

## Originating application

No. \_\_\_\_\_ of 20

**Federal Court of Australia**  
District Registry: **VICTORIA**  
Division:

**BRIAN WILLIAM SHAW**  
Applicant

And

**AUSTRALIAN ELECTORAL COMMISSION**  
Respondent

To the Respondent,

The Applicant applies for the relief set out in this application.

The Court will hear this application, or make orders for the conduct of the proceeding, at the time and place stated below. If you or your lawyer do not attend, then the Court may make orders in your absence.

You must file a notice of address for service (Form 10) in the Registry before attending Court or taking any other steps in the proceeding.

**Time and date for hearing:**

**Place:**

The Court ordered that the time for serving this application be abridged to \_\_\_\_\_ Date:

Signed by an officer acting with the authority  
of the District Registrar

Filed on behalf of (name & role of party) BRIAN WILLIAM SHAW  
Prepared by (name of person/lawyer) APPLICANT  
Law firm (if applicable) N/A  
Tel 0487195522 Fax N/A  
Email brianwshaw1947@gmail.com  
Address for service (include state and postcode) PO Box 800 WARRIBEE 3030 VICTORIA

## Details of Claim / Cause of Action

On the grounds stated in the Statement of Claim, accompanying affidavit and other documents prescribed by the rules, the applicant claims:

### 1. **Unconstitutional removal of the Crown**

That on the 1<sup>st</sup> January 2004, the Federated State of Western Australia did enact an act titled "Acts Amendment Repeal (Courts and Legal Practice) Act". The overt act did remove the crown without the statutory referendum requirement found at Section 73.2 (E) & (G) of the Constitution Act 1889 Western Australia, causing the Federated State of Western Australia to separate from the Federation of the Commonwealth of Australia, and has such by permitting the former Federated State of Western Australia to participate in Commonwealth elections held "under the Crown", has created the situation whereby the applicant is being forced to cast an invalid and unconstitutional vote created by the respondent's fraud. The Western Australian State Constitution referendum requirement was omitted and as such is in breach of Section 106 of the Constitution of the Commonwealth of Australia.

#### Particulars

##### 1.1 **Constitution Act 1889 (West Australia)**

###### **Section 73.2 (E)**

Expressed or implied in any way affects any of the following sections of this act namely:-

###### **Sections 2, 3, 4, 50, 51 and 73**

Shall not be presented for assent by or in the name of the Queen unless:-

###### **Section 73.2 (G)**

The Bill has also prior to such presentation been approved by the electors in accordance with this section and a bill assented to consequent upon its presentation in contravention of this subsection shall be of no effect as an Act.

### 2. **The Crown of the United Kingdom**

The applicant states that the Act cited as the Commonwealth of Australia Constitution Act dated 9<sup>th</sup> July 1900 sets out in the preamble of such act, the Statutory Constitutional "owner" of such Act, by the words "under the Crown of the United Kingdom of Great Britain and Ireland". But, by the unlawful and unconstitutional removal of such crown with agreement from the Commonwealth, by the former Federated State of Western Australia, the Crown was removed and substituted without the statutory referendum

found at Section 128 of the Commonwealth Constitution. The respondent, by not disclosing such fact, is attempting to defraud the applicant into casting an invalid, unconstitutional vote because of this fraud on the electorate and applicant.

### **Particulars**

#### **2.1 Acts Amendment and Repeals Courts and Legal Practice Act 2003 Western Australia**

##### **Section 121 Bail Act 1982 amended**

- (4) Section 63 is amended by deleting "Crown" and inserting instead "State or The Commonwealth"

##### **Section 123 The Criminal Code amended**

- (5) Section 609 is amended by deleting "Crown" and inserting instead "State or the Commonwealth"
- (7) Section 633 is amended by deleting "Crown" and inserting instead "State or The Commonwealth"

### **3. The inclusion of the Commonwealth**

The applicant states that the inclusion of the words "The Commonwealth" into this overt act in Western Australia, had no referendum consent whatsoever as per Section 128 Commonwealth Constitution, because no Commonwealth Act either exists or is in constitutional existence by the Parliament of the Commonwealth to permit the inclusion of the words "The Commonwealth" into the overt act in Western Australia, and as such the respondent is attempting to defraud the applicant to participate in an unlawful and illegal Commonwealth election involving and including the State of Western Australia.

