

AFFIDAVIT
NUMBER

2.

Plus

TRANSCRIPT

28 June 2016.

ACCOMPANYING AFFIDAVIT (2)

IN THE COUNTY COURT OF VICTORIA AT MELBOURNE AP- 16-1957

IN THE MATTER of an application under section 54 of the **Vexatious Proceedings Act 2014**

BETWEEN

THE ATTORNEY GENERAL FOR THE STATE OF VICTORIA

Plaintiff

And

BRIAN WILLIAM SHAW

Defendant

NUMBERS 2. - APPEAL DOCUMENTS
1st DECEMBER 2016

Date of Document: September 2016
Filed on behalf of: The Applicant
Prepared by: Brian William Shaw

Solicitors Code: N/A
Telephone:
DX: N/A
Ref: N/A

I, Brian William Shaw, c/- of PO Box 800 Werribee Victoria do state and affirm the following:-

1. I STATE THAT THIS AFFIDAVIT
EXHIBITS THE COUNTY COURT APPEAL
DOCUMENTS INCLUSIVE OF THE
MAGISTRATES COURT TRANSCRIPT
HEARD 28 JUNE 2016

COUNTY COURT AND
MAGISTRATES COURT.

Brian Shaw M. Dawson

1/2.

2. I STATE THAT AT - PAGE 26
LINE 6 THE TRANSCRIPT SHOULD READ
"THE KNIGHTS OF ST JOHN OF JERUSALEM"

3. I STATE THAT THE TRANSCRIPT AT
PAGE 27 LINE 22 REVERSES THE
STATEMENT - "THE ARGUMENTS ARE
CONSTITUTIONAL AND IN MY VIEW,
CAN GO BEFORE THE HIGH COURT"
THE HEARING WAS NOT RESERVED FOR
THE STATUTORY NOTICE 78^A JUDICIARY ACT
1903 COMMONWEALTH TO BE APPLIED.

AFFIRMED BY:

Brian Sh

AT:

Geelong

THIS

Seventh DAY OF ^{December 21} ~~SEPTEMBER~~, 2016.

BEFORE ME:

McClawson

CARMEL CLEMSON JP
3/84 HAMILTON STREET
GISBORNE 3437
JUSTICE OF THE PEACE FOR VICTORIA
REG. NO 12356



Hrs 9.30 AM – 4.00 PM
Our Ref: AP-16-1957
Lower Court Ref: F13905151
Your Ref:

Melbourne County Court

Registrar's Office
County Court of Victoria
250 William St
Melbourne 3000
Phone:(03) 8636 6570

25-AUG-2016

BRIAN WILLIAM SHAW
PO BOX 114 37 ANZAC RD
MOUNT MACEDON
VIC 3441

Dear Sir/Madam,

The matter of BRIAN WILLIAM SHAW

This case has been scheduled as follows:

EVENT : Appeal
WHEN : 07-SEP-2016
WHERE : Melbourne County Court

Please note the case number AP-16-1957 on all future correspondence.

Yours faithfully,

FOR REGISTRAR
COUNTY COURT

NOTICE OF APPEAL

The name of the appellant is **SHAW, BRIAN WILLIAM**

The name and address of the respondent is **FRAZER, GLENDA**
11 / 530 COLLINS ST MELBOURNE 3000 VIC

- To the Registrar of the Magistrates' Court at **MELBOURNE**
- To the Registrar of the County Court at **MELBOURNE**
- And to the abovenamed Respondent

Case Number: **F13905151**
 JAID:
 Brief ID:

The proceeding(s) appealed from:

- Venue of the Magistrates' Court appealed from **MELBOURNE**
- Plea entered in Magistrates' Court **Not Guilty**
- Date of Conviction(s)/Orders **28/06/2016**
- Nature of Offence(s)/Proceedings

5. Particulars of Order(s)/Sentence(s)

- | | |
|---|--|
| <ol style="list-style-type: none"> FAIL TO VOTE W/O VALID/SUFFICIENT EXCUSE FIN (A) CST (A) | <ul style="list-style-type: none"> - Amount of fine \$151.67 - Without conviction - B W SHAW (Accused) - Pay Costs \$3000.00 |
|---|--|

Contact Details:

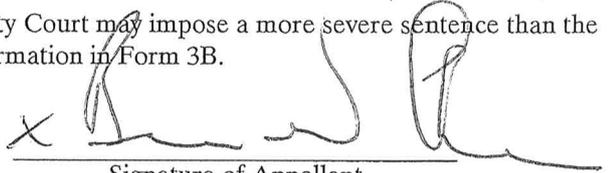
- Appellant's personal address for service
PO BOX 114 37 ANZAC RD MOUNT MACEDON 3441 VIC
- Solicitor's name and address for service

Phone: 0487195527 Email: _____

Reason for Appeal: that the appellant is not guilty

STATEMENT REGARDING IMPOSITION OF MORE SEVERE SENTENCE -

I have been advised and I am aware that on the hearing of my appeal, the County Court may impose a more severe sentence than the one imposed by the Magistrates' Court and I have been given a copy of the information in Form 3B.



 Signature of Appellant

Dated at **KYNETON** on **18/07/2016**

UNDERTAKING TO PROCEED WITH APPEAL

I **SHAW, BRIAN WILLIAM** of **PO BOX 114 37 ANZAC RD MOUNT MACEDON 3441 VIC** undertake to: undertake to:

- (a) appear at the County Court sitting at 250 William Street, Melbourne on **7/9/2016**
OR
 (b) to appear at the County Court of Victoria sitting at
 on a day to be fixed by the Registrar of the Court, and to appear at the County Court for the duration of the appeal;

AND

- to notify the County Court in writing of any change of address or representation.

Dated _____
 in the presence of _____

ANNA CHAPMAN
 Registrar
 Magistrates' Court of Victoria

 Registrar of the Magistrates' Court



 Signature of Appellant

NOTICE OF ORDER MADE

The **Magistrates' Court of Victoria at MELBOURNE**

made the following entries

in the register on the **28th** day of **June 2016**

Case Number	F13905151	
Charge Number	1	
Informant, Plaintiff, Complainant or Applicant	FRAZER, GLENDA VICTORIAN ELECTORAL COMMISSION	
Accused/Respondent	SHAW, BRIAN WILLIAM	D.O.B: 13/03/1947
How before the Court	CHARGE AND SUMMONS	
Nature of Charge or Civil Proceeding	Accused at VICTORIA on 29/11/2014 did commit a breach of Act 02/23.166.1.A FAIL TO VOTE W/O VALID/SUFFICIENT EXCUSE	

COURT ORDER

Without conviction, fined \$151.67

B W SHAW (Accused) ordered to pay costs in the amount of \$3000.00

Stay to 26/12/2016

Pg 1

**S L DIXON
JUDICIAL REGISTRAR**

Remarks **Plea: Not Guilty
IN PERSON**

Dated at **MELBOURNE** this **28th** day of **June 2016**

BRIAN SHAW

37 ANZAC RD

MOUNT MACEDON VIC 3441

PAYMENT NOTICEIn the Magistrates' Court at **MELBOURNE**Case Number: **F13905151**Informant **GLEND A FRAZER (VEC)**Date of Hearing: **28 / 6 / 2016**To: **BRIAN W SHAW**
37 ANZAC RD
MOUNT MACEDON VIC 3441Date of Birth: **13 / 3 / 1947**

	Amount Ordered	Due Date
FINE(S)	151.67	
STATUTORY COSTS		
COSTS	3000.00	26/12/2016
COURT FUND		
OTHER		
COMMUNITY CORRECTION ORDER BOND*		
TOTAL AMOUNT	\$ 3151.67	

The amount ordered, \$ 3151.67 is payable by 26/12/2016.

If you are unable to pay the court fund by the due date you may make an application to a Magistrate of the Magistrates' Court for a variation to your order.

If you are unable to pay the penalty/instalment by the due date, you may make an application to the Registrar of the Magistrates' Court for further time to pay.

If you do not pay the amount on or before the due date you may incur further costs, and/or be arrested and be brought before the Court.

PAYMENT AND ENQUIRIES

This form must be returned with your remittance. A receipt will be issued only upon request.

1. By Post to:
REGISTRAR OF THE MAGISTRATES' COURT
P.O. BOX 882
MELBOURNE 3001

2. Personally at a Magistrates' Court in Victoria.
For the location of the court closest to you, go to:
www.magistratescourt.vic.gov.au
or call 03 - 96287777

3. Via BPAY:



Biller Code: 51755
Ref: 20165390847

Telephone & Internet Banking - BPAY®

Contact your bank or financial institution to make this payment from your cheque, savings, debit, credit card or transaction account. More info: www.bpay.com.au

FORM 3B
INFORMATION FOR APPELLANT

Notice Pursuant to section 255 of the Criminal Procedure Act 2009

To the Appellant:

TAKE NOTICE that in relation to your appeal, the County Court may impose a sentence which is more severe than that which has been imposed on you by the Magistrates' Court.

ALSO TAKE NOTICE THAT you must sign the acknowledgement contained in your Notice of Appeal that you have been advised that on your appeal, the County Court may impose a sentence which is more severe than that which has been imposed on you by the Magistrates' Court.

FURTHER INFORMATION FOR APPELLANT

A copy of the Notice of Appeal must be served on the respondent within 7 days after the day on which the notice is filed. The notice must be served:

- (a) by giving a copy of the document to-
 - (i) the informant; or
 - (ii) a person representing the informant at a hearing in relation to the charge; or
- (b) by sending a copy of the document by prepaid ordinary post addressed to the informant at the business address nominated by the informant under section 18 of the Criminal Procedure Act 2009; or
- (c) by sending a copy of the document by fax or email addressed to the informant at the fax number or email address nominated by the informant under section 18; or
- (d) by leaving a copy of the document for the informant at the informant's business address with a person who appears to work there; or
- (e) in any other manner agreed between the informant and the party serving the document.

INFORMATION CONCERNING ABANDONING AN APPEAL

If you decide to abandon your appeal against both conviction and sentence, you must file a Notice of Abandonment of appeal in accordance with Form 3D of the County Court Criminal Procedure Rules.

If you decide to abandon your appeal against conviction but pursue your appeal against sentence alone you must file a written Notice of Abandonment of appeal- conviction only in Form 3E of the County Court Criminal Procedure Rules.

You should contact the County Court for further information.

INFORMATION CONCERNING FAILURE TO ATTEND AT AN APPEAL

If you fail to attend at the appeal hearing the Court may strike out your appeal or adjourn the proceedings on any terms the Court thinks appropriate.

INFORMATION CONCERNING COSTS OF AN APPEAL

If the Court strikes out or dismisses your appeal, it may order you to pay all or a specified portion of the respondent's costs if it is satisfied that the appeal was brought vexatiously or frivolously or in abuse of process.

APPLICATION FOR LEAVE TO APPEAL

If your Notice of Appeal has been filed more than 28 days after you were sentenced, your appeal is deemed to be an application for leave to appeal. The Court will consider your application prior to an appeal hearing commencing. If your application is granted, the Court may continue to hear your appeal on that day or adjourn the matter to a future date.

LEGAL ASSISTANCE

If you wish to make application for legal assistance you must make application in writing to Victoria Legal Aid (Melbourne- 9269 0120) (Rural Areas- 1800 677 402). The Court office can advise you of the address of the nearest Victoria Legal Aid office. Such application must be made immediately because it may take some time to process. You should take all necessary steps promptly so that, if you are granted legal aid, there will be enough time for advice to be given to you by your lawyer about the appeal.

**IN THE SUPREME COURT OF VICTORIA
AT MELBOURNE
COMMON LAW DIVISION**

No 9997....of 2006

IN THE MATTER of an application under section 54 of the Vexatious Proceedings Act 2014

BETWEEN

THE ATTORNEY-GENERAL FOR THE STATE OF VICTORIA Plaintiff

-and-

BRIAN WILLIAM SHAW Defendant

EXHIBIT

This is the exhibit referred to in the affidavit of Brian William Shaw affirmed on the First.... day of September 2016.

Before me: _____

C. Clemson

CARMEL CLEMSON JP
3/84 HAMILTON STREET
GISBORNE 3437
JUSTICE OF THE PEACE FOR VICTORIA
REG. NO 12356

TRANSCRIPT
28 JUNE 2016

TRANSCRIPT OF PROCEEDINGS

MAGISTRATES' COURT

CIVIL JURISDICTION

MELBOURNE

TUESDAY 28 JUNE 2016

BEFORE MS S. DIXON, JUDICIAL REGISTRAR

VICTORIAN ELECTORAL COMMISSION

Applicant

- and -

BRIAN SHAW

Respondent

MR WILLIAMS appeared on behalf of the Applicant.

MR SHAW appeared in person.

1 MR WILLIAMS: Good morning, Your Honour, my name is Williams
2 and I appear on behalf of the Victorian Electoral
3 Commission.
4 REGISTRAR: Thank you very much. You're Mr Shaw?
5 MR SHAW: Brian Shaw.
6 REGISTRAR: Thank you.
7 MR SHAW: Sorry, Your Honour, could I just ask permission from
8 my friend to sit there so he can hand me the papers?
9 REGISTRAR: Yes if you've got no objection to that?
10 MR WILLIAMS: No objection from me, thank you.
11 REGISTRAR: I've got one charge in front of me, Mr Shaw, that
12 on the 29 November 2014 in the state of Victoria, you, an
13 elector, did fail to vote in the election for the
14 Parliament of the state of Victoria without a valid and
15 sufficient excuse. Do you plead guilty or not guilty?
16 MR SHAW: Not guilty, Your Honour.
17 REGISTRAR: Not guilty, all right.
18 MR WILLIAMS: Thanks very much, Your Honour.
19 REGISTRAR: Thank you very much.
20 MR WILLIAMS: As Your Honour just stated, the charges laid
21 pursuant to 166 sub-1.a of the Electoral Act, did Your
22 Honour have a copy of the Electoral Act?
23 REGISTRAR: I've got that section - - -
24 MR WILLIAMS: The relevant provision?
25 REGISTRAR: Yes, thank you.
26 MR WILLIAMS: Sure. I should state at the outset, Your Honour,
27 that it's agreed between the parties that Mr Shaw was
28 registered to vote and did not vote, so the sole issue is
29 a legal one which is whether Mr Shaw's excuse is a valid
30 and sufficient one for the purposes of the Electoral Act.
31 There's no calling of witnesses, it's solely a legal

1 issue. It will just be determined on that basis, Your
2 Honour.

3 REGISTRAR: All right, thank you.

4 MR WILLIAMS: Your Honour, as you'll note from the brief, s.165
5 of the Electoral Act is intended to facilitate proof of
6 offenses against s.166, and it provides that an extract
7 certified by the Commission, that an elector did not vote
8 is evidence of the contents and facts stated in the
9 extract. I just wanted to bring that to Your Honour's
10 attention so there was no need for me to call the
11 informant in relation to the facts.

12 REGISTRAR: Absolutely. It's similar to the prescribed
13 certificates in its proving what's contained (indistinct).
14 said that.

15 MR WILLIAMS: Exactly, Your Honour. It's also alleged that,
16 and I don't think it's disputed, that the accused was
17 given the opportunity by the Commission to provide an
18 explanation for the failure to vote and didn't provide any
19 response, and as a result was issued with an infringement
20 notice and the way that the Act works, Your Honour, is
21 that upon receipt of the notice the accused elected to
22 have the matter determined in court as is his right.

