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**FEDERAL COURT OF AUSTRALIA  
REGISTRY**

A.B.N. 49 110 847 399

305 WILLIAM STREET  
MELBOURNE VIC 3000

Our Ref: VID52/08

7 March 2008

Mr Arthur Dent  
C/- Nowicki Carbone & Co Lawyers  
302-308 King Street  
MELBOURNE VIC 3003  
(By Email: [ad@arthurdent.info](mailto:ad@arthurdent.info))

Mr Paul Barker  
Australian Government Solicitor  
DX 50  
MELBOURNE  
(By Email: [paul.barker@ags.gov.au](mailto:paul.barker@ags.gov.au))

Dear Sirs

**Re: Arthur Dent -v- Australian Electoral Commission & Anor – VID52/08**

I refer to the above matter and to Mr Dent's facsimile dated 19 February 2008.

I enclose for your records a copy of the Reasons for Judgment given by Justice Jessup on 1 November 2007 in Federal Court Proceeding VID 982 of 2007.

If you have any queries in relation to the above please direct your enquiries to Elaine Coverdale on (03)8600 3292.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Elaine Coverdale'.

Elaine Coverdale  
Full Court Officer

enc

**FEDERAL COURT OF AUSTRALIA**

**Dent v Australian Electoral Commission [2007] FCA 2112**

**ARTHUR DENT v AUSTRALIAN ELECTORAL COMMISSION AND DARYL  
WIGHT  
VID 982 OF 2007**

**JESSUP J  
1 NOVEMBER 2007  
MELBOURNE**

NO QUESTION OF PRINCIPLE

**IN THE FEDERAL COURT OF AUSTRALIA  
VICTORIA DISTRICT REGISTRY**

**VID 982 OF 2007**

**BETWEEN:**           **ARTHUR DENT**  
                          **Applicant**

**AND:**                 **AUSTRALIAN ELECTORAL COMMISSION**  
                          **First Respondent**

**DARYL WIGHT**  
**Second Respondent**

**JUDGE:**             **JESSUP J**

**DATE OF ORDER:**   **1 NOVEMBER 2007**

**WHERE MADE:**      **MELBOURNE**

Upon the undertaking of Arthur Dent to take all necessary steps to commence a proceeding in this court seeking relief against the Australian Electoral Officer in relation to his refusal of Mr Dent's nomination for the Senate in the current federal election –

**THE COURT ORDERS THAT:**

1. Mr Dent have leave to make an application against the Australian Electoral officer orally in court today.
2. Mr Dent's application for interlocutory orders be dismissed.
3. Mr Dent pay the costs of the Australian Electoral Officer in relation to his application for interlocutory orders.

**IN THE FEDERAL COURT OF AUSTRALIA  
VICTORIA DISTRICT REGISTRY**

**VID 982 OF 2007**

**BETWEEN:**           **ARTHUR DENT**  
                          **Applicant**

**AND:**               **AUSTRALIAN ELECTORAL COMMISSION**  
                          **First Respondent**

**DARYL WIGHT**  
**Second Respondent**

**JUDGE:**           **JESSUP J**

**DATE:**           **1 NOVEMBER 2007**

**PLACE:**           **MELBOURNE**

**REASONS FOR JUDGMENT**

1           I have before me an affidavit of Bronwyn Jean Carter affirmed today and a photocopy of a form on the letterhead of the Australian Electoral Commission headed "Rejection of Nomination for Senate" signed by the Australian Electoral Officer today in relation to the applicant, Arthur Dent. As yet, Mr Dent has not had the opportunity to issue a proceeding in which either the affidavit or the rejection form would be filed, but he has undertaken to do so upon the court registry opening in the morning.

2           The nature of his application, and the circumstances which have made it necessary for him to come before the court this afternoon for what I take to be an interlocutory order, either prohibitory or mandatory, are that he desires to lodge a nomination for the Senate in the federal election for which writs were issued on 17 October 2007. Persons acting on his behalf and with his authority lodged a form of nomination with the Australian Electoral Officer at about 11 am today. For present purposes, I am prepared to accept Mr Dent's assurance that the nomination was regular in all respects except the one which is controversial in this proposed proceeding. That controversial aspect of the nomination concerns Mr Dent's name.

3           The form of rejection to which I referred was the response given by the Australian

Electoral Officer to the form of nomination lodged on behalf of Mr Dent. It is in the following terms:

In accordance with section 172 of the Commonwealth Electoral Act 1918, the nomination for election to the Senate of the following candidate or candidates is rejected ... [then the name Arthur Dent appears] ... because it does not comply with section 166 of the Act for the following reasons: the nomination specifies names under which the person is not entitled to be enrolled.

Section 172 of the *Commonwealth Electoral Act 1918* (Cth) ("the Act") provides for the rejection of nominations in circumstances which include those referred to in s 166, the provision upon which the electoral officer relied. Subsection (2)(b) is relevant in the circumstances of this case. It provides:

A nomination may name a candidate only by specifying ... in a case where the candidate is not enrolled – a surname and the Christian or given name, or one or more of the Christian or given names, under which the candidate is entitled to be enrolled.

4 Mr Dent contends that he is entitled to be enrolled under the name Arthur Dent, and that the rejection of his nomination was wrongful upon the grounds specified by the electoral officer. The affidavit of Ms Carter to which I referred deals generally with the question of the name by which Mr Dent is known to her. I accept for this afternoon's purposes that Mr Dent is known to Ms Carter as Arthur Dent, although she learnt at some stage that he used to be known as Albert Langer. Mr Dent has also indicated to me this afternoon that he proposes to call evidence from people known to him, including those in his family, which will be generally to the effect that his name is Arthur Dent and that is the name by which they know him. Although he has offered to call that evidence this afternoon, I am prepared on this interlocutory occasion to note that evidence to that effect will be called in due course, at which time it can be tested in the normal way.

5 Mr Dent's cause of action, if that is the right expression for the present circumstances, must be that the electoral officer acted wrongly in his recourse to s 166(2)(b) of the Act, when he rejected Mr Dent's nomination. Under that paragraph the question is whether the nomination specified a name under which Mr Dent was entitled to be enrolled. I say entitled to be enrolled because it is common ground that Mr Dent is not in fact enrolled. That circumstance requires me to refer to proceedings which were conducted within the last two

days or so before Ryan J.

6 I know very little about those proceedings, but from what the parties have told me it appears to be common ground that they involved an application to require the electoral officer to accept the enrolment of Mr Dent and a challenge to a decision which was made by the electoral officer under s 93A(2) and (3) of the Act to refuse to include Mr Dent's name on the electoral roll. Section 93A is concerned specifically with the inclusion of a person's name on the roll. It gives the returning officer a power to refuse to include a person's name on the roll if he or she considers that the name is fictitious, frivolous, offensive or obscene, is not the name by which the person is usually known or is not written in the alphabet used for the English language. The electoral officer may also refuse to include a person's name on the roll if including in the name on the roll would be contrary to the public interest. I have been informed by Ms Orr, who appears today for the electoral officer and appeared for him before Ryan J, that her client refused to include Mr Dent's name on the roll because it was fictitious, because it was not the name by which Mr Dent was usually known and because the inclusion of that name on the roll would be contrary to the public interest. She informed me that Ryan J decided the proceeding before him on the basis that the challenge to the electoral officer's refusal, at least insofar as that refusal was based upon the name Arthur Dent not being the name by which Mr Dent is usually known, could not be sustained. I am therefore faced with a situation in which it is common ground that very recently (I was told by Ms Orr, late yesterday), the electoral officer has refused to include the name Arthur Dent on the electoral roll and that his refusal was earlier today upheld by the court.

7 That brings me to s 166(2)(b) of the Act. The question under that paragraph is not whether the candidate is entitled to be enrolled, but whether the nomination which was lodged specified a name under which the candidate was entitled to be enrolled. When the nomination was lodged this morning, at about 11 am, the electoral officer had recently refused to accept the name Arthur Dent for entry on the electoral roll. That refusal had been challenged in this court and that challenge had been dismissed. It seems to me, in the circumstances, to be incontestable that Mr Dent's nomination did not specify a name under which he was entitled to be enrolled. It may have specified his name, and he may be entitled to be enrolled, but the nomination did not, I consider, specify a name under which he was entitled to be enrolled. I express these conclusions in the normal provisional way that would

be appropriate for an interlocutory application of this kind. I do so, however, with some confidence, because it seems to me that they are based upon a construction of ss 93, 93A and 166 of the Act, which renders those provisions harmonious as between themselves and produces a result which appears to make sense all round.

8 For those reasons, I am not disposed to grant any interlocutory relief of the kind which Mr Dent seeks. Strictly speaking, it is not necessary for me to go further. However, there are, in addition, considerations which go to what might be called the balance of convenience, and which, in my view, would count rather strongly against making an order, either prohibitory or mandatory, of the kind which Mr Dent seeks.

9 The nominations for the Senate closed at midday today. The position which is required by ss 175 and 176 of the Act is that, at 12 noon tomorrow, the names and addresses of all the candidates in the Senate election for the State of Victoria must be declared. I have been told by Ms Orr, and it is broadly accepted by Mr Dent, that that will, as a matter of practical necessity, trigger a process in which the ballot papers would then be printed for the purposes of the election on 24 November 2007. Short of determining finally the issue which Mr Dent puts before me, I do not believe that I could assist him in any realistic interlocutory way other than to restrain by injunction the electoral officer from making the declaration for which s 176 provides. Quite apart from the practical difficulties which such an injunction would entail, and quite apart from the very large number of other persons whose interests would be affected by such an injunction, it would be something of an understatement to say that I would be reluctant to make an interlocutory order which had the effect of requiring a public official to act in breach of a statutory provision which was binding upon him.

10 Mr Dent drew my attention to s 381A of the Act, which gives the Electoral Commission a discretion to determine a further period of time, not exceeding 48 hours, within which an officer is to do an act which he or she has previously refused or failed to do at a time required by the Act. I do not believe that a section of that kind should or even could be used to regularise what I consider would otherwise be a highly irregular procedure of this court, requiring the electoral officer to breach a statutory obligation which he has under s 176.

11 For those discretionary considerations, in addition to the matters of substance which I

earlier mentioned, I am not disposed to grant the interlocutory order sought by Mr Dent.

I certify that the preceding eleven (11) numbered paragraphs are a true copy of the Reasons for Judgment herein of the Honourable Justice Jessup.

Associate:



Dated: 7 March 2008

Counsel for the Applicant: The applicant appeared in person

Counsel for the Respondents: Ms R Orr

Solicitor for the Respondents: Australian Government Solicitor

Date of Hearing: 1 November 2007

Date of Judgment: 1 November 2007