

# PART 5: LEGITIMACY OF THE BAN

## FREEDOM, DEMOCRACY, LIBERTY AND THE RULE OF LAW

The principles of **freedom, democracy and the Rule of Law** have long been internationally recognised and codified in law throughout the world as fundamental core pre-requisites for any society. It is universally agreed that without such principles a society will disintegrate from within.

**“The Rule of Law requires that all people, including the head of state and the executive government, are subject to the law, and that independent judges are the arbiters of law. By this means, governments are accountable for their actions.”**

The Ninth Manning Clark Lecture

Presented at the National Library of Australia by Julian Burnside, Canberra, 10 March 2007

Source: <http://www.safecom.org.au/burnside6.htm>

“The term ‘democracy’ has its origins in the Greek language. It combines two shorter words: ‘demos’ meaning whole citizen living within a particular city-state and ‘kratos’ meaning power or rule.

It is generally agreed that **liberal democracies** are based on four main principles:

- **A belief in the individual: since the individual is believed to be both moral and rational;**
- **A belief in reason and progress: based on the belief that growth and development is the natural condition of mankind and politics the art of compromise;**
- **A belief in a society that is consensual: based on a desire for order and co-operation - not disorder and conflict;**
- **A belief in shared power: based on a suspicion of concentrated power (whether by individuals, groups or governments).”**
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Source: Museum of Australian Democracy <http://moadoph.gov.au/democracy/defining-democracy/>

See also other relevant definitions on that page

The historical record of Australia tells us that more than 102,000 Australian servicemen and women have sacrificed their lives, more than 226,000 Australian servicemen and women have been wounded and maimed physically and emotionally, and more than 35,000 Australian servicemen and women have suffered harm as prisoners of war in the causes of ***“freedom, democracy and liberty”***.

Source:

[https://en.wikipedia.org/wiki/Military\\_history\\_of\\_Australia](https://en.wikipedia.org/wiki/Military_history_of_Australia)

<https://www.youtube.com/watch?v=8GryNdlz2Xg>

<https://www.youtube.com/watch?v=v4l3aaL8Je4>

In addition, hundreds of thousands of supporting family members have been orphaned and/or endured a lifetime of unacknowledged pain and suffering as a result of war caused injuries and trauma. Those consequences continue to this day.

eg <http://www.dva.gov.au/sites/default/files/files/consultation%20and%20grants/healthstudies/gulfwar/gulfwarvolone.pdf>  
(pages 14-17)

Justifying Australia's participation in war and "peacekeeping operations", every Monarch, their Prime Ministers and their Governments have proclaimed the purpose of Australia's involvement in war has been in the causes of *"freedom, democracy and liberty"*

The "Dead Man's Penny" is a commemorative medallion which was presented to the next-of-kin of the men and women who died during World War One. The Dead Man's Penny was accompanied by a letter from King George V, stating *"I join with my grateful people in sending you this memorial of a brave life given for others in the Great War"*.

It bears the inscription *"He died for freedom and honour"*.



Prime Minister John Curtin declared in part of his declaration of war with Japan on 8 December 1941:

*"Australia, therefore, being a nation that believes in a way of life which has freedom and liberty as its corner stones goes to the battle stations in defence of the free way of living"*

*".....as I speak to you to-night, the United States; Great Britain and her colonies and dominions, which include the Commonwealth of Australia and the Dominion of New*

*Zealand; the great federation of Russian republics; the Netherlands East Indies and China are associated in the common cause of preserving for free men and free women not only their inheritance, but every hope they have of decency and dignity and liberty."*

Source: [http://john.curtin.edu.au/diary/primeminister/fulltext/fulltext%20prime%20minister\\_1941\\_4.html](http://john.curtin.edu.au/diary/primeminister/fulltext/fulltext%20prime%20minister_1941_4.html)

**On Thursday, 17 November 2011 US President Obama - