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Crime and Candidacy

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Crime and Candidacy

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Major Issues

In early 2003, the media reported that convicted bomber and racist Jack van Tongeren had been released after serving 12 years jail in Western Australia and was now interested in seeking election to the Senate. Western Australia's Attorney-General urged the Commonwealth to tighten its restrictions on candidates. Under Western Australian law, van Tongeren cannot stand for State Parliament, but the Commonwealth's restrictions on qualifications to be a member of parliament are less severe. Should a criminal conviction render a person ineligible to become an elected representative in a democracy? This Current Issues Brief discusses the limits placed on the ability of people with criminal convictions to stand for parliament.

Why do we place restrictions on the ability of criminals to stand for political office? There might of course be practical reasons: how could one represent one's constituents, or vote in the parliament, if one is locked in a jail cell? But the underlying restrictions relate to our understanding of citizenship, and in particular of who is a 'good' citizen. The articulation of the relationship between citizenship and elected leadership dates back at least to Aristotle.

The decisions of voters, in cases as diverse as Keith Wright and Terry Metherell, show that the electorate is generally conscious of the difference between citizens breaking the law for their own ends, and citizens breaking the law for what they perceive to be the public good. But it is also clear that, notably in the case of Turkish political leader Recep Erdogan, the public's view about someone's suitability for office can change, sometimes swiftly. Societies embed their understanding of the relationship between law-abiding conduct and suitability for office in their laws, often (as in the Commonwealth's case) in their constitutions. The problems with embedding restrictions on political candidacy in constitutions are that it:

- relies on the wording of the law accurately reflecting community views
- entrenches in legal instruments matters about which community opinion may change, and
- may be seen as censoring the range of political opinions that citizens can express.

In Australia, some laws governing candidacy are constitutionally entrenched, and this will present considerable challenges, particularly at the Commonwealth level, should changes ever be considered necessary.

Laws restricting the ability of criminals to engage in politics exist in every Australian jurisdiction. They vary widely in their effects. In Western Australia a person convicted of a 'felony' is barred from holding office for the rest of his or her life. In most jurisdictions, they are prevented from holding office while in jail provided the sentence is of a certain length, usually a year or more. In Queensland convictions for certain types of offence, such as political bribery, prevent a person from being a candidate for a fixed period of time, even if they are not in jail. And in the Commonwealth, a person cannot take office if convicted and under sentence for a crime 'punishable' by a sentence of more than a year, thus linking disqualification not only to the person's actual sentence but to the maximum sentence for the crime.

History has shown that Australians are prepared to elect to office people who have been convicted and spent time in jail. Indeed the person chosen to give the address in reply to the Governor-General's speech in the very first federal parliament was also the only federal MP who had been transported to Australia as a convict, a man who furthermore had been convicted of theft while in Australia, William Groom. But with the exception of Groom, the arrests and convictions that our politicians have experienced have been closely related to their political careers. Many who went on to be Labor politicians, for example, had been arrested in connection with illegal strikes, particularly in the 1890s.

So, given Jack van Tongeren's intention to seek election to the Senate, is Jim McGinty right to suggest that the Commonwealth's restrictions should be tightened? To do so would represent, if anything, the opposite trend to what is happening elsewhere, and it may be Western Australia's laws rather than the Commonwealth's, that might need review in this regard. However, it could be argued that parts of section 44(ii) of the Constitution would benefit from future reform.

Introduction

In early 2003, the media reported that convicted bomber and racist Jack van Tongeren had been released after serving 12 years jail in Western Australia and was now interested in seeking election to the Senate.¹ He had formed a new organisation, the Australian Nationalist Workers' Union, and was reported saying that 'running an election campaign is a very good way of broadcasting far and wide your views to the Australian people' and that 'we'll get voted in, quite a number of us'.²

Western Australia's Attorney-General urged the Commonwealth to tighten its restrictions on candidates.³ Under Western Australian law, van Tongeren cannot stand for State Parliament, but the Commonwealth's restrictions on qualifications to be a member of parliament are less severe. Should a criminal conviction render a person ineligible to become an elected representative in a democracy? This Current Issues Brief discusses the limits placed on the ability of people with criminal convictions to stand for parliament.

A Tale of Three Criminals

In November 1962, South African activist Nelson Mandela was jailed for five years for incitement and leaving the country without a passport. In 1964, a sentence of life imprisonment for sabotage (an offence similar to treason) was added. In 1990, after years of political negotiations, he was freed from jail, and in 1994 was elected President of South Africa.⁴

In December 1997, the Mayor of Istanbul, Recep Tayyip Erdogan, made a public speech during which he read a poem by an Islamic nationalist. As a result, a court subsequently found him guilty of 'inciting hatred based on religious differences', and he was jailed for four months in 1999.⁵ Three years later, his political party—the Justice and Development Party—won the national elections in a massive landslide. Erdogan's past conviction, however, meant he was banned by the country's constitution from standing for parliament. In late 2002, the Turkish Parliament took the steps necessary to amend the constitution so that Erdogan could stand for election, and become Prime Minister.⁶ He was then elected to parliament in a by-election on 10 March 2003, and immediately given the Prime Ministerial role.⁷

In April 2002, James Traficant, nine-times-elected congressman from Ohio, was convicted of bribery and other corruption charges.⁸ In mid-July 2002, the US Congress used its seldom-invoked power to police its own membership,⁹ expelling Traficant from the

House. Later that month he was sentenced to eight years in prison. Prison, however, was no barrier to seeking political office.¹⁰ From his prison cell, Traficant ran for the same Congressional district that he had won as a Democrat every time since 1984, this time as an independent. He secured 15 per cent of the vote.¹¹

From cases like those of Mandela, Erdogan and Traficant we can see, first, that criminal conduct is widely understood in some way to render a person unfit to be an elected representative. But we see, second, that people's views about what makes a person unfit can change dramatically, and quite quickly.

Bad Citizens?

Why do we impose these restrictions in law, rather than relying on the electorate to assess the worthiness for office of these people? One argument is that some conduct—such as a criminal act—is simply not compatible with being a citizen.¹² And if one is not capable of being a citizen, one should not be able to hold political office. In fact, Aristotle defined citizenship in terms of participation, including the holding of public office.¹³ As a society's constitution and laws set out its basic rules, that legal framework should include provisions that reflect this understanding of citizenship. Provisions preventing criminals from standing—and in some jurisdictions, from even voting—exist for this reason.