23 REGISTRAR: That's right.

24 MR WILLIAMS: Your Honour, just in brief compass, the words,
25 "Valid and sufficient" aren't defined in the Act, but
26 there's quite a case law on what those words mean, and I'm
27 not sure yet what Mr Shaw's response or excuse will be,
28 but a religious objection to voting or a philosophical
29 objection to voting has never been considered a valid and
30 sufficient excuse. There's a long line of authority and
31 numerous High Court cases, albeit decided in the

1 Commonwealth context, but the words are the same. They
2 have direct application to the Victorian Act as well.
3 I have a full court of the Supreme Court of Western
4 Australia decision which holds that a religious excuse is
5 not a valid and sufficient excuse.

6 The type of excuses discussed in the cases have
7 included, for example, physical difficulty, sickness an
8 accident or natural disaster, or where there is some
9 competing public duty. I note, Your Honour, that the
10 circumstances provided such as the voter being out of the
11 state on lection Day, or indeed the voter having a
12 religious obligation and being unable to turn up - - -

13 REGISTRAR: Conflicting, all right.

14 MR WILLIAMS: Exactly, would be a basis for casting a postal
15 vote, for example.

16 REGISTRAR: Yes. That makes sense. It all sounds sensible so
17 far.

18 MR WILLIAMS: Yes. Your Honour, I don't think unless, I'll
19 obviously wait to hear from Mr Shaw, but I think I'll just
20 close in saying, I'll obviously wish to be heard on
21 sentencing and costs when it gets to that point, Your
22 Honour, but the elector Mr Shaw was entitled to vote on
23 the 29 November but failed to vote, that's not in dispute,
24 and that the extract is evidence of that, and in our
25 submission did not have a valid and sufficient excuse
26 under the Act for not voting. Unless Your Honour has any
27 more questions, I'll let Mr Shaw - - -

28 REGISTRAR: No you've laid that out lovely and clearly - - -

29 MR WILLIAMS: Thanks very much, Your Honour.

30 REGISTRAR: Over to you, Mr Shaw.

31 MR SHAW: Thank you, Your Honour. Would it be appropriate to

1 sit, or should I stand?

2 REGISTRAR: I'm happy for you - if you're more comfortable
3 sitting, I have no objection, given you've obviously got a
4 fair bit that you want to put, so I don't mind.

5 MR SHAW: Thank you. I'd prefer to sit.

6 REGISTRAR: That's fine.

7 MR SHAW: Thank you.

8 REGISTRAR: Unless Mr Williams (indistinct)?

9 MR WILLIAMS: I have no objection, no.

10 MR SHAW: A couple of issues that I just need to tidy up first.
11 If this matter is held over for whatever reason, could
12 today's transcript be made available?

13 REGISTRAR: Yes.

14 MR SHAW: Because apparently its - - -

15 REGISTRAR: I'm hoping that it won't need to be held over.

16 MR SHAW: Well, Your Honour, we'll discuss that as we come
17 through. Apparently there is an order that we can't get a
18 transcript until there's a final order, but you could
19 circumvent that by making the transcript available if it
20 goes to that.

21 The other one is I would seek a direction or an
22 order from the court in relation to what you call a senate
23 writs for the state. Now that's critical to my matter
24 because you can't get those - they're almost impossible to
25 get, and I'll explain the reason why, Your Honour.

26 When an election is called, essentially the voter
27 only knows what day to go to a polling booth, and where
28 that polling booth may be. But they don't understand the
29 mechanics of how that begins, which, and I'll only
30 (indistinct) on the senators. The senators are actually
31 Commonwealth but the common denominator here between the

1 Electoral Act Victoria and the Commonwealth Electoral Act,
2 is the Governor of the state. When it's a state election
3 and / or a council election, it's the Victorian Electoral
4 Commission through the Electoral Act 2002. But when it's
5 a Commonwealth election, the mechanics change but the
6 principal player doesn't. By that I mean the Governor of
7 the state.

8 At almost all times in the state elections and in
9 the council elections, it's the Governor that plays a key
10 role. It's my understanding in both of those elections
11 that it's both the Governor and the Victorian Election
12 Commissioner.

13 REGISTRAR: So you're wanting an order made for senate writs?

14 MR SHAW: As far back as 2004. The reason why I'm saying that,
15 Your Honour, is they should be public documents. They
16 should be available on their webs, either the State
17 Electoral Commission or the Commonwealth Electoral
18 Commission, but essentially when you go looking for them
19 it's a closed shop. Most people don't understand the
20 mechanics that begins at that writ.

21 My principal objection is that there's a problem
22 with the writs. I'm not saying that I have a problem in
23 the voting system because it's a democratic country and
24 that's one of the reasons why I'm a registered voter. A
25 lot of people who have a problem with voting just simply
26 go into the polling booth, cross their name off and then
27 walk out, so they don't actually, what you would term, be
28 held accountable. I didn't wish to do that. I wished
29 that the whole matter be clearly placed upon the table.

30 As you can see there's evidence to be whatever, but
31 the matter that, could I say my friend or opponent - what

1 - or my friend?

2 REGISTRAR: My friend.

3 MR SHAW: My friend, mentioned the West Australian matter. I'd
4 like a copy of that.

5 REGISTRAR: I don't see that as problem.

6 MR WILLIAMS: Yes, certainly.

7 MR SHAW: Whether now or after the hearing is not relevant, but
8 it's exceptionally relevant to my issue. Thank you.

9 REGISTRAR: Thank you.

10 MR SHAW: The reason why it becomes evident and it'll become
11 evident as I do the tenders, is because there's in legal
12 terms, a causal link between the Victorian Electoral
13 Commission and the West Australian Electoral Commission.
14 They are obviously held accountable to the Commonwealth
15 Electoral Commission, but in a period of time from 2004 to
16 now, serious infractions occurred in legislation. The
17 average person as in looking at a Parliament or not
18 involved directly inside a Parliament, number one they
19 don't understand and number two they haven't got the
20 capacity to do anything about it if they did understand.

21 REGISTRAR: So what are you saying the infraction is?

22 MR SHAW: West Australia created Acts that are invalid and so
23 did Victoria. The common denominator in relation to the
24 two Electoral Acts, Victoria and West Australia, is
25 Warrick Gately. Now Warrick - this is no dispersion of
26 any particular individual, Your Honour, I'm not intending
27 to do that. Common sense in all of this issue as it would
28 progress or whatever it wants to do, because there's big
29 limitations on me, but common sense in this is the trial
30 of the issue. Not defendants or anything else, because as
31 the evidence will unfold, it's both a constitutional

1 infraction which wouldn't be the jurisdiction of this
2 court, but it's equally a criminal infraction, which is
3 the jurisdiction of this court.

4 What's occurring, Your Honour, and I'm not
5 bellyaching, I'm simply laying out the fact, is that in
6 each group of what you call the staff off each court,
7 whether it be the Supreme Court, Federal Court or High
8 Court, it's all set up to block. It's not therefore - and
9 will certainly take what you call the easy matters, the
10 matters that courts can handle.

11 REGISTRAR: Can I just - you're saying there's two main - the
12 two main issues - you're saying there's a constitutional
13 infraction. What do you say the constitutional infraction
14 is, in a nutshell, as much as you can in a nutshell?

15 MR SHAW: You want an actual opening submission type thing? So
16 in a nutshell - - -

17 REGISTRAR: I'm just wanting to get the issue very clearly.

18 MR SHAW: I understand that. It comes down to legislation,
19 Your Honour, that has been in - we use the word enactment,
20 or enacted, that's changed the whole jurisprudence. Not
21 only of the state, but of the Commonwealth. They've
22 actually breached State Constitutions and Commonwealth
23 Constitutions.

