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Joint Submission to

Electoral and Other Legislation Amendment Bill 2019

Economics and Governance Committee

<https://www.parliament.qld.gov.au/work-of-committees/committees/EGC/inquiries/current-inquiries/ElectoralOLA2019>

Local Government Electoral (Implementing Stage 2 of Belcarra) and Other Legislation
Amendment Bill 2019

Economics and Governance Committee

<https://www.parliament.qld.gov.au/work-of-committees/committees/EGC/inquiries/current-inquiries/LGElectoralStg2ofBel2019>

I repeat what I said and re-incorporate my previous submission and everything in it to the
Local Government Electoral (Implementing Stage 1 of Belcarra) and Other Legislation
Amendment Bill 2018 Inquiry. My Submission 13:

www.parliament.qld.gov.au/documents/committees/EGC/2018/LGElectoralSrg1ofBel2018/submissions/022.pdf

I repeat what I said and re-incorporate my previous submission and everything in it to the
Electoral Legislation (Political Donations) Amendment Bill 2018

<http://www.parliament.qld.gov.au/documents/committees/EGC/2018/ElectoralPolDonations2018/submissions/013.pdf>

I repeat what I said and re-incorporate my previous submission and everything in it to the
Local Government (Councillor Complaints) and Other Legislation Amendment Bill 2018

<http://www.parliament.qld.gov.au/documents/committees/EGC/2018/LGCouncillorComplaints2018/submissions/011.pdf>

Incorporating those previous submissions – the bits you can see -This submission will address the following issues for which I have been consistent on in past inquiries. I always come from the position that you are guilty of corruption and whilst spinning it to look like you are doing something about it, but you are always providing ways out like;

- That even if you sack a council , like with Ipswich , you might hand over administration till next election to a donor company like KPMG who has a labor member as a partner;
- The ECQ and office of the assessor display all enforcement activity and penalties on its website so that it can be used. That the reasons for the assessor be written with full reasons

- so that peoples transgressions follow them into their next public service job in other states or overseas .

- at the moment people can't appeal the lack of or inadequate punishment or failure to investigate .

-That if an electoral offence is an offence – the matter must go to court , because a fine ultimately leads to gaol for non payment , and a person can only be gaoled through a decision of a court under ch3 of the constitution . That the principles of open justice mean that all proceedings be in open court unless you are hiding something. Give it -the whole shebang, back to the CCC too.

- That , because there was donations by Townsville developer [REDACTED] to [REDACTED] in the 2016 gifts register https://www.ecq.qld.gov.au/data/assets/excel_doc/0005/45419/Gift-Register.xls which has been changed to say to the LNP on the realtime site , and a \$2000 donation to was originally made to [REDACTED] [REDACTED] , on 28/4/2017 and this was actually changed on that site to state it was made to the Labor Party Instead – that it be backdated and put on that site who the original donations were to . And who made the amendment to the website and why. Below is a copy of the original entry . [REDACTED] never answered my letter seeking clarification . The staffer confirmed in my call which can be checked against phone records that the email would be brought to his attention.

[REDACTED]	[REDACTED]	28- 04- 2017	TOWNSVILLE	[REDACTED]	\$2,000.00
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I note a new entry with a corresponding date saying :

[REDACTED]	Australian Labor Party (State of Queensland)	28-04-2017	TOWNSVILLE	[REDACTED]	\$2,000.00
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- **Like what I incorporate from my previous inquiry submissions -abolish time limits for corruption prosecutions per se , cos we want to hunt you down like Simon Wiesenthal ;**

- Like I said at p5 of the Stage 1 Inquiry about the developer donation ban Expand bans on donations that are “felt concerns” and “have a sufficient rational connection to its purpose “ like the way the NSW legislation was upheld in McCloy v NSW and backdating it . I said the following :

“There are self evident reasons (especially in Townsville and NTH QLD) why such donations from property developers and others- such as those involved in the construction, ring roads/bridges or airport 2nd runway builders, fossil fuel. real estate , mining, arms, defence contracting, liquor or gambling industry business entities, pharmaceutical, waste/recycling , water infrastructure , pipe builders, layers or consulting engineers , tobacco industry business entity;- or from any other industry that would normally have contractual dealings with government at any level- should be banned.

So much was said by The High Court in McCloy v NSW [2015] HCA 34 (7 October 2015) where it upheld the NSW ban on developer donations. They were against the Americanisation of donations. It was said at par [93]

“...the public interest in removing the risk and perception of corruption is evident. These are provisions which support and enhance equality of access to government, and the system of representative government which the freedom protects. The restriction on the freedom is more than balanced by the benefits sought to be achieved.”

- It’s my belief that legislation in other states relating to caps for instance , have been designed to fail as state solicitors have all the resources of the state to work with . They have to be legal experts to get the job . Read McCloy v NSW and word it properly so that your loss in court isn’t the taxpayers. The resulting loss continues corruption which increases expenditure to combat it.
- On left over councillors being able to vote without quorum, that offends against all principles of democracy and I have a felt concern example below. People should be told -If you have made a donation, don’t bother submitting an application or a tender . if the situation is that because of membership of an organisation a majority of councillors must step aside – you had a problem that needed to be investigated to start with.

An example of “felt concerns’ in Townsville;

On 22/11/2016 , in the Townsville Council Minutes Item 11, the Matter of Maidments Sanctum development came up . The entire council declared an interest because they had said they received donations from Maidment and McConaghy Properties (This was hidden behind the “Lentenyard” donation .

This is at p 8 of the pdf file and p9146 . They Voted anyway at p 11pdf /p9149 , and p16 pdf/ p9154 . At p 20 pdf/ p9158 to p 23pdf / 9161 , and at p53 pdf/ 9191 to p56 pdf 9194 It was recommended by Councils Planning officer that the preliminary approval be rejected on 23 grounds [REDACTED]
https://www.townsville.qld.gov.au/data/assets/pdf_file/0015/26106/OC-mins-22.11.16.pdf

The Council approved an extension of Maidments “Sanctum” development at “North Shore” on 13/12/2016 . No interests were declared in relation to Miadment in that meeting <https://www.townsville.qld.gov.au/about-council/news-and-publications/media-releases/2016/december/council-approves-sanctum-extension-Minutes-13/12/16> :
https://www.townsville.qld.gov.au/data/assets/pdf_file/0016/26107/Confirmed-Minutes-Ordinary-Council-13-December-2016.pdf

In the 2016 TSV Donations returns publicly available on government websites , [REDACTED]
[REDACTED] And since then , they have voted on many matters concerning this developer worth millions.

<http://www.ecq.qld.gov.au/candidates-and-parties/funding-and-disclosure/disclosure-returns/election-disclosure-returns/2016-local-government-quadrennial-elections/townsville-city-council>
https://www.ecq.qld.gov.au/data/assets/excel_doc/0005/45419/Gift-Register.xls
https://www.ecq.qld.gov.au/data/assets/pdf_file/0019/62353/Team-Jenny-Hill-4.pdf
<https://disclosures.ecq.qld.gov.au/Map>

- On ECQ officers printing ballot papers at booths, I note that the AEC has new printers for House of Reps ballots and these are printed in front of you with an official watermark, depending on which electorate you fall into. There will have to be strict compliance and methods of establishing that the ballots issued are for people marked off the roll. There also has to be a “walk around” of the state of the rolls again like what happened in Townsville to start the Shepherdson inquiry
<http://www.ccc.qld.gov.au/research-and-publications/publications/misconduct/the-shepherdson-inquiry-an-investigation-into-electoral-fraud.pdf>
- KEEP FINANCIAL RECORDS FOR 10 YEARS, because prosecutions can be stalled by incumbent governments. And it takes a long time for whistleblowers to come forward. They may wait till a politicians control over the levers of power and

networks have been smashed. This may take ten years and a couple of electoral cycles like Obeid and a rounding up of the labor types pushing CPV.

- That if a parliamentary majority is lost due to corruption or other offences or resignations a new election must be called, by elections must always be called for casual vacancies, and continue till the next election was due.
- Addressing the amendment described in the stage 2 explanatory notes – *“To implement the Government’s response to Recommendation 12 the Bill amends the LGEA section 26 to provide that a person may be nominated as a candidate for an election only if the person has, within six months before the nomination day for the election, successfully completed a training course approved by the department’s chief executive about the person’s obligations as a candidate, including the person’s obligations under the LGEA part 6 (Electoral funding and financial disclosure); and the person’s obligations as a councillor, if the person is elected or appointed, including obligations under a Local Government Act within the meaning of the LGA”* disproportionate – unconstitutional slipped in to give parties time to get dirt on people and to affect employment if they are a public servant. Its against s327(1) of the CTH Electoral Act and s78 of The Qld Criminal code that state :

http://www.austlii.edu.au/cgi-bin/viewdoc/au/legis/cth/consol_act/cea1918233/s327.html

Interference with political liberty etc.

S327(1) A person shall not hinder or interfere with the free exercise or performance, by any other person, of any political right or duty that is relevant to an [election](#) under this Act.

[Penalty](#): Imprisonment for 6 months or 10 [penalty](#) units, or both.

Criminal Code of QLD 78 Interfering with political liberty

(1) Any person who by violence, or by threats or intimidation of any kind, hinders or interferes with the free exercise of any political right by another person, is guilty of a misdemeanour, and is liable to imprisonment for 2 years.

(2) If the offender is a public officer, and commits the offence in abuse of the offender’s authority as such officer, the offender is liable to imprisonment for 3 years.

The references to “Any Political Right” is to be interpreted to mean electoral conduct and matter relating to an election within the meaning of The CTH Electoral Act and the ICCPR article 19 Freedom of expression and also protection against arbitrary arrest *Coleman v Australia* <https://www.hrlc.org.au/human-rights-case-summaries/coleman-v-australia-hrc-communication-no-11572003-un-doc-ccprc87d11572003-10-august-2006>

- Allow cops to prosecute under the electoral acts as well as the code by amending the Police Powers and Responsibilities Act -schedule 1 , and the Electoral acts to say cops can do it aswell . And it can be privately prosecuted, aswell as the commission to remove impediments to prosecutions that may be put in place by politicians protecting people.
- The police can use the following provisions of the code now, to around the ECQ covering for politicians and parties s7 and s204. However , a conspiracy charge can only be brought with consent of the attorney general. Thats where you can use the joint offenders sections to get around that and use the conspiracy common law to help.