This argument is based on two premises: that criminal conduct is inconsistent with citizenship and that good citizenship is a precondition for (or even necessarily entails) being a holder of public office. The first premise has a long heritage. In *The Politics*, Aristotle argued that:

The task of all the citizens, however different they may be, is the stability¹⁴ of the association, that is, the constitution. Therefore the virtue of the citizen must be in relation to the constitution ...¹⁵

Treason, a common disqualification from seeking political office, might seem inconsistent with seeking the safety or stability of the state.¹⁶ Hence acts of treason are taken as signs of a bad citizen. But the broader issue is that contempt for the law in a sense may represent a similar problem: it is a sign that a person is not concerned with the stability of the legal framework of a society. This was the concern of Roman lawyer and statesman Cicero, who regarded 'lawlessness in individuals' to be as corrosive of the state as was war without justification. The 'habit of disregarding legality', he argued, 'transforms our empire from the rule of law to the rule of force'.¹⁷ Academic A. J. M. Milne similarly reasoned:

without the moral obligation to obey law, there could be legal obligations properly so-called. There could only be legal requirements backed by force ...

There are certain characteristics that a human group must possess if it is to constitute any form of community. It must be a group of people living together on terms they all accept ... What this is in detail is specified by the principles and rules of the institutions and practices which give the group a definite structure and corporate existence.¹⁸

It is possible therefore to argue that laws preventing criminals from being members of parliament simply reflect these fundamental understandings of political obligation and of citizenship.

There are, of course, counter-arguments. In general, we do not regard criminals as non-citizens. We do not strip them of legal rights, we do not regard them as unable to be redeemed, we do not outlaw or exile them, and we in general seek to rehabilitate and reintegrate offenders into the community of free citizens. Criminals are citizens upon whom society places certain burdens and disciplines, rather than being temporary non-citizens. In a recent constitutional legal case in Canada, electoral laws that prevented persons serving sentences of more than two years from voting were struck down as breaching citizens' rights. The court overturned such laws because 'the right to vote is fundamental to our democracy' and denying the right to vote does not 'enhance civic responsibility and respect for the rule of law'.¹⁹

One of the awkward questions generated by the idea that a good citizen is one who respects the law is whether and how we should distinguish between those who have been convicted of breaking a law, and those who advocate contempt for the law. Are both equally fit or unfit to stand for office? Jack van Tongeren, for example, has broken the law. Now free, however, he openly states that 'this is the time to shout to the whole rotten system ... damn your rotten laws, and Australia forever',²⁰ and 'the present Legal System in its entirety ... which deliberately maintains and supports such a blatantly unjust status quo, is also bad'.²¹ In judicial terms, the distinction is not a problem: it is one of due process and of a distinction between opinion and action. But when it comes to a political philosophy such as that described by Milne, the distinction is more difficult. Someone who has committed a crime has shown similar contempt for the law as someone who holds the law in contempt. How can we say one of these people is a good citizen, in the sense of being fit to hold public office, while the other is not? The difficulty in making the distinction may be one of the reasons that most jurisdictions in fact do not bother. They do not prevent either person from standing for office, provided they are not actually in jail at the time.

In reality some other arguments also come into play. One is fear of the mob: a mistrust of the *hoi polloi*. During the Constitutional Convention debates on inserting a restrictive clause in the Australian Constitution, Barton remarked:

Unless you have provisions of this kind, it is quite possible that somebody might take a violent affection for a gaol-bird, and put him into parliament. We do not want that sort of thing ...

[I]t is quite on the cards that such persons would stand for election for the commonwealth parliament, and the electors might choose them, not knowing who they were ... Such a thing has happened, and it is a kind of thing which the electors are to be protected against, because it is a state of things the electors themselves could not provide against.²²

The constitution, it is argued, should protect the electorate against itself. One of the counter-arguments to this suggestion, which would almost certainly be even truer today than a hundred years ago, is that in fact it would be highly unlikely that the electorate would not know of a candidate's past convictions. Would not their rivals for the seat have an interest in this being known? Would it not be certain, as one participant in the 1891 Constitutional Convention remarked, that the electorate could 'rely upon the press stirring the thing up from the bottom'?²³

There is one other particular reason that we might bar criminals currently serving a sentence that goes to the nature of political representation. In asking who can be a political representative, the key question is who is the community prepared to accept? The problem in the Erdogan case was that someone with community support was legally prevented from taking office. Yet how do we know what the community wants? One way is through the use of juries. In criminal trials they represent a benchmark establishing community standards in relation to criminal conduct. If a jury has found someone guilty of a crime we can say that that person has been determined to be a 'bad citizen' to some degree. If their guilt causes them to be imprisoned for a year or more (the commonest measure used in Australia for determining whether someone can stand for parliament: see the table below), this is an indication that their 'bad citizenship' requires that they be subject to some punishment, restriction and/or rehabilitation before being able to function as a free citizen again. This may certainly be used as an argument in favour of preventing criminals currently serving sentences from seeking or holding office. However it is also an argument *against* preventing them from *ever* holding office, because a jury's verdict is in relation to a specific act at a specific time, not in relation to a person. This is not to mention the fact that sentencing is premised at least in part on the concept of rehabilitation.

Despite these reasons to be concerned with law-abiding conduct, we do periodically elect those who break the law (of whom, more later), though seldom if the crime was serious. Sometimes our already-elected representatives themselves break the law, occasionally in secret, more often deliberately and publicly. Many of our politicians have been arrested in association with protests such as those opposing Australian involvement in the Vietnam War, and environmental protests. Federal MPs who have been arrested while elected to parliament have included Senators:

- Bob Brown (Green), arrested six times,²⁴ the first in 1982 during the Franklin Dam protest, immediately prior to his entry into the Tasmanian Parliament in 1983
- Irina Dunn (Independent), arrested during anti-woodchipping protests in NSW in 1989, and
- George Georges (Labor), arrested in 1978 and again in 1985 for participating in protest marches (see also below).

Others have been arrested in similar circumstances either before or after their time in parliament, including former Independent and Western Australian Greens Senator Jo

Vallentine, arrested in July 1998 during anti-uranium mining protests, and subsequently jailed in 2000 for failing to pay a fine for trespassing.

