theory behind their use is bogus and incomprehensible. The Justice Department is vigorously prosecuting these crimes. Federal criminal convictions have occurred in several cases. The Office of the Comptroller of the Currency has tried to alert the banking community to this fraud. See Suspicious Transactions, Fictitious Sight Drafts. (3K txt file, uploaded 5/16/00)

A Note on Bills of Exchange

With early and vigorous prosecution by the Justice Department on bogus Sight Draft cases, we have begun to see Bills of Exchange taking their place. This change occurred on or around January 2001. All these Bills of Exchange drawn on the U.S. Treasury are worthless. All the same issues and background materials applicable to Sight Drafts also apply to Bills of Exchange. This is the same fraud under another name.

For inquiries by anyone adversely affected by this fraud, please contact the Treasury Office of Inspector General (OIG).

There are many more such cases, which you can locate on this website under the Tags:

- ***Promissory Notes***
- ***Book-entry Credits***
- ***Securitization***
- ***Accepted for Value***
- ***Birth Certificate Bonds***

Loans are Book Entry Credits

The US "*Modern Money Mechanics*, the *Credit River* decisions, and Australian *"How to screw your bank"* by Laurence F. Hoins.

The following is an analysis of the *Credit River* decisions in the US by Forrest J. in ***Permanent Custodians Ltd v Virgin Investments Pty Ltd [2009] VSC 429*** (From 20):

"The appeal from Associate Justice Evans came before me on 8 September in the Practice Court. In the course of that application Mr Palmer referred to an affidavit filed the day before to which he annexed a copy of a booklet entitled "Modern Money Mechanics" and two decisions emanating from Credit River Township, Scott County, Minnesota.

On the morning of the hearing, Mr Moffatt, who appeared for Permanent Custodians, sighted Mr Palmer's affidavit and was content to deal with it and its annexures in the course of submissions. He did not oppose leave being granted to Mr Palmer to rely upon it.Mr Palmer asserted, in the course of argument, that two decisions in *First National Bank of Montgomery v Daly* [1] ("the Credit River decisions") were not only authoritative but stood unreversed.[2] In addition it was said that, the "Modern Money Mechanics" booklet also provided the foundation for the discovery of the "lawful consideration" category of documents.

- *1 Justice Court State of Minnesota, Martin V. Mahoney.*
- *2 Transcript of proceedings, Permanent Custodians Ltd v Virgin Investments Pty Ltd (Supreme Court of Victoria, Justice Forrest, 8 September 2009), at p 26.*

Subsequently, on 14 September, Mr Moffatt provided the Court and Mr Palmer with extracts from the judgment of Byrne J in ***National Australia Bank Ltd v McFarlane*** ***[2002] VSC 116*** and Dodds-Streeton J in ***Walter v National Australia Bank Ltd*** ***[2004] VSC 36***.

I also thought it necessary to research the status of the Credit River decisions in both State and Federal Courts in the United States. My Associate provided Mr Palmer with details of a number of State and Federal U.S. authorities relating to those decisions as well as details of the two Victorian cases identified by Mr Moffatt. It was then arranged that the matter be re-listed to 24 September for further argument. Mr Palmer appeared, under protest, asserting that the Court should not re-open argument about the authority of the Credit River decisions.

I pause at this moment to observe that it was essential that the Court re-open the debate concerning the status of the Credit River decisions. As will be seen, Mr Palmer's statements to the Court as to their status were patently wrong. The purpose in reconvening the Court was to enable Mr Palmer to put any other material forward which may have indicated that a number of decisions of the Minnesota Supreme Court, U.S. Federal Judges, other U.S. State Judges and Judges of this Court were incorrect. On 24 September, the parties made submissions in relation to these decisions."(From 35) "In support of his argument, Mr Palmer relied upon the two quite different sources which I have already referred to. Firstly, the booklet "Modern Money Mechanics", which has no named author. Secondly, the Credit River decisions.

"Modern Money Mechanics" appears to be a treatise describing the U.S. banking system. It is described as "the workbook on bank reserves and deposit expansion". It was apparently published by the Federal Reserve Bank of Chicago in February 1994. One passage, in particular, is relied upon by Mr Palmer:

> *"In the United States neither paper currency nor deposits have value as commodities. Intrinsically, a dollar bill is just a piece of paper, deposits merely book entries. Coins do have some intrinsic value as metal, but generally far less than their face value.*
>
> *What, then, makes these instruments – cheques, paper money and coins – acceptable at face value in payment of all debts and for other monetary uses? Mainly, it is the confidence people have that they will be able to exchange such money for other financial assets and for real goods and services whenever they choose to do so." (Reserve Bank of Chicago, Modern Money Mechanics page 3.)*

Putting to one side that this analysis is of the US banking system and, in particular, the operations of the Federal Reserve, the contents of the booklet do not support Mr Palmer's contention. The booklet simply sets out the manner in which the U.S. banking system operates and the role of the Federal Reserve.

The facts of this case demonstrate the fallacy of Mr Palmer's assertion that there was no lawful consideration. The moneys advanced by Permanent Custodians were used to pay off an existing mortgage (of about $1.2 million) and other costs associated with the loan and the registration of the mortgage. In addition, Virgin Investments directly received nearly $70,000 by way of bank cheque.[3] Each of these transactions had a value. Virgin Investments was relieved of its indebtedness to the previous mortgagee, creditors were paid out and Virgin received funds which it was able to utilise for its own benefit. Virgin received value as a result of it entering into the loan agreement and the mortgage.

- 3 *Affidavit of Andrew Brown, 23 January 2009, Exhibits APB16 and APB17.*

The second limb to Mr Palmer's argument was based upon the Credit River decisions. In fact, the first of those decisions (*First National Bank of Montgomery v Daly*) [4] related to a trial by a jury of 12 "talesman" presided over by Martin V. Mahoney in the township of Credit River, Scott County Minnesota. [5] The second related to the appeal by the Bank against the jury's decision.

- 4 (12/07/1968) Justice Court State of Minnesota, Justice Martin V. Mahoney.
- 5 Affidavit of Michael Palmer, 7 September 2009, Exhibit MGP10.

In the course of his submissions, Mr Palmer said the following:

> *"MR PALMER: Yes, Your Honour. This ruling has gone unchallenged for 40 years because they cannot dispute his findings. No-one can fault his findings that no lawful consideration was ever tendered either in the initial contract with Mr Jerome Daly, nor was lawful consideration tendered to the court on the appeal with the $2.*
>
> *HIS HONOUR: On your argument, would they ever have been able to appeal?*
>
> *MR PALMER: Yes, they would have, Your Honour.*
>
> *HIS HONOUR: How would they have done that?*
>
> *MR PALMER: With either paying two silver dollars, four half dollars, eight quarter dollars or indeed 200 pennies, Your Honour." [6]*

- *6 Transcript of proceedings, Permanent Custodians Ltd v Virgin Investments Pty Ltd (Supreme Court of Victoria, Justice Forrest, 8 September 2009), p 26.*

Mr Palmer's assertion that the two decisions of the Justice of Credit River Township have gone unchallenged is quite wrong, indeed, misleading. Mr Daly, an Attorney, was sued by the Bank for possession of a property he owned in Scott County. The jury concluded that the loan of $14,000, secured by a mortgage given by Mr Daly, did not constitute "lawful consideration". Martin V. Mahoney was, in fact, a justice of the peace with no legal qualifications. He presided over the trial and wrote in the "judgment and decree":

> *"The jury found there was no lawful consideration and I agree. Only God can create something of value out of nothing … Plaintiff's act of creating credit is not authorised by the Constitution of laws of the United States, as unconstitutional and void and is not a lawful consideration in the eyes of the law to support any thing or upon which any lawful rights can be built."[7]*

- *7 Exhibit MGP10 to the affidavit of Mr Palmer, 7 September 2009.*

The saga did not end there. The Bank appealed and provided security, perhaps unwisely in the context of the first decision, in the form of two one dollar bills. On 6 January, the Court filed a notice of refusal to allow the appeal. On 22 January at 7.00pm, Mr Daly again appeared before Justice of the Peace Mahoney. The bank was unrepresented. The nub of Mr Mahoney's decision was:

> *"That the Federal Reserve notes on deposit with the clerk of the court are not lawful money of the United States; are in violation of the Constitution of the United States and are not valid for any purpose."[8]*

- *8 Exhibit MGP11 to the affidavit of Mr Palmer, 7 September 2009.*

It is necessary, for a few moments, to look at events in Minnesota subsequent to the Credit River decisions. On 11 July 1969, Justice C. Donald Peterson, acting for the Minnesota Supreme Court, directed "Martin v Mahoney, Justice of the Peace of Credit River Township and Jerome Daly to show cause", in respect of a separate proceeding, as to why they should not be permanently restrained from further proceedings in the Justice Court.[9] The death of Mr Mahoney on 22 August 1969 rendered the proceedings against him moot, however Mr Daly was suspended by the Supreme Court from the practice of law in Minnesota courts from 1 October 1969.[10]

- *9 Jerome Daly v Savage State Bank & Anor 171 NW (2d) 218.*
- *10 In Re Jerome Daly 284 Minn. 567, 171 NW 2d 818 (1969), at 568.*

In July 1971, Mr Daly's disbarment hearing came on before the Minnesota Supreme Court. Mr Daly appeared for himself. The tenor of his argument and the Court's response can be gleaned from the following remarks by the Court:

> *"Contrary to the respondent's fanciful assertions that these proceedings are a conspiracy by banks and their directors to put an end to his persistent attacks upon the constitutionality of the monetary system of the United States, disciplinary proceedings, including this one are not designed to punish an attorney or to prevent him in good faith espousing a legal cause however unpopular or seemingly untenable, but rather to discharge this court's responsibility to protect the public, the administration of the justice and the profession …".[11]*

- *11 In Re Jerome Daly 291 Minn. 488, 189 NW 2d 176 (1971), at 489.*

The concluding remarks of the court in disbarring Mr Daly are worth summarising:

> *"No useful purpose would appear to be served by repeating the detail of the instances supporting the foregoing summary of ultimate findings, all of which are adopted as the basis for respondent's removal from practice. It should be noted, however, that respondent's persistent and continuing attacks on our national monetary system can hardly be regarded as zealous advocacy or a good-faith effort to rest the validity of repeated decisions of courts of record. For, as found by the referee, up to the time of his findings and recommendations respondent had avoided payment of any Federal income tax from 1965 and subsequent years on the asserted ground that he has not received gold and silver coin and, therefore, had no earnings that were taxable. Also, he has taken personal advantage of the system he attacks by borrowing money from a bank to purchase lakeside property, only to subsequently defeat the bank's repossession after mortgage foreclosure by taking the position that the bank's extension of credit was unlawful, obligating him neither to pay the debt, nor to surrender possession following expiration of the time to redeem.[12]*

- *12 In Re Jerome Daly 291 Minn. 488, 189 NW 2d 176 (1971), at 495.*

The argument that paper dollars have no intrinsic value and therefore nothing of any worth has been loaned has surfaced regularly in Courts in the United States, often with references to the Credit River decisions. For instance, in 2007 *Sneed v Chase Home Finance LLC* [13] Judge Burns of the United States District Court said as follows:

> *"Plaintiff's allegations concerning the loans appear to be contradictory. She alleges both that Defendants never loaned anything of value … and also that payment of the loan in full was attempted … . The nature of the alleged business relationship, where nothing of value was lent but where Plaintiff attempted to repay the loan anyway, is never explained.*
>
> *The resolution of this paradox appears to be that Plaintiff does not recognize U.S. Federal Reserve notes as legal tender (or 'lawful money', as she terms it). Plaintiff repeatedly either implies or asserts that Defendants did not lend lawful currency. … In particular, Plaintiff reveals her thinking in a boldface paragraph citing what purport to be cases of Minnesota state courts for the proposition that 'Federal Reserve Notes [are] fiat money and not legal tender …*
>
> *Furthermore, the Minnesota cases cited by the plaintiff are not only unreported but they have been vacated by the Minnesota Supreme Court reported decisions. … The plaintiff is hereby admonished. She must not cite any decision under which Justice Martin Mahoney purported a question of the validity of Federal currency or the constitutionality of the Federal Reserve Act, nor may she cite any opinion or decision as authoritative which no longer has authoritative status".[14]*

- *13 2007 WL 185 1674 (S.D. Cal. June 27, 2007).*
- *14 Sneed v Chase Home Finance LLC 2007 WL 185 1674 (S.D. Cal. June 27, 2007), p 3-4.*

It is also clear that in this State, like the United States, arguments concerning fractional reserve banking have been raised and rejected on a number of occasions: ***Smart v ANZ Banking Group Limited* [2002] VSCA 111**, ***Walter v National Australia Bank Limited* [2004] VSC 36**, and ***National Australia Bank Limited v McFarlane* [2002] VSC 116**. In each of these cases, the argument based on "no lawful consideration" was raised in a similar fashion to that articulated by Mr Palmer. It suffices to repeat what was said by Byrne J in *McFarlane:*

> *"The defendants next contend that there was no lawful consideration given for the mortgages as the Bank did not advance the money claimed but only created a credit in the accounts of the McFarlanes. … As best I understood him, he based his conclusion on the fact that the Bank, as lender, does not in fact lend money, that is, cash, banknotes or bullion, but merely creates a book entry. This, he said, was a fraud on the customer who believes that they are receiving a loan. Unless the supposed lender in a transaction such as the present hands over bullion, banknotes or coin, he continued, the mortgage entered into is invalid. It is apparent to me that this is arrant nonsense. It has no regard to the legal obligations which are created by a bank loan; it ignores the reality of modern commerce where it is money, in the broad sense of that term, including choses in action, and not only gold, banknotes and coin, or indeed legal tender, which plays a most important part.*
>
> *I was referred also to the decision of Justice of the Peace Martin V Mahoney in First National Bank of Montgomery v Daly decided in 1969 in the Justice Court, Township of Credit River, County of*

> *Scott, State of Minnesota in the United States of America. I have read this decision with care. This is not an easy task as its procedural aspects are unfamiliar to an Australian practitioner and its logic is bizarre. Insofar as His Honour relied upon the provisions of the Constitution of the United States of America, the Constitution of the State of Minnesota and the laws of the United States, these precepts have no application in Victoria. I am not bound by this decision. In any event, I am not persuaded that His Honour's reasoning is valid. [15]*

- 15 *National Australia Bank Limited v McFarlane* [2002] VSC 116, [7] and [8]. Cited with approval by Dodds-Streeton J in *Walter v National Australia Bank Limited* [2004] VSC 36 [246].

This overly long narrative places in context the Credit River decisions. Absent his death, it is fair to assume that Justice of the Peace Mahoney would have been removed from office. [16] The Credit River decisions are worthless as authority for any proposition in any Court in this country.

- 16 *Daly v Savage Stone Bank* (1969) 171 NW (2D) 218.

The argument put by Mr Palmer that s 115 of the *Constitution* and s 22 of the *Currency Act (C'wealth)* render the printing of paper money by the Reserve Bank illegal is so unmeritorious it does not warrant any further attention.

I have spent far too long in endeavouring to deal with the submission based on "fractional reserve banking" and the absence of lawful consideration; it does seem, however, to be a recurrent theme advanced by litigants in person when confronted with loan default. The argument is totally devoid of merit and should be rejected. If there was a power of admonition, such as that possessed by a US Federal Court Judge, I would apply it unhesitatingly. It follows that none of the documents within the classes sought by Mr Palmer are relevant to the issues in this proceeding."

https://freemandelusion.com/wp-content/uploads/2020/06/permanent-custodians-ltd-v-virgin-investments-pty-ltd-2009-vsc-429.pdf

This document from the *Credit River* decisions in the US is often raised as an attempt to substantiate the book-entry credits contention:

https://freemandelusion.com/wp-content/uploads/2020/09/bank-loan-validity.pdf

This is an Australian publication titled *"**How to screw your bank**"* by Laurence F. Hoins, (1992) which is raised in various cases as a source for the book entry credits contention.

https://freemandelusion.com/wp-content/uploads/2020/11/how-to-screw-your-bank-.pdf

There are many cases in which the book entry credits contention has been raised, you can locate them on this website under the Tag "***Book-entry Credits***".

The Uniform Commercial Code

Pseudolaw adherents often insist that the *UNIFORM COMMERCIAL CODE* is some sort of "international law" that applies to every nation, but this is completely false. The U.C.C. operates mainly in the U.S. where it is used to harmonise the law of sales and other commercial transactions across the nation through its adoption by all states. The Uniform Commercial Code has no jurisdiction in Australia, nor any other sovereign nation, although some countries have included certain parts of it into their own provisions to govern commercial transactions with U.S. companies and institutions.

For these reasons we have adopted Article 9 and Article 3 in Australia, which are of course superseded by our own nations state and federal laws. Article 9 is *"Secured Transactions",* covering transactions secured by security interests between banks, and Article 3 is *"Negotiable Instruments"* covering promissory notes, bills of exchange, banknotes, demand draft and cheques, for the purposes of trade with U.S. companies and institutions.

Article 9 does not even govern real property security interests, only certain fixtures to real property. Mortgages, deeds of trust, and installment land contracts, which are the principal forms of real property security interests, remain governed by state laws. The closest thing we have to the U.C.C. in Australia is the ***Personal Property Securities Register*** but its not the same thing.

International UCC Equivalents:

https://freemandelusion.com/wp-content/uploads/2018/07/international-ucc-equivalents-_-the-metropolitan-corporate-counsel.pdf

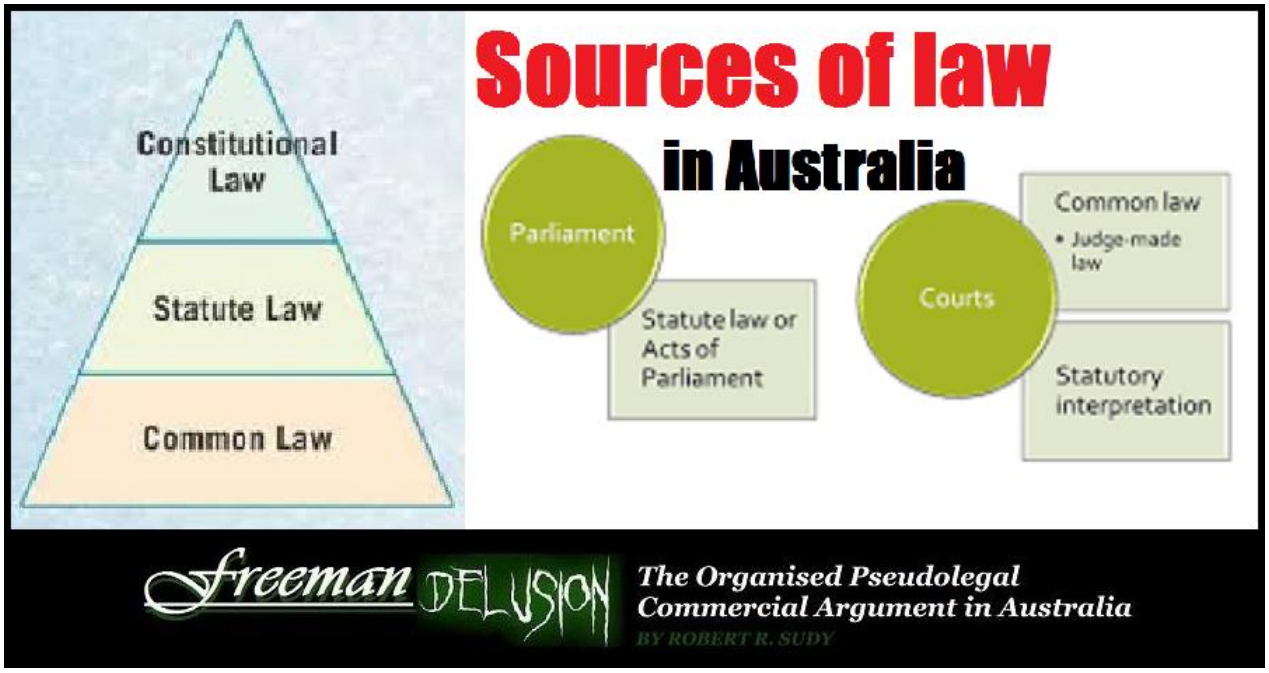
Section 254(1) of the Personal Property Securities Act 2009 (Cth) clarifies the exclusion of current laws, so it definitely doesn't provide a mechanism to avoid any laws as adherents like to think:

> *"This Act is not intended to exclude or limit the operation of any of the following laws (a concurrent law), to the extent that the law is capable of operating concurrently with this Act:*
>
> - *(a) a law of the Commonwealth (other than this Act);*
> - *(b) a law of a State or Territory;*
> - *(c) a general law."*

This exclusion of current laws is also clarified in section 5E(1) of the ***Corporations Act 2001*** (Cth) that all foreign companies are subject to.

> *"The Corporations legislation is not intended to exclude or limit the concurrent operation of any law of a State or Territory."*

The Supremacy of Parliament



> *"It behooves us to remember that men can never escape being governed. They either must govern themselves or they must submit to being governed by others. If from lawlessness or fickleness, from folly or self-indulgence, they refuse to govern themselves, then most assuredly in the end they will have to be governed from the outside. They can prevent the need of government from without only by showing that they possess the power of government from within." - Theodore Roosevelt*

Will the real common law please stand up?

There are a variety of pseudolaw myths concerning common law, from it's general meaning to it's supremacy over statute law or legislation. The common law theorist generally argues that to breach common law, implies that one would have to breach one of three alleged parts of this law, which they define as... harm to others, harm to their property, or mischief in contracts. Others describe it as "common sense law". Pseudolaw ideology places a far different meaning and reliance on common law than exists in any legal system.

Though there are many different strains and theories of common law, a similar thread that runs through most of them is that the common law is a separate, parallel legal/judicial system, one independent from and not subordinate to statutory or written law. Every common law theorist or group has a slightly different explanation for the origins of and nature of their version of "common law," but the following broad summary of their beliefs is general enough to hold for most circumstances. The key, as mentioned above, is that these adherents believe in "common law" as independent of (and even hostile to) other alleged legal systems, rather than all being part of a whole.

Essentially, common law theorists argue that other forms of law have been used by unscrupulous lawyers, merchants and others to subvert and replace the common law. One such is "Roman Civil Law," which some argue is the system of law generally used in continental Europe. Roman Civil Law ignores rights to due process. Another form of law is Law Merchant, which deals not with money "of substance" (silver and gold), but rather with credit and negotiable instruments. These terms are often used interchangeably; one common law publication lists as types of "Roman Civil Law" all the following: Admiralty Law, Law Martial, Law Merchant, Maritime Law, Martial Law, Martial Law Proper, and Martial Law Rule. Commercial Law is very important to common law theorists, which governs commercial transactions "of substance".

What pseudolaw adherents refer to as "common law" is more realistically a form of natural law, not the common law as it is actually defined, as stated by Rookes ACJ in ***Meads v Meads ABQB 571 (CanLII)***:

> *"It is helpful at this point to make a few comments on the manner in which OPCA litigants often use the term "common law". OPCA litigants often draw an arbitrary line between "statutes" and "common law", and say they are subject to "common law", but not legislation. Of course, the opposite is in fact true, the "common law" is law developed incrementally by courts, and which is subordinate to legislation: statutes and regulations passed by the national and provincial governments. The Constitution Act provides the rules and principles that restrict the scope and nature of legislation, both by jurisdiction and on the basis of rights (ie. the Charter). Persons who claim to only be subject to the "common law" also do not appear to mean the current common law, but typically instead reference some historic, typically medieval, form of English law, quite often the Magna Carta, which, as I have previously observed, is generally irrelevant."*

The doctrine of s*tare decisis*

The term "common law" is itself common, but most people do not know exactly what it means. Its meaning, though, is pretty simple: it refers to unwritten, judge-made law (as opposed to written, or statutory, law). Centuries ago, in England, most petty crimes or complaints were settled by judge-made precedents, rather than elaborate legal codes. It is based in the doctrine of s*tare decisis,* or precedent, it is the body of law collected from legal decisions over the centuries, which is applied to future similar cases. This principle means that judges are obliged to respect the precedent established by prior decisions.

The words originate from the Latin maxim s*tare decisis et non quieta movere*: "to stand by decisions and not disturb the undisturbed." In a legal context, this is understood to mean that courts should generally abide by precedent and not disturb settled matters.

Under the doctrine of s*tare decisis*, common-law judges are obliged to adhere to previously decided cases, or precedents, where the facts are substantially the same. A court's decision is binding authority for similar cases decided by the same court or by lower courts within the same jurisdiction. The decision is not binding on courts of higher rank within that jurisdiction or in other jurisdictions, but it may be considered as persuasive authority.

The hierarchy of Laws

The Constitution is the highest form of law in Australia, and any legislation that is not consistent with the Constitution is declared invalid by the High Court. While these decisions are known as common law rulings, it does not imply that common law is superior to legislation, but rather it implies the superiority of the constitution over both other forms of law.

Statute law was originally the law of the King, which trumped local laws. The local laws *became* common law, but were administrated by the King (Henry II). It was actually his statute that allowed the common law courts to exist in the first place, and the statute was only accepted because it was valid in the grundnorm of the public. Statute law and common law validate each other, there's not one and then the other, but it is commonly accepted that the written law of the monarch, and therefore parliamentary statute, trumps the unwritten law. But even the common law says that if you're under lawful arrest, you're under arrest whether you like it or not.

The aspect of where the King's Law actually comes from is one deeply rooted in philosophy and jurisprudence. There are two broad areas of jurisprudence; natural law and positive law.

Natural law is the philosophical theory that law comes from what is naturally right and wrong. For instance; A magpie is naturally entitled to eject anything from its territory that it perceives is a threat to its eggs. On the same notion, a person is entitled to eject anyone from their home that they perceive is unwelcome: See ***Plenty v Dillon (1991) HCA 5***.

Positive law is the theory that law is entirely man made, and instead of having a natural origin extends from a 'grundnorm' (what is popularly perceived as normal). Arguably both of these theories are true, and some laws extend from natural law and others (like taxation laws) resolve a man made problem.

The Kings Law (legislation) arguably comes from a positive law origin, and is/was accepted as law because it was popularly perceived that the King is more powerful than anyone else and should be obeyed. Personally I feel this theory is more accurate, and fits the changing landscape of government from a monarchy to a democracy as the monarchy is slowly rejected in the public grundnorm.

Some scholars argue that the King's Law might have come from a natural background, because humans are social animals who will naturally form a hierarchy in order to survive. However, I am personally of the position that this is not so, given the steady rise of democracy in the last 300 years.

There is a third jurisprudence of Religious Law, but this is not practiced in common law jurisdictions, as the enforcement of God's law is God's duty and not the duty of the courts.

Extract from the *Northern Territory Law Reform Committee*: Background Paper

> *"In the British tradition, sovereignty used to reside with the King or Queen as God's representative on earth, or at least in England. Thus the power of the King or Queen - also called the sovereign – was originally absolute. The sovereign could do whatever he or she wanted, and it was the law that whatever he or she did could never be wrong. Over time this changed. Beginning with Magna Carta in 1215 it was recognised that parliament also had some sovereign rights, that the making of future laws required the approval of parliament and that ordinary people had legal rights that the sovereign could not take away, without parliament's approval. Following this*

tradition, in Australia we now say that sovereignty resides with parliament, and the people elect the members of the various Australian parliaments."

The reason why the common law decisions of the courts are overruled by legislation is succinctly stated in ***Durham Holdings Pty Ltd v New South Wales (2001) HCA 7***:

(at 30) "There is little point in searching for additional expositions of, or foundations for, the principle that courts will presume that legislation does not overrule the common law in the absence of clear and express terms, given that it is so clear and that it was not really contested by the State. In English legal history the principle can be traced back for at least 300 years and probably further. It has been applied countless times in Australia, including in the construction of legislation governing privately owned minerals and the public acquisition thereof. However, any presumption, rule of construction, or imputed intention is subject to valid legislative provisions to the contrary. Judges may decline to read such legislation as having such an effect. The more peremptory, arbitrary and unjust the provisions, the less willing a judge may be to impute such a purpose to an Australian lawmaker. But a point will be reached where the law in question is "clear and unambiguous". Various other verbal formulae are used in the reasoning of this Court to describe that point. They are collected by the Court of Appeal in its reasons. Once that point is reached, subject to any constitutional invalidity, the judge has no authority to ignore or frustrate the commands of the lawmaker. To do so would be to abuse judicial power, not to exercise it."

(at 48) "Secondly, the applicant invoked Sir Owen Dixon's reminder that the principle of parliamentary supremacy is itself a doctrine of the common law."

(at 61) "Members of a legislature, such as the Parliament of New South Wales, are regularly answerable to the electors, whereas judges in Australia are not. Judges recognise that, whatever the deficiencies of electoral democracy, the necessity of answering to the electorate at regular intervals has a tendency to curb legislative excesses. Many judges reject "the role of a Platonic guardian" and are "pleased to live in a society that does not thrust [that role] upon [them]". Most judges in Australia would probably share this relatively modest conception of their role. In this conception, the duty of obedience to a law made by a Parliament of a State derives from the observance of parliamentary procedures and the conformity of the resulting law with the State and federal Constitutions. It does not rest upon judicial pronouncements to accord, or withhold, recognition of the law in question by reference to the judge's own notions of fundamental rights, apart from those constitutionally established."

https://freemandelusion.com/wp-content/uploads/2019/06/durham-holdings-pty-ltd-v-the-state-of-new-south-wales-2001-hca-7.pdf

The courts cannot strike down legislation on their opinions that it isn't a good law, these are political concerns, not legal concerns, as stated in ***Union Steamship Co of Australia Pty Ltd v King (1988) HCA 55***:

"These decisions and statements of high authority demonstrate that, within the limits of the grant, a power to make laws for the peace, order and good government of a territory is as ample and plenary as the power possessed by the Imperial Parliament itself. That is, the words "for the peace, order and good government" are not words of limitation. They did not confer on the courts of a colony, just as they do not confer on the courts of a State, jurisdiction to strike down

> *legislation on the ground that, in the opinion of a court, the legislation does not promote or secure the peace, order and good government of the colony. Just as the courts of the United Kingdom cannot invalidate laws made by the Parliament of the United Kingdom on the ground that they do not secure the welfare and the public interest, so the exercise of its legislative power by the Parliament of New South Wales is not susceptible to judicial review on that score. Whether the exercise of that legislative power is subject to some restraints by reference to rights deeply rooted in our democratic system of government and the common law (see Drivers v. Road Carriers (1982) 1 NZLR 374, at p 390; Fraser v. State Services Commission (1984) 1 NZLR 116, at p 121; Taylor v. New Zealand Poultry Board (1984) 1 NZLR 394, at p 398), a view which Lord Reid firmly rejected in Pickin v. British Railways Board (1974) AC 765, at p 782, is another question which we need not explore."*

https://freemandelusion.com/wp-content/uploads/2019/06/union-steamship-co-of-australia-pty-ltd-v-king-1988-hca-55.pdf

In ***Kable v Director of Public Prosecutions (NSW) [1996] HCA 24***, Dawson J. (at 11-12) explains the principle of the supremacy of Parliament, expanding on the judgement in *Union Steamship Co of Australia Pty Ltd v King:*

> *"But the important thing is that for present purposes the words "peace, welfare, and good government" are not words of limitation. As this Court observed in Union Steamship Co of Australia Pty Ltd v King: "They did not confer on the courts of a colony, just as they do not confer on the courts of a State, jurisdiction to strike down legislation on the ground that, in the opinion of a court, the legislation does not promote or secure the peace, order and good government of the colony (40). Just as the courts of the United Kingdom cannot invalidate laws made by the Parliament of the United Kingdom on the ground that they do not secure the welfare and the public interest, so the exercise of its legislative power by the Parliament of New South Wales is not susceptible to judicial review on that score."*
>
> *Up to that point, that passage would appear to be a complete answer to any suggestion that there are common law rights which are so fundamental that they cannot be overturned by legislation, but the Court added: "Whether the exercise of that legislative power is subject to some restraints by reference to rights deeply rooted in our democratic system of government and the common law (see Drivers v. Road Carriers (1982) 1 NZLR 374, at p 390; Fraser v. State Services Commission (1984) 1 NZLR 116, at p 121; Taylor v. New Zealand Poultry Board (1984) 1 NZLR 394, at p 398), a view which Lord Reid firmly rejected in Pickin v. British Railways Board (1974) AC 765, at p 782, is another question which we need not explore."*
>
> *Those words were prompted by remarks of Cooke J in the New Zealand Court of Appeal to the effect that "some common law rights may go so deep that even Parliament cannot be accepted by the Courts to have destroyed them" (Fraser v State Services Commission (1984) 1 NZLR 116 at 121). As this Court observed, that view was rejected by Lord Reid in Pickin v British Railways Board (1974) AC 765 at 782. There he said: "The idea that a court is entitled to disregard a provision in an Act of Parliament on any ground must seem strange and startling to anyone with any knowledge of the history and law of our constitution ... I must make it plain that there has been no attempt to question the general supremacy of Parliament. In earlier times many learned lawyers seem to have believed that an Act of Parliament could be disregarded in so far as it was*

contrary to the law of God or the law of nature or natural justice, but since the supremacy of Parliament was finally demonstrated by the Revolution of 1688 any such idea has become obsolete."

Lord Reid's reference to earlier times would appear to hark back to the view expressed by Coke CJ in Bonham's Case (1572). He said: "And it appears in our books, that in many cases, the common law will … control Acts of Parliament, and sometimes adjudge them to be utterly void: for when an Act of Parliament is against common right and reason, or repugnant, or impossible to be performed, the common law will control it, and adjudge such Act to be void". Academic debate over the meaning of those words continues to the present time. It is unclear whether Coke CJ was intending to say that Acts of Parliament which are repugnant to the common law are void or whether he was merely laying down a rule of statutory interpretation. If he was intending the former, he appears to have had second thoughts, because in his Fourth Institute he described parliament's power as "transcendent and absolute", not confined "either for causes or persons within any bounds". He there contemplated the enactment of bills of attainder without trial and statutes contrary to Magna Carta without any suggestion of their invalidity.

However, Coke was not alone and there were other early expressions of opinion which appear to suggest that courts might invalidate Acts of Parliament which conflict with natural law or natural equity. But they are of academic or historical interest only for such views did not survive the Revolution of 1688 or, at the least, did not survive for very long after it. Judicial pronouncements confirming the supremacy of parliament are rare but their scarcity is testimony to the complete acceptance by the courts that an Act of Parliament is binding upon them and cannot be questioned by reference to principles of a more fundamental kind. Indeed, it is a principle of the common law itself "that a court may not question the validity of a statute but, once having construed it, must give effect to it according to its tenor."

(at 16.)... In the New South Wales Court of Appeal, Kirby P expressed his agreement with Lord Reid in British Railways Board v Pickin (1974) AC 765. In BLF v Minister for Industrial Relations (1986) 7 NSWLR 372 (at 405) he said: "I agree with Lord Reid's conclusion. I do so in recognition of years of unbroken constitutional law and tradition in Australia and, beforehand, in the United Kingdom. That unbroken law and tradition has repeatedly reinforced and ultimately respected the democratic will of the people as expressed in Parliament. It has reflected political realities in our society and the distribution of power within it."

https://freemandelusion.com/wp-content/uploads/2020/10/kable-v-dpp-nsw-1996-hca-24.pdf

The supremacy of Parliament was inherited by Australia as part of the Westminster system of government, as cited in ***Carnes v Essenberg [1999] QCA 339***:

"The supremacy of Parliament to make laws contrary to what had been the Common Law is expressly recognised by the Courts. It is enough to refer to the decision of the High Court in Kable v. The Director of Public Prosecutions, 189, Commonwealth Law Reports 51 at pages 73 to 74 in the judgment of Justice Dawson. His Honour pointed out that that champion of the Common Law, Chief Justice Coke, had in his Institute of the Laws of England in the early 17th century accepted that Magna Carta could be altered by English Parliament. Indeed he referred to Bills of Attainder which allowed for trial contrary to Magna Carta as being lawful enactments. Justice Dawson

> *went on: "Judicial pronouncements confirming the supremacy of Parliament are rare but their scarcity is testimony to the complete acceptance by the Courts that an Act of Parliament is binding upon them, and it cannot be questioned by reference to principles of a more fundamental kind." The passage goes on and concludes: "There can be no doubt that Parliamentary supremacy is a basic principle of the legal system which has been inherited in this country from the United Kingdom."*

https://freemandelusion.com/wp-content/uploads/2019/05/carnes-v-essenberg-1999-qca-339.pdf

The *Magna Carta*, which forms part of the common law, does not bind governments, as stated in ***Essenberg v The Queen [2000] HCATrans 297***:

> *"McHUGH J: I understand that and persons who have not had full legal training often think of Magna Carta and the Bill of Rights as fundamental documents which control governments, but they do not. After all, Magna Carta was the result of an agreement between the barons and King John and the barons themselves had their own courts, had their own armies, they, in effect, levied what we would call taxes today and they were concerned to protect themselves against the growth of the central power of the royal government, the central government, and that is how Magna Carta came into existence, but modern Parliament did not arise until late in the 17th century and the early struggle was between the King and the barons.*
>
> *We are dealing now with the question of the legislature. I mean, Parliament established its authority over the monarch after the struggles which led to the execution of Charles I and the flight from the kingdom of James II in 1688. But Parliament – some people would regard it as regrettable – can, in effect, do what it likes. As it is said, some authorities could legislate to have every blue-eyed baby killed if it wanted to."*
>
> *"… we are ruled by law and law is the law of Parliament; it is called legal positivism. It is the law laid down. This Court makes decisions and, unless they are constitutional decisions, the Parliament can overrule them and often does. We lay down a law, Parliament can change it. It is the democratic right of the people to do it through their parliamentary representatives. So, what you are faced with is the Queensland Parliament enacting this legislation, which you obviously think is a bad piece of legislation and infringement with your rights and which other members of the community think is a good thing, that is something to be debated at the ballot box, but it is not a constitutional matter…"*
>
> *"Magna Carta and the Bill of Rights are not documents binding on Australian legislatures in the way that the Constitution is binding on them. Any legislature acting within the powers allotted to it by the Constitution can legislate in disregard of Magna Carta and the Bill of Rights. At the highest, those two documents express a political ideal, but they do not legally bind the legislatures of this country or, for that matter, the United Kingdom. Nor do they limit the powers of the legislatures of Australia or the United Kingdom. "*

https://freemandelusion.com/wp-content/uploads/2019/05/essenberg-v-the-queen-2000-hcatrans-297.pdf

Any moral principle does not subtract from the supremacy of Parliament, as cited in ***Gargan v Director of Public Prosecutions and anor [2004] NSWSC 10*** (at 66):

> *"(i) the appeal to scripture, that is to a moral principle higher than parliamentary sovereignty, is "out of line with the mainstream of current constitutional theory as applied in our courts" (BLF v Minister for Industrial Relations (1986) 7 NSWLR 372 at 384 per Kirby P).*
>
> *The same principle was applied by Lord Reid in British Railway Board v Pickin (1974) AC 765 in which he said: "In earlier times many learned lawyers seem to have believed that an Act of Parliament could be disregarded insofar as it was contrary to the law of God or the law of nature or natural justice, but since the supremacy of parliament was finally demonstrated by the Revolution of 1688 any such idea has become obsolete" (at 782)*
>
> *To a like effect is the decision of the Privy Council in Liyanage v The Queen (1967) AC 259 in which it was held that an Act of the Parliament of Ceylon could not be challenged on the basis that it was contrary to the fundamental principles of justice. This argument fails."*

https://freemandelusion.com/wp-content/uploads/2019/05/gargan-v-director-of-public-prosecutions-and-anor-2004-nswsc-10.pdf

The Origins of Parliamentary Supremacy

British Chief Justice John Fineux had once stated in 1519 that:

> *"The Law of God and the Law of the Land are all one, in the sense that they both protect the public good."*

The phrase *"Law of the land"* is a legal term, equivalent to the Latin *lex terrae* (or *legem terrae* in the accusative case). It refers to all of the laws in force within a country or region, including both statute law and common law. English jurists, writing of legem terrae in reference to the Magna Carta, stated that this term embraces all laws that are in force for the time being within a jurisdiction. For example, Edward Coke, commenting upon Magna Carta, wrote in 1606:

> *"No man be taken or imprisoned but per legem terrae, that is, by the common law, statute law, or custom of England."*

British Chief Justice John Vaughan further explained in 1677 that whenever the law of the land declares by a legislative act what divine law is, then the courts must consider that legislation to be correct. Justice Powys of the King's Bench confirmed in 1704:

> *"Lex terrae is not confined to the common law, but takes in all the other laws, which are in force in this realm; as the civil and canon law...."*

In 1765, ***William Blackstone*** wrote *"Commentaries on the Laws of England":*

> *"By the sovereign power, as was before observed, is meant the making of laws; for wherever that power resides, all others must conform to, and be directed by it, whatever appearance the*

> *outward form and administration of the government may put on. For it is at any time in the option of the legislature to alter that form and administration by a new edict or rule, and to put the execution of the laws into whatever hands it pleases; by constituting one, or a few, or many executive magistrates: and all the other powers of the state must obey the legislative power in the execution of their several functions, or else the constitution is at an end.*
>
> *For legislature, as was before observed, is the greatest act of superiority that can be exercised by one being over another. Wherefore it is requisite to the very essence of a law, that it be made by the supreme power. Sovereignty and legislature are indeed convertible terms; one cannot subsist without the other. This may lead us into a short inquiry concerning the nature of society and civil government; and the natural, inherent right that belongs to the sovereignty of a state, wherever that sovereignty be lodged, of making and enforcing laws.*
>
> *The law of the land depends not upon the arbitrary will of any judge; but is permanent, fixed, and unchangeable, unless by authority of parliament.... Not only the substantial part, or judicial decisions, of the law, but also the formal part, or method of proceeding, cannot be altered but by parliament."*

Magistrates Willes J, in *Lee v Bude & Torrington Junction Rly Co (1871) UK*:

> *"Are we to act as regents over what is done in Parliament with the consent of the Queen, Lords and commons? I deny that any such authority exists. If an Act of Parliament has been obtained improperly, it is for the legislature to correct it by repealing it: but, so long as it exists as law, the courts are bound to obey it."*

Albert Venn Dicey, a highly influential constitutional scholar and lawyer, wrote of the twin pillars of the British constitution in his classic work ***An Introduction to the Study of the Law of the Constitution*** *(1885)*. These pillars are the principle of Parliamentary sovereignty and the rule of law. The former means that Parliament is the supreme law-making body: its Acts are the highest source of English Law. A parliament can enact legislation dealing with any subject, and the legislation of the parliament is superior to the jurisdiction of the courts. Parliament has:

> *"…the right to make or unmake any law whatever; and, further, that no person or body is recognized by the law of England as having a right to override or set aside the legislation of parliament."*

Sir Ivor Jennings took the view that a parliament exists only in theory, because it *"is a legal fiction and legal fiction can assume anything"*. To demonstrate this, he once stated:

> *"If Parliament enacted that all men should be women, they would be women so far as the law is concerned".*

In *Cheney v Conn [Inspector of Taxes] (1968 -U.K.)* Magistrate Thomas said:

> *"If the purpose for which a statute may be used is an invalid purpose, then such remedy as there may be must be directed to dealing with that purpose and not to invalidating statute itself. What the statute itself enacts cannot be unlawful, because what the statute says and provides is itself*

> *the law, and the highest from of law that is known to this country. It is the law which prevails over every other form of law, and it is not for the court to say that a parliamentary enactment, the highest law in this country, is illegal."*

Pickin v British Railways Board (1974) AC 765 confirms the legislative supremacy of the British Parliament:

> *"When an enactment is passed there is finality unless and until it is amended or repealed by Parliament. In the Courts there may be argument as to the correct interpretation of the enactment: there must be none as to whether it should be on the statute book at all.*
>
> *In earlier times many learned lawyers seemed to have believed that an Act of Parliament could be disregarded in so far as it was contrary to the law of God or the law of nature or natural justice, but since the supremacy of Parliament was finally demonstrated by the Revolution of 1688 any such idea has become obsolete. The idea that a court is entitled to disregard a provision in an Act of Parliament on any ground must seem strange and startling to anyone with any knowledge of the history and law of our constitution."*

https://freemandelusion.com/wp-content/uploads/2020/11/british-railways-board-v-pickin-1974-ukhl-1.pdf

Legislative supremacy was also favored in the U.S. for several reasons. The legislative branch is most capable of reflecting the will/needs of the people, because they derive their power directly from the people via electoral consent. That way civil matters/laws are passed through proportional representation picked by the people. The executive branch is less accountable to the people, and therefore can't be trusted with the duty of the people. The Founding Fathers feared the nation could overturn to tyranny and had issues with the British government, and wanted to avoid an executive branch. In British history magistrates have been seen as a assistant to the throne and had even tried American colonists for braking British law. Colonists believed that the judicial branch of British government had abused its power and wanted to limit powers they received in American government.

The Common Law of England

English Common law is the body of precedent that had evolved over time in the higher courts of England, and it's what our common law was based on in the beginning, as it was also in the U.S. and many other nations, until they became self-governing. This was not a complete body of law that covered all aspects of judicial interpretation though, just specifically for interpreting the British statutes adopted here at the time. There arose many matters that had to be decided separately, that had no precedent to rely upon in the common law of England.

One good example would be the *Murrell* decision in the 1830's. In that case, an aboriginal man had murdered another aboriginal man, and the *"ratio decidendi"* or point of law in question was, regarding whether the Court had jurisdiction to hear the matter. There was no precedent regarding jurisdiction in a matter between two aboriginal people anywhere in the common law of England, so it had to be decided separately on its own merits. This decision was relied upon in future cases in Australia, where the elements were similar, primarily regarding the question of jurisdiction.

Westminster Parliament passed the *Australian Colonies Government Act* in 1850, first granting the right of legislative power to each of the six Australian colonies. The statutes that were introduced had no interpretative guides in the common law of England, and so, where ambiguity was an issue, the higher Australian courts decided the full extent or effect of a provision, just as the higher courts in England had done previously to create their common law. And so began a body of precedent separate from English precedent, occurring long before full legislative independence from Britain, or even the 1901 federation and constitution.

"*The common law in Australia*" means the decisions and precedents set by these higher courts in Australia, that must be relied upon under the doctrine of *stare decisis*. For a theorist to disregard *"The common law in Australia*" means they are disregarding many important judicial decisions specifically intended for interpreting the laws of this nation.

The Balfour Agreement at the Imperial Conference of 1926 recognized the sovereign right of each dominion to control its own domestic and foreign affairs, and declared that the self-governing dominions were to be regarded as

> *"…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."*

https://freemandelusion.com/wp-content/uploads/2020/11/balfour-agreement-1926.pdf

Shortly after, the *Statute of Westminster 1931* was passed, and brought into effect in Australia by the ***Statute of Westminster Adoption Act 1942***. Section 2 deals with the *Validity of laws made by Parliament of a Dominion (28 and 29 Vict. c. 63):*

> *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."*

https://freemandelusion.com/wp-content/uploads/2020/11/statute-of-westminster-adoption-act-1942.pdf

After the passing of the ***Australia Acts 1986***, section 80 of the *Judiciary Act 1903* was amended by the ***Law and Justice Legislation Amendment Act 1988*** where the wording *"Common law of England"* was replaced with *"Common law in Australia"* to reflect this distinction.

> *No. 120 of 1988 - Section 41 Common law to govern: (1) Section 80 of the Principal Act is amended by omitting "common law of England" and substituting "common law in Australia". (2)*

The amendment made by subsection (1) applies for the purposes of proceedings instituted after the commencement of this section."

Section 80 of the ***Judiciary Act 1903*** now provides:

80 Common law to govern: "So far as the laws of the Commonwealth are not applicable or so far as their provisions are insufficient to carry them into effect, or to provide adequate remedies or punishment, the common law in Australia as modified by the Constitution and by the statute law in force in the State or Territory in which the Court in which the jurisdiction is exercised is held shall, so far as it is applicable and not inconsistent with the Constitution and the laws of the Commonwealth, govern all Courts exercising federal jurisdiction in the exercise of their jurisdiction in civil and criminal matters."

There exists in our law many decisions that have their foundation in the common law of England, that are still binding on our courts. But with the evolution of ***responsible government***, the discretion regarding what parts of British law are to remain valid in Australia, is ultimately a matter that remains in the hands of the parliaments.

As explained by Dorney QC DCJ in ***Van den Hoorn v Ellis, [2010] QDC 451*** (at 24):

"By way of further clarification, McPherson JA (as he then was), speaking generally for the Queensland Court of Appeal in Bone v Mothershaw [2003] 2 Qd R 600 160 noted that the common law received in Australia under the Australian Courts Act 1828 (particularly by s 24) was received as a body of common law and not of enacted law, with the effect that the common law so received in Australia in 1828 was not so received as a body of statute law: at 610. As McPherson JA goes on to observe, the whole notion of such conversion is opposed to the established view that local laws or by-laws are capable of altering the received English law [as was recognised by the High Court in Widgee Shire Council v Bonney (1907) 4 CLR 977: 161 at 610.

The Queensland Court of Appeal decision in Carnes v Essenberg; Lewis v Essenberg [1999] QCA 339 162 concludes that it is "completely inaccurate" to say that colonial parliaments, or indeed the Parliament of Westminster, could not alter, modify or even repeal the provisions of centuries old legislation: see Chesterman J (as he then was) at p 4. Accordingly, after the Australian Courts Act 1828, enacted by the Imperial Parliament, became part of the law of Queensland upon its separate establishment in 1859, the Colonial Laws Validity Act 1865, also passed by the Imperial Parliament, removed doubts about the extent to which Australian Colonial Parliaments could alter imperial legislation as it applied to the colonies: at p 5. This had the consequence that no colonial law was void on the ground that it was repugnant to the fundamental principles of English law: also p 5. As Chesterman J goes on to note, the matter is made even more explicit by s 3(2) of the Australia Act 1986, which provides that no law and no provision of any law made after it by the Parliament of a State shall be void or inoperative on a ground that it is repugnant to the laws of England or to the provisions of an existing or future Act of Parliament of the United Kingdom: also p 5."

https://freemandelusion.com/wp-content/uploads/2020/09/van-den-hoorn-v-ellis-2010-qdc-451.pdf

Common Law Jurisdictions

The Commonwealth has its own criminal jurisdiction for offences against federal laws, however, its jurisdiction in criminal matters is more limited than that of the states. Because the Commonwealth is in transition from the common law model to the ***code model***, some Commonwealth offences are located in the *Crimes Act 1914* (Cth) and others are in the code enacted by the *Criminal Code Act 1995* (Cth), which abolished all common law offences. The *Crimes Act* will eventually be repealed when the code expands to cover all offences. The transition from being a common law jurisdiction to a statutory code jurisdiction is well underway, with New South Wales, Victoria and South Australia the last common law jurisdictions remaining in Australia. Queensland, Northern Territory, Western Australia, ACT and Tasmania are all *"statutory code jurisdictions"*, with every type of offence now detailed in legislature and codified into law.

Legal Dictionary Definitions

> ***Blacks Law Dictionary****: "As distinguished from law created by the enactment of legislatures, the common law from the judgments and decrees of the courts. Under the doctrine of Stare Decisis, common-law judges are obliged to adhere to previously decided cases, or precedents, where the facts are substantially the same."*

"Common Law: The ancient law of England based upon societal customs and recognized and enforced by the judgments and decrees of the courts. The general body of statutes and case law that governed England and the American colonies prior to the American Revolution.

The principles and rules of action, embodied in case law rather than legislative enactments, applicable to the government and protection of persons and property that derive their authority from the community customs and traditions that evolved over the centuries as interpreted by judicial tribunals.

A designation used to denote the opposite of statutory, equitable, or civil, for example, a common-law action. The common-law system prevails in England, the United States, and other countries colonized by England. It is distinct from the civil-law system, which predominates in Europe and in areas colonized by France and Spain. The common-law system is used in all the states of the United States except Louisiana, where French Civil Law combined with English Criminal Law to form a hybrid system. The common-law system is also used in Canada, except in the Province of Quebec, where the French civil-law system prevails.

Anglo-American common law traces its roots to the medieval idea that the law as handed down from the king's courts represented the common custom of the people. It evolved chiefly from three English Crown courts of the twelfth and thirteenth centuries: the Exchequer, the King's Bench, and the Common Pleas. These courts eventually assumed jurisdiction over disputes previously decided by local or manorial courts, such as baronial, admiral's (maritime), guild, and forest courts, whose jurisdiction was limited to specific geographic or subject matter areas. Equity courts, which were instituted to provide relief to litigants in cases where common-law relief was unavailable, also merged with common-law courts. This consolidation of jurisdiction over most legal disputes into several courts was the framework for the modern Anglo-American judicial system.

Early common-law procedure was governed by a complex system of Pleading, under which only the offenses specified in authorized writs could be litigated. Complainants were required to satisfy all the specifications of a writ before they were allowed access to a common-law court. This system was

replaced in England and in the United States during the mid-1800s. A streamlined, simplified form of pleading, known as Code Pleading or notice pleading, was instituted. Code pleading requires only a plain, factual statement of the dispute by the parties and leaves the determination of issues to the court.

Common-law courts base their decisions on prior judicial pronouncements rather than on legislative enactments. Where a statute governs the dispute, judicial interpretation of that statute determines how the law applies. Common-law judges rely on their predecessors' decisions of actual controversies, rather than on abstract codes or texts, to guide them in applying the law. Common-law judges find the grounds for their decisions in law reports, which contain decisions of past controversies.

Under the doctrine of Stare Decisis, common-law judges are obliged to adhere to previously decided cases, or precedents, where the facts are substantially the same. A court's decision is binding authority for similar cases decided by the same court or by lower courts within the same jurisdiction. The decision is not binding on courts of higher rank within that jurisdiction or in other jurisdictions, but it may be considered as persuasive authority.

Because common-law decisions deal with everyday situations as they occur, social changes, inventions, and discoveries make it necessary for judges sometimes to look outside reported decisions for guidance in a case of first impression (previously undetermined legal issue). The common-law system allows judges to look to other jurisdictions or to draw upon past or present judicial experience for analogies to help in making a decision. This flexibility allows common law to deal with changes that lead to unanticipated controversies. At the same time, stare decisis provides certainty, uniformity, and predictability and makes for a stable legal environment.

Under a common-law system, disputes are settled through an adversarial exchange of arguments and evidence. Both parties present their cases before a neutral fact finder, either a judge or a jury. The judge or jury evaluates the evidence, applies the appropriate law to the facts, and renders a judgment in favor of one of the parties. Following the decision, either party may appeal the decision to a higher court. Appellate courts in a common-law system may review only findings of law, not determinations of fact.

Under common law, all citizens, including the highest-ranking officials of the government, are subject to the same set of laws, and the exercise of government power is limited by those laws. The judiciary may review legislation, but only to determine whether it conforms to constitutional requirements."

Common law: "The system of laws originated and developed in England and based on court decisions, on the doctrines implicit in those decisions, and on customs and usages rather than on codified written laws."

Common law: "the body of law based on judicial decisions and custom, as distinct from statute law (Law) the law of a state that is of general application, as distinct from regional customs (Law) common-law (modifier) denoting a marriage deemed to exist after a couple have cohabited for several years, common-law marriage, common-law wife."

Collins English Dictionary: Com’mon law’ "the system of law originating in England, based on custom or court decisions rather than civil or ecclesiastical law."

Random House Kernerman Webster's College Dictionary: ***Common law*** - (civil law) "a law established by following earlier judicial decisions case law, precedent service - (law) the acts performed by an English feudal tenant for the benefit of his lord which formed the consideration for the property granted to him civil law - the body of laws established by a state or nation for its own regulation."

Common law - "a system of jurisprudence based on judicial precedents rather than statutory laws; "common law originated in the unwritten laws of England and was later applied in the United States" case law, precedent law, jurisprudence - the collection of rules imposed by authority; "civilization presupposes respect for the law"; "the great problem for jurisprudence to allow freedom while enforcing order". Common law[kom-uhn-law]

The system of law originating in England, as distinct from the civil or Roman law and the canon or ecclesiastical law. the unwritten law, especially of England, based on custom or court decision, as distinct from statute law. the law administered through the system of courts established for the purpose, as distinct from equity or admiralty."

Common law 14th century: "the body of law developed in England primarily from judicial decisions based on custom and precedent, unwritten in statute or code, and constituting the basis of the English legal system and of the system in all of the United States except Louisiana.

Common law - "One of the two major legal systems of the modern Western world (the other is civil law), it originated in the UK and is now followed in most English-speaking countries. Initially, common law was founded on common sense as reflected in the social customs. Over the centuries, it was supplanted by statute law (rules enacted by a legislative body such as a Parliament) and clarified by the judgments of the higher courts (that set a precedent for all courts to follow in similar cases). These precedents are recognized, affirmed, and enforced by subsequent court decisions, thus continually expanding the common law.

In contrast to civil law (which is based on a rigid code of rules), common law is based on broad principles. And whereas every defendant who enters a criminal trial under civil law is presumed guilty until proven innocent, under common law he or she is presumed innocent until proven guilty."

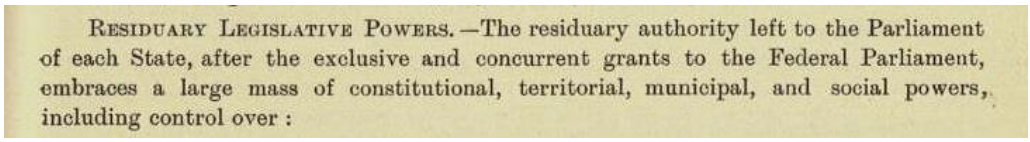
Parliaments in a Federation are not Supreme

Wayne Glew claims that Parliaments are not supreme or sovereign, relying on cherry-picked passages in pages ***676*** and ***791*** of *The Annotated constitution of the Australian Commonwealth* by John Quick and Robert Garran, which he uses in response to the well established doctrine of Parliamentary Sovereignty.

> "*The Parliament is not supreme, and the very essence of the Federation is that it should not be so."*
>
> *"The Federal Parliament and the State Parliaments are not sovereign bodies, they are legislatures with limited powers, and any law which they attempt to pass in excess of those powers is no law at all, it is simply a nullity, entitled to no obedience."*

I don't use the term 'cherry-picked' lightly either, because Robert Garran actually goes into great detail explaining this notion in ss 160, "*The Plenary Nature of the Powers*" (page 509), in ss 330(3) *"As a Federal Constitution"* (page 794), and also ss 444 "*The States"* (page 928).

Of course the Commonwealth Parliament is not supreme or sovereign in an absolute sense, as in any federalist structure the legislative powers are divided between the Commonwealth and the States, which each having specific areas in which they can legislate. If the Commonwealth Parliament was sovereign, (as was Westminster) there would be no need for State Parliaments, Residual or Concurrent Legislative Powers, every area of law would be Exclusive to the Commonwealth Parliament. This is simply not the case, as Quick and Garran make clear. It must be difficult to comprehend this point when one is in denial that the States are in sole possession of the sphere of Residual Legislative Powers. (***See page 935***)

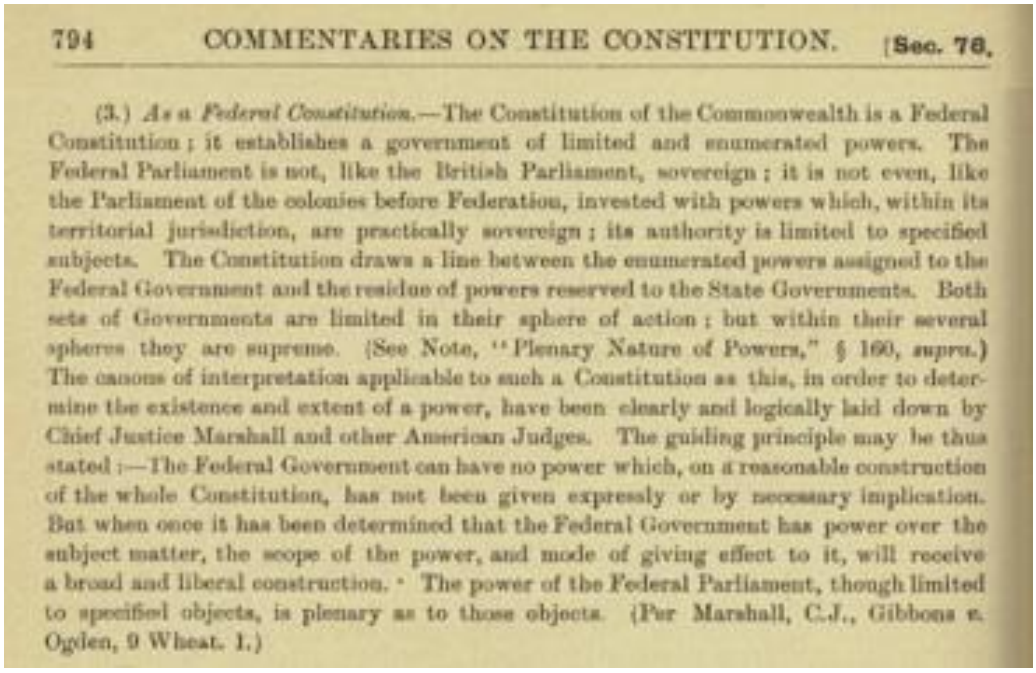


RESIDUARY LEGISLATIVE POWERS.—The residuary authority left to the Parliament of each State, after the exclusive and concurrent grants to the Federal Parliament, embraces a large mass of constitutional, territorial, municipal, and social powers, including control over :

The Parliaments, both State and Commonwealth, are only supreme and sovereign over the particular sphere of powers allocated in the Constitution. If they legislate outside of their particular sphere, the law is ultra vires, unconstitutional, and entitled to no obedience at all. The Commonwealth is sovereign and supreme in the sphere of Exclusive and Concurrent Legislative Powers, and the States are sovereign and supreme in the sphere of Residual Legislative Powers.

As Robert Garran states on ***page 794***:

> *"The Constitution draws a line between the enumerated powers assigned to the Federal Government and the residue of powers reserved to the State Governments. Both sets of Governments are limited in their sphere of action, but within their several spheres they are supreme."*



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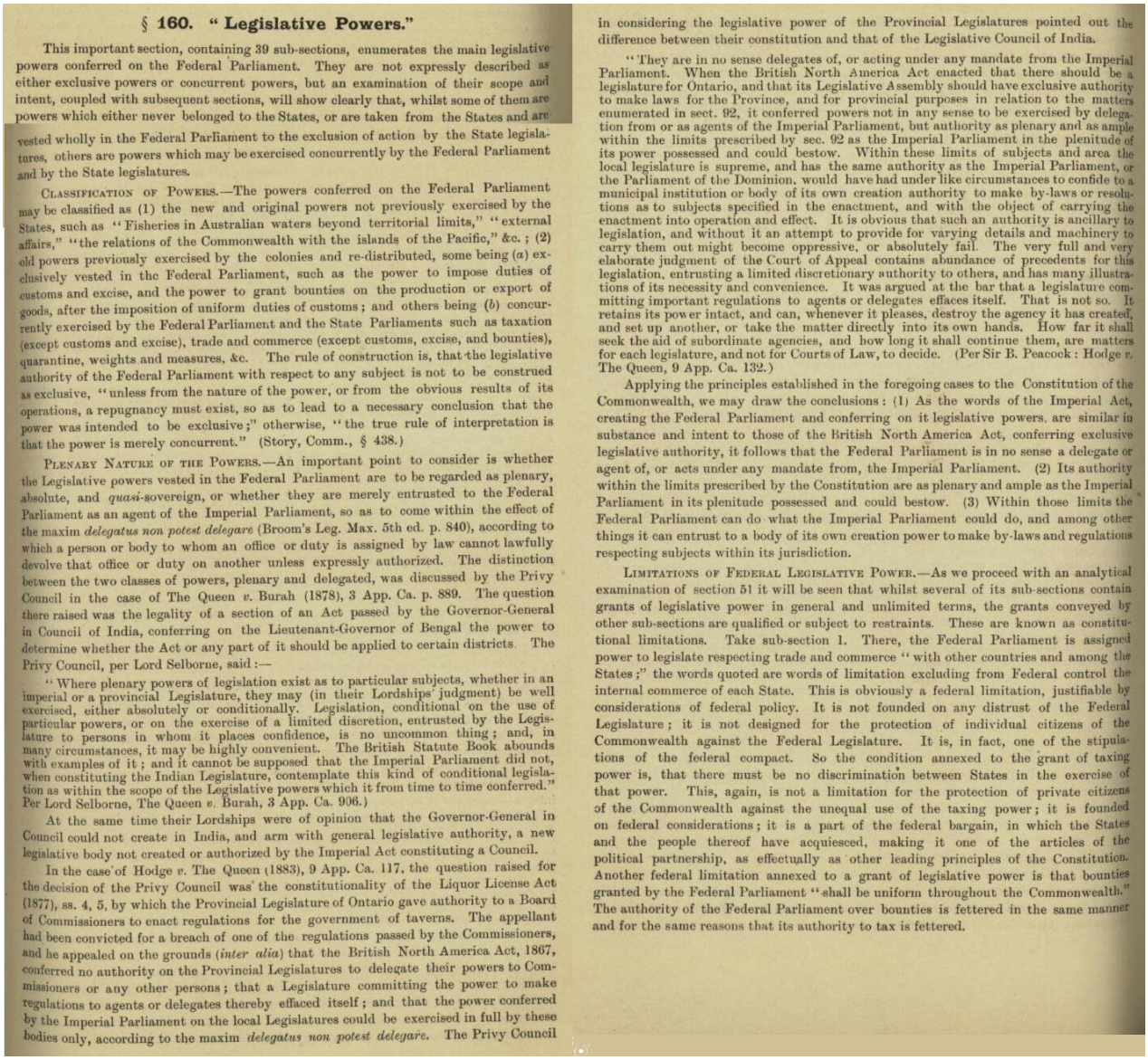
(3.) *As a Federal Constitution.*—The Constitution of the Commonwealth is a Federal Constitution; it establishes a government of limited and enumerated powers. The Federal Parliament is not, like the British Parliament, sovereign; it is not even, like the Parliament of the colonies before Federation, invested with powers which, within its territorial jurisdiction, are practically sovereign; its authority is limited to specified subjects. The Constitution draws a line between the enumerated powers assigned to the Federal Government and the residue of powers reserved to the State Governments. Both sets of Governments are limited in their sphere of action; but within their several spheres they are supreme. (See Note, "Plenary Nature of Powers," § 160, *supra*.) The canons of interpretation applicable to such a Constitution as this, in order to determine the existence and extent of a power, have been clearly and logically laid down by Chief Justice Marshall and other American Judges. The guiding principle may be thus stated:—The Federal Government can have no power which, on a reasonable construction of the whole Constitution, has not been given expressly or by necessary implication. But when once it has been determined that the Federal Government has power over the subject matter, the scope of the power, and mode of giving effect to it, will receive a broad and liberal construction. The power of the Federal Parliament, though limited to specified objects, is plenary as to those objects. (Per Marshall, C.J., Gibbons v. Ogden, 9 Wheat. 1.)

On the same page, there is a note, *"See ss 160, The Plenary Nature of the Powers."* this section on ***page 509***, highlights the plenary or absolute nature of the powers within these spheres, when made by their respective parliaments. They are, as Quick and Garran note, as plenary as the Imperial Parliament itself.



§ 160. "Legislative Powers."

This important section, containing 39 sub-sections, enumerates the main legislative powers conferred on the Federal Parliament. They are not expressly described as either exclusive powers or concurrent powers, but an examination of their scope and intent, coupled with subsequent sections, will show clearly that, whilst some of them are powers which either never belonged to the States, or are taken from the States and are vested wholly in the Federal Parliament to the exclusion of action by the State legislatures, others are powers which may be exercised concurrently by the Federal Parliament and by the State legislatures.

Classification of Powers.—The powers conferred on the Federal Parliament may be classified as (1) the new and original powers not previously exercised by the States, such as "Fisheries in Australian waters beyond territorial limits," "external affairs," "the relations of the Commonwealth with the islands of the Pacific," &c.; (2) old powers previously exercised by the colonies and re-distributed, some being (*a*) exclusively vested in the Federal Parliament, such as the power to impose duties of customs and excise, and the power to grant bounties on the production or export of goods, after the imposition of uniform duties of customs; and others being (*b*) concurrently exercised by the Federal Parliament and the State Parliaments such as taxation (except customs and excise), trade and commerce (except customs, excise, and bounties), quarantine, weights and measures, &c. The rule of construction is, that the legislative authority of the Federal Parliament with respect to any subject is not to be construed as exclusive, "unless from the nature of the power, or from the obvious results of its operations, a repugnancy must exist, so as to lead to a necessary conclusion that the power was intended to be exclusive;" otherwise, "the true rule of interpretation is that the power is merely concurrent." (Story, Comm., § 438.)

Plenary Nature of the Powers.—An important point to consider is whether the Legislative powers vested in the Federal Parliament are to be regarded as plenary, absolute, and *quasi*-sovereign, or whether they are merely entrusted to the Federal Parliament as an agent of the Imperial Parliament, so as to come within the effect of the maxim *delegatus non potest delegare* (Broom's Leg. Max. 5th ed. p. 840), according to which a person or body to whom an office or duty is assigned by law cannot lawfully devolve that office or duty on another unless expressly authorized. The distinction between the two classes of powers, plenary and delegated, was discussed by the Privy Council in the case of The Queen *v.* Burah (1878), 3 App. Ca. p. 889. The question there raised was the legality of a section of an Act passed by the Governor-General in Council of India, conferring on the Lieutenant-Governor of Bengal the power to determine whether the Act or any part of it should be applied to certain districts. The Privy Council, per Lord Selborne, said:—

"Where plenary powers of legislation exist as to particular subjects, whether in an imperial or a provincial Legislature, they may (in their Lordships' judgment) be well exercised, either absolutely or conditionally. Legislation, conditional on the use of particular powers, or on the exercise of a limited discretion, entrusted by the Legislature to persons in whom it places confidence, is no uncommon thing; and, in many circumstances, it may be highly convenient. The British Statute Book abounds with examples of it; and it cannot be supposed that the Imperial Parliament did not, when constituting the Indian Legislature, contemplate this kind of conditional legislation as within the scope of the Legislative powers which it from time to time conferred." Per Lord Selborne, The Queen *v.* Burah, 3 App. Ca. 906.)

At the same time their Lordships were of opinion that the Governor-General in Council could not create in India, and arm with general legislative authority, a new legislative body not created or authorized by the Imperial Act constituting a Council.

In the case of Hodge *v.* The Queen (1883), 9 App. Ca. 117, the question raised for the decision of the Privy Council was the constitutionality of the Liquor License Act (1877), ss. 4, 5, by which the Provincial Legislature of Ontario gave authority to a Board of Commissioners to enact regulations for the government of taverns. The appellant had been convicted for a breach of one of the regulations passed by the Commissioners, and he appealed on the grounds (*inter alia*) that the British North America Act, 1867, conferred no authority on the Provincial Legislatures to delegate their powers to Commissioners or any other persons; that a Legislature committing the power to make regulations to agents or delegates thereby effaced itself; and that the power conferred by the Imperial Parliament on the local Legislatures could be exercised in full by these bodies only, according to the maxim *delegatus non potest delegare*. The Privy Council in considering the legislative power of the Provincial Legislatures pointed out the difference between their constitution and that of the Legislative Council of India.

"They are in no sense delegates of, or acting under any mandate from the Imperial Parliament. When the British North America Act enacted that there should be a legislature for Ontario, and that its Legislative Assembly should have exclusive authority to make laws for the Province, and for provincial purposes in relation to the matters enumerated in sect. 92, it conferred powers not in any sense to be exercised by delegation from or as agents of the Imperial Parliament, but authority as plenary and as ample within the limits prescribed by sec. 92 as the Imperial Parliament in the plenitude of its power possessed and could bestow. Within these limits of subjects and area the local legislature is supreme, and has the same authority as the Imperial Parliament, or the Parliament of the Dominion, would have had under like circumstances to confide to a municipal institution or body of its own creation authority to make by-laws or resolutions as to subjects specified in the enactment, and with the object of carrying the enactment into operation and effect. It is obvious that such an authority is ancillary to legislation, and without it an attempt to provide for varying details and machinery to carry them out might become oppressive, or absolutely fail. The very full and very elaborate judgment of the Court of Appeal contains abundance of precedents for this legislation, entrusting a limited discretionary authority to others, and has many illustrations of its necessity and convenience. It was argued at the bar that a legislature committing important regulations to agents or delegates effaces itself. That is not so. It retains its power intact, and can, whenever it pleases, destroy the agency it has created, and set up another, or take the matter directly into its own hands. How far it shall seek the aid of subordinate agencies, and how long it shall continue them, are matters for each legislature, and not for Courts of Law, to decide. (Per Sir B. Peacock: Hodge *v.* The Queen, 9 App. Ca. 132.)

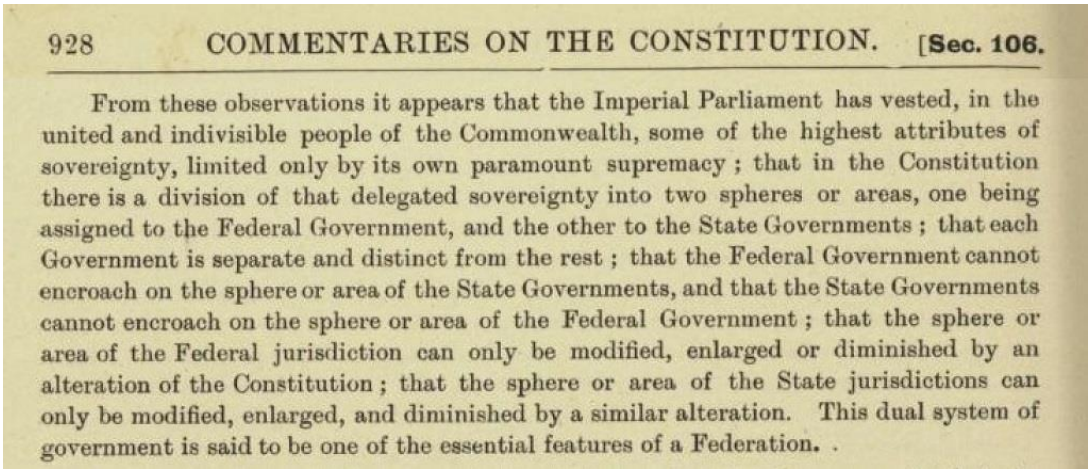
Applying the principles established in the foregoing cases to the Constitution of the Commonwealth, we may draw the conclusions: (1) As the words of the Imperial Act, creating the Federal Parliament and conferring on it legislative powers, are similar in substance and intent to those of the British North America Act, conferring exclusive legislative authority, it follows that the Federal Parliament is in no sense a delegate or agent of, or acts under any mandate from, the Imperial Parliament. (2) Its authority within the limits prescribed by the Constitution are as plenary and ample as the Imperial Parliament in its plenitude possessed and could bestow. (3) Within those limits the Federal Parliament can do what the Imperial Parliament could do, and among other things it can entrust to a body of its own creation power to make by-laws and regulations respecting subjects within its jurisdiction.

Limitations of Federal Legislative Power.—As we proceed with an analytical examination of section 51 it will be seen that whilst several of its sub-sections contain grants of legislative power in general and unlimited terms, the grants conveyed by other sub-sections are qualified or subject to restraints. These are known as constitutional limitations. Take sub-section 1. There, the Federal Parliament is assigned power to legislate respecting trade and commerce "with other countries and among the States;" the words quoted are words of limitation excluding from Federal control the internal commerce of each State. This is obviously a federal limitation, justifiable by considerations of federal policy. It is not founded on any distrust of the Federal Legislature; it is not designed for the protection of individual citizens of the Commonwealth against the Federal Legislature. It is, in fact, one of the stipulations of the federal compact. So the condition annexed to the grant of taxing power is, that there must be no discrimination between States in the exercise of that power. This, again, is not a limitation for the protection of private citizens of the Commonwealth against the unequal use of the taxing power; it is founded on federal considerations; it is a part of the federal bargain, in which the States and the people thereof have acquiesced, making it one of the articles of the political partnership, as effectually as other leading principles of the Constitution. Another federal limitation annexed to a grant of legislative power is that bounties granted by the Federal Parliament "shall be uniform throughout the Commonwealth." The authority of the Federal Parliament over bounties is fettered in the same manner and for the same reasons that its authority to tax is fettered.

As also noted in ***Durham Holdings Pty Ltd v New South Wales (1999) HCA 7***:

> *"In **Union Steamship Co of Australia Pty Ltd v King (1988) HCA 55**, the Court stated that, within the limits of the grant, a power such as that conferred on the New South Wales Parliament by s 5 of the Constitution Act 1902 (NSW) to make laws "for the peace, welfare, and good government of New South Wales" is "as ample and plenary as the power possessed by the Imperial Parliament itself". Moreover, at the time of the 1990 Act, the Australia Act 1986 (Cth) was in force. Section 2(2) thereof declared and enacted that the legislative powers of each State Parliament included all legislative powers that Westminster might have exercised before the commencement of that Act for the peace, order and good government of the State."*

On ***page 928***, Robert Garran makes very clear that the Commonwealth Government cannot encroach on the sphere of the Residual Legislative Powers... they are solely the possession of the State Governments, and they are each sovereign over their own sphere of legislative powers.



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From these observations it appears that the Imperial Parliament has vested, in the united and indivisible people of the Commonwealth, some of the highest attributes of sovereignty, limited only by its own paramount supremacy; that in the Constitution there is a division of that delegated sovereignty into two spheres or areas, one being assigned to the Federal Government, and the other to the State Governments; that each Government is separate and distinct from the rest; that the Federal Government cannot encroach on the sphere or area of the State Governments, and that the State Governments cannot encroach on the sphere or area of the Federal Government; that the sphere or area of the Federal jurisdiction can only be modified, enlarged or diminished by an alteration of the Constitution; that the sphere or area of the State jurisdictions can only be modified, enlarged, and diminished by a similar alteration. This dual system of government is said to be one of the essential features of a Federation. .

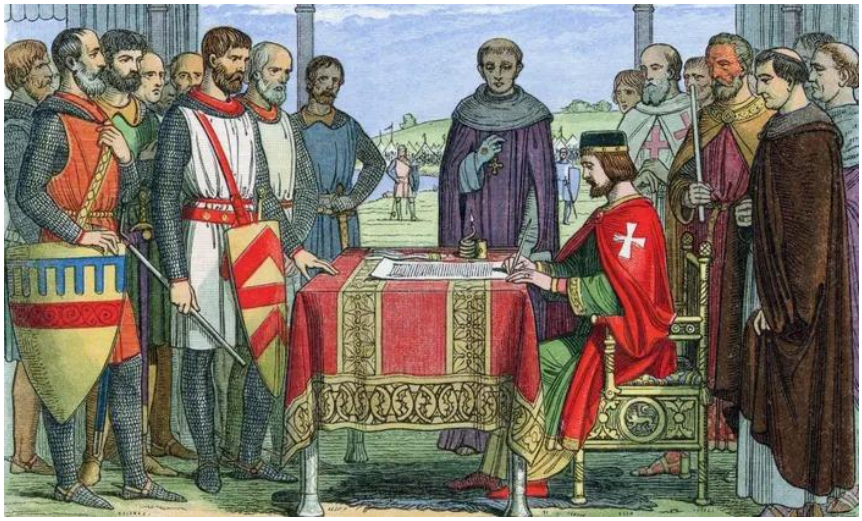
A point that must be taken into consideration when reading various parts of Quick and Garran's commentary, is that it is the 1901 perspective in relation to the supremacy of the Imperial Parliament, ***which has since become obsolete***. We were, at the time, still subject to the *Colonial Laws Validity Act 1865*, which provided that colonial laws were invalid if they were repugnant with UK law. When the British Empire ended and national status emerged, these external restrictions ceased, and constitutional powers could be given their full scope. This changed occurred on a Commonwealth level with the adoption of the *Statute of Westminster 1931* by Australia in 1942, and on a State level with the passing of the *Australia Act 1986.*

"***The Annotated constitution of the Australian Commonwealth***" by John Quick and Robert Garran:

https://freemandelusion.com/wp-content/uploads/2020/11/the-annotated-constitution-of-the-australian-commonwealth.pdf

Finally though, these things are very irrelevant to the ***doctrine of Parliamentary Sovereignty***, it is a completely different subject matter. Parliamentary Sovereignty relates to the hierarchy of law-making powers within any given jurisdiction, (State or Commonwealth) and is further explained by the ***principle of Responsible Government***. Both terms describe a system where the legislature is the supreme law-making body within the particular constitutional structure. In ***Kable v Director of Public Prosecutions (NSW) [1996] HCA 24***, Dawson J. (at 11-12) adequately explains the principle of the supremacy of Parliament, citing Lord Reid in ***Pickin v British Railways Board (1974) AC 765***. As stated in ***Carnes v Essenberg [1999] QCA 339*** citing Dawson J: *"There can be no doubt that Parliamentary supremacy is a basic principle of the legal system which has been inherited in this country from the United Kingdom."* Under the principle of Responsible Government, the Executive and Judiciary are responsible to, and answerable to, the Legislative branch. See ***R v Kirby; Ex parte Boilermakers' Society of Australia (1956) 94 CLR 254*** at 275; ***McGinty (1996) 186 CLR 140*** at 269; ***Australian Capital Television Pty Ltd v Commonwealth (1992) 177 CLR 106*** (Mason C.J. at 30; Dawson J. at 20; McHugh J. at 15) ***The Engineers' Case (1920) 28 CLR***, per Knox C.J., Isaacs, Rich and Starke JJ. at p 147): *"The principle of responsible government – the system of government by which the executive is responsible to the legislature – is not merely an assumption upon which the actual provisions are based; it is an integral element in the Constitution."* ***The Commonwealth v. Kreglinger and Fernau Ltd. and Bardsley (1926) 37 CLR 393***, (Isaacs J.) at p 413: *"It is part of the fabric on which the written words of the Constitution are superimposed."*

Magna Carta and Bill of Rights



Pseudolaw adherents in Australia insist that Article 61 of the *Magna Carta* grants them the right to "lawful rebellion" if the charter is breached. If they are seeking some sort of judicial permission to rebel, unfortunately the law does not recognise this point.

Historic record shows that Clause 61 of the 1215 *Magna Carta* was repealed within months of it's establishment, and therefore not included into subsequent charters. This was of course, a long time before Australia was even thought about. Australian law had at it's foundation Common law of England, which was based on the later 1297 charter, not the outdated 1215 charter.

18 years ago ***a group of 28 Barons invoked Clause 61 of the Magna Carta*** against the Queen to stop closer integration with Europe. A lot of good that done, considering the UK subsequently joined the European Union. The authority to act upon such a demand had long since passed out of her hands and into the hands of the parliament, partly as a result of the very document they relied upon, the *Magna Carta*. The only thing that had the ability to undo this move was the voice of the people, expressed in the Brexit referendum.

The Telegraph

Peers petition Queen on Europe

By Caroline Davies
24 March 2001 • 12:00am

FOUR peers invoked ancient rights under the Magna Carta yesterday to petition the Queen to block closer integration with Europe.

The Duke of Rutland, Viscount Masserene and Ferrard, Lord Hamilton of Dalzell and Lord Ashbourne were imbued with the spirit of the ancient Charter, thrust on King John in 1215. In accordance with the Charter's Clause 61, the famous enforcement clause, the four presented a vellum parchment at Buckingham Palace, declaring that the ancient rights and freedoms of the British people had to be defended.

The clause, one of the most important in the Charter, which was pressed on King John at Runnymede, allows subjects of the realm to present a quorum of 25 barons with a petition, which four of their number then have to take to the Monarch, who must accept it. It was last used in 1688 at the start of the Glorious Revolution.

The four peers, who were all thrown out of Parliament in November 1999, proved they had that quorum by presenting Sir Robin Janvrin, the Queen's private secretary, with the petition signed by 28 hereditaries and letters of support from another 60. In addition, they claim the support of thousands of members of the public.

They say that several articles in the Treaty of Nice agreed by Tony Blair in December will destroy fundamental British liberties. The Queen has 40 days to respond. Under the Magna Carta's provisions, if the Sovereign does not observe the Charter the people may rise up and wage war on her, seizing castles, lands and possessions until they have redress.

Amazingly, some adherents have since pledged an oath of allegiance to Lord Craigmyle of Invernesshire, one of the British peers who urged the Queen in 2001 to block the UK's signing of the *Treaty of Nice*. In the Court of Queen's Bench of Alberta, Canada, Graesser J barred one such adherent, Jacqueline Robinson, a.k.a. Jacquie Phoenix, who claimed the *Magna Carta* puts her outside court's authority, in ***AVI v MHVB, 2020 ABQB 489*** and on the same basis in ***AVI v MHVB, 2020 ABQB 790*** As the court noted regarding her assertions of "lawful rebellion" under Article 61 of the *Magna Carta:*

> *"Article 61 of the 1215 Magna Carta has nothing to do with the rights of individual persons, but instead only granted a counsel of 25 barons the authority to seize King John's castles, lands, and possessions in the event of a dispute between the barons and the king. Worse, when King John died in 1216, so did the provision of the 1215 Magna Carta that MCLR adherents claim creates their extraordinary status. These modern Magna Carta rebels have therefore mustered over 800 years too late."*

https://freemandelusion.com/wp-content/uploads/2018/07/avi-v-mhvb-2020-abqb-489-memorandum-of-decision.pdf

However, the spirit of Article 61 of the *Magna Carta* is alive and well, and has long since evolved through the principle of Responsible Government. Through the age of enlightenment with the further extrapolations of numerous philosophers and legal minds, to the US Declaration of Independence, incorporating the ability *"to alter or abolish"* the current form of government, and notions highlighting the consent of the governed. The spirit of Article 61 of the *Magna Carta* is now a ceremony that occurs every few years at election time, as the people gather to "alter or abolish" the current form of government if the majority so wishes.

Like most other articles of the *Magna Carta*, the intention and effect had been addressed by later statutes, by convention, or other constitutional enactments. The provisions of the ***1297 Magna Carta*** are mostly outdated, and would seem quite absurd in modern times. Here are a few such examples relating to women:

> *Article 8: "No widow shall be compelled to marry, so long as she wishes to remain without a husband. But she must give security that she will not marry without royal consent, if she holds her lands of the Crown, or without the consent of whatever other lord she may hold them of."*
>
> *Article 54: "No one shall be arrested or imprisoned on the appeal of a woman for the death of any person except her husband."*

https://freemandelusion.com/wp-content/uploads/2022/04/MAGNA-CARTA.pdf

Devlyn, Amelia; "***The Magna Carta and Its Relevance to Contemporary Australia***":

> *"The Magna Carta received into Australia upon settlement in 1788 was the 1297 Charter, as it provided for fundamental liberties which extended to the English colonisers. However, the Magna Carta's role as a statute in Australia differs between jurisdictions. For New South Wales, Victoria, Queensland and the Australian Capital Territory, local Imperial Acts legislation has determined which version and provisions of the Magna Carta apply. In these jurisdictions, the 1297 version of the Magna Carta applies, and of that version, only Chapter 29 remains a part of their statutory*

> *law. In Western Australia, South Australia, Tasmania and the Northern Territory, the applicability of the Magna Carta depends upon the jurisdiction's reception of Imperial legislation on a certain date. The result of such Acts is that if British Parliament repealed chapters of the Magna Carta prior to the reception date, then only the remaining chapters were received in the jurisdiction. The effect of such legislation is that many of the chapters of the Magna Carta have been repealed in Australian jurisdictions, and the New South Wales Law Commission went so far as to say that any inclusion of the Magna Carta in New South Wales law was 'chiefly sentimental.' However, much of the Magna Carta's relevance is grounded in the famous Chapter 29 which has not been repealed, and is the document's 'enduring symbolic role."*

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Only chapter 29 of the Magna Carta remains unrepealed in Australian law.

In recent decades most of the States have passed an *Imperial Acts Application Act*, and were careful to say, that the preserved Acts were only preserved with *"the same force and effect (if any)"* as they had before the commencement of the Application Acts. For example, 6(b) of the *Imperial Acts Application Act 1969 (NSW)* declares c 29 to have remained in force in NSW *"except so far as affected by any State Acts from time to time in force in New South Wales"*.

Chapter 29 of the *Magna Carta* does not hold the status of a constitutional provision of NSW, rather it is open to *"affectation and modification"* by ordinary legislation enacted by the State Parliament. (See *Galea v NSW Egg Corporation* Court of Appeal, 21 November 1989, Unreported, (at 6,) ***Adler v District Court of NSW (1990) 19 NSWLR 317*** (at 332); see also ***Chester v Bateson (1920) 1 KB 829*** per Darling J).

As consistent with the *Imperial Acts Application Acts* of other states, only Clause 29 of the *Magna Carta* is in force in Western Australia, despite the other chapters remaining: Page 21 of the ***Law Reform Commission of Western Australia*** – *United Kingdom Statutes in Force*

> *"Its preservation does not ensure that these rights are inalienable because statutes of the Parliament of Western Australia which are repugnant to Magna Carta are not for that reason invalid. Indeed, to the extent of any repugnancy, these statutes operate to repeal Magna Carta. Chapter 29 is one of the historical provisions which should be declared to remain in force. The other chapters should be repealed."*

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New Zealand has the exact same situation as here in Australia, only chapter 29 remains valid. ***"In a Constitutional State - Magna Carta in New Zealand 1840-2015"*** by David Clark:

> *"Given that the British Parliament repealed most of Magna Carta 1297 between 1863 and 1969 because its terms were either obsolete as they dealt with medieval circumstances that had passed into history, or because some of the problems had been addressed in later statutes, the problem for New Zealand was whether the wholesale adoption approach remained useful. A Law Commission report in 1987 recommended a special statute that identified particular Imperial enactments for retention and also identified the provisions of those acts that would remain part*

of New Zealand law. The result was the Imperial Laws Application Act 1988 (NZ), which, by s 3(1) and the First Schedule, retained only chapter 29 of 1297 as part of the law of New Zealand."

https://freemandelusion.com/wp-content/uploads/2018/07/magna-carta-nz.pdf

In ***Ledger Acquisitions Australia MB Pty Ltd v Kiefer [2014] FCCA 2216*** the respondent relied on Clause 29 of the *Magna Carta* in asserting a right to trial by jury in a bankruptcy matter, to which the court delivered the following detailed summary:

*"The Immigration Restriction Act 1901 (Cth) was challenged in **Chia Gee & Ors v Martin (1905) 3 CLR 649** as "unconstitutional, because its provisions were contrary to the provisions of Magna Charta and the Statutes which had since confirmed it". Sir Samuel Griffith, the first Chief Justice of the High Court of Australia, and arguably the principal drafter of what became the Commonwealth Constitution, brooked no argument on this contention, dismissing it in a single sentence: "The contention that a law of the Commonwealth is invalid because it is not in conformity with Magna Charta is not one for serious refutation."*

The other two initial Justices of the High Court of Australia, Justices Barton and O'Connor, contented themselves with concurring with the Chief Justice. Justice Barton, who was the first Prime Minister of the Commonwealth, and Justice O'Connor, were both involved in the Constitutional conventions which led to the drafting of the Commonwealth Constitution, Barton extensively so. Such was the authority of the first three Justices of the High Court of Australia that no more needed to be said.

*In **Ex parte Walsh and Johnson; in re Yates (1925) 37 CLR 36** also a case concerning the Immigration Restriction Act 1901, Justice Isaacs discussed the Constitutional significance of Magna Carta in an Australian context. Referring to Clause 29 of Magna Carta, Justice Isaacs said: "The chapter, … recognises three basic principles, namely, (1) primarily every free man has an inherent individual right to his life, liberty, property and citizenship; (2) his individual rights must always yield to the necessities of the general welfare at the will of the State; (3) the law of the land is the only mode by which the State can so declare its will."*

Justice Isaacs recognised that personal liberty and property give way to a declaration by the State (in this case the Commonwealth) of the law of the land: "These principles taken together form one united conception for the necessary adjustment of the individual and social rights and duties of the members of the State."

*In **Skyring v Federal Commissioner of Taxation (1991) 23 ATR 84** the High Court of Australia held that the power conferred on the Commonwealth Parliament by the taxation power in s.51(ii) of the Commonwealth Constitution, to legislate with respect to taxation, extends to the imposition of taxation and its collection, even though it has the effect of requiring the person on which taxation is levied to pay the tax out of property which he owns.*

*In **Arnold & Anor v State Bank of South Australia & Ors (1992) 38 FCR 484** the appellants sought to attack a mortgage on the basis that the debt secured by the mortgage involved the creation by the respondent bank of a book entry credit at no cost to itself. Magna Carta was invoked as guaranteeing the rights of the appellants to their matrimonial home and livelihood. Challenges*

> *were also made on the basis of passages from the Bible, and in particular those striking at usury. The Full Court of the Federal Court of Australia, in dismissing the appellants' appeal, did not specifically refer to Magna Carta in its reasoning, but approved what had been said in two recent cases before single Judges of the Federal Court, including in Fisher & Anor v Westpac Banking Corporation & Ors.*
>
> *In **Fisher v Westpac Banking Corporation [1992] FCA 390** the plaintiffs sought to set aside a claim made by a bank under a mortgage to their matrimonial home on the basis that the matrimonial home was guaranteed not to be abrogated from or interfered with by anyone by reason of authority derived ultimately from Magna Carta. Similar pleas were also made by reference to biblical authority. In the Federal Court of Australia, Justice French (as the current Chief Justice of the High Court of Australia then was), like the first Chief Justice of the High Court of Australia in Chia Gee, dismissed the plea by reference to Magna Carta in a single sentence, as follows: "In relation to the remaining pleas based on the Magna Carta and the Bible, it is sufficient to say they disclose no legally tenable cause of action."*
>
> *It follows from the foregoing that Commonwealth statutes dealing with a particular matter operate to repeal any contrary or limiting provision of Magna Carta. In this case, the relevant provisions of the Bankruptcy Act 1966, the FCCA Act and the FCC (Bankruptcy) Rules displace and prevail over any effect that Magna Carta might otherwise have had in the field of bankruptcy law, and Magna Carta did not, therefore, preclude the issuance of, or render invalid, the sequestration order made on 3 February 2014 by the Registrar against the estate of Mr Kiefer."*

https://freemandelusion.com/wp-content/uploads/2020/10/ledger-acquisitions-australia-mb-pty-ltd-v-kiefer-2014-fcca-2216.pdf

In ***Re Cusack (1985) 60 ALJR 302***, Wilson J. said:

> *"The validity of laws enacted by the Commonwealth Parliament falls to be determined by reference to the proper construction of the Australian Constitution. It is not open to base an argument for validity by reference to alleged inconsistencies between laws of the Commonwealth and either Magna carta or the Bill of Rights."*

In ***Essenberg v The Queen [2000] HCATrans 297***, McHugh J. said:

> *"Magna Carta and the Bill of Rights are not documents binding on Australian legislatures in the way that the Constitution is binding on them. Any legislature acting within the powers allotted to it by the Constitution can legislate in disregard of Magna Carta and the Bill of Rights. At the highest, those two documents express a political ideal, but they do not legally bind the legislatures of this country or, for that matter, the United Kingdom. Nor do they limit the powers of the legislatures of Australia or the United Kingdom. "*
>
> *"We are ruled by law and law is the law of Parliament; it is called legal positivism. It is the law laid down. This Court makes decisions and, unless they are constitutional decisions, the Parliament can overrule them and often does. We lay down a law, Parliament can change it. It is the democratic right of the people to do it through their parliamentary representatives. So, what you are faced with is the Queensland Parliament enacting this legislation, which you obviously*

think is a bad piece of legislation and infringement with your rights and which other members of the community think is a good thing, that is something to be debated at the ballot box, but it is not a constitutional matter…"

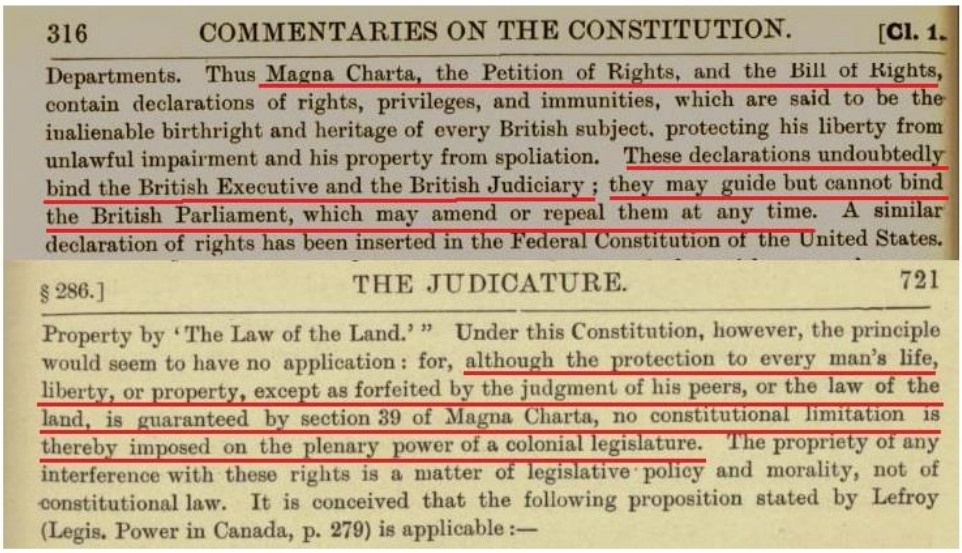
"I understand that and persons who have not had full legal training often think of Magna Carta and the Bill of Rights as fundamental documents which control governments, but they do not. After all, Magna Carta was the result of an agreement between the barons and King John and the barons themselves had their own courts, had their own armies, they, in effect, levied what we would call taxes today and they were concerned to protect themselves against the growth of the central power of the royal government, the central government, and that is how Magna Carta came into existence, but modern Parliament did not arise until late in the 17th century and the early struggle was between the King and the barons.

We are dealing now with the question of the legislature. I mean, Parliament established its authority over the monarch after the struggles which led to the execution of Charles I and the flight from the kingdom of James II in 1688. But Parliament – some people would regard it as regrettable – can, in effect, do what it likes. As it is said, some authorities could legislate to have every blue-eyed baby killed if it wanted to."

https://freemandelusion.com/wp-content/uploads/2019/05/essenberg-v-the-queen-2000-hcatrans-297.pdf

The ability to alter or repeal Magna Carta

Many theorists such as ***Wayne Glew*** believe that the *Magna Carta* cannot lawfully be altered or repealed, by either the British Parliament or the parliaments of Australia. This is despite his continual reliance on ***The Annotated constitution of the Australian Commonwealth***, where Robert Garran makes clear on ***page 316*** that *Magna Carta*, the *Petition of Rights* and the *Bill of Rights "...may guide but cannot bind the British Parliament, which may repeal them at any time."* And likewise on ***page 721*** regarding the the ability to repeal *Magna Carta* here in Australia, that *"...no constitutional limitation is imposed on the plenary power of a colonial legislature."*



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Departments. Thus Magna Charta, the Petition of Rights, and the Bill of Rights, contain declarations of rights, privileges, and immunities, which are said to be the inalienable birthright and heritage of every British subject, protecting his liberty from unlawful impairment and his property from spoliation. These declarations undoubtedly bind the British Executive and the British Judiciary; they may guide but cannot bind the British Parliament, which may amend or repeal them at any time. A similar declaration of rights has been inserted in the Federal Constitution of the United States.

§ 286.] THE JUDICATURE. 721

Property by 'The Law of the Land.'" Under this Constitution, however, the principle would seem to have no application: for, although the protection to every man's life, liberty, or property, except as forfeited by the judgment of his peers, or the law of the land, is guaranteed by section 39 of Magna Charta, no constitutional limitation is thereby imposed on the plenary power of a colonial legislature. The propriety of any interference with these rights is a matter of legislative policy and morality, not of constitutional law. It is conceived that the following proposition stated by Lefroy (Legis. Power in Canada, p. 279) is applicable:—

The British Parliament indeed repealed most of *Magna Carta* between 1863 and 1969 because its terms were either obsolete as they dealt with medieval circumstances that had passed into history, or because some of the problems had been addressed in later statutes. As noted in the ***UK statute book***, only three articles remain, the rest have been repealed. The articles remaining are:

> **I Confirmation of Liberties**: *"FIRST, We have granted to God, and by this our present Charter have confirmed, for Us and our Heirs for ever, that the Church of England shall be free, and shall have all her whole Rights and Liberties inviolable. We have granted also, and given to all the Freemen of our Realm, for Us and our Heirs for ever, these Liberties under-written, to have and to hold to them and their Heirs, of Us and our Heirs for ever."*
>
> **IX Liberties of London, &c**: "*The City of London shall have all the old Liberties and Customs [which it hath been used to have]. Moreover We will and grant, that all other Cities, Boroughs, Towns, and the Barons of the Five Ports, and all other Ports, shall have all their Liberties and free Customs."*
>
> **XXIX Imprisonment, &c. contrary to Law. Administration of Justice**: *"No Freeman shall be taken or imprisoned, or be disseised of his Freehold, or Liberties, or free Customs, or be outlawed, or exiled, or any other wise destroyed; nor will We not pass upon him, nor condemn him, but by lawful judgment of his Peers, or by the Law of the Land. We will sell to no man, we will not deny or defer to any man either Justice or Right."*

In ***Carnes v Essenberg [1999] QCA 339*** Chesterman J noted:

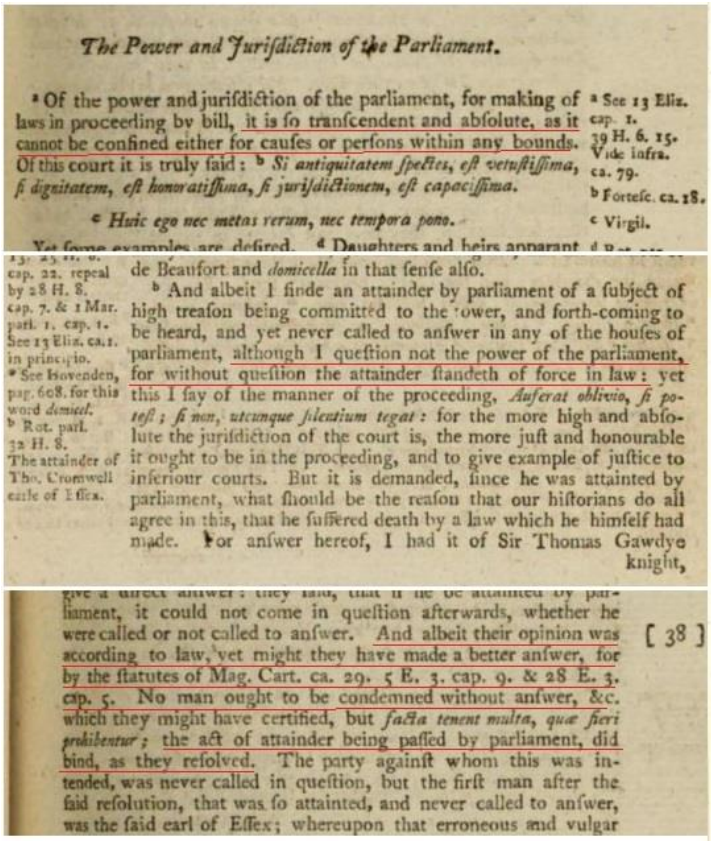
> *"The supremacy of Parliament to make laws contrary to what had been the Common Law is expressly recognised by the Courts. It is enough to refer to the decision of the High Court in Kable v. The Director of Public Prosecutions, 189, Commonwealth Law Reports 51 at pages 73 to 74 in the judgment of Justice Dawson. His Honour pointed out that that champion of the Common Law, Chief Justice Coke, had in his Institute of the Laws of England in the early 17th century accepted that Magna Carta could be altered by English Parliament. Indeed he referred to Bills of Attainder which allowed for trial contrary to Magna Carta as being lawful enactments."*

https://freemandelusion.com/wp-content/uploads/2019/05/carnes-v-essenberg-1999-qca-339.pdf

As Dawson J pointed out in ***Kable v Director of Public Prosecutions (NSW) [1996] HCA 24*** (at 12) Coke had:

> *"...described parliament's power as "transcendent and absolute", not confined "either for causes or persons within any bounds". He there contemplated the enactment of bills of attainder without trial and statutes contrary to Magna Carta without any suggestion of their invalidity."*

Sir Edward Coke, in ***The Fourth Part of the Institutes of the Law of England*** (at 36-38):



The Power and Jurisdiction of the Parliament.

[a] Of the power and jurisdiction of the parliament, for making of laws in proceeding by bill, it is so transcendent and absolute, as it cannot be confined either for causes or persons within any bounds. Of this court it is truly said: [b] *Si antiquitatem spectes, est vetustissima, si dignitatem, est honoratissima, si jurisdictionem, est capacissima.*

[c] *Huic ego nec metas rerum, nec tempora pono.*

[a] See 13 Eliz. cap. 1. 39 H. 6. 15. Vide infra. ca. 79.
[b] Fortesc. ca. 18.
[c] Virgil.

[d] Daughters and heirs apparant

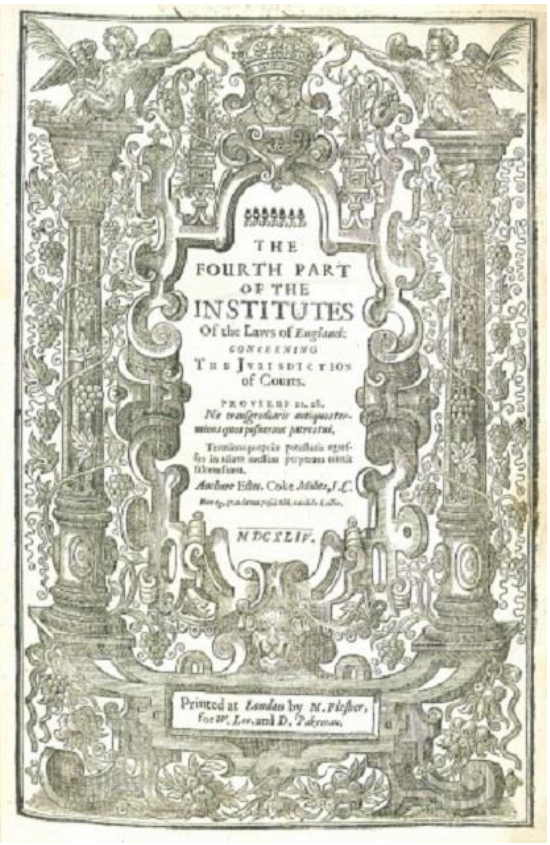
cap. 22. repeal by 28 H. 8. cap. 7. & 1 Mar. parl. 1. cap. 1. See 13 Eliz. ca. 1. in principio.
[a] See Hovenden, pag. 608. for this word *domicel.*
[b] Rot. parl. 32 H. 8. The attainder of Tho. Cromwell earle of Essex.

de Beaufort and *domicella* in that sense also.

[b] And albeit I finde an attainder by parliament of a subject of high treason being committed to the tower, and forth-coming to be heard, and yet never called to answer in any of the houses of parliament, although I question not the power of the parliament, for without question the attainder standeth of force in law: yet this I say of the manner of the proceeding, *Auferat oblivio, si potest; si non, utcunque silentium tegat:* for the more high and absolute the jurisdiction of the court is, the more just and honourable it ought to be in the proceeding, and to give example of justice to inferiour courts. But it is demanded, since he was attainted by parliament, what should be the reason that our historians do all agree in this, that he suffered death by a law which he himself had made. For answer hereof, I had it of Sir Thomas Gawdye knight,

[38]

liament, it could not come in question afterwards, whether he were called or not called to answer. And albeit their opinion was according to law, yet might they have made a better answer, for by the statutes of Mag. Cart. ca. 29. 5 E. 3. cap. 9. & 28 E. 3. cap. 5. No man ought to be condemned without answer, &c. which they might have certified, but *facta tenent multa, quæ fieri prohibentur;* the act of attainder being passed by parliament, did bind, as they resolved. The party against whom this was intended, was never called in question, but the first man after the said resolution, that was so attainted, and never called to answer, was the said earl of Essex; whereupon that erroneous and vulgar



Dawson J goes on to explain (at 13) that

> *"...there can be no doubt that parliamentary supremacy is a basic principle of the legal system which has been inherited in this country from the United Kingdom."*

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As further explained by Dorney QC DCJ in ***Van den Hoorn v Ellis, [2010] QDC 451*** (at 24) the body of law which contains *Magna Carta* was received here in Australia as a body of common law and not of enacted law, which by its nature is open to modification and alteration by the parliaments, but even so, the effect of the *Colonial Laws Validity Act 1865* enabled the parliaments to alter Imperial legislation:

> *"By way of further clarification, McPherson JA (as he then was), speaking generally for the Queensland Court of Appeal in Bone v Mothershaw [2003] 2 Qd R 600 160 noted that the common law received in Australia under the Australian Courts Act 1828 (particularly by s 24) was received as a body of common law and not of enacted law, with the effect that the common law so received in Australia in 1828 was not so received as a body of statute law: at 610. As McPherson JA goes on to observe, the whole notion of such conversion is opposed to the established view that local laws or by-laws are capable of altering the received English law [as was recognised by the High Court in Widgee Shire Council v Bonney (1907) 4 CLR 977: 161 at 610.*
>
> *The Queensland Court of Appeal decision in Carnes v Essenberg; Lewis v Essenberg [1999] QCA 339 162 concludes that it is "completely inaccurate" to say that colonial parliaments, or indeed the Parliament of Westminster, could not alter, modify or even repeal the provisions of centuries old legislation: see Chesterman J (as he then was) at p 4. Accordingly, after the Australian Courts Act 1828, enacted by the Imperial Parliament, became part of the law of Queensland upon its separate establishment in 1859, the Colonial Laws Validity Act 1865, also passed by the Imperial Parliament, removed doubts about the extent to which Australian Colonial Parliaments could alter imperial legislation as it applied to the colonies: at p 5. This had the consequence that no colonial law was void on the ground that it was repugnant to the fundamental principles of English law: also p 5. As Chesterman J goes on to note, the matter is made even more explicit by s 3(2) of the Australia Act 1986, which provides that no law and no provision of any law made after it by the Parliament of a State shall be void or inoperative on a ground that it is repugnant to the laws of England or to the provisions of an existing or future Act of Parliament of the United Kingdom: also p 5."*

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The Bill of Rights 1688

> *"All grants and promises of fines and forfeitures of particular persons before conviction, are illegal and void."*

Section 12 is perceived by pseudolaw adherents to imply that fines are unlawful and invalid unless they are proven in a court. Since it was written several centuries ago, *"grants and promises"* requires a bit of an explanation, though cherry-picking the word *"fines"* seems to satisfy those without knowledge of the historical context.

In short, King James (and King Charles before him) had a habit of "granting or promising" to his mates the wealth of people he didn't like BEFORE they were convicted of treason. To stop this, the Bill of Rights insisted that the Crown can't grant or promise a person's wealth or property to anyone until AFTER the person is convicted.

Prior to 1870 a convicted felon forfeited his assets to the Crown. Indeed, the legal definition of a felon is a person whose property has been forfeited to the Crown. Because such grants and promises were later made illegal by the *Forfeiture Act of 1870*, it hardly matters now what the ***Bill of Rights*** did about narrowing the scope of such grants and promises back in 1688.

The Queen of Australia has not granted or promised any fine or forfeiture to anyone - and experts predict she is unlikely to do so during the remainder of her reign. If she ever does it to you though, you should rely on this section of the Bill of Rights to prevent your home or cattle being seized by the Crown and gifted to some Earle or Duke without giving you an opportunity to a fair trial.

The Bill of Rights was discussed in ***Living Word Outreach Inc v Deputy Sheriff of Victoria [2014] VSC 454*** (from 48):

"In ***Port of Portland Pty Ltd v State of Victoria (2010) 242 CLR 348***, the High Court considered the force of the principles enunciated in the *Imperial Acts Application Act 1980*. That Act, which is an act of the Victorian parliament, transcribes several Imperial acts, including the *Bill of Rights 1688*. Section 3 provides that the transcribed enactments *'shall continue to have in Victoria … such force and effect, if any, as [it] had at the commencement of this Act'.* Considering the interpretation of the *Imperial Acts Application Act 1980*, French CJ, Gummow, Hayne, Heydon, Crennan, Kiefel and Bell JJ said (at 13) that *"...the preferable view is that these provisions in the Victorian statute at best serve only to reinforce what are settled constitutional principles".*

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In ***Antunovic v Dawson (2010) 30 VR 355***, Bell J considered the relevance of the *Bill of Rights 1688* in a contemporary context. His Honour said (at 50):

> *"The rights and liberties in the Bill of Rights restricted the powers of the sovereign, specified and confirmed the responsibilities of Parliament and declared certain fundamental freedoms of the people. The focus of these rights and liberties is mainly on the relationship between the sovereign, the Parliament and the people, rather than on the rights of the people as such. The rights are mainly civil and political in character."*

It follows from what was said in the above cases that the provisions of the *Imperial Acts Application Act 1980* are not to be understood as being capable of striking down provisions in other statutes. Rather, the principles there enshrined lay the groundwork of the constitutional framework and find expression in more specific principles.

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This is a ***republication of the Bill of Rights 1688*** 1 Will and Mary Sess 2 c 2 as in force on 5 July 2002 in the Australian Capital Territory. It includes any commencement, repeal or expiry affecting the republished law and any amendment made under the Legislation Act 2001, part 11.3 (Editorial changes). The legislation history and amendment history of the republished law are set out in endnotes 3 and 4.

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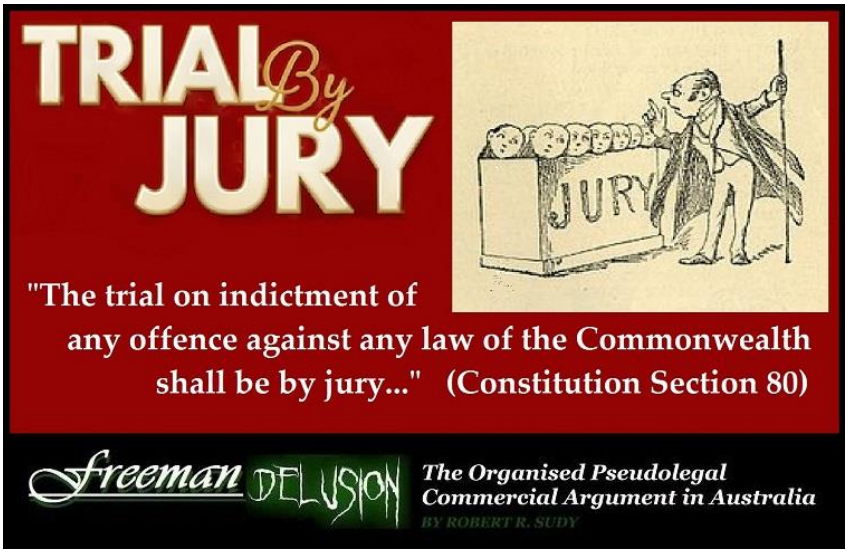
Trial by Jury



Section 80 of the Commonwealth Constitution

It is a common belief among pseudolaw theorists that the judiciary is denying a defendant his rights under chapter 29 of the Magna Carta by not allowing him *"the judgment of his peers"* implying that a ***trial by jury*** must be conducted for every matter before the court, including summary offences. Section 80 of the *Commonwealth Constitution* provides:

> *"The trial on indictment of any offence against any law of the Commonwealth shall be by jury, and every such trial shall be held in the State where the offence was committed, and if the offence was not committed within any State the trial shall be held at such place or places as the Parliament prescribes."*

Section 80 does not require that summary offences be dealt with by way of jury trial, such proceedings are not *"on indictment."* As originally drafted the section applied to trials of *"all indictable offences."* However during the Constitution Convention an amendment was successfully moved to change the words *"indictable offences"* to the present *"trial on indictment"* so as to ensure that the less serious offences could be prosecuted summarily. *(See Pannam C "Trial by Jury and Section 80 of the Australian Constitution" (1968) 6 Sydney Law Review 1 at 3.)*

Even the amendment proposed to section 80 in 1988 (which would have enlarged the right to jury trial, but was defeated) specifically exempted summary offences from its operation. *(See Constitutional Alteration (Rights and Freedoms) Bill 1988)*

Further, section 80 has no application to indictable offences under State laws. (See *Birch v The Queen (1994) 12 WAR 292; Williamson v Hodgson [2010] WASC 95*.) The phrase "*any law of the Commonwealth*" in section 80 specifically relates to those laws made by the Federal parliament pursuant to its legislative powers which have derived from the *Constitution*. In ***Spratt v Hermes [1965] HCA 66*** (at 25 per Barwick CJ), His Honour stated:

> *"...the proper construction of section 80, read in the Constitution as a whole, the offences to which it refers are offences created by or under the authority of laws made by the Parliament pursuant to legislative powers derived from section 51 of the Constitution, that is to say, to offences made under those laws of the Commonwealth..."*

See also ¶ 341 "*Any Offence Against any Law of the Commonwealth.*" in ***The annotated constitution of the Australian Commonwealth*** by Quick and Garran.

The question of whether section 80 is applicable to offences created by an exercise of the powers given to the Commonwealth Parliament by section 122 of the *Constitution* to make laws for the government of any territory was the subject of discussion in ***R v Bernasconi [1915] HCA 13***, where Griffith CJ (with whom Given, Duffy and Rich JJ agreed) held that section 80 of the *Constitution* did not apply in cases arising under what Griffith CJ (at 634) called "*the local laws of a territory, whether enacted by the Commonwealth Parliament or by a subordinate legislature set up by it*". The offence with which Bernasconi was charged was an indictable offence under the Queensland *Criminal Code*, but the trial, held as it was in accordance with the procedure laid down by the ordinance, was not a *"trial on indictment"* within the meaning of section 80.

Pseudolaw adherents generally hold that the chapter 29 of the *Magna Carta*, together with section 80 of the *Constitution*, grants them this right, despite it being long recognised neither establishes an immutable right to trial by jury for criminal offences.

In ***Brown v The Queen (1986) HCA 11*** Gibbs CJ (at 181) stated:

> *"It has been held in a long line of cases ... that s 80 applies only if there is an indictment and that the Parliament is free to decide whether any particular offence, however serious, may be tried summarily."*

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The judgment of his peers

The phrase *"The judgment of his peers"* in c. 29 of the Magna Carta did not even refer to *"trial by jury". (See Adams and Schuyler, Constitutional History of England, Jonathon Cape, London at 136-7; Forsyth, History of Trial by Jury, 2nd Edition, Burt Franklin, New York, 1878 at pp 91-92; Holdsworth, History of English Law, 6th edition, volume 1 at pp 59-660, 385 48; Holt, Magna Carta, 2nd edition, Cambridge University Press, 1992, pp 9-10; Howard, Magna Carta Text and Commentary, The University Press of Virginia, at 14; Lyon, Magna Carta, the Common Law, and Parliament in Medieval England, Forum Press, Missouri, 1980 at p 7; McKechnie, Magna Carta, 2nd edition, 1914 at pp 375-379; Windeyer, Lectures on Legal History, Law Book Company, 1938, "Magna Carta" at pp 64-66.)*

Magna Carta c 29 embodies a *"protest against arbitrary punishment, and against arbitrary infringements of personal liberty and rights of property". (See Holdsworth, Volume II at p 215; Wade and Bradley, Constitutional and Administrative Law, 10th edition, Longman, London, pp 13-14)* The summary procedure undertaken in this case accords with these principles.

Although c.29 traditionally has been thought to embody this fundamental principle, historical analysis reveals that this chapter:

> *"...has had much read into it that would have astonished its framers: application of modern standards to ancient practice has resulted in complete misapprehension"*

*(See McKechnie, Magna Carta, 2nd ed (1914) at 395 as quoted by Toohey J in **Jago v District Court (NSW) (1989) 168 CLR 23** at 66).* In *Jago* Toohey J thought it pertinent to note Holdsworth's observation that whilst it was said in the seventeenth century that c. 29 (together with related chapters) embodied the principles of the writ of Habeas Corpus and of trial by jury:

> *"It is not difficult to show that, taken literally, these interpretations are false. Trial by jury was as yet in its infancy..."*

(See Holdsworth, History of English Law, 7th edition (1956), volume 2 at pp 214-215 cited by Toohey J at p 66)

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Similarly in ***Kingswell v The Queen (1985) 159 CLR 264***, Deane J (in dissent as to the outcome of the appeal) observed that modern scholarship would indicate that much of the traditional identification of trial by jury with Magna Carta was erroneous.

For many years after the establishment of the colony of NSW there were no jury trials, with criminal matters being heard by the Judge Advocate and a panel of six military officers. (See Evatt J "*The Jury System in Australia*" (1936-37) 10 ALJ (Supplement) 49, Bennett JM "*The Establishment of jury Trial in NSW*" (1956-61) 3 Sydney Law Review 463 and Neale D *The Rule of Law in a Penal Colony*, Cambridge University Press, 1991.)

https://freemandelusion.com/wp-content/uploads/2018/07/kingswell-v-the-queen-1985-hca-72.pdf

All States have Magistrate's Courts or Courts of Petty Sessions, in which summary trials of summary offences are conducted. Summary offences are heard by a magistrate, who determines both the verdict and the sanction. Persons charged with a summary offence cannot have the matter heard by a jury, so there is no point in demanding "trial by one's peers" if the Justices Act or Summary Offences Act of your State says the charge is triable summarily.

Every Australian jurisdiction has legislation that outlines which offences can be heard summarily, as well as prescribing penalties for each offence. Commonwealth law also outlines numerous summary offences, but since there is no network of Commonwealth criminal courts, most Commonwealth summary offences are heard in State or Territory Magistrate's Courts.

Summary offences are generally dealt with quickly and efficiently. If the accused pleads guilty, the prosecution simply summarises the offences and establishes the basic facts. The accused or their legal counsel will speak on their behalf, offer mitigating factors and/or character references. The magistrate will then find the matter proven, speak briefly to the accused and deliver a sanction. This process may take no more than several minutes. If the accused pleads not guilty, the magistrate will review the

evidence, hear witnesses and decide whether or not the matter is proven 'beyond reasonable doubt'. If the magistrate returns a finding of guilt, he or she will then decide an appropriate sanction.

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The Principle of Responsible Government

Responsible Government is the term used to describe a political system where the executive government, the Cabinet and Ministry, is drawn from, and accountable to, the legislative branch. The term should not be confused with the everyday meaning of responsible. The term is a political concept and has nothing to do with the idea of governments behaving in a correct, proper or responsible manner when making decisions.

***Mulholland v Australian Electoral Commission* [2004] HCA 41** (at 220):

> *"Numerous judicial observations have recognised the significance of the requirement of direct choice by the people for the constraints that may be imposed through electoral law on the fulfillment of the constitutional idea of representative democracy. Clearly, that idea lies at the heart of the democratic character of the Constitution, by which the sovereign people of Australia control their destiny in the deployment of governmental power within the Commonwealth.* [***Nationwide News Pty Ltd v Wills (1992) 177 CLR 1*** *at 71; ACTV (1992) 177 CLR 106 at 137 per Mason CJ.*]. *They do this by reserving to themselves, as electors, approval of alterations to the Constitution* [*s 128*]*; by the institution of the system of responsible government that renders the Executive answerable to the Parliament*[*s 64. See R v Kirby; Ex parte Boilermakers' Society of Australia (1956) 94 CLR 254 at 275; McGinty (1996) 186 CLR 140 at 269*]*; and by the requirement that each House of Parliament must be "directly chosen by the people"*[*ss 7, 24*].

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R v Kirby; Ex parte Boilermakers' Society of Australia (1956) HCA 10 (at 275):

> *"Probably the most striking achievement of the framers of the Australian instrument of government was the successful combination of the British system of parliamentary government containing an executive responsible to the legislature with American federalism. This meant that the distinction was perceived between the essential federal conception of a legal distribution of governmental powers among the parts of the system and what was accidental to federalism, though essential to British political conceptions of our time, namely the structure or composition of the legislative and executive arms of government and their mutual relations. The fact that responsible government is the central feature of the Australian constitutional system makes it correct enough to say that we have not adopted the American theory of the separation of powers. For the American theory involves the Presidential and Congressional system in which the executive is independent of Congress and office in the former is inconsistent with membership of the latter. But that is a matter of the relation between the two organs of government and the political operation of the institution. It does not affect legal powers."*

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McGinty v Western Australia (1996) HCA 48 (at 269):

> *"Responsible government has been said in this Court to be a central feature of the system devised by the framers of the Australian instrument of government. (R v Kirby; Ex parte Boilermakers' Society of Australia (1956) 94 CLR 254 at 275; affd (1957) 95 CLR 529.). It appears not from express terms so much as from the requirement in the last paragraph of s 64 that a Minister be a member of the Senate or the House of Representatives. Other central features are the separation of the judicial power of the Commonwealth and the doctrine of judicial review of legislative act and executive decision for constitutional validity. These are essential elements of federalism, but again, to a significant degree, the result is to be seen as a matter of necessary inference from consideration of the text and structure of the Constitution. ((1956) 94 CLR 254 at 276-278. See also **R v Sharkey (1949) 79 CLR 121** at 148.). The Constitution also established for the Commonwealth, and prescribes and gives effect to, a system of representative government. This was accepted by the whole Court in Australian Capital Television. ((1992) 177 CLR 106 at 137-138, 150, 168, 184-185, 210-211, 229.)."*

https://freemandelusion.com/wp-content/uploads/2018/07/mcginty-v-western-australia-1996-hca-48.pdf

Australian Capital Television Pty Ltd v Commonwealth (1992) HCA 45:

MASON C.J. at 30.

> *"On the other hand, the principle of responsible government – the system of government by which the executive is responsible to the legislature – is not merely an assumption upon which the actual provisions are based; it is an integral element in the Constitution. (**Amalgamated Society of Engineers v. Adelaide Steamship Co. Ltd. (1920) 28 CLR 129**, per Knox C.J., Isaacs, Rich and Starke JJ. at p 147). 7 In the words of Isaacs J. in **The Commonwealth v. Kreglinger and Fernau Ltd. and Bardsley (1926) 37 CLR 393**, at p 413): "It is part of the fabric on which the written words of the Constitution are superimposed."*

The implication of fundamental rights

*The adoption by the framers of the Constitution of the principle of responsible government was perhaps the major reason for their disinclination to incorporate in the Constitution comprehensive guarantees of individual rights. "(T)he Australian Constitution is built upon confidence in a system of parliamentary Government with ministerial responsibility": **Attorney-General (Cth); Ex rel. McKinlay v. The Commonwealth (1975) 135 CLR 1**, per Barwick C.J. at p 24). They refused to adopt a counterpart to the Fourteenth Amendment to the Constitution of the United States. Sir Owen Dixon said. (Sir Owen Dixon, "Two Constitutions Compared", Jesting Pilate, (1965), p 102): "(they) were not prepared to place fetters upon legislative action, except and in so far as it might be necessary for the purpose of distributing between the States and the central government the full content of legislative power. The history of their country had not taught them the need of provisions directed to control of the legislature itself." The framers of the Constitution accepted, in accordance with prevailing English thinking, that the citizen's rights were best left to the protection of the common law in association with the doctrine of parliamentary supremacy. Sir Anthony Mason, "The Role of a Constitutional Court in a Federation", (1986) 16 Federal Law Review 1, at p 8)."*

DAWSON J. at 20.

*"In addition to representative democracy there is also written into the Constitution the principle of responsible government. See ss.62, 64. It is true that no attempt was made to spell out what responsible government entails – that was felt to be an impossible task – but there is sufficient to make it readily apparent that the system adopted was that of responsible government, that is, the system by which the executive is responsible to the legislature and, through it, to the electorate. That has never been doubted. In the Engineers' Case (1920) 28 CLR, at p 146 the principle of responsible government was described as pervading the Constitution. See also The Commonwealth v. Kreglinger and Fernau Ltd. and Bardsley (1926) 37 CLR 393, at pp 411 et seq; **Victorian Stevedoring and General Contracting Co. Pty. Ltd. and Meakes v. Dignan (1931) 46 CLR 73**, at p 114; **New South Wales v. The Commonwealth (1975) 135 CLR 337**, at pp 364-365. And in the Boilermakers' Case, Reg. v. Kirby; Ex parte Boilermakers' Society of Australia (1956) 94 CLR 254, at p 275 it was referred to as "the central feature of the Australian constitutional system".*

McHUGH J. at 15.

*"The Constitution also gives effect to a system of responsible government. (Amalgamated Society of Engineers v. Adelaide Steamship Co. Ltd. (1920) 28 CLR 129, at p 147; **The Commonwealth v. Colonial Combing, Spinning and Weaving Co. Ltd. (1922) 31 CLR 421**, at pp 446-447; The Commonwealth v. Kreglinger and Fernau Ltd. and Bardsley (1926) 37 CLR 393, at p 413)*

The words "directly chosen by the people" in ss.7 and 24 of the Constitution have to be interpreted against the background of the institutions of representative government and responsible government to which the Constitution gives effect but does not specifically mention. The words of ss.7 and 24 must be construed by reference to the conceptions of representative government and responsible government as understood by informed people in Australia at the time of federation.

In The Commonwealth v. Kreglinger and Fernau Ltd. and Bardsley at pp 411-412., Isaacs J. said: "it is the duty of this Court, as the chief judicial organ of the Commonwealth, to take judicial notice, in interpreting the Australian Constitution, of every fundamental constitutional doctrine existing and fully recognised at the time the Constitution was passed, and therefore to be taken as influencing the meaning in which its words were used by the Imperial Legislature". His Honour went on to say at p 413 in that case that the principle of responsible government is "part of the fabric on which the written words of the Constitution are superimposed".

Representative government involves the conception of a legislative chamber whose members are elected by the people. But, as Birch points out, Representative and Responsible Government, (1964), p 17), to have a full understanding of the concept of representative government, "we need to add that the chamber must occupy a powerful position in the political system and that the elections to it must be free, with all that this implies in the way of freedom of speech and political organization". Furthermore, responsible government involves the conception of a legislative chamber where the Ministers of State are answerable ultimately to the electorate for their policies. As Sir Samuel Griffith pointed out in his Notes on Australian Federation (1896), p 17), the effect of responsible government "is that the actual government of the State is conducted by officers who enjoy the confidence of the people".

It is not to be supposed, therefore, that, in conferring the right to choose their representatives by voting at periodic elections, the Constitution intended to confer on the people of Australia no more than the right to mark a ballot paper with a number, a cross or a tick, as the case may be. The "share in the government which the Constitution ensures" would be but a pious aspiration unless ss.7 and 24 carried with them more than the right to cast a vote. The guarantees embodied in ss.7 and 24 could not be satisfied by the Parliament requiring the people to select their representatives from a list of names drawn up by government officers.

*If the institutions of representative and responsible government are to operate effectively and as the Constitution intended, the business of government must be examinable and the subject of scrutiny, debate and ultimate accountability at the ballot box. The electors must be able to ascertain and examine the performances of their elected representatives and the capabilities and policies of all candidates for election. Before they can cast an effective vote at election time, they must have access to the information, ideas and arguments which are necessary to make an informed judgment as to how they have been governed and as to what policies are in the interests of themselves, their communities and the nation. As the Supreme Court of the United States pointed out in **Buckley v. Valeo (1976) 424 US 1**, at pp 14-15), the ability of the people to make informed choices among candidates for political office is fundamental because the identity of those who are elected will shape the nation's destiny.*

It follows that the electors must be able to communicate with the candidates for election concerning election issues and must be able to communicate their own arguments and opinions to other members of the community concerning those issues. Only by the spread of information, opinions and arguments can electors make an effective and responsible choice in determining whether or not they should vote for a particular candidate or the party which that person represents. Few voters have the time or the capacity to make their own examination of the raw material concerning the business of government, the policies of candidates or the issues in elections even if they have access to that material. As Lord Simon of Glaisdale pointed out

*in **Attorney-General v. Times Newspapers (1974) AC 273**, at p 315): "People cannot adequately influence the decisions which affect their lives unless they can be adequately informed on facts and arguments relevant to the decisions. Much of such fact-finding and argumentation necessarily has to be conducted vicariously, the public press being a principal instrument."*

The words "directly chosen by the people" in ss.7 and 24, interpreted against the background of the institutions of representative government and responsible government, are to be read, therefore, as referring to a process – the process which commences when an election is called and ends with the declaration of the poll. The process includes all those steps which are directed to the people electing their representatives – nominating, campaigning, advertising, debating, criticising and voting. In respect of such steps, the people possess the right to participate, the right to associate and the right to communicate. That means that, subject to necessary exceptions, the people have a constitutional right to convey and receive opinions, arguments and information concerning matter intended or likely to affect voting((351) See the definition of "political matter" in ss.95B, 95C and 95D of the Act.) in an election for the Senate or the House of Representatives. Moreover, that right must extend to the use of all forms and methods of communication which are lawfully available for general use in the community. To fail to give effect to the rights of participation, association and communication identifiable in ss.7 and 24 would be to sap and undermine the foundations of the Constitution.

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Robert Garran explains the principle of Responsible Government in ***Commentaries of the Constitution***. (pages 703 to 707) *"The system of Responsible Government as known to the British Constitution has been practically embedded in the Federal Constitution, in such a manner that it cannot be disturbed without an amendment of the instrument."*

"There are perhaps few political or historical subjects with respect to which so much misconception has arisen in Australia as that of Responsible Government. It is, of course, an elementary principle that the person at whose volition an act is done is the proper person to be held responsible for it. So long as acts of State are done at the volition of the head of the State he alone is responsible for them. But, if he owns no superior who can call him to account, the only remedy against intolerable acts is revolution. The system called Responsible Government is based on the notion that the head of the State can himself do no wrong, that he does not do any act of State of his own motion, but follows the advice of his ministers, on whom the responsibility for acts done, in order to give effect to their volition, naturally falls. They are therefore called Responsible Ministers. If they do wrong, they can be punished or dismissed from office without effecting any change in the Headship of the State. Revolution is therefore no longer a necessary possibility ; for a change of Ministers effects peacefully the desired result. The system is in practice so intimately connected with Parliamentary Government and Party Government that the terms are often used as convertible. The present form of development of Responsible Government is that, when the branch of the Legislature which more immediately represents the people disapproves of the actions of Ministers, or ceases to have confidence in them, the head of the State dismisses them, or accepts their resignation, and appoints new ones. The effect is that the actual government of the State is conducted by officers who enjoy the confidence of the people. In practice they are themselves members of the Legislature. The ' sanction' of this unwritten law

> *is found in the power of the Parliament to withhold the necessary supplies for carrying on the business of the Government until the Ministers appointed by the Head of the State command their confidence. In practice, also, the Ministers work together as one body, and are appointed on the recommendation of one of them, called the Prime Minister. And, usually, an expression of want of confidence in one is accepted as a censure of all. This is not, however, the invariable rule; and it is evidently an accidental and not a fundamental feature of Responsible Government." (Sir Samuel Griffith, Notes on Australian Federation, 1896, pp. 17-18)*

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The origins of Responsible Government

In 1867 the Australian continent was divided into six separate British colonies, five of them with some form of responsible government. British occupation began with a convict settlement (at Sydney, in 1788), but population growth was slow until the discovery of gold in 1851, almost simultaneously in New South Wales and Victoria, followed by the rapid development of the wool industry. The population trebled, from 405 000 in 1850 to 1.4 million in 1867 (together with about 70 000 Aborigines, who then and for a century afterwards were not counted in censuses).

New South Wales was the first colony to be settled, and indeed in the early days covered the whole eastern half of the continent. By the 1840s it was moving towards representative government. In 1850 the British Parliament passed the Australian Colonies Government Act, which separated Victoria from New South Wales and gave that colony a Legislative Council on the same basis as New South Wales-that is, two-thirds elected and one-third appointed by the Governor. The act permitted the existing legislatures in Van Diemen's Land and South Australia to be modified on similar lines, and envisaged such a legislature for Western Australia. The act also gave the various legislative councils, when reformed, the power to alter their colonial constitutions, subject to royal assent. A strong hint was given that bicameral legislatures were desirable.

The British government was not prepared to grant the colonies control over land policy and revenue from the sale of land until they were economically self-supporting. This was dramatically achieved by the discovery of gold in 1851, and in 1855 the British government agreed, with minor amendments, to the Constitution proposed by the New South Wales Legislative Council. There was no dispute about the Assembly, which was elected on a fairly wide male franchise, soon changed to manhood suffrage. A group led by Wentworth attempted to establish an hereditary upper house-the bunyip aristocracy, it was sarcastically called-but had to be satisfied with a house the members of which were appointed for life on the advice of the Assembly. By 1867 the New South Wales system was working reasonably well.

Tasmania was the second colony to be settled, a penal colony being founded in Hobart in 1803. Even by 1867 Tasmania had a population of only 95 000; the Tasmanian Aborigines were almost extinct. After transportation to the rest of Australia was ended, Tasmania became the receptacle for convicts from Britain, India and the other colonies. This system was stopped in 1853, the colony (previously Van Diemen's Land) was renamed Tasmania, and representative institutions were introduced, culminating in responsible government in 1854. The upper house was elected by voters with the requisite property or educational qualifications. There was a lesser property qualification for the lower house.

Settlements were established at Perth and Fremantle in 1829, but the surrounding land was poor, and migrants were scarce. In 1867 Western Australia was the only colony still receiving convicts, who had been asked for in 1850 to overcome the labour shortage. (Transportation was to stop in 1869, under pressure from the other colonies.) In 1867 Western Australia had no effective representative organisations, and was not to achieve responsible government until 1890.

Victoria was settled from Tasmania in 1834. It shared in the great gold and wool booms of the 1850s, and its development to responsible government moved with that of New South Wales, with one significant difference. From 1856, the Victorian Legislative Council was elected, rather than appointed, and had a separate electoral roll, with a heavy property or educational qualification. There was a much smaller property qualification for voters for the Legislative Assembly. Sixty thousand men could vote for the Legislative Assembly in 1856, but only ten thousand for the Legislative Council. Adult male franchise for the Assembly came in the following year. As one of the great issues for the colonial government was land development, the scope for conflict between the two houses was immense. In fact, in 1865 and again in 1867 the Legislative Council rejected the annual appropriation bill. The Council was probably technically in the right, for the Legislative Assembly had on each occasion incorporated in the appropriation bill a contentious provision that would not otherwise have been passed by the Council ('tacking' it was called). Great confusion and bitterness had resulted.

Bagehot was obviously thinking of Victoria when he wrote scathingly about responsible government in Australia, which he said did not work as well in the Australian colonies as in North America:

> *"The lower classes there are mixed, convicts came first, and gold diggers followed … there is a rich class which has little power, which is subject to a lower class, unfit to govern even itself, and still more unfit to govern those above it … there is no such respect among the uneducated as would induce them to accept the judgement of the educated."*

It was a happier picture in South Australia, founded in 1836 as one of the Wakefield colonial schemes (there were also five in New Zealand). Edward Gibbon Wakefield (1796-1862) produced a colonisation scheme designed to attract skilled migrants; land values were to be deliberately kept high, and the revenue used to entice further suitable migrants. He produced his scheme while in prison for the abduction of an heiress. The South Australian Colonization Act of 1834 had promised self-government when the population reached 50 000. In 1850, when the population was 63 000, a legislative chamber of eight crown nominees and sixteen elected representatives was created, as provided for in the Australian Colonies Government Act. Six years later South Australia achieved responsible government on the Victorian model, though with a smaller property qualification for the upper house.

South Australia was a leader in democratic developments. It had adult male suffrage, one man one vote, for the lower house from 1856. It was the first to have triennial parliaments. It created secret voting by ballot, thereafter usually called the Australian ballot. And, although it had little to do with democracy, it produced a simplified system of transfer of land titles (the Torrens title) which was copied in many countries.

The last Australian colony to be formed was Queensland. Though it had been settled in 1826, it had been separated from New South Wales only in 1859, when its population (not counting Aborigines) was about 20 000. The new colony of Queensland was immediately granted self-government and parliamentary institutions on the 1856 New South Wales model.

The idea of an Australian union of some kind surfaced periodically. The Secretary of State for the Colonies, Earl Grey, had back in 1847 recommended a single assembly to DEAL with matters of common Australian interest, but despite its support by a committee of the Privy Council, the proposal was stillborn. There is no doubt it was premature. Worse still, the colonists had not been consulted, and Australians were already starting to show that odd and rather unappealing combination of an almost fawning desire to have the approval of the 'home' country coupled with a fierce resentment of any apparent attempt by that country to dictate to them. Nevertheless the Colonial Office did not completely give up. In 1851, after the separation of Victoria from New South Wales, the Governor of New South Wales was given the additional title of Governor-General of Australia, but he had no power in that role, and the appointment made no difference.

Although there was resistance to the imposition by Britain of a system of inter-colonial co-operation, opinion in the colonies was beginning to stir. In 1852 the Presbyterian cleric, Dr Lang, clamoured for an American-style federation with two legislative chambers (coupled with independence from Britain, which rendered his advocacy ineffective in the climate of the times). A year later a committee of the New South Wales Legislative Council and a Victorian constitutional committee each talked vaguely of an Australian general assembly, but there is no evidence that they seriously faced the problem of how they could combine, in a single chamber, reasonable equality of representation of individual voters together with arrangements ensuring that the smaller colonies need not fear domination by the larger. The latter provision was essential if there were to be any chance of a federal scheme being accepted.

The idea of a federal assembly, apparently a single chamber and always with very limited powers, recurs over the years, as for instance in Wentworth's Memorial of 1857 and a report of a New South Wales select committee of the same year. There were numerous colonial conferences from 1863 onwards but it was to be a quarter of a century before real progress towards federation was made.

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The Binding Effect of Precedent

I hear it a lot from pseudolaw adherents, *"Oh but that's not a fact, that's just some judges opinion."* in an attempt to ignore a certain ruling. The difference between OPINION and a FACT in law, is known as "non-obiter" and "obiter".

When a particular point of law (or *"ratio decidendi"*) is determined by the higher courts, (example: a State Supreme Court or the High Court) it creates a "precedent" which is then binding on all courts below it in the hierarchy or pecking order of courts, for example: a Magistrates Court, or District Court. The decision is not binding on courts of higher rank within that jurisdiction or in other jurisdictions, but it may be considered as persuasive authority.

This is known as *"stare decisis"*. The words originate from the Latin maxim *"stare decisis et non quieta movere"* which means: "to stand by decisions and not disturb the undisturbed." In a legal context, this is understood to mean that courts should generally abide by the decision and not disturb settled matters. Under this doctrine, judges are obliged to adhere to previously decided cases, or precedents, where the facts are substantially the same.

Section 76 of the *Constitution* grants the High Court *"original jurisdiction"* in all matters relating to its interpretation. Even when it is *"carefully considered dicta"* these decisions are binding on all the courts in Australia (see ***Farah Constructions Pty Ltd v Say-Dee Pty Ltd (2010) HCA 22***, at 134, ***Garcia v National Australia Bank Ltd (1998) HCA 48***.

https://freemandelusion.com/wp-content/uploads/2022/04/Farah-Constructions-v-Say-Dee-2007-HCA-22.pdf

https://freemandelusion.com/wp-content/uploads/2022/04/Garcia-v-National-Australia-Bank-Ltd-1998-HCA-48.pdf

As Justice Michael Kirby wrote in ***Precedent Law, Practice & Trends in Australia***:

> *"Where a ratio decidendi exists in the reasoning of one of its decisions, it is not permissible for any other Australian court, whether in an appeal or at trial, to ignore, doubt or qualify the rule so stated. The rule may be analysed and, where thought appropriate, elaborations suggested or distinctions upheld. But the legal duty of obedience requires that it must be followed and applied."*

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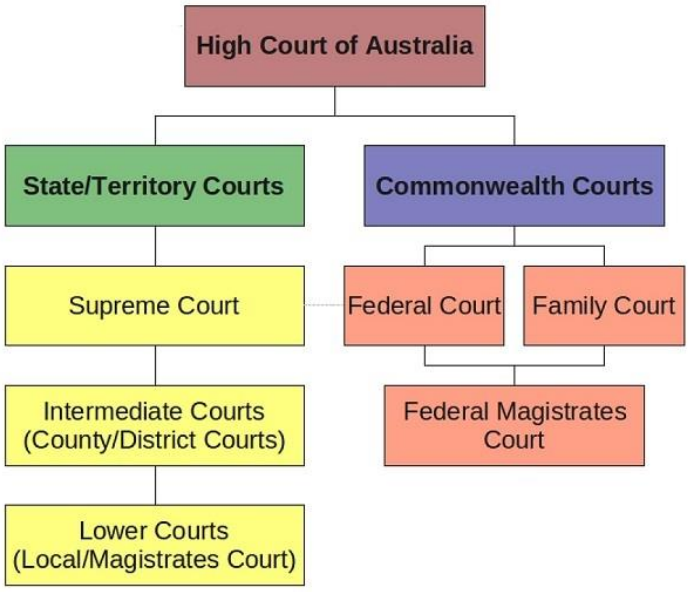
In ***Queensland v. The Commonwealth (1977) HCA 60***, (at 9) Gibbs J. remarked:

> *"Further, it has been said, and with some justification, that "the doctrine of stare decisis should not be so rigidly applied to the constitutional as to other laws" (see the passage cited by Isaacs J. in **Australian Agricultural Co. v. Federated Engine-Drivers and Firemen's Association of Australasia (1913) HCA 41**, at p 278) because in such cases the Parliament cannot legislate to correct the errors of the courts. It has been said, too, that since this Court has the duty of maintaining the constitution, it has a duty to overrule an earlier decision if convinced that it is plainly wrong. In the case already cited, Isaacs J. went on to say (1913) 17 CLR 261, at p 278 :"Our sworn loyalty is to the law itself, and to the organic law of the Constitution first of all. If, then, we find the law to be plainly in conflict with what we or any of our predecessors erroneously thought it to be, we have, as I conceive, no right to choose between giving effect to the law, and maintaining an incorrect interpretation. It is not, in my opinion, better that the Court should be persistently wrong than that it should be ultimately right."*
>
> *But like most generalizations, this statement can be misleading. No Justice is entitled to ignore the decisions and reasoning of his predecessors, and to arrive at his own judgment as though the pages of the law reports were blank, or as though the authority of a decision did not survive beyond the rising of the Court. A Justice, unlike a legislator, cannot introduce a programme of reform which sets at nought decisions formerly made and principles formerly established. It is only after the most careful and respectful consideration of the earlier decision, and after giving due weight to all the circumstances, that a Justice may give effect to his own opinions in preference to an earlier decision of the Court."*



Some recent examples of a Supreme Court stating this rule can be found in ***Southdale Stud Pty Ltd v RJR Trading Pty Ltd [2020] SASC 106*** (at 26) in relation to the binding effect of ***Attorney-General (WA) v Marquet (2003) HCA 67*** and ***Shaw v Minister for Immigration and Multicultural Affairs (2003) HCA 72*** on their court.