### **Particulars**

#### **3.1 Commonwealth of Australia Constitution Act**

##### **Chapter VIII Section 128 (Portion only) - Alteration of the Constitution**

This constitution shall not be altered "except" in the following manner:-

The proposed law for the alteration thereof must be passed by an absolute majority of each House of the Parliament, and not less than two nor more than six months after its passage through both houses, the proposed law shall be submitted to the electors qualified to vote for the election of members of the

House of Representatives

(Portion only)

#### 4. **The Substitution of the Governor (Western Australia)**

The applicant states that the Governor of the State of Western Australia by enactment of the overt act titled "Acts Amendment Repeal (Courts and Legal Practice) Act" enacted on 1<sup>st</sup> January 2004, did unlawfully remove Her Majesty Queen Elizabeth the Second, and substituted instead "The Governor" inclusive of the present Governor of the State of Western Australia, and as such by attempting to hold a Commonwealth Election inclusive of the State of Western Australia, the respondent is attempting to involve the applicant in electoral fraud compounding into treason and misprision of treason.

##### **Particulars**

#### 4.1 **Acts Amendment Repeal Courts and Legal Practice Act (W.A.)**

##### **Section 125 District Court of Western Australia Act 1969 amended.**

(4) Section II (i) is amended by deleting "Her Majesty" and inserting instead "The Governor"

##### **Section 130 Supreme Court Act 1935 amended**

(3) Section 9 (1) is amended by deleting "Her Majesty" and inserting instead "The Governor"

#### 5. **The unconstitutional removal of the Queen**

The applicant states that the unlawful, illegal and unconstitutional removal of The Queen from law within the State of Western Australia, invalidates any purported right for the State of Western Australia to participate in a Commonwealth Election purportedly held under The Crown and as such the respondent is attempting to involve the applicant in electoral fraud compounding into the serious indictable offences of treason and misprision of treason.

##### **Particulars**

#### 5.1 **Constitution Act 1889**

##### **Part 1 Parliamentary**

##### **2. Legislature to be constituted in Western Australia**

(2) The Parliament of Western Australia consists of the Queen and the Legislative Council and the Legislative Assembly.

(3) Every Bill, after its passage through the Legislative Council and the Legislative Assembly shall "**subject to Section 73**", be presented to the Governor for assent by or in the name of the

Queen and shall be of no effect unless it has been duly assented to by or in the name of the Queen.

## **5.2 Constitution Act 1889 (Western Australia)**

### **Part III A The Governor**

#### **50. Office of Governor**

- (1) The Queen's representative in Western Australia is the Governor who shall hold office during Her Majesty's pleasure.
- (2) Abolition of or alteration in the Office of Governor shall not be affected by an act of Parliament except in accordance with Section 73. (2)

## **5.3 Constitution Act 1889 (Western Australia) Section 73(2)(g)**

- (g) The Bill has also prior to such presentation been approved by the electors in accordance with this section, and a Bill assented to consequent upon its presentation in contravention of this subsection shall be of no effect as an Act.

## **6. The Australia Act 1986**

### **Section 14 Amendment of Constitution Act of Western Australia**

The applicant states that The Australia Act of 1986 at Section 14 of such act did not abide by the statutory referendum requirement contained at Section 73 (2) of the Constitution Act 1889 of the State of Western Australia, in relation to the inclusion of Section 50 and Section 51 of the West Australian Constitution Act 1889 being included into The Australia Act of 1986, without the legal requirement of the consent of the electors as set out at Section 50 and Section 73 (2) of such State Constitution creating an invalid act. The respondent, by attempting to conduct a Commonwealth Election involving the applicant in such election, is attempting to involve the applicant in electoral fraud by consenting to and submitting to invalid legislation as per Section 6 of the Australia Act 1986.

