

M150/2010

IN THE MATTER OF AN APPLICATION BY BRIAN WILLIAM SHAW
FOR LEAVE TO ISSUE A PROCEEDING

JUDGMENT

KIEFEL J

M150/2010

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The applicant, Mr Brian William Shaw, sought to file a document in this Court entitled "Election Petition", dated 22 October 2010, together with an affidavit in support. On 26 October 2010 Bell J directed the Registrar, pursuant to r 6.07 of the High Court Rules 2004, to refuse to file that document without the leave of a Justice first had and obtained. Mr Shaw applies for that leave.

Section 353(1) of the *Commonwealth Electoral Act* 1918 (Cth) ("the Act") provides that the validity of any election or return may be disputed by petition addressed to the Court of Disputed Returns and not otherwise. Section 358(1) of the Act provides that no proceedings shall be had on a petition unless the requirements of ss 355, 356 and 357 are complied with.

Section 355(a) of the Act requires that a petition set out the facts relied on to invalidate the election or return. Those facts must be set out with sufficient particularity to identify the specific matter or matters upon which the petitioner relies as justifying the grant of relief (s 355(aa) of the Act). The petition must contain a prayer for relief (s 355(b) of the Act).

In the document sought to be filed, the relief sought involves a declaration of the invalidity of "the election held on 21 August 2010" on account of fraud upon the electors. Further orders and declarations are sought declaring certain State legislation invalid and reserving the petition to the criminal jurisdiction of the Supreme Court of Victoria, where the applicant has filed charges against the respondent. An order is sought preventing High Court justices named in that proceeding from hearing this petition.

It may immediately be observed that the relief sought goes beyond that which may be given under s 360 of the Act.

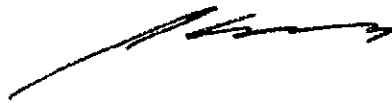
So far as concerns the claim of invalidity, it would appear that the essential complaint of the applicant concerns the removal of reference to the Crown and of the former Oath of Allegiance by legislation in Western Australian and Victoria. These legislative acts are described as treason and as a fraud upon the electorate. Many individuals are said to be implicated in these offences, including the respondent, the Governor-General and Attorneys-General. These amendments are said to render void all of their decisions and actions and to have likewise rendered void the outcome of the 2010 Australian federal election.

The State legislation is also said to be invalid because of inconsistency with Commonwealth legislation and the failure of the States to hold State referenda before making the amendments.

Much of what is contained in the document has no bearing upon a dispute as to an election. The claim for fraud, either on the

electors of Australia generally, or those in the Division for which the applicant was a candidate, is unsubstantiated. The jurisdiction under the Act is not invoked. The "petition", if issued, would be an abuse of the process of this Court.

For these reasons leave is refused.

A handwritten signature in black ink, appearing to be 'M. J. G.', written in a cursive style.

This page and the preceding two pages
comprise my reasons for judgment in *In the
matter of an application by Brian William
Shaw for Leave to Issue a Proceeding.*