Clearly most voters do not regard these people as criminals to be kept well away from political power. Why do we make a distinction between different types of law breaking? Why are some law breakers allowed to stand for office and others not? And why do we elect some law breakers and reject others? The answer lies partly in principle, and partly in practice. In principle, we can make a distinction between weak and strong obligation to the state. DeLue argues:

A person with a strong obligation will, when he disagrees with the state's policies or laws, generally uphold them anyway. Yet it is possible that one will decide to protest the laws one disagrees with. If one does, one chooses civil forms of protest. Here, one protests by showing respect for the state's right to make and enforce laws. ... one may decide to violate a particular law one disagrees with, but in doing so, one's intent is to 'educate' the general public and the policymakers so they will change the laws or policies one dislikes ... [I]f one's actions were to encourage general lawlessness, one would stop using disobedience as a protest form. By contrast, a person with a weak obligation chooses noncivil forms of protest.²⁵

In principle one can thus tell the difference between different types of law breaking: between those actions undertaken within a respect for the constitutional order, and those that hold it in contempt. There can also be drawn a distinction between law breaking that serves self-interest and that which does not, or between law breakers who seek to evade punishment (thus seeking to deny the constitutional order) and those who do not (because they believe in the broader rule of law in some sense).

In practice, citizens do seem to make these distinctions between types of law breaking. This is arguably evident in the case of the re-election attempt in 1993 of Keith Wright.

Keith Wright (ALP) was a sitting federal MP who in November 1992 was committed to trial on charges including indecent dealing.²⁶ Dumped by his party, he ran for his seat in the 1993 election as an independent. Although he was the sitting member, and continued to proclaim his innocence, he received 5.9 per cent of the vote, just one-tenth of the vote at the previous election (he was convicted and jailed seven months later).

Similarly, while many voters supported Traficant's bid to be returned to Congress despite his conviction, he did not come close to re-election. This was despite his immense personal popularity and high profile over the years.

Voters do also sometimes disregard convictions—even when the politician's own party does not. Terry Metherell (Liberal) was elected to NSW Parliament from the seat of Davidson in 1981. In July 1990 he resigned as Minister for Education and Youth Affairs when it became known he was to be prosecuted for tax offences. In September 1990 he pleaded guilty to tax charges, and was ordered to pay fines, back taxes and court costs totalling \$11 847.²⁷ Blaming the neglect of his tax affairs on his heavy workload, he once

again contested his seat for his party and increased his margin by 4.1 percentage points, even though his party lost 1.5 percentage points on average state-wide.²⁸ Despite this, he was overlooked for the new ministry, and, frustrated, resigned from his party six months later to sit as an independent.

Perhaps, given some community antipathy to tax laws, the electorate sympathised with Dr Metherell's tardiness in keeping his tax affairs in order. The point is that voters distinguish between candidates' *stance* toward the state and the constitutional order and the candidates' record in abiding (or failing to abide) by any given law.

It then becomes clear that the problems with embedding restrictions on political candidacy in constitutions are that it:

- relies on the wording of the law accurately reflecting community views
- may entrench in legal instruments matters about which community opinion quickly changes, and
- may be seen as censoring the range of political opinions that citizens can express.

These problems are very evident in the Turkish case, where Erdogan's conviction prevented his election, but clearly did not reflect at all the community's views about his regard for his country's constitution and people. In Australia, some laws governing candidacy are constitutionally entrenched—even more so than those of Turkey—and this will present considerable challenges, particularly at the Commonwealth level, should changes ever be considered necessary.

Australian Law

Laws restricting the ability of criminals to engage in politics exist in every Australian jurisdiction. The laws vary considerably and are summarised in the table below. A more comprehensive description of the arrangements in each jurisdiction is contained in the appendix. Around Australia some of the restrictions on political candidacy are embedded in constitutions, while others are embedded in legislation such as electoral laws. Most states, however, are able to change their constitutions more readily than in the federal case, and so the Commonwealth's restrictions are arguably the most difficult to modify.

Table: Summary of Australian laws on criminals as candidates

Jurisdiction	Ban applies to persons	Period of ban
Commonwealth	(a) Convicted of a crime punishable by a year or more in prison (b) Attainted of treason	(a) Banned while serving or awaiting sentence (b) Banned for life
NSW	Convicted and sentenced to a year or more in prison	Banned while serving sentence
Victoria	(a) Convicted of treason or treachery and not pardoned; or (b) Convicted and serving a sentence of five years or more	(a) Banned for life (b) Banned for life (some exceptions)
Queensland	(a) In prison (b) Convicted in last two years and sentenced to more than a year in prison (c) Convicted in last seven years of a political bribery charge (d) Convicted in last ten years of certain electoral offences (e) Convicted of treason etc and not pardoned.	(a) – (d) Banned for the fixed periods listed (e) Banned for life unless pardoned
SA	(a) Convicted in last two years of a bribery charge (b) No other restriction on candidacy, <i>but</i> a sitting member convicted of any indictable offence or treason is disqualified	(a) Banned for the fixed period listed (b) Legal implication unclear: appears there is nothing to stop the person immediately re-nominating ²⁹
WA	Convicted of treason or felony	Banned for life
Tasmania	In prison	Banned while serving sentence
NT	Convicted and sentenced to a year or more in prison	Banned while serving sentence
ACT	(a) Convicted of a crime punishable by five years or more in prison (b) Convicted in last two years of a political bribery charge	(a) Banned while serving sentence (b) Banned for the fixed period listed

For greater detail on the laws summarised here, see the appendix at pp. 15–17.

From the table it can be seen that Jack van Tongeren cannot stand in WA because he has been convicted of a felony. Even the meaning of that term has never been particularly transparent. When the shape of the Commonwealth constitution was being debated in the 1890s, one reason this terminology was not used was that there was not agreement on the meaning of 'felony'. Mr Glynn remarked at that time:

As Sir Samuel Griffith has pointed out, the meaning of the word 'felony' is changing considerably. In some colonies felony is comparatively a light offence; in other colonies it is a heavy offence. In New Zealand felony is practically unknown to the federal law.³⁰

The comments by Griffith to which Glynn referred were that:

The word 'felony' is ... an inappropriate one. Apart from the fact that the word no longer bears any definite descriptive meaning, the use of it has the effect of making the disqualification in question dependent upon state law.³¹

Accepting these arguments, the Commonwealth declined to use a wording that a century later is still on the books in Western Australia. Griffith had also been concerned that, were such wording to be used, the disqualification would then depend on whether the crime of which a candidate or member was convicted happened to be considered a felony in that particular state. Ironically, as we shall see, the wording that was eventually chosen has created this same problem, just in a different form.

Federally, section 44 of the Constitution only prevents a person serving (or awaiting) a sentence for a crime punishable by a year or more in prison from being a candidate for federal parliament³² (unless they have been attainted of treason: see discussion below).³³ Section 44 currently states:

Any person who ... (ii.) Is attainted of treason, or has been convicted and is under sentence, or subject to be sentenced, for any offence punishable under the law of the Commonwealth or of a State by imprisonment for one year or longer ... shall be incapable of being chosen or of sitting as a senator or a member of the House of Representatives.

Van Tongeren is thus free to stand for federal office. But, again referring to the table, it is clear he would also be free to stand in every other jurisdiction except Western Australia and Victoria.

The History of the Law and of Candidates

The Constitutional Convention of 1891 defeated a proposal that the Commonwealth's law be cast in similar terms to that of Western Australia. As we saw from the debates already mentioned, the Convention concluded in favour of a limited disqualification that applied only to people either under, or awaiting sentence, for crimes punishable by a year or more of prison.³⁴

This has meant that people with a conviction in their past have been free to stand for parliament. Perhaps surprisingly, over the years quite a few have successfully done so. Past MPs have been convicted, some spending time in prison, before entering (or being re-elected to) parliament. They include:

- William (Bill) Hamilton (ALP), who served a three year sentence for criminal conspiracy as a result of his role in the shearers' strikes of 1891, when he had actually tried to prevent illegal actions by workers. Just a few years later he was elected to the Queensland Legislative Assembly, where he sat from 1899 to 1915. He then moved to become president of the Legislative Council until his death in 1920.³⁵

- William Groom (Protectionist) was the only member of the federal Parliament to have been a transported convict. He was transported to Australia in 1849 at the age of 13. Once here he was convicted of theft in 1855 and sentenced to three years in prison. He was pardoned after about a year and went on to be a newspaper proprietor, member of the Queensland Legislative Assembly 1862–1901 and Speaker of the Queensland Assembly from 1883 to 1888. He was a founding member of the federal Parliament, chosen to move the address in reply in the opening session.³⁶
- Arthur Rae (ALP/Lang Labor) was a union organiser who was fined for getting shearers to strike in support of maritime workers in 1890. Refusing to pay the fine, he was sentenced to 'sixty-one consecutive fortnights' in jail.³⁷ He was released after a month in response to widespread protest.³⁸ Rae went on to be the first Labor member of the NSW Legislative Assembly (1891–94) and, after failing to win a House of Representatives seat in 1903 and 1907, was elected as a Senator for two periods: 1910–14 and 1929–35.
- George Yates (ALP) was the federal member for Adelaide in the periods 1914–19 and 1922–31. In 1917, Yates enlisted in the defence forces. During demobilisation in 1919, he was amongst troops waiting in quarantine on ships off Sydney. Yates:

had acted as their spokesman in threatening to take possession of the boats and go ashore. He was found guilty of conduct to the prejudice of good order and military discipline, and of having endeavoured to persuade troops to join in a mutiny.³⁹

He was sentenced to sixty days detention. Though his political career was damaged by the incident, losing his seat in the election of 1919, he was returned to parliament in 1922, and also received compensation as a result of a parliamentary committee inquiry into other allegations made about his military service record.⁴⁰
- Frederick Vosper (Independent) wrote and published material during the shearers' strike that led him to be twice tried and acquitted of seditious libel in 1891. In 1892, however, he was convicted of inciting a riot, and sentenced to three months hard labour. In 1897 he was elected to the WA Legislative Assembly. In 1901 he announced his candidacy for the Senate, but died before the election was held.⁴¹
- E. J. Holloway (ALP/Federal Labor Party) was a unionist and vigorous activist against the anti-Labor Bruce government of 1923–29. He was prosecuted and fined for encouraging a strike in 1929. He was notable not for that incident so much as for the fact that, later that very same year, he became the only candidate ever to oust a serving Prime Minister from his seat in an election.⁴²
- Tom Uren (ALP) had been a member of the House of Representatives for over a decade when in 1970 he participated in a Vietnam War moratorium rally in Sydney. After claiming he had been roughly pushed by a police officer, Uren sought to press a charge of assault against the police officer. When the case was dismissed, costs were awarded

against Uren. He refused to pay, and in early 1971 was taken, with some reluctance on the part of authorities, to Long Bay jail, where he served a couple of days before someone else paid his fine.⁴³

- George Georges (ALP) was jailed twice during his political career for failing to pay fines incurred as a result of participating in protests. Elected from Queensland to the Senate in 1967, in December 1978 he was jailed for fourteen days, but served only one, apparently because someone paid the fine that he would not.⁴⁴ He was convicted and fined on similar charges in 1979.⁴⁵ In 1985 he was jailed for ten days, again for failing to pay a fine, and this time served just three hours.⁴⁶
- (William) Robert Wood (Nuclear Disarmament Party) was elected to the Senate in 1987, though he was subsequently disqualified under section 44(i) of the Constitution because he was not an Australian citizen at the time of standing.⁴⁷ He had in 1972 spent a month in jail because of his objections to National Service,⁴⁸ and in 1987, not long before being elected, was arrested and fined for paddling a kayak in front of a US warship in Sydney harbour, as part of a peace protest.⁴⁹

Most of these examples highlight how there are links between many MPs' convictions and their political careers. The reasons some people fall foul of the law are often the same reasons they seek political office: a preparedness to pursue their beliefs, despite the fact that they may not be the views of the government of the day. Ironically Jack van Tongeren in many respects fits this description.

Section 44 of the Commonwealth's constitution also disqualifies parliamentarians who become the subject of the criminal conviction provisions. Although there have been members of parliament who have gone on to be convicted of criminal offences, none has been removed from office directly by the application of section 44(ii). They have generally resigned or been defeated in elections prior to a conviction that would have made them ineligible.⁵⁰

Reforming the Commonwealth Law?

Western Australian Attorney-General Jim McGinty, it will be recalled, had responded to Jack van Tongeren's political statements by saying that the Commonwealth's laws ought to be tightened to prevent 'serious criminals', including van Tongeren, from being a candidate.⁵¹ Certainly it is reasonable to consider these issues but it may be Western Australia's law that is in need of review. It remains one of the oldest such provisions in the country. Similar provisions in Queensland have been reformed. Only Victoria and Western Australia impose life bans, and in Victoria they are restricted to more serious cases than in Western Australia (see the appendix). Even the New South Wales provisions that date from a similar era and have other problems with anachronistic language (making reference to 'infamous crimes') apply only to disqualification of sitting members and still allow later re-nomination. Whatever the feelings McGinty or anyone else might have toward neo-Nazis in general, or Jack van Tongeren in particular, the question must remain: why

should the electorate be prevented from ever considering the fitness of this person to be their representative?

But while McGinty's suggestion might be treated with caution, it does not mean that section 44(ii) of the Constitution would not benefit from reform. Issues concerning Commonwealth law in this area (particularly section 44 of the Constitution) have been canvassed elsewhere.⁵² Section 44 is known for its controversial and cumbersome wording. Four times in the last twenty years candidates who have won elections have fallen foul of this section of the Constitution (Nuclear Disarmament Party representative Robert Wood, Independent Phil Cleary, One Nation Senate candidate Heather Hill and Liberal Jackie Kelly), though none specifically as a result of the restrictions on people with criminal convictions. Two particular aspects of section 44(ii) are discussed here: the use of the phrase 'attainted of treason' (and the lack of reference to the possibility of pardon), and the reference to crimes 'punishable' by certain terms of imprisonment.

'Attainted of Treason'?

Being 'attainted of treason' occupies a special place amongst the disqualifications for office: it is the only conduct that permanently prevents a person from standing for the Commonwealth parliament. As a Senate committee has noted, the meaning of 'attainted' is obscure, and the usage archaic.⁵³ It used to mean the person in question was subject to 'that extinction of civil rights and capacities which formerly took place under English law when judgement of death or outlawry was recorded against a person convicted of treason or felony'.⁵⁴ In current usage it might be taken to mean someone implicated in treason, though it would probably be taken to mean 'convicted',⁵⁵ were ever the question to come before a court, given that the Criminal Code contains an offence of [treason](#). The entitlement to vote provision in the *Commonwealth Electoral Act 1918* (Electoral Act) was clarified in 1983 to state that a person cannot enrol if he or she 'has been convicted of treason or treachery and has not been pardoned',⁵⁶ but the Constitution remains unaltered.

Aside from the anachronistic language of section 44, there are also policy issues that need to be addressed. The current wording of section 44 of the Constitution does not recognise the possibility of being pardoned for treason. This contrasts with the regime in most States such as Queensland, where the law prevents a person who 'has been convicted, *and not pardoned*, of treason, sedition or sabotage...' from being elected (emphasis added).⁵⁷

Had two of the overseas cases outlined earlier taken place in Australia, Mr Erdogan would be capable of seeking office, but Mr Mandela probably would not, because of his conviction for sabotage.

Should treason be singled out as so different from any other offence that it should permanently disqualify a person from seeking office? Why should we treat other offenders as legitimate candidates once they have served their time, while those released after being imprisoned for treason find a penalty hanging permanently around their necks? Sir George Grey at the Constitutional Convention in 1891 spoke passionately against such a lifetime's

burden. Speaking of both those attainted of treason and those convicted of a crime, he argued:

It is proposed, not only to give him the punishment the law has allotted to his offence, but when he has undergone that punishment, you send him forth with a brand upon him which he can never wipe out. ... He is literally sent out a pariah among his fellow-countrymen without any hope of being restored to his former social status. By no good conduct could he relieve himself of the result of the errors of his past life.⁵⁸

Grey was concerned that stripping a person of any hope of redemption in this regard could actually harm society, because of the dangers presented by citizens who believe they have nothing to gain in the eyes of their community. It may be time to do as Queensland, for example, has already done, and as a minimum amend section 44(ii) to at least recognise the possibility that people may be pardoned of treason.

This issue may be becoming more relevant, as the scope of the crime of treason has recently been broadened.⁵⁹ It has been extended to include:

- assisting an organisation engaged in armed hostilities against the defence forces
- causing death or harm to the Governor-General or Prime Minister, and
- imprisoning or restraining the Governor-General or Prime Minister.⁶⁰

It hitherto referred only to the Sovereign, the Sovereign's heir and consort.⁶¹

One should also not overlook the political nature of laws such as those governing treason, or the related crimes of sedition and sabotage. Australian communist Lawrence Sharkey was jailed for sedition during the Cold War era.⁶² Nelson Mandela was charged with treason and later jailed for sabotage. Their actions may well seem criminal to many at a certain point in time, but their actions should be characterised as, most of all, political actions. Their activities were first and foremost political activities. In Australia, the laws on treason have become increasingly restrictive. Despite the fact that they are now quite broad in scope, and despite the fundamentally political nature of the activities treated as offences, the Constitution still bars those convicted of treason from ever being candidates for office, while the Electoral Act prevents them from ever again being allowed to vote.⁶³ The law is signalling that these are the worst sorts of citizens, yet historical examples suggest this is far from being so. The inherently political nature of such crimes should make us more, rather than less, cautious about entrenching in law the lasting exclusion of such people from democratic participation.

'Punishable' or Punished?

The Commonwealth Constitution refers to people convicted of crimes 'punishable' by more than a year in prison. Other jurisdictions base their bans on the sentence a person actually receives, whereas the Commonwealth's regime is based on the maximum possible

sentence that can be handed out. This could lead to some undesirable consequences. Any conviction of theft under the Commonwealth's Criminal Code, however minor, would lead to disqualification.⁶⁴ So would any conviction of obstruction of a Commonwealth public official, even if the defendant did not know the person was a Commonwealth official.⁶⁵ This could include, for example, obstructing a federal police officer during a demonstration. The fact that a person convicted of a relatively minor offence that took place during, for example, a political demonstration, could then be prevented from seeking office even though they were not in jail, would seem to many a disproportionate response.

The other reason this clause may benefit from reform is that, as the clause currently stands, the constitution is held hostage to the vagaries of changes to the criminal laws, not only of the Commonwealth, but of all the states and territories. So-called 'law and order' campaigns and 'truth in sentencing' initiatives sometimes lead to increases in the maximum sentences that may be handed out for certain offences. Because the Commonwealth constitution links disqualification to the *maximum* sentence, rather than that actually administered, such changes bring citizens within the scope of the disqualification provisions who were previously outside them. The Commonwealth thus effectively has little control over which offences can prevent candidacy and which cannot. In fact Senator George Georges came very close to losing his seat for this reason. On 22 October 1977 he was arrested during a protest rally in Brisbane and charged with, amongst other things, resisting a police officer in the execution of his duty.⁶⁶ The offence of resisting a public officer carried a maximum sentence of two years' imprisonment.⁶⁷ Georges fought the charges and was eventually acquitted in May 1978. Had he been convicted, however, he would have lost his seat in the Senate.⁶⁸

As well as meaning the Commonwealth effectively has ceded control of this aspect of the disqualification provisions, one consequence can be great inconsistency in who may or may not be a candidate. John Kalokerinos, in a 2000 Senate Occasional Lecture, illustrated this well:

possession of a small amount of cannabis in the ACT is punishable merely by a \$100 fine, whilst in NSW the same offence is punishable by two years imprisonment. A person could therefore be disqualified for a conviction in Queanbeyan, but would not be disqualified for conviction for the same activity across the border in Canberra.⁶⁹

Western Australia and Victoria are subject to a particularly severe form of such inconsistency. This is because they impose a lifetime ban on those convicted of serious offences in Victoria or 'any other part of the British Commonwealth of Nations' (in Victoria), or of a felony 'in any part of Her Majesty's dominions' (in the case of Western Australia). This means that, if someone is convicted of a crime punishable by a sentence of five years or more in say, Zimbabwe, they could never stand for parliament in Victoria. A similar situation would appear to apply in Western Australia. It also means that a person convicted of murder or serious corruption in a non-Commonwealth country would be free to stand for office in those states (and in the rest of Australia). The remaining states and the Commonwealth limit their restrictions to crimes committed in an Australian

jurisdiction. This inequity of treatment is only a serious problem if the jurisdiction tries to impose a ban on holding office after a person has served their sentence. In this regard it is perhaps not the Commonwealth's law that might need reform, but that of some states.

One of the other effects of the wording of section 44(ii) is that it does not envisage the possibility of appeals against convictions. As it currently stands, a person is disqualified from being a candidate even if they are appealing against a conviction of a crime that falls within the definition of section 44(ii). Under section 45 of the Constitution, it appears that the seat of a Member or Senator is declared vacant if they are convicted (again of a crime within the terms of 44(ii)), regardless of whether they have lodged an appeal against conviction. Is an appropriate constraint to be placed on those seeking or holding political office?

Conclusion

We allow former criminals to stand for office because we do not believe that 'once a convict, always a convict'. We allow them to stand because we believe in rehabilitation and trust that citizens are capable of judging a person's fitness for public office. Sometimes they appear to do that on even the suspicion of criminal activity, the best-known example being that of Thomas Ley (Nationalist, Barton). During his 1925 campaign for the federal seat of Barton, his opponent Fred McDonald alleged Ley had tried to bribe him (McDonald) to withdraw. Ley won the election, but when McDonald sought to have the election voided by the Court of Disputed Returns, he (McDonald) disappeared. Despite his electoral success, Ley was increasingly criticised over business dealings and other matters. One of his critics, Hyman Goldstein, was found dead below cliffs in Sydney just two months before the 1928 elections. Ley may or may not have silenced these critics (he was never charged), but the public nonetheless was not prepared to re-elect him. He was defeated in the 1928 election (though the swing against him was arguably no worse than that experienced by many of his fellow Nationalist Party members).⁷⁰ Nearly twenty years later and on the other side of the world, he was convicted for the murder of a barman.⁷¹

But while people against whom allegations are made, such as Ley, are free to stand for election, the Australian Constitution currently would not cope with cases such as that of Mandela. Furthermore, people receiving light sentences for minor offences are vulnerable to disqualification because of the reference in section 44 to the sentence for which an offence may be 'punishable' rather than to the actual sentence handed down.

These limitations are symptoms of the well-known problems of section 44,⁷² the wording of which has caused regular problems. It may be that section 44 should be reformed, but not, as McGinty hoped, to exclude former convicts like van Tongeren, but to give the Commonwealth full control of its disqualification provisions and to recognise the possibility of pardon in cases of treason.

Appendix: Disqualification for Membership of Legislature Due to Criminal Conviction

Jurisdiction	Disqualification for Membership	May Nominate when Completed Sentence
Commonwealth	<p>Is attainted of treason, or has been convicted and is under sentence, or subject to be sentenced, for any offence punishable under the law of the Commonwealth or of a State by imprisonment for one year or longer [<i>Commonwealth Constitution</i> section 44. Section 45 will cause a sitting member's seat to be vacated if they become subject to section 44].</p> <p>Cannot be chosen or sit in either House of Parliament for a period of two years from the date of a conviction or finding of an offence against:</p> <ul style="list-style-type: none"> • section 326 or 327 of the <i>Commonwealth Electoral Act 1918</i> or section 28 of the <i>Crimes Act 1914</i>; or • an offence against section 11.1 of the <i>Criminal Code</i> that relates to an offence referred to in the point above; or • is found by the Court of Disputed Returns to have committed or attempted to commit bribery or undue influence, when a candidate. <p>[<i>Commonwealth Electoral Act 1918</i> section 386]</p>	Yes, except in the case of those attainted of treason
New South Wales	<p>Is convicted of an infamous crime, or of an offence punishable by imprisonment for life or for five years or more (if has not lodged an appeal, conviction has not been quashed, appeal has been withdrawn or has lapsed). [disqualification against sitting member only]</p> <p>[<i>Constitution Act 1902</i> section 13A]</p> <p>Has been convicted and sentenced to a term of imprisonment of one year or longer and is in prison pursuant to such sentence.</p> <p>[<i>Parliamentary Electorates and Elections Act 1912</i> sections 39, 79, 81B]</p>	Yes

Jurisdiction	Disqualification for Membership	May Nominate when Completed Sentence
Victoria	<p>Has been convicted of treason under the law of Victoria or treason or treachery under the law of the Commonwealth or a State or Territory of the Commonwealth and has not been pardoned.</p> <p>Is serving a sentence of 5 years imprisonment or more for an offence against the law of Victoria, the Commonwealth or another State or a Territory of the Commonwealth.</p> <p>[<i>Constitution Act 1975</i> section 48 and <i>Electoral Act 2002</i> sections 69, 70]</p> <p>Has been convicted or found guilty of an indictable offence which is punishable upon first conviction by imprisonment for life or for a term of five years or more, under the law of Victoria or under the law of any other part of the British Commonwealth of Nations.</p> <p>[<i>Constitution Act 1975</i> section 44(3)]</p>	<p>Yes in the case of those currently serving a sentence of 5 years or more, <i>provided that</i> the offence of which they were convicted is not punishable <i>upon first conviction</i> by imprisonment for life or for a term of five years or more.</p> <p>No in all other cases.</p>
Queensland	<ul style="list-style-type: none"> • Subject to a term of imprisonment or detention, periodic or otherwise; • has been convicted within two years of the day of nomination of an offence against the law of Queensland, another State or the Commonwealth and sentenced to more than one year's imprisonment; • has been convicted within seven years before the day of nomination of an offence against the <i>Criminal Code</i> section 59 (member of Parliament taking bribes) or section 60 (bribery of member of Parliament); • has been convicted within ten years of the day of nomination of a disqualifying electoral offence. • has been convicted, and not pardoned, of treason, sedition or sabotage under the law of Queensland, another State or the Commonwealth <p>[<i>Parliament of Queensland Act 2001</i> section 64 (2)(4)(5)(6)]</p>	<p>Yes (except in case of unpardoned treason, sedition or sabotage)</p>

Jurisdiction	Disqualification for Membership	May Nominate when Completed Sentence
South Australia	<p>Attainted of treason or is convicted of an indictable offence [disqualification against sitting member only]</p> <p>[<i>Constitution Act 1934</i> section 17 and 31]</p> <p>Convicted of bribery or undue influence or an attempt to commit bribery or undue influence: disqualified for at least two years from the date of conviction.</p> <p>[<i>Electoral Act 1985</i> section 133]</p>	Yes, although the case of sitting members convicted of an indictable offence is ambiguous due to section 46 of the <i>Constitution Act 1934</i>
Western Australia	<p>Has in any part of Her Majesty's dominions been convicted of treason or felony.</p> <p>[<i>Constitution Acts Amendment Act 1899</i> section 32]</p>	No
Tasmania	<p>No person who is in prison under any conviction.</p> <p>[<i>Constitution Act 1934</i> section 14(2)]</p>	Yes
Northern Territory	<p>Has been convicted and is under sentence of imprisonment for one year or longer for an offence against the law of the Commonwealth or of a State or Territory</p> <p>[<i>Northern Territory (Self-Government) Act 1978 (Cth)</i> section 21]</p>	Yes
Australian Capital Territory	<p>Not qualified to take a seat as a member if ... has been convicted and is under sentence for an offence punishable under the law of the Commonwealth or of a State or Territory by imprisonment for 5 years or longer.</p> <p>[<i>Australian Capital Territory (Self-Government) Act 1988 (Cth)</i> section 67]</p> <p>Has been convicted of an offence relating to bribery or intimidation under the <i>Electoral Act 1992</i> or the <i>Commonwealth Electoral Act 1918</i> within the two years preceding the conviction or finding. [<i>Electoral Act 1992</i> section 103 (4)(5)]</p> <p>A person is only eligible to nominate if entitled to be an elector. A person is not entitled to be an elector if serving a sentence of five years or longer for an offence against the law of the Commonwealth or of a State or Territory; or has been convicted of treason or treachery and has not been pardoned (relates to Commonwealth roll) [<i>Electoral Act 1992</i> sections 72, 103, <i>Commonwealth Electoral Act 1918</i>, section 93]</p>	Yes

Endnotes

1. Mark Russell, 'Nazi to run for Senate', *Herald Sun*, 31 January 2003.
2. 'Neo-Nazi to stand for Australian Parliament', *Agence France-Presse*, 29 January 2003.
3. Mark Russell, op. cit.
4. Anthony Sampson, *Mandela: The Authorised Biography*, HarperCollins, London, 1999.
5. See Amnesty International, *Annual Report 2000*, on [Turkey](#).
6. 'Turks clear way for leader', *The Weekend Australian*, 28 December 2002.
7. 'Turkey poll win paves way for US', *The Australian*, 11 March 2003.
8. The Green Papers: Ohio 2002 Midterm Election, <http://www.thegreenpapers.com/G02/OH.phtml#H2000> .
9. 'US Congressman jailed', [BBC News](#) (world edition) on 30 July 2002; 'Traficant expelled after final jabs in House', [USA Today](#), 25 July 2002. Apart from incidents during the Civil War, the only House of Representatives member to be expelled prior to Traficant was Representative Michael Myers. Myers was ousted in 1980 after being convicted of accepting bribes. Only one Senator has been expelled other than during the Civil War, and that was in 1797, when William Blount was expelled for inciting Indians against government officials. Expulsion requires a two-thirds majority vote of the chamber. *Encyclopedia of the American Legislative System*, Charles Scribner's Sons, New York, 1994, vol. 1, pp. 548–53.
10. The US Constitution sets the qualifications for candidacy and contains no barrier based on imprisonment. American States can set such restrictions, but not for federal elections. Incidentally, because voter qualifications are not set by the US Constitution, some states have disqualified prisoners from voting: indeed, as Al Gore found to his cost in Florida during the presidential election, some states never allow convicted criminals to vote again. This still, however, would not prevent them from being candidates. See ['Though Jailed, Could Traficant Run?'](#), US Gov Info / Resources; Jack Maskell, *Congressional Candidacy, Incarceration, and the Constitution's Inhabitancy Qualifications*, Congressional Research Service, 2002; Sasha Abramsky, ['Ex-Felon Laws Cost Florida Residents Vote'](#), AlterNet.org, 9 November 2000.
11. CNN election website, <http://edition.cnn.com/ELECTION/2002/pages/states/OH/index.html>.
12. For a detailed discussion of these issues, in relation to voting rights rather than candidacy, see Graeme Orr, 'Ballotless and Behind Bars: The Denial of the Franchise to Prisoners', *Federal Law Review*, vol. 26, no. 1, pp. 55–82.
13. Aristotle, *The Politics*, Book III, iv. See Philip Manville, *The Origins of Citizenship in Ancient Athens*, Princeton University Press, Princeton, 1990, pp. 38–54.
14. In this context, the word stability—*sōtēria*—does not appear to mean 'unchanging', so much as 'safe'.
15. Aristotle, *The Politics*, Book III, iv, 1276b 20.
16. But see the discussion of this in the later section 'Attainted of Treason?'
17. Cicero, *On the State*, III, 34–7, 41.