### **Particulars**

#### **6.1 Australia Act 1986**

##### **Section 14**

- (1) The Constitution Act 1889 of the State of Western Australia is in this section referred to as the Principal Act.
- (2) Section 50 of the Principal Act is amended in subsection (3):
  - (a) By omitting from paragraph (a):
    - (i) "and Signet"; and

- (ii) "constituted under Letters Patent under the Great Seal of the United Kingdom";
- (b) By omitting paragraph (b):
  - (i) "and Signet"; and
  - (ii) "whenever and so long as the office of Governor is vacant or the Governor is incapable of discharging the duties of administration or has departed from Western Australia"; and
- (c) By omitting from paragraph (c):
  - (i) "under the Great Seal of the United Kingdom"; and
  - (ii) "during a temporary absence of the Governor for a short period from the seat of Government or from the State".
- (3) Section 51 of the Principal Act is amended:
  - (a) By omitting subsection (1); and
  - (b) By omitting from subsection (2):
    - (i) "(2)";
    - (ii) "this section and in"; and
    - (iii) "and the expression 'Signet' means the seal commonly used for the sign manual of the Sovereign or the seal with which documents are sealed by the Secretary of State in the United Kingdom on behalf of the Sovereign".

## **6.2 Constitution Act 1889 (Western Australia)**

### **Section 50 (2)**

Abolition of or alteration in the office of Governor shall not be affected by an act of Parliament except in accordance with Section 73.(2)

## **6.3 Constitution Act 1889 (Western Australia)**

### **Section 73 (2)** A Bill that —

- (a) expressly or impliedly provides for the abolition of or alteration in the office of Governor; or
- (b) expressly or impliedly provides for the abolition of the Legislative Council or of the Legislative Assembly; or
- (c) expressly or impliedly provides that the Legislative Council or the Legislative Assembly shall be composed of members other than members chosen directly by the people; or
- (d) expressly or impliedly provides for a reduction in the numbers of the members of the Legislative Council or of the Legislative Assembly; or
- (e) expressly or impliedly in any way affects any of the following sections of this Act, namely — sections 2, 3, 4, 50, 51 and 73,

shall not be presented for assent by or in the name of the Queen unless -

- (f) the second and third readings of the Bill shall have been passed with the concurrence of an absolute majority of the whole number of the members for the time being of the Legislative Council and the Legislative Assembly, respectively; and
- (g) the Bill has also prior to such presentation been approved by the electors in accordance with this section, and a Bill assented to consequent upon its presentation in contravention of this subsection shall be of no effect as an Act.

## **7. The Oath of Allegiance broken**

The applicant states that the statutory constitutional Oath of Allegiance and Constitution of The Commonwealth of Australia was broken by the unlawful enactment of the "Acts Amendment Repeal (Courts and Legal Practice) Act" on the 1<sup>st</sup> January 2004 in the State of Western Australia by all involved in such Act, and as such the unlawful and illegal removal and substitution of the statutory "Oath of Allegiance" and the concealment of the removal and substitution of such oath by the respondent, is an attempt to have the applicant participate in a primary act of treason in that the criminal element of the offence of treason is "Breach of Allegiance" as set out in R v Casement 1917 1KB 98 at 114. Treason and misprision of treason (concealment of treason) are twin offences and carry life imprisonment penalties. The Applicant refuses to submit to or conceal these serious indictable offences being committed by the Respondent.

### **Particulars**

#### **7.1 Constitution Act 1889 (West Australia)**

##### **Section 22 Oath or Affirmation of Allegiance**

No member of the Legislative Council or Legislative Assembly shall sit or vote therein until he has taken and subscribed before the Governor, or some person authorised by the Governor in that behalf, an oath or affirmation of allegiance in the form set out in Schedule E.

#### **7.2 Schedule E**

I, ..... do swear that I will be faithful and bear true allegiance to Her Majesty Queen Elizabeth the Second, Her Heirs and Successors according to law.

#### **7.3 Acts Amendment Repeal Courts and Legal Practice Act (West Australia) 1<sup>st</sup> January 2004 enacted.**

##### **Section 130 Supreme Court Act 1935 amended**

- (3) Section 9 (1) is amended by deleting "Her Majesty" and inserting instead "The Governor"

- (12) The second schedule is amended by deleting "Our Sovereign Lady Queen Elizabeth the Second, Her Heirs and Successors" and inserting instead "The State of Western Australia"

## 8. The Writ for Senators

The applicant states that the unlawful removal of Her Majesty Queen Elizabeth the Second by the Governor of the former Federated State of Western Australia, by the overt act titled "Acts Amendment Repeal Courts and Legal Practice Act" and the substitution of "The Governor" devoid of the state referendum required by Section 73.(2) of the State Constitution, compounds into the omission of the Commonwealth referendum because of the constitutional impact on Section 12 of the Constitution of the Commonwealth. By such action the respondent in attempting to hold a Commonwealth election violating the constitution and the rights of the applicant contained within the constitution, by concealing from the applicant and the electorate, the fact that the writ by the Governor of the State of Western Australia is an invalid writ creating an invalid Senate in Canberra.