But it must be ingrained that they must act on their initiative in the normal lawful way its says they must prosecute others for various reasons :

<https://www.legislation.qld.gov.au/view/html/inforce/current/act-1899-009#sec.7>

Preamble s7 Offender may be prosecuted under Code or other statute

When an offender is punishable under the provisions of the Code, and also under the provisions of some other statute, the offender may be prosecuted and convicted under the provisions either of the Code or of such other statute, so that the offender is not twice punished for the same offence.

<https://www.legislation.qld.gov.au/view/html/inforce/current/act-1899-009#sch.1-sec.204>

204 Disobedience to statute law

(1)Any person who without lawful excuse, the proof of which lies on the person, does any act which the person is, by the provisions of any public statute in force in Queensland, forbidden to do, or omits to do any act which the person is, by the provisions of any such statute, required to do, is guilty of a misdemeanour, unless some mode of proceeding against the person for such disobedience is expressly provided by statute, and is intended to be exclusive of all other punishment.

(2)The offender is liable to imprisonment for 1 year.

s543 Other conspiracies

(1) Any person who conspires with another to effect any of the purposes following, that is to say—

(a) to prevent or defeat the execution or enforcement of any statute law;

(b) to cause any injury to the person or reputation of any person, or to depreciate the value of any property of any person;

(f) to effect any unlawful purpose

(g) to effect any lawful purpose by any unlawful means; is guilty of a misdemeanour, and is liable to imprisonment for 3 years.

(2) A prosecution for an offence defined in this section shall not be instituted without the consent of the Attorney-General.

- Though a person can initiate proceedings to remove councillors it must be amended that in that proceeding the evidence can be used to charge the councillor with an offence from the bench like a court can do under s697 of the code .- The Councillor removal provisions ;

“Any Person can bring an action in the Supreme Court Under the Qld Local Government Act 2009 ,for judicial review of qualifications (s157) of the council and whether they are therefore acting without authority (s158) cos they are taken to be disqualified for committing electoral and other offences (s153)

<https://www.legislation.qld.gov.au/view/html/inforce/current/act-2009-017#ch.6-pt.2-div.1>

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<https://www.legislation.qld.gov.au/view/html/inforce/current/act-2009-017#ch.6-pt.2-div.1>

- As incorporated from previous submissions : Mandate a local government Hansard , video recording of proceedings ;
- Commercial in confidence must not be used to cover for corruption ;
- Abolish council divisions again to make it proportional with optional preferential voting. This makes it harder for hillbilly majorities in single divisions to prevent progressives from getting a chance.
- Approval of HTV cards is unconstitutional per se , its trite law now [REDACTED] . If you set up a situation that a person can be dragged off, there will be court, there will be invalidity and there will be damages for false imprisonment and assault. I DARE YOU [REDACTED] .

- Compulsory preferential voting is unconstitutional for the federal reasons below. If you are reading Roach , you might aswell read Coleman v Power and all other proportionality cases that followed from it.
- The last federal election for The House Of Representatives was unconstitutional and must be held again. Regardless of the time limit each Simply repeating a bare statement of aligning state and local voting with federal CPV is stupid considering each can be used to challenge the other [REDACTED]

ARGUMENT TO STRIKE OUT THE REPS ELECTION AS VOID AND TO HOLD IT AGAIN WITH OPTIONAL PREFERENTIAL - SIMPLIFIED EXPLANATION

<https://www.facebook.com/notes/pat-coleman/argument-to-strike-out-the-reps-election-as-void-and-to-hold-it-again-with-optio/10157353588379759/>

The House of reps result for The Australian Federal Election 2019 can be challenged in the normal way under s181 of The CTH Electoral Act (The Act -Election wholly failed) in The High Court . IT MUST BE HELD AGAIN FOR THE HOUSE OF REPRESENTATIVES WITH OPTIONAL PREFERENTIAL .In [REDACTED] , in the normal way also , going on what the candidate told me The [REDACTED] candidate [REDACTED] was a teacher on leave from a religious school getting government funding , her primaries and prefs helped decide any outcome (Green v Bradbury) . If she wasn't entitled to run under s 44 like in Sykes v Cleary <http://www.austlii.edu.au/cgi-bin/viewdoc/au/cases/cth/HCA/1992/60.html> then she is also not entitled to the 4% of the vote public funding money and there has to be a by election on top.

(1) Simplified explanation of how the voting system for the House that the Prime Minister comes from – The House of Representatives , is unconstitutional compare these 2 cases : Langer v The CTH (1996) 186 CLR 302 at 317 , [1996] HCA 43 <http://www.austlii.edu.au/cgi-bin/viewdoc/au/cases/cth/HCA/1996/43.html>, and , Brown v Tasmania [2017] HCA 43 <http://www.austlii.edu.au/cgi-bin/viewdoc/au/cases/cth/HCA/2017/43.html>

· In Langer , the court held that CPV was a legitimate aim because it upheld the integrity of the electoral system. Since then the court made statements to the effect that there is a corollary implied in the freedom of communication of freedom of association. I argue the corollary of that – is the freedom to disassociate using s327(1) of the act and the ICCPR freedom of expression and association. What that means is that the freedom to disassociate is that we should not have to preference people we dont want to against our will .

· For the reps the act says you must fill out all boxes but if you leave just one blank and it doesn't matter why, they mark that for you in favour if the one you left out but only if it was blank. If you leave 2 or more blank, its wholly informal and doesn't get counted.

· The Federal 2016 results for Herbert (Based on Townsville) came down to 37 votes and house majority was 1 <https://results.aec.gov.au/20499/Website/HouseDivisionPage-20499-165.htm>The, 1995 Qld State seat Mundingburra (Based on Suburbs of Townsville) results were that 635 people exhausted their preferences , then after the remainder were distributed there was a 16 vote difference between the parties under the then Optional Preferential system. The state election turned on 16 votes

The Supreme Court of Qld decision in Tanti v Davies (No 3) [1995] QSC 298 (8 December 1995) http://www.austlii.edu.au/cgi-bin/viewdoc/au/cases/qld/QSC/1995/298.html?context=1;query=mundingburra;mask_path=au/cases/qld/QSC

Tanti v Electoral Commission of Queensland & Anor [1995] QSC 208 (25 August 1995) http://www.austlii.edu.au/cgi-bin/viewdoc/au/cases/qld/QSC/1995/208.html?context=1;query=mundingburra;mask_path=au/cases/qld/QSC

See **Abc Election archive**

:<http://www.abc.net.au/elections/archive/qld/results/1995/Mundingburra.htm>.

Queensland Parliament Factsheet Queensland By-Elections

https://www.parliament.qld.gov.au/documents/explore/education/factsheets/Factsheet_6.1_ByElections.pdf https://en.wikipedia.org/wiki/1996_Mundingburra_state_by-election

Without a doubt, its literacy, technology and access to information that is causing the old order to shake just as it with the reformation and the printing press. These 2 elections alone invoke what was hinted at in Langer above [1996] HCA 43; (1996) 186 CLR 302 at p 333 per Toohey and Gaudron JJ at par [17].

· I refer you to what I said in the section of my detailed argument below entitled “The proportionality argument “ s16(e) There is an obligation on electors to chose wisely. Citizens who take it seriously have an interest in, and a duty to their society and the body politic (*Mulholland 233 CLR at par [84] per Gummow , Kirby and Crennan JJ*) to make sure we don’t slide back into the white Australia Policy, AUSTRALIAN APARTHEID (*ibid [78]*). CPV deprives citizens and electors of the main ways to discharge their constitutional obligation. This obligation falls on all republicans. Its is as the court describes our “constitutional duty and obligation” *Mulholland 233 CLR 2004 HCA 41* <http://www.austlii.edu.au/cgi-bin/viewdoc/au/cases/cth/HCA/2004/41.html>

· Since Langer , my case , *Coleman v Power* , the *Unions v NSW* cases , *McCloy v NSW* and *Brown v Tasmania* have expanded a European style proportionality testing doctrine THAT ██████████ WITH THE LANGER DECISION . And , now , a law must have a rational connection to its purpose. Its gotta be proper reasons to be valid and cant be valid if the burden – our votes being informal, can be achieved in another demonstrated way . There is optional in other states. We did have it in Qld and it worked so they got rid of it. They brought in optional above the line in the senate with s269(1)(b) of the act. It cant rationally be argued that Langer is correct and cant be reopened because you would have to argue CPV is

for integrity whilst arguing that senate optional is also for integrity whilst at the same time being against- CATCH 22. CPV does not have a rational connection to its purpose and is disproportionate . . . So much of s 240 and s268 that says that optional preferential leads to the conclusion that a vote is informal if a person exhausts their vote- IS INVALID.

A simplified explanation as to why the AEC tells you how to vote in the senate election is also unconstitutional:

.A formal vote is 1 or more above the line , and no-one else but you directs the prefs and they stop with you , or 6 or more below. The AEC and parties were telling voters WHEN ASKED THAT IT WAS INFORMAL. THIS IS A CRIME UNDER BOTH S325 – OFFICER INFLUENCING THE VOTE AND S329 MISLEADING VOTERS.

The relevant provisions of the CTH Electoral Act state :

<https://www.legislation.gov.au/Details/C2019C00103/Download>

268A Formal votes below the line

(1) A ballot paper in a Senate election is not informal under paragraph 268(1)(b) if:

(b) if there are more than 6 squares printed on the ballot paper below the line—the voter has consecutively numbered any of those squares from 1 to 6 (whether or not the voter has also included one or more higher numbers in those squares).

269 Formal votes above the line

(1) A ballot paper in a Senate election is not informal under paragraph 268(1)(b) if:

(a) the voter has marked the ballot paper in accordance with subsection 239(2); or

(b) the voter has marked the number 1, or the number 1 and one or more higher numbers, in squares printed on the ballot paper above the line.