24 REGISTRAR: I just want to know which Act you're saying - - -

25 MR SHAW: In Victoria, and that will come out in this because
26 I want to get the actual words correct.

27 REGISTRAR: Yes.

28 MR SHAW: In Victoria there was an Act enacted on 5 September
29 2000. From memory it's called the Courts and Tribunals
30 Further Amendment Act, and I'll get it correct as I come
31 to the evidence, Your Honour, and that Act at part two of

1 that Act, took the oath of allegiance out of the Legal
2 Practice Act. You can't do that, Your Honour. It
3 automatically activates the Commonwealth referendum
4 because it affects the constitution of the state of
5 Victoria, which is a breach of s.100. I'll just check it.

6 That's a breach of s.106 of the Commonwealth
7 Constitution, Your Honour. I'll read that section, is
8 that okay?

9 REGISTRAR: Yes, that's fine.

10 MR SHAW: It just simply says, "The Constitution of each State
11 of the Commonwealth shall, subject to this Constitution".
12 Now that doesn't need any explanation, it just means it's
13 subject to. "Continue as at the establishment of the
14 Commonwealth, or as at the admission or establishment of
15 the State, as the case may be, until altered in accordance
16 with the Constitution of the State." Now those last words
17 become exceptionally operative in relation to how you
18 alter something within the State.

19 Now when they did what they did, and specifically,
20 it was the Attorney-General at the time, which was
21 Mr Rob Hulls, who introduced and did the first and second
22 readings in the parliament for that particular Act. But
23 when looking at Hansards, Your Honour, and I am not going
24 down where I shouldn't go, Hansards just simply said,
25 "Well as far as we can see", and these are politicians
26 talking, "we seem to still have the Queen and I don't know
27 why we're trying to do this". But all they needed to do
28 was quote s.109 and s.106, that stopped it. Nobody seemed
29 to have the capacity to be able to do it.

30 Section 109 of the Commonwealth Constitution says,
31 "When a law of a State is inconsistent with a law of the

1 Commonwealth, the latter shall prevail, and the former
2 shall, to the extent of the inconsistency, be invalid."
3 When you look at the Commonwealth Constitution the oath of
4 allegiance remains in the Constitution of the
5 Commonwealth, so to remove the oath of allegiance out of
6 the Legal Practice Act is not only a constitutional
7 infraction but in actual fact, Your Honour, it turns out
8 to be a criminal offence because, as the evidence will
9 show, what Western Australia did, they did a particular
10 act, it's called the Acts Amendment and Repeal (Courts and
11 Legal Practice) Act, apparently enacted 1 January 2004.
12 Following on from what I just read out of s.106, you can
13 only alter it in accordance to the constitution of the
14 State.

15 The Western Australia constitution, Your Honour, is
16 actually a much better one than the Victorian one because
17 it has checks and balances in there. In legal terms you
18 would call it manner and form. It was not abided by.

19 Now all I'm simply saying in this is that I'd love
20 to be able to cast a valid vote but to be voting at this
21 present with what I understand has occurred, I'd rather be
22 - well at this moment I'm the defendant.

23 It is very important that portions of the Western
24 Australian Constitution Act come into this matter because,
25 and that's the causal link, in some period between 2004
26 and 2013 or thereabouts, and I can be corrected with that,
27 Warwick Gately was the Western Australian Electoral
28 Commissioner. Today he is our Victorian Electoral
29 Commissioner, same man. An exceptionally intelligent man
30 because you only have to look at his CV, but prior to him
31 getting involved in the Electoral Commissioners he was the

1 captain of HMAS Adelaide and HMAS Torrens, just to use the
2 expression an exceptionally and capable person just in
3 that area, let alone in this area.

4 But the problem is, Your Honour, when he was the
5 Western Australian Electoral Commissioner and in reading
6 the Electoral Act here for Victoria, the Victorian
7 Electoral Commission is Warwick Gately, that's it, full
8 stop. It is a one person Commission according to the Act.
9 I would stand corrected there if I'm wrong but I have read
10 the Act and it's one person. So the Victorian Electoral
11 Commission, the corporation or structure, is in actual
12 fact one man. But going back to his role prior to what he
13 has achieved here, and please this is no dispersion on
14 Warwick Gately - - -

15 REGISTRAR: Yes, you have said that, that's fine. I am not
16 taking it as that.

17 MR SHAW: None. These are only legal issues because as I said
18 the correct way to handle this is a trial of the issue,
19 which I have already addressed at the Supreme Court.
20 There is jurisdiction in there in the Judiciary Act for
21 all of that and it will only be my consent because over
22 the period of time I've laid a lot of criminal charges in
23 relation to this.

24 I will now spend a little bit of time on the Western
25 Australian Constitution Act because under that Act it was
26 the Western Australian Electoral Commission that should
27 have activated all the referendum requirements of this
28 Western Australian Constitution Act and at that period of
29 time that was Warwick Gately, either in the capacity as
30 Deputy Electoral Commissioner or Electoral Commissioner.
31 But in the Western Australian Constitution Act, Your

1 Honour, there are six sections that are protected,
2 according to the Constitution, and I am working off s.106
3 that actually says, of the Commonwealth Constitution, that
4 you can only alter it if it's altered in accordance with
5 the State constitution and it says, "Until altered in
6 accordance with the constitution of the State", now that's
7 manner and form.

8 Manner and form also includes referendums. There is
9 only a couple of places that the electorate can be
10 involved: (1), a referendum; (2), a common jury, whether
11 it be civil or criminal; (3), a grand jury, and when they
12 start using that all hell broke loose, Your Honour, so
13 I won't go into that at the moment. But the critical part
14 is the referendum. So if a referendum had to be held but
15 was not held, there's a big breach in the law, a big
16 breach in the structure of it. I will read a portion of
17 s.73(2) of the Western Australian Constitution Act 1889.
18 It says here, Your Honour, at (e), s.73(2)(e), "expressly
19 or implicitly in any way affects any of the following
20 sections of this Act, namely ss.2, 3, 4, 50, 51 and 73".
21 There are six sections.

22 REGISTRAR: That was what, sorry, what document?

23 MR SHAW: Sorry, I will go through that again, Your Honour. It
24 is s.73(2)(e).

25 REGISTRAR: Of the?

26 MR SHAW: Western Australian Constitution - it's the
27 Constitution Act 1889 Western Australia. What I am
28 actually saying, Your Honour, is the causal link is the
29 Electoral Commissioner, Warwick Gately. He was over
30 there, then he's now here. The six sections are ss.2, 3,
31 4, 50, 51 and 73.

1 If I go to s.2, just to give you a background on
2 what those six sections are - - -

3 REGISTRAR: That's all right, I can do the background.

4 MR SHAW: All right.

5 REGISTRAR: I just want you to reference that to - - -

6 MR SHAW: All right, well I will just read a little bit further
7 into that one because it's critical.

8 REGISTRAR: All right.

9 MR SHAW: At (g) which is the same, 73(2)(g), it says, "The
10 Bill", and it is there referred to as Bill, not an Act, so
11 it's part of the enactment process. "The Bill has also
12 prior to such presentation been approved by the elector".
13 Your Honour, that automatically brings in both the State
14 electors and the Commonwealth electors because the
15 particular Act, and it will come in the evidence, Your
16 Honour, as it's tendered or handed up, automatically - the
17 words of the Act included the Commonwealth, so it's not
18 exclusive to State breach. Somebody put the Commonwealth
19 in there.

20 So being on the electoral roll I am automatically on
21 two rolls. I am a State elector and I'm also a
22 Commonwealth elector but it says here, "The Bill has also
23 prior to such presentation been approved by the electors
24 in accordance with this section, and a Bill assented to
25 consequent upon its presentation in contravention of this
26 subsection shall be of no effect as an Act". That is
27 where the bells ring, Your Honour. Right there. Because
28 the Acts Amendment and Repeal (Courts and Legal Practice)
29 Act, which is something like 250-odd pages, but for the
30 concentration span of most Aussies, not to their
31 detriment, 10 is about the limit, i.e. they sort of run

1 out of puff looking at 10, let alone 250. But in
2 précising it, all I have is what you call Part 8 of that
3 Act, which is about 10 or 12 pages and it's here in the
4 evidence Your Honour so it will come before the court, but
5 Part 5 of that Act is as relevant as Part 8.