> *"The appellant has not raised any argument of merit that is capable of challenging the validity of the Australia Act at all. Further, the existence of this Court is not dependent on the validity of the Australia Act. In any event, as the respondent submits, it is not for this Court to depart from what is manifestly 'seriously considered dicta' of the High Court as to the validity of the Australia Act, even if, against all probability, I had concluded that the Notice of Appeal contained a proposition of merit. (See Farah Constructions v Say-Dee Pty Ltd (2007) 230 CLR 89 (at 134, Gleeson CJ, Gummow, Callinan, Heydon and Crennan JJ.)"*

Likewise in ***Commonwealth Bank of Australia v Haughton [2020] SASC 135*** (at 44) in relation to the same contention:

> *"There is nothing in the argument to which Mr Haughton took me that affects the outcome in Marquet, nor the ruling later made in Shaw v Minister for Immigration and Multicultural Affairs. Ultimately, this point goes nowhere. .. Even if this is merely regarded as seriously considered dicta of the High Court, it remains binding on me, Farah Constructions Pty Ltd v Say-Dee Pty Ltd (2010) 230 CLR 89, [134] (Gleeson CJ, Gummow, Callinan, Heydon and Crennan JJ)."*

One of the best explanations I've found regarding the binding effect of precedent, particularly in relation to the "Strawman" premise, is in the following two Canadian cases.

Crossroads-DMD Mortgage Investment Corporation v Gauthier, 2015 ABQB 703 (paras 32-46):

> *"As a preliminary point I will respond to Gauthier's argument that I should not consider myself as bound by the Alberta Court of Queen's Bench Meads v Meads decision of Associate Chief Justice Rooke. Gauthier called it "obiter". My suspicion is that Gauthier views a declaration of that kind*

to be a kind of simple invocation that will allow him to escape otherwise binding court authorities. It does not, but I think it would be helpful to offer him an explanation of "obiter" or "obiter dicta", and what that term actually means.

Obiter are statements of law, principle or conclusions, that do not directly relate to the outcome of a court decision. For example, a judge might write a decision that says because of facts A I conclude B, and therefore do C, but if I the facts had been X, I would have concluded Y, and then I would have done Z. The X, Y and Z analysis is obiter. The court did not use that part of the decision to reach its actual conclusion. An obiter component of a judgment is not binding on other courts. It is, however, potentially influential.

Next I should clarify stare decisis. This principle dictates when a court has the discretion to address an issue, point of law, or a fact. In South Side Woodwork v R.C. Contracting (1989), 1989 CanLII 3384 (AB QB), 95 AR 161, 33 CLR 43 (Alta QB), Master Funduk explained where Masters of this Court fall in the judicial hierarchy: Any legal system which has a judicial appeals process inherently creates a pecking order for the judiciary regarding where judicial decisions stand on the legal ladder. I am bound by decisions of Queen's Bench judges, by decisions of the Alberta Court of Appeal and by decisions of the Supreme Court of Canada.

Very simply, Masters in Chambers of a superior trial court occupy the bottom rung of the superior courts judicial ladder. I do not overrule decisions of a judge of this court.

The Meads v Meads decision was made by a justice (judge) of the Court of Queen's Bench of Alberta. I cannot ignore any non-obiter findings and principles of law in that decision. Those have binding authority on the Masters of the Court of Queen's Bench of Alberta

Though this will come up again later, one point that Gauthier argued is that he is "an individual human being, or man with inherent jurisdiction on the land commonly known as Canada", and "not a person as defined by Interpretations Act RSC 1985". He is "... the Beneficiary and Grantor of the account referred to as the juristic person ADAM CHRISTIAN GAUTHIER ...". This is obviously an attempt to invoke the OPCA double/split person or "Strawman" concept: individuals have two interlinked aspects, a physical "human" element and an attached or interlinked non-corporeal legal element, what Gauthier calls a "person" or "juristic person".

In Meads v Meads this concept is reviewed and rejected at paras 417-446. Rooke ACJ concludes that in Canadian law the double/split person concept is entirely unfounded in any sense, and has been systematically rejected every time anyone has ever raised it in a Canadian court. He then goes to evaluate the documents that the respondent, Dennis Larry Meads, had filed in the Meads v Meads action. Rooke ACJ explains at paras 432-439 that the Meads' documents are meaningless because they attempt to invoke the double/split person concept, and concludes at paras 438-439: [438] ... everything good and of value attaches to the physical person of Mr. Meads, while all obligation and debt is allocated to the unfortunate DENNIS LARRY MEADS, corporate entity. [439] Of course, that does not work. Mr. Meads is Mr. Meads in all his physical or imaginary aspects. He would experience and obtain the same effect and success if he appeared in court and selectively donned and removed a rubber Halloween mask which portrays the appearance of another person, asserting at this or that point that the mask's person is the one

liable to Ms. Meads. Not that I am encouraging, or indeed would countenance, the wearing of a mask in my courtroom.

This means that ACJ Rooke's conclusion that the double/split person "Strawman" is a myth is not obiter. He used that conclusion of law to reach the result in Meads v Meads. As a consequence, that conclusion is binding on me. To be explicit, even if that were not the law I would come to exactly the same conclusion. Gauthier's claim that distinguishes an "individual human being" from the "person" is entirely meaningless. They are one and the same. Gauthier's apparent belief as to the legal meaning of the word "person" is entirely false and incorrect.

I note that the "Strawman" double/split person concept was also rejected by the Newfoundland and Labrador Court of Appeal in a recent judgment, Fiander v Mills, 2015 NLCA 31 (CanLII) at para 20: This notion of treating a named individual as an "estate" that is somehow separate from the person who is subject to the law and that is free from governmental regulation is also a concept unrecognized by the law of Canada. It is just nonsense. Chief Justice Green concludes the "Strawman" is so obviously and notoriously false that he directs that anytime a trial court encounters "... the fractionating of human personality to support claims of not being subject to law ..." that the litigant who made that argument should be presumed to have sued in a vexatious and abusive manner and only is appearing in court for an improper and ulterior purpose: paras 39-40.

The "Strawman" is therefore not merely a myth. It is litigation poison.

The Fiander v Mills decision is not binding upon me, but it has significant weight because that instruction was from a Canadian Court of Appeal.

Another rule Gauthier should be aware of is that there are parts of Meads v Meads which are obiter, but which are nevertheless binding on me because those passages originate in other, nonobiter court decisions. For example, at para 216 Rooke ACJ indicates notaries do not have judge-like authority. Meads did not argue that in his materials or court appearance, so that statement is obiter. However, Meads v Meads then references an Alberta Court of Appeal decision: Papadopoulos v Borg, 2009 ABCA 201 (CanLII) at paras 3, 10. That decision includes the following explicit statement: The appellant put great stock in the fact that his unconventional documents had been notarized by a Notary Public, but the involvement of the notary could not give these legally ineffective documents any force of law. ... The passage in Papadopoulos v Borg is not obiter and is binding on me. It is from the Alberta Court of Appeal.

There is a third important point for Gauthier to understand concerning Meads v Meads. The weight and influence of a judgment increases when other judges and courts accept that a decision provides the correct approach to a legal issue. Judicial reasoning operates in that sense on a consensus basis, and if a judge's obiter reasoning is generally accepted then that obiter becomes increasingly influential. Consensus results in a generally understood and agreed upon principal of law. The Meads v Meads judgment is very widely cited and accepted in Canada. Five Canadian Courts of Appeal have explicitly endorsed the decision as correct:

R v Blerot, 2015 SKCA 69 (CanLII) at para 4; Minicozzi c Royal Bank of Canada, 2013 QCCA 1722 (CanLII) at para 1; Fiander v Mills at paras 11, 19, 38; Bossé v Farm Credit Canada, 2014 NBCA 34

(CanLII) at para 43, 419 NBR (2d) 1, leave denied [2014] SCCA No 354; Tupper v Nova Scotia (Attorney General), 2015 NSCA 92 (CanLII) at para 53. In those provinces Meads v Meads is the law.

And Canada is not the only country which has accepted the analysis and conclusions in Meads v Meads; it has also been cited both in the Commonwealth and the United States:

Australia: Kosteska v Magistrate Manthey & Anor, [2013] QCA 105 ACM Group Ltd v Jenner, [2014] QMC 7; Deputy Commissioner of Taxation v Aitken, [2015] WADC 18.

Northern Ireland: Parker v McKenna & Anor, [2015] NIMaster 1.

The Republic of Ireland: Freeman & anor v Bank of Scotland (Ireland) Ltd & ors, [2013] IEHC 371; Kearney v KBC Bank Ireland Plc & Anor, [2014] IEHC 260; McCarthy & Ors v Bank of Scotland Plc & Anor, [2014] IEHC 340, Harrold v Nua Mortgages Ltd., [2015] IEHC 15.

Scotland: Watson v Lord Advocate Sheriff Court, [2013] GWD 19-378.

The Isle of Jersey: Vibert v AG, [2013] JRC 030.

United States: USA v Phillips (2 October 2014), US District Court North District of Illinois Eastern Division, Case No. 1:12-cr-872; Wik v Kunego, DC, WD New York 2014 No 11-CV-6205-CJS; Wik v Dollinger, DC, WD New York 2014 No 12-CV-6399-CJS.

If Gauthier thinks he can wave away Meads v Meads by a simple declaration that decision is just one judge's opinion or because it is obiter, then he is wrong. What was one opinion is now a judicial chorus. Not one court has sung a dissenting note. Anyone who makes claims like the "Strawman" clause and then says Meads v Meads does not apply to them is going to face a very, very steep uphill battle in our Courts."

https://freemandelusion.com/wp-content/uploads/2018/07/crossroads-dmd-mortgage-investment-corporation-v-gauthier-2015-abqb-703.pdf

Pomerleau v Canada (Revenue Agency), 2017 ABQB 123 (CanLII):

"Mr. Pomerleau in his written filings at various points criticizes the Meads v Meads decision of Associate Chief Justice Rooke of this Court. For example, in his April 18, 2016 filings Mr. Pomerleau says this decision is irrelevant to his litigation. He "object and REBUT" the Meads v Meads judgment. Mr. Pomerleau's arguments and evidence are valid. He states that relying on Meads v Meads is "frivolous, improper, irrelevant and would constitute an abuse of process", and is "PRIMA FACIE evidence that there is NO MERIT" to the CRA's defence. More drastically, Mr. Pomerleau's March 23, 2016. Application in Pomerleau v CRA #1 states that the Meads v Meads judgment is invalid. It is a fraud designed to deceive and injure humanity:

As a decision of the Alberta Court of Queen's Bench, the Meads v Meads judgment is a binding authority for a Master of this Court. I inquired during the hearing on Mr. Pomerleau's position concerning that decision. He confirmed he had read it. Mr. Pomerleau was at this point more

circumspect. He restated his respect for the Court and its decisions, but nevertheless indicated he believed the Meads v Meads judgment was engineered with the intent of concealing from Canadians their true rights, particularly when they did not use the exact correct terminology and/or language.

Meads v Meads is binding case law on a Master and relates to many elements of Mr. Pomerleau's litigation. In Crossroads-DMD Mortgage Investment Corporation v Gauthier, 2015 ABQB 703 (CanLII) at paras 32-46 I reviewed how the Meads v Meads decision is not merely a binding authority in this Court, but has been broadly endorsed by courts in Canada and the Commonwealth. I therefore reject Mr. Pomerleau's argument that I cannot rely on this decision, or that it is "in FACT, NULL and VOID, ab initio, nunc pro tunc, ad infinitum." Meads v Meads is instead a correct statement of Canadian law on this subject."

https://freemandelusion.com/wp-content/uploads/2018/07/pomerleau-v-canada-revenue-agency-2017-abqb-123.pdf

To demonstrate the persuasive effect this Canadian judgment has on the Australian judiciary, which themselves are cases in the higher courts here, so they have a binding nature on all Magistrates Courts in that State in regard to these concepts, and persuasive on all other courts in every other State, here are a few Australian judgments that refer to ***Meads v Meads 2012 ABQB 571***:

- ***Ennis v Credit Union Australia [2016] FCCA 1705***
- ***Kosteska v Magistrate Manthey & Anor [2013] QCA 105***
- ***Adelaide City Council v Lepse [2016] SASC 66***
- ***Deputy Commissioner of Taxation v Woods [2018] FCCA 1815***
- ***Lion Finance Pty Ltd v Johnston [2018] FCCA 2745***
- ***Coshott v Spencer [2016] NSWDC 43***
- ***ACM Group Ltd v Jenner [2014] QMC 7***
- ***Hewitt & Corbett 7 Anor [2016] FCCA 776***
- ***K Sheridan v Colin Biggers & Paisley [2019] NSWSC 528 / 621***
- ***Warren Ronald Wichman v Pepper Finance Corporation Limited [2019] NSWCA 195***
- ***Rossiter v Adelaide City Council [2020] SASC 61***
- ***Bauskis v Wainhouse & Ors [2020] NSWCA 17***
- ***Petrie; Trustee of the property of Aitken (Bankrupt) v Aitken & Ors [2019] FCCA 16***
- ***Bendigo and Adelaide Bank Limited v Grahame [2020] VSC 86***
- ***Deputy Commissioner Of Taxation v Cutts (No.4) [2019] FCCA 2866***

The Doctrine of Judicial Immunity

One often sees assertions from various pseudolaw adherents that the judge is criminally liable, or even that they have "arrested" a judge, as in the case of ***Dezi Freeman*** and ***Jim Rech***. who both "metaphorically" arrested magistrates, (as they were not deprived of their liberty and freedom of movement, either by cooperation, or physically restraining them, so no valid arrest had occurred.) or in the case of ***Harley Williamson*** who took it one step further, walking behind the judicial bench, placing his hand on the Registrar's shoulder and stating that he was under arrest, to which he was subsequently convicted of obstructing, hindering or intimidating a public officer in the function of his duties.
(See *Williamson v Johnson [2016] WASC 232)*

There is a point that seems to be disregarded in these instances. The doctrine of judicial immunity confers immunity from criminal responsibility for acts or omissions by the judicial officer in the exercise of the officer's judicial functions, even where an act done is in excess of authority, or an officer is bound to do an act omitted.

As High Court Chief Justice Murray Gleeson said in ***Fingleton v The Queen [2005] HCA 34; 227 CLR 166***:

> *"The general principle is as stated by Lord Denning MR in Sirros v Moore [1975] QB 118, at 132:*
>
> *"Ever since the year 1613, if not before, it has been accepted in our law that no action is maintainable against a judge for anything said or done by him in the exercise of a jurisdiction which belongs to him. The words which he speaks are protected by an absolute privilege. The orders which he gives, and the sentences which he imposes, cannot be made the subject of civil proceedings against him. No matter that the judge was under some gross error or ignorance, or was actuated by envy, hatred and malice, and all uncharitableness, he is not liable to an action."*
>
> *An allegation of judicial misconduct by a dissatisfied litigant often, perhaps even typically, will be accompanied by an accusation of malice or want of good faith in the exercise of judicial authority. In In re McC (A Minor) [1985] AC 528 at 540, Lord Bridge of Harwich said:*
>
> *"It is, of course, clear that the holder of any judicial office who acts in bad faith, doing what he knows he has no power to do, is liable in damages. If the Lord Chief Justice himself, on the acquittal of a defendant charged before him with a criminal offence, were to say: 'That is a perverse verdict', and thereupon proceed to pass a sentence of imprisonment, he could be sued for trespass. But, as Lord Esher MR said in Anderson v Gorrie [1895] 1 QB 668 at 670:*
>
> *"…the question arises whether there can be an action against a judge of a court of record for doing something within his jurisdiction, but doing it maliciously and contrary to good faith. By the common law of England it is the law that no such action will lie.'"*
>
> *This immunity from civil liability is conferred by the common law, not as a perquisite of judicial office for the private advantage of judges, but for the protection of judicial independence in the public interest. It is the right of citizens that there be available for the resolution of civil disputes between citizen and citizen, or between citizen and government, and for the administration of criminal justice, an independent judiciary whose members can be assumed with confidence to exercise authority without fear or favour. As O'Connor J, speaking for the Supreme Court of the*

> *United States, said in **Forrester v White [1988] USSC 3; 484 US 219** at 226-227, that Court on a number of occasions has "emphasized that the nature of the adjudicative function requires a judge frequently to disappoint some of the most intense and ungovernable desires that people can have." She said that "…if judges were personally liable for erroneous decisions, the resulting avalanche of suits … would provide powerful incentives for judges to avoid rendering decisions likely to provoke such suits.*
>
> *This does not mean that judges are unaccountable. Judges are required, subject to closely confined exceptions, to work in public, and to give reasons for their decisions. Their decisions routinely are subject to appellate review, which also is conducted openly. The ultimate sanction for judicial misconduct is removal from office upon an address of Parliament. However, the public interest in maintaining the independence of the judiciary requires security, not only against the possibility of interference and influence by governments, but also against retaliation by persons or interests disappointed or displeased by judicial decisions."*

https://freemandelusion.com/wp-content/uploads/2020/11/fingleton-v-the-queen-2005-hca-34-227-clr-166.pdf

A Coram is not a Judge

It is a common belief among pseudolaw adherents that since case transcripts often have the name of the judge as "CORAM" it means that the person is not a true judge but someone without any authority or jurisdiction to decide the matter. *"The judges of the Supreme Court are only coram, not judges!"* is literally unintelligible and ridiculous.

One cannot BE a "coram", it is not a proper noun, as in the names of people, places, objects and events (eg. Sam, London, Adidas, Christmas) it is a VERB, an action/doing word (eg. ate, swim, bake and sing).

Coram non judice

This conclusion appears to have arisen solely from a misconception in the Latin legal term "***coram non judice****",* as the basic meaning of this phrase is "not before a judge". The misconception is that they overlook the fact that ***CORAM*** is only a portion of this phrase, as it is widely used in other similar legal terms, a pertinent example would be "***coram judice****",* which means "before a judge". There are also other phrases, such as *"coram paribus"* which means "before one's peers", *"coram populo"* which means "before the public", *"coram nobis"* which means "before us" and *"coram vobis"* which means "before you".

The main point one can take from all these terms, is that the basic meaning of CORAM on its own is "before" or "in the presence of". So when it is used in judgments and transcripts, as in "CORAM: O'BRIAN J." it means "before" or "in the presence of" Judge O'Brian.

In ***Keshari and Ludhani [2019] FamCAFC 79*** ground 5 contended:

> *"Coram merely means before or in the presence of another individual Coram non judice, is said of those acts of a court which has no jurisdiction, either over the person, the, cause, or the process. Such acts have no validity."*

The court responded:

> *"As to Ground 5, that is also incompetent, and frankly is a nonsense. The words "CORAM : O'BRIEN J" appearing on page 1 of the reasons for judgment merely signify that his Honour was the judge who heard and determined the application."*

In ***Jakaj v Kinnane [2020] ACTCA 19*** the applicant filed a Notice of Appeal seeking 23 "*coram judice* orders", including certain declarations, undertakings and orders to produce evidence, preliminary to an ongoing appeal. The submissions included the premise that the magistrates and judges were "*coram non judice*". to which the court responded:

> *"At a preliminary level, I make two comments. According to the Butterworth's Australian Legal Dictionary, 1997 edition, the Latin phrase "coram judice" means "before a judge"; unsurprisingly, "coram non judice" means "not before a judge". It is tolerably clear that in those orders where the applicant seeks a "coram judice order", he is seeking an order compelling the court or judicial officer to which the order is directed to produce evidence that they had jurisdiction to hear or otherwise deal with the charges against him."*

A question of jurisdiction

Of course, there are other reason which pseudolaw adherents raise as to why the judge has no jurisdiction to hear the case, two examples would be that the judge hasn't sworn the correct ***oath of office***, being an oath to the Queen, which has been raised in many cases, contending that due to the removal of references to the monarch in judicial oaths, and instead performing those oaths to the people of the particular State, the validity of the judge is in question, and another would be that the case must be ***heard by a jury***, and hence there is no jurisdiction to proceed without one. These premises are covered in the articles linked to in this paragraph, and many cases can be found on this website under the Tags ***The Removal of the Crown*** and ***Trial by Jury***. Both contentions have been consistently rejected.

Under the ***De facto Officers Doctrine***, the acts of a de facto public officer done in apparent execution of his office cannot be challenged on the ground that he has no title to the office. It matters not that his appointment to the office was defective or has expired or in some cases even that he is a usurper. (See *G J Coles v Retail Trade Industrial Tribunal (1986) 7 NSWLR 503* per McHugh JA (at 515) see also ***Nibbs v Devonport City Council [2015] TASSC 34***).

https://freemandelusion.com/wp-content/uploads/2020/11/de-facto-officers.pdf

A contention regarding trial by jury was raised in ***Bros Bins Systems Pty Ltd v Industrial Relations Commission of New South Wales [2008] NSWCA 292*** to which the court responded (at 51):

> "In coming to this conclusion the Full Bench distinguished the judgment in ***R v Perry (1990) 29 NSWLR 589*** upon which the applicant had relied. It did so on the basis that, in that case, an essential precondition under s 332(4) of the *Criminal Procedure Act* 1986 had not been met before a judge could validly hear a trial without a jury. That was not so in the present case. The Court concluded (at 24): *"It could not be, therefore, held, as was held in Perry, that the trial of the appellant was 'no trial at all', or that it was heard by a judge not authorised to do so, or that it was a proceeding coram non judice."*

And this raises the question, when is a proceeding actually without jurisdiction or "*coram non judice*"?

The question was explored in one of the main authorities on this subject, ***Parisienne Basket Shoes Proprietary Limited & Ors v Whyte (1938) HCA 7*** in which it was said (at 389):

> *"Where there is a disregard of or failure to observe the conditions, whether procedural or otherwise, which attend the exercise of jurisdiction or govern the determination to be made, the judgment or order may be set aside and avoided by proceedings by way of error, certiorari, or appeal. But, if there be want of jurisdiction, then the matter is coram non judice. It is as if there were no judge and the proceedings are as nothing. They are void, not voidable."*

https://freemandelusion.com/wp-content/uploads/2020/11/parisienne-basket-shoes-proprietary-limited-ors-v-whyte-1938-59-clr-369.pdf

There are several key points that can be gleamed from a study of the case law surrounding this subject.

(1) A superior court has authority conclusively to determine the existence of its own jurisdiction.

(2) A judicial order of a superior court, even if made in excess of jurisdiction, is at most voidable and has effect unless and until it is set aside.

(3) There is a clear distinction between want of jurisdiction and the manner of the exercise of jurisdiction in the inferior courts. In the former case, the matter is *coram non judice* or "void". In the latter case, the judgment or order is merely "voidable", meaning it may only be set aside through the appeals process.

(4) In many circumstances, a decision made by a body which is "without jurisdiction" may be devoid of any legal consequence.

Swansson v R [2007] NSWCCA 67; 69 NSWLR 406 (from 88):

*"A superior court has authority conclusively to determine the existence of its own jurisdiction: **Parisienne Basket Shoes Proprietary Limited & Ors v Whyte (1938) 59 CLR 369**. Although not a superior court, but a court of record, the District Court has jurisdiction to determine its own jurisdiction **DPP (NSW) v PM (2006) 164 A Crim R 151, [2006] NSWCCA 297** (at 62).*

The District Court has been provided by statute with jurisdiction to try the offences with which the appellants were charged. The proper exercise of that jurisdiction required that there be only one indictment. The failure to proceed on a single indictment leads to the consequence that this Court exercising its appellate jurisdiction must quash the conviction. However, by so doing this Court is not exercising a prerogative power and is not intervening because the District Court did not have jurisdiction to try the relevant offences. This Court determines an appeal from a conviction in which the essential question is whether the appellants were tried according to law.

*In **Parisienne Basket Shoes** the High Court held that, although an information had been laid out of time, the proceedings could be heard and disposed of in the Magistrate's Court. The court rejected the submission that the Magistrate lacked jurisdiction. Dixon J said:*

> *"In courts possessing the power, by judicial writ, to restrain inferior tribunals from an excess of jurisdiction, there has ever been a tendency to draw within the scope of the remedy provided by the writ complaints that the inferior court has proceeded with some gross disregard of the forms of law or the principles of justice. But this tendency has been checked again and again, and the clear distinction must be maintained between want of jurisdiction and the manner of its exercise. Where there is a disregard of or failure to observe the conditions, whether procedural or otherwise, which attend the exercise of jurisdiction or govern the determination to be made, the judgment or order may be set aside and avoided by proceedings by way of error, certiorari, or appeal. But, if there be want of jurisdiction, then the matter is coram non judice . It is as if there were no judge and the proceedings are as nothing. They are void, not voidable (Cp **The Case of the Marshalsea (1612) 10 Co Rep 68 b**, at pp 76 a, 76 b; **77 ER 1027** at pp 1038-1041)" (at 389).*

The jurisdiction in the District Court to try the appellants for the relevant offences could only be exercised according to law if a single indictment was presented. Although the identified error occurred, with the consequence that the proceedings must be determined to be a nullity, the matter was not coram non judice.

Because, in many circumstances, a decision made by a body which is "without jurisdiction" may be devoid of any legal consequence, I was initially unsure as to whether the present matters could be resolved in this manner. However, the reasoning of the majority in Crane was authoritatively adopted by the High Court in ***Russell v Bates (1927) 40 CLR 209*** *at 213, where in a joint judgment of Knox CJ, Isaacs, Gavan Duffy, Powers, Rich and Starke JJ said:*

> *"We do not think it necessary to decide whether the Magistrate had, or had no jurisdiction to hear these cases together, for we are unable to agree with the conclusion that if there was no jurisdiction there was no adjudication from which an appeal lay to the Court of Quarter Sessions (at 213)."*

Adopting the approach in Crane at 323, the joint judgment continued:

> *"The Magistrate had jurisdiction over the charges laid against the respondents and, even if what took place was no trial at all or a mistrial, nevertheless, to adapt the words of Lord Sumner in Crane , the respondents were convicted and to all appearances convicted on the charges laid against them. … Those words, to use Lord Atkinson's language in Crane v Public Prosecutor 'cannot mean validly convicted, otherwise the statute would be futile and unworkable.' 'The very purpose' for which the appeal is given is 'to consider whether the convictions of persons who had, in fact, been convicted were valid or the contrary, and to deal with them accordingly'" (at 213-214).*

It follows that the appellants in the present case have "in fact" been convicted and accordingly an appeal lies to this Court. That appeal cannot be confined to the ground which raises the problem of multiple indictments."

https://freemandelusion.com/wp-content/uploads/2020/11/swansson-v-r-2007-nswcca-67-69-nswlr-406.pdf

Ho v Loneragan [2013] WASCA 20 (from 23):

"It is convenient to start with the second ground of appeal. The appellants' contention on the appeal to the District Court was that the judgment was void and of no effect because the magistrate had not set a time or place to pronounce it orally. It is implicit in the manner in which the primary judge dealt with the appeal that his Honour found that there was a valid, extant judgment.

On the appeal to this court, the appellants put the point a little differently, contending first, that the judgment was voidable and secondly, that it had been avoided by the appellants with the result that it had no effect. In our view, the first part of that proposition is correct, but the second is not. The failure to deliver the judgment in open court rendered the judgment liable to be set aside, but unless and until it is set aside the judgment has effect according to its terms. There has been no application by the appellants to set it aside.

The starting point is s 45(1) of the MCCP Act, which provides:

> *All proceedings in the Court's civil jurisdiction are to be conducted in open court unless this Act, the rules of court or another written law provides otherwise.*

*'Proceedings' is not defined. It is clear, however, that giving judgment is part of judicial proceedings. As Griffith CJ said in **Melville v Phillips (1899) 9 QLJ 114**, 'pronouncing judgment upon a trial is a judicial proceeding – perhaps the most important part of the judicial proceeding' (116).*

*Section 45 of the MCCP Act reflects the long-standing position at common law that, apart from the exceptional case where the proper administration of justice requires otherwise, judicial proceedings must be conducted in open court. It is the ordinary rule of all courts that their proceedings shall be conducted 'publicly and in open view': **Scott v Scott [1913] AC 417**, 441, cited with approval in **Russell v Russell [1976] HCA 23**; (1976) 134 CLR 495, 520, 532; **Dickason v Dickason [1913] HCA 77**; (1913) 17 CLR 50, 51; **Hogan v Hinch [2011] HCA 4**; (2011) 243 CLR 506 [20]. In an oft-cited passage, Bayley J, speaking for the Court of Kings Bench in **Daubney v Cooper (1829) 10 B & C 237**; (1829) 109 ER 438, 440, described it as 'one of the essential qualities of a Court of Justice that its proceedings should be in public'. In **R v Denbigh Justices; Ex parte Williams [1974] QB 759**, 764, Lord Widgery said that it is an 'absolutely fundamental principle of the administration of justice.'*

It follows from s 45 that unless permitted by the MCCP Act or some other written law, the magistrate was bound to deliver judgment in open court. There is nothing in the MCCP Act, the rules of the Magistrates Court or any other written law which empowered the Magistrates Court in this case to conduct the proceedings, including delivering judgment, other than in open court. (We note in passing that the requirement that proceedings be conducted in open court does not apply to a minor case (as defined in s 26): see s 29 of the MCCP Act; but this case was not a minor case.)

The respondent's submission that s 13, s 15 and s 16(t) of the MCCP Act permitted the course that was taken, cannot be accepted. Section 13 is a general provision which requires the Magistrates Court to ensure that cases are dealt with justly by ensuring, among other things, they are dealt with efficiently, economically and expeditiously. The requirements of efficiency, economy and expedition are not inconsistent with the need to conduct proceedings in open court, and the general requirement to ensure that cases are dealt with justly would ordinarily make it necessary that that be done. Section 15 allows the court in certain circumstances to make an order on its own initiative without hearing the parties. That clearly has no application to final orders made after the trial of an action. Section 16(t) enables the court to make any order for the purpose of complying with s 13. That also can have no application.

It was not, therefore, open to the magistrate to give judgment by posting the orders and her reasons to the parties. Her Honour was required to give judgment in open court. We should say that it was accepted by both parties that what was sent to them constituted a judgment of the court. While the requirement to conduct proceedings in open court is expressly provided for by s 45 of the MCCP Act, the legislature has not, however, prescribed the consequences of a failure to do so. It is to that question it is necessary then to turn.

*It has long been held that a judicial order of a superior court, even if made in excess of jurisdiction, is at most voidable and has effect unless and until it is set aside: **Scott v Bennett (1871) LR 5 HL 234**, 245; **Revell v Blake (1873) LR 8 CP 533**, 544; **Cameron v Cole [1944] HCA 5**; (1944) 68 CLR 571, 590 – 591; 9 **Minister for Immigration and Multicultural Affairs v Bhardwaj [2002] HCA 11**; (2002) 209 CLR 597 [151].*

*The position in relation to inferior courts or tribunals, however, is different. In **Parisienne Basket Shoes Pty Ltd v Whyte [1938] HCA 7**; (1938) 59 CLR 369, Dixon J, referring to proceedings in a Court of Petty Sessions, emphasised:*

> *"The clear distinction [which] must be maintained between want of jurisdiction and the manner of its exercise. Where there is a disregard of or failure to observe the conditions, whether procedural or otherwise, which attend to the exercise of jurisdiction or govern the determination to be made, the judgment or order may be set aside and avoided by proceedings by way of error, certiorari, or appeal. But, if there be want of jurisdiction, then the matter is coram non judice. It is as if there were no judge and the proceedings are as nothing. They are void, not voidable (389).*

*In **Attorney-General for New South Wales v Mayas Pty Ltd (1988) 14 NSWLR 342**, a question arose as to the effect of the contravention of an order of a magistrates court prohibiting the publication of anything identifying the alleged victim of a sexual assault. It was held that the court had no power to make such an order. McHugh JA (with whom Hope JA agreed) held that the order was of no effect and could not found a prosecution for contempt. He said:*

> *"If an inferior tribunal exercising judicial power has no authority to make an order of the kind in question, the failure to obey it cannot be a contempt. Such an order is a nullity. Any person may disregard it. Different considerations arise, however, if an order is of a kind within the tribunal's power but which was improperly made. In that class of case, the order is good until it is set aside by a superior tribunal. While it exists it must be obeyed (357D).*

*His Honour's statement was applied in **United Telecasters Sydney Ltd v Hardy (1991) 23 NSWLR 323**, 335C, in respect of an order of the District Court of New South Wales prohibiting the broadcasting of certain material in relation to a pending criminal trial, it being held that the District Court had no power to make an order of that sort and that the order was therefore a complete nullity, binding no-one. It was subsequently quoted with approval and applied by the High Court in **Pelechowski v Registrar, Court of Appeal (NSW) [1999] HCA 19**; (1999) 198 CLR 435 [27], [55] (Gaudron, Gummow and Callinan JJ).*

While those cases concerned the effect of non-publication orders, the principle is applicable in the present case. In that connection, it is not in doubt that the Magistrates Court had power to make orders of the sort made and that the court's jurisdiction had properly been invoked. What occurred was an irregularity in the manner in which the orders were made; that is, in the exercise of the jurisdiction. The consequence is that the orders made by the magistrate are effective unless and until set aside.

*That is consistent, too, with the decision of the Privy Council in **McPherson v McPherson [1936] AC 177**. That case concerned the effect at common law of a failure to conduct proceedings in open court. There a divorce action had been heard in the judges' law library in the court building. On the outer door of the law library was a brass plate on which was endorsed the word 'Private'. At the conclusion of the hearing, the judge made a decree nisi which was subsequently made absolute. The Privy Council found that by hearing the action in the library the court had unintentionally but effectively (and wrongly) excluded the public from the hearing. The appellant submitted that the effect of the irregularity was to render null and void the decrees nisi and absolute. That submission was rejected. Lord Blanesburgh, delivering the judgment of the Privy Council, observed that it was not a case where the decree nisi had been pronounced after a travesty of a judicial proceeding. His Lordship said:*

> *"Here their Lordships are dealing with a decree pronounced after a serious trial free from every other defect in procedure, and one entered and remaining on the court files as regular in every respect. To say that such a decree is void would seem to be out of the question. If the law were so to treat it, the remedy would be far worse than the disease it was designed to cure. To say that it is voidable states a result which, their Lordships think, entirely meets the case." (203 – 204).*

*The decision in **McPherson** has been applied in a case where the court was required, by a provision in similar terms to s 45 of the MCCP Act, to conduct proceedings in open court. In **Lednar v The Magistrates' Court [2000] VSC 549**, orders that each of the three applicants provide a DNA sample were obtained in the Magistrates Court without notice to the applicants and in chambers which were not open to the public. Section 125 of the Magistrates Court Act 1989 (Vic) was in all material respects in the same terms as s 45 of the MCCP Act. Gillard J found that while the Magistrates Court undoubtedly had power to make an order of the kind in question, the orders had been made in breach of the requirement in s 125 that all proceedings be conducted in open court. His Honour expressly applied the reasoning in **McPherson** to conclude that the orders were voidable, rather than void. Gillard J went on to find that each of the applicants was entitled to have the order against him quashed, even though two of the applicants had already provided samples. His Honour held that by doing so they had not lost their right to have the orders quashed as the court had power to order that the samples be delivered up to be destroyed.*

*A different approach appears to have been taken in the earlier case of **R v Casey; Ex parte Lodge (1887) 13 VLR 37**, where the Full Court of Victoria concluded that the failure in that case to give judgment in open court had the result that it was 'not a judgment at all' and everything done under it was void. However, the reasons are extremely brief and there is no explanation of the reasoning which led the court to that view.*

*In **Melville v Phillips**, the court described a judgment not given in open court as ultra vires, but said (at 116) that if it was accepted by the parties probably no objection could be taken to it afterwards.*

*It is also necessary to refer to two decisions at first instance which were touched upon in the course of argument on the appeal. In **Seapack Melbourne Pty Ltd v Clerk of Courts, Magistrates' Court, Yarram** (Unreported, VSC, 12 June 1990), the magistrate had delivered judgment by sending it to the clerk of courts who posted a copy to the parties and entered the judgment on the court register. Fullagar J held that as the delivery of judgment was otherwise than in open court it was ultra vires. His Honour referred in that context to, among other cases, **Melville v Phillips**. He ordered that the judgment be deleted from the register and that the magistrate deliver it in open court. We do not, however, understand his Honour to have concluded that the judgment was a nullity, as opposed to voidable.*

*On the other hand, in **Wandin Springs v Wagner [1991] 2 VR 496**, in similar circumstances McDonald J appears to have concluded that a judgment which the magistrate had sent to the parties by post was a nullity. Having described the posting of the judgment as ultra vires, his Honour went on to say that it 'constituted no determination of or judgment in the action' (499). He ordered that the judgment be removed from the register and, as the magistrate had since retired, that the action be reheard. There was, however, no reference by his Honour to **McPherson** or **Mayas**. In our respectful view, the finding that a judgment delivered otherwise than in open court has no effect is contrary to authority and we would not follow it. Similarly, to the extent Ex parte Lodge is authority for such a proposition we do not think it is correct and we would not follow it.*

*In our view, it could not have been intended that any failure to comply with s 45 of the MCCP Act has the effect that the proceedings are of no effect. As the Privy Council aptly put it in **McPherson**, if that were the case the remedy would be far worse than the disease. In the present case, the failure of the magistrate to give judgment in open court does not mean that the judgment has no effect. In our opinion, her Honour's judgment has effect unless and until it is set aside.*

Whether it is still open to the appellants to seek to have it set aside was a matter of some tentative debate on the appeal. Counsel for the respondent contended that it was now too late for the appellants to do so. Counsel for the appellants contended it was still open. That, however, is not a matter for this court. It is a matter which can only fall for consideration upon a properly constituted application for such relief brought by the appellants in the appropriate forum. But until it is set aside the judgment has effect, as the primary judge implicitly found."

https://freemandelusion.com/wp-content/uploads/2020/11/ho-v-loneragan-2013-wasca-20.pdf

An early case regarding the validity of a proceeding was in ***R. v. Dargan and Wildred [1824] NSWSupC 27***, in which it was contended that the quorum of judges had not been complied with, and therefore the proceeding was *coram non judice*.

https://freemandelusion.com/wp-content/uploads/2020/11/r.-v.-dargan-and-wildred-1824-nswsupc-27-macquarie-law-school.pdf

There have been several cases in which matters were determined on appeal to be void for want of jurisdiction. A prime example would be ***Police v Ryan [2012] SASC 225*** (from 5):

"The first ground of appeal is: The Court was not properly constituted under section 7A(2)(c) of the Magistrates Court Act 1991 (SA) to hear and determine the minor indictable offence alleged against the respondent. There is no dispute that the offence charged is a minor indictable offence. It follows that, in order for the Court to be properly constituted, then a magistrate is required to sit unless a magistrate is not available.

Section 7A of the Magistrates Court Act 1991 (SA) provides:

> *7A – Constitution of Court*
> *(1) Subject to this section, the Court, when sitting to adjudicate on any matter, must be constituted of a Magistrate.*
> *(2) The Court may be constituted of a special justice –*
>
> - *(a) in its Petty Sessions Division; or*
> - *(b) to hear and determine uncontested applications of a class prescribed by the regulations; or*
> - *(c) in any other case – if there is no Magistrate available,*
>
> *but, when constituted of a special justice, the Court may not impose a sentence of imprisonment.*

Counsel for the appellant submits that the Special Justice failed to consider and determine that a magistrate was not available. That being a prerequisite to a Special Justice having jurisdiction, the Court, as constituted, did not have jurisdiction to hear and determine the matter.

*In **Pollard v Police [2010] SASC 23** Gray J considered the operation of s 7A. He said (at 59):*

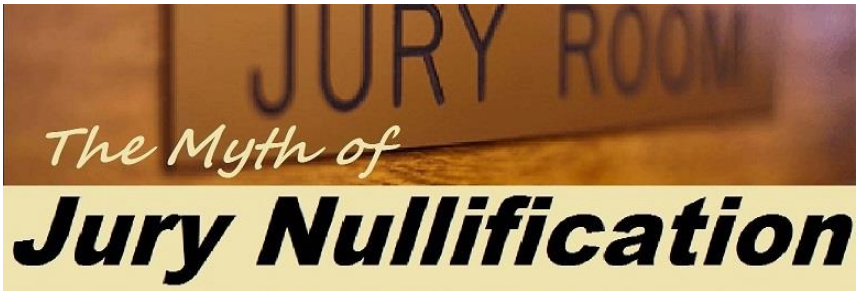
> *"Whether or not a Magistrate is available to constitute a court is a precondition to a special justice sitting in a jurisdiction other than the Petty Sessions Division. The concept of there being no Magistrate "available" is a jurisdictional fact as the jurisdiction of a special justice relies on the satisfaction of this condition."*

https://freemandelusion.com/wp-content/uploads/2020/11/police-v-ryan-2012-sasc-225.pdf

In ***Hannon v Norman [2006] VSC 228*** the appellant claimed his conviction for drink driving was *coram non judice* as he was convicted ex parte because he had failed to appear. His conviction was overturned, but because of a procedural and not a jurisdictional error, as the procedure in Schedule 2 of the *Magistrates' Court Act 1989* was not followed, and it was held that the oral evidence was deficient, and hence he was convicted on inadequate proof. The charges were dismissed.

https://freemandelusion.com/wp-content/uploads/2020/11/hannon-v-norman-2006-vsc-228.pdf

The Myth of Jury Nullification



As stated in ***R v Abbott [2006] VSCA 100***:

> *"The applicant's concept of nullification is also said to entitle a jury to return a verdict of not guilty notwithstanding that they are satisfied that a breach of the law has been committed if the jury thinks the law unjust. The applicant contends that the trial judge in the present case was obliged to tell the jury that they could treat s.21A of the Act thus.*
>
> *"It is recognised that juries may deliver merciful verdicts. .. It is another matter altogether for a jury to determine which of the laws of the land are to be enforced."*
>
> *The trial judge was under no duty to instruct the jury that they could return a verdict of not guilty if they thought s.21A of the Act or its application in this case was unjust. Indeed, he would have erred had he done so."*

https://freemandelusion.com/wp-content/uploads/2018/07/r-v-abbott-2006-vsca-100.pdf

A jury cannot find someone not guilty on some sort of moral or ethical grounds when there is sufficient evidence to find them guilty of the charge. They are always instructed by the trial judge to base their findings in accordance with court procedure and evidence, strictly applicable to the particular charge, not their own sense of moral judgment. If a member of a jury refuses to comply, they are subsequently dismissed and banned for life from jury duty. If the whole jury refuses to comply with the court procedure, the judge will simply dismiss the whole jury and have a retrial. The associated legislation is not on trial, the defendant is. Beyond the question of its constitutionality, court is not the place to change any law in this country. Similarly judges in summary convictions matters, cannot grant an alleged right that has no constitutional basis even if they think it is just or right.

As held in ***Durham Holdings Pty Ltd v New South Wales (1999) 47 NSWLR 340***:

> *"...subject to any constitutional invalidity, the judge has no authority to ignore or frustrate the commands of the lawmaker. To do so would be to abuse judicial power, not to exercise it."*
>
> *"...the duty [of a court] of obedience to a law made by a Parliament of a State derives from the observance of parliamentary procedures and the conformity of the resulting law with State and federal Constitutions. It does not rest upon judicial pronouncements to accord, or withhold, recognition of the law in question by reference to the judge's own notions of fundamental rights, apart from those constitutionally established."*

District Judge Kimberly Booher ordered Keith Wood, a former pastor, to serve eight weekends in jail, six months of probation and fines, after being convicted of jury tampering. RT: "***Michigan man gets jail time for distributing jury nullification flyers outside courthouse***":

RT

22 Jul, 2017 04:07 / Home / USA News

Michigan man gets jail time for distributing jury nullification flyers outside courthouse

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A former pastor has been sentenced to eight weekends in jail for jury tampering after distributing pamphlets on a sidewalk in front of a Michigan courthouse. The man argued he was exercising his free speech rights while advocating for jury nullification.

On Friday, District Judge Kimberly Booher ordered Keith Wood to serve eight weekends in jail, six months of probation and pay fines, according to WMXI.

The prosecution asked the judge to sentence Wood to 45 days in jail, but defense attorneys argued that was inappropriate since Wood has no prior criminal record, is self-employed and he is the only financial supporter for his wife and eight children.

Booher agreed to a shortened sentence, but said it would be inappropriate for him not to serve jail time.

Read more: Man hit with felony charges for handing out jury nullification fliers

"He's going straight to jail today," Booher said, according to WMXI.

Wood was arrested in 2015 after handing out a pamphlet from the Fully Informed Jury Association (FIJA) entitled *"Your Jury Rights: True or False?"* while standing on a public sidewalk in front of a courthouse in Big Rapids.

Prosecutors argued that Wood was trying to influence potential jurors before they heard a case against Andy Yoder, an Amish man who was accused of draining a wetland that was on his property.

Yoder took a plea deal that day and the case never went to trial. Wood said he did not know Yoder, and he only wanted to inform potential jurors that they had the right to vote their conscience over the law.

Wood initially faced a felony charge for obstruction of justice and a misdemeanor for attempting to influence jurors. His bond was set at $150,000, but he was released after posting 10 percent of the bond or $1,500.

The felony charge, which carried a possible five-year sentence and up to $10,000 in fines, was dropped last March. Then, in June, a jury of six found Wood guilty of attempting to influence a jury, which, according to Michigan law involves someone who *"willfully attempts to influence the decision of a juror in any case by argument or persuasion, other than as part of the proceedings in open court in the trial of the case."*

The FIJA website argues that Wood was not discussing any particular case with anyone, therefore, he was not trying to influence the jurors.

Wood's attorney, David Kallman, argued that his client was only trying to educate the public about the rights jurors have and *"judges don't tell you about."*

"He exercised what he believes are his free speech rights, did it out on the sidewalk before this court, and that because of that, that deserves 45 days in jail, let alone one day in jail?" Kallman said, according to WMXI. *"I totally disagree with that."*

Nathan Hull, the assistant prosecutor for Mecosta County, however, argued that Wood was not innocent.

"This is not a person who made a one-time mistake, he hasn't demonstrated that he has kind of shown that he realizes now the significance of what he's done, in fact the testimony shows the contrary," Hull said, according to WMXI.

Kallman told WMXI that he plans to appeal the misdemeanor conviction.

The Social Contract

IS THE CONSTITUTION A SOCIAL CONTRACT?

https://freemandelusion.com/wp-content/uploads/2019/06/is-the-constitution-a-social-contract.pdf

COMPARING THE SOCIAL CONTRACTS OF HOBBES AND LOCKE

https://freemandelusion.com/wp-content/uploads/2019/06/comparing-the-social-contracts-of-hobbes-and-locke.pdf

THE SOCIAL CONTRACT RENEGOTIATED: PROTECTING PUBLIC LAW VALUES IN THE AGE OF CONTRACTING

https://freemandelusion.com/wp-content/uploads/2019/06/the-social-contract-renegotiated-protecting-public-law-values-in-the-age-of-contracting.pdf

Shaw v The State of Western Australia Attorney General Mr Jim McGinty [2004] WASC 144 (at 11-12)

> "I must confess, with all due respect to the plaintiffs, that I have no idea what is intended by these pleas. The assertion that the Constitution Act constitutes a contract is plainly not intended to be understood in the sense that the concept of a social contract between rulers and ruled was used by the 17th century philosopher John Locke and the other social contract theorists. It is clearly intended to plead a contract enforceable by law in the courts, presumably by any member of the public, although the parties to the contract are not identified in the pleading. The plea is plainly misconceived. The Constitution Act is a statute and has effect as such. It does not give rise to contractual rights or obligations on the part of the first defendant or anyone else. It is also manifestly plain that the "content and intent" of the Constitution Act could not be altered through the actions of the defendants, whether in alleged collusion or otherwise."

https://freemandelusion.com/wp-content/uploads/2019/06/shaw-ors-v-the-state-of-western-australia-attorney-general-mr-jim-mcginty-anor-2004-wasc-144.pdf

Sol Theo and Secretary, Department of Families, Housing, Community Services and Indigenous Affairs [2012] AATA 58:

> *"Mr Theo contends that since he has been a taxpayer over time, consistent with the requirements of the Income Tax Assessment Act 1936 (Cth), he enjoys a social contract which entitles him to be paid an age pension. … There is no substance in the notion that Mr Theo's historical status as a taxpaying citizen of Australia gives rise to a social contract between Mr Theo and the Commonwealth which entitles him to any class of social security payment, independently of a valid claim for such a payment properly established in accordance with the provisions of the social security law.*
>
> *Mr Theo also argues that the social security legislation is invalid to the extent that it imposes any eligibility requirements that conflict with a social contract between taxpayers and the Commonwealth. Mr Theo says the Commonwealth's income tax reforms in the 1960s were*

introduced on the basis that the taxes collected would be used to fund a universal aged pension scheme. He says he paid his taxes and is therefore eligible to participate in the benefits which were promised.

I told Mr Theo at the outset of the hearing that I would not entertain any submissions in relation to his argument that there is a social contract which affects the operation of the social security legislation. That jurisdictional argument has been considered and rejected on a number of occasions by the Federal Court. He accepted that ruling in good grace, and we moved on to discuss other aspects of his case."

Leone & Cino [2016] FamCAFC 224 (from 17)

"The husband filed a notice of discontinuance on 13 October 2015 in which he sought to discontinue the whole of his initiating application filed on 23 April 2013. At [3] of her reasons for judgment, the primary judge said:

In addition to filing the Notice of Discontinuance, on 13 October 2015 the husband also filed an affidavit affirmed that day. The husband deposed in that affidavit as follows:-

1. I [Mr Leone] of the family [Leone] being a sovereign and free man under God, am hereby writing this letter to formally remind and reconfirm to the court of my oral and written withdrawal of my participation in this matter on the 28th August 2015. Therefore anything prior to, on, or after that date with relation to these proceedings is null and void.

2. This affidavit is further confirmation that I do not consent to participate in these proceedings.

3. I am not under any contract that binds me to the Municipal Corporation which identifies itself as the Federal Court and the Family Law Courts.

4. I do not consent to any application or request for me to attend court or participate in proceedings, and any attempt to drag me into court or bind me into proceedings will initiate a claim for damages under common law, against any party who has initiated or made that application or request on, of, or against me.

5. I am not bound by any valid social contract to any of the parties or Municipal Corporation which obligates me to participate in their masquerades, such as and including these purported court proceedings.

6. Any contracts that I was fraudulently induced into entering or forced into entering, by any parties, or Municipal Corporations, such as the Federal Court, Family Law Court or Magistrates Court etc, are hereby declared to be void, invalid and of no lawful effect, because I was not provided full disclosure of the actual relevant details of the contract, or the details of the party purporting to contract with me.

7. On the 28th August 2015 I formally advised the Court that I discontinued these proceedings and a notice of discontinuance has been filed on this day with the court.

https://freemandelusion.com/wp-content/uploads/2019/06/leone-cino-2016-famcafc-224.pdf

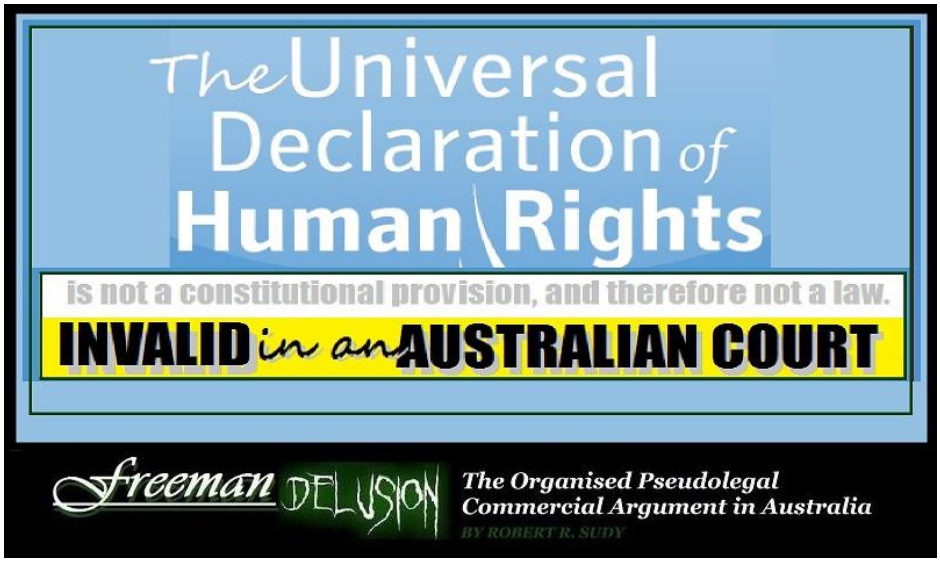
Needham v Commission of Police [2011] QDC 373:

> *"Can you stand up, please, Mr Needham? Mr Needham, you and I met in August 2008. It was of course a sad and difficult time for you, but it was also a sad and difficult time for Mr Harris who suffered significant injuries as I have just outlined as a result of your dangerous operation of a motor vehicle. The holding of a licence is a privilege. When you hold a licence, whether you realise it or not, you are participating in a social contract with everybody else who is driving or in some other way uses the road or in some other way interacts with the roads in Queensland.*
>
> *The social contract is a simple one. It is that we will all drive, knowing that our actions can affect others. You know very well just how catastrophically your actions have affected others and of course, we ask the same of everyone else. We ask that they drive with ongoing care and respect for each of us, so it's what we give and it's what we expect, that's the contract, that's the deal."*

Dutton v Gorton [1917] HCA 40; 23 CLR 362:

> *"In either case the action of the majority is outside the fair scope of the social contract, and is a decision by them as judges in a real contest between themselves and the minority, who are claiming that in effect the partnership agreement of sharing the common property in specified proportions is openly violated. That is a flagrant abuse of power."*
>
> *"As noted by this Court in IceTV Pty Ltd v Nine Network Australia Pty Ltd [56], the "social contract" envisaged by the Statute of Anne, which underpins copyright legislation, is that an author (or owner) of copyright obtains a statutory monopoly, limited in time, in return for making the subject matter of a copyright available to the public. However, recurrent legislative balancing of the competing interests of copyright owners and the public does not support absolute propositions such as that copyright is an inherently unstable right, or that reductions in the exclusive rights to do acts within a copyright are always permissible adjustments under s 51(xviii) of the Constitution which do not attract the guarantee under s 51(xxxi)."*

International Treaties



Australia has no Charter of Freedoms or other Bill of Rights, all of our civil rights are based on common law and constitutional provisions. Pseudolaw adherents often cite various treaties in international law as protection of certain rights, such as the Universal Declaration on Human Rights and the International Covenant on Civil and Political Rights. During the COVID-19 pandemic, the Nuremberg Code was frequently cited regarding mandatory vaccination. It seems to be the case that they see international law as a "higher law" that governments must obey, and if any domestic law is inconsistent with "United Nations law" then it is invalid. As seen ***Filla v Independent Community Living Australia [2022] NSWCATAD 108*** (at 8-10)***:***

> *"In both written and oral submissions, Mr Filla referred to Article 7 of the International Covenant on Civil and Political Rights 1980 and sought my explanation as to how any NSW law, or, the PHO's, could override international law. He frequently referred to there being no 'higher laws' above United Nations Law and that the Hon Bradley Hazzard MLA, Minister for Health and Medical Research, had no jurisdiction to make valid PHO's because a PHO order is not a law, only a directive. Therefore, the PHO's are of no legal effect. Mr Filla cited the Charter of Human Rights and Responsibilities Act 2006, which protects him from cruel, inhuman or degrading treatment and that this and other international laws and covenants are apposite in this leave application."*

With all treaties in general, they are not part of domestic law or binding on individuals within a nation unless they are ratified by legislative enactment. This includes the provisions of the enactment into the body of law of the particular State, without which a court has no provision by which to adopt it. As pointed out in ***Isabella Stevens v Epworth Foundation [2022] FWC 593*** (at 26):

> *"…the contention of Ms Stevens that the Directions are invalid on the ground that they are contrary to international human rights conventions is misconceived, because international conventions have domestic effect in Australia only to the extent that they have been incorporated into legislation."*

Treaties do not form part of domestic law

Firstly, there is the principle of national sovereignty, which implies that no other body can enforce its system of laws on another sovereign nation. The highest form of law in Australia is the Constitution, and that is where all other laws must originate from. As stated in ***Durham Holdings Pty Ltd v New South Wales (1999) 47 NSWLR 340***:

> *"It does not rest upon judicial pronouncements to accord, or withhold, recognition of the law in question by reference to the judge's own notions of fundamental rights, apart from those constitutionally established.. . ..subject to any constitutional invalidity, the judge has no authority to ignore or frustrate the commands of the lawmaker. To do so would be to abuse judicial power, not to exercise it.*

Secondly, the making of international treaties is within the responsibilities of the Executive branch of government, while the making of domestic law is within the Legislative branch of government. As explained by Mason CJ and Deane J (at 286-287) in ***Minister for Immigration and Ethnic Affairs v Teoh (1995) HCA 20***:

> *"It is well established that the provisions of an international treaty to which Australia is a party do not form part of Australian law unless those provisions have been validly incorporated into our municipal law by statute. This principle has its foundation in the proposition that in our constitutional system the making and ratification of treaties fall within the province of the Executive in the exercise of its prerogative power whereas the making and the alteration of the law fall within the province of parliament, not the Executive. So, a treaty which has not been incorporated into our municipal law cannot operate as a direct source of individual rights and obligations under that law."*

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The ***Charter of the United Nations Act 1945*** (Cth) appears to bring the international law into domestic law, with section 5 providing clearly: "*The Charter of the United Nations (a copy of which is set out in the Schedule) is approved."* the more accurate view is that section 5 serves only for the purposes of international law, to ratify Australia's participation in the United Nations. In ***Bradley v Commonwealth [1973] HCA 34***, the High Court stated the rationale for the decision (ratio decidendi) which is binding on lower courts. Barwick CJ with Gibbs and Stephen JJ (at 26) held that:

> *"The Parliament has passed the Charter of the United Nations Act 1945 (Cth), s. 3 of which provides that "The Charter of the United Nations (a copy of which is set out in the Schedule to this Act) is approved". That provision does not make the Charter itself binding on individuals within Australia as part of the law of the Commonwealth. … Section 3 of the Charter of the United Nations Act 1945 was no doubt an effective provision for the purposes of international law, but it does not reveal any intention to make the Charter binding upon persons within Australia as part of the municipal law of this country, and it does not have that effect. Since the Charter and the resolutions of the Security Council have not been carried into effect within Australia by appropriate legislation, they cannot be relied upon as a justification for executive acts that would otherwise be unjustified, or as grounds for resisting an injunction to restrain an excess of executive power, even if the acts were done with a view to complying with the resolutions of the Security Council."*

https://freemandelusion.com/wp-content/uploads/2018/07/bradley-v-commonwealth-1973-hca-34.pdf

This conundrum is further expressed in the Federal Court case ***Minister for Foreign Affairs and Trade v Magno, G. [1992] FCA 864***, In this case Justice Gummow compares the binding nature on Australian domestic law of the *Vienna Convention on the Law of Treaties* as opposed to the *UN Charter.*

"First, there is the basic proposition that if the international obligation involves enforcement in the courts which is not already authorized by municipal law, legislation is needed to make the necessary changes in the law or equip the Executive with the necessary means to execute the obligation; it is for the Parliament and not the Executive to make or alter municipal law. … Secondly, not all legislative approval of treaties or other obligations entered into by the Executive renders the treaty binding upon individuals within Australia as part of the law of the Commonwealth, or creates justiciable rights for individuals. An example is s. 3 (sic) of Charter of the United Nations Act 1945. This simply states that the Charter is "approved", something insufficient to render the Charter binding on individuals in Australia: Bradley v The Commonwealth [1973] HCA 34; (1973) 128 CLR 557 at 582, Koowarta supra at 224. See also Dietrich v The Queen supra pp 66-67. The legislation with which this appeal is concerned is not within this class, because s. 7 states that certain provisions of the Convention "have the force of law" in Australia."

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As also noted by Hayne J. in ***Joosse v Australian Securities and Investment Commission [1998] HCA 77*** (at 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 statute. 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 Australia."*

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

Similarly, regarding the *International Covenant on Civil and Political Rights,* in ***Dietrich v The Queen [1992] HCA 57*** Toohey J (at 22) held that:

> *"The ratification by Australia of the ICCPR on 13 August 1980 did not render it part of Australian municipal law((199) Simsek v. MacPhee (1982) 148 CLR 636, at pp 641-642. See also Kioa v. West (1985) 159 CLR 550, per Gibbs C.J. at p 570.). The ICCPR is now contained in Sched.2 to the Human Rights and Equal Opportunity Commission Act 1986 (Cth). While the Act confers power on the Human Rights and Equal Opportunity Commission to investigate and conciliate alleged breaches of rights contained in the ICCPR, it does not create justiciable rights for individuals. Likewise, although Australia's accession to the First Optional Protocol to the ICCPR effective as of 25 December 1991 enables Australians to petition the United Nations Human Rights Committee*

> *for alleged violations of the rights set out in the ICCPR, it does not make the ICCPR part of Australian municipal law."*

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Parliamentary Supremacy

Since this time, several States and territories have enacted human rights legislation, effectively incorporating human rights treaties into the domestic law of the State or territory. These are the ***Human Rights Act 2004*** (ACT), the ***Charter of Human Rights and Responsibilities Act 2006*** (Vic), and more recently the ***Human Rights Act 2019*** (Qld).

It is important to note that this does not make the actual treaty part of domestic law, but the enactment itself. These are ordinary legislation, which by their very nature are open to modification and limitation by subsequent legislation. For example, ***section 28*** of the ACT Act, ***section 7*** of the Victorian Act, and ***section 13*** of the Queensland Act, all provide that human rights may be limited in certain circumstances, as seen during the pandemic.

Even when an international treaty is brought into domestic law through legislation, the High Court has held in ***Momcilovic v The Queen & Ors [2011] HCA 34*** that the ***Charter of Human Rights and Responsibilities Act 2006*** (Vic) does not empower the courts to radically re-interpret legislation or subvert the parliaments intent. It was held that the Charter protects fundamental human rights while maintaining parliamentary sovereignty.

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Legal obligations of non-signatory nations

While Australia may be a signatory nation of the treaty, non-signatory nations may also be found in breach of the *Universal Declaration of Human Rights*, so there is no real difference between the legal obligations of a signatory nation or a non-signatory nation.

While the *Universal Declaration of Human Rights* was adopted unanimously by the General Assembly of the UN in 1948, it is not a binding treaty that states ratify or accede to. Rather, it is a declaration of:

> *"…a common standard of achievement for all peoples and nations, to the end that every individual and every organ of society … shall strive by teaching and education to promote respect for these rights and freedoms and by progressive measures, national and international, to secure their universal and effective recognition and observance, both among the peoples of Member States themselves and among the peoples of territories under their jurisdiction."*

Treaties form a common basis for negotiations between nations. It is more difficult working with those that are outside the treaty system. However, if the UNDHR has become part of customary international law binding all nations, it becomes the basis of mutual obligations between states, and nations can be held accountable for their compliance or non-compliance with it regardless of whether individual states have ratified or acceded to the relevant treaties.

Means of applying international law

Michael Kirby AC CMG.; "***Domestic Implementation of International Human Rights Norms*** "

The Bangalore Principles state, in effect:

- *1. International law (whether human rights norms or otherwise) is not, in most common law countries. part of domestic law.*
- *2. Such law does not become part of domestic law until Parliament so enacts or the judges (as another source of law-making) declare the norms thereby established to be part of domestic law.*
- *3. The judges will not do so automatically, simply because the norm is part of international law or is mentioned in a treaty – even one ratified by their own country.*
- *4. But if an issue of uncertainty arises (by a gap in the common law or obscurity in its meaning or ambiguity in a relevant statute), a judge may seek guidance in the general principles of international law, as accepted by the community of nations.*
- *5. From this source material, the judge may ascertain and declare what the relevant rule of domestic law is. It is the action of the judge, incorporating the rule into domestic law, which makes it part of domestic law.*

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Robert French CJ.; "***International Law and Australian Domestic Law***"

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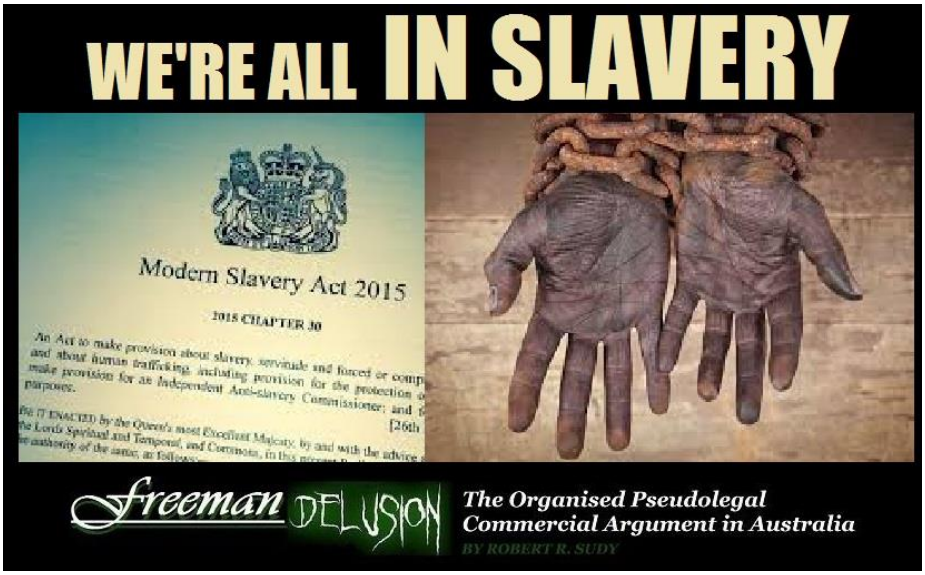
Slavery laws



Pseudolaw adherents consider that the enforcement of laws without individual consent is slavery, and some cite section 268-270 of the *Criminal Code* attempting to establish this. What they neglect to mention is the fact that:

Section 268.120 provides that:

> *"This Division is not intended to exclude or limit any other law of the Commonwealth or any law of a State or Territory."*

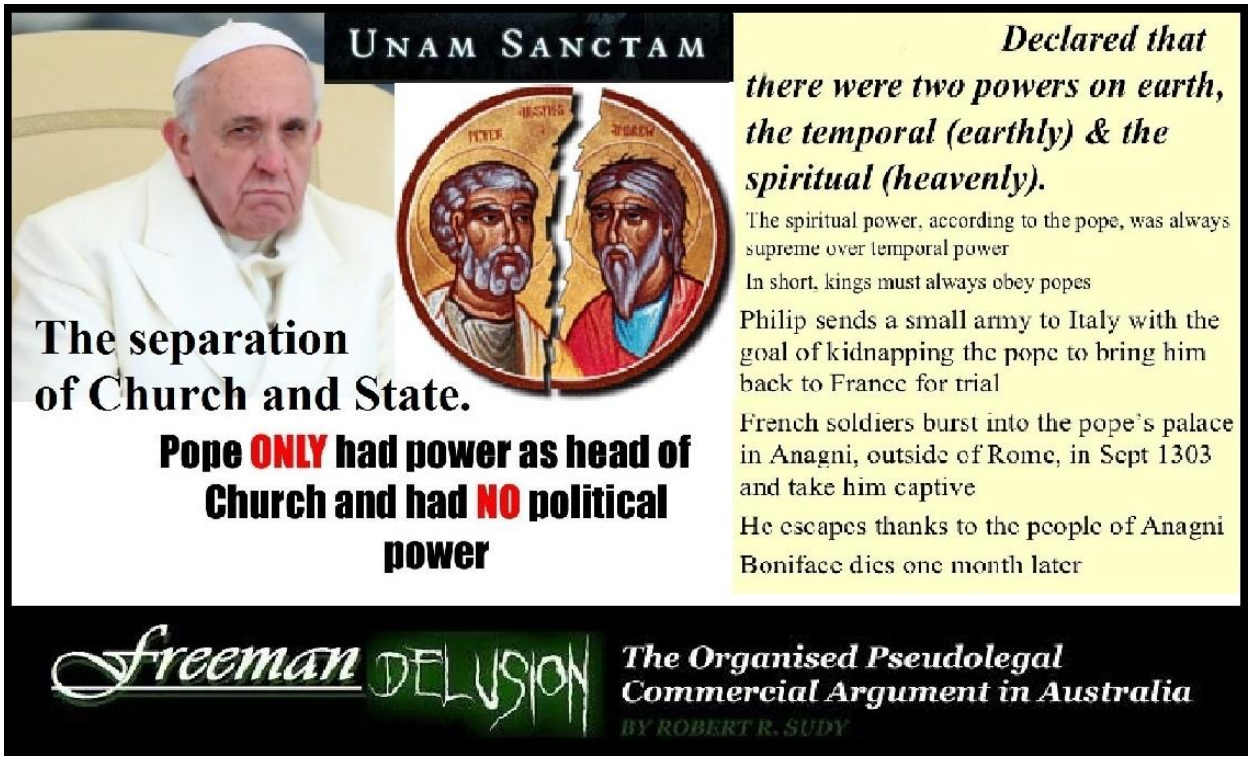
Section 270.12 provides that:

> *"This Division is not intended to exclude or limit the operation of any other law of the Commonwealth or any law of a State or Territory."*

And those enforcing said laws are protected under ***section 10.5*** *"Lawful authority"* which provides that:

> *"A person is not criminally responsible for an offence if the conduct constituting the offence is justified or excused by or under a law."*

Pope Owns your Soul? – Papal Bull Unam Sanctam



Many of the more religious pseudolaw adherents claim that centuries ago, the Papacy placed a claim of right over every soul on earth that has never been rebutted, so in order to free oneself, one must send notices to the Vatican refuting the claim. This theory is based in the Papal bull Unam sanctam, and ignorance of the separation of church and state that followed, which became part of the constitutional framework of all democratic nations.

On 18 November 1302, Pope Boniface VIII issued the Papal bull Unam sanctam which some historians consider one of the most extreme statements of Papal spiritual supremacy ever made. The original document is lost but a version of the text can be found in the registers of Boniface VIII in the Vatican Archives.The Bull lays down dogmatic propositions on the unity of the Catholic Church, the necessity of belonging to it for eternal salvation, the position of the pope as supreme head of the Church, and the duty thence arising of submission to the pope in order to belong to the Church and thus to attain salvation. The pope further emphasizes the higher position of the spiritual in comparison with the secular order. The main propositions of the Bull are the following: First, the unity of the Church and its necessity for salvation are declared and established by various passages from the Bible and by reference to the one Ark of the Flood, and to the seamless garment of Christ. The pope then affirms that, as the unity of the body of the Church so is the unity of its head established in Saint Peter and his successors. Consequently, all who wish to belong to the fold of Christ are placed under the dominion of Peter and his successors. (1)

The response to Unam sanctam

The furious reaction of Philip IV, King of France and his ministry cannot be understood outside the context of a conflict between the increasing power of secular rulers in France and England who had come

to blows with attempts to tax the clergy to support warfare that was no different from some of the "crusades" that had been authorized during the thirteenth century — against the king of Aragon for instance — save that the warfare had not been authorized by the Pope and the taxes were also to be levied on the clergy. Known for his very impulsive interference in international affairs, Boniface's stringent reaction was the fierce bull Clericis laicos of 1296. (2)

In England, Edward I withdrew the protection of the English Common Law from the clergy, an action with fearful possibilities. Philip's ministers reacted with their own typical methods: they banished all non-French bankers from France and forbade the export of bullion from the King's territories, without exception. The supply of French money to the Roman curia dried up completely. The royal ministers and their allies circulated open letters asserting the sovereignty of the king within his realm and the duty of the Church to help in the defense of the realm. (3)

Boniface made the tactical error of backing down from some positions. In September 1296, he sent an indignant protest to Philip headed Ineffabilis Amor, declaring that he would rather suffer death than surrender any of the rightful prerogatives of the Church; but he explained in conciliatory terms that his recent bull had not been intended to apply to any of the customary feudal taxes due the King from the lands of the Church.

Then came the Jubilee year of 1300, that filled Rome with the fervent masses of pilgrims and made up for the lack of French gold in the treasury. The following year, Philip's ministers overstepped their bounds. Bernard Saisset, the Bishop of Pamiers in Foix, the farthest southern march of Languedoc was recalcitrant and difficult. There was no love between the south, that had suffered so recently with the Albigensian Crusade, and the Frankish north. Pamiers was one of the last strongholds of the Cathars. Saisset made no secret of his disrespect for the King of France. Philip's ministry decided to make an example of the bishop. He was brought before Philip and his court, on 24 October 1301, where the chancellor, Pierre Flotte, charged him with high treason, and he was placed in the keeping of the archbishop of Narbonne, his metropolitan. Before they could attack him in the courts, the royal ministry needed the Pope to remove him from his See and strip him of his clerical protections, so that he could be tried for treason. Philip IV tried to obtain from the pope this "canonical degradation". Instead, Boniface ordered the king in December 1301 to free the bishop to go to Rome to justify himself. In the Bull, Ausculta Fili ("Give ear, my son") he accused Philip of sinfully subverting the Church in France, and not in terms that were conciliatory: (4)

> *"Let no one persuade you that you have no superior or that you are not subject to the head of the ecclesiastical hierarchy, for he is a fool who so thinks."*

At the same time, Boniface sent out a more general bull Salvator mundi that strongly reiterated some of the same ground of Clericis laicos. Then, at the end of the year, Boniface, with his customary tactlessness having criticized Philip for his personal behavior and the unscrupulousness of his ministry (that being an assessment with which many modern historians would agree, summoned a council of French bishops for November 1302, intended to reform Church matters in France — at Rome. Philip forbade Saisset or any of them to attend and forestalled Boniface by organizing a counter-assembly of his own, held in Paris in April 1302. Nobles, burgesses, and clergy met to denounce the Pope and pass around a crude forgery titled Deum Time ("Fear God"), which made out that Boniface claimed to be feudal overlord of France. The French clergy politely protested against Boniface's "unheard-of assertions". Boniface denied the document and its claims, but he reminded them that previous popes had deposed three French kings. (5)

This was the atmosphere in which Unam sanctam was promulgated weeks later. Reading of the "two swords" in the Bull, one of Philip's ministers is alleged to have remarked, "My master's sword is steel; the Pope's is made of words." As Matthew Edward Harris writes, 'The overall impression gained is that the papacy was described in increasingly exalted terms as the thirteenth century progressed, although this development was neither disjunctive nor uniform, and was often in response to conflict, such as against Frederick II and Philip the Fair'. Boniface's reputation for always trying to increase the papal power made it difficult to accept such an extreme declaration. His assertion over the temporal was seen as hollow and misguided and it's said the document was not seen as authoritative because the body of faith did not accept it. (6)

In response to the bull, Philip had the Dominican Jean Quidort issue a refutation. Pope Boniface reacted by excommunicating the king. Philip then called an assembly in which twenty-nine accusations against the pope were made, including infidelity, heresy, simony, gross and unnatural immorality, idolatry, magic, loss of the Holy Land, and the death of Celestine V. Five archbishops and twenty-one bishops sided with the king. Boniface VIII could only respond by denouncing the charges; but it was already too late for him. On 7 September 1303, the king's advisor Guillaume de Nogaret led a band of two thousand mercenaries on horse and foot. They joined locals in an attack on the palaces of the pope and his nephew at the papal residence at Anagni, later referred to as the Outrage of Anagni. The Pope's attendants and his beloved nephew Francesco all soon fled; only the Spaniard Pedro Rodríguez, Cardinal of Santa Sabina, remained at his side to the end. (7)

> *"The palace was plundered and Boniface was nearly killed (Nogaret prevented his troops from murdering the pope). Boniface was subjected to harassment and held prisoner for three days during which no one brought him food or drink. Eventually the townsfolk, led by Cardinal Luca Fieschi, expelled the marauders. Pope Boniface pardoned those who were captured. He was escorted back to Rome on 13 September 1303. Despite his stoicism, Boniface was shaken by the incident. He developed a violent fever and died on 11 October 1303. In A Distant Mirror: The Calamitous Fourteenth Century, Barbara Tuchman states that his close advisors would later maintain that he died of a "profound chagrin".*

Boniface VIII's successor, Benedict XI, reigned only nine months. He removed himself and the Roman Curia from the violence of Rome as soon as the Easter celebrations of 1304 were completed. But, on 7 June, 1304, from Perugia, he excommunicated Guillaume de Nogaret, Reynald de Supino, his son Robert, Thomas de Morolo, Peter of Gennazano, his son Stephen, Adenulph and Nicolas, the sons of a certain Matteo, Geoffrey Bussy, Orlando and Pietro de Luparia of Anagni, Sciarra Colonna, John the son of Landolph, Gottifredus the son of John de Ceccano, Maximus de Trebes, and other leaders of the factions who had attached Pope Boniface. He died on 7 July, 1304. The Conclave to pick his successor was in deadlock for eleven months before deciding, under the intimidation of King Charles II of Naples, on Archbishop Bertrand de Got of Bordeaux, who took the name Pope Clement V. To please Philip IV of France, Clement moved his residence to Avignon. From this point until around 1378, the Church, in an effort to keep tensions loose with France, fell under the immense pressure of the French monarchy. (8)

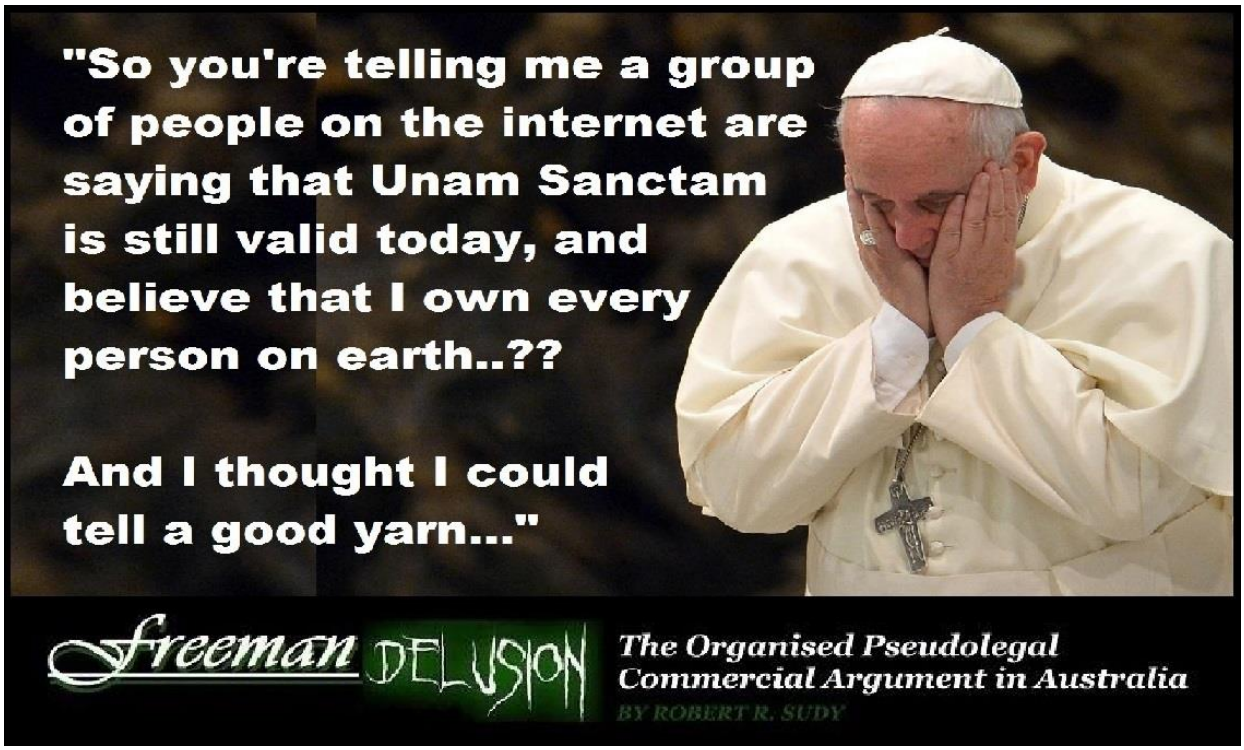
The separation of church and state

Some theologians feel this stemmed from Boniface VIII's and Philip IV's battle against each other. Philip was said to have held a vendetta against the Holy See until his death. It was not just the French monarchy and clergy who disapproved of Boniface and his assertions. There were many texts circulating

around Europe that attacked the bull and Boniface's bold claims for the power of the Papacy over the temporal.

One of the more notable writers who opposed Boniface and his beliefs was the Florentine poet Dante, who expressed his need for another strong Holy Roman Emperor. His treatise Monarchia attempted to refute the pope's claim that the spiritual sword had power over the temporal sword.

Dante pointed out that the Pope and Roman Emperor were both human, and no peer had power over another peer. Only a higher power could judge the two "equal swords", as each was given power by God to rule over their respected domains. (9)



Bradley v Barber [2016] QCA 053:

> *"As to the significance of a decree made by Pope Francis concerning the application of criminal law in the Vatican, the respondent correctly points out that the decree on its face seeks only to make a statement concerning certain aspects of the criminal law in the Vatican City State. The decree has no relevance to this application.*
>
> *The appellant contended that this Court's oath of office to the Queen (or affirmation for that matter), somehow required it to apply the law of the Vatican, because the Queen owed her authority to the Holy See. The appellant described this proposition as the foundation of his argument. It was the thing he needed a trial to establish. There was no substance to the argument, as was correctly found by the learned primary judge."*

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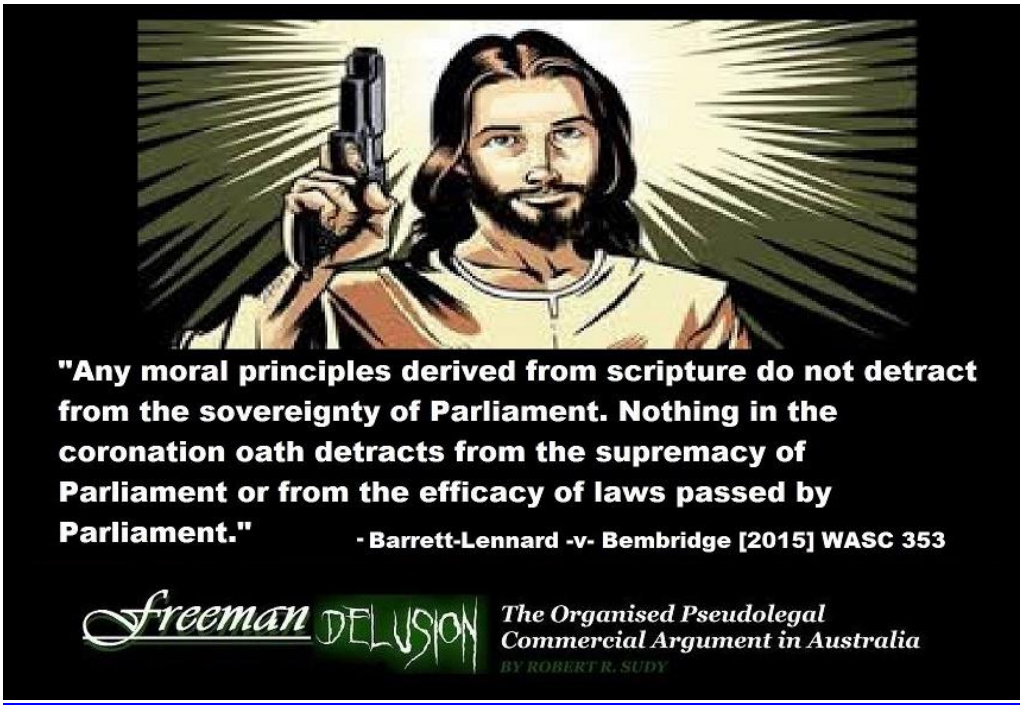
- *(1) "History of Pope Boniface VIII" Luigi Tosti, (tr. E.J. Donnelly) (New York 1911) Augustinus Theiner (Editor), Caesaris S. R. E. Cardinalis Baronii, Od. Raynaldi et Jac. Laderchii Annales Ecclesiastici Tomus Vigesimus Tertius, 1286-1312 (Barri-Ducis: Ludovicus Guerin 1871)*
- *(2) "The notion of papal monarchy in the thirteenth century : the idea of paradigm in church history." Harris, Matthew (2010). Lewiston, N.Y.: Edwin Mellen Press.*
- *(3) "History of Rome in the Middle Ages" Ferdinand Gregorovius, Volume V.2 second edition, revised (London: George Bell, 1906)*
- *(4) "Saints and Sinners: a History of the Popes" (2nd ed.).Duffy, Eamon (2002) New Haven, CT: Yale University Press.*
- *(5) "Unam Sanctam". Catholic Encyclopedia. New York: Robert Appleton Company. 1913.*
- *(6) "Sede Vacante and Conclave of 1304-1305" (Dr. J. P. Adams).*
- *(7) "Giles of Rome's On ecclesiastical power : a medieval theory of world government : a critical edition and translation. Records of Western civilization." Romanus, Egidius (2004) Translated by R.W. Dyson. New York: Columbia University Press.*
- *(8) "Monarchia." Alighieri, Dante (1998) Translated with a commentary by Richard Kay. Toronto: Pontifical Institute of Mediaeval Studies.*
- *(9) "The crisis of church and state, 1050-1300" Tierney, Brian (1988) Published by University of Toronto Press in association with the Medieval Academy of America.*

The Laws of God are Superior?



Some pseudolaw adherents believe that Biblical law holds a superior status over the secular laws of the State. Any such notions ended with the Glorious Revolution in 1688, when the principle of ***parliamentary supremacy*** was recognised.

BarrettLennard -v- Bembridge [2015] WASC 353:

> *"These grounds of appeal were developed in the appellant's written submissions of 16 September 2015. In oral submissions, the appellant stated that the only thing he wanted to add to his written submissions was that 'because I am a Christian, I need it clarified as to whether Bible law and God's law and the coronation oath overrule the parliamentary law of Western Australia'.*
>
> *The position in that respect is crystal clear. None of the Bible, God's law or the coronation oath overrules the laws made by the Parliament of Western Australia. In England, that has been so since 1688. In what became the State of Western Australia, it has been so since the advent of the Parliament of Western Australia.*
>
> *In British Railways Board v Pickin, Lord Reid said as follows:*
>
> *"In earlier times many learned lawyers seemed to have believed that an Act of Parliament could be disregarded in so far as it was contrary to the law of God or the law of nature or natural justice, but since the supremacy of Parliament was finally demonstrated by the Revolution of 1688 any such idea has become obsolete."*

> *This passage has been cited with approval in various courts in Australia. Any moral principles derived from scripture do not detract from the sovereignty of Parliament. Nothing in the coronation oath detracts from the supremacy of Parliament or from the efficacy of laws passed by Parliament. These grounds are entirely without merit; they have no reasonable prospects of success. I would refuse leave to appeal in respect of these grounds."*

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Extract from ***Gargan v Director of Public Prosecutions and anor [2004] NSWSC 10***:

> *"The appeal to scripture, that is to a moral principle higher than parliamentary sovereignty, is "out of line with the mainstream of current constitutional theory as applied in our courts" (BLF v Minister for Industrial Relations (1986) 7 NSWLR 372 at 384 per Kirby P).*
>
> *The same principle was applied by Lord Reid in British Railway Board v Pickin (1974) AC 765 in which he said: "In earlier times many learned lawyers seem to have believed that an Act of Parliament could be disregarded insofar as it was contrary to the law of God or the law of nature or natural justice, but since the supremacy of parliament was finally demonstrated by the Revolution of 1688 any such idea has become obsolete" (at 782)*
>
> *To a like effect is the decision of the Privy Council in Liyanage v The Queen (1967) AC 259 in which it was held that an Act of the Parliament of Ceylon could not be challenged on the basis that it was contrary to the fundamental principles of justice. This argument fails."*
>
> *The appeal to the Coronation Oath, 1689 as a basis for invalidating the legislation is based on the assertion that at her coronation the Queen took such oath and swore to uphold the gospels. This oath of 1689 is then sought to be linked by the plaintiff to s 116 of the Commonwealth Constitution. Any linkage is obscure to say the least, since that section prohibits the making of any law for establishing any religion, or for imposing any religious observance, or for prohibiting the free exercise of any religion and it proscribes any religious test as a qualification for any office under the Commonwealth.*
>
> *Whilst this oath binds Her Majesty, it does not affect the law of New South Wales. Furthermore the oath involves Her Majesty undertaking the moral obligation to govern the people of Australia according to the laws and customs, not of England or the United Kingdom, but according to those of Australia. This argument also fails."*

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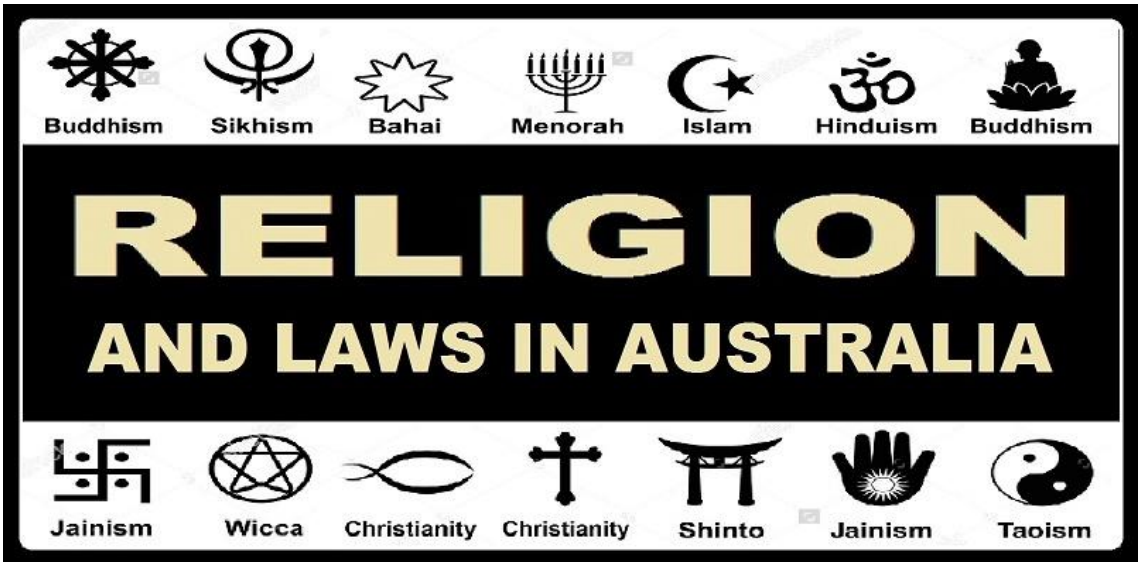
Section 116 – Religious Freedom



Section 116 provides:

> *"The Commonwealth shall not make any law for establishing any religion, or for imposing any religious observance, or for prohibiting the free exercise of any religion, and no religious test shall be required as a qualification for any office or public trust under the Commonwealth."*

The main two limbs of this section of the Constitution prohibit *"establishing any religion"* and the *"free exercise of any religion"*, which I will cover first, using the relevant case law.

(a) Prohibiting the free exercise of any religion:

Krygger v Williams [1912] HCA 65 was the first case to determine the extent that religion would impact government authority and grant certain exemptions. In that case, the protections afforded by section 116 of the Constitution were defined very narrowly. The court held that a person could not object to compulsory military service on the ground of religious belief. It considered that Section 116 would only protect religious observance from government interference; it would not permit a person to be excused from a legal obligation merely because the obligation conflicted with his or her religious beliefs. Griffith CJ (at 369) said:

> *"Sec 116 of the Constitution provides that 'the Commonwealth shall not make any law for … prohibiting the free exercise of any religion' - that is, prohibiting the practice of religion - the doing of acts which are done in the practice of religion. To require a man to do a thing which has nothing at all to do with religion is not prohibiting him from a free exercise of religion. It may be that a law requiring a man to do an act which his religion forbids would be objectionable on moral grounds, but it does not come within the prohibition of sec 116 …."*

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Adelaide Co of Jehovah's Witnesses Inc v Commonwealth (1943) HCA 12 was another landmark case involving section 116. One of the branch's professed beliefs was that the government was an "organ of Satan". Acting pursuant to the National Security (Subversive Organisations) Regulations 1940, the Government declared Jehovah's Witnesses to be "prejudicial to the defence of the Commonwealth and to the efficient prosecution of the war".

At 127-131 Latham CJ examined a number of then recent decisions of the United States Supreme Court on the First Amendment, and concluded that *"...the general protection given by the Constitution to the freedom in question leaves it to the court to determine whether a particular measure which in fact limits complete freedom involves an 'undue' infringement of that freedom".* The Chief Justice then referred to American cases that had been decided before the Commonwealth Constitution was drafted which, he said

> *"...quite clearly determined that such protection was not absolute and that it did not involve a dispensation from obedience to a general law of the land which was not directed against religion. ... There is, therefore, full legal justification for adopting in Australia an interpretation of s 116 which had, before the enactment of the Commonwealth Constitution, already been given to similar words in the United States. This interpretation leaves it to the court to determine whether a particular law is an undue infringement of religious freedom."*

His Honour was however able to decide the case on a more narrow basis. In the course of so doing he observed that the word *"for"* in the expression *"for prohibiting the free exercise of any religion"* showed that the purpose of the legislation in question may be taken into account in determining whether or not it is a law of the prohibited character.

The court unanimously held that the Act did not infringe against section 116 of the Constitution. The ruling caused the Adelaide branch of the Jehovah's Witnesses to be dissolved and have its property acquired by the Commonwealth government.

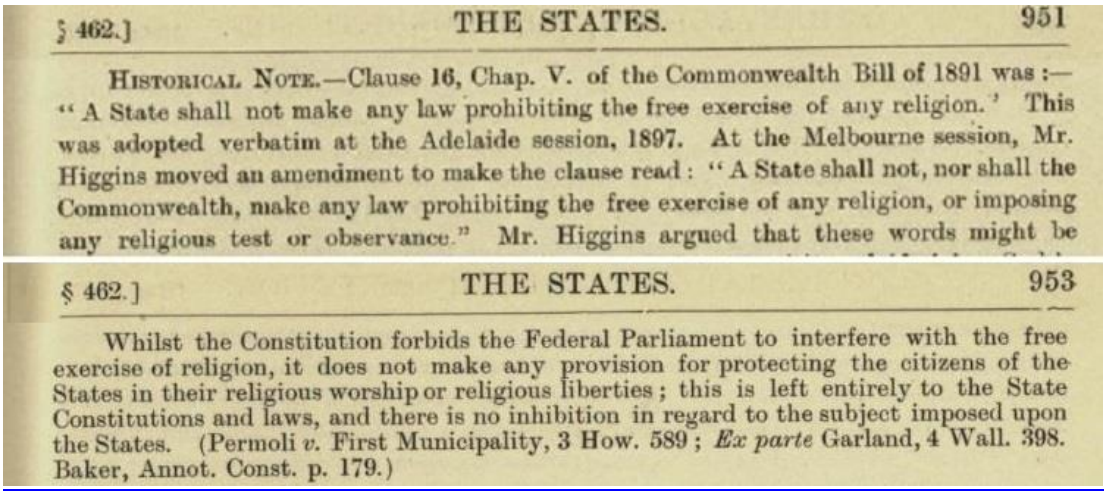
https://freemandelusion.com/wp-content/uploads/2018/07/adelaide-co-of-jehovahs-witnesses-inc-v-commonwealth-1943-hca-12.pdf

Kruger v Commonwealth [1997] HCA 27 became known as the "Stolen Generations Case", in which it was submitted that the forced removal of aboriginal children, (and consequently from their customary lore) prohibited the free exercise of religion. The court found that section 116 will only prevent legislation that has a prohibited purpose, rather than a prohibited effect, and it:

> *"...does no more than effect a restriction or limitation on the legislative power of the Commonwealth. It is not, in form, a constitutional guarantee of the rights of individuals... It makes no sense to speak of a constitutional right to religious freedom in a context in which the Constitution clearly postulates that the States may enact laws in derogation of that right."*

Accordingly, it must be pointed out that the prohibition in section 116 applies only to the Commonwealth government, and does not preclude the states of Australia from making such laws. The first draft, approved by the Melbourne Convention of 1891, would have prohibited the states from passing laws prohibiting the free exercise of religion, but the amendment was defeated. It was feared the

provision would impede the states' legislative powers, so section 116 passed and did not mention the states, as Robert Garran notes on ***pages 951*** to ***953:***



§ 462.] THE STATES. 951

HISTORICAL NOTE.—Clause 16, Chap. V. of the Commonwealth Bill of 1891 was:—"A State shall not make any law prohibiting the free exercise of any religion.' This was adopted verbatim at the Adelaide session, 1897. At the Melbourne session, Mr. Higgins moved an amendment to make the clause read: "A State shall not, nor shall the Commonwealth, make any law prohibiting the free exercise of any religion, or imposing any religious test or observance." Mr. Higgins argued that these words might be

§ 462.] THE STATES. 953

Whilst the Constitution forbids the Federal Parliament to interfere with the free exercise of religion, it does not make any provision for protecting the citizens of the States in their religious worship or religious liberties; this is left entirely to the State Constitutions and laws, and there is no inhibition in regard to the subject imposed upon the States. (Permoli *v.* First Municipality, 3 How. 589; *Ex parte* Garland, 4 Wall. 398. Baker, Annot. Const. p. 179.)

https://freemandelusion.com/wp-content/uploads/2018/07/kruger-v-commonwealth-1997-hca-27.pdf

(b) The Commonwealth establishing any religion:

In ***Attorney-General (Vic) (Ex rel Black) v Commonwealth [1981] HCA 2*** the High Court held that Commonwealth funding of religious schools did not contravene Section 116. This case dealt with the interpretation of the prohibition against *"establishing any religion"* as in section 116.

Several members of the Court considered the import of the word *"for"* in the expression *"for establishing any religion"*. Barwick CJ (at 583) thought the word indicated that the law must be intended and designed to set up the religion as an institution of the Commonwealth. Gibbs J (at 598) said the word *"for"* looked to the purpose of the law rather than to its relationship with a particular subject matter, though at 604 his Honour referred to the "purpose or effect" of the law. Mason J (at 615-616) was of the view that *"for"* connoted a connection by way of purpose or result with the subject matter which was not satisfied by the mere fact that the law touches or relates to the subject matter. Wilson J (at 653) said that *"for establishing"* conveyed the sense of "in order to establish" and spoke quite specifically of the purpose of the law in terms of the end to be achieved.

The court found that its meaning basically is *"the erection and recognition of a State Church, or the concession of special favours, titles, and advantages to one church which are denied to others."*

https://freemandelusion.com/wp-content/uploads/2018/07/attorney-general-vic-ex-rel-black-v-commonwealth-1981-hca-2.pdf

What constitutes a religion...

Church of the New Faith v Commissioner of Pay-Roll Tax (Vic) [1983] HCA 40 further refined the definition of "religion". In this case the High Court found that Scientology was a religion, despite its somewhat obscure fundamentals. "...the criteria of religion [are] twofold: first, belief in a supernatural,

Being, Thing or Principle; and second, the acceptance of canons of conduct in order to give effect to that belief."

The court set out five "indicia" of a religion:

- a belief in the supernatural;
- a belief in ideas relating to "man's nature and place in the universe";
- the adherence to particular standards, codes of conduct or practices by those who hold the ideas;
- the existence of an identifiable group of believers, even if not a formal organisation;
- and the opinion of the believers that what they believe in constitutes a religion.

https://freemandelusion.com/wp-content/uploads/2018/07/church-of-the-new-faith-v-commissioner-for-pay-roll-tax-vic-1983-hca-40.pdf

Religious exemptions from various laws

There is a provision available to people in Australia that wish to abstain from voting due to their religious beliefs. In ***section 245(14) of the Commonwealth Electoral Act 1918 (Cth)*** it states:

> *"Without limiting the circumstances that may constitute a valid and sufficient reason for not voting, the fact that an elector believes it to be part of his or her religious duty to abstain from voting constitutes a valid and sufficient reason for the failure of the elector to vote."*

* There is a general exemption in ***section 61A of the Defence Act 1903 (Cth)***, which exempts certain groups of people such as ministers of religion and others, from military service.

* Schedule 2 of the ***S.A. Summary Offences Act 1953*** has a provision in section 7 regarding carrying or possessing a knife for religious purposes, making them exempt from section 21F(1)(b) of that Act:

* Under ***section 7 of the N.S.W. Charitable Fundraising Act 1991***, recognised religious organisations are exempt from its provisions.

* ***Section 57 of the Fringe Benefits Tax Assessment Act 1986 (Cth)*** exempts employees of religious institutions.

* Ministers of religion are exempt from jury duty under ***section 11 (sch 7) of the N.T. Juries Act 1962***.

* ***Section 316(4) of the Crimes Act 1900 (NSW)*** provides an exemption from prosecution for concealing a serious indictable offence by clergy.

* ***Section 10(e) of the N.S.W. Land Tax Managment Act 1956*** contains exemptions for land taxes, it states: *"land owned by or in trust for a religious society if the society, however formed or constituted, is carried on solely for religious, charitable or educational purposes, including the support of the aged or infirm clergy or ministers of the society, or their wives or widows or children, and not for pecuniary profit."*

* Similarly in ***section 555(e) of the N.S.W. Local Government Act 1993*** it states: *"land that belongs to a religious body and is occupied and used in connection with: (i) a church or other building used or occupied for public worship, or (ii) a building used or occupied solely as the residence of a minister of religion in connection with any such church or building, or (iii) a building used or occupied for the purpose of religious teaching or training, or (iv) a building used or occupied solely as the residence of the official head or the assistant official head (or both) of any religious body in the State or in any diocese within the State."*

Discrimination against religions

* ***The Fair Work Act 2009*** (Cth) contains certain provisions which address conduct that may discriminate against people of religious faiths.

* ***section 153***, which provides that a modern award must not include terms that discriminate against an employee because of, or for reasons including, the employee's race, colour, sex, sexual orientation, age, physical or mental disability, marital status, family or carer's responsibilities, pregnancy, religion, political opinion, national extraction or social origin;

* ***section 195(1)***, which lists discriminatory terms in enterprise agreements including those terms that discriminate against an employee on the basis of their religion and other personal characteristics;

* ***section 351(1)***, which relates to the General Protections division of the Act and provides that any adverse action taken against an employee on the basis of a protected attribute or characteristic is prohibited;

* and ***section 772(1)(f)***, which provides that a person's employment may not be terminated on the basis of a protected attribute, subject to exceptions in s 772(2)(b).

Religions exempt from discrimination laws

* There are a range of exemptions in the ***Sex Discrimination Act 1984 (Cth)*** (SDA), for religious organisations and religious educational institutions where the discriminatory act or conduct conforms to the doctrines, tenets or beliefs of a religion, or is necessary to avoid injury to the religious sensitivities of adherents of that religion. The effect of these exemptions is that a religious school, for instance, may lawfully choose not to employ a pregnant, unmarried teacher, in circumstances where this would be discriminatory conduct for a non-religious organisation.

* ***section 23(3)(b)***, which provides that accommodation provided by a religious body is exempt from s 23(1) making it unlawful to discriminate against a person on the basis of a protected attribute in the provision of accommodation;

* ***section 37***, which exempts the ordination or appointment of priests, Ministers of religion or members of any religious order and accommodation provided by a religious body from the effect of the SDA; and

* ***section 38***, which exempts educational institutions established for religious purposes from the effect of the SDA in relation to the employment of staff and the provision of education and training, provided that

the discrimination is in *"good faith in order to avoid injury to the religious susceptibilities of adherents of that religion".*

* ***Section 30(2) of the N.T. Anti- Discrimination Act 1992*** states: *"An educational authority that operates, or proposes to operate, an educational institution in accordance with the doctrine of a particular religion may exclude applicants who are not of that religion."*

* ***Section 35(2b) of the S.A. Equal Opportunity Act 1984*** exempts an association from discrimination on the ground of chosen gender or sexuality *"if the association is administered in accordance with the precepts of a particular religion and the discrimination is founded on the precepts of that religion."*

* Likewise ***section 85ZN***: *"on the ground of religious appearance or dress if the discrimination arises as a consequence of a person refusing to reveal his or her face in circumstances in which the person has been requested to do so for the purpose of verifying the identity of the person, and the request was reasonable in the circumstances."*

Laws which may affect freedom of religion

Freedom of religion is infringed when a law prevents individuals from practising their religion or requires them to engage in conduct which is prohibited by their religion. Alternatively, the freedom will also be infringed when a law mandates a particular religious practice, like the ***Marriage Act 1961 (Cth)*** contains certain provisions which affect freedom of religion:

* ***section 101***, which provides that the solemnisation of marriage by an unauthorised person is a criminal offence. To be authorised under section 29, a religious leader must REGISTER their status as a marriage celebrant, provided that the denomination is recognised by the Australian Government, and the minister is nominated by their denomination.

This may discriminate against smaller, less well-known religious groups, or break-away groups or sects within established religious traditions; and

* ***section 113(5)***, which makes it unlawful to conduct a religious wedding ceremony, unless it occurs after the performance of a legal civil marriage.

* Some offences in the ***Criminal Code 1995 (Cth)*** may be characterised as indirectly interfering with freedom of religion, as they may restrict religious expression. These laws include the following:

* ***section 80.2C***, which creates the offence of 'advocating terrorism'. This may be seen to limit religious expression by limiting the capacity of individuals to express religious views which might be radical and controversial;

* ***section 102.1(2)***, which provides that an organisation maybe prescribed as a terrorist organisation, making it an offence to be a member of that organisation, to provide resources or support to that organisation, or to train with that organisation. Some argued that this provision risks criminalising individuals for expressing radical, religious beliefs;

* ***section 102.8***, which makes it an offence to associate with a proscribed 'terrorist organisation'. There may be interference with religious freedom where a person is seen to associate with a member of a terrorist organisation who attends the same place of worship or prayer group. While there is a defence in s 102.8(4)(b) where the association *"is in a place being used for public religious worship and takes place in the course of practising a religion"*, this may place a significant burden on defendants to prove that their association arose in the course of practising their religion.

Exemptions from religions

Section 26 of the N.S.W. Education Act 1990 provides for a Certificate of exemption from attending particular classes for parents who have an objection to religious education.

Act of Settlement 1700

A Protestant Monarchy

The ***Act of Settlement 1700*** was passed to settle the succession to the English and Irish crowns to Protestants only… *"…all and every person and persons who shall or may take or inherit the said crown."*

The next Protestant in line to the throne was the Electress Sophia of Hanover, a granddaughter of James VI of Scotland and I of England, and it was proclaimed that after her the crowns would descend only to her non-Roman Catholic heirs. Under the Act of Settlement: *"…whosoever shall hereafter come to the possession of this crown…"* was forbidden from becoming a Roman Catholic, or marrying one, or else they were disqualified from inheriting the throne. The act also placed limits on both the power of the monarch with respect to the Parliament of England, and decreed that no foreigner or Roman Catholic could: *"…hold any office or place of trust, either civil or military, or to have any grant of lands, tenements or hereditaments from the Crown…"*

As well as being part of the law of the United Kingdom, the Act of Settlement was received into the laws of all the countries and territories over which the British monarch reigned. It remains, after more than two centuries, as one of the main constitutional laws governing the succession, not only to the throne of the United Kingdom, but to those of the 16 Commonwealth realms and the relevant jurisdictions within those realms. It cannot be altered in any realm except by that realm's own parliament and, by convention, only with the consent of all the other realms, as it touches on the succession to the shared Crown. The second paragraph of the ***Statute of Westminster Adoption Act 1942*** states:

> *"…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."*

Today, the provisions in the Act of Settlement that relate to the church of Rome applies only to the monarch themselves and their heirs and successors. This is because the Act primarily deals with the monarch's position as Supreme Governor of the Church of England, where the title given to King Henry VIII, "*Defender of the Faith"* is fundamental. As Supreme Governor of the Church of England, the monarch is still forbidden from *"holding communion with the church of Rome."* according to these 1700 provisions. Much of the Oath taken by Elizabeth II at her Coronation likewise applies to her position of Supreme Governor of the Church of England, which doesn't apply in Australia because neither the Queen, the Governor General, or any state Governor have any religious role in Australia. There has never been an established church in Australia, either before or after Federation.

The ***Roman Catholic Relief Act*** was passed by the UK Parliament in 1829, which overturned the requirement that all Ministers of State must be Protestant *"…and all their Officers and Ministers ought to serve them respectively according to the same."* Here in Australia, the ***Roman Catholic Relief Act 1830*** was adopted into legislature in all the colonies, including the following in Queensland:

> *"Whereas by an Act of Parliament passed in the 10th year of the reign of His present Majesty intituted 'An Act for the relief of His Majesty's Roman Catholic Subjects' all His Majesty's subjects professing the Roman Catholic religion are relieved from all civil and military disabilities with certain specified exceptions and it is expedient to remove any doubt which may exist as to the application of the said Act to this colony.*
> *1 Adopting the British Act of Parliament for the relief of Roman Catholics*
> *That the said Act of Parliament extends to and is in force and the same is hereby declared to extend to and be in full force in the State in the same manner in all respects as if the said Act had contained a positive clause to such effect."*

Queensland

Roman Catholic Relief Act 1830

Contents

An Act declaring that a certain Act of Parliament passed in the tenth year of the reign of His Majesty King George IV intituled 'An Act for the relief of His Majesty's Roman Catholic Subjects' extends to and is in force in the colony of New South Wales

Preamble

Whereas by an Act of Parliament passed in the 10th year of the reign of His present Majesty intituled 'An Act for the relief of His Majesty's Roman Catholic Subjects' all His Majesty's subjects professing the Roman Catholic religion are relieved from all civil and military disabilities with certain specified exceptions and it is expedient to remove any doubt which may exist as to the application of the said Act to this colony.

1 Adopting the British Act of Parliament for the relief of Roman Catholics

That the said Act of Parliament extends to and is in force and the same is hereby declared to extend to and be in full force in the State in the same manner in all respects as if the said Act had contained a positive clause to such effect.

This enactment was included in the subsequent enactments in Queensland, as it primarily affected the ***Oaths Act 1867***:

> *"In every case where but for the passing of this Act it would be necessary for any person to take the oaths commonly called the oaths of allegiance supremacy and abjuration or any of them or the oath prescribed by the Act of Parliament commonly called the Roman Catholic Relief Act 1830 or to make the declaration prescribed by the Act of Parliament passed in the ninth year of the reign of King George IV chapter 17 and whensoever it shall be necessary for any person to take the oath of allegiance it shall be sufficient for such person to take in lieu of the said several oaths and declaration the following oath of allegiance—'I A.B. do sincerely promise and swear that I will be faithful and bear true allegiance to Her Majesty Queen Elizabeth the Second, as*

> *lawful Sovereign of the United Kingdom, Australia, and her other Realms and Territories, and to Her Heirs and Successors, according to law.'; anything in the said Acts of Parliament or in any other statute Act or law notwithstanding.*

Soon after, the Church of England also lost its legal privileges in the Colony of New South Wales by the ***Church Act of 1836***, which established legal equality for Anglicans, Catholics and Presbyterians and was later extended to Methodists. The separation of church and state in this regard was later enshrined in ***section 116*** of the Commonwealth Constitution:

> *"The Commonwealth shall not make any law for establishing any religion, or for imposing any religious observance, or for prohibiting the free exercise of any religion, and no religious test shall be required as a qualification for any office or public trust under the Commonwealth."*

Some of the recent theories surrounding the Act of Settlement 1700 sort of imply that the Commonwealth should *"impose religious observance"* and that there should be a *"religious test"* for public office or trust, which is quite obviously unconstitutional.

Although it must be noted that section 116 only applies to the Commonwealth, not the States. The first draft, approved by the Melbourne Convention of 1891, would have prohibited the states from passing laws prohibiting the free exercise of religion, but the amendment was defeated. It was feared the provision would impede the states' legislative powers, so section 116 passed and did not mention the states. In ***Kruger v Commonwealth [1997] HCA 27*** the court found that section 116 *"…does no more than effect a restriction or limitation on the legislative power of the Commonwealth. It is not, in form, a constitutional guarantee of the rights of individuals… It makes no sense to speak of a constitutional right to religious freedom in a context in which the Constitution clearly postulates that the States may enact laws in derogation of that right."*

The ***British Nationality Act 1981*** made naturalised citizens the equal of those native born, overturning the requirement that only those native born to England can sit as a Member of either House of Parliament. *"anyone else born out of the kingdoms of England, Scotland or Ireland or the dominions thereunto belonging."* This requirement is echoed in ***section 44*** of the Commonwealth Constitution in relation to foreign citizenship.

Following the ***Royal Style and Titles Act 1953***, further amendments in the ***Royal Style and Titles Act 1973*** removed *"Defender of the Faith"* from her Australian Title, in formal recognition of the differences between the monarchs role in the UK, compared to her role in Australia.

The Perth Agreement

After the *Perth Agreement* in 2011, legislation passed throughout the Commonwealth realms amended the Act of Settlement 1700. The purpose of the ***Succession to the Crown Act 2015***, was to:

> *"…change the law relating to the effect of gender and marriage on royal succession, consistently with changes made to that law in the United Kingdom, so that the Sovereign of Australia is the same person as the Sovereign of the United Kingdom."*

When legislating for the Perth Agreement, the Australian governments took the approach of the states requesting, and referring power to, the federal government to enact the legislation on behalf of the states under ***section 51(xxxviii)*** of the constitution. The Commonwealth Heads of States agreed to changes to various points like:

- (1) male descendants take precedence over females in the line of succession,
- (2) the disqualification of those married to Roman Catholics;
- (3) the limitations on the number of individuals in line to the throne requiring permission from the sovereign to marry.

However, the ban on Catholics and other non-Protestants becoming sovereign, and the requirement for the sovereign to be in communion with the Church of England remained.

Anne Twomey explores the constitutional perspective in ***"Changing the Rules of Succession to the Throne"***.

https://freemandelusion.com/wp-content/uploads/2020/09/changing-the-rules-of-succession-to-the-throne.pdf

The Roman Catholic Relief Acts

The ***Act of Settlement 1700*** was passed to settle the succession to the English and Irish crowns to Protestants only… *"…all and every person and persons who shall or may take or inherit the said crown."* The act also placed limits on both the power of the monarch with respect to the Parliament of England, and decreed that no foreigner or Roman Catholic could: *"…hold any office or place of trust, either civil or military, or to have any grant of lands, tenements or hereditaments from the Crown…*

Today, the provisions in the ***Act of Settlement 1700*** that relate to the church of Rome applies only to the monarch themselves and their heirs and successors. This is because the Act primarily deals with the monarch's position as *Supreme Governor of the Church of England*, where the title given to King Henry VIII, "*Defender of the Faith"* is fundamental. As *Supreme Governor of the Church of England*, the monarch is still forbidden from *"holding communion with the church of Rome."* according to these 1700 provisions, as recently renewed in the ***Succession to the Crown Act 2015***.

The ***Roman Catholic Relief Act 1829*** was passed by the UK Parliament, which overturned the requirement that all Ministers of State must be Protestant *"…and all their Officers and Ministers ought to serve them respectively according to the same."*

The technical exclusion of Roman Catholics from parliament derived from the compulsory oaths of allegiance and supremacy, as reformulated at the Revolution, which denied the spiritual and ecclesiastical supremacy of foreign princes and prelates, and from the compulsory declaration against transubstantiation, the invocation of saints and the sacrifice of the Mass. The oaths of allegiance and supremacy which could be required from parliamentary electors also operated as a theoretical, if not necessarily as an actual, bar to the exercise of the franchise by Roman Catholics in England, though by an act of 1794 the omission of the oaths was permitted unless demanded by the candidates. In Ireland Roman Catholics had since 1793 been allowed to vote for but not to sit in parliament. Roman Catholics had also been excluded from civil office and in England from commissions in the armed forces (though there was considerable confusion about the state of the law with regard to the latter category) by the oaths of allegiance and supremacy.

As can be seen, the act repealed these technical disqualifications and formally permitted Roman Catholics to sit in Parliament, vote at elections and hold civil and military office subject to the new compound oath which replaced for these purposes the old oaths of allegiance, ***supremacy*** and ***abjuration***.

https://freemandelusion.com/wp-content/uploads/2020/10/roman-catholic-relief-act-1829.pdf

The versions provided above of the Roman Catholic Relief Act 1829 have many omissions where various sections had slowly been repealed over time, until it was repealed in its entirety and as stated on the ***legislation.gov.uk*** website:

"There are currently no known outstanding effects for the Roman Catholic Relief Act 1829."

For the sake of historical accuracy I have included here the original full text of '*A Bill for the Relief of His Majesty's Roman Catholic Subjects*', sourced from the *Hansard* (24 March 1829).

"Whereas by various Acts of Parliament certain Restraints and Disabilities are imposed on the Roman Catholic subjects of His Majesty, to which other subjects of His Majesty are not liable: and whereas it is expedient that such restraints and disabilities shall be from henceforth discontinued: and whereas by various Acts certain Oaths and certain Declarations, commonly called the Declaration against Transubstantiation, and the Invocation of Saints, and the Sacrifice of the Mass, as practised in the Church of Rome, are or may be required to be taken, made and subscribed by the subjects of His Majesty, as qualifications for sitting and voting in Parliament, and for the enjoyment of certain offices, franchises, and civil rights; 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, that from and after the commencement of this Act, all such parts of the said Acts as require the said Declarations, or either of them, to be made or subscribed by any of His Majesty's Subjects as a qualification for sitting and voting in Parliament, or for the exercise or enjoyment of any office, franchise, or civil right, be and the same are (save as hereinafter provided and excepted) hereby Repealed.

And be it Enacted, That from and after the commencement of this Act, it shall be lawful for any person professing the Roman Catholic religion, being a Peer, or who shall after the commencement of this Act be returned as a member of the House of Commons, to sit and vote in either House of Parliament respectively, being in all other respects duly qualified to sit and vote therein, upon taking and subscribing the following Oath, instead of the Oaths of Allegiance, Abjuration, and Supremacy.

' I, A. B. do sincerely promise and swear, That I will be faithful and bear true allegiance to His Majesty King George the Fourth, and will defend him to the utmost of my power against all conspiracies and attempts whatever, which shall be made against his person, crown or dignity; and I will do my utmost endeavour to disclose and make known to His Majesty, His heirs and successors, all treasons and traitorous conspiracies which may be formed against him or them: And I do faithfully promise to maintain, support and defend, to the utmost of my power, the succession of the Crown, which succession, by an Act, entitled, "An Act for the farther Limitation of the Crown, and better securing the Rights and Liberties of the Subject", is and stands limited to the Princess Sophia, Electress of Hanover, and the heirs of her body, being Protestants; hereby utterly renouncing and abjuring any obedience or allegiance unto any other person claiming or pretending a right to the crown of these realms: And I do further declare, That it is not an article of my faith, and that I do renounce, reject and abjure the opinion, that princes excommunicated or deprived by the Pope, or any other authority of the see of Rome, may be deposed or murdered by their subjects, or by any person whatsoever: And I do declare, That I do not believe that the Pope of Rome, or any other foreign prince, prelate, person, state or potentate, hath or ought to have any temporal or civil jurisdiction, power, superiority or pre-eminence, directly or indirectly, within this realm. I do swear, That I will defend to the utmost of my power the settlement of property within this realm, as established by the laws: And I do hereby disclaim, disavow, and solemnly abjure any intention to subvert the present Church Establishment as settled by law within this realm: And I do solemnly swear, That I never will exercise any privilege tod which I am or may become entitled, to disturb or weaken the Protestant religion or Protestant government in the Unitedk Kingdom: And I do solemnly in the presence of God, profess, testify, and declare, That I do make this Declaration, and every part thereof, in the plain and ordinary sense of the words of this Oath, without any evasion, equivocation, or mental reservation whatsoever. So help me God'.

Provided always, and be it further Enacted, That no Peer, professing the Roman Catholic religion, and no person, professing the Roman Catholic religion, who shall be returned a Member of the House of Commons after the commencement of this Act, shall be capable of sitting or voting in either House of Parliament respectively, unless he shall first take and subscribe the oath hereinbefore appointed and set forth, before the same person, at the same times and places, and in the same manner as the Oaths and Declaration now required by law are respectively directed to be taken made and subscribed; and that any such person professing the Roman Catholic religion, who shall sit or vote in either House of Parliament, without having first taken and subscribed in the manner aforesaid the oath in this Act appointed and set forth, shall be subject and liable to the same penalties, forfeitures, and disabilities, and the offence of so sitting or voting shall be followed and attended by and with the same consequences as are by law enacted and provided in the case of persons sitting or voting in either House of Parliament, respectively, without the taking making and subscribing the Oaths and the Declaration now required by law.

And be if further Enacted, That it shall be lawful for persons professing the Roman Catholic religion, to vote at Elections of Members to serve in Parliament, and also to vote at the elections of representative Peers of Scotland and Ireland, and to be elected such representative Peers, being in all other respects duly qualified, upon taking and subscribing the Oath hereinbefore appointed and set forth.

And be it further Enacted, That the Oath hereinbefore appointed and set forth shall be administered to His Majesty's subjects professing the Roman Catholic religion, for the purpose of enabling them to vote in any of the cases aforesaid, in the same manner, at the same time and by the same officers or other persons as the oaths for which it is hereby substituted are or may be now by law administered;

And whereas by a certain Act of the Parliament of Scotland made in the eighth and ninth Session of the first Parliament of King William the Third, entitled, "An Act for the preventing the growth of Popery", and a certain Declaration or Formula is therein contained, which it is expedient should no longer be required to be taken and subscribed; Be it therefore Enacted, That so much and such parts of any Acts as authorise the said Declaration or Formula to be tendered, or require the same to be taken, sworn and subscribed, be and the same are hereby Repealed;

And be it further Enacted, That no person in holy orders in the Church of Rome, shall be capable of being elected to serve in Parliament as a Member of the House of Commons; and if any such person shall be elected to serve in Parliament as aforesaid, such election shall be void; and if any person, being elected to serve in parliament as a Member of the House of Commons shall, after his election, take or receive holy orders in the Church of Rome, the seat of such person shall immediately become void;

And be it Enacted, That it shall be lawful for any of His Majesty's subjects professing the Roman Catholic religion, to hold, exercise and enjoy all civil and military offices and places of trust or profit under His Majesty, His heirs or successors, and to exercise any other franchise or civil right, except as hereinafter excepted, upon taking and subscribing, at the times and in the manner hereinafter mentioned, the Oath hereinbefore appointed and set forth.

Provided always, and be it Enacted, That nothing herein contained shall be construed to exempt any person professing the Roman Catholic religion from the necessity of taking any Oath or Oaths.

Provided also, and be it further Enacted, That nothing herein contained shall extend or be construed to extend to enable any person or persons professing the Roman Catholic religion, to hold or exercise the office of Guardians and Justices of the United Kingdom, or of Regent of the United Kingdom, under whatever name, style or title such office may be constituted; nor to enable any person, otherwise than as he is now by law enabled, to hold or enjoy the office of Lord High Chancellor, Lord Keeper or Lord Commissioner of the Great Seal of Great Britain or Ireland; or the office of Lord Lieutenant, or Lord Deputy, or other Chief Governor or Governors of Ireland, or His Majesty's High commissioner to the General Assembly of the Church of Scotland.

And be it Enacted, That every person professing the Roman Catholic religion, who shall after the commencement of this Act be placed, elected or chosen in or to the office of mayor, provost, alderman, recorder, bailiff, town clerk, magistrate, councillor or common councilman, or in or to any office of magistracy or place of trust or employment, relating to the government of any city, corporation, borough, burgh, or district within the United Kingdom of Great Britain and Ireland, shall within One calendar month next before or upon his admission into any of the same respectively, take and subscribe the Oath hereinbefore appointed and set forth, in the presence of such person or persons respectively as by the charters or usages of the said respective cities, corporations, burghs, boroughs or districts, ought to administer the Oath for due execution of the said offices or places respectively.

And be it further Enacted, That from and after the passing of this Act, no Oath or Oaths shall be tendered to, or required to be taken by His Majesty's subjects, professing the Roman Catholic religion, for enabling them to hold or enjoy any real or personal property, other than such as may by law be tendered to and required to be taken by His Majesty's other subjects; and that the oath herein appointed and set forth, being taken and subscribed in any of the courts, or before any of the persons above mentioned, shall be of the same force and effect, to all intents an purposes, as, and shall stand in the place of, all Oaths and Declarations required or prescribed by any law now in force for the relief of His Majesty's Roman Catholic subjects from any disabilities, incapacities or penalties; and the proper officer of any of the courts above–mentioned in which any person professing the Roman Catholic religion, shall demand to take and subscribe the Oath herein appointed and set forth, is hereby authorised and required to administer the said Oath to such person, and such officer shall make sign and deliver a certificate of such Oath having been duly taken and subscribed as often as the same shall be demanded of him upon payment of One shilling, and such certificate shall be sufficient evidence of the person therein named having duly taken and subscribed such Oath.

And whereas the Protestant Episcopal Church of England and Ireland, and the doctrine, discipline and government thereof, and likewise the Protestant Presbyterian Church of Scotland, and the doctrine, discipline and government thereof, are by the respective Acts of Union of England and Scotland and of Great Britain and Ireland established permanently and inviolably: And whereas the right and title of Archbishops to their respective provinces, of Bishops to their sees, and of Deans to their deaneries, as well in England as in Ireland, have been settled and established by law; Be it therefore Enacted, That if any person after the commencement of this Act, other than

the person thereunto authorized by law, shall assume or use the name, style or title of Archbishop of any province, Bishop of any bishoprick, or Dean of any deanery, in England or Ireland; he shall for every such offence forfeit and pay the sum of One hundred pounds.

And be it further Enacted, That if any Roman Catholic Ecclesiastic, or any member of any of the orders, communities or societies hereinafter mentioned, shall, after the commencement of this Act, exercise any of the rites or ceremonies of the Roman Catholic religion, or wear the habits of his order, save within the usual places of worship of the Roman Catholic religion, or in private houses; such ecclesiastic or other person shall, being thereof convicted by due course of law, forfeit for every such offence the sum of Fifty pounds.

And whereas Jesuits and members of other religious orders, communities or societies, of the church of Rome, bound by monastic or religious vows, are resident within the United Kingdom; and it is expedient to make provision for the gradual suppression and final prohibition of the same therein; Be it therefore Enacted, That every Jesuit, and every member of any other religious order, community or society of the church of Rome, bound by monastic or religious vows, who at the time of the commencement of this Act shall be within the United Kingdom, shall within Six calendar months after the commencement of this Act, deliver to the clerk of the peace of the county or place where such person shall reside, or his deputy, a notice or statement, in the form and containing the particulars set forth in the Schedule to this Act annexed; which notice or statement, such clerk of the peace, or his deputy, is hereby required to preserve and register amongst the other records of such county or place, for which no fee shall be payable, and a copy of which said notice or statement shall be by such clerk of the peace, or his deputy, forthwith transmitted to the chief secretary of the Lord Lieutenant, or other Chief Governor or Governors of Ireland, if such person shall reside in Ireland, or if in Great Britain, to one of His Majesty's principal Secretaries of State; and in case any person shall offend in the premises, he shall forfeit and pay to His Majesty, for every calendar month during which he shall remain in the United Kingdom without having delivered such notice or statement as is hereinbefore required, the sum of Fifty pounds.

And be it further Enacted, That in case any Jesuit, or member of any such religious order, community or society as aforesaid, shall after the commencement of this Act, within any part of the United Kingdom, admit any person to become a regular Ecclesiastic or brother or member of any such religious order, community or society, or be aiding or consenting thereto, or shall administer or cause to be administered, or be aiding or assisting in the administering or taking any oath, vow or engagement, purporting or intended to bind the person taking the same to the rules, ordinances or ceremonies of such religious order, community or society, every person offending in the premises in England or Ireland, shall be deemed guilty of a Misdemeanor, and in Scotland shall be punished by fine and imprisonment.

And be it further Enacted, That in case any person shall after the commencement of this Act, within any part of this United Kingdom, be admitted or become a Jesuit or brother or member of any other such religious order, community or society as aforesaid, such person shall be deemed and taken to be guilty of a Misdemeanor, and being thereof lawfully convicted, shall be sentenced and ordered to be banished from the United Kingdom for the term of his natural life.

Provided always, and be it Enacted, That nothing herein contained shall extend or be construed to extend in any manner to affect any religious order, community or establishment consisting of Females bound by religious or monastic vows."

ADOPTION IN AUSTRALIA

Here in Australia, the Roman Catholic Relief Act 1829 was adopted in all the colonies, including the following in Queensland, the ***Roman Catholic Relief Act 1830***:

https://freemandelusion.files.wordpress.com/2020/10/roman-catholic-relief-act-1830-qld.pdf

Queensland

Roman Catholic Relief Act 1830

Contents

An Act declaring that a certain Act of Parliament passed in the tenth year of the reign of His Majesty King George IV intituled 'An Act for the relief of His Majesty's Roman Catholic Subjects' extends to and is in force in the colony of New South Wales

Preamble

Whereas by an Act of Parliament passed in the 10th year of the reign of His present Majesty intituled 'An Act for the relief of His Majesty's Roman Catholic Subjects' all His Majesty's subjects professing the Roman Catholic religion are relieved from all civil and military disabilities with certain specified exceptions and it is expedient to remove any doubt which may exist as to the application of the said Act to this colony.

1 Adopting the British Act of Parliament for the relief of Roman Catholics

That the said Act of Parliament extends to and is in force and the same is hereby declared to extend to and be in full force in the State in the same manner in all respects as if the said Act had contained a positive clause to such effect.

As you can note, the oaths of allegiance, supremacy and abjuration were replaced with the oath in the second paragraph. However, in Australia, in this example in particular, in Queensland, it was no longer required by the ***Oaths Act 1867***:

"In every case where but for the passing of this Act it would be necessary for any person to take the oaths commonly called the oaths of allegiance supremacy and abjuration or any of them or the oath prescribed by the Act of Parliament commonly called the Roman Catholic Relief Act 1830 or to make the declaration prescribed by the Act of Parliament passed in the ninth year

of the reign of King George IV chapter 17 and whensoever it shall be necessary for any person to take the oath of allegiance it shall be sufficient for such person to take in lieu of the said several oaths and declaration the following oath of allegiance—

'I A.B. do sincerely promise and swear that I will be faithful and bear true allegiance to Her Majesty Queen Victoria as lawful Sovereign of the United Kingdom of Great Britain and Ireland and of this Colony of Queensland belonging to and dependent on the said United Kingdom So help me God'.

anything in the said Acts of Parliament or in any other statute Act or law notwithstanding."

This oath in the ***Oaths Act 1867*** was later changed to reflect the ***Royal Style and Titles Act 1953***:

'I A.B. do sincerely promise and swear that I will be faithful and bear true allegiance to Her Majesty Queen Elizabeth the Second, as lawful Sovereign of the United Kingdom, Australia, and her other Realms and Territories, and to Her Heirs and Successors, according to law.';

anything in the said Acts of Parliament or in any other statute Act or law notwithstanding.

Part 2 Oaths of office and allegiance

1 Oath substituted for the oaths and declaration now prescribed by law

In every case where but for the passing of this Act it would be necessary for any person to take the oa ths commonly called the oaths of allegiance supremacy and abjuration or any of them or the oath pr escribed by the Act of Parliament commonly called the *Roman Catholic Relief Act 1830* or to make the declaration prescribed by the Act of Parliament passed in the ninth year of the reign of King George IV chapter 17 and whensoever it shall be necessary for any person to take the oath of allegiance it sh all be sufficient for such person to take in lieu of the said several oaths and declaration the following oath of allegiance—'I A.B. do sincerely promise and swear that I will be faithful and bear true allegia nce to Her Majesty Queen Elizabeth the Second, as lawful Sovereign of the United Kingdom, Austral ia, and her other Realms and Territories, and to Her Heirs and Successors, according to law.';anythin g in the said Acts of Parliament or in any other statute Act or law notwithstanding.

The Coronation Oath

BarrettLennard -v- Bembridge [2015] WASC 353:

"These grounds of appeal were developed in the appellant's written submissions of 16 September 2015. In oral submissions, the appellant stated that the only thing he wanted to add to his written submissions was that 'because I am a Christian, I need it clarified as to whether Bible law and God's law and the coronation oath overrule the parliamentary law of Western Australia'.

The position in that respect is crystal clear. None of the Bible, God's law or the coronation oath overrules the laws made by the Parliament of Western Australia. In England, that has been so since 1688. In what became the State of Western Australia, it has been so since the advent of the Parliament of Western Australia.

In British Railways Board v Pickin, Lord Reid said as follows:

"In earlier times many learned lawyers seemed to have believed that an Act of Parliament could be disregarded in so far as it was contrary to the law of God or the law of nature or natural justice, but since the supremacy of Parliament was finally demonstrated by the Revolution of 1688 any such idea has become obsolete."

This passage has been cited with approval in various courts in Australia. Any moral principles derived from scripture do not detract from the sovereignty of Parliament. Nothing in the coronation oath detracts from the supremacy of Parliament or from the efficacy of laws passed by Parliament. These grounds are entirely without merit; they have no reasonable prospects of success. I would refuse leave to appeal in respect of these grounds."

https://freemandelusion.com/wp-content/uploads/2019/06/barrett-lennard-v-bembridge-2015-wasc-353.pdf

Gargan v Director of Public Prosecutions and anor [2004] NSWSC 10:

"The appeal to scripture, that is to a moral principle higher than parliamentary sovereignty, is "out of line with the mainstream of current constitutional theory as applied in our courts" (BLF v Minister for Industrial Relations (1986) 7 NSWLR 372 at 384 per Kirby P).

The same principle was applied by Lord Reid in British Railway Board v Pickin (1974) AC 765 in which he said: "In earlier times many learned lawyers seem to have believed that an Act of Parliament could be disregarded insofar as it was contrary to the law of God or the law of nature or natural justice, but since the supremacy of parliament was finally demonstrated by the Revolution of 1688 any such idea has become obsolete" (at 782)

To a like effect is the decision of the Privy Council in Liyanage v The Queen (1967) AC 259 in which it was held that an Act of the Parliament of Ceylon could not be challenged on the basis that it was contrary to the fundamental principles of justice. This argument fails."

The appeal to the Coronation Oath, 1689 as a basis for invalidating the legislation is based on the assertion that at her coronation the Queen took such oath and swore to uphold the gospels. This oath of

1689 is then sought to be linked by the plaintiff to s 116 of the Commonwealth Constitution. Any linkage is obscure to say the least, since that section prohibits the making of any law for establishing any religion, or for imposing any religious observance, or for prohibiting the free exercise of any religion and it proscribes any religious test as a qualification for any office under the Commonwealth.

Whilst this oath binds Her Majesty, it does not affect the law of New South Wales. Furthermore the oath involves Her Majesty undertaking the moral obligation to govern the people of Australia according to the laws and customs, not of England or the United Kingdom, but according to those of Australia. This argument also fails."

https://freemandelusion.com/wp-content/uploads/2019/05/gargan-v-director-of-public-prosecutions-and-anor-2004-nswsc-10.pdf

This decision was upheld in the Federal Court in ***Official Trustee in Bankruptcy v Gargan (No 2) [2009] FCA 398*** where the court stated Gargan had:

"…argued that the Coronation Oath Act 1688, 1 Wm & M, c 6, required the sovereign to uphold the gospels. O'Keefe J rejected this argument on the basis that the oath administered to the present Queen was not the oath prescribed by that Act."

https://freemandelusion.com/wp-content/uploads/2019/05/official-trustee-in-bankruptcy-v-gargan-no-2-2009-fca-398.pdf

In ***Little v State of Victoria [1999] VSCA 113*** the applicant contended that the coronation oath impresses upon the Attorneys-General a duty to ensure that none suffer injustice from abuses of judicial power, which was rejected by the court.

https://freemandelusion.com/wp-content/uploads/2019/06/little-v-state-of-victoria-1999-vsca-113.pdf

This decision was later upheld by the High Court in ***Little v State of Victoria [2000] HCATrans 226***.

https://freemandelusion.com/wp-content/uploads/2019/06/little-v-state-of-victoria-2000-hcatrans-226.pdf

Directly from the High Court in ***An application by Stanbridge [1996] HCATrans 175***:

MR STANBRIDGE: Yes, but you see, your Honour, no judge can make any law which does not line up with the laws of God, because of the requirements of the Oaths Act and the Coronation Oath which requires all judges to hold allegiance to the Queen, who in her turn has sworn in the Coronation Oath to uphold the laws of God, maintain the true profession of the Gospel, and uphold the laws of the land - - -

HIS HONOUR: No judge - - -

MR STANBRIDGE: - - - which includes the Magna Carta.

HIS HONOUR: No judge is more conscious of the Oath of Allegiance to the Queen than I, who have taken twelve of them, nor of the Queen's Coronation Oath but, if you remember, the Coronation Oath goes on to say: …according to the laws and usages respectively in force. And that is what Her Majesty promised. That is what her judges perform. They conform to the law, according to the law as it is made in the

particular dominions. Otherwise, it would be very difficult. I was in India last week, and the God in India who is worshipped is worshipped in places that are not churches. God in a number of the Queen's dominions at that time was called something different, so that it is very difficult to draw anything from the Coronation Oath, because all the Queen promised to do was to uphold the law as it was made in the different dominions.

MR STANBRIDGE: Though it is quite clear that the Coronation Oath refers to the God of the Holy Bible, because the whole of the Coronation Ceremony is a very Christian ceremony, and the Queen is actually given a Bible with the Moderator of the General Assembly of the Church of Scotland – brings the Queen the Bible saying:

"Our Gracious Queen, to keep your Majesty ever mindful of the law and the Gospel of God as the rule for the whole life and government of Christian Princes, we present you with this book, the most valuable thing that this world affords. Here is wisdom. This is the royal law. These are the lively oracles of God."

And then a bit later on, an orb with a cross is given to the Queen by the Archbishop, who declares:

"Receive this orb, set under the cross, and remember the whole world is subject to the power and empire of Christ, our redeemer."

HIS HONOUR: Yes, I remember all of these things very vividly, Mr Stanbridge, and I take them very seriously myself, but we live in a secular country, bound by a Constitution which contains section 116 to which you have referred, and the duty of courts is to enforce the law; it is not to enforce religion or religious principle, unless that happens to be enshrined in the particular law."

https://freemandelusion.com/wp-content/uploads/2019/06/an-application-by-stanbridge-1996-hcatrans-175.pdf

Humbly Relying on the Blessing of Almighty God

The phrase *"Humbly relying on the Blessing of Almighty God"* in the ***Preamble to the Constitution*** is misinterpreted by many constitutional theorists as implying a hierarchy of the Bible over the Constitution. One of these is ***Steven Spiers***, in his *"Realm and Commonwealth"* and *"Realm and Man"* papers.

As already covered in previous articles, there is ***no legal effect of the Preamble***, and ***no legal effect of Biblical passages***.

Pages 287 to 290 of Quick and Garran's ***Annotated Constitution of the Australian Commonwealth*** cover the origin, full intent and meaning of the phrase *"Humbly relying on the Blessing of Almighty God"*, so I thought I'd include these pages so readers can understand the framers reasoning and historical context for its inclusion in the Preamble.

It must be taken into account though, that subsequent changes in the constitutional relations with the U.K. since the collapse of the British Empire have been effected, so where Quick and Garran's Commentary, which was written in 1901, mention the position of the monarch as *"Defender of the Faith"* it is important to note that it no longer carries the same meaning due to amendments to the *Royal Style and Titles Act* in 1973. This subject matter is covered in previous articles ***The Queen of Australia*** and ***The Royal Style and Titles.***

One point can be deducted from the following for and against comments in the Constitutional Conventions, and that is that the passage by no means granted the Commonwealth any powers to pass laws with respect to religion, and that there was sufficient safeguards against such laws in section 116 of the Constitution. *"Humbly relying on the Blessing of Almighty God"* holds no special legal effect or implication, other than a reflection of the petitions at the time, which was noted in the Constitutional Conventions to be affected by the future trends in the population.

Daniels v Deputy Commissioner of Taxation [2007] SASC 431 (at 13):

> *"The other two arguments on which Mr Daniels relied were advanced in support of the contentions under s 116. The first was a reference to that part of the preamble to the Commonwealth Constitution which reads: "WHEREAS the people of New South Wales, Victoria, South Australia, Queensland, and Tasmania, humbly relying on the blessing of Almighty God, have agreed to unite in one indissoluble Federal Commonwealth…"*
>
> *Mr Daniels contended that those words in the preamble constitute an invocation of the laws of God which should not be offended by, as he says, "the shedding of innocent blood". Mr Daniels also relies on the terms of the Oath of Allegiance which he contends reinforces his argument under s 116. There is no validity in either submission. The reference in the preamble to "the blessing of Almighty God" does not in any way enlarge the meaning and operation of s 116 of the Constitution. The argument based on the requirement to take the Oath of Allegiance and the terms of that Oath entirely overlook the fact that the Schedule to the Constitution includes an Affirmation of Allegiance that may be used by those who prefer to make an affirmation instead of swearing on oath."*

Another phrase in the preamble that causes some confusion in this regard is *"Of the Lords Spiritual"*. Quick and Garran's ***Annotated Constitution of the Australian Commonwealth*** also discusses this phrase on pages 303 and 304, which is also included in the following document.

https://freemandelusion.com/wp-content/uploads/2019/01/humbly-relying-on-the-blessing-of-almighty-god-of-the-lords-spiritual.pdf

St. Edward's Crown

There are some absurd speculations being circulated around the internet about St. Edward's Crown being a foreign realm to the Imperial Crown, a contention ***Steven Spiers*** tries to establish in his paper "*Realm and Commonwealth*" and due to this false conclusion he asserts that there exists no line of authority to the Crown in Australia, as it is not an "*Imperial Crown*" being displayed.

St. Edward's Crown is displayed on all State and Territory Police logos:

Most people influenced by this theory relate back to the stylized type of Crown that was used at the time of Federation, or during the first and second world wars, and note the differences.

The change to St. Edward's Crown after the coronation of Queen Elizabeth II can also be noted in Australian Army and Navy memorabilia:

As we can see, Queen Elizabeth II did indeed adopt a stylized image of St Edward's Crown for use in coats of arms, badges, logos and other insignia throughout the Commonwealth realms to symbolize her royal authority. But the reality of the situation is much different from what the theory suggests. The Imperial State Crown is still used by Queen Elizabeth II in all of her State functions, such as the annual opening of Parliament.

Elizabeth II wearing the State Imperial Crown:

In fact, St. Edward's Crown was only used for Elizabeth II's coronation, and she has never worn it since. This is the normal procedure in the coronation ceremony of a monarch in the United Kingdom. 1 It is only ever used by the Archbishop of Canterbury at the actual moment of coronation, in her case in 1953, and the monarch then wears the Imperial State Crown when leaving the coronation ceremony.

Elizabeth II leaving her coronation in 1953:

In 2013, St Edward's Crown was displayed on the high altar in Westminster Abbey at a service to mark the 60th anniversary of Elizabeth II's coronation, the first time it had left the Jewel House at the Tower of London since 1953. 2

Elizabeth II reunited with St. Edward's Crown in 2013:

St Edward's Crown is the centrepiece of the Crown Jewels of the United Kingdom. 3 When not used to crown the monarch, it is still generally placed on the altar during the coronation; as it is regarded as the official coronation crown. 4 In the Tudor period, (1485 to 1603) three crowns were placed on the heads of monarchs at a coronation: St Edward's Crown, the State Crown, and a "rich crown" made specially for the king or queen. 5

St. Edward's Crown:

St Edward's Crown has been traditionally used to crown English and British monarchs at their coronations since the 13th century, and dates back to the 11th century royal saint, Edward the Confessor, the last Anglo-Saxon king of England. A crown referred to as St Edward's Crown is first recorded as having been used for the coronation of Henry III in 1220, and it appears to be the same crown worn by Edward. 6 It is therefore considered the first known set of hereditary coronation regalia in Europe. 7 The original crown was a holy relic kept 8 at *Westminster Abbey*, Edward's burial place, until the regalia were either sold or melted down after Parliament abolished the monarchy in 1649, during the English Civil War.