(1A) For the purposes of this Act:

(a) a voter who, in a square printed on the ballot paper above the line, marks only a single tick or cross is taken as having written the number 1 in the square; and

(b) the following numbers written in a square printed on the ballot paper above the line are to be disregarded:

(i) numbers that are repeated and any higher numbers;

(ii) if a number is missed—any numbers that are higher than the missing number.

Note: Paragraph (1A)(b) applies both for the purposes of determining whether a ballot paper is formal, and for the purposes of determining which numbers marked on a ballot paper are counted in the election.

Example: A ballot paper has squares above the line that are numbered 1, 1, 2 and 3. The vote is informal because, by disregarding the numbers 1 and upwards under subparagraph (1A)(b)(i), no squares have been numbered.

A second ballot paper has squares above the line that are numbered consecutively from 1 to 9 and then 11, 12, 13 and 14. The vote is formal under paragraph (1)(b). However, only the squares numbered from 1 to 9 are counted for the purposes of sections 273 and 273A because the numbers 11 and upwards are disregarded under subparagraph (b)(ii) of this subsection.

This was upheld as formal by the High Court BEFORE the last election and greens knew it and lied just the same. It in pars [33] and [34] of this full bench decision against the godbotherer Day Day v Australian Electoral Officer for the State of South Australia; Madden v Australian Electoral Officer for the State of Tasmania [2016] HCA 20
<http://www.austlii.edu.au/cgi-bin/viewdoc/au/cases/cth/HCA/2016/20.html>

THE DETAILED CONSTITUTIONAL ARGUMENT

An argument for an immediate expedited hearing (s363A, and s369, s374 (iii)) on the validity of ss 240 and 268 of The CTH Electoral Act 1918 (The Compulsory Preferential operation and ballot formality sections) , and mandamus on the Australian Electoral commission to verbally inform electors for the House of Representative Election and senate of the changes, in the manner in which they may cast their votes in accordance with the law and orders of the court. Including ballot paper instructions

And that even after the election there is still a matter to be heard because the election result **WOULD HAVE BEEN DIFFERENT HAD THE ELECTION BEEN CONDUCTED UNDER THE OPTIONAL PREFERENTIAL SYSTEM.**

See s181 of the Act **181 Failure of election**

(1) Whenever an election wholly or partially fails a new writ shall forthwith be issued for a supplementary election. (2) An election shall be deemed to have wholly failed if no candidate is nominated or returned as elected.

THE DETAILED CONSTITUTIONAL ARGUMENT

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That the court may hand down its decision on validity and orders before the election **FINISHES** , like in Unions NSW (2019) . And that even after the election there is still a matter to be heard because the election result **WOULD HAVE BEEN DIFFERENT HAD**

THE ELECTION BEEN CONDUCTED UNDER THE OPTIONAL PREFERENTIAL SYSTEM.

That this apply also to means of voting including assisted electronic voting, as well as paper based voting including postals and declaration votes. And **the instructions** the relevant AEC Officer must put on the ballot papers subject to 209(5), 209(6)(c) and 209(6) (e) and 209(7) (b) , (d) and 209(8) of The CTH Electoral Act 1918 , Schedule 1 to the act , forms (e) and (f) .

That if the court makes a decision after the printing of ballots according to current understanding, it either order a delay in the election until new printing is carried out or issue mandamus to the AEC to verbally inform electors. The delay is preferred, lest in the absence of new instructions on the ballots electors might assume that foul play is afoot due to the contradiction, and that this would cause confusion in itself and unduly affect the outcome in an uneven and undesirable manner. See s181 of the Act **181 Failure of election**
(1) Whenever an election wholly or partially fails a new writ shall forthwith be issued for a supplementary election. (2) An election shall be deemed to have wholly failed if no candidate is nominated or returned as elected.

THE CASE FOR REOPENING AND OVERRULLING OF LANGER v THE CTH

- (1) As to authority on reopening High Court cases I refer to the case of Alqudsi v R [2016] HCA 24 and the dissenting judgement of French CJ at pars [65]-[67]. (HANKS Australian Constitutional Law Materials and Commentary 10th Ed. Meagher et al , Lexis nexis Butterworths , Australia , Printed 2016 p 265-266 , s3.2.50 , 3.2.51C)
- (2) The court will have to decide the lawfulness of the system before the election . *Ha v New South Wales* [1997] HCA 34; (1997) 189 CLR 465; (1997) 146 ALR 355; (1997) 71 ALJR 1080 (5 August 1997)

<http://www.austlii.edu.au/au/cases/cth/HCA/1997/34.html>

The majority said in relation to hundreds of millions unlawfully collected by the state that it must be returned immediately . “*This Court has no power to overrule cases prospectively. A hallmark of the judicial process has long been the making of binding declarations of rights and obligations arising from the operation of the law upon past events or conduct. The adjudication of existing rights and obligations as distinct from the creation of rights and obligations distinguishes the judicial power from non-judicial power. Prospective overruling is thus inconsistent with judicial power on the simple ground that the new regime that would be ushered in when the overruling took effect would alter existing rights and obligations. **If an earlier case is erroneous and it is necessary to overrule it,***

it would be a perversion of judicial power to maintain in force that which is acknowledged not to be the law.”

- (3) Compulsory voting is not in issue. It is both valid and desirable.
- (4) The impugned provisions in Langer either no longer exist, or do not exist in that form. It is not illegal now, to state what the terms of the provisions mean and to advocate voting contrary to them, as long as you do not intentionally mislead as to the consequences of it in s329 ***Misleading or deceptive publications etc.*** (1) *A person shall not, during the relevant period in relation to an election under this Act, print, publish or distribute, or cause, permit or authorize to be printed, published or distributed, any matter or thing that is likely to mislead or deceive an elector in relation to the casting of a vote.*
- (5) Though s327(1) had been inserted as it now stands, in 1983, at no time was it argued that that this may have affected the outcome.
- (6) The Electoral Act refers to voters as “Electors” and candidates are referred to as being “duly elected” (Langer, see contra - Dawson J at 332-333 who seemed confused about the arguments presented)
- (7) Div. 274 of The CTH Criminal Code Act, “Torture”, as amended in 2010 now applies to the interpretation of s327(1) of the CTH Electoral Act.
- (8) There has been a consistent long line of subsequent rulings in relation to the constitutional tests to be applied since Langer that are at odds with that previous ruling such as MCCloy v NSW, Monis, and Brown v Tasmania.
- (9) Since the 2004 ruling in Coleman, the court has developed a European style “proportionality testing utility” for the second limb of the Lange test that the relevant impugned provisions do not satisfy insofar as they require compulsory preferential voting for the House of Representatives.
- (10) The decision in Langer smells way past ripe, and is therefore ripe for reopening and overruling.

IS THE FREEDOM OF COMMUNICATION AND ITS COROLLARY THE FREEDOM OF ASSOCIATION AND TO DISSOCIATE BURDENED?

“Lange requires that a legislative measure which effects any burden on the freedom be assessed not only for its purpose, but for its operation and effect^[84]. The ultimate question, whether a legislative measure can be justified as reasonably appropriate and adapted, or proportionate, cannot be answered without determining its operation and effect. The enquiry as to its effect on the freedom generally is necessarily one about its operation and practical effect” Brown v Tasmania [2017] HCA 43 KIEFEL CJ, BELL and KEANE JJ at Par [50], GAGELER J at par [180] –[181], Nettle J at par [237] and [259]

- (1) Q. What do the provisions effectively do in their practical effect ? This is stated by Brennan CJ and the court in their erroneous reasoning in Langer (1996) 186 CLR 302 at 317 , [1996] HCA 43 at pars [10]-[11] and McHugh J at p338 “*It follows that the Parliament is empowered to prescribe a method of voting in an election for the House of Representatives that requires a voter to fill in a ballot paper in accordance with s 240, although that method requires a voter to choose by allocating preferences among candidates for whom the voter does not wish to vote. It is not to the point that, if a ballot paper were filled in otherwise than in accordance with s 240, the vote would better express the voter's political opinion.*” For a house of reps election , electors are prevented from exhausting their vote even if they are diametrically apposed to the candidates, and, in times of hung parliaments where the fate of the government may rise and fall on less than 50 votes and such a voter “strike” or exhaustion may at the local level , in one small area change the course of the country as much as a landslide. EVERYTHING IS LOCAL

Green v Bradbury [2011] FCA 71 at par [53]“*The facts set out in a petition must be such, if true, as would indicate that there is a real chance that the result of the election would be different if the allegedly illegal practice had not occurred (Kelly v Campbell [2002] FCA 1125 at [20])*

- *Deane and Toohey JJ Nationwide News (1992) 177 CLR 1 at 72*

“The people of the Commonwealth would be unable responsibly to discharge and exercise the powers of governmental control which the Constitution reserves to them if each person was an island, unable to communicate with any other person. The actual discharge of the very function of voting in an election or referendum involves communication. An ability to vote intelligently can exist only if the identity of the candidates for election or the content of a proposed law submitted for the decision of the people at a referendum can be communicated to the voter. The ability to cast a fully informed vote in an election of members of the Parliament depends upon the ability to acquire information about the background, qualifications and policies of the candidates for election and about the countless number of other circumstances and considerations, both factual and theoretical, which are relevant to a consideration of what is in the interests of the nation as a whole or of particular localities, communities or individuals within it.”

