

## April 2019 – Podcast Two



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### Queensland Public Servants: “Less rights than a convicted felon”

14/05/2019

1

Welcome to Podcast Two – I hope you’re going to enjoy this, I think it’s probably a better way for me to respond publicly to a number of issues that have arisen both in the Media and through the messages, emails and comments I receive daily. Rather than write long posts, that no one read’s fully, I can verbalise much more, and identify key issues much quicker and explain them in a much faster time. A benefit for you and I – additionally, because I represent myself legally, and have a large family, I don’t get much free time to do this – so here goes!

Firstly, rather than treat all these questions on an individual basis I think this mode is better because often these responses are “missed” in the comment stream, interviews, or buried away somewhere so not everyone sees them. These questions or statements are often the same question everyone else has and I end up repeating them over and over again. Furthermore, as different people encounter this story at different stages they may not have encountered previous issues, posts and information that were published years, weeks or days ago.

# Audience

1. English second or third language (ESL)
2. Deaf and/or Blind
3. International/Geographical legal difference's
4. Wide range of Age group
5. Subsequently, different level's of "Understanding" or "Experience" – Perception!

Downloadable PDF's of the Podcast notes on website – wont include ALL the commentary

14/05/2019

2

Secondly, this raises another important issue that has arisen - the audience. The audience, as it has been pointed out to me, includes many people who have English as a second or even third language, those who are Deaf and/or Blind, those who don't understand Australia and England's legal structure, those who are teenagers at school and undertaking projects, and for Kyle's benefit ☹ those who don't want to hear the "mumbo jumbo" of all this but want to cut to the bigger picture – yeah I get it!

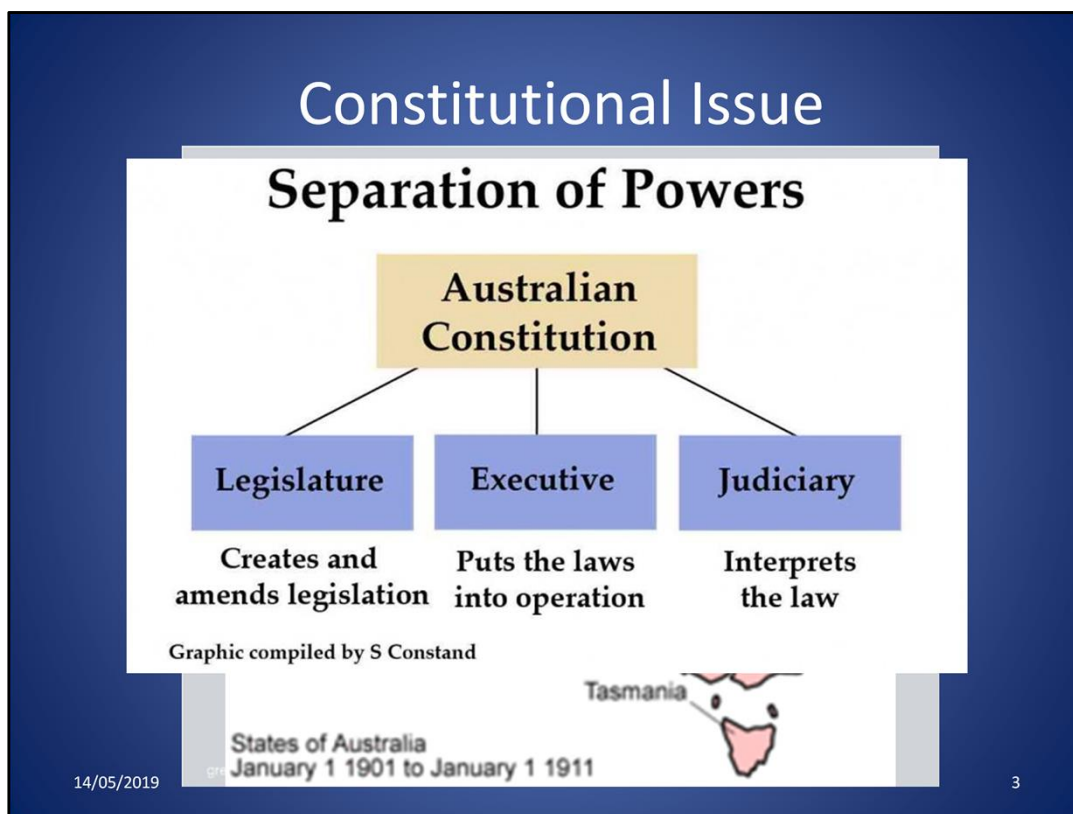
Moreover, to dispel some of the "myth's", "typos", "Chinese whispers", and "Outright Fabrication" – or put another way Lies that are circulating around on the Internet and in Public! I have a public onus and educational responsibility to inform and moreover, a legal right at International Law to inform, correct and dispel any misinformation and I maintain the legal right to do so in my defence: especially, when its defamatory, illegal, incorrect or vexatious.

Which brings me to the third and final point of this podcast which will inform the argument as to why I'm doing this, the Dorante-Day family view, and how this is all interconnected. So if you want to understand it all you'll have to watch the whole thing to the end 😊

Final note: The content of my website at <http://simondoranteday.com/> is my copyright, my ownership, my legal responsibility and I have held this viewpoint since starting it in 2007. I've reconstructed the new site recently to house this information as a central point of reference, if it's not stated there then it's not the legal or "correct" version.

Also, I'm going to record and air podcasts on different common issues such as the "Eye colour change" to present the different events, issues and evidence that people are asking about – so please be patient it's in the pipeline. As I've said previously, we don't really wish for this issue to be public, but it is public and as people have expressed we all have a right to know!

I can only fill that gap as far as I can legally go – so please keep in mind that I have limitations on response.



The first point in this podcast is the Media coverage of the Trial – people have commented on the sensationalist attention on the paternity issue and the lack of focus on the due process issues, the constitutional argument and the legal case. Yeah, well that doesn't sell paper's and as Kyle highlighted most people don't want to hear it or don't understand it. However, a base understanding of it will help people understand what I'm doing, the significance of it and how it's related to my Paternity issue that Charles and Camilla are my natural parents.

Anyway, as the public has asked - here's the simplistic version of what the Constitutional issue is, what it's all about, what I argued and what this means in Australia!

I really like this representation of Australia that appeared on Facebook recently because that's exactly what Australia is – a group or coalition of Countries that agree to be bound together by one common set of rules – the Constitution – in order to be a part of the "Club".

So at it's most basic level a Constitutional issue is one in which one or more of the members of the "Club" (Commonwealth of Australia) have breached the agreement or membership rules (The Constitution) by which they are bound (Operate together). The legislation, or written laws, that set out the constitution and give effect to the Commonwealth or Federal Government (Executive and Parliament) and Commonwealth or Federal Courts (Judiciary) were given the Royal Assent or passed into Law and came into effect on the 1<sup>st</sup> of January 1901 – Queen Victoria, one of the last she gave assent to.

This is why Australia Day should be the 1<sup>st</sup> of January because that's the first official and legal time this country became known, on a whole, as Australia. Our date of independence – our 4<sup>th</sup> of July – well not quite, but from a republican perspective that should be the view!

So the Constitution vests power in the Commonwealth Government of Australia (The Executive), the Parliament of Australia (The Legislature) and the Federal Courts of Australia (The Judiciary) to run Australia's National communal (Intrastate) and International (Interstate) affairs on behalf of the States and Territories. This isn't consistently true though as for example Family Law where all the states and territories have agreed to Federal control except for WA.

**Separation of Powers**

Queensland  
Constitution

<b>Legislature</b>	<b>Executive</b>	<b>Judiciary</b>
Creates and amends legislation	Puts the laws into operation	Interprets the law

Graphic compiled by S Constand

**Public Service Act 2008**

14/05/2019 4

Subsequently, according to the Constitution, the Queensland Government maintains control over their lands, governance, legislation, and administration of the State of Queensland. It does this via – yeah you guessed it – its own Constitutional Act which empowers the Legislature (Parliament) to make the laws, the Executive (Government) to give form too, administer and operate the laws, and the Judiciary (Courts) to rule the law and amend it as required legally.

All public servants in Queensland – this includes the Executive, Judges, Court administration, Crown law, Ministers, Parliament, Nurses, Doctors, Teachers and various other Government positions such as Emergency Service Workers – subsequently, must comply with the Public Service Act 2008 – the current version.

**190 Procedure for disciplinary action**

- (1) In disciplining a public service employee or former public service employee or suspending a public service employee, a chief executive must comply with this Act, any relevant directive of the commission chief executive, and the principles of natural justice.
- (2) However, natural justice is not required if the suspension is on normal remuneration.

1. No other State or Territory nor the Commonwealth Government **remove** Natural Justice from the disciplinary or suspension process of their equivalent Acts – in fact they all do the opposite - they enshrine and enforce it!
2. To legislate away Natural Justice is in contravention of the International Treaties to which the Commonwealth of Australia is a signatory (ratified), including the ICCPR, and is therefore unconstitutional and a violation of my rights as a public servant, resident of Queensland and British Citizen.

14/05/2019

5

It is under the PSA that the Queensland Chief Executive, has “reasonably believed” I am liable to discipline under section 189 of the PSA and has subsequently, enacted the following procedure outlined in section 190.

Clause (2) is what I have the issue with. This clause states that when a Queensland Public Servant is suspended with full pay (normal remuneration) Natural Justice is not required. I have labeled this “Shut-up money” because that’s technically what it amounts to.

What’s the problem with this you may ask? Well for 1) No other State, Territory nor Commonwealth Government remove Natural Justice from either the disciplinary nor the suspension process of their equivalent Public Service Acts – in fact they all do the opposite – enshrine and enforce Natural Justice.

2) To legislate away Natural Justice is in contravention of the International Treaties to which the Commonwealth of Australia has ratified (Signed), including the International Covenant on Civil, Cultural and Political Rights (the ICCPR) and is therefore, Unconstitutional and a violation of my rights as a public servant, resident of Queensland and British Citizen.

So the Queensland Government utilised this clause (2) to “escape” their responsibility to give Natural Justice – or in their argument it gave them the right to “not do it” or “not undertake due process” – However, its not that straight forward! What we need to know now is what is Natural Justice?

## Three Pillars of Natural Justice Hearing – Evidence - Bias

- 1) Right to be assumed innocent;<sup>20</sup>
- 2) Right to a fair hearing and to be heard;
- 3) Right to due process;
- 4) Right to unbiased process;
- 5) Right to Impartial and objective Judge;
- 6) Right to be informed about process;
- 7) Right to be informed about charges against the person;
- 8) Right to be informed about the end result;
- 9) Right to be informed about appeals, complaints and external protections;
- 10) Right to submit and cross examine evidence;
- 11) Right to have and question witnesses and cross examine; and
- 12) Right to be heard and receive the principles of Natural Justice.

14/05/2019

6

Natural Justice has been described as one of the foundational pillars or cornerstones of Common Law in Australia.

Not only is this true in common law but it is also true in most Western Laws including International Law. So What is it, that is so important, to be a Foundational Pillar?

In Australia there are three established “Pillars” of Natural Justice these are Hearing, Evidence and Bias i.e. the right to be heard, the right to produce and challenge evidence, and the right to an un-biased decision maker and hearing process – the Trifecta 😊

However, I’ve reviewed numerous peer reviewed legal articles, actual cases, judges speeches and come up with 12 legally defensible, commonly accepted, expectations of Natural Justice in Australia and most other Western jurisdictions such as Canada, India, Ireland, Kenya etc.

So if you think about these in the context of the case against me! These are some of the things I didn’t get and still haven’t received because according to Crown Law the clause (2) exemption states they don’t apply, I didn’t need them – because I’m being paid!

This effectively means **any** Queensland Public Servant can be suspended on full pay without any investigation, hearing, chance to defend themselves or objection in any manner (other than internally) – less rights than a convicted felon! Even murder suspects and rapists receive more rights than a Public Servant on suspension.

Now that’s not to say that due process or put another way, procedure, wasn’t followed



to get to this point of suspension, just the fact that they can do this without applying any natural justice is criminally wrong and a breach of the International Treaties to which the “Club”, the Australian Commonwealth, is a member. As Queensland is part of the Federation that makes up the Commonwealth of Australia they are in breach of the Constitution or “Club rules” which apply.

In a broader sense, to even suggest removing Natural Justice serves no purpose other than to allow illegitimate actions to be taken either intentionally (Bad Faith) or unintentionally (Negligence) – either way the Court system in Australia, and arguably around the World, spends millions of dollars a year in the appeal systems investigating whether Natural Justice has been observed and making sure procedural fairness applies! Why then would you legislate to remove such a basic fundamental foundation of Common law other than for illegitimate means?

14/05/2019 7

I also argued that the intent of the “Charter of the Commonwealth of Nations” Part 7: Rule of Law also applied to the Queensland case because the Commonwealth of Australia (representing Queensland) is a member state of the Commonwealth of Nations and is subsequently, bound by the assent of the Charter by her Majesty on the 11 March 2013.

During directions hearing Justice Flanagan observed that this could well apply, depending on “*How Mr. Dorante-Day framed his argument*” and during the Trial Justice Mullins observed without argument that “*she didn’t think it did*”! Conversely, Crown law didn’t argue anything different at trial other than what is already submitted in their written submissions; where they don’t mention the Charter at all!

I truly think most people would agree this statement in the Charter clearly expects Natural Justice to be applied in Commonwealth jurisdictions as an “essential protection” not legislated away!

1) Single Judge of the Supreme Court of Queensland, acting in Federal Jurisdiction, deciding on whether Queensland has breached the Federal Constitution.

2) Under s.38(a) of the *Judiciary Act 1903* (Cth) that:

“Matters arising directly under any Treaty are the Exclusive jurisdiction of the High Court of Australia”

14/05/2019

8

Now in Australia – a matter involving the Constitution or involving the interpretation of the Constitution (according to the Constitution itself) is originally the Jurisdiction of the High Court of Australia. However, via the Legislature (Parliament), the Constitution and the Judiciary Act this jurisdiction has and can be transferred to a Federal Court, or the Supreme Court of a State or Territory, acting in federal jurisdiction.

So this is the scenario in my case:

I have a single judge of the Supreme Court of Queensland, acting in Federal Jurisdiction, deciding whether Queensland has breached the rules!

Secondly, I have also argued that under s.38(a) of the Judiciary Act 1903 (Cth) that “matters arising directly under any treaty {such as the ICCPR or the Commonwealth Charter} are the EXCLUSIVE jurisdiction of the High Court”.

**190 Procedure for disciplinary action**

- (1) In disciplining a public service employee or former public service employee or suspending a public service employee, a chief executive must comply with this Act, any relevant directive of the commission chief executive, and the principles of natural justice.

14/05/2019

9

So that's where we are at the moment – while Justice Mullin's is considering her verdict.

What I've argued for in my orders is that clause (2) of s.190 be "struck out" as unconstitutional – subsequently, Natural Justice has to be enforced at all times! Complying with Australia's International obligations.

Now I think that demonstrates the beauty of the Australian Legal System right there – and answers Justice Forrest's question in the Federal Family Case, *Dorante-Day v Mountbatten-Windsor*, about "why here in Australia Simon?"

Well the fact that a Self-Represented litigant, from the Public, can take a legal issue all the way up with the Courts, and potentially all the way to the High Court to ensure Justice and Fairness is applied for all - say's a lot about the Legal System in this Country and whilst it might not be perfect – you couldn't do this in many other Countries.



14/05/2019

10

So that's point 1) of what it has to do with my paternity case! Moreover, it's a good demonstration of how real and how far this issue has gone and more importantly, might demonstrate to people the lengths I will go to in resolving these issues, and really the height it has already climbed.

The other linkage to the paternity case is that the "Royal Case" or the "Paternity" issue was utilised to illegitimately frame me and suspend me from my Job – which doesn't agree with the quality of work I was producing at the time – here's me receiving an award from QFES for excellence in putting "Ideas into action" only six-months before suspension. I won't go into the details of that but eventually it will become Public knowledge once Justice Mullin's makes her decision.

**ICCPR Article 25:** Every citizen shall have the right and the opportunity, without any of the distinctions mentioned in Article 2 and without unreasonable restrictions to:

(c) Have access, on general terms of equality, to Public Service in his Country



14/05/2019

11

So I hope that's answered some of the questions as you saw the focus was very much on the "Prince" Royal issues in the media rather than the boring due process arguments that don't sell papers. However, I hope that's clarified what the Queensland Issue is about, why it's related to the Paternity issue and obviously it's pretty hard for us, as a family to survive, let alone pay the Housing loan if employment is removed!

It would also make it very hard to fight this case if Housing was removed – as I stated in the Court "I have a right under Article 25 (c) of the ICCPR" to Public Service in this Country. Not to have that ripped away in an illegitimate and unconstitutional manner.

I hope that's answered some of your questions – I will upload the PDF to the website afterwards.

Hope you enjoyed the Podcast – the next one will be on the "Eye colour" issue and I'll run through the memories, events, and scientific evidence surrounding that one – Thank you for listening and watching.