6 Now when it first came into the floor of the Western
7 Australian Parliament, at the time Peter Foss was the
8 former Attorney-General but Hansards records that he just
9 simply stood up and said, "Part 5 and Part A of this Act
10 are ultra vires before we begin so I don't know where
11 we're going from here". Most of the politicians at that
12 time, Your Honour, wouldn't have understood what he said
13 because I think at the time there was only two or three
14 legally trained in that parliament of 95 or thereabouts.
15 What somebody should have said was, "Well explain
16 ultra vires to us", because a lot of these people come
17 from various backgrounds and through whatever they find
18 themselves elected and get into parliament and they are
19 out of their depth straight away.

20 REGISTRAR: All right, I am just bringing you back into - you
21 have said so being on the electoral roll you are on the
22 Commonwealth role, you are on the State role, right?

23 MR SHAW: Correct, Your Honour.

24 REGISTRAR: You have then said, now this is the nub, the crux
25 of it, so you have then brought in this Legal Practice Act
26 again. How do you, just put it concisely, ultra vires say
27 how is that the nub of what your argument is for not
28 voting? I am trying to get you - I can do the background.

29 MR SHAW: That's okay, I understand.

30 REGISTRAR: Yes.

31 MR SHAW: The Governor of each State is the hub of that.

1 REGISTRAR: Right.

2 MR SHAW: Now in this case that was Alex Chernov here in
3 Victoria, a former Supreme Court judge, and in Western
4 Australia that was McCusker, Malcolm McCusker.

5 REGISTRAR: Yes.

6 MR SHAW: Now that particular Act I mentioned at Part A is one
7 - there's a few sections, Your Honour, that actually
8 removed the Queen and made the Governor - substituted the
9 Governor. That automatically had two causes in effect.
10 First off, it had to go to the elector under that s.73.
11 The electors of Western Australia never saw that but the
12 problem is that section or that condition automatically
13 activated the Commonwealth constitution's referendum
14 requirement because it was altering the constitution or
15 the structure of the constitution of a State constitution
16 which affected the Commonwealth constitution. But in
17 actual fact, Your Honour, when a governor removes the
18 Queen without the elector's consent, and that would have
19 been my consent, that governor has actually usurped and
20 changed the whole jurisprudence of that particular State.

21 REGISTRAR: So without your consent, so you are upset about the
22 Queen removal?

23 MR SHAW: Not the Queen, Your Honour, no not the Queen. I am
24 objecting to the fact that the referendums required, i.e.
25 the elector's consent, that's mine, was omitted. Even
26 though it's clearly stated in both the Western Australian
27 Constitution Act and the Commonwealth Constitution Act
28 that to touch any of this type structure you need the
29 elector's consent, and we call that a referendum. The
30 responsibility of holding those referendums is the
31 election Electoral Commissions.

1 Now I would be absolutely - I would stand to be
2 corrected if that statement is wrong but there's a process
3 that begins, it's called the Referendum Provisions
4 Machinery Act or thereabouts that apparently puts in. No
5 different than holding a State election or a council
6 election, it's got to be the Election Commissions that now
7 kick in, whether it's State or Commonwealth, that actually
8 handle the referendum. So if someone puts a Bill before
9 the parliament and somebody in that parliament is astute
10 enough to actually say, "I don't think you can put this
11 before us until you put it before our electors", because
12 that's what 70 - s.73(2)(g) says.

13 Now, the moment you put it before the State electors
14 of West Australia on it, because it has such an enormous
15 ramification, it's automatically required to be before the
16 Commonwealth electors under s.128. And the governors,
17 they knew this, Your Honour, but you can't take the Queen
18 out and substitute yourself.

19 Now, that's no different than myself having a title
20 on purchasing a house, and I have a title - or I am
21 getting a title through conveyancing, and that apparently
22 happens, but if two years later I find out that my lawyer
23 was able to get himself on my title during the
24 conveyancing. Now, I just go back and say to the lawyer,
25 "Why did you do that", or "How did you do that?" And in
26 this case, somebody substituted into the title.

27 We have a monarch; we all know that monarch is Queen
28 Elizabeth II. I have respect for that and I'm not getting
29 involved in the monarch or the republican issue, I am just
30 simply saying the politicians, State and/or Commonwealth,
31 are held accountable to us.

1 Now it's absolutely pointless bringing these points
2 to them because they essentially know that their political
3 career is finished if they bring these points up, because
4 what I'm saying here is this program is too big. Somebody
5 brought it up, somebody put it on the table, and
6 somebody's hoping it can get passage.

7 But only one Attorney-General at the time, and from
8 memory it was in the Marquet matter out of Western
9 Australia, M-a-r-q-u-e-t. I think that went on to the
10 High Court. But in the intervenors, only one Attorney-
11 General raised the point and, from memory, that was
12 Gallagher (sic) before the High Court judges that in West
13 Australia had to abide by s.73(2)(g), and it didn't. Now
14 that - unfortunately, Your Honour, that Attorney-General
15 at that time was honest, but the problem is now he's been
16 elevated to be a High Court judge himself.

17 REGISTRAR: All right.

18 MR SHAW: Brought a relevant point.

19 REGISTRAR: Bringing us all back to you saying that it's
20 accepted you failed to vote; you had the right to vote,
21 right?

22 MR SHAW: Yes.

23 REGISTRAR: And you wanted to vote, but for things - - -

24 MR SHAW: Correct.

25 REGISTRAR: Now without a valid and sufficient excuse is what
26 is the case put.

27 MR SHAW: Yes.

28 REGISTRAR: I want you to tie in for me what you've been
29 saying. So what do you say - drawing from what you've
30 said, is your valid or sufficient excuse for not voting?
31 That's what I want.

1 MR SHAW: The election issued by the State senators - sorry,
2 the State governors at the time were outside the
3 constitutional structure.

4 REGISTRAR: State senators and government?

5 MR SHAW: Sorry, not the State senators, it's the State
6 governor that issues the writs in both the State - the
7 State election and/or council election. But - - -

8 REGISTRAR: So keep on, yes.

9 MR SHAW: - - - also in the Commonwealth election.

10 REGISTRAR: Yes. So you're saying the election - just say that
11 again for me?

12 MR SHAW: The election writs issues by the governors of both
13 Victoria and Western Australia, which would accumulatively
14 catch all the other governors, are outside the
15 constitutional boundary lines or structure. They are not
16 valid writs.

17 REGISTRAR: Thank you. Now, I want to hear from Mr Williams
18 about that. Just bear with me one moment.

19 MR WILLIAMS: Sure.

20 REGISTRAR: Sorry gentlemen, we are just going to interpose
21 another matter quickly, which I need to finish up from
22 another day. It won't take very long at all.

23 MR WILLIAMS: Of course, yes.

24 MR SHAW: We can leave all this stuff?

25 REGISTRAR: Yes. Actually, he'll be in the witness box in any
26 event, won't he? So you could stay actually, Mr Shaw
27 where you are.

28 (At this stage the court proceeded with another matter.)

29 REGISTRAR: Mr Williams.

30 MR WILLIAMS: Yes, Your Honour, thank you. Your Honour, as I
31 understand Mr Shaw's argument, he's concerned about the

1 way that the Crown is referred to in legislation, I think
2 that's - if I have that wrong Mr Shaw, please correct me,
3 but he sees some fundamental irregularity in how the Crown
4 is referred to in legislation.

5 The issue, needless to say this court and no court
6 in Victoria is able to rule on West Australian legislation
7 or any issue that arises under Western Australian
8 legislation. To the extent that constitutional matters
9 arise, those matters in my submission would have to go
10 before the High Court. The Electoral Act is a validly
11 enacted Act and the issue in this matter is actually a
12 very narrow and confined one as Your Honour is aware.

13 Just on the writs, the governor does indeed issue
14 the writs, Your Honour, and the writs are issued for the
15 lower house and the upper house and that's provided for in
16 s.61 of the electoral Act. There's no suggestion that
17 those writs were in any way defective. I certainly have
18 no instructions that the writs, that there was a problem
19 with the writs or that any person made an application to a
20 court in relation to the writs, and I believe that Mr Shaw
21 has run the argument or variations of this argument before
22 as to how the Crown is referred to or how the Crown in the
23 State of Victoria is referred to in legislation, and all I
24 can say, Your Honour, to that is to the extent that the
25 argument is intelligible, there is no suggestion at all
26 that the electoral Act is unconstitutional; 166 is validly
27 enacted and the issue that we have to decide is actually a
28 very narrow one and none of those issues really come into
29 it.

30 REGISTRAR: Thank you. Mr Shaw, what do you say to that?

31 MR SHAW: Your Honour, in reply to the issues raised, the issue

1 is not the Victorian Electoral Act, the issue at all times
2 is what you would term respect of governors' writs, that's
3 plural, and legislation that has been passed through
4 various parliaments and enacted that are inconsistent with
5 either state constitutions and/or Commonwealth
6 constitutions.

7 In relation to the Crown Your Honour, I'll read from
8 the Acts Interpretation Act (1900).

9 REGISTRAR: No, you don't need to, I'm familiar with - - -

10 MR SHAW: It's s.16 just for the court.

11 REGISTRAR: Yes.

12 MR SHAW: Just for the point of the record, but in relation to
13 the Victorian Court having no jurisdiction in relation to
14 West Australia, Your Honour, s.80 of the Commonwealth
15 constitution overrides that and outranks that. In
16 relation to the High Court, the High Court does not have a
17 criminal jurisdiction, Your Honour, so in relation to all
18 the criminal issues that are in the matter - I'm the
19 defendant, I'm here before the court as the defendant -
20 but in essence I'm here before the court because other
21 courts have not handled the issue in the criminal
22 jurisdiction where it should be handled, because - and in
23 that Your Honour I rely on s.43(3) of the Crimes Act
24 (1914) that just simply states that a delay in criminal
25 proceedings, or any delay or whatever, is a question of
26 fact. We all know the difference between a question of
27 law and a question of fact.

28 In relation to the High Court the High Court judges
29 themselves have criminal charges lodged against them at
30 the Melbourne Magistrates' Court. What they do is use the
31 Public Prosecutions Act, either state and/or Commonwealth

1 to conceal all of that and not have it heard properly or
2 correctly, but at no time do those Acts outrank the
3 Commonwealth Constitution Act.

4 In relation to the matter that was mentioned, the
5 West Australian matter which is, I've got a copy here, but
6 the date is 1982 Your Honour. The whole jurisprudence of
7 West Australia changed in January 1 2004 so anything
8 before that has drops into a jurisprudence problem, but in
9 looking at who appeared, Mr R S French and Mr Johnson
10 instructed by Mr Warren McDonald French & Harrison
11 appeared for the appellant.

12 Your Honour, with the utmost respect to Mr French,
13 he is currently our Chief Justice of the High Court now
14 after the problem in Western Australia, and he's a Western
15 Australian man, went on to be a Federal Court Judge and
16 now is a High Court or the chief Justice, so taking it to
17 the High Court is taking it to where it can't go, and,
18 Your Honour, with respect, I have this issue with our
19 President of the Court of Appeal here, Chris Maxwell,
20 where he just simply said it's a High Court issue and I
21 said, "Your Honour with the utmost respect, they don't
22 have criminal jurisdiction", so all the High Court can do
23 in the criminal area, is refer it back to the one that
24 does have jurisdiction.

25 Your Honour. in relation to this court, the
26 Magistrates' Court of Vitoria, originally the jurisdiction
27 was in s.354 of the Crimes Act. That's a section,
28 Your Honour, that dealt with indictments that were able to
29 be obtained by a grand jury, but when I started using
30 that, Your Honour, and I won't go into the background and
31 what happened in the middle, the offenders went back to

1 the Victorian Parliament because they were actually inside
2 the Victorian Parliament at the time, one of them, was the
3 Attorney-General, and got that section removed. What they
4 did not say in Hansard, which is misleading and deceptive
5 conduct, Your Honour, is that we need this section
6 removed, and in that case they just simply said because
7 it's an old antiquated section of law, but what they never
8 said was, "We need it removed because we have grand jury
9 applications pending on us". That was not disclosed to
10 the parliament, and Hansard is clear on that, there is no
11 disclosure whatsoever. Specifically, I'm talking about
12 Mr Rob Hulls, the then Attorney-General in that period of
13 whatever, 2000 to 2008.

14 REGISTRAR: Sorry to interrupt you. What do you say about what
15 Mr Williams has said about the writs? There's no
16 suggestion the writs were in any way defective?

17 MR SHAW: Your Honour, can we get to the point of some what
18 you'd call - - -

19 REGISTRAR: I'm wanting to get to the point of the reasonable
20 and lawful excuse.

21 MR SHAW: Your Honour, when they actually basically said "We
22 haven't heard this problem of the writs before" this is a
23 registered post that was sent to Mr Gateley, Glenda Fraser
24 and Mr Kennedy dated 27 November 2014 with the
25 registration number on it. It's a fairly concise little
26 document. Should I hand it up Your Honour or tender it?

27 REGISTRAR: If you want to, yes.

28 MR SHAW: I'll tender it, Your Honour. Your Honour, can we go
29 through that?

30 REGISTRAR: No, I'll have a read of that when I stand down, but
31 I'd rather you pointed me to any salient bits upon which

1 you wish to rely in your argument rather than go through
2 it.

3 MR SHAW: I think that just the first couple of pages are
4 relevant, like the first three pages are relevant to the
5 issues we're talking about here. Should I hand that up or
6 tender it, Your Honour?

7 REGISTRAR: What do you mean? You've already tendered it.

8 MR SHAW: It's tendered?

9 REGISTRAR: It's tendered into evidence, yes.

10 MR SHAW: What will we call it?

11 REGISTRAR: We can call that Exhibit A if you like.

12

13 #EXHIBIT A - Registered post item 27/11/14.

14 MR SHAW: Sorry, Your Honour, could we make that Exhibit 3 only
15 because it stays in line with how I've numbered these?

16 I'll give you the other two.

17 REGISTRAR: No, because it's the first exhibit you've tendered.

18 MR SHAW: Okay, I'll just change that, so we'll call it

19 Exhibit 1.

20 REGISTRAR: Yes.

21 MR SHAW: Does it need any detail.

22 REGISTRAR: No.

23 MR SHAW: That's enough?

24 REGISTRAR: It's enough because I can go away and read that
25 very quickly.

26 MR SHAW: That makes it easier for me anyway because you can
27 see what's there. Your Honour, can I start tendering now?

28 REGISTRAR: What are you tendering, then, what have you got
29 there?

30 MR SHAW: I'll only make mention of them.

31 REGISTRAR: I want a quick mention of them, yes.

32 MR SHAW: We'll call it now Exhibit No.2 it's just - the

1 Queen's the monarch.

2 REGISTRAR: I know the Queen's the monarch.

3 MR SHAW: It's only a picture of the Queen. Beg your pardon?

4 REGISTRAR: I know that.

5 MR SHAW: No, Your Honour, Western Australia doesn't.

6 REGISTRAR: We're not in Western Australia.

7 MR SHAW: Because the governor chucked the Queen out and he

8 became the monarch, and I've got - the Acts will show what

9 he did.

10 REGISTRAR: It's got to be relevant to - - -

11 MR SHAW: Yes, Your Honour, because if he assumed an invalid

12 jurisdiction, and then signed the writ on the - - -

13 REGISTRAR: Yes, but that's not before him. It's before me.

14 MR SHAW: No. Your Honour, it's relevant to Warwick Gately

15 because at the time he was the West Australian electoral

16 commissioner who permitted all this to happen, and he just

17 had to say, all he had to say was, "You'd better abide by

18 s.73(2)(g) and I'm the one who's going to make this

19 referendum happen", that's all he had to say.

20 REGISTRAR: Right, you can tender the document.

21 MR SHAW: Beg your pardon?

22 REGISTRAR: Has Mr Williams seen these documents?

23 MR SHAW: Certainly they saw that, that's a legal notice,

24 Your Honour, that was given at that time. The other one's

25 just a picture of the Queen, and I'm only reiterating that

26 to show that we all know who the Queen is.

27 REGISTRAR: I think, yes.

28 MR SHAW: I know what you're saying, Your Honour, and I totally

29 agree with you. West Australia didn't.

30 REGISTRAR: All right, you've said that, you're repeating

31 yourself now, Mr Shaw.

1 MR SHAW: Sorry. This is just something that the Herald-Sun
2 ran but they made it A3, "Premier's push to ditch Queen",
3 and they've done that. What they should have said is it's
4 already occurred. It's the Herald-Sun.

5 REGISTRAR: That's three. Can we tender them as a bundle so
6 that my clerk doesn't have to be jumping up and down like
7 a jack-in-the box.

8 MR SHAW: Is that okay with you?

9 REGISTRAR: Yes.

10 MR SHAW: Yes, because it's okay with me.

11 REGISTRAR: Great.

12 MR SHAW: I'll just change some of the numbers on them because
13 the sequence changes. All right, I'm tendering the whole
14 lot.

15 REGISTRAR: Yes, expedite matters.

16 MR SHAW: Are you going to go through these at lunch?

17 REGISTRAR: No, Mr Shaw, that's - - -

18 MR SHAW: Then we've got another day.

19 REGISTRAR: No, I'm going to stand down now and go
20 through the materials and the arguments, that's what I
21 intend to do. I've got the nub of both your arguments.

22 MR SHAW: The critical issue Your Honour, is in Exhibit 4 if
23 you want to go straight to that. In doing it, by not -
24 hang on a minute, I'm actually confusing myself because if
25 I don't give the other side their copy I've got to give it
26 to them another time so I'll take one out of each and give
27 it to them now.

28 MR WILLIAMS: I haven't seen these but in any event I have no
29 objection to them being tendered. I don't think any of
30 them are likely to be relevant to the fact in issue in
31 this matter, but I don't have any objection to them being

1 tendered.

2 MR SHAW: What I'll do, Your Honour, is I'll just take two out,
3 one for myself, one for the other side, and that will
4 leave one in for you.

5 REGISTRAR: That's fine, thank you. Exhibit 4 critical
6 exhibit. Then perhaps if you would just label them
7 quietly, tender them as a bundle and then I will stand
8 down and - - -

9 MR SHAW: I will leave them in the envelope for you, so then
10 they will be fine.

11 REGISTRAR: Yes, that would be great, thank you. Otherwise
12 I just don't want to lose any of them either and get them
13 out of - - -

14 MR SHAW: I see what you're saying. You are actually telling
15 me to number what I'm doing, or I'm going to give you
16 these envelopes and I'll lose - - -

17 REGISTRAR: What you can do is - no, what you can do and would
18 be helpful to me, is just tender the whole bundle of
19 documents, we don't have to number them, and they will be
20 a bundle of documents and I will call that Exhibit 5.
21

22 #EXHIBIT 5 - Bundle of documents.

23 MR SHAW: Yes.

24 REGISTRAR: All right. Just to help everyone out and save a
25 lot of time. Because Mr Williams has said he has no
26 objection with you tendering them but he doesn't - - -

27 MR SHAW: That's okay, Your Honour, but if I don't give him a
28 copy at some point or another - the correct process is
29 they get a copy.

30 REGISTRAR: It is.

31 MR SHAW: And while I'm sitting here all I'm doing, I'll have
32 to do it anyway, so it's good reading for them in the

1 office because they don't take their work home and neither
2 do I.

3 Your Honour, one thing I have omitted is that what's
4 occurred is that it's moved to be what you call a foreign
5 power what they've done and specifically the foreign power
6 is the night is the sunshine in (indistinct) and a common
7 denominator appears in the pictures that are here. So
8 I only want to make reference that that foreign power
9 issue was a critical issue because, Your Honour, that s.44
10 of the Constitution.

11 REGISTRAR: Noted.

* *Knowledge of St John
of Jerusalem*

12 MR SHAW: We would have been here forever if we had gone
13 through all these.

14 REGISTRAR: Exactly.

15 MR SHAW: You took the short cut and I agree with that.

16 REGISTRAR: Well I am just trying to; - - -

17 MR SHAW: No, it's - it's - - -

18 REGISTRAR: For everyone's sake - as soon as I understand the
19 relevant arguments I just would rather do that.

20 MR SHAW: Sorry, if you want to make a note, Your Honour, this
21 No.14 is the Western Australian Act, the one I was talking
22 about.

23 REGISTRAR: All right, thank you. My clerk has just come up
24 with a very wise idea, that I can start reading materials,
25 considering arguments while you are getting that together;
26 rather than wasting time it would be more expeditious if
27 I do that. So I'm going to go back to my chambers and
28 start considering both arguments and the appropriate
29 documents. So if you can continue to get those ready then
30 my clerk will bring them through. Are you happy with
31 that?

1 MR SHAW: After that we can go, or?
2 REGISTRAR: No, no, no, while - - -
3 MR SHAW: Stay in the court, or?
4 REGISTRAR: I will stand down until 12.30, I'll let you know
5 then if I need - I'll come back at 12.30, I'll let you
6 know if I need more time but I'll stand down until then.
7 So if you can just get them ready and I'll go back to
8 chambers and start. Thank you very much.
9 (Short adjournment.)
10 REGISTRAR: Thank you for that time. All right.
11 MR SHAW: Your Honour, I just switched my phone off, I didn't
12 realise I had it on.
13 REGISTRAR: That is all right. All right, now my decision is
14 as follows. So firstly, in my view, many of the documents
15 tendered by Mr Shaw are not in themselves relevant to this
16 proceeding. I do not accept the *Electoral Act 2002* is
17 inconsistent with the Constitution.
18 I do not see any established relevance of the *Legal*
19 *Practice Act* or the *Constitution Act* to these proceedings.
20 In my view, this is a quasi-criminal matter, but Mr Shaw's
21 arguments are constitutional in nature and, therefore, in
22 my view, can go before the High Court.
23 This proceeding concerns the *Electoral Act 2002* and,
24 in essence, it comes down to the question pursuant to
25 s.166 of the Act sub-s.(1)(a), of whether Mr Shaw in
26 failing to vote on 29 November 2014 had established a
27 valid and sufficient excuse.
28 Mr Williams, in part, relied on the case of *Peter*
29 *Blakeney v Douglas Arnold Coates* which sets out a
30 definition of what does and does not constitute a valid
31 and sufficient excuse for not voting. Now although this

1 decision is not binding, I do find this case highly
2 persuasive, as it is based on a similar piece of
3 legislation in Victoria.

4 In my view, having listened to both sides, looked
5 over the evidence, there is no factual basis before the
6 court in this case to support a finding that Mr Shaw had a
7 valid and sufficient excuse for not voting at the election
8 on 29 November 2014, and I therefore find the charge
9 proven.