When the British monarchy was restored in 1660, to keep continuity with the past, it was decided that there should again be a coronation crown and a state crown, an orb, sceptre, swords, spurs, ring and bracelets. The cost of creating these 11 principle pieces of regalia alone was estimated at some £13,000 – as much as three fully-equipped warships. 9

Portrait of Charles II, c.1670s, by John Michael Wright displayed at Queen's Presence Chamber, Hampton Court Palace. The King is depicted with the new regalia: the state crown, the Orb and the Sovereign's Sceptre with Cross:

Like the Imperial State Crown, the present version of St Edward's Crown was made for Charles II in 1661 by royal jeweler, Robert Viner. 10 It was fashioned to closely resemble the medieval crown, with a heavy gold base and cluster s of semi-precious stones, but the arches are decidedly Baroque. 11 It was used to crown Charles II, (1661), James II, (1685), William III, (1689), but afterwards was not used to crown a monarch for over 200 years, mainly because of its weight.

Mary II (1689) and Anne (1702) were crowned with small diamond crowns of their own. George I, (1714) George II, (1727) George III, (1761) and William IV (1831) were all crowned with the Imperial State Crown made specially for George I by royal jeweler Samuel Smithin. 12

Imperial State Crown of George I:

George IV (1821) was crowned with a large new diamond State Crown made specially for the occasion by Philip Liebart of *Rundell, Bridge & Rundell.*

Diamond State Crown of George IV:

Rundell, Bridge & Rundell also made a State Diadem for George IV which has been worn by every queen and queen consort from Queen Adelaide, the wife of William IV, onwards. 13 The diadem was reset with jewels from the royal collection for Queen Victoria. 14 Queen Elizabeth II wore the diadem in the procession to her coronation in 1953, 15 and she also wears it in the procession to and from the annual State Opening of Parliament. 16 The iconic piece of jewellery has featured in many portraits of the Queen, as well as Australian banknotes and postage stamps. 17

Victoria and Elizabeth II wearing the George IV diadem:

Queen Victoria (1838) chose not to use St Edward's Crown because of its weight and instead used a lighter version of the Imperial State Crown made specially for the occasion by *Garrard & Co.*

Imperial State Crown made for Queen Victoria in 1838:

Garrard & Co. also made a much smaller diamond State Crown for Queen Victoria in 1870. She wore this crown for the first time at the opening of Parliament on 9 February 1871, and frequently used it after that date for State occasions. After Queen Victoria's death, the crown was worn by Queen Alexandra and later, Queen Mary. 18

Small diamond State Crown made for Queen Victoria:

Edward VII (1902) intended to revive the tradition of using St Edward's Crown, but on coronation day he was still recovering from an operation for appendicitis, and instead he also wore the lighter Imperial State Crown. 19

Edward VII wearing the Imperial State Crown after his coronation in 1902:

The tradition was revived by George V, (1911) and all subsequent monarchs have been crowned using St Edward's Crown, including George VI (1937) and Elizabeth II (1953). But identically, it was only used for the coronation and George V wore the 1838 Imperial State Crown for all State functions. 20

George V wearing the 1838 Imperial State Crown after his coronation in 1911:

The Imperial State Crown made for Queen Victoria in 1838 is the basis for today's crown. The gems in the crown were remounted for the coronation of George VI in 1937 by *Garrard & Co*. 21 and was adjusted for Queen Elizabeth II's coronation in 1953, with the head size reduced and the arches lowered by 25 mm to give it a more feminine appearance. 22

The ***following video*** is Queen Elizabeth II explaining the details regarding the gems in the Imperial State Crown, and also it's usage, including the fact that the St. Edwards Crown is only used at the moment of coronation. 23

https://freemandelusion.com/hm-the-queen-explains-the-imperial-state-crown-mp4/

It's also important to note that each member of the royal family have their own unique regalia. The Coat of Arms of King George III clearly displayed the St. Edward's Crown. 24 This also appears on the top of the *Charters of Justice 1814* 25 that became part of Australian law and the administration of the courts here. King George III died in 1820, but this Coat of Arms also passed to his son George IV, who died in 1831, succeeded by his brother William IV, who assented the *Great Charter* or *Reform Act 1832*. 26 All three

monarchs were males from the same bloodline, so they shared a common regalia, but this is not always so. For example, Victoria ceased to rule Hanover because a woman couldn't occupy that position, so an alteration from her father George IV's regalia was necessary.

Top: The Coat of Arms of King George III. *Centre:* as it appears on the Charters of Justice 1814. *Bottom:* as it appears on the Reform Act 1832

Australia was proclaimed under St. Edward's Crown. Shilling "Australian proclamation coin" 1787, minted in Great Britain. 27

The Coat of Arms of Queen Elizabeth II contains St. Edward's Crown. On the right is the Royal armorial of Queen Elizabeth II used at her coronation in 1953, in comparison to Queen Victoria's on the left.

So as we can see, there is no difference at all in realms between the different types of crowns used for Queen Elizabeth II, but each serve different purposes within the same realm. St. Edward's Crown is the coronation crown, of which there is only one, and the Imperial State Crown is the crown for the monarchs State use, of which there have been approximately ten made since the monarchy was reestablished in 1660. And as is obvious, St. Edward's Crown is actually the oldest and most sacred crown of all crowns mentioned.

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- *1. Tower of London website, "The Crown Jewels History" https://www.hrp.org.uk/tower-of-london/history-and-stories/the-crown-jewels/*
- *2. Gordon Rayner (4 June 2013). "Crown to leave Tower for first time since 1953 for Westminster Abbey service". The Telegraph. https://www.telegraph.co.uk/news/uknews/queen-elizabeth-II/10096497/Queens-coronation-anniversary-Crown-to-leave-Tower-for-first-time-since-1953-for-Westminster-Abbey-service.html*
- *3. The Royal Household. "The Crown Jewels". The Official Website of the British Monarchy. https://web.archive.org/web/20151008074350/http://www.royal.gov.uk/the%20royal%20collection%20and%20other%20collections/thecrownjewels/overview.aspx*
- *4. Mears, et al., p. 23.*
- *5. Arnold, pp. 731–732.*
- *6. Ronald Lightbown in Blair, vol. 1. pp. 257–353.*
- *7. Rose, p. 13.*
- *8. Hoak, p. 59.*
- *9. Tower of London website, "The Crown Jewels History" https://www.hrp.org.uk/tower-of-london/history-and-stories/the-crown-jewels/*
- *10. St Edward's Crown". Royal Collection Trust. Inventory no. 31700 https://www.rct.uk/collection/31700 https://en.wikipedia.org/wiki/Royal_Collection_Trust*
- *11. Holmes, pp. 213–223.*
- *12. Mears, et al., p. 24.*
- *13. "The Diamond Diadem" Royal Collection Trust. Inventory no. 31702 https://www.rct.uk/collection/31702*
- *14. Sophie McConnell (1991). Metropolitan Jewelry. New York: Metropolitan Museum of Art. p. 56. https://books.google.com/books?id=pdyPGIM0rygC&pg=PA56*
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- *16. Jerrold M. Packard (1981) The Queen & Her Court: A Guide to the British Monarchy Today. Scribner. p. 162. https://books.google.com/books?id=c6D-5G3uSSsC*
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God is no respecter of persons

There is a misinterpretation of certain Biblical passages that use the words *"God is no respecter of persons"* in James 2:9, that appears in many statements by ***Steven Spiers*** and his "***United Kingdom of Australia***", as well as by ***Romley Stewart Stover*** and his "***Justinian Deception***".

The argument cherry picks the word *"persons"* and applies an pseudolaw meaning to the common phrase *"respecter of persons"*, concluding that firstly, God doesn't *"respect"* the concept of legal personality, and secondly, that it is a sin to recognise (or "*respect")* ones own legal personality.

From a pseudolaw perspective, this denotes the "all-capitals name" and the "citizen-ship" it carries. It follows from the argument that a “person” is only a fictitious legal entity, as discussed in ***Van den Hoorn v Ellis, [2010] QDC 451*** and other cases, a juridical person, as opposed to a natural person. This perception effectively makes the strawman argument a religious obligation, a Biblical justification for clarifying that they have no recognition or *"respect"* for this "all-capitals name" that is theoretically being foisted upon them.

The context and meaning of "respecter of persons"

According to consensus among both ***Biblical scholars*** and English etymologists, the common phrase "respecter of persons" simply means that one shows no partiality. This pseudolaw interpretation regarding the phrase is of course, a distortion of language and etymology, the true meaning of the phrase is entirely different.

The passage in ***James 2:9*** in the ***Latin Vulgate*** is:

"*si autem personas accipitis peccatum operamini redarguti a lege quasi transgressores"*

The words *"si autem personas accipitis peccatum"* translates to English as *"if you have respect to persons, ye commit sin".* The words *"personas accipitis peccatum"* alone translates to English as *"favoritism, you sin"* while *"personas accipitis"* alone translates to English *as "partiality".*

In ***Collins English Dictionary***:

> *"no respecter of persons" in British English: "a person whose attitude and behaviour is uninfluenced by consideration of another's rank, power, wealth, etc"*

Or even in ***Wiktionary***:

> *"respecter of persons" (plural respecters of persons) "Someone who treats people according to their rank, status or importance."*

The given example of *"Be careful: a hurricane is no respecter of persons."* is very fitting, considering that hurricanes are considered *"an act of God".* It demonstrates succinctly that such an act, quite logically, does not differentiate between people, and neither does God himself.

When meeting with the gentile centurion Cornelius, the apostle Peter explained what God had revealed to him:

> *"Of a truth I perceive that God is no respecter of persons: but in every nation he that feareth him, and worketh righteousness, is accepted with him"* (***Acts 10:34-35***, King James Version).

The ***New King James Version*** translates *"God is no respecter of persons"* as "God shows no partiality."

Many of Peter's fellow Jews thought that God loved them more than the gentiles, but Peter came to understand that God did not show favoritism. God wants people of all nations to repent and be saved (***2 Peter 3:9***; ***1 Timothy 2:4***). The apostle Paul explained that the time order of God's plan was not a sign of injustice or favoritism.

> *"There will be trouble and calamity for everyone who keeps on sinning—for the Jew first and also for the Gentile. But there will be glory and honor and peace from God for all who do good—for the Jew first and also for the Gentile. For God does not show favoritism"* (***Romans 2:9-11***, New Living Translation).

God also does not want us to show favoritism. ***James 2:9*** says that "respect to persons" (KJV) or "partiality" (***NKJV***) is sin. This is seen more clearly by considering the context of this passage in the New Living Translation:

> *"My dear brothers and sisters, how can you claim that you have faith in our glorious Lord Jesus Christ if you favor some people more than others? For instance, suppose someone comes into your meeting dressed in fancy clothes and expensive jewelry, and another comes in who is poor and dressed in shabby clothes. If you give special attention and a good seat to the rich person, but you say to the poor one, 'You can stand over there, or else sit on the floor'—well, doesn't this discrimination show that you are guided by wrong motives?…*
>
> *"Yes indeed, it is good when you truly obey our Lord's royal command found in the Scriptures: 'Love your neighbor as yourself.' But if you pay special attention to the rich, you are committing sin, for you are guilty of breaking that law"* (***James 2:1-4, 8-9***).

Paul, the Roman citizen

In the first century AD, a person could become a Roman citizen by either birth or buying the privilege. Paul's birth in a Jewish family occurred in the city of Tarsus within the province of Cilicia (Acts 22:3).

Although a Jew, his birth in the city grants him citizenship. This is due to Tarsus' designation as a "free city" by Rome. The chief captain, however, had to pay a large sum of money to earn the right. (Acts 22:28) *"With a great sum obtained I this freedom."* while Paul said *"I was free born"*. Paul relied on the existence of his legal personality or "person" and the rights and privileges it provided him under Roman law.

Roman citizens had the right to sue (and be sued) in the courts and the right to have a legal trial where they could appear before a proper court to defend themselves. They even had the ability to request Caesar himself hear their case. Citizens could not be tortured or whipped (scourged), nor could they receive the death penalty, unless they were guilty of treason. It was this right that kept the apostle from a severe flogging at the hands of Roman soldiers (Acts 22:23 - 29).

Paul used his right to a trial before Caesar in Rome in order to avoid being tried before religious leaders in Jerusalem who hated him. He felt certain that any travel he undertook to the holy city would not only be risky but also likely cost him his life (Acts 25:1 - 3). Paul's use of his Roman citizenship in order to avoid being murdered is in Acts 25. But Paul said, *"I stand before the judgment seat of Caesar, where I have the right to be judged."*

Paul conceded to the jurisdiction of the court, he didn't challenge jurisdiction. He had the serenity to accept that despite his own beliefs, under the law he possessed a certain status of a Roman citizen which afforded him rights and privileges unavailable to some others.

Extract from ***Acts 22***, concerning the Apostle Paul.

> 24 *The chief captain commanded him to be brought into the castle, and bade that he should be examined by scourging; that he might know wherefore they cried so against him.*
>
> 25 *And as they bound him with thongs, Paul said unto the centurion that stood by, Is it lawful for you to scourge a man that is a Roman, and uncondemned?*
>
> 26 *When the centurion heard that, he went and told the chief captain, saying, Take heed what thou doest: for this man is a Roman.*
>
> 27 *Then the chief captain came, and said unto him, Tell me, art thou a Roman? He said, Yea.*
>
> 28 *And the chief captain answered, With a great sum obtained I this freedom. And Paul said, But I was free born.*
>
> 29 *Then straightway they departed from him which should have examined him: and the chief captain also was afraid, after he knew that he was a Roman, and because he had bound him."*

Should Christians obey the law of the land?

Romans 13:1-7:

"Let every person be subject to the governing authorities. For there is no authority except from God, and those that exist have been instituted by God. Therefore whoever resists the authorities resists what God has appointed, and those who resist will incur judgment. For rulers are not a terror to good conduct, but to bad. Would you have no fear of the one who is in authority? Then do what is good, and you will receive his approval, for he is God's servant for your good. But if you do wrong, be afraid, for he does not bear the sword in vain. For he is the servant of God, an avenger who carries out God's wrath on the wrongdoer. Therefore one must be in subjection, not only to avoid God's wrath but also for the sake of conscience. For because of this you also pay taxes, for the authorities are ministers of God, attending to this very thing. Pay to all what is owed to them: taxes to whom taxes are owed, revenue to whom revenue is owed, respect to whom respect is owed, honor to whom honor is owed."

Titus 3:1:

"Remind them to be submissive to rulers and authorities, to be obedient, to be ready for every good work."

1 Peter 2:13-17:

"Be subject for the Lord's sake to every human institution, whether it be to the emperor as supreme, or to governors as sent by him to punish those who do evil and to praise those who do good. For this is the will of God, that by doing good you should put to silence the ignorance of foolish people. Live as people who are free, not using your freedom as a cover-up for evil, but living as servants of God. Honor everyone. Love the brotherhood. Fear God. Honor the emperor."

Hebrews 13:17:

"Obey your leaders and submit to them, for they are keeping watch over your souls, as those who will have to give an account. Let them do this with joy and not with groaning, for that would be of no advantage to you."

Mark 12:13-17:

"And they sent to him some of the Pharisees and some of the Herodians, to trap him in his talk. And they came and said to him, “Teacher, we know that you are true and do not care about anyone's opinion. For you are not swayed by appearances, but truly teach the way of God. Is it lawful to pay taxes to Caesar, or not? Should we pay them, or should we not?” But, knowing their hypocrisy, he said to them, “Why put me to the test? Bring me a denarius and let me look at it.” And they brought one. And he said to them, “Whose likeness and inscription is this?” They said to him, “Caesar's.” Jesus said to them, “Render to Caesar the things that are Caesar's, and to God the things that are God's.”

Matthew 17:24-27:

"When they came to Capernaum, the collectors of the two-drachma tax went up to Peter and said, “Does your teacher not pay the tax?” He said, “Yes.” And when he came into the house, Jesus spoke to him first, saying, “What do you think, Simon? From whom do kings of the earth

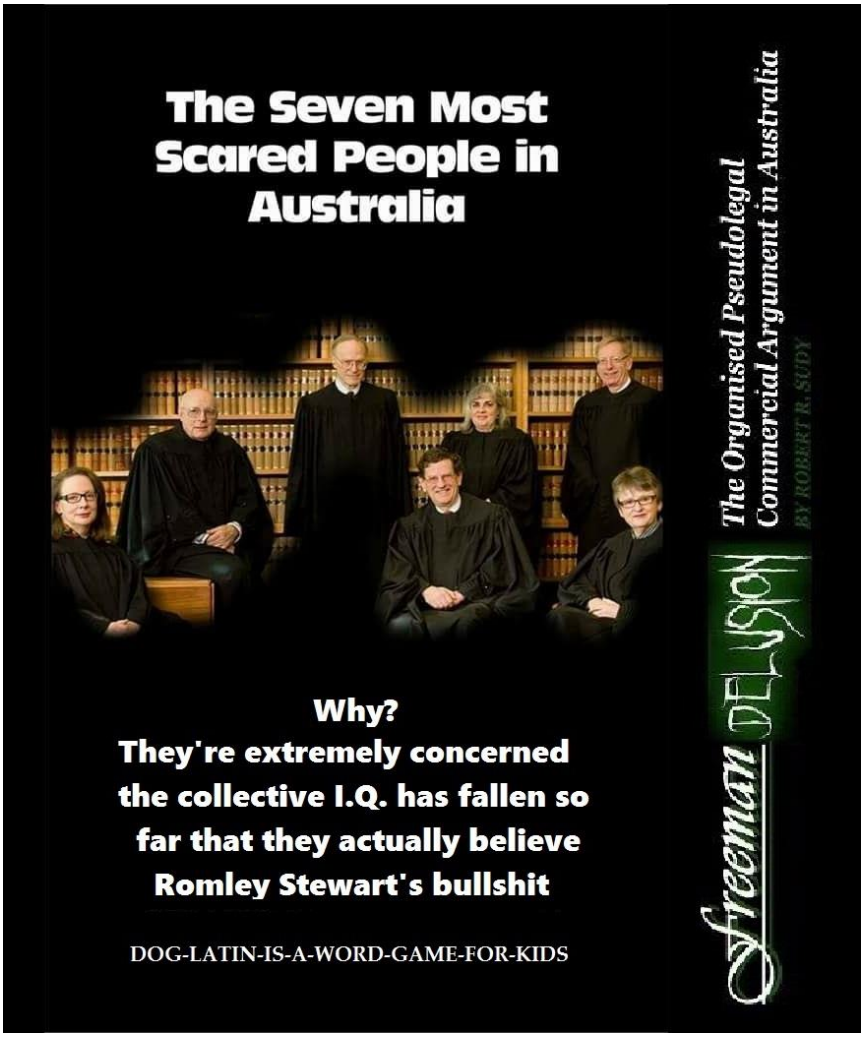
> *take toll or tax? From their sons or from others?" And when he said, "From others," Jesus said to him, "Then the sons are free. However, not to give offense to them, go to the sea and cast a hook and take the first fish that comes up, and when you open its mouth you will find a shekel. Take that and give it to them for me and for yourself."*

1 Peter 2:18:

> *"Servants, be subject to your masters with all respect, not only to the good and gentle but also to the unjust."*

However, a point I must include at this point, is that it is well recognised by the courts that appeals to scripture, that is to a moral principle higher than parliamentary sovereignty, is *"out of line with the mainstream of current constitutional theory as applied in our courts"* (See *BLF v Minister for Industrial Relations (1986) 7 NSWLR 372* at 384 per Kirby P.) See also *Gargan v Director of Public Prosecutions and anor [2004] NSWSC 10* and *BarrettLennard -v- Bembridge [2015] WASC 353*: *"Any moral principles derived from scripture do not detract from the sovereignty of Parliament."* citing Lord Reid in *British Railway Board v Pickin (1974) AC 765* (at 782): *"...since the supremacy of parliament was finally demonstrated by the Revolution of 1688 any such idea has become obsolete".* See article: ***The Laws of God are Superior?***

Glossa? The Romley Stewart Deception by Justinian



The Justinian Deception by Romley Stewart Stover is a captivating work of fiction.

I say fiction because that is all it is, a conspiratorial bedtime story about a world ruled by Rome through the secret use of grammar. There are no references cited that establish his story line as fact, only a couple of cherry-picked obscure verses to which he applies his own distorted interpretation to fit the narrative. It is jam-packed with innuendos, abstract speculations, unanswered questions, superstitions, personal religious bias, more warped interpretations, and possible theories, but facts are hard to come by.

It also adopts other myths already covered, like the basic maritime admiralty myth, ***Lost at Sea – The Cestui Que Vie Act 1666*** and ***Australia is NOT a foreign corporation registered with the U.S. S.E.C.*** and most others, and portrays them from the perspective of the "Glossa" narrative.

Ultimately, it is a story about a desperate search to establish that all capital lettering means something, because that is where it began. *"Rohan walked in and said: I found something in the: Chicago Manual of*

Styles, that identifies the all uppercase text as a "GLOSSA" and from that find, we found Justinian, of 530 AD, and the GLOSSA, that now gave us the ability to place a name with the all uppercase text."

(1) There is not a mention of how the name of his "tale" is associated with the Eastern Roman Emperor Justinian I, only his own conspiratorial speculation that this person created *"Glossa"* to enslave humanity. Apparently it was Accursius though, a Roman jurist "around 1230 in the Hohenstaufen Dynasty of the Roman Empire" that completed the "Justinian GLOSSA Corpus Juries Code, laws of the Dead Corporation System". There is no mention of what the Corpus Juris Civilis is, anything about its history, continuation, or revival. There is not even a single reference to the many fine literary works written about the Corpus Juris Civilis, to add a touch of credibility.

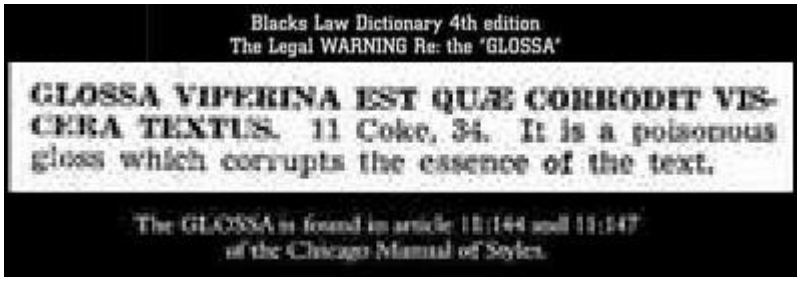
(2) The second glaring absence, is the meaning of a *"Glossa"*. He sidesteps around it citing every narrative-fitting definition of a similar root word "gloss", except the actual meaning of a "Glossa". The term has a specific meaning that in all honesty, looks to be intentionally omitted. Again, there is not a single reference to the many fine literary works written about "*Glossa*'s" to add a touch of credibility. I should tell him his page requires a *"Glossa"* for references, but he doesn't have any, and understanding what that might possibly mean would only confuse him further.

(3) The third point, identical, is the meaning of *"Dog Latin"*. He again sidesteps around it citing only the narrative-fitting Blacks Law: "the language of the Illiterate" and how since "Dog Latin" is considered "debased Latin", therefore it is "criminal, immoral and constitutes a counterfeit". Again, the term actually has a specific, first meaning, that in all honesty, looks to be intentionally omitted. And likewise, not a single reference to the many fine literary works written about "Dog Latin" to add a touch of credibility.

There is a reason why he makes so many omissions, it is simply because the facts omitted are inconsistent with his narrative, which is to establish that all capital lettering means something. After reading this analysis, it becomes obvious to the reader that he has cherry-picked a couple of terms out of context, and without even understanding what they mean, ran with it for his story, simply because it mentioned a possible association with all capital lettering. His very imaginative, lengthy extrapolations on these terms is really quite an absurd, paranoid delusion.

His basic premise is: *"The: SECRET-FOREIGN-SIGN language hidden in plain sight. "DOG-LATIN": The poison in the text: It is a poisonous gloss that corrupts the essence of the text."*

(4) He snatched this ambiguous beauty from the 4th Edition of Blacks Law Dictionary: "*GLOSSA VIPERINA EST QUIE CORRODIT VISCERA TEXTUS*. 11 Coke, 34. *It is a poisonous gloss which corrupts the essence of the text"*. It's a perfectly vague passage to promote further speculation, well, paranoia more so, since it is based on previous conclusions. Again, the associated lengthy extrapolations, warped personal opinions, and spooky insinuations, but not one reference to judicial meaning of the phrase cited.



(1) The Corpus Juris Civilis

(*"Body of Civil Law"*) is the modern name for a collection of fundamental works in jurisprudence, issued from 529 to 534 by order of Justinian I, Eastern Roman Emperor. It is also sometimes referred to as the Code of Justinian, although this name belongs more properly to the part titled *Codex Justinianus.* The work as planned had three parts: the Code (Codex) is a compilation, by selection and extraction, of imperial enactments to date; the *Digest* or *Pandects* (the Latin title contains both *Digesta* and *Pandectae*) is an encyclopedia composed of mostly brief extracts from the writings of Roman jurists; and the Institutes (*Institutiones*) is a student textbook, mainly introducing the Code, although it has important conceptual elements that are less developed in the Code or the Digest. Justinian found himself having to enact further laws and today these are counted as a fourth part of the Corpus, the ***Novellae Constitutiones*** (Novels, literally New Laws).

(See Charles M. Radding & Antonio Ciaralli, *"The Corpus Juris Civilis in the MIddle Ages: Manuscripts and Transmission from the Sixth Century to the Juristic Revival"* (Brill, Leiden, 2007)

The work was directed by Tribonian, an official in Justinian's court. His team was authorized to edit what they included. How far they made amendments is not recorded and, in the main, cannot be known because most of the originals have not survived.

The text was composed and distributed almost entirely in Latin, which was still the official language of the government of the Byzantine Empire in 529–534, whereas the prevalent language of merchants,

farmers, seamen, and other citizens was Greek. By the early 7th century, the official government language had become Greek during the lengthy reign of ***Heraclius (610–641)***.

New Greek legal codes, based on *Corpus Juris Civilis*, were enacted. The most known are: ***Ecloga (c. 740)*** - enacted by emperor Leo the Isaurian, ***Proheiron (c. 879)*** - enacted by emperor Basil the Macedonian and Basilika (late 9th century)—started by Basil the Macedonian and finished by his son emperor Leo the Wise. The name "*Corpus Juris Civilis*" occurs for the first time in 1583 as the title of a complete edition of the Justinianic code by Dionysius Godofredus.

(See Kunkel, W. *An Introduction to Roman Legal and Constitutional History.* Oxford 1966 (translated into English by J.M. Kelly), p. 157, n. 2)

The *Corpus Juris Civilis* was translated into French, German, Italian, and Spanish in the 19th century. However, no English translation of the entire Corpus Juris Civilis existed until 1932 when Samuel Parsons Scott published his version The Civil Law.

(See Hulot, H. et al., *Corpus iuris civilis. Le Digeste, les Institutes, le Code, les Nouvelles* 14 vols (1803-11); Otto, C.E., Schilling, B., Sintenis, C.F.F., *Das Corpus Iuris Civilis in's Deutsche übersetzt...* 7 vols. (1831-39); Vignali, G., *Corpo del diritto, corredato delle note di* D. Gotofredo... 10 vols. (1856-62); Rodriguez de Fonseca, B. et al., *Cuerpo del derecho civil*... 2 vols. (1874)

Unfortunately, Scott did not base his translation on the best available Latin versions, and his work was ***severely criticized***. Fortunately, ***Fred. H. Blume*** did use the best-regarded Latin editions for his translations of the Code and of the Novels. A new English translation of the Code, based on Blume's, was published in October 2016.

(See Bruce W. Frier, ed. (2016), *The Codex of Justinian. A New Annotated Translation, with Parallel Latin and Greek Text,* Cambridge University Press, p. 2963)

(2) The "Glossa"

Romley Stewart obviously read the ***definition of "Glossa" in Blacks Law Dictionary*** it is where he sourced the name Accursius, yet he neglected to give the stated definition. Although he should have used Greek scholar and translator Irnerius as an example instead of Accursius, because he had more influence on the early concept of a *"Glossa"*. (not that he even mentioned what one was) Irnerius' technique was to read a passage aloud, which permitted his students to copy it, then to deliver an excursus explaining and illuminating Justinian's text, in the form of "*Glosses*". Irnerius' pupils, the so-called *Four Doctors of Bologna*, were among the first of the "*glossators*" who established the curriculum of medieval Roman law. The tradition was carried on by French lawyers, known as the *Ultramontani,* in the 13th century.

(See Campbell, Lyle. 2004. *Historical Linguistics: An Introduction*. Edinburgh: Edinburgh University Press)

> ***(Lat. glossa). Interpretation; comment; explanation****; remark intended to illustrate a subject, especially the text of an author. See Webster. In Civil Law. Glossae, or glossemwta, were words which needed explanation. Calv. Lex. The explanations of such words. Id. Especially used of the short comments or explanations of the text of the Roman law, made during the twelfth century by the teachers at the schools of Bologna, etc., who were hence called glossators, of which*

glosses Accursius made a compilation which possesses great authority, called Glossa Ordinaria. These glosses were at first written between the lines of the text (glossae interlineares) , afterwards, on the margin, close by and partly under the text (glossae ma/rginales). Cush. Introd. Rom. Law, 130132.

A gloss (from Latin glossa; from Greek γλῶσσα (glóssa), meaning 'language' or 'tongue') is a brief notation, especially a marginal one or an interlinear one, of the meaning of a word or wording in a text. It may be in the language of the text, or in the reader's language if that is different. The word "gloss" was first used in the 1570s to refer to the insertion of a word as an explanation, the concept of a note being inserted in the margin of a text to explain a difficult word.

A collection of glosses is a glossary. A collection of medieval legal glosses, made by glossators, is called an apparatus. The compilation of glosses into glossaries was the beginning of lexicography, and the glossaries so compiled were in fact the first dictionaries. In modern times a glossary, as opposed to a dictionary, is typically found in a text as an appendix of specialized terms that the typical reader may find unfamiliar. Also, satirical explanations of words and events are called glosses. The German Romantic movement used the expression of gloss for poems commenting on a given other piece of poetry, often in the Spanish Décima style.

Glosses were originally notes made in the margin or between the lines of a text in a classical language; the meaning of a word or passage is explained by the gloss.

As such, glosses vary in thoroughness and complexity, from simple marginal notations of words one reader found difficult or obscure, to interlinear translations of a text with cross references to similar passages. Today parenthetical explanations in scientific writing and technical writing are also often called glosses. Hyperlinks to a glossary are today the most often used variation of a "gloss".

As I said earlier, Romley Stewart's "Justinian Deception" badly needs such a "*Glossa*" to hold all its missing references. It's common practice really, I suppose we call it a footnote.

*"Gloss : "word inserted as an explanation, translation, or definition," c. 1300, glose (modern form from 1540s; earlier also gloze), from Late Latin glossa "obsolete or foreign word," one that requires explanation; later extended to the explanation itself, from Greek glossa (Ionic), glotta (Attic) "language, a tongue; word of mouth, hearsay," also "obscure or foreign word, language," also "mouthpiece," literally "the tongue" (as the organ of speech), from PIE *glogh- "thorn, point, that which is projected" (source also of Old Church Slavonic glogu "thorn," Greek glokhis "barb of an arrow").*

Glosses were common in the Middle Ages, usually rendering Hebrew, Greek, or Latin words into vernacular Germanic, Celtic, or Romanic. ***Originally written between the lines, later in the margins.*** *Both glossology (1716) and glottology (1841) have been used in the sense "science of language."*

"From the Ancient Greek γλῶσσα (glôssa , " tongue ") ; compare -glossia. gloss- (chiefly anatomy) tongue, speech , language. ***Usage notes. An obsolete or foreign word requiring explanation.***

In the medieval legal tradition, the glosses on Roman law and Canon law created standards of reference, so-called *sedes materiae* (literally: seat of the matter). In common law countries, the term "judicial gloss" refers to what is considered an authoritative or "official" interpretation of a statute or regulation by a judge. Judicial glosses are often very important in avoiding contradictions between statutes, and determining the constitutionality of various provisions of law.

Ironically, the one point that caught his attention in the first place, that inspired wishful thinking, the mention of SMALL CAPITAL LETTERING being used, is not always the case for glossa's either. The *Glosas Emilianenses,* which are glosses added to this Latin codex, are now considered the first phrases written in the Castilian language. You will note that lower case lettering is used as a gloss, even back then.

This brings us to Romley Stewart's most cited little gem:

Article 11:147 of Chicago Manual of Styles.

He assets that the *"sign language"* mentioned here means a "symbol" or as he puts it: *"Ancient Latin, being an illustrative text"*. It clearly says: *"The written transcription of a sign is called a gloss."* In usual form he again extrapolates on this point to absurdity, and again omitting any inconsistencies. He then applies his literal but false interpretation of these passages to the written language, insisting that it is proper use of written English grammar to add the described hyphens, breaks and stopples (full stops). *"One rest in relation to sign language constitutes a stopple between the signs, whereas, one rest in written English constitutes the joinder between the two words. Two rests are needed to confirm the stopple between words appearing in written English text, whereas only one rest will cause the stopple between words appearing as signs."* etc. It's clearly written there for all to see. What a discovery!

So he concludes:

> *"So lets translate: "The cat sat on the mat" into the Latin, in relation to article 11:147 of the: Chicago Manual of Styles, to see what happens:*
>
> *"The cat sat on the mat" = "THE-CAT-SAT-ON-THE-MAT"*
>
> *Now from DOG-LATIN to English:*
>
> *"THE CAT SAT ON THE MAT" = "The. Cat. Sat. On. The. Mat."*
>
> *As you can see, the second sample translated into nothing readable, its babble, that's why the second sample is called: "DOG-LATIN" or "Dog Latin" being the language of the illiterate. It is debased."*
>
> *"COMMONWEALTH OF AUSTRALIA" = "Commonwealth. Of. Australia" …??? Does it grammatically exist in fact? Notice the full stops after each word? So lets translate the "Commonwealth Of Australia" into correct: American Sign Language, under the correct grammatical rules of Latin Text:*
>
> *"Commonwealth Of Australia" = "COMMONWEALTH-OF-AUSTRALIA". There is no ALL UPPERCASE TEXT constituted in the English Grammatical rules. It does not exist, and there is also no "unhyphenated" strings of SIGNES in the LATIN or American Sign Language."*
>
> *"A car drove by". The translation into ASL (American Sign Language) appears as: "VEHICLE-DRIVE-BY"… Did you notice the "hyphen"? … One rest in Written LATIN and American Sign Language, constitutes a break between the two signs, (Words) where as in relation to the English grammatical rules dealing with English Text, one rest constitutes joinder between the two words. Two rests or one rest and a full stop constitutes the break in relation to the written English Grammatical rules. Two different sets of very different grammatical rules!"*

The basis of his argument:

> *"This means that when LATIN or American Sign Language is used without the "hyphen" it renders nothing in fact, leaving only an ignorant presumption that such ALL UPPERCASE TEXT is valid. This is just word science. If you operate English text or Latin text in breach of its relating Manuals, you void warranty! just like operating an automobile in breach of its manuals. You void warranty."*

Incidentally, this assertion evokes influence from ***David Wynn Miller***, or ***Mary Elizabeth Croft***, who also share this conclusion regarding the use of hyphens, and existence due to grammar.

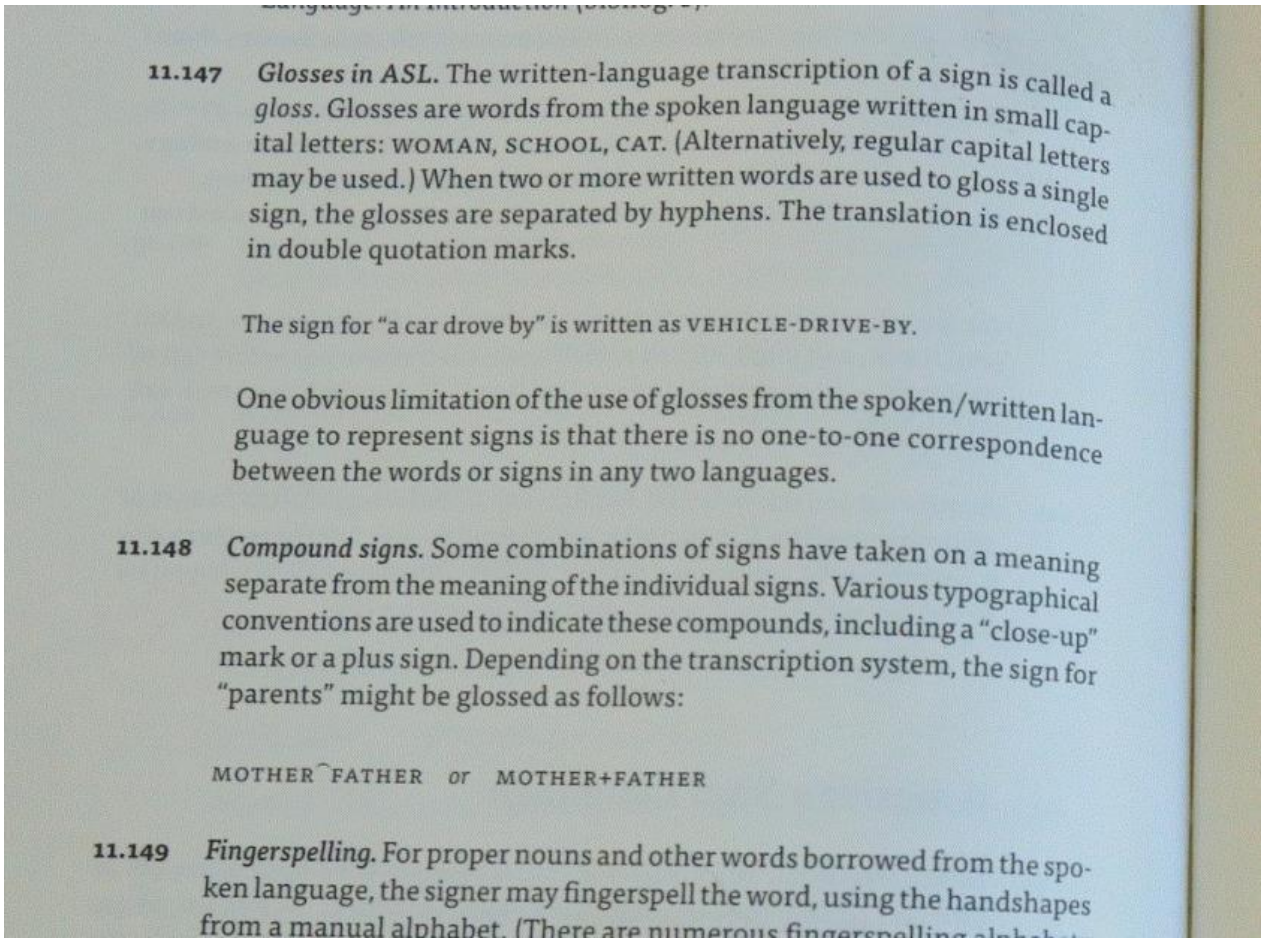
Now, let's get back down to the missing facts, and put some perspective and context to this cherry-picked screenshot and reference, which is in fact the one reference he cites constantly to establish his narrative.

Now, the reader has to take into consideration one very important, bubble-busting oversight. This section of Chicago Manual of Styles is describing the proper use of American Sign Language. Well, he obviously didn't know what that was, cherry-picked in isolation to its context, so he just speculated, as usual.

American Sign Language is actually the language of the deaf.

When it mentions a *"sign"* it refers to an associated hand signal, not a symbol, and not another language as theorised. *"The written transcription of a sign is called a gloss."* means exactly that, how to write a hand signal.

Now you can understand his precious citation, that is self-explanatory really, once you realise what a *"sign"* really is:



11.147 *Glosses in ASL.* The written-language transcription of a sign is called a *gloss*. Glosses are words from the spoken language written in small capital letters: WOMAN, SCHOOL, CAT. (Alternatively, regular capital letters may be used.) When two or more written words are used to gloss a single sign, the glosses are separated by hyphens. The translation is enclosed in double quotation marks.

The sign for "a car drove by" is written as VEHICLE-DRIVE-BY.

One obvious limitation of the use of glosses from the spoken/written language to represent signs is that there is no one-to-one correspondence between the words or signs in any two languages.

11.148 *Compound signs.* Some combinations of signs have taken on a meaning separate from the meaning of the individual signs. Various typographical conventions are used to indicate these compounds, including a "close-up" mark or a plus sign. Depending on the transcription system, the sign for "parents" might be glossed as follows:

MOTHER⌒FATHER *or* MOTHER+FATHER

11.149 *Fingerspelling.* For proper nouns and other words borrowed from the spoken language, the signer may fingerspell the word, using the handshapes from a manual alphabet. (There are numerous fingerspelling

"Sign languages are typically transcribed word-for-word by means of a gloss written in the predominant oral language in all capitals; American Sign Language and Auslan are written in English. Prosody is often glossed as superscript words, with its scope indicated by brackets.

[I LIKE]NEGATIVE [WHAT?]RHETORICAL, GARLIC. = "I don't like garlic."

Pure fingerspelling is usually indicated by hyphenation. Fingerspelled words that have been lexicalized (that is, fingerspelling sequences that have entered the sign language as linguistic units and that often have slight modifications) are indicated with a hash. For example, W-I-K-I indicates a simple fingerspelled word, but #JOB indicates a lexicalized unit, produced like J-O-B,

but faster, with a barely perceptible O and turning the "B" hand palm side in, unlike a regularly fingerspelled "B".

(3) "Dog Latin"

...is also known as ***Cod Latin, macaronic Latin, mock Latin, or Canis Latinicus*.** It refers to the creation of a phrase or jargon in imitation of Latin, often by "translating" English words (or those of other languages) into Latin by conjugating or declining them as if they were Latin words. Unlike the similarly named language game Pig Latin (a form of playful spoken code), ***Dog Latin is more of a humorous device for invoking scholarly seriousness***. Sometimes "dog Latin" can mean a poor-quality attempt at writing genuine Latin.

Pig Latin is mostly thought of as a secret language game for kids. In pig Latin, one takes a word, i.e., bibliophage, moves the first letter to the end of the word, and adds an "ay" sound. So, we get ibliophagebay. The most famous examples of this exercise are the words "ixnay" and "amscray" produced from "nix" and "scram" - so famous that today they're considered slang words in themselves. There are some additional rules about what to do when the word starts with a vowel.

The formalized modern game has its roots in centuries long past and may even predate Shakespeare. In Love's Labor's Lost (act V, scene 1), we find the following exchange:

Costard: Go to; thou hast it ad dungill, at the fingers' ends, as they say.
Holofernes: O, I smell false Latine; dunghill for unguem.

This is a play on a Latin proverb, a nonsensical multilingual wordplay was well known in Shakespeare's time - and now it had a name, false Latin, which had become "dog Latin" by the 18th century and "dog Greek" not long afterwards. Edgar Allen Poe used the term "pig Greek" in 1844. ***All of these terms were meant to signify "bad" Latin or things that sounded like Latin but weren't.***

Thomas Jefferson mentioned dog Latin by name in 1815:

"Fifty-two volumes in folio, of the acta sanctorum, in dog-latin, would be a formidable enterprise to the most laborious German."

At first the idea was simply to amuse, using puns, Latin endings appended to English roots, and so on. The first instance of a term describing a language purposely modified to confuse the listener is in Walter Scott's *Kennilworth* (1821), where a character says...

"A very learned man ... and can vent Greek and Hebrew as fast as I can 'thieves' Latin.'"

The expression referred to the argot of the underworld, sometimes used in conversation to confuse outsiders. In the mid-19th/early 20th century it also meant the lingo used in carnivals and circuses to prevent a "mark" from understanding what the carnies were saying.

A verse in similar vein, from ***Ronald Searle's Down with Skool*:**

"Caesar adsum jam forte
Brutus aderat
Caesar sic in omnibus
Brutus sic in at"

(which, when read aloud using traditional English pronunciation of Latin, sounds like…

"Caesar 'ad(had) some jam for tea
Brutus 'ad a rat
Caesar sick in omnibus
Brutus sick in 'at (hat)"

(but which means in Latin…

"Caesar I am already here by chance
Brutus was present
Caesar thus in all things
Brutus thus in but"

Kids developed their own secret code, which by 1866 was called "hog-Latin." In The Galaxy of that year we find the following:

"He adds as many new letters as the boys in their "hog latin," which is made use of to mystify eavesdroppers. A boy asking a friend to go with him says, "Wig-ge you-ge go-ge wig-ge me-ge?" The other, replying in the negative says, "Noge, Ige woge."

The term "pig Latin" appeared in the same decade and seems to have gradually vanquished other claimants (double Dutch, etc.) as the term of choice. The modern system of dropping the first letter, etc., is almost certainly an invention of the 20th century. Proving that silliness knows no bounds, one can find on the Internet today a translation of the Bible into pig Latin. Google even has a pig Latin translator in its language tools.

Ankindmay isway oomeday!

(4) "GLOSSA VIPERINA EST QUIE CORRODIT VISCERA TEXTUS.

11 Coke, 34. ***"It is a poisonous gloss which corrupts the essence of the text."***

Romley Stewart would of loved these tidbits too:

Glossa Viperina Est Quae Corrodit Viscera Textus: ***"A viperine gloss which eats out the vitals of the text."*** 10 Coke, 70; 2 Bulst. 79. ***"To their false glosses that opposeth his own sole and single authority. Christ, by taking away their viperine glosses that did eat out the bowels of the text..."*** or... ***"Any viperine gloss that may be put upon it..."*** evil because... ***Viperine describes a snake,*** an identical meaning to the "poisonous" description in 11 Coke, 34. Maledicta expositio quae corrumpit textum: ***"A cursed construction which corrupts the text".*** 2 Coke, 24; 4 Coke, 35; 11 Coke, 34; Wingate, Max. 26.

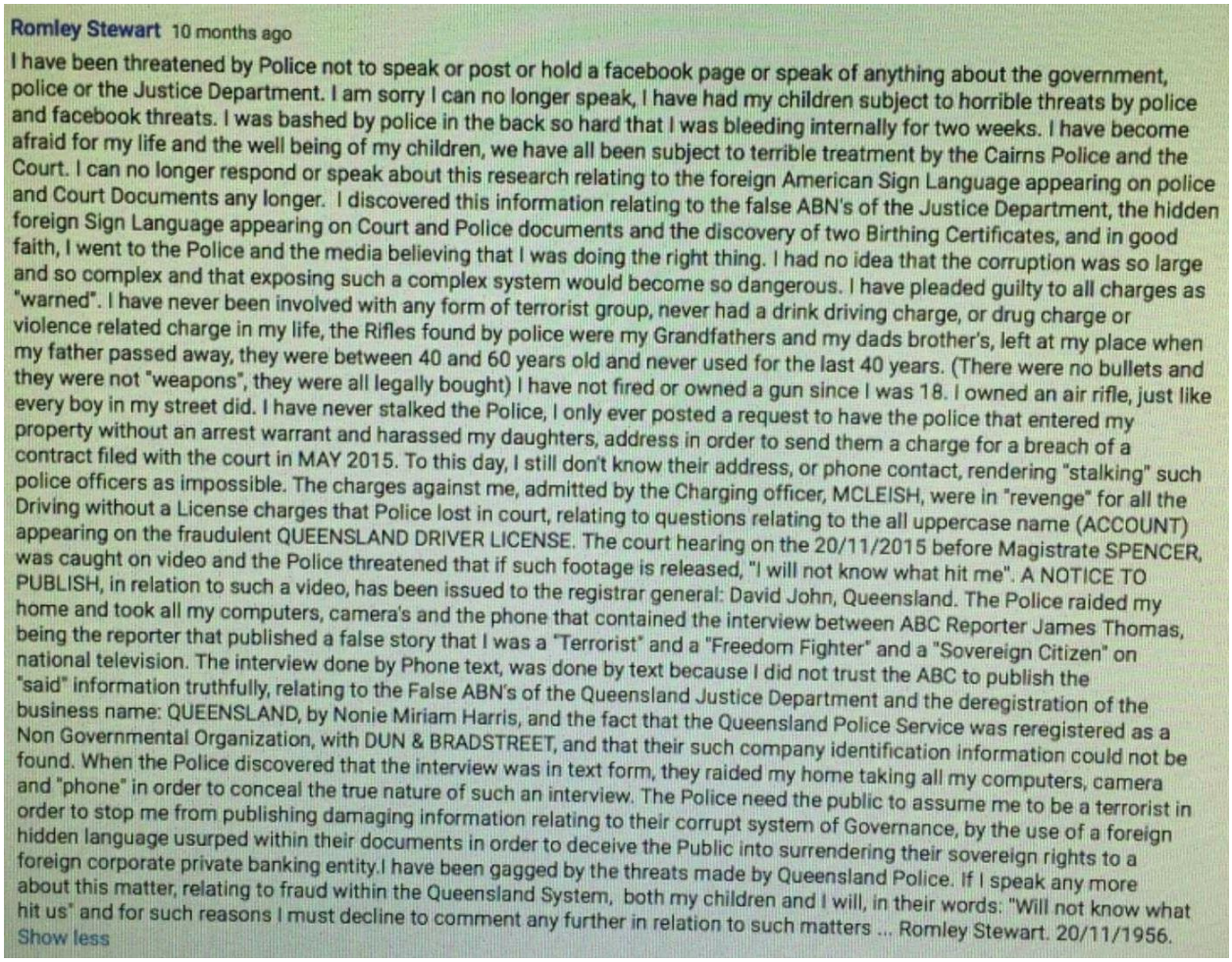
These phrases are quite simple to understand, now that one knows what a *"Glossa"* really is. They describe the actions of a glossator placing a glossa on a manuscript, with an interpretation that is flawed, contrary or inconsistent with the source text, presumably added to confuse or cause the reader to adopt a certain unfavourable interpretation. This was much the case in various interpretations of holy books, with the glossator adding notes from the perspective of his own philosophy, school of thought, sect or denomination, especially during the Schisms and the Reformation.

We now know...

(a) the real meaning of *"Glossa"* and that it is not a secret symbol language invented by Justinian, or anyone else. Your name appearing on your licence in capital letters is definitely not a "*Glossa*" margin or footnote, it doesn't even have any relation to the term.

(b) how hand signals for the hearing impaired are written is also very irrelevant to the way a name is written on a licence.

(c) that *"Dog Latin"* is a word game, for kids it has nothing to do with unhyphenated capital lettering, and likewise, proper English in all capitals doesn't require any hyphens to be valid.



Romley Stewart 10 months ago

I have been threatened by Police not to speak or post or hold a facebook page or speak of anything about the government, police or the Justice Department. I am sorry I can no longer speak, I have had my children subject to horrible threats by police and facebook threats. I was bashed by police in the back so hard that I was bleeding internally for two weeks. I have become afraid for my life and the well being of my children, we have all been subject to terrible treatment by the Cairns Police and the Court. I can no longer respond or speak about this research relating to the foreign American Sign Language appearing on police and Court Documents any longer. I discovered this information relating to the false ABN's of the Justice Department, the hidden foreign Sign Language appearing on Court and Police documents and the discovery of two Birthing Certificates, and in good faith, I went to the Police and the media believing that I was doing the right thing. I had no idea that the corruption was so large and so complex and that exposing such a complex system would become so dangerous. I have pleaded guilty to all charges as "warned". I have never been involved with any form of terrorist group, never had a drink driving charge, or drug charge or violence related charge in my life, the Rifles found by police were my Grandfathers and my dads brother's, left at my place when my father passed away, they were between 40 and 60 years old and never used for the last 40 years. (There were no bullets and they were not "weapons", they were all legally bought) I have not fired or owned a gun since I was 18. I owned an air rifle, just like every boy in my street did. I have never stalked the Police, I only ever posted a request to have the police that entered my property without an arrest warrant and harassed my daughters, address in order to send them a charge for a breach of a contract filed with the court in MAY 2015. To this day, I still don't know their address, or phone contact, rendering "stalking" such police officers as impossible. The charges against me, admitted by the Charging officer, MCLEISH, were in "revenge" for all the Driving without a License charges that Police lost in court, relating to questions relating to the all uppercase name (ACCOUNT) appearing on the fraudulent QUEENSLAND DRIVER LICENSE. The court hearing on the 20/11/2015 before Magistrate SPENCER, was caught on video and the Police threatened that if such footage is released, "I will not know what hit me". A NOTICE TO PUBLISH, in relation to such a video, has been issued to the registrar general: David John, Queensland. The Police raided my home and took all my computers, camera's and the phone that contained the interview between ABC Reporter James Thomas, being the reporter that published a false story that I was a "Terrorist" and a "Freedom Fighter" and a "Sovereign Citizen" on national television. The interview done by Phone text, was done by text because I did not trust the ABC to publish the "said" information truthfully, relating to the False ABN's of the Queensland Justice Department and the deregistration of the business name: QUEENSLAND, by Nonie Miriam Harris, and the fact that the Queensland Police Service was reregistered as a Non Governmental Organization, with DUN & BRADSTREET, and that their such company identification information could not be found. When the Police discovered that the interview was in text form, they raided my home taking all my computers, camera and "phone" in order to conceal the true nature of such an interview. The Police need the public to assume me to be a terrorist in order to stop me from publishing damaging information relating to their corrupt system of Governance, by the use of a foreign hidden language usurped within their documents in order to deceive the Public into surrendering their sovereign rights to a foreign corporate private banking entity.I have been gagged by the threats made by Queensland Police. If I speak any more about this matter, relating to fraud within the Queensland System, both my children and I will, in their words: "Will not know what hit us" and for such reasons I must decline to comment any further in relation to such matters ... Romley Stewart. 20/11/1956.

Show less

https://freemandelusion.com/wp-content/uploads/2018/07/open-letter-to-romley-stewart-from-robert-sudy.pdf

What the courts think about this concept

O'Hagan v Commissioner of Taxation [2020] QDC 288:

> *"The defendant relies upon the fact that English is the official language of Australia and that The Chicago Manual of Style is definitive of the language. It does seem to be a 1104-page venerable, time-tested guide to style, usage, and grammar. This ground of appeal is misguided. It seems to me that it is a mere manual of style to guide consistency of style for writers, editors, proof-readers, indexers, copywriters, designers, and publishers, informing the editorial canon with sound, definitive advice – this is distinct from being definitive of the English language itself. The language is that understood of the ordinary use and meaning of the language in conventional society, and even if written in a different style, with poor grammar or punctuation, or syntax, or slang, the court will resort to acceptance principles of interpretation and common usage to determine the ordinary meaning of the words in the community. In this case, all documents were in English and readily understood. They were properly admitted by the magistrate pursuant to s 69 of the Evidence Act 1995 (Cth). ... I have done my best to learn and understand the merits of the appellant's arguments to ensure a fair and full review of the case. For the most part, the appellant's assertions could be considered a nonsense in conventional society, foreign to Australian law and verging on the bizarre, and whilst very interesting, they are well beyond the scope of this proceeding and role of this court."*

Maksacheff v Commonwealth Bank of Australia [2017] NSWCA 126:

> *"Mr and Mrs Maksacheff's written submissions also assert that there were various deficiencies in the Bank's supporting affidavits and the judgments of the courts below, to the effect* ***that the differing languages and fonts*** *appearing in the judgments proved "deception by this arbitral tribunal that appears not a Court of competent jurisdiction or have subject matter jurisdiction" [sic, as in original] and that the pro-forma "Judgement/Order" documents contain* ***"unreadable hidden languages, which appears to be dog latin/Glossa"*** *and are illegitimate for want of a signature of a Supreme Court Justice. The submissions also refer to* ***"symbolism"*** *and the use of* ***"hidden language"*** *by the Bank, which is alleged to be an attempt to deceive Mr and Mrs Maksacheff and* ***to constitute fraud****. As will be manifest, these assertions are* ***nonsensical****. Neither appears to advance comprehensible claims. We reproduce them, not to imbue them with any substance, but, rather, to illustrate their* ***nonsensical nature****."*

Rambaldi & anor v Rice Bar Restaurant & anor [2018] VSC 218:

> *"The affidavit is* ***rambling, nonsensical*** *and, aside from the occasional assertion in respect of matters the subject of this claim, is unresponsive to Mr Rambaldi's affidavit of 7 December 2017. By way of example in this regard, an extract of the defendant's affidavit: "We make this "special appearance" before this honourable court, to assist the court in distinguishing between ourselves: Kim Huit living spirit of the House Tang and KIM HUIT TANG (and all the derivatives and variation in the spelling of the said name* ***(CORPORATION SOLE), in DOG-LATIN of the grammatical fact stating that such NAME written in DOG-LATIN-GLOSSA style in any of your***

> ***documents are Corrupt and Criminal**, our appearance before the court must not be construed as volunteering or consenting to the Plaintiff or the court jurisdiction.*

Wollongong City Council v Falamaki [2009] FMCA 1204:

> *"In summary, Dr Falamaki and Ms Williams are making an informal application for a person identifying himself as Judge: David-Wynn: Miller to intervene or to appear as amicus curiae in order to prove by evidence and draw the Court's attention to a series of frauds which they describe and characterise as **syntax fraud**. I have ignored and put to one side the numerous statements delivered by Ms Williams and her supporters that the failure to hear and accept the argument in respect of syntax fraud would result in me also being guilty of fraud and breaching my judicial responsibilities. **The apparent fervour of the members of this linguistic cult led by Mr Miller has the distinct character of a crusade** – searching for a public platform to ventilate their views. .. Fraud at common law or in equity concerns the use of false representations to gain an unjust advantage. Syntax is the grammatical arrangement of words showing their connection and relationship (a set of rules for analysis of this connection and relationship). **The concept of fraud perpetrated by syntax is not a concept currently reflected in the Commonwealth or State statutes or at common law**."*

Wollongong City Council v Dr Masood Falamaki [2010] NSWLEC 66:

> *"**HIS HONOUR**: This case is not about sentence structure and **syntax**. It's about orders which I'm sure Dr Falamaki can read and understand. .. We're not dealing with maritime law here. .. Regrettably, I did not find the submissions helpful in addressing Dr Falamaki's claim."*

The Trustee of the Property of Currey (A Bankrupt) v Currey [2017] FCCA 2692:

> *"The respondents' argument is that by reason of **"syntax fraud"**, the respondents have some type of defence to these proceedings. "Judge: David-Wynn: Miller" has in another case attempted to explain a theory that appears to be a creation by him that Mrs Currey referred to before me as **"CORRECT-SENTENCE-STRUCTURE-COMMUNICATION-PARSE-SYNTAX-GRAMMAR"**. Craig J recorded that: Regrettably, I did not find the submissions helpful in addressing Dr Falamaki's claim. Similarly, I do not find the submissions made by Mr and Mrs Currey based upon what they described as **"**CORRECT-SENTENCE-STRUCTURE-COMMUNICATION-PARSE-SYNTAX-GRAMMAR**"** helpful. Indeed, I did not find them comprehensible."*

The Driving v Travelling conundrum

The term "Driving" is understood as a "Commercial activity" to pseudolaw adherents - Instead of admitting to "Driving" (as described in the statute) they prefer to practice the "Common law right" to "Travel" in their "Private Automobiles" on "The Kings Highway".

There is a great conundrum here, they cannot have a valid licence or registration, because it would create "joinder" with a "private corporation" (the traffic registry or police). Think about it. How dare our "policy enforcers" interrupt their "lawful right" to "travel", and then attempt to force them to "contract" with them, at threat of armed violence. The dirty scumbags, hey. Grab an outdated foreign law dictionary and check this out:

The definition of a "Driver" in Bouvier's Law Dictionary, (1914 ed., Pg. 940) is

> *"One employed in conducting a coach, carriage, wagon, or other vehicle."*

The definition of "Motor Vehicle" (Title 18 USC 31) is

> *"Every description or other contrivance propelled or drawn by mechanical power and used for commercial purposes on the highways in the transportation of passengers, or passengers and property."*

"Used for commercial purposes" means

> *"the carriage of persons or property for any fare, fee, rate, charge or other considerations, or directly or indirectly in connection with any business, or other undertaking intended for profit."*

The definition of "Traffic" in Bouvier's Law Dictionary, (1914 ed., Pg. 3307) is

> *"Commerce, trade, sale or exchange of merchandise, bills, money, or the like. The passing of goods and commodities from one person to another for an equivalent in goods or money."*

Those indoctrinated by pseudolaw are told to use the term "TRAVEL" or "SOJOURN" as opposed to "DRIVE", and "AUTOMOBILE" as opposed to "VEHICLE" etc. They claim that "driving" is a business term, denoting "For Hire", and for these reasons the activity doesn't apply to those using their conveyance just for private use.

Unfortunately for them, these definitions from outdated foreign dictionaries make no difference at all in the eyes of police or magistrates, and they have no obligation to follow these terms at all. These interpretory concepts are further discussed in ***Van den Hoorn v Ellis [2010] QDC 451***

Roads and transport are a state matter, and each state has its own Roads and Traffic Act, with the glossary of terms included. This is called *"Intrinsic evidence"*, which is defined as information contained within the definition section of the Act. The use of the Interpretation Acts, and Hansard (a record of debates in parliament concerning that legislation) is called *"Extrinsic evidence"* which is defined as information which is obtained from outside of the Act. See the article on ***Interpreting legalese***.

This is New South Wales legislation, section 4 of the ***Road Traffic Act 2013***, but you'll find the other states are similar. This is the definitions NSW Police and the courts are obliged to follow...

LICENCE...

"driver licence" means: (a) a licence (including a conditional licence, a provisional licence and a learner licence) issued in accordance with the statutory rules authorising the holder to drive one or more classes of motor vehicle on a road or road related area, or (b) a driver licence receipt.

"driver licence receipt" means a receipt that: (a) is issued following an application for an Australian driver licence and after payment of any applicable fee, and (b) authorises the holder to drive one or more classes of motor vehicle on a road or road related area.

"learner licence" means a licence or permit issued to a person under a law in force in a State or internal Territory to authorise the person to drive a motor vehicle on a road or road related area for the purpose of learning to drive a motor vehicle.

"probationary licence" means a licence to drive a motor vehicle: (a) issued to a person who applies for a driver licence following a period of disqualification from driving: ordered by a court in Australia, or (b) issued to replace an equivalent licence issued under a corresponding driver law.

"provisional licence" means a licence (other than a learner licence) to drive a motor vehicle, issued under a law in force in a State or internal Territory, that is subject to conditions, restrictions or qualifications.

"provisional P1 licence" means a provisional P1 licence issued in accordance with the statutory rules.

"provisional P2 licence" means a provisional P2 licence issued in accordance with the statutory rules.

"relevant Australian driver licence" means: (a) an Australian driver licence, or (b) a learner licence issued under a law in force in a State or internal Territory authorising the holder to drive a motor vehicle on a road or road related area.

"restricted licence" means an authority to drive a motor vehicle issued at the direction of a court in Australia that authorises the holder to drive only in the course of the holder's employment or in other specified restricted circumstances.

"unrestricted driver licence" means a driver licence other than a learner licence or provisional licence.

VEHICLE...

"motor vehicle" means a vehicle that is built to be propelled by a motor that forms part of the vehicle.
"vehicle" means: (a) any description of vehicle on wheels (including a light rail vehicle) but not including any other vehicle used on a railway or tramway, or (b) any description of tracked vehicle (such as a bulldozer), or any description of vehicle that moves on revolving runners inside endless tracks, that is not used exclusively on a railway or tramway, or (c) any other description of vehicle prescribed by the statutory rules.

"registrable vehicle" means: (a) any motor vehicle, or (b) any trailer, or (c) any other vehicle prescribed by the statutory rules for the purposes of this definition.
"registered" and "registration" in relation to a vehicle-see section 7.

TRAFFIC...

"traffic" includes vehicular traffic and pedestrian traffic and all other forms of road traffic.

DRIVE/DRIVER...

"drive" includes: (a) be in control of the steering, movement or propulsion of a vehicle, and (b) in relation to a trailer, draw or tow the trailer, and (c) ride a vehicle. "driver" means any person driving a vehicle, and includes any person riding a vehicle.

Losalini Rainima tested these theories all the way to the Supreme Court of New South Wales. You can read her case here. ***Losalini Rainima***

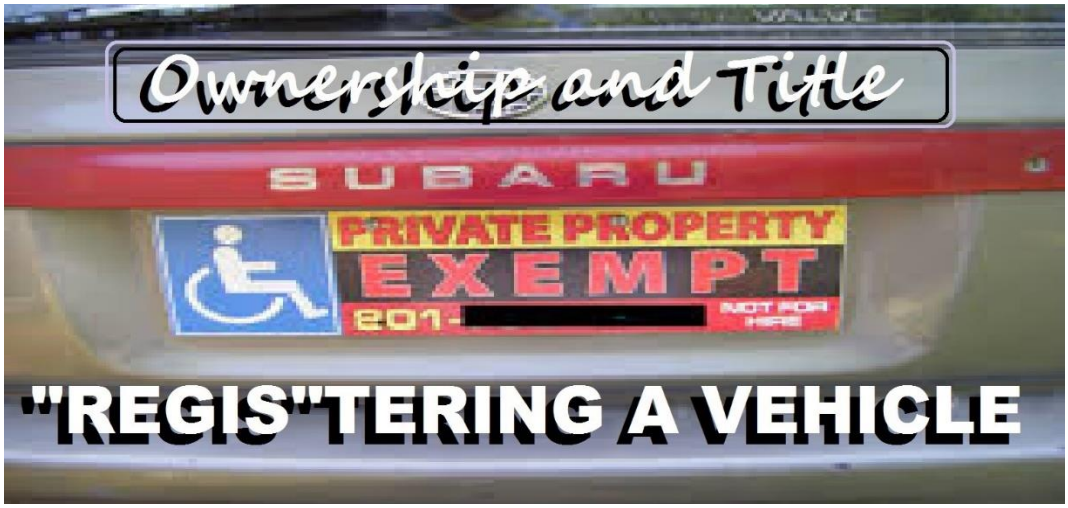
In Victoria, a person must pull over when signaled by police, which includes a PSO in their designated area, under section 59 (1) of the ***Road Safety Act 1986 (Vic)*** They must provide a name and address when asked. This is 'name AND address', not 'driver's licence'. You do not have to have your driver's licence on you if you're over 26 and not on your Ls or Ps (See ***section 19(8)***), but do need to provide your name and address in some way. This can be your rego number if you are driving your own car. Under ***section 76*** of the *Road Safety Act 1986 (Vic)* Police may arrest a person for driving offense if they refuse

to give a name AND address, or there is reason to believe they have given false information. See ***Police Powers in Victoria*** for Victorian Supreme Court rulings.

Similar to the relevant provisions in other states, in South Australia, under section 96(1) of the South Australian ***Motor Vehicles Act 1959***, drivers must produce their licence when requested by a police officer, either immediately or to a specified police station within forty-eight hours. The maximum penalty for failure to comply is a fine of $1,250.

Under s 137(b) of the ***Motor Vehicles Act 1959 (SA)*** a person must answer any question that would help to identify the driver of a motor vehicle The maximum penalty for failure to comply is a fine of $750. ***Section 40V*** of the *Road Traffic Act 1961 (SA)* also requires a driver to give their name and other personal details, while s 40W requires them to produce records, devices or other things.

Registration: Ownership and Title



Pseudolaw theory teaches that registering a vehicle with the state voids private ownership, transfers this to the state via the registration process, and therefore binds the operator to traffic regulation. It is theorised that one can "travel" with a vehicle as private property, but cannot do this with state property after registration. It is claimed *"regis"* means "king" so it follows registration means to "hand over" ownership to the king. For example, in ***Van den Hoorn v Ellis, [2010] QDC 451***:

> *"The appellant, in his Outline of Argument, included 12 pages of definitions which included a definition of "registration" as meaning the transfer of "superior ownership to the entity accepting the registration", adding that once an item has been registered, "you are no longer the OWNER … but instead you become the KEEPER".*

To break this myth down, we will examine ownership and the contractual relationship of registration.

The question is, "How does one acquire ownership?"

Ownership is usually acquired through purchase. A purchase is made through contract, which is defined by a transaction with a giver, a receiver, a valuable consideration over time and acceptance. Such relations are demonstrated in the related documentation. When you go to the store and buy a bag of oranges you pick out the oranges, take them to the checkout stand and pay for them and the store gives you a Title (receipt) for the oranges.

The transaction for a vehicle is not much different, except that the Title document may be a bit more complex. In most vehicle ownership transactions, there is a contract for sale, which, when completed and fulfilled, is your Title to the vehicle, just like the receipt was for the bag of oranges. It shows the cars previous owner sold the vehicle to you for a value that was agreed upon and exchanged.

Some people think that the "Certificate of Title" is the Title. It is not. The Certificate of Title is simply a certificate that represents the existence of a Title Insurance agreement over the car. It simply certifies that the state has used due diligence to cause you to demonstrate that you lawfully acquired the vehicle and that their records do not show any defects in the ownership of the vehicle. They certify that they will

continue to secure the ownership of the vehicle to you and they will use due diligence to secure that the vehicle will not change ownership in their system in an unlawful manner. It is purely Title Insurance.

Second let's look at the contractual relationship...

In the process of securing a Certificate of Title for a vehicle, there is nothing that states you are conveying ownership of the vehicle to the State and there is nothing in the code that indicates any such thing. Wherefore, the alleged transfer of ownership from you to the State is false. The state does not own your vehicle. A registration document is not proof of ownership in a legal sense anyway. The registered keeper should be the person who is actually using / keeping the vehicle and this is not necessarily the owner of the vehicle or the person who is paying for it. He is the person responsible for the vehicle so far as official communications from the police and traffic authorities, but the owner is the person who put up the cash (or was given it as a gift).

> ***The motor vehicle registry makes a point of saying that the person named on the registration document is not necessarily the owner.***

This is particularly true with a company car which is owned by the company, however the registration document should show the registered keeper, i.e. the day to day user (this may be an employee who has it as a permanent perk with his/her job). In the case of a car used by a married couple, ownership of any property is usually classed as joint and if the husband was stopped driving the vehicle without insurance the police would probably accept that he was joint owner and not look to the wife for additional offences, such as owner permitting no insurance. A registered keeper will usually be regarded as responsible for parking tickets etc so it would be wise to have the registration document changed if you are the owner, but not the user/keeper. Most insurance companies insist that the person who they insure is the primary user of the vehicle and can specify that the person is the registered keeper.

Finally, while the motor vehicle registry may cancel your registration for non-payment of fines, this cancellation does not impact on the ownership of the vehicle in any way, as it would if this premise had any merit. Hypothetically, if the state owned it by the registration process, and subsequently you could no longer be the "user" because of this cancellation, then they could just come over and collect their property. They don't, because the vehicle still remains the property of the financial owner.

Vehicle registration is not a "TRANSFER OF TITLE" nor does the process involve any sort of "CONTRACT" either. It is governed entirely by statute, the obligation to the states traffic laws regarding vehicle registration and identification plates is statutory, not contractual.

U.S. case law: Licence v Freedom of travel

I have read quite a few comments from people online in Australia, that there exists in the U.S. a legal method that allows Americans to drive without a license. As you will see, there is no "common law right" to "travel" in the U.S. (as in the pseudolaw concept of driving unlicenced, by "automobile") nor any "contractual" aspects involved. Identically to here in Australia, the privilege of driving is governed entirely by statute, and the obligation to the road rules is statutory, not contractual. Before I lay this myth to rest with two appeal cases in the Federal Courts, I will elaborate on the right to freedom of travel in U.S. law.

The U.S. Supreme Court has recognized a protected right to interstate travel, (*Saenz v. Roe*) and the Sixth Circuit has recognized a protected right to intrastate travel, i.e., *"a right to travel locally through public spaces and roadways,"* (*Johnson v. City of Cincinnati*). Yet, the District Court held the protected right to travel does not embody a right to a driver license or a right to a particular mode of transportation, citing *Duncan v. Cone, 2000 WL* holding:

> *"there is no fundamental right to drive a motor vehicle."*

John Doe No. 1 v. Georgia Department of Public Safety, observed that

> *"the Circuit Courts have uniformly held that burdens on a single mode of transportation do not implicate the right to interstate travel"*

Further, the District Court held that the right to travel, whatever its contours, is not infringed by Chapter 778 because a person who receives a certificate for driving is able to operate a motor vehicle just like a person who receives a driver license. (*Lulac, 2004*) Potential difficulties that may be experienced by one who does not have a driver license to use for identification purposes, were held not to implicate the right to travel. In *Saenz*, the Supreme Court identified three components of the right to travel:

> *"It protects the right of a citizen of one State to enter and to leave another State, the right to be treated as a welcome visitor rather than an unfriendly alien when temporarily present in the*

second State, and, for those travelers who elect to become permanent residents, the right to be treated like other citizens in that State."

"A state law implicates the right to travel when it actually deters travel, when impeding travel is its primary objective, or when it uses a classification that serves to penalize the exercise of the right." ~ Attorney General of New York v. Soto-Lopez

"Tennessee's issuance of certificates for driving, which confer all the same driving privileges as driver licenses, is clearly not designed primarily to impede travel and can hardly be said to deter or penalize travel. The state's denial of state-issued photograph identification to temporary resident aliens may arguably result in inconvenience, requiring the bearer of a certificate for driving to carry other personal identification papers, but this inconvenience can hardly be said to deter or penalize travel. To the extent this inconvenience burdens exercise of the right to travel at all, the burden is incidental and negligible, insufficient to implicate denial of the right to travel." ~ Town of Southold v. Town of East Hampton

U.S. case law recognises that *"citizens do not have a constitutional right to the most convenient form of travel. Something more than a negligible or minimal impact on the right to travel is required before strict scrutiny is applied." ~ State of Kansas v. United States*

The two following cases confirm that U.S. Federal Court will uphold a states legislative authority to issue citations for unlicensed driving regardless of the defense of the right to freedom of travel among other things...

GEORGE TAYLOR DUNCAN; CHRISTINE JOSEE NELLY DUNCAN, Plaintiffs-Appellants, v. LINDA CONE, Branch Supervisor, TN Department of Safety, Issuance Division; TIM STRINGFIELD, Issuance Division Manager, TN Department of Safety, Issuance Division; TENNESSEE DEPARTMENT OF SAFETY, Issuance Division, Defendants-Appellees. No. 00-5705 UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT 2000 U.S. App. LEXIS 33221 December 7, 2000, Filed PRIOR HISTORY: Western District of Tennessee. 00-01110. Todd. 4-27-00. DISPOSITION: Affirmed.

"CASE SUMMARY PROCEDURAL POSTURE: Plaintiffs appealed from judgment of the Western District of Tennessee, which dismissed their civil rights suit purportedly filed pursuant to 18 U.S.C.S. § 242, 42 U.S.C.S. § 408(a)(8), § 7(a) of the Privacy Act of 1974, U.S. Const. amend. I, and state law.

OVERVIEW: Plaintiffs applied for driver's licenses, but were denied by defendant agency and defendant employees for plaintiffs' failure, due to religious reasons, to list their social security numbers on the applications. Plaintiffs claimed that defendants' actions violated their right to free exercise of their religion. Plaintiff brought suit pursuant to 18 U.S.C.S. § 242, 42 U.S.C.S. § 408(a)(8), § 7(a) of the Privacy Act of 1974, U.S. Const. amend. I, and state law. The district court dismissed their claims as frivolous, and plaintiffs appealed. Upon review, judgment was affirmed. The district court properly dismissed plaintiffs' claims as frivolous. Neither § 242 nor § 408(a)(8) provided for a private cause of action. While a fundamental right to travel existed, the denial of driver's licenses did not infringe on plaintiffs' right to travel by other modes of transportation. It only prevented them from driving a vehicle. Consequently, plaintiffs' right to freely exercise their religion and their right to travel had not been impermissibly infringed.

OUTCOME: Judgment affirmed. The district court properly dismissed plaintiffs' claims as frivolous. Neither criminal statute sued under provided for a private cause of action.

> *"While a fundamental right to travel existed, denial of driver's licenses did not infringe on plaintiffs' right to travel by other modes of transportation."*

WILLIE C. McGHEE, Plaintiff, v. LT. MICHAEL McCALL, et al., Defendants.
Case No. 1:10-cv-333UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF MICHIGAN, SOUTHERN DIVISION 2010 U.S. Dist. LEXIS 52362 April 19, 2010
*SUBSEQUENT HISTORY: Adopted by, Complaint dismissed at McGhee v. McCall, 2010 U.S. Dist. LEXIS 52356 (W.D. Mich., May 27, 2010) COUNSEL: [*1] Willie C. McGhee, plaintiff, Pro se, Kalamazoo, MI. JUDGES: Joseph G. Scoville , United States Magistrate Judge. Honorable Paul L. Maloney.*

"This is a civil action brought by a pro se plaintiff against a lieutenant and other unnamed officers of the Kalamazoo Department of Public Safety. Plaintiff's complaint alleges that officers of the City of Kalamazoo have insisted that plaintiff have a driver's license and current license plate tags as a prerequisite to driving on the streets of the State of Michigan, in violation of plaintiff's federal constitutional right to travel. Plaintiff alleges that a driver's license and license plate tags are only necessary when a person is using the roads for purposes of commerce and that, as a "national citizen" of the United States, plaintiff has the right to travel on the roads of the state unencumbered by state licensing laws. Plaintiff seeks an award of damages for relief.

The court has granted plaintiff leave to proceed in forma pauperis, in light of his indigence. Under the provisions of federal law, PUB. L. No. 104-134, 110 STAT. 1321 (1996), the court is required to dismiss any action brought under federal law in [*2] forma pauperis if the complaint is frivolous, malicious, fails to state a claim upon which relief can be granted, or seeks monetary relief from a defendant immune from such relief. 28 U.S.C. § 1915(e)(2). An action may be dismissed as frivolous if "it lacks an arguable basis either in law or in fact." See Neitzke v. Williams, 490 U.S. 319, 325, 109 S. Ct. 1827, 104 L. Ed. 2d 338 (1989). Accordingly, an action is frivolous within the meaning of section 1915(e)(2) when it is based on either an inarguable legal conclusion or fanciful factual allegations. 490 U.S. at 325

In deciding whether the complaint states a claim, the court applies the standards applicable to Rule 12(b)(6) motions. The complaint must provide "a short and plain statement of the claim showing that the pleader is entitled to relief" in order to give the defendant fair notice of what the claim is and the grounds upon which it rests. Bell Atlantic Corp. v. Twombly, 550 U.S. 544, 555, 127 S. Ct. 1955, 167 L. Ed. 2d 929 (2007) (citing FED. R. CIV. P. 8(a)(2)).

While this notice pleading standard does not require "detailed" factual allegations, it does require more than the bare assertion of legal conclusions. Twombly, 550 U.S. at 555. The court must construe the complaint in the light most favorable [*3] to plaintiff, accept the plaintiff's factual allegations as true, and draw all reasonable factual inferences in plaintiff's favor. See DirecTV, Inc. v. Treesh, 487 F.3d 471, 476 (6th Cir. 2007). The court need not accept as true legal conclusions or unwarranted factual inferences. DirecTV, 487 F.3d at 476. Pro se pleadings are held to a less stringent standard than formal pleadings drafted by licensed attorneys. See Erickson v. Pardus, 551 U.S. 89, 94, 127 S. Ct. 2197, 167 L. Ed. 2d 1081 (2007); Haines v. Kerner, 404 U.S. 519, 520, 92 S. Ct. 594, 30 L. Ed. 2d 652 (1972). However, even the lenient treatment generally given pro se pleadings has its limits. See Jourdan v. Jabe, 951 F.2d 108, 110 (6th Cir. 1991). "[T]o survive a motion to dismiss, the complaint must contain either direct or inferential

allegations respecting all the material elements to sustain recovery under some viable legal theory." Bishop v. Lucent Techs., Inc., 520 F.3d 516, 519 (6th Cir. 2008).

Plaintiff challenges the laws of the State of Michigan requiring a driver's license and valid license plate tags as an abridgement of his constitutional right to travel. The Supreme Court has identified the right to interstate travel as a fundamental right of United States citizenship, [*4] protected from abridgement by the states. See Saenz v. Roe, 526 U.S. 489, 500-01, 119 S. Ct. 1518, 143 L. Ed. 2d 689 (1999).

The Supreme Court has long held, however, that the states have the power to regulate the use of motor vehicles on their highways. See, e.g., Kane v. New Jersey, 242 U.S. 160, 37 S. Ct. 30, 61 L. Ed. 222 (1916). Therefore, state-created burdens placed on travel generally and in a nondiscriminatory fashion, such as gasoline taxes, licensing requirements, and tolls do not constitute a violation of the right to travel, as they only place a negligible burden on commerce. See Miller v. Reed, 176 F.3d 1202, 1205 (9th Cir. 1999); Kansas v. United States, 16 F.3d 436, 442, 305 U.S. App. D.C. 14 (D.C. Cir. 1994). Furthermore, the federal courts unanimously hold that there is no fundamental right to drive a motor vehicle. See Duncan v. Cone, No. 00-5705, 2000 U.S. App. LEXIS 33221, 2000 WL 1828089 at * 2 (6th Cir. Dec. 7, 2000) ("While a fundamental right to travel exists, there is no fundamental right to drive a motor vehicle.") (citing Miller, 176 F.3d at 1205-06).

Consequently, plaintiff's civil action is premised on an inarguable legal conclusion. Plaintiff asserts that the Kalamazoo Department of Public Safety has insisted on his compliance with state driver's license and vehicle [*5] licensing laws as a condition to plaintiff's ability to operate a motor vehicle on the roads of this state. Plaintiff asserts that defendants have thereby violated his constitutional right to travel, but this contention is untenable. State driver's license laws impose only an "incidental and negligible" burden on the exercise of right to travel, a burden insufficient to implicate denial of the right. League of United Latin Am. Citizens v. Bredesen, 500 F.3d 523, 535 (6th Cir. 2007). There is simply no fundamental right to drive a motor vehicle. Id. at 534.

Consequently, the federal courts uniformly reject suits by plaintiffs who seek vindication of their nonexistent "right" to operate motor vehicles without complying with state licensing laws. See, e.g., Matthew v. Honish, 233 F. App'x 563, 564 (7th Cir. 2007); Hallstrom v. City of Garden City, 991 F.2d 1473, 1477 (9th Cir. 1993); Aziza El v. City of Southfield, No. 09-11569, 2010 U.S. Dist. LEXIS 26560, 2010 WL 1063825, at * 5 (E.D. Mich. Mar. 22, 2010); Nevada v. Matlean, No. 3:08cv505, 2009 U.S. Dist. LEXIS 53228, 2009 WL 1810759, at * 2 (D. Nev. June 24, 2009); John Doe No. 1 v. Georgia Dep't of Pub. Safety, 147 F. Supp. 2d 1369, 1375 (N.D. Ga. 2001); Kaltenbach v. Breaux, 690 F. Supp. 1551, 1553-55 (W.D. La. 1988). [*6] As the court summarized the rule in the John Doe case:

> *"A legal resident of Georgia does not have a constitutional right to a driver's license. Regulation of the driving privilege is a quintessential example of the exercise of the police power of the state, and the denial of a single mode of transportation does not rise to the level of a violation of the fundamental right to interstate travel."*

147 F. Supp. 2d at 1375. Plaintiff's complaint fails to state a claim upon which relief can be granted. I therefore recommend that it be dismissed pursuant to 28 U.S.C. § 1915(e)(2).
Dated: April 19, 2010 Joseph G. Scoville United States Magistrate Judge."

Is that speed camera tested

Breedon v Kongras (1996) 16 WAR 66 is often wrongly cited by pseudolaw theorists in application to the testing of speed cameras.

The case centred around prosecution under the *Fisheries Act 1905 (WA)*, regarding measurements of Western Rock Lobsters taken with a sheridan gauge, compliant with *s 10 of the National Measurement Act 1960 (Cth)* not speed cameras.

The following cases examine this contention:

Moran v Police [2010] SASC 269:

> *"The appellant's next complaint was that the speed device and the method of testing it by the police did not comply with s 10 of the National Measurement Act 1960 (Cth). Section of that Act operates only when it is necessary to ascertain whether or not a measurement of a physical quantity has been made in the terms of Australian legal units of measurement. It does not in its terms set out a method of determining whether an Australian legal unit has been measured correctly in a particular instance. Nor does it displace the common presumption of the accuracy of scientific instruments where the scientific instrument is notoriously accurate; see Jenkins v WMC Resources Ltd (1999) 21 WAR 393. Speedometers fall within the category of scientific instruments to which the presumption of accuracy applies; see Gray J in **Pinkerton v Police [2006] SASC 341**, **Redman v Klun (1979) 20 SASR 343** at 344 – 345."*

https://freemandelusion.com/wp-content/uploads/2018/07/moran-v-police-2010-sasc-269.pdf

Best v Police [2015] SASC 190:

> *"The certificates are therefore admissible if they satisfy the criteria prescribed by s 175(3)(ba) of the RTA as regards Certificate of Accuracy of Traffic Speed Analyser and s 175(3)(b) regards Certificate of Accuracy of Speedometer. There is no requirement that the certificates must satisfy the criteria required by the National Measurement Act.*
>
> *This Court has on many occasions considered and rejected very similar if not identical arguments to that contended by Mr Best regarding alleged non-compliance with the National Measurement Act. (See **Moran v Police [2010] SASC 269**; **Anastasiou v Police [2013] SASC 112**; **Kuipers-Lloyd v Police [2013] SASC 137** and **Millington v Police [2015] SASC 52**)*
>
> *I agree with the reasons of Peek J in **Police v Young (2012) 114 SASR 567** in deciding that the National Measurement Act does not exclude the operation of the State law and does not govern the operation of speed cameras in this State."*

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Police v Young (2012) 114 SASR 567:

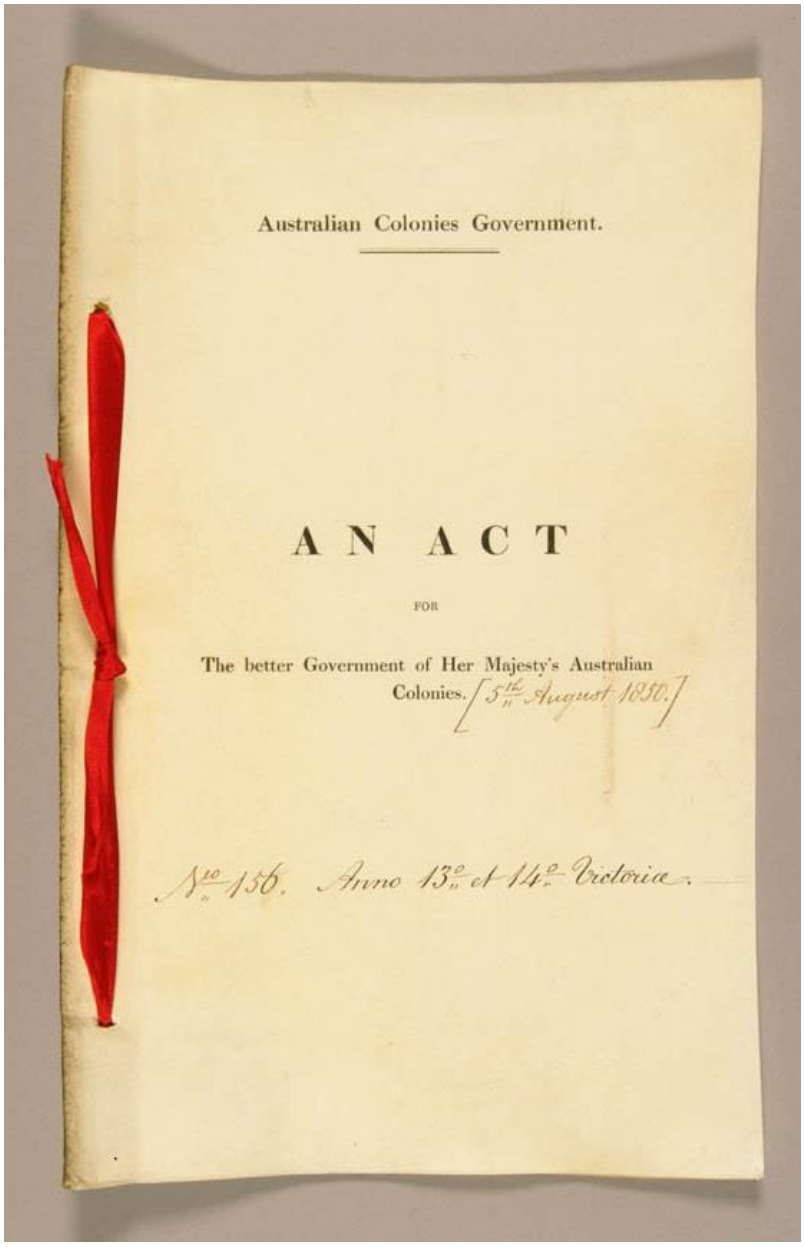
https://freemandelusion.com/wp-content/uploads/2018/07/police-v-young-2012-sasc-210.pdf

The following paper by ***Patrick Street LL B, Dip Crim*** written 23 April 2014 details several key arguments regarding speeding charges in Victoria, and the outcomes in the Victorian courts, including:

- 1. Statutory Definition of Evidence of Speed
- 2. Proof of testing, sealing and use of speed measuring device
- 3. Defence of honest and reasonable mistake – defence of necessity
- 4. National Measurement Act 1960 (Cth)

https://freemandelusion.com/wp-content/uploads/2018/07/speeding-charges.pdf

The Australian Constitutions Act 1850 (UK)



Australian Colonies Government.

AN ACT

FOR

The better Government of Her Majesty's Australian Colonies. [5th August 1850.]

No. 156. Anno 13° et 14° Victoriæ.

The Australian Constitutions Act 1850 (UK) is significant for all four Australian colonies established before the 1850s. The Assent original of the British Act of Parliament separating Victoria from New South Wales, and naming and providing a Constitution for the new Colony, it was signed by Queen Victoria on 5 August 1850. The New South Wales Parliament passed the necessary enabling legislation before separation took effect on 1 July 1851. This was formally the founding moment of the Colony of Victoria, its separation from New South Wales established by Section 1 of this Act.

This document was also important in its effects on the government of all four established colonies, New South Wales, Van Diemen's Land (Tasmania), South Australia and Western Australia.

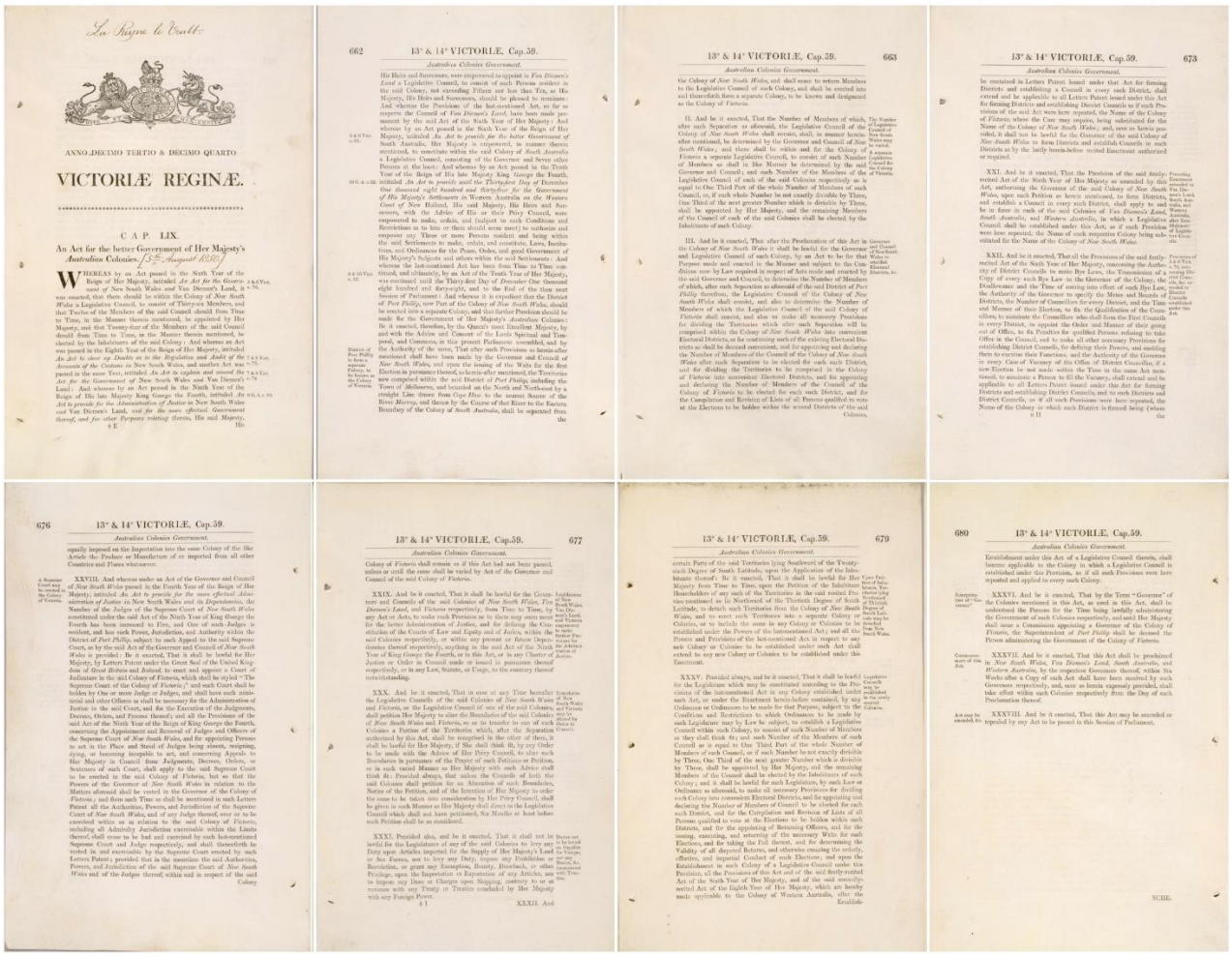
For New South Wales, the Act not only reduced the territory of the government in separating Victoria from New South Wales, but provided for changes to government within New South Wales. It liberalised the franchise qualifications for the New South Wales Legislative Council (Section 4) and it empowered the Governor and the Legislative Council, with Britain's approval, to establish a Parliament of two Houses, either appointed or elected (Section 2).

For Van Diemen's Land, the Act authorised a number of important changes:

- creation of a Legislative Council with two-thirds of the members elected (Section 7)
- empowering the Governor, with the advice and consent of this Legislative Council, to make laws 'for the Peace, Welfare and good Government' of the Colony, with the proviso that such laws not be repugnant to the law of England (Section 14)
- laws in force when writs were issued for the election of the Legislative Council were to remain in force (Section 25)
- the new Legislative Council could make further provision for the administration of justice, including juries (Section 29)
- any Bill passed by the new Legislative Council could be reserved by the Lieutenant-Governor 'for the signification of Her Majesty's pleasure thereon' (Section 33).

The Legislative Council also received the power to prepare Bills for Royal Assent altering the constitution of the Legislative Council by varying the qualifications of electors and elected members. It could also present a Bill for Royal Assent to replace itself with a Legislative Council and 'House of Representatives' whose members might be appointed or elected (Section 32). The way was paved for creating a colonial version of the two chambers (the House of Lords and the House of Commons) of the Imperial Parliament.

Western Australia had just begun to ***receive convicts***, and was thus subject to special provisions in Section 9 of the Act providing that, upon the petition of not less than one-third of the householders of the colony, and when the Colony ceased to depend on grants from the United Kingdom, a Legislative Council (to consist of members of whom two-thirds might be elected) could be established by the existing Council.



ANNO DECIMO TERTIO & DECIMO QUARTO

VICTORIÆ REGINÆ.

CAP. LIX.

An Act for the better Government of Her Majesty's *Australian Colonies.* [5th August 1850.]

WHEREAS by an Act passed in the Sixth Year of the Reign of Her Majesty, intituled *An Act for the Government* [illegible] was enacted, that there should be within the Colony of *New South Wales* a Legislative Council, to consist of Thirty-six Members, and that Twelve of the Members of the said Council should from Time to Time, in the Manner therein mentioned, be appointed by Her Majesty, and that Twenty-four of the Members of the said Council should from Time to Time, in the Manner therein mentioned, be elected by the Inhabitants of the said Colony: And whereas an Act was passed in the Eighth Year of the Reign of Her Majesty, intituled *An Act to shew up Doubts as to the Regulation and Audit of the Accounts of the Customs* in New South Wales, and another Act was passed in the same Year, intituled *An Act to explain and amend the Act for the Government of New South Wales and Van Diemen's Land*: And whereas by an Act passed in the Ninth Year of the Reign of Her late Majesty King George the Fourth, intituled *An Act to make further Provision for the Administration of Justice* in New South Wales and Van Diemen's Land, *and for the more effectual Government thereof, and for other Purposes relating thereto*, His said Majesty,

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His Heirs and Successors, were empowered to appoint a *Van Diemen's Land* a Legislative Council, to consist of such Persons resident in the said Colony, not exceeding Fifteen nor less than Ten, as His Majesty, His Heirs and Successors, should be pleased to nominate: And whereas the Provisions of the last-mentioned Act, so far as respects the Council of *Van Diemen's Land*, have been made permanent by the said Act of the Sixth Year of Her Majesty: And whereas by an Act passed in the Sixth Year of the Reign of Her Majesty, intituled *An Act to provide for the better Government of* South Australia, Her Majesty is empowered, in manner therein mentioned, to constitute within the said Colony of *South Australia* a Legislative Council, consisting of the Governor and Seven other Persons at the least: And whereas by an Act passed in the Tenth Year of the Reign of His late Majesty King George the Fourth, intituled *An Act to provide until the Thirty-first Day of* December *One thousand eight hundred and thirty-five for the Government of His Majesty's Settlements* in Western Australia *on the Western Coast of New Holland*, His said Majesty, His Heirs and Successors, with the Advice of His or their Privy Council, were empowered to make, ordain, and (subject to such Conditions and Restrictions as to him or them should seem meet) to authorize and empower any Three or more Persons resident and being within the said Settlements to make, ordain, and constitute, Laws, Institutions, and Ordinances for the Peace, Order, and good Government of His Majesty's Subjects and others within the said Settlements: And whereas the last-mentioned Act has been from Time to Time continued, and ultimately, by an Act of the Tenth Year of Her Majesty, was continued until the Thirty-first Day of *December* One thousand eight hundred and forty-eight, and to the End of the then next Session of Parliament: And whereas it is expedient that the District of *Port Phillip*, now Part of the Colony of *New South Wales*, should be erected into a separate Colony, and that Provision should be made for the Government of Her Majesty's *Australian* Colonies: Be it enacted, therefore, 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, That after such Provisions as herein-after mentioned shall have been made by the Governor and Council of *New South Wales*, and upon the issuing of the Writs for the first Election in pursuance thereof, as herein-after mentioned, the Territories now comprised within the said District of *Port Phillip*, including the Town of *Melbourne*, and bounded on the North and North-east by a straight Line drawn from *Cape Howe* to the nearest Source of the River *Murray*, and thence by the Course of that River to the Eastern Boundary of the Colony of *South Australia*, shall be separated from the

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the Colony of *New South Wales*, and shall cease to return Members to the Legislative Council of such Colony, and shall be erected into and thenceforth form a separate Colony, to be known and designated as the Colony of *Victoria*.

II. And be it enacted, That the Number of Members of which, after such Separation as aforesaid, the Legislative Council of the Colony of *New South Wales* shall consist, shall, in manner herein after mentioned, be determined by the Governor and Council of *New South Wales*; and there shall be within and for the Colony of *Victoria* a separate Legislative Council, to consist of such Number of Members as shall in like Manner be determined by the said Governor and Council; and such Number of the Members of the Legislative Council of each of the said Colonies respectively as is equal to One-Third Part of the whole Number of Members of such Council, or, if such whole Number be not exactly divisible by Three, One-Third of the next greater Number which is divisible by Three, shall be appointed by Her Majesty, and the remaining Members of the Council of each of the said Colonies shall be elected by the Inhabitants of such Colony.

III. And be it enacted, That after the Proclamation of this Act in the Colony of *New South Wales* it shall be lawful for the Governor and Legislative Council of such Colony, by an Act to be for that Purpose made and enacted in the Manner and subject to the Conditions now by Law required in respect of Acts made and enacted by the said Governor and Council, to determine the Number of Members of which, after such Separation as aforesaid of the said District of *Port Phillip* therefrom, the Legislative Council of the Colony of *New South Wales* shall consist, and also to determine the Number of Members of which the Legislative Council of the said Colony of *Victoria* shall consist, and also to make all necessary Provisions for dividing the Territories which after such Separation will be comprised within the Colony of *New South Wales* into convenient Electoral Districts, or for continuing such of the existing Electoral Districts as shall be deemed convenient, and for appointing and declaring the Number of Members of the Council of the Colony of *New South Wales* after such Separation to be elected for each such District, and for dividing the Territories to be comprised in the Colony of *Victoria* into convenient Electoral Districts, and for appointing and declaring the Number of Members of the Council of the Colony of *Victoria* to be elected for each such District, and for the Completion and Revision of Lists of all Persons qualified to vote at the Elections to be holden within the several Districts of the said Colonies,

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be contained in Letters Patent issued under that Act for forming Districts and establishing a Council in every such District, shall extend and be applicable to all Letters Patent issued under this Act for forming Districts and establishing District Councils as if such Provisions of the said Act were here repeated, the Name of the Colony of *Victoria*, where the Case may require, being substituted for the Name of the Colony of *New South Wales*; and, save as herein provided, it shall not be lawful for the Governor of the said Colony of *New South Wales* to form Districts and establish Councils in such Districts as by the lastly herein-before recited Enactment authorized or required.

XXI. And be it enacted, That the Provision of the said firstly-recited Act of the Sixth Year of Her Majesty as amended by this Act, authorizing the Governor of the said Colony of *New South Wales*, upon such Petition as herein mentioned, to form Districts, and establish a Council in every such District, shall apply to and be in force in each of the said Colonies of *Van Diemen's Land*, *South Australia*, and *Western Australia*, in which a Legislative Council shall be established under this Act, as if such Provision were here repeated, the Name of each respective Colony being substituted for the Name of the Colony of *New South Wales*.

XXII. And be it enacted, That all the Provisions of the said firstly-recited Act of the Sixth Year of Her Majesty, concerning the Authority of District Councils to make Bye Laws, the Transmission of a Copy of every such Bye Law to the Governor of the Colony, the Disallowance and the Time of coming into effect of such Bye Law, the Authority of the Governor to specify the Metes and Bounds of Districts, the Number of Councillors for every District, and the Time and Manner of their Election, to fix the Qualification of the Councillors, to nominate the Councillors who shall form the First Councils in every District, to appoint the Order and Manner of their going out of Office, to fix Penalties for qualified Persons refusing to take Office in the Council, and to make all other necessary Provisions for establishing District Councils, for defining their Powers, and enabling them to exercise their Functions, and the Authority of the Governor in every Case of Vacancy of the Office of District Councillor, if a new Election be not made within the Time in the same Act mentioned, to nominate a Person to fill the Vacancy, shall extend and be applicable to all Letters Patent issued under this Act for forming Districts and establishing District Councils, and to such Districts and District Councils, as if all such Provisions were here repeated, the Name of the Colony in which such District is formed being (where it

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equally imposed on the Importation into the same Colony of the like Article the Produce or Manufacture of or imported from all other Countries and Places whatsoever.

XXVIII. And whereas under an Act of the Governor and Council of *New South Wales* passed in the Fourth Year of the Reign of Her Majesty, intituled *An Act to provide for the more effectual Administration of Justice in New South Wales and its Dependencies*, the Number of the Judges of the Supreme Court of *New South Wales* constituted under the said Act of the Ninth Year of King George the Fourth has been increased to Five, and One of such Judges is resident, and has such Power, Jurisdiction, and Authority within the District of *Port Phillip*, subject to such Appeal to the said Supreme Court, as by the said Act of the Governor and Council of *New South Wales* is provided: Be it enacted, That it shall be lawful for Her Majesty, by Letters Patent under the Great Seal of the United Kingdom of *Great Britain and Ireland*, to erect and appoint a Court of Judicature in the said Colony of *Victoria*, which shall be styled "The Supreme Court of the Colony of *Victoria*," and such Court shall be holden by One or more Judge or Judges, and shall have such ministerial and other Officers as shall be necessary for the Administration of Justice in the said Court, and for the Execution of the Judgments, Decrees, Orders, and Process thereof; and all the Provisions of the said Act of the Ninth Year of the Reign of King George the Fourth, concerning the Appointment and Removal of Judges and Officers of the Supreme Court of *New South Wales*, and for appointing Persons to act in the Place and Stead of Judges being absent, resigning, dying, or becoming incapable to act, and concerning Appeals to Her Majesty in Council from Judgments, Decrees, Orders, or Sentences of such Court, shall apply to the said Supreme Court to be erected in the said Colony of *Victoria*, but so that the Provisions of the Charter of *New South Wales* in relation to the Matters aforesaid shall be vested in the Governor of the Colony of *Victoria*; and from and after such Time as shall be mentioned in such Letters Patent all the Authorities, Powers, and Jurisdiction of the Supreme Court of *New South Wales*, and of any Judge thereof, over or to be exercised within or in relation to the said Colony of *Victoria*, including all Admiralty Jurisdiction exercisable within the Limits thereof, shall cease to be had and exercised by such last-mentioned Supreme Court and Judge respectively, and shall thenceforth be vested in and exercisable by the Supreme Court erected by such Letters Patent; provided that in the meantime the said Authorities, Powers, and Jurisdiction of the said Supreme Court of *New South Wales* and of the Judges thereof, within and in respect of the said Colony

13° & 14° VICTORIÆ, Cap. 59. 677 *Australian Colonies Government.*

Colony of *Victoria* shall remain as if this Act had not been passed, unless or until the same shall be varied by Act of the Governor and Council of the said Colony of *Victoria*.

XXIX. And be it enacted, That it shall be lawful for the Governors and Councils of the said Colonies of *New South Wales*, *Van Diemen's Land*, and *Victoria* respectively, from Time to Time, by any Act or Acts, to make such Provision as to them may seem meet for the better Administration of Justice, and for fixing the Constitution of the Courts of Law and Equity and of Justice, within the said Colonies respectively, or within any present or future Dependencies thereof respectively, anything in the said Act of the Ninth Year of King George the Fourth, or in this Act, or in any Charter of Justice or Order in Council made or issued in pursuance thereof respectively, or in any Law, Statute, or Usage, to the contrary thereof notwithstanding.

XXX. And be it enacted, That in case at any Time hereafter the Legislative Councils of the said Colonies of *New South Wales* and *Victoria*, or the Legislative Council of one of the said Colonies, shall petition Her Majesty to alter the Boundaries of the said Colonies of *New South Wales* and *Victoria*, so as to transfer to one of such Colonies a Portion of the Territories which, after the Separation authorized by this Act, shall be comprised in the other of them, it shall be lawful for Her Majesty, if She shall think fit, by any Order to be made with the Advice of Her Privy Council, to alter such Boundaries in pursuance of the Prayer of such Petitions or Petition, or in such varied Manner as Her Majesty with such Advice shall think fit: Provided always, that unless the Councils of both the said Colonies shall petition for an Alteration of such Boundaries, Notice of the Petition, and of the Intention of Her Majesty to order the same to be taken into consideration by Her Privy Council, shall be given in such Manner as Her Majesty shall direct to the Legislative Council which shall not have petitioned, Six Months at least before such Petition shall be so considered.

XXXI. Provided also, and be it enacted, That it shall not be lawful for the Legislature of any of the said Colonies to levy any Duty upon Articles imported for the Supply of Her Majesty's Land or Sea Forces, nor to levy any Duty, impose any Prohibition or Restriction, or grant any Exemption, Bounty, Drawback, or other Privilege, upon the Importation or Exportation of any Articles, nor to impose any Dues or Charges upon Shipping, contrary to or inconsistent with any Treaty or Treaties concluded by Her Majesty with any Foreign Power.

XXXII. And

13° & 14° VICTORIÆ, Cap. 59. 679 *Australian Colonies Government.*

certain Parts of the said Territories lying Southward of the Twenty-sixth Degree of South Latitude, upon the Application of the Inhabitants thereof: Be it enacted, That it shall be lawful for Her Majesty from Time to Time, upon the Petition of the Inhabitant Householders of any such of the Territories in the said recited Provinces mentioned as lie Northward of the Thirtieth Degree of South Latitude, to detach such Territories from the Colony of *New South Wales*, and to erect such Territories into a separate Colony or Colonies, or to include the same in any Colony or Colonies to be established under the Powers of the last-mentioned Act; and all the Powers and Provisions of the last-mentioned Act in respect to any new Colony or Colonies to be established under that Enactment.

XXXV. Provided always, and be it enacted, That it shall be lawful for the Legislature which may be constituted according to the Provisions of the last-mentioned Act in any Colony established under such Act, or under the Enactment herein-before contained, by any Ordinance or Ordinances to be made for that Purpose, subject to the Conditions and Restrictions to which Ordinances to be made by such Legislature may by Law be subject, to establish a Legislative Council within such Colony, to consist of such Number of Members as they shall think fit; and such Number of the Members of such Council as is equal to One Third Part of the whole Number of Members of such Council, or if such Number be not exactly divisible by Three, One Third of the next greater Number which is divisible by Three, shall be appointed by Her Majesty, and the remaining Members of the Council shall be elected by the Inhabitants of such Colony; and it shall be lawful for such Legislature, by such Law or Ordinance as aforesaid, to make all necessary Provisions for dividing such Colony into convenient Electoral Districts, and for appointing and declaring the Number of Members of Council to be elected for each such District, and for the Completion and Revision of Lists of all Persons qualified to vote at the Elections to be holden within such Districts, and for the appointing of Returning Officers, and for the issuing, executing, and returning of the necessary Writs for such Elections, and for taking the Poll thereat, and for determining the Validity of all disputed Returns, and otherwise ensuring the orderly, effective, and impartial Conduct of such Elections; and upon the Establishment in such Colony of a Legislature under this Provision, all the Provisions of this Act and of the said firstly-recited Act of the Sixth Year of Her Majesty, and of the said secondly-recited Act of the Eighth Year of Her Majesty, which are hereby made applicable to the Colony of Western Australia, after the Establish-

680 13° & 14° VICTORIÆ, Cap. 59. *Australian Colonies Government.*

Establishment under this Act of a Legislative Council therein, shall become applicable to the Colony in which a Legislative Council is established under this Provision, as if all such Provisions were here repeated and applied to every such Colony.

XXXVI. And be it enacted, That by the Term "Governor" of the Colonies mentioned in this Act, as used in this Act, shall be understood the Persons for the Time being lawfully administering the Government of such Colonies respectively, and until Her Majesty shall issue a Commission appointing a Governor of the Colony of *Victoria*, the Superintendent of *Port Phillip* shall be deemed the Person administering the Government of the Colony of *Victoria*.

XXXVII. And be it enacted, That this Act shall be proclaimed in *New South Wales*, *Van Diemen's Land*, *South Australia*, and *Western Australia*, by the respective Governors thereof, within Six Weeks after a Copy of such Act shall have been received by such Governors respectively, and, save as herein expressly provided, shall take effect within such Colonies respectively from the Day of such Proclamation thereof.

XXXVIII. And be it enacted, That this Act may be amended or repealed by any Act to be passed in this Session of Parliament.

SCHE-

History

Victoria

The Port Phillip District grew rapidly. By 1850 it was a wealthy region with a population of more than 70 000 and contained nearly six million sheep (two-fifths of the Australian total). Throughout the 1840s the residents of the Port Phillip District agitated for independence from New South Wales. After the enactment of the ***New South Wales Constitution Act*** in 1842, they were granted the right to elect six of the 24 elected members of the Legislative Council of New South Wales. Despite this concession, an independence movement continued to petition the British government for Victoria's own representative government. They succeeded when this Act became law on 5 August 1850, and conferred on the colony a Constitution similar to that enjoyed by New South Wales since 1842, with a separate, partly elected ***Legislative Council*** (Section 2). The news reached Victoria on 11 November 1850, and was celebrated along with the opening of the new Princes Bridge over the Yarra. Separation took effect on 1 July 1851.

New South Wales

In New South Wales this Act was criticised for insufficiently providing for local control of revenue, and for failing to give the Legislative Council full powers. The Act did not satisfy growing demands for self-government and a draft Constitution for New South Wales was prepared. This was submitted to Britain and amended, becoming part of the ***New South Wales Constitution Act*** and passed by the British Parliament in 1855.

Tasmania

In New South Wales and Victoria, where transportation of convicts virtually ceased after 1840, the Australian Constitutions Act was widely welcomed as providing processes of constitutional reform. The eventual goal for many was responsible government, with colonial premiers and ministries more closely resembling the British Prime Minister and ministries. The colonial governor's role would be broadly similar to that of the monarch in Britain – to commission as chief minister and thus head of government, whoever commanded a majority in the legislature. The immediate effect of this Act for Tasmania was partly representative government on the model in operation in New South Wales since ***1842***. In this model, the Governor remained, in an active and practical sense, the chief executive as well as the Vice-Regal representative in the Colony.

Continuing transportation of convicts from Britain meant 'responsible government' for the Island was a remote prospect in 1850. While anti-transportation agitation was part of public life in Van Diemen's Land from 1847, it is hard to detect much impact of this on the British Parliament. In 1851 that situation changed. The discovery of extensive alluvial gold in Victoria from 1851 persuaded the British government that sending convicts to a Colony close to probably the richest goldfield in the world was bad policy. By 1850 the Tasmanian anti-transportation movement had developed into a crusade for 'social freedom', the phrase of prominent Launceston anti-transportationist, the Reverend John West. The crusade quality of this movement found expression at mass meetings in Van Diemen's Land and Victoria. It also produced a ***Federation Flag*** very similar to the present Australian ensign.

The Colonial Secretary in Britain, Sir John Pakington, on 14 December 1852 wrote to Lieutenant-Governor Denison, a resolute defender of transportation, foreshadowing its end. The Duke of Newcastle, Pakington's successor, confirmed the demise in a dispatch of 22 February 1853, (CO 408/37). Cessation of transportation was confirmed by an Order-in-Council of 29 December 1853, which repealed an 1847 designation of Van Diemen's Land as a penal colony.

In December 1852 Pakington (and the following year his successor Newcastle) wrote to the governors of New South Wales, Victoria and South Australia encouraging them to draft constitutions under the 1850 Act. He suggested these embody a bicameral legislature with an elected Lower House, control over colonial waste lands (a prize hitherto retained by the British Parliament) and, in effect, responsible government. Here Denison perhaps showed himself a good loser. He wrote to Newcastle on 25 August 1853 requesting that Van Diemen's Land receive the same invitation. Newcastle agreed on 30 January 1854. However the Island was already on track to responsible government, and on 1 September 1853, Thomas Daniel Chapman moved in the Legislative Council for the introduction of a Bill which became the ***Constitution Act 1855***.

Western Australia

At the time the Australian Constitutions Act was passed, Western Australia had just started ***receiving convicts*** with the first boatload arriving on 1 June 1850. There were thus special provisions in the Act for what was now the only penal colony in Australia, limiting rights to participation in government. Householders petitioned for greater representation in 1865 and although the petition was rejected, six additional members were added to the Council. In 1867 the Governor agreed to nominate those elected on an adult suffrage basis. When transportation ended in 1868 the provisions of Section 9 were fully implemented and a Legislative Council with two-thirds of its members elected was created in 1870. When Western Australia moved to establish a bi-cameral legislature and responsible government in 1889, Section 32 of this 1850 Act meant the Bill had first to be agreed in the British Parliament, before being enacted as the ***Constitution Act 1890***.

https://freemandelusion.com/wp-content/uploads/2022/03/Australian-Constitutions-Act-1850-UK.pdf

The Colonial Laws Validity Act 1865

ANNO VICESIMO OCTAVO & VICESIMO NONO

VICTORIÆ REGINÆ.

CAP. LXIII.

An Act to remove Doubts as to the Validity of Colonial Laws. [29th *June* 1865.]

The ***Colonial Laws Validity Act 1865*** (28 & 29 Vict. c. 63) is an Act of the Parliament of the United Kingdom. Its long title is *"An Act to remove Doubts as to the Validity of Colonial Laws"*. The purpose of the Act was to remove any apparent inconsistency between colonial and Imperial legislation. Thus it confirmed that colonial legislation, provided it had been passed in the proper manner, was to have full effect within the colony, limited only to the extent that it was not in contradiction with any Act of Parliament that contained powers which extended beyond the boundaries of the United Kingdom to include that colony. This had the effect of clarifying and strengthening the position of colonial legislatures, while at the same time restating their ultimate subordination to the Westminster Parliament.

Until the passage of the Act, a number of colonial statutes had been struck down by local judges on the grounds of repugnancy to English laws, whether or not those English laws had been intended by Parliament to be effective in the colony. This had been a particular problem for the government in South Australia, where ***Justice Benjamin Boothby*** had struck down local statutes on numerous occasions in the colony's Supreme Court.

By the mid-1920s, the British government accepted that the dominions should have full legislative autonomy. Accordingly, the imperial Parliament passed the ***Statute of Westminster 1931***, which repealed the application of the *Colonial Laws Validity Act 1865* to the dominions (i.e., Australia, Canada, the Irish Free State, New Zealand, Newfoundland, and the Union of South Africa). The *Statute of Westminster 1931* took effect immediately in Canada, the Irish Free State and South Africa. Australia adopted the Statute in 1942 with the passing of the ***Statute of Westminster Adoption Act 1942***, with retroactive effect to 3 September 1939, the start of World War II. The *Colonial Laws Validity Act 1865* continued to have application in individual Australian states until the ***Australia Act 1986*** came into effect in 1986.

https://freemandelusion.com/wp-content/uploads/2022/04/Colonial-Laws-Validity-Act-1865-Original.pdf

Australasian Federation Conferences 1890-98

The records of the Australasian Federation Conference of 1890 and the Australasian Federal Conventions of 1891 and 1897/8 are among the most significant founding documents of the Australian nation. At the Australasian Federation Conference held in Melbourne from 6 to 14 February 1890, leading politicians from the six Australian colonies and New Zealand affirmed the desirability of 'an early union under the crown' and committed themselves to persuading their governments to send delegates to a convention which would 'consider and report' on a scheme for a federal constitution.

The Proceedings of the Federation Conference, held in Melbourne in February, 1890, were carefully reported by the Official Shorthand Writers of the Victorian Parliamentary Staff, and this Volume contains a reprint of their admirable reports.

https://freemandelusion.com/wp-content/uploads/2021/04/proceedings-of-the-federation-conference-february-1890.pdf

Australasian Federal Convention, Sydney, 1891

Accordingly, the members of the National Australasian Convention of 1891 which met in Sydney from 2 March to 9 April did not debate whether the colonies should federate but how. They devoted themselves to finding a draft constitution to which they could agree and which they could take back to their legislatures for discussion and endorsement.

https://freemandelusion.com/wp-content/uploads/2021/04/1-1891-australasian-federation-conference-index-to-speeches.pdf

https://freemandelusion.com/wp-content/uploads/2021/04/2-1891-australasian-federation-conference-appendix.-commonwealth-of-australia-bill-1891.pdf

https://freemandelusion.com/wp-content/uploads/2021/04/3-1891-australasian-federation-conference-index-to-debates.pdf

https://freemandelusion.com/wp-content/uploads/2021/04/4-1891-australasian-federation-conference-delegations-from-colonies.pdf

https://freemandelusion.com/wp-content/uploads/2021/04/5-1891-australasian-federation-conference-contents.pdf

https://freemandelusion.com/wp-content/uploads/2021/04/6-1891-australasian-federation-conference-debates-march-2.pdf

https://freemandelusion.com/wp-content/uploads/2021/04/7-1891-australasian-federation-conference-debates-march-3.pdf

https://freemandelusion.com/wp-content/uploads/2021/04/8-1891-australasian-federation-conference-debates-march-4.pdf

https://freemandelusion.com/wp-content/uploads/2021/04/9-1891-australasian-federation-conference-debates-march-5.pdf

https://freemandelusion.com/wp-content/uploads/2021/04/10-1891-australasian-federation-conference-debates-march-6.pdf

https://freemandelusion.com/wp-content/uploads/2021/04/11-1891-australasian-federation-conference-debates-march-9.pdf

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https://freemandelusion.com/wp-content/uploads/2021/04/13-1891-australasian-federation-conference-debates-march-11.pdf

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https://freemandelusion.com/wp-content/uploads/2021/04/15-1891-australasian-federation-conference-debates-march-13.pdf

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https://freemandelusion.com/wp-content/uploads/2021/04/18-1891-australasian-federation-conference-debates-march-18.pdf

https://freemandelusion.com/wp-content/uploads/2021/04/19-1891-australasian-federation-conference-debates-march-24.pdf

https://freemandelusion.com/wp-content/uploads/2021/04/20-1891-australasian-federation-conference-debates-march-31.pdf

https://freemandelusion.com/wp-content/uploads/2021/04/21-1891-australasian-federation-conference-debates-april-1.pdf

https://freemandelusion.com/wp-content/uploads/2021/04/22-1891-australasian-federation-conference-debates-april-2.pdf

https://freemandelusion.com/wp-content/uploads/2021/04/23-1891-australasian-federation-conference-debates-april-3.pdf

https://freemandelusion.com/wp-content/uploads/2021/04/24-1891-australasian-federation-conference-debates-april-6.pdf

https://freemandelusion.com/wp-content/uploads/2021/04/25-1891-australasian-federation-conference-debates-april-7.pdf

https://freemandelusion.com/wp-content/uploads/2021/04/26-1891-australasian-federation-conference-debates-april-8.pdf

https://freemandelusion.com/wp-content/uploads/2021/04/27-1891-australasian-federation-conference-debates-april-9.pdf

When the Australasian Federal Convention met, in three sessions, in Adelaide Sydney and Melbourne in 1897 and early 1898, the delegates modified the draft produced in 1891. The Australian Constitution was contained in the Commonwealth of Australia Constitution Bill, which was endorsed by the voters of each Australian colony at referendums in 1898, 1899 and 1900, passed by the British Parliament, and given Royal Assent on 9 July 1900.

Debates of the Australasian Federal Convention of 1897/8 are in three sessions. These documents are yet to be added to this article, you can locate them in the following links:

- ***First session***, Adelaide, 22 March – 5 May 1897
- ***Second session***, Sydney, 2-24 September 1897
- ***Third session***, Melbourne, 22 January-17 March 1898

The Commonwealth Constitution Act 1901

The Royal Commission of Assent from Queen Victoria for the *Commonwealth Constitution Act 1900*:

This is the scans of the original *Commonwealth Constitution Act* as passed by the British Parliament on 9 July 1900.

https://freemandelusion.com/wp-content/uploads/2020/11/commonwealth-of-australia-constitution-act-uk.pdf

This is a copy of the *Commonwealth Constitution Act* printed for the public service in Australia in 1901.

https://freemandelusion.com/wp-content/uploads/2020/11/commonwealth-of-australia-constitution-act.pdf

This is the *Commonwealth Constitution Act* compiled in 2013, containing notes of all amendments up until the last carried referendum in 1977.

https://freemandelusion.com/wp-content/uploads/2021/07/C2013Q00005XN01.pdf

This is the *Commonwealth Constitution Act,* together with the Proclamation declaring the establishment of the Commonwealth, Letters Patent relating to the Office of Governor-General, the Statute of Westminster Adoption Act 1942, and Australia Act 1986, with Overview, Notes and Index by the Attorney-General's Department and Australian Government Solicitor.

https://freemandelusion.files.wordpress.com/2020/09/the-constitution.pdf

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):

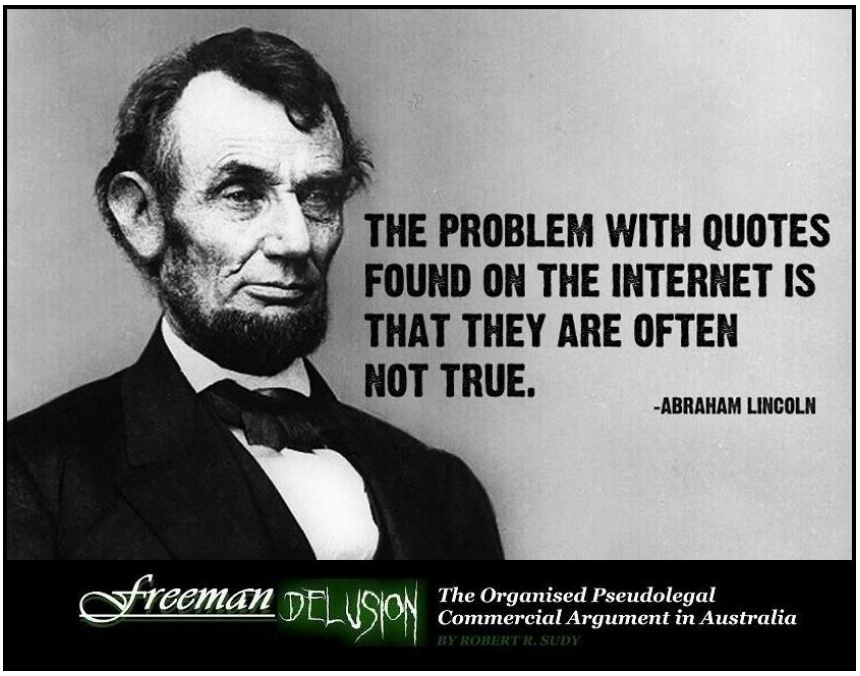
> *"...it may be that the Treaty of Versailles or some other international instrument can be seen as according Australia a place in international dealings which it may not have had before the instrument was signed. But what is significant for the disposition of the present applications is not whether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

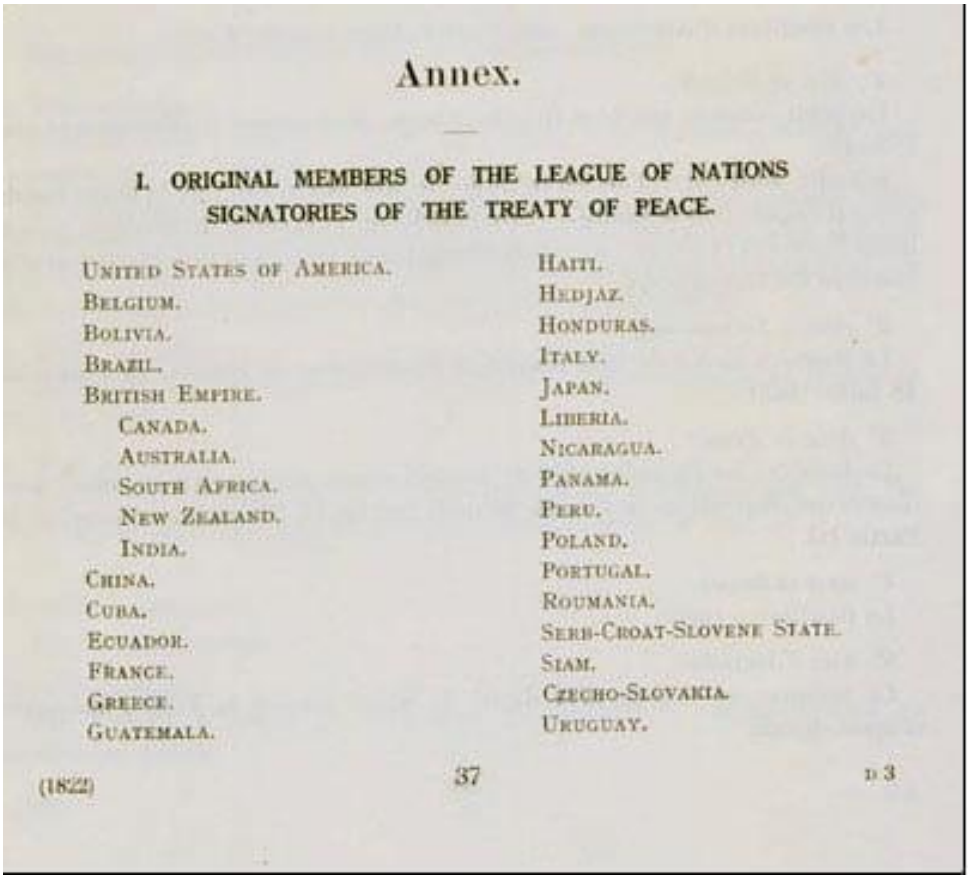
(2) Australia's entry to the League of Nations in 1919.

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 D 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?

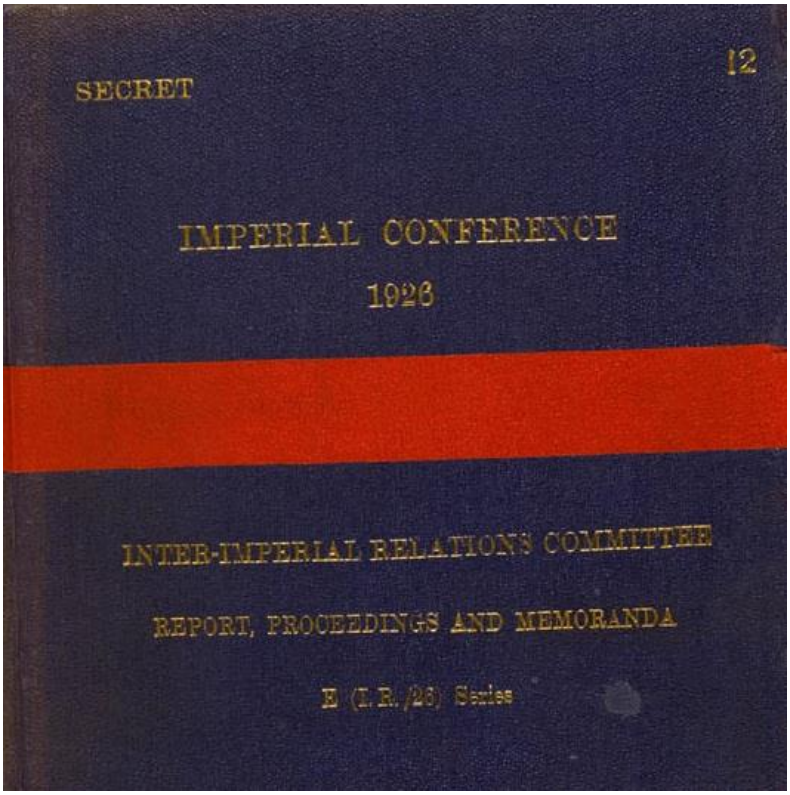
Yes we can, as we are a fully autonomous, self-governing sovereign nation. Constitutional sovereignty, that is the power to amend the constitution, lies with the Australian people under section 128, and the Australian people have the power to reject a constitutional amendment proposed by Parliament. 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

The Balfour Declaration 1926



The Balfour Declaration agreed to at the Imperial Conference of 1926 declared that the self-governing dominions were to be regarded as

"…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."

The declaration recognized the sovereign right of each dominion to control its own domestic and foreign affairs.

Scans: https://freemandelusion.com/wp-content/uploads/2022/04/Balfour-Agreement-1926.pdf

Text: https://freemandelusion.com/wp-content/uploads/2020/11/balfour-agreement-1926.pdf

The Statute of Westminster Adoption Act 1942

No. 56 of 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.

Assented to
9th October, 1942.

The *Statute of Westminster 1931* was brought into effect in Australia by the ***Statute of Westminster Adoption Act 1942***. Section 2 deals with the *Validity of laws made by Parliament of a Dominion (28 and 29 Vict. c. 63):*

> *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."*

https://freemandelusion.com/wp-content/uploads/2020/11/statute-of-westminster-adoption-act-1942.pdf

Statute of Westminster Act 1931

https://freemandelusion.com/wp-content/uploads/2020/11/statute-of-westminster-act-1931.pdf

The Australia Acts 1986

The Australia Act 1986 is often raised by pseudolaw adherents in Australia as having replaced the *Commonwealth Constitution 1901* without referendum. This is factually incorrect as it was solely to do with the States relationship with the UK not the Commonwealth. The theory is based on a misconception of the changes to constitutional relations between Australia and the UK that had already occurred decades earlier. As stated in the preamble, its purpose was:

> *"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."*

https://freemandelusion.com/wp-content/uploads/2020/11/australia-acts-1986.pdf

The Australia Acts were put in place to properly separate UK law from the law of the Australian States. By their introduction, they solved a legal problem that occurred with the ***Balfour Declaration 1926*****,** and the ***Statute of Westminster Act 1931***, where the UK declared they will no longer legislate for "the dominions" (Canada, India, New Zealand, Australia etc).

While the ***Statute of Westminster Adoption Act 1942*** cut legislative ties between the Federal Parliament and UK Parliament, UK law from before the Statute of Westminster Act that was intended for the States (or former Colonies), and UK law in general, was still able to be used for State affairs. UK Acts that were around before 1931 were stuck in a kind of legal 'time warp', where even if UK Parliament repealed a UK Act it would still apply to State law. For instance, many Australian states were still using old UK shipping laws in 1931 and never bothered to write their own. When the UK amended their shipping Acts the amendments had no effect on Australian law (since the UK declared they would no longer legislate for the dominions, they could also no-longer repeal or amend the laws of the dominions), some Australian states were still stuck in the old laws, which caused havoc with trade disputes, resulting in many a judge putting their head through a wall in frustration.

Another problem was that State courts could bypass the High Court in appeals and go straight to the Privy Council in the UK, causing further headaches in Australia's court system, since the High Court still had to answer to the UK privy council. In legal terms, the Australian law system was in a tangled mess that no parliament in the world had the power to solve. In almost Monty Python hilarity, the UK couldn't even undo their own error, as they had legally bound themselves to not legislate for any of the dominions.

In the end, the solution was found in ***Section 51 (xxxviii)*** which gives the Commonwealth Parliament power to legislate at the request of the State parliaments. The State parliaments passed various *Request Acts* giving the Commonwealth Parliament the ability to pass the Australia Act (Cth).

This was backed by the Australia Act (UK) just in case there was any absence of power on any level, which gained its authority from section 4 of the *Statute of Westminster 1931*, which provides: *"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."*

This officially made the Commonwealth and State constitutions Australian property, and gave Australia complete independence from the UK. It also cut the Privy Council out of the States court system, continuing from previous legislation that enabled this on a federal level. All appeals to the Privy Council from Australian courts exercising federal jurisdiction were abolished in 1968 (*Privy Council (Limitation of Appeals/Act 1968* (Cth) and all appeals from any decision of the High Court (other than those where a certificate might be granted under section 74 of the Constitution) were terminated by the *Privy Council (Appeals from the High Court) Act 1975 (Cth).* See article regarding ***Appeals to the UK Privy Council***.

The Commonwealth Parliament did not require the use of a section 128 referendum, because the Australia Act 1986 did not alter any part of the Commonwealth Constitution, nor was there any intention of altering the Constitution, as stated in the Australia Act itself, in ***Section 5***:

> *"Commonwealth Constitution, Constitution Act and Statute of Westminster not affected: 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."*

While it is true that Justice Michael Kirby delivered a dissent in ***Attorney-General (WA) v Marquet (2003) HCA 67*** this was not due to a lack of a section 128 referendum. He argued that the *Australia Act* was invalid because section 106 of the *Constitution* guarantees that a State constitution may be altered only in accordance with its own provisions, hence not by the Commonwealth Parliament. However, Sections 50 and 51 of the *Constitution Act 1889 (WA)* were altered by section 14 of the *Act*, and sections 11 and 14 of the *Constitution Act 1867 (QLD)* were altered by section 13 of the *Act*. In Kirby's view was that this was inconsistent with Constitution section 106, so that the Australia Act was not a valid exercise of Commonwealth legislative power. A majority, however, thought that it was sufficient that the Act had been passed in reliance on Constitution section 51(xxxviii), which gives the Commonwealth parliament power to legislate at the request of the State parliaments.

https://freemandelusion.com/wp-content/uploads/2020/10/attorney-general-wa-v-marquet-2003-hca-67.pdf

Soon afterwards, however, in ***Shaw v Minister for Immigration and Multicultural Affairs (2003) HCA 72***, the whole Court (including Kirby) took a more comprehensive view: that the Australia Act in its two versions, together with the State request and consent legislation, amounted to establishing Australian independence at the date when the Australia Act came into operation, 3 March 1986. Kirby J. (from 108):

> *"In Attorney-General (WA) v Marquet (2003) 202 ALR 233 I expressed my reservations about the validity of the relevant parts of the Australia Acts invoked in that case. I contested the proposition that, in 1986, the United Kingdom Parliament had any legislative power to enact a law with respect to Australia's constitutional arrangements. Such power in my view belongs, and in 1986 belonged, only to the Australian people and their legislatures. So far as the federal Act is concerned, the stream could not rise higher than the source. It could not enlarge federal constitutional power or make it greater than it was. Nor, in my opinion, did s 51(xxxviii) of the Constitution provide a source for the validity of the federal Act. That Act was subject to the provisions of Chs III and V of the Constitution, including provisions with respect to the States and the requirements of s 128 concerning alteration of the Constitution. However, in Marquet, my view was not adopted by the majority of this Court. Pending a greater enlightenment, I must accept this Court's holding that the Australia Acts are valid laws."*

https://freemandelusion.com/wp-content/uploads/2020/10/shaw-v-minister-for-immigration-and-multicultural-affairs-2003-hca-72.pdf

These two decisions from the High Court are referred to whenever the contention arises in any other court in Australia disputing the validity of the Australia Acts, as has occurred many times in the Supreme Courts of the States. You can locate these cases on this website under the Tag "***Australia Acts 1986***". Some of the most recent cases demonstrate the binding nature of these decisions on the Supreme Courts, such as in ***Southdale Stud Pty Ltd v RJR Trading Pty Ltd [2020] SASC 106*** (at 26):

> *"The appellant has not raised any argument of merit that is capable of challenging the validity of the Australia Act at all. Further, the existence of this Court is not dependent on the validity of the Australia Act. In any event, as the respondent submits, it is not for this Court to depart from what is manifestly 'seriously considered dicta' of the High Court as to the validity of the Australia Act, even if, against all probability, I had concluded that the Notice of Appeal contained a proposition of merit. (See Farah Constructions v Say-Dee Pty Ltd (2007) 230 CLR 89 (at 134, Gleeson CJ, Gummow, Callinan, Heydon and Crennan JJ.)"*

https://freemandelusion.com/wp-content/uploads/2020/06/southdale-stud-pty-ltd-v-rjr-trading-pty-ltd-2020-sasc-106.pdf

Likewise in ***Commonwealth Bank of Australia v Haughton [2020] SASC 135*** (at 44):

> *"There is nothing in the argument to which Mr Haughton took me that affects the outcome in Marquet, nor the ruling later made in Shaw v Minister for Immigration and Multicultural Affairs. Ultimately, this point goes nowhere. .. Even if this is merely regarded as seriously considered dicta*

> *of the High Court, it remains binding on me, Farah Constructions Pty Ltd v Say-Dee Pty Ltd (2010) 230 CLR 89, [134] (Gleeson CJ, Gummow, Callinan, Heydon and Crennan JJ).”*

https://freemandelusion.com/wp-content/uploads/2020/06/commonwealth-bank-of-australia-v-haughton-2020-sasc-135.pdf

There was also an argument that the *Australia Act 1986* altered certain entrenched provisions of the constitutions of Queensland and Western Australia without the referendum required by these State constitutions. Section 11 of the ***Constitution Act 1867*** *(QLD)* is entrenched by ***section 53*** of the *Act*, which requires a referendum if the Queensland Parliament wants to expressly or impliedly provide for the alteration of the office of the Governor of Queensland or *"in any way affects"* the specified sections.

The argument proceeds that the ***Australia Acts (Request) Act 1985*** *(QLD)* requested the enactment of Commonwealth legislation which would alter the office of the Governor of Queensland and that the Queensland Act therefore required approval in a referendum in order to be valid. The argument concluded that the *Australia Act 1986* is invalid because it was not enacted pursuant to a valid request from all the affected States.

This argument was rejected by the Queensland Court of Appeal in ***Sharples v Arnison [2002] 2 Qd R 444***, and by the Federal Court in ***Kelly v Campbell [2002] FCA 1125***. The fundamental flaw is that the *Australia Acts (Request) Act 1985 (QLD)* did not of itself have the effect of expressly or impliedly altering the office of Governor. It merely requested the Commonwealth and Westminster Parliaments to do so. A request for a change does not itself affect the existing law. The request may, indeed, be rejected. If so, there could be no effect upon the law.

The assumed invalidity of the *Australia Acts 1986* in reference to these entrenched provisions being altered without referendum was also rejected by the High Court in ***Attorney-General (WA) v Marquet (2003) HCA 67***.

In Western Australia, the same contention was rejected regarding sections 50 and 51 of the ***Constitution Act 1889*** *(WA)* by their Supreme Court in ***Sprlyan v Wyborn [2019] WASC 227***, referring (at 296) in agreement with the reasoning of the decision in *Sharples v Arnison* noting that before and after *Sharples*, single judges of that court had reached conclusions to more or less similar effect.

https://freemandelusion.com/wp-content/uploads/2020/06/sharples-v-arnison-2001-qca-518.pdf

The Timeline

The Australia Act 1986 (Cth) was passed in reliance on section 51(xxxviii) of the *Constitution*, which gives the Commonwealth Parliament power to legislate at the request and consent of the State parliaments.

The Governor-General of Australia, Sir Ninian Stephen, had reserved the Act for Her Majesty's pleasure, and upon receiving her approval, assented to the *Australia Act (Cth)* according to section 58 of the *Constitution*, on ***4 December 1985***, which would come *into* force on a date to be fixed by *Proclamation.*

"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*.

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

I HEREBY CERTIFY that the above is a fair print of the Australia Bill 1986 which originated in the House of Representatives and has been finally passed by the Senate and the House of Representatives.

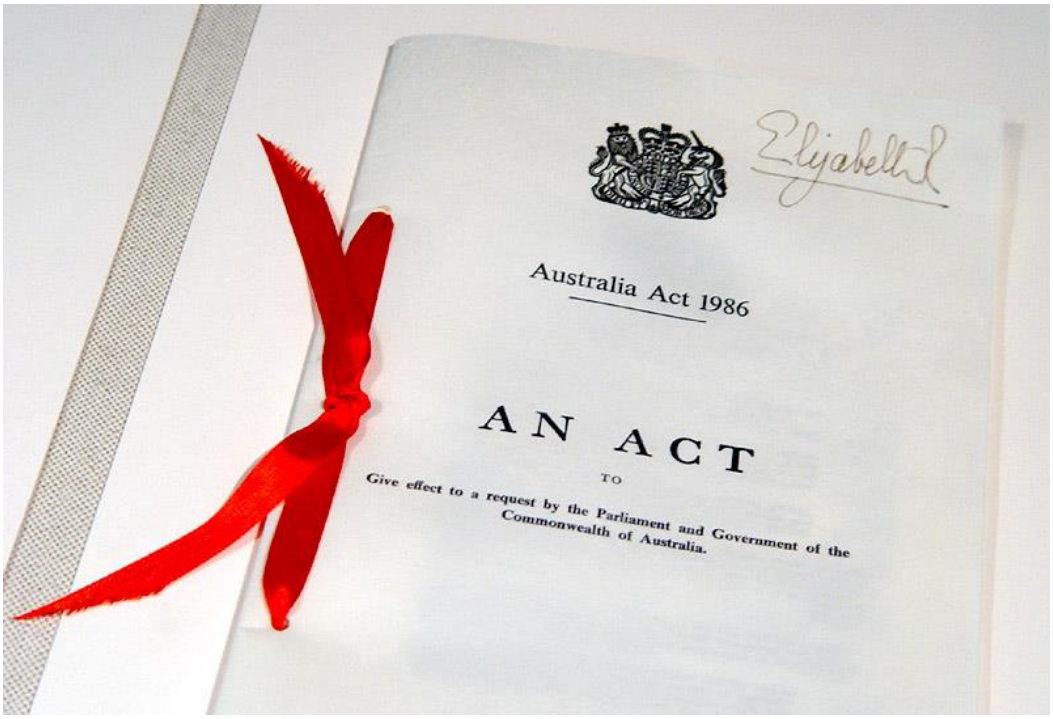
Clerk of the House of Representatives

IN THE NAME OF HER MAJESTY, I assent to this Act.

Governor-General

4 December 1985

Queen Elizabeth II personally assented to the *Australia Act 1986 (UK)* on ***17 February 1986***, which would come into force on a date to be fixed by *Proclamation.*



On ***24 February 1986*** she proclaimed that the *Australia Act 1986 (UK)* would come into force at 0500 Greenwich Mean Time on 3 March.