### Particulars

#### 8.1 Commonwealth of Australia Constitution Act (1900)

##### Part II. The Senate

##### Section 12

"The Governor of any state may cause writs to be issued for elections of senators for the state. In case of the dissolution of the senate the writs shall be issued within ten days from the proclamation of such dissolution."

#### 8.2 Acts Amendment and Repeal (Courts and Legal Practice) Act 2003 (Western Australia)

##### Section 130 Supreme Court Act 1935 amended

(3) Section 9 (1) is amended by deleting "Her Majesty" and inserting instead "The Governor"

#### 8.3 Constitution Act 1889 (West Australia)

##### Section 50 (2)

Abolition of or alteration in the office of Governor shall not be effected by an Act of Parliament except in accordance with Section 73 (2)

#### 8.4 Constitution Act 1889 (West Australia)

##### Section 73.2 (E)

Expressly or impliedly in any way affects any of the following sections of this Act, namely Sections 2. 3. 4. 50. 51 and 73



Shall not be presented for assent by or in the name of the Queen

Unless

(G) The Bill has also “Prior to such presentation” been “approved by the electors” in accordance with this section.

**And a Bill assented to consequent upon its presentation in contravention of this subsection shall be of no effect as an Act.**

## **8.5 Commonwealth of Australia Constitution Act**

### **Section 106**

The Constitution of each State of the Commonwealth shall, “subject to this Constitution” continue as at the establishment of the Commonwealth, or as at the admission or establishment of the State, as the case may be, until altered in accordance with the Constitution of The State.

## **8.6 Commonwealth of Australia Constitution Act 1900**

### **Section 109**

When a law of a State is consistent with a law of The Commonwealth, the latter shall prevail, and the former shall, “**To the extent of the inconsistency be invalid**”.

## **9. Attainted of Treason**

The respondent in attempting to hold a Commonwealth Election inclusive of the State of Western Australia after the Crown, and Monarch and Oath of Allegiance have been removed without the lawful constitutional adherence to the referendum requirement at Section 128 of the Commonwealth Constitution, the respondent is attempting to conduct an illegal election, but at the same time committing the serious indictable offence of treason, compounded by misprision of treason and other compounding offences and is attempting to involve the applicant in such criminal activity.

### **Particulars**

#### **9.1 R v Casement 1917 1 Kings Bench 98 at 114 (UK)**

The criminal element for the offence of treason is a breach of duty of allegiance. The criminal element for the offence of misprision of treason is the concealment or keeping secret of any treason by a person.

#### **9.2 Sykes v Director of Public Prosecutions (UK)**

All England Law Reports. 1961 3 All ER 33 at 36  
“Now concealment of treason was itself treason”.

#### **9.3 Sykes v Director of Public Prosecutions (UK)**

All England Law Reports. 1961 3 All ER 33 at 38

"This is properly when anyone learns or knows that another has committed treason or felony, and he does not choose to denounce him to the King or His Council or to any Magistrate, but conceals the offence. This is misprision.

**9.4 Acts Amendment and Repeal (Courts and Legal Practice) Act 2003  
Western Australia (No: 65 of 2003)**

Part 8: Amendments about the Crown.

**Section 130 Supreme Court Act 1935 amended**

(12) The Second Schedule is amended by deleting Our Sovereign Lady Queen Elizabeth the Second, Her Heirs and Successors and inserting instead "The State of Western Australia".

**9.5 Commonwealth of Australia Constitution Act 1900**

**Section 44**

Any person who

(ii) Is attainted of treason

Shall be incapable of being chosen or of sitting as a Senator or a Member of the House of Representatives.

**10. The Security of the Commonwealth**

The applicant states that the respondent and all officers working within the corporation structure of the respondent is attempting to involve the applicant in the concealing of the criminal offence of treason by seeking to hold an election, after the Crown has been removed inclusive of Her Majesty and the Oath of Allegiance broken inclusive of a purported monetary penalty by failing to vote thereby violating the security of the Commonwealth.