- (2) This is no “little burden” Hayne J Monis at [120] .
- (3) *The Court has just handed down the case of Clubb v Edwards , Preston v Avery [2019] HCA 11 10 April 2019 at pars [51] [82] [98] [99] [101] [197], THE MAJORITY AGREED WITH THE OLD DISSENTERS THAT THE PEOPLE ARE SOVEREIGN ! Compulsory preferential voting (**not compulsory voting**) offends against the dignity of voters by forcing them to swallow their pride if they want their votes to be declared formal and “recant” they’re political beliefs that are consistent with human rights and democracy in favour of those that arnt. This is not an abstract question, there is a matter as I don’t want to vote they want me to [135][136] . There are examples where , with the former OPV in Qld votes came down to 2 digits and*

- caused another by-election leading to a change in government from Townsville and came down to double digits for the seat of Herbert based on Townsville when the parliament was hung . CPV holds the sovereign people “captive to the 2 party system par [98] [99] <http://eresources.hcourt.gov.au/downloadPdf/2019/HCA/11>
- (4) Electors are prevented by the impugned provisions from voting “against” candidates by leaving more than 1 square on the reps ballot blank or their vote is informal. Rendering their desired vote “ineffective” if they wish to express only one or 2 preferences to the exclusion of others.
 - (5) For the senate , the commission informing people that they must fill out 6 boxes above and 12 below when formality rests on one above or 6 below artificially and unduly influences the outcome, which, if the uneducated voter were informed of they may take advantage of.
 - (6) As a historical fact, Australia had a republic referendum in 1999. It was rejected by a narrow majority. Its a notorious fact that it was because an unacceptable model was presented as a yes or no fait accompli . This is coming around again.
 - (7) Compulsory preferential voting means that voters cant discriminate between candidates with competing models let alone between republicans and royalists arguing for the status quo. Compulsory preferential voting stifles s128 of the constitution.
 - (8) The effective burden which isnt slight is that for the purposes of s7,24 and s128 of the constitution, electors are denied by the terms operation and effect of s240 and 268 at elections leading to referenda the right in s327(1) to vote against candidates groups or parties. It was Nationwide News and the decision of Deane and Toohey JJ that informed Coleman v Power arguments in the court of appeal and high court. Communications were struck down whether or not they were true or in the public interest. The same can be said of s240 and s268 , it forces you to vote for people you want, as well as for those you are against with no way out but an informal vote in the secrecy of the booth after getting ones name marked off as having voted. The only way, in all practicality, to vote against your enemies if you are in a minority, is to vote against your preferred candidate by denying the preference flow to the enemy.

THE PROPORTIONALITY ARGUMENT

- (1) Since the 2004 ruling in Coleman, the court has developed a European style “proportionality testing utility” for the second limb of the Lange test that the relevant impugned provisions do not satisfy insofar as they require compulsory preferential voting for the House of Representatives. This case should be decided using the tests set down in Brown v Tasmania at pars [5] , [88] , [90],[94] , [102]-[104] Nettle J at [295] and [298] . Hayne J Monis at [120]
- (2) The question is, do the impugned provisions go too far as being insofar as they would require compulsory preferential voting for House of Representative Elections?
- (3) There is a “bare assertion” from Langer (at339) per McHugh J “*The system is as effectively undermined by filling in a ballot-paper in a way that does not indicate*

the voter's complete order of preferences as it is by a vote that is wholly informal."

The court and its justices have been critical of claiming legitimate aims from such bare assertions such as "integrity" (Mulholland at par [235] of the system or act set up by legislation. It has a rhetorical ring to it . It allows the dominant majorities to "*hide behind a thin veneer of false repute*" *Deane and Toohey JJ , Nationwide New [1992] HCA 46 at par [25]*. **The true purpose of the law is to maintain the 2 party system , to give the fictional impression, that a majority or minority government declared elected , via individual candidates belonging to it being declared elected , is legitimate on a 2 party preferred basis because voters are forced to vote via compulsory preferences, for people they didn't want TO RECOGNISE OR SPEAK THE NAME OF IN THE BOXES anyway.**

- (4) Are there available less drastic means by which the aims can be achieved?
- (5) Applying the courts decision in *Day v Australian Electoral Officer for the State of South Australia; Madden v Australian Electoral Officer for the State of Tasmania [2016] HCA 20* at par [23] , the fact that we have optional preferential voting above and below the line for the senate , where a voter/elector can mark either 1 box , or 6 below and MAY continue to mark in order of preference, and that The High Court upheld it, shows that optional preferential voting is not prohibited by the constitution . It does not in itself harm democracy and in fact enhances it. It is not undermined as was stated by the court in Langer.
- (6) By virtue of s 200DJ(1) and (3) , s200DK and s206 of The Electoral Act , an elector is marked off as receiving the ballot once identified and goes to cast that ballot in private and in the secrecy of the booth. That vote is recorded as having been cast and no other elector can use it No commission staff may disclose information identifying an electors vote or about how the person voted. No prosecution if any could be instigated for informal voting. The practical effect of this is that is not illegal (Brown v Tasmania) to cast an informal ballot into the box to deny it "falling into the wrong hands' through being forced to mark ballots against the electors wishes .It complies with s245(1) where it states "(1) It shall be the duty of every elector to vote at each election" . The elector has voted. But for the terms of the compulsory *preferential* provisions, an elector could lawfully be taken to have "voted against" all candidates. This is supposed to be protected by s327(1).
- (7) Optional Preferential voting is consistent with the ICCPR articles 19 -freedom of Opinion and Expression (see *Coleman v Australia*) and 22 freedom of association which has as its corollary the freedom to disassociate. OPV does not offend against the ICCPR's exceptions and limitations of rights.
- (8) In *Roach , Gummow , Kirby and Crennan JJ* said at [88] "*Paragraph (a) of s 93(8) of the Electoral Act disentitles those who are incapable of understanding the nature and significance of enrolment and voting because they are of unsound mind. That provision plainly is valid. It limits the exercise of the franchise, but does so for an end apt to protect the integrity of the electoral process. That end, plainly enough, is consistent and compatible with the maintenance of the system of representative government.*" In effect , if a person who isn't religious , believed that Hitler used the Vatican ratlines and escaped to mars without the help of the war criminal Werner Von

Braun, and came back after drinking of the cup of eternal life, and plastic surgery, to assume the identity of the Chief Justice of The High Court, s116 wouldn't apply cos the person isn't religious and they could arguably be denied the franchise. However, if a candidate, group or party had as their hero Adolf Hitler, and had as their policy that war criminals should be assisted by the Vatican, and the state, using public funds, to escape to mars to have plastic surgery in order to assume the identity of the CJ, and there were 5 of them on the ballot paper, who had different views about how they should get there, we arnt allowed to vote against them. Simply because the law and a previous case said we have a Hobsons Choice between them, i.e. take it or leave it, whether we liked it or not. THAT CANT LOGICALLY BE RIGHT !!!!

- (9) The CTH must be held to this part of their argument in Mulholland [2004] 220 CLR 181 at p191-2 par [18] HCA 41 par [20] and paraphrased by Gleeson CJ "*Attorney-General of the Commonwealth intervening, accept that the choice required by the Constitution is a true choice with "an opportunity to gain an appreciation of the available alternatives"*[13]. In the course of argument, examples were given of forms of ballot paper prescribed for use at elections which might not conform to that fundamental requirement. A ballot paper, for example, that had printed on it only one name, being that of the government candidate, requiring the name of any alternative candidate to be written in (a form not unknown in the past in some places), might so distort the process of choice as to fail to satisfy the test." And McHugh J at p217 par [86] HCA41 at par [88] "No doubt a point could be reached where the electoral system is so discriminatory that the requirements of ss 7 and 24 are contravened."
- It is a fact of life in Australia, that so far, for the House of reps elections, save for exceptions where other parties or independents may win scattered seats around the country, governments, whether majority or minority, cant be formed without the help of The Australian Labor Party, or the Coalition comprising the Liberal and National Parties of Australia at the federal level. The court has made, and will continue to make decisions in the political donations cases. Though limited in the federal sphere by a large disclosure threshold the Australian Electoral Commission has its own donations disclosure website which anyone, anywhere in the world can access on the internet. In Qld there is an effective online real time disclosure website. Anyone can gain real-time evidence that very many, less than altruistic donors, –donate and play both side of the street. As the court said in McCloy, there are felt concerns that the perception of corruption is evident. The High Court further held in McCloy v NSW [2015] HCA 34 (7 October 2015) there must be **equality of access to government** They upheld the NSW ban on developer donations. They were against the Americanisation of donations. It was said at par [93] "...the public interest in removing the risk and perception of corruption is evident. These are provisions which support and **enhance equality of access to government**, and the system of representative government which the freedom protects. The restriction on the freedom is more than balanced by the benefits sought to be achieved."
- <http://www.austlii.edu.au/au/cases/cth/HCA/2015/34.html>
- (10) To many desirous of change it can seem that the terms, operation and effect of CPV is to make the choice between the 2 majors, a choice between factions of the same party and therefore the political realities discussed in Day may lead to the conclusion that the choice offered is between 1 or 2 government candidates, and it falls to consider what numbers are placed against the remainder, which flows logically back to the majors depending on what order the majors are put by the voter..
- (11) As for that remainder, using historical facts and self description by candidates, parties and groups, There was an Australian Nazi Party seeking election There are

other self described Nazis , fascists and associated far right candidates , groups and parties . The former federal labor leader Latham joined One Nation; the former labor Mp Graham Campbell restarted the Old Australia First Party which is now a well known far right grouping whether or not registered. In a well known recent federal by-election caused by s44, there were a number of far right people (Longman) , on the same ballot . Even if you could leave one square blank, does it mean that the voter, who may have been jewish, preferred the nazi over the fascist ? Its goes without saying there may have been, like churches, a synagogue in the electorate or close by.

