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WESTERN AUSTRALIAN GOVERNMENT Gazette

349

PERTH, TUESDAY, 2 FEBRUARY 1999 No. 13

PUBLISHED BY AUTHORITY JOHN A. STRIJK, GOVERNMENT PRINTER AT 3.30 PM

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PART 1

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PART 2

NEW FORMAT FOR GENERAL GOVERNMENT GAZETTES

For ease of access to particular notices the general Gazette will be divided into two parts as detailed below. In each part, the notices will appear in alphabetical order of the authorising Department.

Part 1 will contain Proclamations, Regulations, Rules, Local Laws and various other Instruments etc. but not Town Planning Schemes.

Part 2 will contain general notices and information and Town Planning Schemes.

PUBLISHING DETAILS

The Western Australian *Government Gazette* is published by State Law Publisher for the State of Western Australia on Tuesday and Friday of each week unless disrupted by Public Holidays or unforeseen circumstances (changes to this arrangement will be advertised beforehand on the inside cover).

Special *Government Gazettes* containing notices of an urgent or particular nature are published periodically.

The following guidelines should be followed to ensure publication in the *Government Gazette.*

- Material submitted to the Executive Council prior to gazettal will require a copy of the signed Executive Council Minute Paper and in some cases the Parliamentary Counsel's Certificate.
- Copy should be received by the Manager (Sales and Editorial), State Law Publisher no later than 12 noon on Wednesday (Friday edition) or 12 noon on Friday (Tuesday edition).

Postal address:
State Law Publisher
P.O. Box 8448,
Perth Business Centre 6849

Delivery address:
State Law Publisher
Ground Floor,
10 William St. Perth, 6000
Telephone: 9321 7688 Fax: 9321 7536

- Lengthy or complicated notices should be forwarded early to allow for preparation. Failure to observe this request could result in the notice being held over.

If it is necessary through isolation or urgency to fax copy, confirmation is not required by post. *If original copy is forwarded later and published, the cost will be borne by the advertiser.*

ADVERTISING RATES AND PAYMENTS

EFFECTIVE FROM 1 JULY 1998.

Deceased Estate notices, (per estate)—$17.70

Real Estate and Business Agents and Finance Brokers Licences, (per notice)—$41.30

Other articles in Public Notices Section—$41.30 (except items of an exceptionally large nature. In these instances arrangements will be made for pricing the notice at time of lodging).

All other Notices

Per Column Centimetre—$8.15

Bulk Notices—$153.00 per page

Clients who have an account will be invoiced for advertising charges.

Clients without an account will need to pay at time of lodging the notice.

PUBLISHING ALTERATIONS

Periodically the normal *Gazette* publishing times need to be altered to cater for disruption caused by public holidays.

- Easter and Christmas holidays cause disruption each year.
- Australia Day and Anzac Day cause disruption when they fall on a Tuesday or Friday.

In these instances, notices warning of the change are generally published on page 2 for approximately 4 weeks prior to the date.

Readers are urged to check *Gazettes* accordingly, prior to contacting State Law Publisher.

JOHN A. STRIJK, Government Printer.

— PART 1 —

PROCLAMATIONS

AA101*

MARINE AND HARBOURS ACT 1981

PROCLAMATION

WESTERN AUSTRALIA
P. M. Jeffery,
Governor.
[L.S.]

} By His Excellency Major General Philip Michael Jeffery, Companion of the Order of Australia, Officer of the Order of Australia (Military Division), Military Cross, Governor of the State of Western Australia.

I, the Governor, acting under section 9(2) of the *Marine and Harbours Act 1981* and with the advice and consent of the Executive Council, do hereby vary the proclamation made under that Act and published in the *Gazette* on 9 January 1987 at p. 17 by deleting the Schedule and inserting the following Schedule —

"

Schedule

Carnarvon Lot 1232 on Land and Surveys original Plan 16524 and the building and equipment on the lot.

".

Given under my hand and the Public Seal of the State on 27 January 1999.

By Command of the Governor,

MURRAY CRIDDLE, Minister for Transport.

GOD SAVE THE QUEEN!

AA102*

RAIL SAFETY ACT 1998

32 of 1998

PROCLAMATION

WESTERN AUSTRALIA
P. M. Jeffery,
Governor.
[L.S.]

} By His Excellency Major General Philip Michael Jeffery, Companion of the Order of Australia, Officer of the Order of Australia (Military Division), Military Cross, Governor of the State of Western Australia.

I, the Governor, acting under section 2 of the *Rail Safety Act 1998* and with the advice and consent of the Executive Council, do hereby fix the day after the day on which this proclamation is published in the *Government Gazette as* the day on which the provisions of that Act come into operation.

Given under my hand and the Public Seal of the State on 27 January 1999.

By Command of the Governor,

MURRAY CRIDDLE, Minister for Transport.

GOD SAVE THE QUEEN!

LOCAL GOVERNMENT

LG301

LOCAL GOVERNMENT ACT 1995

Shire of Wyalkatchem

Standing Orders Local Law

Under the powers conferred by the Local Government Act 1995, the Council of the Shire of Wyalkatchem resolved on 17 December 1998 to adopt the Model Local Law (Standing Orders) 1998 published in the *Government Gazette* on 3 April 1998 with such modifications as are here set out—

Clause 9
In Clause 9.1, delete the heading "Members to Rise" and insert the heading "Members to Speak" and delete the whole of the second sentence.

Clause 17
In Clause 17.6, delete paragraph (b)

The Standing Orders of the Shire of Wyalkatchem published in the *Government Gazette* on 15 February 1983 are repealed.

Dated this 2nd day of February 1999.

The Common Seal of the Shire of Wyalkatchem was hereunto affixed by authority of a decision of the Council in the presence of—

R. J. CRUTE, President.
B. E. TAYLOR, Chief Executive Officer.

TRANSPORT

TR301*

Road Traffic Act 1974

Road Traffic (Licensing) Amendment Regulations 1999

Made by the Governor in Executive Council.

1. Citation

These regulations may be cited as the *Road Traffic (Licensing) Amendment Regulations 1999.*

2. Commencement

These regulations come into operation on 1 July 1999.

3. Regulation 4A inserted

After regulation 4 of the *Road Traffic (Licensing) Regulations 1975** the following regulation is inserted —

"

4A. Applicant for grant or transfer of vehicle licence to declare whether vehicle is fitted with immobilizer

(1) Except as stated in subregulation (2), an applicant —

(a) for the grant of a licence for a vehicle under section 18 of the Act; or

(b) for the transfer of the licence for a vehicle under section 24 of the Act,

in respect of a motor vehicle to which regulation 1017B of the Vehicle Standards Regulations applies, shall declare in writing, at the time of making the application, whether the vehicle meets the requirement prescribed by regulation 1017A(1) of those regulations for the vehicle to be fitted with an approved device.

(2) Subregulation (1) does not apply if the application is referred to in regulation 1017A(2) of the Vehicle Standards Regulations.

(3) In this regulation —

"approved device" has the meaning given by regulation 1017A(4) of the Vehicle Standards Regulations;

"Vehicle Standards Regulations" means the *Road Traffic (Vehicle Standards) Regulations 1977*.

".

[* *Reprinted as at 5 October 1994. For amendments to 15 January 1999 see 1997 Index to Legislation of Western Australia, Table 4, pp. 235-7, and Gazette 12 May and 4 August 1998.*]

By Command of the Governor,

ROD SPENCER, Clerk of the Executive Council.

TR302*

Road Traffic Act 1974

Road Traffic (Vehicle Standards) Amendment Regulations 1999

Made by the Governor in Executive Council.

1. Citation

These regulations may be cited as the *Road Traffic (Vehicle Standards) Amendment Regulations 1999.*

2. The regulations amended

The amendments in these regulations are to the *Road Traffic (Vehicle Standards) Regulations 1977**.

[* *Reprinted as at 29 July 1996.*
For amendments to 15 January 1999 see 1997 Index to Legislation of Western Australia, Table 4, pp. 237-8, and Gazette 12 May, 23 June and 17 November 1998.]