**Particulars**

**10.1 Criminal Code Act 1995 (Commonwealth)**

Chapter 5 The Security of the Commonwealth  
Part 5.1 Treason and sedition

**Section 80.1 A Definition of Organization**

(A) A body corporate

(B) An unincorporated body

whether or not the body is based outside Australia, consists of persons who are not Australian citizens, or is part of a larger organization.

**Section 80.1 Treason**

(1) A person commits an offence called treason, if the person,

- (D) levies war, or does any act preparatory to levying war, against The Commonwealth.

Penalty: Imprisonment for life

(2) A person commits an offence if the person

- (A) Receives or assists another person who, to his or her knowledge, has committed treason with the intention of allowing him or her to escape punishment or apprehension

Or

- (B) Knowing that another person intends to commit treason, does not inform a constable of it within a reasonable time or use other reasonable endeavours to prevent the commission of the offence.

Penalty: Imprisonment for life.

**10.2 Crimes Act 1958 Victoria**

No: 6231 of 1958 (Reprint No. 22)

**Section 9A Treason**

(1) A person who

- (C) Levies war, or does any act preparatory to levying war, against The Commonwealth of Australia.

**10.3. Crimes Act 1958 Victoria**

No: 6231 of 1958 (Reprint No. 22)

**Section 316 (2) (A) (viii)**

Not to reveal or discover any unlawful association, society or confederacy or any illegal act done or to be done or any illegal oath or engagement that may have been administered or tendered to or taken by himself or any other person or the import of any such oath or engagement.

## 11. State Offences

The applicant states that the respondent has concealed from the applicant and all electors of the Commonwealth of Australia, the State offences committed by the State of Western Australia and is now attempting to hold a Commonwealth Election "under the Crown", without disclosing the true facts thereby creating a constitutional problem for the applicant involving criminal activity.

### Particulars

#### 11.1 Crimes Act 1914 Commonwealth

##### **Section 3 AA State offences that have a Federal aspect.**

- (1) (B) A State offence is taken to be covered by paragraph (1) (C) if the conduct constituting the State offence
- (A) Affects the interests of:
- (i) The Commonwealth or
  - (ii) an authority of the Commonwealth or
  - (iii) a constitutional corporation.

#### 11.2 Constitutional Corporation Crimes Act Commonwealth **Section 3 A A (5)**

Constitutional Corporation means a corporation to which paragraph 51 ( XX ) of the Constitution applies.

## 12. Constitutional Corporation

The applicant states that the discovered fracture of the Constitution of both Western Australia and the Commonwealth and with the unlawful removal of the Crown without the required referendum does create a corporation nightmare in that every constitutional corporation currently operating with a Grant of Power under Section 51 of the Constitution of the Commonwealth is functioning and existing outside of the constitutional Grant of Power and as such, the respondent (a Constitutional Corporation) is attempting to defraud the applicant into voting in an invalid Commonwealth Election within a fractured Federation and fractured Constitution.

### Particulars

#### 12.1 Commonwealth of Australia - Constitution Act 1900

##### **Section 51. In particular:-**

- (i) Trade and commerce
- (ii) Taxation
- (iv) Borrowing money
- (v) Postal services

- (xii) Currency, coinage and legal tender
- (xiii) Banking
- (xiv) Insurance
- (xvi) Bill of exchange
- (xvii) Bankruptcy
- (xix) Naturalization
- (xx) Foreign corporations and trading or financial corporation formed within the limits of the Commonwealth
- (xxi) Marriage
- (xxii) Divorce
- (xxiv) Service and execution of court processes
- (xxv) Recognition of judgements
- (xxxviii) Exercise of power
- (xxxix) Matters incidental to the exercise of power

### **13. The False Oath of Office (Bryce and Rudd)**

The applicant states that the words "Oath of Office" does not appear in the Constitution of the Commonwealth of Australia and in fact are words unlawfully and illegally substituted for the Constitutional words "Oath of Allegiance" and as such this means that the current Governor General Quentin Bryce did administer an unlawful oath in relation to Kevin Rudd and others. The respondent is attempting to defraud the applicant by the substitution of this false oath. The oath taken is not the oath of the Constitution.