- (12) In Sykes v Cleary there were a number of victims of s44 on the same ballot. The court has recently had to deal with a plethora of such cases, hidden by well resourced parties with access to professional lawyers and senior council, and QC's as members who must have known. There is now a declaration form upon which a person can make the lie official about eligibility to be nominated, which falls to be considered AFTER AN ELECTION. These are felt concerns.
- (13) Speaking of felt concerns, what if, as a result of a royal commission, a high ranking (within their own community) religious official was before a court on trial, with no finding of guilt, at the time of nominations and Election Day, and the penalty would invoke s44. And the voters were not only atheists, but had knowledge of this?
- (14) There will come a time when they are all on the ballot. BUT WAIT, THERE'S MORE!
- (15) Referring to the court's decision again in Day at Par [23] Compulsory preferential voting "offends against the general principles of justice"
- (16) The court has handed down its own decisions as to the validity of organised crime consorting laws. Ask these questions ;
- (a) if one may not legally consort with persons of that nature, and one did so within the 6 meter rule (sanctity of the voting place) would the authorities seek a determination that subsequent amendments of the CTH Criminal Code, CTH Crimes Act, or of the laws of the states and Territories override, and are complimentary to the Electoral Act and such persons offending could be prosecuted? ;and
 - (b) If one is not so inclined to consort with such persons, then why should the constitution and the Electoral act be interpreted so as to compel voters/electors within the meaning of the act to express a preference for them against their will with the punishment being of declaring the ballot paper being informal?
 - (c) An elector may be a whistle blower against all sides.
 - (d) An elector may be a victim of crime or the above organised crime and have AVO's against one or more people who may be on the same ballot or they may be before the court . It may like proceedings in well known circumstances, invoke memories and severe psychological stress and harm to even see the names on ballot let alone be forced by law to recognise and express a preference between them . This can apply to all of the above circumstances.
 - (e) There is an obligation on electors to chose wisely. Citizens who take it seriously have an interest in, and a duty to their society and the body politic (*Mulholland 233 CLR at par [84] per Gummow , Kirby and Crennan JJ*) to make sure we

don't slide back into the white Australia Policy, AUSTRALIAN APARTHIED (*ibid* [78]). CPV deprives citizens and electors of the main ways to discharge their constitutional obligation. This is a not slight or little obligation or burden.

- (f) The insertion of and amendments to Div 274 of the CTH Criminal Code s274.1(1) and s274.2(4) "Torture" , Implemented the ICCPR and International Convention Against Torture and Other Cruel , Inhuman or Degrading Treatment or Punishment into The CTH Law. The Federal Governments own website invokes the international conventions when it comes to division 274 of the CTH Criminal Code
<https://www.ag.gov.au/RightsAndProtections/HumanRights/Human-rights-scrutiny/PublicSectorGuidanceSheets/Pages/Prohibitionontortureandcruelinhumanordegradingtreatmentorpunishment.aspx#6which>
- (g) The punishment/detriment is also discussed in the s327(1) argument discussed below .
- (h) But for the CPV terms and operation of s240 and 268 , that could constitute **274.2(a)**, "severe mental pain or suffering on a person under **(b)(ii) , (b)(iii), (b)(iv) ,(c) , and s274.2(2) . s274.2(4) States (4) Subsections (1) and (2) do not apply to conduct arising only from, inherent in or incidental to lawful sanctions that are not inconsistent with the Articles of the International Covenant on Civil and Political Rights (a copy of the English text of which is set out in Schedule 2 to the Australian Human Rights Commission Act 1986). Article 18(1). Freedom of thought. Article 19, Freedom of expression and the right to manifest it. Article 22(1) Freedom of association, which has as its corollary the freedom to disassociate. Article 25(b) free expression of the will of the electors. Article 26 Freedom from discrimination. **274.4 says No defence of exceptional circumstances or superior orders****

"It is not a defence in a proceeding for an offence under this Division that:

(a) the conduct constituting the offence was done out of necessity arising from the existence of a state of war, a threat of war, internal political instability, a public emergency or any other exceptional circumstance; or

(b) in engaging in the conduct constituting the offence the accused acted under orders of a superior officer or public authority; but the circumstances referred to in paragraphs (a) and (b) may, if the accused is convicted of the offence, be taken into account in determining the proper sentence."

THE S327(1) ARGUMENT

327 Interference with political liberty etc.

- (1) **A person shall not hinder or interfere with the free exercise or performance, by any other person, of any political right or duty that is relevant to an election under this Act.**

Penalty: Imprisonment for 6 months or 10 penalty units, or both.

Its The Constitution that defines what Electoral or political matter is. The Act seeks to define and confine Electoral “matter” by s4AA of the act and by s322 to limit it to the period between the writs and the end of polling . Matters concerning referendums are not defined. But for the purposes of s327(1) relating to voting supporting and opposing is electoral matter S4AA is open to challenge. .

I refer again to what Nettle J said in *Brown v Tasmania* at [295] and [298] “*As the plurality reasoned in McCloy, whether such a risk is "undue" is to be assessed by weighing the consequent effect upon the implied freedom of political communication against the apparent public importance of the purpose sought to be achieved by the provisions*” see also. Hayne J in *Monis* at [120]

EVERYTHING IS LOCAL

Green v Bradbury [2011] FCA 71 at par [53] “The facts set out in a petition must be such, if true, as would indicate that there is a real chance that the result of the election would be different if the allegedly illegal practice had not occurred (Kelly v Campbell [2002] FCA 1125 at [201)

Contrary to what the court said in *Day* at [2016] HCA 20 applying *McKinlay* par [24] the provisions of the act in this case DO discriminate against people who are not, and do not approve of candidates, parties or groups. When it comes down to the end , The count and recount, The ‘felt concerns” of a handful of votes matter .Where a handful of preferences determine a matter, whether or not it was the wish of the voter , this not only influences, but distorts (*Roach at p 188-9 par [49]*) the course the count and election but history , and the constitutional meaning given by “freely chosen” from time to time. And thus the exercises that must be undertaken when engaging in the legal and verbal gymnastics required to deny the right of full optional preferential voting –WITHOUT INJURY TO THE PERSONS ATTEMPTING IT .

“Whereas recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world,

Whereas disregard and contempt for human rights have resulted in barbarous acts which have outraged the conscience of mankind, and the advent of a world in which human beings shall enjoy freedom of speech and belief and freedom from fear and want has been proclaimed as the highest aspiration of the common people,

Whereas it is essential, if man is not to be compelled to have recourse, as a last resort, to rebellion against tyranny and oppression, that human rights should be protected by the rule of law”(extract from the Preamble of The Universal Declaration of Human Rights)

“Suppression of such criticism of government and government officials removes an important safeguard of the legitimate claims of individuals to live peacefully and with dignity in an ordered and democratic society. Indeed, if that suppression be institutionalized, it constitutes a threat to the very existence of such a society in that it reduces the possibility of peaceful

change and removes an essential restraint upon excess or misuse of governmental power”
Nationwide News(1992) 177 CLR 1 at par [25] Deane and Toohey JJ

In Mulholland CLR 220 par [96] HCA 41 at [98] McHugh J said :

*“The primary purpose of a ballot-paper, however, is to record the voter's preferences among the candidates standing for election to Parliament in the voter's electorate. It is part of a process for the casting, counting and recording of votes to elect Parliamentary representatives which is the end to which the Constitution's implication of freedom of communication is directed. **It does not convey information, ideas, opinions and arguments that may enable other voters to make an informed judgment as to how they should vote. Nor does it seek to persuade candidates in the election to modify or adjust their policies.** The delivery of a ballot-paper to an elector is primarily a communication by the Commission to that elector that informs the elector what candidates are standing for election and what parties, if any, they represent. It also informs the elector of the manner in which an elector may record a valid vote. In so far as the elector makes a communication by marking the ballot-paper and lodging it in the ballot-box, the elector's primary purpose is to inform the Commission - the body charged with conducting the election - which candidate or candidates the elector wishes to have elected.”*

Balderdash ! Because of the last republic vote the question and process is going to be different . People hand out HTV's , people scrutineer the vote . Parties lose seats because of the ballot and next time round or in a following local, state or federal election or by-election they may get hammered. If the federal system was optional preferential, everyone knew it, the “joke” as it used to be called in Qld , The system , would indeed be undermined cos someone would shout the punch line before the corrupt fascist/nazi gypsie joker. What parties call “polling”. And if there are a larger group of people in the electorate than the swinging vote who make demands, that may be that!

- *Deane and Toohey JJ Nationwide News (1992) 177 CLR 1 at 72*

*“The people of the Commonwealth would be unable responsibly to discharge and exercise the powers of governmental control which the Constitution reserves to them if each person was an island, unable to communicate with any other person. The actual discharge of the very function of voting in an election or referendum involves communication. An ability to vote intelligently can exist only if the identity of the candidates for election or the content of a proposed law submitted for the decision of the people at a referendum can be communicated to the voter. The ability to cast a fully informed vote in an election of members of the Parliament depends upon the ability to acquire information about the background, qualifications and policies of the candidates for election and about the countless number of other circumstances and considerations, both factual and theoretical, which are relevant to a consideration of what is in the interests of the nation as a whole or **of particular localities, communities or individuals within it.**”*

Langer [1996] HCA 43; (1996) 186 CLR 302 at p 333 per Toohey and Gaudron JJ at par [17]

“[17] There is, perhaps, more force in an argument that an individual who is "elected on final preferences" (48) is not properly described as "chosen by the people". However, in our view, such a person is as much "chosen by the people" as a candidate who is unopposed and declared "duly elected" pursuant to s 179(3) of the Act and who, as already indicated, is properly encompassed in the expression "chosen by the people". This notwithstanding, it may be that the same could not be said if the outcome of an election were to depend on deemed preferences because of the operation of one or other of the provisos to s 268(1)(c) of the Act. If in the event of a tied vote, for example, the candidate for whom fewer voters expressed a final preference were to be declared elected, it may be that he or she could not accurately be described as "chosen by the people" (49). That, however, is a question that is separate and distinct from any question as to the validity of s 240 of the Act. Moreover, it is a question that may never arise.”

The Federal 2016 results for Herbert (Based on Townsville) came down to 37 votes and house majority was 1 <https://results.aec.gov.au/20499/Website/HouseDivisionPage-20499-165.htm>

The, 1995 Qld State seat Mundingburra (Based on Suburbs of Townsville) results were that 635 people exhausted their preferences , then after the remainder were distributed there was a 16 vote difference between the parties under the then Optional Preferential system. The state election turned on 16 votes

The Supreme Court of Qld decision in **Tanti v Davies (No 3) [1995] QSC 298 (8 December 1995)** http://www.austlii.edu.au/cgi-bin/viewdoc/au/cases/qld/QSC/1995/298.html?context=1;query=mundingburra;mask_path=au/cases/qld/QSC

Tanti v Electoral Commission of Queensland & Anor [1995] QSC 208 (25 August 1995) http://www.austlii.edu.au/cgi-bin/viewdoc/au/cases/qld/QSC/1995/208.html?context=1;query=mundingburra;mask_path=au/cases/qld/QSC

See Abc Election archive
[:http://www.abc.net.au/elections/archive/qld/results/1995/Mundingburra.htm](http://www.abc.net.au/elections/archive/qld/results/1995/Mundingburra.htm) .

Queensland Parliament Factsheet Queensland By-Elections
https://www.parliament.qld.gov.au/documents/explore/education/factsheets/Factsheet_6.1_ByElections.pdf https://en.wikipedia.org/wiki/1996_Mundingburra_state_by-election

Without a doubt, its literacy, technology and access to information that is causing the old order to shake just as it with the reformation and the printing press. These 2 elections alone invoke what was hinted at in **Langer above [1996] HCA 43; (1996) 186 CLR 302 at p 333 per Toohey and Gaudron JJ at par [17]** .

In *Brown v Tasmania* [2017] HCA 43 par [90] The Court applying previous settled authority said unless you can point to a pre existing statutory right the freedom will only be a

restriction on legislative power which burdens communication. It is settled that s327(1) protects the statutory right to vote AGAINST CANDIDATES. Even without s327(1), the subsequent cases on proportionality mean the decision of the court in Langer is erroneous. However, the Federal Court in Both *Green v Bradbury* and *Hudson v Entsch* [2005] FCA 460 at [34]-[56]

Applying Hudson v Entsch [2005] FCA 460 at [34]-[56]

In *Hudson* the court explained that s327(1) was used to interpret other provisions. However, here we are concerned with the application of s327(1) for the purposes of informing the arguments about the disproportionate nature of enforced CPV for reps elections.

In none of the s327(1) cases is the focus on the word's "*free exercise or performance*" "*any*", as it applies to "*any political right or duty*" *Hudson* at pars[38]-[39], [44]. In his decision, Dowsett J merely refers to "a political right or duty". He said at [44] "*Of course, the conduct prescribed by subs 327(1) is limited to conduct affecting the exercise or performance of a political right or duty which is 'relevant to an election under this Act'. To that extent, and despite Mr Hudson's assertions to the contrary, his argument must be so limited.*"

He went on to be wilfully blind of the words "free exercise or performance" and 'any' when used in conjunction with "political right or duty" [47] before holding [49] "*In my view, a political right, for the purposes of subs 327(1) is the right to vote (including the allocation of preferences), the right to stand for election and the right to support or oppose a candidate, group of candidates or party. It is not necessary to determine whether the matter referred to in pars 326(1)(e) and 326(2)(e) involves political rights for the purposes of subs 327(1).*"

Keeping in mind that the AEC declaring a vote or ballot informal AGAINST THE ELECTORS WISHES is capable of being described as being a detriment for purposes of the Torture law and s327(1) he said the following as well [56] "*In my view, the approach urged by the Electoral Commission is unduly narrow. If applied to s 326, it would deprive pars 326(1)(c) and 326(2)(c) of virtually any effect. There is very little point in trying to change a person's opinion by the use of force or detriment. Opinions, of themselves, are of little effect. It is the manifestation of such opinions which may affect others. In protecting a person's right to stand for office or to vote freely, s 326 protects rights to act. There is no reason to doubt that in protecting the right to support or oppose a candidate, the subsection also protects the right to act. If, as I consider, subs 327(1) seeks to protect, at least, the same aspects of the electoral process as does s 326, it follows that the sub-section proscribes the use of violence, detriment or threats thereof, intended to affect a person's right to manifest his or her views concerning a candidate, group or party.*"

See also

Green v Bradbury[2011] FCA 71

"[48] Paragraph 31 of the Petition asserts that, by reason of the matters alleged in paragraphs 21, 26, 27 and 28, Mr Bradbury has committed or attempted to commit undue influence. Only paragraph 21 asserts a contravention of s 327. Paragraphs 26, 27 and 28

variously allege breaches of s 326 and s 328 of the Electoral Act and s 48 and [s 49](#) of the [Constitution](#). Since undue influence is defined as meaning a contravention of s 327, the other paragraphs appear to have no relevance to the allegation of undue influence in paragraph 31.

[49]Section 327(1) prohibits a person from hindering or interfering with the free exercise or performance, by any other person, of any political right or duty that is relevant to an election under the Act. The relevant right or duty is said to be the right to vote and the duty to do so as prescribed by the Electoral Act. The right to vote is protected by s 327 (*Hudson v Entsch* [\[2005\] FCA 460](#); [216 ALR 188](#) at [\[49\]](#)). The duty to vote is also covered by s 327(1).”

[53] The facts set out in a petition must be such, if true, as would indicate that there is a real chance that the result of the election would be different if the allegedly illegal practice had not occurred (Kelly v Campbell [\[2002\] FCA 1125](#) at [\[20\]](#)).”

What also informs s327(1) is the obligation on electors to chose wisely. Citizens who take it seriously have an interest in, and a duty to their society and the body politic (*Mulholland 233 CLR at par [84] per Gummow , Kirby and Crennan JJ*) to make sure we don't slide back into the white Australia Policy, AUSTRALIAN APARTHIED (*ibid [78]*)

Schedule 1 , form (e) That the Schedule and form Senate ballot instructions for above and below the line, is invalid to the extent that for:

- (a) The required instructions for printing the ballot for above the line do not say that you must mark at least one box , and you may continue to mark many remaining as you like in order of your preference ;and
- (b) The required instructions for printing the ballot for below the line do not say that you must if choosing to vote below, number at least 6 but may continue to mark as many remaining as you like in order of your preference

Schedule 1 form (f) house of representatives ballot instructions is invalid to the extent that The required instructions for printing the ballot for above the line do not say that you must mark at least one box , and you may continue to mark many remaining as you like in order of your preference

It therefore, is an AEC Officer that causes the instructions/directions to be printed on the ballot papers for the senate under s209(5) and 209(6)(c) and the reps under s209(7)(b)

It is the right to vote against candidates, groups and parties in s327 (1) in conjunction with the right to have a ballot for the senate declared formal in s268(1)(b) and s269(1)(b) (*Mulholland 200 CLR p 245 par [182] per Gummow J and Hayne J applying McClure*) that is the exception pointed out in Lange , Levy and Brown v Tasmania. The right is positive. But for the invalid requirements of s240, s268, schedule 1 form (e) and (f) there would be a positive right to VOTE AGAINST people in a House of reps election. **It is not shown that the**

burden on the freedom of communication, association and the corollary the right to disassociate is necessary to the achievement of any legitimate aim , because its contradicted by the senate voting system which shows that optional preferential is legitimate and such was argued by the State in Day.

The AEC has legal requirements (*Deane and Toohey JJ in Nationwide at 72 above and Mulholland at 220 CLR p 211 par [73]*) not to influence the vote by refusing to have printed on the ballot and verbally advise electors **200DJ** , **s200DK** that they may have a lawful choice of voting one or more as they see fit above the line or 6 or more as they see fit below s268(1)(b) and s269(1)(b) (Day v AEC).

This is because, in the absence of the **then s328A in Langer as it then was** it falls to be considered whether the AEC is liable to be punished under ss 324-325A and the new s 329(1) for misleading them its full preferential , when , if they had a choice and exercised it they may have acted differently and therefore changed the outcome of the numbers in the count , whether or not affecting the election outcome, because the numbers are the outcome.

The new **s329**

“Misleading or deceptive publications etc.

(1) A person shall not, during the relevant period in relation to an election under this Act, print, publish or distribute, or cause, permit or authorize to be printed, published or distributed, any matter or thing that is likely to mislead or deceive an elector in relation to the casting of a vote.”

Cases (each case link contains cases referred to)

Langer v The CTH (1996) 186 CLR 302 at 317 , [1996] HCA 43

<http://www.austlii.edu.au/cgi-bin/viewdoc/au/cases/cth/HCA/1996/43.html>

Nationwide News v Wills (1992) 177 CLR 1 <http://www.austlii.edu.au/cgi-bin/viewdoc/au/cases/cth/HCA/1992/46.html>

Lange v The Abc <http://www.austlii.edu.au/cgi-bin/viewdoc/au/cases/cth/HCA/1997/25.html>

Alqudsi v R [2016] HCA 24 <http://www.austlii.edu.au/cgi-bin/viewdoc/au/cases/cth/HCA/2016/24.html>

Ha v New South Wales [1997] HCA 34; (1997) 189 CLR 465; (1997) 146 ALR 355; (1997) 71 ALJR 1080 (5 August 1997) <http://www.austlii.edu.au/au/cases/cth/HCA/1997/34.html>

Brown v Tasmania [2017] HCA 43 <http://www.austlii.edu.au/cgi-bin/viewdoc/au/cases/cth/HCA/2017/43.html>

Monis v R <http://www.austlii.edu.au/cgi-bin/viewdoc/au/cases/cth/HCA/2013/4.html>

Green v Bradbury [2011] FCA 71 http://www.austlii.edu.au/cgi-bin/viewdoc/au/cases/cth/FCA/2011/71.html?context=1;query=green%20v%20bradbury;mask_path=au/cases/cth/FCA

Hudson v Entsch [2005] FCA 460 http://www.austlii.edu.au/cgi-bin/viewdoc/au/cases/cth/FCA/2005/460.html?context=1;query=Entsch%20;mask_path=au/cases/cth/FCA

Clubb v Edwards , Preston v Avery [2019] HCA 11
<http://eresources.hcourt.gov.au/downloadPdf/2019/HCA/11>

Coleman v Power <http://www.austlii.edu.au/cgi-bin/viewdoc/au/cases/cth/HCA/2004/39.html>

Day v Australian Electoral Officer for the State of South Australia; Madden v Australian Electoral Officer for the State of Tasmania [2016] HCA 20 <http://www.austlii.edu.au/cgi-bin/viewdoc/au/cases/cth/HCA/2016/20.html>

Roach v Electoral Commissioner [2007] HCA 43

<http://www.austlii.edu.au/cgi-bin/viewdoc/au/cases/cth/HCA/2007/43.html>

McCloy v NSW [2015] HCA 34 <http://www.austlii.edu.au/au/cases/cth/HCA/2015/34.html>

Mulholland 233 CLR 2004 **HCA 41** <http://www.austlii.edu.au/cgi-bin/viewdoc/au/cases/cth/HCA/2004/41.html>

Tanti v Davies (No 3) [1995] QSC 298 (8 December 1995) http://www.austlii.edu.au/cgi-bin/viewdoc/au/cases/qld/QSC/1995/298.html?context=1;query=mundingburra;mask_path=au/cases/qld/QSC

Tanti v Electoral Commission of Queensland & Anor [1995] QSC 208 (25 August 1995)
http://www.austlii.edu.au/cgi-bin/viewdoc/au/cases/qld/QSC/1995/208.html?context=1;query=mundingburra;mask_path=au/cases/qld/QSC

See Abc Election archive
:<http://www.abc.net.au/elections/archive/qld/results/1995/Mundingburra.htm> .

Queensland Parliament Factsheet Queensland By-Elections
https://www.parliament.qld.gov.au/documents/explore/education/factsheets/Factsheet_6.1_ByElections.pdf https://en.wikipedia.org/wiki/1996_Mundingburra_state_by-election

Legislation

CTH Electoral Act s4AA, **200DJ**, **s200DK**, s209, s239, s240, s268(1)(b) and s269(1)(b), s322, s327, s329, s339 <https://www.legislation.gov.au/Details/C2019C00103/Download>

High Court Rules 2004 <http://www.hcourt.gov.au/registry/filing-documents>

CTH Criminal Code Act 1995 Div 274
<https://www.legislation.gov.au/Details/C2019C00043/Download>

ICCPR <https://www.humanrights.gov.au/international-covenant-civil-and-political-rights-human-rights-your-fingertips-human-rights-your>

UDHR <https://www.un.org/en/universal-declaration-human-rights/>

EXTRACTED PROVISIONS

CTH CRIMINAL CODE ACT

Division 274—Torture

274.1 Definitions

(1) In this Division:

Convention means the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment adopted by the General Assembly of the United Nations at New York on 10 December 1984.

Note: The text of the Convention is set out in Australian Treaty Series 1989 No. 21 ([1989] ATS 21). In 2010, the text of a Convention in the Australian Treaty Series was accessible through the Australian Treaties Library on the AustLII website (www.austlii.edu.au).

(2) An expression that is used both in this Division and in the Convention (whether or not a particular meaning is given to it by the Convention) has, in this Division, the same meaning as it has in the Convention.

274.2 Torture

(1) A person (the **perpetrator**) commits an offence if the perpetrator:

(a) engages in conduct that inflicts severe physical or mental pain or suffering on a person (the **victim**); and

(b) the conduct is engaged in:

(i) for the purpose of obtaining from the victim or from a third person information or a confession; or

(ii) for the purpose of punishing the victim for an act which the victim or a third person has committed or is suspected of having committed; or

(iii) for the purpose of intimidating or coercing the victim or a third person; or

(iv) for a purpose related to a purpose mentioned in subparagraph (i), (ii) or (iii); and

(c) the perpetrator engages in the conduct:

(i) in the capacity of a public official; or

(ii) acting in an official capacity; or

(iii) acting at the instigation, or with the consent or acquiescence, of a public official or other person acting in an official capacity.

Penalty: Imprisonment for 20 years.

(2) A person (the **perpetrator**) commits an offence if the perpetrator:

- (a) engages in conduct that inflicts severe physical or mental pain or suffering on a person; and
- (b) the conduct is engaged in for any reason based on discrimination of any kind; and
- (c) the perpetrator engages in the conduct:
 - (i) in the capacity of a public official; or
 - (ii) acting in an official capacity; or
 - (iii) acting at the instigation, or with the consent or acquiescence, of a public official or other person acting in an official capacity.

Penalty: Imprisonment for 20 years.

(3) Absolute liability applies to paragraphs (1)(c) and (2)(c).

Note: For absolute liability, see section 6.2.

(4) Subsections (1) and (2) do not apply to conduct arising only from, inherent in or incidental to lawful sanctions that are not inconsistent with the Articles of the International Covenant on Civil and Political Rights (a copy of the English text of which is set out in Schedule 2 to the *Australian Human Rights Commission Act 1986*).

(5) Section 15.4 (extended geographical jurisdiction—category D) applies to an offence against subsection (1) or (2).

274.4 No defence of exceptional circumstances or superior orders

It is not a defence in a proceeding for an offence under this Division that:

- (a) the conduct constituting the offence was done out of necessity arising from the existence of a state of war, a threat of war, internal political instability, a public emergency or any other exceptional circumstance; or
- (b) in engaging in the conduct constituting the offence the accused acted under orders of a superior officer or public authority;

but the circumstances referred to in paragraphs (a) and (b) may, if the accused is convicted of the offence, be taken into account in determining the proper sentence.

200DJ Right of voter to receive ballot paper

(1) If, under section 200DG, the voter is entitled to vote by pre-poll ordinary vote, a voting officer must give the voter a ballot paper, duly initialled by the officer.

(2) The voting officer, at the request of a scrutineer, must note any objection by the scrutineer to the right of the voter to vote by pre-poll ordinary vote, and must keep that record.

(3) Immediately after giving the ballot paper to the voter, the voting officer must:

(a) place a mark against the person's name on a copy of the certified list of voters for the voter's Division; or

(b) record electronically against an approved list of voters for the voter's Division

200DK Voter to mark vote on ballot paper

Except as otherwise prescribed by the regulations, the voter, upon receipt of a ballot paper under section 200DJ, must without delay:

- (a) go to an unoccupied compartment of the voting place and mark his or her ballot paper in private; and
- (b) fold the ballot paper so as to conceal his or her vote and deposit it in a ballot-box; and
- (c) leave the voting place.

206 Separate voting compartments

Polling booths shall have separate voting compartments, constructed so as to screen the voters from observation while they are marking their ballot papers, and each voting compartment shall be furnished with a pencil for the use of voters.

If the decision is handed down after printing or too late , the court issue mandamus to aec to verbally inform electors of changes prior to pre polling or asap.

209 Ballot papers

(1) Ballot papers to be used in a Senate election shall be in Form E in Schedule 1.

(2) Ballot papers to be used in a House of Representatives election shall be in Form F in Schedule 1.

(3) Ballot papers must have a green background colour for House of Representatives elections and a white background colour for Senate elections and are to be printed using black type face of a kind ordinarily used in Commonwealth Government publications.

Note: One effect of this subsection is that party logos are printed only in black on ballot papers.

(5) The ballot papers to be used for postal voting shall have the words “Postal Ballot paper” as a heading and shall contain the following directions:

“Fold the ballot paper, place it in the envelope on which the postal vote certificate is printed and fasten the envelope.”.

(6) Before issuing a ballot paper for a Senate election, an officer shall, if the particulars are not already printed on the ballot paper, write on the ballot paper:

(a) the name of the State or Territory in which the election is to be held;

(b) the number of candidates to be elected;

(c) the numbers required to complete the *Directions* on the ballot paper;

(d) the full names of all candidates arranged in the same way as would be required if the names were being printed on the ballot paper; and

(e) the information that would be required by section 214 to be printed on the ballot paper if the ballot paper were being printed.

(7) Before issuing a ballot paper for a House of Representatives election, an officer shall, if the particulars are not already printed on the ballot paper, write on the ballot paper:

(a) the name of the State or Territory, and the name of the Division, in which the election is to be held;

(b) the numbers required to complete the *Directions* on the ballot paper;

(c) the full names of all candidates for the Division in the same order as would be required if the ballot paper were being printed; and (d) the information that would be required by section 214 to be printed on the ballot paper if the ballot paper were being printed.

(8) Before issuing a ballot paper that is to be used for postal voting, an officer must ensure that the words and directions required by subsection (5) are printed or written on the ballot paper.

245 Compulsory voting

(1) It shall be the duty of every elector to vote at each election.

239 Marking of votes in Senate election

Voting below the line

(1) Subject to subsection (2), a person must mark his or her vote on the ballot paper in a Senate election by:

- (a) writing at least the numbers **1 to 12** in the squares printed on the ballot paper below the line (with the number 1 being given to the candidate for whom the person votes as his or her first preference, and the numbers 2, 3, 4 and so on to at least the number **12** being given to other candidates so as to indicate the order of the person's preference for them); or
- (b) if there are 12 or fewer squares printed on the ballot paper below the line—numbering the squares consecutively from the number 1 (in order of preference as described in paragraph (a)).

Note: See also section 268A for when the vote is formal.

Voting above the line

(2) A vote may be marked on a ballot paper by:

- (a) writing at least the numbers 1 **to 6 in the squares (if any)** printed on the ballot paper above the line (with the number 1 being given to the party or group for whom the person votes as his or her first preference, **and the numbers 2, 3, 4, 5 and 6 being given to other parties or groups so as to indicate the order of the person's preference for them**); or
- (b) if there are 6 or fewer squares printed on the ballot paper above the line—numbering the squares consecutively from the number 1 (in order of preference as described in paragraph (a)).

Note: See also section 269 for when the vote is formal.

Candidates who die before polling day

(4) Where a candidate dies between the date of nomination and polling day, and the number of candidates remaining is greater than the number of candidates to be elected, a ballot paper shall not be informal by reason only:

- (a) of the inclusion on the ballot paper of the name of the deceased candidate;
- (b) of the marking of any consecutive number opposite that name; or
- (c) of the omission to place any number opposite that name, or of any resultant failure to indicate in consecutive order the voter's preferences.

240 Marking of votes in House of Representatives election

(1) In a House of Representatives election a person **shall** mark his or her vote on the ballot paper by:

- (a) writing the number 1 in the square opposite the name of the candidate for whom the person votes as his or her first preference; and
- (b) writing the numbers 2, 3, 4 (and so on, as the **case requires**) in the squares opposite the names of all the remaining candidates so as to indicate the order of the person's preference for them.

(2) The numbers referred to in paragraph (1)(b) are to be consecutive numbers, without the repetition of any number.

268 Informal ballot papers

(1) A ballot paper shall (except as otherwise provided by section 239, and by the regulations relating to voting by post) be informal if:

(a) subject to subsection (2), it is not authenticated by the initials of the presiding officer or a voting officer (within the meaning of Division 3 of Part XVA), or by the presence of the official mark;

(b) subject to sections 268A and 269, in a Senate election, it has no vote indicated on it, or it does not indicate the voter's first preference for 1 candidate and then consecutively number at least 11 other candidates in the order of his or her preference;

(c) in a House of Representatives election, it has no vote indicated on it, or it does not indicate the voter's first preference for 1 candidate and an order of preference for all the remaining candidates;

Provided that, where the voter has indicated a first preference for 1 candidate and an order of preference for all the remaining candidates except 1 and the square opposite the name of that candidate has been left blank, it shall be deemed that the voter's preference for that candidate is the voter's last and that accordingly the voter has indicated an order of preference for all the candidates;

Provided further that, where there are 2 candidates only and the voter has indicated his or her vote by placing the figure 1 in the square opposite the name of 1 candidate and has left the other square blank or placed a figure other than 2 in it, the voter shall be deemed to have indicated an order of preference for all the candidates;

(d) it has upon it any mark or writing (not authorized by this Act or the regulations to be put upon it) by which, in the opinion of the Divisional Returning Officer, the voter can be identified:

Provided that paragraph (d) shall not apply to any mark or writing placed upon the ballot paper by an officer, notwithstanding that the placing of the mark or writing upon the ballot paper is a contravention of this Act; or

(e) in the case of an absent vote—the ballot paper is not contained in an envelope bearing a declaration made by the elector under subsection 222(1) or (1A).

(2) A ballot paper to which paragraph (1)(a) applies shall not be informal by virtue of that paragraph if the Divisional Returning Officer responsible for considering the question of the formality of the ballot paper is satisfied that it is an authentic ballot paper on which a voter has marked a vote and the officer has endorsed the ballot paper with the words 'I am satisfied that this ballot paper is an authentic ballot paper on which a voter has marked a vote.'

(3) A ballot paper shall not be informal for any reason other than the reasons specified in this section, but shall be given effect to according to the voter's intention so far as that intention is clear.

268A Formal votes below the line

(1) A ballot paper in a Senate election is not informal under paragraph 268(1)(b) if:

(a) the voter has marked the ballot paper in accordance with paragraph 239(1)(b); or

(b) if there are more than 6 squares printed on the ballot paper below the line—the voter has consecutively numbered any of those squares from 1 to 6 (whether or not the voter has also included one or more higher numbers in those squares).

(2) For the purposes of this Act:

(a) a voter who, in a square printed on the ballot paper below the line, marks only a single tick or cross is taken as having written the number 1 in the square; and

(b) the following numbers written in a square printed on the ballot paper below the line are to be disregarded:

(i) numbers that are repeated and any higher numbers;

(ii) if a number is missed—any numbers that are higher than the missing number.

Note: Paragraph (2)(b) applies both for the purposes of determining whether a ballot paper is formal, and for the purposes of determining which numbers marked on a ballot paper are counted in the election.

Example: A ballot paper has squares below the line that are numbered 1, 2, 3, 3, 4, 5 and 6. The vote is informal because, by disregarding the numbers 3 and upwards under subparagraph (2)(b)(i), only 2 squares have been numbered.

A second ballot paper has squares below the line that are numbered consecutively from 1 to 9 and then 11, 12, 13 and 14. The vote is formal under paragraph (1)(b). However, only the squares numbered from 1 to 9 are counted for the purposes of sections 273 and 273A because the numbers 11 and upwards are disregarded under subparagraph (b)(ii) of this subsection.

269 Formal votes above the line

(1) A ballot paper in a Senate election is not informal under paragraph 268(1)(b) if:

- (a) the voter has marked the ballot paper in accordance with subsection 239(2); or
- (b) the voter has marked the number 1, or the number 1 and one or more higher numbers, in squares printed on the ballot paper above the line.**

(1A) For the purposes of this Act:

- (a) a voter who, in a square printed on the ballot paper above the line, marks only a single tick or cross is taken as having written the number 1 in the square; and

(b) the following numbers written in a square printed on the ballot paper above the line are to be disregarded:

- (i) numbers that are repeated and any higher numbers;
- (ii) if a number is missed—any numbers that are higher than the missing number.

Note: Paragraph (1A)(b) applies both for the purposes of determining whether a ballot paper is formal, and for the purposes of determining which numbers marked on a ballot paper are counted in the election.

Example: A ballot paper has squares above the line that are numbered 1, 1, 2 and 3. The vote is informal because, by disregarding the numbers 1 and upwards under subparagraph (1A)(b)(i), no squares have been numbered.

A second ballot paper has squares above the line that are numbered consecutively from 1 to 9 and then 11, 12, 13 and 14. The vote is formal under paragraph (1)(b). However, only the squares numbered from 1 to 9 are counted for the purposes of sections 273 and 273A because the numbers 11 and upwards are disregarded under subparagraph (b)(ii) of this subsection.

Votes that are formal both above and below the line

(2) If a ballot paper in a Senate election:

- (a) has squares marked above the line in accordance with subsection 239(2) or paragraph (1)(b) of this section; and
- (b) has squares marked below the line in accordance with subsection 239(1) or section 268A; then, for the purposes of sections 272 and 273, the only squares that are taken to have been marked on the ballot paper are the squares that are marked below the line.

324 Officers not to contravene Act etc.

A person who, being an officer, contravenes:

- (a) a provision of this Act for which no other penalty is provided; or
 - (b) a direction given to him or her under this Act;
- commits an offence punishable on conviction by a fine not exceeding 10 penalty units.

325 Officers not to influence vote

(1) A person who, being an officer other than an Antarctic officer, does any act or thing with the intention of influencing the vote of another person, commits an offence punishable on conviction by imprisonment for a period not exceeding 6 months or a fine not exceeding 10 penalty units, or both.

(2) A person who, being an Antarctic officer, during the relevant period in relation to an election under this Act, does any act or thing with the intention of influencing the vote of another person, commits an offence punishable on conviction by imprisonment for a period not exceeding 6 months or a fine not exceeding 10 penalty units, or both.

(3) In this section, *Antarctic officer* means:

(a) an Antarctic Returning Officer;

(b) an Assistant Antarctic Returning Officer; or

(c) a person appointed to act as an Antarctic Returning Officer or as an Assistant Antarctic Returning Officer.

325A Influencing votes of hospital patients etc.

(1) A person who is the proprietor of, or an employee of the proprietor of, a hospital or nursing home shall not do anything with the intention of influencing the vote of a patient in, or resident at, the hospital or nursing home.

Penalty: Imprisonment for 6 months or 10 penalty units, or both.

(2) The reference in subsection (1) to the proprietor of a hospital or nursing home includes a reference to a person who is a member or officer of a body corporate that is the proprietor of a hospital or nursing home.

327 Interference with political liberty etc.

(2) **A person shall not hinder or interfere with the free exercise or performance, by any other person, of any political right or duty that is relevant to an election under this Act.**

Penalty: Imprisonment for 6 months or 10 penalty units, or both.

(2) A person must not discriminate against another person on the ground of the making by the other person of a donation to a political party, to a State branch or a division of a State branch of a political party, to a candidate in an election or by-election or to a group:

(a) by denying him or her access to membership of any trade union, club or other body;

(b) by not allowing him or her to work or to continue to work;

(c) by subjecting him or her to any form of intimidation or coercion;

(d) by subjecting him or her to any other detriment.

Penalty:

(a) if the offender is a natural person—imprisonment for 2 years or 50 penalty units, or both; or

(b) if the offender is a body corporate—200 penalty units.

(3) A law of a State or Territory has no effect to the extent to which the law discriminates against a member of a local government body on the ground that:

(a) the member has been, is, or is to be, nominated; or

(b) the member has been, is, or is to be, declared;

as a candidate in an election for the House of Representatives or the Senate.

(4) In subsection (3):

member of a local government body means a member of a local governing body established by or under a law of a State or Territory.

329 Misleading or deceptive publications etc.

(1) A person shall not, during the relevant period in relation to an election under this Act, print, publish or distribute, or cause, permit or authorize to be printed, published or distributed, any matter or thing that is likely to mislead or deceive an elector in relation to the casting of a vote.

(4) A person who contravenes subsection (1) commits an offence punishable on conviction:

(a) if the offender is a natural person—by imprisonment for a period not exceeding 6 months or a fine not exceeding 10 penalty units, or both; or

(b) if the offender is a body corporate—by a fine not exceeding 50 penalty units.

(5) In a prosecution of a person for an offence against subsection (4) by virtue of a contravention of subsection (1), it is a defence if the person proves that he or she did not know, and could not reasonably be expected to have known, that the matter or thing was likely to mislead an elector in relation to the casting of a vote.

Note: A defendant bears a legal burden in relation to the defence in subsection (5) (see section 13.4 of the *Criminal Code*).

(5A) Section 15.2 of the *Criminal Code* (extended geographical jurisdiction—category B) applies to an offence against subsection (4).

(6) In this section, **publish** includes publish by radio, television, internet or telephone.

369 Copies of petition and order of Court to be sent to House affected, Governor-General and Speaker

The Chief Executive and Principal Registrar of the High Court must, forthwith after the filing of the petition, give to the Clerk of the House of Parliament affected by the petition a copy of the petition, and, forthwith after the trial of the petition, give to:

(a) that Clerk; and

(b) in the case of a general election or a House of Representatives election the writ for which was issued by the Governor-General—the Governor-General; and

(c) in the case of a House of Representatives election the writ for which was not issued by the Governor-General—the Speaker;

a copy of the order of the Court.

374 Effect of decision

Effect shall be given to any decision of the Court as follows:

(i) If any person returned is declared not to have been duly elected, the person shall cease to be a Senator or Member of the House of Representatives;

(ii) If any person not returned is declared to have been duly elected, the person may take his or her seat accordingly;

(iii) If any election is declared absolutely void a new election shall be held.

381A Extension of time for acts by officers

Where:

(a) an officer is required by a provision of this Act or the regulations to do an act;

(b) the officer refuses or fails to do the act at the time, or within the period, required by that provision; the Commission may determine that the act may be done within such further time, not exceeding 48 hours, as the Commission fixes.

Pat Coleman

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