1084

STATUTORY INSTRUMENTS

1986 No. 319 (C. 8)

AUSTRALIA

The Australia Act 1986 (Commencement) Order 1986

Made - - - - 24*th February* 1986

In pursuance of section 17(2) of the Australia Act 1986 (**a**), I hereby make the following Order:—

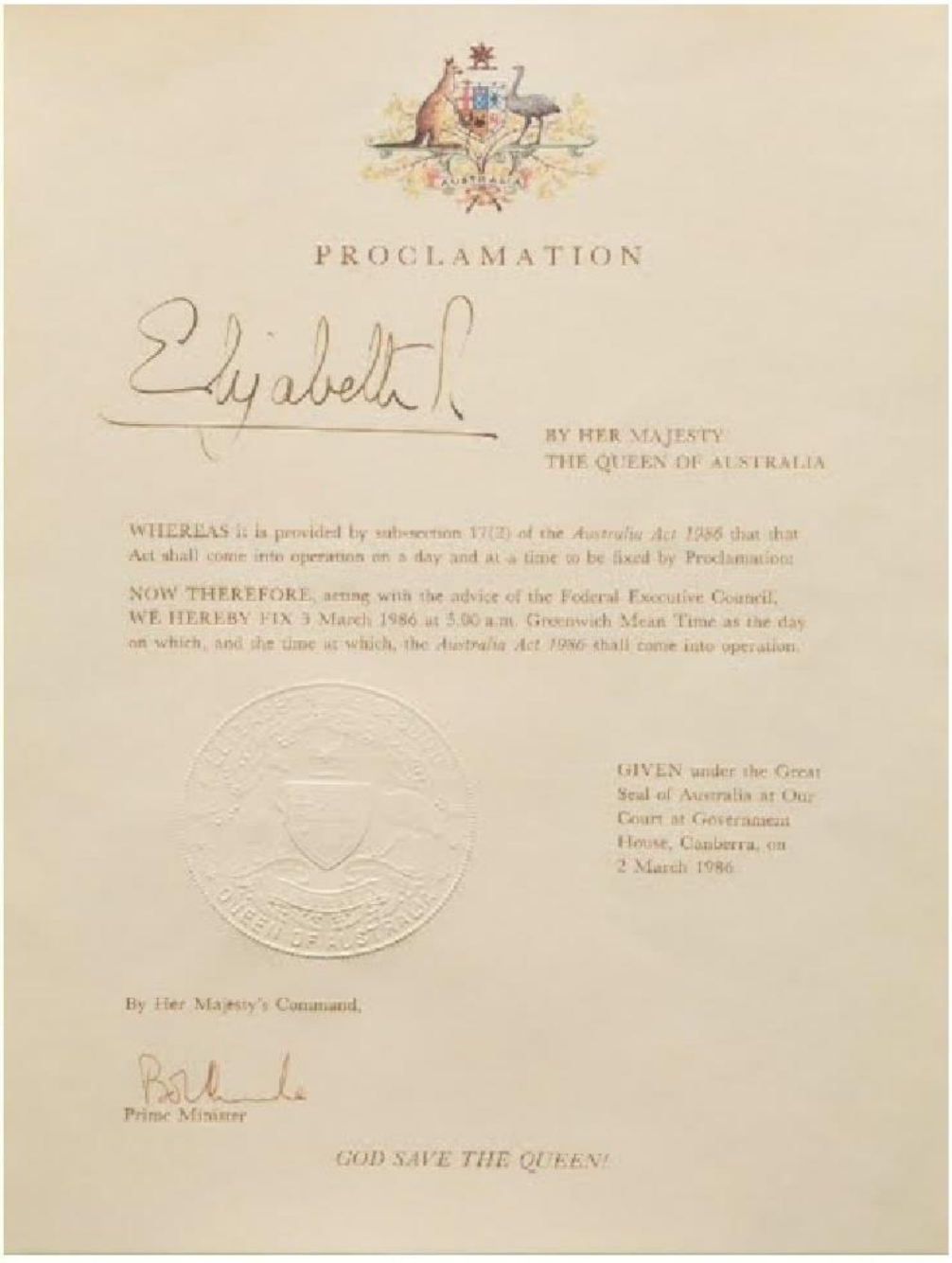
1. This Order may be cited as the Australia Act 1986 (Commencement) Order 1986.

2. The Australia Act 1986 shall come into force on 3rd March 1986, at five o'clock, Greenwich mean time, in the morning.

Geoffrey Howe,
Her Majesty's Principal Secretary of State for Foreign and Commonwealth Affairs.

24th February 1986.

The Queen then came to Australia, and at a ceremony held in Government House, Canberra, on ***2 March 1986***, Queen Elizabeth II signed a *Proclamation* that the *Australia Act (Cth)* would come into force at 0500 GMT the following day, 3 March 1986. (See *Commonwealth of Australia Gazette* No S 85 of 2 March 1986, page 87)



PROCLAMATION

Elizabeth R.

BY HER MAJESTY
THE QUEEN OF AUSTRALIA

WHEREAS it is provided by subsection 17(2) of the *Australia Act 1986* that that Act shall come into operation on a day and at a time to be fixed by Proclamation:

NOW THEREFORE, acting with the advice of the Federal Executive Council, WE HEREBY FIX 3 March 1986 at 5.00 a.m. Greenwich Mean Time as the day on which, and the time at which, the *Australia Act 1986* shall come into operation.

GIVEN under the Great Seal of Australia at Our Court at Government House, Canberra, on 2 March 1986.

By Her Majesty's Command,

Prime Minister

GOD SAVE THE QUEEN!

Thus, according to both UK law and Australian law, the two versions of the *Australia Act* would commence simultaneously—the UK version at 0500 GMT in the UK and, according to the time difference, the Australian version at 1600 AEST in Canberra.

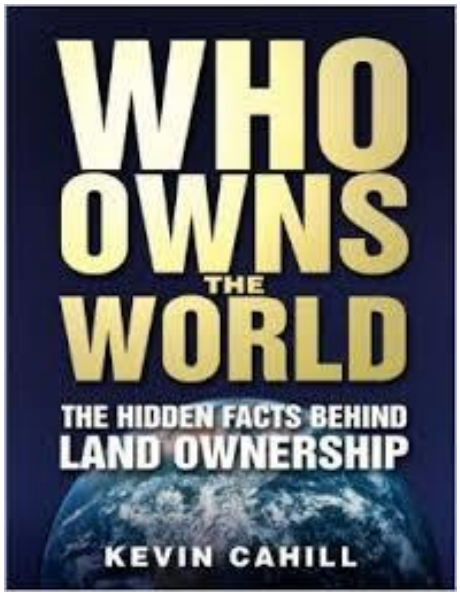
Queen then presented the signed copy of the *Proclamation*, along with the *Assent original* of the *Australia Act 1986 (UK)* to the then Australian Prime Minister Bob Hawke. As seen ***here*** Elizabeth II personally signed the Proclamation to bring the *Australia Act* into law herself.

Video summary:

https://freemandelusion.com/10-v4-australia-act-1986-mp4/

There is a misconception that the Royal Sign Manual being placed on the top of the document somehow invalidates the document and her “permission”, or oversight. See the article "***The Queen signed it at the top!***" where ***Wayne Glew***'s remarks that the Royal Sign Manual on the *Australia Act 1986* is a forgery because it reads *"Elyabeth"* instead of *"Elizabeth"* is also addressed.

What is “the Crown”?



In a 2006 book, *"Who Owns the World: The Hidden Facts Behind Land ownership"*, Kevin Cahill claimed that Queen Elizabeth II holds ownership of one sixth of the land on the Earth's surface, more than any other individual or nation. (This amounts to a total of 6,600 million acres (2.7×1013 m2) in 32 countries.) However, this is based on the legal technicality that the Crown as an institution owns all the territory over which it rules, like any government of a non-allodial state.

This land does not actually belong to the Queen personally, but to the governments of the respective realms over which she reigns.

In reality, the Queen doesn't own much property here, in England, or in any other Commonwealth nation. The Crown Estate is not the private property of the monarch, including all Crown land anywhere in the world. It cannot be sold or owned by the monarch in any private capacity, nor do any revenues, or debts, from the estate accrue to her. Instead the Crown Estate is owned by the Crown, a corporation representing the legal embodiment the State.

The royal palaces she occupies in the United Kingdom, such as Buckingham Palace and Windsor Castle, are held in trust and do not belong to the Sovereign personally either. Instead they are state-owned and held in trust for the Queen's successors and the nation.

The Treasury refers to these assets as "*vested in the sovereign and cannot be alienated*". Even the Royal Collection, the Crown Jewels, (including the crown, orb and scepter) over 200,000 works of art, historical photographs, tapestries, furniture, ceramics, books, gold and silver plate, arms and armour, jewelry and more, is likewise state-owned, and all income generated are received by the Royal Collection Trust, the collection's management charity, and not by the Queen herself.

The Australian people as a collective own the Australian landmass. It is held in trust by our executive government, which is known as *"the Crown".*

According to *Oxford Australian Law Dictionary*: *"**The Crown**"* is an*"abstract metonymic concept"* that *"represents the legal embodiment of the executive government".*

The Queen's title *"**Head of the Commonwealth**"* (of nations) implies no sovereign authority:

> *"Head of the commonwealth, the title adopted in the London Declaration of the Commonwealth Heads of government Meeting in 1949, and vested in the person of the Queen of the United Kingdom. The title does not imply any Sovereign authority. It reflected the new role of the SOVEREIGN as a unifying force of voluntary association of free nations, separate from any notions of a common allegiance."*

The Sovereign

According to ***Vattel's Law of Nations***, the "*Sovereign*" is the entity with the power to pass laws prospectively. In the case of Australia, it's more accurate to say that the Parliament is the sovereign. This is because under the doctrine of Responsible Government, the Governor General is responsible to, and answers to, the Parliament, in regards to what legislation is assented, and has no choice in the matter. Therefore, the power of sovereignty lies in the Parliament in respect to legislation.

Under ***the principle of Responsible Government***, the Executive and Judiciary are responsible to, and answerable to, the people, through the Legislative branch. See ***R v Kirby; Ex parte Boilermakers' Society of Australia (1956) 94 CLR 254*** at 275; ***McGinty (1996) 186 CLR 140*** at 269; ***Australian Capital Television Pty Ltd v Commonwealth (1992) 177 CLR 106*** (Mason C.J. at 30; Dawson J. at 20; McHugh J. at 15) ***The Engineers' Case (1920) 28 CLR***, per Knox C.J., Isaacs, Rich and Starke JJ. at p 147): *"The principle of responsible government – the system of government by which the executive is responsible to the legislature – is not merely an assumption upon which the actual provisions are based; it is an integral element in the Constitution."* ***The Commonwealth v. Kreglinger and Fernau Ltd. and Bardsley (1926) 37 CLR 393***, (Isaacs J.) at p 413: *"It is part of the fabric on which the written words of the Constitution are superimposed."*

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. So in terms of the constitution, the sovereign is the Australian people.

"The Queen" or *"the Crown*" is a proxy for the people's *"popular sovereignty*". Therefore a literal reference to *"The Queen*" as the criminal litigant, is in spirit a reference to the "polity" which is the people, who by fact of their power to elect representatives in Parliament or change parts of the Constitution, hold the sovereignty. The body politic that is the Crown in relation to Australia is the people

of Australia, and the body politic that is the Crown in relation to the States is the people of that particular State. This point is highlighted by the statements of Wheeler JA in ***Glew v Shire of Greenough [2006] WASCA 260***, in relation to the judicial oaths taken "*to the people of Western Australia"* as opposed to *"the Crown"*, stating that the change in terminology is entirely consistent with constitutional reality:

> *"When we talk of the Crown in the context of Australian government in the late twentieth century, we refer to a complex system of which the formal head is the monarch. We do not refer to a replica of sixteenth century English government, where real power was vested in and exercised by the monarch personally. Rather, we mean that collection of individuals and institutions (Ministers, public servants, a Cabinet, the Executive Council, a Governor or Governor-General, and statutory agencies) which exercise the executive functions of government".* (See Hanks & Cass, "Australian Constitutional Law: Materials and Commentary", 6th ed (1999) at [7.1.6])

The phrase: *"A subject of the Queen, resident in any State…"* in ***section 117*** of the *Commonwealth Constitution is* interpreted by the High Court as that of the body politic, in ***Re Patterson [2001] HCA 51; 207 CLR 391*** (from 226):

> *"The notion that an individual became a British subject at birth anywhere within the dominions of the Imperial Crown and by reason of allegiance to the Imperial Crown, had been abandoned both in the United Kingdom and in Australia before the birth of the prosecutor. … It may be accepted that, at the time of federation, the state of subjection identified in s 117 was to the indivisible Imperial Crown. But, as a result of the changes made in the constitutional relationships within the British Commonwealth which were reflected in the various statutory provisions that were made between 1948 and 1953 and are mentioned earlier, the allegiance owed by the subjects spoken of in s 117 was to the Crown in its Australian politic capacity. There no longer was in constitutional theory or political reality the Imperial Crown of earlier days. To continue to read s 117 as it had been read initially would have been to deprive it of any useful operation."*

The concept of popular sovereignty is given legitimacy by the High Court in ***Australian Capital Television Pty Ltd v Commonwealth [1992] HCA 45 (1992) 177 CLR 106***, in which Mason J. states (at 37):

> *"And, most recently, the Australia Act 1986 (U.K.) 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."*

The former Chief Justice of the High Court, Chief Justice Brennan wrote:

> *"As the Constitution can now be abrogated or amended only by the Australian people in whom, therefore, the ultimate sovereignty of the nation resides, the Oath of Allegiance and the undertaking to serve the head of State as Chief Justice are a promise of fidelity and service to the Australian people."*

In "***Maintaining fairness to accused in criminal matters: the separation of powers***" by Craig Myatt, he mentions an email from Anne Twooney to himself, which states:

> *"The terms 'Queen' and 'Crown' mean a number of different things in legislation. Sometimes they mean the Queen herself, but more commonly they mean the relevant polity or the executive government. The reference to the Queen as a party to criminal litigation has nothing to do with the Queen herself. It is just a term that represents the State as a whole."*

In Anne Twooney's '***The Unrecognised Reserve Powers***' in regard to Queensland following the passing of the Australia Acts 1986, she refers to the notion of "popular sovereignty" that *"…a new Crown is created when the Queen is directly advised by Ministers responsible to a legislature of a particular polity…"* She indicated:

> *"A new Crown is established… The polity itself does not need to have attained formal independence or to be internationally recognised as sovereign…".*

Thus the community of Queensland is the new "sovereign" of Queensland, a concept recognised by the ***Preamble of the Constitution of Queensland 2001***:

> *"The people of Queensland…adopt the principle of the sovereignty of the people…"*

While the Queen, as a "constitutional sovereign", maintains a ceremonial role as head of State, in practice, the Head of State who holds the actual power under the Constitution is not the Queen, but the Governor of the States, (and on a federal level, the Governor General of Australia). This was formalised in the ***Australia Acts 1986*** (Cth), which indicates:

> *7 Powers and functions of Her Majesty and Governors in respect of States*
>
> *(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.*

The Crown as a Body Politic

Constitution of New South Wales by Anne Twomey. (pg 386):

The notion of 'allegiance' derives from feudal times where protection was exchanged for the provision of services to a feudal lord. By 1608, allegiance was described in *Calvin's Case* as the mutual bond and obligation between the King and his subjects, whereby the subjects are bound to obey and serve him, and he should maintain and defend them.[135] At that time allegiance was to the King or Queen in their personal capacity, rather than as a body politic. However, notions of allegiance have since changed. In 1886 in *Isaacson v Durant*,[136] it was held that allegiance was owed not to the monarch in his or her personal capacity, but rather to the Crown as a body politic.[137] As the body politic was a creation of law, then allegiance could be changed by a law-making authority. Thus, in *Re Patterson; Ex parte Taylor*,[138] the High Court recognised that a person may have allegiance to Her Majesty Queen Elizabeth II, as Queen of the United Kingdom, and that this is different from allegiance to Her Majesty Queen Elizabeth II as Queen of Australia.[139] Constitutional references to the Queen are to the office, rather than the person of the Queen,[140] and allegiance relates to the body politic, rather than the Queen personally.

The duty of allegiance arises independently of the taking of any formal oath.[141] It arises by reason of birth within a country, or by naturalisation or even presence within a country.[142] The oath itself is therefore 'ceremonial' in nature, but does not have any legal significance in terms of establishing bonds of allegiance.[143]

Peaceful advocacy of reform to the *Constitution Act*, which involves changes to the constitutional system such as the removal of links to the Queen, would not breach the oath of allegiance. The oath is given to Her Majesty's heirs and successors 'according to law'. The law may change the constitutional composition of the body politic, just as it may change succession to the throne. As long as these changes are made in a constitutionally valid manner, there is no breach of the oath

Singh v Commonwealth of Australia [2004] HCA 43:

> *While the Crown remained indivisible, a British subject was outside the denotation of the term "alien". However, when the Crown divided, so to speak, the denotation of the term "subject of the Queen" changed. As a result, British subjects no longer owed permanent allegiance to the Queen of Australia and became "aliens" in Australia.*
>
> *The meaning of "aliens" in the Constitution does not turn on whether under the law of another country the person in question owes a duty of allegiance to that country. It turns on whether that person owes a duty of permanent allegiance to the Queen of Australia.*

Re Stepney Election Petition; Isaacson v Durant(1886) 17 QBD 54 *concerned the entitlement to vote in parliamentary elections of persons who were born in Hanover and who were living in England, but were not naturalised British subjects, at the time when Queen Victoria ascended the throne of Great Britain but not Hanover. Such persons were born when William IV was simultaneously the King of Hanover and the King of Great Britain and Ireland. The Queen's Bench Division held that a Hanoverian, who by birth was a British subject while William IV held both the Crowns of Great Britain and Hanover, had become an alien when Queen Victoria ascended the throne of Great Britain but not Hanover. Lord Coleridge CJ said:*
(at 59-60)

> *"The Hanoverian by birth who had needed no naturalization in the lifetime of William IV needed it when the Hanoverian heir and successor of that monarch was no longer the sovereign of these islands. He owed allegiance to William IV and his heirs and successors according to law, and as a Hanoverian he owed it on the death of William IV to the Duke of Cumberland, who was, according to Hanoverian law, the heir and successor of his brother, and ascended the throne as King Ernest in due course of law. He became an alien because the sovereign to whom his allegiance was due was a foreign sovereign; and the person to whom his allegiance had been due was dead leaving an heir. The Crowns had by accident been united in one person, but when the union of the Crowns came to an end the union of allegiance ceased too; and the allegiance which had been due to the King of Hanover, who was also King of the United Kingdom, was never at any time due to the Queen of the United Kingdom, who was not and who could not be by law Queen of Hanover."*

The decision established the rule that a natural born subject becomes an alien when the sovereign ceases to have dominion over the territory in which the person resides. Lord Coleridge CJ said that statements to the contrary in Calvin's Case were "dicta only". (at 64) After considering the British Nationality Act 1730 and the British Nationality Act 1772 (UK) (13 Geo III c 21), Lord Coleridge CJ also said that,

> *…as the statutes referred to the Crown and not the sovereign, allegiance was due to the King in his politic, and not in his personal, capacity. (at 65-66)*

This was a further development in the law since Calvin's Case. Fundamental to the decision in that case – that those born after the accession of James I to the English throne were "natural born subjects" of the King of England – was the conclusion that the tie of allegiance is a tie between the individual and the person of the sovereign, not between the individual and the political entity that is the sovereign.

Using the concept of "allegiance" to distinguish between British subjects and aliens invites attention to what is meant by "allegiance" in this context. Pointing to its root in the feudal idea of a personal duty of fealty to a lord from whom land is held does little to identify the content of the term. Plainly it is a term which connotes duty or obligation, but what exactly are the duties or obligations embraced by the word?

> *These duties or obligations, whatever their content, are said to be due to the Crown in the "politic" not the "personal capacity" of the sovereign.*

The relationship between sovereign power and the person who is a non-alien (that is, in Australia, the relationship between Crown and non-alien) is mutual. The Crown owes obligations to the non-alien. But again those obligations are described only in abstract terms like a "duty of protection" Their content is not spelled out, although it may very well be that these obligations find expression in Australia's exercise of its right, but not duty, in international law to protect its nationals and even, perhaps, in what the Court said was "[t]he right of the Australian citizen to enter the country [which] is not qualified by any law imposing a need to obtain a licence or 'clearance' from the Executive". Further, the relationship between the Crown and a resident alien is also mutual and is not necessarily limited to such time as the alien remains in Australia. "The protection of the laws of Australia which is the counterpart of a local allegiance due from a resident alien" may continue despite departure from Australia.

The change in the application of the term is the result of a number of significant developments since federation. They include:

- *(a) the gradual emergence of Australia as an independent, sovereign nation (which arguably culminated with the passage of the Australia Acts 1986 (Cth) and (UK));*
- *(b) the acceptance of the divisibility of the Crown (implicit in the development of the Commonwealth as an association of independent nations);*
- *(c) the creation of a distinct Australian citizenship commencing in 1948 with the passage of the Nationality and Citizenship Act and the British Nationality Act 1948 (UK); and*
- *(d) the acceptance by this Court that the phrase "subject of the Queen" in the Constitution no longer means "subject of the Queen of the United Kingdom" but "subject of the Queen of Australia".*

*As Windeyer J noted in **Ex parte Professional Engineers' Association(1959) 107 CLR 208** (at 267):*

> *"Law is to be accommodated to changing facts. It is not to be changed as language changes."*

https://freemandelusion.com/wp-content/uploads/2019/06/singh-v-commonwealth-of-australia-2004-hca-43.pdf

In ***Flowers v State of New South Wales (No 5) [2021] NSWSC 887*** the plaintiff sought that since Rothman J, as a judicial officer, had sworn allegiance to the Crown, he should disqualify himself on the basis he is not impartial and/or independent in the determination of the outcome of the proceedings. As explained (at 59), a judicial officer in New South Wales is required to swear an oath of allegiance to the monarch, and the judicial oath, as prescribed by the second and fourth schedule to the *Oaths Act 1900* (NSW). His Honour goes on (from 111):

> *"The allegiance and service to which a judicial officer swears in the oath of allegiance and the judicial oath is allegiance to the monarch, not in his or her personal capacity, but, rather, to the body politic. The allegiance, for example, would not apply to applying or enforcing Canadian law or English law. The Crown as a body politic is "an abstraction", used in a metaphysical or metaphorical sense. Hence, we speak of the Crown in the Right of New South Wales as a distinct entity from the Crown in the Right of Victoria. As the High Court explained in Re Patterson; ex parte Taylor [2001] HCA 51 (at 224), the body politic is a creation of law and, as a consequence, the allegiance would be changed by any validly made law or by a lawmaking authority. The allegiance is to the body politic, being the State as an entity, not the government and not the monarch personally. On any analysis, properly informed, of the effect of the oath of allegiance and the judicial oath, neither requires or allows conduct by a judicial officer inconsistent with the judicial officer's duty to uphold the law and administer it and certainly does not allow favour, affection or ill-will towards the Government over the rights, under law, of the citizens of the State."*

Re Patterson; ex parte Taylor [2001] HCA 51 (at 224):

> *"Allegiance" examines the relationship between an individual and a sovereign power from the point of view of the individual, and principally by reference to duties and obligations which the individual may owe to that sovereign power. In a monarchy, questions of allegiance may be personified and, if that is done, insufficient attention may be given to identifying the distinction between relevant separate sovereign powers. The notion of personal allegiance "lay at the very root of the feudal system" but long before federation that state of affairs had ceased to exist. In*

> *1886, Lord Coleridge CJ had explained that allegiance was due from subjects to the Crown in "the politic" not the "personal capacity" of the sovereign. In Sue v Hill [1999] HCA 30, Gleeson CJ, Gummow and Hayne JJ discussed this and other senses in which the term "the Crown" has been used in constitutional theory derived from the United Kingdom."*

More recently in ***Love v Commonwealth [2020] HCA 3*** (at 107-108):

> *"Before and after federation, in the vestigial language of feudalism taken to be descriptive of the formal legal relationship between a British subject and the "Crown", Aboriginal and Torres Strait Islander Australians were accordingly understood to have owed "allegiance" to the Crown and to have been entitled, at least in theory, to the "protection" of the Crown in exactly the same way and to exactly the same extent that other Australians were understood to have owed allegiance to the Crown and to have been entitled to the protection of the Crown. By federation, the Crown to which such allegiance was owed was understood to be the monarch "in his politic, and not in his personal capacity" and the full feudal dimensions of what might once have been meant by the "protection" of the Crown had been lost in the mists of time. To the extent that the "protection" of the Crown might have been thought to involve a positive duty on the part of the Crown to exercise prerogative power physically to protect a British subject, any such duty of the Crown to provide that protection to a British subject was understood to be one of "imperfect obligation".*

An identical change in the meaning of the term occurred in the US, as cited in ***Re Minister for Immigration and Multicultural Affairs; ex parte Te* [2002] HCA 48**; (at 229 per Callinan J.), in ***United States v Wong Kim Ark (1898) 169 US 649***, Gray J. referred to what was then recent English authority in which it was said that: *"feudalism being long gone, it was to the sovereign in his or her politic not personal capacity that allegiance was due."*

Hasluck J provides an excellent analysis of the meaning of the Crown in ***Glew v The Governor of Western Australia [2009] WASC 14*** (from 48-60):

"Before proceeding further it will be useful to make some further observations about the role of the Monarch in the Westminster system of government and the way in which the term 'crown' is used to describe the relationship between the Monarch and the exercise of executive powers. I make these further observations in order to flesh out Wheeler J's comment that the Acts Amendment and Repeal (Courts and Legal Practice) Act 2003 (WA) purports to change terminology only, not constitutional reality, and her further comment that in modern times a reference to the crown is a reference to those persons or bodies exercising the executive functions of government.

In Law of the Constitution: A V Dicey (3rd ed, Macmillan, London, UK, 1889) at 10 the learned author referred to an injurious tendency of Blackstone and other less famous constitutionalists to adhere to unreal expressions. The harm wrought was said to be that unreal language obscures or conceals the true extent of the powers, both of the King and of the government. It makes it difficult to say for certain what is the exact relation between the facts of constitutional government and the more or less artificial phraseology under which they are concealed.

The learned author goes on to say this (at 11):

> *"Thus to say that the King appoints the Ministry is untrue; it is also of course, untrue to say that he creates courts of justice; but these two untrue statements each bear a very different relation to actual facts. Moreover, of the powers ascribed to the Crown, some are in reality exercised by the government, whilst others do not in truth belong either to the King or to the Ministry. The general result is that the true position of the Crown as also the true powers of the government are concealed under the fictitious ascription to the sovereign of political omnipotence, and the reader of, say, the first Book of Blackstone, can hardly discern the facts of law with which it is filled under the unrealities of the language in which these facts find expression."*

Observations of this kind prompted jurists in a later age to endeavour to explore these so-called unrealities at greater length. Thus, Maitland in Selected Essays (ed by H D Hazeltine, G T Lapsley and P H Winfield, 1936, repr 1968) observed that 'the crown' is regarded, not merely as a chattel now lying in the dower, but as the personification of the state.

In Liability of the Crown: P W Hogg and P J Monahan (3rd ed, Carswell, Scarborough, Ont, 2000), a learned Australian author, observed (at 10) that the state is a legal person. It is entirely accurate to speak simply of 'the State of Victoria', for example, as the subject of legal rights and duties, and this usage is indeed quite common. But it is far more common, in the language of parliaments, courts and commentators, to find that 'the crown' is used as a convenient symbol for the state. According to this usage, in order to distinguish a particular state from others which recognise the same Queen, it is necessary to speak of 'the crown in right of' the particular state. Whether this is convenient or not may be debated, but it is important not to allow the symbol to raise unnecessary conceptual difficulties.

The same author went on to observe that Harold Laski took the mysticism out of the concept of 'the crown' with these apt words:

> *"Crown in fact means government, and government means those innumerable officials who collect our taxes and grant us patents and inspect our drains. They are human beings with the money bags of the State behind them."*

Hogg goes on to say that like a corporation, the crown can only act through human servants or agents. This does not usually cause difficulty in the creation of rights and duties because the doctrines of agency and vicarious liability can be used by or against the crown to hold it bound by the acts of its servants or agents.

It was against this background that George Winterton, the author of Parliament, The Executive and the Governor-General (Melbourne University Press, Melbourne, 1983), observed (at 207) that 'the crown' is used in the monarchies of the Commonwealth as a shorthand expression for the executive government.

The learned author cited in support of that proposition these observations by Lord Diplock in ***Town Investments Ltd v Department of the Environment [1978] AC 359*** *(at 380):*

> *"My Lords, the fallacy in this argument is that it is not private law but public law that governs the relationships between Her Majesty acting in her political capacity, the government departments among which the work of Her Majesty's government is distributed, the ministers of the Crown in charge of the various departments and civil servants of all grades who are employed in those departments. These relationships have in the course of centuries been transformed with the*

> *continuous evolution of the constitution of this country from that of personal rule by a feudal landowning monarch to the constitutional monarchy of today; but the vocabulary used by lawyers in the field of public law has not kept pace with this evolution and remains more apt to the constitutional realities of the Tudor or even the Norman monarchy than to the constitutional realities of the 20th century."*

Lord Diplock then went on to make these further observations:

> *"To use as a metaphor the symbol of royalty, 'the Crown', was no doubt a convenient way of denoting and distinguishing the monarch when doing acts of government in his political capacity from the monarch when doing private acts in his personal capacity, at a period when legislative and executive powers were exercised by him in accordance with his own will. But to continue nowadays to speak of 'the Crown' as doing legislative or executive acts of government, which, in reality as distinct from legal fiction, are decided on and done by human beings other than the Queen herself, involves risk of confusion. … I believe that some of the more Athanasian-like features of the debate in your Lordship's House could have been eliminated if instead of speaking of 'the Crown' we were to speak of 'the government' - a term appropriate to embrace both collectively and individually all of the ministers of the Crown and Parliamentary Secretaries under whose direction the administrative work of government is carried on by the civil servants employed in the various government departments. It is through them that the executive powers of Her Majesty's government in the United Kingdom are exercised, sometimes in the more important administrative matters in Her Majesty's name, but most often under their own official designation. Executive acts of government that are done by any of them are acts done by 'the Crown' in the fictional sense in which that expression is now used in English public law."*

*In **Cain v Doyle (1946) 72 CLR 409** Williams J observed (at 431) that it is certainly most unusual if not unique for legislation to provide for the prosecution of the crown. But there is no constitutional difficulty in the law of the Sovereign binding himself and parliament. It is a question in each case of the extent to which he is intended to be bound.*

His Honour went on to hold that the legislation before him, being the Re-establishment and Employment Act 1945 and the Acts Interpretation Act 1901, were Acts binding the crown. He then observed that "the crown means of course not his Majesty in person but the government of the Commonwealth or State of the day".

I pause here to note in passing that shortly after the case I have just mentioned was decided, the legislature in this state repealed the Crown Suits Act 1898 and sought to make better provision for suits by and against 'the crown' by enacting the Crown Suits Act 1947 (WA). Having regard, perhaps, to some of the unrealities mentioned by Blackstone and Lord Diplock the term 'crown' was defined by section 3 of the Act to mean more exactly 'the Crown in right of the Government of Western Australia'. By section 5 of the Act the crown may sue and be sued in the same manner as a subject. Every proceeding should be taken by or against the crown under the title 'The State of Western Australia'. This is an example of the way in which the sovereign power of parliament in the modern world can be used not only to bind the crown in the same manner as a citizen but also to change the description of the body exercising governmental powers."

https://freemandelusion.com/wp-content/uploads/2018/07/glew-v-the-governor-of-western-australia-2009-wasc-14.pdf

The meaning of the Crown in constitutional theory

"*The Crown*" of the States are entirely different and distinct legal personalities from the Commonwealth Crown, and from the Crown of England, or any other Commonwealth nation. This notion is known as the divisibility of the Crown which Justice Gaudron found to be "implicit in the Constitution." in ***Sue v Hill [1999] HCA 30*** (from 83):

> *"Accordingly, it is necessary to say a little as to the senses in which the expression "the Crown" is used in constitutional theory derived from the United Kingdom.*
>
> *In its oldest and most specific meaning, "the Crown" is part of the regalia which is "necessary to support the splendour and dignity of the Sovereign for the time being", is not devisable and descends from one sovereign to the next.*
>
> *The writings of constitutional lawyers at the time show that it was well understood in 1900, at the time of the adoption of the Constitution, that the term "the Crown" was used in several metaphorical senses. "We all know", Lord Penzance had said in 1876, "that the Crown is an abstraction", and Maitland, Harrison Moore, Inglis Clark and Pitt Cobbett, amongst many distinguished constitutional lawyers, took up the point.*
>
> ***The first use of the expression "the Crown"** was to identify the body politic. Writing in 1903, Professor Pitt Cobbett identified this as involving a "defective conception" which was "the outcome of an attempt on the part of English law to dispense with the recognition of the State as a juristic person, and to make the Crown do service in its stead". The Constitution, in identifying the new body politic which it established, did not use the term "the Crown" in this way. After considering earlier usages of the term in England and in the former American colonies, Maitland rejoiced in the return of the term "the Commonwealth" to the statute book. He wrote in 1901:*
>
> *"There is no cause for despair when 'the people of New South Wales, Victoria, South Australia, Queensland and Tasmania, humbly relying on the blessing of Almighty God, have agreed to unite in one indissoluble Federal Commonwealth under the Crown of the United Kingdom of Great Britain and Ireland'. We may miss the old words that were used of Connecticut and Rhode Island: 'one body corporate and politic in fact and name'; but 'united in a Federal Commonwealth under the name of the Commonwealth of Australia' seems amply to fill their place. And a body politic may be a member of another body politic."*
>
> ***The second usage of "the Crown"** is related to the first and identifies that office, the holder of which for the time being is the incarnation of the international personality of a body politic, by whom and to whom diplomatic representatives are accredited and by whom and with whom treaties are concluded. The Commonwealth of Australia, as such, had assumed international personality at some date well before the enactment of the Australia Act. Differing views have been expressed as to the identification of that date but nothing turns upon the question for present purposes. Since 1987, the Executive branch of the Australian Government has applied s61 of the Constitution (which extends to the maintenance of the Constitution) consistently with the*

views of Inglis Clark expressed over 80 years before and the Governor-General has exercised the prerogative powers of the Queen in regard to the appointment and acceptance, or recall, of diplomatic representatives and the execution of all instruments relating thereto.

In State Authorities Superannuation Board v Commissioner of State Taxation (WA) , McHugh and Gummow JJ said: "Questions of foreign state immunity and of whether an Australian law, upon its true construction, purports to bind a foreign state now should be approached no differently as regards those foreign states which share the same head of state than it is for those foreign states which do not. This is consistent with the reasoning and outcome in Nolan v Minister for Immigration and Ethnic Affairs."

***Thirdly, the term "the Crown"** identifies what Lord Penzance in Dixon called "the Government", being the executive as distinct from the legislative branch of government, represented by the Ministry and the administrative bureaucracy which attends to its business. As has been indicated, under the Constitution the executive functions bestowed upon "the Queen" are exercised upon Australian advice.*

***The fourth use of the term "the Crown"** arose during the course of colonial development in the nineteenth century. It identified the paramount powers of the United Kingdom, the parent state, in relation to its dependencies. At the time of the establishment of the Commonwealth, the matter was explained as follows by Professor Pitt Cobbett in a passage which, given the arguments presented in the present matters, merits full repetition:*

"In England the prerogative powers of the Crown were at one time personal powers of the Sovereign; and it was only by slow degrees that they were converted to the use of the real executive body, and so brought under control of Parliament. In Australia, however, these powers were never personal powers of the King; they were even imported at a time when they had already to a great extent passed out of the hands of the King; and yet they loom here larger than in the country of their origin.

The explanation would seem to be that, in the scheme of colonial government, the powers of the Crown and the Prerogative really represent, – not any personal powers on the part of the Sovereign, – but those paramount powers which would naturally belong to a parent State in relation to the government of its dependencies; although owing to the failure of the common law to recognise the personality of the British 'State' these powers had to be asserted in the name and through the medium of the Crown.

This, too, may serve to explain the distinction, subsequently referred to, between the 'general' prerogative of the Crown, which is still wielded by Ministers who represent the British State, and who are responsible to the British Parliament, – and what we may call the 'colonial' prerogative of the Crown, which, although consisting originally of powers reserved to the parent State, has with the evolution of responsible government, been gradually converted to the use of the local executive, and so brought under the control of the local Legislature, except on some few points where the Governor is still required to act not as a local constitutional Sovereign but as an imperial officer and subject to an immediate responsibility to his imperial masters."

What Isaacs J called the "Home Government" ceased before 1850 to contribute to the expenses of the colonial government of New South Wales. On the grant of responsible government, certain prerogatives of the Crown in the colony, even those of a proprietary nature, became vested "in the Crown in right of the colony", as Jacobs J put it in New South Wales v The Commonwealth.

Debts might be payable to the exchequer of one government but not to that of another and questions of disputed priority could arise. Harrison Moore, writing in 1904, observed: "So far as concerns the public debts of the several parts of the King's dominions, they are incurred in a manner which indicates the revenues out of which alone they are payable, generally the Consolidated Revenue of the borrowing government; and the several Colonial Statutes dealing with suits against the government generally limit the jurisdiction of the Court to 'claims against the Colonial Government,' or to such claims as are payable out of the revenue of the colony concerned …"

Section 105 of the Constitution provided for the Parliament to take over from the States their public debts "as existing at the establishment of the Commonwealth".

***The expression "the Crown in right of** the government in question was used to identify these newly created and evolving political units. With the formation of federations in Canada and Australia it became more difficult to continue to press "the Crown" into service to describe complex political structures. Harrison Moore identified "the doctrine of unity and indivisibility of the Crown" as something "not persisted in to the extent of ignoring that the several parts of the Empire are distinct entities". He pointed to the "inconvenience and mischief" which would follow from rigid adherence to any such doctrine where there were federal structures and continued:*

"The Constitutions themselves speak plainly enough on the subject. Both the British North America Act and the Commonwealth of Australia Constitution Act recognize that 'Canada' and the 'Provinces' in the first case, the 'Commonwealth' and the 'States' in the second, are capable of the ownership of property, of enjoying rights and incurring obligations, of suing and being sued; and this not merely as between the government and private persons, but by each government as distinguished from and as against the other this in fact is the phase of their personality with which the Constitutions are principally concerned. Parliament has unquestionably treated these entities as distinct persons, and it is only by going behind the Constitution that any confusion of personalities arises."

It may be thought that in this passage lies the seed of the doctrine later propounded by Dixon J in Bank of New South Wales v The Commonwealth, and applied in authorities including Crouch v Commissioner for Railways (Q) and Deputy Commissioner of Taxation v State Bank (NSW), that the Constitution treats the Commonwealth and the States as organisations or institutions of government possessing distinct individuality. Whilst formally they may not be juristic persons, they are conceived as politically organised bodies having mutual legal relations and are amenable to the jurisdiction of courts exercising federal jurisdiction. The employment of the term "the Crown" to describe the relationships inter se between the United Kingdom, the Commonwealth and the States was described by Latham CJ in 1944 as involving "verbally impressive mysticism". It is of no assistance in determining today whether, for the purposes of the present litigation, the United Kingdom is a "foreign power" within the meaning of s 44(i) of the Constitution.

Nearly a century ago, Harrison Moore said that it was likely that Australian draftsmen would be likely to avoid use of the term "Crown" and use instead the terms "Commonwealth" and "State". Such optimism has proved misplaced. That difficulties can arise from continued use of the term "the Crown" in State legislation is illustrated by The Commonwealth v Western Australia. However, no such difficulties need arise in the construction of the Constitution.

The phrases "under the Crown" in the preamble to the Constitution Act and "heirs and successors in the sovereignty of the United Kingdom" in covering cl 2 involve the use of the expression "the Crown" and cognate terms ***in what is the fifth sense.***

This identifies the term "the Queen" used in the provisions of the Constitution itself, to which we have referred, as the person occupying the hereditary office of Sovereign of the United Kingdom under rules of succession established in the United Kingdom. The law of the United Kingdom in that respect might be changed by statute. But without Australian legislation, the effect of s1 of the Australia Act would be to deny the extension of the United Kingdom law to the Commonwealth, the States and the Territories.

There is no precise analogy between this state of affairs and the earlier development of the law respecting the monarchy in England, Scotland and Great Britain. It has been suggested: "The Queen as monarch of the United Kingdom, Canada, Australia and New Zealand is in a position resembling that of the King of Scotland and of England between 1603 and 1707 when two independent countries had a common sovereign."

But it was established that a person born in Scotland after the accession of King James I to the English throne in 1603 was not an alien and thus was not disqualified from holding lands in England. That was the outcome of Calvin's Case. Nor does the relationship between Britain and Hanover between 1714 and 1837 present a precise analogy, if only because there was lacking the link of a common law of succession.

Almost a century has passed since the enactment of the Constitution Act in the last year of the reign of Queen Victoria. In 1922, the Lord Chancellor observed that doctrines respecting the Crown often represented the results of a constitutional struggle in past centuries, rather than statements of a legal doctrine. The state of affairs identified in Section III of these reasons is to the contrary. It is, as Gibbs J put it, "the result of an orderly development – not … the result of a revolution". Further, the development culminating in the enactment of the Australia Act (the operation of which commenced on 3 March 1986) has followed paths understood by constitutional scholars writing at the time of the establishment of the Commonwealth.

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 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, 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.*

https://freemandelusion.com/wp-content/uploads/2020/10/sue-v-hill-1999-hca-30.pdf

Frederic Maitland "***The Crown as Corporation***" (1901):

https://freemandelusion.com/wp-content/uploads/2021/03/maitland-the-crown-as-corporation.pdf

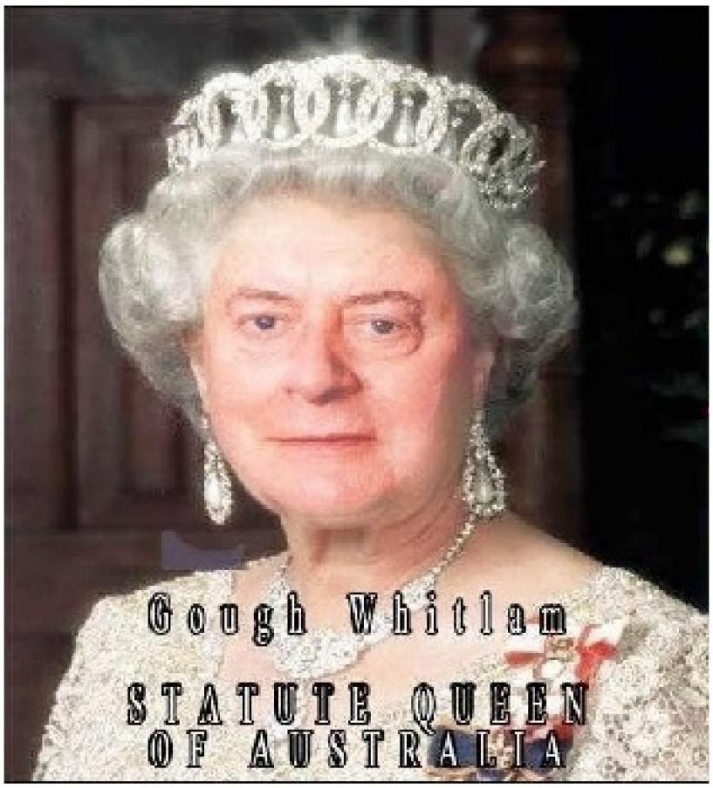
George Winterton "***The Evolution of a Separate Australian Crown***" (1993):

https://freemandelusion.com/wp-content/uploads/2020/11/the-evolution-of-a-separate-australian-crown.pdf

Anne Twomey "***Responsible Government and the Divisibility of the Crown***" (2008):

https://freemandelusion.com/wp-content/uploads/2021/03/responsible-government-and-the-divisibility-of-the-crown.pdf

The Queen of Australia



The *Royal Styles and Titles Act 1973*, in conjunction with the *Royal Styles and Titles Act 1953*, changed the Queen's title to be used in relation to Australia to the *"Queen of Australia"* as opposed to the *"Queen of the United Kingdom".*

The pseudolaw movement has many different abstract speculations regarding the validity of the title of the Queen of Australia, most of these false premises are based in a misconception of the changes that had occurred in the constitutional relations between the United Kingdom and Australia. The Queen's current Australian title is in fact completely valid within constitutional theory. The amendments made by the Whitlam Government to the *Royal Style and Titles Act* in 1973 are merely a reflection of decisions previously made throughout all the former colonies at the Imperial Conferences prior to the adoption of the *Statute of Westminster*, which was decades before the amendments were made by his government.

Rodney Culleton has often referred to the *"Queen of Australia"* as a *"bush chook"*. Adherents often refer to this title as a *"paper queen"* without any attachment to the *"lawful monarch Elizabeth II".* They generally believe that Gough Whitlam *"acted in treason"* by passing this legislation, and that it was unconstitutional, as it somehow altered the *Constitution* without the referendum process set out in section 128. The basis of this belief is because covering clause 2 of the *Constitution* provides:

> *"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."*

The whole position of the monarch in today's political system is easily misunderstood, that's why this false premise of the invalidity of her title runs concurrent in the pseudo-legal theories of most commonwealth nations, and not just here about her Australian title amended by the Whitlam government. To refer to the Queen of Australia as the British Queen, the English Queen or the foreign monarch is fallacious when considering the Queen's role as outlined in the Australian Constitution and the several laws of Australia that relate to constitutional matters.

The "Crown of the United Kingdom of Great Britain and Ireland" that appears on the Preamble to the Australian Constitution, ceased to exist after the ***Anglo-Irish treaty of 1922*** put an end to the union of Great Britain and Ireland, creating a smaller dominion of which George V remained King. The ***Imperial Conference in 1926*** proposed a change to the Royal style and titles designated for King George V.

> *"The title of His Majesty the King is of special importance and concern to all parts of His Majesty's Dominions. Twice within the last fifty years has the Royal Title been altered to suit changed conditions and constitutional developments. The present title, which is that proclaimed under the Royal Titles Act of 1901, is as follows: — "George V, by the Grace of God, of the United Kingdom of Great Britain and Ireland and of the British Dominions beyond the Seas King, Defender of the Faith, Emperor of India." Some time before the Conference met, it had been recognised that this form of title hardly accorded with the altered state of affairs arising from the establishment of the Irish Free State as a Dominion. It had been further ascertained that it would be in accordance with His Majesty's wished that any recommendation for change should be submitted to him as the result of the discussion at the Conference. We are unanimously of the opinion that a slight change is desirable, and we recommend that, subject to His Majesty's approval, the necessary legislative action should be taken to secure that His Majesty's title should henceforward read: "George V, by the Grace of God, of Great Britain and Ireland and of the British Dominions beyond the Seas King, Defender of the Faith, Emperor of India."*

https://freemandelusion.com/wp-content/uploads/2020/11/balfour-agreement-1926.pdf

The *"Crown of the United Kingdom of Great Britain and Ireland"* became the *"Crown of the United Kingdom of Great Britain and Northern Ireland".* The Parliament in Westminster ceased to represent all of Ireland, which required a change in its style. Therefore, the ***Royal and Parliamentary Titles Act 1927 (17 Geo 5 c. 4)*** changed the style of Parliament, which would *"hereafter be known as and styled the Parliament of the United Kingdom of Great Britain and Northern Ireland"*. The change was incorporated in the ***Statute of Westminster 1931***.

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

At the Imperial Conference of 1949 it was agreed that *"it would not be necessary for each country to approve all the local variations of the title"* and further in 1952 it was again agreed that each country should adopt *"a form of Royal title suitable to its own circumstances"* but *"retain a substantial element which is common to all". These changes were agreed at the Imperial Conferences by "all the Dominions as of the Parliament of the United Kingdom." in accordance with the provisions of the second paragraph of the Statute of Westminster Adoption Act 1942, "...shall hereafter require the assent as well of the Parliaments of all the Dominions as of the Parliament of the United Kingdom."*

https://freemandelusion.com/wp-content/uploads/2020/11/statute-of-westminster-act-1931.pdf

From the ***Royal Titles Act 1953 (UK)***:

> *"And whereas it was agreed between representatives of Her Majesty's Governments in the United Kingdom, Canada, Australia, New Zealand, the Union of South Africa, Pakistan and Ceylon assembled in London in the month of December, nineteen hundred and fifty-two, that there is need for an alteration thereof which, whilst permitting of the use in relation to each of those countries of a form suiting its particular circumstances, would retain a substantial element common to all."*

Royal Titles Act 1953

1953 CHAPTER 9

An Act to provide for an alteration of the Royal Style and Titles.

[26th March 1953]

WHEREAS it is expedient that the style and titles at present appertaining to the Crown should be altered so as to reflect more clearly the existing constitutional relations of the members of the Commonwealth to one another and their recognition of the Crown as the symbol of their free association and of the Sovereign as the Head of the Commonwealth:

And whereas it was agreed between representatives of Her Majesty's Governments in the United Kingdom, Canada, Australia, New Zealand, the Union of South Africa, Pakistan and Ceylon assembled in London in the month of December, nineteen hundred and fifty-two, that there is need for an alteration thereof which, whilst permitting of the use in relation to each of those countries of a form suiting its particular circumstances, would retain a substantial element common to all:

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:—

This element was retained in *"Her other realms and Territories"* and in *"Head of the Commonwealth"*, and all Commonwealth Nations STILL retain this today.

As stated in ***Re Patterson Ex parte Taylor [2001] HCA 51*** (at 226-227):

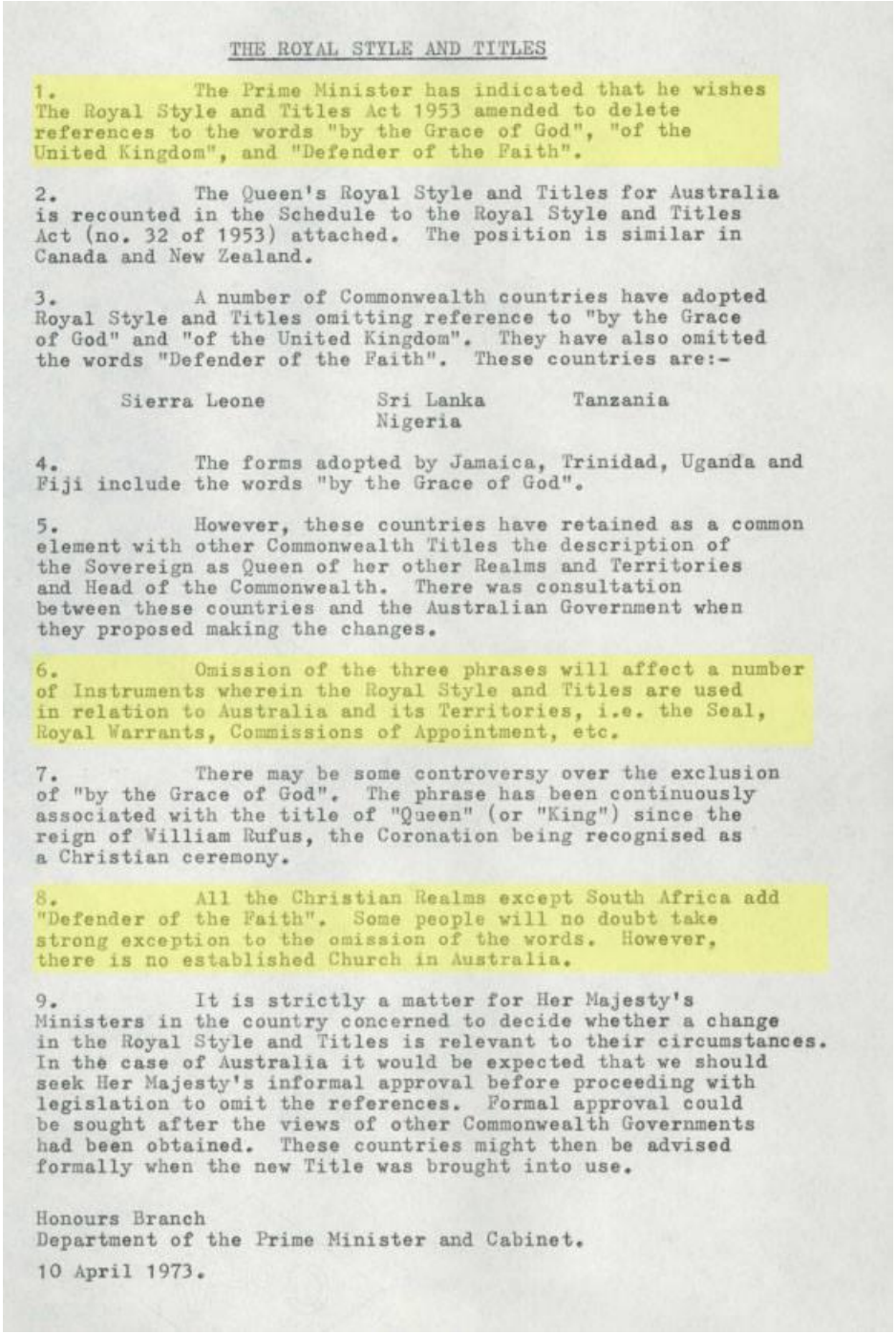
> *"Notions of allegiance as the factum upon which nationality laws and status turned were accommodated to international realities consequent upon the disappearance of the British Empire. Those realities were reflected in the Royal Style and Titles Act 1953 (Cth). This recited an*

> *agreement reached at a meeting of British Commonwealth Prime Ministers in London in December 1952 that "the Style and Titles at present appertaining to the Crown are not in accord with current constitutional relationships within the British Commonwealth"."*

https://freemandelusion.com/wp-content/uploads/2020/05/re-patterson-ex-parte-taylor-2001-hca-51.pdf

The amendment in 1973 did not alter this element, and was therefore within the powers of the particular parliament for this reason. It had to exclude (in the case of Australia) the Papal title given to King Henry VIII, *"Defender of the Faith"* because it was previously established that neither the Queen, the governor-general, or any state governor have any religious role in Australia. The Church of England lost its legal privileges in the Colony of New South Wales by the *Church Act* of 1836. Drafted by the reformist attorney-general John Plunkett, the act established legal equality for Anglicans, Catholics and Presbyterians and was later extended to Methodists. There never has been an established church in Australia, either before or since Federation in 1901. This amendment was reflective of one of the key differences from the Queen's role in England where she is the *Supreme Governor of the Church of England.*

It must be pointed out that it was the *Royal Style and Titles Act 1953* that added the word *"Australia"* to the Queen's style and titles, and the Queen became *Queen of Australia*. Popular mythology has it that it was Prime Minister Whitlam who did this with his *Royal Style and Titles Act 1973*, but that is simply not true. What Whitlam did was remove the words *"United Kingdom"* and *"Defender of the Faith"* from the 1953 style and titles as being no longer appropriate for use in Australia, but he added nothing to what was already there. He had wanted also to remove the words *"by the Grace of God"*, but the Queen would not hear of it.



THE ROYAL STYLE AND TITLES

1. The Prime Minister has indicated that he wishes The Royal Style and Titles Act 1953 amended to delete references to the words "by the Grace of God", "of the United Kingdom", and "Defender of the Faith".

2. The Queen's Royal Style and Titles for Australia is recounted in the Schedule to the Royal Style and Titles Act (no. 32 of 1953) attached. The position is similar in Canada and New Zealand.

3. A number of Commonwealth countries have adopted Royal Style and Titles omitting reference to "by the Grace of God" and "of the United Kingdom". They have also omitted the words "Defender of the Faith". These countries are:-

Sierra Leone Sri Lanka Tanzania
Nigeria

4. The forms adopted by Jamaica, Trinidad, Uganda and Fiji include the words "by the Grace of God".

5. However, these countries have retained as a common element with other Commonwealth Titles the description of the Sovereign as Queen of her other Realms and Territories and Head of the Commonwealth. There was consultation between these countries and the Australian Government when they proposed making the changes.

6. Omission of the three phrases will affect a number of Instruments wherein the Royal Style and Titles are used in relation to Australia and its Territories, i.e. the Seal, Royal Warrants, Commissions of Appointment, etc.

7. There may be some controversy over the exclusion of "by the Grace of God". The phrase has been continuously associated with the title of "Queen" (or "King") since the reign of William Rufus, the Coronation being recognised as a Christian ceremony.

8. All the Christian Realms except South Africa add "Defender of the Faith". Some people will no doubt take strong exception to the omission of the words. However, there is no established Church in Australia.

9. It is strictly a matter for Her Majesty's Ministers in the country concerned to decide whether a change in the Royal Style and Titles is relevant to their circumstances. In the case of Australia it would be expected that we should seek Her Majesty's informal approval before proceeding with legislation to omit the references. Formal approval could be sought after the views of other Commonwealth Governments had been obtained. These countries might then be advised formally when the new Title was brought into use.

Honours Branch
Department of the Prime Minister and Cabinet.
10 April 1973.

Both the 1953 and 1973 amendments to the *Royal Titles and Styles Acts* were ***reserved for her majesty's pleasure***. The ***Royal Style and Titles Act 1953*** was assented to on the April 3rd 1953, and Proclaimed in the Government Gazette ***(No 21, 9 April 1953)***

https://freemandelusion.com/wp-content/uploads/2019/06/rstact1953.pdf

No. 32 of 1953.

AN ACT

Relating to the Royal Style and Titles.

Assented to

Elizabeth R

April 3rd 1953.

The *Royal Style and Titles Act 1953* was repealed by the *Statute Law Revision Act 1973* (No. 216, 1973) vide the enactment of the *Royal Style and Titles Act 1973*. Elizabeth II personally Assented to, and made the Proclamation for the ***Royal Style and Titles Act 1973*** while in Australia on the 19th October 1973.

https://freemandelusion.com/wp-content/uploads/2019/06/c2004a00044.pdf

The Proclamation was published in the Government Gazette ***(No 152, 19 October 1973)***. along with the Royal Warrant and Proclamation for the Great Seal of Australia.

Elizabeth R

19 October 1973

Royal Style and Titles Act 1973

No. 114 of 1973

https://freemandelusion.com/wp-content/uploads/2020/09/seal.pdf

Hopes v Australian Securities and Investments Commission [2016] WASC 198 provides an excellent analysis of the historical perspective (from 42):

"A history of the royal style and titles of the monarch is summarised in two works by Professor Anne Twomey: The Chameleon Crown – the Queen and Her Australian Governors (2006) (chapter 9) and The Australia Acts 1986: Australia's Statutes of Independence (chapter 6). The history is partly recorded in the second reading speeches for the Bills that became the Royal Style and Titles Act 1953 (Cth) (the 1953 Act) and the 1973 Act and, so far as is relevant to Australia, can be traced in a succession of legislative enactments: the Royal and Parliamentary Titles Act 1927 (Imp), the Statute of Westminster 1931 (UK), the Royal Style and Titles (Australia) Act 1947 (Cth), the 1953 Act and the 1973 Act.

Briefly stated, the royal style and titles of the monarch were originally determined in the United Kingdom. The Royal and Parliamentary Titles Act authorised the King to issue a royal proclamation altering the royal style and titles in accordance with recommendations made by an Imperial Conference. The change authorised by the Act was declared in Australia by way of proclamation in June 1927 (Twomey, The Chameleon Crown, 104). The object of the Statute of Westminster was to 'give effect to certain resolutions passed by Imperial Conferences held in the years 1926 and 1930'. The preamble to the Statute then recorded a convention agreed at those Conferences: "And whereas it is meet and proper to set out by way of preamble to this Act that … 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.

The purpose of the Royal Style and Titles (Australia) Act was to give assent to an alteration in the royal style and title consequent upon the enactment of the Indian Independence Act 1947 (UK). The preamble to the Act recited that the Act gave effect to the convention recognised in the preamble to the Statute of Westminster. The 1953 Act gave effect to a further agreement made at a Prime Ministers' conference held in London in December 1952. It was agreed that each member country of the British Commonwealth should use, for its own purposes, a form of the royal style and titles that suited its particular circumstances but retained a substantial element that was common to all countries. The preamble to the 1953 Act again recited the convention recorded in the Statute of Westminster and the agreement made at the Prime Ministers' London conference. Section 4(1) of the Act provided for the assent of the Commonwealth Parliament to the adoption by the Queen, for use in relation to the Commonwealth of Australia and its Territories, the style and titles set out in the schedule to the Act and to the issue of a royal proclamation. The royal style and titles provided for in the schedule was 'Elizabeth the Second, by the Grace of God of the United Kingdom, Australia and Her other Realms and Territories Queen, Head of the Commonwealth, Defender of the Faith'. Accordingly, the style and titles of the Queen under the 1953 Act included a reference to 'Queen of Australia'.

Section 2(1) of the 1973 Act also provided for the assent of the Commonwealth Parliament to be given to the adoption by the Queen of the royal style and titles set out in the schedule in lieu of the royal style and titles set out in the schedule to the 1953 Act and for the issue by the Queen of a royal proclamation for that purpose. The royal style and titles provided for in the schedule was 'Elizabeth the Second, by the Grace of God Queen of Australia and Her other Realms and Territories, Head of the Commonwealth'. The second and third reading speeches for the Bill that became the 1973 Act indicated that it was proposed that the Queen would sign the proclamation and personally give assent to the Bill during a forthcoming trip to Australia. That occurred in

October 1973 (Twomey, The Chameleon Crown, 109; Commonwealth, Government Gazette, No 152 (19 October 1973) 5)."

The case also provides a summary on the power to enact the 1973 Act (from 51). As noted, the royal style and titles was actually adopted by royal proclamation – that is, by a prerogative act of the Queen, and was within the executive power of the Commonwealth by its very subject matter and within the legislative power of the Commonwealth as either incidentally conferred by section 51(xxxix) of the Constitution, or deduced from the nature and status of the Commonwealth as a national polity.

"Professor Twomey noted that a briefing paper prepared by the Commonwealth Attorney-General's Department in 1974 identified four sources of power to enact the 1973 Act (The Australia Acts, 452, citing Commonwealth Attorney-General's Department, Briefing Paper, 'The Queen of Queensland', November 1974, National Archives of Australia, 1209 1974/6962):

- *(a) the Statute of Westminster 'as adopted by the Australian Parliament in 1942 in its character as a basic constitutional instrument modifying and extending the Constitution Act of 1900';*
- *(b) an 'inherent power of the Commonwealth to provide for matters essentially involved in its existence as a self-governing Dominion under the sovereignty of the Queen within the Commonwealth of Nations';*
- *(c) the incidental powers conferred on the Parliament by s 51(xxxix) of the Constitution in relation to such provisions as s 1 and s 61; and*
- *(d) possibly, the external affairs power conferred by s 51(xxix).*

Professor Twomey, in The Chameleon Crown, expressed doubt as to whether the Statute of Westminster conferred legislative power on the Commonwealth Parliament to enact the 1973 Act, either by reason of the preamble or the provisions of s 2. Although the external affairs power supported the Australia Act 1986 (Cth), Professor Twomey dismissed the suggestion that the Commonwealth Parliament was empowered to enact the 1973 Act by s 51(xxix) of the Constitution. As she observed, it is difficult to characterise the subject matter of an Act that deals with the title of the Queen of Australia as an external affair (although see Freeman D, 'The Queen and her dominion successors: the law of succession to the throne in Australia and the Commonwealth of Nations (2002) 4(3) CLPR 28). Accordingly, Professor Twomey prefers the 'nationhood' power as the head of power to support the 1973 Act 'either characterised as an inherent power deriving from the status of the Commonwealth as a nation to deal with national matters such as the flag, anthem or the celebration of a bicentenary, or as a legislative power, under s 51(xxxix) of the Australian Constitution, to enact laws incidental to the executive power of the Commonwealth' (The Chameleon Crown, 110).

*The reference to an inherent power to deal with matters such as the 'flag, anthem or the celebration of a bicentenary' is apparently a reference to the reasoning of the Mason CJ, Deane and Gaudron JJ in **Davis v The Commonwealth [1988] HCA 63**; (1988) 166 CLR 79. Their Honours concluded that the commemoration of the Bicentenary fell squarely within Commonwealth executive power as a 'matter falling within the peculiar province of the Commonwealth in its capacity as the national and federal government' (94). Consequently, the incidental power conferred by s 51(xxxix) of the Constitution supported the enactment of the Australian Bicentennial Authority Act 1980 (Cth). Further, it was considered that it might have been possible*

> *to conclude that the legislation was validly enacted without recourse to s 51(xxxix) as the 'requisite legislative power may be deduced from the nature and status of the Commonwealth as a national polity' (95) as 'the legislative powers of the Commonwealth extend beyond the specific powers conferred upon the Parliament by the Constitution and include such powers as may be deduced from the establishment and nature of the Commonwealth as a polity' (93). The 'nationhood power' is a term that has been given by academic writers to the power recognised in that case and in earlier authorities, particularly in the judgments of Mason J and Jacobs J in **Victoria v The Commonwealth and Hayden [1975] HCA 52**; (1975) 134 CLR 338. The scope of the Commonwealth's executive power has been subsequently considered in a series of cases challenging legislation to give effect to various Commonwealth programmes and most recently, in relation to a claim for damages for wrongful imprisonment commenced by a refugee claimant who was detained on an Australian border protection vessel: **Pape v Commissioner of Taxation [2009] HCA 23**; (2009) 238 CLR 1; **Williams v The Commonwealth [No 1] [2012] HCA 23**; (2012) 248 CLR 156; **Williams v The Commonwealth [No 2] [2014] HCA 23**; (2014) 252 CLR 416 and **CPCF v Minister for Immigration & Border Protection [2015] HCA 1**; (2015) 89 ALJR 207; (2015) 316 ALR 1.*
>
> *I do not consider that it is necessary to further explore the scope of the Commonwealth's executive power and the incidental power conferred by s 51(xxxix), read with s 61, or the 'nationhood' power as discussed in those cases for two reasons. First, the royal style and titles referred to in the schedule to the 1973 Act was actually adopted by royal proclamation – that is, by a prerogative act of the Queen. As French CJ observed in Pape, the executive power of the Commonwealth Government includes the prerogatives of the Crown [126] – [127]. Second, there is nothing in the authorities to which I have referred that suggests that the style and titles of the monarch to be adopted in Australia is a matter that is outside the executive and legislative powers of the Commonwealth. The 1973 Act (and the 1953 Act) were within the executive power of the Commonwealth by their very subject matter and within the legislative power of the Commonwealth as either incidentally conferred by s 51(xxxix) or deduced from the nature and status of the Commonwealth as a national polity."*

https://freemandelusion.com/wp-content/uploads/2020/11/hopes-v-australian-securities-and-investments-commission-2016-wasc-198.pdf

Nevertheless, there is an abundance of cases in which the premise that the change in titles made all subsequent legislation invalid, all of which are available on this website under the Tag "***The Queen of Australia***". Some were listed in ***Petrie; Trustee of the property of Aitken (Bankrupt) v Aitken & Ors [2019] FCCA 16***:

> *"...allegations that the plaintiff was prosecuting provisions of law that are not recognised by the Commonwealth Constitution, and was making fraudulent misrepresentations of their nature and standing, that there are no acts or provisions made recognised by the Constitution from a time in 1973 upon using the Queen of Australia for Royal Assent, that the action was a departure from the constitutional law, that the Queen of Australia is not a legal personality and that name cannot be placed on court documents, and that, effectively, laws passed since the Royal Style and Titles Act 1973 are invalid and, judges and magistrates in Western Australia have taken an alternate or extra jurisdictional oath in contempt of the Commonwealth of Australian*

> *Constitution Act, and such office bearers have not been lawfully installed by a deputy governor or administrator commissioned under the Queen of Australia."*
>
> *These or similar submissions, in relation to both State and Commonwealth Acts, using the same grounds or variants thereof have been made in a large number of cases and characterised over a period of almost 17 years as having no basis in law by Commonwealth courts: **Joosse & Anor v Australian Securities and Investment Commission [1998] HCA 77; (1998) 159 ALR 260**; **Helljay Investments Pty Ltd v Deputy Commissioner of Taxation [1999] HCA 56**; **McKewin's Hairdressing and Beauty Supplies Pty Ltd v Deputy Commissioner of Taxation [2000] HCA 27; (2000) 171 ALR 335**; and State courts: **Hedley v Spivey [2011] WASC 325**; **Shaw v Jim McGinty in his capacity as Attorney General & Anor [2006] WASCA 231**; **Glew & Anor v Shire of Greenough [2006] WASCA 260** (special leave refused: **Glew v Shire of Greenough [2007] HCATrans 520**); **Glew Technologies Pty Ltd v Department of Planning and Infrastructure [2007] WASCA 289**; **Glew v City of Greater Geraldton [2012] WASCA 94**; **Glew v Frank Jasper Pty Ltd [2012] WASCA 93**; **Krysiak v Hodgson [2009] WASCA 114**; **Glew v The Governor of Western Australia [2009] WASC 14**; **Glew v Frank Jasper Pty Ltd [2010] WASCA 87**; **O'Connell v The State of Western Australia [2012] WASCA 96**; **Hedley v Spivey [2012] WASCA 116**; **Bell v Cribb [2012] WASCA 234**; and also by courts in other jurisdictions: **Meads v Meads [2012] ABQB 571**.*
>
> *Some of these cases dealt with submissions relating to the alleged constitution invalidity, particularly since the Royal Style and Titles Act 1973 (Cth) of, inter alia, the ITAA, the TAA and various state courts. In each case the points sought to be agitated were found not to be arguable, as are the defendant's submissions in this case. Accordingly, I reject the submission that the ITAA or the TAA are invalid on Constitutional grounds and that the writ is in some way invalid because it refers to the Queen of Australia.*

https://freemandelusion.com/wp-content/uploads/2019/05/petrie-trustee-of-the-property-of-aitken-bankrupt-v-aitken-ors-2019-fcca-16.pdf

In what is likely the first of these cases to be heard by the High Court, and subsequently referred to in many cases in the Supreme Courts, was in ***Joosse & Anor v Australian Securities and Investment Commission [1998] HCA 77***. Hayne J. rejected the notion that the change in titles worked any fundamental constitutional change (at 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 is no material that would suggest that has not been done in the case of each Commonwealth Act that now is challenged."*

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

This decision has been referred to in cases such as ***Conroy v Deputy Commissioner of Taxation [2005] QSC 206***:

> *"The argument is that the Governor- General was appointed by commission by the Queen as Queen of Australia and that there is no-one answering that description having any legal role in the constitutional or legal affairs of this country. The argument is one which has been raised a number of times and it can, I think, be seen set out in somewhat more extensive form in the judgment of the Chief Justice of South Australia in Money Tree Management Systems Pty Ltd v Deputy Commissioner of Taxation [2000] SASC 54.*
>
> *The argument, wherever it has been raised, has been rejected. I, with respect, adopt what was said by the Chief Justice of South Australia in that case. The position is, in my view, clear that the Queen acts in her capacity as Queen of Australia using that style or title in exercising the relevant powers and I reject this argument. I also refer to the judgment of Hayne J in Joosse and Anor v Australian Securities and Investment Commission (1998) 159 ALR 260. I also reject the argument that the great seal of Australia is not the correct seal for use by the Queen. This argument is based upon a similar premise to the first argument and, in my view, also has to be rejected.*

Lamont v Bright [2002] HCATrans 229:

> *MR. LAMONT: Further, my notice of motion of 27 March seeks to have this Court answer a number of questions applicable to the Queen's title, role and authority as identified in the Commonwealth of Australia Constitution Act. It is my submission that the Queen of Australia is not a recognisable entity within the Commonwealth of Australia Constitution Act 1900 and at no time since that Act's implementation has the United Kingdom Parliament suitably amended that Act so as to recognise a Queen of Australia.*
>
> *The letters patent of 1984 signed by Prime Minister Hawke identifies only the Queen of Australia and the Great Seal of Australia, both having no nexus to the Commonwealth of Australia Constitution Act and are so ultra vires. It is to this end that I have applied to this Court to have the current proceedings before the Family Court removed, in part, to this Court so that the matters arising under the Constitution and certain treaties to which Australia has ratified our acceptance can be dealt with more fully and appropriately.*
>
> *HIS HONOUR: Arguments similar in principle but not in detail to those now relied on by the applicant were considered and rejected by Justice Hayne of this Court in Joosse v ASIC in a judgment with which I fully agree. The questions that the applicant seeks to argue do not, in my view, have sufficient prospects of success to warrant removal into this Court and taking up the time of the Justices of the Court. Even if I thought that the applicant had an arguable case, which I do not, I would not order the removal of the Family Court proceedings.*

Nibbs v Devonport City Council [2015] TASSC 34:

> *"The Queen's title in the Commonwealth of Australia was changed, firstly by the Royal Style and Titles Act 1953 (Cth), and again by the Royal Style and Titles Act 1973 (Cth). Following those changes, Her Majesty's title was Elizabeth II, by the Grace of God Queen of Australia and her other Realms and Territories, Head of the Commonwealth. For some, that left room for argument*

about Her Majesty's title in the States, what power the British monarch could exercise in and in relation to those States, and whether the relationship of Australian States to the Crown was truly independent of the relationship of the Commonwealth to the Crown: see for instance Commonwealth v Queensland [1975] HCA 43; (1975) 134 CLR 298 (the 'Queen of Queensland Case') 409 The Australia Act 1986 (UK) repealed the Imperial Colonial Laws Validity Act 1865. Thereafter there were no residual powers or responsibilities of the United Kingdom in relation to Australian States. Generally, the provisions of the Australia Act (UK) left a discrete Australian monarchy."

Final Report of the Constitutional Commission 1988

The following is an extract from ***Volume 1 of the Final Report of the Constitutional Commission 1988.*** The report was forwarded to the the then Attorney-General of the Commonwealth of Australia, The Hon Lionel Bowen MP, on 30 June 1988. Authors of the report include Sir Maurice Byers CBE QC, Professor Enid Campbell OBE, The Hon Sir Rupert Hamer KCMG, The Hon E G Whitlam AC QC and Professor Leslie Zines.

Effect of independent nationhood

2.129 The sovereign status of Australia resulted in the rejection of earlier colonial restrictions on the interpretation of the powers of the Commonwealth. It has been declared by a number of High Court judges that the Governor-General, as the Queen's representative, possesses the prerogatives of the Crown relevant to the Federal Government's sphere of responsibility, which includes, for example, all matters relating to external affairs. (See eg Barton v Commonwealth (1974) 131 CLR 477, 498 (Mason J); Victoria v Commonwealth and Hayden (1975) 134 CLR 338, 406 (Jacobs J); New South Wales v Commonwealth (1975) 135 CLR 337.373 (Barwick C J)

2.130 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 (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.

2.131 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. Its 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. (See PH Lane, The Australian Constitution (1986) viii.)

2.132 As a result of federal legislation all appeals to the Privy Council from Australian courts exercising federal jurisdiction were abolished in 1968 (Privy Council (Limitation of Appeals/Act 1968 (Cth)). All appeals from any decision of the High Court (other than those where a certificate might be granted under section 74 of the Constitution) were terminated by the Privy Council (Appeals from the High Court) Act 1975 (Cth).

2.133 The growth to full national status, of course, did not affect the position of the Commonwealth as a community under the Crown. While the preceding events dissolved most of the constitutional links with the British Government, those with the Sovereign remain.

2.134 Indeed the notion of the Crown pervades the Constitution. The preamble recites that the people of the named colonies had agreed to unite in a Federal Commonwealth under the Crown. The Queen is empowered by section 2 of the Constitution to appoint a Governor-General who 'shall be Her Majesty's representative'. Section 61 of the Constitution vests the executive power of the Commonwealth in the Queen and declares that it is exercisable by the Governor-General as the Queen's representative.

2.135 These powers are, of course, consistent with British constitutional practice, exercised on the advice of Australian Ministers (except in those very rare cases which are said to come within the 'reserve powers' of the Crown). On those occasions when the Queen acts in her own capacity, such as in appointing the Governor-General, she also acts on the advice of Australian Ministers, rather than British ones, in accordance with the principle established at the Imperial Conference of 1926.

2.136 The position of the Queen as the Sovereign of a number of independent realms was recognised at a conference of Prime Ministers and other representatives of the nations of the Commonwealth in December 1952 where it was agreed that each country should adopt a form of Royal title suitable to its own circumstances. As a result, the legislation of each country of the Commonwealth (other than Pakistan which expected to become a republic) included for the first time a reference in its Royal Style and Titles to the particular country which enacted the legislation.

2.137 The Royal Style and Titles Act 1953 (Cth), therefore, for the first time referred to the Queen as 'Elizabeth the Second, by the Grace of God of the United Kingdom, Australia and Her other Realms and Territories Queen, Head of the Commonwealth, Defender of the Faith'. As a result of amendments made in 1973 (Royal Style and Titles Act 1973) the present Royal Style and Titles in Australia are 'Elizabeth the Second, by the Grace of God Queen of Australia and Her other Realms and Territories, Head of the Commonwealth.'

2.138 The disappearance of the British Empire has therefore meant that the Queen is now Sovereign of a number of separate countries such as the United Kingdom, Canada, Australia, New Zealand and Papua New Guinea, amongst others. As Queen of Australia she holds an entirely distinct and different position from that which she holds as Queen of the United Kingdom or Canada. The separation of these 'Crowns' is underlined by the comment of Gibbs CJ in Pochi v Macphee (1982) 151 CLR 101,109. that 'The allegiance which Australians owe to Her Majesty is owed not as British subjects but as subjects of the Queen of Australia.'

https://freemandelusion.com/wp-content/uploads/2020/09/constitutional-commission-1988.pdf

Sue V Hill [1999] HCA 30

The following is an extract of the High Court decision (High Court of Australia, Gleeson CJ, Gaudron, McHugh, Gummow, Kirby, Hayne and Callinan JJ - ***Sue v Hill [1999] HCA 30*** relating to the Henry (Nai Leung) Sue - Petitioner and Heather Hill & Anor Respondents case in which Heather Hill lost her right to take her place in the Senate post the 1998 Federal election. The High Court confirmed that the Queen of Australia does not act as a foreign Queen. One of the main arguments that was raised by Heather Hill was that the Queen of Australia is the same person as the Queen of the United Kingdom and Northern Ireland. Therefore swearing allegiance to the Queen of Australia was the same as swearing allegiance to the Queen of the United Kingdom and Northern Ireland. This argument was rejected by the Court on the basis that whilst physically it is the same person (Queen Elizabeth II) they are "independent and distinct" legal personalities. This notion is known as the divisibility of the Crown which Justice Gaudron found to be *"implicit in the Constitution."*

74. We turn now to the position of the Crown in relation to the government of the Commonwealth. Section 2 of the Constitution states:

"A Governor-General appointed by the Queen shall be Her Majesty's representative in the Commonwealth, and shall have and may exercise in the Commonwealth during the Queen's pleasure, but subject to this Constitution , such powers and functions of the Queen as Her Majesty may be pleased to assign to him." (emphasis added)

It has been accepted, at least since the time of the appointment of Sir Isaac Isaacs in 1931, that in making the appointment of a Governor-General the monarch acts on the advice of the Australian Prime Minister [1]. The same is true of the exercise of the power vested by s4 of the Constitution in the monarch to appoint a person to administer the government of the Commonwealth and the power given to the monarch by s126 to authorise the Governor-General to appoint deputies within any part of the Commonwealth.

75. Section 58 makes provision for the Governor-General to reserve a "proposed law passed by both Houses of the Parliament" for the Queen's pleasure, in which event the law shall not have any force unless and until, in the manner prescribed by s60, the Governor-General makes known the receipt of the Queen's assent. Further, s59 provides for disallowance by the Queen of any law within one year of the Governor-General's assent. The text of the Constitution is silent as to the identity of the Ministers upon whose advice the monarch is to act in these respects.

76. As indicated when dealing earlier in these reasons with the former position of the States, provisions in colonial constitutional arrangements for reservation and disallowance had been designed to ensure surveillance of colonial legislatures by the Imperial Government. The convention in 1900 was that the monarch, in relation to such matters, would act on the advice of a British Minister. That advice frequently was given after consultation between the Colonial Office and the Ministry in the colony in question [2]. With respect to the Commonwealth, the whole convention, like that respecting the appointment of Governors-General, changed after the Imperial Conference of 1926 [3].

77. As early as 1929, it was stated in the Report of the Royal Commission on the Constitution [4] with reference to the provisions of ss 58 and 59 of the Constitution that "in virtue of the equality of status which, from a constitutional as distinct from a legal point of view, now exists between Great Britain and the self-governing Dominions as members of the British Commonwealth of Nations, and on the principles which are set out in the Report submitted by the Inter-Imperial Relations Committee to the Imperial Conference in 1926", for "British Ministers to tender advice to the Crown against the views of Australian Ministers in any matter appertaining to the affairs of the Commonwealth" would "not be in accordance with constitutional practice".

78. Whilst the text of the Constitution has not changed, its operation has. This reflects the changed identity of those upon whose advice the sovereign accepts that he or she is bound to act in Australian matters by reason, among other things, of the attitude taken since 1926 by the sovereign's advisers in the United Kingdom. The Constitution speaks to the present and its interpretation takes account of and moves with these developments. Hence the statement by Gibbs J in Southern Centre of Theosophy Inc v South Australia [5], with reference to the Royal Style and Titles Act I973 (Cth), that:

"[i]t is right to say that this alteration in Her Majesty's style and titles was a formal recognition of the changes that had occurred in the constitutional relations between the United Kingdom and Australia".

79. It remains to consider the provision in s 122 of the Constitution whereby the Parliament may make laws, among other things, "for the government of any territory ... placed by the Queen under the authority of and accepted by the Commonwealth". The requirement of acceptance by the Commonwealth and, earlier in s 122, the reference to the surrender of territory by a State and the acceptance thereof by the Commonwealth serve to confirm the placement "by the Queen" of a territory under the authority of the Commonwealth as being a dispositive act by the Crown acting on other than Australian advice.

80. For example, what had been the Crown Colony of British New Guinea was by Imperial instruments placed under the authority of the Commonwealth after the Senate and the House

had passed resolutions authorising the acceptance of British New Guinea as a territory of the Commonwealth [6]. The procedures adopted for the acquisition of Christmas Island and the Cocos (Keeling) Islands reflected the Statute Of Westminster Adoption Act 1942 (Cth). They involved, as a first step, the passage of the Christmas Island (Request and Consent) Act 1957 (Cth) and the Cocos (Keeling) Islands (Request and Consent) Act 1954 (Cth). The Parliament of the Commonwealth thereby requested and consented to an enactment by the Parliament of the United Kingdom enabling the Queen to place the respective islands under the authority of the Commonwealth. There followed the passage of the Cocos Islands Act 1955 (UK) and the Christmas Island Act 1958 (UK) [7].

81. The point is that the reference to "the Queen" in s122 to distinguish the sovereign from "the Commonwealth" indicates within the structure of the Constitution itself a recognition of the involvement of the Crown in distinct bodies politic.

82. Nevertheless, it is submitted for Mrs Hill that the reference in the preamble to the Constitution Act to unification "in one indissoluble Federal Commonwealth under the Crown of the United Kingdom of Great Britain and Ireland, and under the Constitution hereby established" and the identification in covering cl 2 to the heirs and successors of Queen Victoria in the sovereignty of the United Kingdom have a special and immutable significance for the construction of s44(i) of the Constitution. This is said to be so notwithstanding, as we have indicated, that in the regal capacities for which provision is made by the constitutions of the Commonwealth and the States, the sovereign acts on Australian ministerial advice.

The meaning of "the Crown" in constitutional theory

83. Accordingly, it is necessary to say a little as to the senses in which the expression "the Crown" is used in constitutional theory derived from the United Kingdom. In its oldest and most specific meaning, "the Crown" is part of the regalia which is "necessary to support the splendour and dignity of the Sovereign for the time being", is not devisable and descends from one sovereign to the next [8]. The writings of constitutional lawyers at the time show that it was well understood in 1900, at the time of the adoption of the Constitution, that the term "the Crown" was used in several metaphorical senses. "We all know", Lord Penzance had said in 1876, "that the Crown is an abstraction" [9], and Maitland, Harrison Moore, Inglis Clark and Pitt Cobbett, amongst many distinguished constitutional lawyers, took up the point.

84. The first use of the expression "the Crown" was to identify the body politic. Writing in 1903, Professor Pitt Cobbett [10] identified this as involving a "defective conception" which was "the outcome of an attempt on the part of English law to dispense with the recognition of the State as a juristic person, and to make the Crown do service in its stead". The Constitution, in identifying the new body politic which it established, did not use the term "the Crown" in this way. After considering earlier usages of the term in England and in the former American colonies, Maitland rejoiced in the return of the term "the Commonwealth" to the statute book. He wrote in 1901 [11]:

"There is no cause for despair when 'the people of New South Wales, Victoria, South Australia, Queensland and Tasmania, humbly relying on the blessing of Almighty God, have agreed to unite in one indissoluble Federal Commonwealth under the Crown of the United Kingdom of Great

Britain and Ireland'. We may miss the old words that were used of Connecticut and Rhode Island: 'one body corporate and politic in fact and name'; but 'united in a Federal Commonwealth under the name of the Commonwealth of Australia' seems amply to fill their place. And a body politic may be a member of another body politic."

85. The second usage of "the Crown" is related to the first and identifies that office, the holder of which for the time being is the incarnation of the international personality of a body politic, by whom and to whom diplomatic representatives are accredited and by whom and with whom treaties are concluded. The Commonwealth of Australia, as such, had assumed international personality at some date well before the enactment of the Australia Act. Differing views have been expressed as to the identification of that date [12] but nothing turns upon the question for present purposes. Since 1987, the Executive branch of the Australian Government has applied s61 of the Constitution (which extends to the maintenance of the Constitution) consistently with the views of Inglis Clark expressed over 80 years before [13] and the Governor-General has exercised the prerogative powers of the Queen in regard to the appointment and acceptance, or recall, of diplomatic representatives and the execution of all instruments relating thereto [14].

86. In State Authorities Superannuation Board v Commissioner of State Taxation (WA) , McHugh and Gummow JJ said [15]:

"Questions of foreign state immunity and of whether an Australian law, upon its true construction, purports to bind a foreign state now should be approached no differently as regards those foreign states which share the same head of state than it is for those foreign states which do not[16]. This is consistent with the reasoning and outcome in Nolan v Minister for Immigration and Ethnic Affairs [17]."

87. Thirdly, the term "the Crown" identifies what Lord Penzance in Dixon called "the Government" [18], being the executive as distinct from the legislative branch of government, represented by the Ministry and the administrative bureaucracy which attends to its business. As has been indicated, under the Constitution the executive functions bestowed upon "the Queen" are exercised upon Australian advice.

88. The fourth use of the term "the Crown" arose during the course of colonial development in the nineteenth century. It identified the paramount powers of the United Kingdom, the parent state, in relation to its dependencies. At the time of the establishment of the Commonwealth, the matter was explained as follows by Professor Pitt Cobbett in a passage which, given the arguments presented in the present matters, merits full repetition [19]:

"In England the prerogative powers of the Crown were at one time personal powers of the Sovereign; and it was only by slow degrees that they were converted to the use of the real executive body, and so brought under control of Parliament. In Australia, however, these powers were never personal powers of the King; they were even imported at a time when they had already to a great extent passed out of the hands of the King; and yet they loom here larger than in the country of their origin. The explanation would seem to be that, in the scheme of colonial government, the powers of the Crown and the Prerogative really represent, - not any personal powers on the part of the Sovereign, - but those paramount powers which would naturally belong to a parent State in relation to the government of its dependencies; although owing to the failure

of the common law to recognise the personality of the British 'State' these powers had to be asserted in the name and through the medium of the Crown. This, too, may serve to explain the distinction, subsequently referred to, between the 'general' prerogative of the Crown, which is still wielded by Ministers who represent the British State, and who are responsible to the British Parliament, - and what we may call the 'colonial' prerogative of the Crown, which, although consisting originally of powers reserved to the parent State, has with the evolution of responsible government, been gradually converted to the use of the local executive, and so brought under the control of the local Legislature, except on some few points where the Governor [20] is still required to act not as a local constitutional Sovereign but as an imperial officer and subject to an immediate responsibility to his imperial masters. [21]"

89. What Isaacs J called the "Home Government" ceased before 1850 to contribute to the expenses of the colonial government of New South Wales [22]. On the grant of responsible government, certain prerogatives of the Crown in the colony, even those of a proprietary nature, became vested "in the Crown in right of the colony", as Jacobs J put it in New South Wales v The Commonwealth [23]. Debts might be payable to the exchequer of one government but not to that of another and questions of disputed priority could arise [24]. Harrison Moore, writing in 1904, observed [25]:

"So far as concerns the public debts of the several parts of the King's dominions, they are incurred in a manner which indicates the revenues out of which alone they are payable, generally the Consolidated Revenue of the borrowing government; and the several Colonial Statutes dealing with suits against the government generally limit the jurisdiction of the Court to 'claims against the Colonial Government,' or to such claims as are payable out of the revenue of the colony concerned ..."

Section 105 of the Constitution provided for the Parliament to take over from the States their public debts "as existing at the establishment of the Commonwealth" [26].

90. The expression "the Crown in right of ..." the government in question was used to identify these newly created and evolving political units [27]. With the formation of federations in Canada and Australia it became more difficult to continue to press "the Crown" into service to describe complex political structures. Harrison Moore identified "the doctr ine of unity and indivisibility of the Crown" as something "not persisted in to the extent of ignoring that the several parts of the Empire are distinct entities" [28]. He pointed to the "inconvenience and mischief" which would follow from rigid adherence to any such doctrine where there were federal structures and continued [29]:

"The Constitutions themselves speak plainly enough on the subject. Both the British North America Act and the Commonwealth of Australia Constitution Act recognize that 'Canada' and the 'Provinces' in the first case, the 'Commonwealth' and the 'States' in the second, are capable of the ownership of property, of enjoying rights and incurring obligations, of suing and being sued; and this not merely as between the government and private persons, but by each government as distinguished from and as against the other this in fact is the phase of their personality with which the Constitutions are principally concerned. Parliament has unquestionably treated these entities as distinct persons, and it is only by going behind the Constitution that any confusion of personalities arises."

91. It may be thought that in this passage lies the seed of the doctrine later propounded by Dixon J in Bank of New South Wales v The Commonwealth [30], and applied in authorities including Crouch v Commissioner for Railways (Q) [31] and Deputy Commissioner of Taxation v State Bank (NSW) [32], that the Constitution treats the Commonwealth and the States as organisations or institutions of government possessing distinct individuality. Whilst formally they may not be juristic persons, they are conceived as politically organised bodies having mutual legal relations and are amenable to the jurisdiction of courts exercising federal jurisdiction. The employment of the term "the Crown" to describe the relationships inter se between the United Kingdom, the Commonwealth and the States was described by Latham CJ in 1944 [33] as involving "verbally impressive mysticism". It is of no assistance in determining today whether, for the purposes of the present litigation, the United Kingdom is a "foreign power" within the meaning of s 44(i) of the Constitution.

92. Nearly a century ago, Harrison Moore said that it was likely that Australian draftsmen would be likely to avoid use of the term "Crown" and use instead the terms "Commonwealth" and "State" [34]. Such optimism has proved misplaced. That difficulties can arise from continued use of the term "the Crown" in State legislation is illustrated by The Commonwealth v Western Australia [35]. However, no such difficulties need arise in the construction of the Constitution.

93. The phrases "under the Crown" in the preamble to the Constitution Act and "heirs and successors in the sovereignty of the United Kingdom" in covering cl 2 involve the use of the expression "the Crown" and cognate terms in what is the fifth sense. This identifies the term "the Queen" used in the provisions of the Constitution itself, to which we have referred, as the person occupying the hereditary office of Sovereign of the United Kingdom under rules of succession established in the United Kingdom. The law of the United Kingdom in that respect might be changed by statute. But without Australian legislation, the effect of s1 of the Australia Act would be to deny the extension of the United Kingdom law to the Commonwealth, the States and the Territories.

94. There is no precise analogy between this state of affairs and the earlier development of the law respecting the monarchy in England, Scotland and Great Britain. It has been suggested [36]:

"The Queen as monarch of the United Kingdom, Canada, Australia and New Zealand is in a position resembling that of the King of Scotland and of England between 1603 and 1707 when two independent countries had a common sovereign."

But it was established that a person born in Scotland after the accession of King James I to t he English throne in 1603 was not an alien and thus was not disqualified from holding lands in England. That was the outcome of Calvin's Case [37]. Nor does the relationship between Britain and Hanover between 1714 and 1837 present a precise analogy, if only because there was lacking the link of a common law of succession [38].

IV CONCLUSIONS

95. Almost a century has passed since the enactment of the Constitution Act in the last year of the reign of Queen Victoria. In 1922, the Lord Chancellor [39] observed that doctrines respecting the Crown often represented the results of a constitutional struggle in past centuries, rather than

statements of a legal doctrine. The state of affairs identified in Section III of these reasons is to the contrary. It is, as Gibbs J put it [40], "the result of an orderly development - not ... the result of a revolution". Further, the development culminating in the enactment of the Australia Act (the operation of which commenced on 3 March 1986 [41]) has followed paths understood by constitutional scholars writing at the time of the establishment of the Commonwealth.

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 [42] 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 [43], 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.

Justice Gaudron Extract

164. The first consideration which tells against the United Kingdom not being permanently excluded from the concept of "a foreign power" in s 44.(i) of the Constitution is that the Constitution, itself, acknowledges the possibility of change in the relationship between the United Kingdom, on the one hand, and the Commonwealth of Australia and the Australian States, on the other. Thus, for example, s34 acknowledges that Parliament may alter the qualifications for election so as to eliminate the requirement that candidates be subjects of the Queen. Of greater significance is that, by s5l(xxxviii) of the Constitution, the Commonwealth has power to legislate with respect to "the 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". It was pursuant to s51.(xxxviii) that the Parliament of the Commonwealth enacted the Australia Act 1986 (Cth), to which further reference will shortly be made.

165. The second consideration is that, It is implicit in the existence of the States as separate bodies politic with separate legal personality, distinct from the body politic of the Commonwealth with its own legal personality. The separate existence and the separate legal identity of the several States and of the Commonwealth is recognised throughout the Constitution, particularly in Ch III [44].

166. Once it is accepted that the divisibility of the Crown is implicit in the Constitution and that the Constitution acknowledges the possibility of change in the relationship between the United Kingdom and the Commonwealth, it is impossible to treat the United Kingdom as permanently excluded from the concept of "foreign power" in s 44(i) of the Constitution. That being so, the phrase is to be construed as having its natural and ordinary meaning."

https://freemandelusion.com/wp-content/uploads/2020/10/sue-v-hill-1999-hca-30.pdf

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- *[1] Cunneen, King's Men - Australia's Governors-General from Hopetoun to Isaacs , (1983) at 173-182.*
- *[2] Inglis Clark, Studies in Australian Constitutional Law , (1901) at 323.*
- *[3] Final Report of the Constitutional Commission , (1988), vol 1, pars 2.122-2.123.*
- *[4] at 70.*
- *[5] (1979) 14.5 CLR 246 at 261.*
- *[6] Strachan v The Commonwealth (1906) 4 (Pt 1) CLR 455 at 461-463, 464-465. See also the recitals to the Papua Act 1905 (Cth).*
- *[7] See the recitals to the Christmas Island Act 1958 (Cth) and the Cocos (Keeling) Islands Act 1955 (Cth).*
- *[8] Chitty, Prerogatives of the Crown , (1820), Ch XI, Section III.*
- *[9] Dixon v London Small Arms Company (1876) 1 App Cas 632 at 652.*
- *[10] "'The Crown' as Representing 'the State"', (1903) 1 Commonwealth Law Review 23 at 30. See also Hogg, Liability of the Crown , 2nd ed (1989) at 9-13; Law Reform Commission of Canada, The Legal Status of the Federal Administration , Working Paper 40, (1985) at 24-28.*
- *[11] "The Crown as Corporation", (1901) 17 Law Quarterly Review 131 at 144 (footnote omitted).*
- *[12] Victoria v The Commonwealth (Industrial Relations Act Case) (1996) 187 CLR 416 at 477-478.*
- *[13] Inglis Clark, Studies in Australian Constitutional Law , (1901) at 65-66.*
- *[14] Instrument dated 1 December 1987, Commonwealth of Australia Gazette , $270, c_) September 1988; see Starke, "Another residual constitutional link with the United Kingdom terminated; diplomatic letters of credence now signed by Governor-General", (1989) 63 Australian Law Journal 149.*
- *[15] (1996) 189 CLR 253 at 289.*
- *[16] See, generally, Foreign states Immunities Act 1985 (Cth), ss 9-22.*
- *[17] (1988) 165 CLP, 178 at 183-186.*
- *[18] (1876) 1 App Cas 632 at 651.*
- *[19] "The Crown as Representing the State", (1904) 1 Commonwealth Law Review 145 at 146-147.*
- *[20] Who, legally [represented] the King, but really [represented] the British 'State'.*
- *[21] As with regard to the reservation of Bills and the exercise of the power of pardon in matters affecting imperial interests.*
- *[22] Williams v Attorney-General for New South Wales (1913) 16 CLR 404 at 448.*
- *[23] (1975) 135 CLR 337 at 494.*
- *[24] Federal Commissioner of Taxation v Official Liquidator of E 0 Farley Ltd (1940) 63 CLR 278 at 302-303.*
- *[25] "The Crown as Corporation", (1904) 20 Law Quarterly Review 351 at 357.*
- *[26]Words of limitation omitted in 1910, after a successful referendum: Constitution Alteration (State Debts) Act 1909 (Cth).*
- *[27] Evatt, The Royal Prerogative , (1987) at 63.*
- *[28] "The Crown as Corporation", (1904) 20 Law Quarterly Review 351 at 358. See also Harrison Moore, "Law and Government", (1906) 3 Commonwealth Law Review 205 at 207.*

- *[29] "The Crown as Corporation", (1904) 20 Law Quarterly Review 351 at 359.*
- *[30] (1948) 76 CLR I at 363.*
- *[31] (1985) 159 CLR 22 at 28-29, 39.*
- *[32] (1992)174 CLR 219 at 230-231.*
- *[33] Minister for Works (WA) v Gulson (1944) 69 CLR 338 at 350-351.*
- *[34] "The Crown as Corporation", (1904) 20 Law Quarterly Review 351 at 362.*
- *[35] (1999) 73 ALJR 345 at 352-353, 359, 364-368, 387-390; 160 ALR, 638 at 647-649, 656-657, 663-669, 695-700.*
- *[36] Zines, The High Court and the Constitution , 4th ed (1997) at 314.*
- *[37] (1606) 7 Co Rep la [77 ER 377]. Coke's report of the litigation was "a massive achievement of ponderous learning": Tanner, English Constitutional Conflicts in the Seventeenth Century 1603-1689 , (1957) at 269.*
- *[38] Nolan v Minister for Immigration and Ethnic Affairs (1988) t 65 CLR 178 at 192-193; In re The Stepney Election Petition; Isaacson v Durant (1886) 17 QBD 54 at 59-60.*
- *[39] Viscount Birkenhead LC in Viscountess Rhondda's Claim [1922] 2 AC 339 at 353.*
- *[40] Southern Centre of Theosophy Inc v South Australia (1979) 145 CLR 246 at 261.*
- *[41] Commonwealth of Australia Gazette , s85, 2 March 1986 at 1.*
- *[42] Nolan v Minister for Immigration and Ethnic Affairs (1988) 165 CLR 178.*
- *[43] See European Communities Act 1972 (UK), European Communities (Amendment) Act 1986 (UK), European Communities (Amendment) Act 1993 (UK) and R v Secretary of State for Transport; Ex parte Factortame Ltd [1990] 2 AC 85; R v Secretary of State for Foreign and Commonwealth Affairs; Ex parte Rees-Mogg [1994] QB 552; R v Employment Secretary; Ex parte Equal Opportunities Commission [1995] 1 AC 1.*
- *[44] See especially ss 75(iii), (iv) and 78.*

The Great Seal of Australia

Pseudolaw adherents in Australia try to insert the U.S. Sovereign Citizen "two governments" contention into our constitutional framework in several ways. The main basis of the Australian version, is that because of changes to the Royal Style and Titles in 1973, the original "Commonwealth of Australia" had been usurped, and replaced (just like its Sovereign Citizen "United States" counterpart) with a "corporation" that is headquartered in Washington DC. Consequentially, they claim this *"**Queen of Australia**"* has no lawful authority, and hence the laws created by parliament in the name of this *"fictional Queen"* are null and void.

And then, there is the change in Royal Seal, from the *Royal Arms of the United Kingdom* with the lion and unicorn, to the *Great Seal of Australia* with kangaroo and emu. To the adherent, this is a foreign seal, a trademark of a corporation.

This can be seen recently with the ***Great Australia Party***'s "***Notice of Prohibition and Disclosure***" served on the secretary of the Governor-General David Hurley in Canberra, 25 January 2022, And ***Rodney Culleton***'s statements regarding his case in the Albany Magistrates Court:

https://videos.files.wordpress.com/opQX6f81/rod-culleton-explaining-jurisdictions.mp4

Barrister David Fitzgibbon took the matter to the ***British High Court in 2004***, which not only upheld the principle of the divisibility of the Crown, (the reason why there's a se parate title for the Queen of Australia, Queen of Canada, Queen of New Zealand, Queen of the United Kingdom, etc) citing *R v. Foreign Secretary ex parte Indian Association of Alberta [1982] 1 QB 892* regarding the Queen of Canada, but also dismissed the matter as the UK courts have no jurisdiction to interfere in the affairs of an independent member of the British Commonwealth, citing *Buck v. Attorney General [1965] Ch 745.*

https://freemandelusion.com/wp-content/uploads/2018/06/queen-accused-of-using-wrong-seal-for-g-g.pdf

The case was dismissed by High Court judge Justice Gavin Lightman in ***Fitzgibbon v HM Attorney General [2005] EWHC 114 (Ch)***, who noted that not only did he have no say over the case, but even if he did rule in favour of Mr Fitzgibbon the Australian Government, independent since 1901, could ignore him completely.

> *"It is for the Australian courts to apply Australian law to determine the capacity in which Her Majesty the Queen is acting, the appropriate seal and the consequences, if any, if the wrong seal is used. It is not for the UK courts to enter the field, proffering their view as the to the proper interpretation of the Constitution."*

https://freemandelusion.com/wp-content/uploads/2020/06/fitzgibbon-v-hm-attorney-general-2005-ewhc-114-ch.pdf

This premise was raised in ***Glenevan Pty Ltd [2015] NSWSC 201*** in the New South Wales Supreme Court, and dismissed as without legal merit. (at 17):

> *"First, in paragraph 8, it refers to a ruling in the Chancery Division of the High Court in London on Friday 25 June 2004 as having stated, "letters patent issued under the great seal of Australia by the Queen appointing the Governor-General in Australia have been issued incorrectly". It then goes on to assert that as a result of that ruling, the Governor-General of Australia holds no executive powers whatsoever and that as a result of that ruling all current Australian laws assented to on behalf of a British monarch by the Governor-General cannot hold any valid or executive authority as the Governor-General's appointments have not been lawfully issued. In the short time available I have not been able to locate a full copy of the decision of Senior Master Bowman, but it has been possible to locate a report of it which explains the following:*
>
> *Master Bowman agreed that the Letters Patent appointing the Governor-General, which for Major-General Michael Jeffery and several of his predecessors were clearly stamped with the Great Seal of Australia, should perhaps have been stamped with the Great Seal of Britain instead. But the success of Mr Fitzgibbon ended at this particular concession. "Essentially it is a matter of procedure and not necessarily of substance – that the wrong seal was used," Master Bowman found in the judgement. "The claim should be struck out on the basis of hopelessness … and, where appropriate, embarrassment." Accordingly, the judgment of Master Bowman provides no support whatsoever for the contentions for which it is cited in the so-called affidavit/commercial lien.*

https://freemandelusion.com/wp-content/uploads/2020/10/in-the-matter-of-glenevan-pty-ltd-2015-nswsc-201.pdf

But these cases don't really answer the question for the adherent, who doesn't see them as anything more than "opinion" and an attempt by the courts to hide the truth. They generally seek *"the originating document"* that authorized these changes, and contend there should of been a referendum, to allow the subsequent changes in interpretation to associated sections of the *Constitution*.

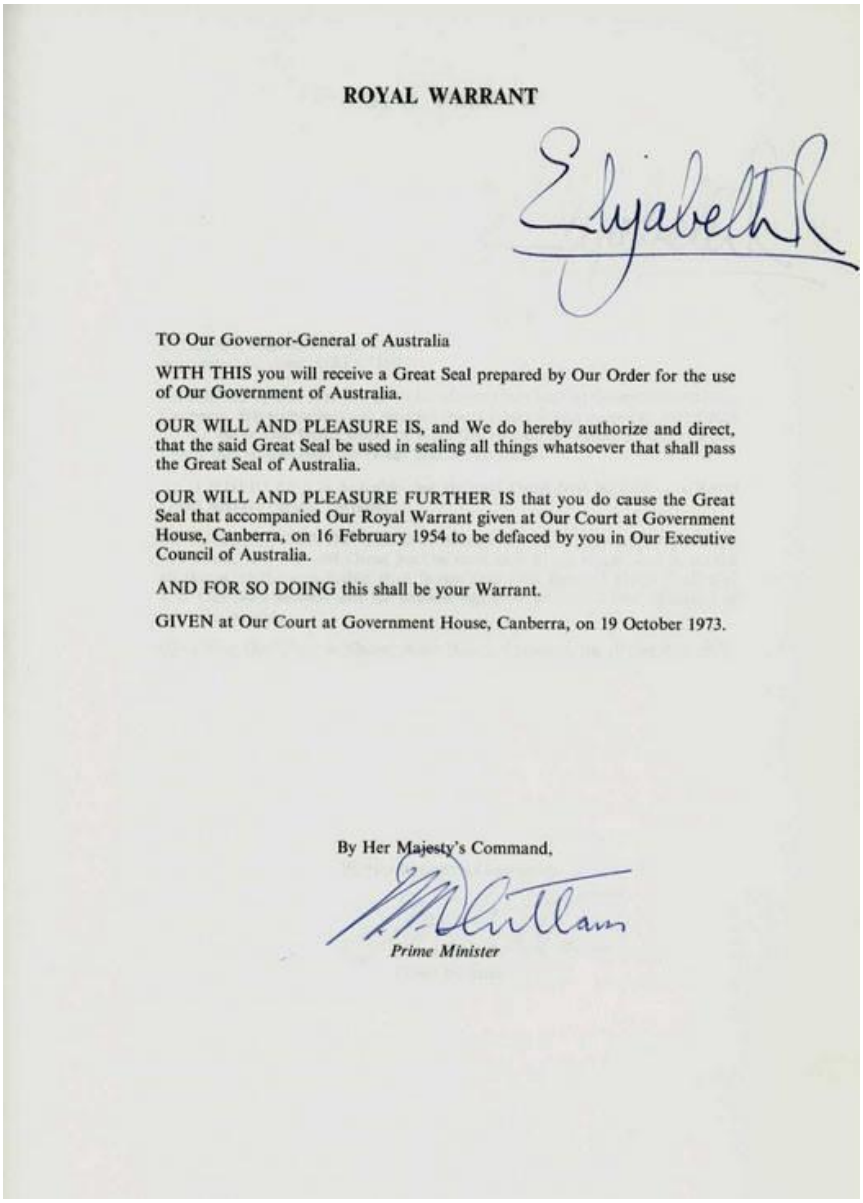
But the reason for these changes came from outside the *Constitution,* and outside Australia, and therefore not anything that could even be decided by referendum. The British Empire collapsed, and so did our obligations to it, or reliance on it for sources of law. Regardless of these outside occurrences, we just continued following our own rules, according to the same constitutional structure we designed by the referendums in each proposed state prior to Federation. As covered in previous articles, it was a gradual path to complete independence, the *Balfour Agreement* in 1926, and other agreements in following Imperial Conferences, and the *Statute of Westminster 1931*, that was adopted here in 1942 as a formal recognition of these agreements. The matter has been succinctly addressed in ***Sue v Hill [1999] HCA 30***, where Justice Gaudron noted:

> *"Once it is accepted that the divisibility of the Crown is implicit in the Constitution and that the Constitution acknowledges the possibility of change in the relationship between the United Kingdom and the Commonwealth, it is impossible to treat the United Kingdom as permanently excluded from the concept of "foreign power" in s 44(i) of the Constitution. That being so, the phrase is to be construed as having its natural and ordinary meaning."*

In ***Volume 1 of the Final Report of the Constitutional Commission 1988*** it was noted:

> *"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 (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."*
>
> *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."*

The Royal Warrants and Proclamations that enacted the Great Seal of Australia.



ROYAL WARRANT

Elizabeth R

TO Our Governor-General of Australia

WITH THIS you will receive a Great Seal prepared by Our Order for the use of Our Government of Australia.

OUR WILL AND PLEASURE IS, and We do hereby authorize and direct, that the said Great Seal be used in sealing all things whatsoever that shall pass the Great Seal of Australia.

OUR WILL AND PLEASURE FURTHER IS that you do cause the Great Seal that accompanied Our Royal Warrant given at Our Court at Government House, Canberra, on 16 February 1954 to be defaced by you in Our Executive Council of Australia.

AND FOR SO DOING this shall be your Warrant.

GIVEN at Our Court at Government House, Canberra, on 19 October 1973.

By Her Majesty's Command,

Prime Minister

On 19 October 1973, Queen Elizabeth II met with ministers at Government house, where she provided personal assent to the Royal Warrants and Proclamation that enacted the Great Seal of Australia.

https://freemandelusion.com/wp-content/uploads/2022/02/Documents-Great-Seal-of-Australia-Royal-Style-and-Titles-Act-1973.pdf

This was published in the ***Australian Government Gazette No. 152*** Canberra, Friday, 19 October 1973 along with the assent and Proclamation for the *Royal Styles and Titles Act 1973.*

https://freemandelusion.com/wp-content/uploads/2020/09/seal.pdf

According to the ***Federal Executive Council Handbook*** (at 159-160):

> *"The Governor-General's Letters Patent issued in 1900 provided for a Great Seal for use by the Governor-General. Its purpose is to authenticate certain official documents. The Great Seal of Australia is used by the Secretariat to seal official documents in accordance with the terms of the Royal Warrant issued by The Queen to the Governor-General on 19 October 1973.*
>
> *The Great Seal of Australia is affixed to commissions of appointment of Governors-General, Administrators, Judges, Officers of the Defence Force, Ambassadors and Consuls. The Great Seal is also applied to documents such as proclamations, administrative arrangements orders, orders under section 4 of the Commonwealth Inscribed Stock Act 1911, orders under section 19 of the Acts Interpretation Act 1901 and letters patent. It is circular in shape and approximately seven centimetres in diameter - documents requiring the Great Seal should be printed on parchment and prepared so as to allow sufficient space for it to be affixed."*

With many courthouses in Australia being of heritage status they often still have the original *Royal Arms of the United Kingdom* with the lion and unicorn displayed, often it is a sculpted arms on the wall behind the bench where the magistrate sits. This leads some adherents to insist that its presence governs the proceedings in some way, such as in ***Kosteska v Magistrate Manthey & Anor [2013] QCA 105***:

> *"It was also argued that her Honour was "severely constrained" in respect of the orders she could make by the "British Coat of Arms" which appeared above the bench. Apparently, the presence of this representation (of what is actually the Royal Coat of Arms) required that the law which was to be upheld in all proceedings was the common law of England "in all of its might and majesty". But, says Ms Kosteska, that requirement was ignored. There are occasions (thankfully very rare) when a submission is made that is so misguided, so erroneous and so lacking in any understanding of the basics of Australian law that one is faced with a truly sublime absurdity. This is such an argument. The presence of a coat of arms in a courtroom is merely a symbol of authority. It provides no power. It creates no duty."*

The reasons the *Royal Arms of the United Kingdom* still exists in many courthouses is for its heritage value, as explained in Section 5(3) of the ***State Arms, Symbols and Emblems Act 2004*** (NSW):

> *"Replacement of Royal arms of the United Kingdom:*
>
> *(1)As soon as practicable after the commencement of this Act, any Royal arms of the United Kingdom used to represent the authority of the Crown in right of the State or the State in or on any public building, or public place that is the property of the Crown in right of the State or of the State and is intended to represent the authority of the Crown in right of the State or of the State, are to be removed and replaced by the State arms.*
>
> *(2)As soon as practicable (but in any event within 3 years) after the commencement of this Act, any Royal Arms of the United Kingdom on any document, seal or other object (not being a fixture or otherwise part of a building) that is the property of the Crown in right of the State or of the State, and is intended to be used to represent the authority of the Crown in right of the State or of the State, are to be removed and replaced by the State arms.*

> *(3)Subsection (1) does not apply in relation to a building or place in respect of which the Premier, after consultation with the Heritage Council, determines that the Royal arms of the United Kingdom there displayed form an integral part of an item of the environmental heritage of the State.*
>
> *(4)In any building or place to which subsection (1) does not apply because of subsection (3), the State arms must be used and displayed in a prominent position to represent the authority of the Crown in right of the State or the State, as the case may be, in addition to the Royal arms of the United Kingdom while they continue to be displayed there."*

In 2015 ***Michael Nibbs*** tried to allege that he had a case dismissed in Tasmania for invalidity because they didn't use the correct seal, and hence the laws relied on did not exist, and prosecution could not proceed any further unless they addressed the seal argument. It spread around the internet quickly, like these myths often do, but the premise had already been disposed of in numerous cases prior to that time. See the article ***The Great Seal Hoax***. He also raised similar arguments in ***Nibbs v Devonport City Council [2015] TASSC 34***, to which the court responded:

> *"The Queen's title in the Commonwealth of Australia was changed, firstly by the Royal Style and Titles Act 1953 (Cth), and again by the Royal Style and Titles Act 1973 (Cth). Following those changes, Her Majesty's title was Elizabeth II, by the Grace of God Queen of Australia and her other Realms and Territories, Head of the Commonwealth. For some, that left room for argument about Her Majesty's title in the States, what power the British monarch could exercise in and in relation to those States, and whether the relationship of Australian States to the Crown was truly independent of the relationship of the Commonwealth to the Crown: see for instance Commonwealth v Queensland [1975] HCA 43; (1975) 134 CLR 298 (the 'Queen of Queensland Case') The Australia Act 1986 (UK) repealed the Imperial Colonial Laws Validity Act 1865. Thereafter there were no residual powers or responsibilities of the United Kingdom in relation to Australian States. Generally, the provisions of the Australia Act (UK) left a discrete Australian monarchy."*

The fact of the matter is that proof of Assent, of Proclamation, or of the Seals, are not required to be provided to a defendant, under Judicial Notice. **Section 143 of the Evidence Act 1995 (Cth)** provides that proof is not required about Assent or Proclamation, and Section 150 regarding **Seals and signatures**, Section 153 **Gazettes and other official documents**, and **Section 5** extends the operation of these provisions to proceedings in all Australian courts.

In ***Fekete v Child Support Registrar [2016] FamCAFC 14:*** the applicant sought production of:

> *"A Certified Copy of the Referendum results that granted the Parliament of the Commonwealth of Australia the authority to use the "Great seal of Australia" as opposed to the original seal of the Commonwealth of Australia, as was used on the Commonwealth of Australia Constitution Act 1900 (UK)."*

The Court held that:

> *"As far as paragraphs 2 and 3 of the 25 November 2015 Notice to Produce are concerned, there is no suggestion that there was a referendum that granted the Commonwealth of Australia the authority to use the Great Seal of Australia.."*

Likewise in ***Conroy v Deputy Commissioner of Taxation [2005] QSC 206***:

> *"The argument is that the Governor- General was appointed by commission by the Queen as Queen of Australia and that there is no-one answering that description having any legal role in the constitutional or legal affairs of this country. The argument is one which has been raised a number of times and it can, I think, be seen set out in somewhat more extensive form in the judgment of the Chief Justice of South Australia in Money Tree Management Systems Pty Ltd v Deputy Commissioner of Taxation [2000] SASC 54. The argument, wherever it has been raised, has been rejected. I, with respect, adopt what was said by the Chief Justice of South Australia in that case. The position is, in my view, clear that the Queen acts in her capacity as Queen of Australia using that style or title in exercising the relevant powers and I reject this argument. I also refer to the judgment of Hayne J in Joosse and Anor v Australian Securities and Investment Commission (1998) 159 ALR 260. I also reject the argument that the great seal of Australia is not the correct seal for use by the Queen. This argument is based upon a similar premise to the first argument and, in my view, also has to be rejected.*

There are numerous cases in which the "Seal argument" has been raised, and rejected. You can locate these cases on this website under the Tag "***The Great Seal of Australia***".

History of the Coat of Arms to the Great Seal

On 21 January 1904, the first Coat of Arms of the Commonwealth came into use, granted by King Edward VII:

A postcard commemorating the US Navy Great White Fleet visiting in 1908:

Correspondence with the United Kingdom regarding the Coat of Arms of the Commonwealth, with Royal Warrant (1907):

https://freemandelusion.com/wp-content/uploads/2022/04/Coat-of-Arms-of-the-Commonwealth-1907.pdf

Evening News, Wednesday ***17 June 1908***, Page 8:

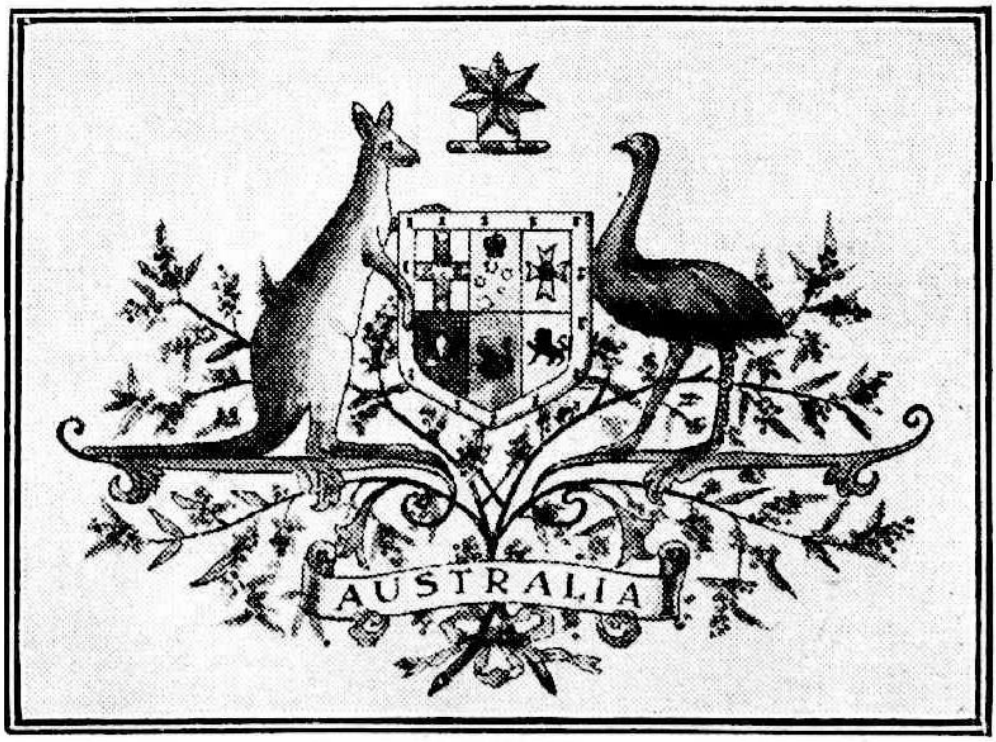
COMMONWEALTH COAT-OF-ARMS.

At last the Commonwealth can boast a correct coat of arms (writes a London correspondent). The following is the official description, or "blazon," of the arms granted by King Edward to the Commonwealth on May 7, under Royal warrant:—

"Azure on an inescutcheon Argent upon the Cross of St. George cottised of the field five six-pointed stars of the second (representing the constellation of the Southern Cross) all within an orle of inescutcheons of the second, each charged with a chevron gules." Crest.—On a wreath of the colors. "A Seven-pointed Star, Or." Supporters.—"On a compartment of grass to the dexter a Kangaroo, to the sinister an Emu, both proper." Motto.—"Advance Australia." This simple design is most appropriate for the great community to which it now appertains. The colors are those of the Union flag, and the six smaller shields, or "inescutcheons," stand for the six States of which the Commonwealth is composed. The "supporters" have long been popularly associated with the country, and are, therefore, very happily retained with the present design. The Royal warrant directs that a proper official entry shall be "recorded in our College of Arms, in order that our officers of arms and all other public functionaries whom it may concern may take full notice and have knowledge thereof in their several and respective departments." A handsome carving of the shield of arms will in due course appear upon the Victoria memorial at Buckingham Palace.

The second Coat of Arms of the Commonwealth arrived here in 1912, with an improved design representative of the six States. The Daily Telegraph, Friday ***15 November 1912***, Page 11:

COMMONWEALTH COAT OF ARMS.



The illustration shows the Commonwealth Coat of Arms, as accepted by the College of Heralds. The college suggested some amendments, but the Commonwealth Government refused to make any alterations, and gained its point. The new design is much more artistic than the original one, which was considered to be a very crude production.

The Royal Warrant by King George V, 19 September 1912:

GEORGE R.I.

GEORGE THE FIFTH, by the Grace of God of the United Kingdom of Great Britain and Ireland and of the British Dominions beyond the Seas, King, Defender of the Faith, Emperor of India: To Our Right Trusty and Right Entirely beloved Cousin and Counsellor, Henry, Duke of Norfolk, Earl Marshal and our Hereditary Marshal of England, Knight of Our Most Noble Order of the Garter, Knight Grand Cross of our Royal Victorian Order, Greeting: WHEREAS His late Majesty King Edward the Seventh was graciously pleased by Warrant under His Royal Sign Manual bearing date the Seventh day of May One thousand nine hundred and eight to assign certain Armorial Ensigns and Supporters for the Commonwealth of Australia: And forasmuch as it is Our Royal Will and Pleasure that certain other Armorial Ensigns should be assigned to the said Commonwealth of Australia in lieu and instead of those thus previously granted and assigned NOW KNOW YE that We of our Princely Grace and Special Favour have granted and assigned and do by these Presents grant and assign for the Commonwealth of Australia the Armorial Ensigns following, that is to say:— "Quarterly of six, the first quarter Argent a Cross Gules charged with a Lion passant guardant between on each limb a Mullet of eight points Or; the second, Azure five Mullets, one of eight two of seven one of six and one of five points of the first (representing the Constellation of the Southern Cross) ensigned with an Imperial Crown of the third, on a Perch wreathed Vert and Gules an Australian Piping Shrike displayed also proper; the fifth also Or a Swan naiant to the sinister Sable; the last of the first a Lion passant of the second, the whole within a Bordure Ermine:" And for the Crest, on a Wreath Or and Azure a seven pointed Star Or; And for the Supporters, to the dexter a Kangaroo, to the sinister an Emu, both proper as the same are in the painting hereunto annexed more plainly depicted, in lieu and instead of the Arms previously assigned to be borne and used by the said Commonwealth upon Seals, Shields, Banners or otherwise according to the Laws of Arms: Our Will and Pleasure therefore is that you Henry, Duke of Norfolk, to whom the cognizance of matters of this nature doth properly belong, do require and command that this Our Concession and Declaration be recorded in Our College of Arms in order that our Officers of Arms and all other Public Functionaries whom it may concern may take full notice and have knowledge thereof in their several and respective departments. And for so doing this shall be your Warrant.

GIVEN at Our Court at St. James's this Nineteenth Day of September, 1912 in the Third Year of Our Reign.

By His Majesty's Command
L. Harcourt."

As erected on the Old Parliament House in 1927:

The Maitland Daily Mercury, ***Saturday 9 November 1912***, Page 4:

Commonwealth Coat of Arms.

It has taken 12 years to grace the Commonwealth with a suitable coat of arms. Years ago a design was adopted by the Government, and approved by the College of Heralds in London. No sooner had it arrived back in Melbourne, and been transferred to the Federal stationery and documents, than cynical remarks commenced to be made. Yielding to the consensus of opinion, the Prime Minister (Mr. Fisher) some month ago secured a new design, and sent it to the College of Heralds. It was generally approved, but amendments were suggested. These did not meet the wishes of the Government, which supplied further details to the college. The completed design has now been returned to the Prime Minister. The emu and kangaroo have been vastly improved by their visit to London. The shield has been altered to include the crests of each of the States. The solid ground-work has been replaced by a scroll, made mainly of a spray of wattle blossom, and for "Advance Australia" has been substituted the one word "Australia."

Correspondence in 1915 regarding the use of the Coat of Arms of the Commonwealth on stationary instead of the Royal Arms of the United Kingdom:

https://freemandelusion.com/wp-content/uploads/2022/04/Correspondence-Coat-of-Arms-of-the-Commonwealth-on-documents-1915.pdf

The Coat of Arms of the Commonwealth would be used on all government publications. Observer, ***Saturday 27 June 1925***, Page 41:

COMMONWEALTH COAT OF ARMS.

The Prime Minister (Mr. Bruce) intimated on Monday that the Federal Ministry, after consideration, had decided that in future the Commonwealth coat of arms should be used instead of the royal coat of arms on all Government publications. The features of the Commonwealth coat of arms are a kangaroo and an emu supporting an escutcheon on which are the arms of the six original States of the Commonwealth, and surmounted by a seven-pointed star sprigs of wattle blossom form the background, and underneath is the single word "Australia."

Since the establishment of the Commonwealth of Australia, there have been three seals. Formal provision for an ***Australian seal*** was made in Letters Patent from Queen Victoria dated 29 October 1900 constituting the office of Governor General and Commander in Chief of the Commonwealth of Australia and providing that:

> "*There shall be a Great Seal of and for Our said Commonwealth which Our said Governor-General shall keep and use for sealing all things whatsoever that shall pass the said Great Seal....*"

On 21 January 1904, the first Great Seal of the Commonwealth came into use; this had been prepared in 1903, and had been granted by King Edward VII. King Edward VII died on May 6 1910, but by a warrant of King George V, dated 20 days later, the use of King Edward's seal was authorised till a new one should be provided. Many were already critical of the choice of seal in regards to its relevance to Australia, suggesting: "*...the regretful part is that he didn't break away from a tradition which has no Australian meaning. Far better than a woman on a charger would be one on an elevated seat, receiving the homage of six figures representative of the States, or of three or four figures representative of our primary industries—wool, mining, farming, etc.*"

Bendigo Advertiser, ***Wednesday 11 September 1901***, Page 5:

AUSTRALIA'S FIRST GREAT SEAL.

The accepted great seal of the Commonwealth is not of a very attractive design. The side containing the arms of the contributing States centred by the arms of Great Britain is good. Correspondingly the other side is decidedly disappointing. As will be seen, it consists of a female figure mounted on a charger and carrying in one hand a British shield, and in the other a palm. The sun forms a kind of setting for her face. It is not a strong conception, especially for Australia, which would be better represented by something indicating the arts of peace. It is peculiar that the only other Commonwealth Seal, the Lord Protector's, also has a single horsed figure on the main side, but the figure is not a female one, but Oliver in armor, holding the sceptre. The other side bears the Royal Arms, Crown and all, for

THE ACCEPTED DESIGN.
Prize divided between Sydney and Melbourne.

Cromwell was in all respects a King, was addressed by the Royal title and "petition and advice," and had the right in law to name his successor. The inscription is interesting:—"Oliver, by the Grace of God, Protector of England, Ireland and Scotland." The artist in designing the Australian seal had evidently in mind that a horsed figure is almost a religious necessity in a British seal, and the regretful part is that he didn't break away from a tradition which has no Australian meaning. Far better than a woman on a charger would be one on an elevated seat, receiving the homage of six figures representative of the States, or of three or four figures representative of our staple industries—wool, mining, farming, etc.

This, the second great seal of the Commonwealth, arrived here in 1912, and bears upon it a design similar to that of its predecessor, with a few exceptions.

This article in the Sydney Morning Herald, ***Saturday 1 October 1932***, page 9 provides an insight into the history of the seal:

THE GREAT SEAL

Of the Commonwealth.

(BY FLINDERS BARR.)

On October 29, 1900, the office of Governor-General of the Commonwealth of Australia was constituted by letters patent, which included provision for a great seal for the Commonwealth. But, as some considerable time would elapse before the new seal could be designed and made, it was arranged that the private or personal seal of the Governor-General should be used as a great seal, till the latter was ready. Since the most remote periods princes, nobles, important personages, and traders had been in the habit of using their own personal seals in place of a signature, and when, in the course of time, the art of heraldry flourished, the seal bore the arms of the owner upon it, in as full detail as was possible. When knighthood was in flower, the idea of a knight without a coat of arms would have seemed as absurd as a handle without a pump. The title "Sir" was the handle, but the actual and visible record of his deeds, and of his family, was his coat-of-arms.

The Earl of Hopetoun, the first Governor-General of the Commonwealth, was naturally in possession of a personal seal bearing his arms fully displayed. This seal was used for all official purposes from October 29, 1900, till July 18, 1902, from which latter date till January 21, 1904, Lord Tennyson's personal seal was in use, he having succeeeded Lord Hopetoun as Governor-General. I have not seen an impression of Lord Hopetoun's seal, but I have one in red wax of Lord Tennyson's, which is quite large and of an oval shape; it bears his arms as they are shown in Burke's Peerage.

An January 21, 1904, the first actual great seal of the Commonwealth came into use; this had been prepared in 1903, and had been granted by King Edward VII. King Edward died on May 6, 1910, but by a warrant of King George V., dated 20 days later, the use of King Edward's seal was authorised till a new one should be provided. This, the second great seal of the Commonwealth, arrived here in 1912, and bears upon it a design similar to that of its predecessor, with a few exceptions.

CURIOUS ERRORS.

The Royal Arms and Imperial Crown in the centre are surrounded by six shields, having their base points inwards. On these shields, treated as coats of arms, are the official badges of the six federated States. This incorrect manner of using badges was adopted because South Australia and Western Australia had no coats of arms, nor have these two States yet placed themselves in a correct heraldic position. Round the edge of the seal runs an inscription in Latin and English. The shield of Queensland on the great seal, should be charged with a maltese cross surmounted by an Imperial crown, but by some error, what is called a cross moline has been used instead. Neither the authorities at the Heralds' College, nor those of the Queensland Government, could tell me how the mistake arose. Also on the seal, the black swan of Western Australia is swimming in the wrong direction. When a new great seal shall be required for the Commonwealth, in addition to correcting the abovementioned errors, the arms of Canberra will have to be included, and possibly those of any new States

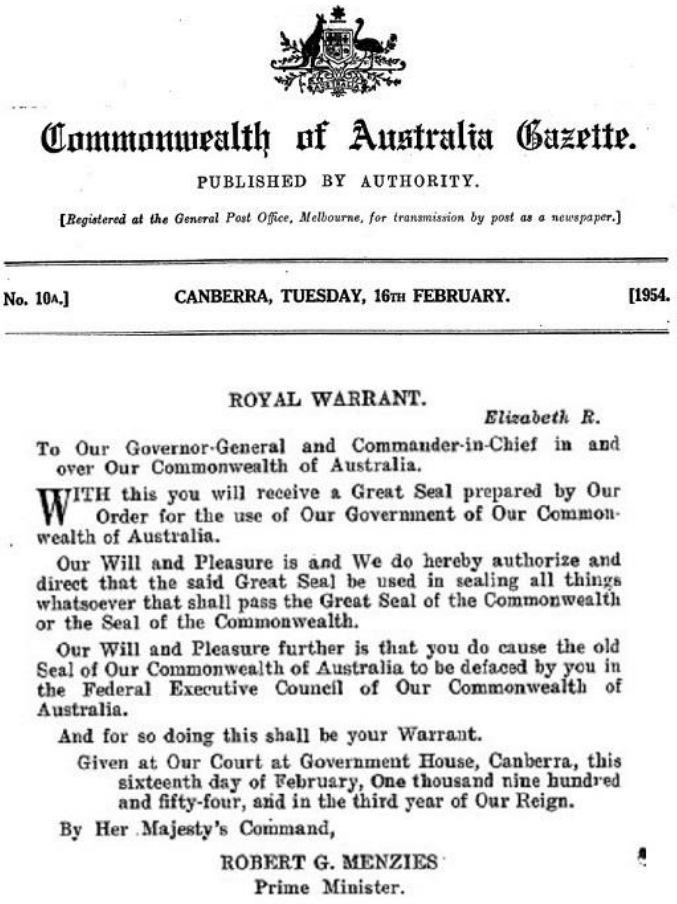
The Second Commonwealth Seal.

which may by that time have come into being, though with the multiplicity of States a complexity of heraldic design is bound to follow, and some simple device for the whole Empire, with a "difference" for each particular unit, will become a necessity.

In connection with the use of the personal seals of Governors used as official seals, it is interesting to remember that Governor Phillip had no official seal when he first assumed office in New South Wales, on February 7, 1788. Between that date and September 22, 1791, when the colony's first seal arrived from England, he used his own private one, or, as he puts it, "a seal of my arms." Now, this opens an interesting question as to what those arms were, as Governor Phillip's father, Jacob Phillip, was a German, belonging to Frankfort, a land steward or agent, who came to England, took up the professsion of a teacher of languages, and married a widow, then Mrs. Herbert, afterwards Arthur Phillip's mother. The right to bear arms was very sharply regulated in Germany at that period, and it is very doubtful whether Jacob Phillip's social position would entitle him to the honour.

Round the hall at Government House, Sydney, are depicted in correct colouring the arms of all the State Governors, from Arthur Phillip to Sir Dudley de Chair, and being anxious to know something about the imposing armorial ensigns there assigned to Governor Phillip, I wrote to the Heralds' College on the subject. In reply, they told me that the arms displayed as his at Government House were those of a very ancient and long extinct English family, and had been taken from the tomb of Sir John Phillips of Devington, in Kidderminster Church, erected about 1500. They further informed me that according to their records Governor Arthur Phillip had never established any right to bear arms in England. It would be very interesting to know who provided our first Governor with the very ancient achievement now posing as his at Government House, and also what the actual arms were upon the seal which he first used in New South Wales. Finally, it would be of interest to know what seal a Governor-General or a Governor would use in the event of the Commonwealth or a State great seal being put out of action, if he should not happen to possess a private seal of his own.

On 16 February 1954, on the advice of Menzies, the Queen issued a Royal Warrant whereby she authorised the Great Seal of the Commonwealth of Australia to be used as the Royal Great Seal of Australia whenever she signed a document that was counter-signed by one of her Australian ministers of state. The Royal Warrant was published in the ***Government Gazette***, (***No 10A, 16 February 1954***).



Commonwealth of Australia Gazette.

PUBLISHED BY AUTHORITY.

[Registered at the General Post Office, Melbourne, for transmission by post as a newspaper.]

No. 10A.] CANBERRA, TUESDAY, 16TH FEBRUARY. [1954.

ROYAL WARRANT.

Elizabeth R.

To Our Governor-General and Commander-in-Chief in and over Our Commonwealth of Australia.

WITH this you will receive a Great Seal prepared by Our Order for the use of Our Government of Our Commonwealth of Australia.

Our Will and Pleasure is and We do hereby authorize and direct that the said Great Seal be used in sealing all things whatsoever that shall pass the Great Seal of the Commonwealth or the Seal of the Commonwealth.

Our Will and Pleasure further is that you do cause the old Seal of Our Commonwealth of Australia to be defaced by you in the Federal Executive Council of Our Commonwealth of Australia.

And for so doing this shall be your Warrant.

Given at Our Court at Government House, Canberra, this sixteenth day of February, One thousand nine hundred and fifty-four, and in the third year of Our Reign.

By Her Majesty's Command,

ROBERT G. MENZIES
Prime Minister.

The Newcastle Morning Herald and Miners' Advocate reported the approval on ***Wednesday 17 Feb 1954***, Page 1. It was noted in The Mercury, ***Wednesday 17 February 1954***, Page 20 that Elizabeth II broke precedent by defacing the prior seal, something that was formerly done in the Privy Council:

Use Of Great Seal Approved

CANBERRA, Tuesday.—The Queen to-day authorised the use of the new Great Seal of the Commonwealth of Australia.

The Queen issued the authority by Royal warrant at a meeting of the Federal Executive Council at Government House.

Other matters attended to by the Queen at the council meeting included.—

New Great Seal For Australia

CANBERRA, Tues. — The Queen today authorised the use of a new Great Seal of the Commonwealth.

The Queen made the order at a meeting of the Federal Executive Council, over which she presided.

She broke precedent by directing that the old seal (in the name of King George VI) be defaced in the Federal Executive Council.

Hitherto an old seal has always been defaced in the Privy Council.

The third and present seal of the Commonwealth of Australia was enacted by Royal Warrant and Proclamation by the Queen on 19 October 1973, depicting the Coat of Arms of the Commonwealth of Australia which was granted Royal Warrant by King George V in 1912.

Oaths and Affirmations of Public Office

Pseudolaw adherents invariably claim that politicians and judges are acting outside of and contrary to their oaths, especially in relation to the monarch. This is generally regarding the removal of references to the Crown in the judicial oaths of some States, but also claims that federal politicians are not performing their oaths according to section 42 of the *Constitution.*

42. Oath or affirmation of allegiance.

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 authorized by him, an oath or affirmation of allegiance in the form set forth in the schedule to this Constitution.

SCHEDULE.

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.*)

Sometimes they will show as evidence a video of a minister being sworn in with a different oath, neglecting the fact that the oath is in the Schedule to the *Constitution* applies only to when a member first takes his seat, not on each appointment.

https://freemandelusion.com/scott-morrison-oath-mp4/

Wayne Glew also makes the claim that the oath is in the Schedule to the *Constitution* applies to State judges and every one else, which solely applies to *"every senator and every member of the House of Representatives"* as clearly provided in section 42, and not to any judges. This was a point highlighted in ***Jakaj v Kinnane (No 2) [2020] ACTCA 28*** (at 11).

11. First, none of the judges sitting on the appeal were required to take an oath under covering clause 2 or s 42 of the Constitution. Covering clause 2 provides that the provisions of the Constitution referring to the Queen extend to Her Majesty's heirs and successors in the sovereignty of the United Kingdom. Section 42 of the Constitution requires every senator and every member of the House of Representatives to take an oath or affirmation of allegiance in the form set out in the schedule to the Constitution. Neither of those provisions have any application in relation to judges of the Supreme Court of the Australian Capital Territory (ACT).

Section 42: Oath "directory and not absolute".

"In September 1901, Attorney-General, Alfred Deakin, advised that, in his opinion, the direction in section 42 of the Constitution, that a member of the federal Parliament 'shall before taking his seat make and subscribe' the oath of allegiance, was "directory and not absolute" in the sense that "neglect of the requirement does not invalidate what is done afterwards". (see Attorney-General's Department, Opinions of the Attorneys-General of the Commonwealth of Australia: volume 1, 1901-1914 (1981) 27-8.)

This has been interpreted to mean that the validity of parliamentary proceedings would not be affected by the participation in them of members who had not complied with section 42. Members of the federal parliament do not incur a penalty if they participate in proceedings of the Senate or the House of Representatives without fulfilling the requirement of section 42."

See Research Paper: ***Oaths and affirmations made by the executive and members of federal parliament since 1901***. Deirdre McKeown. (see p. 14 and footnote 51)

https://freemandelusion.com/wp-content/uploads/2020/08/oaths.pdf

Extract from pages 153-6 of "***Oaths and Affirmations of Public Office***." Enid Campbell, Emeritus Professor of Law, Monash University:

"Legal consequences of refusal or failure to take an Oath or Affirmation

In his General Abridgment of Law and Equity, published in the mid-eighteenth century, Charles Viner wrote:

> *"A new oath cannot be imposed on any judge, commissioner, or any other subject without authority of parliament, but the giving of every oath must be warranted by act of parliament, or by the common law time out of mind".*

This statement was essentially the same as that which Sir Edward Coke had made on the subject in the third volume of his Institutes, first published in 1641. The statement is undoubtedly true of contemporary law. Unless there is a statutory requirement that a person elected or appointed to a public office shall take an oath or affirmation in order to perfect the person's title to occupy the office, no one has authority to prevent the person entering upon the office without having first taken some oath or affirmation. If the office has been created by or pursuant to statute, the person or body having power to appoint to the office probably cannot even make an offer of appointment conditional on the prospective appointee undertaking to make an oath or affirmation. Such a course of action would hardly be consistent with the statute which confers the power of appointment and which may also have prescribed the qualifications for appointment to the office. The imposition of such a condition is tantamount to an addition to the qualifications for appointment prescribed by statute, and it may fly in the face of a deliberate decision on the part of the enacting parliament not to make a person's entitlement to occupy a statutory office dependent on his or her having taken any oath or affirmation.

Tasmania's Promissory Oaths Act 1869 includes a provision taken from s 7 of the United Kingdom's Promissory Oaths Act 1868. It states that if a person who is required to take an oath under the Act declines or neglects to take the oath when it is duly tendered to him or her, by someone authorised to

tender the same, then if he or she has already entered on that office the office is vacated. If he or she has not entered on the office, he or she is disqualified from entering on it. If the declarations required of local government councilors in Queensland and Victoria are not made within a specified time after election, those elected vacate the office. In Western Australia a local government councilor who acts in office without having taken the required oath or affirmation of allegiance and made the required declaration commits a criminal offence. The maximum penalty is a fine of $5000 or imprisonment for one year. This provision is akin to s 5 in the Parliamentary Oaths Act 1866 (UK). This stipulates that if a member of either House sits and votes with- out having taken the required oath within the prescribed time, he or she is liable to a penalty of £500. In addition a member of the House of Commons vacates the seat to which he or she was elected. Under Australian legislation those elected as members of parliament are not entitled to sit and vote in the House to which they have been elected unless they have taken the required oath or affirmation, but they do not now incur any penalties if they do sit and vote without having fulfilled that requirement.

In September 1901, Alfred Deakin, in his capacity as Attorney-General for the Commonwealth, advised that, in his opinion, the direction in s 42 of the federal Constitution that a member of the federal Parliament "shall before taking his seat make and subscribe" the oath of allegiance was "directory, and not absolute" in the sense that "neglect of the requirement does not invalidate what is done afterwards". Deakin presumably meant no more than that the validity of parliamentary proceedings would not be affected by the participation in them of members who had not complied with s 42. In practice, of course, responsibility for enforcing s 42 rests in the hands of the presiding officers of the two Houses.

Where the making of an oath, affirmation or declaration is a condition which must be satisfied before a person can be regarded as the lawful occupant of a public office, and thus entitled to exercise the powers given to occupants of that office, then logically it would seem to follow that no legal force or effect can be accorded to the acts of persons who have presumed to exercise the powers of office without having taken the prescribed oath, affirmation or declaration. But under the common law of England and of legal systems derived from it such acts may be recognised as legally valid by virtue of the de facto officer doctrine. Such acts may be so recognised if they are acts which would have been valid had they been performed by an officer de jure and if the defect in the title of the person who has performed the acts is not readily discoverable by members of the public.

Should the defect in title be failure to take the requisite oath or affirmation it will seldom be that it is one which is readily discoverable. It is certainly not reasonable to expect members of the public who have occasion to seek the exercise of powers attached to a particular public office to make inquiries to satisfy themselves that the person held out to be the lawful occupant of the office has taken the requisite oath or affirmation of allegiance or office.

In a case decided in 1676 the Court of King's Bench held that the de facto officer doctrine could not be invoked to validate the decision of someone who had failed to satisfy the oath-taking requirements imposed by the Test Act 1672. Later judges were to pronounce this ruling to be wrong and there are nineteenth century decisions in which English courts clearly accepted that the de facto officer doctrine could apply in cases in which someone had failed to swear a prescribed oath of office.

Breach of Oath or Affirmation

Breach of an oath or affirmation of allegiance, or of an official oath or affirmation, is not of itself a crime though the conduct which constitutes the breach may attract criminal liability. For example, someone who has violated the oath or affirmation of allegiance may have done so by reason of conduct which amounts to treason or sedition. Should a member of parliament violate the oath or affirmation of allegiance he or she may thereby become disqualified from sitting and voting as a member and may incur monetary penalties recoverable in a court of law. All Australian constitutions (or other legislation on membership of Houses of parliament), except Victoria's, include a provision similar to s 44(i) of the federal Constitution. It declares that:

> "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; . . shall be incapable of being chosen or of sitting as a senator or a member of the House of representatives."

Should the conduct which is in violation of a member's oath or affirmation of allegiance have attracted criminal liability and sentence, then again the member may thereby have become disqualified from sitting and voting. The Houses of the Australian State parliaments and until 1987 the Houses of the federal Parliament also, could simply expel one of their members adjudged by them guilty of breach of the oath or affirmation of allegiance. The motion of Prime Minister WM Hughes in 1920 that the member for Kalgoorlie, Hugh Mahon, be expelled from the House of Representatives, on account of his seditious and disloyal utterances, asserted also that Mahon had violated the oath of allegiance. The motion was carried and the member's seat was declared vacant.

> Section 8 of the Parliamentary Privileges Act 1987 (Cth) removed from the Houses of the federal Parliament their power to expel members. The statute which creates a public office will often limit the grounds on which occupants of the office may be suspended or removed. Although breach of the oath or affirmation of office taken by the office-holder would not of itself be such a ground, conduct which does constitute a ground for suspension or removal could also be in violation of the oath or affirmation.