#### **Particulars**

##### **13.1 Constitution of the Commonwealth of Australia - Section 42**

Every senator and every member of the House of Representatives shall before taking his seat make and subscribe before the Governor - General, or some person authorised by him, an oath or affirmation of allegiance in the form set forth in the schedule to this Constitution.

##### **Quorum**

Until the Parliament otherwise provides, the presence of at least one-third of the whole number of the senators shall be necessary to constitute a meeting of the Senate for the exercise of its powers.

##### **13.2 Constitution of the Commonwealth of Australia - Schedule**

##### **Oath**

"I, A.B., do swear that I will be faithful and bear true allegiance to Her Majesty Queen Elizabeth, Her heirs and successors according to law, SO HELP ME GOD!

##### **Affirmation**

"I, A.B., do solemnly and sincerely affirm and declare that I will be faithful and bear true allegiance to Her Majesty Queen Elizabeth, Her heirs and successors according to law."

**13.3 Oath of Office by K. Rudd (27<sup>th</sup> June 2013)**

"I, Kevin Michael Rudd, do swear that I will well and truly serve the Commonwealth of Australia, her land and her people in the office of Prime Minister, so help me God".

**14. Constitution of the Commonwealth of Australia, 1900**

The applicant states that under the Constitution Section 80 affords the right to a Jury Trial "by indictment" such indictment is obtainable via a Grand Jury indict submitted to the Supreme Court of Victoria under Section 354 Crimes Act 1918: All submitted prior to any purported abolition.

The applicant states that the respondent is involving the applicant in criminal activity.

**14.1 Commonwealth of Australia Constitution Act 1900 Section 80.**

The trial on indictment of any offence against any law of the Commonwealth shall be by jury, and every such trial shall be held in the State where the offence was committed, and if the offence was not committed within any State the trial shall be held at such place or places as the Parliament prescribes.

## Claim for Interlocutory Relief

### 1. The Injunction Application

#### Seeks the following:

The Applicant seeks an immediate injunction against the Respondent (Australian Electoral Commission) to prevent the holding of the coming Commonwealth Election listed for 7<sup>th</sup> September 2013. Such election is inclusive of the State of Western Australia, but, on the 1<sup>st</sup> January 2004, the State of Western Australia enacted an overt Act titled:

#### **Acts Amendment and Repeal (Courts and Legal Practice) Act**

At Part 8 of such Act, "Amendments about the Crown" the following did occur:

1. Her Majesty Queen Elizabeth the Second was removed and substituted.
2. The Crown was removed and substituted.
3. The statutory "Oath of Allegiance" was removed and substituted.
4. The Subjects were removed.

All statutory referendums were omitted inclusive of the principal referendum at Section 128 of the Constitution of the Commonwealth of Australia.

On the evidence evident in the named overt Act, the State of Western Australia cannot participate in a Commonwealth election held under the Constitution of the Commonwealth of Australia. Accordingly the injunction application must stand.

### 2. Applicant's address:

The Applicant's address for service is:

Place: PO Box 800, Werribee 3030 in the State of Victoria

Email: [brianwshaw1947@gmail.com](mailto:brianwshaw1947@gmail.com)

The Applicant's address is PO Box 800, Werribee 3030 in the State of Victoria

#### **Service on the Respondent**

It is intended to serve this application on all Respondents

**Date:**

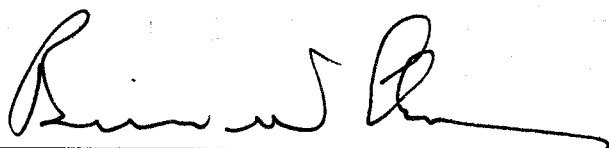
**3. Address for Service of Respondent:**

Federal Seat of Lalor  
Australian Electoral Commission  
Returning Officer: Terrie Page  
Level 2, 75-79 Watton Street  
Werribee VIC 3030

**Signed by Brian William Shaw**

**Applicant**

Date: 19 August 2013



**Signed by**

**Schedule**

No. of 20

Federal Court of Australia

District Registry: Victoria

Division:

BRIAN WILLIAM SHAW

Applicant

And

AUSTRALIAN ELECTORAL COMMISSION

Respondent

Date: