

Federal Court of Australia
 District Registry: New South Wales
 Division: Fair Work

James Hunter Ashby

Applicant

The Commonwealth & Anor

Respondents

BOOK OF EVIDENCE FOR HEARING COMMENCING 2 OCTOBER 2012

This book has been prepared by the applicant at the request of Justice Rares

Volume 3		
Document	Date	Page Number
Affidavit of David Russell QC	23/07/12	953
Affidavit of Michael Harmer	17/05/12	1016
Affidavit of Michael Harmer	23/07/12	1019
Affidavit of Michael Harmer (Annexure MDH 5 in Volume 4)	31/08/12	1049
Affidavit of Michael Harmer	26/09/12	1096
Affidavit of Brad Buffoni	27/09/12	1104
Exhibit S1	23/07/12	1163
Exhibit S2	23/07/12	1165
Exhibit S3	23/07/12	1169
Exhibit C1	23/07/12	1173
Exhibit C2	23/07/12	1220
Exhibit C3	23/07/12	1222
Applicant's Letter to Second Respondent	19/09/12	1224

Second Respondent's Notice of address for service	24/09/12	1226
---	----------	------

Form 59
Rule 29.02(1)

Affidavit

No. NSD 580 of 2012

Federal Court of Australia
District Registry: New South Wales
Division: Fair Work

James Hunter Ashby
Applicant

Commonwealth of Australia
First Respondent

Peter Slipper
Second Respondent

Affidavit of: David Graham Russell A.M., R.F.D., Q.C.
Address: Sir Harry Gibbs Chambers, Level 15, 95 North Quay, Brisbane, QLD 4000
Occupation: One of Her Majesty's Counsel
Date: 23 July 2012

Contents

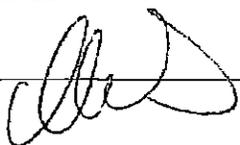
Document number	Details	Paragraph	Page
1	Affidavit of David Graham Russell A.M., R.F.D., Q.C. sworn on 23 July 2012		1
2	Annexure "DGR1" being a copy of the curriculum vitae of Mr Russell A.M., R.F.D., Q.C.	5	14
3	Annexure "DGR2", being a copy of the LNP Ethics Statement	12	33
4	Annexure "DRG3", being a speech entitled "How the North was Won" delivered by Mr Russell to the Sydney Institute on 12 June 2012	14	37

Filed on behalf of James Ashby, Applicant
HARMERS WORKPLACE LAWYERS

Address for service:
Level 28, St Martins Tower
Market Street
SYDNEY NSW 2000

Tel: 02 9267 4322,
Fax: 02 9264 4295,
Email: michael.harmer@harmers.com.au

[Form approved 01/08/2011]



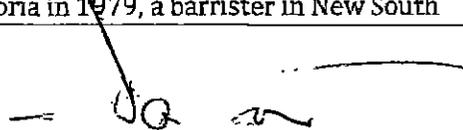

I, David Graham Russell, of Level 15, 95 North Quay, Brisbane, in the State of Queensland, say on oath:

1. I am one of Her Majesty's Counsel appointed in Queensland in 1986, New South Wales and Victoria in 1987 and the Australia Capital Territory and the Northern Territory in 1998.
2. I gave legal advice to the applicant in relation to matters relevant to allegations made against the second respondent on 6 April 2012 (**relevant communications**). I had originally considered the relevant communications to have been probably privileged, but having given the matter further reflection, I have taken account of the fact that the relevant communications were made in the presence of a person who was not a client (within the meaning of section 117 of the *Evidence Act 1995* (Cth)) in the circumstances recounted below and was probably not under an express or implied obligation not to disclose the contents of the communications I had with the applicant. Additionally, at the time, I considered the relevant communications constituted general legal advice and were not made for the dominant purpose of the applicant being provided with professional legal services relating to a particular proceeding or an anticipated proceeding. In these circumstances, I consider the better view is that I am in a position to reveal the contents of all my communications with the applicant if called as a witness. I am conscious, however, that if any privilege does exist it is not mine, but that of my former client. For the avoidance of doubt, I have clarified the position proposed to be taken on behalf of those who act for the applicant and I am informed by the applicant's solicitor that if the relevant communications are (contrary to my current view) the subject of a valid claim for privilege, then the applicant is prepared to waive privilege but any such waiver is expressly limited to the revelation of relevant communications between the applicant and me so that I am at liberty to disclose the contents of all matters within my knowledge which may be relevant to these applications. To the extent it is suggested that any part of this affidavit is alleged to constitute a waiver of any privilege in any confidential communication with any other person (or other than the relevant communications), then I withdraw that part of this affidavit and I am informed by the solicitor for the applicant that the part of my affidavit said to constitute any broader waiver is not relied upon.

Background

Overview of Professional and Political background

3. I was admitted as a solicitor by the Supreme Court of Queensland in 1974 and practised as a solicitor until 1977, when I was admitted by the Supreme Court of Queensland as a barrister. I became a barrister and solicitor in Victoria in 1979, a barrister in New South



Wales in 1980, in Papua New Guinea in 1981 and in the Northern Territory and the Australian Capital Territory in 1987.

4. I currently have chambers in both Brisbane and Sydney. My chambers in Brisbane are Sir Harry Gibbs Chambers and in Sydney are Ground Floor Wentworth Chambers.
5. Annexed to this affidavit and marked "DGR1" is a copy of my curriculum vitae.
6. My political associations are listed in detail in exhibit DGR1, but I have recently held the following senior positions:
 - a. National Party of Australia - Queensland
 - President 1995 - 1999;
 - Honorary Legal Advisor 2004 - 2008;
 - b. National Party of Australia - National
 - Vice President 1995 - 1999
 - Senior Vice President 1990 - 1995, 1999 - 2005
 - President 2005 - 2006
 - c. Liberal National Party of Queensland (LNP)
 - State Councillor 2008 - to date.
 - Member State Executive 2009 - to date
 - d. Liberal Party of Australia
 - Federal Vice President 2009 - 2011.
7. For a significant period of time I have acted in either a formal capacity as the Honorary Legal Advisor to the National Party in Australia or more recently as a legal advisor, on an *ad hoc* basis, to the LNP.

Political Background

8.

9.



10.

11.

12.

13.

14.

My knowledge of, and dealings with, the Second Respondent

15.

16.

cll

4

[Signature]

17.

18.

19.

20.

21.

des

5

down

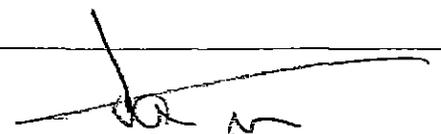
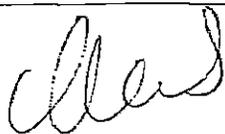
22.

23.

24.

My dealings with Mr Brough

25. I have had dealings with Mr Malcolm Brough for some time. My first involvement with Mr Brough occurred at the time when he was Minister for Revenue in the early years of the Howard Government.
26. Upon the election of the Howard Government I had informed the new Federal Treasurer that it may be that contacts I had formed as President of the Taxation Institute of Australia (now the Tax Institute) may be useful when it came to issues of taxation reform. Mr Costello suggested to me that he would be grateful if I would use my contacts to assist the newly appointed Assistant Treasurer, Senator Kemp. Mr Brough later became Minister for Revenue (effectively the role previously played by Senator Kemp) and I had some limited dealings with him in that role.
27. Mr Brough and I had different views as to the desirability of there being a merger of the Liberal Party and the National Party in Queensland. Mr Brough was a strong (and indeed vehement) opponent of the proposed merger, which was under consideration from 2007 to 2008. Although my recollection is that he stated his position to be one of concern about aspects of the proposal under consideration, rather than the principle of merger, he was forthright in his views and at one stage I recall him describing the merger ultimately agreed as an "abomination".



28. I found this frustrating and very unhelpful. I was one of the principal proponents of the merger. We had never had a personal friendship prior to the issue (although I would have described him as a political acquaintance) but our relationship was not a particularly friendly one in the wake of the political tensions that arose concerning the creation of the LNP.
29. After I started spending more time on the Sunshine Coast, however, I would see Mr Brough from time to time and we resumed a degree of acquaintanceship although I would not describe us as friends. It would correct to say, however, that we managed to put our political differences behind us and were on cordial terms.

Legal Advice given to Mr Ashby

30. On a day, which I believe (but cannot be absolutely certain) was around 29 March 2012, I received a telephone call from Mr Brough. Words passed between us to the following effect:

Brough: *"David, I have been contacted by a person who works in Slipper's office. He has raised a number of issues with me. One is sexual harassment and the other one is his view that there has been a misuse of entitlements - he doesn't think that Slipper has behaved appropriately towards him and wants to get some legal advice about what he should do - it's obviously fairly sensitive so I thought you may be able to help."*

Russell: *"Mal, I think I need to be fairly careful and I'd want to think about it. I am primarily a tax lawyer and don't know much about sexual harassment legal issues. For my part - given my involvement with the Party - I would feel uncomfortable acting for him professionally if the matter ever went anywhere and it seems to me to be much better if he got an independent lawyer experienced in the relevant area to advise him as to what he should do. I suppose I may be able to give him some general advice - but not about any proceedings or anything if that's what he is thinking about. This all has to be done properly"*

Brough: *"I know but the fellow doesn't have much money and I am not sure whether there is anything in it although he seems as though he genuine and is pretty upset. I feel sorry for him."*

Russell: *"Look, this would have to be handled very sensitively. If something happened then it would be fairly explosive and if there were anything in it, it would have to be handled by someone completely independent from the LNP. Some might perceive I'd have a conflict in acting for him in the long term but I suppose I could see him just to make sure that it is not all completely hopeless or shouldn't be pursued. I suppose I can see him for the limited purpose of telling him whether I think he'd be wasting his time in spending his money. I think we would have to come to some sort*

David Russell

Malcolm Ashby

of formal arrangement though – I suppose I can charge a nominal amount – say \$1 for giving him advice. I guess it will be OK – if there seems a basis for pursuing it further he will have to seek complete expert advice from a lawyer independent of the LNP who is fully qualified in the area. But look – let me think about it. For one thing I want to get some information about the area if I am going to help him at all – there is someone on my floor on Sydney I can speak to who knows about these sorts of matters and acted in the DJ's case”.

31. After that telephone call, and as best I can recall on the following day, I spoke to one of the junior barristers on my floor, Ground Floor Wentworth Chambers (Rachel Francois) who I knew had some experience in the area of sexual harassment litigation. I said to her words to the effect:

“I have been asked to give some advice on a sex case. It involves a very senior person who is said to have taken an inappropriate interest and made unwelcome overtures to a male employee. Credit will be highly relevant and the whole of the resources of the Commonwealth will probably be marshalled against this employee. I'm seeing him because I am concerned to make sure it is a case which is worthy of further investigation, and to give him some initial advice. Where does one start with this area of law?”

32. I did not reveal the second respondent's name. She directed me to the relevant provisions of the *Sex Discrimination Act 1984* (Cth), which I then read.
33. On or about the Thursday before Easter, I received a further telephone call from Mr Brough and we arranged a conference for me to see Mr Ashby at my home on the Sunshine Coast at 9.30am on Good Friday. In the meantime, I had reflected further upon whether I should agree to meet Mr Ashby. I ultimately concluded that it would be wrong to refuse to at least hear what he had to say. This was for two reasons: first, I thought it was the right thing to do to give someone some preliminary advice to see whether they were wasting their money; secondly, given my views, it did not surprise me at all that improper conduct (particularly misuse of entitlements) would be alleged against the second respondent and I did not want to think any “whistle-blower” was being abandoned or left out to dry – as noted above, that approach to issues involving possible corruption had led to the events which caused my Party so much difficulty in the 1980s.
34. Mr Ashby arrived with Mr Brough on Friday morning. Upon arrival, Mr Brough said to me words to the effect:

“Good morning David. This is James Ashby. His co-worker, Karen Doane, is just parking the car and she will be joining us shortly”.




35. This was the first time I had heard of Ms Doane. I did not think that Ms Doane was going to be present when I saw Mr Ashby, but as the meeting was relatively informal and for a limited purpose, I thought it may be overly formal and discourteous to ask her to wait in another room.

36. Despite this relative informality, prior to commencing the conference, I wished to impress upon Mr Ashby that I was seeing him in my professional capacity as a legal practitioner and to make sure I made plain that I considered it a serious discussion. I handed him my ipad and said to him words to the effect:

"James, please read my standard terms of engagement which are on this ipad."

37. I observed Mr Ashby read that document. In light of what I understood to be Mr Ashby's financial circumstances, I then said to him words to the effect:

"James, I will charge you \$1 for the conference today."

38. Mr Ashby then handed me \$5.00.

39. Ms Doane joined the conference shortly thereafter. She said to me words to the effect,

"I'm here to support James but I also have my own claims I want to make against Slipper."

40. I then passed the ipad to her, asked her to read my terms of engagement and charged her \$4.00 (which obviated the immediate need to give change to Mr Ashby).

41. I then said words to the following effect:

Russell: *"Before we go into any detail the first point I want you to realise is that you must be sure any allegations are true - any claim you make will be strongly contested. You must tell me the truth - I need to see whether you are wasting your money because if you go off half-cocked it will be a disaster - we need to go through what you say in detail so I can see what, if anything, I think you should do - but it is only fair I give you a warning - even if you are telling the truth the reality is that I expect the whole of the resources of the Commonwealth will be used against you and it will be your word against an MP. Even with the best case, you are likely to have difficulty in establishing a case in these circumstances."*

Ashby: (proffering a bundle of papers) *"Everything I will say to you is true - I am here because I feel I have no choice - I have kept copies of the text messages he sent me and made notes of what he said."*

42. I did not read the whole bundle of papers but glanced at them. [REDACTED]

[REDACTED] I understood from what Mr Ashby told me that the papers included contemporaneous text

messages, which provided a level of corroboration to his claims, and I read some of them. Given the apparent corroboration contained in the text messages, I thought it may take it out of the category of cases where it was simply one man's words against another (more senior and highly positioned) man.

43. I then said to Mr Ashby:

"You also need to be aware that I'm a tax lawyer and I am connected to the LNP. I cannot represent you in this matter if it goes any further. I agreed to help because I don't want you to waste your money if this is all misconceived - this is obviously politically sensitive - if you decide you are wronged and want help and want to take this further, you will need to see independent lawyers with no connection to the LNP. You also need to know that I have no experience in this field of law. My basic understanding is that you need to satisfy the definition of sexual harassment in the Sex Discrimination Act. Can you please read this and tell me if you think that is what happened and how you felt?"

44. I then passed Mr Ashby my ipad on which I had opened the text of section 28A of the Sex Discrimination Act 1984 (Cth) on the austlii.edu.au website.

45. I observed Mr Ashby read the section. Mr Ashby then nodded and said to me: *"That's exactly how I felt."*

46. I then saw Ms Doane look at the ipad and read the section. She said words to the effect: *"That's exactly what it was. He was also inappropriately touched. It went beyond just the conversations."* Ms Doane then demonstrated the touching: I observed that she placed a hand going slowly down Mr Ashby's arm and then lingering on his hand. As she did this, Mr Ashby appeared to be very embarrassed and uncomfortable.

47. I recall we also discussed the question of whether the Speaker was employed by the Commonwealth in the context of whether he was a fellow employee for the purpose of section 28B(2) of the Sex Discrimination Act 1984 (Cth). I said words to the effect:

"It is difficult to see why the Speaker would be an employee."

48. Mr Brough said words to the effect, *"My understanding is that he is treated as an employee for tax purposes."*

49. At some point during the conference Mr Ashby mentioned he had done some investigation as to experts and I recall he made reference to the law firm Harmers. I was unaware of the firm but looked up the Harmers Workplace Lawyers website on my ipad. I said words to the effect:

"As I said - you need someone to look at this to see whether you have any causes of action available to you - I can't touch for them but from what I can see they appear to

be leaders in the field of employment law and they should be able to give you independent and competent advice. From what you have said to me I don't think you would be wasting your money by going to them and having a chat about what you should do."

50. Mr Ashby also told me about his concerns in relation to what he had observed of the Speaker's use of Cabcharge vouchers. He said to me words to the effect:

"I also saw Slipper give three unsigned Cabcharge dockets to cab drivers on one occasion."

51. I have had some experience in the Commonwealth's use of the Cabcharge system from my various roles and duties in the Royal Australian Air Force and have an understanding of the requirements for proper controls in their use. I said words to the effect:

"That does seem highly inappropriate. It would not be done in the military. But I have no experience of the requirements for MPs."

52. Mr Brough said words to the effect:

"It's similar for MPs. But this seems highly irregular. I guess it's possible it might relate to three different journeys and if so, it would be within entitlement."

53. At some point in the conversation Mr Ashby mentioned that the Australian Federal Police were investigating possible irregularities in travel claims by another member of the second respondent's staff whom he named, but the name meant nothing to me and I cannot recall it.

54. I said words to the effect:

"You have mentioned that there is an AFP inquiry in relation to use of entitlements in his office. Any concerns you have about Cabcharge use, you have the right, if not a duty, to go the police. No one could criticise you for doing so. But look it is a matter for you and you should check with Harmers or whatever firm you go to about how to deal with that issue."

55. Ms Doane then raised further questions about the practicalities of their situation. I recall we had an exchange to the following effect:

Doane: *"Our financial circumstances are difficult. We need to stay in employment but how can we do that and address these issues?"*

Russell: *"If you reach the view that you wish to take any action, I suspect you will probably have to resign and I suppose you should be prepared to get out of the office urgently. It seems to me you might have a case for sexual harassment and also you might need to reveal Slipper's travel claims, which I must say, seem to me to be very odd. But you should not rely on me for what you should do now - I just wanted to make sure you were not wasting your time - you*

need to get specific advice about these issue from the lawyers you see. You will need to give your lawyers full disclosure of all the facts so that they can advise you properly. This can be a very technical area of law."

Doane: *"If we are out of work, what will we do? Is it possible we could get employment in some other LNP parliamentarian's office?"*

Russell: *"Well let me make it plain - one group that can't help you is the LNP. Federal and state members will not be able to give you any assurances of employment or any benefit at all, either directly or indirectly. If you decide to do it you need to take expert advice and have to think about it very carefully - they will throw everything at you - what you need to understand that to bring this claim will take a great deal of courage. It will not be easy."*

Doane: [Looking at Mr Ashby] *"James, you know if you do nothing he's just going to do it again to someone else. It is an ongoing pattern of behaviour and he has to be stopped before he hurts others - just as he has hurt us."*

56. Mr Ashby then said words to the effect that he agreed.

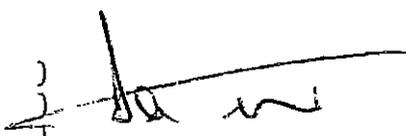
57.

58.

59. Since this conference, I have had no further contact with Mr Ashby or Ms Doane and I had no contact with anyone acting on behalf of Mr Ashby prior to the commencement of the proceeding. I first became aware that Mr Ashby had commenced this proceeding as a result of a text message from a friend who monitors the media on a regular basis who was not connected with the matters outlined above.

60. Prior to being asked to give evidence and after the commencement of the proceeding, I had no contact with anyone acting on behalf of Mr Ashby or Ms Doane other than social contact with Senior and Junior counsel for the applicant, who wholly co-incidentally have their chambers on my floor. It was around the time of the first directions hearing, that I first became aware that they were then briefed by Harmers.

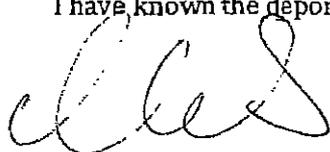
Sworn by the deponent
at Sydney
in New South Wales
on 23 July 2012

)
) 
)
)
) Signature of deponent

Name of witness: ANGELA MAREE NOAKES, JP
Address of witness: Ground Floor Wentworth Chambers
180 Phillip Street, Sydney NSW 2000
Capacity of witness: JP Reg No: 143646

And as a witness, I certify the following matters concerning the person who made this affidavit (the deponent):

1. I saw the face of the deponent.
2. I have known the deponent for at least 12 months.



Signature of witness

Annexure Certificate

No. NSD580 of 2012

Federal Court of Australia
District Registry: New South Wales
Division: Fair Work

James Hunter Ashby

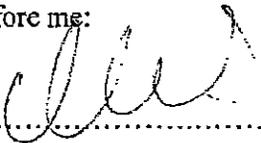
Applicant

The Commonwealth & Anor

Respondents

This is the annexure marked DGR1 produced and shown to David Graham Russell A.M., R.F.D., Q.C. at the time of affirming his affidavit on 23 July 2012.

before me:



Name

ANGELA MAREE NOAKIS, JP
Ground Floor Wentworth Chambers
180 Phillip Street, Sydney NSW 2000

.....JP Reg No: 443646

Qualification

GROUND FLOOR
WENTWORTH
CHAMBERS

DAVID GRAHAM RUSSELL R.F.D. Q.C. B.A. LL.M.

PERSONAL

- Born 2 December 1950 at Dalby Queensland, second son of Charles Wilfred Russell MP (Maranoa) and Hilary Maude Russell (née Newton)(subsequently H M Russell OBE).
- Married 19 September 1975 Deborah Ann Campbell (daughter of the Honourable Mr Justice Walter Benjamin Campbell and Georgina Margaret Campbell (née Pearce)(subsequently Sir Walter Campbell AC QC Chief Justice and Governor of Queensland and Lady Campbell)).
- One son (Andrew Robin Campbell Russell) born 25 September 1986.

EDUCATION

- Jimbour State School 1956-1960
- Church of England Grammar School, Brisbane 1961-1967
- University of Queensland, Brisbane
 - Bachelor of Arts 1971
 - Bachelor of Laws 1974
 - Master of Laws 1983

PROFESSIONAL

- Solicitor, Queensland 1974-1977
- Barrister, Queensland (1977) New South Wales (1980)
- Barrister and solicitor, Victoria (1979) Papua New Guinea (1981) Australian Capital Territory (1987)
- Legal Practitioner, Northern Territory (1987)
- Queen's Counsel, Queensland (1986) New South Wales, Victoria (1987) Australian Capital Territory, Northern Territory (1988)
- Listed Mediator and Arbitrator, World International Property Organisation 1994-present
- Fellow Member, Australian Society of Certified Practising Accountants 1995-2004
- Registered Practitioner with right of audience, Dubai International Financial Centre Courts (2006)

- o Barrister and Solicitor, New Zealand (2006)

PUBLICATIONS

- o "Private Remedies under the *Trade Practices Act*"
1981 *Queensland Law Society Journal*
- o "Recent Amendments to Taxation Legislation"
1981 *Taxation in Australia*
- o "Bury the Great Duke"
1984 19 *Taxation in Australia* 250
- o "Turning on the Power in Queensland"
1985 Institute of Public Affairs Sydney
- o "Arbitration in Contempt"
1987 *Quadrant*
- o Contributor to *Butterworths Weekly Tax Bulletin*
1987, 1988, 1990 (twice), 1991
- o "Religion - Protection or Prohibition" and "Fair Elections or Foul"
The Australian August 1988
- o Co-Author *Butterworths Australian Income Tax Law and Practice Chapter. Part IVA* 1989
- o "A Law Beyond Redemption?"
1989 *Quadrant*
- o "Property Income Tax: Looking for Level Ground"
1992 1 *Taxation in Australia (Red Edition)* 34
- o "A Look Ahead"
1993 28 *Taxation in Australia* 16
- o "Subsection 51(1) - Disquieting Trends in the Courts"
1994 2 *Taxation in Australia (Red Edition)* 161
- o "Political log jam"
1994 2 *Taxation in Australia (Red Edition)* 131
- o "The Present Situation of the Tax Consultation Services in Australia and its Perspectives"
1994 AOTCA *Technical Reports* 61
- o "Time to Change Tack"
1994 3 *Taxation in Australia (Red Edition)* 256
- o "There's no Zen in Xenophobia"
1996 *The Australian* (27 November)
- o "Dispossession cuts both ways"
1997 *The Australian* (7 January)
- o "Wik: The Aftermath"
1997 *The Sydney Papers* Vol.9 No.4 131
- o "The Forgotten Issue: The States and the Republic"
1999 *The NO Case Papers* 139

- o "Commercial Laws and Taxation"
Strengthening Commercial Laws in the APEC Region
Department of Foreign Affairs and Trade (Australia) 2003
- o "International Developments in relation to Sham Trusts"
Trust Quarterly Review 2007 (Vol 5 Issue 2)
- o "Tax and Climate Change – New Horizons for Tax Practitioners"
The Tax Specialist 2007 (also published on CFE website and – in abbreviated form – in Tax Adviser, the journal of the UK's Chartered Institute of Taxation and Association of Tax Technicians)

CONFERENCE PAPERS

1979

- "Amendments to the *Income Tax Assessment Act 1978-1979*"
Taxation Institute of Australia (Queensland Branch), Taxation Refresher Course, Brisbane

1980

- "Review of Recent Court and Board Decisions"
Institute of Chartered Accountants (Queensland Branch), Professional Development Course, Brisbane
- "Sales Tax"
Taxation Institute of Australia (Queensland Branch), 1980 Annual Taxation Convention, Brisbane

1981

- "Liability to Stamp Duty of Inter-State Transactions"
Queensland Law Society Incorporated, Continuing Legal Education, Brisbane
- "The *Crimes (Taxation Offences) Act 1980*"
Queensland Law Society Incorporated, Continuing Legal Education, Brisbane
- "Private Remedies under the *Trade Practices Act 1974* - Coextensive and Conflicting Statutory Remedies"
Queensland Law Society Incorporated and Bar Association of Queensland Joint Symposium, Surfers Paradise
- "Tax Avoidance - Morality: Possible Cures: New Systems"
Institute of Chartered Accountants, North Queensland Members' Conference, Cairns
- "Part IVA of the *Income Tax Assessment Act*"
Institute of Chartered Accountants Queensland Branch, Professional Development Course, Brisbane
- "The Taxation of Professional Income"
Australian Association of Surgeons, Hong Kong

1982

- "Taxation of Australian Business in Europe"
Associated and Professional Businessmen's Residential Conference, Verbier, Switzerland

Curriculum Vitae
David Graham Russell
Page 4

- "The Implications of *Federal Commissioner of Taxation v. Whiffords Beach Pty Ltd*"
Taxation Institute of Australia (Queensland Branch), Taxation Refresher
Course, Brisbane

1983

- ◆ "Taxation Aspects of Sale of a Business: Sale of the Business by Sale of Entity Conducting the Business"
Institute of Chartered Accountants, Professional Development Course, Brisbane

1984

- "Taxpayers' Remedies against the Commissioner and others outside the *Income Tax Assessment Act*"
Taxation Institute of Australia (Queensland Branch) State Convention, Surfers Paradise
- "Exchange Control Regulations"
Taxation Institute of Australia, Foreign Investment and Exchange Control Seminar, Brisbane
- "The *Administrative Decisions (Judicial Review) Act 1977*"
Queensland Law Society Incorporated Continuing Legal Education Committee, Brisbane

1985

- "Practical Administrative Law Remedies"
Taxation Institute of Australia (Western Australia Division), Perth
- "Remedies for Unlawful Industrial Action"
Industrial Law Seminar for Minister for Employment and Industrial Affairs, Brisbane

1986

- Open Forum Panellist
Taxation Institute of Australia (Queensland Division), State Convention, Broadbeach
- "The New Taxation Environment"
Australian Institute of Valuers (Queensland Branch) State Convention, Marcoola
- "Trade Unions: Privileges and Power"
H R Nicholls Society, Melbourne

1987

- "Civil Action in Industrial Disputes"
Industrial Relations Society, Brisbane

1988

- Open Forum Panellist
Taxation Institute of Australia - Queensland State Convention, Broadbeach
- "Essential Services Legislation"
H R Nicholls Society, Lorne, Vic.
- "Taxing International Transactions - Future Challenges"
Law Council of Australia Bicentennial Legal Convention, (Panellist) Canberra
- "The *Cash Transactions Reports Act 1988*"
Taxation Institute of Australia - Queensland, Brisbane

Curriculum Vitae
David Graham Russell
Page 6

- "Exercising Discretion in Changing Environment - Ensuring Maintenance of Professional Standards"
B R & S International Conference: Tax Advisors and the Law, Melbourne, Brisbane

1989

- "Exchange Control"
Taxation Institute of Australia International Conference, Shanghai, Peoples Republic of China
- Dramatic Presentation: "Are you being searched?"
Taxation Institute of Australia - Queensland, Broadbeach
- "Litigation"
International Business Communications Annual Australian Stamp Duties Symposium, Brisbane
- "The New Accruals Tax"
Diocletian Club (Tax Discussion Group), Brisbane
- "Income Tax Implications of Reserve Service and Pay"
Regional RAAF Legal Reserve Seminar, Townsville

1990

- "Current Labour Market Reform in New South Wales"
H R Nicholls Society, Sydney
- Dramatic Presentation: "With this file I thee ..."
Taxation Institute of Australia - Queensland, Broadbeach
- "The Concept of Assessable Income"
Taxation Institute of Australia - Queensland, Brisbane

1991

- "The Political History of Queensland Industrial Relations Reform Program of the 1980s and its Repeal"
H R Nicholls Society, Melbourne
- "Aviation Law and the Law of Armed Conflict"
Aviation Law Association, Brisbane
- "Corporate Restructuring in the 1990s" and
"Extra-Territorial Reach - The Hypothetical"
Australian Stamp Duties Symposium, Gold Coast
- "*Scottish Australian Mining Co Ltd v. Federal Commissioner of Taxation revisited*"
Taxation Institute of Australia (New South Wales Division) State Convention (Dramatic Presentation) Wollongong
- "The Legal Consequences of *Troubleshooters Available v. BWIU*, and the potential application of contract labour in small business using Service Agreements"
Queensland Confederation of Industry Enterprise Bargaining Seminar, Brisbane

1992

- "Income Taxes on Property"
AIC Conferences, Property Taxation '92, Brisbane
- "The Audit Lottery"
Dramatic presentation for Taxation Institute of Australia, 10th National Convention, Broadbeach
- "Property Income Tax Looking for Level Ground"
Taxation Institute of Australia - Tasmania State Conference, Swansea

1993

- "Tax Planning"
Australasian Tax Research Foundation Tax Ethics Workshop, Brisbane
- "Judicial Trends in section 51(1)"
Taxation Institute of Australia National Tax Retreat, Port Douglas
- "Allowable Deductions: section 51(1), symmetry and exclusion provisions"
Taxation Institute of Australia - Queensland Dinner Seminar and Open Forum, Brisbane
- Open Forum Panellist
Taxation Institute of Australia - Victoria State Convention, Lorne
- "Current Policy and Administration Issues within Australia"
Asia-Oceania Tax Consultants' Association General Council meeting, Sydney

1994

- "Developments in Taxation of Technology Transactions"
Queensland Society for Computers and the Law, Brisbane
- "The National Review of Standards for the Tax Profession"
Taxation Institute of Australia Seminars in Brisbane, Sydney and Perth
- Open Forum Panellist
Taxation Institute of Australia - South Australia State Convention, Wirrina
- "Australian Tax Planning measures and implications of emigrating from Hong Kong to Australia"
Taxation Institute of Australia Fifth International Convention, Hong Kong
- "The Taxation Implications of an Overseas Company seeking listing on the Australian Stock Exchange"
The Taxation Institute of Hong Kong, Hong Kong
- "The Australian system of Tax Advising and Tax Agents"
Taxation Institute of Australia Fifth International Convention, Shanghai
- "Update on the National Review of Standards for the Tax Profession" and Open Forum Panellist
Taxation Institute of Australia - Victoria State Convention, Lorne
- The Constitution and our State Constitutions•
Samuel Griffith Society, Brisbane

- "Tax Audits for Small Business - The Commissioner's Power to Access Documents"
The Taxation Institute of Hong Kong, Hong Kong

1995

- "Time to change Tack"
Institute of Chartered Accountants Queensland Members Congress, Surfers Paradise
- "National Standards for the Tax Profession"
Taxation Institute of Australia (Qld Division) North Queensland Convention, Townsville
- Open Forum Panellist
Australian Tax Teachers Association and University of NSW (ATAX) New Tax Act Seminar, Brisbane
- Trends in Deductible Expenses•
Taxation Institute of Australia (Victorian Division) State Convention, Melbourne
- and -
Taxation Institute of Australia (Tasmanian Division) State Convention
Swansea

1996

- Trends in Section 51(1)•
Taxation Institute of Australia (Queensland Division) 1996 Educational Programme, Brisbane
- The Workplace Relations Bill 1996 and Trade Union privilege•
H R Nicholls Society, Melbourne
- What's missing from the State Constitution•
Constitutional Centenary Foundation, Brisbane
- Trends in Australian Jurisprudence•
New Zealand Institute of Chartered Accountants Convention, Surfers Paradise
- The Spotless Case•
Taxation Institute of Australia (Queensland Division) Tax Update, Brisbane

1997

- Substance v. Form: The Australian Taxation Office Approach•
Taxation Institute of Australia National Convention, Melbourne
- One Chamber Only: Queensland's Upper House 75 Years On•
Griffith University Queensland Studies Centre, Brisbane
- Tax Law Improvement Project - the New Regime•
Taxation Institute of Australia Queensland State Convention, Surfers Paradise
- Open Forum Panellist
Australian Tax Teachers Association and University of NSW (ATAX) New Tax Act Seminar, Brisbane

Curriculum Vitae
David Graham Russell
Page 9

1998

- •The *Wik* Debate•
Urban Development Institute of Australia National Congress, Brisbane
- •Revenue Law•
Bar Association of Queensland/Queensland Law Society Joint Symposium,
Surfers Paradise
- ◆ "The Republic – is there a minimalist position?"
Samuel Griffith Society, Brisbane
- ◆ "Self Assessment – the Consequences for Tax Professionals"
Malaysian Institute of Accountants/Malaysian Institute of Taxation, Kuala Lumpur

1999

- ◆ "Noncomplying Superannuation Funds: To Be, or not to Be?"
Taxation Institute of Australia Queensland Breakfast, Brisbane
- ◆ "The future of the Capital v. Income Distinction"
Taxation Institute of Australia Victorian State Convention, Lorne
- ◆ "Trusts and the small business rollover and exemption provisions, trust loss provisions"
Taxation Institute of Australia Queensland Spring Seminar, Surfers Paradise
- ◆ "GST Traps – the New Zealand Experience" (Commentary on Paper by A P Molloy QC)
Taxation Institute of Australia 3rd GST Symposium, Gold Coast
- ◆ "Root and Branch Reform: The Tax Base Redefined"
Television Education Network *Business Tax Reform after Ralph* seminar,
Brisbane

2000

- ◆ "The Profits First Rule"
Taxation Institute of Australia Queensland Review of Business Taxation
Seminar Brisbane.
- ◆ "The New Tax Regime: Ralph Report Repercussions"
Bar Association of Queensland/Queensland Law Society Symposium, Surfers
Paradise
- ◆ "Challenging the Commissioner: Objections and Appeals"
Taxation Institute of Australia Seminar, Brisbane
- ◆ "Trust Distributions and other Year End Issues"
Television Education Network *Trusts: Current Issues* seminar, Brisbane

2001

- ◆ "Capital Allowances"
Taxation Institute of Australia Queensland State Convention, Surfers' Paradise
- ◆ "Beyond the Assessment"
Taxation Institute of Australia Queensland *Tax Effective Investments* Seminar,
Brisbane

Curriculum Vitae
David Graham Russell
Page 10

2002

- ♦ "Australian Workplace Agreements and the Evolution of Workplace Culture"
Recruitment & Consulting Services Association, Brisbane

2003

- "The Globalisation of Tax Culture"
Income Tax Bar Association, Karachi

2004

- "Transfer Pricing: Recent Australian Developments"
World Tax Conference, Sydney
- "Safely Leveraging Intangibles within your Transfer Pricing Framework"
IQPC Conference on Leveraging Global Transfer Pricing to Drive Business Transformation, Sydney
- "Hart's Case: What kind of card has the High Court dealt?"
Taxation Institute of Australia Queensland Seminar, Brisbane

2005

- "The improvement of professional risk awareness and professional risk insurance"
China Certified Tax Agents Association, Beijing and Shanghai
- "Conspiracy to Defraud the Revenue"
Malaysian Institute of Taxation, Putra Jaya
- "Managing Tax Disputes"
Taxation Institute of Australia National GST Intensive Conference, Gold Coast
- "Idlecraft Revisited"
Taxation Institute of Australia, Sydney and Brisbane

2006

- "The Future of Tax in Asia"
Society of Trust and Estate Practitioners, Hong Kong
- "New Frontiers for Personal Asset, Trust and Estate Planning: China and the World" (Co-Chair and Presenter) New York State Bar Association, Shanghai
- "New Horizons for Tax Practitioners"
Asia Oceania Tax Consultants Association, Hong Kong
- "IFRS Implications for the Accounting Standards/Taxation Law interface"
IBC Asia IFRS Conference, Hong Kong

2007

- "International Developments in relation to Sham Trusts"
Society of Trust and Estate Practitioners, Hong Kong
- "Tax and Climate Change – New Horizons for Tax Practitioners"
Confédération Fiscale Européenne, Brussels
- "Litigating with the ATO – What you need to know"
Taxation Institute of Australia NSW Tax Forum, Sydney

EDUCATIONAL ACTIVITIES

- Barristers' Board (Queensland) Examiner in Trade Practices Law 1978 - 1981
- Lecturer, University of Queensland Master of Laws course 1984, 1992 - present
- University of Queensland Master of Business Administration Course - "International Tax Planning" 1985 - 6

Curriculum Vitae
David Graham Russell
Page 11

- Barristers' Board (Queensland) Examiner in Taxation Law 1988 - 1991
- Member, Australian Tax Practice (formerly Butterworths' Australian Income Tax Law and Practice) Advisory Editorial Board 1988 - present
- Member, Advisory Board, National Institute for Law, Ethics and Public Affairs Griffith University 1996 - 1998
- External Member, Advisory Board, Key Centre for Ethics, Law, Justice and Governance, Griffith University 1999 – present
- Adjunct Professor, T C Beirne School of Law, University of Queensland 2001 – 2006
- Member, Industry Advisory Board, Australian Centre for Commerce, Law and Tax, University of Queensland 2002 – present
- Member, Industry Advisory Executive, College of Tourism and Hospitality, Southbank Institute of TAFE 2004 - present

PROFESSIONAL ASSOCIATIONS

- Taxation Institute of Australia (FTIA) 1974 - present
 - X member, Queensland Legislation Committee 1985 - 1992
 - X member, Queensland State Council 1987 - 1998
 - X Chairman, Queensland Legislation Committee 1987 - 1990
 - X member, National Marketing/Membership Services/Membership Committee 1990 - 1995
 - X Co-ordinator, Membership survey 1991
 - X member, National Council 1991 - 1996
 - X member, National Executive Committee 1991 - 2001
 - X Vice President 1991 - 1993
 - X member, National Education Committee 1991 - 1995 (Chairman 1991 - 1993)
 - X member, National Technical Committee 1991 - present
 - X representative, Business Tax Forum 1992 - 1995
 - X Chairman, 10th National Convention Social Committee
 - X Chairman, 11th National Convention Committee
 - X Chairman, 5th International Convention Committee
 - X representative, National Review of Standards for the Tax Profession, Term of Reference #3 Working Group
 - X representative, Asia-Oceania Tax Consultants' Association 1992 - 1996
 - X President, 1993 - 1995
 - X member, National Finance and Administration Committee 1993 - 1995
 - X representative, National Review of Standards for the Tax Profession Steering Committee 1994
 - X Chairman, International Relations Committee, 1995 - 2001
 - X Honorary Life Member 1996
 - X representative and session reporter, National Tax Reform Summit (1996)
- International Fiscal Association

Curriculum Vitae
David Graham Russell
Page 12

- Institute of Directors in Australia/Australian Institute of Company Directors (FAICD)
 - X member Taxation Committee 1983 - 1990
- International Tax Planning Association
- Law Council of Australia
 - X member Business Law Section (•BLS•)
 - X member BLS Intellectual Property Committee 1991 - present
 - X member BLS Taxation Committee 1992 - present
- Bar Association of Queensland 1977 - present
 - X Chairman, Taxation Committee 1991 - 2000
 - X Chairman, International Relations Committee 2000 - 2003
 - X member, Direct Professional Access Committee 1993
 - X member, Incorporation of Barristers Subcommittee 1993
- Bar Association of New South Wales 1980 - 1982, 1987 - 1991, 2003 - present
 - X Member, Taxation Committee 2005 - present
- The Victorian Bar 1979 - 1995
- The Papua New Guinea Law Society 1987 - 1992, 2003 - present

Curriculum Vitae
David Graham Russell
Page 13

- Diocletian Club (Tax Discussion Group - Brisbane) 1988 - present
- Chairman Papers Committee 1990 - 1992
- Asia-Oceania Tax Consultants' Association
- Vice President 1993 - 1996
- President 1996 - 2000
- Honorary Advisor 2000 (life appointment)
- Representative at Study Group on Asian Tax Administration and Research (SGATAR) 2004 - 2006
- Australian Tax Research Foundation
- member Board of Governors 1993 - present
- Australian Society of Certified Practising Accountants (FCPA) 1995 - 2004
- International Wine Law Association 2000 - present
- Gunn Club (Tax Discussion Group - Sydney) 2003 - present
- Challis Group (Tax Discussion Group - Sydney) 2004 - present
- Society of Trust and Estate Practitioners 2006 - present
- New York State Bar Association (Associate) 2006 - present
- Taxation Institute of Hong Kong (Honorary Member) 2007 - present

EMPLOYMENT

- Articled Clerk - Cannan & Peterson, Solicitors, Brisbane 1972 - 3
- Solicitor, Cannan & Peterson 1974
- Personal Assistant to Director General, Conservative and Unionist Central Office, London 1974
- Director, Frank & Nahida Scarf Memorial Foundation Limited 1975 - 6
- Secretary, Logan Downs Proprietary Limited, Brisbane 1976
- Barrister-at-Law, Brisbane 1977 - present (Sydney from 2003)

GOVERNMENT BODIES

- Member, Mortgage Secondary Market Board 1985 - 8, 1988 - 90
- Member, Queensland Government Committee on Voluntary Employment Agreements 1986 - 7
- Member, Barristers' Board (Queensland) 1986 - 2004

**Curriculum Vitae
David Graham Russell
Page 14**

- Member, Queensland Institute of Medical Research Trust 1988 - 91
- Chairman, Queensland Institute of Medical Research Trust 1989 - 91
- Member, Queensland Institute of Medical Research Council 1989 - 91
- Member, National Tax Liaison Group 1991-1995
- Member, Term of Reference #3 Working Party, National Review of Standards for the Tax Profession 1992-4
- Member, Steering Committee, National Review of Standards for the Tax Profession 1994
- Member, Ministerial Consultative Committee, Tax Law Improvement Project 1994 - 1998
- Member, Executive Committee, 2006 Australia-Japan Year of Exchange.

COMPANY DIRECTORSHIPS

- Baldwins Pty Ltd and subsidiary companies (except Logan Downs Proprietary Limited and subsidiaries) 1973 - present
 - X Vice Chairman 1996 - 2004
 - X Chairman 2004 -
- Barnes Milling Limited and subsidiary companies 1976-8
- Logan Downs Proprietary Limited and subsidiary companies 1976-7, 1980-present
 - X Vice Chairman 1996 - 2004
 - X Chairman 2004 - present

MILITARY SERVICE

- Officer Cadet, Queensland University Squadron 1970-2
- Pilot Officer, RAAF General Reserve 1972-7
- Member of the RAAF Legal Panel, Brisbane 1977 - present
- ◆ Flight Lieutenant, RAAF Specialist Reserve 1977-83
- Squadron Leader, RAAF Specialist Reserve 1983-8
- Reserve Force Decoration (RFD) 1987 (Clasps 1992, 1997)
- Wing Commander, RAAF Specialist Reserve 1988 - present
- Judge Advocate 1988 - 2004

PUBLIC ASSOCIATIONS

- University of Queensland Union 1968-73
 - X St Lucia Full Time Vice-President 1969-70, 1971-2
 - X Delegate to National Union of Australian University Students Federal Council 1970, 1971
- The National Trust of Queensland 1973-91, 2001 (current)
- Australia - Japan Society, Queensland 1970-4, 1993 - present
 - X Management Committee member 1994 - present
 - X Delegate to National Conference of Australia-Japan Societies 1995, 1997, 2001 and 2003
 - X Vice President 1995-6
 - X President 1996 - 2001
- Union College (University of Queensland) Council member, 1970 - 2
- Australian Association for Cultural Freedom 1983 - present
- H R Nicholls Society 1985 - present
- Institute of Public Affairs 1986 - present
- Samuel Griffith Society 1992 - present
- Trustee, Committee for Economic Development of Australia (CEDA) 1996 - present
- Queensland Japan Chamber of Commerce and Industry 1996 - present
 - X Committee member, Brisbane Branch and State Councillor 1996 - 2003
- National Federation of Australia Japan Societies
 - Chairman, Fifth National Convention (Brisbane 1997)
 - President, 2001- 2005
 - National Committee Member, 2001 - 2008
 - Member, *Australia-Japan: Friendship and Prosperity* Advisory Group 2007-8
- United Nations Association of Australia 2001-2007
- Australian Garden History Society 2001 (current)
- Australian Institute of International Affairs 1969-72, 2001 (current)
- Queensland Wine Industry Association
 - Director, 2001 (current)
 - President, 2002 -2004
- Australian Regional Winemakers Forum/WFA Small Winemakers Committee
 - Committee Member, 2003-2007
 - Deputy President 2004-2006
- Winemakers Federation of Australia

- Executive Council Member, 2004-2007
- Member, Restructure Planning Committee 2004-2006
- Royal Historical Society of Queensland 2004 (current)

CLUBS AND SOCIETIES

- United Service Club, Brisbane 1971-85
- Queensland Club, Brisbane 1974 - present
 - Convenor, Wine Interest Group 2001 - 2003
- Royal Queensland Golf Club, Brisbane 1978 - present
- Royal National Agricultural and Industrial Association of Queensland 1983 - present
- Lyric Opera of Queensland 1983 - 90
- Tattersalls Club, Brisbane 1984-present
- Queensland Art Gallery Society 1984 - present
- Brisbane Amateur Turf Club 1986-91
- Queensland Turf Club, Brisbane 1987-93
- Australasian Pioneers' Club, Sydney 1987 - present
- Brisbane Polo Club 1990 – present
- Union Club, Sydney 2003 – present
- Australian Club, Sydney 2004 - present

POLITICAL

- Liberal Party of Australia (Queensland Division) 1976 - 74
 - X Member, State Executive, Young Liberal Movement 1969 - 73
 - X Chairman of Country Branches Committee 1969
 - X Chairman Political Education Committee 1970 - 3
 - X Member, Rural Committee 1970 - 4
 - X Special Projects Officer, Ryan Area 1972 - 4
 - X Assistant Campaign Director, Stafford State Electorate 1972
- Workers' Party/Progress Party 1975 - 7
 - X Senate Candidate 1975
 - X State President 1976
- National Party of Australia - Queensland 1982 - 2008
 - X Member, Industry, Commerce & Economics Policy Committee/Treasury Policy Committee 1982 - 1999

Curriculum Vitae
David Graham Russell
Page 17

- X Campaign Director, Merthyr State Electorate 1983
 - X Member, Policy Review Committee (subsequently Policy Standing Committee) 1984 - 2000
 - X Member, Constitution Review Committee 1984
 - X Chairman, Merthyr State Electorate Council 1984 - 5
 - X *Central Councillor 1984 - 2008*
 - X Member, State Management Committee 1984 - 2008
 - X President, Lilley Federal Divisional Council 1984 - 5
 - X Chairman, 1985 Conference Planning Committee
 - X Campaign Director, Lilley Federal Division 1984
 - X Member, Agenda Committee 1985 - 1999
 - X Chairman, Policy Standing Committee/Policy Review Committee 1985-95
 - X Chairman, Agenda Committee 1986 - 90
 - X Member, Constitution Review Committee 1987 - 8
 - X Endorsed Candidate, Groom by-election 1988
 - X Senior Vice President 1990 - 1995
 - X Member, Finance Committee 1990 - 1999
 - X Member, Candidate Selection and Training Committee 1990 - 1999
 - X Member, State Campaign Working Committee 1992 - 1999
 - X Member, Federal Campaign Working Committee 1992 - 1999
 - X Joint Chairman, Coalition Policy Committee 1993-6
 - X President 1995 - 1999
 - X Honorary Life Member 2003
 - X Honorary Legal Advisor 2004 - 2008
- National Party of Australia
- X Proxy delegate to Federal Council and Federal Conference 1982
 - X Proxy Delegate to Federal Council 1987 - 8
 - X Member, Platform Review Committee (Chairman of Working Group) 1987
 - X Member, Committee of Review into the Future Direction of the Party 1987 - 8
 - X Member, Federal Council 1988 - present
 - X Member, Federal Management Committee 1989 - present
 - X Member, Policy Review Committee 1988 - present
 - X Senior Vice President 1990 - 5, 1999 - 2005
 - X Trustee, John McEwen Foundation 1991 - 1995, 1999 - present
 - X Chairman, Policy Review Committee 1993 - 2005
 - X *Chairman, Agenda Committee 1994 - 5, 1997, 2003, 2005*
 - X Vice President, 1990-1995, 1999 - 2006
 - X President 2005 - 2006
- Liberal National Party of Queensland 2008 -
- State Councillor 2008 -

"DGR 2"

984

Annexure Certificate

No. NSD580 of 2012

Federal Court of Australia
District Registry: New South Wales
Division: Fair Work

James Hunter Ashby

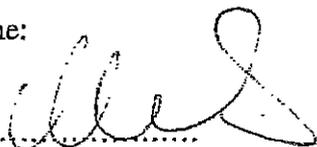
Applicant

The Commonwealth & Anor

Respondents

This is the annexure marked DGR2 produced and shown to David Graham Russell A.M., R.F.D., Q.C. at the time of affirming his affidavit on 23 July 2012.

before me:



.....
Name

.....
Qualification

ANGELA MAREE NOAKES, JP
Ground Floor Wentworth Chambers
180 Phillip Street, Sydney NSW 2000
JP Reg No: 143646



CODE OF ETHICS

INTRODUCTION

The LNP is a political party for all Queenslanders.

The LNP supports a constitutional democracy and governments that are responsible to the people, dedicated to enhancing the quality of life and fostering a society that offers opportunity to all.

We acknowledge our diverse religious heritage and freedom of belief. We are committed to cultivating a cohesive and compassionate community in which all may feel safe and secure and where individual initiative is rewarded.

Our members share similar beliefs and objectives and involve themselves in the Party on the basis that they care about the Party and its future. They have a right to expect certain standards from fellow members, particularly those chosen to represent them.

It follows that it is reasonable and desirable to identify the standards of conduct necessary to ensure the Party is judged favorably and that members' actions reflect the high principles and aspirations of the Party. While this Statement is not exhaustive, it should be regarded as a basic guide for members to help them aspire to high ethical standards.

Members of Parliament and office-bearers should be mindful that their positions derive from the Party and carry a responsibility to support the Party's welfare and structure by word and action.

Members of Parliament, being most in the public gaze, carry the extra responsibility that flows from their official positions. They have a special need to be most scrupulous in their conduct and in the observance of this Statement. Heavy responsibility also rests on office-bearers of the Party.

Members of the LNP should acknowledge that their role in a Party that aims to win the confidence of electors requires them to strive towards making social responsibility an inherent quality of the Party.

A member should not engage in any practice that corrupts the integrity of the Party, its membership or the political process.

PRINCIPLES

1. Social Responsibility

Members should accept that their behaviour, personal or professional, could, at any time, reflect on the reputation of the Party. They should act in a manner that embraces the essence of the standards implicit in the stated philosophy of the Party.

While members will choose their own standards, if they wish to belong the LNP, and particularly if they hold prominent positions in the political field, they should strive to remain beyond reproach in their moral conduct.

2. Conflict of Interest

A Member of Parliament must not employ, or cause to be employed, at public expense, family members or any person with whom the member has an intimate relationship or members of that family.

Parliamentary entitlements must be used strictly within their designated limits and for their designated purpose.

A member of the LNP who has a personal financial interest in a matter under consideration should declare that interest. Where appropriate, this declaration of interest should be minuted.

A member of the LNP must not misuse confidential information.

Party members, particularly those in positions of leadership, should seek ethical solutions to problems without regard to personal interest.

3. Standards

Members should observe the Party's rules, as set out in the Constitution and should promote the Party's established principles and policies. Members should maintain high standards of truth, accuracy, fair dealing and good taste. They should exercise respect and trust towards other members.

A member should not, without proper cause, injure the personal professional reputation of another member. Members should use discretion in keeping Party matters within the Party.

4. Meetings

Members should observe the properties of meeting procedure in relation to courtesy and respect as defined in the Party's Standing Orders for Meetings.

The confidentiality of Party meetings must be observed whenever it is appropriate.

Resolutions passed by State Convention should not be disregarded by members of Parliament, Policy Committees and other Party Units.

Conveners of committee meetings should have regard for the convenience of committee members, particularly those for whom considerable travel is involved.

5. General

Members should be ever mindful not to bring the image of the Party into disrepute. Many factors influence the Party's image. These range from the activities and personalities of its Leaders and its Parliamentary representatives to the tone and presentation of its communications.

Members must not make statements as representatives of the Party except as permitted by the Party's rules on this matter.

Members should not make public statements of position on matters yet to be resolved privately by the Party.

Endorsed Members must not make public statements that are contrary to Party policy.

Members must abide by undertakings given to the Party, whether in the pre-selection process or in other matters.

Office bearers should realise they have a stewardship role towards members and should act responsibly, honestly, with commonsense and a regard for Party customs.

Office bearers and Parliamentary representatives should be willing to be accountable at Party meetings for any of their actions or activities, fairly raised.

Incumbent office bearers and members of parliament should recognise, without rancour, the entitlement of any eligible members to contest their positions.

Members should co-operate with fellow members in upholding the Statement.

NOTES ABOUT THE CODE OF ETHICS

While the statement above represents the Party's official code, the basic rules are:

You are seeking to go into elected political life where ethical constraints are becoming increasingly intrusive into one's private and commercial life. It is important therefore, that you should know what the Party would expect of you should you be successful in your attempt to become a Member of Parliament.

If we don't behave ethically towards one another in the Party then we will not operate together very effectively. Even if you are successful in becoming a candidate you are already in the category of community leader – someone the public expects to set an example and who should not let them down.

What is required when one talks about an ethical obligation?

The key to it, in terms of what the Party expects of you, are personal responsibility and accountability.

Anyone who feels in need of assistance as to whether or not particular conduct is ethical could start with the simple test whether or not you would be happy to read details of what you propose to do on page one of your local newspaper. If you wouldn't be happy to read them there, there is a reasonable chance the conduct doesn't match up with the standards expected by the community generally.

It is not enough to say when your conduct is questioned that you have not been put into prison yet. The LNP expects a higher standard than that you simply stay out of jail or avoid being convicted. Ethics is concerned with higher standards than those.

Candidates and donors don't mix well.

Once a person holds public office, he/she may well be in a position to make decisions that affect people who have donated to his campaign. If you make a decision in favor of somebody who happens to have contributed to your campaign, then there may be in the mind of the public a presumption that you may have made that favorable decision because you received the donation.

The only possible defence both politically and legally is for you to be in a position to say you had no knowledge of any donation and the only way you can be in a position to say that is to have nothing to do with receipt of donations. If somebody wants to come to you to talk about money the answer is to say, 'Go and see my Campaign Treasurer. I can tell you only two things. The first is that whether or not you donate will affect no decision I make in relation to you and the second is that the Treasurer is under strict instructions not to tell me whether you have donated or not,' and then make sure the Treasurer keeps that undertaking.

Similarly, if support is offered in some other way, you should not be offering to provide some sort of favour. Nor should you offer any sort of undertaking that has not been cleared by the Parliamentary Leader. It is for the Parliamentary Leader to give electoral undertakings on behalf of the Party. The Parliamentary Leader will not be sympathetic to the suggestion that we give private undertakings as opposed to public ones.

Finally, there are stakeholders external to the Party that have their own Codes of Ethics. For example, the Queensland Legislative Assembly has adopted a code of ethical standards applying to all members of the Assembly. The code is available on the Queensland Parliament's website www.parliament.qld.gov.au

"DGR 3"

Annexure Certificate

No. NSD580 of 2012

Federal Court of Australia
District Registry: New South Wales
Division: Fair Work

James Hunter Ashby

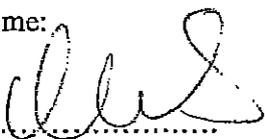
Applicant

The Commonwealth & Anor

Respondents

This is the annexure marked DGR3 produced and shown to David Graham Russell A.M., R.F.D., Q.C. at the time of affirming his affidavit on 13 July 2012.

before me:



Name

ANGELA MAREE NOAKES, JP
Ground Floor Wentworth Chambers
180 Phillip Street, Sydney NSW 2000

JP Reg No: 143646

Qualification

THE SYDNEY INSTITUTE

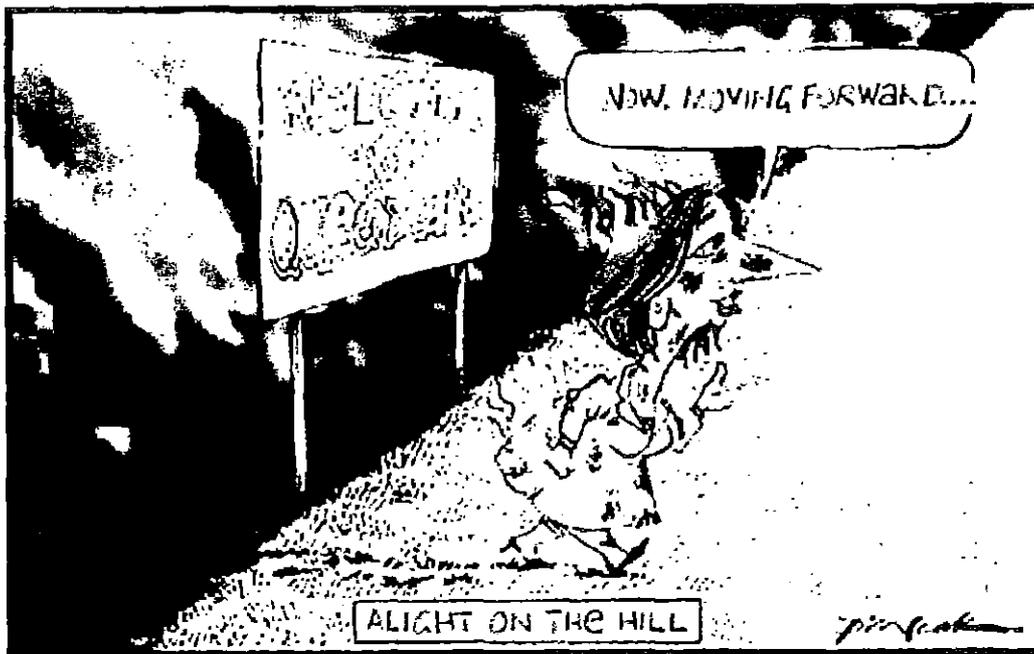
SYDNEY
12 JUNE 2012

"HOW THE NORTH WAS WON"

David Russell AM RFD QC

Ground Floor Wentworth Chambers
180 Phillip Street
Sydney NSW 2000
Australia

Telephone: +61 2 9230 3222
Facsimile: +61 2 9232 8435
E-Mail: russell@wentworthchambers.com.au
www.davidrussellqc.com



Mise-en-scène

At the outset, it is perhaps appropriate to pose the question, “Is Queensland different?”

My answer, as a native Queenslanders now working frequently South of the Tweed, is “Not particularly”. But there are some differences relevant to the present topic that are worth mentioning at the outset.

Queensland historian Ross Fitzgerald has made the point that life for Queenslanders has never been easy – our climate and geography mean that we don’t have the fertile fields and genteel lifestyles available to our Southern compatriots. There was something of that understanding in Premier Anna Bligh’s declaration during the 2011 floods:

I want us to remember who we are.

We are Queenslanders. We’re the people that they breed tough North of the border. We’re the ones that they knock down and we get up again.

Queensland politics has been played out against that background.

There are important differences in our demography and our political system from those in other States.

Queensland is unique among the mainland states in that the majority of Queenslanders live outside the capital city. The pattern of settlement did not commence in the capital.

The capital city is a single local government area, with a budget greater than that of Tasmania.

Queensland had first past the post voting until 1963, then compulsory preferential voting, and now optional preferential voting. It also has had an electoral system aspects of which have been controversial, but since the advent of the Party system has only denied office to a Party which won the majority of the vote four times – in 1920, 1926, 1950 and 1995. In each case the beneficiary was the Labor Party.

It also has a tradition of strong executive government, accentuated by the lack of an Upper House of Parliament since 1921. Just how that came about is worth recalling.

In 1915, the Denham Liberal government was defeated by the Labor Party, led by T J Ryan. It experienced difficulties with its legislative program at the hands of the Legislative Council and the Courts. In 1919 he was replaced as Premier by Edward Granville Theodore.

1921 was not an auspicious year for Queensland's democracy. In 1920 the Theodore Labor Government had taken advantage of the retirement of the Governor to appoint as Lieutenant Governor William Lennon, the Speaker of the Legislative Assembly, a former (Labor) Minister¹. He acceded to its recommendation to appoint sufficient Members of Legislative Council to ensure passage of the Government's legislative program (including abolition of the Legislative Council - hence their nickname of "the suicide squad").

¹ The traditional practice was to appoint either the President of the Legislative Council or the Chief Justice: see (ed.) Murphy and Joyce, *Queensland Political Portraits*, p.317.

The Australian Dictionary of Biography² takes up the tale:

In September 1919 he became Speaker of the assembly until an interregnum at Government House gave the Labor government an opportunity to move against the obstructive Legislative Council. In January 1920 Lennon resigned his seat to accept appointment, on a salary of £1000 a year, to the previously unremunerated office of lieutenant-governor. In a series of manoeuvres, lampooned by some as at best comic opera, he appointed himself to a seat in, and subsequently the presidency of, the Legislative Council. The conservative press was particularly galled at Lennon's alleged misuse of the vice-regal prerogative, resurrecting from the conscription debate his denunciation of British imperialism and his 1910 description of the office of State governor as 'effete'. Following a cabinet recommendation, Lennon augmented Labor's 'suicide squad' in the council with a further fifteen new appointees prepared to vote out of existence a House their party deemed undemocratic and anachronistic. In March 1922 Queensland became the only Australian State to abolish its Upper House. Lennon had achieved 'the most important single constitutional reform in Queensland history'. He continued as lieutenant-governor until May 1929 when he returned to private life after the Moore government cancelled his salary.

In addition to the passage of legislation for the abolition of the Legislative Council³, 1921 saw the enactment of legislation which removed three judges from the Supreme Court by reason of a retrospective age limitation, shortened terms of office of the remainder and abolished the District Court.

The government justified these measures on the grounds that the Legislative Council and Supreme Court were frustrating the will of the democratically elected government of the day. Although this argument had a superficial attraction⁴, it does not withstand close analysis. Since 1908, the **Parliamentary Bills Referendum Act** had permitted the Government to enact legislation not approved by the Legislative Council by submitting it to a referendum. The only legislation so submitted was a Bill for abolition of the Legislative Council, which was decisively defeated in 1917⁵. Moreover, Ryan and

² Rodney Sullivan: *William Lennon* (1986) Australian Dictionary of Biography Vol. 10

³ **Constitution Act Amendment Act of 1922**

⁴ Murphy, *op. cit.*, pp.315, 320, and Cilento and Lack, "Triumph in the Tropics", pp.403-4, accept it.

⁵ For abolition, 116,196: against abolition, 179,105 (figures quoted in Murphy, *op. cit.*, p.277).

Theodore had been able to placate their more radical supporters by proposing legislation neither supported secure in the knowledge that the Legislative Council would reject it⁶. Decisions of the Supreme Court, whether favourable or unfavourable from the Government's viewpoint, were subject to appeal to either the Privy Council or the High Court, neither of which was amenable to changes in composition at the instance of the Queensland Government to secure more favourable outcomes. Nor, in any event, is it clear that the decisions to which the Government took exception were wrong as a matter of legal principle⁷.

It should not be thought that the "suicide squad" were unmindful of the possible loss of perquisites of office when they voted to abolish their positions. The **Constitution Act Amendment Act of 1922** provided⁸ that upon abolition of the Legislative Council, its members should retain the privileges of office including gold travel passes. These were abolished by the Moore (CPNP) Government⁹, and restored by the Forgan Smith (Labor) government¹⁰.

One of Queensland's most distinguished jurists, Mr Justice McPherson of the Court of Appeal has observed that -

*A tendency for the legislature to assert its dominance over the judiciary, and for the executive to dominate the legislature, may have its origins in the bungling of Queensland's constitution at Separation ... Its apotheosis was the decision in McCawley's case and The Supreme Court Act of 1921 followed a year later by the abolition of the Legislative Council. In fashioning an instrument of power for their use the politicians of that era lacked the wisdom to foresee, or perhaps to care, that control of it would one day pass to their opponents. Those who now regret the ambit of Executive authority in Queensland can be in no doubt who were responsible for creating it ...*¹¹

⁶ Irwin E. Young, *Theodore: His Life and Times*, Alpha Books, p.27

⁷ See, e.g., B.H. McPherson J.A., *The Supreme Court of Queensland*, 1989, Butterworths at pp.290-1.

⁸ Section 3

⁹ **Constitution Act Amendment Act of 1929 (No.2)**

¹⁰ **Constitution Act Amendment Act of 1935**

¹¹ B.H. McPherson J.A., *op. cit.*, p.399.

Nor should it be thought that the consequences in Queensland of abolition of the Upper House were unintended. Premier Theodore, proposing it, expressed the view that an Upper House which duplicated the composition of the Lower House would be superfluous, while one that obstructed the working of a constitutionally elected lower house would be destructive of parliamentary democracy¹².

Not content with this act of constitutional vandalism¹³, Theodore and his Labor successors attended to a succession of questionable judicial appointments which appear to have been in part motivated by payback arising from an inquiry into Theodore's corrupt conduct.

Again, to quote Mr Justice McPherson¹⁴,

The choice of McCawley, Blair, Brennan and Webb was not made in order to encourage the belief that judicial appointment remained the prize for pre-eminence in the practising profession. Men like Feez, Stumm, and MacGregor, and later Hart, Real and Fahey, were passed over because of their political opinions.

In 1930 a Royal Commission found in respect of former Premiers Theodore and McCormack that "men who have occupied high and responsible positions in the State ... betrayed for personal gain, the trust reposed in them, and have acted corruptly and dishonourably"¹⁵. The Crown declined to prosecute Theodore and McCormack, but sought to recover moneys from them in a civil action and failed – although as McPherson has pointed out, that seems to have been a perverse finding as "it is impossible now for a rational doubt to survive as to Theodore's part in the venture"¹⁶. Subsequently all barristers who acted for Theodore were appointed to the bench by the 1932-1957 Labor Government. Although amongst those who acted for the Crown were

¹² quoted in Murphy, *Queensland Political Portraits* at p.322

¹³ State Governor Sir Walter Campbell, a former Chief Justice, in the 1992 John Oxley Memorial Lecture described these events as involving "impropriety and abuse of power" and "deserving of condemnation".

¹⁴ B. H. McPherson J.A., *op. cit.*, p.338.

¹⁵ *Report of Royal Commission appointed to inquire into and Report upon certain matters relating to Mungana, Chillagoe Mines etc*, Queensland Parliamentary Papers 1930 Vol.1 p.1366.

¹⁶ B. H. McPherson J.A., *op. cit.* p.295

leaders of the Bar, none were appointed, although one was appointed to the District Court upon its re-establishment in 1959¹⁷.

While on the subject, it is perhaps worth noting that Theodore was neither the first nor the last Queensland politician to be under a cloud for corrupt activities. Sir Thomas McIlwraith had spent the last three years of his life¹⁸ in Europe avoiding the powers of an Inquiry into his dealings with the (then government owned) Queensland National Bank and, perhaps most egregiously, the Gair (Labor) government in 1956 had secured the dismissal by Parliament of V. R. Creighton, a Lands Commissioner who had drawn to public attention the corrupt activities of Thomas Foley, the Minister for Lands¹⁹. In fairness to the Labor Party, it should be acknowledged that it expelled Foley, only to see him re-elected at the following election.

In the following year, the Labour Party government split apart and the first of two long periods of government, one by the non-Labor parties and one by Labor, commenced.

Non-Labor in power 1957-1989

The 26 years of coalition government, followed by 6 years of National Party government, were increasingly marked by disputes between the Liberal and National Parties. Preferential voting was introduced in 1963. Accompanied by its introduction, in part intended to capture DLP preferences, there was an agreement between the then coalition parties whose terms were later disputed. The Country Party perspective was that the agreement was that the pre-existing arrangement whereby the Parties did not engage in electoral contests against each other would continue. The Liberal Party perspective was that the agreement was to apply to only that election.

In 1966, following upon the Country Party's rejection of a Liberal Party approach for merger, the Liberal Party endorsed candidates in seats traditionally contested by the

¹⁷ The identity of those who appeared may be found in *R. v. Goddard and others* [1931] Q.W.N. 37.

¹⁸ From 1897 to 1900

¹⁹ Moroney, Tim: *T.A. Foley Australian Dictionary of Biography*, Volume 14, (MUP), 1996

Country Party, including some held by sitting Country Party members and very nearly won one of them, losing another [in the vacant seat of South Coast] only because the Labor Party directed preferences to the Country Party. As time passed, three cornered contests became more widespread and reached the point where they involved sitting cabinet ministers and, on one occasion, an exchange of preferences between a Country Party sitting member and the Labor Party.

Ill feeling between the parties reached a crescendo with the split in the coalition in 1983, which saw the election of a National Party government, made possible by the defection from the Liberal Party to the National Party of two sitting Liberal Party members who, it must be said, had made it plain to their respective electorates during the election campaign that they would support a government led by the National Party.

Relations between the Parties continued to deteriorate, coming to a high point in the 1987 federal election campaign. At the same time, aspects of police administration became the subject initially of media scrutiny and then of a Commission of Inquiry headed by Tony Fitzgerald QC. The outcomes of this Inquiry, in addition to the conviction of a number of corrupt police personnel [including the Commissioner, who had close ties with Sir Joh Bjelke-Petersen, who was leader of the National Party government for much of the period], included the conviction of four former Ministers for abuse of parliamentary expenses and, in one case, income tax obligations, one businessman for bribing yet another Minister (who died prior to his own trial), and a failed prosecution of former Premier Sir Joh Bjelke-Petersen for perjury. The 1989 election saw the Liberal Party publicly indicating that it would refuse to serve in a coalition government with the National Party except as senior partner, which was widely considered to be a totally unrealistic prospect, and allocating its preferences to the Labor Party against a sitting Minister in one seat, which Labor won.

Whilst it cannot be disputed that aspects of the later years of the Bjelke-Petersen administration were far from satisfactory, it is important to keep them in perspective having regard to the standards which had applied in Queensland beforehand (and indeed in the later years of the subsequent Labor administration). As against these defects, it should also be kept in mind that the 32 years of coalition and subsequently National Party government had transformed Queensland from the "Cinderella state" as it was

known in 1957 to the powerhouse of the Australian economy. Not only was there no net state debt, but [uniquely in Australia] all public sector superannuation entitlements were fully funded. This fiscal nirvana was achieved despite (indeed arguably because of) Queensland's status as the lowest taxed State or Territory in the nation. Progress had been made in other areas too, including Australia's first steps towards labor market reform following the successful conclusion of a major dispute in the electricity industry.

When the National Party left office in 1989, it was the only government in Australia which had legislated to permit direct bargaining between employees and their employer as an alternative means to industrial awards for determining wages and conditions. It had legislated to ensure that the public was not inconvenienced by wildcat strikes, and to protect the export trade from industrial action²⁰.

These measures, vehemently attacked by their critics in the Labor Party at the time, have stood the test of time. The Voluntary Employment Agreement legislation formed the legislative basis for the Greiner Government's introduction of a similar concept in New South Wales. Indeed, from the standpoint of the current industrial relations debate, the measures were, if anything, conservative, with even the Labor Party recognizing that direct employer/employee negotiations have an important role to play in this area.

All this was swept away by the Labor Party as soon as it came to power. On the very day that the Cooke Inquiry into misconduct by Union officials handed down its first Report which indicated deficiencies in legislation then before the Parliament and recommended strengthening of provisions to protect the rights of members of trade unions not to contribute to a political party to which they were opposed, the Labor Party enacted the legislation, limiting the opportunity for the Opposition to move amendments or fully debate it, and repealed the Political Objects Funds provisions in breach of its promise at previous the State election.

From being at the forefront of industrial relations reform in Australia, Queensland now has amongst the least progressive industrial relations legislation.

²⁰ a more complete record can be found in Sir Joh's speech opening the third meeting of the H R Nicholls Society in 1987.

Labor in power 1989-2012

There followed 22 years of Labor government, interrupted only by the short interregnum of coalition government from 1996 to 1998. One of the first matters attended to by the Labor Party was an electoral redistribution, and the Liberal Party, believing that this removed its obstacle to achieving supremacy over the National Party, refused to enter into a coalition in opposition despite it being invited to do so. The 1992 election largely reproduced, in terms of seats numbers, the results of the 1989 election although, given the changes in boundaries, this represented a significant gain for the National Party. A distinguishing feature of the election was the aggressive campaign run by a Liberal front bench member against the Leader of the Opposition in his own seat of Surfers Paradise.

In the following year, the National Party reversed its many years of opposition to non-Labor unity, and adopted a policy of seeking to merge the Parties in Queensland. It was not possible to negotiate such a merger prior to the 1995 State election, but a coalition was formed on terms which reduced the number of three cornered contests to one [Barron River] and the Parties campaigned jointly on common policies. One of the significant aspects of preparation for the campaign was the work done by the organizations on policy development, through a joint process in which both sides were equally represented, and during which there was no policy divide on Party lines, indicating to any objective observer that there were no philosophical grounds upon which merger could be resisted.

The Goss Labor government can be seen, in retrospect, to have laid the seeds of the economic problems which came back to haunt the Labor Party in later years.

However at the time it was seen as being mildly reformist rather than potentially damaging. If anything, its failing was to elevate process above outcomes – arguably a reaction to its National Party predecessor which, it might be argued, was overly concerned with outcomes to the detriment of proper process. Interestingly, the head of the Cabinet office for this period was Kevin Rudd who went on to become Prime Minister and whose government exhibited many of the process failures which Queenslanders had observed in his earlier role

Somewhat unexpectedly, the coalition won the 1995 election easily in terms of the popular vote [with 53.4% of the two-party preferred vote] but lost in terms of seats, a result corrected when a re-election in early 1996 brought about the election of a further Liberal member of Parliament.

The coalition government which then took office managed to address a number of significant infrastructure issues, and privatized the former state government monopoly of workers compensation, but was hampered by lack of a majority in the Parliament and constantly distracted by an Inquiry commenced by the Criminal Justice Commission (CJC) into an understanding reached by the coalition with the police union in relation to a matter number of matters of police administration. Whilst the Inquiry finally determined that there was no misconduct on the part of those in the coalition who had entered into the understanding [and an inquiry into the CJC established that the CJC had received advice to that effect from the state's most senior barrister prior to commencing the Inquiry] that, the unpopularity in Queensland of early measures taken by the Howard government and the emergence of Pauline Hanson as a political figure campaigning on federal issues put paid to the government's prospects in the subsequent State election, which again resulted in a hung parliament, a newly elected independent representing a traditionally non-Labor electorate delivering government to the Labor Party.

One interesting feature of the 1998 election campaign was that it was the first occasion on which the non-Labor Parties had to make a decision as to whether or not preferences would be allocated in favor of the Labor Party or Pauline Hanson's One Nation. After anxious deliberation, both Parties decided to preference against the Labor Party. This resulted in the defeat of a number of Labor sitting members, compensated for by a swing against the non-Labor parties in the metropolitan area reflecting the distaste of the electorate for this decision.

It is difficult to imagine how, had they set out deliberately to do so, the Liberal and National Parties could have established themselves in the public mind as unelectable more comprehensively than they were to do in the 2001, 2004 and 2006 State elections. In the first of these, the Liberal Party sensibly reversed its previous decision and allocated preferences against One Nation. Despite the Leader of the Opposition indicating his preference that the National Party organization should do the same, it

failed to do so, thereby damaging his electoral credibility. The result was a very substantial Labor Party victory, repeated in 2004 because the Opposition Parties had failed to resolve their differences about leadership or policy.

Merger

This led to a recognition on the part of the organizational and Parliamentary leaderships of both Parties that in the absence of a merger, there was simply no prospect of putting together a workable coalition arrangement. Agreement was reached for a merged party to be formed in 2006 following successful joint campaigns which resulted in by-election victories in Labor seats, but federal Parliamentarians in both Parties were obstructive and these difficulties resulted in the merger not progressing. The State Parliamentary leadership of the Liberal Party changed. The Queensland Labor Party, not believing its luck, called an early election and after the Parliamentary leaders of the National and Liberal Parties were unable, at the first joint press conference of the campaign, to answer the question who would be Premier if the Labor Party were defeated, the result of the campaign was inevitable.

In the ensuing federal election, the Liberal and National Parties suffered substantial losses in Queensland as part of their nationwide loss. But that loss did mean that the possibility of destabilization of the federal government was no longer an impediment to merger, and the risks to the federal non-Labor forces attendant upon a debilitated organization in Queensland became more obvious. At the same time, proponents of the merger came to more fully understand that obtaining federal acquiescence, if not active support, for the merger was an essential part of the process.

Over the following three years, satisfactory merger terms were agreed and implemented. A detailed history of that process is outside the scope of this paper. Suffice it to say that the final constitution of the merged Party – to be known as the Liberal National Party of Queensland or LNP - broadly reflected the 1993 proposal put forward by the National Party with one exception: the original proposal was for a standalone non-Labor Party, in this respect modelled on the Country Liberal Party of the Northern Territory. The final version adopted involved the LNP being a division of the Liberal Party of Australia, whilst maintaining its status as a State Party of the

federal National Party. Existing federal members stayed where they were, and as the federal representation has increased, new federal members have sat with the federal Party which traditionally represented the area in question. A precedent had been set for this by the Liberal Country League in South Australia, one of whose federal members sat with the Country Party although it was a Division of the Liberal Party. This is undoubtedly an improvement on the original proposal, and addressed one of the principal objections to it, perhaps most clearly articulated by John Howard – merger in Queensland should not lead to a process of balkanization of the non-Labor side of federal politics.

The final version of the constitution had been developed over many years, in a process commenced in 1984 and involving both Nationals and Liberals. Those involved were well aware, from a perspective of both Parties, of the contribution made by organizational weakness to the ongoing failure of the non-Labor Parties in the State, and were determined to establish a Party which would not only be enduring but also would make a major contribution to the development of the State and the welfare of its people.

Despite the overwhelming superiority of members of the former National Party in the LNP²¹, care was taken to ensure that at State Executive and Parliamentary levels former Liberals were afforded an equal share of the positions to be filled so the result was a true merger, not the takeover which some in the Liberal Party had feared. The process of building an organization which could match the Labor Party began. Some idea of the parlous state which had been reached prior to the merger can be gained from the fact that the Liberal Party's Queensland Division pre-merger had no significant net assets and found itself in a challenging financial situation.

The LNP in action

The first electoral outing for the merged Party was the 2009 state election. It performed credibly, gaining 49.5% of the two-party preferred vote and winning 9 seats but, by reason of imbalances in the electoral system, the result was a Labor

²¹ There were approximately 2,500 Liberals and 5,500 Nationals whose membership was financial immediately preceding the merger

majority of 17. The LNP is generally regarded as having won the campaign up to the point of the last week, during which a ferocious Labor Party advertising campaign focusing on the statement by the Leader of the Opposition, Lawrence Springborg, that Australia was not in a recession and therefore there was no excuse for the state's poor economic performance, being treated as evidence of economic illiteracy when in fact he had done nothing more than state the truth. Nevertheless, the ferocity and effectiveness of the Labor campaign made clear to the LNP what it would confront in the following election, as well as identifying the huge task it faced in needing something in excess of 53% of the two-party preferred vote to win if the swing were uniform.

Opponents of the merger seized on this result as suggesting variously that the LNP was conceptually flawed, or alternatively incompetently run, or both.

A key point on the 2009 state election results that is often ignored is the breakthrough in Brisbane. The Liberals and Nationals had been mutually unsuccessful in breaking Labor's lock on Brisbane's 24 seats since 1989. In fact, in 2001 and 2004, the Liberals only won one seat (Moggill). In 2006, only Clayfield was recovered. One of the central arguments against amalgamation was that a Party with the word "National" in it would never gain the acceptance of metropolitan voters. Yet in its first outing, the LNP won Aspley, Clayfield (which had become notionally Labor in the redistribution), Cleveland, Indooroopilly and Redlands. This breakthrough was critical to demystifying the LNP in Brisbane and laid the groundwork for the results in 2012. It was also a greater number of gains in Brisbane than the 1995 swing (where the Liberals won Mansfield, Mount Ommaney and Greenslopes) on the back of the Koala Highway debacle. Most importantly, it showed that traditional conservative voters in suburban Brisbane were entirely comfortable supporting the LNP brand and possibly more inclined to support the LNP than the Liberal or National parties.

The next electoral outing for the LNP was the 2010 federal election. The results provided a comprehensive answer to the critics, the LNP two-party preferred vote being 54.93%, 7 new seats (Leichhardt, Dawson, Flynn, Longman, Brisbane, Forde, Bonner and Wright) being won and two notionally Labor seats following redistribution (Dickson and Herbert) being held. Collectively, these represented three

quarters of the gains made by the federal coalition in the election.

The LNP's selection of 19 year old Wyatt Roy in Longman, and its expulsion of former Ryan MP Michael Johnson for integrity related issues, had been the subject of particular criticism as likely to lead to the loss of these seats. The expulsion of Michael Johnson raised a number of difficult issues. As part of the negotiations to secure federal Liberal approval for the merger, it had been agreed that all sitting Parliamentary members would be grandfathered for the 2010 election. This meant that there could not be candidate selections (which under the LNP constitution involve all local members and the State Executive) in any federal seats, notwithstanding that in at least two [Ryan and Fisher] there was considerable agitation amongst the local membership for the right to have a selection. Johnson's expulsion meant that the Ryan members were to have that choice. The inability of the LNP under its proposed constitution to hold a selection in Fisher was one of the matters of concern to the Liberal President at the time of the merger, former Howard government minister Mal Brough, and with the benefit of hindsight it can be seen that the price paid in order to secure federal Liberal agreement to the merger was a very high one.

Success at last

The final term of the Labor government involved many chickens coming home to roost. Almost immediately after the election, the government decided to terminate the state's petrol rebate scheme, which returned to motorists the amount of the tax collected by the Commonwealth for the other states whose petrol taxes were declared unconstitutional and had to be imposed in Queensland because of the requirement for non-discrimination in Commonwealth taxes. This broke an explicit pre-election promise by the Treasurer and Deputy Premier. Although not specifically a broken promise, the announcement of an asset sales program shortly after the election led many to believe that this was both intended and concealed at the time of the election. In addition to economic decline²², a miasma of sleaze and corruption emerged, in

²² Queensland's former AAA rating was downgraded to AA+ immediately before the 2009 State election and according to recent media reports (*Courier-Mail* 12 June 2012) a further downgrade to AA is imminent.

which the activities of Labor-linked lobbyists were prominent.²³ The relationships of third parties such as lobbyists and the trade union movement with successive Labor Governments and the running of parallel campaigns created a structural imbalance in funding of political parties and electoral outcomes.²⁴ Two former Ministers were convicted and jailed respectively for corruption and extortion²⁵.

What made this more than a problem of a few rotten apples in the barrel were the subsequent steps taken by the Labor Party to lower standards of public administration, perhaps best demonstrated by its response to the long running Nuttall affair. It is instructive to consider the details:²⁶

- July 8, 2005: The former Health Minister Gordon Nuttall was found to have lied to the Budget Health Estimates Committee hearing over his knowledge of issues relating to the qualifications of overseas trained doctors;
- July 15, 2005: The Leader of the Opposition wrote to the Queensland Police Service requesting that an investigation be conducted to ascertain whether, by his answers to certain questions, Nuttall had committed an offence against section 57 of the *Criminal Code* of Queensland.
- July 28, 2005: The Queensland Police Service referred the complaint to the Crime and Misconduct Commission

²³ Marriner, C, "Lobbyist one day, campaigner the next," Sydney Morning Herald, www.smh.com.au, August 7, 2009. The lobbying firms Hawker Britton, Enhance Corporate and CPR Communications all lent key staff for free to the Queensland ALP to assist in the re-election of the Bligh Government. After the campaign in March, the workers on loan returned to lobbying the Queensland Labor Government on behalf of paying clients, raising more questions about the ability of lobbyists to influence government decisions; Mitchell, A, "Bye bye Crosby/Textor hello Hawker/Arbib", www.crikey.com.au, April 16, 2008: "Now you get the picture? Hawker Britton staffers move in and out of Labor administrations with seamless ease, almost treating them as work assignments."

²⁴ Ibid. and Wardill, Steven, "Labor Party failed to declare \$225,000 donation on time", The Courier Mail, July 27, 2009, (\$225,000 from Construction, Forestry, Mining and Energy Union of which \$170,000 was utilised in the marginal electorate of Mirani in an (ultimately unsuccessful) attempt to defeat LNP candidate).

²⁵ During the Labor term, two other Labor MPs (or former MPs) had been convicted and jailed for sex offences involving children, and two members of Parliament (one a Deputy Premier) forced to retire from the Parliament as a result of their involvement in electoral offences. The former became a highly successful lobbyist, while the latter was appointed to senior offices within the New South Wales, Queensland and Federal governments.

²⁶ Hansard, Recall of Parliament, "Member for Sandgate, Crime and Misconduct Commission Report, www.parliament.qld.gov.au/hansard, December 9, 2005.

("CMC") which formed the view that it had the power to conduct an investigation, and it did so.

- August 9, 2005: The Parliamentary Opposition referred to the Members' Ethics and Parliamentary Privileges Committee the matter concerning an allegation that Nuttall deliberately misled a committee of the House.
- December, 7 2005: The CMC released its report recommending that Nuttall (by then Minister for Primary Industries and Fisheries) be considered for prosecution;
- December, 7 2005: Executive Government considered the report as matter of urgency. Minister Nuttall, after meeting with Premier Beattie and Deputy Premier Bligh, resigned his portfolio. The Premier put in place arrangements for a special sitting of Parliament.
- December 8, 2005: Legal and parliamentary experts within the Government examined precedents that were relevant to the findings of the CMC and to the circumstances of Nuttall. This work allowed the government to frame a motion for resolving the matter to its satisfaction.
- December 9, 2005: At a special sitting of Parliament, Premier Beattie moved and Deputy Premier Bligh seconded a motion that included that Nuttall's conduct be dealt with by the parliament as contempt, ensuring that he was not prosecuted.

The Opposition drew the Speaker's attention to the referral of the matter to the Members' Ethics and Parliamentary Privileges Committee and the Speaker's strict ruling that the matter could not be mentioned in the House, before the Committee reported. The Speaker ruled that any resolution of the House overrode any other decision.

The Opposition moved to amend the motion that the CMC's report into the allegations concerning Nuttall be referred to the independent Director of Public Prosecutions for consideration. The amendment was defeated and the Government's motion was agreed, legalising lying to a Parliamentary Committee.

- January 9, 2006 Acting Premier Bligh announced that the State Labor Government would amend laws to make it legal for

Ministers to lie to Parliament and Parliamentary committees.

- May 9, 2006 Under the cover of the Federal Budget and the euphoria of the miners' rescue in Beaconsfield, the Labor Government introduced laws to legalise lying in State Parliament.
- May 26, 2006 The Labor Government amended the *Criminal Code Act 1899* to make it legal for Premiers and Ministers to lie when under investigation by a parliamentary committee. The amendment exonerated Nuttall (who was later convicted for corruption and subsequently five charges of official corruption and five charges of perjury²⁷) from possible criminal charges for lying to the Budget Health Estimate Committee, and removed Section 57 from the *Criminal Code*²⁸.

It was against this background that the LNP made a conscious decision to elevate integrity issues to the forefront of its campaign against the Labor government. That involved the preparation of a comprehensive paper on Integrity and Accountability in government, prepared by the party organization and its then Parliamentary leadership, and a number of decisions in relation to its own internal management including the prohibition of members of the State Executive engaging in lobbying activities²⁹ or being working journalists. The federal Liberal Party's Fund Raising Code, which whilst formally applicable to its Queensland Division had been largely ignored, was refined and rigorously applied. Party members who are registered lobbyists are not permitted to engage in fund raising. These measures were more than mere electoral opportunism: the LNP was acutely conscious of the electoral consequences, and subsequent economic damage to the State, of the perceived ethical failures of members of the Bjelke-Petersen government, and determined to prevent their recurrence – to the point that all potential candidates had to acknowledge the

²⁷ Fraser, A, "Ex-minister Nuttall jailed for corruption", www.theaustralian.com.au/news, July 17, 2009; and Guest, A, "Nuttall found guilty of efficient corruption", *The World Today*, www.abc.net.au, October 27, 2010

²⁸ Section 57 of the Criminal Code: "*Any person who in the course of examination before the Legislative Assembly, or before a committee of the Legislative Assembly, knowingly gives a false answer to any lawful and relevant question put to the person in the course of the examination is guilty of a crime, and is liable to imprisonment for 7 years.*"

²⁹ Some idea of the benefit perceived to flow from use of Party connections for lobbying purposes can be gained from the Statement of Claim lodged in 2011 by a former Party officer against the LNP, claiming that the losses to his lobbying business flowing from the Party's refusal of a life membership and certain Party commendations exceeded \$2 million.

requirements of the LNP's Ethics Statement which is drawn in uncompromising terms.

The Integrity Paper has informed a number of the decisions of the newly elected government, including its decision to restore the criminality associated with Ministers lying to Parliament. Other aspects of the Paper have been superseded by the change of leadership which occurred in early 2011, but the Paper's commitment to accountability in government has been reinforced under the new leadership, with [amongst other things] the individual ministers accepting office against the background of a published charter outlining their responsibilities³⁰ and ministerial changes following incomplete disclosure of information relating to driving offences by a (former National) MP, unanimously supported by the LNP State Executive.

One of the results of the merger was that time and effort could be spent building up the membership and finances of the Party organization. Membership, approximating 8,000 at the time of the merger, now exceeds 14,000 -- the largest of any Party at State level in Australia. The 2012 state election would be the first in the memory of many Queenslanders in which the non-Labor forces were competitive in organizational terms against the Labor Party. And the capacity to build a financially secure base as opposed to that which existed prior to the merger proved to be of immense value when the LNP's highly successful Lord Mayor of Brisbane, Campbell Newman, was approached to become the leader of the State Parliamentary party for the state election.

Although unprecedented in Australia, similar circumstances did exist in other comparable countries such as Canada. However it required, since Newman was not able to access the resources available to the Opposition in the State Parliament, that the Party organization supply him with staff, infrastructure, and provide further resources. Indeed, one of the lessons of the merger is that unless the non-Labor forces are organizationally competitive with the Labor Party, it is very difficult to win an election. That requires a substantial membership base, which will only be achieved if membership is meaningful to members, a purposeful approach to sound governance principles ahead of factional game playing, and a disciplined and focused approach to

³⁰ <http://www.cabinet.qld.gov.au/charter-letters.aspx>

the management of the Party.

Confronted with unfavorable opinion polls, the Labor Party decided to rewrite the rules on election funding for the 2012 election. This was said to be in response to public concerns about integrity in government, but the funding model adopted did not reflect any of the submissions made to the government's Inquiry, which was conducted within the Premier's department, rather than on the open model adopted by the National Party when it set up the Fitzgerald Inquiry as urged by the LNP. Rather, it came from a somewhat surprising source if one were concerned to improve integrity and other standards of public administration, the former New South Wales Labor government. Under the model adopted, expenditure by political parties was capped, but expenditure by unions affiliated with the Labor Party was not within the cap, giving it a substantial advantage. In addition, instead of the pro-rata funding support which had been a feature of all electoral funding arrangements in Australia until the Labor Party in New South Wales changed it, funding was provided on the basis of a percentage of electoral expenditure incurred up to the expenditure cap. Figures are not presently available to establish precisely the extent to which this has advantaged the Labor Party, but it seems likely that the Labor Party has received almost twice as much for each vote it received as the LNP did.

Much has been said about the campaign which I will not repeat here. The most notable feature of it was the ferocity of the personal attacks leveled at Campbell Newman, which were very much in the mould of those launched against Lawrence Springborg three years beforehand. That there was no basis for the campaign became clear when the CMC investigated the allegations, and found them to involve no misconduct on Newman's part. To make matters worse for Labor, former Premier Peter Beattie publicly acknowledged Newman's honesty two weeks before the election³¹, so the campaign did not reflect any belief in its truth on the part of the Labor Party. The Premier personally asserted that one of the matters which justified the campaign was the fact that a land developer had its registered office in a building owned by Newman's father-in-law's superannuation fund. The CMC's observation that as this was in the office of an accountant who was a commercial tenant of the premises there was hardly any basis for concern gives some idea of the flimsiness of

³¹ Australian Financial Review 10 March 2012

the assertions.

The ferocity of the campaign, and the fact it continued even after the CMC cleared Newman, almost certainly contributed to the scale of the Labor Party's defeat. However, as one Labor operative was quoted in the media as saying in defence of the campaign, the Labor Party could hardly campaign on the achievements of Queensland Health.

Analysis of the results reveals some interesting features. The overall two-party preferred swing was of the order of 16%. That this was no mistake was demonstrated five weeks after the State election when, in the former Premier's seat, vacant because, contrary to an election promise, she refused to serve the term for which she was elected, the LNP vote improved by a further 3%. In all but one seat West of the Great Dividing Range, the Labor Party ran third in what had been its traditional heartland. The first ALP member to represent a seat North of the Brisbane River represents the electorate of Rockhampton. Brisbane, previously held by the Labor Party in all but 4 seats, now has only 3 Labor members, the remainder representing one seat in each of Cairns, Mackay, Rockhampton and Ipswich.

Not even the most enthusiastic proponents of merger could have contemplated such a result.

The 2012 results demonstrate the potency of the LNP brand with non-traditional conservative voters in Brisbane. This is best demonstrated by the fact that the CBD of Brisbane, a city with now over 2 million people, is represented at federal, State and local levels by the LNP, with the party holding Brisbane, Brisbane Central and Central respectively.

The demographics of the LNP Parliamentarians are also significant. The LNP 2012 intake is a diverse group that is reflective of contemporary Queensland. The intake represents an atypical gene pool for non-Labor politics, reflecting the strength of the LNP preselection process, which empowers local members and fosters the identification of talented individuals with an interest in public policy.

At a macro level, the 2012 result is not simply the pendulum swinging back to the

right. This is something more than that. Labor with 20-30 seats would demonstrate a natural swing. Labor with 7 seats suggests something much more profound. It demonstrates that Labor has deep and debilitating brand weaknesses in Queensland that will not be resolved by a new leader. They may not even be resolved with the passage of time. Labor is fundamentally broken in Queensland: it has lost its ideological moorings and is adrift in a sea of irrelevance. The comprehensive loss of its working class base (best demonstrated with the results in seats like Lytton, Logan and Ipswich) show that Queensland Labor is now a party without people. It also demonstrates the appeal of the LNP stretches across the political spectrum and across Queensland's increasingly diverse geographic and demographic profiles. The LNP have built a brand that attracts the support of traditional Labor, Liberal, National and Independent voters. That it has done so attests to the fluidity of modern political allegiances and the power of sensible, mainstream, practical conservatism in the 21st Century.

Looking forward

I commenced by discussing the differences between Queensland and the rest of Australia, and it is perhaps appropriate that I finish by asking the question whether the Queensland experience offers any guide to the remainder of the country, and its implications for the future of federal politics.

The style of the LNP government has already been widely remarked upon favorably. Of particular note in the present context is the Premier's personal commitment to, and articulation of, the principles of competitive federalism. There is, in truth, no conflict between proper process and successful outcomes. Both are possible when those in the political system display both integrity and conviction. That having been said, the LNP government lacks the constraints which others have, particularly, in New South Wales, in not always co-operative upper houses.

There is not, at federal level or in any other state, an irreconcilable conflict between separate Liberal and National Parties. Unlike the position in Queensland, the National Party does not seek to be anything other than a representative of rural and regional electorates and the demography of the other states is such that in those circumstances

it could never aspire to be the major party in the coalition. That does not mean that conflict is impossible: there will always be the risk that while there are separate parties, an outstanding individual in the minor party will have no prospect of holding the most senior political office in the state. In the same way, local selection decisions will not necessarily produce the best outcome. But there will not be an overarching conflict over who will be the Premier or Prime Minister if the non-Labor parties win an election. Nor will the likely holders of the major offices of state be unknown.

On the other hand, there will be wasteful conflict, particularly when three-cornered contests are involved, and it is a tragedy to see such waste occur when the non-Labor parties are so desperately short of resources when compared with the Labor Party.

Policy conflicts have not occurred in the Eastern states in recent times: indeed the Parties have campaigned as a coalition, with a joint campaign headquarters, in each of the most recent state elections in Victoria and New South Wales, and in the most recent federal election. Whether the badging is that of the Liberal Party and the National Party in coalition, or of the Liberal National Party, makes little difference in the minds of those parts of the electorate not conditioned by the long-running disputes in Queensland.

Merger in other states will happen when the members and supporters of both Parties want it to happen. As the Queensland experience shows, self-interested attempts to prevent it at Parliamentary level will ultimately fail. The LNP has made it clear that it does not seek to impose Queensland solutions on the rest of the country. But the LNP experience does demonstrate that those in the National Party who are concerned that the rural and regional voice would be swallowed up in a merged party have overstated concerns which can easily be addressed in the context of the rational planning of a framework for a merged party. After all, under the coalition model Parliamentary members of both Parties need to meet to resolve what the common program of the coalition Parties will be. If that can occur, it seems difficult to understand why members of the Party organizations could not meet to address their areas of common concern. The combination of resources, and the capacity to ensure that there is optimal candidate selection must ultimately advantage the non-Labor cause.

What has been plain for many years is that there are really only two viable models —

merger or coalition. The Western Australian experiment of an alliance is, at least at State level, coming increasingly to resemble a coalition and the 1983 Queensland experience leaves little doubt as to what would happen if the W.A. Nationals were to abandon that alliance.

At the federal level, the position is even clearer that the coalition is now more than a marriage of convenience which could be unstitched.

After 30 June 2011, the Nationals party room consisted of 19 members: seven from Queensland, six from New South Wales, three from Victoria and one each from the Northern Territory and Western Australia, the last-mentioned of whom until recently refused to sit in either the federal Nationals Party room or the coalition joint Party room.

Of these, 7 (including the Leader, Deputy Leader and Senate Leader) were elected as representatives of merged parties (LNP and CLP). A further four (Senator Boswell and the Victorian and NSW Senators) were elected on joint tickets by the grace and favour of the Liberal Party. None would be in the Senate without it - in the last separate Senate contest in Queensland the Liberals outpolled the Nationals in Longreach! So a clear majority of their Party room has no interest in policy differentiation for its own sake. The LNP is totally opposed to it.

That is not to say that the distinct interests of rural and regional Australia should be in any way ignored. Rather, it is to ask how best they will be advanced. The view that a separate political party is necessary for that purpose has not commended itself to rural and regional voters in any comparable democracy, or indeed within Tasmania or South Australia where the National Party is either non-existent or is barely represented. Following the 2010 election, the coalition joint Party room comprised 36 House of Representatives members representing rural and regional electorates from a total of 72³², but because these were split between the Liberal Party (23) and the National Party (13), metropolitan members dominated the Liberal Party whose members chose the Leader and Deputy Leader of the Opposition and hence the alternative Prime Minister and Treasurer. What truly made a separate Party necessary in the early twentieth century was the interaction of now past industrial relations and

³² Western Australian National Tony Crook and the Speaker have been included in these figures.

tariff policies, since the economic costs of these policies were largely borne by the export industries based in regional and rural Australia.

The parallels between the 2012 State Election and the forthcoming federal election include a government conspicuously in breach of an election promise (the carbon tax), demonstrably unable to maintain appropriate public standards (Thomson and Slipper), unable to prevent massive waste of public resources (the pink batts and BER fiascos) or to satisfactorily implement policy (border protection). Attacks on the personality of the coalition leader seem likely to feature heavily also. It is not surprising that recent published opinion polls show a federal Labor vote lower than the 2012 State result, at which point Labor would lose all its seats, as would the Speaker (Slipper) who by his defection for all practical purposes may as well have become a member of the Labor Party.

To these issues should be added the Mineral Resources Rent Tax and more recently the Federal Government's interference in the development approvals for major projects. Paul Keating is credited with the aphorism that whoever seeks to rob Peter to pay Paul can usually rely upon the vote of Paul. The corollary is that it is more than a little unsafe to continue to expect the support of Peter. Whatever the merits of the argument that governments should extract higher benefits for the community from the mining boom, the notion that the federal government should extract them rather than the States in which the minerals are located, and utilize the proceeds to subsidise the genteel mendicancy of those States which have chosen to not develop their resources, is one which is unattractive to Queenslanders. So too is the notion that federal governments should seek to buttress their electoral support in inner city seats in Sydney and Melbourne at the expense of development in Queensland. Campbell Newman has already made it clear that he will stand up for Queensland on these issues, and given his administration's environmental record in Brisbane attempts to paint him as an environmental vandal or laissez-faire developmentalist in the alleged mould of Sir Joh Bjelke-Petersen are unlikely to be successful.

One of the concerns expressed within the federal Liberal Party had been that the LNP, like the former Queensland Nationals, would become excessively State focused to the detriment of the federal cause. Nothing could have been further from the intentions of the merger proponents, who were and remain well aware of the primacy of federal

political issues to the well-being of the State and its people. Even victory in all of Queensland's seats will not secure federal office if the non-Labor forces interstate are unable to carry their share of the burden in securing the defeat of the Labor Party. The LNP has a vital interest in their success and stands ready to actively and constructively participate in the maintenance of an effective political organization at federal level.

Historically, Queensland has punched well below its weight in federal politics. It has produced four Prime Ministers, only one of whom (Fadden) was non-Labor, and only one of whom (Fisher) served a full term. Despite it providing the bulk of non-Labor majorities since World War 2, it has not been significantly represented at leadership level in either the Liberal Party or, from 1958 to 2008, the National Party or its predecessors. The key to redressing this imbalance lies in rigorous attention to candidate selection, now that the risks associated with three cornered contests no longer exist. The LNP's enhanced vetting procedures will be of considerable assistance in this area.

Australia can only benefit from these developments.

And as a witness, I certify the following matters concerning the person who made this affidavit (the deponent):

1. I saw the face of the deponent.
2. I have known the deponent for at least 12 months.



Signature of witness

Form 59
Rule 29.02(1)

Affidavit

No. NSD 580 of 2012

Federal Court of Australia
District Registry: New South Wales
Division: Fair Work

James Hunter Ashby
Applicant

Commonwealth of Australia
First Respondent

Peter Slipper
Second Respondent

Affidavit of: Michael Daniel Harmer
Address: Level 28, St Martins Tower, 31 Market Street, Sydney, NSW
Occupation: Solicitor
Date: 23 July 2012

Contents

Document number	Details	Paragraph	Page
1	Affidavit of Michael Daniel Harmer affirmed on 23 July 2012		1
2	Annexure MDH1 being an email dated 19 April 2012 at 4.31pm from Megan Hobson to Brad Buffoni including attachments	28	9
3	Annexure MDH2 being an email dated 19 April 2012 at 7:25pm from Mr Buffoni to Megan Hobson including attachments and Ms Hobson's emailed response dated 20 April 2012 at 12.41pm	29	16

Filed on behalf of James Ashby, Applicant

HARMERS WORKPLACE LAWYERS

Address for service:

Level 28, St Martins Tower
31 Market Street
SYDNEY NSW 2000
michael.harmer@harmers.com.au

Tel: 02 9267 4322,
Fax: 02 9264 4295,
Email:

[Form approved 01/08/2011]

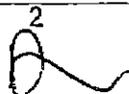


Michael Harmer

Document number	Details	Paragraph	Page
4	Annexure MDH3 being an unsigned statutory declaration which Ms Hobson indicated had previously been declared by her	31	25
5	Annexure MDH4 being and an email dated 4 May 2012 sent by Mr Leon Zwier of Arnold Block Leibler	32	29

I, Michael Daniel Harmer of Level 28, St Martins Tower, 31 Market Street, Sydney, NSW affirm as follows:

1. I am the solicitor for the applicant.
2. All my communications with Mr Ashby have been confidential communications made for the dominant (indeed sole) purpose of Mr Ashby being provided with legal advice and professional legal services relating to a proceeding or an anticipated proceeding.
3. They were all made in circumstances where I (and any other persons present) were under an express or implied obligation not to disclose the contents of the communications. I do not have instructions from Mr Ashby to waive any claim for privilege in any of these confidential communications or any other common law privilege. I do not propose, by anything referred to in this affidavit, to knowingly or voluntarily disclose the substance of any of these confidential communications. To the extent that there is anything contained in this affidavit, which might be thought to suggest that I have knowingly and voluntarily disclosed the substance of any communication or waived any privilege, the inclusion of that material is contrary to my instructions as I understand them and I wish to withdraw that part of the affidavit (and the applicant does not rely upon it for the purposes of these applications).
4. My firm, Harmers Workplace Lawyers, was first contacted by Mr Ashby on 3 April 2012 and the first meeting with Mr Ashby (being a meeting in which I participated) occurred on 10 April 2012.
5. To the best of my knowledge, Mr Ashby was not referred to my firm (or me) by any person or organisation.
6. I am not a member or supporter of the Liberal Party of Australia or the Liberal National Party or any other conservative political party. I am not a member of any political party. To the extent that I hold political views, those views are generally inconsistent with the views that I understand represent the objectives and policies of the coalition parties at a state or Federal level (to the extent those objectives and views differ from other mainstream political parties).
7. The firm, Harmers Workplace Lawyers, has throughout its history, been predominantly an advisor to employers in respect of workplace relations, safety and human rights issues. Subject

2


Michael Harmer

to conflicts of interest, the firm also acts for employees, unions and other participants in the workplace.

8. In 2012, I anticipate the firm will deal with legal inquiries from in excess of 1,000 employees. During the June quarter 2012, the firm received legal enquiries from approximately 380 employees. The firm acts for many individuals on either a heavily discounted, deferred fee, or no charge basis in circumstances where the individual may otherwise be unable to access justice. Some of these cases are run in what I consider to be the public interest. I cross-subsidise the funding of such cases from the conduct of matters for our fee-paying clients.
9. No entity is providing funding to my firm for the payment of Mr Ashby's representation and disbursements in this proceeding. The firm is supporting the funding of Mr Ashby's claim because I believe that the prevention of sexual harassment and discrimination and the maintenance of appropriate standards of conduct by persons in public office are important public interest issues.
10. At the time this proceeding was commenced, I was aware of the terms of the *Revised Professional Conduct and Practice Rules 1995* made by the Council of the Law Society of New South Wales, pursuant to its power under section 57B of the *Legal Profession Act 1987 (NSW)* (which rules were deemed to be made under the *Legal Profession Act 2004* by virtue of Schedule 9 Clause 24 of that Act) (**Rules**). I was also aware of Part VB of the *Federal Court of Australia Act 1976 (Cth)* (**Act**).
11. I am aware that the Act and Rule 23 of the *Rules* includes obligations to facilitate the efficient administration of justice. I was also aware that Rule A.35, provides that I was to take care to ensure that decisions by me (or on my advice) to make allegations or suggestions under privilege against any person were required to be:
 - reasonably justified by the material already available to me;
 - a. appropriate for the robust advancement of my client's case on its merits;
 - b. not made principally in order to harass or embarrass a person against whom allegations are made; and
 - c. not made principally in order to gain some collateral advantage for my client or for me out of court.
12. Further, I was aware that:
 - a. by Rule A.36 I was not to allege any matter of fact in any court document settled by me unless I believed on reasonable grounds that the factual material already available provided a proper basis to do so;
 - b. by Rule A.37 that I was not to allege any matter of fact amounting to criminality, fraud, or other serious misconduct against any person unless:

- I believed on reasonable grounds that I had available material by which the allegation could be supported and which provided a proper basis for it; and
- I had advised my client of the seriousness of any such allegation and the possible consequences for my client if such an allegation was not made out.

13. In settling and filing the originating application (**application**) in this proceeding, I attempted to discharge faithfully my professional obligations as I understood them.

14. I refer to paragraph 10 of the second respondent's amended points of claim (APOC). I deny that I had a predominant purpose in assisting Mr Ashby in bringing or conducting this proceeding against Mr Slipper (either alone or in combination with other persons) to:

- a. vilify Mr Slipper;
- b. expose Mr Slipper to opprobrium and scandal;
- c. to bring Mr Slipper in disrepute; and/or
- d. to destroy or seriously damage Mr Slipper reputation and standing, and his political position and career

in order to advance the political interests of the Liberal National Party and/or Mr Brough and by those means enhance or promote Mr Ashby's and Ms Doane's prospects of advancement or preferment within, or the hands of, the LNP.

15. I refer to paragraph 33 of the APOC. I did not believe as at 10 April 2012 that any concerns Mr Ashby had as to his safety in connexion with the commencement of this proceeding, was a proposition, which was manifestly nonsensical.

16. I refer to paragraphs 43 to 44 of the APOC. I did not inform the media that the Originating Application would be filed or had been filed and I am informed by the solicitors employed by my firm and who were assisting me at the time that they did not inform the media that the Originating Application would be filed or had been filed.

17. I refer to paragraph 45 of the APOC. In my experience of running high profile workplace cases, particularly sex discrimination and sexual harassment litigation on behalf of applicants, I have found that cases which involve high profile respondents attract publicity without the applicants having engaged media consultants and without the applicants having contacted the press. Based on my experience, I have formed the view that there is an inherent and justifiable public interest in such cases by the media, whose role it is to report on the Courts and who monitor the Court lists, by reason of the subject matter and the identity of the respondents. My firm is not equipped to deal with that level of media inquiry and interest. It is for this reason that I came to the conclusion some years ago that there is a need to engage the services of an expert media consultant when the respondent to this type of claim is a high profile organisation or person.

18. I refer to paragraph 53 of the APOC. I deny that in making any of the allegations in the application and subsequently filing a statement of claim which no longer made the allegations referred to in this paragraph, I intended (either alone or in combination with any other person) to expose Mr Slipper to the maximum degree of vilification, opprobrium, sensation and scandal, and to cause maximum damage to his reputation, to the political advantage of the LNP and Mr Brough.
19. I refer to paragraph 55 of the APOC. I instructed the preparation and contents of the Genuine Steps document. At the time of its completion, I believed it to be true and deny that I believed that it was false and untenable.
20. I refer to the document entitled "first respondent's outline of submissions" (**Commonwealth submissions**). At paragraph 16 of the Commonwealth submissions, it is alleged that the application did not conform to the pleading requirements of the *Federal Court Rules*. At the time the application was filed, I believed that the document did conform to the *Federal Court Rules*.
21. Paragraph 16 of the Commonwealth submissions and paragraph 51 of the APOC also alleges that the application falsely claimed that the allegations were supported by sworn or affirmed evidence. At the time of the filing of the application, I believed that the allegations contained in it were supported by sworn or affirmed evidence. I return to the basis of that belief below.
22. Paragraph 16 of the Commonwealth submissions also refers to the fact that the most serious allegations against Mr Slipper were withdrawn prior to the first directions hearing. At the first directions hearing on 18 May 2012, Senior Counsel for Mr Ashby informed the Court that the Originating Application had been amended and the statement of claim filed consistent with Mr Ashby's obligations in accordance with the Overarching Purpose. I believed that statement was true.
23. I refer to paragraph 18 of the Commonwealth submissions. At the time of the commencement of this proceeding, I did not believe that there were multiple alternative remedies, which were likely to be more effective for Mr Ashby. I did not participate in the commencement of this proceeding in this Court on the basis that such a course would involve publicity and damage to Mr Slipper's reputation.
24. I refer to paragraph 48 of the Commonwealth submissions. I did not brief the barrister referred to in that paragraph (whom I now understand to be Mr David Russell QC) and have never had any communication with him (other than a communication informing him as to the applicant's position in relation to legal professional privilege). I have not had any contact with any person I am aware holds office in or is in any way associated with the Liberal National Party of Queensland, or the Liberal Party of Australia or the National Party of Australia in relation to any of Mr Ashby's affairs.

25. I refer to paragraphs 66 to 69 of the Commonwealth submissions. I did not believe at the time the application was filed that it was irregular for any of the three reasons identified in those paragraphs.
26. I refer to paragraph 83 of the Commonwealth submissions where reference is made to the Commonwealth writing to the applicant confirming there was no other sworn evidence which supported the allegations in the application and that had not been provided to the Commonwealth. I also note that the paragraphs refer to the confirmation that there was no further sworn or affirmed evidence, which supported the allegations at the time of filing the application. The relevant letters are annexed to the affidavit of Catherine Mann affirmed on 4 July 2012 as annexure CM-6 and CM-7. The contents of CM-7 are correct.
27. I refer to paragraph 84 of the Commonwealth submissions. As noted above, at the time the application was filed I believed that the allegations contained in the application were supported by sworn or affirmed evidence. In paragraph 84 of the Commonwealth submissions, it is asserted that there was no sworn or affirmed evidence to support the following allegations:
- a. that Mr Slipper had formed a relationship of a sexual nature with a younger male member of staff employed in his office around mid-2003;
 - b. that the Commonwealth had been informed through a senior adviser to the then Prime Minister, of a video in which Mr Slipper was observed to:
 - i. enter the bedroom of a junior male staff member via the window;
 - ii. lie on a bed with the junior male staff member in shorts and t-shirt and hug the junior male staff member in an intimate fashion;
 - iii. urinate out of the window of the room;
 - c. that the junior staff member had complained to another staffer "I have been abused by Peter [Slipper]".
28. Annexed hereto and marked **MDH1** is a copy of an email from Megan Hobson to Brad Buffoni, one of my employed solicitors sent by Ms Hobson on 19 April 2012 at 4:31pm. Attached to the email was a document "*Affidavit of Megan Hobson 19 April 2012.DOC (78.4KB)*". That document is a draft affidavit of Ms Hobson containing her mark-ups. The covering email confirms that she would do her best to get it witnessed (that is, sworn), on 20 April 2012.
29. Annexed hereto and marked **MDH2** is a copy of an email from Mr Buffoni to Megan Hobson on 19 April 2012 at 7:25pm thanking Ms Hobson for her amendments and asking whether she could please "execute" the attached final version of her affidavit. Mr Buffoni noted that he had saved all of Ms Hobson's changes, fixed some formatting and made other minor consequential amendments.

30. Part of the annexure is a response from Ms Hobson the following day at 12:41pm where Ms Hobson noted that she had received the updated affidavit but had not had the opportunity to get it signed by a JP, but that she would send it to Mr Buffoni once she had done so and that she would update the dates on the document to 23 April 2012.
31. At the time I authorised the filing of the application (by instructing an employee to file it electronically while I was interstate) I was aware of the email from Mr Buffoni to Ms Hobson dated 19 April 2012 but I was unaware of the response from Ms Hobson dated 20 April 2012 at 12:41pm. I had understood from my communications with Mr Buffoni prior to the filing of the application, that Ms Hobson was happy with the contents of the affidavit and was in the process of swearing the affidavit on 19 April 2012. I had not specifically checked with Mr Buffoni from interstate prior to the filing of the application to ascertain whether or not the affidavit had actually been sworn because I believed that if the affidavit had not been sworn as anticipated on 20 April 2012, that this fact would have been brought to my attention. At the time that the application was filed I believed:
- a. the matters proposed to be deposed in the draft affidavit of Ms Hobson approved by her (which I had read) were evidence that she would give should this matter proceed to a contested hearing and she was called;
 - b. she had sworn the draft affidavit I had read;
 - c. that a statutory declaration in the form annexed hereto and marked MDH3 had previously been declared by her and had been provided to a media organisation; and
 - d. the factual material already available to me provided a proper basis for the allegations.
32. On 4 May 2012, an email sent by Mr Leon Zwier of Arnold Block Leibler was brought to my attention. A copy of that email is annexed and marked MDH4.
33. I refer to paragraph 84(d) of the Commonwealth submissions. In that subparagraph it is alleged that at the time of the filing of the application there was no sworn or affirmed evidence to support the allegation that the applicant suffered considerable stress, humiliation and illness and was currently seeking medical assistance. I was aware at the time of the filing of the statement of claim of the provisions of section 44 of the *Safety, Rehabilitation and Compensation Act 1988*. I was not prepared to allege "injury" within the meaning of section 44 of that Act unless I was satisfied on the basis of admissible evidence that such an injury had been suffered.
34. I was responsible for the drawing of the application. I instructed the drafting of the notation on page 14 of the application that "*(t)he allegations contained in the Application are supported by sworn/affirmed evidence and, in the case of text messages, by independent forensic Information Technology assessment and report*". My sole purpose in instructing the inclusion of such words on the application was that I wished to convey that allegations of the type alleged in the application were being made on the basis of material then in my possession and in accordance

with what I then understood to be my personal professional obligations. Much like the certification made under section 347 of the *Legal Profession Act 2004* (NSW) in statements of claim filed pursuant to the *Uniform Civil Procedure Rules 2005* (NSW).

Affirmed by the deponent
at Sydney
in New South Wales
on 23 July 2012

)
)
)
)
)


Signature of deponent

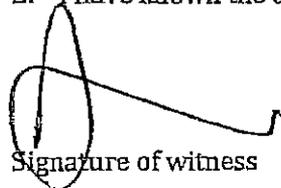
Name of witness: *Dean Schubert*

Address of witness: *31 Market St, Sydney NSW 2000.*

Capacity of witness: *solicitor.*

And as a witness, I certify the following matters concerning the person who made this affidavit (the deponent):

1. I saw the face of the deponent.
2. I have known the deponent for at least 12 months.


Signature of witness

Annexure Certificate

No. NSD580 of 2012

Federal Court of Australia
District Registry: New South Wales
Division: Fair Work

James Hunter Ashby
Applicant

The Commonwealth & Anor
Respondents

This is the annexure marked MDH-1 produced and shown to MICHAEL DANIEL HARMER at the time of affirming his affidavit on 23 July 2012.

before me:

Dean Schubert

.....
Name

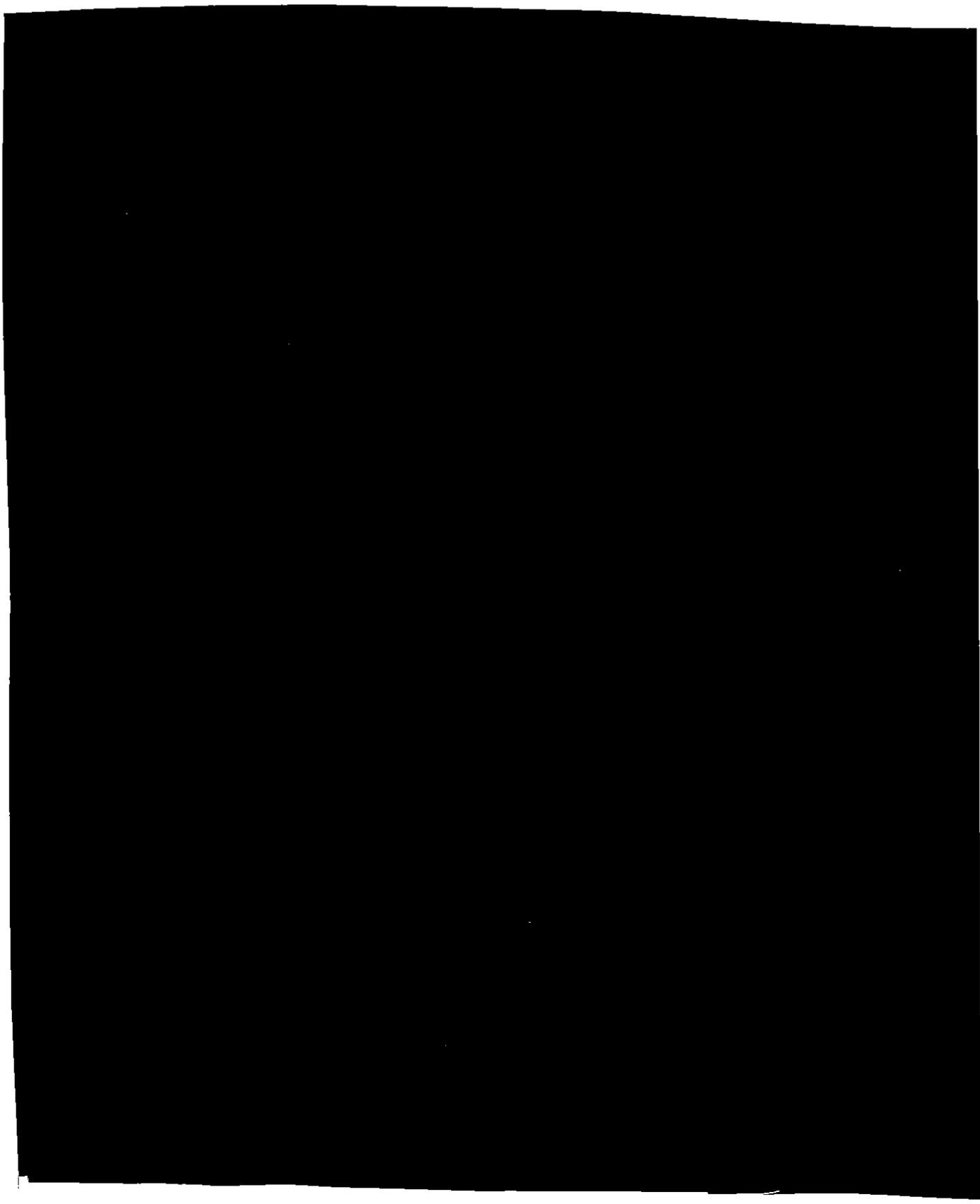
Solicitor

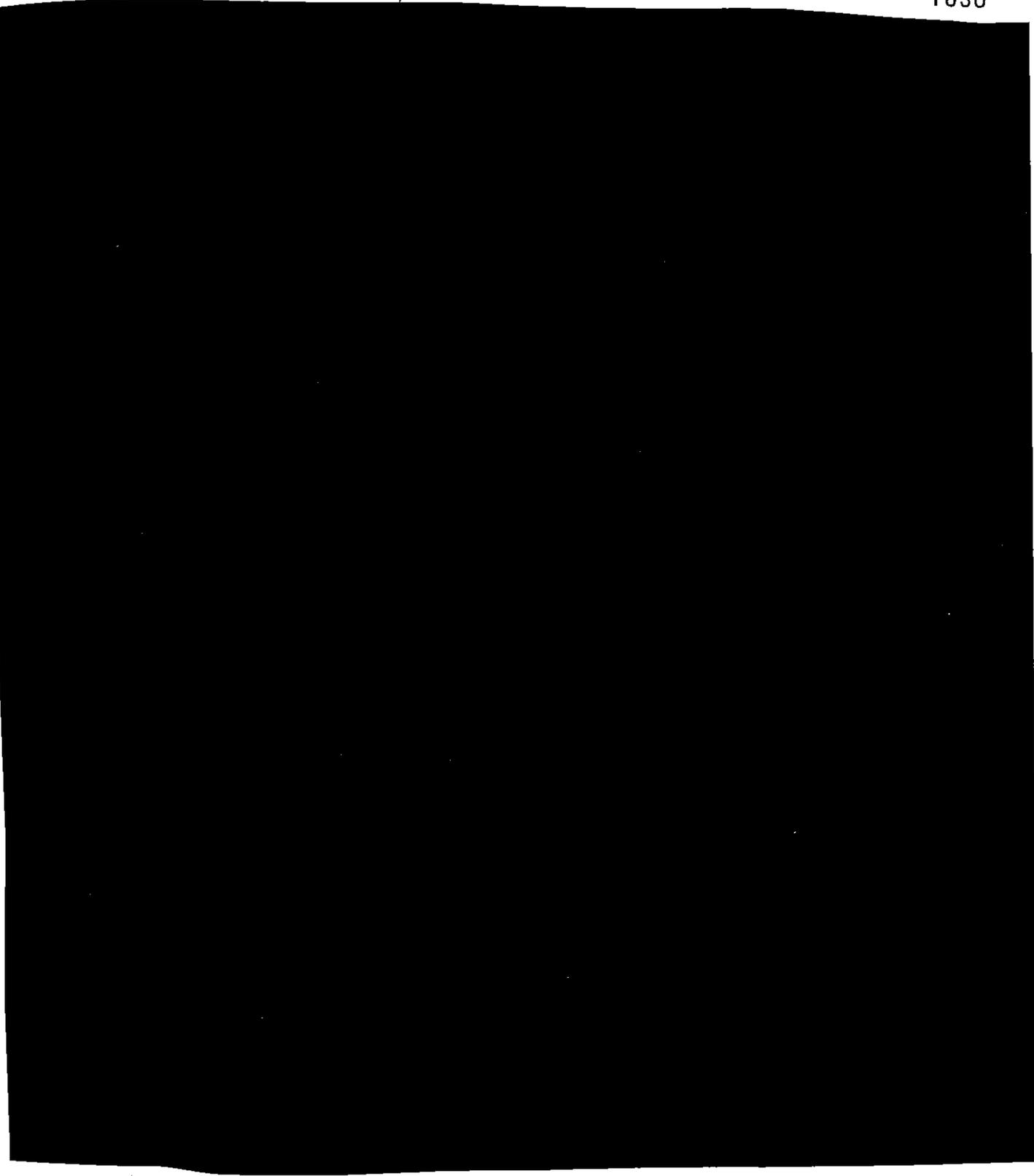
.....
Qualification

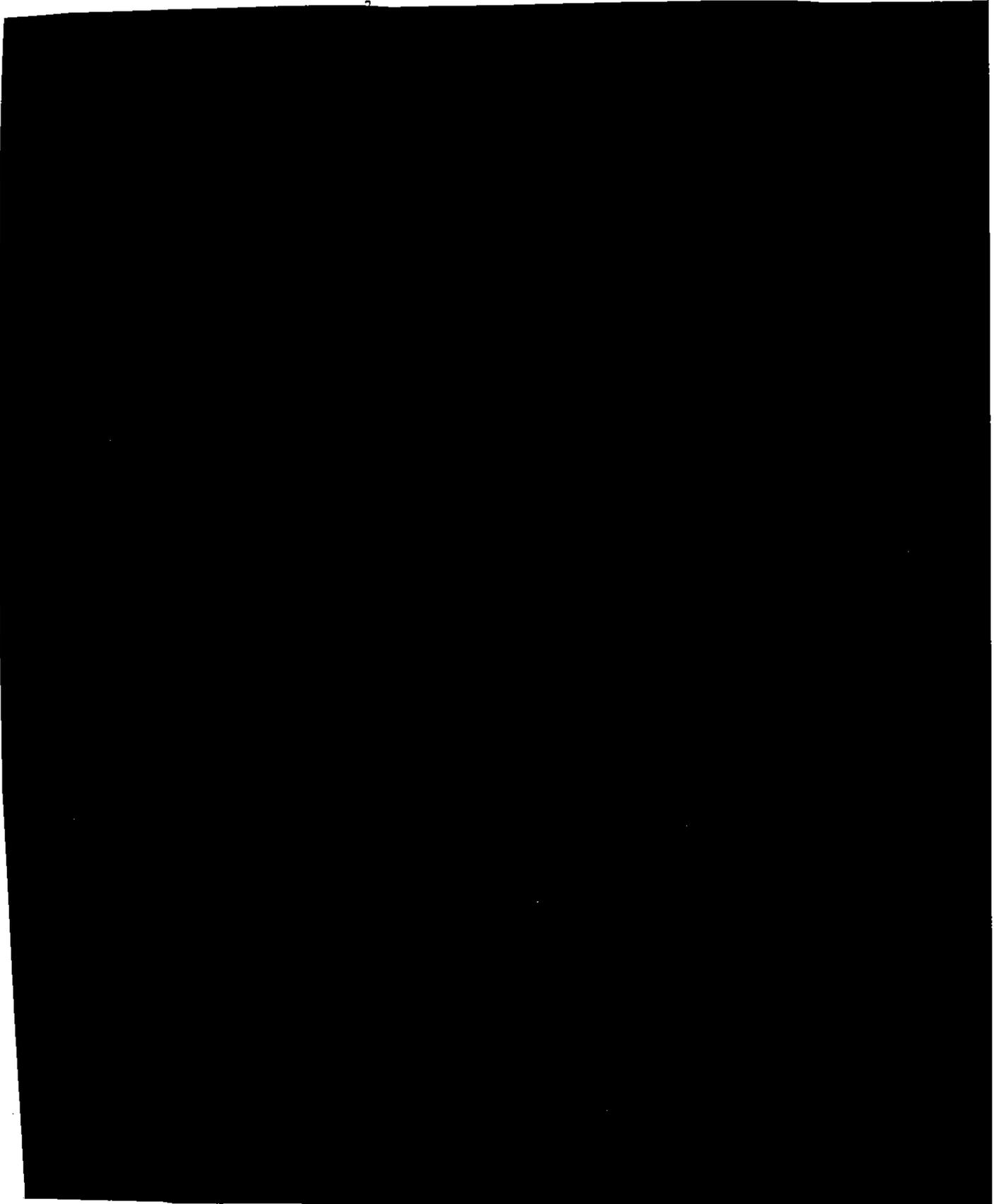
From: Megan [megan.hobson08@bigpond.com]
Sent: Thursday, 19 April 2012 4:32 PM
To: Brad Buffoni
Subject: Updated Affidavit
Attachments: Affidavit of Megan Hobson 19 April 2012.DOC

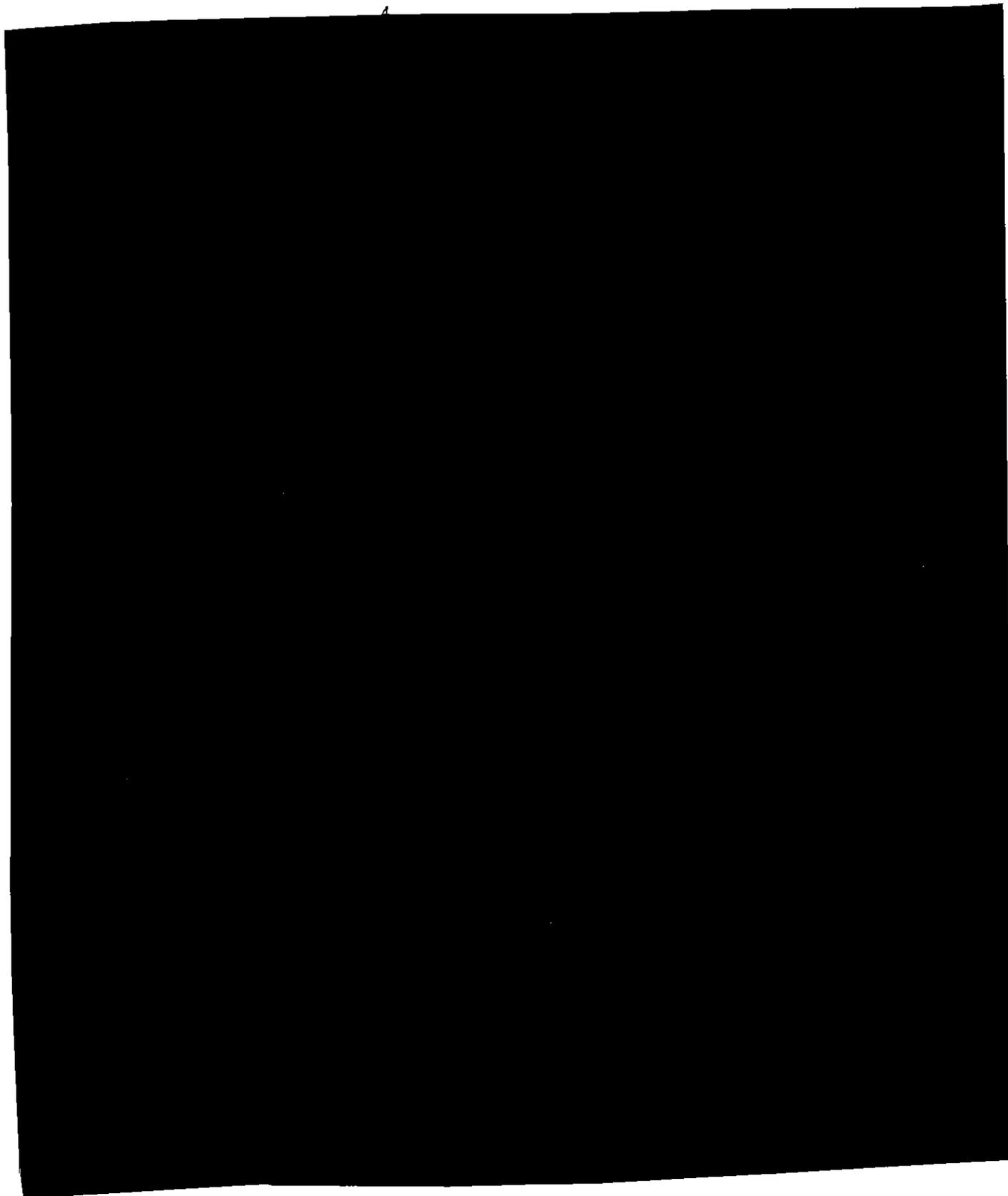
Hi Brad, attached is my amended Affidavit, just correcting some of the statements (names etc). Please return amended as you see fit and I will do my best to get it witnessed tomorrow but will have to let you know as my day progresses.

Kind regards, Megan











Annexure Certificate

No. NSD580 of 2012

Federal Court of Australia

District Registry: New South Wales

Division: Fair Work

James Hunter Ashby

Applicant

The Commonwealth & Anor

Respondents

This is the annexure marked MDH-2 produced and shown to **MICHAEL DANIEL HARMER** at the time of affirming his affidavit on 23 July 2012.

before me:

Dean Schubert

Name

Solicitor

Qualification

From: Brad Buffoni [brad.buffoni@harmers.com.au]
Sent: Thursday, 19 April 2012 7:25 PM
To: Megan
Subject: RE: Updated Affidavit
Attachments: signature_alb_banner_2010.gif

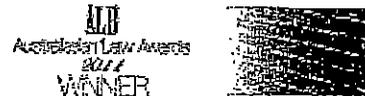
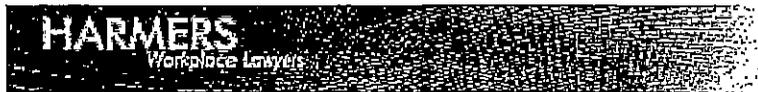
Sorry for previous message Megan, been in a meeting all afternoon and am working my way through all of this afternoon's messages .

Thanks for your amendments. Could you please execute the attached version of the affidavit? I have saved all your changes, fixed some formatting and added the politician's surnames where you added the bit about membership of the Liberal Party at the end, hope that is OK.

Kind regards
Brad

Brad Buffoni
Special Counsel Litigation and Investigations

D +61 2 9993 8519 | T +61 2 9267 4322 | F +61 2 9264 4295
E brad.buffoni@harmers.com.au | W www.harmers.com.au
A Level 28, St Martins Tower, 31 Market Street, Sydney NSW2000



Harmers Workplace Lawyers – "Employment Specialist Law Firm of the Year"
ALB Australasian Law Awards Winner 2006, 2007, 2008, 2009, 2010 & 2011

CONFIDENTIAL COMMUNICATION – This e-mail and any files transmitted with it are confidential and are intended solely for the use of the addressee. If you are not the intended recipient be advised that you have received this e-mail in error and that any use, dissemination, forwarding, printing or copying of this e-mail and any file attachments is strictly prohibited. If you have received this e-mail in error, please immediately notify us by telephone at +61 (02) 9267 4322 or +61 (03) 9612 2300 or +61 (07) 3016 8000 or by reply e-mail to the sender. You must destroy the original transmission and its contents. You will be reimbursed for reasonable costs incurred in notifying us.

 Please consider the environment before printing this email.

From: Megan [mailto:megan.hobson08@bigpond.com]
Sent: Thursday, 19 April 2012 4:32 PM
To: Brad Buffoni
Subject: Updated Affidavit

Hi Brad, attached is my amended Affidavit, just correcting some of the statements (names etc). Please return amended as you see fit and I will do my best to get it witnessed tomorrow but will have to let you know as my day progresses.

Kind regards, Megan