10 Now are there any priors Mr - - -

11 MR WILLIAMS: Yes, Your Honour, Mr Shaw previously failed to
12 vote in 2010, and was prosecuted at Kyneton Magistrates'
13 Court. He received a fine there of \$60 with \$44 in
14 statutory costs, no conviction was recorded.

15 REGISTRAR: Thank you. What is the - - -

16 MR WILLIAMS: Sorry, Your Honour, the penalty is - it is one
17 penalty unit, which is \$151.67. In our submission, the
18 court - although obviously, it is a matter for you, Your
19 Honour, the court should impose a fine significantly above
20 the amount paid by other electors who failed to vote, and
21 that amount was \$74.

22 Mr Shaw, as it is his right, has sought to challenge
23 this before the court. However, for that infringement to
24 act as a sufficient penalty, our submission would be that
25 the fine should reflect the fact that other people who
26 failed to vote paid that fine rather than challenging it
27 in open court. So that would be our submission.

28 Obviously, Your Honour, whether a conviction is
29 recorded is a matter for the court.

30 REGISTRAR: All right.

31 MR WILLIAMS: We would seek to be heard on the question of

1 costs once you have heard from Mr Shaw.

2 REGISTRAR: No, I will hear from you about costs.

3 MR WILLIAMS: Yes, sure.

4 REGISTRAR: And then I will hear from Mr Shaw about costs.

5 MR WILLIAMS: Sure, yes.

6 REGISTRAR: So what are you seeking?

7 MR WILLIAMS: Yes, in our submission, Your Honour, there should
8 be a substantial award of costs in this matter for a few
9 reasons. Mr Shaw knew that - Mr Shaw knew, in essence,
10 that this defence had no substance, but he has run a
11 contest anyway which was doomed to fail.

12 Mr Shaw has run variations of this argument in
13 numerous proceedings throughout the State, and it's been
14 determined by the Supreme Court to really have no
15 substance. As Your Honour may be aware, Mr Shaw was
16 declared a vexatious litigant in 2007.

17 If Your Honour reads the cases related to that, you
18 will see that the arguments in relation to the West
19 Australian issues and in relation to freemasonry and grand
20 juries, are very similar.

21 The total costs incurred by the VEC in this matter
22 are around \$6,200. Now, while I am not suggesting that
23 Your Honour impose costs in that order, in a recent
24 failure to vote matter where an individual did contest the
25 charge on constitutional grounds, the learned magistrate
26 awarded the costs to the VEC of some \$2,500.

27 I should add that the arguments that Mr Shaw has run
28 today were, in essence, although I don't have the
29 transcript here, were very similar, if not identical
30 arguments to the ones that were run - - -

31 REGISTRAR: In that - - -

1 MR WILLIAMS: - - - in the last prosecution in Kyneton.
2 REGISTRAR: All right.
3 MR WILLIAMS: So a costs award, obviously, is not a punishment,
4 but it's ordered to compensate the Commission, Your
5 Honour, which is publicly funded out of consolidated
6 revenue. As I noted, the accused had the opportunity to
7 pay an infringement penalty without the court process.
8 And while he is entitled to have the court determine the
9 matter, he did not advance even a plausible, valid excuse
10 for not voting, and he has necessitated the bringing of
11 these proceedings, and the Commission's costs are
12 significantly higher than what is sought. I think that's
13 all I have to say.
14 REGISTRAR: All right. And with the fines, you're arguing that
15 it should be more than \$74 for the reasons you advanced.
16 MR WILLIAMS: Yes. Sorry, Your Honour, I should clarify. So
17 if persons who didn't vote wish to have that matter simply
18 dealt with administratively, the amount would have been
19 \$74 to have it - - -
20 REGISTRAR: But otherwise, it's one penalty unit, yes.
21 MR WILLIAMS: It is one penalty unit, which is - that's the
22 maximum penalty under the provision, yes.
23 REGISTRAR: All right, thank you very much.
24 MR WILLIAMS: No problem.
25 REGISTRAR: Mr Shaw, what do you say about, firstly, the fine
26 and then costs?
27 MR SHAW: Your Honour, can I remain seated?
28 REGISTRAR: Yes, that's fine.
29 MR SHAW: Thank you. There's a couple of issues there, Your
30 Honour. Number one - - -
31 REGISTRAR: About the fine and then costs? That is what I am

1 hearing you on, Mr Shaw.

2 MR SHAW: In the Victorian Crimes Act and a few other Acts,
3 concealing for benefit is an indictable offence.

4 REGISTRAR: No, I want to hear what you've got to say
5 about - - -

6 MR SHAW: But I've just said that.

7 REGISTRAR: Yes.

8 MR SHAW: But in relation to the costs, I will relay the
9 situation that happened in front of the Deputy Registrar
10 of this court.

11 REGISTRAR: No, I would rather just hear what you have to say
12 about - - -

13 MR SHAW: Yeah, but that is relevant, because the Deputy
14 Registrar - the Deputy Magistrate at that point when they
15 were seeking costs, and from memory that was May of 2004 -
16 you will find that in - one of those envelopes says "eight
17 defendants".

18 That decision of Jelena Popovic at the time was,
19 "I'll reserve the issue of costs for a written decision",
20 which took a week. That written decision is on record
21 here of saying, "That if you seek costs in this type
22 regard, you'd have to open the witness box for cross-
23 examination".

24 REGISTRAR: That is incorrect.

25 MR SHAW: Well - - -

26 REGISTRAR: It is not me seeking costs.

27 MR SHAW: That's okay, but they are.

28 REGISTRAR: Yes, and - - -

29 MR SHAW: Which, in actual fact, means - - -

30 REGISTRAR: What you are saying is not correct.

31 MR SHAW: What I'm saying is, if they do that, they're going to

1 open the witness box. And I'm only saying that - - -
2 REGISTRAR: Based on where - - -
3 MR SHAW: Well, based on - - -
4 REGISTRAR: What do you say based on?
5 MR SHAW: - - - Jelena Popovic's reserved decision. It was a
6 written decision, because at that time they sought \$9,000
7 costs.
8 REGISTRAR: But that's her decision - - -
9 MR SHAW: Correct.
10 REGISTRAR: - - - in a courtroom.
11 MR SHAW: Correct.
12 REGISTRAR: That's not based on a legal principle.
13 MR SHAW: Then - no, Your Honour. It was based on her decision
14 on that day in relation to the cost issue. Now cost
15 issues are exceptionally relevant, because in this case -
16 and I can't say it - and I will say it quite clearly,
17 concealing for benefit is an indictable offence.
18 Now one of the exhibits I never handed up to you,
19 Your Honour, which is in this document, and I will
20 actually reserve this exhibit, but - because it will be
21 brought up later, it shows and will categorically prove,
22 Australian birth certificates being traded to Boston.
23 REGISTRAR: No, no, no.
24 MR SHAW: But - - -
25 REGISTRAR: No. No, you're getting off the tangent. What I
26 want to know is what do you have to say about the amount
27 of the fine and the amount of costs that are being sought
28 today? That's what I want to know. That's all I need to
29 know here.
30 MR SHAW: Not - not according to law. Their request is not
31 according to law.

1 MR WILLIAMS: As Your Honour pleases, thank you.
2 REGISTRAR: Thank you very much.
3 MR WILLIAMS: Thank you.
4 REGISTRAR: Mr Shaw, I will have my clerk return your exhibits
5 to you.
6 MR SHAW: Thank you.
7 REGISTRAR: Thank you. Thank you very much for your assistance
8 both of you.
9 MR SHAW: Thank you, Your Honour.
10 REGISTRAR: Thank you.
11

TRANSCRIPT ERROR

At Page 26 Line 6

"The NIGHT IS THE SUNSHINE"
IS INCORRECT

WHAT WAS STATED WAS

"The KNIGHTS of ST JOHN of Jerusalem"

David Shaw