3. Regulation 103B amended

Regulation 103B(b) is amended by inserting after "1008," —

" 1017A, 1017B, ".

4. Regulations 1017A and 1017B inserted

After regulation 1017 the following regulations are inserted —

"

1017A. Requirement to fit immobilizers

(1) A motor vehicle to which regulation 1017B applies shall be fitted with an approved device at the time the first application is made on or after 1 July 1999 —

(a) under section 18 of the Act for the grant of a licence for the vehicle; or

(b) under section 24 of the Act for the transfer of the licence for the vehicle,

whichever occurs first.

(2) An application is not a **"first application"** for the purposes of subregulation (1) if it is made —

(a) for —

(i) the transfer of a licence referred to in section 76C(6)(a) of the *Stamp Act 1921*; or

(ii) the issue of a licence referred to in section 76C(6)(b) of that Act,

and the certification required by section 76C(7) of that Act has been given in relation to the transfer or issue of the licence; or

(b) for the transfer of the licence for a vehicle and the licence is to be transferred —

(i) under a testamentary instrument, or on an intestacy, to a person who is entitled to that vehicle in terms of the instrument or on the intestacy; or

(ii) to comply with a judgment or order of a court.

(3) If a vehicle is required under subregulation (1) to be fitted with an approved device at the time an application is made, that requirement continues in force from that time.

(4) In this regulation and regulation 1017B —

"approved device" means a device, approved by the Director General by notice published in the *Gazette*, that is designed to secure a vehicle against theft.

1017B. Classes of vehicles to be fitted with immobilizers

(1) Except as stated in subregulation (2), this regulation applies to a motor vehicle —

(a) that is —

(i) a motor car;

(ii) a motor wagon that has a manufacturer's gross vehicle mass that does not exceed 4.5 tonnes; or

(iii) an omnibus;

and

(b) that has a tare that does not exceed 3 tonnes.

(2) This regulation does not apply to a motor vehicle —

(a) manufactured 25 years or more before the time the first application referred to in regulation 1017A(1) is made in relation to the vehicle;

(b) to which regulation 21D of the *Road Traffic (Licensing) Regulations 1975* applies; or

(c) exempted by the Director General, by notice published in the *Gazette* or notice in writing given to the owner of the vehicle, from the requirement to be fitted with an approved device.

".

By Command of the Governor,

ROD SPENCER, Clerk of the Executive Council.

— PART 2 —

FISHERIES

FI401*

PEARLING ACT 1990

RESTRICTION OF PEARLING AND HATCHERY ACTIVITIES
(NORTH TURTLE ISLET) NOTICE 1999

Notice No. 1 of 1999

FD 658/98 [271]

Made by the Minister under section 19.

Citation

1. This notice may be cited as the *Restriction of Pearling and Hatchery Activities (North Turtle Islet) Notice 1999*.

Interpretation

2. In this notice—

"holding site" means the area bounded by a line commencing at the intersection of 19° 51.95' south latitude and 118° 54.78' east longitude, thence to the intersection of 19° 51.46' south latitude and 118° 54.79' east longitude, thence to the intersection of 19° 51.46' south latitude and 118° 55.60' east longitude, thence to the intersection of 19° 51.95' south latitude and 118° 55.57' east longitude; thence in a straight line to the commencement point (AGD 84); and

"operator" means Dampier Pearling Company Pty Ltd (ACN 061 740 145).

General restriction of pearling and hatchery activities

3. A person other than the operator must not undertake any pearling or hatchery activity in the holding site.

Restriction of pearling and hatchery activities by the operator

4. The operator must not undertake any pearling or hatchery activity in the holding site other than the activity of temporarily holding seeded pearl shells prior to transport to a pearl oyster farm and in the manner specified in the Executive Director's letter to the operator dated 17 November 1998.

Dated this 11th day of January 1999.

MONTY HOUSE, Minister for Fisheries.

FI402*

PEARLING ACT 1990

RESTRICTION OF PEARLING AND HATCHERY ACTIVITIES
(NORTH TURTLE ISLET) NOTICE (No 2) 1999

Notice No. 2 of 1999

FD 659/98 [272]

Made by the Minister under section 19.

Citation

1. This notice may be cited as the *Restriction of Pearling and Hatchery Activities (North Turtle Islet) Notice (No 2) 1999*.

Interpretation

2. In this notice—

"holding site" means the area bounded by a line commencing at the intersection of 19° 52.46' south latitude and 118° 55.20' east longitude, thence to the intersection of 19° 52.45' south latitude and 118° 55.61' east longitude, thence to the intersection of 19° 53.10' south latitude and 118° 55.85' east longitude, thence to the intersection of 19° 53.16' south latitude and 118° 55.45' east longitude; thence in a straight line to the commencement point (AGD 84); and

"operator" means Cossack Pearls Pty Ltd (ACN 009 212 015).

General restriction of pearling and hatchery activities

3. A person other than the operator must not undertake any pearling or hatchery activity in the holding site.

Restriction of pearling and hatchery activities by the operator

4. The operator must not undertake any pearling or hatchery activity in the holding site other than the activity of temporarily holding seeded pearl shells prior to transport to a pearl oyster farm and in the manner specified in the Executive Director's letter to the operator dated 17 November 1998.

Dated this 11th day of January 1999.

MONTY HOUSE, Minister for Fisheries.

LOCAL GOVERNMENT

LG401

LOCAL GOVERNMENT (MISCELLANEOUS PROVISIONS) ACT 1960

Town of Victoria Park

CLOSURE OF PRIVATE STREET

Department of Local Government,
Perth, 2 February 1999.

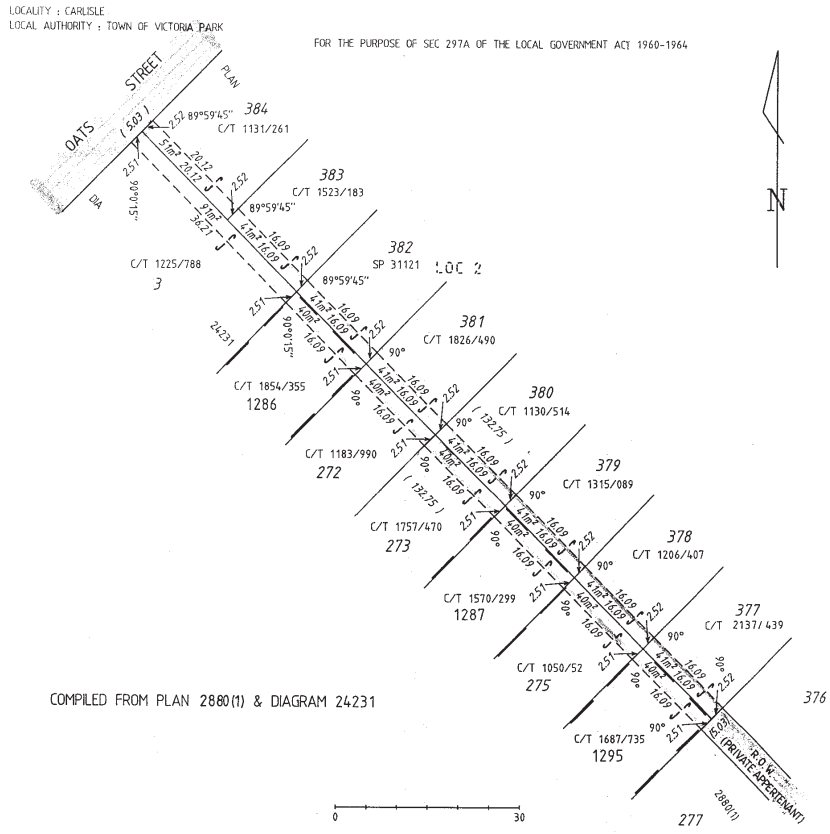
LG: VI 4-12

It is hereby notified for public information that the Governor has approved under section 297A of the Local Government (Miscellaneous Provisions) Act 1960, the resolution passed by the Town of Victoria Park that portion of the private street which is described as being portion of Canning Location 2 and Swan Location 35, being portion of the land coloured brown on Plans 2880 and 2132, and being part of the land contained in Certificate of Title Volume 469 Folio 104 be closed, and the land contained therein be amalgamated with adjoining Lots 377-384 Bishopsgate Street, Lots 272, 273, 275, 1286, 1287 and 1295 Raleigh Street and Lot 3 Oats Street, Carlisle, as shown in the Schedule hereunder.

