Robert C. Sadler

No 4

Spec 41.1

17 January 2002

Ms K.L. Struthers MLA
egal, Constitutional & Administrative
Review Committee.
arliament House.
eorge Street.
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ear Ms Struthers

hankyou for your 5 Dec. 2001 invitation to offer a submission to the Electoral Fraudulent Actions) Amendment Bill.

have read with interest Mr Springborg's comments in Hansard #10 on his ntroduction of this Bill, and the debate between Mr Welford and Mr Horan n Hansard # 13 during its referral to your committee.

lthough Mr Welford disagrees with mandatory sentancing as interference with he independance of the judiciary, the increasing general public opinion of ur court system seems to be that sentances imposed are not, in general, roviding either a sufficient deterrant to criminals of all kinds, or even iving a proper return on taxpayer funding of the courts.

herefor tend to agree with Mr Horan, and if the present justice system is ot doing the job the public pays it to do, then the public, via our arliament of representatives, should offer the justice system a message via law that imposes minimum sentancing.

With this in mind, may I suggest that the committee consider making the aw require a minimum of one year mandatory sentance for any second or ubsequent offences under this law on electoral fraud.

his would give the court some discretion for any first offence, which, as r Welford claims, may be "an error of judgement", but not for continued aw-breaking.

lectoral fraud can render the whole voting process invalid if, as in the ecent Hinkler contest, the eventual result was determined by the fraudulent ntentions of a minority defeating the will of the majority.

nclosed for information are copies of two fairly recent articles which may elevant to committee deliberations.

ours Sincerely,

CALOUNDRA CITY NEWS VOL 6 #8 MAY 11 2001

Walkabout with GUMNUT

YOU may recall how, a couple of months ago, following the Queensland State Election, I called for an investigation into the operations of the Electoral Commission Queensland (ECQ).

That was prompted because of some very dubious activities of the ECQ prior to, and on, polling day.

Well now, following an 'incident' during the recent Caloundra City Council Division 5 By-election I've decided to widen the call.

Now the call is for a proper, high-level, and independent investigation into the activities, and responsibilities, of every person, group, organisation and statutory body across the nation running elections involving public office.

Let me explain.

Prior to the By-election suspicion surrounded one of the eleven candidates concerning their legal right to nominate for election to public office.

It all related to whether the candidate had provided correct information in their declaration to the returning officer.

Specifically whether the candidate was indeed an 'elector under the Electoral Act 1992 for an electoral district'.

Or to put it in simple terms did the candidate actually live where they had stated, or where they 'appeared' to reside according to the electoral roll.

When informed of the suspicions (a couple of weeks prior to polling day) the returning officer replied that the candidate's declaration had to be correct because 'that was what the candidate had stated'.

During the fortnight leading up to the By-election the matter was raised with various individuals and organisations.

Among them was the returning officer, the Australian Electoral Commission (AEC), the ECQ, and even some parliamentarians.

While all were polite, and somewhat horrified at the allegations - none were very helpful.

The AEC referred us to the ECQ. The ECQ referred us to the returning officer The returning officer seemed happy to hide behind the Local Government Act.

Around and around we went!

No matter where we went or whom we spoke to we were effectively (and very efficiently) referred to somewhere, or someone, else.

In short no-one wanted to take responsibility and each was happy to 'buck-pass'.

But we never did figure out who was the responsible 'someone', or if they even existed.

Two days prior to polling day we were advised by the AEC to once again refer the matter to the returning officer. We did.

We were also advised to notify the Local Government Authority concerned (Caloundra City Council).

This was because even though Council's CEO would normally conduct such elections the By-election had been contracted-out, by the CEO, to the returning officer.

This was the same procedure that had been utilised during the year-2000 whole-of-Council elections.

Our attempt to notify Council's CEO of the AEC's advice was unsuccessful with our telephone call still unanswered.

So what is the upshot of all this?

Well the By-election has been held and won. The poll's been declared. And we have a new Councillor.

No, it wasn't the candidate about whom there was suspicion over their legal right to stand for election.

But preferences of the 'suspect' candidate were used to make up the total vote for the winning candidate.

So, what is the bottom line?

You don't have to be any sort of mental giant to figure out that the way elections are conducted in this country is nothing short of a debacle.

Those charged with running fair elections are suffering from the 'not us - talk to someone else' syndrome.

Plus, it seems that those who should know better don't really care too much if elections in this country are held in a proper and fair manner.

Don't rock the boat seems the mantra. And don't unsettle our cosy existence the edict.

Much has been made about the integrity of the electoral roll, and various Electoral Commissioners have admitted they can't guarantee its integrity.

That's bad enough!

But surely it is not too big an ask that they guarantee the integrity of a simple list of candidates standing for public office.

Currently, it seems, you have to provide more authenticated identification to hire a video, than you do to stand for public office.

That's simply no way to be running elections!

So the call goes out for a proper investigation into the operations, and activities, of those charged with running fair and proper elections.

Maybe that way we can find out who is responsible,. what is happening behind closed doors, what skeletons are in the cupboards, and what secrets are locked in safes secreted in secured vaults!

EDITOR Mr A. STEWART

THE PROCEEDS OF CRIME BILL 2001

Asset Stripping the People

By SUSAN BRYCE

The major Australian political parties have indicated their support for a regime of criminal assets forfeiture, in line with international trends. The Proceeds of Crime Bill 2001 is part of a growing plethora of legislation, considered by Parliament, which poses a grave and continuing threat to civil liberties. This Bill is expected to surface when Parliament reconvenes in 2002.

WHAT IS ASSET FORFEITURE?

Forfeiture means that the government can seize property that has been gained as a result of a crime, or an alleged crime. There are two types of forfeiture procedures.

Criminal Forfeiture: Requires the defendant to be found guilty of the crime in criminal court before property can be seized. In Australia, this action comes under the Proceeds of Crime Act 1987. In these cases, legal representation is a right and the jury must find "beyond a reasonable doubt" that the property was integrally connected with the crime.

Civil Forfeiture: Occurs when the government shows "probable cause" to initiate proceedings; "innocent until proven guilty" is reversed and the property owner generally has the burden of proof that they are innocent. Since the forfeiture is a civil, not criminal proceeding, the right to a trial by jury is often denied plus defendants are not entitled to legal representation unless they can pay for it themselves (a difficult task since often the seized property is the defendant's only asset). The Proceeds of Crime Bill 2001 is based on civil forfeiture proceedings.

...asset forfeiture legislation has curtailed civil liberties in several countries and it is widely abused by law enforcement agencies...

AUSTRALIAN LEGISLATION PURPOSE

The current legislation is driven not by need, but by police hype, political pressure and US insistence that the rest of the world imitates its mistakes. Under the Bill, introduced by the Minister for Justice and Customs, Senator Chris Ellison, the Commonwealth will be able to confiscate criminal assets with a court's approval. The Commonwealth will have to show that, on the balance of probabilities, assets are the profits of serious criminal activity. This means the traditional common law principal, 'innocent until proven guilty', would be discarded and 'the balance of probabilities', which arguably amounts to little more than suspicion of guilt, would be deemed enough to result in a serious and apparently irrevocable loss of peoples' life support systems: their homes, their property, car and other possessions.

The Proceeds of Crime Bill 2001 also introduces provisions for the forfeiture of "literary proceeds". Literary proceeds can be broadly defined as profits or benefits derived by a criminal as a result of the publication in any form, of details or experiences related to that person's crime or life of criminal activity. The expression "literary proceeds" also includes "cheque-book journalism" as related to criminal activity. The civil forfeiture regime will operate in parallel with the existing conviction-based regime, via the federal government's Proceeds of Crime Act 1987.

WHERE DO THE FORFEITED ASSETS GO?

The Proceeds of Crime Bill 2001 differs from the US federal assets forfeiture legislation in that the confiscation of assets would be based on approval by a court. Nonetheless, the Bill diminishes the prospect for a proper trial and examination of evidence. As international experience