The misbehaviour on the part of a judge which is claimed to be the cause for his or her removal from office could, for example, be conduct in breach of the judicial oath of office. Judges who have committed themselves under oath or affirmation to uphold a particular constitution may consider it in breach of that oath or affirmation to accord legal validity to the acts of government which has effectively overturned that constitution by revolutionary means. In such a situation some judges may take the view that their proper course is to resign from office."

https://freemandelusion.com/wp-content/uploads/2020/08/e.-campbell.pdf

Nibbs v Devonport City Council [2015] TASSC 34 considered whether a Magistrate had authority to hear case if not correctly sworn into office, and whether it invalidates judicial oaths or affirmations, oaths or affirmations of allegiance and oaths or affirmations of office. It was held that the Governor and Magistrate had been correctly sworn, and additionally, the judge also relied on the presumption of regularity and de facto officer doctrine.

The presumption of regularity

> "The principle commonly known as the 'presumption of regularity' is that where the exercise of a power or the performance of an act by a public officer or public authority is proved, it will be presumed that the preconditions to the lawful exercise of that power or performance of that act have been met." ***McLean Bros & Rigg Ltd v Grice [1906] HCA 1; (1906) 4 CLR 835*** at 560. Relevant to this case, in ***Minister for Natural Resources v New South Wales Aboriginal Land Council (1987) 9 NSWLR 154***, McHugh JA at 164 said:
>
> "Where a public official or authority purports to exercise a power or to do an act in the course of his or its duties, a presumption arises that all conditions necessary to the exercise of that power or the doing of that act have been fulfilled. Thus a person who acts in a public office is presumed to have been validly appointed to that office."
>
> (***M'Gahey v Alston [1836] EngR 150***; ***(1836) 2 M & W 206*** at 211; ***[1836] EngR 150***; ***150 ER 731*** at 733; ***R v Brewer [1942] HCA 33***; ***(1942) 66 CLR 535*** at 548; ***Hardess v Beaumont [1953] VicLawRp 46***; ***[1953] VLR 315*** at 318-319.)

The de facto officer doctrine

> The second answer is that in any event, the doctrine known as the 'de facto officer doctrine' would undoubtedly apply. ***G J Coles v Retail Trade Industrial Tribunal (1986) 7 NSWLR 503*** per McHugh JA at 515: "The acts of a de facto public officer done in apparent execution of his office cannot be challenged on the ground that he has no title to the office. It matters not that his appointment to the office was defective or has expired or in some cases even that he is a usurper."
>
> As his Honour demonstrated in his analysis in that case, and as demonstrated in the discussion by Crawford J (as he then was) in ***Official Trustee v Byrne [1989] Tas SR 1*** at 13-15, the principle applies to judicial officers. The three conditions necessary for the operation of the doctrine apply in this case. The office of a magistrate is one which existed in law. The acts of the magistrate in hearing and determining the application for summary judgment were within the scope and authority of the office of a magistrate. Lastly, the doctrine should properly be applied in the public interest: see generally ***Jamieson v McKenna [2002] WASCA 325*** at [13]- [14]."

https://freemandelusion.com/wp-content/uploads/2020/06/nibbs-v-devonport-city-council-2015-tassc-34.pdf

In 1901, Sir Owen Dixon wrote regarding this principle in his work "***Defacto Officers***".

https://freemandelusion.com/wp-content/uploads/2020/11/de-facto-officers.pdf

A "ceremonial but not a legal sense".

Moller v Board of Examiners for Legal Practitioners [1999] VSCA 116; [1999] 3 VR 36 (from 17):

As Street, C.J. Said in ***Re Howard [1976] 1 N.S.W.L.R., 641*** *at 646:-*

> *"The taking of the oath of allegiance in association with admission to practice is part of the formal ceremony attendant thereon, but the law is clear that the bond of allegiance exists at common law, independently of whether the oath be taken or not. The formal taking of the oath has significance in a ceremonial, but not a legal, sense. It is customary, on admission ceremonies, to remind those newly admitted that the significance of the oath is that the Sovereign represents the fountainhead of law and justice – the oath is a pledge of service to the symbol of law and justice ."*

And in *Miller*, at 383, Young, C.J. said:-

> *"But it remains important that a candidate for admission should take an oath of allegiance to the Sovereign. Parliament has provided that it is one of the essential prerequisites for admission to practise. In so providing Parliament has required a candidate for admission to do what every high office holder in this State does upon his assumption of office. The provision is thus a recognition by Parliament of the importance attaching to admission to practise as a barrister and solicitor."*
>
> *The thrust of these passages remains, I think, relevant, notwithstanding that it is now the Rules of Court, rather than Parliament itself, which impose the obligation to take the oath of allegiance, and also that various governments may have in cases such as the adoption of Australian citizenship substituted a pledge of loyalty to Australia for the oath of allegiance to the Sovereign. Ms Ryan, who appeared for the Board of Examiners, submitted that a duty of allegiance is owed to the Sovereign by all those resident within her realm whether or not an oath of allegiance is taken; **Joyce v. DPP [1946] A.C. 347** at 366 and 374; **Howard** at 645-646; and **Nicholls v. Board of Examiners [1986] V.R. 719** at 729-730. As the judge put it in paragraph (22) of his reasons, the requirement that the appellant take an oath of allegiance as a condition of being admitted to practice is nothing more than a recognition of that duty. The concept of allegiance was discussed, and the reciprocal nature of the rights and obligations involved was explained, by Ormiston, J. in **Nicholls** at 728.*

https://freemandelusion.com/wp-content/uploads/2020/08/moller-v-board-of-examiners-for-legal-practitioners-1999-vsca-116-1999-3-vr-36.pdf

The removal of references to the Queen

A popular contention held by pseudolaw adherents in Australia is that judgments are void because certain legislation governing the states courts and legal practice contain an oath to the people of the State, rather than to the Queen. One example is in Western Australia, regarding the ***Acts Amendment and Repeal (Courts and Legal Practice) Act 2003*** (WA), and another example is in Victoria, where the Oath of allegiance was no longer required due to section 3 of the ***Courts and Tribunals Legislation (Further Amendment) Act 2000*** (Vic) amending section 6(1)(c) of the *Legal Practice Act 1996* (Vic).

This was raised by ***Rodney Culleton*** in ***Balwyn Nominees Pty Ltd v Culleton [2016] FCA 1578***:

> ""WAS THE DISTRICT COURT JUDGMENT OF NO FORCE AND EFFECT BECAUSE THE DISTRICT COURT JUDGE ON HIS APPOINTMENT AS A JUDGE DID NOT SWEAR AN OATH TO THE QUEEN, BUT RATHER TO "THE PEOPLE AND THE STATE OF WESTERN AUSTRALIA"?

> The time has arrived for people who consider that this is a constitutional issue of some moment to appreciate that the courts have long since discredited the theory. Nonetheless it continues to be advanced from time to time, as it has been by the respondent debtor on this occasion.
>
> Most recently, as counsel for the petitioning creditor submits, McKerracher J in the Federal Court disposed of the same argument in the recent application brought by the respondent debtor in October 2016. See **Culleton [2016] FCA 1193**.
>
> All previous attempts to raise this issue have equally been rejected as without any legal merit. See **Shaw v Jim McGinty in his capacity as Attorney General & Anor [2006] WASCA 231** upholding **Shaw v Attorney General for the State of Western Australia & Anor [2005] WASC 149**; **Glew & Anor v Shire of Greenough [2006] WASCA 260**; **Glew v The Governor of Western Australia (2009) 222 FLR 416; [2009] WASC 14**.
>
> In Glew v Shire of Greenough, Wheeler JA (with whom Pullin and Buss JJA agreed) observed, at [17] and [18], that 2003 State legislation bringing about the change in terminology did not effect any change to constitutional reality. It did not attempt to alter the relationship between the Crown and the various bodies contained within the Acts amended. Her Honour said:
>
> "There is no constitutional prohibition upon the alteration of the terminology which refers to the Crown or to her Majesty. Further, the changes of terminology contained within the Acts Amendment and Repeal (Courts and Legal Practice) Act 2003 are consistent with constitutional reality".
>
> I accept the submission made on behalf of the petitioning creditor that the contentions made by the respondent debtor are seriously flawed and the matters upon which he relies have no effect on the judgment obtained by the petitioning creditor in 2013 in the District Court of Western Australia; or the decisions of the Western Australian Court of Appeal made thereafter. The judgment is enforceable against the respondent debtor, despite the discredited theory being advanced yet again."

The case also extrapolates on the different oaths taken by judges in the courts of different jurisdictions.

https://freemandelusion.com/wp-content/uploads/2018/07/balwyn-nominees-pty-ltd-v-culleton-2016-fca-1578.pdf

TM Fresh Pty Ltd [2019] VSC 383:

> *"Firstly, Mr Margheriti has repeatedly requested that the solicitors and counsel for Mr Tripodi produce certificates under s 88 of the Imperial Acts Application Act 1922 (Vic) to establish that they have taken an oath of allegiance, are admitted to practise and are entitled to represent their client in Court.... This argument is, with respect, misconceived. Section 88 of the Imperial Acts Application Act 1922 (Vic), has long been repealed."*
>
> "*...The provision was repealed in 1928 by s 2 of the Legal Profession Practice Act 1928 (Vic) and the schedule to that legislation. A similar provision was then inserted into s 5(2) of the Legal Profession Practice Act 1928 (Vic) and subsequently s 5(2) of the Legal Profession Practice Act*

> *1958 (Vic). Stylistic changes to the relevant provision were then made in the form of s 5(1)(c) of the **Legal Practice Act 1996 (Vic)**.*
>
> *However, as a consequence of an amendment made by s 3 of the **Courts and Tribunals Legislation (Further Amendment) Act 2000 (Vic)** to s 6(1)(c) of the **Legal Practice Act 1996 (Vic)**, it is clear that an oath of allegiance to the Queen is no longer required. The requirements for admission to practice are now contained in s 16(1)(c) of Schedule 1 to the **Legal Profession Uniform Law Application Act 2014 (Vic)**."*

The terminology which refers to the Crown or to her Majesty has altered, quite logically, due to the divisibility of the Crown, a principle that was recognised at the Imperial Conferences, starting with the Balfour Agreement 1926, and brought into law with the Statute of Westminster 1931 which was adopted in Australia in 1942. The British Empire collapsed and each executive government of the former dominions had by default a Crown that was "*an entirely different and distinct legal personality"* from the Crown of England. Gaudron J. found this notion to be *"implicit in the Constitution."* in ***Sue v Hill [1999] HCA 30***, the case also details how the expression "the Crown" is used in constitutional theory. See also ***Re Patterson [2001] HCA 51***. with regards to the subsequent interpretation of section 117 of the Constitution. The divisibility of the Crown has been upheld by the UK High Court in *R v. Foreign Secretary ex parte Indian Association of Alberta [1982] 1 QB 892* which was cited in relation to Australia in ***Fitzgibbon v HM Attorney General [2005] EWHC 114 (Ch)***.

In ***Re Stepney Election Petition; Isaacson v Durant (1886) 17 QBD 54*** Lord Coleridge CJ said (at 65-66): *"…as the statutes referred to the Crown and not the sovereign, allegiance was due to the King in his politic, and not in his personal, capacity."* In relation to this case, on page 386 of "*Constitution of New South Wales*", Anne Twomey notes that *"As the body politic was a creation of law, then allegiance could be changed by a law-making authority."* This case is also reviewed in ***Singh v Commonwealth of Australia [2004] HCA 43***, in relation to the definition of allegiance.

The body politic that is the Crown in relation to Australia is the people of Australia, and it is represented by the Queen of Australia, a point highlighted by Wheeler JA in ***Glew & Anor v Shire of Greenough [2006] WASCA 260*** (from 16), that the change in terminology is entirely consistent with constitutional reality.

> *"This ground is concerned with the passage of the abovementioned 2003 Act. It is contended by the appellants that the Local and District Courts of Western Australia do not have lawful authority to administer law within the State since the passage of that Act. The concern appears to be that the Act has "removed Her Majesty and the Crown" from a large number of Acts within Western Australia, including the District Court of Western Australia Act 1969 (WA) and the Local Courts Act 1904 (WA).*
>
> *The Act referred to changes the terminology in a large number of statutes of Western Australia. In broad terms, references to the Crown or to her Majesty are changed to references to the Governor or the State. The first observation to be made about the Act is that it purports to change terminology only, not constitutional reality. That is, it does not attempt to alter the relationship between the Crown and the various bodies contained within the Acts amended.*
>
> *There is no constitutional prohibition upon the alteration of the terminology which refers to the Crown or to her Majesty. Further, the changes of terminology contained within the Acts*

Amendment and Repeal (Courts and Legal Practice) Act 2003 are consistent with constitutional reality. The Governor is, for constitutional purposes, effectively the Queen's representative in Western Australia (s 50 State Constitution) and so is, for practical purposes, "her Majesty" within Western Australia. The "State" is simply another way of referring to the executive power of the Crown in right of the State of Western Australia. Parallel terminology can be found in the Commonwealth Constitution. For example, although the Commonwealth Constitution provides, by s 61, that the executive power of the Commonwealth is "vested in the Queen and is exercisable by the Governor-General as the Queen's representative", a number of sections of the Constitution refer simply to "the Commonwealth" as a shorthand expression for the entity exercising that executive power. A striking example is s 119, which provides that "the Commonwealth shall protect every State against invasion ... ".

As is explained in a text book popular in constitutional law courses: (Hanks & Cass, "Australian Constitutional Law: Materials and Commentary", 6th ed (1999) at [7.1.6]):

"When we talk of the Crown in the context of Australian government in the late twentieth century, we refer to a complex system of which the formal head is the monarch. We do not refer to a replica of sixteenth century English government, where real power was vested in and exercised by the monarch personally. Rather, we mean that collection of individuals and institutions (Ministers, public servants, a Cabinet, the Executive Council, a Governor or Governor-General, and statutory agencies) which exercise the executive functions of government"

The Acts Amendment and Repeal (Courts and Legal Practice) Act 2003 effects no constitutional alteration. Even if it did, and even if it did so invalidly, the consequence would not be that the Courts suddenly lacked jurisdiction. The only consequence of that Act having been passed in a manner which was constitutionally invalid, would be that the Acts Amendment and Repeal (Courts and Legal Practice) Act 2003, or portions of it, would be invalid and that the Courts and bodies in relation to which it purported to amend terminology continued to function, but under the former terminology."

https://freemandelusion.com/wp-content/uploads/2020/08/glew-v-shire-of-greenough-2006-wasca-260.pdf

In ***Flowers v State of New South Wales (No 5) [2021] NSWSC 887*** the plaintiff sought that since Rothman J, as a judicial officer, had sworn allegiance to the Crown, he should disqualify himself on the basis he is not impartial and/or independent in the determination of the outcome of the proceedings. As explained (at 59), a judicial officer in New South Wales is required to swear an oath of allegiance to the monarch, and the judicial oath, as prescribed by the second and fourth schedule to the *Oaths Act 1900* (NSW). His Honour goes on (from 111):

"The allegiance and service to which a judicial officer swears in the oath of allegiance and the judicial oath is allegiance to the monarch, not in his or her personal capacity, but, rather, to the body politic. The allegiance, for example, would not apply to applying or enforcing Canadian law or English law. The Crown as a body politic is "an abstraction", used in a metaphysical or metaphorical sense. Hence, we speak of the Crown in the Right of New South Wales as a distinct entity from the Crown in the Right of Victoria. As the High Court explained in Re Patterson; ex parte Taylor [2001] HCA 51 (at 224), the body politic is a creation of law and, as a consequence,

> *the allegiance would be changed by any validly made law or by a lawmaking authority. The allegiance is to the body politic, being the State as an entity, not the government and not the monarch personally. On any analysis, properly informed, of the effect of the oath of allegiance and the judicial oath, neither requires or allows conduct by a judicial officer inconsistent with the judicial officer's duty to uphold the law and administer it and certainly does not allow favour, affection or ill-will towards the Government over the rights, under law, of the citizens of the State."*

Further explained in the article "***What is "the Crown"?***". The removal of references to the Queen has been contended in many cases, you can locate them on this website under the Tags "***The Removal of the Crown***" and "***Oaths of Office***".

Show me the Proclamation Certificate!

In 2017, an extremely patient Queensland police officer was praised online for his tact, when dealing with ***Christopher James David Summers***, a man who insisted he could not legally be breathalysed until he was shown a 'proclamation certificate' signed by the Queen.

yahoo!news

'Has the Queen enacted it?": Queensland driver tests cop's patience, insists breath tests are illegal

Ben Brennan
16 November 2016

An extremely patient Queensland police officer has been praised online for his tact, when dealing with a man who insisted he could not legally be breathalysed until he was shown a 'proclamation certificate' signed by the Queen.

The driver recorded his tense conversation with the officer, the clip has since received millions of views online.

The conversation goes for about 10 minutes, and shows the driver testing the police officer's patience by demanding to know if he was under arrest while repeatedly refusing to blow into the breathalyser.

"You can be under arrest if you want," the officer informs the man, while explaining that drivers are legally required to provide samples for road side breath tests.

The officer informs the man the Transport Operations (Road Use Management) Act 1995 requires him to provide a breath sample. Photo: Facebook/Brett White

"Has it been through the upper house, the lower house, and she's (the Queen) enacted it?" The driver demands to know.

Queensland has a unicameral parliamentary system, meaning it only has one house. The Queen's representative, the governor, must sign off legislation passed in Queensland.

Eventually the officer appears to give up, but hinted that it may not be the end of the matter.

"We'll be seeing later on, Mr Summer," he said, after the driver refused to tell the police officer his full name, insisting: "I am a man and I'm called many things".

The officer kept his promise and the 33-year-old Sunshine Coast man was ordered to appear in a Noosa Court next month after police tracked him down four days later.

A police spokesman said the man, from Pomona, would be asked to answer to charges over his failure to provide a breath sample when he was stopped on Elm Street, Cooroy, on November 10.

He has been ordered to appear in court on December 13.

Refusing a roadside breath test in Queensland is punishable by 40 demerit points, a fine of $4000 or six months in jail.

The exchange bears the hallmarks of the 'sovereign citizens' movement, a fringe political belief system which has been gathering pace around the world in recent years, and causing headaches for legal officers of all stripes.

Clips of people denying police authority have become increasingly popular online and frequently feature questions such as "Am I being detained" or "Am I under arrest" as police conduct routine duties.

Sovereign citizens are also known to refer to themselves as "free men on the land", and have taken particular offense at the world's traffic police, who they believe illegally impede their rights to travel freely.

Frustrated but unshaken, the officer tells the driver

Many supporters believe governments to be illegal conspiracies that use their citizens for financial leverage.

Last year, counter-terrorism police in Australia said they had identified about 300 sovereign citizens, with a confidential report uncovered by the ABC, suggesting police considered the movement a potential security risk.

The latest video was uploaded to Facebook by a user called Brett White, who told readers he did not film the conversation but had found it on another page.

It has been seen almost three million times since Monday.

The police officer was under no obligation to provide any evidence of a proclamation certificate, in fact neither does a court, or a respondent in a proceeding. The same exists regarding seals and signatures, and the Act as it appears in the Government Gazette.

Judicial Notice

Section 143 of the Evidence Act 1995 (Cth) provides:

(1) Proof is not required about the provisions and coming into operation (in whole or in part) of:

- *(a) an Act, a State Act, an Act or Ordinance of a Territory or an Imperial Act in force in Australia; or*
- *(b) a regulation, rule or by-law made, or purporting to be made, under such an Act or Ordinance; or*
- *(c) a Proclamation or order of the Governor-General, the Governor of a State or the Administrator or Executive of a Territory made, or purporting to be made, under such an Act or Ordinance; or*
- *(d) an instrument of a legislative character (for example, a rule of court) made, or purporting to be made, under such an Act or Ordinance, being an instrument that is required by or under a law to be published, or the making of which is required by or under a law to be notified, in any government or official gazette (by whatever name called).*

(2) A judge may inform himself or herself about those matters in any way that the judge thinks fit.

(3) A reference in this section to an Act, being an Act of an Australian Parliament, includes a reference to a private Act passed by that Parliament.

Note: Section 5 extends the operation of this provision to proceedings in all Australian courts.

150 Seals and signatures:

(1) If the imprint of a seal appears on a document and purports to be the imprint of:

- *(a) a Royal Great Seal; or*
- *(b) the Great Seal of Australia; or*
- *(c) another seal of the Commonwealth; or*
- *(d) a seal of a State, a Territory or a foreign country; or*
- *(e) the seal of a body (including a court or a tribunal), or a body corporate, established by a law of the Commonwealth, a Territory or a foreign country; or*
- *(f) the seal of a court or tribunal established by a law of a State;*

it is presumed, unless the contrary is proved, that the imprint is the imprint of that seal, and the document was duly sealed as it purports to have been sealed.

(2) If the imprint of a seal appears on a document and purports to be the imprint of the seal of an office holder, it is presumed, unless the contrary is proved, that:

- *(a) the imprint is the imprint of that seal; and*
- *(b) the document was duly sealed by the office holder acting in his or her official capacity; and*
- *(c) the office holder held the relevant office when the document was sealed.*

(3) If a document purports to have been signed by an office holder in his or her official capacity, it is presumed, unless the contrary is proved, that:

- *(a) the document was signed by the office holder acting in that capacity; and*
- *(b) the office holder held the relevant office when the document was signed.*

(4) In this section: "office holder" means:

- *(a) the Sovereign; or*
- *(b) the Governor-General; or*
- *(c) the Governor of a State; or*
- *(d) the Administrator of a Territory; or*
- *(e) a person holding any other office under an Australian law or a law of a foreign country.*

(5) This section extends to documents sealed, and documents signed, before the commencement of this section.

Note: Section 5 extends the operation of this provision to proceedings in all Australian courts.

153 Gazettes and other official documents:

(1) It is presumed, unless the contrary is proved, that a document purporting:

- *(a) to be any government or official gazette (by whatever name called) of the Commonwealth, a State, a Territory or a foreign country; or*
- *(b) to have been printed by the Government Printer or by the government or official printer of a State or Territory; or*
- *(c) to have been printed by authority of the government or administration of the Commonwealth, a State, a Territory or a foreign country;*

is what it purports to be and was published on the day on which it purports to have been published.

(2) If:

(a) there is produced to a court:

- *(i) a copy of any government or official gazette (by whatever name called) of the Commonwealth, a State, a Territory or a foreign country; or*
- *(ii) a document that purports to have been printed by the Government Printer or by the government or official printer of a State or Territory; or*
- *(iii) a document that purports to have been printed by authority of the government or administration of the Commonwealth, a State, a Territory or a foreign country; and*

(b) the doing of an act:

- *(i) by the Governor-General or by the Governor of a State or the Administrator of a Territory; or*

- *(ii) by a person authorised or empowered to do the act by an Australian law or a law of a foreign country;*

is notified or published in the copy or document; it is presumed, unless the contrary is proved, that the act was duly done and, if the day on which the act was done appears in the copy or document, it was done on that day.

Note: Section 5 extends the operation of this provision to proceedings in all Australian courts.

Section 5 of the Evidence Act 1995 *(Cth):*

Extended application of certain provisions

The provisions of this Act referred to in the Table apply to all proceedings in an Australian court, including proceedings that:

- *(a) relate to bail; or*
- *(b) are interlocutory proceedings or proceedings of a similar kind; or*
- *(c) are heard in chambers; or*
- *(d) relate to sentencing.*

TABLE	
Provisions of this Act	Subject matter
Subsection 70(2)	Evidence of tags and labels in Customs prosecutions and Excise prosecutions
Section 143	Matters of law
Section 150	Seals and signatures
Section 153	Gazettes and other official documents
Section 154	Documents published by authority of Parliaments etc.
Section 155	Official records
Section 155A	Commonwealth documents
Section 157	Public documents relating to court processes
Section 158	Evidence of certain public documents
Section 159	Official statistics
Section 163	Proof of letters having been sent by Commonwealth agencies
Section 182	Commonwealth records, postal articles sent by Commonwealth agencies and certain Commonwealth documents

Note: Australian court is defined in the Dictionary to cover all courts in Australia. The definition extends to persons and bodies that take evidence or that are required to apply the laws of evidence.

Provisions regarding judicial notice also exist in State legislation:

- **Victoria:** Section 143 of the Evidence Act 2008 (Vic)
- **New South Wales:** Section 143 of the Evidence Act 1995 (NSW)
- **Queensland:** Section 123 of the Evidence Act 1977 (Qld)
- **South Australia:** Section 35 of the Evidence Act 1929 (SA)
- **Western Australia:** Section 53 of the Evidence Act 1906 (WA)
- **Northern Territory:** Section 143 of the Evidence (National Uniform Legislation) Act 2011 (NT)
- **Tasmania:** Section 143 of the Evidence Act 2001 (Tas)

Similar assertions have been made in many cases, such as in ***Fekete v Child Support Registrar [2016] FamCAFC 14***:

> *The Applicant was not satisfied by this response and on 25 November 2015 served on the Respondent a further Notice to Produce, again using the heading relevant to r 20.31(1) of the Federal Court Rules. The Notice sought production of the following documents:*
>
> - *A Certified Copy of the Proclamation certificate of the Child Support (Registration and Collection) Act 1988 as well as certified copies of all Proclamation certificates for any and all amendments made to the Child Support (Registration and Collection) Act 1988. The Respondent requires the certified copies to be certified by the Secretary of the State of New South Wales and the Secretary of the Commonwealth of Australia and requires those documents to be produced within 28 days from the date of this Notice.*
> - *A Certified Copy of the Referendum results that granted the Parliament of the Commonwealth of Australia the authority to use the "Great seal of Australia" as opposed to the original seal of the Commonwealth of Australia, as was used on the Commonwealth of Australia Constitution Act 1900 (UK). The Respondent requires the certified copies to be certified by the Secretary of the State of New South Wales and the Secretary of the Commonwealth of Australia and requires those documents to be produced within 28 days from the date of this Notice.*
> - *A Certified Copy of the Proclamation certificate of the Federal Court Act 1976 as well as certified copies of all Proclamation certificates for any and all amendments made to Federal Court Act 1976. The Respondent requires the certified copies to be certified by the Secretary of the State of New South Wales and the Secretary of the Commonwealth of Australia and requires those documents to be produced within 28 days from the date of this Notice.*
>
> *The well-known proposition that the burden of proof falls on the person asserting the claim does not help the Applicant because that relates to the burden of proving the elements of the offence or the cause of action and not the law itself. Rule 15A.17 of the FCC Rules provides:*
>
> *Notice to produce*
> *1. A party may, by notice in writing, require another party to produce, at the hearing of the proceeding, a specified document that is in the possession, custody or control of that other party.*
> *2. Unless the Court otherwise orders, the party given notice to produce must produce the document at the hearing.*

As the Respondent correctly pointed out, there is no evidence that any of the documents were at any time in the possession, custody or control of the Respondent. The obligation to produce is limited to such documents. There is no evidence that the offices of "Secretary of the State of New South Wales" or the "Secretary of the Commonwealth of Australia" exist or that they have power to certify copies of proclamation certificates.

Essentially, the Applicant argues that the Notices to Produce were served on the Respondent because the Respondent has an obligation to prove that the Child Support (Registration and Collection) Act 1988 (Cth) is valid and was properly proclaimed. In support of that argument the Applicant relied on s. 6 of the Acts Interpretation Act 1901 (Cth) which provides:

6. Evidence of date of assent
"The date appearing on the copy of an Act printed by the Government Printer, and purporting to be the date on which the Governor-General assented thereto, or made known the Sovereign's assent, shall be evidence that such date was the date on which the Governor-General so assented or made known the Sovereign's assent, and shall be judicially noticed."

Section 6 does not require a person relying on an Act to prove its proclamation. Rather, the court is to take judicial notice that the date appearing on a copy of an Act printed on a Government printer is evidence that the date of assent on that copy is the date that the Governor-General so assented. It therefore does not assist the Applicant."

Lade and Company Pty Ltd v Finlay & Anor; Lade v Franks & Anor [2010] QSC 382:

"Secondly, I am required to take judicial notice of Acts of Parliament and assume the accuracy of copies of such Acts: s 43 and 46A of the Evidence Act 1977 (Qld). So, without evidence to the contrary, I am not concerned with the question of whether the constitutional requirements relating to the valid passing of any Act of Parliament have been complied with."

Postponed legislation

Constitutional theorists like ***Wayne Glew***, ***Sue Maynes***, and most others have trouble with the changes in our constitutional relations with the UK, and still believe we are a colony of the British Empire. This leads to many different abstract speculations when applied to the current situation, like that the old procedures relating to the assent and proclamation of legislation are still in effect, hence the imagined requirement that the authorities show this proclamation certificate and prove its validity as a law.

The Governor-General possesses all the prerogatives of the Crown relating to the assent of bills of the Commonwealth Parliament. It is in his discretion under section 58 of the Constitution, whether he assents in the Queen's name, or that he withholds assent, or that he reserves the law for the Queen's pleasure. A similar role exists with the State Governors and State legislation, except with the passing of the ***Australia Act 1986***, the State Governors were no longer required to reserve any bill for the monarchs pleasure, pursuant to section 9. Here is a complete list of Commonwealth bills since Federation that were ***reserved for Her Majesty's pleasure***.

For example, the ***Royal titles and Styles Act 1973***, was reserved for Her Majesty's pleasure, and the Proclamation was published in the Government ***Gazette No 152***, 19 October 1973

> *"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."*

With Acts assented in the normal process by the Governor General or State Governors, the "commencement" section of every Act contains the details of the Proclamation. Mostly, it states it commences: *"A single day to be fixed by Proclamation."* but also states:

> *"However, if the provisions do not commence within the period of 12 months beginning on the day this Act receives the Royal Assent, they commence on the day after the end of that period."*

For example, we'll use the ***Independent Parliamentary Expenses Authority Act 2017*:**

The assent and accompanying publishing of it in the Gazette, is therefore considered sufficient for the Act to have effect, after a period of 12 months.

A similar contention was raised regarding the *Heavy Vehicle National Law (HVNL)* which was a Queensland Act later adopted by several other States, and hence becoming national. This is defined as "postponed" legislation. The Queensland Parliament passed the ***Heavy Vehicle National Law (HVNL) Amendment Bill 2012*** (Qld) on 10 February 2013. The date of assent was 3 June 2013, and ss 1–2 commenced on the date of assent in Queensland, but the remaining provisions commenced 10 February 2014 on the commencement of the provisions of the *Heavy Vehicle National Law Act 2012*, as the 12 month postponement ended on that day. (2014 SL No. 6) Likewise, the HVNL and regulations commenced in the Australian Capital Territory, New South Wales, Queensland, South Australia, Tasmania and Victoria on 10 February 2014, bringing all the participating states in line with each other. If you note, the Act states under its ***"Commencement"*** section that:

> *(1) This Act commences on a day to be fixed by proclamation.*

But also states:

> *(2) The Acts Interpretation Act 1954, section 15DA applies to the provisions of this Act as ifâ€"*
>
> *(a) the references in subsections (2) and (3) of that section to 1 year were a reference to 2 years; and*
>
> *(b) the reference in subsection (3) of that section to 2 years were a reference to 3 years.*

Turning to the ***The Acts Interpretation Act 1954*** for clarification.

The one and two year postponement apply in this case, so no proclamation was necessary, in accordance with standard enactment procedures of postponed legislation.

The Queen signed it at the top!

There is a ridiculous theory that implies by that the Queen placing her signature at the top of bill requiring her assent (instead of at the end, the bottom, underneath the body of words) invalidates the document and her "permission", or oversight. This false premise is applied to legislation such as the *Royal Style and Titles Act 1973* and the *Australia Act 1986,* (both of which were reserved for Her Majesty's pleasure), to claim that these Acts did not receive assent.

The origin of this myth is presumably based in the pseudolaw premise that legislation is a form of contract, and hence it requires a signature at the end of the body of text.

The Royal Sign Manual

The signature of a monarch is called a Royal Sign Manual. The Royal Sign Manual of Elizabeth II is *"Elizabeth R"* (R is for "*regina*" - a Latin word meaning "queen").

The Royal Sign Manual is generally placed by the monarch at the top of a bill requiring assent. The following are a group of references regarding the proper placing of the Royal Sign Manual throughout history...

Hansard's Parliamentary Debates By Great Britain Parliament (1862) describing how a Officers Commission is enacted: "*"In every case- whether it be that of a first commission or that of the promotion of an officer- a "submission" is made by the Commander-in-Chief to the Queen. He states the name of the officer, together with the rank in the army which it is proposed the officer should hold. If the Queen approves it, Her Majesty signs her name at the **TOP** of the submission paper ... When made out, the commission is sent by the Secretary of State to Her Majesty. Her Majesty writes her name at the **TOP** of the document. It is countersigned by the Secretary of State, and then it is complete."*

Alexander Milne, that the country ought to have ten more troop-ships. Vessels had been taken up and chartered as transports which ought never to have been sent to sea if they had better ones to put in their places. As for the alleged economy of employing merchant vessels, he knew that when he was carrying troops for the Indian service years ago the charge was at the rate of £15 per man. He observed that £15 per man had recently been paid for sending them to Halifax.

Vote *agreed to.*

House *resumed.*

Resolutions to be reported *To-morrow.*

Committee to sit again *To-morrow.*

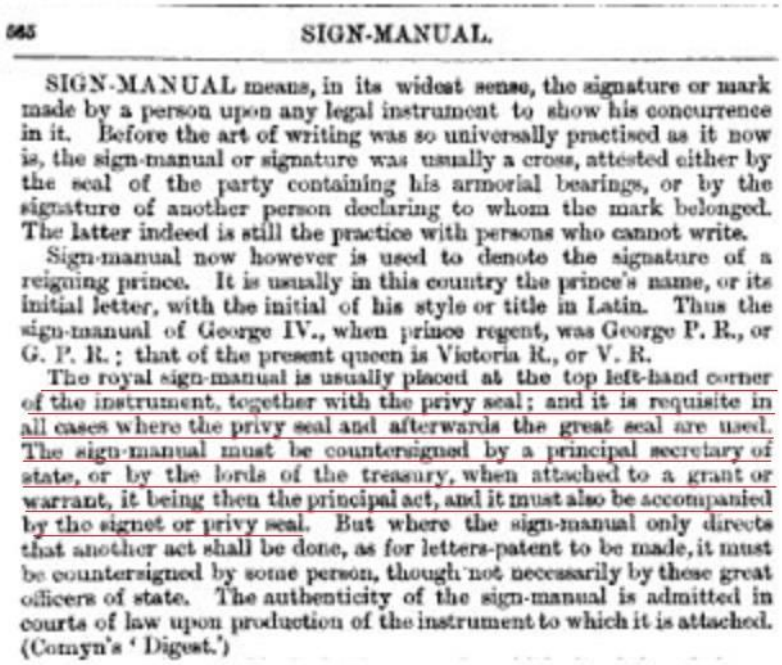
OFFICERS COMMISSIONS BILL.

LEAVE. FIRST READING.

SIR GEORGE LEWIS: Sir, I rise to move for leave to bring in a Bill of which I have given notice. This Bill is purely of a technical nature, but it is right that I should explain to the House the precise effect which I wish it to have. The House may not be aware of the exact form now adopted with respect to the commissions of military officers. In every case —whether it be that of a first commission or that of the promotion of an officer— a "submission" is made by the Commander-in-Chief to the Queen. He states the name of the officer, together with the rank in the army which it is proposed the officer should hold. If the Queen approves it, Her Majesty signs her name at the top of the submission paper, and also signs a direction at the bottom of the paper to the Secretary of State to prepare a commission according to the name and the degree stated in the body of the document, and the latter is then returned to the Commander-in-Chief. It is sent by him to the War Office, and then it becomes the duty of the Secretary of State to prepare a commission according to the directions contained in the paper. This commission runs in the name of the Queen —that the Queen grants certain rank in the army, and certain powers to the officer named in the document. When made out, the commission is sent by the Secretary of State to Her Majesty. Her Majesty writes her name at the top of the document. It is countersigned by the Secretary of State, and then it is complete. The House will see, therefore, that in order to enable an officer to obtain a commission in the army it is necessary that Her Majesty should sign her name three times. By the present custom the sign manual is repeated three times for that purpose. That rule applies to all the land forces. With regard to the marines, the practice of the Admiralty is to send the commission of every officer of marines, to the Queen, and Her Majesty signs it in the same way as those of the officers in the army are signed. It is also necessary that the commissions of Quartermasters General and Adjutants in the militia should be signed by the Queen; and they are sent from the War Office in a similar manner. I may also observe to the House that all officers in the store department of the War Office are to receive commissions, and these commissions they will receive from the Queen. Again, the change made in respect of the Indian army brings the whole of that army on the Home establishment; and, according to the present practice, all the commissions in the Indian army will require the signature of Her Majesty. I am told that the number of these commissions will be 6,000; and the commissions of officers in the storekeeper's department of the War Office—which will be very numerous —will also require the sign manual. I think the House will see that this repetition of the sign manual gives no particular security; that by the attachment of the Royal signature to the "submission" paper the officer himself has a complete assurance that this commission from the Queen has been directed by Her Majesty. There is no advantage to the officer himself from having the sign manual placed on his commission; and, it appearing that no advantage arises from what, under present circumstances, may be termed pressing on the Queen this mechanical labour, the object of the measure which I am about to propose is to give power to Her Majesty in Council to determine what class of commissions should be attested by the Commander-in-Chief and the Secretary of State for War without the sign manual being attached to the body of those commissions. I shall therefore conclude by moving for leave to bring in a Bill to enable Her Majesty to issue commissions to the officers of her Majesty's land forces and Royal Marines, and to Adjutants and Quartermasters of Her Militia and Volunteer Forces, without affixing her Royal sign manual thereto.

SIR JOHN PAKINGTON said, that the Bill was of a very unusual character,

The English Cyclopedia; Bradbury, Evans, (1866)**:** *"The royal sign-manual is usually placed at the **TOP** left hand corner of the instrument, together with the privy seal; and it is requisite in all cases where the privy seal and afterwards the great seal are used. The sign manual must be countersigned by a principle secretary of state, or by the lords of the treasury, when attached to a grant or warrant, it being then the principle act, and it must also be accompanied by the signet or privy seal."*



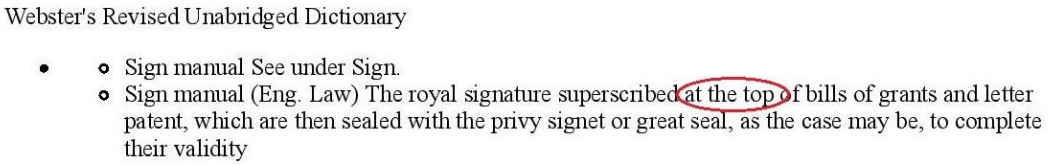
565 SIGN-MANUAL.

SIGN-MANUAL means, in its widest sense, the signature or mark made by a person upon any legal instrument to show his concurrence in it. Before the art of writing was so universally practised as it now is, the sign-manual or signature was usually a cross, attested either by the seal of the party containing his armorial bearings, or by the signature of another person declaring to whom the mark belonged. The latter indeed is still the practice with persons who cannot write.

Sign-manual now however is used to denote the signature of a reigning prince. It is usually in this country the prince's name, or its initial letter, with the initial of his style or title in Latin. Thus the sign-manual of George IV., when prince regent, was George P. R., or G. P. R.; that of the present queen is Victoria R., or V. R.

The royal sign-manual is usually placed at the top left-hand corner of the instrument, together with the privy seal; and it is requisite in all cases where the privy seal and afterwards the great seal are used. The sign-manual must be countersigned by a principal secretary of state, or by the lords of the treasury, when attached to a grant or warrant, it being then the principal act, and it must also be accompanied by the signet or privy seal. But where the sign-manual only directs that another act shall be done, as for letters-patent to be made, it must be countersigned by some person, though not necessarily by these great officers of state. The authenticity of the sign-manual is admitted in courts of law upon production of the instrument to which it is attached. (Comyn's 'Digest.')

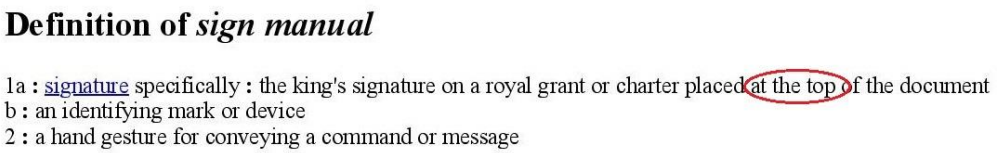
Webster's Revised Unabridged Dictionary: *"The royal signature superscribed at the **TOP** of bills of grants and letter patent, which are then sealed with the privy signet or great seal, as the case may be, to complete their validity."*



Webster's Revised Unabridged Dictionary

- Sign manual See under Sign.
- Sign manual (Eng. Law) The royal signature superscribed at the top of bills of grants and letter patent, which are then sealed with the privy signet or great seal, as the case may be, to complete their validity

Merriam-Webster Unabridged Dictionary: ***"**the king's signature on a royal grant or charter placed at the **TOP** of the document."*



Definition of *sign manual*

1a **:** signature specifically **:** the king's signature on a royal grant or charter placed at the top of the document
b **:** an identifying mark or device
2 **:** a hand gesture for conveying a command or message

***American Heritage Dictionary of the English Language**: "A signature, especially that of a monarch at the **TOP** of a royal decree."*

sign manual

n. pl. **signs manual**

A signature, especially that of a monarch at the top of a royal decree.

American Heritage® Dictionary of the English Language, Fifth Edition. Copyright © 2016 by Houghton Mifflin Harcourt Publishing Company. Published by Houghton Mifflin Harcourt Publishing Company. All rights reserved.

Wikipedia: Sign Manual: *"The Royal signature, normally written at the **TOP** of a document."*

Other letters patent, due to the nature of their contents (such as those that authorise the expenditure of money, or those that signify Royal Assent to Acts of Parliament), require the royal sign-manual to be affixed directly to them. Such letters patent contain, at the bottom, the words: "By the King/Queen Him/Herself, Signed with His/Her own hand." The royal sign-manual is usually placed by the sovereign at the top of the document. These papers usually must be countersigned by a principal secretary of state or other responsible minister.[1]

It is rare for any legislation, (either Commonwealth or State) to be reserved for Her Majesty's pleasure. Under section 9 of the *Australia Act 1986* State legislation not subject to the withholding of assent or reservation by the Governor, and Commonwealth legislation is likewise given assent under section 58 of the *Constitution* by the Governor General, where according to his discretion, he can assent in the Queen's name, or reserve the law for the Queen's pleasure. Here is a list of ***Commonwealth bills reserved for the Sovereign's assent*** since Federation:

House of Representatives Practice, 6th edition – Appendix 19 - Bills reserved for the sovereign's assent and bills returned by the governor-general with recommended amendments

Reserved for Sovereign's Assent:

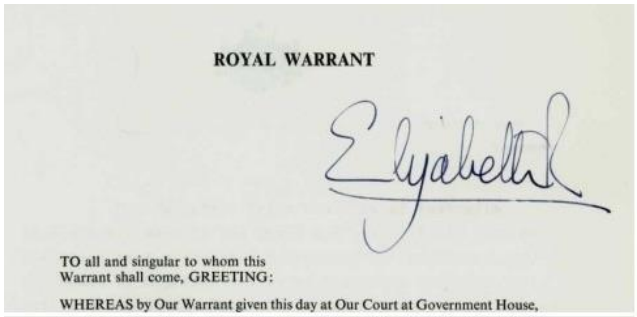
- Customs Tariff (British Preference) Bill 1906 (failed to receive Royal Assent)
- Navigation Bill 1912 (Act No. 4 of 1913)
- Navigation Bill 1919 (Act No. 32 of 1919)
- Navigation Bill 1920 (Act No. 1 of 1921)
- Navigation Bill 1925 (Act No. 8 of 1925)
- Navigation Bill 1926 (Act No. 8 of 1926)
- Navigation (Maritime Conventions) Bill 1934 (Act No. 49 of 1934)
- Navigation Bill 1935 (Act No. 30 of 1935)
- Judiciary Bill 1939 (Act No. 43 of 1939)
- Navigation Bill 1942 (Act No. 1 of 1943)
- Royal Style and Titles Bill 1953 (Act No. 32 of 1953)
- Flags Bill 1953 (Act No. 1 of 1954)
- Privy Council (Limitation of Appeals) Bill 1968 (Act No. 36 of 1968)
- Royal Style and Titles Bill 1973 (Act No. 114 of 1973)
- Privy Council (Appeals from the High Court) Bill 1975 (Act No. 33 of 1975)

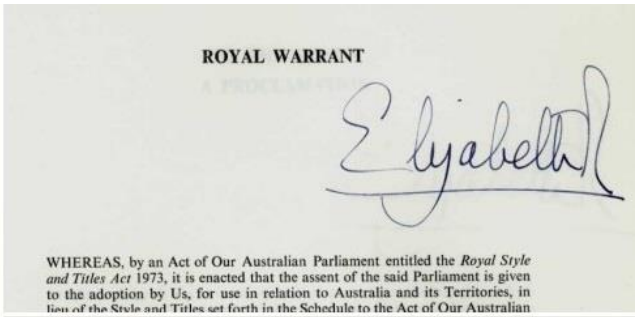
I have searched all data bases intensively, and cannot locate a single piece of legislation where Her Majesty has placed the Royal Sign Manual at the bottom of the document to give it assent. All of them are placed in the correct position at the top of the document. Here are a few examples:

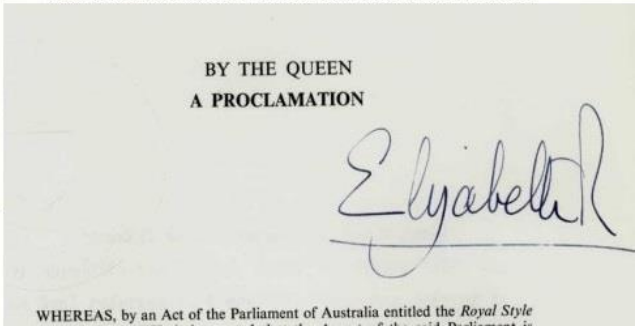
Royal Style and Titles Act 1973:

Royal Style and Titles Act 1973

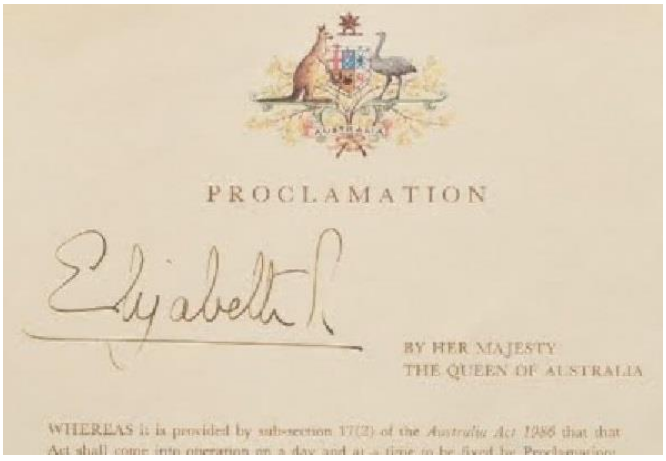
Royal Warrants and Proclamation for the ***Great Seal of Australia***:







Proclamation for the ***Australia Act 1986***:

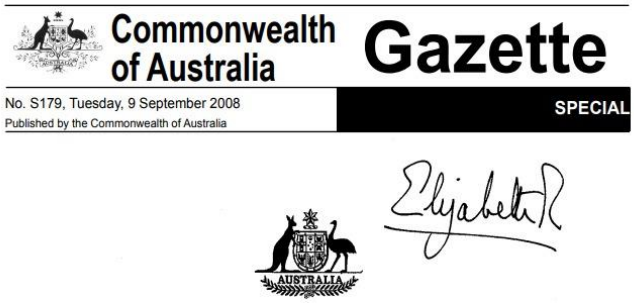


Office of Governor-General of the Commonwealth of Australia (Amendment) 2003:


Commonwealth of Australia Gazette
No. S 309, Monday, 11 August 2003
Published by Commonwealth of Australia
SPECIAL

COMMISSION

Letters Patent Relating to the Office of Governor-General of the Commonwealth of Australia 2008:


Commonwealth of Australia Gazette
No. S179, Tuesday, 9 September 2008
Published by the Commonwealth of Australia
SPECIAL

Letters Patent

Relating to the Office of Governor-General

Epistolary context

The origin of the top placement of the Royal sign Manual by the monarch has deeper roots than one imagines. Mel Evans in "***Royal Voices: Language and Power in Tudor England***" (from page 53 - part 1.4.4) details the *"material politeness"* and etiquette for royalty placing their signature on correspondence. She notes that in the correspondence that make up the *"scribal letter corpus"* collected over centuries:

> *"Almost all (94% 151 letters) of the English royal scribal letters in the corpus are signed at the top of the page in the header. When reading (left to right) the declarative 'By the King/Queen', where present, follows the signature. For a recipient, this organisation has pragmatic impact as the signature would be the first textual property of the letter encountered by the recipient. Recognised as a royal sign manual, the signature frames the interpretation of the subsequent text, legitimising and authorising the contents. The placement may also have more practical affordances. A top signature impacts minimally on the organisation of the main text, enabling rapid, autonomous text production by the scribe(s)."*

The author further notes that:

> *"Among the top-signed letters, there is variation on the horizontal axis. A top-left placement is the most frequent position in the scribal letters and the letters of Henry VII, Henry VIII and Edward VI only show this placement. The majority of Mary's letters are also top-left signed, but three have a top-middle signature."*

Citing Daybell (2016) she explains the apparent source of this left-middle-right placement, from the writing instructions of William Fulwood in his 1568 work *"**The Enimie of Idlenesse: Teaching the maner and stile how to endite, compose, and write all sorts of Epistles and Letters: as well by answer, as otherwise**".* Fulwood advised:

> *"...to our superors we must write at the right syde in the nether end of the paper ... to our equalles we may write towards the midst of the paper [and] To our inferiors we may write on high at the left hand."*

Further, Angel Day's 1586 work ***The English Secretary*** which was the first comprehensive epistolary manual. Citing Goatly (2007) she writes:

> *"From a cognitive perspective, conceptual metaphors that equate power, status and authority with height underlie the spatial organisation of the page. The signature first and foremost signals the origin of the letter's content to the recipient (a textual function), but it also acts as an authorising device (stance-marking function) and, depending on how it is positioned, can influence the relationship between letter writer and recipient (interactive function)."*

1.4.4 Signature Position

The placement of the subscription and signature on the epistolary page was a significant part of the 'material politeness' of the early modern letter (Daybell, 2016: 66). Thus, Fulwood (1568: A12) advised his readers that 'to our superiors we must write at the right syde in the nether end of the paper [. . .] to our equalles we may write towards the midst of the paper [and] To our inferiors we may write on high at the left hand'. Fulwood's instructions suggest the importance of both vertical and horizontal axes. Angel Day's (1599) prescriptions echo Fulwood's, although he refers to the vertical axis only. From a cognitive perspective, conceptual metaphors that equate power, status and authority with height (Goatly, 2007: 36–7) underlie the spatial organisation of the page. The signature first and foremost signals the origin of the letter's content to the recipient (a textual function), but it also acts as an authorising device (stance-marking function) and, depending on how it is positioned, can influence the relationship between letter writer and recipient (interactive function). The treatises on letter writing do not explicitly mention royal signing practices, but contemporary guidelines for letters to inferiors offer a plausible model. These stipulate a high subscription and signature, positioned on the left of the page. This could be placed either in the margin – as seen in Elizabeth I's pre-accession scribal correspondence (see Bryson and Evans, 2017) and that of Mary I (e.g. BL Vespasian MS F III 42) – or close beneath the final line of the letter's main body. The scribal letter corpus suggests that royal signature placement is generally concordant with these practices. Almost all (94 per cent; 151 letters) of the English royal scribal letters in the corpus are signed at the top of the page in the header. When reading (left to right) the declarative 'By the King/Queen', where present, follows the signature. For a recipient, this organisation has pragmatic impact as the signature would be the first textual property of the letter encountered by the recipient. Recognised as a royal sign manual, the signature frames the interpretation of the subsequent text, legitimising and authorising the contents. The placement may also have more practical affordances. A top signature impacts minimally on the organisation of the main text, enabling rapid, autonomous text production by the scribe(s).

Among the top-signed letters, there is variation on the horizontal axis. A top-left placement is the most frequent position in the scribal letters and the letters of Henry VII, Henry VIII and Edward VI only show this placement. The majority of Mary's letters are also top-left signed, but three have a top-middle signature. This positioning occurs in the letters which are co-signed with her husband, King Philip of Spain, who assumes the leftmost position. The cramped presentation of the signatures in the co-signed letters could indicate that Mary signed the letter first, with Philip's signature forced into the remaining space. If accurate, this suggests that practices around the epistolary signatures and significant space were salient to the king and queen and therefore likely to be perceived by the letters' recipients.

Elizabeth's scribal letters have the greater variety of signature placements, although top left is still norm (76 per cent; thirty-five of forty-six examples). There are two examples of the signature taking up the full width of the top header: a letter to Robert Devereux, Earl of Essex (not the aforementioned italic epistle) and one to Lord Willoughby. The placement exemplifies the (increasing) size of Elizabeth's signature in comparison with the more modestly sized sign manuals of her predecessors. Their signatures do not provide the same kind of material display and dominance over the page space. Two other atypical top-position signatures occur in the italic scribal letters to George Carey, Baron Hunsdon, discussed above, in which Elizabeth's signature occurs on the top right-hand side, beneath a subscription (technically, superscription). The horizontal alignment accords with the protocols outlined by Fulwood for under-signing, in which the right-hand side signalled the writer's deference and respect, therefore occupying a middle ground between the formal authority of the top-signed letter and the greater intimacy of a conventional under-signed epistle. Whilst under-signing would be more evocative of a holograph letter, the placement of the signature in the header ensures that Carey would read the queen's real italic hand first, before going on to read its proxy, perhaps helping to ensure that the recipient perceived the similarity. It also implies that Elizabeth took care and responsibility for the whole letter; it was not a perfunctory 'signing off' exercise. Overall, the greater variation in Elizabeth's letters could indicate that the queen had a greater awareness of, or felt it more necessary to utilise, the visual pragmatics of the epistolary page than her predecessors, although the greater quantity of material arising from the length of her reign and changing archivists' practices are probable contributing factors to the identified diversity of practices as well.

Other examples of signature placement indicate the significance for marking power in royal scribal correspondence. Edward's scribal letters are countersigned by his uncle Edward Seymour, as required by the king's minority. In these texts, Edward's royal signature is positioned at the top left, as expected. Seymour's signature is written below the main body. Viewed holistically, the signature placements therefore frame the letter with royal authority (Edward, to open) and political legitimacy (Seymour, to conclude). However, the horizontal placement of Seymour's signature varies. In the earliest co-signed letter in the corpus (SP 10/2 f.4), dated 18 July 1547, Seymour's signature is located in the bottom right corner. However, the subsequent three letters (1548–9) are all signed on the bottom left. The left-sided placement accords with the contemporary practice for superiors writing to their inferiors. From a textual perspective, it parallels the signature of the king himself. One interpretation is that the right-hand-side signature conveyed the wrong kind of authority with regards to the letter text, in light of the practice of clerks to also countersign their letters on the right-hand side. The signature position conceivably indexes Seymour's authority over the material text rather than over its sociopolitical contents. The circumstances motivating the change in practice are unclear, although the implications for Seymour's indexed power and status are one possibility (see Chapter 6).

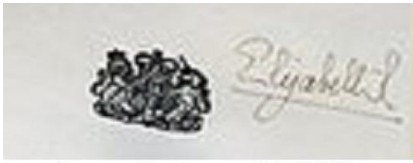
The scribal letters also include examples of signatures placed underneath the main body. All of these letters, written in English, occur in Elizabeth's reign, although there is evidence dating back to the reign of Henry VIII of under-signing being used in foreign-language epistles. The pragmatics of under-signing is linked to the social status of the recipient. In Elizabeth's English-language scribal letters, those to royalty (e.g. James VI, Mary, Queen of Scots; James Stewart, Earl of Moray) are under-signed. This practice could have been read as a material 'apology' for the scribal status, or at least an attempt to add a degree of intimacy and respect to the material provenance. Strikingly, Edward VI signs the letter to his sister Mary at the top, with under-signatures of the council (SP 10/8 f.92). In the letter, Edward criticises his sister's religious practices, and the top signature can be seen to cue his stance towards the topic and his recipient. The signature position materially privileges Edward's royal status above (quite literally) his kinship with his half-sister and snubs practices of epistolary decorum.

Signature placement in the holograph royal letters shows no variation on the vertical axis. All the letters in the corpus are signed below the main body. On the horizontal axis, over two-thirds (68 per cent; thirty-five of fifty letters) are signed towards the right-hand side of the sheet, although the quantity of white space around the signature varies. For example, Henry VIII's signature is often positioned as a continuation of the final line of the main body, such as a letter to Wolsey (BL Vespasian MS F III f.138) with a blank space below the main text and signature. According to contemporary epistolary materiality, the blank space signals the king's social status, despite his positive relationship with his 'dear cardinal'. Edward VI's holograph letters use right-hand and middle placements for his signature. Two of these letters are short notes that endorse the letter of a third party written on the page below. It is interesting that in these notes he signs beneath his endorsement, rather than above it. This arguably keeps his message discrete and distinct from the accompanying text to which most of the paper is dedicated, whereas a top signature could have suggested a wide-reaching authority over all parts of the page. Mary's memorandum to Simon Renard, despite being little more than a royal Post-it note, is likewise under-signed (BL Vespasian MS F III f.12).

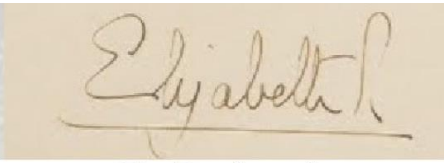
Elizabeth shows a range of practices in her holographs that may in part reflect the quantity of extant archival material. As with her predecessors, the majority of letters are signed on the right-hand side. In her holographs to James VI of Scotland, the placement often arises from her efforts to limit paper usage, resulting in her sign manual being squeezed beneath the main body into the bottom right corner and on occasion even the left margin. Fifteen of the thirty-nine letters in the corpus have a signature in which the *R* is written below or above the *h*, due to there being insufficient space on the page. This practice may strike present-day readers as surprising, potentially even offensive, in such a high-status interaction. However, it seems likely that it was read as a marker of material intimacy – what Susan Doran (2005: 206) terms a 'personal' diplomacy – between monarchs, although the principle of 'uglyography' might also be operating as a material power play by the queen.

There is a more acute example of the material signification of power in the Elizabeth–James correspondence. In a 1588 letter, written shortly after the failure of the Spanish Armada, Elizabeth signs her letter on the bottom left, not the bottom right as is her standard practice. This strategy, in which left-sided

For the sake of completion, I'll also address ***Wayne Glew***'s remarks that the Royal Sign Manual on the *Australia Act 1986* is a forgery, because it reads "Elyabeth" instead of "Elizabeth". What he is looking at is not a "y" but a "z" in stylized cursive writing. There's also her Royal Sign Manual from ***2003*** and ***2008*** for comparison. The point seems quite moot anyway, considering she is photographed signing the Proclamation. See article "***The Australia Acts 1986***".



Australia Act 1986 (UK)



The Proclamation

Letters Patent 2003

Letters Patent 2008

The Governor General / Letters Patent

There is a number of myths surrounding the assent of legislation, such as that the Queen needs to personally assent all legislation for it to be valid, and that the Governor General has not been properly sworn in under Letters Patent.

The Queen needs to personally assent legislation

> *"It has been declared by a number of High Court judges that the Governor-General, as the Queen's representative, possesses the prerogatives of the Crown relevant to the Federal Government's sphere of responsibility, which includes, for example, all matters relating to external affairs."* – ***Volume 1 of the Final Report of the Constitutional Commission 1988***.

The precedents were set in ***Barton v Commonwealth (1974) 131 CLR 477,*** (Mason J); ***Victoria v Commonwealth and Hayden (1975) 134 CLR 338,*** (Jacobs J); ***New South Wales v Commonwealth (1975) 135 CLR 337***. (Barwick C J).

Pursuant to section 58 of the Constitution is regarding Royal assent to Bills, the Governor General has the discretion whether he assents in the Queen's name, or that he withholds assent, or that he reserves the law for the Queen's pleasure.

58. Royal assent to Bills.

When a proposed law passed by both Houses of the Parliament is presented to the Governor-General for the Queen's assent, he shall declare, according to his discretion, but subject to this Constitution, that he assents in the Queen's name, or that he withholds assent, or that he reserves the law for the Queen's pleasure.

Recommendations by Governor-General.

The Governor-General may return to the house in which it originated any proposed law so presented to him, and may transmit therewith any amendments which he may recommend, and the Houses may deal with the recommendation.

Here is a complete list of Commonwealth Bills that were ***reserved for Her Majesty's pleasure***.

House of Representatives Practice, 6th edition – Appendix 19 - Bills reserved for the sovereign's assent and bills returned by the governor-general with recommended amendments

Reserved for Sovereign's Assent:

- Customs Tariff (British Preference) Bill 1906 (failed to receive Royal Assent)
- Navigation Bill 1912 (Act No. 4 of 1913)
- Navigation Bill 1919 (Act No. 32 of 1919)
- Navigation Bill 1920 (Act No. 1 of 1921)
- Navigation Bill 1925 (Act No. 8 of 1925)
- Navigation Bill 1926 (Act No. 8 of 1926)
- Navigation (Maritime Conventions) Bill 1934 (Act No. 49 of 1934)
- Navigation Bill 1935 (Act No. 30 of 1935)
- Judiciary Bill 1939 (Act No. 43 of 1939)
- Navigation Bill 1942 (Act No. 1 of 1943)
- Royal Style and Titles Bill 1953 (Act No. 32 of 1953)
- Flags Bill 1953 (Act No. 1 of 1954)
- Privy Council (Limitation of Appeals) Bill 1968 (Act No. 36 of 1968)
- Royal Style and Titles Bill 1973 (Act No. 114 of 1973)
- Privy Council (Appeals from the High Court) Bill 1975 (Act No. 33 of 1975)

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

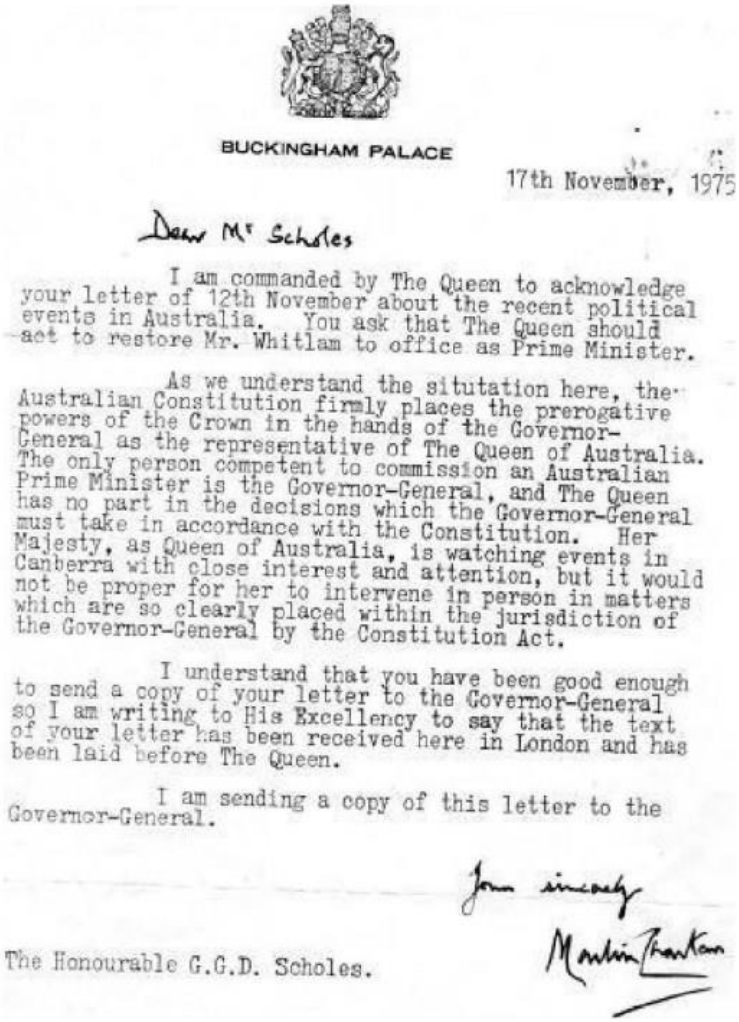
> *"The Queen is empowered by section 2 of the Constitution to appoint a Governor-General who 'shall be Her Majesty's representative'. Section 61 of the Constitution vests the executive power of the Commonwealth in the Queen and declares that it is exercisable by the Governor-General as the Queen's representative. These powers are, of course, consistent with British constitutional practice, exercised on the advice of Australian Ministers (except in those very rare cases which are said to come within the 'reserve powers' of the Crown). On those occasions when the Queen acts in her own capacity, such as in appointing the Governor General, she also acts on the advice of Australian Ministers, rather than British ones, in accordance with the principle established at the Imperial Conference of 1926."*

At the Imperial Conference of 1926, agreement was reached between all dominions of the then British Empire, which resulted in the ***Balfour Declaration 1926*****.** The Balfour Declaration declared the United Kingdom and the Dominions to be:

> *"…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."*

It was decided that the Governors-General, the representatives of the King in each dominion, should no longer also serve automatically as the representative of the British government in diplomatic relations between the countries.

The Queen herself, has stated that she has no powers to intervene in matters clearly placed within the responsibilities of the Governor General. There is also a recognition of her position as *"Queen of Australia"* (as opposed to the *"Queen of England"*) and the differences for her role that this alternate title represents.



BUCKINGHAM PALACE

17th November, 1975

Dear Mr Scholes

I am commanded by The Queen to acknowledge your letter of 12th November about the recent political events in Australia. You ask that The Queen should act to restore Mr. Whitlam to office as Prime Minister.

As we understand the situtation here, the Australian Constitution firmly places the prerogative powers of the Crown in the hands of the Governor-General as the representative of The Queen of Australia. The only person competent to commission an Australian Prime Minister is the Governor-General, and The Queen has no part in the decisions which the Governor-General must take in accordance with the Constitution. Her Majesty, as Queen of Australia, is watching events in Canberra with close interest and attention, but it would not be proper for her to intervene in person in matters which are so clearly placed within the jurisdiction of the Governor-General by the Constitution Act.

I understand that you have been good enough to send a copy of your letter to the Governor-General so I am writing to His Excellency to say that the text of your letter has been received here in London and has been laid before The Queen.

I am sending a copy of this letter to the Governor-General.

Yours sincerely

Martin Charteris

The Honourable G.G.D. Scholes.

The Governor General has not been sworn in under Letters Patent

In ***Pham v Secretary, Department of Education, Employment and Workplace Relations [2009] FCA 1310*** the applicant contended that the judges appointment was invalid as the Governor General had not been properly appointed:

> *"It was suggested that the Governor General was not validity appointed, and thus my appointment was not valid. The Applicant contended that there is no record from the Privy Council to indicate that the Queen made a valid appointment of the Governor-General. Putting aside the question of whether the Constitution requires such appointments of the Queen to made 'in Council' or with the advice of the Privy Council, I must presume that the appointment of the Governor-General is valid without at least some evidence or basis to the contrary.*

I observe that a similar argument was put before Justice Goldberg in the ACCC v Purple Harmony Plates Pty Ltd [2001] FCA 1062. At [27] his Honour stated:

"I reject the respondents' submission that the Governors General have not been properly appointed and that legislation assented to by the Governors General has not been validly assented to. On 29 October 1900, Queen Victoria issued Letters Patent constituting the office of Governor General of the Commonwealth of Australia. Those Letters Patent were passed under the seal of the United Kingdom and issued by Warrant under the Queen's Sign Manual: Commonwealth Gazette (No 1), 1 January 1901. The first Governor General, Lord Hopetoun, was appointed to his office in accordance with those Letters Patent. The current Letters Patent were issued by Queen Elizabeth II on 21 August 1984 and gazetted in the Commonwealth Special Gazette (No S334), 24 August 1984. The Governor General at the time the application was filed, Sir William Deane, was appointed to his office in accordance with the current Letters Patent by Commission dated 29 December 1995 passed under the Royal Sign Manual and the Great Seal of Australia and took the oath of allegiance and prescribed oath of office on 16 February 1996: Commonwealth Special Gazette (No S66), 19 February 1996. As each of the Governors General have been validly appointed, there is no merit in the respondents' contentions that all members of parliament, ministers of State and justices were invalidly appointed or that the Act is invalid."

In relation to my own appointment, the Governor-General was appointed to his office in accordance with the current Letters Patent (as amended on 11 May 2003) by Commission dated 29 July 2003 passed under the Royal Sign Manual and the Great Seal of Australia, and he took oath of allegiance and prescribed oath of office on 11 August 2003 (see Commonwealth Special Gazette (No S309), 11 August 2003)."

https://freemandelusion.com/wp-content/uploads/2019/05/pham-v-secretary-department-of-education-employment-and-workplace-relations-2009-fca-1310.pdf

The Letters Patent *"as amended"* at the time of His Honours appointment was the "***Office of Governor-General of the Commonwealth of Australia (Amendment) – 11/05/2003***"

https://freemandelusion.com/wp-content/uploads/2018/07/office-of-governor-general-of-the-commonwealth-of-australia-amendment-11052003.pdf

See ***Special Gazette No. S309*** dated 11 August 2003.

https://freemandelusion.com/wp-content/uploads/2018/07/special-gazzette-no.-s309-11-august-2003.pdf

This amended ***Letters Patent Relating to the Office of Governor-General of the Commonwealth of Australia 21 August 1984***.

https://freemandelusion.com/wp-content/uploads/2018/07/letters-patent-relating-to-the-office-of-governor-general-of-the-commonwealth-of-australia-21-august-1984.pdf

See ***Special Gazette No. S334*** dated 24 August 1984.

https://freemandelusion.com/wp-content/uploads/2018/07/special-gazzette-no.-s334-24-august-1984.pdf

This was repealed by the new "***Letters Patent Relating to the Office of Governor-General of the Commonwealth of Australia 21 August 2008***".

https://freemandelusion.com/wp-content/uploads/2018/07/letters-patent-relating-to-the-office-of-governor-general-of-the-commonwealth-of-australia-21-august-2008.pdf

See ***Special Gazette No. S179*** dated 9 September 2008.

https://freemandelusion.com/wp-content/uploads/2018/07/special-gazzette-no.-s179-9-september-2008.pdf

Many of the cases submitted by ***The Institute of Taxation Research and Wayne Levick*** engaged in the so-called "*interregnum* argument" based upon an asserted deficiency in the appointment of Lord Gowrie VC as Governor-General so therefore the giving of Royal Assent to the *Income Tax Assessment Act 1936.* This argument is based on the proposition that, at the time when Lord Gowrie gave his assent, His Majesty King George V, who had appointed Lord Gowrie on 20 December 1935, had died on 20 January 1936 and that Lord Gowrie's commission was not gazetted until 23 January 1936. It is argued that the Letters Patent, which were the source of the appointment of Lord Gowrie, expired with the death of the King and that no new Letters Patent were issued until 10 January 1938 after King George VI ascended the throne of the United Kingdom.

This premise has been rejected in a multitude of cases, such as by Hill J in ***Deputy Commissioner of Taxation v Levick*** (at 26-33), and ***McKewins Hairdressing and Beauty Supplies Pty Ltd v Deputy Commissioner of Taxation [2000] HCA 27*** where Gummow J noted (at 8):

> *"Further, the text of the Constitution itself points to the efficacy of the Royal Assent given to the Act. The statute was assented to on 2 June 1936. Section 58 of the Constitution states: "When a proposed law passed by both Houses of the Parliament is presented to the Governor-General for the Queen's assent, he shall declare, according to his discretion, but subject to this Constitution, that he assents in the Queen's name, or that he withholds assent, or that he reserves the law for the Queen's pleasure." Section 58 is to be read with s 4 of the Constitution. This states: "The provisions of this Constitution relating to the Governor-General extend and apply to the Governor-General for the time being …"*
>
> *Lord Gowrie answered that description for the purposes of s 58 because he had been appointed by King George V pursuant to s 2 of the Constitution. This provides: "A Governor-General appointed by the Queen shall be Her Majesty's representative in the Commonwealth …"*

https://freemandelusion.com/wp-content/uploads/2018/07/mckewins-hairdressing-and-beauty-supplies-pty-ltd-v-deputy-commissioner-of-taxation-s123-1999-2000-hca-27.pdf

The Royal Powers Act 1953

The *Royal Powers Act 1953* was passed in preparation of the first ever Royal Visit of a reigning monarch to Australia, which took place on 3 February 1954. Menzies had sought to strengthen the role of the Sovereign as Queen of Australia, and to remove British ministers and British processes from Australia's constitutional arrangements. So in 1953, he introduced two bills into the Australian Parliament, the *Royal Style and Titles Act 1953*, which formally designated the Queen as Queen of Australia, and the second the *Royal Powers Act 1953*, which affected the Queen's constitutional position in Australia.

The Government wanted to involve the Queen in some of the formal processes of government, in addition to the inevitable public appearances and social occasions. But the Government's legal advisers suddenly discovered what had been apparent to some writers at the time of Federation. Andrew Inglis Clark, Charles F. Maxwell and Harrison Moore had pointed out that the *Constitution* placed all constitutional powers, other than the power to appoint the Governor-General, in the hands of the Governor-General and that he exercised these constitutional powers in his own right, and not as a representative or surrogate of the Sovereign.

(See A. Inglis Clark, ***Studies in Australian Constitutional Law***, Charles F. Maxwell (G. Partridge & Co.), Melbourne, 1901, pp.54–7, and W. Harrison Moore, *The Constitution of the Commonwealth of Australia*, Charles F. Maxwell (G. Partridge & Co.), Melbourne, 1910, p.162.)

It was further pointed out that the Governor-General's statutory powers, that is, those powers conferred on him by legislation passed by the Commonwealth Parliament, were also conferred on the Governor-General in his own right and could be exercised by no one else—not even the Sovereign.

And so by means of the *Royal Powers Act 1953*, Parliament empowered the Queen, when she was personally present in Australia, to exercise any power under an Act of Parliament that was exercisable by the Governor-General. The Act further provided that the Governor-General could continue to exercise any of his statutory powers, even while the Queen was in Australia, and in practice governors-general have continued to do so.

Queen Elizabeth II opening the of Parliament of Victoria:

Text of the ***Royal Powers Act 1953*** (Cth):

An Act relating to the exercise by the Queen of Powers under Acts of the Parliament

1 Short title [*see* Note 1]

This Act may be cited as the *Royal Powers Act 1953*.

2 Exercise of statutory powers by the Queen

(1) At any time when the Queen is personally present in Australia, any power under an Act exercisable by the Governor-General may be exercised by the Queen.

(2) The Governor-General has the same powers with respect to an act done, or an instrument made, granted or issued, by the Queen by virtue of this section as the Governor-General has with respect to an act done, or an instrument made, granted or issued, by the Governor-General himself or herself.

(3) Nothing in this section affects or prevents the exercise of any power under an Act by the Governor-General.

(4) In this section, references to the Governor-General or to the Queen shall be read as references to the Governor-General, or to the Queen, acting with the advice of the Federal Executive Council.

The ***Royal Powers Act 1953*** has enabled the Queen to preside at three meetings of the Federal Executive Council at Government House, Canberra. She has also opened Parliament on three occasions, and held a Privy Council on five occasions. The Queen has also issued two assignments of powers to the Governor-General under section 2 of the *Constitution*, acting on each occasion with the advice of the Federal Executive Council. These documents were countersigned by her Australian Prime Minister—Menzies in 1954 and Whitlam in 1973—and they were sealed with the Royal Great Seal of Australia.

Queen Elizabeth II and Prince Phillip on the first ever Royal Visit of a reigning monarch to Australia:

Steven Spiers has drawn conclusions relating to the *Royal Powers Act 1953*. In his papers he asserts that "*because St. Edward's Crown had no line of authority"*, this Act needed to be passed in order for her to *"step in as Queen of this realm*". Of course, without the previous false conclusion, the Act could be taken on face value for its true purpose, but because it is built on a false premise, it inevitably arrives at an unintelligible conclusion.

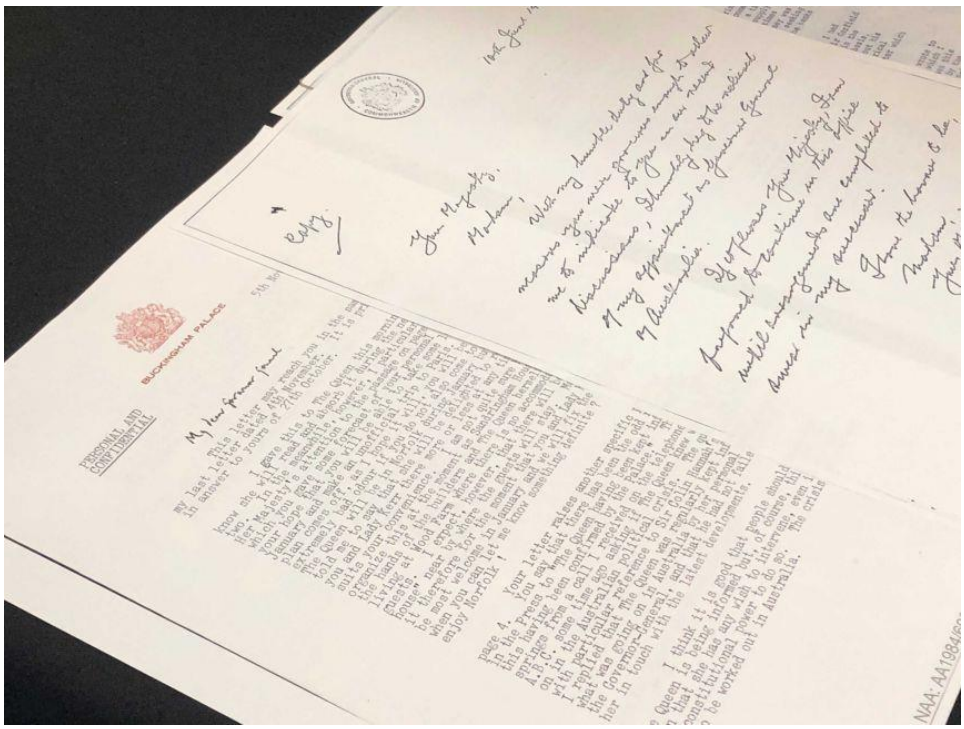
Sir David Smith "***An Australian Head of State: An Historical and Contemporary Perspective***":

https://freemandelusion.com/wp-content/uploads/2022/04/Sir-David-Smith-_An-Australian-Head-of-State_-An-Historical-and-Contemporary-Perspective-1_-%E2%80%93-Parliament-of-Australia.pdf

The Palace Letters

The secret correspondence between the Queen, Sir John Kerr, and Sir Martin Charteris were supposed to provide proof of a high-level covert conspiracy "*to create the corporate Queen of Australia*" and evidence this blatant display of treason was the secret reason Gough Whitlam had been dismissed. In a twist of irony, they reveal just the opposite...

> *"The newly released 'Palace letters' have revealed then governor-general Sir John Kerr sacked the Whitlam government in 1975 without giving advance notice to the Queen, because "it was better for Her Majesty not to know".*



ABC: "*['Palace letters' between Sir John Kerr, Queen released, revealing information about Gough Whitlam and 1975 constitutional crisis*":

ABC NEWS

'Palace letters' between Sir John Kerr, Queen released, revealing information about Gough Whitlam and 1975 constitutional crisis

By Matthew Doran, Elizabeth Byrne and Craig Allen

Posted Tue 14 Jul 2020 at 10:44am, updated Tue 14 Jul 2020 at 5:43pm

Scenes from the day Gough Whitlam was dismissed on November 11, 1975

The newly released 'Palace letters' have revealed then governor-general Sir John Kerr sacked the Whitlam government in 1975 without giving advance notice to the Queen, because "it was better for Her Majesty not to know".

The 211 letters exchanged between Sir John and Buckingham Palace at the time of the dismissal were today released online by the National Archives of Australia, in Canberra.

The letters, penned between 1974 and 1977, had been locked up and labelled as private documents, but a High Court decision in May deemed them to be the property of the Commonwealth and thus able to be released.

Many hoped the correspondence would answer some of the long-standing questions surrounding Australia's biggest constitutional crisis.

But, due to interest in the letters, the National Archives' website struggled to cope with the number of people trying to access them online. The Archives later made the Palace letters available to download as PDFs.

Sir John 'could not risk the outcome for the sake of the monarchy'

The released letters reveal, on the day of the dismissal — November 11, 1975 — Sir John alerted Buckingham Palace to his decision to sack then prime minister Gough Whitlam.

"I should say that I decided to take the step I took without informing the Palace in advance because, under the Constitution, the responsibility is mine and I was of the opinion that it was better for Her Majesty not to know in advance," Sir John wrote.

Then, more than a week after the dismissal, on November 20, Sir John clarified further, writing that he had to act without giving Mr Whitlam a chance to call an election, because he feared he would be sacked himself, which would have put the Queen in a difficult position.

> "As you know from earlier letters, on occasions, sometimes jocularly, sometimes less so, but on all occasions with what I considered to be underlying seriousness, he [Mr Whitlam] said that the crisis could end in a race to the Palace.
>
> "I could act, if necessary, directly myself under the Constitution. I am sure that he would have known this and the talk about a race to the Palace really constituted another threat.
>
> "History will doubtless provide an answer to this question, but I was in a position where, in my opinion, I simply could not risk the outcome for the sake of the monarchy.
>
> "If, in the period of say 24 hours, during which he [Mr Whitlam] was considering his position, he advised the Queen in the strongest of terms that I should be immediately dismissed, the position would then have been that either I would, in fact, be trying to dismiss him while he was trying to dismiss me — an impossible position for the Queen."

When the letters were released on Tuesday morning, almost nobody was as excited to read them as historian Jenny Hocking, who has been trying to get access to the letters since 2016.

She said, upon first impression, the nature of the conversations between Sir John and Buckingham Palace were "concerning".

"A head of a constitutional monarchy must at all times remain politically neutral, and must remain above the politics of the day," Professor Hocking said.

"The really startling thing about these letters is the extent to which the governor-general, Sir John Kerr, is communicating with the Queen about exactly those issues — about political matters that are happening in Australia at the time, about options he may face.

"The Queen, in response, is engaging with that level of conversation at a very political level.

"You could not get more political than the crisis in the Senate that the government faced, and the eventual dismissal without warning of the elected government."

Palace provided advice on constitutional powers

Something Professor Hocking also said was "startling", was the discussion between Sir John and the Queen's private secretary, Sir Martin Charteris about the "reserve powers".

In the lead-up to the dismissal, Sir John and Sir Martin had discussed the evolving constitutional crisis — and in particular, what powers a governor-general had to intervene.

"I think you are playing the vice-regal hand with skill and wisdom," Sir Martin wrote to Sir John on November 4.

"Your interest in the situation has been demonstrated, and so has your impartiality.

"The fact you have powers is recognised. But it's also clear you will only use them in the last resort, and then only for constitutional — and not for political — reasons."

But Professor Hocking labelled the discussion as "alarming".

"The reserve powers is one of the most contentious areas in Australian political legal and constitutional structures because it is highly contested, some would claim exist at all," she said.

"For the Queen's private secretary to be commenting to the governor-general who was about to exercise those powers on the existence of those powers, I think, is alarming.

"There's no doubt they had conversations that clearly affected the decisions Kerr made."

Palace fully supported decision to sack the PM

In the days following the dismissal, letters from Buckingham Palace showed that it believed the governor-general had no option but to remove Mr Whitlam as prime minister.

"I have received two letters from you ... both of these are individually of great historic interest and, when taken together, I think they provide a clear, full, and, if I may use the phrase with respect, most convincing account of the psychological and actual pressures to which you were subject when you took action on November 11, and of the reason why no other course was open to you," Sir Martin responded on November 25, 1975.

"I have still not found anyone here with knowledge prepared to say what else you could have done."

In a separate letter, Sir Martin wrote that he believed Sir John had done the right thing in not telling the Queen prior to taking action.

"If I may say so with the greatest respect, I believe in NOT informing The Queen of what you intended to do before doing it, you acted not only with constitutional propriety, but also with admirable consideration for Her Majesty's position," Sir Martin said.

"If I may permit myself a last reflection, it is that should the Member for Werriwa [Mr Whitlam] be returned to power, he ought to be extremely grateful to you!"

Mr Whitlam went on to lose the election in the wake of the dismissal, putting Liberal leader Malcolm Fraser formally in the prime minister's office.

In a statement on Tuesday evening, Buckingham Palace said "throughout her reign, Her Majesty has consistently demonstrated ... support for Australia, the primacy of the Australian constitution and the independence of the Australian people".

"While the Royal Household believes in the longstanding convention that all conversations between Prime Ministers, Governor Generals and The Queen are private, the release of the letters by the National Archives of Australia confirms that neither Her Majesty nor the Royal Household had any part to play in Kerr's decision to dismiss Whitlam," the statement said.

Letters 'blow away silly conspiracy theories'

Constitutional law expert Anne Twomey said, according to Sir John's letters, he had wanted the correspondence to be released as he "thought it would vindicate his position".

"So all it does is blows away the silly conspiracy theories that we've been having for an awfully long time, which said 'this was all the conspiracy of the British and the establishment and the Queen'," she said.

"Well it wasn't.

"We just have to live with the fact it was an Australian who dismissed an Australian government."

Professor Twomey said another interesting revelation from the letters was that Mr Whitlam had called Buckingham Palace at 4:15am London time on November 11.

In a letter dated November 17, Sir Martin said Mr Whitlam "calmly" prefaced his remarks by saying he was speaking as a "private citizen".

"[He] said now Supply [the money bills] had passed he should be re-commissioned as Prime Minister so that he could choose his own time to call an election."

"So instead of the British interfering in Australia's constitutional system, [it] seems that Gough Whitlam was rather hoping the British would interfere into the system by making him Prime Minister again," Professor Twomey said.

Release could reignite republic debate in Australia

Federal Labor leader Anthony Albanese said the correspondence should prompt a renewed discussion about an Australian republic and that the dismissal was a "blight on our character as a nation".

"The actions of the Governor-General on the 11th of November to dismiss a government, to put himself above the Australian people, is one that reinforces the need for us to have an Australian head of state, is one that reinforces the need for Australia to stand on our own two feet," he said.

"The fact that we have waited 45 years for correspondence between the Queen and the Palace and the Governor-General in Australia says that there is something very wrong with our structures of government."

Former prime minister Malcolm Turnbull, who is also a former chair of the Australian Republican Movement, said he was surprised by the extent of the communications between Sir John and Sir Martin in the lead up to the dismissal.

"The governor-general was reporting to her [the Queen] almost like a local manager reporting to head office and seeking advice as to his options," Mr Turnbull said.

"Of course he made the final decision himself but he was getting a lot of advice on the way through.

"Until our head of state is an Australian citizen, with a loyalty only to this country, then our Constitution will not be fully achieved, in terms of giving Australia the independence and the dignity that our great nation deserves."

Altogether, the letters comprise 1,200 pages and include press clippings about events in Australia at the time.

National Archives of Australia director-general David Fricker said his team had rushed to pore over the documents after the High Court ruled they should be released in late May.

He said the Archives would carefully consider the High Court judgment to decide whether any other royal correspondence in its collection would now be released.

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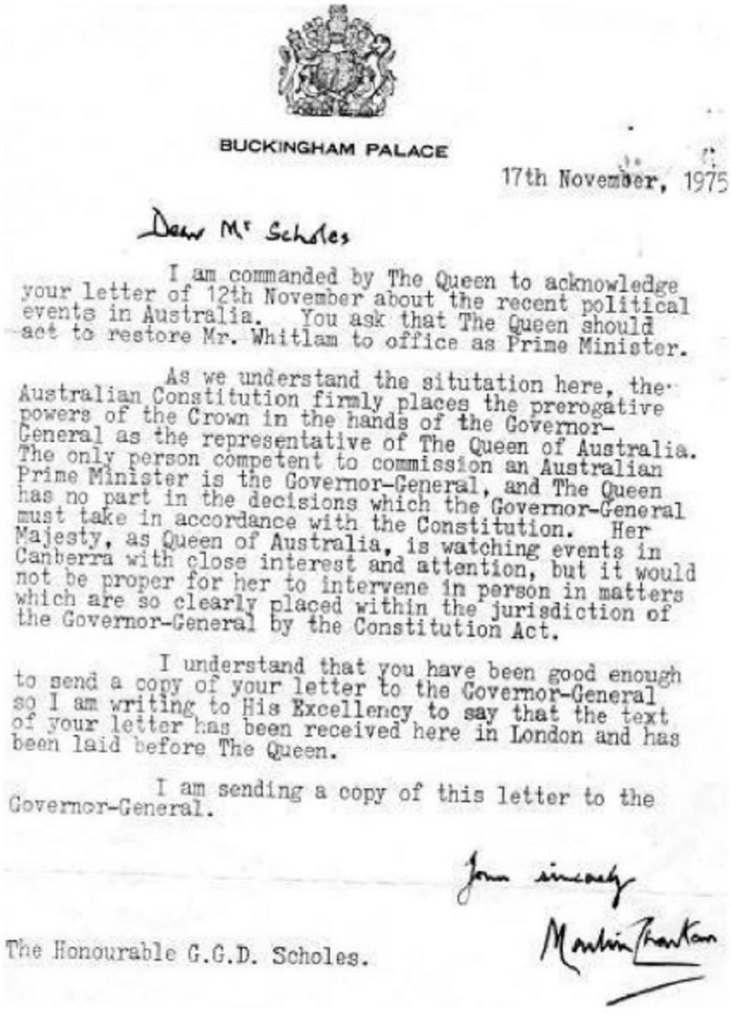


BUCKINGHAM PALACE

17th November, 1975

Dear Mr Scholes

I am commanded by The Queen to acknowledge your letter of 12th November about the recent political events in Australia. You ask that The Queen should act to restore Mr. Whitlam to office as Prime Minister.

As we understand the situtation here, the Australian Constitution firmly places the prerogative powers of the Crown in the hands of the Governor-General as the representative of The Queen of Australia. The only person competent to commission an Australian Prime Minister is the Governor-General, and The Queen has no part in the decisions which the Governor-General must take in accordance with the Constitution. Her Majesty, as Queen of Australia, is watching events in Canberra with close interest and attention, but it would not be proper for her to intervene in person in matters which are so clearly placed within the jurisdiction of the Governor-General by the Constitution Act.

I understand that you have been good enough to send a copy of your letter to the Governor-General so I am writing to His Excellency to say that the text of your letter has been received here in London and has been laid before The Queen.

I am sending a copy of this letter to the Governor-General.

Yours sincerely

Martin Charteris

The Honourable G.G.D. Scholes.

Part 1 (15 August 1974 to 8 October 1975)

https://freemandelusion.com/wp-content/uploads/2022/04/kerr-palace-letters-part-1.pdf

Part 2 (10 October 1975 to 3 December 1975)

https://freemandelusion.com/wp-content/uploads/2022/04/kerr-palace-letters-part-2.pdf

Part 3 (16 December 1975 to 27 May 1976)

https://freemandelusion.com/wp-content/uploads/2022/04/kerr-palace-letters-part-3.pdf

Part 4 (8 June 1976 to 22 September 1976)

https://freemandelusion.com/wp-content/uploads/2022/04/kerr-palace-letters-part-4.pdf

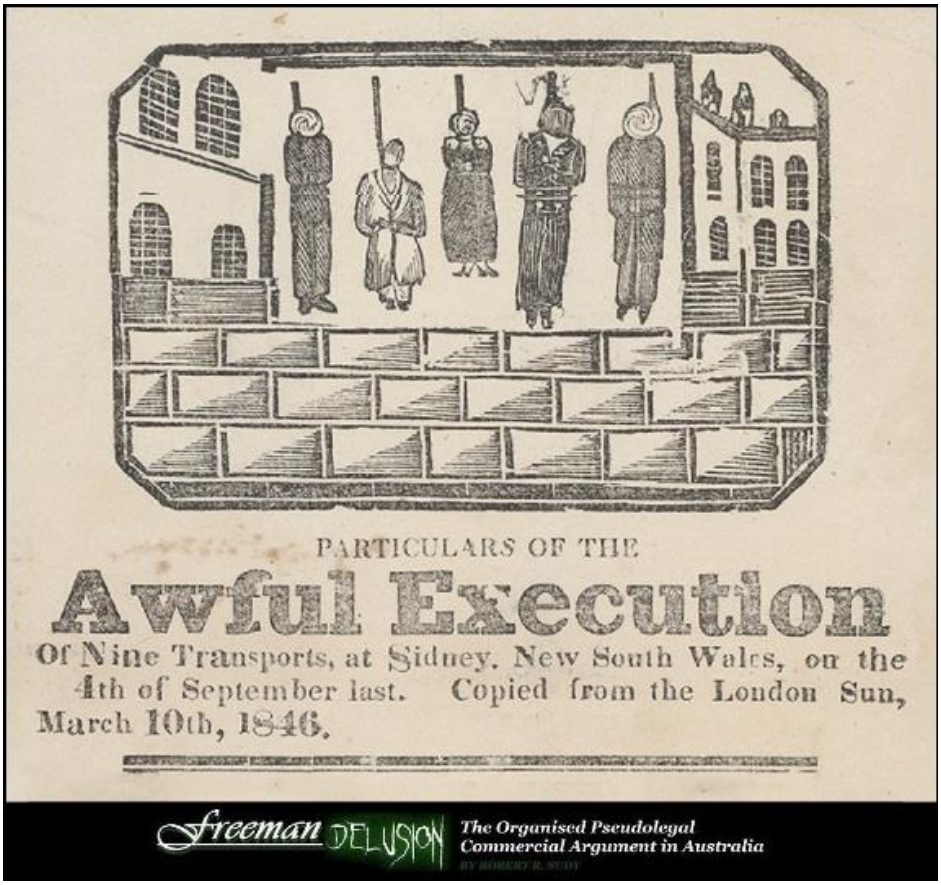
Part 5 (18 September 1976 to 14 July 1977)

https://freemandelusion.com/wp-content/uploads/2022/04/kerr-palace-letters-part-5.pdf

Part 6 (19 July 1977 to 5 December 1977)

https://freemandelusion.com/wp-content/uploads/2022/04/kerr-palace-letters-part-6.pdf

You should be hung for treason



I see a sense of frustration frequently on social media, that the courts are *"corrupt"* because they are not upholding the *"true law",* and following the fantastical script the pseudolaw adherent has in their head. This is often followed with calls of "treason" and threats that all politician, police and lawyers should be "hung for treason". This has become quite the common occurrence with many different peoples interactions with supporters of vexatious litigant ***Wayne Glew***, as he has for years insisted that the death penalty still exists as law, because the *Death Penalty Abolition Act 1973 is invalid*. I have had identical threats from ***Steven Spiers*** and many others.

In summary, they appear to say that:

(1) The *Death Penalty Abolition Act 1973* was given assent by the ***Queen of Australia***, after the unlawful *Royal Styles and Titles Act 1973*, so the repeal has no effect, and the original provisions for treason are still very much valid and enforceable. Gough Whitlam passed the Act to protect himself from accountability for his treasonous breach of allegiance in creating this *"fictional Crown".*

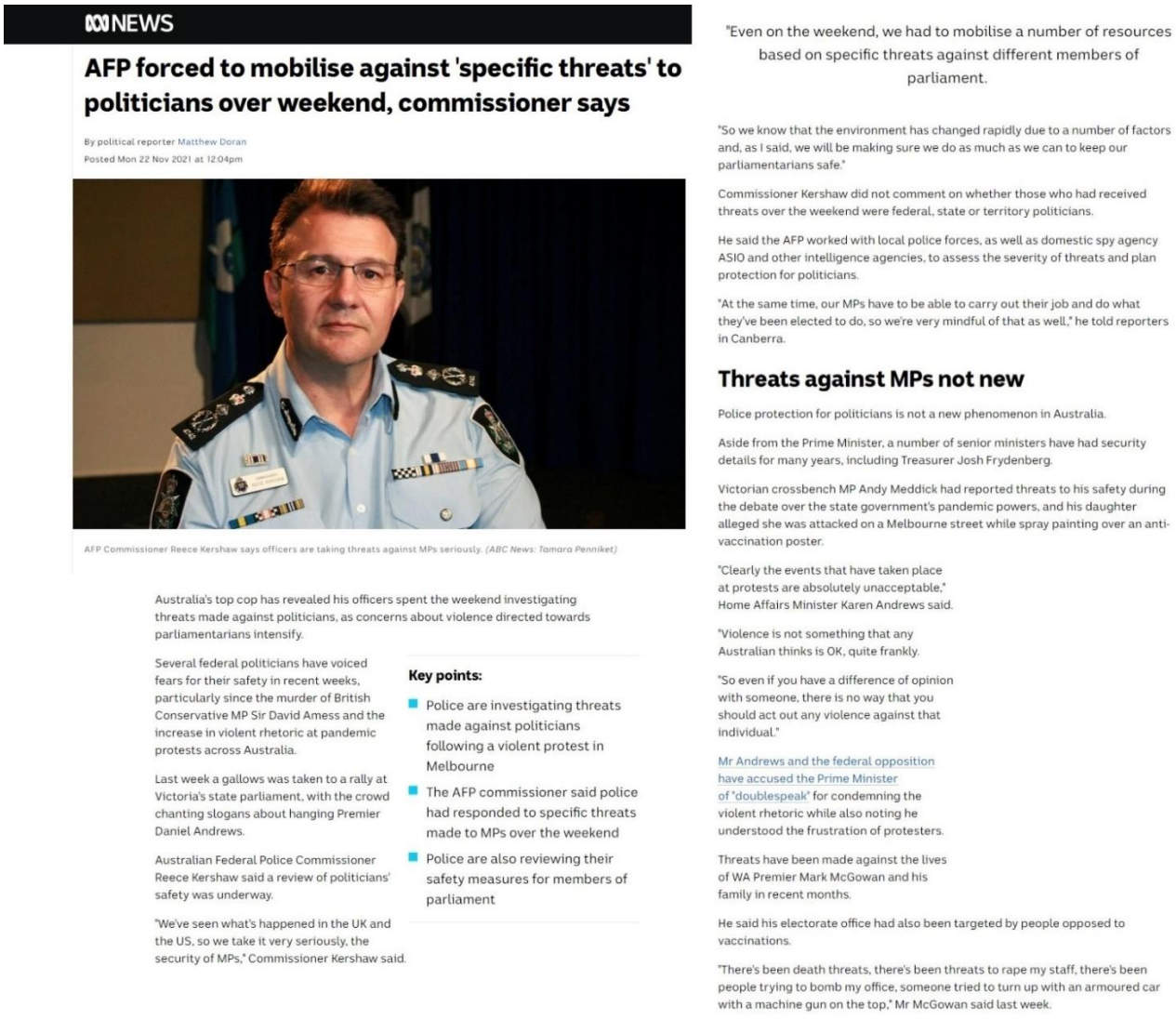
(2) The decision in The *King v Casement 1917* clearly establishes that allegiance to the Queen of Australia is a breach of allegiance to the indivisible Imperial Crown in section 117 of the Constitution. The very existence of the judgements in *Sue v Hill, Joosse v ASIC, Re Patterson* and *Singh v Commonwealth* proves the point that the High Court of Australia is now a registered corporation with an ABN, and can't be

trusted. They work for the trading company registered in the US with the **Security and Exchanges Commission** called “THE COMMONWEALTH OF AUSTRALIA”, so it is an immediate conflict of interest.

(3) We the people need to hold these treasonous queen-less people accountable for their horrendous crimes despite the corrupt judicial system. That’s why there is currently a lawful “***common law court***” being established in Australia to convict and sentence offenders, and lawfully sworn ***Commonwealth Public Officials*** that are empowered to arrest and detain individuals to be brought before that court.

This behaviour was amplified during the COVID-19 pandemic, with countless protesters making similar statements threatening politicians which often went without prosecution. This can be seen in various protest organisers during the pandemic, such as ex-SAS officer, Riccardo Bosi, often dressed in military fatigues, calling for politicians and others to be charged with treason and hanged.

ABC: "***AFP forced to mobilise against 'specific threats' to politicians over weekend, commissioner says***":



ABC NEWS

AFP forced to mobilise against 'specific threats' to politicians over weekend, commissioner says

By political reporter Matthew Doran
Posted Mon 22 Nov 2021 at 12:04pm

AFP Commissioner Reece Kershaw says officers are taking threats against MPs seriously. *(ABC News: Tamara Penniket)*

Australia's top cop has revealed his officers spent the weekend investigating threats made against politicians, as concerns about violence directed towards parliamentarians intensify.

Several federal politicians have voiced fears for their safety in recent weeks, particularly since the murder of British Conservative MP Sir David Amess and the increase in violent rhetoric at pandemic protests across Australia.

Last week a gallows was taken to a rally at Victoria's state parliament, with the crowd chanting slogans about hanging Premier Daniel Andrews.

Australian Federal Police Commissioner Reece Kershaw said a review of politicians' safety was underway.

"We've seen what's happened in the UK and the US, so we take it very seriously, the security of MPs," Commissioner Kershaw said.

Key points:

- Police are investigating threats made against politicians following a violent protest in Melbourne
- The AFP commissioner said police had responded to specific threats made to MPs over the weekend
- Police are also reviewing their safety measures for members of parliament

"Even on the weekend, we had to mobilise a number of resources based on specific threats against different members of parliament.

"So we know that the environment has changed rapidly due to a number of factors and, as I said, we will be making sure we do as much as we can to keep our parliamentarians safe."

Commissioner Kershaw did not comment on whether those who had received threats over the weekend were federal, state or territory politicians.

He said the AFP worked with local police forces, as well as domestic spy agency ASIO and other intelligence agencies, to assess the severity of threats and plan protection for politicians.

"At the same time, our MPs have to be able to carry out their job and do what they've been elected to do, so we're very mindful of that as well," he told reporters in Canberra.

Threats against MPs not new

Police protection for politicians is not a new phenomenon in Australia.

Aside from the Prime Minister, a number of senior ministers have had security details for many years, including Treasurer Josh Frydenberg.

Victorian crossbench MP Andy Meddick had reported threats to his safety during the debate over the state government's pandemic powers, and his daughter alleged she was attacked on a Melbourne street while spray painting over an anti-vaccination poster.

"Clearly the events that have taken place at protests are absolutely unacceptable," Home Affairs Minister Karen Andrews said.

"Violence is not something that any Australian thinks is OK, quite frankly.

"So even if you have a difference of opinion with someone, there is no way that you should act out any violence against that individual."

Mr Andrews and the federal opposition have accused the Prime Minister of 'doublespeak' for condemning the violent rhetoric while also noting he understood the frustration of protesters.

Threats have been made against the lives of WA Premier Mark McGowan and his family in recent months.

He said his electorate office had also been targeted by people opposed to vaccinations.

"There's been death threats, there's been threats to rape my staff, there's been people trying to bomb my office, someone tried to turn up with an armoured car with a machine gun on the top," Mr McGowan said last week.

The Australian: "***Australian police crack down on protesters who try to incite violence***":

THE AUSTRALIAN

Australian police cracking down on protesters who try to incite violence

EXCLUSIVE
By STEPHEN RICE
NSW EDITOR
Follow @riceyontheroad

4:23AM FEBRUARY 21, 2022
339 COMMENTS

Protest leaders who have called for the execution of politicians and other public officials will be targeted for prosecution as federal and state police forces change tactics and crack down on incitements to violence, in a bid to avert a feared "lone wolf" terror attack.

Police are expected to charge high-profile leaders of the "freedom" movement with incitement to commit offences of violence and deprivation of liberty, following explicit death threats to MPs, state premiers and other officials.

In one recent case, a prominent leader of the Convoy to Canberra protests publicly called for Foreign Minister Marise Payne to be hanged by a wire cable.

In Western Australia, police have already charged a leader of the so-called Sovereign Citizen movement who threatened Premier Mark McGowan, under rarely used incitement provisions.


AFP Commissioner Reece Kershaw says those who incite violence could face prosecution. Picture: Gary Ramage

Counter-terrorism authorities have been reluctant to use incitement laws for fear of provoking further violence from extremists but now believe that risk is outweighed by the threat of an attack by an unbalanced individual spurred on by others.

ASIO boss Mike Burgess last week warned that the greatest security threat facing the nation was from conspiracy theory extremists and anti-government "sovereign citizens" who did not fit on the traditional left-right spectrum.

Australian Federal Police Commissioner Reece Kershaw last week vowed to ramp up enforcement action against those inciting violence, even if not committing it themselves.

"Where disinformation reaches a criminal threshold – particularly where it urges or advocates violence – the AFP will be exercising the full force of its powers," he said. Mr Kershaw told a parliamentary inquiry the AFP was very concerned about the risks to MPs and their staff, noting the murder of British MP Sir David Amess four months ago.

Risk assessments for MPs would be "a growth part of our business", he said, pointing to more than 20 arrests at the Canberra protests, including that of a Sovereign Citizen leader found with what police allege was a loaded sawn-off rifle and plans of Parliament House in his truck.


Riccardo Bosi has come to authorities' attention. Picture: Martin Ollman

Sovereign Citizens believe they – not politicians, judges or police – should decide which laws to obey and which to ignore.

Among those being monitored is an ex-SAS officer, Riccardo Bosi, who has figured prominently in the Convoy to Canberra protests, often dressed in military fatigues.

Mr Bosi, who leads the unregistered AustraliaOne Party and has more than 40,000 followers on Telegram, has called several times for politicians and others to be charged with treason and hanged.

In one recent video, he made vile remarks about Senator Payne.

"That bloated cow … if we hang her … we're going to have to get an arrestor cable off an aircraft carrier to suspend the weight," he said.

Mr Bosi has openly called for the execution of media figures ranging from Sky's Peta Credlin and Andrew Bolt to the ABC's Ita Buttrose for their alleged roles in protecting pedophiles.

"Watch them hang by their necks till they're dead … we'll draw a lottery to see who gets to pull the lever," he said in one obscenity-filled rant.

State Security Investigation Group officers in Western Australia last week charged Sovereign Citizen and former policeman Wayne Glew after he allegedly posted videos inciting others to arrest government ministers including Mr McGowan.

The videos also allegedly threatened those who "guard" Mr McGowan.

Two other people have been charged with impersonating commonwealth public officials after they allegedly sent "arrest warrants" to government ministers.

Despite these fantasies, there are laws preventing both capital punishment and threats of murder, that is the reality. There is no provision in law to rely on to have anyone killed for any crime, real or as in this case, imagined. The ***Death Penalty Abolition Act 1973*** provides:

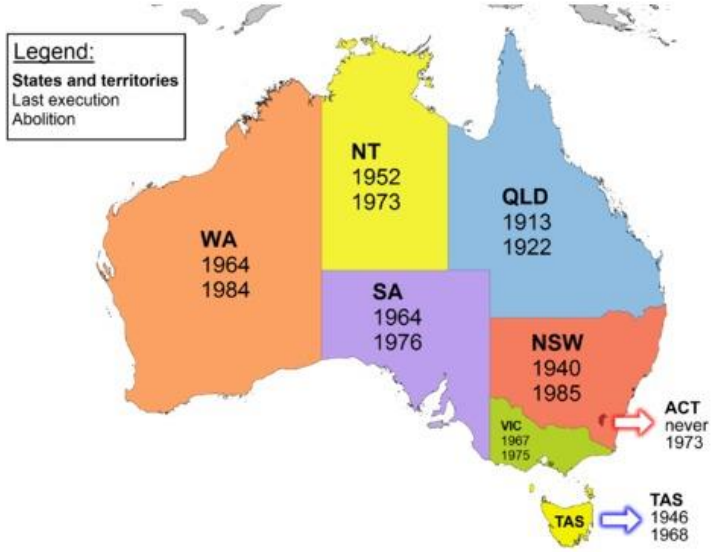
> *(1) This Act applies within and outside Australia and extends to all the Territories.*
>
> *(2) This Act applies in relation to, and in relation to offences under, the laws of the Commonwealth and of the Territories, and, to the extent to which the powers of the Parliament permit, in relation to, and in relation to offences under, Imperial Acts.*
>
> *(3) Section 6 also applies in relation to, and in relation to offences under, the laws of the States.*

The reliance on *R v Casement* in 1917 is very irrelevant and obscure to say the least, it was a common law decision that has long been overwritten with subsequent changes over time. In 1917 we were still part of the British Empire, it was before the divisibility of the Crown was recognised at the Imperial Conferences

starting with the *Balfour Agreement 1926*, and brought into law with the *Statute of Westminster 1931* which was adopted in Australia in 1942. The Empire collapsed and each executive government of the former dominions had by default a Crown that was "*an entirely different and distinct legal personality"* from the Crown of England. Gaudron J. found this notion to be *"implicit in the Constitution."* in *Sue v Hill [1999] HCA 30*, the case also details how the expression "the Crown" is used in constitutional theory. See also *Re Patterson [2001] HCA 51*. with regards to the subsequent interpretation of section 117 of the Constitution. The divisibility of the Crown has been upheld by the UK High Court in *R v. Foreign Secretary ex parte Indian Association of Alberta [1982] 1 QB 892* and in relation to Australia in *Fitzgibbon v HM Attorney General [2005] EWHC 114 (Ch)*.

The decision in *Re Stepney Election Petition; Isaacson v Durant (1886) 17 QBD 54* established the rule that a natural born subject becomes an alien when the sovereign ceases to have dominion over the territory in which the person resides. Lord Coleridge CJ said (at 65-66): *"…as the statutes referred to the Crown and not the sovereign, allegiance was due to the King in his politic, and not in his personal, capacity."* In relation to this case, on page 386 of "*Constitution of New South Wales*", Anne Twomey notes that *"As the body politic was a creation of law, then allegiance could be changed by a law-making authority."* This case is also reviewed in *Singh v Commonwealth of Australia [2004] HCA 43*, in relation to the definition of allegiance. The body politic that is the Crown in relation to Australia is the people of Australia, and it is represented by the Queen of Australia, a position entirely consistent with constitutional reality.

HISTORY



Queensland abolished the death penalty in 1922. Tasmania did the same in 1968, the federal government abolished the death penalty in 1973, with application also in the Australian Capital Territory and the Northern Territory. Victoria did so in 1975, South Australia in 1976, and Western Australia in 1984. New South Wales abolished the death penalty for murder in 1955, and for all crimes in 1985. In 2010, the federal government passed legislation prohibiting the re-establishment of capital punishment by any state or territory. The last execution in Australia took place in 1967, when Ronald Ryan was hanged in Victoria. Between Ryan's execution in 1967 and 1984, several more people were sentenced to death, but had their sentences commuted to life imprisonment. The last death sentence was given in

August 1984, when Brenda Hodge was sentenced to death in Western Australia (and subsequently had her sentence commuted to life imprisonment). [1]

Capital punishment had been part of the legal system of Australia since British settlement. During the 19th century, crimes that could carry a death sentence included burglary, sheep stealing, forgery, sexual assaults, murder and manslaughter, and there is one reported case of someone being executed for "being illegally at large". During the 19th century, these crimes saw about 80 people hanged each year throughout Australia. Before and after federation, each state made its own criminal laws and punishments. Death sentences were also carried out under Aboriginal customary law, either directly or through sorcery. In some cases the condemned could be denied mortuary rites. [2]

Commonwealth In 1973 the Death Penalty Abolition Act 1973 [3] of the Commonwealth abolished the death penalty for federal offences. It provided in Section 3 that the Act applied to any offence against a law of the Commonwealth, the Territories or under an Imperial Act, and in s. 4 that "a person is not liable to the punishment of death for any offence".

No executions were carried out under the bridge of the federal government, and the passage of the Death Penalty Abolition Act 1973 [3] saw the death penalty replaced with life imprisonment as their maximum punishment. Since the Commonwealth effects of utilising this Act, no more individuals have been exposed to the death penalty. The Commonwealth will not extradite or deport a prisoner to another jurisdiction if they might face the death penalty. [4] A recent case involving this was the case of American Gabe Watson, who was convicted of the manslaughter of his wife in North Queensland, and faced capital murder charges in his home state of Alabama. His deportation was delayed until the government received assurances that he would not be executed if found guilty.

New South Wales The last execution in New South Wales was carried out on 24 August 1939, when John Trevor Kelly was hanged at Sydney's Long Bay Correctional Centre for the murder of Marjorie Constance Sommarlad. New South Wales abolished the death penalty for murder in 1955, but retained it as a potential penalty for treason, piracy, and arson in naval dockyards until 1985. New South Wales was the last Australian state to formally abolish the death penalty for all crimes.

Victoria Victoria's first executions occurred in 1842 when two Aboriginal men, Tunnerminnerwait and Maulboyheenner, were hanged outside the site of the Melbourne Gaol for the killing of two whalers in the Westernport district. [5] Ronald Ryan was the last man executed at Pentridge Prison and in Australia. He was hanged on 3 February 1967 after being convicted of shooting dead a prison officer during an escape from Pentridge Prison, Coburg, Victoria in 1965. [6] Victoria was also the state of the last woman executed in Australia: Jean Lee was hanged in 1951. She was accused of being an accomplice in the murder of 73-year-old William ('Pop') Kent. She, along with her accomplices, were executed on 19 February 1951. Victoria would not carry out another execution until that of Ronald Ryan. [7] Not all those executed were murderers: for instance, Albert McNamara was hanged for arson causing death in 1902, and David Bennett was hanged in 1932 after being convicted of raping a four-year-old girl. Bennett was the last man to be hanged in Australia for an offence other than murder.[8] The beam used to execute condemned prisoners was removed from Old Melbourne Gaol and installed in D Division at Pentridge Prison by the condemned child rapist David Bennett, who was a carpenter by trade. It was used for all 10 Pentridge hangings (including a double hanging). [9] After Victoria abolished capital punishment in 1975, the beam was removed and put into storage, and was reinstalled at the Old Melbourne Gaol in August 2000. [10]

Queensland A total of 94 people were hanged in the Moreton Bay/Queensland region from 1830 until 1913. [11] The last person hanged was Ernest Austin on 22 September 1913 for the rape and murder of 11-year-old Ivy Mitchell. The only woman to be hanged was Ellen Thompson on 13 June 1887; she was hanged alongside her lover, John Harrison, for murdering her husband William. In 1922, Queensland became the first part of the British Commonwealth to abolish the death penalty. [12]

Western Australia In Western Australia, the first legal executions were under Dutch VOC law on 2 October 1629 on Long Island, Houtman Abrolhos (near Geraldton), when Jeronimus Corneliszoon and six others were hanged as party to the murders of 125 men, women and children. Following British colonization, between 1833 and 1855 executions by firing squad and hanging were performed at a variety of places, often at the site of the offence. Even with the construction of the new Perth Gaol in 1855 as the main execution site in the state, executions were also carried out at various country locations until 1900. In 1886 the Fremantle Prison was handed over to the colonial government as the colony's major prison; from 1889 43 men (and one woman, Martha Rendell) were hanged there. From 1889 all executions took place at Fremantle Prison. The first execution under British law was that of Midgegooroo, who on 22 May 1833 was executed by firing squad while bound to the door of the original Perth Gaol. John Gavin, a Parkhurst apprentice, was the first British settler to be executed in Western Australia. In 1844 he was hanged for murder at the Fremantle Round House, at the age of fifteen. Bridget Larkin was the first woman to be executed in Western Australia, for the murder of John Hurford, in 1855. The last execution was that of Eric Edgar Cooke on 26 October 1964 at Fremantle Prison. Cooke had been convicted on one count of murder, but evidence and his confessions suggested he had committed many more. The last sentence of death in Western Australia was passed in 1984, [13][14][15] but the female killer (Brenda Hodge) [16] in question had her sentence commuted to imprisonment for life, as was customary by this stage. Capital punishment was formally removed from the statutes of the state with the passage of the Acts Amendment (Abolition of Capital Punishment) Act 1984.

South Australia The Adelaide Gaol was the site of forty-four hangings, from Joseph Stagg on 18 November 1840 to Glen Sabre Valance, murderer and rapist, on 24 November 1964. Three executions also occurred at Mount Gambier Gaol, five at country locations out of Port Lincoln, three at Franklin Harbor, one at Streaky Bay and two at Fowler's Bay. [17] Two Ngarrindjeri men were controversially executed by hanging along the Coorong on 22 August 1840, after a drumhead court-martial conducted by Police Commissioner O'Halloran on the orders of Governor George Gawler. The men were found to be guilty of murdering the twenty-five survivors of the shipwreck *Maria* a few months before. [18] Elizabeth Woolcock, the only woman ever to have been executed under South Australian law, was hanged on 30 December 1873. Her body was not released to the family and was buried between the inner and outer walls of the prison, identified by a number and the date of the execution. In 1976, the *Criminal Law Consolidation Act* was modified so that the death sentence was changed to life imprisonment.

Tasmania In the early days of colonial rule Tasmania, then known as Van Diemen's Land, was the site of penal transports. Mary McLauchlan was convicted in 1830 for infanticide; she was sentenced to both death and dissection.[19][20] She was the first woman to be hanged in Tasmania. The last execution was on 14 February 1946, when serial rapist and killer Frederick Thompson was hanged for the murder of eight-year-old Evelyn Maughan. The death penalty was abolished in 1968.[21]

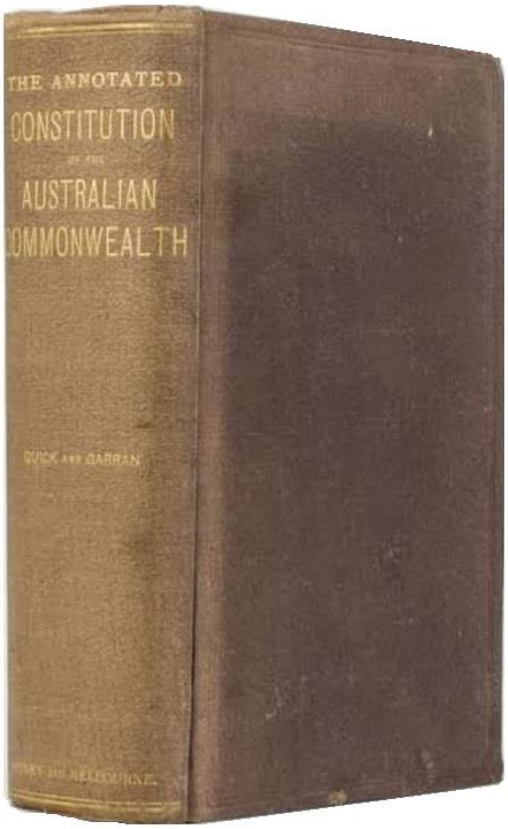
Australian Capital Territory No executions were carried out in the Australian Capital Territory, where federal legislation abolished capital punishment in 1973.

Northern Territory There were nine executions between 1893 and 1952. Seven of them took place at Fannie Bay Gaol, the other two at regional locations close to where the crime took place. The last execution in the Northern Territory was a double hanging at Fannie Bay Gaol on 8 August 1952. The death penalty was abolished in 1973. [22]

- *1 Death penalty dead and buried". The Age. Melbourne. 11 March 2010.*
- *2 Traditional Aboriginal Law and Punishment Archived 6 March 2009 Part V – Aboriginal Customary Law and the Criminal Justice System, Law Reform Commission of Western Australia – Aboriginal Customary Laws Discussion Paper*
- *3 "AFP Governance: AFP National Guideline on international police-to-police assistance in death penalty situations" (PDF). Australian Federal Police.*
- *4 Finlay, Lorraine (March 2011). "Exporting the Death Penalty? Reconciling International Police Cooperation and the Abolition of the Death Penalty in Australia" (PDF). Sydney Law Review. **33** (1): 95–117.*
- *5 "British Justice". Museum Victoria Australia.*
- *6 The Hanging of Ronald Ryan:40 Years Later Archived 28 December 2007.*
- *7 Biography – Jean Lee – Australian Dictionary of Biography. Adb.anu.edu.au.*
- *8 "Prisoner hanged". The Sydney Morning Herald. 27 September 1932. p. 10.*
- *9 "Leonski executed". Daily Advertiser. Wagga Wagga, NSW. 10 November 1942. p. 1.*
- *10 Executions in the State of Victoria ned kelly Archived 8 October 2011.*
- *11 'Queensland Executions' Archived 13 June 2015.*
- *12 Dawson, Christopher, "A Pit of Shame: The Executed Prisoners of Boggo Road"Archived 13 June 2015.*
- *13 Sentenced at Birth. Emsah.uq.edu.au (2005-08-05).*
- *14 Australian Online Bookshop – Books for Australians, Australian Books for the World. Bookworm.com.au.*
- *15 [1] Archived 16 October 2010.*
- *16 Walk On – Last Person Sentenced to Death – Brenda Hodge. quicksales.com.au*
- *17 [The Hempen Collar David J Towler and Trevor J porter, The Wednesday Press, 1999]*
- *18 http://www.abc.net.au/backyard/shipwrecks/sa/mariacreek.htm*
- *19 Public Executions. Utas.edu.au.*
- *20 Trevor McClaughlin (1998). Irish Women in Colonial Australia. Allen & Unwin.*
- *21 Helen MacDonald (2005). Human remains: Dissection and Its Histories. Yale University Press.*
- *22 "Two executed". Northern Standard. Darwin, NT. 8 August 1952. p. 1.*
- *23 Death Penalty Abolition Act 1973 https://www.legislation.gov.au/Details/C2010C00307*

The Annotated Constitution of the Australian Commonwealth

The original edition of the *Annotated Constitution of the Australian Commonwealth* by John Quick and Robert Garran was published by *Angus and Robertson Sydney* in 1901 yet remains widely consulted and cited in constitutional law cases today. It was originally published with a purple cover, that in most copies has now unevenly faded in parts to brown.



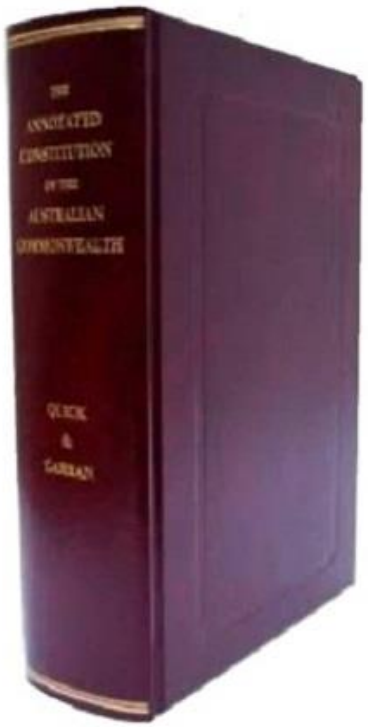
The text of the *Annotated Constitution of the Australian Commonwealth* is divided into three parts.

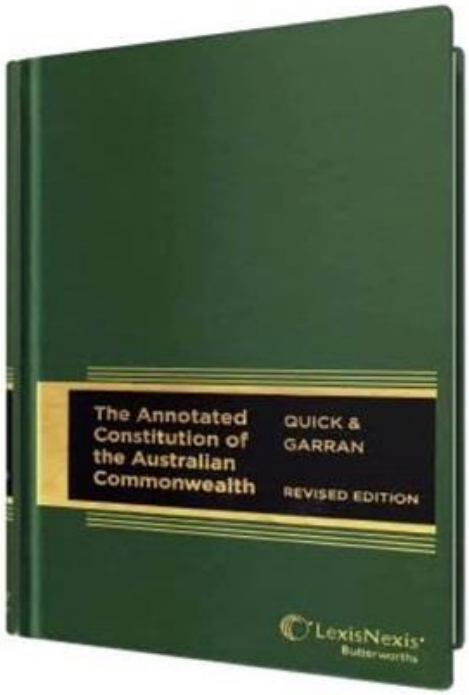
* Pages ***01*** to ***261*** provides an invaluable historical introduction to the Constitution by John Quick, covering ancient colonies, modern colonisation, colonial government in Australia, and the federal movement in Australia. Then follows a list of members of federal conventions and conferences.

* Pages ***262*** to ***278*** contains the text of the Commonwealth Constitution as originally enacted.

* Pages ***279*** to page ***1008***, the bulk of the text, is a separate work by Robert Garran, *Commentaries on the Constitution of the Commonwealth of Australia,* which consists of the original commentaries on each section of the Constitution, including references to the corresponding sections of other federal constitutions.

Another identical edition was published in 1976 with a red cover, and in 2014 *LexisNexis Butterworths* published a revised edition with a green cover.





In this latest edition of the *Annotated Constitution of the Australian Commonwealth*, the text of the original work remains unaltered, but changes to the book's layout have been made and some useful additional features included. Features of the revised edition include the inclusion of a table of over 160 High Court decisions in which the 1901 edition has been cited, the text of the 2003 compilation of the Constitution showing all amendments in bold and ruled-through text, a new detailed index in addition to the original 1901 index, and the inclusion of the original 1901 edition page numbers in the margin of the commentaries for ease of cross-referencing to the original work.

Scans of each page of the original 1901 edition of the *Annotated Constitution of the Australian Commonwealth* by John Quick and Robert Garran are available online, on the ***Trove website***, and the ***Internet Archives***, which are also available combined in a PDF format.

https://freemandelusion.com/wp-content/uploads/2020/11/the-annotated-constitution-of-the-australian-commonwealth.pdf

The bulk of the text of the *Annotated Constitution of the Australian Commonwealth* is Robert Garran's ***Commentaries on the Constitution of the Commonwealth of Australia*** the text of which is available in PDF format.

https://freemandelusion.com/wp-content/uploads/2020/11/robert-garran-commentaries-on-the-constitution-of-the-commonwealth-of-australia.pdf

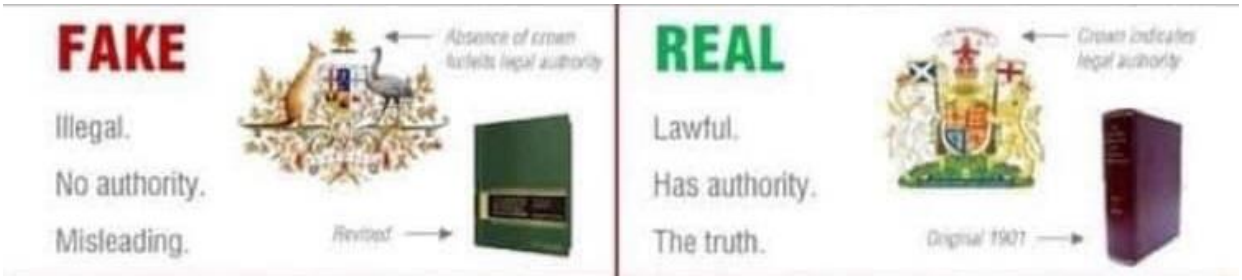
A point that must be taken into consideration when reading various parts of Quick and Garran's commentary, is that it is the 1901 perspective in relation to the Imperial Parliament, which has since become obsolete. We were, at the time, still subject to the *Colonial Laws Validity Act 1865*, which provided that colonial laws were invalid if they were repugnant with UK law. When the British Empire

ended and national status emerged, these external restrictions ceased, and constitutional powers could be given their full scope. This changed occurred on a Commonwealth level with the adoption of the *Statute of Westminster 1931* by Australia in 1942, and on a State level with the passing of the *Australia Act 1986*.

Another point is that there have been many section 128 referendums that sought to alter the text of the Constitution, and quite a few have been successfully carried, which neither of the authors could have included in this 1901 commentary, and hence it was from the perspective of the position of that particular time. This is what makes the 2014 edition more accurate, as it contains annotations including these various changes.

The 'red or green constitution' fallacy

There is a popular conspiratorial myth spread by ***Wayne Glew*** that there is some difference between these editions, when the text is provably identical, and there is even scans of the original text available to verify the point. It isn't surprising that he would encourage this myth, considering he actively sells the "*original red version of the constitution*" for profit, while referring to the 2014 edition as *"the mucus green version of the constitution"*. There is only one original text, and it appears in each of these reprints of the commentary identically.



Secondly, ***Wayne Glew*** consistently refers to this book as *"the constitution"* when it is not the Constitution at all, but a book of commentaries on the Constitution. It does include the text of the Constitution as originally enacted, but that is a mere 16 pages of the 1008 pages the *Annotated Constitution of the Australian Commonwealth* contains. He alleges that to alter the format of this commentary requires a referendum under section 128 of the Constitution, when the *Commonwealth of Australia Constitution Act 1900* received assent on 9th July 1900, a year before this commentary was first published.

Even some of his followers have realised these assertions are factually inaccurate, such as ***Deno Budimir***, who released a ***video*** and ***post*** regarding the point. In response, he received a tirade of abuse from ***Yuliana Glew***, (Wayne's spouse, who subsequently blocked him) and also from his own followers, as you can read in the threads.

Where's the Commonwealth of Australia?

A popular pseudolaw concept in Australia is the theory that because the government publications often have the title "*The Australian Government*" this verifies the original *"Government of the Commonwealth of Australia*" has been usurped, and is now under foreign administration.

Wherever they find it, adherents point to the decreased use of the term *"the Commonwealth"* in popular discourse as evidence that "the Commonwealth" and its associated Constitution has been "removed" from the people.

Similarly, the popular use of the term *"the constitution"* is believed to not in fact be referring to *"the Constitution of the Commonwealth of Australia"* but some alternate constitution, presumably invented by Bob Hawke under the *Australia Acts 1986*.

For better or worse, it is the same entity, of which there is only one, and the same constitution, of which there is only one.

The "two governments" narrative is a typical motif of the US Sovereign Citizen movement, but this Australian version was largely concocted by Scott Bartle in his documentary "*What the FUQ"* or *"Frequently Unanswered Questions" of the Australian Government"*. In the film he asks various authorities from "T*he Australian Government*" to prove they are in fact the legitimate "*Commonwealth of Australia*", but unfortunately he received no response.

To the paranoid pseudolaw mind, their non-response of course, confirms the fact they aren't.

So why did they change from "*Commonwealth of Australia*" to "*The Australian Government*" anyway? The answer is amazingly simple. They didn't. If you look at a copy of the Constitution (sorry, I mean *"the Constitution of the Commonwealth of Australia"*) you'll notice that the official country name is the "*Commonwealth of Australia*".

Put simply, "*Commonwealth***"** refers to the type of nation created by federation.

The Constitution was written over a period of about a decade before Federation in 1901. It is said that Henry Parkes, affectionately known as the father of federation, suggested the term "*Commonwealth*" when the drafting process of the Constitution was beginning. A vote was taken and a substantial majority of the delegates at the 1891 Constitutional Convention in Sydney accepted the name "*Commonwealth of Australia*".

At the later Constitutional Conventions there were other potential names suggested. In the 1901 ***Commentaries on the Constitution of the Commonwealth of Australia***, Robert Garran wrote (in ss 17):

> *"Other names were submitted for consideration before federation, such as "United Australia," "Federated Australia," "The Australian Dominion," "The Federated States of Australia" etc, but the name "Commonwealth" was generally accepted as the description of the federal unit."*

They wrote that *Webster Dictionary* in 1901 defined *"Commonwealth"*:

> *"A Commonwealth is a State consisting of a certain number of men united by compact, or tacit agreement under one form of government and one system of laws. It is applied more appropriately to governments which are considered free or popular, but rarely or improperly to absolute governments. Strictly, it means a government in which the general welfare is regarded rather than the welfare of any particular class."*

Webster's (now known as *Merriam Webster*) mentioned the phrase **"***the common good"* when defining a "*Commonwealth"*:

> *"A commonwealth is a nation, state, or other political unit: such as:*
>
> *a) one founded on law and united by compact or tacit agreement of the people for the common good*
> *b) one in which supreme authority is vested in the people*
> *c) republic"*

But back at federation, mentioning republicanism was a sure-fire way to get yourself removed from public life. Hence a few delegates dissented on the vote to call the country the *"Commonwealth of Australia":*

> *"The only objections raised to it being that it was suggestive of republicanism, owing to its association with the Commonwealth of England, under Oliver Cromwell's Protectorate."*

But Maitland rejoiced in the return of the term *"Commonwealth"*. As mentioned in ***Sue v Hill [1999] HCA 30***, (at 84) he wrote in 1901:

> *"There is no cause for despair when 'the people of New South Wales, Victoria, South Australia, Queensland and Tasmania, humbly relying on the blessing of Almighty God, have agreed to unite in one indissoluble Federal Commonwealth under the Crown of the United Kingdom of Great Britain and Ireland'. We may miss the old words that were used of Connecticut and Rhode Island: 'one body corporate and politic in fact and name'; but 'united in a Federal Commonwealth under the name of the Commonwealth of Australia' seems amply to fill their place. And a body politic may be a member of another body politic."*

So ultimately, "Commonwealth" describes the type of nation.

It is called "*Australia***"**, no matter what one wants to call the federation of colonies it was composed of. And so logically, it follows that the government of this *"Australia"* is called... *"The Australian Government"...*

The ***Acts Interpretation Acts 1901*** in Part 2B, provides that:

> "***Australia*** means the *Commonwealth of Australia* and, when used in a geographical sense, includes Norfolk Island, the Territory of Christmas Island and the Territory of Cocos (Keeling) Islands, but does not include any other external Territory."

The very simple concept of shortening the nomenclature seems to have led to this flawed belief.

It was noted in The Australian Law Journal in January 1974, that the Federal Government had undergone the replacement in official usage of the terms *"the Commonwealth of Australia"* with *"Australia"* and "*the Commonwealth Government"* with *"the Australian Government".* Even the Commonwealth of Australia Gazette was renamed the Australian Government Gazette, and various definitions were added to the *Acts Interpretation Acts 1901* to remove any confusion in regard to the renaming of various Commonwealth departments.

The journal also mentions the Victorian State Cabinet raising concerns over the issue, concluding that the use of the nomenclature will have to be accepted, that such a promotion is legitimate, and does not run counter to any constitutional prohibition.

The term " Australian Government "

The present Government of the Commonwealth of Australia has in a number of different ways made known its dislike for the terms " Commonwealth of Australia " and " Commonwealth Government ", and its preference for their replacement in official usage, as far as legally possible, by the appellations " Australia " and " Australian Government ", respectively.

In Canberra, the practice of substitution of the changed nomenclature has already gone very far. One important illustration may be given. On 2nd July, 1973, the *Commonwealth of Australia Gazette* was renamed the *Australian Government Gazette*, and all subsequent issues have borne this title. The last issue of the *Gazette* to be published under the old title was Number 79 of 30th June, 1973. This alteration in the title of the *Gazette* was preceded by an amendment made by the *Acts Interpretation Act* 1973 (assented to, 19th June, 1973) to the *Acts Interpretation Act* 1901-1966, whereby the term " The *Gazette* " was to mean the *Commonwealth of Australia Gazette* published before the relevant date, and the *Australian Government Gazette* after that date. Also par. (a) of s. 17 of the principal Act was deleted and replaced by a provision declaring that the term " Australia " or the term " The Commonwealth " should mean the Commonwealth of Australia. In his second reading speech on the Bill containing these amendments, the Minister for the Capital Territory said (see Cth. Parl. Debs., 24th May, 1973, p. 2642): " The Bill also contains provisions to give effect to the Government's intention to use, wherever possible, the term ' Australia ' to signify the Australian nation. This involves adopting the name ' *Australian Government Gazette* ' in place of the ' *Commonwealth of Australia Gazette* ', the use of the imprint ' Government Printer of Australia ' instead of ' Commonwealth Government Printer ' on official documents and the use of the term ' Australia ' instead of ' Commonwealth ' in legislation."

Incidentally also, commencing in February 1974, the periodical publication *Current Commonwealth Publications* (CCP), listing available publications issued by Commonwealth departments and instrumentalities, has been retitled *Current Publications of the Australian Government* (CPAG).

The official use of the new terminology by Commonwealth Ministers and by Departments based in Canberra prompted a decision in January this year by the Victorian State Cabinet that Victorian Government departments, instrumentalities, and agencies should thenceforth use the term " Commonwealth Government " in preference to " Australian Government " in correspondence and communications, as far as practicable. In a circular to Victorian State Departments conveying the terms of this decision, the Secretary of the Victorian Premier's Department pointed out that there is no authority in the Australian Constitution for the use of the term " Australian Government ", all references in the Constitution being to the entity, the Commonwealth of Australia, while the Federal Parliament was described in that instrument as " The Parliament of the Commonwealth ". The circular concluded with the following parenthetical paragraph: " (It is realised that some Commonwealth departments and agencies have been renamed by statute to introduce the term ' Australian Government ', and these titles will have to be accepted. This does not however affect the general application of the Cabinet decision.) "

Apart from the point that the Australian Constitution makes reference not to the " Australian Government ", but to the " Executive Government of the Commonwealth " and to the " Parliament of the Commonwealth ", other objections to the rejection of the word " Commonwealth " are: (a) that the use of the term " Australian Government " implies that the Government in Canberra is the government of the whole of Australia, whereas by reason of the division of powers under the Constitution this is not true, since Australia is governed by six State Governments as well as by the Government of the Commonwealth; and (b) that the word " Commonwealth " well conveys the political fact that the Federation of Australia is a union of peoples as distinct from a union of Governments.

While the Constitution does not expressly authorise the use of the terms sought to be promoted by the present Commonwealth Government, nevertheless it would seem that, provided certain limits are not overstepped, such promotion is legitimate. These limits to the sponsorship at an official level of " Australian Government " and " Australia " can better be illustrated than closely defined. For example, in the absence of amendments to the Constitution, the Commonwealth Parliament and the Commonwealth Government could not legally prohibit officials and members of the public from the use of the terms " Commonwealth of Australia ", " Government of the Commonwealth ", and " Parliament of the Commonwealth ", these being laid down in the Constitution, nor semble compel them under threat of legal process to use the substitutes, " Australia ", " Australian Government ", and " Australian Parliament " where the constitutional terms would otherwise be appropriate. Again, in proceedings in the High Court, the Commonwealth could not appear as plaintiff or defendant on the record as " Australia " but only as the " Commonwealth of Australia ". The High Court, itself a creation of the Constitution, would naturally insist upon the Commonwealth being given its formal name and style under the Constitution. On the other hand, the renaming of official departments and of official publications so as to refer to " Australian Government " rather than to " Commonwealth Government " does not run counter to any constitutional prohibition.

It may be of interest to recall that the emergence of the term " Commonwealth " to describe an Australian Federation was more or less a case of historical accident. At the 1891 Convention summoned to consider the subject of Federation, the Constitutional Committee voted for " Commonwealth " by a majority of only one, and if that Committee had not supported this appellation and allowed it to appear in the " Draft Bill to Constitute the Commonwealth of Australia " presented to the plenary session by Sir Samuel Griffith as Chairman of the Committee, it would probably never have been adopted (see La Nauze, " The Name of the Commonwealth of Australia ", 15 *Historical Studies* (1971), at pp. 60-61; and the same author's *The Making of the Australian Constitution* Melbourne University Press (1972), at pp. 138-139, and 152). Delegates and members of the public regarded the term " Commonwealth " as having, to some extent, a republican connotation, inconsistent with loyalty to the British Crown. Indeed, as late as January 1900 Queen Victoria seemed to think the use of the term reflected an anti-monarchical intention, and she doubtless would have preferred the word " Dominion ". As it was, the vote in favour of " Commonwealth " at the plenary session of the 1891 Convention was twenty-six to thirteen. In view of the Victorian Government's endorsement of " Commonwealth " early this year, it may seem ironic that in 1891, subsequent to the Convention, the Victorian Parliament rejected the term " Commonwealth " during its consideration of the Draft Bill (La Nauze, 15 *Historical Studies* (1971), at p. 62). At a later Convention, that of 1897, Sir Josiah Symon, a South Australian delegate, argued unsuccessfully that the name of the Federation should be simply " Australia ". In the period 1891-1900 the term " Commonwealth " continuously gained ground, and became generally accepted.

Sir Henry Parkes was entirely responsible for suggesting " Commonwealth " to the 1891 Convention. It has been said that this reflected his admiration for the statesmen of what was known as the " Commonwealth " in the period of Cromwell's administration, prior to 1660 (see Harrison Moore, *The Constitution of the Commonwealth of Australia* (2nd ed., 1910), at pp. 65-66), but other historical evidence indicates that the name " Commonwealth " appealed to him for other reasons of a literary and historical nature, while he could not have overlooked the appearance in 1888 of Bryce's classical work, *The American Commonwealth*, since he and other statesmen of the Australian colonies were so concerned with the United States as a model for the proposed Australian Federation (La Nauze, 15 *Historical Studies* (1971), at pp. 63-69).

Finally, it may be mentioned that in the period 1891-1900 many influential persons supported the name " Commonwealth ". Edmund Barton, for instance, later to become first Prime Minister of the Commonwealth, defended the name, saying: " I venture the assertion that I know of none better and none statelier " (La Nauze, *The Making of the Australian Constitution* (Melbourne University Press (1972), at p. 138).

https://freemandelusion.com/wp-content/uploads/2022/04/The-Australian-Law-Journal-January-1974.pdf

The Red Ensign Flag

A popular contention of the pseudolaw movement in Australia is that the Blue Ensign is a "corporate flag" while the true national flag is the Red Ensign. It is largely connected to misconceptions regarding the changes that occurred due to the *Royal Style and Titles Act* 1953, and 1973, and the introduction of the Great Seal of Australia. The inclusion of the "maritime admiralty law" myth originating in the US Posse Comitatus movement leads adherents to believe that the Blue Ensign remains a maritime flag (as it was originally), and it follows that allegiance to this flag is allegiance to a corporate entity acting under maritime admiralty law.

The pseudo legal belief seems to have its origin the writings of ***Steven Spiers***, and his ***United Kingdom of Australia***, but has since been adopted by many other groups, including ***Rodney Culleton***'s ***Great Australian Party***, and many among the anti-mandate and anti-lockdown protesters during the COVID-19 pandemic.

What is the Australian merchant navy flag, the red ensign? And why do anti-government groups use it?:

James Ross/AAP

The Australian red ensign – a red version of the familiar Australian flag – has appeared all over the news and social media in recent months. The question is, why?

Historically associated with Australia's commercial shipping vessels, the merchant navy, the flag has recently been adopted by people involved in anti-lockdown and anti-government movements.

It's almost certain the flag has gained popularity due to its use by Australia's sovereign citizen (or "SovCit") movement, a fringe group who believe laws do not apply to them.

Since 2019, I've been researching the SovCit movement and the insights it reveals into public (mis)understanding of our legal order.

To understand why this particular flag is being flown requires a detour into their strange, conspiracy-laden, pseudo-legal culture.

Who are the sovereign citizens?

Self-identifying sovereign citizens – and their counterparts the "Freemen on the land" - believe they possess a pure and true understanding of the legal system. The movement emerged in America, and has spread to Australia and other countries.

According to their version of the law, individuals are "sovereign", meaning they are not bound to the laws of the country in which they live, unless they waive those rights by accepting a contract with the government.

While the movement has no single leader or central doctrine, SovCits believe that by reciting certain phrases, such as "I am a natural living being" or "I do not consent", they can lawfully avoid any obligation to obey laws and regulations.

Like a magic spell, these phrases grant them a cloak of legal immunity, and beneath that cloak, there is no need to wear masks, pay taxes, or hold a driver's licence.

To those with any understanding of the legal system, these arguments are without foundation. It's not surprising SovCits struggle to distinguish between valid and fanciful legal arguments: we do a poor job of educating Australians about how the legal system operates, and the system remains irreducibly complex and profoundly inaccessible to most Australians.

Nevertheless, SovCit arguments are devoid of any legal merit.

It is a mistake to think such eccentric movements are benign. Some SovCits have been identified as anti-government extremists and a potential terrorism threat in Australia, as well as in America.

The movement has gained prominence during the pandemic, with the "pick-and-choose" approach to legal obligations attracting anti-health measure activists, such as the infamous "Bunnings Karen".

By encouraging people to disregard laws they don't like, the SovCit movement presents an insidious threat to our legal order.

So what is the Australian red ensign?

Back to that strange flag. The Australian red ensign is the official flag flown at sea by Australian registered merchant ships.

The flag was developed as part of the Commonwealth government's 1901 federal flag design competition, which resulted in two flags: the familiar Australian blue ensign for official Commonwealth government use and our national flag, and the Australian red ensign for the merchant navy, which refers to our shrinking commercial shipping fleet.

In the early years of federation, the red ensign was an important symbol of Australian identity as the main flag used by private citizens on land and at sea. Australians have fought under it during both world wars.

So, are fringe groups using it to suggest they are private citizens? The flag's history suggests it's not that simple.

At federation, Australia was not an independent country, but a dominion of the British empire. Australian citizenship did not exist until 1948, and the UK parliament could theoretically pass laws governing Australia until 1986.

So, in the half century after federation, the official flag for general use was the Union Jack.

Like the current governor-general's flag, the Australian blue ensign was used only by the Commonwealth government. It did not become the general national flag until 1953.

Before that date, if citizens wanted a distinctive flag to signify an Australian rather than a British identity, they tended to (mis)use the Australian red ensign.

Why do SovCits use the Australian red ensign?

Unfortunately, the decentralised nature of the SovCit movement makes it difficult to reach definitive conclusions.

For a movement that has an inherent distrust of government, the flag's historical usage as a "people's flag" must seem appealing.