18. A. J. M. Milne, 'Political Obligation and the Public Interest', in Paul Harris (ed.), *On Political Obligation*, Routledge, London, 1990, pp. 3, 5.
19. *Sauvé v. Canada*, 2002 SCC 68 at 9, 21.
20. Jack van Tongeren, 'The Extremist: The Ultimate Hero', Australian Nationalist Movement website: <http://www.whiteprideco.com/ex3.htm> .
21. Jack van Tongeren, 'The Bigger Picture', Australian Nationalist Movement website: <http://www.whiteprideco.com/biggerpicture.htm> .
22. *Constitutional Convention Debates*, 21 September 1897, pp. 1012–13.
23. *Constitutional Convention Debates*, 3 April 1891, p. 659.
24. Juliette Hughes, 'The Green Battler', *Eureka Street*, vol. 11, no. 3, 2001, pp. 22–6.
25. Steven DeLue, *Political Obligation in a Liberal State*, State University of New York Press, New York, 1989, p. x.
26. James Warden, 'A Bunyip Democracy: The Parliament and Australian Political Identity', *Political Studies Fellow Monograph No. 2*, Department of the Parliamentary Library, Canberra, 1995, p. 8.
27. 'Metherell fined, blames pressure', *Sydney Morning Herald*, 11 September 1990.
28. For election results see Gerard Newman, 'New South Wales Elections 1988', *Background Paper*, Department of the Parliamentary Library, Canberra, 1988–89; Gerard Newman, 'New South Wales Elections 1991', *Background Paper no. 10*, Department of the Parliamentary Library, Canberra, 1992.
29. This is despite the contrary claim made by Gerard Carney, *Members of Parliament: Law and Ethics*, Prospect Publishing, St. Leonards, 2000, p. 46. He suggests that in South Australia 'candidates appear to be subject to a lifetime disqualification if convicted of an indictable offence before being elected', in support of which he cites sections 17, 31 and 46 of the SA Constitution Act. However, not only is it far from clear that these sections cause a lifetime disqualification, if they were to be interpreted in this way, they would seem only to apply to a person who is convicted *while already holding a seat*.
30. *Constitutional Convention Debates*, 21 September 1897, p. 1012.
31. Cited in the *Constitutional Convention Debates*, 21 September 1897, p. 1014.
32. The language is ambiguous as to its impact on those 'under sentence' but not actually in detention, such as those serving community service orders, or paying fines in instalments. Orr, *op. cit.*, p. 58.
33. Under [section 44\(ii\)](#). See also *Nile v Wood* (1987) 167 CLR 133.
34. John Quick and Robert Garran, *The Annotated Constitution of the Australian Commonwealth*, Angus & Robertson, Sydney, 1901, p. 490.
35. *Australian Dictionary of Biography (ADB)*, vol. 9, pp. 176–7; Ross McMullin, *The Light on the Hill*, Oxford University Press, Melbourne, 1991, pp. 3, 98; Queensland Parliament,

[Alphabetical Register of Members of the Legislative Assembly 1860–2000 and of the Legislative Council 1860–1922.](#)

36. *ADB*, vol. 4, p. 304; Gavin Souter, *Acts of Parliament*, Melbourne University Press, Melbourne, 1988, p. 52.
37. *ADB*, vol. 11, p. 324.
38. McMullin, *op cit.*, p. 13.
39. Gavin Souter, *op. cit.*, 1988, p. 162.
40. *ibid.*
41. *ADB*, vol. 12, p. 334.
42. McMullin, *op. cit.*, pp. 150–1.
43. Tom Uren, *Straight Left*, Random House, Sydney, 1994, pp. 192–5.
44. 'Influence forced release: Georges', *Canberra Times*, 29 December 1978.
45. 'Marches leader in doubt', *The Age*, 28 July 1979.
46. *Senate Debates*, 11 November 1986, p. 1940.
47. His election was declared invalid by the High Court on 12 May 1988. Hugo Kelly, 'Wood gets a ticket home after losing Senate seat', *The Age*, 13 May 1988.
48. Keith Scott, 'Robert Wood: a man committed to peace', *Canberra Times*, 12 November 1987.
49. 'Challenge looming for N-party senator', *The Age*, 25 August 1987; Alan Gill, 'Senator-elect has a date in court', *Sydney Morning Herald*, 21 August 1987. In fact Mr Wood attended a court hearing in connection with his appeal against the fine on the very day he was declared the winner of the NSW Senate seat.
50. The case of Keith Wright, mentioned earlier, is an example, as would be that of Michael Cobb (National Party, Parkes), who retired at the 1998 election after being charged in 1997 with fraud and imposing on the Commonwealth. He was convicted after the election, and received a fine and suspended two-year sentence.
51. Mark Russell, *op. cit.*
52. See Bob Bennett, '[Candidates, Members and the Constitution](#)', *Research Paper no. 18*, Department of the Parliamentary Library, Canberra, 2001–02, Senate Standing Committee on Constitutional and Legal Affairs, *The Constitutional Qualifications of members of Parliament*, PP No. 131 / 1981, Ch. 3.
53. Senate Standing Committee, *op. cit.*, p. 17.
54. *ibid.*, p. 16.
55. For a brief discussion, see Gerard Carney, *op. cit.*, p. 39.
56. *Commonwealth Electoral Legislation Amendment Act 1983*, [section 23](#).
57. *Parliament of Queensland Act 2001*, section 64 (2)(e).

58. *Constitutional Convention Debates*, 3 April 1891, p. 656.
59. See Michael Head, 'Counter-terrorism Laws Threaten Fundamental Democratic Rights', *Alternative Law Journal*, vol. 27, no. 3, 2002, pp. 121–26; Nathan Hancock, 'Terrorism and the Law in Australia: Legislation, Commentary and Constraints', *Research Paper no. 12*, Department of the Parliamentary Library, Canberra, 2001–02.
60. *Criminal Code Act 1995*, section 80.1. See Nathan Hancock, [Security Legislation Amendment \(Terrorism\) Bill 2002 \[No. 2\]](#), *Bills Digest no. 126*, Department of the Parliamentary Library, 2001–02, pp. 18–19.
61. In what was the *Crimes Act 1914*, section 24.
62. Peter Edwards, 'Public Enemy Number One-Fifty Years Later', *Wartime*, vol. 8, pp. 50–2.
63. Commonwealth Electoral Act 1918, [section 93](#).
64. *Criminal Code Act 1995*, [section 131.1](#).
65. *Criminal Code Act 1995*, [section 149.1](#).
66. 'Acquittal for senator over march in Qld.', *The Advertiser*, 11 May 1978.
67. *Criminal Code Act 1899* (Qld), section 199.
68. On a separate occasion, Georges was convicted of taking part in an unlawful procession and disobeying an order given by a police officer. The Senate Standing Committee noted that, had he instead been convicted of unlawful assembly, he again would have been disqualified, because the maximum sentence for that particular offence was a year's imprisonment. See Senate Standing Committee, *op. cit.*, p. 21.
69. John Kalokerinos, 'Who May Sit? An Examination of the Parliamentary Disqualification Provisions of the Commonwealth Constitution', *Papers on Parliament*, no. 36, Department of the Senate, Canberra, 2001, pp. 85–116.
70. His vote declined from 51.03% to 43.69% in what was on both occasions a two-man contest. For details see Colin Hughes and B. Graham, *Voting for the Australian House of Representatives 1901–1964*, ANU Press, Canberra, 1974.
71. *ADB*, vol. 10, pp. 97–8.
72. See for example Bob Bennett, *op. cit.*, Senate Standing Committee, *op. cit.*, Ian Holland, ['Candidacy of Local Councillors for Federal Office'](#), *Research Note no. 21*, Department of the Parliamentary Library, Canberra, 2002–03.