JOHN LYNCH, Executive Director,
Department of Local Government.

Schedule

Diagram No. 97044



LG402*

TOWN OF CLAREMONT

It is advised for public information that John Goward, being Ranger for the Town of Claremont, will be responsible for the administration of the following, within the Town of Claremont—

A. Parking By-laws
B. Local Government Act 1995 and By-laws
C. Litter Act 1969
D. Dog Act 1976 and Regulations

T. PEARSON, Acting Chief Executive Officer.

MINERALS AND ENERGY

MN401

MINING ACT 1978

NOTICE OF APPLICATION FOR AN ORDER FOR FORFEITURE

Department of Minerals and Energy.

In accordance with Regulation 49(2)(c) of the Mining Act 1978, notice is hereby given that the licences are liable to forfeiture under the provisions of Section 96(1)(a) the breach of covenant, viz. non payment of rent.

Warden.

To be heard in the Warden's Court, Marble Bar on the 25th February 1999.

PILBARA MINERAL FIELD

Marble Bar District

P45/2361—Ruane, Michael

MN402

MINING ACT 1978

NOTICE OF APPLICATION FOR AN ORDER FOR FORFEITURE

Department of Minerals and Energy,
Meekatharra.

In accordance with Regulation 49(2)(c) of the Mining Act 1978, notice is hereby given that the licences are liable to forfeiture under the provision of Section 96(1)(a) for breach of covenant, viz. non payment of rent.

J. R. PACKINGTON, Warden.

To be heard in the Warden's Court, Meekatharra on Thursday 18th February 1999.

MURCHISON MINERAL FIELD

P51/1753—Byron Exploration Pty Ltd
P51/2046—Balde Exploration Consultants Pty Ltd; D. J. Hockley
P51/2047—Balde Exploration Consultants Pty Ltd; D. J. Hockley
P51/2048—Balde Exploration Consultants Pty Ltd; D. J. Hockley
P51/2049—Balde Exploration Consultants Pty Ltd; D. J. Hockley
P51/2050—Balde Exploration Consultants Pty Ltd; D. J. Hockley
P51/2051—Balde Exploration Consultants Pty Ltd; D. J. Hockley
P51/2052—Balde Exploration Consultants Pty Ltd; D. J. Hockley
P51/2053—Balde Exploration Consultants Pty Ltd; D. J. Hockley

PEAK HILL MINERAL FIELD

P52/870—Sorna Pty Ltd
P52/871—Sorna Pty Ltd
P52/872—Sorna Pty Ltd
P52/873—Sorna Pty Ltd
P52/874—Sorna Pty Ltd
P52/875—Sorna Pty Ltd
P52/949—V. M. Caruso

EAST MURCHISON MINERAL FIELD

P53/960—New Millennium Resources NL
P53/961—New Millennium Resources NL

PLANNING

PD101*

CORRECTION

TOWN PLANNING AND DEVELOPMENT ACT 1928

Statement of Planning Policy No.8

State Planning Framework Policy

Notice is hereby given that the Statement of Planning Policy No.8, State Planning Framework Policy as published in the *Government Gazette* dated Tuesday 22 December 1998, Special No.253, is in error on:

— page 6927, Section 4.1 under the paragraph headed Part B State and Regional Provisions, the 2nd last line. This is corrected by deleting "Aprovision@" and substituting "provision"; and

— page 6931, under the heading B4. Strategic Policies. "Urban Bushland Policy (1995)" is corrected by deleting "Policy" and substituting "Strategy".

PD401*

WESTERN AUSTRALIAN PLANNING COMMISSION

METROPOLITAN REGION SCHEME (SECTION 33) AMENDMENT
SOUTH WEST DISTRICTS OMNIBUS (No. 4)

CALL FOR PUBLIC SUBMISSIONS

File No: 809-2-1-51

Amendment No: 1006/33

The Western Australian Planning Commission intends to amend the Metropolitan Region Scheme for land in the Cities of Cockburn, Fremantle, Melville and Rockingham and the Towns of East Fremantle and Kwinana and is seeking public comment.

The purpose of this amendment is to implement recommendations for the rezoning and reservation of land in the Cities of Cockburn, Fremantle, Melville and Rockingham and the Towns of East Fremantle and Kwinana. The *Amendment Report* details all the proposed changes.

The procedure for amending the Scheme, as set out in section 33 of the Metropolitan Region Town Planning Scheme Act, is to be used to advertise this proposal. Public submissions are invited and the amendment will eventually be put to Parliament for final approval. In accordance with the procedure in section 33, the Hon Minister for Planning has approved the amendment for public display and for the calling of submissions.

Copies of the amending plans and detail plans showing the proposed changes to the zones and reservations of the Scheme, and the Commission's *Amendment Report* which explains the various proposals, will be available for public inspection from Monday 23 November 1998 to Friday 26 February 1999 at each of the following places:

- Ministry for Planning
  1st Floor
  Albert Facey House
  469 Wellington Street
  PERTH
- J S Battye Library
  Alexander Library Building
  Cultural Centre
  Francis Street
  NORTHBRIDGE

Council Offices of the municipalities of:
- City of Cockburn
- City of Fremantle
- City of Melville
- City of Perth
- City of Rockingham
- Town of East Fremantle
- Town of Kwinana

Any person who desires to make a submission either supporting or objecting to any provisions of the proposed amendment should do so on the Form 6A. This submission form is available on request from the display locations and is also contained in the explanatory *Amendment Report*.

Submissions must be lodged with the:

Secretary
Western Australian Planning Commission
469 Wellington Street
PERTH WA 6000

on or before 5.00pm Friday 26 February 1998. Late submissions will not be considered.

PETER MELBIN, Secretary,
Western Australian Planning Commission.

PD402*

TOWN PLANNING AND DEVELOPMENT ACT 1928

TOWN PLANNING SCHEME AMENDMENT AVAILABLE FOR INSPECTION

CITY OF ARMADALE

TOWN PLANNING SCHEME NO 2—AMENDMENT NO 154

Ref: 853/2/22/4 Pt 154

Notice is hereby given that the local government of the City of Armadale has prepared the abovementioned scheme amendment for the purpose of:

1. rezoning Lot 9 Brookton Highway, Karragullen from "General Rural" to "Rural C1" and "Rural D1"; and
2. modifying the Scheme Maps accordingly.

Plans and documents setting out and explaining the scheme amendment have been deposited at Council Offices, 7 Orchard Avenue, Armadale and at the Western Australian Planning Commission, Albert Facey House, 469 Wellington Street, Perth, and will be available for inspection during office hours up to and including 16 March 1999.

Submissions on the scheme amendment may be made in writing on Form No 4 and lodged with the undersigned on or before 16 March 1999.

This amendment is available for inspection in order to provide an opportunity for public comment and it should not be construed that final approval will be granted.

J. H. A. ADDERLEY, Acting Chief Executive Officer.

PD403*

TOWN PLANNING AND DEVELOPMENT ACT 1928

TOWN PLANNING SCHEME AMENDMENT AVAILABLE FOR INSPECTION

CITY OF BUNBURY

TOWN PLANNING SCHEME NO 6—AMENDMENT NO 216

Ref: 853/6/2/9 Pt 216

Notice is hereby given that the local government of the City of Bunbury has prepared the abovementioned scheme amendment for the purpose of:

1. Rezoning Portion of Leschenault Location 52 Jubilee Road, Vittoria Heights, from 'Residential R12.5' to 'Residential R20'.
2. Inserting a new clause 10(e) in Section 4.3 of the Scheme Text.

Plans and documents setting out and explaining the scheme amendment have been deposited at Council Offices, Stephen Street, Bunbury and at the Western Australian Planning Commission, Albert Facey House, 469 Wellington Street, Perth, and will be available for inspection during office hours up to and including 16 March, 1999.

Submissions on the scheme amendment may be made in writing on Form No 4 and lodged with the undersigned on or before 16 March, 1999.

This amendment is available for inspection in order to provide an opportunity for public comment and it should not be construed that final approval will be granted.

G. P. BRENNAN, Chief Executive Officer.

PD404*

TOWN PLANNING AND DEVELOPMENT ACT 1928

TOWN PLANNING SCHEME AMENDMENT AVAILABLE FOR INSPECTION

SHIRE OF HARVEY

TOWN PLANNING SCHEME NO 1—AMENDMENT NO 24

Ref: 853/6/12/18 Pt 24

Notice is hereby given that the local government of the Shire of Harvey has prepared the abovementioned scheme amendment for the purpose of rezoning Wellington Locations 5061, Part 2166, Part 2167 and Portion of Reserve 20331 Forestry Road and Myalup Road from the General Farming zone to the Special Rural Zone.

Plans and documents setting out and explaining the scheme amendment have been deposited at Council Offices, 102 Uduc Road, Harvey and at the Western Australian Planning Commission, Albert Facey House, 469 Wellington Street, Perth, and will be available for inspection during office hours up to and including 16 March, 1999.

Submissions on the scheme amendment may be made in writing on Form No 4 and lodged with the undersigned on or before 16 March, 1999.

This amendment is available for inspection in order to provide an opportunity for public comment and it should not be construed that final approval will be granted.

K. J. LEECE, Chief Executive Officer.

PREMIER AND CABINET

PR401

MINISTERIAL ACTING ARRANGEMENTS

It is hereby notified for public information that the Governor in accordance with section 52(1)(b) of the Interpretation Act 1984 has approved the following temporary appointment in the place of the Hon H. J. Cowan MLA in the period 25 to 31 January 1999 inclusive—

Minister for Commerce and Trade; Regional; Small Business—Hon M. G. House MLA

M. C. WAUCHOPE, Director General,
Ministry of the Premier and Cabinet.

PR402

MINISTERIAL ACTING ARRANGEMENTS

It is hereby notified for public information that the Governor in accordance with section 52(1)(b) of the Interpretation Act 1984 has approved the following temporary appointment in the place of the Hon G. M. Evans MLC in the period 25 January to 5 February 1999 inclusive—

Minister for Finance; Racing and Gaming—Hon K. D. Hames MLA

M. C. WAUCHOPE, Director General,
Ministry of the Premier and Cabinet.

WATER

WA401*

RIGHTS IN WATER AND IRRIGATION ACT 1914

Notice under Section 13 of the Act

[Regulation 14(1)]

The Water & Rivers Commission has received the application listed below to take and use surface water for irrigation purposes.

Any owner or occupier of land within 4.8 kilometres of the applicants land and contiguous to the watercourse may object to that application.

Objections should be sent to reach me at the—Water & Rivers Commission, PO Box 261, Bunbury WA 6230 prior to 16th February 1999 by certified mail.

Any queries regarding this application should be referred to Ms Rachael Nickoll on telephone 08 9721 0666, Water Resources Officer, South West Region, Water and Rivers Commission.

W. F. TINGEY, Regional Manager,
South West Region.

Schedule

1)	Applicant:	Southern Wine Corporation
	Property	Wellington Location 3245
	Water Course:	Tributary of the Preston River

PUBLIC NOTICES

ZZ201

TRUSTEES ACT 1962

STATUTORY NOTICE TO CREDITORS

Creditors and other persons having claims (to which section 63 of the Trustees Act 1962 and amendments thereto relate) in respect of the estates of the undermentioned deceased persons are required by the personal representatives of care of Messrs. Corser & Corser, 1st Floor, 256 Adelaide Terrace, Perth to send particulars of their claims to them within one month from the date of publication of this notice at the expiration of which time the personal representatives may convey or distribute the assets having regard only to the claims of which they have then had notice—

Alford, Gladys Jean, late of 250 Herbert Street, Doubleview, Seamstress, died on 2 January 1999.

Van Helden, Hubert, late of 62 Stanley Street, Nedlands, Contractor, died on 27 October 1998.

ZZ202

NOTICE TO CREDITORS—WESTERN AUSTRALIA

In the Supreme Court of Western Australia Probate jurisdiction.

In the matter of the will of Jacob Bos late of 201 Keymer Street, Belmont, Western Australia, Retiree, deceased.

Notice is hereby given that all persons having claims or demands against the estate of the abovenamed Jacob Bos, deceased are requested to send particulars thereof in writing to the executor, Mr Robert Weir of care of 132 Murray Street, Perth in the said State, Manager, within one month from the date of this publication after which date the executor will proceed to distribute the assets of the deceased among the persons entitled thereto having regard only to the claims and demands of which he shall then have notice.

SUMMERS PARTNERS,
Level 3, 190 St George's Terrace, Perth WA 6000.
(Ref: MLP:jg:72--015).

ZZ401*

HIGH COURT CHALLENGE TO 3rd OCTOBER 1998 SENATE ELECTION

Under Part XXII of the *Commonwealth Electoral Act 1918* the validity of the 3rd October 1998 Senate election held in the States of Victoria, Western Australia, New South Wales, Tasmania, and the Northern Territory, has been challenged in the High Court, acting as the Court of Disputed Returns. Per O68, 3(a) of the High Court Rules a copy of this petition is herein published in this Gazette. The body of this petition is the same for all States and Territories.

HIGH COURT RULES

Form 70 O 68, r 2A

IN THE HIGH COURT OF AUSTRALIA

SITTING AS THE COURT OF DISPUTED RETURNS

[*PERTH*] OFFICE OF THE REGISTRY.

Insert capital city

No. [*P58*] of 19*98*

Insert allocated case No.

BETWEEN *Roderick David Garcia*

PETITIONER

AND

THE AUSTRALIAN ELECTORAL COMMISSION
RESPONDENT

ELECTION PETITION

This petition concerns the election of the Half Senate for the Commonwealth of Australia in the State/Territory of ____*Western Australia*____, held on 3rd October 1998.

Insert State/Territory

RETURN OF WRIT

The writ for the election was returned on ____27th October 1998____

Insert date for return of the writ

ENTITLEMENT TO FILE THIS PETITION

The petitioner is entitled to file this petition under the *Commonwealth Electoral Act 1918*. Specifically per Section 353 (1) "The validity of any election or return may be disputed by petition addressed to the Court of Disputed Returns and not otherwise"

And

Section 354 (1) "The High Court shall be the Court of Disputed Returns, and shall have jurisdiction either to try the petition or to refer it for trial to the Federal Court of Australia or to the Supreme Court of the State or Territory in which the election was held or return made"

And

Section 355 (c) of the Act that a petition "be signed by a candidate at the election in dispute or by a person who was qualified to vote thereat" is satisfied because the petitioner is a person who was qualified to vote at the election in dispute and was also a candidate at the same said election.

Petition & Statement of Facts

1.0a That this Court acknowledge that the Petitioner is a layman at law and grant what ever leave and assistance necessary to ensure the Petitioner the lawful and democratic conclusion of this matter under s.364 of the Commonwealth Electoral Act 1918.

1.0b That the Petitioner is granted leave to be assisted by a McKenzie friend at the choosing of the Petitioner at all times of these proceedings whether in the High Court of Australia or in any other delegated Court.

1.1 That the half Senate election held on 3rd October 1998, for the State/Territory, in which the petitioner was a Senate Candidate, is declared void and that none of the six Senate candidates returned was duly elected.

1.2 That the platform of candidacy of the petitioner was not given media coverage despite requests and/or demands for such coverage to the various media bodies, and that denial of such media coverage is against the principles of fair democratic elections which is a foundation of the Constitution and that were such coverage granted the result of the election, would in the greater probability, have been significantly different.

1.3 That the petitioner was disadvantaged under ss 211 and 211A of the Commonwealth Electoral Act 1918 by not having a right to a "ticket vote", and that such a disadvantage has in the greater probability significantly effected the outcome of this election, and that such disadvantagement is against the interests of a true and fair democratic process which forms the foundation of our constitution.

And notwithstanding the court's decision regarding the aforementioned, that;

1.4. The court instruct the Australian Electoral Commission to return the $700 lodgement fee paid by the petitioner to register as a Senate candidate on the grounds that the fee did not provide the same benefit as received by other non-independent candidates and/or that there was a failure of consideration, that was understood by the petitioner to be in place at the time of registration, such consideration being that independent candidates would not be disadvantaged in the electoral process.

And notwithstanding the court's decision regarding the aforementioned that;

1.5 The court instruct the Australian Electoral Commission to have provision for ticket voting for independent candidates in all future elections of the Senate, given as outlined herein, that such instruction is in no way against the Democratic principles of the Constitution or s211A of the Commonwealth Electoral Act 1918 and is not against the principle intention of s211A, which is to simplify the voting procedure and reduce the number of informal votes.

And notwithstanding the court's decision regarding the aforementioned that;

1.6 The Chiefs of Staffs of the media bodies referred to in this petition be informally instructed by the court to make provision for and ensure proper coverage of press releases and policy launches by independent candidates and/or that some form of caution be given to said media bodies regarding the intrinsically incumbent responsibilities they have within our democratic process to discern and report important election issues raised by independents.

1.7. That given a significant proportion of independents in other States and Territories in the Commonwealth of Australia also petition the Court of Disputed returns on similar grounds as herein stated, that leave is granted by the Court that these Petitions form a "Class-Action" of independent Candidates (who so chose to join such an action) and that the matter be brought as a Class-Action before the Full Bench of the High Court or that given permission by the other petitioning independents who have joined said Class Action that the case be determined by a single Court of Disputed returns whose final decision will embody all the petitions.

That failing the granting of such leaves the petitioner asks that this petition be read down to the Half Senate Election in which the petitioner was a candidate.

2.0 That s209 (1) of the *Commonwealth Electoral Act 1918* provides that ballot-papers to be used in a Senate election shall be in Form E in Schedule 1 to the Act. That form shows a ballot-paper across which is drawn a horizontal black line.

2.1 That pursuant to s168 of the Act, two or more candidates may request that their names be grouped on ballot-papers, but candidates who wish the word "Independent" to be printed adjacent to their name on ballot-papers pursuant to s169A are not able to make such a request.

2.2 That under s210- (1) (a) of the Act, when printing ballot-papers the names of grouped candidates is to be printed before the names of ungrouped candidates.

2.2b That the names of grouped candidates appear in a single column dedicated to that group below the line on the ballot-paper, and except as otherwise provided by the regulations a square is to be printed opposite the name of each candidate as per S 210 (f) and Form E.

2.3 That where grouped candidates lodge with the Australian Electoral Officer a statement in accordance with s211 indicating their order of preferences or orders of preferences in relation to all the candidates, they are taken to have a group voting ticket or group voting tickets, and a square appears above the line on the ballot-paper in the same column in which the names of the grouped candidates are listed individually below the line as per s211 (4) and (5) and Form E.

2.4 That subject to s210 (3)(b) and (c), the names of ungrouped candidates appear, in a single column after the names of grouped candidates. Since those candidates are unable to register voting tickets, no voting ticket square appears above the line in that column as per s210 (3)(a) and Form E.

2.5 That the voter may mark his vote either by placing consecutive numbers in every square appearing beside the names of candidates below the line, or simply by placing the figure "1" or a tick or a cross in one only of the voting tickets squares appearing above the line as per s239 and Form E. Thus, the Act allows a simplified method of voting for grouped candidates by marking a single group voting Ticket Square appearing above the line on the ballot-paper.

2.6 That where a group voting ticket square is marked in this way, the ballot-paper is deemed to be marked in accordance with the relevant voting ticket or tickets as per s272.

2.7 However, this simplified voting procedure is not available to ungrouped independent candidates who are unable to register a voting ticket.

2.8 In addition to the scheme, which may be discerned from the provisions to which I have referred, it is necessary to refer to s211A of the Act. That section allows an ungrouped independent candidate whom is a sitting member of the Senate to lodge an individual voting ticket or individual voting tickets.

2.9 Where such a ticket or such tickets is or are lodged, the candidate is able to avail himself or herself of the advantages enjoyed by grouped candidates because a voter who wishes to vote for such a candidate is able to use the simplified method of voting provided for in the Act, namely, by casting a vote for the individual ticket or tickets simply by placing the figure "1" or a tick or cross in a square above the line on the ballot-paper.

2.10 This is not an advantage enjoyed by ungrouped candidates who do not fall within the language of s211A.

2.11 On the October 3rd 1998 half-Senate election voters were presented with two voting options. The voter's first option was simply to mark one square above the line; in the alternative, the voter could mark, with consecutive numbers, all the squares below the line. Both means of voting were available as alternatives to vote for individuals and groups with registered voting tickets, but only the latter method was available to vote for ungrouped independent candidates who were unable to register a voting ticket.

ARGUMENTS—in support of 1.2

3.0 Within our constitution there is an implied freedom of communication in relation to the political and electoral processes. Those guarantees arise as a necessary implication from the nature of the institutions of government created and preserved by the Constitution or from the common citizenship of the Australian people. The agreement of the Australian people called the Constitution into existence and gave it substantial validity. The Commonwealth of Australia Constitution Act 1900 (Imp.) gave that agreement legal form. The Constitution derives its continuing validity from the will of the Australian people. The people only can change it; s. 128.

3.1 The view of the framers of the Constitution that an American-style Bill of Rights was unnecessary was based on their faith in the proper functioning of representative and responsible government and the free operation of the electoral process. Representative and responsible government is responsive to the voice of the people. It requires that every person and every political candidate have the entitlement to make his or her views known on political issues not only between elections but also especially during election campaigns. It requires that all political candidates have an equal opportunity to be elected and that the voting process should unfairly disadvantage no political candidate.

3.2 Since the executive government is responsible to the popularly elected House of Parliament, the ability of the people and political candidates in an election to make known their views on current political issues arising during a term of that House, or during an election, is essential to its operation. The fundamental premise of the structure of the Constitution, and in particular of the electoral processes specifically provided for by ss. 7, 24, 28 and 128 and preserved in the case of State Constitutions by s. 106, is the continuous ability of the Australian people as a whole to make informed judgments on matters of political significance. This necessarily involves the capacity at all times for free and unhindered public discussion on all such matters, subject to traditional and proportional limitations such as those imposed by the laws of defamation and sedition.

3.3 A decision was made by the media Chiefs of Staffs of Television stations 2, 7, 9, and 10 and various radio stations to deny media coverage of matters of political significance raised by the Petitioner. This decision so made whilst the Petitioner was campaigning in an election and, amongst other considerations, acting and performing duties on behalf of the electorate and also of the 50 nominees who so nominated said Petitioner as a Senate Candidate. Such decision was made in the absence of any compelling justification, and was made despite, demanding such communication and media coverage. The media Chiefs of Staff have therefore

(a) Interfered with the free operation of the institutions and processes created or preserved by the Constitution, in particular the electoral processes required or preserved by ss. 7, 24, 28, 106 and 128

(b) And have denied execution of a fundamental premise on which the representative and responsible government established and preserved by the Constitution is based, viz. the ability of the Australian people to control the institutions of government through electoral processes.

3.4 The structures and processes of the Constitution require or permit access to and/or participation by political candidates with the media bodies. They necessarily confer on the candidates a correlative right to that access or participation (5) Crandall v. Nevada (1867), 73 US 35; R. v. Smithers; Ex parte Benson (1919), 16 CLR 99, at pp.108-109, 109-110. That right includes all that is necessary for its effective exercise.

3.5 The right to vote is a personal right (6) Ashby v. White (1703), 2 Ld Raym 938 (92 E.R. 126); Judd v. Mckeon (1926), 38 CLR 380, at p. 384. In Canada the existence of an implied guarantee of freedom of communication was recognised as an essential feature of Canadian parliamentary democracy having constitutional status even before the Canadian Charter of Rights and Freedoms (7) Re Alberta Legislation, (1938) 2 DLR, at pp. 107-108, 119-120; Switzman v. Ebbling, (1957) SCR 285, at pp. 305-307; (1957) 7 DLR (2d) 337, at pp. 357-359; Retail, Wholesale and Department Store Union Local 580 v. Dolphin Delivery Ltd., (1986) 33 DLR (4th) 174, at pp. 183-187. A major purpose of the express guarantee of freedom of speech in the First Amendment to the United States Constitution was to protect the free discussion of governmental affairs (8) Mills v. Alabama (1966), 384 US 214, at p. 218; Buckley v. Valeo (1975), 424 US 1, at pp. 14-15; First National Bank of Boston v. Bellotti (1977), 435 US 765, at pp. 776-777.

3.6 The implication of the guarantee of freedom of communication arising from the common citizenship of the Australian people rests on the same as well as on broader considerations. The concept of citizenship in a free and democratic society necessarily implies a personal freedom of movement and communication throughout that society. The existence of such a freedom is deeply rooted in the common law and in the traditions of democratic government. The petitioner during the election campaign demanded such freedom of the media Chiefs of Staff. However the Chiefs of Staff did not comply. In addition to the express guarantee of freedom of speech in the First Amendment, an implied constitutional guarantee of freedom of movement, and equality of opportunity within the mechanics of the election process, to be elected, has always been recognised in the United States (9) Edwards v. California (1941), 314 US 160, Shapiro v. Thompson (1969), 394 US 618.

3.7 The Media Chiefs of Staff of the Media bodies in the absence of legislative guidelines have power to abrogate a citizen's or political candidate's freedom to communicate on political matters during election periods. Generally such abrogation *discriminates against persons or parties not already represented in a Parliament*. Whilst the time allocated by the media to the representation of political parties and independent candidates is logically expected to be proportional to the corresponding number of incumbent members of Parliament and Senators of the political party, it is however not logical nor just to expect, that non-incumbent independent candidates be totally boycotted from any representation whatsoever. Such censorship cannot be justified.

3.8 Rights of universal suffrage are entrenched in the Constitution Act 1902 (N.S.W.), ss. 11B, 22, 22A, 29. The process of election is fundamental to the organisation and structure of State governments because it determines the composition of the legislature and the executive. Political announcements of platforms of candidacy by political parties and independents and media coverage of such announcements is a well-established and legitimate means whereby relevant information is conveyed to electors and the Executive kept accountable. (19) Whitney v. California (1927), 274 US 357, at pp. 375-378; Stromberg v. California (1930), 283 US 359, at p. 369; First National Bank of Boston v. Bellotti (1978), 435 US 765, at pp. 776-777; The Commonwealth v. John Fairfax and Sons Ltd. (1980), 147 CLR 39, at p. 52; Miller v. TCN Channel Nine Pty. Ltd. (1986), 161 CLR 556, at pp. 583-584.

3.9 It is the threat through proper means of conveying pleasure or displease at government that is of the essence of a democratic political system and has impact on the way governments act from time to time. Elections are not to be conducted in an information vacuum or with specific censorship by Media Chiefs of Staff. An effective democracy requires information to be freely circulated in the "marketplace of ideas" (20) Abrams v. United States (1919), 250 US 616, at p. 630. Effective means of choice between alternative governments or ideas is fundamental. The Media Chiefs of staffs decision not to give media coverage of the Petitioners platform of candidacy has substantially interfered with the capacity of the Executive to govern and to protect the efficacy of State laws and policies and has dangerously endangered our democratic process.

3.10 The public interest requires the dissemination, not the suppression, of the information of a candidate's platform of candidacy, the broadcasting of which is left to the choice of Media Chiefs of Staff.

3.11 Whilst the failure of the Media Chiefs to cover my platform of candidacy still leaves ample mechanisms for political debate and communication to those who wish to participate; for example print advertising, direct mail, public meetings and door knocking, such mechanisms require funding and man power which is generally outside the capacity of an independent candidate. Notwithstanding such available means of communication, which the Petitioner utilised, access to the electronic media is imperative to the creation of any serious and/or effective public debate. Such imperativeness is further compounded when considering that independent candidates do not have access to large funds or staff and helpers.

3.12 The time period for election campaigns is short, and in today's information age to be denied access to current affairs interviews press conferences and press releases, was to deny and hinder the implied rights in the constitution of candidates. Such denial causes a disadvantage to independents that consequently will remain largely unknown to the electorate.

3.13 The Constitution requires or is predicated on a process such that the Senators and members are "directly chosen by the people". It is implicit that the process must permit the choice to be freely made and, to the extent necessary for a free choice, permit candidates and electors to communicate with each other. The proper approach is not to ask what are the assumptions that were made by the framers of the Constitution, and then to express them as affirmative rights, but to consider whether the particular decisions made by respective Chiefs of Staff of the various media bodies to not give media coverage of the Petitioner's platform of candidacy, or press releases, in their operation prevents electors and

candidates from participating in the conduct of the election in a meaningful way. It is my contention that the answer to this question must be in the affirmative.

3.14 A decision by media Chiefs of Staff, which from a practical point of view prevents a free election, would hinder the democratic process. It is implied in the Constitution that a political candidate represents constituents in an electorate. Decisions by the Chiefs of Staff of media bodies, to restrict communication between a political candidate and electors prevents the candidate from representing the electorate.

3.15 The effect of such decisions is not so great as to lead to the conclusion that free and meaningful elections cannot be held, or that independent candidates and electors cannot communicate, but it is certain that the effect could be great enough to significantly effect the outcome of an election. Indeed it is almost certain that were any reputable independent candidate exposed on the media to the extent of either of the major parties, that such candidate would receive a very significant proportion of the vote and very likely be elected. The role of the media cannot be underestimated.

Considering the fickle nature of elections and public support, it is almost certain that media coverage of the petitioner's platform of candidacy or his/her policy launch would have a significant effected the vote tally. Alternatively it would be almost impossible to prove that such media coverage, if given, would not have any effect on the outcome of an election. Therefore it is intrinsic to the integrity of our democratic process and the future of Australia the benefit of the doubt on this issue be given to the petitioner, and that it be accepted by the court that the greater probability is that were media coverage granted by the Chiefs of Staff, that the vote tally would certainly be different. It can only be conjecture whether or not the final result of the election would be different, but because of the nature of the issue the benefit of doubt must fall on the side of the petitioner. It is possible that the petitioner, given media coverage, may have received sufficient votes to be elected, or sufficient votes such that expenses could be claimed, or in the least sufficient votes to effect the standing and tally of an elected candidate.

3.16 In a democracy the right to freedom of speech is part of the fabric of society (68) Derbyshire County Council v. Times Newspapers Ltd., (1992) 1 QB 770. There cannot be democracy if the independent candidates are effectively gagged

ARGUMENTS—in support of 1.3

4.0 That not having provisioned for ticket voting of independent candidates placed said candidates, such as myself, in a position of disadvantage that certainly would have effected the tally of the election and possibly also the result of the election. The low percentage of electors who voted by numbering every box below the line on the ballot-paper, during the 1996 and 1998 half Senate elections support this contention.

4.1 I also cite the statutory declarations provided by Mr John Murray Abbotto (in case r37 of 1996) who also petitioned the Commonwealth Electoral Officer in the court of disputed returns, to the effect that certain persons who intended to vote for him or for independent candidates were confused or misled by the ballot-paper and failed to cast a formal vote as a result. That independents are disadvantaged was not in dispute in Mr Abbotto's petition by either the respondent or Justice Dawson.

4.2 In the case of McKenzie V the Commonwealth of Australia, which also unsuccessfully challenged the group voting system, Gibbs CJ rejected the submission on that occasion that the system under s211A, contravened s16 of the Constitution. He also rejected a submission that it offended general principles of justice by discriminating against candidates who are not members of established parties or groups. Gibbs CJ was prepared to assume that S7 of the Constitution requires the Senate to be elected by democratic methods but held that any disadvantage caused by the group voting system to ungrouped and independent candidates did not "so [offend] democratic principles as to render the sections beyond the power of Parliament to enact" {(1985) 59 ALJR 190 at 191; 57 ALR 747 at 749.}. However this view directly contravenes the popular view of voters, and thus should be reconsidered. This interpretation by a single Justice of the High court is against that of the popular opinion of Electors qualified to vote at the election of a member of the House of Representatives and does adequately account for the probability of said disadvantage effecting the outcome of an election.

4.3 The exclusion under S211 of the Commonwealth electoral act of non-incumbent independent candidates from access to a "ticket vote" cannot be linked to the attainment of any legitimate governmental objective. (Castlemaine Tooheys Ltd. v. South Australia (10) (1990) 169 CLR 436, at pp. 473-474. and Denis v. United States (11) (1951) 183 F 2d 201, at p. 212.)

4.4a The challenge to s211 is that it does not satisfy the test of being a reasonable and proportionate regulation.

4.4b Parliament has plenary powers under ss. 10, 29, 31, 51(xxxvi) and (xxxix) to make laws with respect to elections. It may make laws regulating the conduct of persons in regard to elections, including laws for the protection of the integrity of the electoral process by the prevention of corruption and undue influence (43) Smith v. Oldham (1912), 15 CLR 355, at p. 358, 360, 362-363; Attorney-General (Cth) (Ex rel. McKinlay) v. The Commonwealth (1975), 135 CLR 1, at pp. 46, 56-58. As the Constitution in ss. 24, 29 and 41 contains express restrictions upon the exercise of these legislative powers, there is limited scope for the implication of other restrictions.

4.5 This Petition is that the High Court not strikes down section 211A, even though it may be satisfied that it so impairs the democratic process. Instead the Petitioner seeks the court to instruct the Australian Electoral Commission to have provision for ticket voting for independent candidates. Section 211 cannot be reasonably considered to be appropriate and adapted to achieving its objective, which is a simplified voting system for [all] candidates and a reduction in informal votes. It is so lacking in reasonable proportionality by the exclusion of independent candidates from ticket votes that this effect must be characterised as having no relationship with the objective it was intended to achieve (53) South Australia v. Tanner (1989), 166 CLR 161, at pp. 165-168, 178-179. The framers of the Constitution did not show the American farmers' lack of faith in parliamentary supremacy. The latter considered

it necessary to protect minority rights. The former expressly rejected this necessity (54) Dixon, "Two Constitutions Compares", Jesting Pilate (1965), and pp. 101-102.

4.6 S 364 of the Commonwealth Electoral Act reads

"Real justice to be observed.

The Court shall be guided by the substantial merits and good conscience of each case without regard to legal forms or technicalities, or whether the evidence before it is in accordance with the law of evidence or not."

4.7 In the case of John Murray Abbotto V Australian Electoral Commission, J. Dawson presiding *interprets* "substantial merits" of the case to mean substantial "legal merits". I quote Mr Dawson "When that section (section 364) speaks of the "substantial merits" of the case, it means, of course, the substantial legal merits of each case rather than what might be perceived to be the fairness of the law itself. For the reasons I have given, there is no legal merit in the petitioner's case." For the reasons below the petitioner is not convinced that Mr Dawson has justifiably dismissed the "the substantial merits and good conscience of Mr Abbotto's petition"

4.8 The Shorter Oxford English Dictionary, third edition, defines the word *real* as

"[1.2.1 Actually existing or present as a state or quality of things; having a foundation in fact; actually occurring or happening 1597

1.3.1 That is actually and truly such as its name implies; possessing the essential qualities denoted by its name; hence, genuine, undoubted 1559

1.1.3.b Natural, as opposed to artificial or depicted 1718.

1.1.4. a) That is actually present or involved, as opposed to apparent, ostensible, etc 1716.

1.1.4.b). The actual (thing or person); that properly bears the name 1631

1.1.5.a Sincere, straightforward, honest 1709

1.1.5.b Free from nonsense or affectation; 'genuine' 1847."]"

The same dictionary defines the word *justice* as

"[1.1 the quality of being (morally) just or righteous; the principle of just dealing; just conduct; integrity, rectitude. (One of the four cardinal virtues.) (Modern English)

1.2 Theological. Observance of the divine law; righteousness; the state of being 'just before God'- 1622. The path of justice was the path of wisdom (Macaulay)

2.1 Exercise of authority or power in maintenance of right; vindication of right by assignment of reward or punishment; requital of desert OE.]"

4.9 The Petitioners reading of S364, having consideration of the aforementioned definitions leaves no doubt as to its intention and interpretation which is contrary to Mr Dawson's interpretation. By combination of the above terms Real justice should be read as either *Sincere or morally righteous or* free *from technicalities and nonsense and in observance of just conduct and integrity* or *genuine and having integrity and wisdom and in observance righteousness.* or *straightforward and vindicating righteousness or other such similar combinations.*

Further the interpretation of "real justice" must take into consideration that interpretation as given to it by Australians in general and specifically Australian voters. Such interpretation is easily gleaned by observance of the rules governing our sporting traditions. A sense of fair play pervades the consciousness of Australians.

I am sure that the court would grant the petitioner that there would be outrage and condemnation of any plan to unfairly disadvantage a sporting competitor. For example, that winners of Olympic Gold medals of the 400-meter freestyle swim in all subsequent Olympic meetings must be handicapped by 1 second. Australians would meet this form of disadvantagement with outrage.

Similarly independents are disadvantaged by not having a ticket vote and such disadvantagement is blatant and transparent to Australian voters. Real justice is not observed in our electoral process.

Given the popular view that Australians are proud of their sense of fair play and *real justice* and of their observance of righteous behaviour and rules, it is incumbent upon the Court to uphold 'real justice' as would be interpreted by Australians, especially given that all the electors in the State/ Territory to which the petitioner was a candidate are directly effected by this petition now before the Court.

4.10 Real justice is not universally reflected in the laws created by Members of the houses of Parliament. Whether by accident or design or shortsightedness, laws are on occasion made that do not embody real justice. That the matter of s211A has been brought before the Court of disputed returns on previous occasions is indicative that there is a problem that must be addressed, and a problem that will not go away until real justice is finally observed and practised in our electoral procedures.

4.11 Whilst Mr Dawson was able to dismiss Mr Abbotto's petition on legal grounds. Specifically on the basis that; "*The framework of the Act as well as the language of S 355(c) indicates that the jurisdiction of the Court of Disputed Returns does not extend to the making of a declaration that the entirety of a general election is void. The jurisdiction to declare an election void on the petition of a person 'who was qualified to vote thereat' is limited to those elections in which the petitioner was an elector entitled to vote. If a challenge on justiciable grounds can be mounted to the validity of a general election - a question that I need not consider - such a challenge cannot be entertained by the Court of Disputed Returns (Re Surfers Paradise Election Petition [1975] Qd R 114 at 117 suggests that a similar conclusion was reached under the Elections Act 1915 (Q) by Dunn J sitting as an Election Tribunal). It may be that the High Court has such a jurisdiction but that has not been decided*". The principle and ethical grounds upon which Mr Abbotto's petition was based were not dismissed, only the technical and legal grounds.

4.12 About 96% of voters use the ticket vote. There is no doubt that independents are disadvantaged by not having access to this system of voting. Such contention has not been disputed by either Dawson J, Dunn J and others.

4.13 Independent Candidates for the Senate election are disadvantaged as follows.

(1) Unless already sitting as an independent member, they cannot

(a) have their name placed on the ballot paper above the line.

(b) Register a "ticket vote" whereas other groups and sitting independents may have up to three ticket votes, which may split preferences.

(2) Independents are not included in the draw for positions on the ballot paper and are always relegated to the right hand side of the paper, which is the position of greatest disadvantage. This means that, even below the line, they are denied the opportunity for a lucky draw placing them first or in a more favourable position to get the donkey vote which may be as high as 10% of all votes cast.

(3) Voting below the line results in doubling the informal votes and requires that Independents need to receive about 5% more primary votes than those above the line to begin to create a level playing field. Source: "Elections" by Prof. Dean Jeansch

(4) Independents are placed in an "ungrouped" category with other Independents and /or those individuals who have not declared any status. This is a grouping of independents. However this group is denied any group ticket.

(5) Some electors could believe that the Independents truly are a group and may believe they have similar ideologies, whereas in fact the philosophies of some candidates in the "ungrouped" section may be diametrically opposed.

ARGUMENTS IN SUPPORT OF 1.4

5.0 Payment of the registration fee of $700 by the Petitioner to the Australian Electoral Commission was confirmation of a contract between these two parties.

5.1 In the event that Senate Candidates poll more than a particular minimum percentage of the vote, usually 4%, in an election of the Senate then they may have the $700 fee that they paid to the Australian Electoral Commission returned to them. In addition to the return of their registration fee such candidates who poll more than this minimum percentage also receive benefit of a payment to them from the Australian Electoral Commission, of a particular amount for each vote received above this minimum quota.

5.2 The disadvantage to independents from not having a ticket vote reduces their opportunity to achieve this minimum percentage. Independents do not therefore have the same advantage and share in the same opportunities and benefits for the payment of the $700 fee as the other candidates. They do not have the same opportunities to receive the financial remunerations commensurate with the work that they do during the election.

5.3 A consideration perceived to be in place by the Petitioner at the time of paying the registration fee was that in Australia's democratic process there are fair and equal elections, where no one candidate would be disadvantaged above any another, which is an implied right within the Constitution.

5.4 There is a failure of this consideration by the Australian Electoral Commission. There is a failure to deliver the same certain aforementioned opportunities to independent candidates and that these said opportunities would not be available was not mentioned to the Petitioner during the selection interview held at the Australian Electoral Commission. The Petitioner accepts that there is no requirement in the Act that independent candidates receive a ticket vote, but such consideration was in the mind of the Petitioner at the time of registration and such consideration was assumed to be in place and a foundation of our electoral process. Therefore there was not a meeting of minds between the parties when the $700 was paid to the Australian Electoral Commission.

PRAYER FOR RELIEF

Pertaining to all the above and the further documents attached herein presented to this Court of disputed returns, and under s355 of the Commonwealth Electoral Act 1918, I pray this court for the following relief/s

6.0.Declare per s360 (vii) that the 3rd October 1998 Half Senate election, for the State/Territory in which the petitioner was a Senate Candidate, be declared absolutely void.

6.1 Declare per s360 (vi) that any persons elected were not duly elected.

6.2 Under s.360 (4) award costs to the petitioner

6.3 That the Australian Electoral Commission is ordered to repay the $700 registration fee to the Petitioner.

6.4 That the court instructs the Australian Electoral Commission to have provision for ticket voting for independent candidates in all future elections.

6.4b That the court instructs the Australian Electoral Commission to make provision in its information booklet, "Your Guide to the 1998 Federal Election' (or words to that effect) which it distributes freely to all electors approximately two weeks prior to polling day, for a one page submission from each of the names, groups and ungrouped candidates to be included in said booklet. That an offer to be included in the said booklet is posted to each of the aforementioned candidates three days after the close of nominations with instruction that the copy of the said submission be provided within 10 days after close of nominations, or such workable time to be decided by the Australian Electoral Commission. The page is without cost to the eligible candidates.

6.5 That the Chiefs of Staff of television stations 2,7,9, 10 and SBS be recommended by the Court to make provision for and ensure proper coverage of press releases and policy launches by independent candidates and that a caution be given to said media bodies regarding the intrinsically incumbent responsibilities they have within our democratic process to discern and report important issues raised by independents and to treat seriously their policies.

6.6 That given a significant proportion of independents in other States and Territories in the Commonwealth of Australia also similarly petition the Court of Disputed returns on similar grounds as herein petitioned, that the matter be brought before the Full Bench of the High Court to be heard as a class action of said independents or otherwise as per 1.7.

6.7 Such further orders that this Court see fit in relation to this petition.

Signed .....R. Garcia.....

Printed .....R.D. Garcia The Petitioner

Dated this .....7th ..... Day of December 1998
Insert date

First Witness

Name ...Fay L. Maughan... Occupation—Bus Proprietor

Address—126 Stirling Tce. Toodyay

Signature of First Witness .....Fay Maughan.....

Second Witness

Name ...Nancy Garratt... Occupation—Clerk

Address—Lot 136 Blackbutt Pl. Gidgegannup Springs, WA.

Signature of Second Witness .....N. Garratt.....

To the Respondent: The Australian Electoral Commission.

Petitioner details for service

Name—Roderick David Garcia

Address—L59 Beaufort St. Toodyay, WA, 6566

ZZ402

PARTNERSHIP ACT

NOTICE OF CESSATION OF BUSINESS UNDER BUSINESS NAME
TERRY McNEILL TILING

We, Terrence McNeill, and Beverley Anne McNeill, of 16 Constitution Street, Bunbury, Western Australia, trading as TERRY McNEILL TILING, give notice that on the 31st day of January, 1999, business ceased to be carried on in Western Australia, and the partnership was dissolved by mutual consent of both parties.

Dated this 31st day of January, 1999.

ZZ403*

ADVERTISEMENT OF APPLICATION FOR WINDING UP

IN THE SUPREME COURT OF WESTERN AUSTRALIA AT PERTH

No. COR 3 of 1999

In the matter of Meatco Pty Ltd ACN 079 909 443

Notice is hereby given that an application for the winding upon the grounds of insolvency of the abovenamed company by the Supreme Court of Western Australia was on 8 January 1999 filed by Craig Readhead & Co. The application is to be heard before a Master in chambers at the Supreme Court at Perth at 10.30 am on Wednesday, 24 February 1999.

The liquidator whose appointment is sought is Michael Rodney Evans of the firm of Hall Chadwick of Level 20, 140 St George's Terrace, Perth, Western Australia.

Any creditor or contributory of the company desiring to support or oppose the making of an order on the application may appear at the time of hearing by himself or his counsel for that purpose.

The applicant's address is Craig Readhead & Co, Level 2, Scott House, 46-50 Kings Park Road, West Perth, WA, 6005.

Note: (1) Any person who intends to appear on the hearing of the application must serve on or send by post to the abovenamed applicant notice in writing of that intention. The notice must state the name and address of the person or, if a firm, the name and address of the firm, and must be signed by the person or firm, or their solicitor (if any), and must be served or, if posted, must be sent by post in sufficient time to be received not later than 4 p.m. on Tuesday, 23 February 1999.

(2) A person may not, without leave of the Court, oppose the application unless, at least 7 days before the hearing date, the person has filed and served on the applicant:

(a) notice of the grounds of opposition; and

(b) an affidavit verifying the matters stated in the notice.

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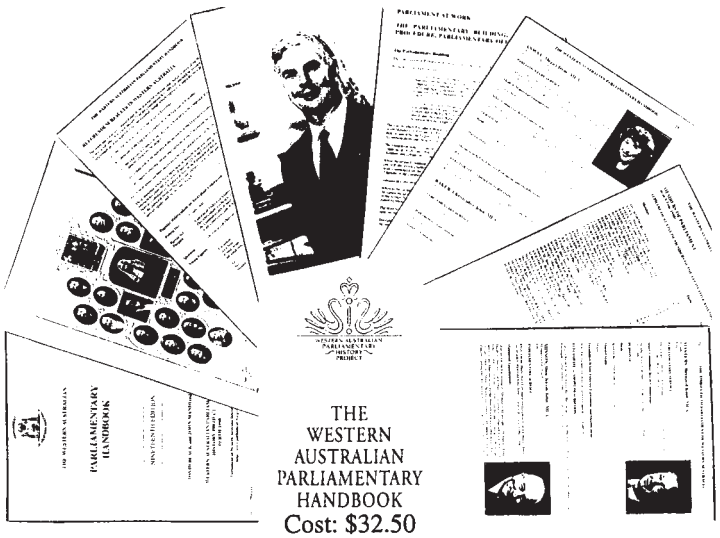

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