A similar appeal may derive from the fact the ANZACs fought under this flag (as Australian divisions of the British Army).

In both cases, though, a little knowledge is a dangerous thing. In both cases, those historical usages spoke more to Australia's identity as a British dominion.

Indeed, RSL Australia has condemned the flag's use by protesters as disrespectful.

Alternatively, the usage may derive from the maritime nature of the flag. One of the more outlandish claims of the SovCits is that the only valid sources of law are the common law and "admiralty law". As such, a maritime people's flag must seem like the perfect symbol.

For a movement that has inherent distrust of government, the flag's historical usage as a 'people's flag' must seem appealing. MICK TSIKAS/AAP

There are darker possibilities, too. For some people, it could be an attempt to mirror the use of the Canadian red ensign by the far-right. In Canada, white supremacists see their red ensign as a throwback to a time when Canadians were overwhelmingly white.

In the US, the SovCit movement has explicitly racist and antisemitic roots, emerging from the Posse Comitatus movement led by the notorious preacher William Potter Gale.

A similar undertone may underpin the use of the flag in Australia, a racist yearning for a non-existent "golden age" when Australia was "free" and "white".

To me, the use of this flag also suggests a yearning for certainty and a simpler past, that, though misguided and exclusionary, perhaps emerges from the collective trauma of the last two years.

In the minds of these fringe protesters, they are not law-breakers, but patriots who possess a deep and true understanding of the law.

Like the Australian red ensign itself, these movements take familiar images and ideas and twist them.

RSL Condemns Misuse of National Flag and Red Ensign:

RSL Australia

23 Sep

RSL CONDEMNS MISUSE OF NATIONAL FLAG AND RED ENSIGN

MEDIA RELEASE

The Returned & Services League of Australia (RSL) has condemned the misuse of the Australian National Flag and Red Ensign flag by the Melbourne anti-vaccination, anti-lockdown protesters.

RSL Australia President Greg Melick said the protestors' flying of the National Flag and Red Ensign, as well as their deplorable action yesterday in occupying Melbourne Shrine of Remembrance simply shows a gross level of disrespect that would be denounced by all reasonable Australians.

Greg Melick said the National Flag and the Red Ensign are an official Australian flag, with the Red Ensign flown at sea by Australian registered merchant ships.

"They are not protest flags and flying them during the unruly and lawless protests in Melbourne is unauthorised and yet another deplorable act by an irresponsible and shameful mob.

"The disrespect of these people apparently knows no bounds. They dishonour Australian service men and women who have made the ultimate sacrifice for our nation, and they dishonour our national flags.

"Their actions to further their own selfish cause and ambitions are reprehensible, particularly at a time when all Australians should be coming together to deal with the impacts of the COVID-19 pandemic.

"Our veterans did fight for the right for Australians to freely express themselves, but they did not fight to enable these people to desecrate our memorials and national flags."

Greg Melick said any misuse of the flags should result in the prosecution of the offenders.

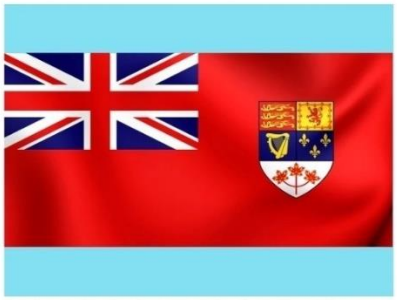
A similar ideology exists in Canada regarding the Red Ensign, described as *"Canada's equivalent of the Confederate flag"*: "***Former Canadian flag, the Red Ensign, gets new, darker life as far-right symbol***."

NATIONAL POST

Former Canadian flag, the Red Ensign, gets new, darker life as far-right symbol

The perversion of the Red Ensign was first observed among white supremacists, who saw it as a throwback to a time when Canadians were overwhelmingly white

Graeme Hamilton
Jul 10, 2017 • July 10, 2017 • 3 minute read • Join the conversation



The Red Ensign has been adopted as Canada's equivalent of the Confederate flag by some extremists here. PHOTO BY GETTY IMAGES

When five members of the anti-immigration, alt-right Proud Boys strode into a Halifax park on Canada Day to confront Indigenous protesters, the Canadian flag they carried was more than 50 years out of date.

With a Union Jack in the corner and a coat of arms on a red background, the Canadian Red Ensign held aloft by one member has largely disappeared from public view since it was replaced in 1965 by the Maple Leaf.

But the Red Ensign, a variation of which Canadian troops fought under in both world wars, has recently taken on a darker symbolism, adopted as Canada's equivalent of the Confederate flag by some extremists here.

The perversion of the Red Ensign was first observed among white supremacists, who saw it as a throwback to a time when Canadians were overwhelmingly white and of European extraction.

Anti-immigrant protests by the Aryan Guard in Calgary featured the Red Ensign as far back as 2008, and photos showed group members decorated their apartments with the flag alongside a Nazi flag and a Confederate flag.

When John Beattie, who founded the Canadian Nazi Party in the 1960s and remains a white supremacist, ran for municipal office in 2014, a reporter noted that he flew the Red Ensign flag at his home.

Notorious white nationalist Paul Fromm has campaigned to have the Red Ensign returned as Canada's flag, calling it "the flag of the true Canada, the European Canada before the treasonous European replacement schemes brought in by the 1965 immigration policies."

Northern Dawn, a Canadian alt-right website launched last year to defend Western heritage against "chaos," has used the Red Ensign as its Facebook cover photo. In a July 1 essay on the site, Gerry Neal decried the 1965 replacement of the Red Ensign with the current flag as evidence of a Liberal revision of national symbolism "to eliminate reference to our British heritage."

Anti-Racist Canada has been tracking the growing popularity of the Red Ensign among extremist groups for years. A spokesperson, who for safety reasons asked to be identified only as Chris, said racists have adopted the Red Ensign "to represent a time when Canada was a 'white man's country.' They view the flag that flies in Canada today as an abomination representing multiculturalism and diversity.

"If you attend any far-right rally or march in Canada, there is a very good chance that, along with 'white pride,' Nazi, and Confederate flags, you will also see the Red Ensign being flown rather than the Maple Leaf."

For the Royal Canadian Legion, which flies the Red Ensign outside its headquarters and includes the flag in its official colour party, the idea that it has been adopted by extremists is hard to stomach.

"There is significant and genuine affection for the Red Ensign in the veterans' community of Canada for the reason that wars were fought and lives were lost under that flag," Bill Maxwell, secretary of the Legion's Poppy and Remembrance Committee, said.

"Canadians fought for the freedoms we enjoy today. I don't think they fought to have the Red Ensign denigrated in such a manner, quite frankly."

Caitlin Bailey, executive director of the Canadian Centre for the Great War, in Montreal, said the Red Ensign was a symbol of unity as a young nation went to war. It was the flag that flew over Vimy Ridge to signal its 1917 capture by Canadian troops.

"It's unfortunate that it has turned into a white nationalist symbol," she said. "It's not right, and it flies in the face of what the Red Ensign means."

C.P. Champion, editor of the history journal the Dorchester Review, recently wrote in support of greater prominence for the Canadian Red Ensign, arguing it should fly permanently at the National War Memorial in Ottawa.

He said in an interview that he was disappointed when the self-described traditionalists of the Proud Boys were captured on video provoking Indigenous protesters with the flag.

"It looked like it was trivializing, or treating as a kind of talisman of defiance, a flag that has a much more venerable and mainstream role," Champion said. "I've always thought it's important not to let traditional symbols be appropriated by fringe elements."

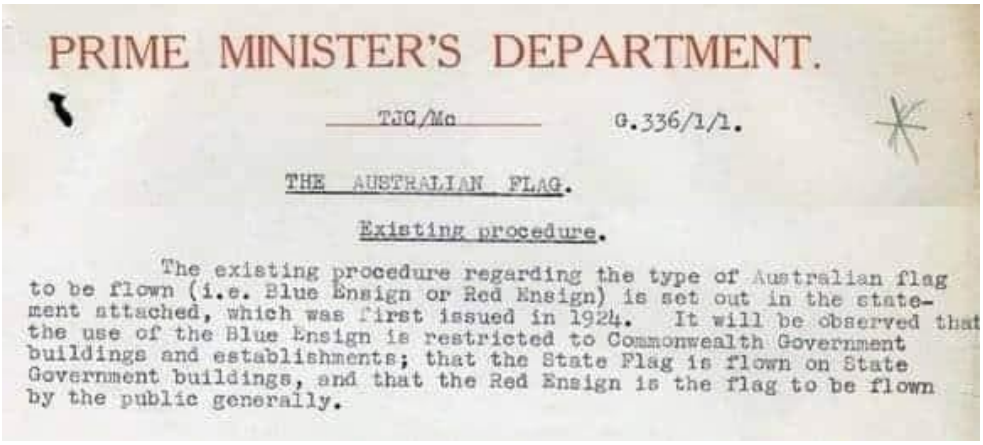
The history of the National Flag

In the 1901 Federal Flag Design Competition, each competitor was required to submit two coloured sketches, a Red Ensign for the merchant service and public use, and a Blue Ensign for naval and official use. Essentially, they chose the design of the Victorian Red Ensign and blue Flag of Victoria, (from 1870–1877) with the addition of a large star – the Commonwealth Star – beneath the Union Jack, its six points symbolising the federating colonies. (Later, in 1908 a seventh point was added which represented Australian territories.)

Although the ensigns were adopted by the Commonwealth Government, and memorandums were issued as to their proper usage, the British Union Jack still continued dominance to a large extent, such as in schools in most States. Even as far as the 1920's, an Australian ensign, unless accompanied by the British Union Jack, was seen as a disloyal symbol, aligned to various nationalist, republican and other anti-British movements of the time.

Uncertainty as to which flag is the appropriate national flag continued for some time. During the interwar period, these questions were a constant source of frustration for public servants, but by 1924 there was agreement that the Union Jack should take precedence as the national flag. The Blue Ensign was for Commonwealth government buildings, but could be used on state government buildings – but not state schools – if the state ensign was not available. There were no restrictions on the Red Ensign or the Union Jack: these were the flags state schools, private organisations and individuals could fly.

The following memorandum from the Prime Minister's Department dated 6 March 1939, outlined the appropriate flag flying procedures, citing the 1924 agreement.



PRIME MINISTER'S DEPARTMENT.

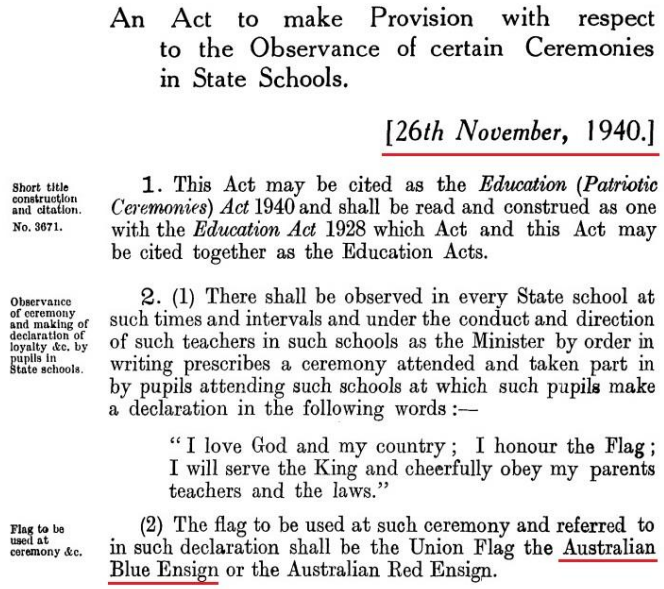
TJG/Mc G.336/1/1.

THE AUSTRALIAN FLAG.

Existing procedure.

The existing procedure regarding the type of Australian flag to be flown (i.e. Blue Ensign or Red Ensign) is set out in the statement attached, which was first issued in 1924. It will be observed that the use of the Blue Ensign is restricted to Commonwealth Government buildings and establishments; that the State Flag is flown on State Government buildings, and that the Red Ensign is the flag to be flown by the public generally.

However, in 1940, Victoria forced the Commonwealth's hand, challenging the assumption that the Blue Ensign was for governments and not people by passing the ***Education (Patriotic Ceremonies) Act 1940*** allowing state schools to fly the Blue Ensign.



An Act to make Provision with respect to the Observance of certain Ceremonies in State Schools.

[26th November, 1940.]

Short title construction and citation. No. 3671.

1. This Act may be cited as the *Education* (*Patriotic Ceremonies*) *Act* 1940 and shall be read and construed as one with the *Education Act* 1928 which Act and this Act may be cited together as the Education Acts.

Observance of ceremony and making of declaration of loyalty &c. by pupils in State schools.

2. (1) There shall be observed in every State school at such times and intervals and under the conduct and direction of such teachers in such schools as the Minister by order in writing prescribes a ceremony attended and taken part in by pupils attending such schools at which such pupils make a declaration in the following words :—

"I love God and my country; I honour the Flag; I will serve the King and cheerfully obey my parents teachers and the laws."

Flag to be used at ceremony &c.

(2) The flag to be used at such ceremony and referred to in such declaration shall be the Union Flag the Australian Blue Ensign or the Australian Red Ensign.

Following this, in a Press Release on 15 March 1941, Prime Minister Robert Menzies stated *"there should be no unnecessary restriction placed on the flying of the Blue Ensign on shore"* and removed all previous restrictions as to its use by the public generally. *(See Press Release Memorandum from Secretary, Prime Ministers Department to Secretary, Department of External Affairs dated 28 February 1941. Australian Archives, ACT (A981/1: Def 220).* Prime Minister Ben Chifley issued a similar statement in 1947.

But it wasn't until the *Flags Act* 1953 (enacted 1954) was passed by the Menzies Government that Australia finally had an official national flag, or rather, one that was required to be flown in a superior position to any other national flag (including the Union Jack). The *Flags Act 1954* formally adopted the Blue Ensign as Australia's national flag, and the Act was assented to by Queen Elizabeth II on her first visit to Australia on 15 April 1954, the first Act of the Australian Parliament to receive assent by the Monarch rather than the Governor General.

No. ~~97~~ 4 of 1953.

AN ACT

To declare a certain Flag to be the Australian National Flag and to make other provision with respect to Flags.

Assented to

Elizabeth R.

February 14th 1954.

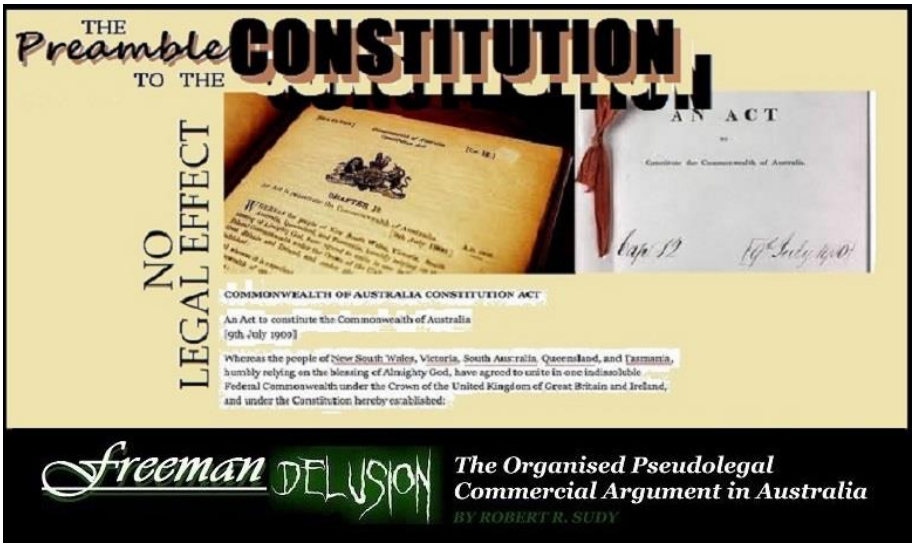
Finally, more than 53 years after the first design was hoisted, Australia had an official national flag.

Some of the finest academic literature that exists regarding the historical account of Australia's national flag can be found in "***Finding the Flag's History Mediating the Maze of Misinformation and Mythmaking***" by Historian Dr Elizabeth Kwan, and "***Filibuster: The Century-long Australian Flag Debate***" by Ralph Kelly.

https://freemandelusion.com/wp-content/uploads/2018/07/finding-the-flags-history-mediating-the-maze-of-misinformation-and-mythmaking.pdf

https://freemandelusion.com/wp-content/uploads/2022/03/Filibuster-the-century-long-Australian-flag-debate-Ralph-Kelly.pdf

The Preamble to the Constitution



The preamble of the *Commonwealth Constitution Act* is relied on by many theorists to insist on various contentions regarding our constitutional relations with the UK, and also adherence to Christian principles.

Although often referred to as a preamble to the *Constitution,* this is factually incorrect. It is generally accepted that everything below Section 9 is the *Constitution*, and everything above it is part of the *Constitution Act.* Even Section 9 itself provides: *"The Constitution of the Commonwealth shall be as follows..."* In reality, the *Commonwealth Constitution* actually has no preamble, it is the *Constitution Act* that has a preamble, and even the covering clauses fall outside of the "four corners" of the *Commonwealth Constitution.*

The 1998 Constitutional Convention recommended that it was time that the *Constitution* had a new preamble which made reference, amongst other things, to shared national values, as is common in the constitutional preambles of many other countries around the world. The Prime Minister was technically correct to make a distinction between the British Act of Parliament called the *Commonwealth of Australia Constitution Act* (which begins with the existing preamble), and the *Constitution* proper (which has no preamble of its own) commencing at section 9 of the *Constitution Act.*

Although they mean little in terms of Constitutional law, as Anne Winckel points out in "***The Contextual Role of a Preamble in Statutory Interpretation***", the preamble and covering clauses have a contextual and a constructive role in statutory interpretation, and are therefore a useful tool to understand the legal meaning of the *Constitution.* The High Court did this in ***Kable v Director of Public Prosecutions (NSW) [1996] HCA 24*** in explaining the concept of a unified court system established under Chapter III, and in ***Joosse & Anor v Australian Securities and Investment Commission [1998] HCA 77***, explaining what law is to be applied in the courts of Australia.

https://freemandelusion.com/wp-content/uploads/2022/04/Anne-Winckel-The-Contextual-Role-of-a-Preamble-in-Statutory-Interpretation.pdf

WHEREAS the people of New South Wales, Victoria, South Australia, Queensland, and Tasmania, humbly relying on the blessing 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:

And whereas it is expedient to provide for the admission into the Commonwealth of other Australasian Colonies and possessions of the Queen:

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:

It is important to note that *"The Crown of the United Kingdom of Great Britain and Ireland"* that appears in the preamble ceased to exist after the ***Anglo-Irish treaty of 1922*** put an end to the union of Great Britain and Ireland, creating a smaller dominion of which George V remained king. "The Crown of the United Kingdom of Great Britain and Ireland" became "*The Crown of the United Kingdom of Great Britain and Northern Ireland".* The Parliament in Westminster ceased to represent all of Ireland, which required a change in its style. Therefore, the ***Royal and Parliamentary Titles Act 1927 (17 Geo 5 c. 4)*** changed the style of Parliament, which would *"hereafter be known as and styled the Parliament of the United Kingdom of Great Britain and Northern Ireland"*. This is just one example of how history has altered the literal meaning of the preamble. Both this change, and the following were changes that occurred outside Australia, and outside the "four corners" of the *Commonwealth Constitution.*

At the time of Federation it may be accepted that the preamble was binding on Australia, as at that time Australia was bound by section 2 of the ***Colonial Laws Validity Act 1865*** which provided that colonial laws were invalid if they were repugnant with UK law. But since the passing of both the ***Statute of Westminster Adoption Act 1942*** (section 2) on a federal level, and the ***Australia Acts 1986*** (section 3) on a State level, no law made by any parliament is void on the ground that it is repugnant to UK law.

As held in ***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 (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."*

As also confirmed in many other sources, including these ***Parliament and Senate documents***... (Note: the 'covering clauses' show the various changes since 1901)

> ***Note 3.*** *Covering clause 5 – Cf. the Statute of Westminster Adoption Act 1942.*
> (Cf. means "compare")

The legal effect of the preamble is discussed in the Conclusion to "***First Words: The Preamble to the Australian Constitution***"

> *"Despite what some of the Constitution's framers may have anticipated, it is not surprising that the present Preamble has played a very limited role in the interpretation of the Constitution. It must not be forgotten that the Preamble does not accompany the Constitution itself, but rather sits at the head of the Imperial enactment to which the Constitution was appended for passage through the British Parliament. That the Preamble has received limited attention from judges can be attributed not only to this placement outside the 'four corners' of the Constitution, but also to the limited and relatively inconsequential matters with which it deals."*

https://freemandelusion.com/wp-content/uploads/2018/07/first-words-the-preamble-to-the-australian-constitution.pdf

The first 3 paragraphs are (excluding the long and short title) as follows:

> *"Whereas the people of New South Wales, Victoria, South Australia, Queensland, and Tasmania, humbly relying on the blessing 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: And whereas it is expedient to provide for the admission into the Commonwealth of other Australasian Colonies and possessions of the Queen Be it therefore enacted by the Queen's most Excellent Majesty, 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"*

Following the constitutional technique which has been approved in the ***Engineers Case (1920) 28 CLR 129***, plain English should be used. It is also important to use connotation rather than denotation (See Engineers at 142-3 and 151; and also see ***Grain Pool of Western Australia v Commonwealth (2000) 202 CLR 479*** at 493). I believe it was Galdron J who made the very good point that the Constitution should be read as if it is being read for the very first time, and to apply a modern meaning.

It's also important to understand that the first few sections of any Act merely provide context, and in the case of Westminster acts are full of formalities that are legal idioms (ie: they don't have words that are legally binding.) A good example is *'"for peace, order and good government".* This doesn't create anything that is legally actionable, as it can be debated from sunrise to sunset what is *"peace, order and good government"* without any definitive answer. In the first paragraph *"Almighty God"* is a legal idiom, as the question of *"which God?"* springs to mind. Christian? Tibetan? Islamic? This phrase has no legal effect. Great Britain and Ireland is the United Kingdom, and expresses that the Crown creating the Act is the Crown of the UK.

The bits in the first paragraph that provides some legal device is:

> *"the people of New South Wales, Victoria, South Australia, Queensland, and Tasmania ... 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"*

This simply means that the States have agreed to form a federal parliament, which is answerable to the UK parliament and the Constitution. UK parliament relinquished power to legislate for Australia in 1931, leaving the Crown in Australia's hands, so what we are left with is that we have a hierarchy of:

Constitution > Crown > Federal Government > States. This first paragraph simply describes a constitutional monarchy.

The second paragraph reads:

> *"And whereas it is expedient to provide for the admission into the Commonwealth of other Australasian Colonies and possessions of the Queen"*

This paragraph is stating that the UK parliament has agreed with that colonies have the right to Federation, and they will grant it. The third paragraph, the one I think many Christian-orientated theorists are most concerned with is:

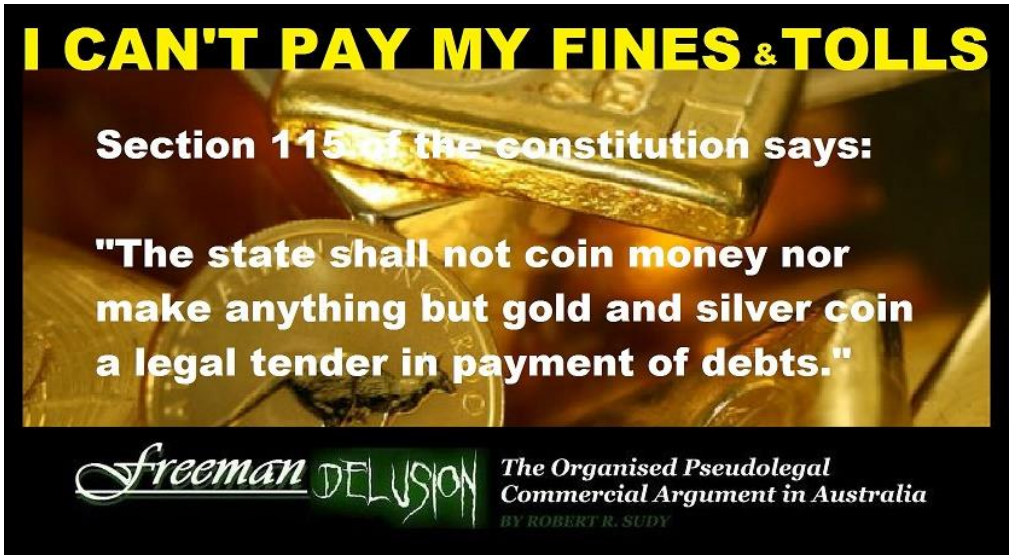
> *"Be it therefore enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows..."*

"Spiritual and Temporal" is a reference to the House of Lords in the UK (their Senate), and *"Commons"* is the House of Commons (their House of Representatives). Remember, the House of Lords is not elected, and are members of the clergy, and the nobility from time to time. Hence *"spiritual"* (the clergy) and *"temporal"* (nobility, as they are from time to time). Also, the House of Commons are elected commoners, hence, *"Lords Commons".* This paragraph simply states that the Act has passed through both houses of UK Parliament, and is given Royal Assent.

A summary of the first three paragraphs could be:

> *"The colonies of Australia has requested to unite under a Federation, in a Constitutional Monarchy. UK Parliament recognizes this, and has advised the Monarch. The Act has passed through both houses of Parliament, and is now given Royal Assent. It is as follows…*

Cash is no good for debts! - section 115



Leonard Clampett repeatedly claimed it was impossible for him to pay fines, tolls, and other state debts because section 115 of the *Constitution* states the government can accept only coins made of gold or silver as payment for debts. He last regurgitated his previously rejected theories in 2012, in ***Brisbane Magistrates Court***, after he was snapped by a speed camera. He argued he could not pay the $200 speeding fine, because *"there is no gold and silver coins in common circulation"*. He insisted that *"A state, as opposed to the Commonwealth, cannot compel you to pay in other than gold and silver coin. Fairly simple."* His argument inevitably failed, with Magistrate Sheryl Cornack finding Mr Clampett guilty and ordering he pay the $200 fine, and $76.90 in court costs. She also ordered he pay police prosecution's out of pocket expenses, totaling $3500, in obtaining an expert witness.

Three weeks later, Mr Clampett fought to have the ruling overturned by the Supreme Court in ***Clampett v Magistrate Cornack [2012] QSC 123*** applying for a judicial review on the grounds no court had previously defined the terms of the constitution. He also raised a challenge to the photographic evidence, contending that the speed camera failed to comply with the *National Measurements Act* (Cth). Supreme Court Justice Martin Daubney ruled that the basis of his argument *"has long been discredited"* and dismissed Mr Clampett's application. *"None of the reasons advanced by the applicant amount to any good reason for having instituted the present application."*

> *"To the extent that the applicants justification for bringing the present application in this Court relies on a contention that he was precluded from approaching the District Court because of his assertion that this would require him to make payment in a manner which was not "strictly legal manner, constitutionally" (i.e. the legal tender argument referred to in paragraph 2 of his prayer for relief), it is clear that the argument on which that contention is based has been long discredited. It is sufficient in that regard to refer to the judgment of Deane J in Re Skyring's Application (No 2)."*

https://freemandelusion.com/wp-content/uploads/2018/07/clampett-v-magistrate-cornack-2012-qsc-123.pdf

The appellant appealed this decision in ***Clampett v Magistrate Cornack & Anor* [2013] QCA 2** and the application was dismissed.

https://freemandelusion.com/wp-content/uploads/2018/07/clampett-v-magistrate-cornack-anor-2013-qca-2.pdf

brisbane times

It's the constitution, no bullion

By **Marissa Calligeros**
May 10, 2012 – 3.00am

A Queensland driver has tried in vain to argue it is "impossible" for him to pay a speeding fine because the Australian constitution states the government can accept only coins made of gold or silver as payment for debts.

Indeed, section 115 of the Commonwealth of Australia Constitution Act states: "The state shall not coin money nor make anything but gold and silver coin a legal tender in payment of debts."

The constitution says: "The state shall not coin money nor make anything but gold and silver coin a legal tender in payment of debts."

Leonard William Clampett tested the weight of constitutional law in Brisbane Magistrates Court in September last year, after he was snapped by a speed camera driving at 73km/h in a 60km/h zone on Wardell Street, Enoggera.

He argued he could not pay a $200 speeding fine, because "there is no gold and silver coins in common circulation".

"It's logical when you look at the paramount legislation in this country, that no matter what money they [the police] request or you award them, I can't pay," he told Magistrate Sheryl Cornack.

"I haven't been able to pay a lot of things over the years. Fifteen years, I haven't paid any income tax because it's not possible to pay it.

"I haven't paid for instance a couple of companies. I haven't paid Crown Law Queensland $12,500 they claimed from me, because of section 115 of the Commonwealth Constitution.

"It is paramount law in this country, but somehow or other, certain people don't seem to catch onto that ...

"A state, as opposed to the Commonwealth, cannot compel you to pay in other than gold and silver coin. Fairly simple."

Police prosecutors called on an expert from Melbourne, who was required to travel to Brisbane and review the evidence, to confirm the roadside camera was working accurately when it photographed Mr Clampett speeding.

Despite his argument, Ms Cornack found Mr Clampett guilty and ordered he pay the $200 fine, as well as $76.90 in court costs.

She also ordered Mr Clampett pay police prosecution's out of pocket expenses, totalling $3500, in obtaining the expert witness.

But, three weeks later, Mr Clampett fought to have Ms Cornack's ruling overturned by the Supreme Court.

He applied for a judicial review on the grounds no court had previously defined the terms of the constitution.

"My claims, and the action sought based thereon, are as well for the Queen as for myself," Mr Clampett wrote in his application.

However, Supreme Court Justice Martin Daubney said the basis of Mr Clampett's argument "has long been discredited".

"None of the reasons advanced by the applicant amount to any good reason for having instituted the present application," he stated in a written judgment, published this week.

He did not comment further on Mr Clampett's argument regarding constitutional law.

Justice Daubney dismissed Mr Clampett's application.

This wasn't the first time Leonard Clampett has raised this defence in paying his debts. The previous time was in ***Clampett v Kerslake (Electoral Commissioner of Queensland) [2009] QCA 104***, where Fraser JA reminded him of the last time the Supreme Court rejected this argument.

> *"In Clampett v Hill [2007] QCA 394 at paragraphs 15 and 16, this Court rejected as vexatious an appeal in which the applicant agitated his argument to the contrary. The applicant nevertheless repeats that rejected argument. In doing so, he adopts Mr Skyring's earlier argument to the same effect even though it was rejected as lacking legal merit in numerous authoritative decisions*

including a decision of the Full Court of the High Court on 9 July 1985 which affirmed Justice Deane's decision in Re Skyring's Application (No 2) (1985) 59 ALJR 561."

https://freemandelusion.com/wp-content/uploads/2018/07/clampett-v-kerslake-electoral-commissioner-of-queensland-2009-qca-104.pdf

https://freemandelusion.com/wp-content/uploads/2018/07/clampett-v-hill-ors-2007-qca-394.pdf

The appellant sought special leave to the High Court in ***Leonard William Clampett v David Kerslake, Electoral Commissioner Of Queensland [2010] HCASL 280*** which was likewise rejected.

LEONARD WILLIAM CLAMPETT
v
DAVID KERSLAKE, ELECTORAL COMMISSIONER OF QUEENSLAND
[2010] HCASL 280
B44/2010

1. In March 2009, the applicant commenced a proceeding in the Supreme Court of Queensland in which he sought to argue that the only lawful currency in Australia is gold and silver coins and in which he made al legations described by the primary judge (Mullins J) as allegations about "the legality, constitutionality of the *Electoral Act* Queensland 1992 and questions about the Queensland *Constitution Act*". Mullins J dismiss ed the proceeding as frivolous, vexatious and an abuse of court.

2. The applicant sought to appeal to the Court of Appeal of the Supreme Court of Queensland but, by opera tion of s 48(5) of the *Judicial Review Act* 1991 (Q), no appeal lay except with leave. The Court of Appeal (Kea ne and Fraser JJA and White J) refused leave and ordered that the notice of appeal be struck out. The appl icant was ordered to pay the respondent's costs.

3. The applicant now seeks special leave to appeal to this Court. The application is made well out of time.

4. There is no reason to doubt the correctness of the decision of the Court of Appeal.

5. Pursuant to r 41.10.5 we direct the Registrar to draw up, sign and seal an order dismissing the application.

K.M. Hayne S.M. Crennan
8 December 2010

Allan Skyring, who also ran this argument persistently after his 1985 High Court rejection, was eventually declared a vexatious litigant by White J in 1995. He raised the argument again in 2013, also defending a speeding fine. After it was rejected by Magistrate Springer in the Brisbane Magistrates Court, Skyring also applied for a judicial review on the grounds that there was never any court determination on the issue, and the 1995 order should be set aside so he could institute proceedings “unencumbered”. Mullins J refused leave and dismissed the application.

Re Skyring [2013] QSC 197:

> *"White J in the course of giving the reasons for the 1995 order referred to the disposition of the applicant's currency issue against the applicant by Deane J in Re Skyring's Application (No 2) (1985) 59 ALJR 561 which decision was upheld by the Full Court of the High Court. That the applicant's argument was disposed on the merits has been recognised in other cases, such as Clampett v Kerslake (Electoral Commissioner of Qld) [2009] QCA 104. It is incontrovertible that the applicant's argument about what is legal tender was authoritatively determined against him in the High Court, as accurately recorded by White J in the reasons for the 1995 order. The applicant's desire to re-agitate an argument that has been settled authoritatively and resulted in the vexatious proceedings order against him."*

https://freemandelusion.com/wp-content/uploads/2020/06/re-skyring-2013-qsc-197.pdf

Re Skyring's Application (No 2) (1985) 59 ALJR 561 is unpublished online, but I did find this statement by Deane J in a report:

> *"I have come to the clear conclusion that there is no substance in the argument that there is a constitution bar against the issue by the Commonwealth of paper money as legal tender. Nor in my view would there be any substance in an argument that the provisions of s 36(1) of the Reserve Bank Act 1959 are invalidated or overruled by the provisions of the Currency Act."*

The argument was also raised in ***Fyffe v State of Victoria [2000] HCA 31***, in which ***Brian Fyffe*** contended that the state did not, or may not have, lawfully paid for land it acquired in 1989 through the *Ministry for Conservation, Forests and Lands*, because it did not pay in the manner prescribed by s 115 of the Commonwealth Constitution. Hayne J also cited Deane J in *Re Skyring's Application (No 2) (1985) 59 ALJR 561* and ruled that:

> *"It is enough to say of this point that, in my opinion, it is wholly without substance."*

https://freemandelusion.com/wp-content/uploads/2020/10/fyffe-v-state-of-victoria-2000-hca-31.pdf

Patrick Cusack also ran the currency argument numerous times before the High Court. It is very rare for an individual to be declared a vexatious litigant by the High Court. Only four people have been declared to be vexatious litigants by the High Court of Australia since its inception, and two of those were regarding this long-debunked currency argument. One was Patrick Cusack in ***Jones v Cusack [1992] HCA 40*** and the other was Alan Skyring in ***Jones v Skyring [1992] HCA 39***. It was ordered that either *"...shall not, without the leave of the Court or a Justice, begin any action, appeal or other proceeding in the Court."*

https://freemandelusion.com/wp-content/uploads/2020/11/jones-v-cusack-1992-hca-40-1992-109-alr-313-1992-66-aljr-815-27-august-1992.pdf

https://freemandelusion.com/wp-content/uploads/2020/11/jones-v-skyring-1992-hca-39.pdf

This contention has been raised very often in the courts. You can read further cases on this website under the Tag "***The Currency Argument***".

The following is a published response from the ***Tolling Customer Ombudsman*** responding to the section 115 argument regarding non-payment of tolls.

https://freemandelusion.com/wp-content/uploads/2018/07/claim-regarding-opportunity-to-pay-tolls-and-fees-in-gold-or-silver-coin-february-2015.pdf

Most of these arguments are a form of protest against the fractional reserve banking system, however misconceived they are. There have even been some academic papers published on this subject, like the following from Andrew Dahdal, entitled "***The Constitutionality of Fiat Paper Money in Australia: Fidelity or Convenience?***"

https://freemandelusion.com/wp-content/uploads/2018/07/andrew-dahdal-the-constitutionality-of-fiat-paper-money-in-australia-fidelity-or-convenience.pdf

Paper money

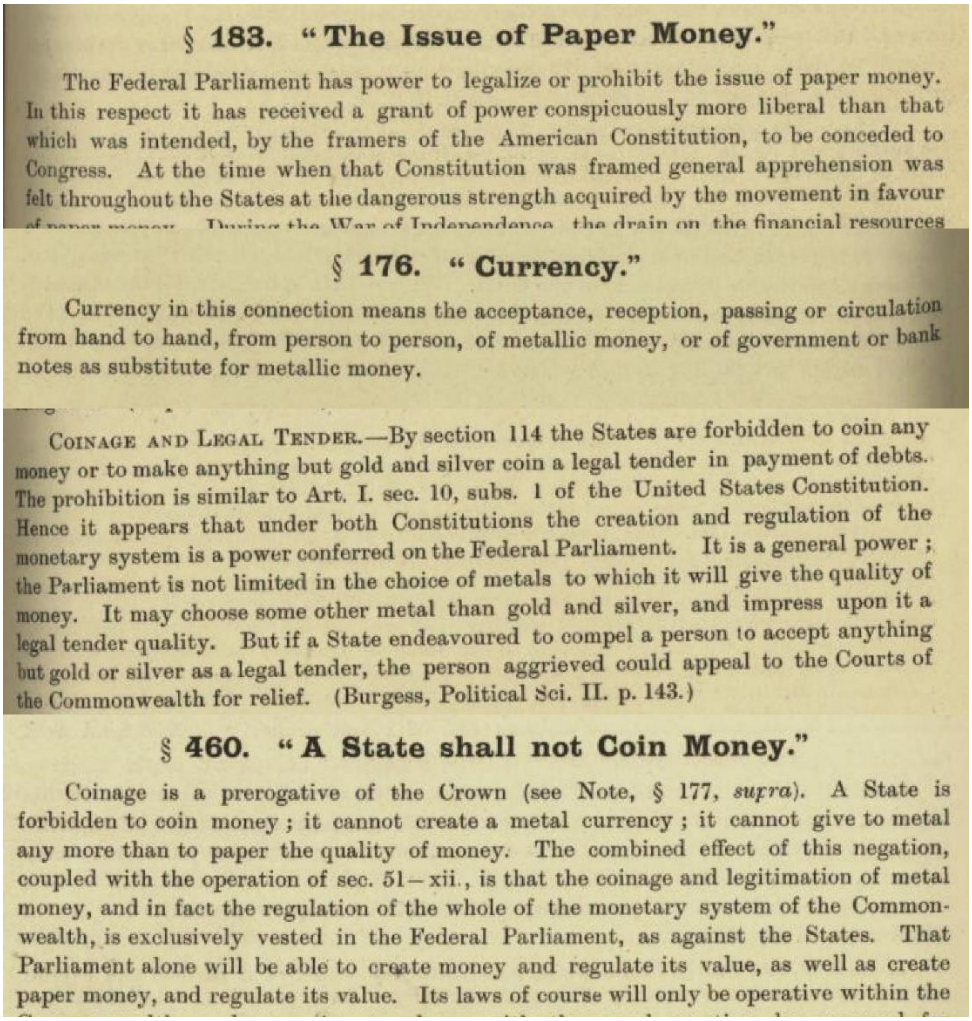
Many of the preceding litigants arguments revolve around the notion that the Commonwealth has no constitutional source of power to create legal tender other than gold and silver, specifically aimed at the fractional reserve banking system, and often includes the "***Book-entry credits***" contention, based on the ***US Credit River decisions***. (*First National Bank of Montgomery v Daly* and *Jerome Daly v Savage State Bank & Anor).*

The power to create currency is provided for under section 51 of the *Constitution* **-** 51(xii) *"currency, coinage, and legal tender"* and section 51(xiii) *"banking... and the issue of paper money"*. Banknotes issued by the Reserve Bank of Australia, and coin up to certain amounts have the status of “legal tender”. (See section 36 ***Reserve Bank Act 1959***, and section 16 ***Currency Act 1965***) A referendum is not required to change the currency, as this is clearly within the legislative powers of the Commonwealth.

The following passages in ***The Annotated constitution of the Australian Commonwealth*** by Quick and Garran explain this source of power.

> Page 579 - "The Federal Parliament has power to legalize or prohibit the issue of paper money, in this respect it has received a grant of power conspicuously more liberal than that which was intended, by the framers of the American Constitution, to be conceded to Congress."
>
> *Page 572 - "Currency in this connection means the acceptance, reception, passing or circulation from hand to hand, from person to person, of metallic money, or of government or bank notes as substitute for metallic money."*
>
> *Page 575 - "By section 114 the States are forbidden to coin any money or to make anything but gold and silver coin a legal tender in payment of debts. The prohibition is similar to Art. I. sec. 10, subs. 1 of the United States Constitution. Hence it appears that under both Constitutions the creation and regulation of the monetary system is a power conferred on the Federal Parliament. It is a general power; the Parliament is not limited in the choice of metals to which it will give the quality of money. It may choose some other metal than gold and silver, and impress upon it a legal tender quality."*

Page 950 - "A State is forbidden to coin money; it cannot create a metal currency; it cannot give to metal any more than to paper the quality of money. The combined effect of this negation, coupled with the operation of sec. 51—xii., is that the coinage and legitimation of metal money, and in fact the regulation of the whole of the monetary system of the Commonwealth, is exclusively vested in the Federal Parliament, as against the States. That Parliament alone will be able to create money and regulate its value, as well as create paper money, and regulate its value."



§ 183. "The Issue of Paper Money."

The Federal Parliament has power to legalize or prohibit the issue of paper money. In this respect it has received a grant of power conspicuously more liberal than that which was intended, by the framers of the American Constitution, to be conceded to Congress. At the time when that Constitution was framed general apprehension was felt throughout the States at the dangerous strength acquired by the movement in favour of paper money. During the War of Independence the drain on the financial resources

§ 176. "Currency."

Currency in this connection means the acceptance, reception, passing or circulation from hand to hand, from person to person, of metallic money, or of government or bank notes as substitute for metallic money.

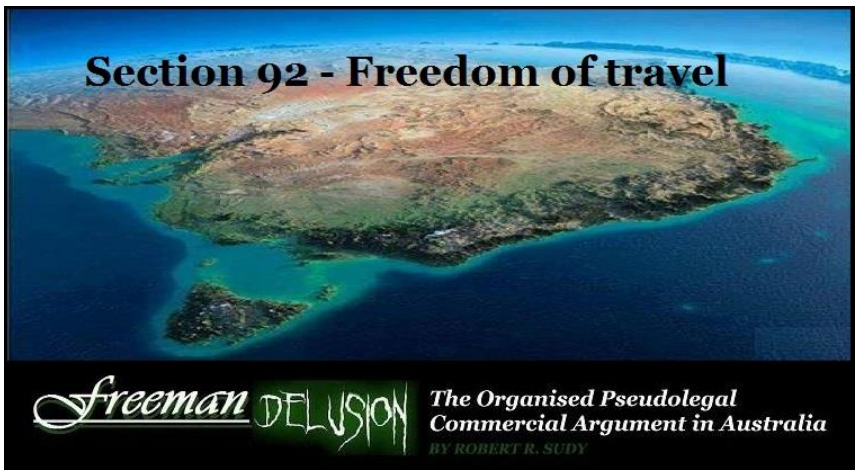
COINAGE AND LEGAL TENDER.—By section 114 the States are forbidden to coin any money or to make anything but gold and silver coin a legal tender in payment of debts. The prohibition is similar to Art. I. sec. 10, subs. 1 of the United States Constitution. Hence it appears that under both Constitutions the creation and regulation of the monetary system is a power conferred on the Federal Parliament. It is a general power; the Parliament is not limited in the choice of metals to which it will give the quality of money. It may choose some other metal than gold and silver, and impress upon it a legal tender quality. But if a State endeavoured to compel a person to accept anything but gold or silver as a legal tender, the person aggrieved could appeal to the Courts of the Commonwealth for relief. (Burgess, Political Sci. II. p. 143.)

§ 460. "A State shall not Coin Money."

Coinage is a prerogative of the Crown (see Note, § 177, *supra*). A State is forbidden to coin money; it cannot create a metal currency; it cannot give to metal any more than to paper the quality of money. The combined effect of this negation, coupled with the operation of sec. 51—xii., is that the coinage and legitimation of metal money, and in fact the regulation of the whole of the monetary system of the Commonwealth, is exclusively vested in the Federal Parliament, as against the States. That Parliament alone will be able to create money and regulate its value, as well as create paper money, and regulate its value. Its laws of course will only be operative within the

Ultimately, the purpose of section 115 was specifically to prohibit the States from creating currency, as this power is wholly conferred on the Commonwealth. It is an exclusive legislative power, as opposed to a concurrent power.

Section 92 - Freedom of travel



Section 92 of the *Commonwealth Constitution* actually has nothing to do with freedom of travel between the states, or some constitutional right to drive unregistered and unlicensed, as Australian pseudolaw adherents like to imply, but rather, the concept of FREE TRADE between the States.

Section 92 of the *Constitution* provides:

> *"Trade within the Commonwealth to be free: On the imposition of uniform duties of customs, trade, commerce, and intercourse among the States, whether by means of internal carriage or ocean navigation, shall be absolutely free. But notwithstanding anything in this Constitution, goods imported before the imposition of uniform duties of customs into any State, or into any Colony which, whilst the goods remain therein, becomes a State, shall, on thence passing into another State within two years after the imposition of such duties, be liable to any duty chargeable on the importation of such goods into the Commonwealth, less any duty paid in respect of the goods on their importation."*

The chapter in the *Constitution* that this provision appears in is under Chapter IV "*Finance and Trade*", and it specifically states "*TRADE within the Commonwealth to be free".*

In the case of ***Cole v Whitfield [1988] HCA 18***, in a unanimous decision, the High Court identified the full extent of section 92:

> *"The purpose of the section is clear enough: to create a free trade area throughout the Commonwealth and to deny to Commonwealth and States alike a power to prevent or obstruct the free movement of people, goods and communications across State boundaries.*
>
> *The expression "free trade" commonly signified in the nineteenth century, as it does today, an absence of protectionism, that is, the protection of domestic industries against foreign competition. Accordingly, s. 92 prohibits the Commonwealth and the States from imposing burdens on interstate trade and commerce which: 1. discriminate against it by conferring an advantage on intrastate trade or commerce of the same kind, and 2. are protectionist in character."*

https://freemandelusion.com/wp-content/uploads/2018/07/cole-v-whitfield-1988-hca-18.pdf

A great summary of the preceding decisions regarding section 92 can be found in ***Nationwide News Pty Ltd v Wills (1992) HCA 46*** (from 33):

> *"Cases prior to Cole v. Whitfield admitted the validity of laws for the protection of a State against the introduction into the State of animal: Ex parte Nelson (No.1) (1928) 42 CLR 209, at pp 218-219) and plant: Tasmania v. Victoria (1935) 52 CLR 157, at pp 168-169) diseases, noxious drugs: The Commonwealth v. Bank of N.S.W. (1949) 79 CLR 497, at p 641; (1950) AC 235, at pp 311-312), gambling materials and pornography: R. v. Connare; Ex parte Wawn (1939) 61 CLR 596, at pp 620, 628; see also Mansell v. Beck (1956) 95 CLR 550).*
>
> *The Privy Council said that permissible regulation of trade might take the form "of excluding from passage across the frontier of a State creatures or things calculated to injure its citizens": The Commonwealth v. Bank of N.S.W.(1949) 79 CLR 497, at p 641; (1950) AC, at p 312. See also Fergusson v. Stevenson (1951) 84 CLR 421, at pp 434-435, and the views of Inglis Clark in Studies in Australian Constitutional Law, (1901), p 146 and of Harrison Moore in The Constitution of the Commonwealth of Australia, 2nd ed. (1910), p 571, and cf. Quick and Garran, op cit, pp 850-853).*
>
> *Where the true character of a law, ascertained by reference to the "grounds and design of the legislation, and the primary matter dealt with, (and) its object and scope": Ex parte Nelson (No.1) (1928) 42 CLR , at p 218), is to protect the State or its residents from injury, a law which expressly prohibits or impedes movement of the apprehended source of injury across the border into the State may yet be valid: Chapman v. Suttie (1963) 110 CLR 321, at p 341. However, the severity of and need for the prohibitory measure are relevant considerations: Tasmania v. Victoria (1935) 52 CLR , at pp 168-169).*
>
> *After Cole v. Whitfield, these cases need not be seen as exceptions to a general invalidation of laws impairing the guaranteed freedom of interstate trade and commerce, but the reasoning in these cases is material to the scope of the guaranteed freedom of interstate intercourse. Although State borders are not to be regarded "as in themselves possible barriers to intercourse between Australians", they do mark the territorial end of one area of legislative competence and the territorial beginning of another. Since State legislative competence is maintained by ss.106 and 107 of the Constitution, s.92 cannot transform a mere change in legal regime applicable to a person, thing or intangible that is moved across a State boundary into an impermissible burden on that movement. The change in the legal regime on one side of the border may impose a burden that is not imposed on the other, but that is not enough in itself to amount to an impermissible burden.*
>
> *Nor does s.92 purport to place interstate intercourse in a position where it is immune from the operation of laws of general application which are not aimed at interstate intercourse. The object of s.92 is to preclude the crossing of the border from attracting a burden which the transaction would not otherwise have to bear; its object is not to remove a burden which the transaction would otherwise have to bear if there were no border crossing. Section 92 does not invalidate laws that do not select a movement across a State border as a criterion of the imposition of the burden but do have the effect of burdening interstate intercourse provided (1) the law is enacted chiefly for a purpose other than preventing or impeding a crossing of a State border, (2) the*

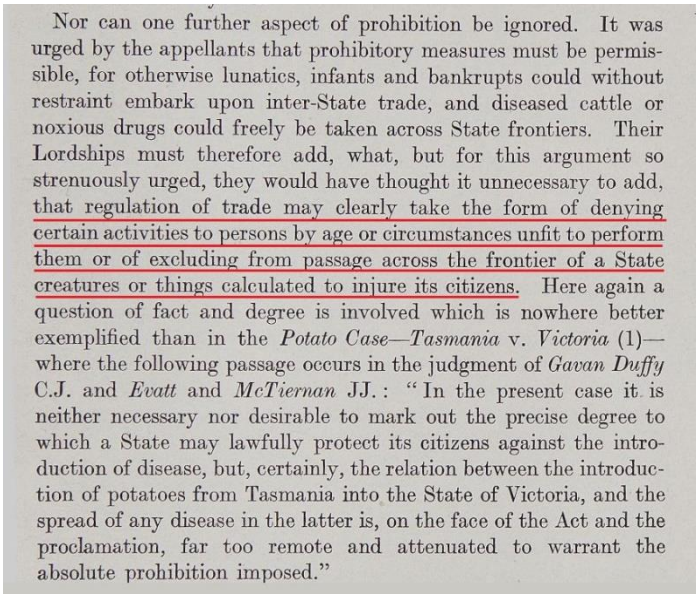
imposition of the burden is appropriate and adapted to the fulfilment of the other purpose: Cf. Castlemaine Tooheys Ltd. v. South Australia (1990) 169 CLR , at pp 471-472, where a corresponding requirement in relation to freedom of interstate trade and commerce is discussed) and (3) the prevention or impediment to border crossing is an incidental and necessary consequence of the law's operation: R. v. Connare; Ex parte Wawn (1939) 61 CLR , at p 616).

Of course, many transactions which constitute interstate trade and commerce equally constitute interstate intercourse, but it does not follow that the protection with which s.92 clothes a single interstate movement requires the transaction to be classified exclusively as either trade and commerce or as intercourse. The protection which s.92 gives to a particular interstate movement is indirect: it invalidates a law which would otherwise apply to an interstate movement where the law imposes an impermissible burden on transactions of the kind in which the particular movement occurs.

This view of the operation of s.92 found some support even before Cole v. Whitfield: See North Eastern Dairy Co. Ltd. v. Dairy Industry Authority of N.S.W. (1975) 134 CLR , at pp 614-615; Clark King and Co. Pty. Ltd. v. Australian Wheat Board (1978) 140 CLR 120, per Mason and Jacobs JJ. at p 188; Australian Coarse Grains Pool Pty. Ltd. v. Barley Marketing Board (1985) 157 CLR 605, at pp 649-650; Miller v. TCN Channel Nine Pty. Ltd. (1986) 161 CLR , at pp 570-571,609-610) and, since Cole v. Whitfield, replaces the "individual rights" theory of s.92 which had prevailed at one time: Barley Marketing Board (N.S.W.) v. Norman (1990) 171 CLR 182, at p 201). In accordance with this view, the validity of a law affecting interstate trade and commerce is now tested by reference to its discriminatory and protectionist effect: See Castlemaine Tooheys Ltd. v. South Australia (1990) 169 CLR , at pp 471ff). A law which imposes a burden on interstate trade or commerce must satisfy the test propounded in Cole v. Whitfield if it is to escape invalidity; a law which imposes a burden on a category of interstate intercourse (whether or not it is also a category of interstate trade or commerce) must satisfy a test stated in the terms discussed in this judgment. If one law applies to a movement because the movement occurs in a transaction of interstate trade and commerce and another law applies to the same movement because it is an instance of interstate intercourse, it is necessary to determine the validity of each law in order to decide whether any burden legislatively imposed on the movement has been validly imposed."

https://freemandelusion.com/wp-content/uploads/2018/07/nationwide-news-pty-ltd-v-wills-1992-hca-46.pdf

It is important to note that the provision does not imply a blanket prohibition over any laws that restrict access into a State, as seen during the COVID-19 pandemic. As stated by the Privy Council in ***Commonwealth v Bank of New South Wales [1949] UKPCHCA 1; [1949] 79 CLR 497*** (on page 461) permissible regulation of trade might take the form *"of excluding from passage across the frontier of a State creatures or things calculated to injure its citizens":*



Nor can one further aspect of prohibition be ignored. It was urged by the appellants that prohibitory measures must be permissible, for otherwise lunatics, infants and bankrupts could without restraint embark upon inter-State trade, and diseased cattle or noxious drugs could freely be taken across State frontiers. Their Lordships must therefore add, what, but for this argument so strenuously urged, they would have thought it unnecessary to add, that regulation of trade may clearly take the form of denying certain activities to persons by age or circumstances unfit to perform them or of excluding from passage across the frontier of a State creatures or things calculated to injure its citizens. Here again a question of fact and degree is involved which is nowhere better exemplified than in the *Potato Case—Tasmania* v. *Victoria* (1)—where the following passage occurs in the judgment of *Gavan Duffy* C.J. and *Evatt* and *McTiernan* JJ.: "In the present case it is neither necessary nor desirable to mark out the precise degree to which a State may lawfully protect its citizens against the introduction of disease, but, certainly, the relation between the introduction of potatoes from Tasmania into the State of Victoria, and the spread of any disease in the latter is, on the face of the Act and the proclamation, far too remote and attenuated to warrant the absolute prohibition imposed."

Hence when in ***Palmer & Anor v The State of Western Australia & Anor [2020] HCATrans 180*** the High Court was asked whether the *Quarantine (Closing the Border) Directions* (WA) and/or the authorising *Emergency Management Act 2005* (WA) were invalid because they impermissibly infringed section 92 of the *Constitution,* the court responded that on their proper construction, in their application to an emergency constituted by the occurrence of a hazard in the nature of a plague or epidemic, comply with the constitutional limitation of section 92 of the Constitution in each of its limbs.

The detailed reasons were published in ***Palmer v Western Australia [2021] HCA 5***.

https://freemandelusion.com/wp-content/uploads/2018/07/palmer-v-the-state-of-western-australia-2021-hca-5.pdf

Section 100 - Water rights

Section 100 of the *Commonwealth Constitution* provides:

> "Nor abridge right to use water: The Commonwealth shall not, by any law or regulation of trade or commerce, abridge the right of a State or of the residents therein to the reasonable use of the waters of rivers for conservation or irrigation."

It is important to note the initial words in this provision: *"The Commonwealth shall not…"* Like section 116, and section 99, it is a provision that solely applies to the Commonwealth and does not in any way apply to the States. Its purpose was to prevent the Commonwealth from infringing on the water rights of the States with respect to trade and commerce, as was found in ***Commonwealth v Tasmania [1983] HCA 21*** (popularly known as the *Tasmanian Dam Case*).

Sections 99 and 100 of the *Constitution* have been the subject of relatively little consideration by the High Court of Australia since federation. The decision in ***Morgan v Commonwealth [1947] HCA 6*** dealt directly with section 99 and, in the course of doing so, the Court made certain observations about section 100:

> *"The following phrases are used in this group of sections : section 98—•" laws with respect to trade and commerce " ; section 99—" any law or regulation of trade, commerce, or revenue " ; section 100—" any law or regulation of trade or commerce " ; section 101—" provisions of this Constitution relating to trade and commerce and … all laws made thereunder " ; section 102—" any law with respect to trade or commerce." These phrases vary in some particulars but they are all intended to refer to the same subject matter, namely laws which the Parliament can make under the power conferred upon it by section 51 (i)."*

Section 100 was also mentioned in ***Arnold v Minister Administering the Water Management Act 2000 [2010] HCA 3***. The New South Wales Court of Appeal also regarded *Morgan* in relation to section 100 in ***Arnold v Minister Administering the Water Management Act 2000 [2008] NSWCA 338***.

In the *Tasmanian Dam Case*, the Hydro-Electric Commission contended (amongst other things) that the Commonwealth regulations prohibiting it from building a dam on a Tasmanian river were invalid as a

result of the operation of section 100. Mason, Murphy and Brennan JJ each applied *Morgan* in separate reasons for decision. Mason J, (at 153), expressly addressed the question whether the Commonwealth legislation infringed section 100. He said the prohibitions in sections 99 and 100 were plainly directed to the Commonwealth, not to the States.

In *Arnold CA*, the appellants had commenced proceedings in the Land and Environment Court in New South Wales challenging the validity of a legislative scheme whereby farmers who held groundwater extraction entitlements required aquifer access licences and supplementary water licences. The appellants contended that a water sharing plan made in 2006 under this legislative scheme and the legislative scheme itself were invalid and unconstitutional, based upon section 51(xxxi) concerning the acquisition of the property on just terms by the Commonwealth, and on section 100. As to the section 100 point, the Chief Justice, (at 89), explained that the focus of attention in the proceeding, for the proposition that the appellants had no prospect of success, was upon the words *"by any law or regulation of trade or commerce"*. His Honour there said that this was a matter that had been "authoritatively determined by the High Court in *Morgan*…". His Honour noted, (at 90), that the appellants did not contend that the laws in question in the case before the Court were capable of answering that description. His Honour further noted, (at 91), that in the *Tasmanian Dam Case*, Mason, Murphy and Brennan JJ accepted the authority of *Morgan*.

In *Arnold HC*, the High Court declined an invitation to re-open *Morgan*, which the appellants had submitted should be overruled on the basis that the words *"law or regulation of trade or commerce"* in section 100 were not confined to laws made under section 51(i). The Court considered that the rights of the holders of bore licences under the old legislation were not to *"the waters of rivers"* within the meaning of section 100, which expression spoke only to surface water of a stream flowing in a defined channel.

A summary of these and other associated cases can be found in ***Lee v Commonwealth of Australia [2014] FCAFC 174*** where the Federal Court examined a challenge to the validity of the *Water Act 2007* (Cth) and claim for damages as a result of impairment by abridgment or acquisition of water entitlements and allocations, likewise based on a claim under section 100 of the *Constitution*.

https://freemandelusion.com/wp-content/uploads/2021/04/lee-v-commonwealth-of-australia-2014-fcafc-174.pdf

For peace, order and good government

The words *"for peace, order and good government"* appear in the Commonwealth and State Constitutions in relation to the legislative powers of the parliaments. For example, section 51 of the *Commonwealth Constitution* begins with the words:

> *"The Parliament shall, subject to this Constitution, have power to make laws for the peace, order, and good government of the Commonwealth with respect to…"*

Similarly, by reference to the legislative powers of state parliaments, ***Section 5 of the Constitution Act 1902 (NSW)*** states:

> *"The Legislature shall, subject to the provisions of the Commonwealth of Australia Constitution Act, have power to make laws for the peace, welfare, and good government of New South Wales in all cases whatsoever."*

There is a pseudolaw theory that unless a law is in fact "*for peace, order and good government*" then it is beyond legislative powers, for example if a law isn't personally considered to be "good" or "peaceful" then it is invalid.

From ***Union Steamship Co of Australia Pty Ltd v King [1988] HCA 55*** (from 13):

> *"The scope and content of the power conferred by s.5 of the Constitution Act 1902 (N.S.W.) to make laws "for the peace, welfare, and good government of New South Wales" is still a topic of current debate: see BLF v. Minister for Industrial Relations (1986) 7 NSWLR 372. This may seem somewhat surprising. The explanation is historical and it is to be found in the evolving relationships between the United Kingdom and its colonies, especially the relationships with the Australian colonies and, after federation, with the Commonwealth of Australia and the Australian States.*

The power to make laws "for the peace, welfare, and good government" of a territory is indistinguishable from the power to make laws "for the peace, order and good government" of a territory. Such a power is a plenary power and it was so recognized, even in an era when emphasis was given to the character of colonial legislatures as subordinate law-making bodies. The plenary nature of the power was established in the series of historic Privy Council decisions at the close of the nineteenth century: Reg. v. Burah (1878) 3 AppCas 889; Hodge v. The Queen (1883) 9 AppCas 117; Powell v. Apollo Candle Company (1885) 10 AppCas 282; Riel v. The Queen (1885) 10 AppCas 675. They decided that colonial legislatures were not mere agents or delegates of the Imperial Parliament.

Lord Selborne, speaking for the Judicial Committee in Burah, said (at p 904) that the Indian Legislature "has, and was intended to have, plenary powers of legislation, as large, and of the same nature, as those of Parliament itself". Later, Sir Barnes Peacock in Hodge, speaking for the Judicial Committee, stated (at p132) that the legislature of Ontario enjoyed by virtue of the British North America Act 1867 (Imp.): "authority as plenary and as ample within the limits prescribed by sect.92 as the Imperial Parliament in the plenitude of its power possessed and could bestow.

Within these limits of subjects and area the local legislature is supreme, and has the same authority as the Imperial Parliament …" In Riel Lord Halsbury L.C., delivering the opinion of the Judicial Committee, rejected (at p 678) the contention that a statute was invalid if a court concluded that it was not calculated as a matter of fact and policy to secure the peace, order and good government of the territory. His Lordship went on to say (at p 678) that such a power was "apt to authorize the utmost discretion of enactment for the attainment of the objects pointed to". In Chenard and Co. v. Joachim Arissol (1949) AC 127, Lord Reid, delivering the opinion of the Judicial Committee, cited (at p 132) Riel and the comments of Lord Halsbury LC with evident approval. More recently Viscount Radcliffe, speaking for the Judicial Committee, described a power to make laws for the peace, order and good government of a territory as "connot(ing), in British constitutional language, the widest law-making powers appropriate to a Sovereign": Ibralebbe v. The Queen (1964) AC 900, at p 923.

These decisions and statements of high authority demonstrate that, within the limits of the grant, a power to make laws for the peace, order and good government of a territory is as ample and plenary as the power possessed by the Imperial Parliament itself. That is, the words "for the peace, order and good government" are not words of limitation. They did not confer on the courts of a colony, just as they do not confer on the courts of a State, jurisdiction to strike down legislation on the ground that, in the opinion of a court, the legislation does not promote or secure the peace, order and good government of the colony. Just as the courts of the United Kingdom cannot invalidate laws made by the Parliament of the United Kingdom on the ground that they do not secure the welfare and the public interest, so the exercise of its legislative power by the Parliament of New South Wales is not susceptible to judicial review on that score. Whether the exercise of that legislative power is subject to some restraints by reference to rights deeply rooted in our democratic system of government and the common law (see Drivers v. Road Carriers (1982) 1 NZLR 374, at p 390; Fraser v. State Services Commission (1984) 1 NZLR 116, at p 121; Taylor v. New Zealand Poultry Board (1984) 1 NZLR 394, at p 398), a view which Lord Reid firmly rejected in Pickin v. British Railways Board (1974) AC 765, at p 782, is another question which we need not explore."

https://freemandelusion.com/wp-content/uploads/2019/06/union-steamship-co-of-australia-pty-ltd-v-king-1988-hca-55.pdf

Similarly in ***Essenberg v The Queen [2000] HCATrans 297*:**

> *GUMMOW J: "Now these words, "for peace, order and good government" are words of expansion, not contraction, you see – they are not words of limitation."*
>
> *McHUGH J: "They do not limit the powers. In fact they arguably have no legal effect whatever, and that is the doctrine of this Court. We do not make a decision as to whether the law is for the peace, for the order, for the good government. It is assumed that if Parliament makes it, it is, and the real question is, is it a law with the same respect to trade and commerce in other countries or whatever the relevant law of Parliament relies on, but this Court has never attempted to say that a law, on the subject of trade and commerce, for example, is not "for peace, order and good government". It is, in effect, a parliamentary expression rather than a legal expression. It does not limit Parliament's power; it is said to expand them."*

https://freemandelusion.com/wp-content/uploads/2019/05/essenberg-v-the-queen-2000-hcatrans-297.pdf

Section 3 - Governor General to be paid in pounds

Some adherents insist that the Governor General must be paid in pounds, citing 3 of the *Commonwealth Constitution* which provides:

> *"Salary of Governor-General: There shall be payable to the Queen out of the Consolidated Revenue fund of the Commonwealth, for the salary of the Governor-General, an annual sum which, until the Parliament otherwise provides, shall be ten thousand pounds. The salary of a Governor-General shall not be altered during his continuance in office."*

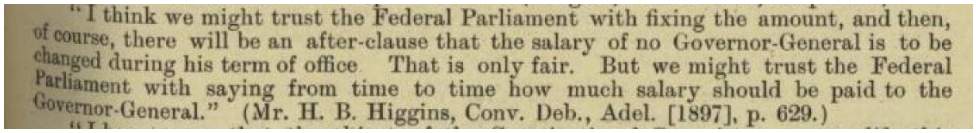
The ten thousand pounds specified by the Constitution referred to the currency in use in Australia in 1901, pound sterling. This was replaced by the Australian pound in 1910, which was linked to the gold standard at parity to £ sterling until 1931. When the United Kingdom abandoned the gold standard in 1931, the Australian pound was devalued and traded at a discount to pound sterling of around 25%. The Australian pound was replaced by the Australian dollar on 14 February 1966, where £1 Australian equaled A$2.

The salary remained unchanged at £10,000 until the introduction of decimal currency in Australia in 1966 when it became A$20,000 and remained unchanged until 1974. The 1st Governor-General, Lord Hopetoun, received no allowance for maintaining Government Houses in Melbourne and Sydney nor for staff, travel or other expenses. Instead the Governor-General was required to meet these from the fixed salary. The 2nd Governor-General, Baron Tennyson fared slightly better, with an allowance for the operation of Government House in Melbourne and Sydney, and the Official Secretary to the Governor-General was paid by the Australian government. The Governor-General was required to meet staff salaries and some household expenses from their salary. The requirement to meet staff salaries continued until the retirement of the 12th Governor-General, Sir William McKell, with half his salary going on "staff sustenance". The contribution to household expenses continued until the retirement of the 17th Governor General, Sir Paul Hasluck.

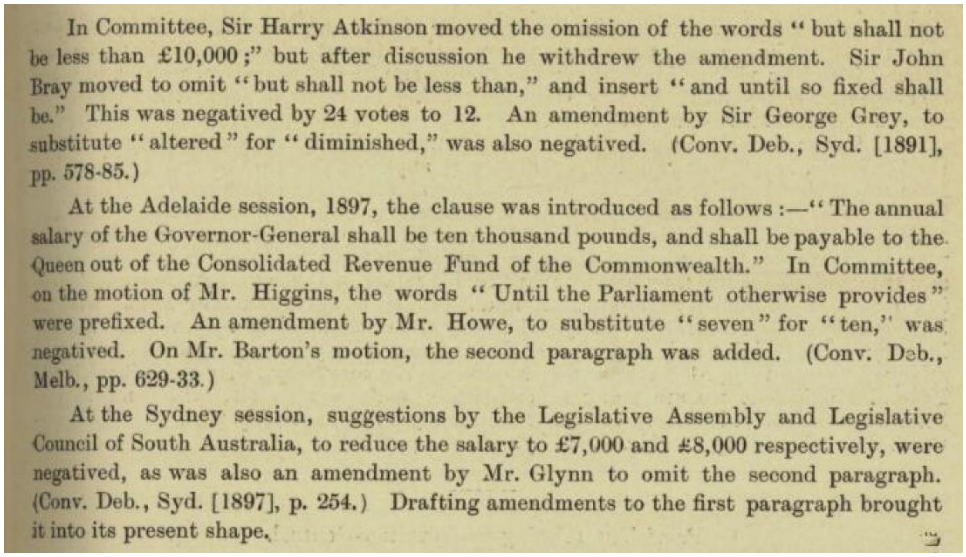
Until 2001, Governors-General did not pay income tax on their salary; this was changed after the Queen agreed to pay tax. Today, the salary is set to be slightly higher than that of the Chief Justice of the High Court, over a five-year period.

Section 3 of the *Constitution* entrusted to the Federal Parliament to *"otherwise provide"* for the salary amount. They did so before the appointment of Sir John Kerr as the 18th Governor-General in 1974, increasing the salary to $30,000 with the passing of the ***Governor-General Act 1974***, and have since set the salary of each incoming Governor-General by amending this Act, consistent with the final paragraph of section 3 of the *Constitution.*

Page 401 of *The annotated constitution of the Australian Commonwealth* by Quick and Garran:



"I think we might trust the Federal Parliament with fixing the amount, and then, of course, there will be an after-clause that the salary of no Governor-General is to be changed during his term of office. That is only fair. But we might trust the Federal Parliament with saying from time to time how much salary should be paid to the Governor-General." (Mr. H. B. Higgins, Conv. Deb., Adel. [1897], p. 629.)



In Committee, Sir Harry Atkinson moved the omission of the words "but shall not be less than £10,000;" but after discussion he withdrew the amendment. Sir John Bray moved to omit "but shall not be less than," and insert "and until so fixed shall be." This was negatived by 24 votes to 12. An amendment by Sir George Grey, to substitute "altered" for "diminished," was also negatived. (Conv. Deb., Syd. [1891], pp. 578-85.)

At the Adelaide session, 1897, the clause was introduced as follows:—"The annual salary of the Governor-General shall be ten thousand pounds, and shall be payable to the Queen out of the Consolidated Revenue Fund of the Commonwealth." In Committee, on the motion of Mr. Higgins, the words "Until the Parliament otherwise provides" were prefixed. An amendment by Mr. Howe, to substitute "seven" for "ten," was negatived. On Mr. Barton's motion, the second paragraph was added. (Conv. Deb., Melb., pp. 629-33.)

At the Sydney session, suggestions by the Legislative Assembly and Legislative Council of South Australia, to reduce the salary to £7,000 and £8,000 respectively, were negatived, as was also an amendment by Mr. Glynn to omit the second paragraph. (Conv. Deb., Syd. [1897], p. 254.) Drafting amendments to the first paragraph brought it into its present shape.

There have been various amendments to the *Governor-General Act 1974*, the last amendment was via the ***Governor-General Amendment (Salary) Bill 2019***, to set the salary for the incoming Governor-General David Hurley. The Queen agreed to extend the appointment of the current Governor-General, Sir Peter Cosgrove, until that time.

Like all the other sections of the *Constitution* that state *"until the Parliament otherwise provides"* the text of this provision remains completely unaltered. This may cause confusion to some not familiar with the subsequent enactments, but it is nevertheless consistent with the *Constitution*. The Parliament is empowered to create legislation *"otherwise providing"* for the subject matter under section 51(xxxvi), but the alteration of the text of the *Constitution* requires a referendum under section 128.

Pounds are no longer in existence as a currency in Australia. I believe it was Galdron J who made the very good point that the *Constitution* should be read as if it is being read for the very first time, and to apply a modern meaning. As Windeyer J noted in ***Ex parte Professional Engineers' Association (1959) 107 CLR 208*** at 267: *"Law is to be accommodated to changing facts…"* Following the constitutional technique which has been approved in the ***Engineers Case (1920) 28 CLR 129***, plain English should be used in interpretation. It is also important to use connotation rather than denotation (See *Engineers* at 142-3 and 151; and also see ***Grain Pool of Western Australia v Commonwealth (2000) 202 CLR 479*** at 493).

In ***Walter v Mackay Regional Council [2015] FCCA 351***, (At 5) ***David Walter*** argued unsuccessfully during bankruptcy proceedings that legislation passed in Australia since 1966 is unconstitutional because it has been signed by Governor Generals who were paid in dollars, not pounds as specified by the constitution.

https://freemandelusion.com/wp-content/uploads/2019/06/walter-v-mackay-regional-council-2015-fcca-351.pdf

Peter Gargan argued the same point to press the former officer's case in a ***letter to the then prime minister***, Malcolm Turnbull, in April 2016. He urged Turnbull to call a "referendum to normalise the currency" as *"no legislation since 1966 has been legitimately approved by any Governor General because none of them have been paid in legitimate currency"*. He also wrote to a lawyer involved in ongoing

bankruptcy proceedings against Walter to upbraid him for not engaging with issues he was raising, including "*currency fraud*".

There have been a number of other litigants who raised similar currency arguments before the courts, including Leonard Clampett and Brian Fyffe. (See *Clampett v Hill [2007] QCA 394*, *Clampett v Kerslake (Electoral Commissioner of Queensland) [2009] QCA 104*, *Clampett v Magistrate Cornack [2012] QSC 123*, and *Fyffe v State of Victoria [2000] HCA 31*.) None of these cases have ever been successful, as the matter was already determined prior, in Allan Skyring's cases. (See *Re Skyring's Application (No 2) (1985) 59 ALJR 561*, and *Re Skyring [2013] QSC 197*.) See article on "***Cash is no good for debts! – section 115***" and under the Tag "***The Currency Argument***".

It is important to note the words *"until the Parliament otherwise provides*" when it appears in various provisions of the *Constitution*, and then apply the current interpretation. Most of those sections have in fact already been *"otherwise provided"* for. See article on "***Until the Parliament otherwise provides***".

Until the Parliament otherwise provides

There are various sections of the *Constitution* that states the words *"until the Parliament otherwise provides"*. This may cause confusion to some not familiar with the subsequent enactments, but they are nevertheless consistent with the *Constitution*. The basis of this confusion is due to the text of the particular provision remaining completely unaltered, and this leads some to believe that a current interpretation as held by the courts is unconstitutional. The alteration of the actual text of the *Constitution* requires a referendum under section 128, but the Parliament is thereby empowered to create legislation *"otherwise providing"* for the subject matter under section 51(xxxvi).

It is important to note the words *"until the Parliament otherwise provides"* when it appears in various provisions of the *Constitution*, and then apply the current interpretation, as most of those sections have in fact already been *"otherwise provided"* for.

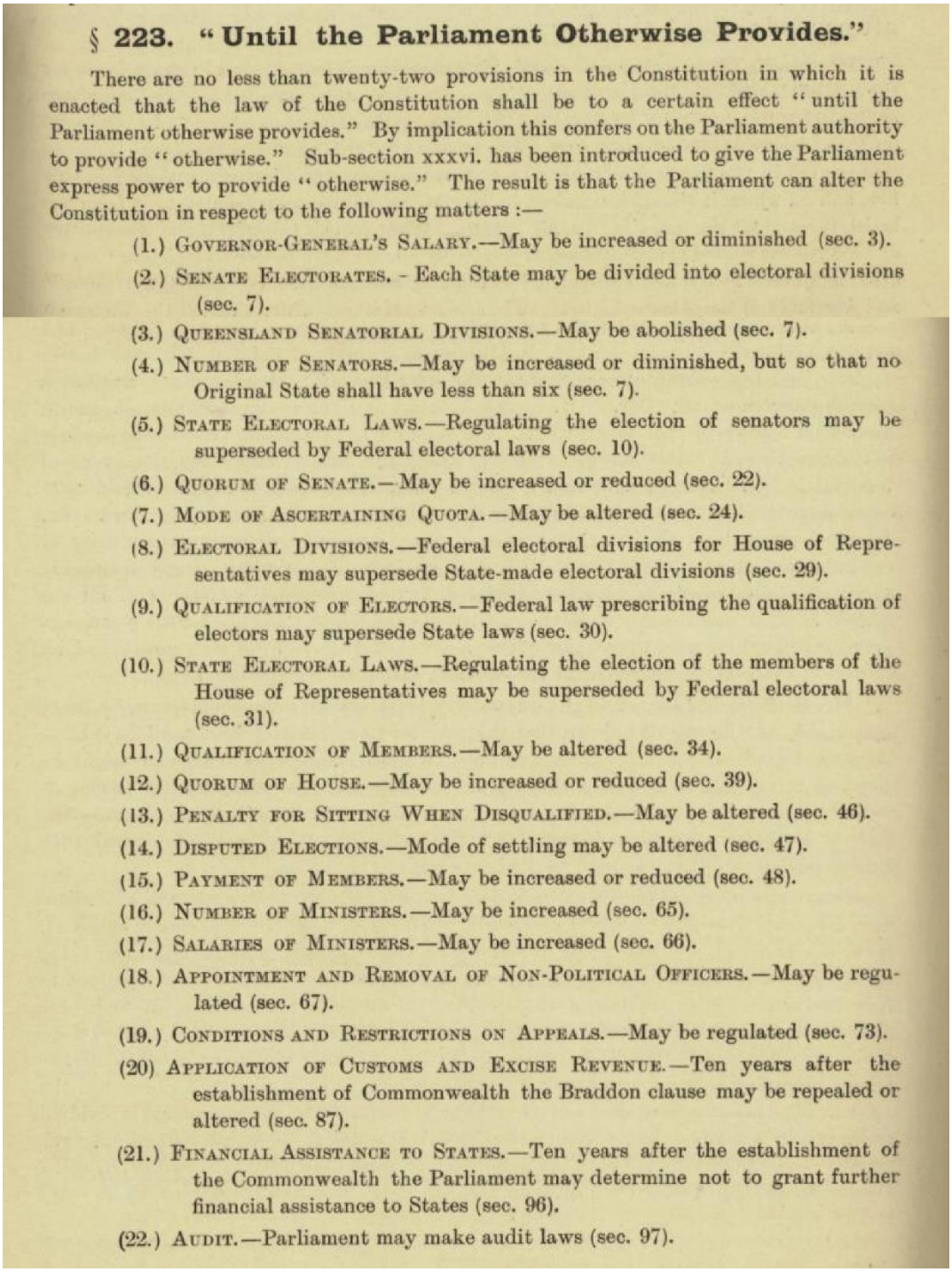
According to ***The Annotated constitution of the Australian Commonwealth*** by Quick and Garran, at page 647:

> *"There are no less than twenty-two provisions in the Constitution in which it is enacted that the law of the Constitution shall be to a certain effect "until the Parliament otherwise provides." By implication this confers on the Parliament authority to provide "otherwise." Sub-section xxxvi. has been introduced to give the Parliament express power to provide "otherwise." The result is that the Parliament can alter the Constitution in respect to the following matters:*

(1.) GOVERNOR-GENERAL'S SALARY. —May be increased or diminished (sec. 3).
(2.) SENATE ELECTORATES. - Each State may be divided into electoral divisions (sec. 7).
(3.) QUEENSLAND SENATORIAL DIVISIONS.— May be abolished (sec. 7).
(4.) NUMBER OF SENATORS. —May be increased or diminished, but so that no Original State shall have less than six (sec. 7).
(5.) STATE ELECTORAL LAWS. —Regulating the election of senators may be superseded by Federal electoral laws (sec. 10).
(6.) QUORUM OF SENATE.— May be increased or reduced (sec. 22).
(7.) MODE OF ASCERTAINING QUOTA.— Maybe altered (sec. 24).
(8.) ELECTORAL DIVISIONS. —Federal electoral divisions for House of Repre sentatives may supersede State-made electoral divisions (sec. 29).
(9.) QUALIFICATION OF ELECTORS. —Federal law prescribing the qualification of electors may supersede State laws (sec. 30).
(10.) STATE ELECTORAL LAWS. —Regulating the election of the members of the House of Representatives may be superseded by Federal electoral laws (sec. 31).
(11.) QUALIFICATION OF MEMBERS. —May be altered (sec. 34).
(12.) QUORUM OF HOUSE. —May be increased or reduced (sec. 39).
(13.) PENALTY FOR SITTING WHEN DISQUALIFIED. —May be altered (sec. 46).
(14.) DISPUTED ELECTIONS. —Mode of settling may be altered (sec. 47).
(15.) PAYMENT OF MEMBERS.—May be increased or reduced (sec. 48).
(16.) NUMBER OF MINISTERS. —May be increased (sec. 65).
(17.) SALARIES OF MINISTERS. —May be increased (sec. 66).
(18.) APPOINTMENT AND REMOVAL OF NON-POLITICAL OFFICERS.— May be regu lated (sec. 67).
(19.) CONDITIONS AND RESTRICTIONS ON APPEALS. —May be regulated (sec. 73).

(20) APPLICATION OF CUSTOMS AND EXCISE REVENUE.— Ten years after the establishment of Commonwealth the Braddon clause may be repealed or altered (sec. 87).
(21.) FINANCIAL ASSISTANCE TO STATES. —Ten years after the establishment of the Commonwealth the Parliament may determine not to grant further financial assistance to States (sec. 96).
(22.) AUDIT. —Parliament may make audit laws (sec. 97)."

Page 647 of *The Annotated constitution of the Australian Commonwealth* by Quick and Garran:



§ 223. "Until the Parliament Otherwise Provides."

There are no less than twenty-two provisions in the Constitution in which it is enacted that the law of the Constitution shall be to a certain effect "until the Parliament otherwise provides." By implication this confers on the Parliament authority to provide "otherwise." Sub-section xxxvi. has been introduced to give the Parliament express power to provide "otherwise." The result is that the Parliament can alter the Constitution in respect to the following matters :—

(1.) GOVERNOR-GENERAL'S SALARY.—May be increased or diminished (sec. 3).

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(3.) QUEENSLAND SENATORIAL DIVISIONS.—May be abolished (sec. 7).

(4.) NUMBER OF SENATORS.—May be increased or diminished, but so that no Original State shall have less than six (sec. 7).

(5.) STATE ELECTORAL LAWS.—Regulating the election of senators may be superseded by Federal electoral laws (sec. 10).

(6.) QUORUM OF SENATE.—May be increased or reduced (sec. 22).

(7.) MODE OF ASCERTAINING QUOTA.—May be altered (sec. 24).

(8.) ELECTORAL DIVISIONS.—Federal electoral divisions for House of Representatives may supersede State-made electoral divisions (sec. 29).

(9.) QUALIFICATION OF ELECTORS.—Federal law prescribing the qualification of electors may supersede State laws (sec. 30).

(10.) STATE ELECTORAL LAWS.—Regulating the election of the members of the House of Representatives may be superseded by Federal electoral laws (sec. 31).

(11.) QUALIFICATION OF MEMBERS.—May be altered (sec. 34).

(12.) QUORUM OF HOUSE.—May be increased or reduced (sec. 39).

(13.) PENALTY FOR SITTING WHEN DISQUALIFIED.—May be altered (sec. 46).

(14.) DISPUTED ELECTIONS.—Mode of settling may be altered (sec. 47).

(15.) PAYMENT OF MEMBERS.—May be increased or reduced (sec. 48).

(16.) NUMBER OF MINISTERS.—May be increased (sec. 65).

(17.) SALARIES OF MINISTERS.—May be increased (sec. 66).

(18.) APPOINTMENT AND REMOVAL OF NON-POLITICAL OFFICERS.—May be regulated (sec. 67).

(19.) CONDITIONS AND RESTRICTIONS ON APPEALS.—May be regulated (sec. 73).

(20) APPLICATION OF CUSTOMS AND EXCISE REVENUE.—Ten years after the establishment of Commonwealth the Braddon clause may be repealed or altered (sec. 87).

(21.) FINANCIAL ASSISTANCE TO STATES.—Ten years after the establishment of the Commonwealth the Parliament may determine not to grant further financial assistance to States (sec. 96).

(22.) AUDIT.—Parliament may make audit laws (sec. 97).

Examples:

> Section 22: *"Quorum: Until the Parliament otherwise provides, the presence of at least one-third of the whole number of the senators shall be necessary to constitute a meeting of the Senate for the exercise of its powers."*

Rod Culleton alleged that the Senate was inquorate when it resolved to refer him to the Court of Disputed Returns. He overlooked the *"until the Parliament otherwise provides"* in this provision, as the quorum was amended down to one-fifth by the *House of Representatives (Quorum) Act 1989*. One can also note his misreading of section 47:

> "Disputed elections – Until the Parliament otherwise provides, any question respecting the qualification of a senator or of a member of the House of Representatives, or respecting a vacancy in either House of the Parliament, and any question of a disputed election to either House, shall be determined by the House in which the question arises."

Rod Culleton also tried to substantiate his claims that the Senate was "wrong at law" when it referred him to the Court of Disputed Returns, with a UK precedent *Hilary Term [2014] UKSC 3*, but again overlooked *"until the parliament otherwise provides"*. In 1902 the Parliament did *"otherwise provide"* that the High Court would be the federal Court of Disputed Returns, in Part XVI of the *Commonwealth Electoral Act 1902*. This is now provided for in Part XXII of the *Commonwealth Electoral Act 1918.*

See also section 3 ***Governor-General to be paid in pounds***

Appeals to the UK Privy Council

In 1986 the *Australia Acts* were introduced in all of the States, the Federal Parliament and in UK Parliament *"to bring constitutional arrangements affecting the Commonwealth and the States to be brought into conformity with the status of the Commonwealth of Australia as a sovereign, independent and federal nation". **Section 11*** provides:

> *"...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."*

The purpose of this provision was to abolish appeals to the Privy Council from the State courts. While Chapter III of the *Constitution* established the High Court as the final court of appeal for Australia, the problem was that State courts could bypass the High Court in appeals and go straight to the Privy Council in the UK, causing complications in Australia's court system, since the High Court still had to answer to the UK privy council.

The ***High Court website*** states:

> "*Appeals to the Privy Council from decisions of the High Court were effectively ended by the combined effects of the Privy Council (Limitation of Appeals) Act 1968 and the Privy Council (Appeals from the High Court) Act 1975. However, a right of appeal to the Privy Council remained from State courts, in matters governed by State law, until the passage of the Australia Acts, both State and Federal, in the 1980s."*

Until the passing of the *Privy Council (Limitation of Appeals) Act 1968* and the *Privy Council (Appeals from the High Court) Act 1975* it was possible for some appeals from decisions of the High Court to be taken under section 74 of the *Constitution*, which provides:

> *"Appeal to Queen in Council - No appeal shall be permitted to the Queen in Council from a decision of the High Court upon any question, howsoever arising, as to the limits inter se of the Constitutional powers of the Commonwealth and those of any State or States, or as to the limits inter se of the Constitutional powers of any two or more States, unless the High Court shall certify that the question is one which ought to be determined by Her Majesty in Council. The High Court may so certify if satisfied that for any special reason the certificate should be granted, and thereupon an appeal shall lie to Her Majesty in Council on the question without further leave. Except as provided in this section, this Constitution shall not impair any right which the Queen may be pleased to exercise by virtue of Her Royal prerogative to grant special leave of appeal from the High Court to Her Majesty in Council. The Parliament may make laws limiting the matters in which such leave may be asked, but proposed laws containing any such limitation shall be reserved by the Governor-General for Her Majesty's pleasure."*

The purpose of this provision was to limit appeals from the High Court to the Privy Council. Appeals were theoretically possible for section 74 inter se cases, which involves a dispute between the federal Government and one or more of the States, but in order for any such appeal to happen the High Court would need to provide a certificate.

Colonial Sugar Refining Co Ltd v Attorney-General for the Commonwealth [1912] HCA 94 is the only case in which the High Court issued a certificate under section 74 of the *Constitution* to permit an appeal to the Privy Council on a constitutional question. In ***Attorney-General (Cth) v Colonial Sugar Refining Company Limited [1913] UKPCHCA 4***, the Privy Council did not answer the question asked by the High Court, and the court never issued another certificate of appeal. In 1918 ***Prime Minister Hughes*** described the decision of the Privy Council as one *"which must have caused great embarrassment and confusion, if it were not for the fortunate fact that the reasons for the Judicial Committee's decision are stated in such a way that no court and no counsel in Australia has yet been able to find out what they were".* In ***Whitehouse v Queensland [1961] HCA 55*** the court said (at 6):

> *"...experience shows - and that experience was anticipated when s. 74 was enacted - that it is only those who dwell under a Federal Constitution who can become adequately qualified to interpret and apply its provisions."*

In the 1890's ***Constitutional Conventions*** there was much discussion between the delegates about whether the Privy Council should even have a role. It was thought that members of the Queen's council would not know the Australian Constitution well enough to make judgements on it. The first draft of the Constitution from 1891 stipulated that appeals from State Courts should be brought to the High Court of which judgements would be final, but that the Queen would have some power to grant leave of appeal to herself in some cases. Section 74 was omitted in the final draft and some extra words were added to the covering clauses to preserve the prerogative of appeal with respect to decisions of the High Court and State Supreme Courts. The British Parliament objected, and the eventual section 74 was a compromise. The imperial authorities saw the role of the Privy Council as a unifier of the English common law throughout the British Empire.

In ***Kirmani v Captain Cook Cruises Pty. Ltd [No. 2] [1985] HCA 27*** the High Court denied an application by the Attorney-General of Queensland seeking a certificate that would permit the Privy Council to hear an appeal from the High Court's decision in *Kirmani v Captain Cook Cruises Pty Ltd (No 1) [1985] HCA 8.* Further, the High Court held that it would never again grant a certificate of appeal, stating (at 5):

> *"Although the jurisdiction to grant a certificate stands in the Constitution, such limited purpose as it had has long since been spent. The march of events and the legislative changes that have been effected - to say nothing of national sentiment - have made the jurisdiction obsolete."*

https://freemandelusion.com/wp-content/uploads/2019/06/kirmani-v-captain-cook-cruises-pty.-ltd-no.-2-1985-hca-27.pdf

Pursuant to section 11 of the *Australia Act 1986* all Privy Council appeals ended from Australian courts other than the High Court, where it remains theoretically possible for some appeals to be taken under Section 74 of the *Constitution*. Technically the High Court could still grant a certificate for appeal to the Privy Council, but this is unlikely. As ***Tony Blackshield*** writes about the effect of removing appeals to the Privy Council:

> *"The final abolition of Privy Council appeals has had a dramatic effect on the High Court's own jurisprudence. Many commentators have observed that the abolition did more than formally make the High Court the final court of appeal for all Australian matters. It also contributed to a new judicial mindset. Liberated from the correction of a higher court and then from competition*

in relation to appeals from state courts, the High Court became the true apex of the Australian hierarchy and took a new responsibility for shaping the law for Australia."

The Influence of the Privy Council on Australia - Murray Gleeson (2007):

https://freemandelusion.com/wp-content/uploads/2022/04/The-Influence-of-the-Privy-Council-on-Australia-Murray-Gleeson.pdf

The UK House of Lords

There was a viral rumor that Rodney Culleton had an ongoing matter before the UK Privy Council, and the UK High Court, and a similar rumour regarding the UK House of Lords, implying that they have some sort of jurisdiction over Australian affairs. Rodney Culleton had sought their assistance in remedying his unfounded fears of a constitutional crisis. (See articles "***Rodney Culleton***" and "***The UK High Court application by the Great Australian Party***").

Theresa May
Prime Minister
10 Downing Street
London
SW1A 2AA

Neil Piccinin
care of:
[redacted]
St Mary Cray
Orpington
BR5 4AA

Postal No: SJ 7702 1640 1GB

April 25,2019

Delivery of the Prayer to the Lords
and related documents for Restoration of the Commonwealth of Australia

Dear Prime Minister,

I write to you, as a matter of delivery of information of paramount importance, with reference to Her Majesty's constitutional role within the Commonwealth of Australia, and your role thereto.

The enclosed set of evidentiary documents and declared certificates are prefaced with a letter of introduction by a Senator of the federal parliament (in exile) with a petition, of right, for *Restoration of the Commonwealth of Australia*.

This letter and the bound set of documents comprising the opening letter of Senator Culleton, the Prayer to the Lords, the Certificate of Harry Hopes on judicial jurisdiction in Western Australia and another on the validity on the *Royal Style and Titles Act 1973* (Cth) accompanied with five FOI findings by the Department of the Prime Minister and Cabinet (2004 – 2015) provide the gravitas cause for attention by the government of the United Kingdom to attend to obligatory matters outstanding in Australia: the Commonwealth of Australia.

Such obligation, not having been statutorily amended or removed from the *Commonwealth of Australia Constitution Act 1900*, is current and enforcable against the Crown for which instrument belongs.

The included document of Darren Dickson, of Melbourne, referenced within the said prayer, is of outstanding reference to the two constitutional reports of 1988 within which details several legal anomalies for departure of the constitutional norms, for application of the Crown, that is evidence, of the knowledge at 1988, of the apparent treachery and sedition in the lawmaking and judicial machinery of governance within Australia, requiring attention.

I trust that the representation of information that had been in the hands of Andrea Leadsom, for the Commons, and Mark Cooper, for the Lords, will not escape your attention, and those entrusted with fiduciary duty for the people of the Commonwealth of Australia, in restoring Her Majesty's role.

If any material thing within the documents may be denied, be mistaken or otherwise found for error, by those charged with responsibility, I shall attend accordingly for the record.

I have the honour to be Her Majesty's humble and obedient servant,

Neil Piccinin

For those who are unaware, the UK House of Lords is the Upper House of the UK government system, and the Lower House is the UK Parliament. We have an identical system here in Australia based on the Westminster design. Here in Australia, the Upper House of the Commonwealth is the Senate, and the Lower House is the Commonwealth Parliament. Here is a good comparison of the ***House of Lords and the Australian Senate***. There are no appeals to the Upper House of a government of a foreign nation.

Even prior to the passing of the *Australia Act 1986*, in his 1977 State of the Judicature address, Sir Garfield Barwick announced that the High Court did not regard itself as bound by decisions of the House of Lords and in future would not regard itself as bound by decisions of the Privy Council in *The State of the Australian Judicature (1977) 51 ALJ 480* (at 485)

In *Viro v. R. (1978) 18 A.L.R. 257* (at 282-283) Gibbs J., commenting that although the High Court no longer regarded itself as bound by decisions of the House of Lords it nevertheless continued to recognise *"their peculiarly high persuasive value"*, suggested:

> *"We ought now to regard a decision of the Privy Council as even more highly persuasive [than those of the House of Lords], if that is possible, by reason of the very fact that its decisions remain binding on the States."*

The Authority of Privy Council Decisions in Australian Courts - Robert Geddes (1978):

https://freemandelusion.com/wp-content/uploads/2019/06/the-authority-of-privy-council-decisions-in-australian-courts.pdf

Then came the *Australia Act 1986*, as Gleeson J. points out in ***The Privy Council - An Australian Perspective*** (2008), the former restrictions on legislative powers of Parliaments of States were terminated, as ***section 3. subsection (2)*** provides:

> *"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."*

The responsibility of the United Kingdom Government in relation to State matters was terminated by ***section 10***, which provides:

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

https://freemandelusion.com/wp-content/uploads/2019/06/the-privy-council-an-australian-perspective.pdf

Sue v Hill [1999] HCA 30 (from 95):

> *"Almost a century has passed since the enactment of the Constitution Act in the last year of the reign of Queen Victoria. In 1922, the Lord Chancellor observed that doctrines respecting the Crown often represented the results of a constitutional struggle in past centuries, rather than statements of a legal doctrine. The state of affairs identified in Section III of these reasons is to the contrary. It is, as Gibbs J put it, "the result of an orderly development – not … the result of a revolution". Further, the development culminating in the enactment of the Australia Act (the operation of which commenced on 3 March 1986) has followed paths understood by constitutional scholars writing at the time of the establishment of the Commonwealth. 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 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, 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."*

https://freemandelusion.com/wp-content/uploads/2020/10/sue-v-hill-1999-hca-30.pdf

It is also overlooked by Rodney Culleton that the UK are obliged to their own legislation. Firstly, we can look at the *Statute of Westminster 1931*, adopted in Australia in 1942. Section 2 states: *"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."*

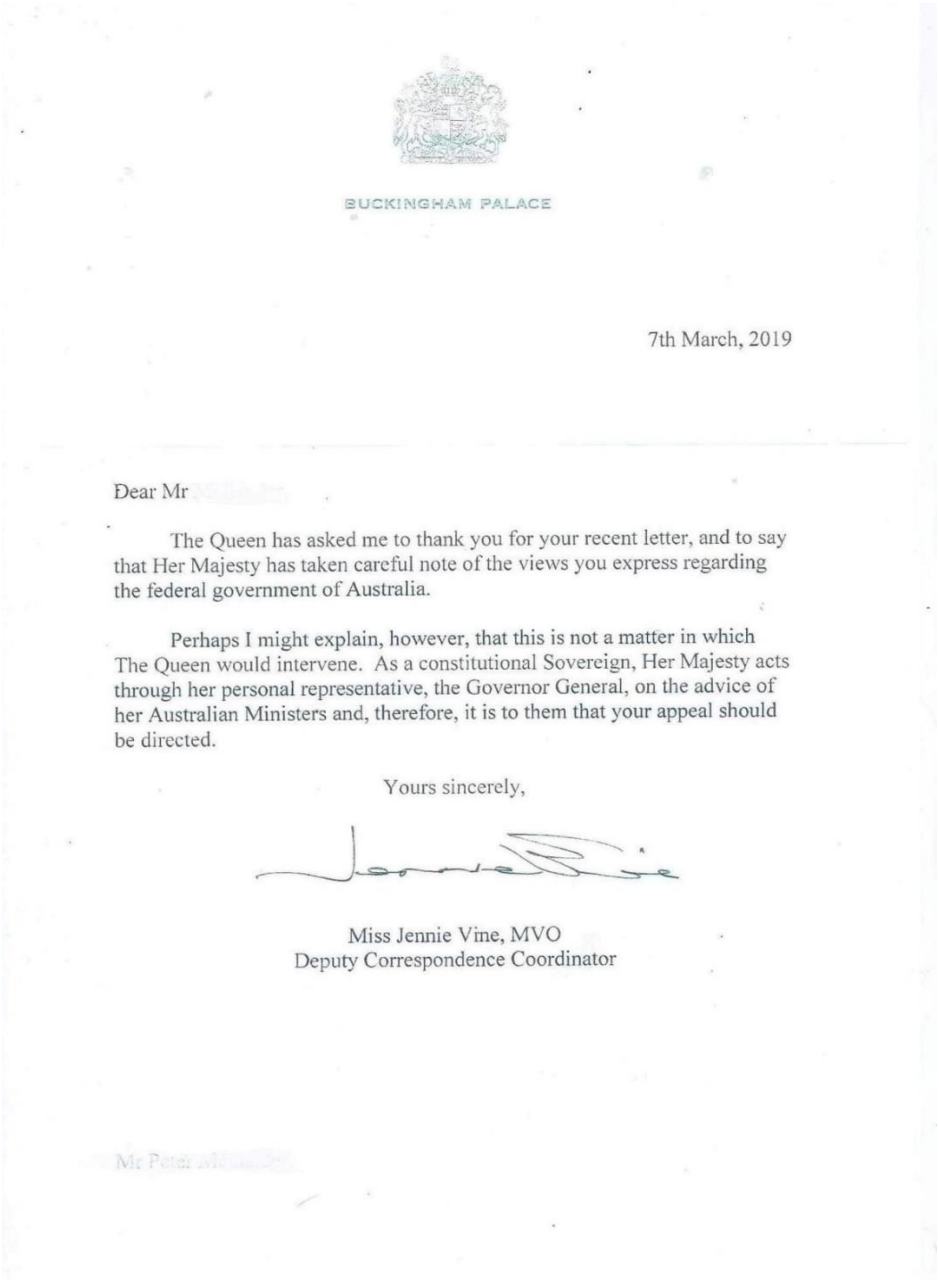
The *Australia Act 1986 (UK)* is also a UK Act, not an Australian Act, passed by the UK Parliament, not the Commonwealth Parliament. ***Section 11*** of the UK version, just like the Australian version, also states: *"Termination of appeals to Her Majesty in Council: "..no appeal to Her Majesty in Council 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."*

The responsibility of the United Kingdom Government in relation to State matters was likewise terminated by ***section 10***, of the UK version, which states: *"After the commencement of this Act Her Majesty's Government in the United Kingdom shall have no responsibility for the government of any State."*

David Fitzgibbon likewise attempted to take a matter to the British High Court in 2004, in ***Fitzgibbon v HM Attorney General [2005] EWHC 114 (Ch).*** The case was dismissed by Justice Gavin Lightman, who noted that not only did he have no say over the case, but even if he did rule in favour of Mr Fitzgibbon the Australian Government, independent since 1901, could ignore him completely.

> *"It is for the Australian courts to apply Australian law to determine the capacity in which Her Majesty the Queen is acting, the appropriate seal and the consequences, if any, if the wrong seal is used. It is not for the UK courts to enter the field, proffering their view as the to the proper interpretation of the Constitution."* Calling Mr Fitzgibbon's action *"quite purposeless",* the Chancery Division's Master Bencher Bowman said: *"The claim should be struck out on the basis of hopelessness … and, where appropriate, embarrassment."*

This letter from Buckingham Palace is Her Majesty's latest response, to a question that has been asked many times.



BUCKINGHAM PALACE

7th March, 2019

Dear Mr

The Queen has asked me to thank you for your recent letter, and to say that Her Majesty has taken careful note of the views you express regarding the federal government of Australia.

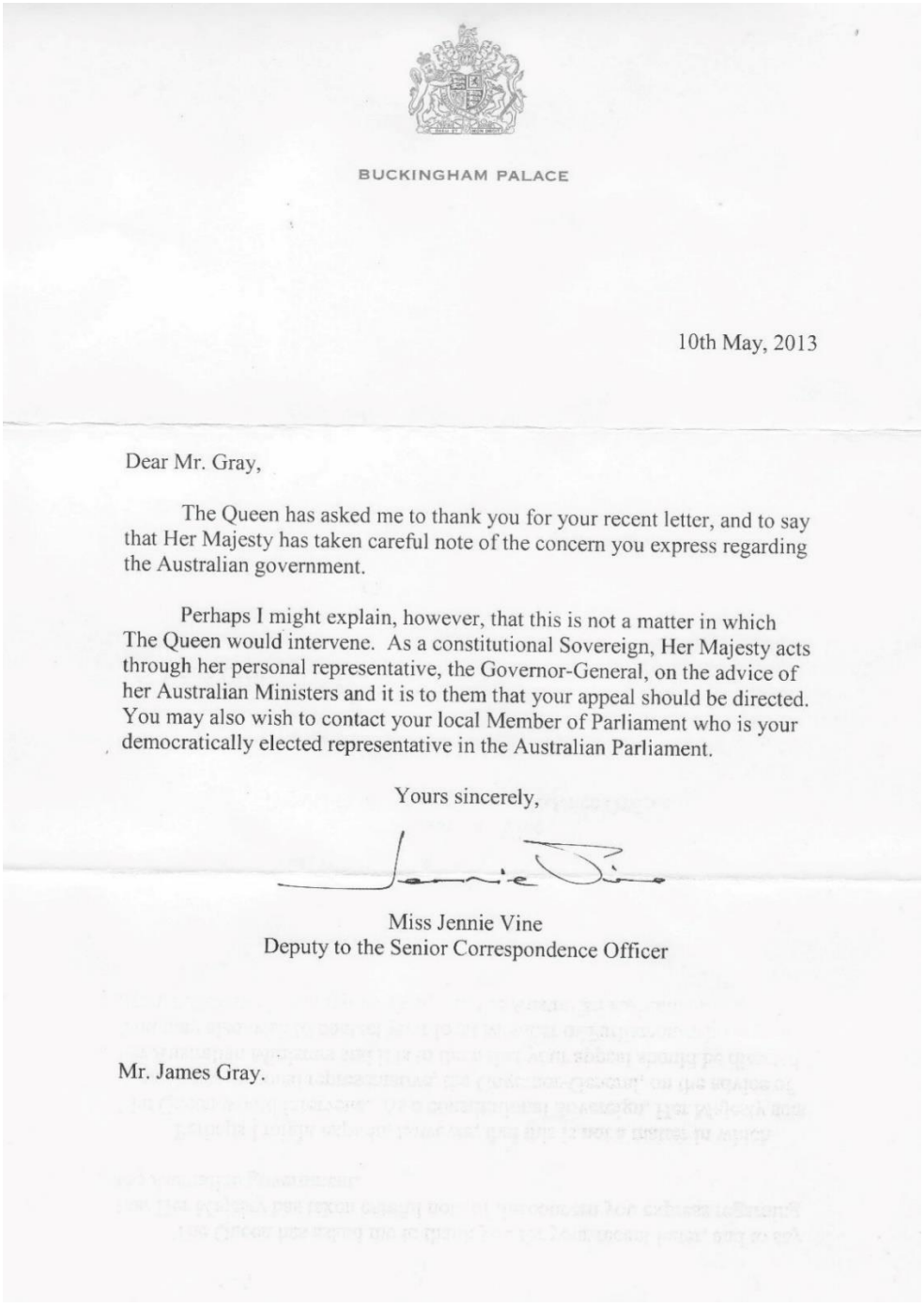
Perhaps I might explain, however, that this is not a matter in which The Queen would intervene. As a constitutional Sovereign, Her Majesty acts through her personal representative, the Governor General, on the advice of her Australian Ministers and, therefore, it is to them that your appeal should be directed.

Yours sincerely,

Miss Jennie Vine, MVO
Deputy Correspondence Coordinator

Mr Peter

An earlier response from the Palace was answered nearly identically.



BUCKINGHAM PALACE

10th May, 2013

Dear Mr. Gray,

The Queen has asked me to thank you for your recent letter, and to say that Her Majesty has taken careful note of the concern you express regarding the Australian government.

Perhaps I might explain, however, that this is not a matter in which The Queen would intervene. As a constitutional Sovereign, Her Majesty acts through her personal representative, the Governor-General, on the advice of her Australian Ministers and it is to them that your appeal should be directed. You may also wish to contact your local Member of Parliament who is your democratically elected representative in the Australian Parliament.

Yours sincerely,

Jennie Vine

Miss Jennie Vine
Deputy to the Senior Correspondence Officer

Mr. James Gray.

And the response to reinstate Gough Whitlam as Prime Minister in 1975 was even more explicit.

BUCKINGHAM PALACE

17th November, 1975

Dear Mr Scholes

I am commanded by The Queen to acknowledge your letter of 12th November about the recent political events in Australia. You ask that The Queen should act to restore Mr. Whitlam to office as Prime Minister.

As we understand the situtation here, the Australian Constitution firmly places the prerogative powers of the Crown in the hands of the Governor-General as the representative of The Queen of Australia. The only person competent to commission an Australian Prime Minister is the Governor-General, and The Queen has no part in the decisions which the Governor-General must take in accordance with the Constitution. Her Majesty, as Queen of Australia, is watching events in Canberra with close interest and attention, but it would not be proper for her to intervene in person in matters which are so clearly placed within the jurisdiction of the Governor-General by the Constitution Act.

I understand that you have been good enough to send a copy of your letter to the Governor-General so I am writing to His Excellency to say that the text of your letter has been received here in London and has been laid before The Queen.

I am sending a copy of this letter to the Governor-General.

Yours sincerely

Martin Charteris

The Honourable G.G.D. Scholes.

The Australian Tax Office is not a legal entity

The point is often raised that the Australian Tax Office does not have legal existence and therefore cannot impose taxes. The contention seems to originate in a submission in ***Moeliker v Chapman [2000] HCATrans 242***, in which it was agreed that the Australian Tax Office does not have legal personality. This point was sufficient for many theorists to indicate that taxes were voluntary.

https://freemandelusion.com/wp-content/uploads/2020/08/moeliker-v-chapman-b8_2000-2000-hcatrans-242-17-may-2000.pdf

But that is as far as the contention could proceed as it was the Commissioner of Taxation that brought proceedings, and not the Australian Tax Office.

The matter was adjoined and the final judgment was handed down in a later decision The submissions were identical to a series of other cases, also brought by ***Wayne Levick and the Institute of Taxation Research***, represented by ***David Fitzgibbon***, so they were delivered collectively in *Dooney v Henry; Dooney v Chapman; Morgillo v Ross de Vere; Morgillo v Chapman; Gorshkov v Key; Gorshkov v Chapman; Dive v Chapman; Dive v Key; Gair v Chapman; Moeliker v Henry; Moeliker v Chapman (2000) HCA 44.*

The series judgment title is ***Dooney v Henry [2000] HCA 44*** in which it was stated (at 6):

> *"There then follows an allegation, purportedly supported by a number of particulars, which need not be repeated, that the Australian Taxation Office is a body without a legal existence. This last allegation, and the misconceived claim for relief in respect of it (prayer 5), can be immediately disposed of. The Australian Taxation Office is not a legal personality, the applicant does not contend that it is, and whether the Australian Taxation Office is, or is not a legal personality, is not a matter of the slightest relevance to any issue or efficacious remedy that might be available to the respondent."*

https://freemandelusion.com/wp-content/uploads/2020/08/dooney-v-henry-2000-hca-44.pdf

Wayne Levick and the Institute of Taxation Research were in dozens of cases ordered to pay the costs of the respondent. The Federal Court also declared that they engaged in misleading and deceptive conduct contravening the Trade Practices Act 1974, by making representations that there are arguments available to avoid payment of taxes by using their services.

Deputy Commissioner Of Taxation v Cutts (No.4) [2019] FCCA 2866 (From 92):

> *"Mr Cutts asserts that as the Australian Taxation Office ("ATO") is not a legal and lawful entity, it has no legal rights. This ground is similar to ground 6 of the Notice of Objection before the Registrar which sought supply of "certified copies of evidence that establish the Australian Taxation Office giving the Australian Taxation Office the right to lawfully exist", and is dealt with at [44]-[50] above.*
>
> *Mr Cutts also asserts: Cutts 2017 Affidavit at [2], that the Commonwealth of Australia is listed on the United States Securities and Exchange Commission as a "for-profit" organisation and likewise all government departments and agencies are "for profit". It is not apparent what the point of*

this assertion is, and it suffices to observe that even if it is correct, it does not affect the statutory regime in Australia in relation to bankruptcy or the task of this Court on this application.

Mr Cutts asserts that, if he owes tax, he must have entered into a contract to pay the ATO tax, but that he is not aware of his doing so, and if so he wished to stop. As is otherwise evident liability for tax is ultimately imposed pursuant statute not contract, and this assertion does not affect this Court's role on this application.

In Webb v Deputy Commissioner of Taxation [2017] FCA 1520 ("Webb Appeal") the Federal Court dismissed an appeal against the judgment of this Court in Webb FCCA whereby the applicant had raised the same grounds as Mr Cutts. In dispensing with the ground this Court stated as follows in Webb FCCA at [59]-[64] per Judge Wilson:

"This argument I accept. But the argument is irrelevant to this case because the petitioning creditor was the Deputy Commissioner of Taxation and not the ATO.

The status of the ATO as a legal entity has been the subject of a number of authoritative pronouncements. In Levick, Hill J said that the ATO does not exist for legal purposes.

In the High Court, Callinan J held in Dooney that the ATO is not a legal personality.

In the Supreme Court of South Australia, David J in Daniels held that the ATO was not a legal entity. ..

To my mind, this ground missed the point because the current party with statutory authority to sue in fact brought the proceeding in the County Court. That party also petitioned this court for the sequestration order of Mr Webb's estate. The status of the ATO as a separate legal entity had nothing to do with this case."

https://freemandelusion.com/wp-content/uploads/2020/06/deputy-commissioner-of-taxation-v-cutts-no.4-2019-fcca-2866.pdf

Commonwealth Public Official

It has become popular through the assertions of ***Wayne Glew*** to style oneself a "Commonwealth Public Official" by swearing the oath contained in the schedule to the *Constitution*, to enable a status by which one could arrest "unlawful" authorities.

This is despite the Supreme Court utterly rejecting that notion in no uncertain terms in ***Re Glew; Ex Parte The Hon Michael Mischin MLC Attorney General WA 2014 WASC 107***: (at 59):

> *"When told that if he did not address the proposed grounds of appeal the court would adjourn and decide the matter on the papers, he responded by saying that if the court did that he would formally charge the judges as he claimed to be entitled to do as a Commonwealth public official. This was absurd histrionics. He is not, and was not, a Commonwealth official; there was no basis for charging anyone and his remarks were nothing less than preposterous. The incongruity of Mr Glew's contentions, and of his claims, was plainly obvious to their Honours and must have been obvious to any fair-minded, reasonable observer. No such observer could attach any credit or plausibility to Mr Glew's behaviour, which was that of an ignorant man disastrously pursuing his own obsession."*

https://freemandelusion.com/wp-content/uploads/2018/07/re-glew-ex-parte-the-hon-michael-mischin-mlc-attorney-general-wa-2014-wasc-107.pdf

The Impersonation of a Commonwealth public official is actually an offence under ***Division 148 of the Criminal Code 1995*** which provides:

Division 148—Impersonation of Commonwealth public officials

148.1 Impersonation of an official by a non-official

(1) A person other than a Commonwealth public official commits an offence if:

(a) on a particular occasion, the person impersonates another person in that other person's capacity as a Commonwealth public official; and

(b) the first-mentioned person does so knowing it to be in circumstances when the official is likely to be on duty; and

(c) the first-mentioned person does so with intent to deceive.

Penalty: Imprisonment for 2 years.

(2) A person other than a Commonwealth public official commits an offence if:

(a) the person falsely represents himself or herself to be a Commonwealth public official in a particular capacity; and

(b) the person does so in the course of doing an act, or attending a place, in the assumed capacity of such an official.

Penalty: Imprisonment for 2 years.

(2A) For the purposes of subsection (2), it is immaterial whether that capacity as a Commonwealth public official exists or is fictitious.

(3) A person other than a Commonwealth public official commits an offence if:

(a) the person:

(i) impersonates another person in that other person's capacity as a Commonwealth public official; or

(ii) falsely represents himself or herself to be a Commonwealth public official in a particular capacity; and

(b) the first-mentioned person does so with the intention of:

(i) obtaining a gain; or

(ii) causing a loss; or

(iii) influencing the exercise of a public duty or function; and

(c) if subparagraph (a)(i) applies—the first-mentioned person also does so with intent to deceive.

Penalty: Imprisonment for 5 years.

(3A) For the purposes of subparagraph (3)(a)(ii), it is immaterial whether that capacity as a Commonwealth public official exists or is fictitious.

(4) The definition of ***duty*** in section 130.1 does not apply to this section.

(5) To avoid doubt, for the purposes of this section:

(a) ***impersonation*** does not include conduct engaged in solely for satirical purposes; and

(b) ***false representation*** does not include conduct engaged in solely for satirical purposes.

The definition of an actual Commonwealth public official is listed in the dictionary of the ***Criminal Code 1995*** and even when he was a serving Western Australian Police officer Wayne Glew didn't fall within any of these definitions.

Criminal Code Act 1995 (Cth)

Commonwealth public official means:

(a) the Governor-General; or

(b) a person appointed to administer the Government of the Commonwealth under section 4 of the Constitution; or

(c) a Minister; or

(d) a Parliamentary Secretary; or

(e) a member of either House of the Parliament; or

(f) an individual who holds an appointment under section 67 of the Constitution; or

(g) the Administrator, an Acting Administrator, or a Deputy Administrator, of the Northern Territory; or

(i) a Commonwealth judicial officer; or

(j) an APS employee; or

(k) an individual employed by the Commonwealth otherwise than under the *Public Service Act 1999*; or

(l) a member of the Australian Defence Force; or

(m) a member or special member of the Australian Federal Police; or

(n) an individual (other than an official of a registered industrial organisation) who holds or performs the duties of an office established by or under a law of the Commonwealth, other than:

(i) the *Corporations (Aboriginal and Torres Strait Islander) Act 2006*; or

(ii) the *Australian Capital Territory (Self-Government) Act 1988*; or

(iii) the *Corporations Act 2001*; or

(v) the *Northern Territory (Self-Government) Act 1978*; or

(o) an officer or employee of a Commonwealth authority; or

(p) an individual who is a contracted service provider for a Commonwealth contract; or

(q) an individual who is an officer or employee of a contracted service provider for a Commonwealth contract and who provides services for the purposes (whether direct or indirect) of the Commonwealth contract; or

(r) an individual (other than an official of a registered industrial organisation) who exercises powers, or performs functions, conferred on the person by or under a law of the Commonwealth, other than:

(i) the *Corporations (Aboriginal and Torres Strait Islander) Act 2006*; or

(ii) the *Australian Capital Territory (Self-Government) Act 1988*; or

(iii) the *Corporations Act 2001*; or

(v) the *Northern Territory (Self-Government) Act 1978*; or

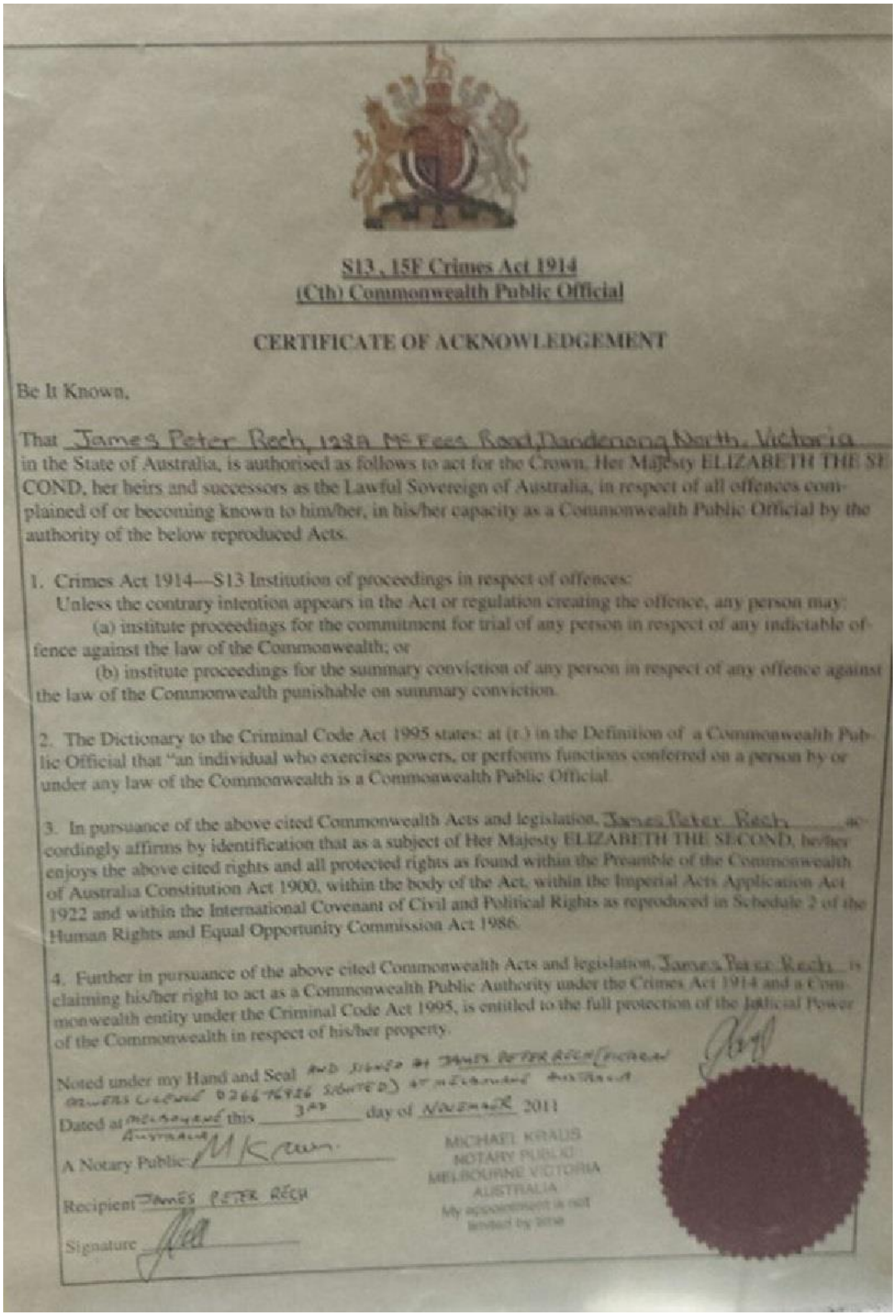
(vii) a provision specified in the regulations; or

(s) an individual who exercises powers, or performs functions, conferred on the person under a law in force in the Territory of Christmas Island, the Territory of Cocos (Keeling) Islands or the Territory of Norfolk Island; or

(t) the Registrar, or a Deputy Registrar, of Aboriginal and Torres Strait Islander Corporations.

He has great difficulty differentiating between jurisdictions of the Commonwealth v the States in most things, in this claim that a Western Australian Police officer is somehow a Commonwealth police officer, or "Commonwealth public official". The WA Police is a department of the State, not the Commonwealth. Feds are only involved in a matter when it is within their jurisdiction, and not State jurisdiction.

Document from "***James Rech*** CPO"



S13 , 15F Crimes Act 1914
(Cth) Commonwealth Public Official

CERTIFICATE OF ACKNOWLEDGEMENT

Be It Known,

That James Peter Rech, 128A McFees Road, Dandenong North, Victoria in the State of Australia, is authorised as follows to act for the Crown, Her Majesty ELIZABETH THE SECOND, her heirs and successors as the Lawful Sovereign of Australia, in respect of all offences complained of or becoming known to him/her, in his/her capacity as a Commonwealth Public Official by the authority of the below reproduced Acts.

1. Crimes Act 1914—S13 Institution of proceedings in respect of offences:
Unless the contrary intention appears in the Act or regulation creating the offence, any person may:
(a) institute proceedings for the commitment for trial of any person in respect of any indictable offence against the law of the Commonwealth; or
(b) institute proceedings for the summary conviction of any person in respect of any offence against the law of the Commonwealth punishable on summary conviction.

2. The Dictionary to the Criminal Code Act 1995 states: at (r.) in the Definition of a Commonwealth Public Official that "an individual who exercises powers, or performs functions conferred on a person by or under any law of the Commonwealth is a Commonwealth Public Official

3. In pursuance of the above cited Commonwealth Acts and legislation, James Peter Rech accordingly affirms by identification that as a subject of Her Majesty ELIZABETH THE SECOND, he/her enjoys the above cited rights and all protected rights as found within the Preamble of the Commonwealth of Australia Constitution Act 1900, within the body of the Act, within the Imperial Acts Application Act 1922 and within the International Covenant of Civil and Political Rights as reproduced in Schedule 2 of the Human Rights and Equal Opportunity Commission Act 1986.

4. Further in pursuance of the above cited Commonwealth Acts and legislation, James Peter Rech is claiming his/her right to act as a Commonwealth Public Authority under the Crimes Act 1914 and a Commonwealth entity under the Criminal Code Act 1995, is entitled to the full protection of the Judicial Power of the Commonwealth in respect of his/her property.

Noted under my Hand and Seal AND SIGNED BY JAMES PETER RECH (VICTORIAN DRIVERS LICENCE 026676926 SIGHTED) AT MELBOURNE AUSTRALIA
Dated at MELBOURNE AUSTRALIA this 3RD day of NOVEMBER 2011

A Notary Public: M Kraus

MICHAEL KRAUS
NOTARY PUBLIC
MELBOURNE VICTORIA
AUSTRALIA
My appointment is not limited by time

Recipient JAMES PETER RECH

Signature

Mike Holt's idea of preparing for the 2022 Federal Election:

Many others have followed in his footsteps attempting to contend this concept in the courts, such as in ***Woolnough & Anor v Isaac Regional Council [2019] QSC 54*** (from 3):

> *"There remains a final matter to consider. At the outset of the trial on 27 August 2018 I noted a document filed by the plaintiffs bore a stamp endorsement worded "Commonwealth of Australia 1955 Public Official". I enquired of the Woolnoughs whether either of them knew the source of the stamp and Mr Woolnough volunteered the stamped endorsement came from a stamp that he had a stamp-maker make. The exchange which ensued is contained at T1-2 to T1-5 of the trial transcript. I enquired of Mr Woolnough whether he saw that by the stamp he appeared to be representing himself to be some sort of publicly appointed official. He responded:*
>
> *"Not a public appointed official, your Honour. I am a volunteer."*
>
> *I thereafter adjourned consideration of the significance or otherwise of the stamped endorsement of the document filed in Court to the conclusion of the trial. The trial having concluded, I return to consideration of the significance of the endorsement. The endorsement by Mr Woolnough was obviously calculated at using the Court's filing and serving of documents process as a means of misleading others about the righteousness and power of his cause by conferring the false imprimatur of Commonwealth officialdom on him and or his document.*
>
> *On the face of it this involves Mr Woolnough falsely representing himself to be a Commonwealth public official contrary to s 148.1 Criminal Code Act 1995 (Cth), an offence known as Impersonation of Commonwealth public officials, punishable in its simpliciter form with two years imprisonment, potentially more depending on aggravating circumstances. It might also arguably constitute the misdemeanour of False Assumption of Authority contrary to s 96 Criminal Code (Qld), punishable with 3 years imprisonment.*

https://freemandelusion.com/wp-content/uploads/2019/06/woolnough-anor-v-isaac-regional-council-2019-qsc-54.pdf

From ***Althaus v Australia Meat Holdings Pty Ltd & Ors [2010] QCA 312***:

> *"The appellant has subsequently asserted that he is a Commonwealth public official, Commonwealth entity or authority so that his matters must be dealt with in a court upon which Federal jurisdiction has been conferred under Ch III of the Constitution. He claims to be a Commonwealth public official because s 13 of the Crimes Act 1914 (Cth) permits any person to institute either summary proceedings or proceedings for commitment for trial in respect of Commonwealth offences and the Criminal Code Act 1995 (Cth) defines "Commonwealth Public Official" as including "an individual … who exercises powers, or performs functions, conferred on the person by or under a law of the Commonwealth." Under the Criminal Code, a "Commonwealth authority" is "a body established by or under a law of the Commonwealth" and "person" is defined as including a "Commonwealth authority that is not a body corporate." "Commonwealth entity" means the Commonwealth or a Commonwealth authority. All of those descriptions then, the appellant says, fit him and he is entitled to the protection of the Commonwealth's judicial power.*
>
> *The appellant's claim to be a Commonwealth public official, authority or entity whose matters must be heard by a court exercising Federal jurisdiction under Ch III, is a nonsense. Assuming that there exists a Commonwealth Act in which no contrary intention appears in respect of the general capacity to prosecute conferred by s 13, and assuming (in the absence of any evidence) that the appellant is "an individual who exercises [s 13] powers" so as to make him a Commonwealth public official, that confers no right of having his matters heard in the Federal Court. Nor will it make him a body established by or under a law of the Commonwealth so as to be a Commonwealth authority or a Commonwealth entity. A body may be a person for certain purposes but an individual person cannot be a body by himself, let alone one established by or under law."*

https://freemandelusion.com/wp-content/uploads/2019/06/althaus-v-australia-meat-holdings-pty-ltd-2010-qca-312.pdf

From ***Tatana v Commonwealth DPP [2011] VSC 316***:

> *"The applicant, who appears in person, seeks to appeal to this Court from orders made by the Magistrates' Court at Melbourne on 22 February 2011. On that day, the Magistrates' Court struck out a multitude of charges filed by the applicant ostensibly as a "Commonwealth Public Official" against 17 persons under the Criminal Code Act 1995. The charges ranged from perverting the judicial power of the Commonwealth, producing false and misleading documents to a Commonwealth entity, making false and misleading statements and documents to a Commonwealth entity, obtaining by deception property belonging to a Commonwealth entity, conspiracy to defraud a Commonwealth entity, obstructing a Commonwealth public official and obtaining a financial advantage by deception from a Commonwealth entity.*
>
> *The references to Chapter III of the Constitution and the judicial power of the Commonwealth make no sense, the references to Mr Tatana being a Commonwealth public official are silly, and*

> *the balance seems to be directed at impeaching the judicial authority of court and the significance of the Commonwealth referendum of 1999. It is simply not possible to distil from the notice of appeal any question of law. I am afraid to say this is all nonsensical and cannot be taken seriously."*

https://freemandelusion.com/wp-content/uploads/2019/06/tatana-v-director-of-public-prosecutions-2011-vsc-316.pdf

The Civil Conscription Argument – Section 51(xxiiiA

This pseudo legal myth has been circulating the internet for several years now, beginning I think with the *No jab/No play* policies in relation to children not up-to-date with the Childhood Vaccine Schedule attending Childcare Centres, and the *No jab/No pay* policies in which the Childcare Subsidy and a portion of Family Tax Benefit were withheld from Centrelink payments for families with children not up-to-date with the Childhood Vaccine Schedule.

Since the pandemic in 2020, the same argument has now been applied to possible restrictions for people without proof of Covid-19 vaccination, and vaccine mandates in general. The argument was widely disseminated online during the pandemic, including by Great Australian Party legal adviser ***Darren Dickson***:

https://freemandelusion.com/darren-dickson-section-51xxiiia-mp4/

Pauline Hanson's speech introducing the *"COVID-19 Vaccination Status (Prevention of Discrimination) Bill 2021":*

https://freemandelusion.com/pauline-hanson-speech-mp4/

Numerous lawyers including ***Serene Teffaha*** (AdvocateMe) and ***Nathan Buckley*** (G&B Lawyers) perpetuated the theory, and even Professors ***Gabriël Moens*** and ***Augusto Zimmermann*** wrote widely about it:

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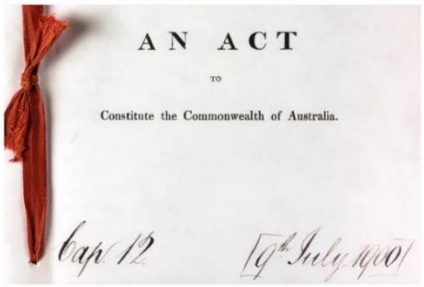
Mandatory jabs and bans on the unvaccinated? Try getting that past the High Court

Gabriël A Moens AM and Augusto Zimmermann



National Museum of Australia

Gabriël A Moens AM and Augusto Zimmermann
11 August 2021
4:00 AM

In a provocative article published last weekend, Joe Hildebrand argued that "We are fast approaching a point where anyone who refuses whatever vaccine they are eligible for can no longer consider themselves a truly decent member of society."

Australian health authorities, supporting Hildebrand's bold claim, now try to achieve the goal of full vaccination by scaring and threatening people. For example, a dozen health officials signed a letter, published in *The Australian* last week in which they pleaded with people to get vaccinated, warning that the "only options" are being vaccinated or dying from a Covid infection.

The Prime Minister, Scott Morrison, speaking to the press last Thursday, foreshadowed that people who are unvaccinated "will face more restrictions". This potentially means that the unvaccinated may no longer have unrestricted access to travel, or may not be allowed to attend football matches, concerts, and festivals. The Prime Minister believes that his comment describes a "common sense" approach — that those who pose a 'greater health risk' to others for not being vaccinated should not be allowed to enjoy the same level of rights and freedoms.

In this context, Associate Professor Ron Levy from the Australian National University, who specialises in constitutional law, opined that any constitutional challenge to restricting the unvaccinated would face an uphill battle in the courts. He said the High Court would likely be averse to preventing governments acting on public health matters. "There isn't too much that can be done, constitutionally speaking," he said.

Although Levy's assessment may be correct with regards to what the High Court might do, it is not necessarily the same as to what it should do if it were called upon to consider the constitutionality of mandatory vaccinations. Accordingly, any assessment of the constitutionality of vaccination directives should consider that the purpose of the Australian Constitution was to establish an institutional arrangement capable of restricting arbitrary power and ensuring limited government. The Australian governments should act within, and in conformity with, these legal-institutional limitations.

This classical liberal tradition of constitutionalism laid the basis for representative democratic government and the legal protection of citizens against the exercise of arbitrary political power. Under this tradition, to be under the rule of law presupposes the existence of rules and principles serving as an effective check on such political power.

A failure to effectively protect the constitutional framework would transform the Constitution into a less reliable document when it comes to restricting political power and ensuring the proper operation of constitutional government. In this context, Giovanni Sartori, an Italian political scientist, would properly describe such a constitution as no more than a "façade". Specifically, this would be the case if the mechanisms for limiting the power of government appears to be considerably disregarded at least in their most essential features.

One of the most remarkable characteristics of the Australian Constitution is its express limitation on governmental powers. In drafting the Constitution, the framers sought to design an instrument of government intended to distribute and limit the powers of the state. This distribution of, and limitation upon, governmental powers was deliberately chosen because of the proper understanding that unrestrained power is always inimical to the achievement of human freedom and happiness.

Accordingly, the Constitution allocates the areas of legislative power to the Commonwealth primarily in sections 51 and 52, with these powers being variously exclusive or concurrent with the Australian states.

The Constitution was amended in a referendum in 1946 to include section 51(xxiiiA). This provision determines that the Commonwealth parliament, among others, can make laws with respect to: "the provision of … pharmaceutical, sickness and hospital benefits, medical and dental services (but not so as to authorize any form of civil conscription), benefits to students and family allowances."

This provision allows for the granting of various services by the federal government but not to the extent of authorising any form of civil conscription. The prohibition of such conscription is directed particularly to the provision of medical services.

The idea, that constitutional provisions protect fundamental legal rights, plays a prominent role in an understanding of these express limitations and, indeed, of the implied constitutional limitations derived from them.

The "no conscription" requirement to be found in that constitutional provision amounts to an explicit limitation on mandating the provision of medical services, for example, compulsory vaccination, which remains governed by the contractual relationship between patients and doctors. Section 51(xxiiiA) could thus also be regarded as an implied constitutional right of individual patients to refuse vaccinations.

The concept of "civil conscription" was first considered by the High Court in 1949 *in British Medical Association v Commonwealth*.6 Legislation which required that medical practitioners use a particular Commonwealth prescription form as part of a scheme to provide pharmaceutical benefits was declared invalid as a form of civil conscription. In the opinion of Latham CJ, civil conscription included not only legal compulsion to engage in particular conduct, but also the imposition of a duty to perform work in a particular way. Williams J, in his judgment, stated that "the expression invalidates all legislation which compels medical practitioners or dentists to provide any form of medical service".

Hence, if the medical profession were directed by the Federal Government to mandatorily vaccinate people, such direction would constitute unconstitutional civil conscription. Such direction would interfere with the relationship between the doctor and the patient – a relationship which is based on contract and trust.

Of course, a doctor who freely performs his or her medical service does not create conscription. However, as Justice Webb explicitly mentioned: "When Parliament comes between patient and doctor and makes the lawful continuance of their relationship as such depend upon a condition, enforceable by fine, that the doctor shall render the patient a special service, unless that service is waived by the patient, it creates a situation that amounts to a form of civil conscription."

Accordingly, any legislation that requires medical practitioners to prescribe government-mandated medical services, such as vaccinations, constitutes a form of civil conscription that is constitutionally invalid. Webb J's statement also indicates that, even if the doctor were compelled to provide a service, the patient would have the right to waive that service. In other words, the Commonwealth parliament is not constitutionally authorised to force or compel any individual to accept vaccination or a medical procedure against his or her own will.

In 2009, in *Wong v Commonwealth; Selita v Professional Services Review Committee*, French CJ and Gummow J held that civil conscription is a "compulsion or coercion in the legal and practical sense, to carry out work or provide [medical] services". Kirby J opined that the purpose of prohibiting civil conscription was to ensure that the relationship between medical practitioner and patient was governed by contract where that is the intention of the parties. For him the test whether civil conscription has been imposed is "whether the impugned regulation, by its details and burdens, intrudes impermissibly into the private consensual arrangements between the providers of medical and dental services and the individual recipients of such services."

This view is also supported by the *Nuremberg Code* – an ethics code – relied upon during the Nazi doctors' trials in Nuremberg. This Code has as its first principle the willingness and informed consent by the individual to receive medical treatment or to participate in an experiment. Hence, people's refusal to be vaccinated may be based on the ground that the Covid vaccines are still experimental and their long-term effects and safety on its recipients are largely unknown. The unvaccinated, its relying on health implications for the purpose of refusing the vaccine, may thus ironically invoke the same argument used by proponents of vaccinations, who also rely on health grounds to promote the vaccine.

Importantly, the jurisprudence of the High Court indicates that the prohibition of civil conscription must be construed widely to invalidate any law requiring such conscription expressly or by practical implication. In other words, no law in Australia can impose limitations on the rights of citizens that directly or indirectly amount to a form of civil conscription.

Moreover, if unvaccinated Australians were to face serious restrictions of rights and freedoms – as suggested by medical officers and the Prime Minister – these restrictions would violate the democratic principle of equality before the law. In *Leeth v Commonwealth*, Deane and Toohey JJ referred to the Preamble to the Constitution to support their view that the principle of equality is embedded impliedly in the Constitution. They said that "the essential or underlying theoretical equality of all persons under the law and before the courts is and has been a fundamental and generally beneficial doctrine of the common law and a basic prescript of the administration of justice under our system of government."

The flagged exclusion of unvaccinated Australian citizens from participation in certain activities discriminates against them on the ground of vaccine status. Of course, vaccine status is not one of the accepted grounds in any anti-discrimination legislation and, therefore, it would be possible for governments to defeat a claim that compulsory vaccination violates the equality principle. However, reliance on vaccine status would still create an apartheid-type situation since benefits would be conferred and burdens imposed on this ground. But, more importantly, the making of coercive statements to force people to get vaccinated would effectively amount to an indirect form of mandatory vaccination, the constitutionality of which is doubtful at best. Indeed, from a constitutional point of view, the jurisprudence of the High Court indicates that what cannot be done directly, cannot be achieved indirectly without violating s. 51 of the Constitution.

Additionally, compulsory vaccination adversely affects the dignity and privacy of people. Governments should be fearful of relying on the *parens patriae* doctrine according to which government will decide what is good for people: it would be a textbook example of the operation of the Nanny State. If governments cannot constitutionally force everyone to be vaccinated, they certainly cannot indirectly create a situation whereby everybody would be forced to take the vaccine.

This point is also addressed in a comment of Webb J in *British Medical Association v Commonwealth*: "If Parliament cannot lawfully do this directly by legal means it cannot lawfully do it indirectly by creating a situation, as distinct from merely taking advantage of one, in which the individual is left no real choice but compliance".

To conclude: the Australian Constitution explicitly prohibits any form of compulsion upon the citizens to take any form of medical or pharmaceutical service, including vaccination.

On this view, unvaccinated Australians still remain decent members of society and they cannot be treated as second class citizens.

In reality, the provision has nothing to do with mandatory vaccination nor reductions in Centrelink payments, as the various High Court authorities show. Section 51(xxiiiA) provides:

> *51 "The Parliament shall, subject to this Constitution, have power to make laws for the peace, order, and good government of the Commonwealth with respect to:…*
>
> *(xxiiiA) the provision of maternity allowances, widows' pensions, child endowment, unemployment, pharmaceutical, sickness and hospital benefits, medical and dental services (but not so as to authorize any form of civil conscription), benefits to students and family allowances;"*

Who's conscripted?

The prohibition on conscription does not apply to the patient, but to the health provider. It does not create justiciable rights for individuals, but for dentists, doctors, and other health providers, to avoid conscription, and the associated socialization of medical and dental services.

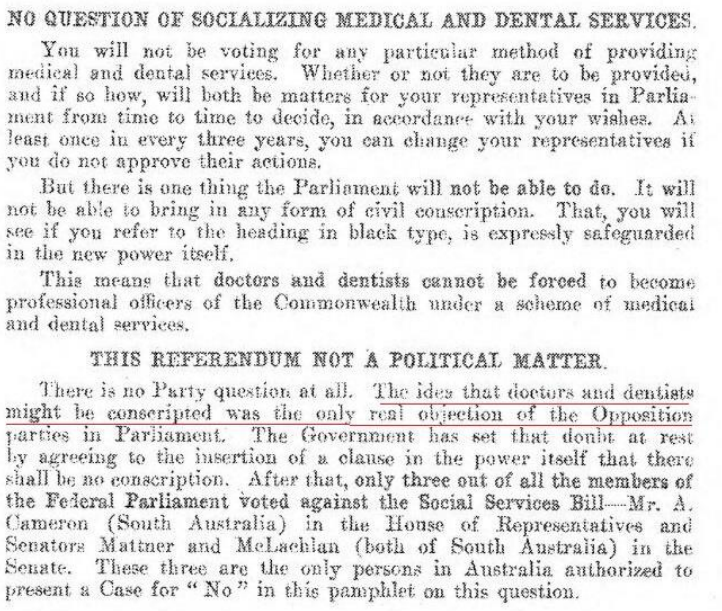
Wong v Commonwealth of Australia [2009] HCA 3: French CJ and Gummow J (at 44-46):

*"Thereafter at a referendum conducted on 28 September 1946 the majorities of electors required by s 128 of the Constitution approved a proposed law to alter s 51 of the Constitution by inserting par (xxiiiA). **The "YES" case** for the proposed law under the heading "No question of socializing medical and dental services" stated:*

> *"You will not be voting for any particular method of providing medical and dental services. Whether or not they are to be provided, and if so how, will both be matters for your representatives in Parliament from time to time to decide, in accordance with your wishes. At least once in every three years, you can change your representatives if you do not approve their actions. But there is one thing the Parliament will not be able to do. It will not be able to bring in any form of civil conscription. That, you will see if you refer to the heading in black type, is expressly safeguarded in the new power itself. This means that doctors and dentists cannot be forced to become professional officers of the Commonwealth under a scheme of medical and dental services."*

Under the heading "This referendum not a political matter", the "YES" case said:

> *"There is no Party question at all. The idea that doctors and dentists might be conscripted was the only real objection of the Opposition parties in Parliament. The Government has set that doubt at rest by agreeing to the insertion of a clause in the power itself that there shall be no conscription."*



NO QUESTION OF SOCIALIZING MEDICAL AND DENTAL SERVICES.

You will not be voting for any particular method of providing medical and dental services. Whether or not they are to be provided, and if so how, will both be matters for your representatives in Parliament from time to time to decide, in accordance with your wishes. At least once in every three years, you can change your representatives if you do not approve their actions.

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THIS REFERENDUM NOT A POLITICAL MATTER.

There is no Party question at all. The idea that doctors and dentists might be conscripted was the only real objection of the Opposition parties in Parliament. The Government has set that doubt at rest by agreeing to the insertion of a clause in the power itself that there shall be no conscription. After that, only three out of all the members of the Federal Parliament voted against the Social Services Bill—Mr. A. Cameron (South Australia) in the House of Representatives and Senators Mattner and McLachlan (both of South Australia) in the Senate. These three are the only persons in Australia authorized to present a Case for "No" in this pamphlet on this question.

French CJ and Gummow J (at 60):

> *“The legislative history and the genesis of s 51(xxiiiA) supports a construction of the phrase “(but not so as to authorize any form of civil conscription)” which treats “civil conscription” as involving some form of compulsion or coercion, in a legal or practical sense, to carry out work or provide services; the work or services may be for the Commonwealth itself or a statutory body which is created by the Parliament for purposes of the Commonwealth; it also may be for the benefit of third parties, if at the direction of the Commonwealth."*

Hayne, Crennan and Kiefel JJ (at 226):

> *"To adopt and adapt what Dixon J said in British Medical Association v The Commonwealth (1949) 79 CLR 201: "[t]here is no compulsion to serve as a medical [practitioner], to attend patients, to render medical services to patients, or to act in any other medical capacity, whether regularly or occasionally, over a period of time, however short, or intermittently".*

Heydon J said (at 263):

> *"...among the things which in 1946 were seen as examples of “industrial conscription” were the following:*
> *(a) a law compelling an individual to work;*
> *(b) a law compelling a worker to work in a particular industry;*
> *(c) a law compelling a worker to work for a particular employer, or compelling a particular employer to accept a particular worker;*
> *(d) a law compelling a worker to work in a particular place; and*
> *(e) a law preventing a worker from leaving his employment (ie a law compelling a worker not to leave his current employment).*
> *This is unlikely to be an exhaustive list…"*

The conscription aspect doesn't apply to anyone but the providers of such services. As Kirby J. stated (at 124):

> *"A further feature, derived from the text, that lends support to the foregoing propositions is that the protection afforded by the words in brackets is special, limited and necessarily restricted to those involved in the provision of "medical and dental services". Such persons comprise the healthcare professionals who provide the designated services."*

Kirby J. then goes on to describe how this protects the patient, by preventing such conscription of their provider. (at 126):

> *"It is designed to ensure the continuance in Australia of the individual provision of such services, as against their provision, say, entirely by a government-employed (or government controlled) healthcare profession."*

Should medical and dental providers be conscripted, it would affect the patients in their care, as the SUPPLY of such services, otherwise than by private contract, would indeed be forced upon them without their consent. All it offers for the patient, is protection from their provider being conscripted, and

without their provider being conscripted, they maintain that "contractual" relationship referred to by Kirby J. (at 125).

It has nothing to do with treatments being forced upon people, (such as mandatory vaccination) but the provision of socialized medical and dental services, such as exists in the UK.

The meaning and intention of civil conscription is also highlighted in the Parliamentary Report regarding the ***Dying with Dignity Bill 2014***, in relation to the constitutionality of the Bill.

Meaning of 'civil conscription'

3.21 Subsection 51(xxiiiA) contains an express prohibition on the use of the medical services power 'to authorize any form of civil conscription'.

3.22 The submission of Catholic Health Australia provided a helpful description of the events that led to the inclusion of subsection 51(xxiiiA) in 1946,[40] which included the explanation that the prohibition on civil conscription was inserted to allay fears that 'the proposed amendment would grant the Commonwealth the power to nationalise medical and dental services'.[41]

3.23 The prohibition on civil conscription has been described as referring to:

> ...any sort of compulsion to engage in practice as a doctor or a dentist or to perform particular medical or dental services. However, in its natural meaning it does not refer to compulsion to do, in a particular way, some act in the course of carrying on practice or performing a service, when there is no compulsion to carry on the practice or perform the service.[42]

3.24 Importantly, the prohibition on civil conscription only applies to the provision of 'medical and dental services' and not to the other elements of subsection 51(xxiiiA).[43]

https://freemandelusion.com/wp-content/uploads/2020/11/wong-v-commonwealth-of-australia-2009-hca-3.pdf

Kassam v Hazzard; Henry v Hazzard [2021] NSWSC 1320 was a challenge against COVID-19 vaccine mandates for certain workers in New South Wales, which included the contention that section 51(xxiiiA) of the *Constitution* prevents any parliament from passing laws in respect of mandatory vaccination. In summary, section 51(xxiiiA) does not prevent mandatory vaccination, it prevents the nationalization of medical and dental services, in this situation, doctors being forced to administer a vaccine against their will, as employees of the Commonwealth. It is regarding the provision of services by the doctor, not the acquisition of services by the patient. Secondly, it only applies to the Commonwealth, not the States:

> **MEANING OF SECTION 51(xxiiiA)** at 272: *"Nothing in any part of Order (No 2) or the PHA involves any element of coercion on a doctor or other medical provider to vaccinate anyone. Otherwise, this submission simply repeats the wrong assertion that s 51(xxiiiA) operates on the acquisition of a medical service as opposed to its provision."*
>
> **APPLICABILITY TO STATES** at 275-276: *"Section 51 of the Constitution, of which s 51(xxiiiA) is part, is directed to the legislative power of the Commonwealth not the states. ... Even if the impugned orders imposed a form of civil conscription, which they do not, they would not be rendered invalid by the operation of s 51(xxiiiA)."*

Full extract (from 261):

Constitutional Ground - Civil Conscription

The Kassam plaintiffs contend that Order (No 2) creates a form of civil conscription referred to in s 51(xxiiiA) of the Constitution which they contend applies to State laws. In the alternative, if s 51(xxiiiA) is held not to apply to State laws, then the Kassam plaintiffs contend that Order (No 2) was made in furtherance of a joint scheme between New South Wales and the Commonwealth "which had the effect of imposing a civil conscription on State citizens".

Both the State parties and the Commonwealth of Australia contended that nothing in Order (No 2) involves a form of civil conscription referred to in s 51(xxiiiA), no such restriction on imposing civil conscription applies to the States, that, even if Order (No 2) did impose a form of civil conscription the limitation would only be infringed if the Commonwealth required the States to conscript persons and even if the Commonwealth did, it would not invalidate Order (No 2). [156]

Civil Conscription

Section 51(xxiiiA) of the Constitution confers on the Federal Parliament legislative power to make laws for the peace, order and good government of the Commonwealth with respect to:

"[t]he provision of maternity allowances, widows pensions, child endowment, unemployment, pharmaceutical, sickness and hospital benefits, medical and dental services (but not so as to authorise any form of civil conscription, benefits to students and family allowances; …" (emphasis added)

This legislative power was inserted into s 51 with effect from 19 December 1946 by the Constitution Alteration (Social Services) Act 1946 following its passage in a referendum. The historical events that lead to the passage of this provision in this particular form are described in Wong v The Commonwealth (2009) 236 CLR 573; [2009] HCA 3 at [18] to [55] per French CJ and Gummow J, at [174] to [191] per Hayne, Crennan and Kiefel JJ and, to an extent, by Heydon J at [271] to [277] ("Wong"). It suffices to note two matters about that history.

First, the phrase "civil conscription" has its origins in the debate about whether "industrial conscription", that is, the use of compulsory civilian labour, would or would not be deployed in the war effort, as it eventually was (Wong at [31] to [40]; see Reid v Sinderberry (1944) 68 CLR 504).

Second, the carve out from the referendum proposing the grant of legislative power so as to not authorise any form of civil conscription was suggested by the then opposition and agreed to by then government (Wong at [50] to [51]) and no doubt helped secure its passage. It stands in contrast to the nationalisation of medical services that took place in the United Kingdom around the same time (Wong at [274]). Thus, the phrase "civil conscription" was deployed so as to preclude compulsory service by medical professionals which might not answer the description "industrial conscription" (Wong at [50]).

Bearing that in mind, two aspects of the concept of civil conscription of s 51(xxiiiA) should be noted. First, the preclusion on authorising civil conscription only qualifies a (Commonwealth) law for the "provision" of "medical or dental services" (the BMA Case at 254 per Rich J, at 261 per

Dixon J, at 282 per McTiernan J, at 286 per Williams J, contra per Latham CJ at 253 and Webb J not deciding at 292; Alexandra Private Geriatric Hospital Pty Ltd v Commonwealth (1987) 162 CLR 271 at 279; [1986] HCA 6; "Alexandra").

Second, civil conscription is directed to compulsive service in the provision of medical services. In the BMA Case a majority, Latham CJ, Rich, Williams and Webb JJ, Dixon and McTiernan JJ dissenting, upheld a challenge to the validity of a legislative requirement for pharmacists to write scripts for medicines on a particular form regardless of whether the medicine was to be obtained for free by the patient under the Pharmaceutical Benefits Scheme. The widest reading of the majority's conclusion was that the prohibition on civil conscription in relation to medical and dental services strikes down any "compulsion of law requiring that men … perform work in a particular way" (at 249 per Latham CJ). Dixon J in dissent concluded that nothing in the impugned provision compelled the rendering of medical services to patients in any capacity whether regularly, occasionally, for a short period or intermittently (at 278). His Honour's approach was effectively adopted in the General Practitioner's Case (1980) 145 CLR 532 at 556-557 per Gibbs J. at 563 per Stephen J, at 564 per Mason J and 571 to 572 per Wilson J; Wong at [195]).

In Wong, Hayne, Crennan and Kiefel JJ also applied the approach of Dixon J in the BMA Case while accepting that civil conscription can arise from the practical and not just legal effect of a legislative provision (at [209]). Even so, their Honours concluded that the practical effect of the scheme for the payment of medical benefits in the Health Insurance Act did not amount to civil conscription in that it did not compel a medical practitioner, legally or practically, to provide a service on behalf of the Commonwealth or at all to treat any patient or particular patient ([id]). Their Honours also concluded that, accepting that the practical effect of the Health Insurance Act was to require doctors who wish to practise to participate in the Medicare scheme (at [224]), a requirement to comply with a standard of practice is not a form of civil conscription (at [226]).

Similarly, after reviewing the history of s 51(xxiiiA), French CJ and Gummow J in Wong reached the same conclusion. In so doing, their Honours described the meaning of "civil conscription" in s 51(xxiiiA) as follows (at [60]):

"The legislative history and the genesis of s 51(xxiiiA) supports a construction of the phrase "(but not so as to authorize any form of civil conscription)" which treats "civil conscription" as involving some form of compulsion or coercion, in a legal or practical sense, to carry out work or provide services; the work or services may be for the Commonwealth itself or a statutory body which is created by the Parliament for purposes of the Commonwealth … it also may be for the benefit of third parties, if at the direction of the Commonwealth." (emphasis added)

The effect of the Kassam plaintiffs' written submissions was that Order (No 2) effected a form of civil conscription because it effectively required unvaccinated persons to obtain a COVID-19 vaccine. [157] This wrongly assumed that s 51(xxiiiA) proscribes the compulsory acquisition of medical services which it does not. In oral submissions, counsel for the Kassam plaintiffs, Mr King, was pressed on how any doctors or any other medical professional was compelled to provide a medical or dental service. He contended that [158]

"…the effect of the order is what is critical in our respectful submission, and the effect of that order is to conscript both patients and doctors, their doctors, to obtain a double vaccination, or in

relation to the earlier orders a single vaccination, as the price of giving up their employment and their right to protect and look after their families."

This contention was repeated in a written submission filed on 4 October 2021. [159] Nothing in any part of Order (No 2) or the PHA involves any element of coercion on a doctor or other medical provider to vaccinate anyone. Otherwise, this submission simply repeats the wrong assertion that s 51(xxiiiA) operates on the acquisition of a medical service as opposed to its provision.

In his submissions, Dr Harkess contended that a medical or dental service was provided by a person who received a COVID-19 vaccine because they contribute to the eventual establishment of "herd immunity". He submitted that it follows that those who were "compelled" to be vaccinated were civilly conscripted to provide dental and medical services. [160] It suffices to state that contributing to the general health of the community by adding to herd immunity is not providing a medical service.

Wong establishes that s 51(xxiiiA) is to be interpreted according to its historical purpose as explained above. On any sensible reading of the authorities the impugned orders do not impose any form of civil conscription as referred to in s 51(xxiiiA).

No Application to the States

Section 51 of the Constitution, of which s 51(xxiiiA) is part, is directed to the legislative power of the Commonwealth not the states. The reference in s 51(xxiiiA) to the provision of the benefits is confined to the provision of those benefits by the Commonwealth (Alexandra at 279; the BMA Case at 244 per Latham CJ, at 254 per Rich J, at 260 per Dixon J and at 279 to 280 per McTiernan J and 292 per Webb J). The Kassam plaintiffs sought to rely on a statement by Williams J in the BMA Case that the "expression invalidates all legislation which compels medical practitioners or dentists to provide any form of medical or dental service" (at 287). However, that statement came at the conclusion of a passage that commenced "[t]he expression [ie, civil conscription] is a prohibition upon the exercise of the legislative powers of the Commonwealth" (at 287.2). The Kassam plaintiffs also referred to the judgment of Kirby J in Wong who construed s 51(xxiiiA) by reference to "emerging norms of fundamental human rights as expressed in international law" (Wong at [133]). None of the other judgments in Wong endorsed his Honour's approach. In any event, his Honour made it clear that what was being addressed was a restriction on "federal law" (at [145]).

The Kassam plaintiffs sought to extend the proscription on civil conscription in the provision of medical and dental services to the States by contending that it gives rise to an "an implied constitutional right of individual patients to reject unless consented to vaccination[s]" binding on the states. [161] Nothing in the text or structure of the Constitution supports any such implication. The express words of s 51(xxiiiA) suggests to the contrary as do the cases just noted. If s 51(xxxi) does not bind the States (Pye v Renshaw (1951) 84 CLR 58 at 83; [1951] HCA 8) then there is no possible justification for s 51(xxiiiA) doing so.

Even if the impugned orders imposed a form of civil conscription, which they do not, they would not be rendered invalid by the operation of s 51(xxiiiA).

Alleged Joint Scheme

On the assumption that Order (No 2) does effect a scheme of civil conscription, but that the proscription on civil conscription in s 51(xxiiiA) does not bind the States, the Kassam Plaintiffs contended that the evidence demonstrates that there was a "joint scheme or ... a co-operative arrangement [between NSW and the Commonwealth] to bring about a civil conscription and that the provisions of Order (No 2), being part of and made in furtherance of the scheme, are for that reason invalid". [162]

This contention seeks to rely on the decisions in P J Magennis Pty Ltd v Commonwealth (1949) 80 CLR 382; [1949] HCA 6 ("Magennis") and ICM Agriculture Pty Ltd v Commonwealth (2009) 240 CLR 140; [2009] HCA 51 ("ICM"). In Magennis a majority of the High Court held the Commonwealth exceeded its powers by entering into an intergovernmental agreement with NSW that provided for an infringement of the just terms guarantee in s 51(xxxi). The NSW legislation which effected an acquisition on other than just terms was construed as depending for its operation upon the existence of a valid law of the Commonwealth. The Commonwealth law giving effect to the agreement was held invalid, but the NSW law was only held to be inoperative (at 403 to 404 per Latham CJ; 424 to 425 per Williams J and at 406 per Rich J agreeing). Later the NSW legislation was "decoupled" from the agreement with the federal government and upheld in Pye (see ICM at [39] per French CJ, Gummow and Crennan JJ). A similar result followed in Tunnock v Victoria (1951) 84 CLR 42. The premise of Magennis that s 51(xxxi) qualifies the Commonwealth's power to make financial grants to the States under s 96 of the Constitution was reaffirmed by French CJ, Gummow and Crennan JJ in ICM (at [46]) as well as by Heydon J (at [174]).

One matter that was not expressly determined by either Magennis or the majority in ICM is whether some restriction that only applies to the Commonwealth, such as s 51(xxxi) or the civil conscription component of s 51(xxiiiA), is engaged by some informal agreement, arrangement or understanding between the Commonwealth and a State that either requires or contemplates the latter legislating to acquire property other than on just terms or effect civil conscription of the providers of medical or dental services as the case may be. This was addressed by Griffiths and Rangiah JJ in Spencer v Commonwealth (2018) 262 FCR 344; [2018] FCAFC 17 at [210] ("Spencer") as follows:

"As we have said, where it is alleged that the State has effected an acquisition of property, s 51(xxxi) will not apply unless the State is required under an intergovernmental agreement with the Commonwealth to acquire the property on other than just terms. Assuming that an informal agreement is sufficient, there can be no lesser requirement where the agreement is an informal one. Latham CJ used the expression 'joint action' in the context of the specific facts of the case in Magennis where the terms and conditions of an agreement required the State to acquire property. There is no Constitutional principle that any action that can be described as 'joint action' that has the effect of acquiring property enlivens s 51(xxxi) of the Constitution. The expression cannot be understood as some free-standing criterion for the engagement of the provision." (emphasis added)

Having regard to these principles and bearing in mind that the reference to "civil conscription" in the Kassam plaintiffs' submission is to some form of mandatory vaccination, how do they seek to

factually support their argument that there was a joint scheme? The Kassam plaintiffs' submissions made reference to numerous documents recording various joint efforts between the Commonwealth and the State to address the pandemic commencing from February to March 2020 which in turn invoked pandemic planning documents prepared prior to then. [163] The main focus of its submissions was the "National Plan to Transition Australian National Covid-19 Response" published on 6 August 2021 (the "National Plan"). [164] The National Plan was issued after statements by the Prime Minister on 9 July 2021, 30 July 2021, 2 August 2021 and 6 August 2021 following meetings of the body described as "National Cabinet". [165]

Save for one topic, none of these documents or any other document referred to by the Kassam plaintiffs evidences any joint agreement, understanding or consensus between the Commonwealth and NSW to mandate vaccines for COVID-19 much less any requirement imposed by the Commonwealth to do so.

The one exception concerns aged care workers. Thus, in his statement on 9 July 2021 the Prime Minister stated [166] :

"National Cabinet reaffirmed the commitment to implement the decision to mandate vaccination of aged care workers by mid- September 2021, with limited exceptions. All states and territories will work towards implementing this decision using state public health orders or similar state and territory instruments and will provide an indication of timing when it is available. This is consistent with the approach taken for mandating influenza vaccinations for aged care workers."

This statement is consistent with the correspondence noted in [121].

However, all this of this material takes the matter nowhere for two reasons. First, there is nothing in any of the materials relied on, including the material concerning aged care workers, to support the contention that NSW was required under some agreement to mandate vaccines to anyone (cf Spencer at [210]). Second, even if they were, there is nothing in Order (No 2) or the PHA to suggest that any aspect of their operation or validity is dependent on the existence of any agreement with the Commonwealth to require them to mandate vaccines which on the authority of Magennis might render them inoperative. As for the Commonwealth, there is not a skerrick of a suggestion that any legislation of the Commonwealth gives effect to any such agreement so as to justify some relief being sought against it, which there was not.

Conclusion on s 51(xxiiiA) Contention

Lastly on this topic I note that the Kassam plaintiffs referred the Court to an article by two legal academics recently published in a magazine of political commentary concerning the unconstitutionality of vaccine orders (Augusto Zimmerman and Gabriel Moens, "Emergency Measures and the Rule of Law", (2021) 64(10) Quadrant Magazine). The reliance on the article was misconceived because in fairness to the authors of the article they did not purport to address the state of the authorities on s 51(xxiiiA) and their applications to orders made under s 7(2) of the PHA or similar legislation. Hence, at the commencement of the article, the authors state that is not "feasible to predict what the Australian High Court might do if it were called upon to consider the constitutionality of vaccination orders and emergency declaration directions" but stated that they "it is still possible to determine what it should do". This Court's task does not

involve any determination of what the High Court "might do" much less what it "should" do. Instead, its function is to apply the what the High Court has decided in relation to s 51(xxiiiA).

A consideration of the authorities in relation to s 51(xxiiiA) of the Constitution confirms that the contention that it renders any part of Order (No 2) invalid was completely untenable. I reject this ground."

Comments on Civil Conscription in the Court of Appeals in ***Kassam v Hazzard; Henry v Hazzard [2021] NSWCA 299***.

(at 10): *"Order (No 2) did not effect any form of civil conscription as referred to in s 51(xxiiiA) of the Constitution and, even if it did, the prohibition on civil conscription does not apply to laws made by the State of NSW: PJ [11(iv)]. The primary judge described this aspect of the constitutional argument as "completely untenable": PJ [286]. His Honour also rejected an argument based upon PJ Magennis Proprietary Limited v Commonwealth (1949) 80 CLR 382; [1949] HCA 66 (Magennis) to the effect that there was a joint scheme between the Commonwealth and the State which engaged s 51(xxiiiA): PJ [284]."*

(at 38): *"In relation to the constitutional arguments sought to be raised by the Kassam Applicants (grounds 6 and 9, noting that ground 7 was not pressed), I agree with the primary judge's assessment that the argument based upon s 51(xxiiiA) of the Constitution was completely untenable. As his Honour noted at PJ [267], that placitum "only qualifies a (Commonwealth) law for the 'provision' of 'medical or dental services'." Moreover, as his Honour outlined at PJ [268], "civil conscription is directed to compulsive service in the provision of medical services", not their receipt. As the primary judge observed at PJ [272], "[n]othing in any part of Order (No 2) or the [Public Health Act] involves any element of coercion on a doctor or other medical provider to vaccinate anyone."*

Additionally, s 51(xxiiiA) of the Constitution is not a constraint on State power. Ground 9 of the Kassam Appeal relates to the attempt to circumvent the fact that s 51(xxiiiA) does not purport to constrain State power and is bound up with the unsuccessful argument put at first instance based on Magennis. This was only one of the objections to the s 51(xxiiiA) argument. In any event, as the primary judge observed at PJ [284] in relation to the body of material which the Kassam Parties sought to rely on:

"all this [sic] of this material takes the matter nowhere for two reasons. First, there is nothing in any of the materials relied on, including the material concerning aged care workers, to support the contention that NSW was required under some agreement to mandate vaccines to anyone (cf Spencer at [210]). Second, even if they were, there is nothing in Order (No 2) or the [Public Health Act] to suggest that any aspect of their operation or validity is dependent on the existence of any agreement with the Commonwealth to require them to mandate vaccines which on the authority of Magennis might render them inoperative."

(at 141): *"There is nothing in the Kassam Applicants' submission that s 51(xxiiiA) directly subtracts from State legislative power. A qualification to a new head of legislative power granted to the Commonwealth following a referendum cannot result in a diminution of State legislative power. The Kassam Applicants' alternative submission, based upon joint action by the Commonwealth*

> *and the States, fails at the threshold because it was not shown that there was is any legal or practical compulsion on any medical or dental practitioner to perform any medical or dental service. The primary judge explained this, by reference to binding authority, at [267]-[274]."*

https://freemandelusion.com/wp-content/uploads/2022/03/Kassam-v-Hazzard-Henry-v-Hazzard-2021-NSWSC-1320.pdf

https://freemandelusion.com/wp-content/uploads/2022/01/Kassam-v-Hazzard-Henry-v-Hazzard-2021-NSWCA-299.pdf

In ***Tilley v State of Queensland (Queensland Health) [2022] QIRC 002***, (at 35) Hartigan IC agreed with Beech-Jones CJ in *Kassam v Hazzard [2021] NSWSC 1320* (from 261) regarding the correct interpretation of section 51(xxiiiA) of the Constitution:

> *"In relation to Mr Tilley's contention with respect to s 51(xxiiiA) of the Commonwealth of Australia Constitution Act, regard must be had to the terms of that provision. Relevantly, s 51(xxiiiA) of the Constitution states:*
>
> *Legislative powers of the Parliament: The Parliament shall, subject to this Constitution, have power to make laws for the peace, order, and good government of the Commonwealth with respect to:— (xxiiiA) The provision of maternity allowances, widows' pensions, child endowment, unemployment, pharmaceutical, sickness and hospital benefits, medical and dental services (but not so as to authorize any form of civil conscription), benefits to students and family allowances:*
>
> *This provision of the Constitution appears to relate to the Commonwealth's power to make laws regarding the provision of, inter alia, medical services. The civil conscription limitation appears to relate to those who provide the, inter alia, medical services. In **Wong v Commonwealth of Australia and Anor, Selim v Lele, Tan and Rivett constituting the Professional Services Review Committee No 309 [2009] HCA 3** the High Court, in considering s 51 (xxiiiA) of the Constitution, relevantly held (at 60):*
>
> *The legislative history and the genesis of s 51(xxiiiA) supports a construction of the phrase "(but not so as to authorize any form of civil conscription)" which treats "civil conscription" as involving some form of compulsion or coercion, in a legal or practical sense, to carry out work or provide services; the work or services may be for the Commonwealth itself or a statutory body which is created by the Parliament for purposes of the Commonwealth; it also may be for the benefit of third parties, if at the direction of the Commonwealth. [footnotes omitted].*
>
> *Accordingly, I do not consider that s 51(xxiiiA) of the Constitution is relevant to the circumstances of this matter as it relates to the provision of, inter alia, medical services, rather than the receipt of such services by an individual. Further, I do not consider that s 51(xxiiiA) of the Constitution is relevant to this matter as it relates to the Commonwealth's power to make such laws and does not cover the responsibilities of the State."*

https://freemandelusion.com/wp-content/uploads/2022/03/Tilley-v-State-of-Queensland-Queensland-Health-2022-QIRC-002.pdf

Luke Beck, an associate professor of constitutional law at Monash University, told ***AAP FactCheck*** that this section was added to the constitution in 1946 to *"allow the Commonwealth to fund various social services schemes"* such as Medicare, the pharmaceutical benefits scheme and payments available through Centrelink. Dr Beck called this claim "*pseudo-legal nonsense"*, saying the civil conscription limitation only prevents the federal government from forcing people to do work as doctors and dentists – it did not grant people individual rights. The High Court dealt with the clause in 2009, when it ruled that requiring doctors to comply with professional standards in order to receive Medicare payments did not amount to civil conscription, he pointed out. *"There's nothing in the constitution that would prevent a law making COVID vaccination mandatory. We have had mandatory vaccination rules for some professions for a long time in respect of other vaccines,"* Dr Beck added.

Amelia Simpson, an associate professor at the Australian National University (ANU) who specialises in discrimination and equality principles in constitutional law, said the claim was *"far-fetched"* and *"highly unlikely to be accepted by any court".* She said the prohibition on civil conscription was included to prevent the "forced enlistment of medical personnel to work for the government". *"It was a response to the fears of the medical profession in Australia at the time (70 years ago) that their profession may be nationalised and their ability to work in private practice restricted,"* Dr Simpson said. *"It has got nothing to do with coercive immunisation of citizens, then or now."*

Scientia professor George Williams, the deputy vice-chancellor and former dean of law at UNSW, said the clause could be used to prevent the Commonwealth – although not the states – from compelling doctors to take part in mass immunisation programs. *"On the other hand, it would not prevent the Commonwealth from requiring citizens to be vaccinated,"* he said in an email.

The Legal experts also noted that the section of the constitution only relates to the Commonwealth's power and does not cover responsibilities of the states. Ron Levy, an associate professor with expertise in constitutional law at the ANU College of Law, said that even if a person somehow convinced a court to re-read the section to bar mandatory vaccination, that decision would not apply to any laws of the states. Under the constitution, the Commonwealth is responsible for national health policies such as Medicare, whereas the states look after public hospitals and deliver preventative services such as immunisation programs.

https://freemandelusion.com/wp-content/uploads/2022/04/Does-a-constitutional-clause-ban-vaccine-mandates-in-Australia_-Australian-Associated-Press.pdf

Nothing to do with Centrelink benefits

Halliday v The Commonwealth of Australia [2000] FCA 950; 45 ATR 458:

> *"The only restriction on the Commonwealth's power to make laws imposing civil conscription is found in s 51(xxiiiA) of the Constitution. The power to legislate to provide medical and dental services is limited by the phrase "but not so as to authorize any form of civil conscription". This prohibition applies only to the provision of medical and dental services, and not to the other benefits etc mentioned in par (xxiiiA)."*

***British Medical Association v The Commonwealth* (1949) HCA 44**; at 286-287:

> *"This condition cannot by reason of its place in par. (xxiiiA.) apply to a law providing "benefits to students" and "family allowances". Its place in the paragraph raises the question whether it applies only to the provision of medical and dental services and nothing else or to the provision of any matter in the paragraph which precedes the condition. They are maternity allowances, widows' pensions, child endowment, unemployment, pharmaceutical, sickness and hospital benefits, medical and dental services. It would seem odd to say that there is power to make a law with respect to the provision of maternity allowances "but not so as to authorize any form of civil conscription." And if the condition applies to that subject matter it would appear to be odd that it is not made to apply to "family allowances." Clearly it does not apply to that subject matter. If the construction that the condition applies only to the provision of medical and dental services is not adopted, the only alternative construction is that it applies to every subject matter beginning with maternity allowances down to medical services. This alternative construction would bring the idea of conscription into association with matters with which it is not naturally or logically connected. I think that the key to the interpretation of the paragraph is that the idea of conscription cannot naturally be associated with the provision of anything in the paragraph except the services which are mentioned; they are medical and dental services. The condition immediately follows the words "medical and dental services." In my opinion it should not be annexed to anything before the word "medical." There is no comma between dental services and the first of the brackets enclosing the condition: there is a comma at the end of the second bracket. The words "medical and dental services (but not so as to authorize any form of civil conscription)" are a separate branch of the legislative power conferred by the paragraph. No other branch of the power is qualified by the condition."*

https://freemandelusion.com/wp-content/uploads/2020/11/british-medical-association-v-commonwealth.pdf

***Alexandra Private Geriatric Hospital Pty Ltd v The Commonwealth* (1987) HCA 6** at 12:

> *"Secondly, the prohibition contained in the words "but not so as to authorize any form of civil conscription" in s.51(xxiiiA) applies only to the reference in the paragraph to the provision of "medical and dental services". The words of that prohibition, however, are not irrelevant to the scope of the other matters described in the paragraph at least to the extent that whenever medical or dental services are provided pursuant to a law with respect to the provision of some other benefit, for example, sickness or hospital benefits, "the law must not authorize any form of civil conscription of such services": the B.M.A. Case per Williams J. at pp.286-287; see also..."*

https://freemandelusion.com/wp-content/uploads/2020/11/alexandra-private-geriatric-hospital-pty-ltd-v-the-commonwealth.pdf

General Practitioners Society v. The Commonwealth (1980) HCA 30, per Gibbs J. at p 549:

> *"It was held by the majority of the Court in British Medical Association v. The Commonwealth that the bracketed words in par. (xxiiiA) qualify only "medical and dental services", and that the other heads of power in the paragraph are not subject to those words: see per Rich J., per Dixon J., per McTiernan J., and per Williams J. ; contra, per Latham C.J."*

https://freemandelusion.com/wp-content/uploads/2020/11/general-practitioners-society-in-australia-v-the-commonwealth.pdf

Therefore, the *"the provision of maternity allowances, widows' pensions, child endowment, unemployment, pharmaceutical, sickness and hospital benefits"* part are not matters which fall within the matters to which *"but not so as to authorize any form of civil conscription"* applies. It applies only to the *"medical and dental services"* part of the subsection. Family Tax Benefit and Childcare Subsidy are not payments for medical and dental services anyway (even if they are linked to having a medical procedure) nor are services provided by conscripted health workers.

The mother in a Family Court dispute regarding orders that the child be vaccinated, filed an application in the High Court seeking an order removing an appeal against the orders made to the High Court, asserting that there was a question involving section 51(xxiiiA) of the Constitution. It was contended that:

> *"...the Family Law Court only has the power to make a binding order upon the mutual consent of the parties. If there is no mutual consent by the parties any order made by the Family Law Court has no legal effect because it would contravene the prohibition on civil conscription provided in s 51(xxiiiA) which is binding on all the Courts and Judges".*

The High Court application was dismissed by Steward J, finding it lacked merit and was misconceived:

> *"The constitutional point would appear to rely upon the carve out for "civil conscription" in section 51(xxiiiA) of the Constitution, which is in the following terms: "The Parliament shall, subject to this Constitution, have power to make laws for the peace, order, and good government of the Commonwealth with respect to: … the provision of maternity allowances, widows' pensions, child endowment, unemployment, pharmaceutical, sickness and hospital benefits, medical and dental services (but not so as to authorize any form of civil conscription), benefits to students and family allowances:"*
>
> *The mother alleges that this paragraph confers a constitutional freedom of some kind from compulsory vaccination. Her application for removal, which characterises the freedom as a constitutional "right", is very difficult to follow and is, with great respect, assertive in nature. Her contention is not supported by any authority and would appear to have very slim prospects of success.*
>
> *In **General Practitioners Society v The Commonwealth (1980) 145 CLR 532**, Gibbs J (as his Honour then was) observed that the phrase "civil conscription" applied to medical and dental services and "refers to any sort of compulsion to engage in practice as a doctor or a dentist or to perform particular medical or dental services" (at 557). Earlier in his Honour's reasons, Gibbs J explained the term "civil conscription" in the following way: "The word 'conscription', in the sense that seems to be most apposite for present purposes, means the compulsory enlistment of men (or women) for military (including naval or air force) service. The expression 'civil conscription' appears to mean the calling up of persons for compulsory service other than military service."*
>
> *As it is directed at preventing the conscription of a doctor or dentist to perform compulsory medical or dental services, the carve out for civil conscription in para (xxiiiA) would appear to have nothing at all to do with the power of the Family Court to make orders by consent for the*

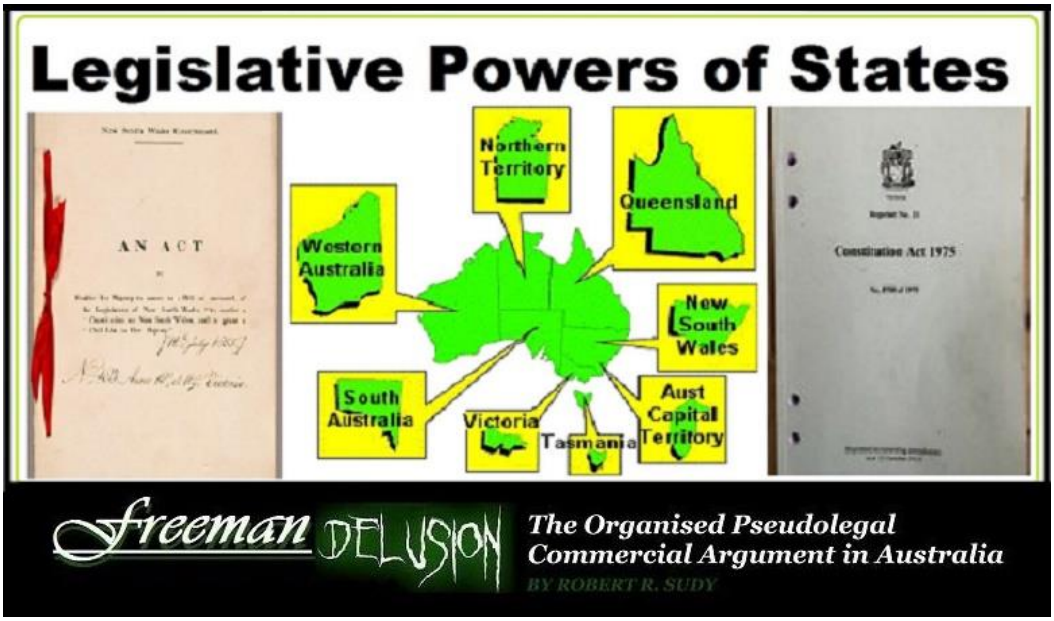
> *vaccination of the daughter. Further, it is not suggested in any way that the doctor who might perform that vaccination will do so compulsorily pursuant to some Act of Parliament."*

In ***Covington & Covington [2021] FamCAFC 52***, Strickland, Ryan & Aldridge JJ dismissed an Appeal application and gave reasons for judgment, adding:

> *"Furthermore, the mother would appear to recognise in her affidavit relied upon that what section 51(xxiiiA) prohibits, is legislation that authorises any form of civil conscription. However, here there is an order that the child be vaccinated; and therefore the only legislation that could be in play is the **Family Law Act 1975** (Cth). Thus, the mother would have to persuade the High Court of Australia that that Act, and presumably section 65, and maybe section 67ZC, is the relevant legislation that is caught by the prohibition in section 51(xxiiiA). However, nowhere does the mother make that submission, and indeed, in our view, it is a submission that could not be made.*
>
> *What the mother does do in her affidavit is suggest that the relevant legislation which is caught by section 51(xxiiiA) here is the Victorian Public Health (No Jab, No Play) Act 2008, and as a result that Act is invalid. However, the first point to make is that that is a Victorian Act, and not Commonwealth legislation, when only the latter would be caught by section 51(xxiiiA). Secondly, and obviously, the order was not made under the Victorian Act; it was made under the Family Law Act 1975 (Cth), and thirdly, the vaccinations once given, will be given pursuant to the orders made by his Honour.*
>
> *The mother suggested in oral submissions that this Court had more material before it than was before Steward J. We assume that that is referring to the reliance before this Court on the High Court decision of **Wong v The Commonwealth (2009) 236 CLR 573**. However, that decision can give no comfort to the mother. It does not provide a basis for the application of s 51(xxiiiA) to the proceedings here. In summary then, we are not persuaded that there is any merit in the constitutional issue relied on to have the appeal removed to the High Court of Australia. Thus, we dismissed the Application in an Appeal filed on 13 April 2021."*

https://freemandelusion.com/wp-content/uploads/2022/04/Covington-Covington-2021-FamCAFC-52.pdf

The Legislative Powers of States



In 1850, half a century before Federation, Westminster Parliament passed the ***Australian Colonies Government Act***, 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.

This was never completely surrendered to the Commonwealth Parliament at Federation, the legislative powers of the federal body were actually limited to a mere 39 different matters outlined in section 51 of the federal constitution, (plus several more in section 52 and section 90 section 114, and section 115) and all other matters still remained within the jurisdiction of the State parliaments.

The Commonwealth constitution is basically a document that limits Commonwealth powers. Yes it is the ultimate source of our law but it specifically says that the States keep the powers they had prior to federation unless taken away in the constitution - (refer section 106 section 107 section 108 and section 118.)

There are EXCLUSIVE, CONCURRENT and RESIDUAL legislative powers

This is a hard concept for most pseudolaw adherents to grasp, and their arguments fail to acknowledge the basic nature of a federation in the form which the Commonwealth of Australia takes. Section 109 seems invariably to be relied upon to substantiate many of their constitutional contentions. It provides:

> *"When a law of a State is inconsistent with a law of the Commonwealth, the latter shall prevail, and the former shall, to the extent of the inconsistency, be invalid."*

Although section 109 says that Commonwealth laws are superior to State laws, it must be understood that this is only in the sphere of **CONCURRENT** powers: Those powers that belong both to the States and the Commonwealth. Thus when both the States and Commonwealth have power to pass legislation in a

certain area, Commonwealth laws will prevail to the extent of any inconsistencies. (See article "***The premise of inconsistency: Section 109***")

The vast majority of powers that are concurrent are found in section 51 - both the Commonwealth and the States can legislate in these areas but Commonwealth laws are superior.

But what of **EXCLUSIVE** powers? The States are not allowed to legislate in these areas - ever. Only the Commonwealth can legislate in these areas. (See eg section 52, section 90, section 114, and section 115.)

What's left? Aptly, what's left over are called the **RESIDUAL** powers. If it isn't mentioned in the constitution then the Commonwealth can't legislate in respect of it, never - it has no power to do so, it would be ultra vires. Practically all these unmentioned powers are left to the States, section 106, section 107, section 108 and section 118 make that absolutely clear.

Most of the States powers were granted to them under the ***Colonial Laws Validity Act 1865*** prior to the Commonwealth Constitution's existence - and it kept these powers according to the constitution. This is a very broad area of powers - it includes all our state criminal laws (the Commonwealth can only pass laws over criminal matters if they relate to another power - social security, drug importation, etc.

The constitutions

Notice the legislative powers of the federal parliament outlined in section 51 of the Commonwealth Constitution are limited to a mere 39 categories...

Legislative powers of the Parliament

> *"The Parliament shall, subject to this Constitution, have power to make laws for the peace, order, and good government of the Commonwealth with respect to..."*

The legislative powers of State parliaments however, are much broader, covering everything not included in the legislative functions of the federal body...

Constitution Act 1975 (Vic) - Section 16 - Legislative power of Parliament

> *"The Parliament shall have power to make laws in and for Victoria in all cases whatsoever."*

Constitution Act 1902 (NSW) - Section 5 General legislative powers

> *"The Legislature shall, subject to the provisions of the Commonwealth of Australia Constitution Act, have power to make laws for the peace, welfare, and good government of New South Wales in all cases whatsoever."*

Section 118 of the Commonwealth Constitution states that the Commonwealth must give full faith and credit to the legislative processes of the States, and the powers of the States are also protected by sections 106, 107, 108 of the federal constitution, regarding the saving of State constitutions, existing legislation, and legislative powers of State parliaments...

Section 118 - Recognition of laws etc. of States

> *"Full faith and credit shall be given, throughout the Commonwealth to the laws, the public Acts and records, and the judicial proceedings of every State."*

Section 106 - Saving of state constitutions

> *"The Constitution of each State of the Commonwealth shall, subject to this Constitution, continue as at the establishment of the Commonwealth, or as at the admission or establishment of the State, as the case may be, until altered in accordance with the Constitution of the State."*

Section 107 - Saving of Power of State Parliaments

> *"Every power of the Parliament of a Colony which has become or becomes a State, shall, unless it is by this Constitution exclusively vested in the Parliament of the Commonwealth or withdrawn from the Parliament of the State, continue as at the establishment of the Commonwealth, or as at the admission or establishment of the State, as the case may be."*

Section 108 - Saving of State laws

> *"Every law in force in a Colony which has become or becomes a State, and relating to any matter within the powers of the Parliament of the Commonwealth, shall, subject to this Constitution, continue in force in the State; and, until provision is made in that behalf by the Parliament of the Commonwealth, the Parliament of the State shall have such powers of alteration and of repeal in respect of any such law as the Parliament of the Colony had until the Colony became a State."*

This means that the existing laws of a State, its powers, and its constitution, cannot be altered by the federal body, but only by the provisions of that particular State.

For example, when the Australia Act included amendments to the constitutions of Queensland (section 13) and Western Australia (section 14). Kirby's view in ***Attorney-General (WA) v Marquet (2003) HCA 67*** was that this was inconsistent with Constitution section 106, so that the Australia Act (Cth) was not a valid exercise of Commonwealth legislative power. A majority however, thought that it was sufficient that the Act had only been passed in reliance on Constitution section 51(xxxviii), which gives the Commonwealth parliament power to legislate at the request of the State parliaments. Soon afterwards, however, in ***Shaw v Minister for Immigration and Multicultural Affairs (2003) HCA 72***, the whole Court (including Kirby) took a more comprehensive view: that the Australia Act in its two versions, together with the State request and consent legislation, amounted to establishing Australian independence at the date when the Australia Act (Cth) came into operation, 3 March 1986.

In ***McGinty v Western Australia [1996] HCA 48*** their Honour's explain (at 56):

> *"Section 106 does not effect a blanket importation of the Australian Constitution into State constitutions. To interpret s 106 in this way unduly subjects State constitutions to the Australian Constitution at the price of the other stated aims of the section. Its primary aim is to guarantee the continuation of State constitutions after federation, though subject to the Constitution."*

https://freemandelusion.com/wp-content/uploads/2018/07/mcginty-v-western-australia-1996-hca-48.pdf

As held in ***Durham Holdings Pty Ltd v New South Wales (1999) 47 NSWLR 340***:

> *"In **Union Steamship Co of Australia Pty Ltd v King [1988] HCA 55**, the Court stated that, within the limits of the grant, a power such as that conferred on the New South Wales Parliament by s 5 of the Constitution Act 1902 (NSW) to make laws "for the peace, welfare, and good government of New South Wales" is "as ample and plenary as the power possessed by the Imperial Parliament itself". Moreover, at the time of the 1990 Act, the Australia Act 1986 (Cth) was in force. Section 2(2) thereof declared and enacted that the legislative powers of each State Parliament included all legislative powers that Westminster might have exercised before the commencement of that Act for the peace, order and good government of the State."*

https://freemandelusion.com/wp-content/uploads/2019/06/durham-holdings-pty-ltd-v-the-state-of-new-south-wales-2001-hca-7.pdf

As explained in ***Glew v Shire of Greenough [2006] WASCA 260*** (from 3):

> *"Before I turn to the grounds of appeal, therefore, it is desirable, so that the appellants will understand the following discussion, to set out a very bare outline of the relationships between Commonwealth and State Constitutions and the Commonwealth and State legislative powers which flow from them.*
>
> *The settlement of the Australian colonies began as an executive act of the Imperial Crown. Letters Patent - in effect, public instructions - from the Crown were issued to governors. However, in 1823 the Act commonly called the New South Wales Act (4 Geo IV, c 96) was passed by the Imperial Parliament. It conferred upon the governor power to enact laws for the "peace welfare and good government" of New South Wales, with the advice of the Legislative Council. Because legislation can restrict or alter the prerogatives of the Crown, this Act began the process of restricting the power of the Crown to govern the colonies. In time, further Acts of the United Kingdom Parliament not only set up local legislatures, but also provided that those legislatures could set up, and amend, their own constitutions. One of those Acts is referred to in the preamble to the Constitution Act 1889, which is an Act passed by the Western Australia legislature of the day pursuant to that authority. When the Commonwealth Constitution was passed as an Act of the United Kingdom Parliament, the former colonies became States.*
>
> *The Commonwealth Constitution is binding on all Courts and Parliaments throughout the country. To the extent that State or Commonwealth law is inconsistent with it, that State or Commonwealth law is invalid. It is, however, a Constitution which was superimposed on, and assumes the existence of, pre-existing State Constitutions which not only continued, but which were able to be altered in accordance with their terms.*
>
> *So far as legislative power was concerned, s 51 of the Commonwealth Constitution listed most of the legislative powers of the Commonwealth. Those powers were not expressed to be exclusive. That is, the Commonwealth Constitution contemplated that both State and Commonwealth Parliaments would be able to make laws in relation to the matters set out in that*

> *list. It was only where the Commonwealth had passed a law in relation to one of those listed subject matters, and a State law was inconsistent with the Commonwealth law, that the State law would become invalid or inoperative (s 109). That would not be because the State lacked constitutional power to pass the law, but simply because the Commonwealth legislation was, to the extent that the Commonwealth had passed law, paramount. There is a short list of powers which are exclusive to the Commonwealth Parliament. They include, for example, the power to make laws with respect to the seat of government of the Commonwealth (s 52(i)).*
>
> *In relation to Western Australia, s 2 of the Constitution Act 1889 (WA) empowers the State to make laws for the "peace, order and good government of Western Australia". That is a very extensive grant of legislative power. The words "peace, order and good government" are to be understood as conferring ample and plenary power on the States to legislate for any matter having a connection with the State (**Union Steamship Co of Australia Pty Ltd v King (1988) 166 CLR 1**). The State can make any "fact, circumstance, occurrence or thing" in or connected with the State a subject of legislation (**Broken Hill South Ltd (Public Officer) v The Commissioner of Taxation (New South Wales) (1937) 56 CLR 337**, at 375 per Dixon J).”*

https://freemandelusion.com/wp-content/uploads/2020/08/glew-v-shire-of-greenough-2006-wasca-260.pdf

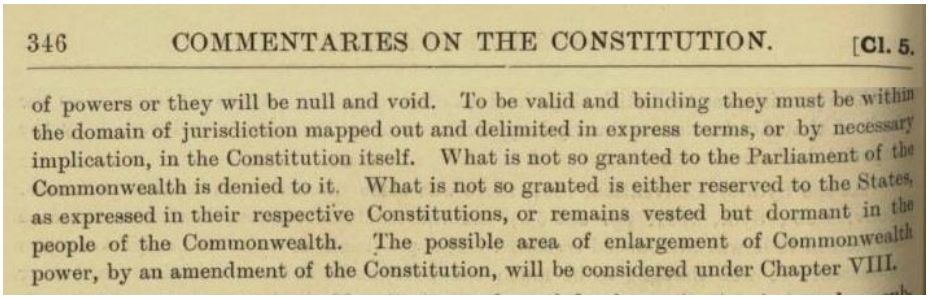
It was stated in ***Nibbs v Devonport City Council [2015] TASSC 34***:

> *“The argument ignores completely the sovereign authority of the Parliament of Tasmania, derived from imperial legislation and confirmed in the Australian Constitution to make laws binding within the territorial jurisdiction of Tasmania. The defendant's argument does not accept the legitimacy and authority of such law that this Court is bound by and must enforce and apply such law. As the magistrate rightly said, the argument fails to acknowledge the basic nature of a federation in the form which the Commonwealth of Australia takes. The States of Australia are sovereign states: see ss 106 and 107 of the Constitution. Section 109 renders invalid State laws to the extent that they are inconsistent with a law of the Commonwealth. There is nothing to prevent States from legislating about local government. Whilst s 51(ii) enables the Commonwealth Parliament to make laws with respect to taxation, a State government is not thereby precluded from making such laws, provided there is no inconsistency.”*

https://freemandelusion.com/wp-content/uploads/2020/06/nibbs-v-devonport-city-council-2015-tassc-34.pdf

As Robert Garran makes clear on ***page 346*** of *The annotated constitution of the Australian Commonwealth:*

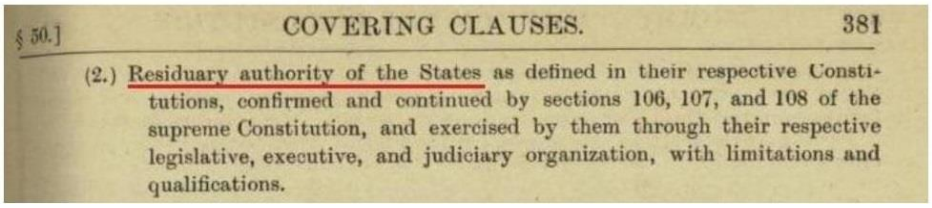
> *"What is not so granted to the parliament of the Commonwealth is denied. What is not so granted is either reserved to the States, as expressed in their respective constitutions, or remains vested by dormant in the people of the Commonwealth."*



346 COMMENTARIES ON THE CONSTITUTION. [Cl. 5.

of powers or they will be null and void. To be valid and binding they must be within the domain of jurisdiction mapped out and delimited in express terms, or by necessary implication, in the Constitution itself. What is not so granted to the Parliament of the Commonwealth is denied to it. What is not so granted is either reserved to the States, as expressed in their respective Constitutions, or remains vested but dormant in the people of the Commonwealth. The possible area of enlargement of Commonwealth power, by an amendment of the Constitution, will be considered under Chapter VIII.

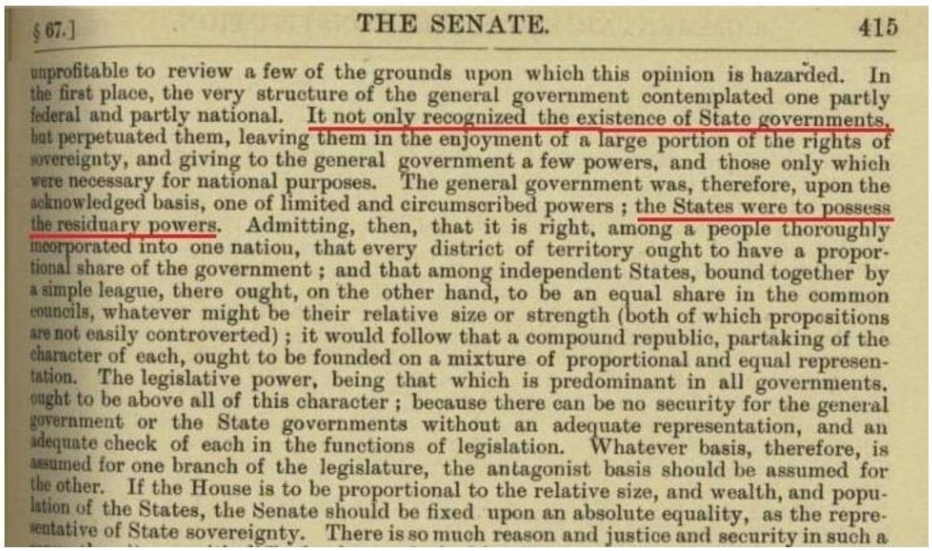
On ***page 381*** he states that these Residual legislative powers as defined by their respective State constitutions are: *"...confirmed and continued by sections 106, 107 and 108 of the supreme Constitution."*



§ 50.] COVERING CLAUSES. 381

(2.) Residuary authority of the States as defined in their respective Constitutions, confirmed and continued by sections 106, 107, and 108 of the supreme Constitution, and exercised by them through their respective legislative, executive, and judiciary organization, with limitations and qualifications.

On ***page 415*** he states that the Constitution *"not only recognised the existence of State governments, but perpetuated them..."* and that the general government was one of *"limited and circumscribed powers"* while *"...the States were to possess the Residual powers."*

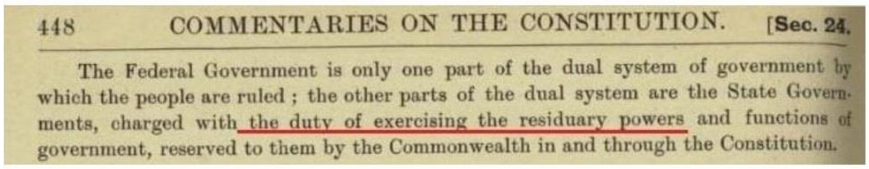


§ 67.] THE SENATE. 415

unprofitable to review a few of the grounds upon which this opinion is hazarded. In the first place, the very structure of the general government contemplated one partly federal and partly national. It not only recognized the existence of State governments, but perpetuated them, leaving them in the enjoyment of a large portion of the rights of sovereignty, and giving to the general government a few powers, and those only which were necessary for national purposes. The general government was, therefore, upon the acknowledged basis, one of limited and circumscribed powers; the States were to possess the residuary powers. Admitting, then, that it is right, among a people thoroughly incorporated into one nation, that every district of territory ought to have a proportional share of the government; and that among independent States, bound together by a simple league, there ought, on the other hand, to be an equal share in the common councils, whatever might be their relative size or strength (both of which propositions are not easily controverted); it would follow that a compound republic, partaking of the character of each, ought to be founded on a mixture of proportional and equal representation. The legislative power, being that which is predominant in all governments, ought to be above all of this character; because there can be no security for the general government or the State governments without an adequate representation, and an adequate check of each in the functions of legislation. Whatever basis, therefore, is assumed for one branch of the legislature, the antagonist basis should be assumed for the other. If the House is to be proportional to the relative size, and wealth, and population of the States, the Senate should be fixed upon an absolute equality, as the representative of State sovereignty. There is so much reason and justice and security in such a

On ***page 448***, he states that:

> *"...the federal government is only one part of the duel system of government, and that the other parts of the duel system are the State governments, charged with the duty of exercising the Residual powers..."*

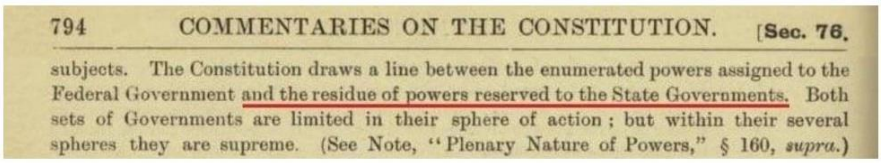


448 COMMENTARIES ON THE CONSTITUTION. [Sec. 24.

The Federal Government is only one part of the dual system of government by which the people are ruled; the other parts of the dual system are the State Governments, charged with the duty of exercising the residuary powers and functions of government, reserved to them by the Commonwealth in and through the Constitution.

On ***page 794*** he states that:

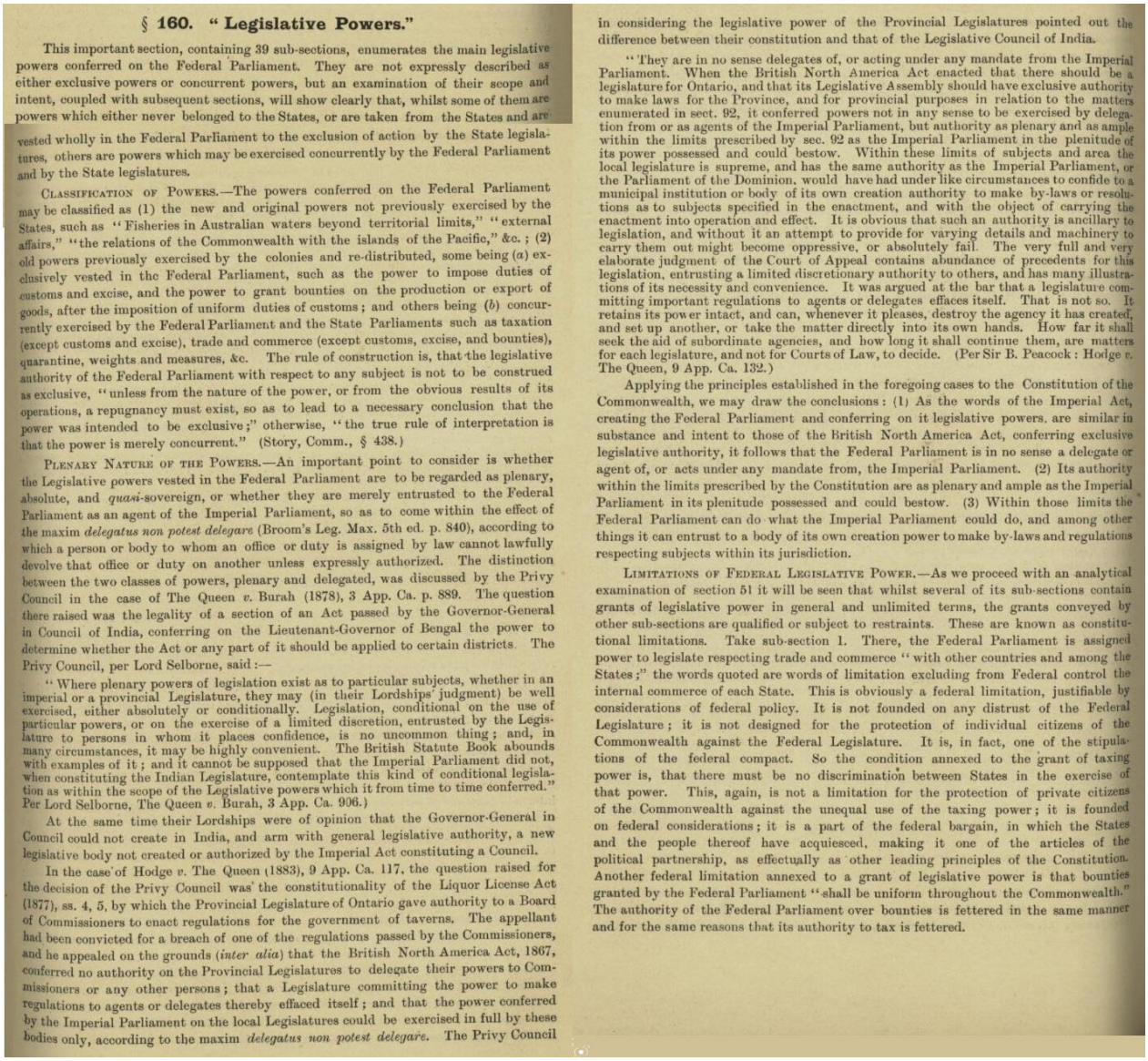
> *"The Constitution draws a line between the enumerated powers assigned to the Federal Government and the residue of powers reserved to the State Governments. Both sets of Governments are limited in their sphere of action, but within their several spheres they are supreme."*



794 COMMENTARIES ON THE CONSTITUTION. [Sec. 76.

subjects. The Constitution draws a line between the enumerated powers assigned to the Federal Government and the residue of powers reserved to the State Governments. Both sets of Governments are limited in their sphere of action; but within their several spheres they are supreme. (See Note, "Plenary Nature of Powers," § 160, *supra*.)

On the same page, there is a note, *"See ss 160, The Plenary Nature of the Powers."* this section on ***page 509***, highlights the plenary or absolute nature of the powers within these spheres, when made by their respective parliaments. They are, as Robert Garran notes, as plenary as the Imperial Parliament itself.



§ 160. "Legislative Powers."

This important section, containing 39 sub-sections, enumerates the main legislative powers conferred on the Federal Parliament. They are not expressly described as either exclusive powers or concurrent powers, but an examination of their scope and intent, coupled with subsequent sections, will show clearly that, whilst some of them are powers which either never belonged to the States, or are taken from the States and are vested wholly in the Federal Parliament to the exclusion of action by the State legislatures, others are powers which may be exercised concurrently by the Federal Parliament and by the State legislatures.

Classification of Powers.—The powers conferred on the Federal Parliament may be classified as (1) the new and original powers not previously exercised by the States, such as "Fisheries in Australian waters beyond territorial limits," "external affairs," "the relations of the Commonwealth with the islands of the Pacific," &c.; (2) old powers previously exercised by the colonies and re-distributed, some being (*a*) exclusively vested in the Federal Parliament, such as the power to impose duties of customs and excise, and the power to grant bounties on the production or export of goods, after the imposition of uniform duties of customs; and others being (*b*) concurrently exercised by the Federal Parliament and the State Parliaments such as taxation (except customs and excise), trade and commerce (except customs, excise, and bounties), quarantine, weights and measures, &c. The rule of construction is, that the legislative authority of the Federal Parliament with respect to any subject is not to be construed as exclusive, "unless from the nature of the power, or from the obvious results of its operations, a repugnancy must exist, so as to lead to a necessary conclusion that the power was intended to be exclusive;" otherwise, "the true rule of interpretation is that the power is merely concurrent." (Story, Comm., § 438.)

Plenary Nature of the Powers.—An important point to consider is whether the Legislative powers vested in the Federal Parliament are to be regarded as plenary, absolute, and *quasi*-sovereign, or whether they are merely entrusted to the Federal Parliament as an agent of the Imperial Parliament, so as to come within the effect of the maxim *delegatus non potest delegare* (Broom's Leg. Max. 5th ed. p. 840), according to which a person or body to whom an office or duty is assigned by law cannot lawfully devolve that office or duty on another unless expressly authorized. The distinction between the two classes of powers, plenary and delegated, was discussed by the Privy Council in the case of The Queen *v.* Burah (1878), 3 App. Ca. p. 889. The question there raised was the legality of a section of an Act passed by the Governor-General in Council of India, conferring on the Lieutenant-Governor of Bengal the power to determine whether the Act or any part of it should be applied to certain districts. The Privy Council, per Lord Selborne, said:—

"Where plenary powers of legislation exist as to particular subjects, whether in an imperial or a provincial Legislature, they may (in their Lordships' judgment) be well exercised, either absolutely or conditionally. Legislation, conditional on the use of particular powers, or on the exercise of a limited discretion, entrusted by the Legislature to persons in whom it places confidence, is no uncommon thing; and, in many circumstances, it may be highly convenient. The British Statute Book abounds with examples of it; and it cannot be supposed that the Imperial Parliament did not, when constituting the Indian Legislature, contemplate this kind of conditional legislation as within the scope of the Legislative powers which it from time to time conferred." Per Lord Selborne, The Queen *v.* Burah, 3 App. Ca. 906.)

At the same time their Lordships were of opinion that the Governor-General in Council could not create in India, and arm with general legislative authority, a new legislative body not created or authorized by the Imperial Act constituting a Council.

In the case of Hodge *v.* The Queen (1883), 9 App. Ca. 117, the question raised for the decision of the Privy Council was the constitutionality of the Liquor License Act (1877), ss. 4, 5, by which the Provincial Legislature of Ontario gave authority to a Board of Commissioners to enact regulations for the government of taverns. The appellant had been convicted for a breach of one of the regulations passed by the Commissioners, and he appealed on the grounds (*inter alia*) that the British North America Act, 1867, conferred no authority on the Provincial Legislatures to delegate their powers to Commissioners or any other persons; that a Legislature committing the power to make regulations to agents or delegates thereby effaced itself; and that the power conferred by the Imperial Parliament on the local Legislatures could be exercised in full by these bodies only, according to the maxim *delegatus non potest delegare*. The Privy Council in considering the legislative power of the Provincial Legislatures pointed out the difference between their constitution and that of the Legislative Council of India.

"They are in no sense delegates of, or acting under any mandate from the Imperial Parliament. When the British North America Act enacted that there should be a legislature for Ontario, and that its Legislative Assembly should have exclusive authority to make laws for the Province, and for provincial purposes in relation to the matters enumerated in sect. 92, it conferred powers not in any sense to be exercised by delegation from or as agents of the Imperial Parliament, but authority as plenary and as ample within the limits prescribed by sec. 92 as the Imperial Parliament in the plenitude of its power possessed and could bestow. Within these limits of subjects and area the local legislature is supreme, and has the same authority as the Imperial Parliament, or the Parliament of the Dominion, would have had under like circumstances to confide to a municipal institution or body of its own creation authority to make by-laws or resolutions as to subjects specified in the enactment, and with the object of carrying the enactment into operation and effect. It is obvious that such an authority is ancillary to legislation, and without it an attempt to provide for varying details and machinery to carry them out might become oppressive, or absolutely fail. The very full and very elaborate judgment of the Court of Appeal contains abundance of precedents for this legislation, entrusting a limited discretionary authority to others, and has many illustrations of its necessity and convenience. It was argued at the bar that a legislature committing important regulations to agents or delegates effaces itself. That is not so. It retains its power intact, and can, whenever it pleases, destroy the agency it has created, and set up another, or take the matter directly into its own hands. How far it shall seek the aid of subordinate agencies, and how long it shall continue them, are matters for each legislature, and not for Courts of Law, to decide. (Per Sir B. Peacock: Hodge *v.* The Queen, 9 App. Ca. 132.)

Applying the principles established in the foregoing cases to the Constitution of the Commonwealth, we may draw the conclusions: (1) As the words of the Imperial Act, creating the Federal Parliament and conferring on it legislative powers, are similar in substance and intent to those of the British North America Act, conferring exclusive legislative authority, it follows that the Federal Parliament is in no sense a delegate or agent of, or acts under any mandate from, the Imperial Parliament. (2) Its authority within the limits prescribed by the Constitution are as plenary and ample as the Imperial Parliament in its plenitude possessed and could bestow. (3) Within those limits the Federal Parliament can do what the Imperial Parliament could do, and among other things it can entrust to a body of its own creation power to make by-laws and regulations respecting subjects within its jurisdiction.

Limitations of Federal Legislative Power.—As we proceed with an analytical examination of section 51 it will be seen that whilst several of its sub-sections contain grants of legislative power in general and unlimited terms, the grants conveyed by other sub-sections are qualified or subject to restraints. These are known as constitutional limitations. Take sub-section 1. There, the Federal Parliament is assigned power to legislate respecting trade and commerce "with other countries and among the States;" the words quoted are words of limitation excluding from Federal control the internal commerce of each State. This is obviously a federal limitation, justifiable by considerations of federal policy. It is not founded on any distrust of the Federal Legislature; it is not designed for the protection of individual citizens of the Commonwealth against the Federal Legislature. It is, in fact, one of the stipulations of the federal compact. So the condition annexed to the grant of taxing power is, that there must be no discrimination between States in the exercise of that power. This, again, is not a limitation for the protection of private citizens of the Commonwealth against the unequal use of the taxing power; it is founded on federal considerations; it is a part of the federal bargain, in which the States and the people thereof have acquiesced, making it one of the articles of the political partnership, as effectually as other leading principles of the Constitution. Another federal limitation annexed to a grant of legislative power is that bounties granted by the Federal Parliament "shall be uniform throughout the Commonwealth." The authority of the Federal Parliament over bounties is fettered in the same manner and for the same reasons that its authority to tax is fettered.

On ***page 928***, he states:

> *"…that in the Constitution there is a division of that delegated sovereignty into two spheres or areas, one being assigned to the Federal Government, and the other to the State Governments ; that each Government is separate and distinct from the rest; that the Federal Government cannot encroach on the sphere or area of the State Governments, and that the State Governments cannot encroach on the sphere or area of the Federal Government; that the sphere or area of the Federal jurisdiction can only be modified, enlarged or diminished by an alteration of the Constitution ; that the sphere or area of the State jurisdictions can only be modified, enlarged, and diminished by a similar alteration. This dual system of government is said to be one of the essential features of a Federation."*

928 COMMENTARIES ON THE CONSTITUTION. [Sec. 106.

there is a division of that delegated sovereignty into two spheres or areas, one being assigned to the Federal Government, and the other to the State Governments; that each Government is separate and distinct from the rest; that the Federal Government cannot encroach on the sphere or area of the State Governments, and that the State Governments cannot encroach on the sphere or area of the Federal Government; that the sphere or area of the Federal jurisdiction can only be modified, enlarged or diminished by an alteration of the Constitution; that the sphere or area of the State jurisdictions can only be modified, enlarged, and diminished by a similar alteration. This dual system of government is said to be one of the essential features of a Federation. .

He even lists some of the matters that fall under the sphere of Residual Legislative Powers on ***page 935***.

§ 447.] THE STATES. 935

RESIDUARY LEGISLATIVE POWERS.—The residuary authority left to the Parliament of each State, after the exclusive and concurrent grants to the Federal Parliament, embraces a large mass of constitutional, territorial, municipal, and social powers, including control over:

Agriculture and the cultivation of the soil:
Banking—State banking within the limits of the State:
Borrowing money on the sole credit of the State:
Bounties and aids on mining for gold, silver, or metals:
Charities—establishment and management of asylums:
Constitution of State: amendment, maintenance and execution of
Corporations—other than foreign corporations and trading or financial corporations:
Courts—civil and criminal, maintenance and organization for the execution of the laws of a State:
Departments of State Governments—regulation of
Education
Factories
Fisheries within the State:
Forests
Friendly Societies
Game
Health
Inspection of goods imported or proposed to be exported in order to detect fraud or prevent the spread of disease:
Insurance—State Insurance within the limits of the State:
Intoxicants—the regulation and prohibition of the manufacture within the State of fermented, distilled, or intoxicating liquids:
Justice—Courts:
Land—management and sale of public lands within the State:
Licenses—the regulation of the issue of licenses to conduct trade and industrial operations, within the State, such as liquor licenses and auctioneers' licenses. Subject however to sec. 92:
Manufactures—see factories:
Mines and Mining:
Municipal institutions and local government:
Officers—appointment and payment of public officers of the State:

The premise of inconsistency: Section 109

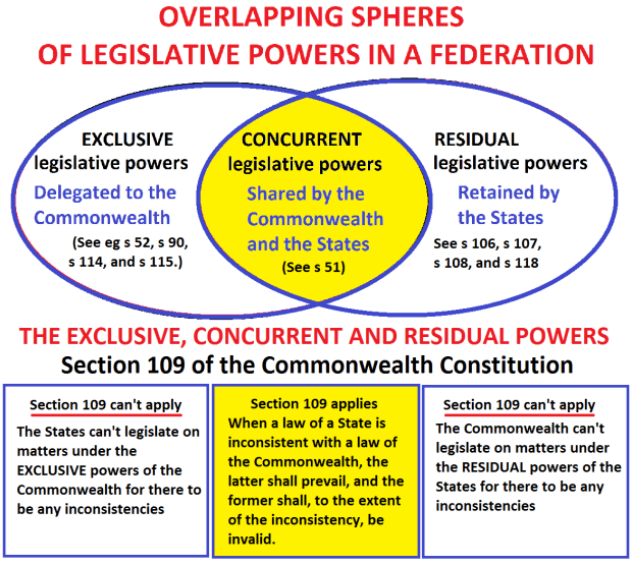
Section 109 of the *Commonwealth Constitution* provides:

> *"Inconsistency of laws: When a law of a State is inconsistent with a law of the Commonwealth, the latter shall prevail, and the former shall, to the extent of the inconsistency, be invalid."*

The purpose of this provision was to clarify that in situations where both the States and the Commonwealth can legislate regarding a certain subject, Commonwealth laws will prevail to the extent of any inconsistency.

This is an important point to initially note, as the provision cannot apply to the EXCLUSIVE legislative powers delegated to the Commonwealth, (as the States have no constitutional source of power to legislate in this area in order for an inconsistency to arise in the first place), nor can it apply to the RESIDUAL legislative powers retained by the States, (as the Commonwealth has no constitutional source of power to legislate in this area in order for an inconsistency to arise in the first place). In such situations, the laws would be ultra-vires, (beyond power) as opposed to inconsistent.

It can only apply to laws made under the CONCURRENT legislative powers, where both the States and the Commonwealth can legislate, and therefore an inconsistency may possibly arise.



See ***Corica v Shire Of Mundaring [2016] WASC 356***:

> *"Section 109 deals with any conflicts between Commonwealth and State laws made in the exercise of concurrent legislative power by providing that, if a Commonwealth law and a State law are inconsistent, the former prevails and the latter is inoperative to the extent of any inconsistency."*

https://freemandelusion.com/wp-content/uploads/2019/05/corica-v-shire-of-mundaring-2016-wasc-356.pdf

Parliament's Development of Federalism; Professor Brian Galligan:

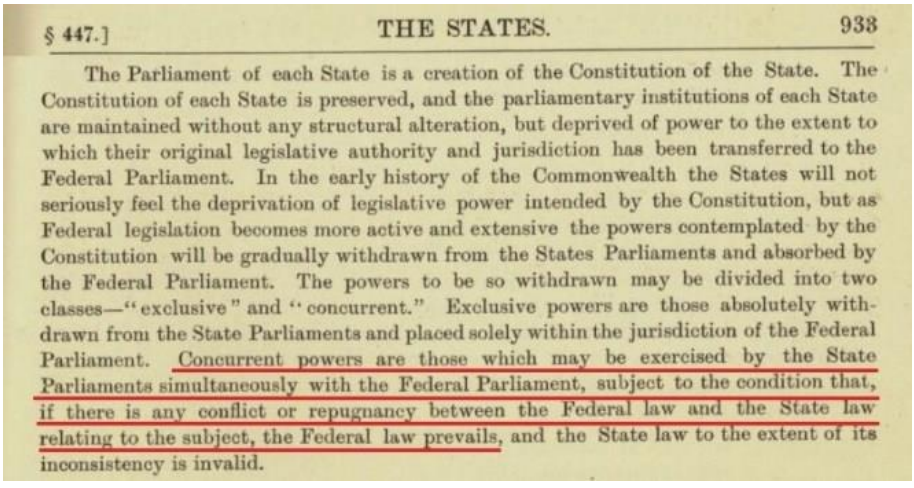
> Borrowing largely from the American model, the founders adopted a federal system that divided the powers of government between the national or Commonwealth sphere, and the sub-national or State sphere. The National Government was given defined powers-either exclusive or concurrent-whereas the States retained the residual. Where there is overlap, Commonwealth laws prevail to the extent of any inconsistency. By adopting a written Constitution, notions of parliamentary sovereignty were confined by the terms of the Constitution itself. Unlike Westminster, the Commonwealth Parliament is not supreme. Rather the people have sovereign authority over the constitutional system and participate as citizens in two spheres of government. One sphere is national and the other State-based.
>
> Support for a federal rather than a unitary constitution was unanimous amongst the delegates to the 1891 and 1897-1898 Conventions. Labor provided some support for a unitary model but the party itself was not sufficiently established as a force at the national level to influence either the Convention Debates or to shape the federal model in the very early years of the Commonwealth. The appeal of the federal model was that it enabled the creation of a new sphere of national governance while preserving the established colonial systems of self-government including local government.

https://freemandelusion.com/wp-content/uploads/2018/07/parliaments-development-of-federalism-e28093-parliament-of-australia.pdf

The authority of these Residual Powers creates a problem for those who attempt to apply a few different pseudo legal theories, that are inevitably overruled on this one point, and therefore never succeed in appeals. One example would be disregarding Local Government because they are not recognised in the *Commonwealth Constitution*, and another, claiming inconsistency under section 109 regarding State Roads and Traffic legislation, both of which are, in terms of the *Constitution*, among the Residual Powers of the state. The Commonwealth doesn't even have the power to legislate in respect of these matters, it would be ultra vires.

As Robert Garran points out on ***page 933*** of *The annotated constitution of the Australian Commonwealth:*

> *"The powers to be so withdrawn may be divided into two classes—"exclusive" and "concurrent." Exclusive powers are those absolutely withdrawn from the State Parliaments and placed solely within the jurisdiction of the Federal Parliament. Concurrent powers are those which may be exercised by the State Parliaments simultaneously with the Federal Parliament, subject to the condition that, if there is any conflict or repugnancy between the Federal law and the State law relating to the subject, the Federal law prevails, and the State law to the extent of its inconsistency is invalid."*

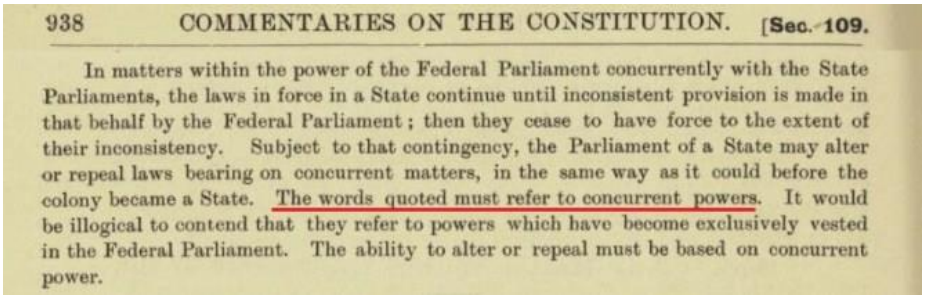


§ 447.] THE STATES. 933

The Parliament of each State is a creation of the Constitution of the State. The Constitution of each State is preserved, and the parliamentary institutions of each State are maintained without any structural alteration, but deprived of power to the extent to which their original legislative authority and jurisdiction has been transferred to the Federal Parliament. In the early history of the Commonwealth the States will not seriously feel the deprivation of legislative power intended by the Constitution, but as Federal legislation becomes more active and extensive the powers contemplated by the Constitution will be gradually withdrawn from the States Parliaments and absorbed by the Federal Parliament. The powers to be so withdrawn may be divided into two classes—"exclusive" and "concurrent." Exclusive powers are those absolutely withdrawn from the State Parliaments and placed solely within the jurisdiction of the Federal Parliament. Concurrent powers are those which may be exercised by the State Parliaments simultaneously with the Federal Parliament, subject to the condition that, if there is any conflict or repugnancy between the Federal law and the State law relating to the subject, the Federal law prevails, and the State law to the extent of its inconsistency is invalid.

On ***page 938*** he states:

> *"The words quoted must refer to concurrent powers. It would be illogical to contend that they refer to powers which have become exclusively vested in the Federal Parliament. The ability to alter or repeal must be based on concurrent power."*

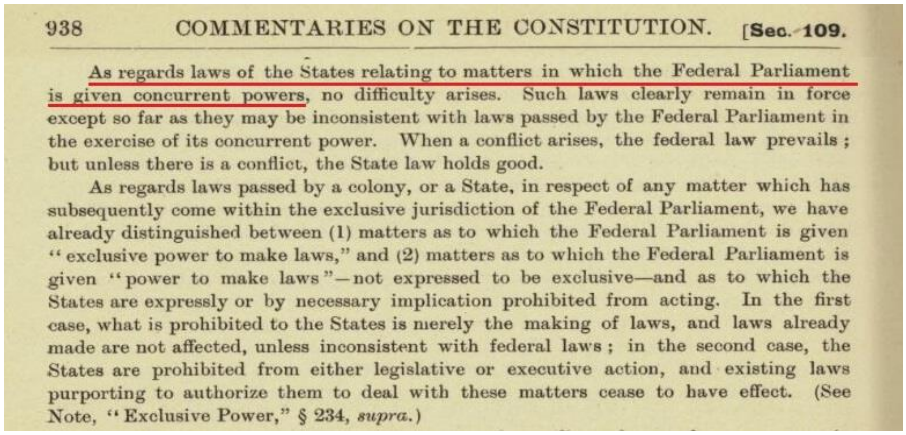


938 COMMENTARIES ON THE CONSTITUTION. [Sec. 109.

In matters within the power of the Federal Parliament concurrently with the State Parliaments, the laws in force in a State continue until inconsistent provision is made in that behalf by the Federal Parliament; then they cease to have force to the extent of their inconsistency. Subject to that contingency, the Parliament of a State may alter or repeal laws bearing on concurrent matters, in the same way as it could before the colony became a State. The words quoted must refer to concurrent powers. It would be illogical to contend that they refer to powers which have become exclusively vested in the Federal Parliament. The ability to alter or repeal must be based on concurrent power.

Also on ***page 938***:

> *"As regards laws of the States relating to matters in which the Federal Parliament is given concurrent powers, no difficulty arises. Such laws clearly remain in force except so far as they may be inconsistent with laws passed by the Federal Parliament in the exercise of its concurrent power. When a conflict arises, the federal law prevails ; but unless there is a conflict, the State law holds good."*



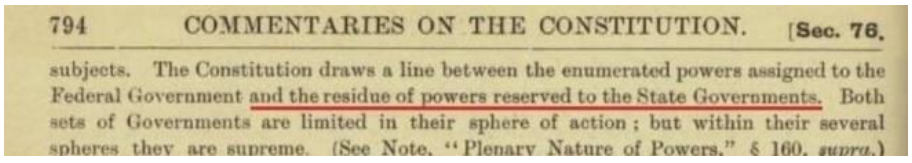
938 COMMENTARIES ON THE CONSTITUTION. [Sec. 109.

As regards laws of the States relating to matters in which the Federal Parliament is given concurrent powers, no difficulty arises. Such laws clearly remain in force except so far as they may be inconsistent with laws passed by the Federal Parliament in the exercise of its concurrent power. When a conflict arises, the federal law prevails; but unless there is a conflict, the State law holds good.

As regards laws passed by a colony, or a State, in respect of any matter which has subsequently come within the exclusive jurisdiction of the Federal Parliament, we have already distinguished between (1) matters as to which the Federal Parliament is given "exclusive power to make laws," and (2) matters as to which the Federal Parliament is given "power to make laws"—not expressed to be exclusive—and as to which the States are expressly or by necessary implication prohibited from acting. In the first case, what is prohibited to the States is merely the making of laws, and laws already made are not affected, unless inconsistent with federal laws; in the second case, the States are prohibited from either legislative or executive action, and existing laws purporting to authorize them to deal with these matters cease to have effect. (See Note, "Exclusive Power," § 234, *supra*.)

On ***page 794*** he states:

> *"The Constitution draws a line between the enumerated powers assigned to the Federal Government and the residue of powers reserved to the State Governments. Both sets of Governments are limited in their sphere of action, but within their several spheres they are supreme."*

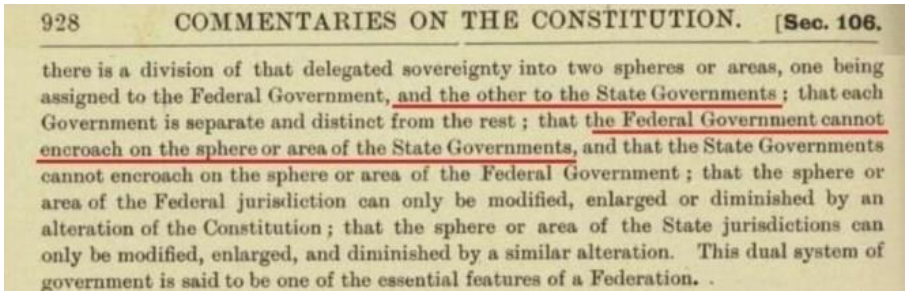


794 COMMENTARIES ON THE CONSTITUTION. [Sec. 76.

subjects. The Constitution draws a line between the enumerated powers assigned to the Federal Government and the residue of powers reserved to the State Governments. Both sets of Governments are limited in their sphere of action; but within their several spheres they are supreme. (See Note, "Plenary Nature of Powers," § 160, *supra*.)

On ***page 928***, he states:

> *"…that in the Constitution there is a division of that delegated sovereignty into two spheres or areas, one being assigned to the Federal Government, and the other to the State Governments ; that each Government is separate and distinct from the rest; that the Federal Government cannot encroach on the sphere or area of the State Governments, and that the State Governments cannot encroach on the sphere or area of the Federal Government; that the sphere or area of the Federal jurisdiction can only be modified, enlarged or diminished by an alteration of the Constitution ; that the sphere or area of the State jurisdictions can only be modified, enlarged, and diminished by a similar alteration. This dual system of government is said to be one of the essential features of a Federation."*



928 COMMENTARIES ON THE CONSTITUTION. [Sec. 106.

there is a division of that delegated sovereignty into two spheres or areas, one being assigned to the Federal Government, and the other to the State Governments ; that each Government is separate and distinct from the rest ; that the Federal Government cannot encroach on the sphere or area of the State Governments, and that the State Governments cannot encroach on the sphere or area of the Federal Government ; that the sphere or area of the Federal jurisdiction can only be modified, enlarged or diminished by an alteration of the Constitution ; that the sphere or area of the State jurisdictions can only be modified, enlarged, and diminished by a similar alteration. This dual system of government is said to be one of the essential features of a Federation. .

Thus, as cited in ***Flaherty v Girgis [1987] HCA 17*** (at 588):

> *"…where both Commonwealth and state legislation confer concurrent or parallel powers in relation to the same matter or thing, an inconsistency may arise in their practical application, which is to be resolved by giving supremacy to the Commonwealth legislation in the particular situation: **Victoria v. The Commonwealth (1937) 58 CLR 618**; **Carter v. Egg and Egg Pulp Marketing Board (Vict.) (1942) 66 CLR 557**, at pp 574-576."*

https://freemandelusion.com/wp-content/uploads/2022/03/Flaherty-v-Girgis-1987-HCA-17.pdf

This category of inconsistency has attracted the epithet "operational". See ***Commonwealth v Western Australia [1999] HCA 5*** (at 61); and ***AMS v AIF [1999] HCA 26*** (at 37).

https://freemandelusion.com/wp-content/uploads/2022/03/AMS-v-AIF-1999-HCA-26.pdf

In ***Victoria v The Commonwealth [1937] HCA 82*** (at 630), Dixon J referred to two approaches which might be taken to the question whether an inconsistency might be said to arise between State and Commonwealth laws.

https://freemandelusion.com/wp-content/uploads/2022/03/Victoria-v-The-Commonwealth-1937-HCA-82.pdf

They were subsequently adopted by the Court in ***Telstra Corporation Ltd v Worthing [1999] HCA 12*** (at 76-77), ***Dickson v The Queen [2010] HCA 30*** (at 502) and ***Jemena Asset Management (3) Pty Ltd v Coinvest Ltd [2011] HCA 33*** (at 524).

https://freemandelusion.com/wp-content/uploads/2022/03/Dickson-v-The-Queen-2010-HCA-30.pdf

https://freemandelusion.com/wp-content/uploads/2022/03/Jemena-Asset-Management-3-Pty-Ltd-v-Coinvest-Limited-2011-HCA-33.pdf

The test for applying section 109 is set out in the following passage from ***Work Health Authority v Outback Ballooning Pty Ltd (2019) HCA 2*** (at 32-34 per Kiefel CJ, Bell, Keane, Nettle and Gordon JJ), citing Dixon J in ***Victoria v The Commonwealth [1937] HCA 82*** (at 630):

> *"The first approach has regard to when a State law would 'alter, impair or detract from' the operation of the Commonwealth law. This effect is often referred to as a direct inconsistency'. Notions of 'altering', impairing' or 'detracting from' the operation of a Commonwealth law have in common the idea that a State law may be said to conflict with a Commonwealth law if the State law in its operation and effect would undermine the Commonwealth law.*
>
> *The second approach is to consider whether a law of the Commonwealth is to be read as expressing an intention to say 'completely, exhaustively, or exclusively, what shall be the law governing the particular conduct or matter to which its attention is directed'. This is usually referred to as an 'indirect inconsistency'. A Commonwealth law which expresses an intention of this kind is said to 'cover the field' or, perhaps more accurately, to 'cover the subject matter' with which it deals. A Commonwealth law of this kind leaves no room for the operation of a State or Territory law dealing with the same subject matter. There can be no question of those laws having a concurrent operation with the Commonwealth law.*
>
> *The question whether a State or Territory law is inconsistent with a Commonwealth law is to be determined as a matter of construction. In a case where it is alleged that a State or Territory law is directly inconsistent with a Commonwealth law it will be necessary to have regard to both laws and their operation. Where an indirect inconsistency is said to arise, the primary focus will be on the Commonwealth law in order to determine whether it is intended to be exhaustive or exclusive with respect to an identified subject matter."*

https://freemandelusion.com/wp-content/uploads/2022/03/Work-Health-Authority-v-Outback-Ballooning-Pty-Ltd-2019-HCA-2.pdf

In ***Telstra Corporation Limited v Worthing [1999] HCA 12*** (at 27-28) the Court added in relation to these two statements:

> *The second proposition may apply in a given case where the first does not, yet, contrary to the approach taken in the Court of Appeal, if the first proposition applies, then s 109 of the Constitution operates even if, and without the occasion to consider whether, the second proposition applies.*
>
> *"The applicable principles are well settled. Cases still arise where one law requires what the other forbids. It was held in **Wallis v Downard-Pickford (North Queensland) Pty Ltd (1994) 179 CLR 388** [at 398] that a State law which incorporated into certain contracts a term which a law of the Commonwealth forbade was invalid. However, it is clearly established that there may be inconsistency within the meaning of s 109 although it is possible to obey both the Commonwealth*

> *law and the State law. [**Viskauskas v Niland (1983) 153 CLR 280** at 291-292.]. Further, there will be what Barwick CJ identified as "direct collision" where the State law, if allowed to operate, would impose an obligation greater than that for which the federal law has provided. [**Blackley v Devondale Cream (Vic) Pty Ltd (1968) 117 CLR 253** at 258-259; see also at 270 per Taylor J, 272 per Menzies J; **Australian Broadcasting Commission v Industrial Court (SA) (1977) 138 CLR 399** at 406; **Dao v Australian Postal Commission (1987) 162 CLR 317** at 335, 338-339.]. Thus, in Australian Mutual Provident Society v Goulden, in a joint judgment, the Court determined the issue before it by stating that the provision of the State law in question "would qualify, impair and, in a significant respect, negate the essential legislative scheme of the Commonwealth Life Insurance Act" [**(1986) 160 CLR 330** at 339.]. A different result obtains if the Commonwealth law operates within the setting of other laws so that it is supplementary to or cumulative upon the State law in question. [**Ex parte McLean (1930) 43 CLR 472** at 483; **Commercial Radio Coffs Harbour v Fuller (1986) 161 CLR 47** at 57-58.] But that is not this case."*

https://freemandelusion.com/wp-content/uploads/2022/03/TelstraCorporation-Limited-v-Worthing-1999-HCA-12.pdf

As recognised in ***R v Winneke; Ex parte Gallagher [1982] HCA 77***; (at 216), the circumstance that federal and state legislation may confer upon different repositories, powers in respect of the same subject matter, will not of itself engage the operation of Section 109. In ***Winneke***, the second qualification was expressed as follows:

> *The words of s. 109 make it plain that it deals only with inconsistency between laws. It does not deal with inconsistency between powers: **O'Sullivan v. Noarlunga Meat Ltd. (1956) 95 CLR 177**, at p 183 . It does not deal directly with inconsistency between executive or judicial acts done under a power conferred by a federal law, on the one hand, and acts of that kind done under a State law, on the other hand. If a federal law validly confers a power which is intended to be exclusive, so that no one else can do the same thing, s. 109 directly operates, with the result that a State law conferring a power to do that thing would be invalid. However the federal law may reveal an intention that although the power which it confers is not exclusive, an exercise of that power will be exclusive; in that event, s. 109 will give paramountcy to the law under which the power is exercised, with the result that State law cannot validly operate once the power has been exercised.*

https://freemandelusion.com/wp-content/uploads/2022/03/R-v-Winneke-Ex-parte-Gallagher-1982-HCA-77.pdf

A good example of where the Commonwealth has not legislated in regard to a concurrent power to intend it to be exclusive, can be found in ***Glew v Shire of Greenough [2006] WASCA 260*** (from 3, and 27):

> *"Taxation, which is referred to in s 51(ii), is a non-exclusive power, so that both State and Commonwealth Parliaments can pass laws dealing with taxation. However, because of the existence of s 109 of the Commonwealth Constitution, it is possible for the Commonwealth Parliament to give priority to its own taxation law, and/or to impose taxation at a rate such that the practical effect would be that it would not be politically possible for a State to tax the same subject matter. This was the effect achieved in relation to income tax in a case to which the appellants refer, South Australia v The Commonwealth (1942) 65 CLR 373. In other areas of*

taxation, where the Commonwealth has not legislated, it remains both politically and practically possible for the States to impose taxation; an example of such a tax would be land tax."

"As I have pointed out, the taxation power is not one which is exclusive to the Commonwealth, but one which is concurrent, so that laws imposing taxation can be passed by both State and Federal Parliaments. Further, s 109 renders invalid or inoperative only State laws which are inconsistent with relevant Commonwealth law. There is no Commonwealth law relevant to local council rates, since the Commonwealth has not enacted legislation "covering the field" of rates on land."

https://freemandelusion.com/wp-content/uploads/2020/08/glew-v-shire-of-greenough-2006-wasca-260.pdf

I should also mention the observation by Gummow J in ***APLA Ltd v Legal Services Commissioner of New South Wales [2005] HCA 44*** (at 205-206) concerning the first of Dixon J's statements:

"In **Australian Mutual Provident Society v Goulden (1986) 160 CLR 330** *at 337, the Court stated: "In the words of Dixon J in* ***Victoria v The Commonwealth (1937) 58 CLR 618*** *at 630, it 'would alter, impair or detract from' the Commonwealth scheme of regulation established by the [Life Insurance Act 1945 (Cth)] if a registered life insurance company was effectively precluded by the legislation of a State from classifying different risks differently, from setting different premiums for different risks or from refusing to insure risks which were outside the class of risk in respect of which it wished to offer insurance." (emphasis added)*

Against this background, the Commonwealth put a submission more narrowly expressed than that of Victoria and its supporters. The Commonwealth met the plaintiffs' contention that s 109 is engaged if, in the light of the practical operation of the State law, there is anything more than a de minimis impairment of the enjoyment of a federal right by saying that the question is always one of fact and degree. This approach should be adopted. The starting point in the resolution of any assertion that Section 109 of the Constitution is engaged is the construction of the laws said to be inconsistent. It is only an inconsistency disclosed by the proper construction of each of those laws that will operate to invalidate the relevant State law."

https://freemandelusion.com/wp-content/uploads/2018/07/apla-limited-v-legal-services-commissioner-nsw-2005-hca-44.pdf

And also the observations of Gleeson CJ AND Gaudron J. in ***Commonwealth v Western Australia [1999] HCA 5*** (from 61):

*"Section 109 of the Constitution operates to render a State law inoperative only to the extent of its inconsistency with a law of the Commonwealth and only for so long as the inconsistency remains. (****Western Australia v The Commonwealth (Native Title Act Case) (1995) 183 CLR 373*** *at 465 per Mason CJ, Brennan, Deane, Toohey, Gaudron and McHugh JJ.) Although there may be "operational inconsistency" between the Mining Act and the Defence Regulations in the event and to the extent that authority is conferred pursuant to the former to enter upon or engage in activities on land in the perimeter area at a time when a defence operation or practice is*

> *authorised underreg 51(1) of the Defence Regulations, that situation has not yet arisen. Thus, at the present time, there is no inconsistency between the Mining Act and the Defence Regulations.*

https://freemandelusion.com/wp-content/uploads/2018/07/commonwealth-v-western-australia-1999-hca-5.pdf

Councils are Unconstitutional!

The premise that rates are unconstitutional because local government is not recognised in the *Commonwealth Constitution* is a false one, and many have lost their homes attempting this. The main problem with this argument is the fact that we are a Federation, and that legislative powers are divided between the Commonwealth and the States, ***as explained in the chapter on state legislative powers.***

There are EXCLUSIVE powers, CONCURRENT powers, and RESIDUAL powers, and Local Government is a State matter which falls under the latter. The attempts by the Commonwealth to include Local Government within the scope of the CONCURRENT powers, and thereby increase their legislative ability, was rejected by referendum several times, so it remains within the state RESIDUAL powers.

Rossiter v Adelaide City Council [2020] SASC 61 (at 42):

> *"Ground 6 is a complaint that there is no constitutional recognition of local government. This has been tried by others before. (See Glew v Shire of Greenough [2006] WASCA 260, [22]-[24] (Wheeler JA); Glew v Shire of Greenough [2007] HCATrans 520, "entirely lacking in legal merit" (Gummow J); McDougall v City of Playford [2017] SASC 169, [2]-[6] (Nicholson J). It is without merit. Because the 1988 constitutional referendum failed, local government remains a matter within the residual power of the States. The failure of the constitutional amendment says nothing about the legal existence and validity of local government entities such as the Adelaide City Council, and their capacity to regulate parking and prosecute parking offences. (See, for example, Local Government Act 1999 (SA), s 6.)"*

Nibbs v Devonport City Council [2015] TASSC 34 (at 10, 15-16):

> *"The argument ignores completely the sovereign authority of the Parliament of Tasmania, derived from imperial legislation and confirmed in the Australian Constitution to make laws binding within the territorial jurisdiction of Tasmania. The defendant's argument does not accept the legitimacy and authority of such law that this Court is bound by and must enforce and apply such law. The Local Government Act is such a law. It creates a liability in the defendant to pay the rates in question.*
>
> *The appellant fails because, as the magistrate rightly said, the argument fails to acknowledge the basic nature of a federation in the form which the Commonwealth of Australia takes. It is true*

that local government, as a tier of government in Australia, is not referred to in the Constitution. However, the States of Australia are sovereign states: see ss 106 and 107 of the Constitution. Section 109 renders invalid State laws to the extent that they are inconsistent with a law of the Commonwealth. There is nothing to prevent States from legislating about local government. Whilst s 51(ii) enables the Commonwealth Parliament to make laws with respect to taxation, a State government is not thereby precluded from making such laws, provided there is no inconsistency.

Section 45A of the Constitution Act 1934 (Tas) establishes in Tasmania a system of local government with municipal councils elected in such manner as Parliament may from time to time provide. Subsection (2) provides that each municipality shall have such powers as Parliament may from time to time provide, being such powers as Parliament considers necessary for the welfare and good government of the municipal area. The provisions of Pt 3 and Sch 3 of the Local Government Act establish the Devonport municipality and the Devonport City Council."

Stuart v City of Belmont [2016] WASCA 5 (at 21, 27):

*"Magistrate Heaney dismissed the application on the basis that the defence that the appellant wished to advance was an absurdity ... the grounds upon which that review order was sought were wholly without merit. The appellant's argument that the respondent had no authority to impose fines due to a lack of provision for local government in the Commonwealth Constitution and the failure of the 1988 referendum to recognise local government in the Commonwealth Constitution had been rejected in numerous other cases: His Honour referred to: **Glew v Shire of Greenough [2006] WASCA 260** [22]–[25] **Van Lieshout v City of Fremantle [No 2] [2013] WASC 176**; **Pennicuik v City of Gosnells [2011] WASC 63**; **Hargreaves v Tiggemann [2012] WASCA 92**; **Glew v City of Greater Geraldton [2012] WASCA 94**."*

Glew v Shire of Greenough (2006) WASCA 260 (at 24-25, 29):

"So far as the 1988 referendum is concerned, the proposition appears to be that, because that referendum was defeated, there arises some prohibition upon the State which would preclude it from passing legislation setting up local government authorities. That proposition misunderstands the referendum process. The 1988 referendum contained a proposal to amend the Commonwealth Constitution by inserting a proposed s 119A, which proposed section would have required each State to provide for the establishment and continuance of a system of local government. Because it was defeated, there is no Commonwealth constitutional requirement that a State provide a system of local government. However, the absence of a requirement to establish a system of local government does not imply any absence of power to do so. Each State has always had, pursuant to the power to legislate for the peace, order and good government of that State, a power to set up a system of local government as the State sees fit.

In Western Australia, s 52 of the State Constitution imposes a positive duty on the State government to maintain a system of local governing bodies. The appellants, as I understand it, assert that s 52 is invalid, because it was not passed by referendum. There seems to me to have been no constitutional requirement that it be passed by referendum. However, even if it were invalid, there would still remain power pursuant to s 2 of the State Constitution to set up a system of local government, such as that contained in the Local Government Act 1995 (WA).

> *As his Honour Magistrate King recognised, the appellants' submissions are based on a misunderstanding of the Commonwealth and State Constitutions and are entirely lacking in legal merit."*

https://freemandelusion.com/wp-content/uploads/2020/08/glew-v-shire-of-greenough-2006-wasca-260.pdf

This decision was appealed to the High Court in ***Glew v Shire of Greenough*** **[2007] HCATrans 520** where leave was rejected, agreeing that it is *"entirely lacking in legal merit"*.

History

As a second source of the Colonies' consolidated revenue funds, land taxes were introduced: first in Victoria in 1877, and then in Tasmania in 1880, South Australia in 1884, New South Wales in 1895, Western Australia in 1907, and Queensland in 1915. Each legislated to enable their local authorities to raise their finances by rates on the unimproved capital value of land, either as a compulsory alternative to or local option for the English system of Annual Value Rating.

In New South Wales, the ***Land and Income Tax Assessment Act 1895*** received assent on 12 December 1895. The Act established a system of direct taxation by means of a tax on land and a tax on income. It provided for the appointment of officers for the levying, assessment, and collection of such taxes and provided for appeals from assessments.

Section 51 of the New South Wales Constitution Act 1902:

> *"There shall continue to be a system of local government for the State under which duly elected or duly appointed local government bodies are constituted with responsibilities for acting for the better government of those parts of the State that are from time to time subject to that system of local government. The manner in which local government bodies are constituted and the nature and extent of their powers, authorities, duties and functions shall be as determined by or in accordance with laws of the Legislature."*

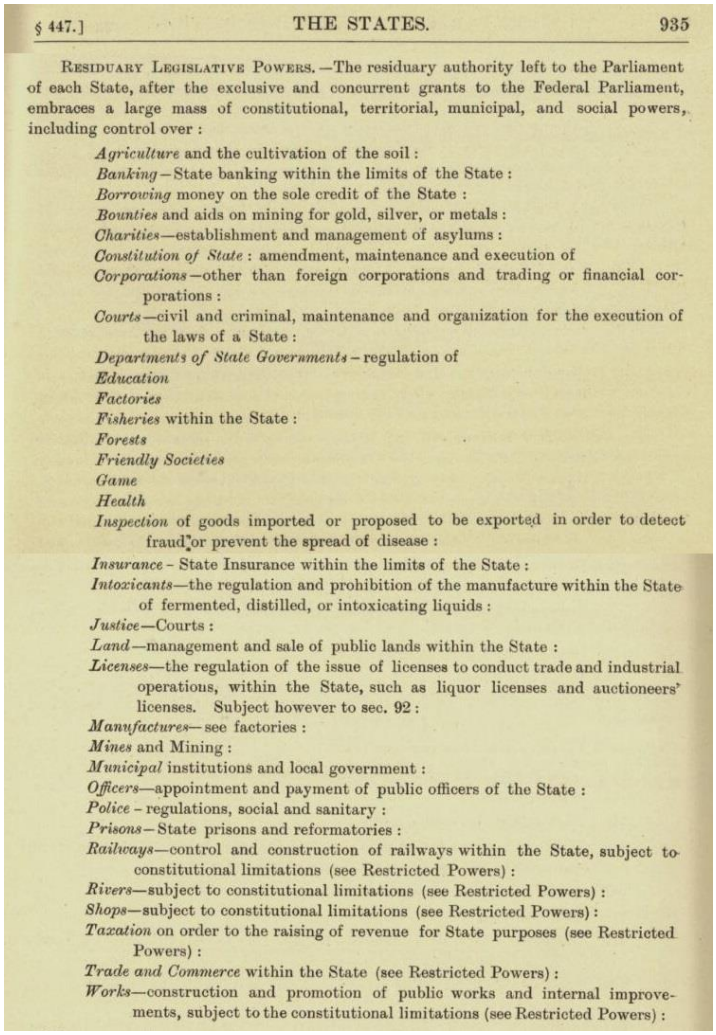
Local government was within state provisions, and well established at the time of federation. In New South Wales there was the ***1833 Parish Roads Act***, and ***Roads and Streets Act***, the ***1867 Municipalities Act***, the ***1840 The Parish Roads Trust Act***, the ***1842 Constitution Act***, and ***Sydney City Incorporation Act***, and shortly after federation, local government was a section of the the ***New South Wales Constitution Act 1902***, then the ***1905 Local Government (shires) Act***, and the ***1919 Local Government Act***.

The 1901 *Commonwealth Constitution* did not (and still does not) contain any reference to Local Government. ***McGarrity and Williams note*** that while local government was mentioned in the Federation Convention debates in the 1890s, there was *"no meaningful discussion"* of it being recognised in the *Constitution.* Most of the founding fathers, including Sir Samuel Griffith, saw local government as purely a domestic responsibility of the individual states which had no relevance to federal discussions. Local government was controlled by the colonial Parliaments, and was therefore regarded as "creatures" of those Parliaments. Local government was still in the early stages of development in some colonies in the 1890s when the Commonwealth Constitution was drafted. At this time, there was no consensus

among the colonies about the role, powers and functions of local government. One future Prime Minister, Alfred Deakin, tentatively suggested at the ***Australasian Federal Convention (1897)*** that some individual 'localities' might be funded directly by the Commonwealth, but another future Prime Minister, Edmund Barton, expressed what many other colonial politicians thought of this proposal:

> *"The revenue and the financial position of the various colonies would be so impaired and hampered that they would become municipalities instead of self–governing communities."*

Barton's response reflected the consensus that Federation was an agreement between the future states to create a nation on mutually agreed principles. The notion of local government as the 'third tier' of Australian governance was yet to take hold. Nevertheless, a large minority of the first federal parliamentarians elected in 1901 had served in local government - 29.7 per cent according to one estimate. The fact that there were so many former local councilors elected to federal parliament suggests that the popular status of local government was reasonably high by the time of Federation. ***Pages 935 and 936*** of Quick & Garren's *Annotated Constitution of the Australian Commonwealth,* refers to the *RESIDUAL POWERS OF THE STATES*. Note that *"Municipal Institutions and Local Government*" are under these RESIDUAL legislative powers of the states, as opposed to the EXCLUSIVE or CONCURRENT powers of the Commonwealth:



§ 447.] THE STATES. 935

RESIDUARY LEGISLATIVE POWERS.—The residuary authority left to the Parliament of each State, after the exclusive and concurrent grants to the Federal Parliament, embraces a large mass of constitutional, territorial, municipal, and social powers, including control over:

Agriculture and the cultivation of the soil:
Banking—State banking within the limits of the State:
Borrowing money on the sole credit of the State:
Bounties and aids on mining for gold, silver, or metals:
Charities—establishment and management of asylums:
Constitution of State: amendment, maintenance and execution of
Corporations—other than foreign corporations and trading or financial corporations:
Courts—civil and criminal, maintenance and organization for the execution of the laws of a State:
Departments of State Governments—regulation of
Education
Factories
Fisheries within the State:
Forests
Friendly Societies
Game
Health
Inspection of goods imported or proposed to be exported in order to detect fraud or prevent the spread of disease:
Insurance—State Insurance within the limits of the State:
Intoxicants—the regulation and prohibition of the manufacture within the State of fermented, distilled, or intoxicating liquids:
Justice—Courts:
Land—management and sale of public lands within the State:
Licenses—the regulation of the issue of licenses to conduct trade and industrial operations, within the State, such as liquor licenses and auctioneers' licenses. Subject however to sec. 92:
Manufactures—see factories:
Mines and Mining:
Municipal institutions and local government:
Officers—appointment and payment of public officers of the State:
Police—regulations, social and sanitary:
Prisons—State prisons and reformatories:
Railways—control and construction of railways within the State, subject to constitutional limitations (see Restricted Powers):
Rivers—subject to constitutional limitations (see Restricted Powers):
Shops—subject to constitutional limitations (see Restricted Powers):
Taxation on order to the raising of revenue for State purposes (see Restricted Powers):
Trade and Commerce within the State (see Restricted Powers):
Works—construction and promotion of public works and internal improvements, subject to the constitutional limitations (see Restricted Powers):

The Referendums

There have been two failed attempts to recognise local government in the *Constitution*: in 1974 and in 1988. The ***1974 referendum*** arose out of the States' rejection of the Whitlam Government's proposal for local government to be represented on the Loan Council, and to be able to borrow money from the Commonwealth.

Two changes to the *Constitution* were put to voters: An amendment to section 51 to enable the Parliament to make laws in respect of:

> *"the borrowing of money by the Commonwealth for local government bodies"*

A new section 96A, providing that:

> *"the Parliament may grant financial assistance to any local government body on such terms and conditions as the Parliament thinks fit".*

The Federal Opposition strongly opposed this change and the bill was rejected twice by the Senate, thus becoming a double dissolution trigger for the 1974 election. The States opposed the referendum.

Anne Twomey has summarised the official Yes/No case as follows:

> *"The official 'Yes' case for this referendum proposal stressed the need for increased funding for better roads, sewerage, health and childcare services, recreation facilities and cleaner rivers and beaches, without increasing rates. It argued that it is 'unnecessary for national money to be provided to local government through middle-men, the States, particularly as this only increases administrative costs'. It concluded that the Commonwealth should be able to 'deal with local government on the same terms as with the States'.*
>
> *The official 'No' case stressed that grants to local government would be made on 'terms and conditions' allowing 'Canberra's bureaucratic fingers into every one of Australia's 1,000 Council Chambers'. It claimed that such an amendment would require the creation of another expensive administration in Canberra that would examine the affairs of 1000 municipalities to ascertain how much assistance they needed. The 'No' case accepted that local government needed more money, but argued that it should be done under the current mechanism of section 96 of the Constitution, with grants passing to local government via the States. It concluded that the Commonwealth should seek 'co-operation instead of confrontation'. Nationally, only 46 per cent of people voted in favour of the changes and a majority was achieved in only one State (NSW).*
>
> *The Hawke Government's **1988 referendum** on local government had its origins in a recommendation from the First Report of the Constitutional Commission. Instead of being a proposal about financial assistance, the proposal was for new provision stating: "Each State shall provide for the establishment and continuance of a system of local government, with local government bodies elected in accordance with the laws of a State and empowered to administer, and make by-laws for, their respective areas in accordance with the laws of the State". The Federal Opposition again campaigned against this proposal, arguing that the proposal was mere tokenism but also that it would centralise power. The referendum failed by an even greater*

> *margin than in 1974. Nationally, only 33 per cent of people voted in favour of the proposal and a majority was not achieved in any of the States and Territories."*

https://freemandelusion.com/wp-content/uploads/2018/07/cru-report-3-local-government-a-twomey.pdf

Can the States raise taxes?

Australia is a federation and legislative power is distributed between the Commonwealth and the States. Although the text of the *Constitution* allows both States and the Commonwealth to raise revenue, subsequent constitutional interpretation and political developments have limited state taxing powers.

Prior to 1942, consistent with the concurrent power in Section 51(ii) of the *Commonwealth Constitution*, the states also collected income tax. The Commonwealth also levied tax. However, in 1942 the Commonwealth attempted to gain a monopoly on income taxes by passing the ***Income Tax Act 1942*** and the ***States Grants (Income Tax Reimbursement) Act 1942***. The first act purported to impose Commonwealth income tax. The latter act said Commonwealth funding would be provided to the States only if they imposed no income tax. This latter act was premised on ***Section 96*** of the *Commonwealth Constitution.*

The High Court has interpreted these 'terms and conditions' very broadly. In ***South Australia v Commonwealth (First Uniform Tax Case) (1942) 65 CLR 373*** the scheme was upheld. The scheme was again upheld on the basis of Section 96, in ***Victoria v Commonwealth (Second Uniform Tax Case) (1957) 99 CLR 575***. As Section 51 and other provisions of the constitution (such as section 52 and section 90) prescribe only limited legislative powers to the Commonwealth, Australian states have considerable obligations. For example, primarily, Australian states fund schools and hospitals.

Wayne Glew also raised the assertion that the States cannot collect tax in ***Glew v Shire of Greenough (2006) WASCA 260***. The court responded (at 7-8):

> *"So far as legislative power was concerned, s 51 of the Commonwealth Constitution listed most of the legislative powers of the Commonwealth. Those powers were not expressed to be exclusive. That is, the Commonwealth Constitution contemplated that both State and Commonwealth Parliaments would be able to make laws in relation to the matters set out in that list. It was only where the Commonwealth had passed a law in relation to one of those listed subject matters, and a State law was inconsistent with the Commonwealth law, that the State law would become invalid or inoperative (s 109). That would not be because the State lacked constitutional power to pass the law, but simply because the Commonwealth legislation was, to the extent that the Commonwealth had passed law, paramount. There is a short list of powers which are exclusive to the Commonwealth Parliament. They include, for example, the power to make laws with respect to the seat of government of the Commonwealth (s 52(i)).*
>
> *Taxation, which is referred to in s 51(ii), is a non-exclusive power, so that both State and Commonwealth Parliaments can pass laws dealing with taxation. However, because of the existence of s 109 of the Commonwealth Constitution, it is possible for the Commonwealth Parliament to give priority to its own taxation law, and/or to impose taxation at a rate such that the practical effect would be that it would not be politically possible for a State to tax the same*

subject matter. This was the effect achieved in relation to income tax in a case to which the appellants refer, South Australia v The Commonwealth (1942) 65 CLR 373. In other areas of taxation, where the Commonwealth has not legislated, it remains both politically and practically possible for the States to impose taxation; an example of such a tax would be land tax."

Are local councils 'corporations'?

In the case of The ***Australian Workers' Union of Employees, Queensland v Etheridge Shire Council [2008] FCA 1268,*** the Federal Court considered whether the Etheridge Shire Council in Queensland could enter into a workplace agreement with its employees under the Federal industrial relations system. Under the ***Workplace Relations Act 1996 (Cth)***, the agreement could only be made if the Council was a constitutional corporation, that is, a trading or financial corporation formed within the limits of the Commonwealth.

The Federal Court determined that local councils are NOT constitutional corporations and therefore not 'employers' for the purposes of the Workplace Relations Act 1996 (Cth). Justice Spender held that, in determining whether the Council was a trading or a financial corporation, the primary focus is on the activities of the Council. There was evidence that the Council's activities included providing a tourism centre, road works for the Department of Works, private works (services to residents and organisations), hostel accommodation, childcare centres, office space rental, residential property rental, sale of land, hire of halls, sale of water and services to the Federal Government. The court suggested that it was "*inconceivable*" that the drafters of the *Constitution* intended local government, which is a body politic of a State government, would be subject to Commonwealth powers in the area of workplace relations. In finding the Council was not a trading corporation, Justice Spender held that:

"All of the above activities "entirely lack the essential quality of trade" Almost all activities ran at a loss. All activities were directed to public benefit objectives In monetary terms they were so inconsequential and incidental to the primary activity and function of the Council as to deny the Council the characterisation of a 'trading corporation or a financial corporation'."

https://freemandelusion.com/wp-content/uploads/2018/07/australian-workers-union-of-employees-queensland-v-etheridge-shire-council-2008-fca-1268.pdf

The decision meant that local councils could not enter into workplace agreements under the Federal industrial relations system and were not employers for the purposes of the Federal unfair dismissal

provisions. This is due in part to legislative amendments made to the ***Local Government Act 1993 (Qld)*** in March 2008 which expressly provided that councils are not corporations.

Similarly in New South Wales, ***section 220 of the Local Government Act 1995*** provides:

LOCAL GOVERNMENT ACT 1993 - SECT 220

Legal status of a council

220 Legal status of a council

(1) A council is a body politic of the State with perpetual succession and the legal capacity and powers of an individual, both in and outside the State.

(2) A council is not a body corporate (including a corporation).

(3) A council does not have the status, privileges and immunities of the Crown (including the State and the Government of the State).

(4) A law of the State applies to and in respect of a council in the same way as it applies to and in respect of a body corporate (including a corporation).

However, for councils that have implemented Federal workplace agreements, such as in Western Australia, the Federal Court's decision is likely to cause significant uncertainty. In New South Wales, the government legislated to shield some public sector employees from Federal industrial relations law, but not council employees. However, councils have not sought to enter into Federal agreements and the issue in *Etheridge* has not arisen.

In ***Communications, Electrical, Electronic, Energy, Information, Postal, Plumbing and Allied Services Union of Australia v Queensland Rail [2015] HCA 11***, the High Court held that Queensland Rail is a trading corporation within the meaning of section 51(xx) of the *Constitution*; and that Queensland Rail and its employees governed by federal Industrial Relations law and not Queensland Industrial Relations laws. What does the High Court decision in Queensland Rail case mean for Local Government?

> *"Whether a local council "…is said to be a 'body politic of the State' but 'not a body corporate', the question of whether the council is a constitutional corporation must be answered by looking to whether – as a matter of substance, not form – it has the characteristics of a corporation for the purposes of s 51(xx)". (¶64 of the Cth submissions)*

In those instances the question that will need to be asked is whether the trading activities at the council in question forms a sufficiently significant proportion of the council's overall activities, a matter of substance, not form.

In finding that the *City of Burnside* was not a trading corporation in ***Mr Martin Cooper [2017] FWC 5974***, Deputy President Anderson of the Fair Work Commission made the following observations:

> *"A corporation is a financial corporation if its principal purpose or purposes include banking or finance or if banking or finance activities are a not insubstantial component of its operations. (**State Superannuation Board of Victoria v Trade Practices Commission (1982) 150 CLR 28**) On the evidence before me, the City of Burnside is not established for banking or finance purposes nor operating in that industry. It does not undertake activities that could be said to involve the provision of finance or banking services. I find it is not a financial corporation. The approach of*

*courts and tribunals to the meaning of a "trading corporation" was conveniently summarised by Steytler P in **Aboriginal Legal Service (WA) Inc v Lawrence (No 2) (2008) 252 ALR 136** at [68]) in the following terms:*

*(1) A corporation may be a trading corporation even though trading is not its predominant activity: **Adamson [1979] HCA 6** (239); State Superannuation Board (303 - 304); **Tasmanian Dam case [1983] HCA 21** (156, 240, 293); **Quickenden [2001] FCA 303** [49] - [51], [101]; **Hardeman [2007] NSWIRComm 189; 166 IR 196** [18].*

*(2) However, trading must be a substantial and not merely a peripheral activity: Adamson (208, 234, 239); State Superannuation Board (303 - 304); **Hughes v Western Australian Cricket Association Inc (1986) 19 FCR 10**, 20; **Fencott [1983] HCA 12** (622); Tasmanian Dam case (156, 240, 293); Mid Density (584); Hardeman [22].*

*(3) In this context, 'trading' is not given a narrow construction. It extends beyond buying and selling to business activities carried on with a view to earning revenue and includes trade in services: Ku-ring-gai (139, 159 - 160); Adamson (235); **Actors and Announcers Equity Association of Australia v Fontana Films Pty Ltd (1982) 150 CLR 169**, 184 - 185, 203; **Bevanere Pty Ltd v Lubidineuse (1985) 7 FCR 325**, 330; Quickenden [101].*

(4) The making of a profit is not an essential prerequisite to trade, but it is a usual concomitant: St George County Council (539, 563, 569); Ku-ring-gai (140, 167); Adamson (219); E (343, 345); Pellow [28].

(5) The ends which a corporation seeks to serve by trading are irrelevant to its description: St George County Council (543, 569); Ku-ring-gai (160); State Superannuation Board (304 - 306); E (343). Consequently, the fact that the trading activities are conducted is the public interest or for a public purpose will not necessarily exclude the categorisation of those activities as 'trade': St George County Council (543) (Barwick CJ); Tasmanian Dam case (156) (Mason J).

(6) Whether the trading activities of an incorporated body are sufficient to justify its categorisations as a 'trading corporation' is a question of fact and degree: Adamson (234) (Mason J); State Superannuation Board(304); Fencott (589); Quickenden [52], [101]; Mid Density (584).

(7) The current activities of the corporation, while an important criterion for determining its characterisation, are not the only criterion. Regard must also be had to the intended purpose of the corporation, although a corporation that carries on trading activities can be found to be a trading corporation even if it was not originally established to trade: State Superannuation Board (294 - 295, 304 - 305); Fencott (588 - 589, 602, 611, 622 - 624); Hughes (20); Quickenden [101]; E (344); Hardeman [18].

(8) The commercial nature of an activity is an element in deciding whether the activity is in trade or trading: Adamson (209, 211); Ku-ring-gai (139, 142, 160, 167); Bevanere (330); Hughes (19 - 20); E (343); Fowler; Hardeman [26]."

> *This summary was subsequently adopted by the Full Court of the Federal Court in **Bankstown Handicapped Children's Centre v Hillman (2010) 182 FCR 483** at [48] and has been cited with approval by the Commission in matters arising in the anti-bullying jurisdiction. (For example, **Re McInnes [2014] FWC 1395** at [26] per Commissioner Hampton) Also relevant are the recent observations of a Full Bench of the Commission in **Lim v Trade & Investment Queensland [2016] FWCFB 6615**:*
>
> *"A corporation may be a trading corporation within the meaning of paragraph 51(xx) of the Constitution if it is constituted for the purposes of engaging in, or its purpose is to engage in trading activities. A corporation may also be a trading corporation if it engages in trade or trading activities. As Gageler J observed in **Communications, Electrical, Electronic, Energy, Information, Postal, Plumbing and Allied Services Union of Australia v Queensland Rail [2015] HCA 11** the constitutional description of trading corporation as capable of applying to a corporation – by reference to its trading purpose or alternatively by reference to its trading activity – must each be qualified to exclude that which is insubstantial. There is no bright line delineating a body corporate that is a trading corporation and one that is not. The characterisation of a body corporate as a trading corporation is a matter of fact and degree."*

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But this is not always the case, take for example how the trading activities of the *City of Port Phillip* did in fact constitute a significant proportion of the council's overall activities. It was declared a trading corporation by the Fair Work Commission in ***Matina Bastakos [2018] FWC 7650***.

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Nevertheless, whether the council is a trading corporation or not, it does not affect their obligations to collect rates, that is a statutory obligation. All it does is shift their obligations from State Industrial Relations policy to Federal Industrial Relations policy under the *Fair Work Act 2009*.

In ***Corica v Shire Of Mundaring [2016] WASC 356***, the appellants contended: *"...that various entities, including the respondent, the respondent's solicitors, this Court and the State of Western Australia, are 'trading corporations' within the meaning of s 51(xx) of the Commonwealth Constitution, which was said to have various consequences for the validity or efficacy of the proceedings against the appellants..."*

The court responded (at 94) that:

> *"These submissions are misconceived and wrong for reasons I will explain shortly. Apart from the flaws of such submissions as a matter of legal principle, submissions of a similar kind have already been rejected by this Court and by the Court of Appeal on numerous occasions: see, for example, Palmer v City of Gosnells [2014] WASCA 102 and the authorities therein cited. It is unfortunate that some litigants in this Court, and especially self-represented persons, continue to be seduced by these arguments and to run the risk of costs orders being made against them by repeating the arguments in litigation when they are doomed to failure.*
>
> *It is unnecessary to enter into the question whether any of the entities to which the appellants referred are trading corporations within the meaning of s 51(xx) of the Constitution. Even if they*

> *were, that fact would have no consequences in the context of these proceedings. Section 51(xx) confers on the Commonwealth Parliament power to make laws for the peace, order and good government of the Commonwealth with respect to 'foreign corporations, and trading or financial corporations formed within the limits of the Commonwealth'. The legislative power of the Commonwealth Parliament under s 51 is concurrent with that of the States. That is, it is entirely open to the States to legislate in respect of trading corporations, subject to the operation of s 109 of the Constitution. Section 109 deals with any conflicts between Commonwealth and State laws made in the exercise of concurrent legislative power by providing that, if a Commonwealth law and a State law are inconsistent, the former prevails and the latter is inoperative to the extent of any inconsistency. The appellants did not point to any Commonwealth law which was inconsistent with any State law engaged in these proceedings, nor could they have."*

https://freemandelusion.com/wp-content/uploads/2019/05/corica-v-shire-of-mundaring-2016-wasc-356.pdf

In ***Palmer v City of Gosnells [2013] WASC 446***, the appellants claimed (at 7) that: *"...the City of Gosnells is subject to the 'Corporations Law of the Commonwealth and as such is unable to claim from or prosecute the Defendants other than as a result of a contract..."* and (at 27) that *"...there were grounds for objection to his Honour's preliminary decision including a document which asserted that 'Australia has got an ABN number in America. They're owned by a corporation..."*

The court noted (at 107) that:

> *"Counsel for the Palmers on this appeal, Dr Walsh, had also represented Mr O'Connell last year in the Court of Appeal in O'Connell v The State of Western Australia [2012] WASCA 96. In that case, the Court of Appeal rejected a near-identical submission to the first two points made by Dr Walsh in this Court. Mazza JA (with whom Martin CJ and Buss JA agreed) described Dr Walsh's submission (at 88) as follows: since 'the Department of the Attorney General has an Australian Business Number (ABN), the courts in this State have effectively become corporations. Thus, it is said the judiciary is no longer a separate and independent arm of government'. It is not necessary to repeat the reasoning of Mazza JA. It suffices to set out his conclusion that this argument: "...is totally devoid of merit. The identical argument has been decided in this court in a number of cases including Glew v The Shire of Greenough [2006] WASCA 260; and Glew Technologies Pty Ltd v Department of Planning and Infrastructure [2007] WASCA 289. An application to the High Court for special leave to appeal against the first of those decisions was refused: Glew v Shire of Greenough [2007] HCATrans 520 (6 September 2007)."*

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The decision was appealed in ***Palmer v City of Gosnells [2014] WASCA 102***, where it was held that:

> *"None of the grounds of appeal, as elaborated on in the submissions, have a reasonable prospect of succeeding. The same issues have been repeatedly raised in the Supreme Court and dismissed. See for example Shaw v Jim McGinty in his capacity as Attorney General [2006] WASCA 231; Glew v Shire of Greenough [2006] WASCA 260 (special leave refused: Glew v Shire of Greenough [2007] HCATrans 520); Glew Technologies Pty Ltd v Department of Planning and Infrastructure [2007]*

> *WASCA 289; Glew v City of Greater Geraldton [2012] WASCA 94; Glew v Frank Jasper Pty Ltd [2012] WASCA 93; Krysiak v Hodgson [2009] WASCA 114; Glew v The Governor of Western Australia [2009] WASC 14; Glew v Frank Jasper Pty Ltd [2010] WASCA 87; O'Connell v The State of Western Australia [2012] WASCA 96 [92]. The grounds of appeal are devoid of any merit."*

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There is no shortage of cases in the courts where these assertions regarding local government have been rejected. You can find many more cases on this website under the Tag "***Local Government***" Closely related is the notion that a title of Fee Simple "alienates the property from the Crown" and thereby prevents governments from exercising legislative authority in relation to the property. This assertion is covered in the article ***The Fee Simple Alienation Argument***.

This Fact Sheet explores the ***Legitimacy of Councils and Rating Powers in Victoria***, covering 5 common myths regarding local government in Victoria.

- *1. A referendum in 1988 to recognise local government in the Constitution did not succeed. Therefore local government has no legal existence.*
- *2. The Victorian Constitution is not valid; therefore its recognition of local government is invalid; therefore local government itself has no lawful basis. The Constitution Act 1975 was not properly enacted as it did not receive the assent of the Queen.*
- *3. Council has no right to impose rates because the Commonwealth Constitution only gives the power to tax to the Federal and State Governments. The High Court recently confirmed this in the 'Pape' case.*
- *4. Councils are created as bodies corporate, not governments. Therefore they cannot levy taxes.*
- *5. There is no lawful penalty for failing or refusing to pay rates because there is no power to impose rates.*

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The Fee Simple Alienation Argument

There is a premise that contends that since land owned in fee simple is "alienated from the Crown", the laws passed by governments regarding regulation of activities on that land is beyond power. As you will note from the plentiful amount of case law surrounding this premise, the primary authority that overrules the fee simple alienation argument is found in ***Bone v Mothershaw [2002] QCA 120***

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This decision was appealed to the High Court, where leave to appeal was rejected in **Bone v Mothershaw [2003] HCATrans 779**

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The case law also carries with it identical conclusions reached in the other States, as well as in Queensland, which we will now explore...

Queensland

Canaway v Chief Executive, Department of Natural Resources and Water [2009] QLC 120 (From 16)

"I note that the contentions by the appellant were rejected by the Court of Appeal in Bone v Mothershaw, and that numerous decisions of various Queensland courts have confirmed the decision in Bone v Mothershaw. It would also be remiss of me not to note the comments of the Queensland Court of Appeal in the recent decision of Millmerran Shire Council v Smith & Anor. Although that case related to a challenge to the validity of the Integrated Planning Act 1997 Queensland, and not the VMA, similar arguments were advanced to those under consideration here. As Keane JA (with whom the other Members of the Court agreed) noted:

> *"The 'Deed of Grant' argument is also legal nonsense, which was rejected as such in Bone v Mothershaw and Burns v State of Queensland and Croton. There is no occasion for this Court to reconsider these earlier decisions which gave the quietus to these legal fantasies."*

*In perhaps the best way of summarising not only this contention but all the contentions of the appellant, I can do little better than to quote from the decision of McPherson JA in **Bone v. Mothershaw [2003] 2 Qd R 600**. Bone v Mothershaw involved a challenge which related to a notice under chapter 22 of the Brisbane City Council Ordinances by which the Council had made a vegetation protection order in respect of vegetation on specified land owned by Mr Bone. The vegetation on Mr Bone's land, despite the existence of the notice, was subsequently destroyed and removed, resulting in a conviction of Mr Bone for a contravention of the Brisbane City Council ordinances Mr Bone appealed. McPherson JA stated as follows:*

> *"In a memorable observation, Pollock and Maitland once remarked that English law conceived of land ownership as being "projected on the plane of time". Vegetation does not grow on the plane of time. But to grant a fee simple estate in land is to confer the largest interest in land that is known to the common law, and one which is said to invest in the grantee "the lawful right to exercise over, upon, and in respect to the land every act of ownership which can enter into the*

*imagination including the right to commit unlimited waste": **Commonwealth v New South Wales [1923] HCA 34**; **(1923) 33 CLR 1**, 42 (Isaacs J), recently applied in **Fejo v Northern Territory of Australia [1998] HCA 58**; **(1998) 195 CLR 96**, 126. Accordingly, the argument proceeds, for chapter 22 to deny a fee simple owner in Brisbane the right, liberty or power to clear vegetation from his land is inconsistent with the proprietary rights that, under s 6(1) of the Land Act, are intended to be conveyed by the Crown to a grantee of a fee simple estate in Queensland, and so is invalid by force of s 31 of the Local Government Act.*

*It is, however, a mistake to suppose that s 6(1) of the Land Act 1962 is directed to defining the extent of the rights conferred on a grantee of land from the Crown. The section is one of several successive re-enactments of earlier statutory provisions, of which in Queensland the first was the Crown Lands Alienation Act 1860; 22 Vic No 1 (1 Pring's Statutes 833). Section 2 of that Act, and comparable provisions of other statutes that applied here before Separation in 1859, represented the culmination of a political struggle with the imperial government over local control of the waste lands of the Crown and the revenue arising from their sale. As sovereign of Australia, the King exercised through the colonial governor as his local representative a prerogative power at common law of granting out parcels of the unalienated land of the Crown that in English legal theory was vested in him in that capacity. The immediate effect of the legislation in question was to supersede the Crown's prerogative by a statutory power to make grants of land, and so to bring its alienation or disposal under the authority of the colonial legislature. The subject is discussed in the reasons for judgment of Windeyer J in **Randwick Municipal Council v Rutledge [1959] HCA 63**; **(1959) 102 CLR 54**, 71, of Brennan J in the **Tasmanian Dam Case [1983] HCA 21; (1983) 158 CLR 1**, 209-212, and in many historical accounts of the evolution of representative and responsible government in Australia. The royal prerogative is, it is well settled, displaced by legislation that covers the same subject matter: **Attorney-General v De Keyser's Royal Hotel [1920] UKHL 1; [1920] AC 508**, 560. The primary function of s 6(1) and other such legislation is facultative. Its object and effect are to confer on the Crown legislative, as distinct from prerogative, authority to grant waste lands, and so to transfer the power of doing so from the uncontrolled discretion of the Crown to the Governor in Council acting under the direction of the legislature, while at the same time limiting the range of interests that can be granted in such land to those designated in the section. Crown land may be granted, demised or dealt with only "subject to this Act".*

*In addition to historical considerations like these, a mere reference in a statute to an interest in land that is recognised at common law, such as an estate in fee simple, does not have the effect of transforming that interest, or the rights incidental to it, into statutory interests and rights. If it were so, s 24 of the Australian Courts Act 1828 (Imp) in introducing English law into eastern Australia would have had the effect of converting the whole of the common law received here in 1828 into a body of statute law, which, moreover, would have had the status and force under s 24 of an imperial enactment, with all the consequences which that entailed. Quite plainly, that is not what happened. The common law received in Australia under that Act was received as a body of common law and not of enacted law. A suggestion to the contrary in the Hong Kong case of **Mitchell v Lemm (1908) 3 HKLR 75**, 78, has been rightly condemned by Mr Wesley-Smith as "merely eccentric" (P Wesley-Smith, The Sources of Hong Kong Law, at 131, n2). The whole notion is, in any event, opposed to the established view that local laws or by-laws are capable of altering the received English law, as was recognised in **Widgee Shire Council v Bonney [1907] HCA 11; (1907) 4 CLR 977**, 982, 986-987, in the passages referred to above. Otherwise, as it was said in that case, the power to make municipal by-laws would be nugatory. The provisions of chapter 22*

> *prohibiting an owner in fee simple of land from clearing vegetation from his land are no more inconsistent with s 6(1) of the Land Act 1962, or with s 14(1) of the current Land Act 1994, than are the provisions of the Brisbane City Council ordinances prohibiting, for example, the growing of stinking roger (tagetes minuta), the keeping of roosters or reptiles, or the lighting of incinerators on residential land, to name only a few of the many other intrusions effected by local laws upon rights of fee simple owners within the city."*

Having carefully considered all of the relevant authorities, I am in no doubt that the VMA is a valid Act of the Queensland Parliament and applicable to the appellant's land. (Bone v. Mothershaw [2003] 2 Qd R 600; Burns v State of Queensland [2004] QSC 434; Wilson v Raddatz [2005] QDC, Brabazon DCJ, Maryborough, 24 August 2005; Burns v State of Queensland [2004] P & E Court, White DCJ, Cairns, 2 August 2004; Dore v State of Queensland [2004] QDC, Bradley DCJ, Cairns, 5 August 2004; Glasgow v Hall [2006] 042 at para 12; Watts v Ellis [2006] QCD 056; Burns v State of Queensland & Croton [2006] QCA 235; and Watts v Ellis [2007] QCA 234.) I note that the contentions by the appellant were rejected by the Court of Appeal in Bone v Mothershaw, and that numerous decisions of various Queensland courts have confirmed the decision in Bone v Mothershaw."

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Dore v State of Queensland and Anor [2004] QDC 364 (From 14):

> *"As I understand it, the brothers' central argument with respect to the clearing of vegetation on their own land, is that they own their property in fee simple as stated on the relevant Deed of Grant and the property has therefore been "alienated from the State". Thus, the brothers argue that "the State or its officers have no jurisdiction over the clearing of the native vegetation on our registered freehold land". Indeed, for centuries the right of the State to impose restrictions on the ownership of land has been recognised, and in fact, at common law there is no right to compensation where mere restrictions are imposed by the State, unlike the generally accepted right to compensation in the event of land being acquired by the State. The rights of fee simple owners have at common law always been restricted by the torts of nuisance, negligence and the law relating to restrictive covenants and to easements.*
>
> *It has been said that a grant of an estate in fee simple in land is a grant of the largest interest in land known to the common law, and one which gives the owner "the lawful right to exercise over, upon, and in respect to the land every act of ownership which can enter into the imagination including the right to commit unlimited waste". But the right to use such land has in modern times, been severely restricted. (See **Bone v Mothershaw [2002] QCA 120**) In Queensland the Constitution Act 1867 gives the Executive power, with the advice and consent of the Legislative Assembly, to "make laws for the peace, welfare and good government of the colony in all cases whatsoever." These words have traditionally been used to confer "the widest legislative powers appropriate to a sovereign". (See **Ibralebbe v The Queen1964 AC 900** at 923 and **Union Steamship Co of Australia Pty Ltd v King (1998) 166 CLR 1** at 9-10) Such words permit the Legislative Assembly of Queensland to pass laws restricting, modifying or even removing common law rights. The Legislative Assembly of Queensland is the supreme law-making authority in the State of Queensland and there is no doubt that it had the power to pass the Integrated Planning Act and the Land Act. Equally there is no doubt that the Integrated Planning Act applies to the*

land owned by the three brothers or that the Land Act applies to Bellenden Road. The brothers' property has not been "alienated from the State" in the sense that Queensland State law does not apply to the property or that the Queensland legislature is precluded from passing laws adversely affecting the property."

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Appeal dismissed in ***Dore and Ors v Penny [2006] QSC 125***

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Christopher Holeszko v Daniel McDonald and Katrina McDonald (No 2) [2017] QMC 23

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McDonald v Holeszko [2018] QDC 204 (At 49):

*"However, as the learned magistrate correctly identified in his decision, in **Burns v. The State of Queensland & Croton [2006] QCA 235** Jerrard JA stated:*

"…the sovereign law making power of the Queensland Parliament, considered in a somewhat similar context in the decision in Bone v. Mothershaw [2003] 2 Qd R 600 included the power to impose upon Mrs Burns the requirement that she have a development permit prior to changing the complexion or presentation of her land by clearing it. … Parliament was clearly empowered to authorise planning schemes which restricted what the owners of estates in fee simple might lawfully do with that land. If this challenge is correct, then there would seem no limit at all that a State Parliament could impose on the use to which a fee simple land owner put her or his land. Any such title holder could build, clear, or grow what they pleased; which activities would include growing cannabis, opium poppy, or noxious weeds, destroying historic buildings, or constructing buildings of any kind wherever they pleased."

(From 119)

"This argument has been raised in matters coming before the superior courts of this state on many previous occasions. Further, the High Court of Australia has also refused to entertain an appeal based on this contention. The weight of authority from superior courts in this State against this proposition is almost crushing. Arguments such as the present one were rejected by the Queensland Court of Appeal in Bone v. Mothershaw [2003] 2 Qd R 600 in a judgment delivered on 12th April 2002. The grant of special leave on this ground was refused by the High Court in Bone (above) on 25th June 2003 on the basis that there were insufficient prospects of success. At paragraph [19] of Bone (above) McPherson JA addressed the issue in the following terms:

"In addition to historical considerations like these, a mere reference in a statute to an interest in land that is recognised at common law, such as an estate in fee simple, does not have the effect

> *of transforming that interest, or the rights incidental to it, into statutory interests and rights. If it were so, s 24 of the Australian Courts Act 1828 (Imp) in introducing English law into eastern Australia would have had the effect of converting the whole of the common law received here in 1828 into a body of statute law, which, moreover, would have had the status and force under s 24 of an imperial enactment, with all the consequences which that entailed. Quite plainly, that is not what happened. The common law received in Australia under that Act was received as a body of common law and not of enacted law…"An argument on the same basis was presented to the Trial Division of the Queensland Supreme Court in **Dore & Others v. Penny [2006] QSC 125** and rejected in a judgment delivered on 5th May 2006. Essentially the same argument was presented in **Burns v. The State of Queensland & Croton [2006] QCA 235** and rejected by the Court of Appeal in a judgment delivered on 23rd June 2006. Similar submissions were made in **Wilson v. Raddatz [2006] QCA 392** and rejected in a brief judgment of the Court of Appeal delivered on 10th October 2006. With similar brevity (and increasing terseness) in **Glasgow v. Hall [2007] QCA 19** the same proposition was again rejected by the Court of Appeal. In that case, Holmes JA, as Her Honour then was, dryly observed at [5]: -*
>
> *"…The absence of merit of the argument must surely be becoming apparent even to Mr. Walter".*
>
> *Notwithstanding Her Honour's admonishment, the same arguments were raised and the same orders dismissing the appeal resulted in **Watts v. Ellis [2007] QCA 234** before the Court of Appeals"*

https://freemandelusion.com/wp-content/uploads/2020/06/mcdonald-v-holeszko-2018-qdc-204.pdf

McDonald v Holeszko [2019] QCA 285 (at 23):

> *"Mr McDonald also submits that both the magistrate and the primary judge failed to give proper consideration to the application of s 682 of the SPA. Section 682, however, does not apply to the present matter. Mr McDonald further submits that the offence provision under s 578 is incompatible with the rights of the owner of freehold property under the Land Act 1994 (Qld), the Property Law Act 1974 (Qld) and the Land Title Act 1994 (Qld). Such a proposition is contrary to authority."*

https://freemandelusion.com/wp-content/uploads/2020/06/mcdonald-v-holeszko-2019-qca-285.pdf

Lade v Department of Natural Resources and Mines [2007] QLC 49 (At 11):

> *"The learned Chief Justice went on at [5] to say in Burns:*
>
> *"These contentions are plainly untenable. Mrs Burns certainly has an indefeasible interest as registered proprietor of an estate in fee simple in the land. But the sovereign law making power of the Queensland Parliament, considered recently in a somewhat similar factual context in Bone v Mothershaw [2003] 2 QdR 600, amply embraced its imposing this requirement as a requirement as a prerequisite to her changing the complexion or presentation of her land in this way. In a different, though analogous way, the Parliament is clearly empowered to authorize planning schemes which restrict what the owners of estates in fee simple may lawfully do with their land. …"*

https://freemandelusion.com/wp-content/uploads/2020/06/lade-v-department-of-natural-resources-and-mines-2007-qlc-0049.pdf

Lade and Company Pty Ltd v Finlay; Lade v Franks [2010] QSC 382 (At 25):

> *"The proposition, I think, is that public servants acting under the authority of Acts of Parliament derogate in some way from Mr Lade's title by dealing with it as the legislation provides, and the relevant Minister is therefore liable to him for the alleged diminution in value brought about by that adverse derogation. Assuming, for the sake of argument, that there is such a derogation, the fallacy in the proposition is the notion that Parliament is precluded from so derogating once an estate in fee simple has been granted. So much has been established in a number of decisions that Ms Hartigan has taken me to: Bone v. Mothershaw [2003] 2 Qd R 600; Burns v State of Queensland [2006] QCA 235; Wilson v Raddatz [2006] QCA 392; Glasgow v Hall [2007] QCA 19. Special leave to appeal to the High Court was refused in Bone and Glasgow."*

https://freemandelusion.com/wp-content/uploads/2019/05/lade-and-company-pty-ltd-v-finlay-anor-lade-v-franks-anor-2010-qsc-382.pdf

Fletch Pty Ltd v Gladstone Regional Council and Anor [2010] QPEC 63:

> *"The point, for purposes of this Court, in my view, must be regarded as determined against what might be called the common law rights or interests of a land owner by Bone v. Mothershaw [2003] 2 Qd R 600. The High Court refused special leave to appeal from Court of Appeal's decision in B29/2002 [2003] HCATrans 829 (25 June 2003)."*

https://freemandelusion.com/wp-content/uploads/2020/06/fletch-pty-ltd-v-gladstone-regional-council-2010-qpec-63.pdf

Booth v Frippery Pty Ltd and Ors [2007] QPEC 99 (At 65):

> *"Reference is made to Quick & Garran's failure to list any new powers relating to alienated land accruing to the States after Federation in their list of exclusive powers, residuary powers and new legislative powers extant after Federation. Mr Fitzgibbon advises that Burns v State of Queensland [2004] QSC 434, in which he appeared, is currently the subject of application 44 of 2007 to the High Court of Australia seeking special leave to appeal. The Chief Justice's reasons make reference to the Court of Appeal decision in Bone v. Mothershaw [2003] 2 Qd R 600 (an appeal from a decision of my own). The Sovereign power of the State legislature to regulate what may and may not be done in relation to freehold land is clearly established by such authorities."*

https://freemandelusion.com/wp-content/uploads/2020/06/booth-v-frippery-pty-ltd-ors-2007-qpec-99.pdf

Burns v State of Queensland & Croton [2007] QCA 240 (From 4):

> *"The essential argument presented in the written outlines Mr Walter prepared for presentation in this and the other Courts, and when appearing before the Planning and Environment Court, was that the State of Queensland lacked legislative power to impose the requirement that, before*

clearing native vegetation from her freehold land, Mrs Burns had first to obtain a development permit to do that. He argued that the owner of freehold land had a right, with which the State of Queensland could not interfere, to clear such vegetation as the owner pleased. That issue had already been decided adversely to Mr Walter's arguments by this Court in Bone v. Mothershaw [2003] 2 Qd R 600. The written submissions Mr Walter filed in this Court on the primary appeal recognised that the decision was against his argument. This matter was not the first time Mr Walter had unsuccessfully advanced that same argument, which was contradicted by Bone v Mothershaw. The State of Queensland, in its written submissions on costs in this matter, has drawn the court's attention to the proceedings in Wilson v Raddatz (District Court Maryborough 24 August 2005), in which Mr Walter appeared by leave on behalf of a Mr Wilson, in an appeal to the District Court seeking to overturn Mr Wilson's conviction in the Hervey Bay Magistrates Court on a count of starting an assessable development, namely the clearing of native vegetation on freehold land, without a development permit for that development. The judgment of Brabazon QC DCJ records that Mr Walter, who appeared as agent with leave of the court, forcibly argued against the legitimacy of the Integrated Planning Act 1997 (Qld) and the Vegetation Management Act 1999 (Qld). As quoted by Brabazon QC DCJ, the essence of Mr Walter's submission was that those statutes could not adversely affect the conduct of owners of freehold land.

Brabazon QC DCJ applied the decision in Bone v Mothershaw, and likewise the decision of White DCJ in the appeal to that judge in the Planning and Environment Court in this matter, and also the decision of the Chief Justice at first instance in the primary appeal in this matter. Brabazon QC DCJ also referred to a matter of Dore v State of Queensland & Anor [2004] QDC 364, heard by Bradley DCJ in the Cairns District Court on 5 August 2004, in which similar arguments had been prepared in written submissions by Mr Walter for the appellants in that matter, and dismissed, with reasons, by Bradley DCJ. Brabazon QC DCJ noted that the fundamental point presented by Mr Walter in his argument was that ownership of freehold land meant that the provisions of the Integrated Planning Act and Vegetation Management Act were invalid to that extent. Brabazon QC DCJ dismissed the argument and the appeal.

In Glasgow v Hall [2006] QDC 042 Mr Walter had also appeared as the agent for the appellant in that matter, who had been convicted in February 2005 of an offence of starting an assessable development without a development permit, constituted by clearing remnant vegetation on freehold land. Nase DCJ recorded in his judgment delivered on 2 March 2006, that Mr Walter argued that the term "freehold" or "freehold land" used in the Integrated Planning Act did not include land held in fee simple, and should be understood as a reference to freehold land owned by the State as distinct from privately owned freehold land; His Honour dismissed both arguments, applying Bone v Mothershaw, the judgment of de Jersey CJ at first instance in this matter, and referring to the judgments in the District Court in Wilson v Raddatz, Dore v State of Queensland, and in the Planning and Environment Court in this matter. That appeal was dismissed with the appellant ordered to pay the respondent's costs. Similarly costs orders had been made against the unsuccessful appellant in Wilson v Raddatz; and costs orders were made against Mrs Burns by the Chief Justice on 8 December 2005, following the dismissal of the applications filed in the Supreme Court on her behalf.

Mr Walter has thus exposed Mrs Burns, Mr Glasgow, and Mr Wilson to costs orders incurred when he appeared for them arguing against the essential proposition established by the decision

> *of this Court in Bone v Mothershaw. He had heard judges follow that decision, and had the opportunity to read their reasons which gave independent judgments leading to the same conclusion as in Bone v Mothershaw. Nevertheless, he persisted with preparation of the written argument in the primary appeal in this matter, which was heard on 1 June 2006, although for that appeal to succeed, this Court would have to reverse its earlier decision in Bone v Mothershaw. The respondent's written submissions on costs in this matter included material showing that Mr Walter had also appeared in person for a Mr Watts in a matter of Watts v Ellis, heard before Wall QC DCJ on 3 March 2006, with leave from that Court, presenting similar arguments. That learned judge had also advised that the judge was bound by the decision in Bone v Mothershaw, and that Mr Walter would have to persuade this Court to reconsider that decision, and if unsuccessful ask the High Court to reverse it.*
>
> *Mr Walter has been very persistent in presenting those arguments in Court in person, with leave, or in writing, on behalf of different applicants or appellants for some years. He may not have known until shortly before the hearing of the primary appeal in this matter of the unsuccessful special leave application in Bone v Mothershaw. He did know he had repeatedly failed to persuade Judges and Magistrates that the decision was wrong, and he had been given independent reasoning by a number of Judges and Magistrates dismissing his arguments and supporting the conclusion in that case.*
>
> *Once Mr Walter learnt of the earlier refusal of special leave, persistence with the appeal in Burns v State of Queensland would have been self-evidently pointless, unless a further special leave application was intended. Sufficient grounds therefore exist for making an order against Mr Walter, in the exercise of the power recognised in Knight v FP Special Assets and further discussed in Kebaro Pty Ltd v Saunders. Because he may not have known of the unsuccessful earlier special leave application in Bone v Mothershaw until shortly before this appeal was to be heard, and because he had obtained no benefit himself from his efforts for Mrs Burns, I would not exercise a discretion against him in this matter."*

https://freemandelusion.com/wp-content/uploads/2020/10/burns-v-state-of-queensland-croton-2007-qca-240.pdf

Appealed from ***Burns v State of Queensland [2004] QSC 434***

https://freemandelusion.com/wp-content/uploads/2020/10/burns-v-state-of-queensland-2004-qsc-434.pdf

Watts v Ellis [2007] QCA 234:

> *"Arguments to that effect were rejected by this Court in the decision in Bone v Mothershaw [2003] 2 Qd R 600 and, in particular, in the passages in the judgment of McPherson JA at pages 609 and 610. The High Court refused special leave to appeal from that decision on the 25th of June 2003. Despite that fact, an argument, on the same basis, regarding an estate in fee simple was represented to Jones J in the Supreme Court in Cairns in the matter of Dore & Others v Penny [2006] QSC 125 on the 3rd of February 2006 and rejected by his Honour in a judgment delivered on 5th May 2006.*

> *That matter had concerned the Integrated Planning Act 1997 (Qld) and the argument before Jones J followed that rejected in Bone v Mothershaw being an argument that the grant was a contract between the landowner and the sovereign giving the land to the landowner free of any restrictions on its use which were not contained in the deed of grant. That matter also concerned the Integrated Planning Act 1997 and the Vegetation Management Act 1999 (Qld) and once again Mr Walter in the written submissions prepared for that applicant invited this Court to reconsider and reverse the decision in Bone v Mothershaw."*

https://freemandelusion.com/wp-content/uploads/2020/06/watts-v-ellis-2007-qca-234.pdf

Appealed from ***Watts v Ellis [2006] QDC 56***

https://freemandelusion.com/wp-content/uploads/2020/06/watts-e28093-v-e28093-ellis-2006-qdc-056.pdf

Glasgow v Hall [2006] QDC 42

https://freemandelusion.com/wp-content/uploads/2020/10/glasgow-v.-hall-2006-qdc-042.pdf

Appeal dismissed in ***Glasgow v Hall[2007] QCA 19***

https://freemandelusion.com/wp-content/uploads/2020/10/glasgow-v-hall-2007-qca-19.pdf

Booth v Yardley and Anor [2006] QPEC 119

https://freemandelusion.com/wp-content/uploads/2020/06/booth-v-yardley-anor-2006-qpec-119.pdf

Wilson v Raddatz [2006] QCA 392

https://freemandelusion.com/wp-content/uploads/2020/10/wilson-v-raddatz-2006-qca-392.pdf

New South Wales...

Spencer v Australian Capital Territory [2007] NSWSC 303

https://freemandelusion.com/wp-content/uploads/2020/06/spencer-v-australian-capital-territory-ors-2007-nswsc-303.pdf

Shoalhaven City Council v Ellis [2012] NSWLEC 225 (at 8):

"Thirdly, the respondents submit that because they are the holders of estates in fee simple, they are not subject to the requirements of the EPA Act and this Court has no jurisdiction. The argument is misconceived. Ownership of an estate in fee simple does not mean that the law does not apply in respect of that land. The respondents cite Fejo v Northern Territory of Australia [1998] HCA 58, 195 CLR 96 at [47] per Gleeson CJ, Gaudron, McHugh, Gummow, Hayne and Callinan JJ:

> *"Subject to whatever qualifications may be imposed by statute or the common law, or by reservation or grant, the holder of an estate in fee simple may use the land as he or she sees fit and may exclude any and everyone from access to the land."*

The respondents' reliance on Fejo is misplaced. As the opening words of the quotation make clear, restrictions on the use of land, including by the holder of an estate in fee simple, may be imposed by statute or the common law. Relevantly, the EPA Act imposes restrictions on the use of land within New South Wales, including the Jerberra Estate. The present proceedings are brought to restrain breaches of those restrictions."

The respondents also cited imprecisely the judgment of Isaacs J in The Commonwealth of Australia v The State of New South Wales [1923] HCA 34, 33 CLR 1 and cited s 36 of the Imperial Acts Application Act 1969 which provides:

> *"36 Alienation of fee simple – Land held of the Crown in fee simple may be assured in fee simple without licence and without fine and the person taking under the assurance shall hold the land of the Crown in the same manner as the land was held before the assurance took effect."*

I can see nothing in either which supports the respondents."

https://freemandelusion.com/wp-content/uploads/2019/05/shoalhaven-city-council-v-ellis-2012-nswlec-225.pdf

Victoria...

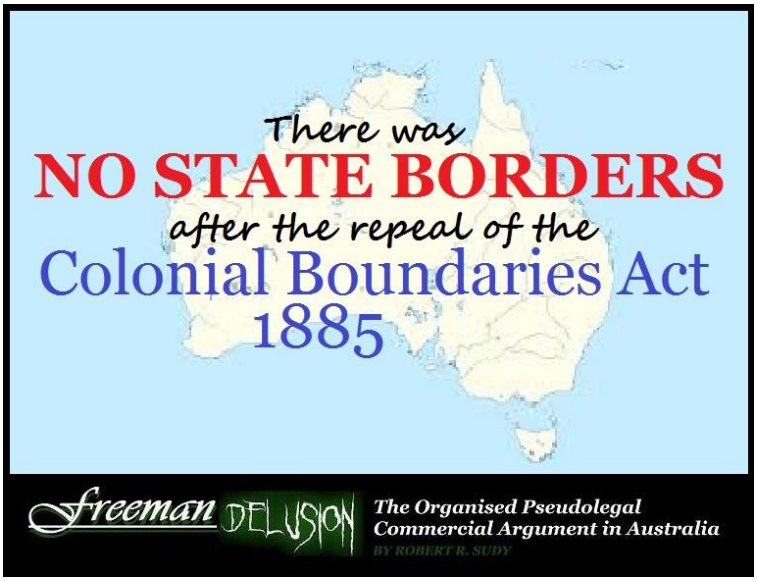
Cardinia Shire Council v Kraan [2017] VMC024 (From 15):

> *Submission 4 - "Fee Simple is clearly stated in Fejo v The Northern Territory HCA 58 of 1998 at paragraph 93 it states; "This court has expressed in the most ample terms the meaning of an estate in Common Law in the Commonwealth v New South Wales, Isaacs J said (138) "In the language of English Law, the word Fee signifies An Estate of Inheritance as distinguished from a Less Estate, A Fee Simple is the most Absolute in respect to the Rights it confers of all Estates known to the Law, it confers and since the beginning of Legal History it always has conferred, the Lawful Right to exercise over, upon, and in respect to the land, every Act of Ownership which can enter into the imagination".*
>
> *This submission misstates **Fejo v Northern Territory (1998) 195 CLR 96** which provides: (at p. 93) "Before the decision of this Court in Mabo v Queensland [No 2] ("Mabo [No 2]") which gave rise to legal claims of native title in Australia, the Court had expressed in the most ample terms the meaning of an estate in fee simple at common law. In The Commonwealth v New South Wales, Isaacs J said:*
>
> *"In the language of the English law, the word fee signifies an estate of inheritance as distinguished from a less estate … A fee simple is the most extensive in quantum, and the most absolute in respect to the rights which it confers, of all estates known to the law. It confers, and since the beginning of legal history it always has conferred, the lawful right to exercise over, upon, and in respect to, the land, every act of ownership which can enter into the imagination".*

> *This case is wholly irrelevant to this prosecution. Insofar as Mr Kraan is attempting to restate that he, as the owner of his land, is not subject to the laws of Australia, that submission has been considered and dismissed in the ruling of 13 July 2017."*

https://freemandelusion.com/wp-content/uploads/2019/07/cardinia-shire-council-v-kraan-2017-vmc024.pdf

Australia has no State borders



It is a common premise among some constitutional theorists in Australia such as ***Wayne Glew***, that because the *Colonial Boundaries Act 1895* did not apply to the States after Federation, there exists no borders between States. One example of this can be found on page 60 and 63 in ***Steven Spiers*** *"Realm and Man"* where he states *"...the repeal of the Colonial Boundaries Act 1875 removing any border from New South Wales as at Constitution on the 1st January 1901."* (Note the wrong date - it's 1895 not 1875) On page 63 he explains this further:

> *"Clause 8 of the Commonwealth of Australia Constitution Act July 1900 UK/PGA repealed the Colonial Boundaries Act 1875 [1895] leaving the State of New South Wales without a border as civilians united in a Federal Body called the Commonwealth of Australia. So what is the "jurisdiction" of the New South Wales Policy Enforcer on "civilians" of the Commonwealth of Australia, and what is a State of the Commonwealth of Australia, formerly a Colony with its own borders now repealed. If the State has no borders, and under Clause 5 of the Commonwealth of Australia Constitution Act July 1900 UK/PGA has its line of authority in the Constitution at Clause 9 of said act, then what exactly is a "State" of the Commonwealth of Australia?"*

During the COVID-19 pandemic, ***Rodney Culleton*** of the ***Great Australian Party*** also consistently told his followers that there are no State borders hence there can be no border restrictions. He also took offence to checkpoint police and anyone else referring to these boundaries as "borders" and instead called them "political limitations" which is quite the logical fallacy. The terms "border" and "boundary" basically mean the same thing, from different perspectives.

By definition, a border is the outer edge of something, while a boundary is the dividing line or location between two areas.

The limits of a State ARE the boundaries, and they are actual physical geographic boundaries, as evidenced by fact the original *Letters Patent* that established the particular colony provides the latitude and longitude points to define the exact location of the boundary.

Covering clause 8 of the *Constitution* provides:

> *"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."*

Note it doesn't state that the boundaries themselves were abolished, but the effect of the *Colonial Boundaries Act 1895*. So what was the *Colonial Boundaries Act 1895* about? It certainly didn't establish the boundaries, they all existed prior to 1895, from the beginning of whatever colony.

Colonial Boundaries Act 1895

1 Alteration or boundaries of colony.

(1) Where the boundaries of a colony have, either before or after the passing of this Act, been altered by Her Majesty the Queen by Order in Council or letters patent the boundaries as so altered shall be, and be deemed to have been from the date of the alteration, the boundaries of the colony.

(2) Provided that the consent of a self-governing colony shall be required for the alteration of the boundaries thereof.

(3) In this Act " self-governing colony " means any of the colonies specified in the schedule to this Act.

2 Short title.

This Act may be cited as the Colonial Boundaries Act, 1895.

SCHEDULE

SELF-GOVERNING COLONIES

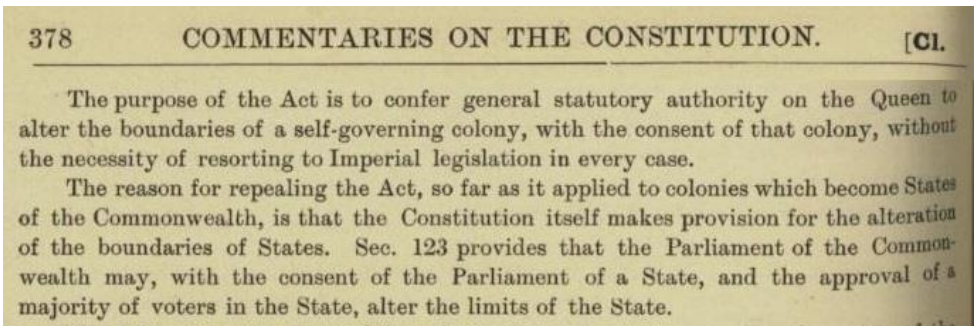
Canada.	Victoria.	Western Australia.	Cape of Good Hope.
Newfoundland.	South Australia.	Tasmania.	Natal.
New South Wales.	Queensland.	New Zealand.	

The answer is relatively simple, there were no borders removed by this repeal. ***The Colonial Boundaries Act 1895*** merely dealt with the manner of which the colonial boundaries could be altered. Before federation, the colonial boundaries could be altered by the Queen in Council under the *Colonial Boundaries Act 1895* with the consent of the affected Colonial Parliaments.

Since federation, section 123 of the *Commonwealth Constitution* provides the only constitutional avenue for an alteration in State borders. It provides:

> *"The Parliament of the Commonwealth may, with the consent of the Parliament of a State, and the approval of the majority of the electors of the State voting upon the question, increase, diminish, or otherwise alter the limits of the State, upon such terms and conditions as may be agreed on, and may, with the like consent, make provision respecting the effect and operation of any increase or diminution or alteration of territory in relation to any State affected."*

This is confirmed by ***Page 378*** of Quick and Garran's *Annotated constitution of the Australian Commonwealth:*



378 COMMENTARIES ON THE CONSTITUTION. [Cl.

The purpose of the Act is to confer general statutory authority on the Queen to alter the boundaries of a self-governing colony, with the consent of that colony, without the necessity of resorting to Imperial legislation in every case.

The reason for repealing the Act, so far as it applied to colonies which become States of the Commonwealth, is that the Constitution itself makes provision for the alteration of the boundaries of States. Sec. 123 provides that the Parliament of the Commonwealth may, with the consent of the Parliament of a State, and the approval of a majority of voters in the State, alter the limits of the State.

Accordingly, it is only possible for the borders of a State to be altered by Commonwealth legislation enacted under s 123 which has been approved by both that State's Parliament and by a referendum of that State's electorate. Where the alteration affects the borders of more than one State, then the requisite approvals will be required from all affected States.

Ultimately, there are two methods here of boundary alteration here, one prior to Federation, the other after Federation. So the following question needs to be asked: Was there either (a) any alteration of the borders by the the Queen in Council under the *Colonial Boundaries Act 1895*, or (b) any alteration of the borders under section 123 approved by referendum of all the States? No there wasn't, so no borders were affected by this repeal.

Further provisions which show the existence of State territory post Federation:

Section 111 - States may surrender territory -

> *"The Parliament of a State may surrender any part of the State to the Commonwealth; and upon such surrender, and the acceptance thereof by the Commonwealth, such part of the State shall become subject to the exclusive jurisdiction of the Commonwealth."*

Section 124 - Formation of new States -

> *"A new State may be formed by separation of territory from a State, but only with the consent of the Parliament thereof, and a new State may be formed by the union of two or more States or parts of States, but only with the consent of the Parliaments of the States affected."*

Section 121 - New States may be admitted or established -

> *"The Parliament may admit to the Commonwealth or establish new States, and may upon such admission or establishment make or impose such terms and conditions, including the extent of representation in either House of the Parliament, as it thinks fit."*

Extract from the Public Lecture Series of the High Court of Australia. Dr Gerard Carney ***The Story behind the Land Borders of the Australian States*** - A Legal and Historical Overview (10 April 2013):

> *"Writing in 1900, Quick & Garran (at 975) considered the requirement of electoral approval as an "extraordinary limitation" on the power of State Parliaments. This additional approval had been inserted into clause 123 subsequent to the Convention Debates, in response to the failure of the*

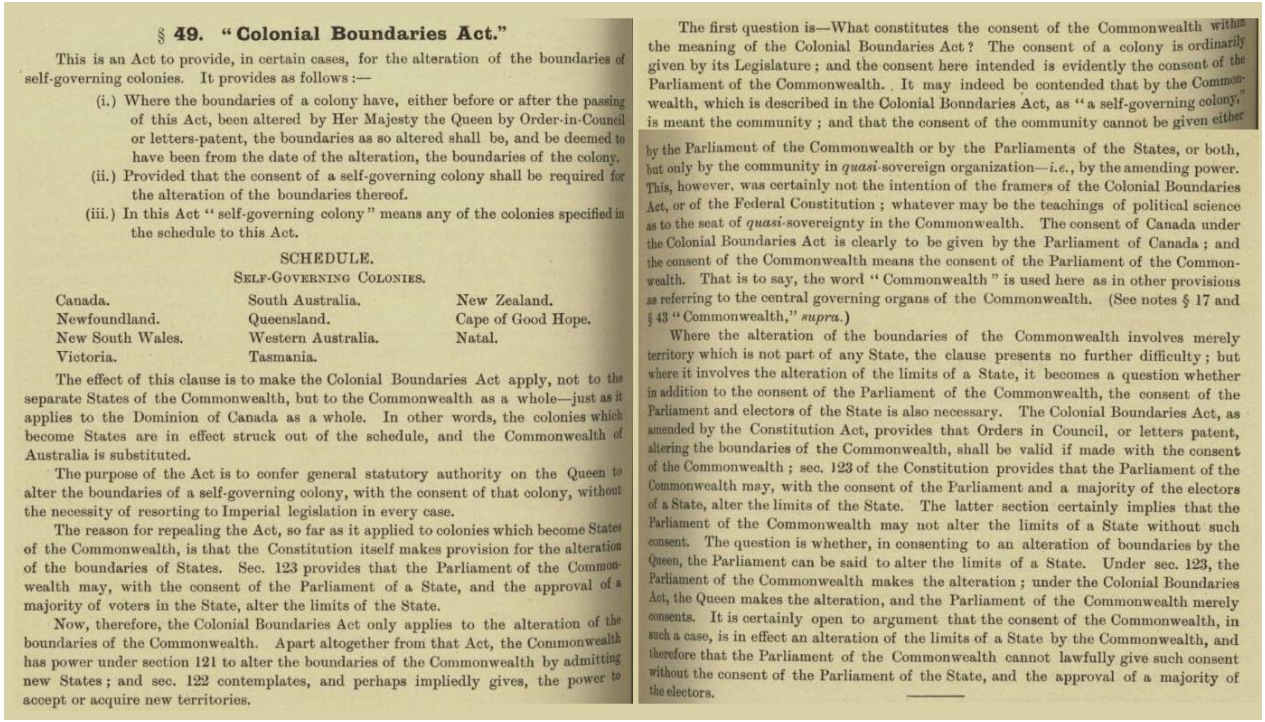
Convention Bill to be approved by the requisite majority in NSW. Today, referendum approval for any alteration in the State borders seems entirely appropriate and justified.

However the late inclusion of State electoral approval in the drafting of s 123, creates difficulty with ss 111, 121 and 124 of the Constitution. Section 111 enables a State Parliament to surrender part of its territory to the Commonwealth. Section 121 enables the Commonwealth Parliament to establish new States, which by s 124, can occur by an existing State giving up part of its territory to form a new State, or by the union of two or more States or parts thereof. In each of these circumstances, State borders are likely to change, but only the consent of the relevant State Parliament is expressly required.

Hence the issue: whether s 123 applies in each of these circumstances to require referendum approval? Not surprisingly, Quick & Garran argue against this on the basis that each of the specific powers in ss 111, 121 and 124 should not be read down by s 123. (The NT was surrendered by SA to the Cth under s 111, approved in Paterson v O'Brien (1977) 138 CLR 276 without any SA or NT referendum.) While constitutional arguments can be mounted each way on this issue, I suggest that each of the State electorates in the 21st century would expect their approval to be sought before the borders of their State were altered in any respect."

https://freemandelusion.com/wp-content/uploads/2019/01/the-story-behind-the-land-borders-of-the-australian-states.pdf

The complete ss 49 from ***Page 378-379*** of Quick and Garran's *Annotated constitution of the Australian Commonwealth*:



§ 49. "Colonial Boundaries Act."

This is an Act to provide, in certain cases, for the alteration of the boundaries of self-governing colonies. It provides as follows:—

(i.) Where the boundaries of a colony have, either before or after the passing of this Act, been altered by Her Majesty the Queen by Order-in-Council or letters-patent, the boundaries as so altered shall be, and be deemed to have been from the date of the alteration, the boundaries of the colony.

(ii.) Provided that the consent of a self-governing colony shall be required for the alteration of the boundaries thereof.

(iii.) In this Act "self-governing colony" means any of the colonies specified in the schedule to this Act.

SCHEDULE.

SELF-GOVERNING COLONIES.

Canada.	South Australia.	New Zealand.
Newfoundland.	Queensland.	Cape of Good Hope.
New South Wales.	Western Australia.	Natal.
Victoria.	Tasmania.	

The effect of this clause is to make the Colonial Boundaries Act apply, not to the separate States of the Commonwealth, but to the Commonwealth as a whole—just as it applies to the Dominion of Canada as a whole. In other words, the colonies which become States are in effect struck out of the schedule, and the Commonwealth of Australia is substituted.

The purpose of the Act is to confer general statutory authority on the Queen to alter the boundaries of a self-governing colony, with the consent of that colony, without the necessity of resorting to Imperial legislation in every case.

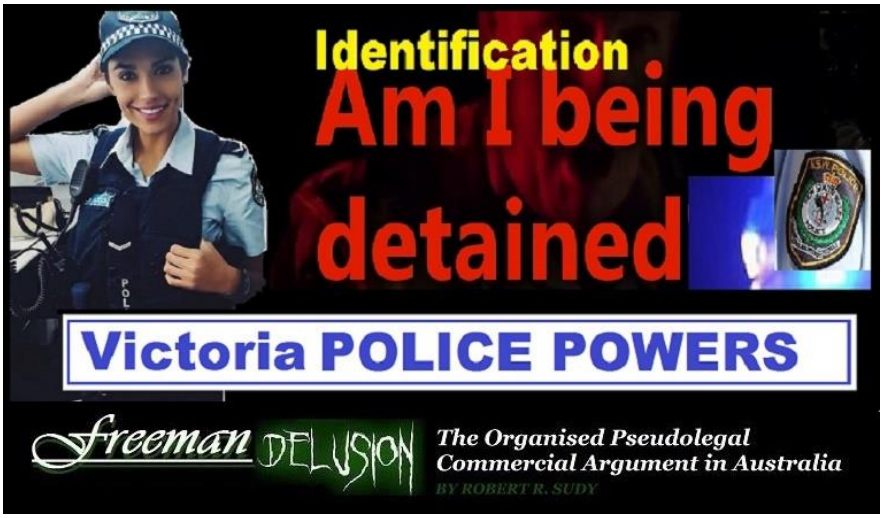
The reason for repealing the Act, so far as it applied to colonies which become States of the Commonwealth, is that the Constitution itself makes provision for the alteration of the boundaries of States. Sec. 123 provides that the Parliament of the Commonwealth may, with the consent of the Parliament of a State, and the approval of a majority of voters in the State, alter the limits of the State.

Now, therefore, the Colonial Boundaries Act only applies to the alteration of the boundaries of the Commonwealth. Apart altogether from that Act, the Commonwealth has power under section 121 to alter the boundaries of the Commonwealth by admitting new States; and sec. 122 contemplates, and perhaps impliedly gives, the power to accept or acquire new territories.

The first question is—What constitutes the consent of the Commonwealth within the meaning of the Colonial Boundaries Act? The consent of a colony is ordinarily given by its Legislature; and the consent here intended is evidently the consent of the Parliament of the Commonwealth. It may indeed be contended that by the Commonwealth, which is described in the Colonial Boundaries Act, as "a self-governing colony," is meant the community; and that the consent of the community cannot be given either by the Parliament of the Commonwealth or by the Parliaments of the States, or both, but only by the community in *quasi*-sovereign organization—*i.e.*, by the amending power. This, however, was certainly not the intention of the framers of the Colonial Boundaries Act, or of the Federal Constitution; whatever may be the teachings of political science as to the seat of *quasi*-sovereignty in the Commonwealth. The consent of Canada under the Colonial Boundaries Act is clearly to be given by the Parliament of Canada; and the consent of the Commonwealth means the consent of the Parliament of the Commonwealth. That is to say, the word "Commonwealth" is used here as in other provisions as referring to the central governing organs of the Commonwealth. (See notes § 17 and § 43 "Commonwealth," *supra*.)

Where the alteration of the boundaries of the Commonwealth involves merely territory which is not part of any State, the clause presents no further difficulty; but where it involves the alteration of the limits of a State, it becomes a question whether in addition to the consent of the Parliament of the Commonwealth, the consent of the Parliament and electors of the State is also necessary. The Colonial Boundaries Act, as amended by the Constitution Act, provides that Orders in Council, or letters patent, altering the boundaries of the Commonwealth, shall be valid if made with the consent of the Commonwealth; sec. 123 of the Constitution provides that the Parliament of the Commonwealth may, with the consent of the Parliament and a majority of the electors of a State, alter the limits of the State. The latter section certainly implies that the Parliament of the Commonwealth may not alter the limits of a State without such consent. The question is whether, in consenting to an alteration of boundaries by the Queen, the Parliament can be said to alter the limits of a State. Under sec. 123, the Parliament of the Commonwealth makes the alteration; under the Colonial Boundaries Act, the Queen makes the alteration, and the Parliament of the Commonwealth merely consents. It is certainly open to argument that the consent of the Commonwealth, in such a case, is in effect an alteration of the limits of a State by the Commonwealth, and therefore that the Parliament of the Commonwealth cannot lawfully give such consent without the consent of the Parliament of the State, and the approval of a majority of the electors.

ID: Police Powers in Victoria



Justice Stephen Kaye

A common pseudolaw argument in Victoria is that police have no power to ask for identification. The argument seems to be based around ***DPP v Hamilton [2011] VSC 598*** where the Supreme Court ruled that police have no unfettered right to stop a person arbitrarily.

One often sees this case erroneously cited online in the following form:

> *Justice Stephen Kaye - Melbourne Supreme Court ruling - 25 November 2011:*
>
> *"It is an ancient principle of the Common Law that a person not under arrest has no obligation to stop for police or answer their questions. And there is no statute that removes that right. The conferring of such a power on a police officer would be a substantial detraction from the fundamental freedoms which have been guaranteed to the citizen by the Common Law for centuries."*

Firstly, it must be pointed out that first part of the passage above attributed to Kaye J. does not appear in the case at all, and the passage beginning with *"The conferring of such a power …"* (at 36) is paraphrased:

> *"In effect, Mr Gyorffy's submissions were based on the implication, from s 464(1)(c), and from other provisions in subdivision 30A, of a power to detain a suspect for questioning. The conferring of such a power, on a police officer, would be a substantial, and indeed a radical, detraction from the fundamental freedoms which have been guaranteed to the citizen by the common law for centuries. As a matter of first principle, a court would not construe a statute as having the effect contended for by Mr Gyorffy, unless such an effect, at the very least, could be demonstrated to be the necessary implication of the provisions of the statute. In the present instance, Mr Gyorffy has not demonstrated that the implied conferral of such a radical power is a necessary implication from the provisions of Division 30A."*

In the case, Leading Senior Constable Hemingway was on patrol in the Melbourne CBD, and was flagged down by an employee of Taco Bill. The employee informed Hemingway that two men had left the restaurant without paying, and indicated one of them was Hamilton. When Hemingway approached Hamilton, he fled on foot. Hemingway pursued Hamilton in his police car and finally arrested and charged him with resisting arrest.

The court was asked if police had a right to stop a person on a mere suspicion. The case circulated around the common law powers of arrest. A common law arrest requires a belief an offense had been committed, informing the person they are under arrest, why they are under arrest, physical contact and the person understanding why they are under arrest: (see eg ***George v Rockett (1990) 170 CLR 104***; ***Collins v Wilcock [1984] 1 WLR 1172***)

Even though Hemingway had been given indication that Hamilton may have committed an offense, only one element of the 5 needed to complete an arrest were fulfilled before the chase began.

The Magistrate struck the charge out for three reasons:

- The arrest occurred after the chase had finished, not before it started. He cannot have been resisting arrest if the arrest had not been completed in the first place.
- Police were relying on information from the Taco Bill employee and not their own investigation, this does not satisfy 'belief'.
- While a person *on foot* has a moral obligation to stop when asked (and not under arrest), they do not have a legal obligation.

Pseudolaw theorists argue this case provides a blanket immunity from being stopped by police for identification, even when driving, but miss two crucial elements:

Hamilton was on foot, not in a car, and Police didn't have sufficient grounds for 'belief'.

https://freemandelusion.com/wp-content/uploads/2018/07/dpp-v-hamilton-2011-vsc-598.pdf

Magistrate Duncan Reynolds

A similar argument in Victoria centres around *Kaba v DPP*, in which the magistrate ruled that police do not have an unfettered right to stop a vehicle. One often sees this case erroneously cited online in the following form:

> *Magistrate Duncan Reynolds - Melbourne - July 2013:*
>
> *"There is no common law power vested in police giving them the unfettered right to stop or detain a person and seek identification details. Nor, is s.59 of the (Road Safety) Act a statutory source of such power."*

While this is true to a certain extent, theorists seem to disregard the fact that Kaba was not the driver, and also that the decision was overturned on appeal regarding ***section 59(1) of the Road Safety Act.*** As affirmed in the Victorian Supreme Court decision of ***DPP v Kaba [2014] VSC 52*** (at 486):

> *"For the reasons given in this judgment, the ruling of the magistrate will be quashed because his Honour committed an error of law upon the face of the record in relation to the interpretation of s 59(1) of the Road Safety Act. Contrary to his Honour's interpretation, police do have a power of random stop and check under that provision."*

https://freemandelusion.com/wp-content/uploads/2018/07/dpp-v-kaba-2014-vsc-52.pdf

Where Police can stop a person and/or ask for ID.

Crimes Act 1958 (Vic) ***section 456AA***: Police may request ID of people: Believed to have committed an offense. Believed to be about to commit an offense. Believed to know something about an *indictable* offense (serious offense).

> Note: 'Belief' is an 'assentation of mind' and different to 'suspicion': See ***George v Rockett***, ***Slaveski v State of Victoria [2010] VSC 441***. An indictable offense is something like burglary or murder, not a traffic offense.

Road Safety Act 1986 (Vic) ***section 59 (1)***: A person must pull over when signaled by police. This includes a PSO in their designated area. They must provide a name and address when asked.

> Note: This is 'name AND address', not 'driver's licence'. You do not have to have your driver's licence on you if you're over 26 and not on your L's or P's (See ***section 19(8)***, but need to provide your name and address in some way. This can be your rego number if you are driving your own car.

Control of Weapons Act (Vic) ***section 10G***: Police can stop and search anyone in a *"designated search area"* without a warrant.

Police power to arrest

Road Safety Act 1986 (Vic) ***section 76***: Police may arrest a person for driving offense *if* they refuse to give a name AND address, or there is reason to believe they have given false information.

Crimes Act 1958 (Vic) ***section 458***: Any person may arrest any other person found committing any offense, where necessary. This does mean literally *any* person. You do not have to be a police officer to arrest someone, but you do have to *find* a person committing an offense, not suspect they might have.

Crimes Act 1958 (Vic) ***section 459***: A police officer or PSO may apprehend any person they *believe* has committed an indictable offense.

Bail Act 1977 (Vic) ***section 24***: Police may arrest person breaching, or likely to breach, bail conditions.

Family Violence Protection Act 2008 (Vic) ***section 38***: Police may arrest a person contravening an intervention order.

Can police stop a person at any time and ask for ID?

Generally speaking NO. Unless you are driving a car, in a designated search area, believed to have committed an offense or know something about a serious offense police have no legal grounds to ask for ID. However, this is not a blanket protection and does not prevent police from pulling you over. Driving a car is a potentially dangerous task. This is why it is regulated; cars are big metal things full of explosive liquid traveling at speed, it's a good idea to check if the person is allowed to do it.

Application of Chapter III to the States

Often pseudolaw litigants demand to be heard in a *"lawful court under Chapter III of the constitution*" as opposed to the *"unlawful star chamber"* court they are being heard in. You can find many of these cases on this website under the Tag "***Chapter III court***".

Extract from ***Fardon v Attorney-General (Qld) [2004] HCA 46; 223 CLR 575*** (from 36, per McHugh J. analysis of ***Kable v Director of Public Prosecutions (NSW) (1996) 189 CLR 51***):

Application of Chapter III to the States

"The doctrine of the separation of powers, derived from Chapters I, II and III of the Constitution, does not apply as such in any of the States, including Queensland. Chapter III of the Constitution, which provides for the exercise of federal judicial power, invalidates State legislation that purports to invest jurisdiction and powers in State courts only in very limited circumstances. One circumstance is State legislation that attempts to alter or interfere with the working of the federal judicial system set up by Ch III [1]. Another is the circumstance dealt with in Kable: legislation that purports to confer jurisdiction on State courts but compromises the institutional integrity of State courts and affects their capacity to exercise federal jurisdiction invested under Ch III impartially and competently. Subject to that proviso, when the Federal Parliament invests State courts with federal jurisdiction, it must take them as it finds them

- *[1] The Commonwealth v Queensland (1975) 134 CLR 298 at 314-315 per Gibbs J, Barwick CJ, Stephen and Mason JJ agreeing.*

*Cases in this Court have often demonstrated that, subject to the Kable principle, the Parliament of the Commonwealth must take State courts as it finds them [2]. Thus, the structure of a State court may provide for certain matters to be determined by a person other than a judge – such as a master or registrar – who is not a component part of the court. If the Parliament of the Commonwealth invests that court with federal jurisdiction in respect of those matters, the investiture does not contravene Ch III of the Constitution, and that person may exercise the judicial power of the Commonwealth. Thus, in **The Commonwealth v Hospital Contribution Fund (1982) 150 CLR 49**, this Court held that, notwithstanding that a Master of the Supreme Court of New South Wales was not a component part of that Court, under the Supreme Court Act 1970 (NSW), orders made by the Master were orders of that Court in both State and federal jurisdiction. Gibbs CJ said [3]:*

> *"He was the officer of the court by whom the jurisdiction and powers of the court in the matter in question were normally exercised, and an order made by him, if not set aside or varied by the court, would take effect as an order of the court. Although he was not a member of the court he was, in my respectful opinion, part of the organization through which the powers and jurisdiction of the court were exercised in matters of State jurisdiction, and through which they were to be exercised in matters of federal jurisdiction also, once the court was invested with federal jurisdiction."*

- *[2] See, eg, Federated Sawmill, Timberyard and General Woodworkers' Employes' Association (Adelaide Branch) v Alexander (1912) 15 CLR 308 at 313 per Griffith CJ; Le Mesurier (1929) 42 CLR 481 at 496-498 per Knox CJ, Rich and Dixon JJ; Adams v Chas S Watson Pty Ltd (1938) 60 CLR 545 at 554-555 per Latham CJ; Peacock v Newtown Marrickville and General Co-operative Building*

> *Society No 4 Ltd (1943) 67 CLR 25 at 37 per Latham CJ; Kotsis v Kotsis (1970) 122 CLR 69 at 109 per Gibbs J; Russell v Russell (1976) 134 CLR 495 at 516-517 per Gibbs J, 530 per Stephen J, 535 per Mason J, 554 per Jacobs J; The Commonwealth v Hospital Contribution Fund (1982) 150 CLR 49 at 61 per Mason J.*

- *[3] Hospital Contribution Fund (1982) 150 CLR 49 at 59.*

Furthermore, when investing a State court with federal jurisdiction, the Federal Parliament cannot alter the structure of the court by making an officer of the Commonwealth a functionary of the court and empowering the officer to administer part of its jurisdiction [4]. Nor can it invest State courts with federal jurisdiction and, contrary to the open justice rule, require those courts to conduct proceedings in closed court [5]. Nor can the Parliament require a State court invested with federal jurisdiction to have trial by jury when the court is so organised under State law that it does not use that form of trial when exercising State jurisdiction [6]. For example, Magistrates' Courts in this country do not provide for trial by jury. If the Parliament, acting under s 77(iii) of the Constitution, enacted a law purporting to invest a Magistrates' Court of a State with jurisdiction to hear indictable offences and the law, expressly or impliedly, sought to require trial by jury in the Magistrates' Court, the law would be invalid because a law that invests a State court with federal jurisdiction must take the court as it finds it. In any event, s 80 of the Constitution, which requires trial by jury for federal indictable offences, would operate to invalidate the law.

- *[4] Le Mesurier (1929) 42 CLR 481 at 496-497 per Knox CJ, Rich and Dixon JJ*
- *[5] Russell (1976) 134 CLR 495 at 506 per Barwick CJ, 520 per Gibbs J, 532 per Stephen J.*
- *[6] Brown v The Queen (1986) 160 CLR 171 at 199 per Brennan J.*

*Moreover, as Gaudron J pointed out in **Kable** [7]:*

> *"[T]here is nothing to prevent the Parliaments of the States from conferring powers on their courts which are wholly non-judicial, so long as they are not repugnant to or inconsistent with the exercise by those courts of the judicial power of the Commonwealth."*

Nor is there anything in the Constitution that would preclude the States from legislating so as to empower non-judicial tribunals to determine issues of criminal guilt or to sentence offenders for breaches of the law. The Queensland Parliament has power to make laws for "the peace welfare and good government" of that State [8]. That power is preserved by s 107 of the Commonwealth Constitution. Those words give the Queensland Parliament a power as plenary as that of the Imperial Parliament [9]. They would authorise the Queensland Parliament, if it wished, to abolish criminal juries and require breaches of the criminal law to be determined by non-judicial tribunals. The content of a State's legal system and the structure, organisation and jurisdiction of its courts are matters for each State. If a State legislates for a tribunal of accountants to hear and determine "white collar" crimes or for a tribunal of psychiatrists to hear and determine cases involving mental health issues, nothing in Ch III of the Constitution prevents the State from doing so. Likewise, nothing in Ch III prevents a State, if it wishes, from implementing an inquisitorial, rather than an adversarial, system of justice for State courts. The powers conferred on the Queensland Parliament by s 2 of the Constitution Act 1867 (Q) are, of course, preserved subject to the Commonwealth Constitution. However, no process of legal or logical reasoning leads to the conclusion that, because the Federal Parliament may invest State courts with federal jurisdiction, the States cannot legislate for the determination of issues of criminal guilt or sentencing by non-judicial tribunals.

- *[7] (1996) 189 CLR 51 at 106.*
- *[8] Constitution Act 1867 (Q), s 2.*
- *[9] Union Steamship Co of Australia Pty Ltd v King (1988) 166 CLR 1 at 10.*

The bare fact that particular State legislation invests a State court with powers that are or jurisdiction that is repugnant to the traditional judicial process will seldom, if ever, compromise the institutional integrity of that court to the extent that it affects that court's capacity to exercise federal jurisdiction impartially and according to federal law. State legislation may alter the burden of proof and the rules of evidence and procedure in civil and criminal courts in ways that are repugnant to the traditional judicial process without compromising the institutional integrity of the courts that must administer that legislation. State legislation may require State courts to exercise powers and take away substantive rights on grounds that judges think are foolish, unwise or even patently unjust. Nevertheless, it does not follow that, because State legislation requires State courts to make orders that could not be countenanced in a society with a Bill of Rights, the institutional integrity of those courts is compromised.

The pejorative phrase – "repugnant to the judicial process" – is not the constitutional criterion. In this area of constitutional discourse, it is best avoided, for it invites error. That which judges regard as repugnant to the judicial process may be no more than a reflection of their personal dislike of legislation that they think unjustifiably affects long recognised rights, freedoms and judicial procedures. State legislation that requires State courts to act in ways inconsistent with the traditional judicial process will be invalid only when it leads to the conclusion that reasonable persons might think that the legislation compromises the capacity of State courts to administer invested federal jurisdiction impartially according to federal law. That conclusion is likely to be reached only when other provisions of the legislation or the surrounding circumstances as well as the departure from the traditional judicial process indicate that the State court might not be an impartial tribunal that is independent of the legislative and the executive arms of government.

Conclusions

*In my opinion, **Kable** does not govern this case. Kable is a decision of very limited application. That is not surprising. One would not expect the States to legislate, whether by accident or design, in a manner that would compromise the institutional integrity of their courts. Kable was the result of legislation that was almost unique in the history of Australia. More importantly, however, the background to and provisions of the Community Protection Act pointed to a legislative scheme enacted solely for the purpose of ensuring that Mr Kable, alone of all people in New South Wales, would be kept in prison after his term of imprisonment had expired. The terms, background and parliamentary history of the legislation gave rise to the perception that the Supreme Court of that State might be acting in conjunction with the New South Wales Parliament and the executive government to keep Mr Kable in prison. The combination of circumstances which gave rise to the perception in Kable is unlikely to be repeated. The Kable principle, if required to be applied in future, is more likely to be applied in respect of the terms, conditions and manner of appointment of State judges or in circumstances where State judges are used to carry out non-judicial functions, rather than in the context of Kable-type legislation.*

In this case, it is impossible to conclude that the Queensland Parliament or the executive government of that State might be working in conjunction with the Supreme Court to continue the imprisonment of the appellant. Nor is it possible to conclude that the Act gives rise to a perception that the Supreme Court of Queensland might not render invested federal jurisdiction impartially in accordance with federal law.

The Act is not directed to a particular person but to a class of persons that the Parliament might reasonably think is a danger to the community [10]. Far from the Act giving rise to a perception that the Supreme Court of Queensland is acting in conjunction with the Queensland Parliament or the executive government, it shows the opposite. It requires the Court to adjudicate on the claim by the Executive that a prisoner is "a serious danger to the community" in accordance with the rules of evidence and "to a high degree of probability". Even if the Court is satisfied that there is an unacceptable risk that the prisoner will commit a serious sexual offence if released from custody, the Court is not required to order the prisoner's continued detention or supervised release. Furthermore, the Court must give detailed reasons for its order [11], reasons that are inevitably subject to public scrutiny. It is impossible to hold, therefore, that the Queensland Parliament and the executive government intend that the appellant's imprisonment should continue and that they have simply used the Act "to cloak their work in the neutral colors of judicial action." [12] On the contrary, the irresistible conclusion is that the Queensland Parliament has invested the Supreme Court of Queensland with this jurisdiction because that Court, rather than the Parliament, the executive government or a tribunal such as a Parole Board or a panel of psychiatrists, is the institution best fitted to exercise the jurisdiction.

- *[10] See, eg, Queensland, Dangerous Prisoners (Sexual Offenders) Bill 2003 (Q) Explanatory Notes, (2003) at 1; Queensland, Legislative Assembly, Parliamentary Debates (Hansard), 3 June 2003 at 2484 per Welford; Queensland, Dangerous Prisoners (Sexual Offenders) Bill 2003 (Q), Amendments in Committee, Explanatory Notes, (2003) at 1.*
- *[11] Section 17.*
- *[12] Mistretta v United States 488 US 361 at 407 (1989).*

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Lazarus v Independent Commission Against Corruption [2017] NSWCA 37; 94 NSWLR 36; 341 ALR 483; 265 A Crim R 352; 317 FLR 164 (Leeming JA at 106):

> *"However, a further difficulty arises from the fact that the applicants' challenge is to the validity of a State law. The applicants' submission must not be grounded merely in a breach of separation of powers, for the separation of powers found in Chapter III of the Commonwealth Constitution does not apply to a State: **Kirk [2010] HCA 1** at [69]. Thus State validating laws were upheld in **H A Bachrach Pty Ltd v The State of Queensland (1998) 195 CLR 547; [1998] HCA 54**, and **Re Macks; ex parte Saint (2000) 204 CLR 158; [2000] HCA 62**. Instead, in order to invalidate a State law, it is necessary to identify a function which compromises or is repugnant to the integrity of the court, in accordance with the principles considered in **Kable v Director of Public Prosecutions (NSW) (1996) 189 CLR 51** and **Fardon v Attorney-General (Qld) (2004) 223 CLR 575; [2004] HCA 46**."*

https://freemandelusion.com/wp-content/uploads/2020/08/lazarus-v-independent-commission-against-corruption-2017-nswca-37.pdf

Attorney-General (Qld) v Lawrence [2013] QCA 364; [2014] 2 Qd R 504, (at 2):

> *"For ease of reference these reasons refer to the potential ground of invalidity described in those questions as "the Kable doctrine". That doctrine was first formulated in **Kable v Director of***

Public Prosecutions (NSW) (1996) 189 CLR 51 (Kable) and it was later considered and applied by the High Court in Fardon v Attorney-General (Qld) (2004) 223 CLR 575 ("Fardon"), Gypsy Jokers Motorcycle Club Inc v Commissioner of Police (2008) 234 CLR 532 ("Gypsy Jokers"), K-Generation Pty Ltd v Liquor Licensing Court (2009) 237 CLR 501 ("K-Generation"), International Finance Trust Co Ltd v New South Wales Crime Commission (2009) 240 CLR 319 ("International Finance"), South Australia v Totani (2010) 242 CLR 1 ("Totani") Wainohu v New South Wales (2011) 243 CLR 181 ("Wainohu") and Assistant Commissioner Condon v Pompano Pty Ltd (2013) 87 ALJR 458 ("Pompano").

In Pompano at [123]-[126], Hayne, Crennan, Kiefel and Bell JJ described the Kable doctrine in the following passage:

"The relevant principles have their roots in Ch III of the Constitution. As Gummow J explained in Fardon, the State courts (and the State Supreme Courts in particular) have a constitutionally mandated position in the Australian legal system. Once the notion is rejected, as it must be, that the Constitution 'permits of different grades or qualities of justice', and it is accepted that the State courts have the constitutional position that has been described, it follows that 'the Parliaments of the States [may] not legislate to confer powers on State courts which are repugnant to or incompatible with their exercise of the judicial power of the Commonwealth' (emphasis added). As Gummow J further pointed out, and as is now the accepted doctrine of the Court, 'the essential notion is that of repugnancy to or incompatibility with that institutional integrity of the State courts which bespeaks their constitutionally mandated position in the Australian legal system'.

Three further points must be made about this 'essential notion'. First, 'the critical notions of repugnancy and incompatibility are insusceptible of further definition in terms which necessarily dictate future outcomes'. Second, the repugnancy doctrine 'does not imply into the Constitutions of the States the separation of judicial power mandated for the Commonwealth by Ch III'. Third, content must be given to the notion of institutional integrity of the State courts, and that too is a notion not readily susceptible of definition in terms which will dictate future outcomes.

Something more must be said about the second and third points. Independence and impartiality are defining characteristics of all of the courts of the Australian judicial system. They are notions that connote separation from the other branches of government, at least in the sense that the State courts must be and remain free from external influence. In particular, the courts cannot be required to act at the dictation of the Executive. In this respect, clear parallels can be drawn with some aspects of the doctrines that have developed in relation to federal courts. But because the separation of judicial power mandated by Ch III does not apply in terms to the States, and is not implied in the constitutions of the States, there can be no direct application to the State courts of all aspects of the doctrines that have been developed in relation to Ch III. More particularly, the notions of repugnancy to and incompatibility with the continued institutional integrity of the State courts are not to be treated as if they simply reflect what Ch III requires in relation to the exercise of the judicial power of the Commonwealth.

Two related consequences follow from these propositions and should be noted. First, in applying the notions of repugnancy and incompatibility it may well be necessary to accommodate the accepted and constitutionally uncontroversial performance by the State courts of functions which

go beyond those that can constitute an exercise of the judicial power of the Commonwealth. Second, the conclusions reached in this matter cannot be directly translated and applied to the exercise of the judicial power of the Commonwealth by a Ch III court. As pointed out by this Court in Bachrach (HA) Pty Ltd v Queensland, the 'occasion for the application of Kable does not arise' if the impugned State law would not offend Ch III had it been enacted by the Commonwealth Parliament for a Ch III court. But because '[n]ot everything by way of decision-making denied to a federal judge is denied to a judge of a State', that a State law does not infringe the principles associated with Kable does not conclude the question whether a like Commonwealth law for a Ch III court would be valid. It is not necessary for the resolution of this case to pursue those matters further."

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Attorney-General for the State of Qld v Harvey [2012] QSC 173; 263 FLR 433, (at 27):

*"So far there have been only five occasions on which legislation has been struck down through application of the principle in **Kable**. They are:*

*(a) The **Community Protection Act 1994** (NSW) in Kable itself. In that case the New South Wales Parliament had enacted legislation which applied only to Mr Kable and which effectively sought to detain him legislatively.*

*(b) The **Criminal Proceeds Confiscation Act 2002** (Qld) which was held to be unconstitutional in **Re Criminal Proceeds Confiscation Act 2002 [2004] 1 Qd R 40**. because it obliged the court to hear the State's application for a restraining order ex parte.*

*(c) In **International Finance Trust Company Limited & anor v New South Wales Crime Commission & ors (2009) 240 CLR 319**, the **Criminal Assets Recovery Act 1990** (NSW) was held to be invalid as offending the Kable principle to the extent that it compelled the court to proceed ex parte with respect to a restraining order.*

*(d) In **State of South Australia v Totani (2010) 242 CLR 1** that part of the **Serious and Organised Crime (Control) Act 2008** (SA) which effectively required the Magistrates Court to be engaged in "an essentially executive process" was inconsistent with its fundamental characteristics as a court.*

*(e) In **Wainohu v State of New South Wales (2011) 243 CLR 181**. the **Crimes (Criminal Organisations Control) Act 2009** (NSW) was invalid because, by generally exempting eligible judges from any duty to give reasons in connection with the making or revocation of a declaration that a particular organisation was a declared organisation, that Act was repugnant to or incompatible with the court's institutional integrity.*

*Other attempts to engage the Kable principle have failed: see **Fardon v Attorney-General (Qld) (2004) 223 CLR 575**, **Gypsy Jokers Motor Cycle Club Inc v Commissioner of Police (2008) 234 CLR 532**, **K-Generation Pty Ltd v Liquor Licensing Court (2008) 237 CLR 501**, and **Thomas v Mowbray (2007) 233 CLR 307**."*

https://freemandelusion.com/wp-content/uploads/2020/08/attorney-general-for-the-state-of-qld-v-harvey-2012-qsc-173.pdf

QPS v Earthey [2011] QMC 56 (from 46):

> *"I point out that this case is heard in a State court exercising State jurisdiction, not federal jurisdiction. Therefore I do not believe this is a matter involving the Australian Constitution or involving its interpretation where Notices are required to be served on the Commonwealth and State Attorney-Generals under section 78B of the Judiciary Act 1903 by the defendant.*
>
> *However, I note decisions of the High Court, commencing with **Kable**, establish the principle that a State legislature cannot confer upon a State court a function which substantially impairs its institutional integrity, and which is therefore incompatible with its role, under Ch III of the Constitution, as a repository of federal jurisdiction and as a part of the integrated Australian court system: **[1996] HCA 24**; (1996) 189 CLR 51 at 96 per Toohey J, 103 per Gaudron J, 116-119 per McHugh J, 127-128 per Gummow J; **HA Bachrach Pty Ltd v Queensland [1998] HCA 54; (1998) 195 CLR 547** at 561-562 [14]; **Baker v The Queen [2004] HCA 45**; (2004) 223 CLR 513 at 519 [5] per Gleeson CJ; **Fardon v Attorney-General (Qld) [2004] HCA 46**; (2004) 223 CLR 575 at 591 [15] per Gleeson CJ. This constitutional principle has as its touchstone protection against legislative or executive intrusion upon the institutional integrity of the courts. The term "institutional integrity", applied to a court, refers to its possession of the defining or essential characteristics of a court. Those characteristics include the reality and appearance of the court's independence and its impartiality. (See **Wainohu v New South Wales [2011] HCA 24** at 107) Other defining characteristics are the application of procedural fairness and adherence, as a general rule, to the open court principle. (See **Wainohu v New South Wales [2011] HCA 24** at 109) As explained later, it is also a defining characteristic of a court that it generally gives reasons for its decisions.*
>
> *Hayne J made the same point in **South Australia v Totani (2010) 242 CLR 1** at 81 [201]:*
>
> *"Kable dealt with one respect in which the Constitutions of the States are affected by the federal Constitution: the legislative powers of the States are not unlimited. The relevant limitation is not one which follows from any separation of judicial and legislative functions under the Constitutions of the States. Rather, it is a consequence that follows from Ch III establishing, in Australia, 'an integrated Australian legal system, with, at its apex, the exercise by this Court of the judicial power of the Commonwealth'."*
>
> *Nor do I believe it necessary to explain in length the Australian system of government suffice to say we have a federal system with a Constitution designed to protect the autonomy of the states and cede only particular and limited powers to the federation. It does this by prescribing the powers of the federal government with the residual powers left to the states.*
>
> *Generally, the parliament of Queensland has plenary power to make laws for the peace, order and good government of the State subject to express and implied limitations from the Commonwealth Constitution and the Australia Act 1986 which leaves that State the freedom to legislate on the terms chosen by them: **Union Steamship Co of Australia Pty Ltd v King (1988) 166 CLR 1 at 9-10; 82 ALR 43; 62 ALJR 645**. It would be 'almost impossible to use wider or less*

*restrictive language' than the phrase 'peace, welfare (or order) and good government': **McCawley v R (1920) 28 CLR 106; [1920] AC 691** at 712; (1920) per Lord Birkenhead, PC. See also **Ibralebbe v R [1964] AC 900** at 923; [1964] 1 All ER 251; [1964] 2 WLR 76 per Viscount Radcliffe. They have been held to admit of no inquiry by the courts as to whether, as a matter of fact or law, a particular statute is or is not a prudent exercise of the power, or is calculated to attain its particular end or object: **Riel v The Queen (1885) 10 App Cas 673**, 678; **Bone v. Mothershaw [2002] QCA 120** per McPherson JA at page 4.*

As to what I think Mr Earthey is saying is the facilitation of proof provisions removes the capacity of the court to exercise its judicial function in that it interferes with the presumption of innocence and the burden of proof.

This, I infer because Mr Earthey has cited the Cambodian "Boat People" case, breaches the doctrine of the separation of powers which refers to the distinct separation of the three branches of Government – the legislature, the executive and the judiciary. The legislature exercising legislative power enacts the laws, the executive exercising executive power administers the laws and the judiciary through the exercise of judicial power, interprets and adjudicates upon the laws.

*The Defendant's submissions are based on a misapprehension. The doctrine of the separation of powers does not exist in its classic form at the state level: **Gilbertson v Attorney-General (SA) [1978] AC 772, 783; (1977) 14 ALR 429; 51 ALJR 519**; **City of Collingwood v Victoria (No 2) [1994] 1 VR 652**. The relevant provisions of the Constitution of Queensland 2001 are very different to the provisions of the Commonwealth Constitution.*

*It is well established that Parliament may legislate to prescribe rules of evidence or procedure, and to cast a burden of proof on a defendant in relation to an element of an offence, without in any way infringing upon the separation of powers. For example, High Court case law upholds the power of parliament to change the onus of proof (**Williamson v Ah On (1926) 39 CLR 95; (1927) 33 ALR 13**; **Milicevic v Campbell (1975) 132 CLR 307**) in a criminal case or to declare that a state of facts is presumed to exist: **R v Hush; Ex parte Devanny (1932) 48 CLR 487**. In **Commonwealth v Melbourne Harbour Trust Commissioners (1922) 31 CLR 1** at 12; **28 ALR 325**, Knox CJ, Gavan Duffy and Starke JJ said that a law does not usurp judicial power simply because it regulates "the method or burden of proving facts".*

*In **Nicholas v The Queen (1998) 193 CLR 173**, 188-189, Brennan CJ said that: The practice and procedure of a court may be prescribed by the court in exercise of its implied power to do what is necessary for the exercise of its jurisdiction but subject to overriding legislative provision governing that practice or procedure…A law prescribing a rule of evidence does not impair the curial function of finding facts, applying the law or exercising any available discretion in making the judgment or order which is the end and purpose of the exercise of judicial power."*

https://freemandelusion.com/wp-content/uploads/2020/08/qps-v-earthey-2011-qmc-56.pdf

The Abolition of the Upper House of Queensland Parliament

The Upper House of Queensland Parliament (the Legislative Council) was abolished in 1922, and the State continues today without an Upper House.

> *"Re-establishment remained a feature of the election platforms of the anti-Labor parties. In 1929, the Country Party prepared a draft Bill providing for the restoration of the Legislative Council without going to a referendum, but containing a provision preventing the Bill from being amended or repealed unless a referendum was held.*
>
> *In 1934, through the Constitution Act Amendment Bills, Premier Forgan Smith's Labor Government removed any threat that the Legislative Council would for could be revived. The Opposition forces boycotted the Bill, sitting coldly and silently throughout the second-reading debate,*
>
> *In more recent times, consideration of the consolidation and review of the Queensland Constitution has been undertaken by:*
>
> *• the Electoral and Administrative Review Commission (1993),*
> *• the Parliamentary Committee for Electoral and Administrative Review (1993-94),*
> *• the Parliamentary Legal, Constitutional and Administrative Review Committee (1998.2000), and*
> *• the Queensland Constitutional Review Commission (1999-2000).*
>
> *The Constitution of Queensland 2001 consolidated and modernised existing constitutional provisions. However, entrenched provisions, such as s 3 of the 1934 Constitution Act Amendment Act, which cannot be repealed or amended without the approval of the electors at a referendum remains."*

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https://freemandelusion.com/wp-content/uploads/2020/09/act-1934-035.pdf

In ***Bowyer v de Jersey [2017] QSC 340*** the appellant contended that the Legislative Council was abolished unlawfully because the 1921 State Parliament did not have the powers to bypass triple-entrenched provisions to amend the Constitution Act 1867 (Qld) that made changes to the composition of the legislature. The argument was rejected.

> *"When enacted, the Constitution Act 1867 (Qld) contained provisions requiring special majorities for amendments of the composition of the Legislative Assembly and the Legislative Council. Section 9 originally provided a power to alter the composition of the Legislative Council subject to two provisions. First, it was unlawful to present a bill for such change to the governor unless it had been passed with the concurrence of two-thirds of the members of both the Legislative Assembly and the Legislative Council. Second, such a bill was to be reserved for signing by her Majesty and it was required to be laid before the Imperial Parliament before such signing. However, it is significant that those provisos were not doubly entrenched. Section 10 of the Constitution placed similar special majority requirements and provisos on the passing of a*

measure to alter the system of representation for the Legislative Assembly. Similarly, those restrictive provisions were not doubly entrenched.

By the Constitution Act Amendment Act 1871 (Qld), the proviso to section 10 of the Constitution Act 1867 (Qld) was removed. Consequently, the composition of the Legislative Assembly could therefore by amended by ordinary Act passed by simple majority. ... By the Constitution Act Amendment Act 1908 (Qld), the first and second provisos to section 9 were repealed. Consequently, the composition of the Legislative Council could thereafter be amended by ordinary Act passed by simple majority.

In relation to the abolition of the Legislative Council on 23 March 1922 royal assent was given to the Constitution Act Amendment Act 1922 (Qld). The Act was able to be passed by simple majority of the Legislative Assembly because the requirement for a special majority had been removed by the Constitution Act Amendment Act 1908."

https://freemandelusion.com/wp-content/uploads/2019/05/bowyer-v-de-jersey-2017-qsc-340.pdf

The Office of Governor of Queensland

There are several misconceived premises relating to the Office of Governor of Queensland that appear to be doing the rounds online.

The first contention is succinctly explained in ***Dooney v Henry [2000] HCA 44*** (from 19):

> *"The next matter which the respondent raises is the so called "interregnum argument" based upon an asserted deficiency in the appointment of Lord Gowrie VC as Governor-General and in the giving of Royal Assent to the Act. The substance of the same argument is set out at length in the reasons for judgment, and emphatically rejected, in **McKewins Hairdressing and Beauty Supplies Pty Ltd v Deputy Commissioner of Taxation(2000) 74 ALJR 1000; 171 ALR 335** by Gummow J. I fully concur in his Honour's reasoning and argument in regard to it.*
>
> *The final substantive matter advanced by the respondent is to be found in the Reply of the respondent, that the proclamation on 8 March 1986, after the commencement of the Australia Act 1986 (Cth) on 3 March 1986, of Her Majesty's Letters Patent dated 14 February 1986 under the Royal Sign Manual and the Great Seal of the United Kingdom reconstituting the office of Governor of Queensland, was an invalid exercise of sovereignty by the United Kingdom with respect to Queensland. It followed, it was submitted, that appointments of judicial officers in Queensland are invalid. How this could have any relevance to Judges appointed before 1986 is left entirely unexplained.*
>
> *However put, the argument misconceives and misunderstands the comprehensive scheme of United Kingdom, Australian and State legislation which collectively was enacted as the Australia Acts pursuant to the "request and consent" provisions then found, so far as Australia and the States were concerned, in ss 4 and 9(2) and 9(3) of the Statute of Westminster 1931 (Imp) and in s 51(xxxviii) of the Commonwealth Constitution. The Letters Patent of 14 February 1986 formed part of that scheme and anticipated the enactment by the United Kingdom Parliament of the Australia Act 1986 (UK), assent to which was given on 17 February 1986.*

> *At the time when the Letters Patent were signed and sealed the use of the Great Seal of the United Kingdom in conjunction with the Royal Sign Manual was appropriate, having regard to the residual responsibilities of the United Kingdom in relation, relevantly, to Queensland at that time. The proclamation thereafter of those Letters Patent was no more relevant to their validity than was the proclamation, after the death of King George V, of His Majesty's commission appointing Lord Gowrie VC to the office of Governor-General. While this is enough to dispose of the argument, I note in relation to Queensland that the operation of the Letters Patent of 14 February 1986 has, in any event, been superseded by the Constitution (Office of Governor) Act 1987 (Q) which presently provides for and affirms the office of Governor and the authorities and powers of that office."*

https://freemandelusion.com/wp-content/uploads/2018/07/dooney-v-henry-2000-hca-44.pdf

https://freemandelusion.com/wp-content/uploads/2018/07/mckewins-hairdressing-and-beauty-supplies-pty-ltd-v-deputy-commissioner-of-taxation-s123-1999-2000-hca-27.pdf

The Entrenched Provisions

There were a number of cases challenging various enactments with the contention that there has been an alteration to the Entrenched Provisions in ***Section 53 of the Constitution of Queensland 1867*** which provides that any Bill that expressly or impliedly provides for the alteration of the office of the Governor of Queensland or *'in any way affects'* certain specified sections must be approved at a referendum before it becomes a law.

> *"A Bill that expressly or impliedly provides for the abolition of or alteration in the office of Governor or that expressly or impliedly in any way affects any of the following sections of this Act namely— Sections 1, 2, 2A, 11A, 11B; and this section 53"*

The argument proceeds that the *Australia Acts (Request) Act 1985 (Qld)* requested the enactment of Commonwealth legislation which would alter the office of the Governor of Queensland and that the Queensland Act therefore required approval in a referendum in order to be valid. The argument concludes that the *Australia Act 1986 (Cth)* is invalid because it was not enacted pursuant to a valid request from all the affected States and that this also affected the validity of the *Australia (Request and Consent) Act 1985 (Cth)*, making the *Australia Act 1986 (UK)* invalid.

As Anne Twomey points out on page in ***The De-Colonisation of the Australian States***:

> *"This argument was rejected by the Queensland Court of Appeal in Sharples v Arnison and by the Federal Court in Kelly v Campbell. The fundamental flaw is that the Australia Acts (Request) Act 1985 (Qld) did not of itself have the effect of expressly or impliedly altering the office of Governor. It merely requested the Commonwealth and Westminster Parliaments to do so. The question then arises as to whether such a request law 'affected' the purportedly entrenched provisions. A request for a change does not itself affect the existing law. The request may, indeed, be rejected. If so, there could be no effect upon the law."*

In the Supreme Court of Queensland, Connolly J. first rejected this argument in *The Queen v The Minister for Justice and Attorney-General of Queensland; ex parte Alan George Skyring,* (unreported, 17 February

1986). Muir J upheld this decision (at 15) in ***Skyring v Electoral Commission of Queensland [2001] QSC 080***:

> *"In proceedings in the Supreme Court in 1986 … Connolly J rejected the argument finding that: the Australia Acts (Request) Act made no alteration to the Constitution Act; Section 53 of the Queensland Constitution could not restrict the legislative powers of the Parliament at Westminster; there was no limit to that Parliament's legislative power and that any relevant alteration to the Constitution Act was effected by an enactment of the Parliament at Westminster (and/or by the Commonwealth Parliament). The decision, with respect, is plainly correct."*

Sharples v Arnison [2001] QSC 56, per Ambrose J (at 30):

> *"Connolly J dismissed this application on the basis that s 53 of the Constitution Act did not and could not affect the power of the Queensland Government or Parliament to request constitutional change through the Commonwealth Parliament pursuant to s 51 XXX(viii) of the Australian Constitution. Although on one view it might be contended that the use of s 51 XXX (viii) to effect an alteration by partial repeal of ss 11B and 14 of the State Constitution Act was a device adopted to circumvent the provisions of s 11A(2) and s 53(1) of the Constitution Act, nevertheless, it could not be said that the presentation of the bill for the Australia Act (Request) Act 1985 for assent without first having it approved by the electors upon referendum was contrary to the requirements of either s 11A(2) or s 53(1) of the Constitution Act 1867 as at 1985."*

https://freemandelusion.com/wp-content/uploads/2020/06/sharples-v-arnison-2001-qsc-056.pdf

In ***Sharples v Arnison [2001] QCA 274*** de Jersey CJ upheld the judgment of Ambrose J.; and likewise Philippides J (at 15-19) in ***Skyring v Crown Solicitor [2001] QSC 350***.

https://freemandelusion.com/wp-content/uploads/2020/06/skyring-v-crown-solicitor-2001-qsc-350.pdf

In ***Sharples v Arnison [2002] 2 Qd R 444***, per McPherson JA (at 25) (McMurdo P and Davies JA agreeing).

> *"The combined effect of these enactments, which joined together the legislative powers of the Parliament of the United Kingdom, the Commonwealth, and Queensland, had, through the force of what in each of them was numbered as s 13(3), the effect of repealing s 11B in the form in which it had been enacted in the 1977 Act, and simultaneously of substituting a new s 11B in the limited form in which it now appears in the Constitution Act 1867. The result unquestionably was to "affect" s 11B in its original form; but the referendum requirement imposed by s 53 was not set in motion by what was done. There never has at any time been a Bill in the Queensland Parliament to repeal, amend or otherwise "affect" s 11B. The Australia Acts (Request) Act 1985 (Qld) did not do so. Instead, it requested that the United Kingdom Parliament and the Commonwealth Parliament take that step. Neither of those legislative bodies was bound by s 53(1) of the Constitution Act 1867 (Qld) as amended by the 1977 Act to submit the Bills which would become those Acts to a referendum of the voting electors of Queensland before they were presented for assent. The Parliament of Queensland would have been bound by s 53(1) to do so; but the Bill that became the Australia Acts (Request) Act 1985 (Qld) did not "affect" s 11B. It simply asked the Parliaments of the United Kingdom and the Commonwealth to take that step."*

https://freemandelusion.com/wp-content/uploads/2020/06/sharples-v-arnison-2001-qca-518.pdf

Kelly v Campbell [2002] FCA 1125, per Madgwick J (at 31):

> *"If that view is correct, it is unnecessary to deal further with the matters at issue. However, I would add some further brief comments. Firstly, as to what may be called the "Queensland" point, the manner and form restriction relied on by Mr Kelly relevantly applied so as to require a referendum before royal assent might be given, among other things, to "a bill that expressly or impliedly provides for the for the abolition or alteration of the office of the Governor [of Queensland]": s 53 of the Constitution Act 1867 (Qld) ("the Queensland Constitution"). However, the Australia Acts (Request Act) 1985 (Qld) ("the Queensland Request Act") is not a law within the contemplation of s 53 of the Queensland Constitution. The Queensland Request Act did not purport to abolish or alter the office of the Governor of Queensland (nor otherwise affect the other manner and form protected provisions of the Queensland Constitution). While it expressed a request for the enactment of legislation by the Commonwealth and United Kingdom Parliaments, the Queensland Request Act did not itself abolish or alter the Governor's office. Consequently, there was no requirement that the Bill for the Queensland Request Act should have been approved by a referendum of the Queensland people. Any complaint about the effect secured by the Queensland Request Act process lies in the realm of politics, not law. Sharples v Arnison [2001] QCA 518, a unanimous decision of the Queensland Court of Appeal, in litigation brought by Mr Kelly before he adopted his present name, makes this clear. Even if I thought this decision were attended by some doubt, which as presently advised I do not, I would certainly follow it as to matters concerning the Queensland Constitution, unless I were quite convinced that it was plainly wrong; it is obvious that I am not so convinced."*

https://freemandelusion.com/wp-content/uploads/2018/07/kelly-v-campbell-2002-fca-1125.pdf

The issue was not pursued in the High Court: ***Re Australian Electoral Commission; Ex parte Kelly (2003) 77 ALJR 1307***, per Gummow J (at 20):

> *"In oral submissions, counsel for the applicant correctly accepted that his client could only have standing with respect to the election for Senators for New South Wales. He correctly also did not press complaints in the applicant's written submissions of 16 April 2003 concerned with the validity of the appointment of the Governor of New South Wales."*

https://freemandelusion.com/wp-content/uploads/2018/07/re-australian-electoral-commission-ex-parte-kelly-2003-77-aljr-1307.pdf

James Bowes makes similar claims:

> *"There is no valid legislation in Queensland since the parliament altered the Office of Governor in the 2001 Constitution."*

HIs ideas are further discussed in the article "***James Bowes***".

Alterations to Queensland's Constitution can, in the majority of cases, be effected by the Queensland Parliament via the passage of legislation. Only certain measures are to be supported by referendum.

They do not prevent the parliament from legislating regarding the Office of Governor, merely that the alteration of these sections must be supported by referendum.

These sections are provided unaltered and current in ***Section 53 of the Constitution of Queensland 1867***, and can also be found in ***Attachment 1 of the Constitution of Queensland 2001***, where they also remain unaltered.

The Entrenched Provisions:

Constitution of Queensland 2001

The Entrenched Provisions

The Legislative Assembly can consolidate the majority of Queensland's constitutional provisions into a Constitution of Queensland by passing an ordinary Act of Parliament. However, to wholly consolidate the existing provisions of constitutional legislation would require a referendum as a number of the provisions of the Constitution are said to be 'entrenched'.

Entrenched provisions are laws that the Parliament has sought to protect so that the laws may not be repealed or changed through normal law-making procedures. Entrenched provisions may not be repealed, amended, or affected (depending on the terms of the entrenchment) unless Parliament follows certain special measures that are required, for example, first obtaining the approval of electors at a referendum.

In Queensland, constitutional provisions that are said to be referendum entrenched (the "entrenched provisions") are contained in the *Constitution Act 1867* (sections 1, 2, 2A, 11A, 11B and 53), the *Constitution Act Amendment Act 1890* (section 2) and the *Constitution Act Amendment Act 1934* (sections 3 and 4). These provisions concern the establishment and law-making power of the Parliament of Queensland and the Legislative Assembly, the duration of the Parliament and matters pertaining to the office of the Governor.

These provisions will not be relocated, therefore, into the Constitution of Queensland 2001 and will remain in the *Constitution Act 1867*, the *Constitution Act Amendment Act 1890* and the *Constitution Act Amendment Act 1934*.

The entrenched provisions have not been restated in modern drafting style in the Bill in the manner recommended by the Legal, Constitutional and Administrative Review Committee.

There is a concern that a court could find that modernised versions of the entrenched provisions included in the Bill would impliedly repeal the entrenched provisions by applying the general principle of statutory interpretation that a later enactment will repeal an earlier inconsistent provision. It may be open for a court to conclude that the fact the proposed later provision purports to restate in modern language the precise effect of the earlier provision demonstrates that the two provisions are in law inconsistent and cannot stand together. In doing so, the court could strike the whole Act down on the basis that Assent should not have been given to a Bill which included a provision which had the effect of repealing the entrenched sections until a referendum had been held.

This interpretation may be applied even if the Parliament expressed an intention not to amend (or repeal) the entrenched provision. A court may be forced to the conclusion that the Parliament's statement of intention is inconsistent with the actual effect of what it has purported to do.

For these reasons, the entrenched provisions have not been modernised and restated in the Bill. However, to ensure that Queensland's constitutional legislation is as accessible as possible, signpost provisions have been included in the Bill. These signpost provisions refer to the entrenched provisions in their original Acts as containing the substantive law about the various matters pertaining to the Parliament and the office of the Governor. To further enhance accessibility, copies of the entrenched provisions have been included in attachments 1, 2 and 3 of the Bill.

The Constitution of Queensland 2001, in particular, the inclusion of the signpost provisions and attachments 1, 2 and 3, is not intended to expressly or impliedly in any way affect the entrenched provisions.

Lade and Company Pty Ltd v Finlay & Anor; Lade v Franks & Anor [2010] QSC 382: (at 16, 19-21):

> *"Apart from invalidity brought about by a failure to comply with Imperial legislation Mr Lade also seems to contend, relying on s 53 of the Constitution Act 1867 (Qld), that, absent a referendum, the constitutional requirements necessary to validate the various legislative provisions under which rates have been levied or his Certificate of Title dealt with were not met.*
>
> *There are at least two difficulties for Mr Lade's contentions. First, parliament is quite at liberty to alter these provisions if it so wishes, even though the Act is expressed to be a constitutional one: see McCawley v R [1920] AC 691 (PC). So if the relevant Acts have been passed without regard to the requirements of the Constitution Act 1867 (Qld), as Mr Lade contends, then Parliament must be assumed to have so intended.*
>
> *Secondly, I am required to take judicial notice of Acts of Parliament and assume the accuracy of copies of such Acts: s 43 and 46A of the Evidence Act 1977 (Qld). So, without evidence to the contrary, I am not concerned with the question of whether the constitutional requirements relating to the valid passing of any Act of Parliament have been complied with.*
>
> *Now, so far as I am aware, there never has been a referendum held to alter these constitutional arrangements. Equally, so far as I am aware, there has been no Bill passed that expressly or impliedly provides for the abolition of or alteration in the office of Governor or that expressly or impliedly in any way affects any of the nominated sections of the Constitution Act 1867, nor do any of the legislative enactments mentioned by Mr Lade in his pleading have this effect. As well, again so far as I am aware, the constitutional requirements were followed in the passing into law of the enactments in question."*

https://freemandelusion.com/wp-content/uploads/2019/05/lade-and-company-pty-ltd-v-finlay-anor-lade-v-franks-anor-2010-qsc-382.pdf

(See **Section 123 of the Evidence Act 1977 (Qld)** also **Section 143 of the Evidence Act 1995 (Cth)** which provides that proof is not required about the Assent of legislation, Section **150 Seals and signatures** Section **153 Gazettes and other official documents** and **Section 5** extending the operation of these provisions to proceedings in all Australian courts.)

There are further cases involving the Entrenched Provisions, which can be located on this website under the Tag "***State Entrenched Provisions***".

The Brigalow Corporation Myth

The conspiracy theory that the Brigalow Corporation had taken over all the land in Queensland originated in the material of ***David Walter*** and ***Sue Maynes***.

The *Brigalow Lands Development Scheme* in Queensland began in 1962 and involved the clearing and development of brigalow scrub land for producing beef cattle and other primary products. Originally, about 1.73 million hectares in the Fitzroy River Basin were to be developed. In 1965 the area of the Scheme was increased to about 2.01 million hectares, and in 1967 the area increased to about 4.52 million hectares with an extra 2.51 million hectares in the McKenzie-Isaacs River Basin being included in the Scheme.

The Land Administration Commission was constituted as a corporation under the *Brigalow and Other Lands Development Act 1962* for the purpose of administering the Brigalow Land Development Trust Fund and Agreement. Commonwealth funding was provided to the Land Administration Commission for subdividing and allocating blocks of land to settlers, and for the clearing of brigalow and the provision of fencing, yards, dips and watering points. Loans were provided by the Commission to lessees for clearing and development of the land.

About 250 lots were made available for lease by way of public competition by either public auction or ballot. Once the land had been developed, the lessees were able to apply to convert their leases to freehold. In 1992, when the Land Administration Commission was abolished, the Brigalow Land Development Trust Fund and Agreement were still operational, therefore it was necessary to replace the Land Administration Commission with an appropriate body. This replacement body was called the Brigalow Corporation, and the sole reason for its existence was to carry out the function of making advances under the Brigalow Scheme.

The explanatory notes for the amendment to the *Land Act 1962* explains just what the Brigalow Corporation was established for. The Chief Executive of the then Department of Lands was the sole person who comprised the Brigalow Corporation. As all the loans under the scheme have now been repaid, the Brigalow Corporation was abolished and the *Land Act 1962* was amended in February 2009 to remove the provisions that related to it.

https://freemandelusion.com/wp-content/uploads/2018/07/brigalow-corp.pdf

Turning to the myths in their *EnviroWild* letter to the Governor General:

> CLAIM... *"On 29th January 1999 the Governor of the State of Queensland, the Representative of the Crown in Queensland was moved into the "Constitution Act 1867" as a parliamentary secretary and a public official."*

The only reference in legislation I can find that has Governor and Parliamentary Secretary in the same section is in ***Section 24(1)*** of the *Constitution of Queensland Act 2001* where it says the Governor in Council may appoint members of the Legislative Assembly as Parliamentary Secretaries. ***Section 26(3)*** also says the Governor in Council, at any time, may end the appointment. As only members of the Legislative Assembly may be appointed as Parliamentary Secretary by the Governor, how the conclusion was reached that the Governor is a Parliamentary Secretary is totally beyond me.

> CLAIM... *"I refer to the following Acts - the "Reprints Act 1992", the "Statutory Instruments Act 1992", the "Legislative Standards Act 1992". These Acts were used in conjunction with the Constitution of Queensland 2001, section 92 to create the corporation Government of the State and then further to repeal those Acts under section 95 of that Constitution. Those Acts moved back in time, one may say like the Tardis, reprinting, removing the Crown out of all Acts as far back as the Magna Carta then reprinting back to the Australia Acts (Requests) Act 1985 and removing all the positions as cited in that Act."*

Section 92 did not create a corporation Governor of the State, it merely says that references in other legislation, as repealed by the *Constitution of Queensland Act 2001*, to the Legislative Council are taken to refer only to the Queen and the Legislative Assembly.

Section 95 says that the laws mentioned in Schedule 3 of the *Constitution of Queensland Act 2001* are repealed and Imperial laws in schedule 4 are repealed so far as they are part of the law of Queensland. The reason these laws are repealed is because all the required parts of this Act are now contained in the *Constitution of Queensland Act 2001*. Nothing that was contained in those repealed Acts that was still required has been removed.

> CLAIM... *"By using the "Australia" "Acts (Request) Act 1985" section 12 in conjunction with the other three State Acts, the Acts reprinted Queensland into a corporate State. In conjunction with the "Acts Interpretation Act 1954" section 15DA(2) which allowed for the automatic commencement and assent of any Act that had been laying dormant for a period of twelve months, Acts which were framed to create the corporate State of Queensland in 1992, 1993 and 1994 were reprinted by the "Reprints Act 1992" which is under the Department of the Premier."*

Legislation that is passed by Parliament has to receive royal assent by the Governor before it can commence. The legislation can say that it commences on the day of assent, or on a date that mentioned in the legislation, or on a date that is published later in a regulation. Legislation automatically commences 12 months from the date of assent, if another date is not given for it to commence. Within the first 12 months a regulation may extend the period before commencement to not more than 2 years after the assent day.

When an Act is reprinted it is because the Act was amended, and the date of the reprint is the date of commencement of the amendments, either the date of assent or the date of the regulation that commenced, or the automatic commencement date. There is no hidden agenda in the term *"Reprinted as in force on …date…"* on the front page of the legislation.

If the legislation says that it *"binds the State"* (and many do, some even say they bind the Commonwealth where it can), then the State and all its entities that represent it are bound by the legislation, and must comply with it just like everyone else.

> CLAIM... *"As the corporation of Queensland, when it was formed, had no assets, it had to acquire assets if they wished to borrow. Under the "Queensland Government (Land" "Holding) Amendment Act 1992", they immediately took all the Crown land and estates in fee simple registered under the "Property Law Act 1974" as equity for the corporation without compensation…"*

Up until 1992, the State of Queensland (as an entity) could not hold freehold title to land in Queensland. Land that was required for government use had to be set aside as a reserve under the *Land Act 1962*. In 1992, the government decided that it was more appropriate for land that was required for operational government use, such as schools, hospitals, police stations and so forth should be held as freehold land rather than as reserves under the *Land Act* because of the restrictions that Act placed on the use that could be made of the land outside of the gazetted use.

So the statement that they *"immediately took all the Crown land and estates in fee simple registered under the Property Law Act as equity for the corporation"* is patently wrong. All reserves and all vacant Crown land at the time the State was given the power to hold freehold land was already the property of the State and it could now be held under freehold title, and progressively since that time government departments have been obtaining freehold title over all their reserves. Incidentally, ownership of land is not registered under the Property Law Act, it was registered under the Real Property Act 1861, now the ***Land Title Act 1994***.

There was no power given to take control or ownership of land that was in the ownership of anyone else. The only power to take land is under the ***Acquisition of Land Act 1967***, and compensation must be paid to the owner for the land taken.

> CLAIM… *"The Acts Interpretation Act 1954" (Qld) defines property both present and future, owned by you as an 'individual and a corporation' as subject to a statutory instrument only and that statutory instrument is not only applicable to your land, but all property as you, as a person now own, as opposed to the previous common law indefeasible deed of grant in fee simple, only an interest in your land under a statutory title. All land, including private land held previously in the common law estate of inheritance in fee simple by private individuals, is now held by the corporation of the State of Queensland known as the Brigalow Corporation."*

The State of Queensland is a corporation that has all the powers of any other individual or company in Australia, including the power to buy and sell land freehold land. It appears to me the fact that the Brigalow Corporation *"represented the Crown"* and *"had all the privileges and immunities of the Crown"* - a common occurrence for some government bodies and not just for the Brigalow Corporation – seems to be the basis for this claim. It has been interpreted to mean that the Brigalow Corporation replaced the

Crown, which quite clearly it didn't. . A search of much of the Queensland legislation will reveal all number of bodies *"represent the Crown"*, though these days they represent the State and have all the privileges and immunities of the State. The change from "*Crown*" to "*State*" was a change of name only. The Governor still represents Her Majesty.

The term *"privileges and immunities of the State"* relate to such things as being exempt from State taxes and charges such as Stamp Duty and Land Tax, payment of registration fees, that sort of thing.

Every freehold land owner in Queensland still holds full title to their land. When land was granted by the Crown in fee simple it didn't mean it gave it away absolutely. It meant the land was granted by the Crown who retained certain rights over it – the right to resume it, or to pass laws relating to how the land may be used. Those laws have not taken our land away from from our ownership. They have just placed restrictions on how we may use our land.

> CLAIM... *"The 3 October 2007 High Court of Australia rulings that removes all land ownership from the people of Queensland and puts it into the hands of the State Government."*

The High Court heard two cases on 3 October 2007, ***Wilson v Raddatz [2007] HCATrans 558*** (an appeal from ***Wilson v Raddatz [2006] QCA 392***), and ***Glasgow v Hall [2007] HCATrans 557*** (an appeal from ***Glasgow v Hall [2007] QCA 19***), both involving David Walter and both dismissing applications for special leave to appeal against the orders of Queensland courts regarding penalties for starting an assessable development without a development permit (clearing of native vegetation). The primary decisions rejected the applicants arguments that the *Integrated Planning Act* did not apply to land held in fee simple and that the land was not comprehended by the term "freehold land" in the Act. (See article on ***The Fee Simple Alienation Argument***)

It would appear that the belief the Brigalow Corporation has removed land ownership from the people of Queensland comes from the restrictions on tree clearing on freehold land brought about by the *Vegetation Management Act*. The numerous court cases relied on to support that belief are all founded on either prosecutions for tree clearing without a permit or appeals against the refusal of an application for tree clearing.

David Walter and ***Sue Maynes*** have taken a few words from a number of court judgments and relied on them for support of their beliefs that their property rights have been removed. They have then gone searching for something to support that belief, and fell upon the creation of the Brigalow Corporation in 1992.

The fact that the Brigalow Corporation *"represented the Crown"* and *"had all the privileges and immunities of the Crown"* - a common occurrence for some government bodies and not just for the Brigalow Corporation - has been taken out of context and they have interpreted it mean that the Brigalow Corporation replaced the Crown, which quite clearly it didn't.

Australian Law as Applied To Aborigines

As held in ***R v Wedge [1976] 1 NSWLR 581***, English law recognises three methods of acquisition of foreign land – conquest, cessation and settlement. Settlement occurs when a colony is founded in a land in which there are no settled inhabitants or a settled system of law. In such a case, English law is immediately in force in the new settled colony, and only those laws are applicable. According to the express authority of the Privy Council in ***Cooper v Stuart (1889) 14 App Cas 286***, New South Wales was acquired by settlement, and since it was decided that it was a 'settled' colony under the doctrine of *terra nullius*, the English law was immediately transferred to it and therefore applied to all the inhabitants.

The Colonial Office treated Australia, for the purposes of its acquisition and the application of English law, as a settled colony, that is, one uninhabited by a recognised sovereign or by a people with recognisable institutions and laws. Thus there were no treaties concluded with the Aboriginal group, and no arrangements were made with them to acquire their land, or to regulate dealings between them and the colonists. They were treated as individuals, not as groups or communities. The decision to classify the 'new' country of Australia as a settled colony, rather than as conquered or ceded, meant that the new settlers brought with them the general body of English law, including the criminal law.

https://freemandelusion.com/wp-content/uploads/2022/01/Cooper-v-Stuart-1889.pdf

In ***Mabo v Queensland (No.2) [1992] HCA 23***, the doctrine of *terra nullius* was finally overturned. If Australia were truly *terra nullius*, the Crown's so-termed *"radical title"* would become absolute beneficial title of the Crown. However, since Australia was not *terra nullius*, radical title did not imply full beneficial ownership. The High Court concluded that the Crown's radical title only conferred sovereignty, and sovereignty did not extinguish native title by default. Therefore, while the sovereignty remained with the Crown, the beneficial ownership or title remained with the original inhabitants. Nevertheless, native title only confers what is directed by the Crown, being the sovereign entity representative of the people as a collective.

https://freemandelusion.com/wp-content/uploads/2022/01/Mabo-v-Queensland-No-2-1992-HCA-23.pdf

There have been consistent cases challenging the jurisdiction of the Crown, and asserting Aboriginal sovereignty was never ceded. In ***Coe v Commonwealth of Australia [1979] HCA 68*** it was stated:

> "The aboriginal people are subject to the laws of the Commonwealth and of the States or Territories in which they respectively reside. They have no legislative, executive or judicial organs by which sovereignty might be exercised. If such organs existed, they would have no powers, except such as the laws of the Commonwealth, or of a State or Territory, might confer upon them. The contention that there is in Australia an aboriginal nation exercising sovereignty, even of a limited kind, is quite impossible in law to maintain."

https://freemandelusion.com/wp-content/uploads/2022/01/Coe-v-Commonwealth-1979-HCA-68.pdf

Another such case was ***Walker v NSW [1994] HCA 64***, in which it was argued that Aboriginal customary law survived the assertion of sovereignty by the British, and continued until extinguished by clear and unambiguous legislation. It was claimed that general laws failed to extinguish Indigenous laws in that way. Chief Justice Mason, and Judges Ashley, Neave and Redlich, unanimously rejected the notion that a system of law could operate along side the Australian legal system. It was held the notion of parliamentary sovereignty means that Australian parliaments can pass laws that apply to Aboriginal people, and have the legislative competence to regulate or affect the rights of Aboriginal people, as equally as they do regarding any other race, and that this is not subject to their acceptance, adoption, request or consent.

https://freemandelusion.com/wp-content/uploads/2019/06/walker-v-new-south-wales-1994-hca-64.pdf

Regarding the acquisition of sovereignty, the court has numerous times relied on the principle stated by Gibbs J. in ***New South Wales v. The Commonwealth [1975] HCA 58*** (at 14), that: *"The acquisition of territory by a sovereign state for the first time is an act of state which cannot be challenged, controlled or interfered with by the courts of that state."* and that the principle *"…precludes any contest between the executive and the judicial branches of government as to whether a territory is or is not within the Crown's Dominions."*

The High Court's single source of authority, and the extent of the parameters of its jurisdiction are derived solely from the Crown itself, therefore it had no authority or jurisdiction to hear challenges to the legitimacy of the Crown's jurisdiction. As Kenna, J. stated in *Mabo (No.2)*: *"There is no indication in Mabo (No.1) that the High Court is prepared to recognize Aboriginal sovereignty, the High Court is unable to inquire into the actual acquisition of sovereignty."* and in *Walker* the Court confirmed received doctrine on sovereignty, putting the matter beyond the reach of review in domestic Australian courts.

https://freemandelusion.com/wp-content/uploads/2022/01/New-South-Wales-v-Commonwealth-1975-HCA-58.pdf

As pointed out by Logan J in ***Electoral Commissioner of Australian Electoral Commission v Wharton (No 3) [2021] FCA 742***, the enduring authority of the view as to an absence of Aboriginal sovereignty or any form thereof expressed by Gibbs J in *Coe* had recently been affirmed by a majority of the High Court in ***Love v Commonwealth [2020] HCA 3***, and that there was no disagreement as to the enduring authority of *Coe*, citing Kiefel CJ, (at 29); Gageler J, (at 102-103); Keane J, (at 199-205); Nettle J, (at 266); and Gordon J, (at 356).

> *"Australian courts before and after Mabo, as well as in the reasoning in Mabo itself, have consistently rejected the existence of Aboriginal or Torres Strait Islander sovereignty..."*

And that like conclusions as to an absence of Aboriginal sovereignty were reached by Kirby J in ***Thorpe v Commonwealth (No 3) [1997] HCA 21*** and by Spender J in ***Turrbal People v Queensland [2002] FCA 1082***.

https://freemandelusion.com/wp-content/uploads/2022/04/Love-v-Commonwealth-of-Australia-2020-HCA-3.pdf

The effect of R v Murrell and Bummaree (1836) 1 Legge 72; [1836] NSWSupC 35:

R v Murrell in 1836 is a landmark case in Australia in two main points. It settled both the question of jurisdiction over the Aboriginal people, and declared that Aboriginal people were British Subjects.

https://freemandelusion.com/wp-content/uploads/2022/04/R-v-Murrell-and-Bummaree-1836-1-Legge-72-1836-NSWSupC-35-Macquarie-Law-School.pdf

The following is an interesting and detailed historical account on the way this case impacted on future decisions of the courts in Australia. Source: *Recognition Of Aboriginal Customary Laws (Australian Law Reform Committee Report 31) / 4. Aboriginal Customary Laws And Anglo-Australian Law After 1788 / **"Australian Law As Applied To Aborigines"***:

The application of English law to Aborigines was in practice less certain, especially for offences (especially killings) committed by one Aborigine against another. For some time the practice was to apply English law at least to offences committed by colonists against Aborigines and by Aborigines against colonists, so as to provide a measure of protection for each group against the other. Although these figures are unrepresentative of the actual number of killings during this period, from 1788-1855, 68 whites were committed and 59 tried for murder of Aborigines; 44 Aborigines were committed and 29 tried for murder of whites or other Aborigines. (See B Bridges, 'The Aborigines and the Law: New South Wales 1788-1855' (1970) Teaching History 40, 47.)

However the amenability of Aborigines to English law presented many problems, whether the victims were colonists or other Aborigines. The Colonial Office condemned the military execution of two Aborigines in South Australia for the murder of certain whites, as itself murder, because it lacked due process of law. But the judge of the Supreme Court had declared himself without jurisdiction to try the Aborigines. (See SD Lendrum, 'The Coorong Massacre: Martial Law and the Aborigines at First Settlement' (1977) 6 Adel L Rev 26; K Hassell, The Relations Between the Settlers and Aborigines in South Australia, 1836-1860, Libraries Board of South Australia, Adelaide, 1966, 52-72.)

In 1829 the New South Wales Supreme Court advised the Attorney-General that it would be unjust to apply English law to the killing of an Aborigine by members of another tribe. (See B Bridges, 'The Extension of English Law to the Aborigines for Offences Committed Inter Se, 1829-1842' (1973) 59 JRAHS 264, 264.)

Similar doubts were entertained in South Australia (See Lendrum; Castles (1982) 524-6.) and in Melbourne. (R v Bon Jon (1841); see para 41.)

In Jack Congo Murrell's Case, that the Aborigines were British subjects seemed to have been conclusively settled, so far as colonial courts were concerned, by the various proclamations and statutes establishing the Australian colonies, but the implications of this status for the application of English law took surprisingly long to establish. The Proclamation of Governor Hindmarsh (28 December 1836) extending *'the same protection to the native population as to the rest of His Majesty's subjects'* (See JM Bennett & AC Castles, A Source Book of Australian Legal History, Law Book Co, Sydney, 1979, 258.) Similarly the official proclamation of Western Australia conferred the protection of the law on Aborigines as equals of *'other of His Majesty's subjects'* (See R Cranston, 'The Aborigines and the Law: An Overview' (1973) 8 U Queens LJ 60, 61 citing H Schapper, Aboriginal Advancement to Integration: Conditions and Plans for Western Australia (1970) 11. also Australian Courts Act 1829 (9 Geo IV c 83) s 3, 24.)

The decisive case was ***R v Jack Congo Murrell (1836) 1 Legge 72***, in which the Full Court of the New South Wales Supreme Court held unanimously that it had jurisdiction to try one Aborigine for the murder of another. The Full Court had to deal with two distinct cases.

In Murrell's case, the defendant alleged that he was so drunk he could not help killing. In the other case, the defendant relied on Aboriginal customary laws. His victim was, apparently, a member of the group which had killed his brother: *'this was clearly a case of obedience to the native custom of revenge killing'*. (See Bridges (1973) 264.) The argument for the defence was lucidly put by Alfred Stephen:

"This country was not originally desert, or peopled from the mother country, having had a population far more numerous than those that have since arrived from the mother country. Neither can it be called a conquered country as Great Britain was never at war with the natives, not a ceded country either, it, in fact, comes within neither of these, but was a country having a population which had manners and customs of their own, and we have come to reside among them: therefore in point of strictness and analogy 'to our law, we are bound to obey their laws, not they to obey ours. The reason why subjects of Great Britain are bound by the laws of their own country is, that they are protected by them; the natives are not protected by those laws, they are not admitted as witnesses in Courts of Justice, they cannot claim any civil rights, they cannot obtain recovery of, or compensation for, those lands which have been torn from them, and which they have probably held for centuries. They are not therefore bound by laws which afford them no protection."

Although not reported in Legge, apparently Stephen also argued from the fact of double jeopardy: *'even if acquitted, a native would have to face another trial in the bush according to native law'* (See Bridges (1973) 265.)

In response, the Court simply denied that the binding quality of the laws was contingent upon their effectiveness as 'protection':

"If the offence had been committed on a white, he would be answerable, was acknowledged on all hands, but the Court could see no distinction between that case and where the offence had been committed upon one of his own tribe. Serious cases might arise if these people were allowed to murder one another with impunity, our laws would be no sanctuary to them. For these reasons the Court had jurisdiction." (See Bridges (1973) 265-6.)

Despite the reality of the coexistence of two laws for Aborigines, the case came to be regarded as having settled the question for Australian law. It has since been reaffirmed on numerous occasions, ***Tuckiar v R (1934) 52 CLR 335***; ***Milirrpum v Nabalco Pty Ltd (1971) 17 FLR 141***, 261-2 (Blackburn J); ***R v Wedge [1976] 1 NSWLR 581***. In the latter case, ***Rath J concluded*** at p. 587 that *`all the reasons of the court in R v Murrell are as valid today as they were when judgment in that case was given'.*

But in practice, both before and after 1836, the law was applied differentially and, especially in remoter areas, haphazardly, so that few killings (whether an Aborigine was offender or victim) were prosecuted. (See RHW Reece, Aborigines and Colonists, 1974, 194-5, 225-7.) Such recognition as was given to Aboriginal customary laws and traditions was thus a matter of 'administrative flexibility', or simply the result of a policy of non-involvement in Aboriginal quarrels or disputes which did not affect the British settlements. Colonial Office policy required that every effort be made to live peacefully with and respect local Aborigines. Governor Phillip and later Governors were directed to 'educate and Christianize the

Aborigines, to protect their persons and the enjoyment of their possessions, to prevent and restrain violence and injustices towards them, and to punish any of our subjects who harmed them'. Thus the Aborigines were to be protected by the punishment of white offenders 'according to the degree of the offence'. (See Instructions to Arthur Phillip Esq (25 April 1787) Historical Records of Australia (hereafter HRA) ser 1 vol 9, 13-4.)

Similarly, Governor King, in his Port Regulations of 1800, warned that *'If any of the natives are killed, or violence offered to their women, the offenders will be tried for their lives'.* (See HRA ser 1 vol 4, 143.) However, official ambivalence soon emerged; it is recorded that during Governor King's time, *'(military) officers kept the crowd back to give native duellists room to spear each other, according to native custom, in the streets of Sydney, and then led troops out against the natives for spearing whites'.* (See Sydney Gazette (29 December 1805) cited by Bridges (1973) 42.)

In his Port Regulations and Orders of 1810, Governor Macquarie stated:

"The natives of this territory are to be treated in every respect as Europeans; and any injury or violence done or offered to the men or women natives will be punished according to law in-the same manner and in equal degree as if done to any of his Majesty's subjects or foreigners residing there." (See Historical Records of New South Wales vol 7, 1901, 418.) But ironically, in the same paragraph he banned the supply of intoxicants to Aborigines.

But Macquarie's famous Proclamation to the Aborigines of 4 May 1816 (See HRA ser 1 vol 9, 141.) is ambivalent as to whether Aborigines were to be considered British subjects, subject to British law. The proclamation imposed certain restrictions upon Aborigines and stated that those who wished to be considered under the protection of the British Government and who were *'disposed to conduct themselves in a peaceful, inoffensive, and honest manner'* would, upon application to the Secretary's office on the first Monday of each month, be provided with a passport signed by the Governor which would entitle them to protection so long as they did not break his regulations against carrying arms. This in effect made protection of the law for an Aborigine a privilege to be granted or withheld at the Governor's discretion. Macquarie's Proclamation of 1816 also represented the first explicit regulation of Aboriginal traditional practices as such. The Proclamation prohibited Aborigines from carrying any spears, and prohibited them from pursuing their customary punishment against transgressors of customary law at or near Sydney or other settlements, stating that such practices were repugnant to British laws. (See HRA ser 1 vol 9, 142-3.)

Such prohibitions were legally unnecessary, on the theory, established by Murrell's case, that Aborigines were British subjects equally subject to British law. Those who argued against this sometimes did so because if Aborigines where amenable to the law this implied that whites could also be punished for killing or harming Aborigines. (See Reece, 182, 194.)

But the reality in many cases was that Aborigines neither understood nor felt allegiance to that law. In such cases, judicial punishments was usually mitigated through the Governor's exercise of the prerogative of mercy, under which he could remit or mitigate punishment for all offences other than treason and willful murder (where he was limited to postponing execution until the Monarch's pleasure was known). Another safeguard for Aborigines lay in the fact that in the Colony, the Attorney-General exercised the functions of a Grand Jury. Without his initiative, an Aborigine would not be sent for trial.

Thus both the initiation and final review of criminal prosecutions against Aborigines lay with the Government. According to Bridges (1970) 62:

"On the whole executive review took much of the sting out of major sentences in that a significant proportion of capital sentences imposed on natives were commuted to transportation which in effect often becomes a term for Cockatoo or Goat Islands (in Sydney Harbour) for instruction in secular and religious matter preparatory to an early release. A review of the cases tried (for the period 1788-1855) leads one to believe that with the sole exception of Charley, no Aboriginal was executed who would not have qualified for death also under native laws … Governor Gipps stated explicitly that this was the test applied by the Executive Council in his time."

While the attitude of Gipps' Executive Council may have been enlightened for its time, in practice, law enforcement and the activities of private citizens were not at all consistent with it. (See Reece, ch 5.)

Meanwhile there was considerable debate and controversy in Britain over the treatment of native peoples in Britain's overseas colonies, including the Australian Aborigines. In 1835 the Aboriginal Protection Society was established in Britain. The Society helped to bring about the establishment of a Select Committee of the House of Commons to examine the conditions of Aborigines in British settlements. As has been noted, the Committee in its Report in 1837 recognised the absurdity and injustice inherent in applying British notions of law automatically to Aboriginal people. (See House of Commons Select Committee on Aborigines (British Settlements) Report, Parl Paper, House of Commons no 425, 1837, 79-80.) However, the Committee reaffirmed the position that Aborigines should be subject to that law, provided that its full rigours were tempered by the exercise of discretions, for example, by reducing the penalty in certain cases. The Committee stated that:

"…when British law is violated by the Aborigines within the British dominions, it seems right the utmost indulgence compatible with a due regard for the lives and properties of others, should be shown for their ignorance and prejudices. Actions which they have been taught to regard as praiseworthy we consider as meriting the punishment of death. It is of course impossible to adopt or sanction the barbarous notions which have urged the criminal to the commission of the offence, but neither is it just to exclude them from our view in awarding the punishment of his crimes."

The Committee (at 84.) recommended further study on the possibility of special measures for Aborigines:

"To determine under what special regulations they should be placed is a task to be performed only by those who can study the case with the aid of the most minute and close observation. It should therefore be part of the duty of the Protector to suggest to the Local Government, and through it to the local legislature, such short and simple rules as may form a temporary and provisional code for the regulation of the Aborigines, until advancing knowledge and civilisation shall have superseded the necessity for any such special laws."

This — one of the first of many suggestions for special laws and special studies — does not appear to have been taken particularly seriously by the Australian colonies.

In 1840, the British Government set out its views on the application of British laws to Aborigines, in a despatch to all Governors in Australia and New Zealand. (See Lord Russell to Sir George Gipps, HRA set 1

vol 21, 33.) These despatches contained a Report from Captain (later Sir George) Grey with the advice that his recommendations:

"…appear … fit for adoption generally within your Government subject to such modifications as the varying circumstances of the Colony may suggest."

Grey was critical of allowing Aborigines to exercise their customary law in any circumstances. He stated:

"The Aborigines of Australia having hitherto resisted all efforts which have been made for their civilization. it would appear that. if they are capable of being civilized. it can be shewn that all the systems, on which these efforts have been founded, contained some common error. or that each of them involved some erroneous principles: the former supposition appears to be the true one, for they all contained one element, they all started with one recognized principle, the presence of which in the scheme must necessarily have entailed its failure.

This principle was that. although the Natives should, as far as European property and European subjects were concerned. be amenable to British laws, yet, so long as they only exercised their own customs upon themselves and not too immediately in the presence of Europeans. they should be allowed to do so with impunity.

This principle originates in Philanthropic motives and a total ignorance of the peculiar traditional laws of this people."

In Grey's view, English law should entirely supersede customary law, in order to protect an Aborigine from the violence of his fellows, and to prevent the older natives from obstructing the civilisation of members of their tribe. (See HRA ser 1 vol 21, 35.) Grey commented:

"… I do not hesitate to assert my full conviction, that whilst those tribes, which are in communication with Europeans, are allowed to execute their barbarous laws and customs upon one another, so long will they remain hopelessly immersed in their present state of barbarism."

Grey's views on punishment, which echoed those of the Select Committee, (at 36.) were clear:

"To punish the Aborigines severely for the violation of laws to which they are ignorant, would be manifestly cruel and unjust, but to punish them in the first instance slightly for the violation of true laws would inflict no great injury on them…

I imagine that this course would be more merciful than that at present adopted, viz., to punish them for the violation of a law they are ignorant of, when this violation affects a European, and yet to allow them to commit this crime as often as they like, when it only regards themselves."

In addition to the House of Commons inquiry and Captain Grey's Report, several early inquiries on related questions were conducted within the Australian colonies, though none were specifically concerned with Aboriginal law.

NSW: Select Committee on the Conditions of the Aboriginals, Votes & Proceedings (Legislative Council) (1845); Report from the Select Committee on the Native Police Force, id (1856-7)

Qld: Report of the Select Committee on the Native Police Force and the Conditions of the Aboriginals Generally, Votes & Proceedings (1861)

Vic: Report of the Select Committee on the Aboriginals, Votes and Proceedings (Legislative Council) (1859 no D8)

SA: Select Committee of the Legislative Council on the Aboriginals, Report (Part Papers 1860 no 165).

The Colonial Office entertained no doubts that Aborigines were to be treated as British subjects for all purposes, but the appropriateness and justice of applying this principle was questioned by members of the colonial judiciary even after the decision in R v Jack Congo Murrell. In 1841, (See CSO 511/1840, Advice from Cooper J to the Government of South Australia.) Justice Cooper of the South Australian Supreme Court still held the view that it was:

"… impossible to try according to the forms of English law, people of a wild and savage tribe whose country although within the limits of the province of South Australia, has not been occupied by Settlers, who have never submitted themselves to our dominion and between whom and the Colonists there has been no social intercourse."

Similar views were expressed by Justice Willis in Melbourne in 1841 in the Bon Jon case. (See Port Phillip Gazette (18 September 1841) Justice Willis stated that 'there is no express law which makes the Aborigines subject to our Colonial Code'. The case did not proceed and Bon Jon was handed over to the Protectorate to be educated. The Chief Protector, Robinson, was accused by the victim's kin of being an accessory to his escape (See Dixon Library, Sydney Add 77, Robinson to La Trobe (9 April 1842).) and Bon Jon himself was murdered in a payback killing, (See A Sutherland, Victoria and its Metropolis, Melbourne, 1888, vol 1, 249.) thus lending weight to the argument of Stephen in Murrell's case that 'the British were not filling a void with their laws and it was absurd to ignore native law while its practice continued'. (See Bridges (1973) 267.)

Willis requested Governor Gipps to bring the question to Lord Stanley's notice for reference to the Law Officers. (See Sir George Gipps to Lord Stanley, 24 January 1842: HRA set 1 vol 21, 653-4.) Gipps himself considered having legislation passed to clarify the position that Aborigines were amenable to the courts like any other of Her Majesty's subjects. (See Colonial Secretary Thomson to Sir James Dowling (4 January 1842): id, 654-5.) However he was advised by the Supreme Court that Murrell's case had decided the matter and that no legislative action was necessary. (See Sir James Dowling, advice to Sir George Gipps (8 January 1842): id, 656.)

In South Australia Justice Cooper remained unwilling to concede that Aborigines should always be tried for offences under British law. In 1846, an Aborigine was brought before the court for killing another Aborigine. Justice Cooper argued that he required a legislative direction if such cases were to be justiciable and the accused was discharged because no competent interpreter was available. (See Larry v R, The Register 14, 25, 28 November 1846. Cooper J referred the matter to the Governor: CSO 1564 (1851).) In 1848, Justice Cooper accepted jurisdiction but indicated before the trial commenced that *'in the case of conviction he would stay any execution required by law and specifically refer the case to the Governor'*. (See Castles, 530, citing The Register 14, 17 June 1848; Robe to Grey, 10 July 1848, GRG 2/6/4.)

In Western Australia, Captain Grey's Report, which confirmed the view of the British authorities that Aborigines were and should be subject to European law for offences committed on each other, was rejected by Governor Hurt. According to Hasluck:

"In spite of the indication given by the Secretary of State of his views, Hurt held to his own opinion regarding disputes between natives, and during his term no notice was taken of acts by natives against natives in accordance with their own law."

(See P Hasluck, Black Australians, Melbourne UP, Melbourne, 1942, 129.) By contrast Hutt's successor, Governor Fitzgerald, adopted a policy of *'cognisance of all aggravated cases of assault committed even by bush natives inter se'.* This policy produced considerable debate, and attempts were made in successive years to mitigate its effects by reduced sentences or by non-prosecution. But there were cases in which severe penalties were imposed. (See Hasluck 129-34. See generally Castles (1982) 520-42; Bennett & Castles, 247-63.)

Applying British law to Aborigines produced special difficulties in the presentation of Aboriginal evidence. In theory Aborigines were British subjects, but in practice they were not, and perhaps could not be, given the same rights as British subjects in judicial proceedings. The paradox caused considerable concern to colonial administrators. Captain Grey put the problem thus:

"The greatest obstacle that presents itself in considering the application of British Law to these Aborigines is the fact that, from their ignorance of the nature of an oath, or of the obligations it imposes, they are not competent to give evidence before a Court of Justice …

The fact of the Natives being unable to give testimony in a Court of Justice is a great hardship on them, and they consider it as such: the reason that occasions their disability for the performance of this function is at present quite beyond their comprehension and it is impossible to explain it to them. I have been a personal witness to a case in which a Native was most undeservedly punished for the circumstance of the Natives, who were the only persons who could speak as to certain exculpatory fact s, not being permitted to give their evidence …

The Natives being ignorant of our Laws, of the forms of our Courts of Justice, of the language in which the proceedings are concluded, and the sentence pronounced upon them, it would appear that but a very imperfect protection is afforded to them by having present in the Court merely an interpreter … who knows nothing of legal proceedings and can be but very imperfectly acquainted with the Native language: it must also be borne in mind that the natives are not tried by a jury of their peers, but by a jury having interests directly opposed to their own and who can scarcely avoid being in some degree prejudiced against Native offenders …"

(See HRA ser 1 vol 21, 37.) Attempts were made in South Australia, New South Wales and Western Australia to relax the rules regarding the administering of oaths and the admissibility of evidence for Aborigines, and in some instances to enable magistrates to award summary punishment in certain offences. (See Bridges (1970) 65-70; Hasluck, 135-43.) But these early attempts were defeated by hostile local legislatures, or disallowed by British law officers as being *'contrary to the principles of British jurisprudence'.* (See Campbell and Wilde to Russell (27 July 1840): HRA ser I vol 20, 756.) Any such special measures for Aborigines, it was said, (Lord John Russell to Hutt (30 April 1841) cited in Hasluck, 136-7.) were:

"…dangerous in its tendency and faulty in principle. By thus establishing inequality in the eye of the law itself between the two classes, on the express ground of national origin, we foster prejudices, and give a countenance to bad passions."

In 1839 (See HRA ser 1 vol 20, 303.) the British Aboriginal Protection Society commented on the paradox of regarding Aborigines as British subjects while at the same time refusing Aboriginal testimony, unless they had been converted to Christianity:

"It is evident that the rejection of the Evidence of these Natives renders them virtually outlaws in their Native Land which they have never alienated or forfeited. It seems to be a moral impossibility that their existence can be maintained when in the state of weakness and degradation, which their want of civilisation necessarily implies; they have to cope with some of the most cruel and atrocious of our species, who carry on their system of oppression with almost perfect impunity so long as the Evidence of Native Witnesses is excluded from Our Courts."

Local opponents, echoing WC Wentworth's comparison of Aboriginal evidence with *'the chatterings of the ourang-outang',* managed to postpone the enactment of such legislation for many years. (See Reece, 181 for Wentworth's statement, and generally id, 179-82 for the issue. See further para 605n.)

As this brief account reveals, most, if not all, of the debate was focused on the criminal law (and on problems of Aboriginal evidence in criminal cases). This obscured what was perhaps the more fundamental point, which was never questioned or debated — that is, the complete absence of recognition of Aboriginal rights to land, or of the recognition of Aboriginal customary laws in the civil law. Aborigines were not treated as trespassers on Crown land, but the Crown freely alienated land to settlers who then displaced local Aborigines, often by force. (See para 41-2, 899-902.)

Aboriginal marriages were not recognised (See para 237 for the few early cases.) and rights to the custody of children were precarious or non-existent. Although Aborigines as British subjects had formal capacity to make contracts, to own property, and to sue in the courts, in practice these facilities were irrelevant. These common law rights were modified or removed by legislation under the 'protection' policy.

Despite doubts and uncertainties, it was firmly established by 1850 that no formal recognition of Aboriginal customary laws should be accorded. This remained the situation until this century. Instead the emphasis moved to policies based on 'protection' (with the underlying expectation that Aboriginal identity and tradition was a rapidly passing phenomenon). But there was a distinguishable phase during the 1920s and 1930s when some attempt was made to recognise Aboriginal customary laws. These legislative and administrative responses are of considerable interest.

https://freemandelusion.com/wp-content/uploads/2022/04/Australian-Law-as-Applied-to-Aborigines-_-ALRC.pdf

The Pacific Islanders Protection Acts

The ***Pacific Islanders Protection Acts*** of 1872 and 1875 are ***misconstrued*** by many Aboriginal activists as preventing the colonial governments from expanding their territories or otherwise interfering with the sovereignty and rights of the indigenous peoples in Australia without their consent. Both the *Pacific Islanders Protection Acts* of 1872 and 1875 were repealed by Schedule 2 of the ***Criminal Code Amendment (Slavery and Sexual Servitude) Act 1999***. Following the previous notion, is the assertion that the repeal of these Acts were unlawful, as it is contended that they offered protections granted by Queen Victoria's Orders in Council.

The *Pacific Islander Protection Acts* of 1872 and 1875 are Imperial legislation passed by the UK Parliament. Section 2 of the ***Colonial Laws Validity Act 1865*** once provided that colonial laws were invalid if they were repugnant with UK law. However, since the Statute of Westminster 1931 was passed, and adopted in Australia by the ***Statute of Westminster Adoption Act 1942***. Pursuant to section 2 of the Act, the Commonwealth Parliament had the legislative powers to repeal any such Imperial legislation as it applied here.

The Pacific Islanders Protection Acts never applied to the Australian aborigines.

Prior v South West Aboriginal Land and Sea Council Aboriginal Corporation [2020] FCA 808 (at 70):

> *"These settled propositions are not affected by the Pacific Islanders Protection Act 1875 (UK) (1875 Act) or the Pacific Islanders Protection Acts 1872 (UK) to which Mr Prior refers. The effect of s 6 and s 7 of the 1875 Act was to extend the Crown's authority to British subjects living in the Pacific islands, while preserving the rights of non-British subjects. These sections said nothing about the status (sovereign or otherwise) of indigenous peoples in Australia, where the Crown had already acquired sovereignty by the time the Acts were passed. Section 6 expressly did not apply to places that were 'within Her Majesty's dominions', such as the colonies of Australia: see Walker v South Australia (No 2) (2015) 215 FCR 254 (at [53]-[56])."*

Walker v State of South Australia (No 2) [2013] FCA 700 (at 10-11):

> *"Second, Mr Walker contends that the Pacific Islanders Protection Act 1875 (Imp) 38 & 39 Vict, c 51 (1875 PIP Act) also has the effect of "barring" the Crown from "extending … sovereignty or dominion over the Ramindjeris' lands and people…" The sections of that Act that are said to support this argument are ss 6 and 7. Section 7 appears to be most relevant to the argument. In conjunction with that provision, he refers to an Order in Council of 2 August 1875 (Imp) by which the 1875 PIP Act "was made"."*

(at 53-56)

> *"Contrary to Mr Walker's contention, the Pacific Islanders Protection Act 1872 (Imp) 35 & 36 Vict, c 19 (1872 PIP Act) and the 1875 PIP Act have no application to the Indigenous people of Australia.*
>
> *The 1872 PIP Act (then given the short title of The Kidnapping Act 1872) was passed to protect the indigenous populations of the islands of the Pacific Ocean from kidnapping for the purpose of labour, a practice known as "blackbirding". It expressly referred to "natives of islands in the Pacific Ocean, not being in Her Majesty's dominions". Section 3 made it unlawful for British vessels to carry native labourers absent a licence granted by a Governor of any of the Australasian Colonies of New South Wales, New Zealand, Queensland, South Australia, Tasmania, Victoria, and Western Australia. Section 9 established offences relating to the kidnapping and enforced labour of the natives, conferring jurisdiction on any Supreme Court in any of the Australasian Colonies for the trial and punishment for any such offences.*
>
> *Section 6 of the 1875 PIP Act gave the Queen the power to exercise jurisdiction over her subjects "within any islands and places in the Pacific Ocean not being within Her Majesty's dominions nor within the jurisdiction of any civilised power", and conferred the power to establish courts of justice with jurisdiction over those subjects within those islands. However, s 7 contained the proviso that:*
>
> *"...nothing herein or in any such Order in Council contained shall extend or be construed to extend to invest Her Majesty, her heirs or successors, with any claim or title whatsoever to dominion or sovereignty over any such islands or places … or to derogate from the rights of the tribes or people inhabiting such islands or places … to such sovereignty or dominion."*
>
> *On their own terms, those Acts do not apply to the Indigenous people of Australia. Their application is clearly with respect to the peoples of the islands in the Pacific Ocean, who did not have the protection of the law. Hence, jurisdiction to try the offences created by the Acts was conferred upon the Supreme Courts of the Australasian colonies. Further, their application is with respect to the islands of the Pacific Ocean "not being within her Majesty's dominions". As at the passing of the 1872 PIP Act, the Province of South Australia had been for some time within Her Majesty's dominion, as had all the other colonies of Australia."*

According to ***Encyclopaedia Britannica***, the *Pacific Islanders Protection Acts* concerned blackbirding:

"*Blackbirding was the 19th- and early 20th-century practice of enslaving (often by force and deception) South Pacific islanders on the cotton and sugar plantations of Queensland, Australia (as well as those of the Fiji and Samoan islands). The kidnapped islanders were known collectively as Kanakas. Blackbirding was especially prevalent between 1847 and 1904. The Queensland government's first attempt to control it came only in 1868 with the Polynesian Labourers Act, which provided for the regulation of the treatment of Kanaka labourers—who theoretically worked of their own free will for a specified period—and the licensing of "recruiters." Because the Queensland government lacked constitutional power outside its own borders, the regulations could not be enforced; moreover, the fact that notorious and brutal blackbirders were able to retain their licenses seemed to indicate that the government was not seriously trying to end the practice. British government acts of the 1870s—especially the 1872 Pacific Islanders Protection Act (the Kidnapping Act)—provided for agents on British recruiting vessels, stricter licensing procedures, and patrol of British-controlled islands; these measures reduced the incidence of blackbirding by British subjects. Because of the continuing heavy demand for labour in Queensland, however, the practice continued to flourish. Blackbirding died out only in 1904 as a result of a law, enacted in 1901 by the Australian commonwealth, calling for the deportation of all Kanakas after 1906.*"

King's Seal – Letters Patent 1836

In the 2014 documentary "***King's Seal***" it was alleged that consecutive governments have ignored the legal rights of Aboriginal people of South Australia contained in clause 8.1 of the ***Letters Patent 1836 (SA)*** which provides:

> "PROVIDED ALWAYS that nothing in these our Letters Patent contained shall affect or be construed to affect the rights of any Aboriginal Natives of the said Province to the actual occupation or enjoyment in their own Persons or in the Persons of their Descendants of any Lands therein now actually occupied or enjoyed by such Natives…"

According to the ***film makers***, this constituted treason as it was contrary to the Kings command that sovereignty be exercised over the Aboriginal people of South Australia.

NITV segment:

https://freemandelusion.com/the-kings-seal_-the-constitution-treason-and-the-sa-letters-patent-from-1836-mp4/

There were several protests regarding the Letters Patent, in which Owen Karpany and his son Daniel were involved, as they were challenging fishing rights after being charged for catching undersize abalone. The Karpany's are featured heavily in the documentary, despite the fact that the Letters Patent argument was not part of their High Court challenge.

In the Magistrates Court, the contention that the Letters Patent afforded any defence was rejected, but as the abalone were taken in accordance with the traditional laws and customs of the Narrunga People, the applicants successfully invoked section 211 of the *Native Title Act* 1993 (Cth). On appeal in the Supreme Court in ***Dietman v Karpany (2012) 112 SASR 514*** it was held that the native title rights and interests conceded in the Magistrates Court was wrong, and that the relevant native title rights, which, absent extinguishment, would have embraced the taking of the undersize abalone, had been extinguished by the *Fisheries Act* 1971 (SA).

The Karpany's sought special leave to appeal to the High Court in ***Karpany and Anor v Dietman [2012] HCATrans 210*** which was granted, and reserved in ***Karpany and Anor v Dietman [2013] HCATrans 236***. The basis of this challenge was not regarding the Letters Patent, but section 211 of the *Native Title Act* 1993 (Cth), although the following was submitted and never raised again:

> *"That is the relevance of the letters patent argument in the sense of the matters put before the court. It arises in two ways. It either arises so as to distinguish the public right from the native title right or, alternatively, it arises by reason of the fact that if one looks to the scheme of the fisheries legislation, in our respectful submission, it is insufficient to simply…..the scheme by looking at the fisheries legislation and ignoring the preservation of rights contained in the letters patent and the subsequent Orders in Council."*

The challenge was successful, in ***Karpany v Dietman [2013] HCA 47*** the High Court held that the *Fisheries Act* 1971 (SA) did not extinguish the applicants' native title right to take fish, as it permitted a person

without holding a licence to take fish by certain means and *"otherwise than for the purpose of sale"*. The *Fisheries Act* 1971 (SA) regulated, but was not inconsistent with, the continued enjoyment of native title rights.

Several months prior, the Federal Court addressed the issue of the Letters Patent in no uncertain terms, in ***Walker v State of South Australia (No 2) [2013] FCA 700***. The applicant asserted that the Letters Patent that established the Province of South Australia had the effect of "*barring*" the Crown from *"extending … sovereignty or dominion over the Ramindjeris' lands and people…"* The court rejected this proposition. (From 26):

> *"Neither the 1834 SA Act nor the Letters Patent preserve any sense of sovereignty in the Aboriginal people of South Australia. I do not accept that the language of the Letters Patent ascribes any protection of indigenous sovereignty. In **Milirrpum v Nabalco Pty Ltd (1971) 17 FLR 141** at 278, Blackburn J characterised the contrary argument as follows:*
>
> *That the words of the Letters Patent do not naturally suggest this meaning appears to me to be self-evident. That the Government would have tried to effect such a result by an instrument in such terms seems unlikely.*
>
> *A construction of the Letters Patent proviso that provides for some protection of sovereignty is inconsistent with the fact that by 1770, and at least by 1834, the Crown understood that it had acquired full legal and beneficial ownership over the whole of eastern Australia, including that which is now South Australia. The clear terms of s 1 of the 1834 SA Act provided for the erection of a colony over which full sovereignty was exercised, expressly providing that:*
>
> *All and every person who shall at any time hereafter inhabit or reside within His Majesty's said province … shall be subject to and bound to obey such laws, orders, Statutes, and Constitutions as shall from time to time, in the manner herein-after directed, be made, ordered, and enacted for the Government of His Majesty's province … of South Australia.*
>
> *Moreover, s 6 of the 1834 SA Act authorised the Commissioners of the Province to declare all lands of the Province to be public lands, open to purchase by British subjects. Considering the proviso in light of s 6, Blackburn J in Milirrpum at 281 held:*
>
> *It is impossible to see how, if the proviso to the Letters Patent is to be construed as either giving or preserving to any persons any proprietary rights in any lands of the Province, it was not repugnant to the express provisions of the Act, and thus invalid to that extent.*
>
> *It is consistent with the express provisions of the South Australia Act 1834 (Imp) that broad powers to convey and alienate the waste lands of the Crown vested in the Governor, and subsequently the legislature of the Province are granted by the Imperial Acts 5 & 6 Victoria c 35 (1842) and 18 & 19 Victoria c 56 (1855).*
>
> *The Proclamation of Governor Hindmarsh on 28 December 1836 included the resolution:*
>
> *… to take every lawful means of extending the same protection to the NATIVE POPULATION as to the rest of His Majesty's Subjects, and of my firm determination to punish with exemplary*

severity, all acts of violence or injustice which may in any manner be practiced or attempted against the NATIVES, who are to be considered as much under the Safeguard of the law as the Colonists themselves, and equally entitled to the privileges of British Subjects.

It shows that sovereignty over all inhabitants of the newly established colony vested in the Crown in right of the Colony was in place.

In my view, the clear effect of the South Australia Act 1834 (Imp), and that which was recognised by the Proclamation of Governor Hindmarsh, is that the Indigenous people inhabiting the Province of South Australia were to be treated as British subjects, in the same way as the colonists themselves were. I reject the assertion of sovereignty vested in the Indigenous people of South Australia carved out by the Letters Patent proviso: Mabo (No 2) at 107 per Deane and Gaudron JJ."

(From 50)

*"It is desirable to say a little more about the Letters Patent proviso. The Letters Patent proviso was addressed with at length by Blackburn J in Milirrpum at 274-283 and briefly by Kirby J (agreeing with the majority, who however did not address this question) in **Fejo v Northern Territory (1998) 195 CLR 96**. In both cases, their Honours rejected a less radical argument than Mr Walker's argument – namely, an argument that the Letters Patent proviso protected the rights of Aboriginal people to the occupation or enjoyment of their lands from any inconsistent legislative or executive act.*

Kirby J in Fejo dismissed an argument that the Letters Patent proviso provides any protection for the rights of Aboriginal people to the occupation or enjoyment of their lands other than protection from any effect the terms of the Letters Patent itself might have on such rights. Some of his reasons for that conclusion are not applicable to this case, but the following reasoning at [91] is directly applicable to this case and highly persuasive:

[A]ccording to the terms of the [Letters Patent] proviso the only rights affected [by the Letters Patent proviso] were those arising from the activities of erecting and establishing the Province of South Australia and fixing its boundaries. The Letters Patent do not purport to deny, still less do they have the effect in law of denying, the quality of other acts which would otherwise affect the rights of the defined Aboriginals and their descendants. [Also], the [South Australia Act 1834 (Imp)] provided that it was the Colonisation Commissioners, not the Governor, who could declare all lands in the Province to be public lands available for purchase and to sell such lands and apply the funds recovered (e.g. for future immigration to the Province). Thus the actual alienation of land in South Australia was, from the start, effected pursuant to express statutory provision, not the Royal Prerogative. Any limitation on the power to grant a legal interest in land would therefore have to conform to the applicable statute. A proviso in the Letters Patent of the Governor could not override such a statutory source of power. [Further], and in any case, the mere fact of erecting and establishing the Province of South Australia and fixing its boundaries did not of itself adversely affect the rights referred to in the proviso. With the wisdom of hindsight and the modern understanding of the effect of the acquisition of sovereignty over Australia by the Crown, its establishment of a settlement (such as the Province of South Australia) did not of itself

> *adversely affect native title. Any such effect arose from later conduct which on no view could be seen as subject to the proviso's limitations.*
>
> *That is, with respect, clearly correct. The terms of the Letters Patent proviso are expressly limited in their application to the substantive provisions of the Letters Patent. They merely establish the province of South Australia and fix its boundaries. They do not provide for the Crown's acquisition of sovereignty over the relevant land. That had already been acquired, because the relevant land was, prior to the Letters Patent, part of the colony of New South Wales. As such, the Letters Patent proviso cannot be said to have any effect on the sovereignty of the Commonwealth over the asserted Ramindjeri lands. See also per Blackburn J in Milirrpum at 281 and at 282-283."*

https://freemandelusion.com/wp-content/uploads/2020/11/walker-v-state-of-south-australia-no-2-2013-fca-700.pdf

Governed under the Flora and Fauna Act

There are several misunderstandings regarding the effect of the national vote on the *Constitution Alteration (Aboriginal People)* more commonly known today as simply the 1967 referendum. At the time, Australian voters had backed only four of 24 constitutional referendums in all the years since Federation in 1901. This one passed with more than 90 per cent approval from the Australian people. The referendum aimed at addressing two parts of the *Constitution* that had actively discriminated against Indigenous people. It removed Section 127, which said Aboriginal natives shall not be counted in "reckoning the numbers" of people in the Commonwealth, that is, in the population Census. And it amended Section 51, which prohibited the federal government from specifically making laws for the Indigenous people of any state.

Four key misunderstandings persist regarding the 1967 Referendum:

- 1) whether it gave Indigenous people the right to vote in federal elections,
- 2) whether it gave Indigenous people the right to Australian citizenship,
- 3) whether it gave Indigenous people the right to be included in the census, and
- 4) whether, up until the referendum, Indigenous people were classed as fauna.

1) whether it gave Indigenous people the right to vote in federal elections

The Aboriginal right to vote in most Australian states actually dated back legally to the 1850s, long before Federation. Every state but Queensland and Western Australia allowed all male British subjects to vote, including Aboriginal men, and, in 1895, when South Australia gave women the right to vote, Aboriginal women shared that right. Few Aboriginal people knew of their voting rights though, and after Federation, the 1902 *Franchise Act* allowed only those who had already been state voters to vote federally. Even when the Chifley Government passed an Act in 1949 that anyone eligible to vote in state elections could now vote federally, many Aboriginal people still believed they could not. Finally, in 1962, legislation extended the vote in federal elections to all Aboriginal people of voting age, but, even then, it remained voluntary and not well known. That is why, even after Western Australia finally allowed the vote in state elections in 1962 and Queensland followed in 1965, a few years prior to the 1967 referendum.

2) whether it gave Indigenous people the right to Australian citizenship

The Nationality and Citizenship Act 1948 already gave automatic citizenship to all Australians previously deemed British subjects, which included Indigenous people.

3) whether it gave Indigenous people the right to be included in the census

The census issue is a little murkier, since including Aboriginal people in "reckoning the numbers" was an aim of the referendum. Up until 1967, the Commonwealth Bureau of Census and Statistics indeed interpreted Section 127 to mean it could count Aboriginal people but not in the official population. In 1947, Queensland did finally convince the Commonwealth to count Torres Strait Islanders, although they were first classified as Polynesians, then as Pacific Islanders. A race question in the census was used to assess the number of what it termed "full-blood" Aboriginal people-- anybody of over 50 per cent Aboriginal ancestry.

That number was then subtracted from the population count. Only rough estimates of remote Aboriginal populations were done because society viewed Aboriginality as a disadvantage, many people did not reveal theirs. The shortcomings showed starkly after the referendum: from 1966, the year before it, to 1971, the Aboriginal count increased by almost 45 per cent. Over the next five-year period, it increased again by almost 40 per cent.

(4) whether, up until the referendum, Indigenous people were classed as fauna

Not being counted properly in the census all those years has fed into the misunderstanding that Aboriginal people were “classified as fauna” until 1967. Also, in regard to the second amendment to the constitution, many were under an assumption that “the government” had no powers to make laws for aboriginal people, which led to a misunderstanding that aboriginal people were being “governed under the Flora and Fauna Act” prior to the referendum. This is simply not the case.

While it is true the Commonwealth Parliament had no powers to make laws for aboriginal people, the states DID. The question of jurisdiction was actually settled in the 1830’s, in the Murrell case, where it was stated on record that aboriginal people possessed the same rights in a court as any other British subject. The effect of the 1967 amendment to section 51 basically turned a “residual” power (solely

possessed by the state) into a “concurrent” power shared by both the states and the Commonwealth. For a start, there is no “*Fauna and Flora Act*” in state or federal legislation.

There was a situation in New South Wales where “aboriginal sites” were protected by National Parks and Wildlife in their provisions, but this didn’t imply that the aboriginal people were “governed” by this legislation, only the sites.

Fact check: Were Indigenous Australians classified under a flora and fauna act until the 1967 referendum?

The true history of how aboriginal people were governed prior to 1967 is perhaps much darker than even this myth suggests. The responsibility for making laws for the tribes was solely a state matter, and each state passed their own *Aboriginal Protection Act* from 1867 onward. By 1911 every state except Tasmania had a protection Act, giving the Chief Protector or Protection Board extensive power to control Indigenous people. In some states and in the Northern Territory, the Chief Protector was made the legal guardian of all Aboriginal children, displacing the rights of parents.

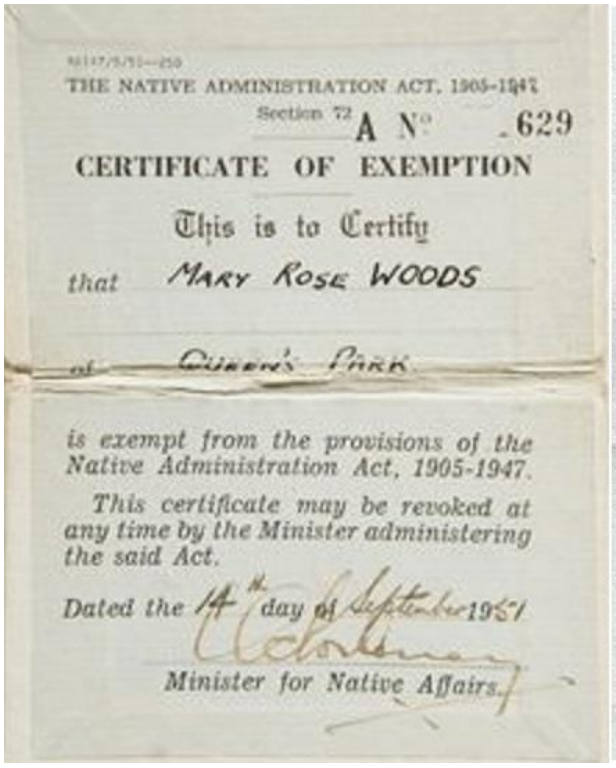
The legislation is commonly referred to as the "*Protection Acts*" because its stated intention was to 'protect' Indigenous people. But these Acts were used, in some cases until the 1980s, as a means of implementing policies of protection, separation, absorption and assimilation of Indigenous populations, depending on the prevailing philosophy of governments at the time.

The Board for the Protection of Aborigines (the NSW Board) was established in 1883. The stated objectives of the NSW Board were to "provide asylum for the aged and sick, who are dependent on others for help and support; but also, and of at least equal importance to train and teach the young, to fit them to take their places amongst the rest of the community". Although not explicit in the stated intention, the Public Interest Advocacy Centre (PIAC) notes the NSW Board *"initially had a policy...of removing Aboriginal children from their communities and families”.*

Under the Aborigines Act, Aboriginal people can apply to "cease being Aboriginal" and have access to the same rights as whites. "Exemption Certificates" were introduced in the late 1930's, exempting certain Aboriginal people from restrictive legislation and entitling them to vote, drink alcohol and move freely

but prohibiting them from consorting with others who are not exempt. Their children were also allowed to be admitted to ordinary public schools. Aboriginal people used the derogatory terms "dog tags" or "dog licences" to refer to these certificates. For many Aboriginal people this renunciation of their traditional lifestyle is promoted as the only opportunity to overcome poverty, gain work and access to education and social welfare benefits.

In practice, these ***assimilation policies*** lead to the destruction of Aboriginal identity and culture, justification of dispossession and the removal of Aboriginal children. In 1969 the Aborigines Welfare Board in NSW was abolished. By that year all states had repealed the legislation allowing for the removal of Aboriginal children under the policy of "protection".



THE NATIVE ADMINISTRATION ACT, 1905-1947

Section 72 A No. 629

CERTIFICATE OF EXEMPTION

This is to Certify

that MARY ROSE WOODS

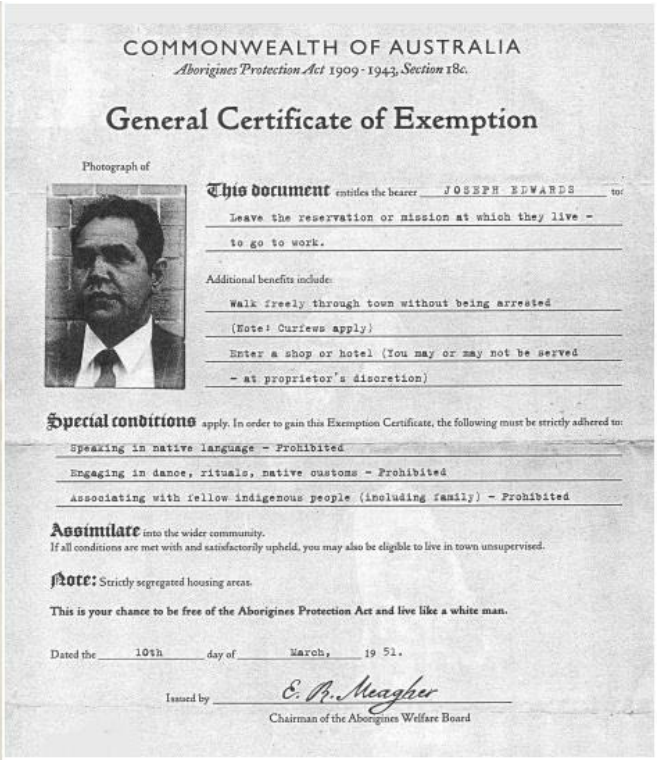
of QUEEN'S PARK

is exempt from the provisions of the Native Administration Act, 1905-1947.

This certificate may be revoked at any time by the Minister administering the said Act.

Dated the 14th day of September 1951

Minister for Native Affairs.



COMMONWEALTH OF AUSTRALIA

Aborigines Protection Act 1909-1943, *Section* 18c.

General Certificate of Exemption

Photograph of

This document entitles the bearer JOSEPH EDWARDS to:

Leave the reservation or mission at which they live -

to go to work.

Additional benefits include:

Walk freely through town without being arrested

(Note: Curfews apply)

Enter a shop or hotel (You may or may not be served - at proprietor's discretion)

Special conditions apply. In order to gain this Exemption Certificate, the following must be strictly adhered to:

Speaking in native language - Prohibited

Engaging in dance, rituals, native customs - Prohibited

Associating with fellow indigenous people (including family) - Prohibited

Assimilate into the wider community.

If all conditions are met with and satisfactorily upheld, you may also be eligible to live in town unsupervised.

Note: Strictly segregated housing areas.

This is your chance to be free of the Aborigines Protection Act and live like a white man.

Dated the 10th day of March, 19 51.

Issued by E. R. Meagher

Chairman of the Aborigines Welfare Board

Australian society viewed aboriginality as a disadvantage, so many denied their nationality, having to pretend they were something they were not to appease the grundnorm of the time. As I suggested earlier, the truth about how the aboriginal people were treated under the *Protection Acts* is far more shocking than any myth about being governed as "fauna and flora".

Aboriginal Protection Act 1869 (Vic)

https://freemandelusion.com/wp-content/uploads/2018/07/aboriginal-protection-act-1869-vic.pdf

The Aborigines Protection Acts 1886 and 1905 (WA)

https://freemandelusion.com/wp-content/uploads/2018/07/the-aborigines-protection-acts-1886-and-1905-wa.pdf

Aboriginals Protection and Restriction of the Sale of Opium Act 1897 (Qld)

https://freemandelusion.com/wp-content/uploads/2018/07/aboriginals-protection-and-restriction-of-the-sale-of-opium-act-1897-qld.pdf

Aborigines Protection Act 1909 (NSW)

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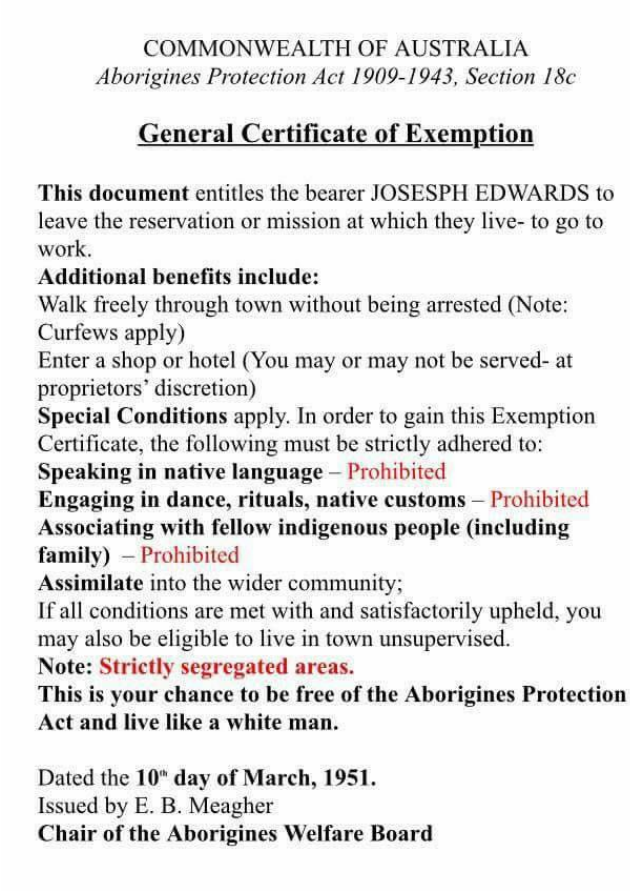
South Australian Aborigines Act 1911

https://freemandelusion.com/wp-content/uploads/2018/07/south-australian-aborigines-act-1911.pdf

Northern Territory Aboriginals Ordinance 1911

https://freemandelusion.com/wp-content/uploads/2018/07/northern-territory-aboriginals-ordinance-1911.pdf



COMMONWEALTH OF AUSTRALIA
Aborigines Protection Act 1909-1943, Section 18c

General Certificate of Exemption

This document entitles the bearer JOSESPH EDWARDS to leave the reservation or mission at which they live- to go to work.
Additional benefits include:
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Enter a shop or hotel (You may or may not be served- at proprietors' discretion)
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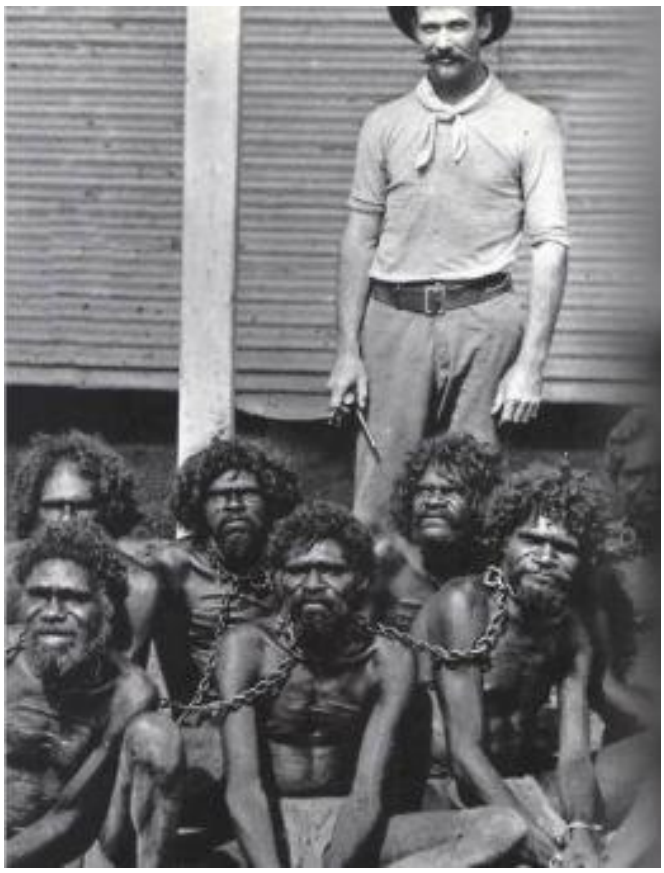
Associating with fellow indigenous people (including family) – Prohibited
Assimilate into the wider community;
If all conditions are met with and satisfactorily upheld, you may also be eligible to live in town unsupervised.
Note: Strictly segregated areas.
This is your chance to be free of the Aborigines Protection Act and live like a white man.

Dated the **10th day of March, 1951.**
Issued by E. B. Meagher
Chair of the Aborigines Welfare Board

"Everything that related to a concentration camp was there in [Cherbourg]. You could not move without getting a permit. Cherbourg is built right on Bramble Creek. About 100 metres or so away from the river was the farmer's house. We had to get a permit to go down and fish there. We had to get a permit to go to Murgon, which was four miles away – six kilometres – and it had a time set on it. If you came back five to ten minutes after that time expired, you would be put in jail for, maybe, a weekend. And they brought the curfew in. All lights had to be out at nine o'clock. If you were found out after dark or after the lights had gone out, you were put in jail. They even put searchlights on the vehicles – the police, the superintendent – and chased black fellas everywhere, hither and thither, throughout the night hours.

"During the mid-forties, they took away our corroborees, they took away our culture. Our ancestors were not allowed to teach us our language; most of us know nothing of our language."



For some examples of how these premises work out in the courts, check out:

- ***The Queen v Kevin Buzzacott [2004] ACTSC 89***
- ***Anderson v Kerslake [2013] QDC 262***
- ***R v Anning [2013] QCA 263***
- ***Ngurampaa Ltd v Balonne Shire Council [2014] QSC 146***
- ***Lacey v Earle [2014] ACTSC 397***

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The Australian Pseudo-Legal Encyclopedia

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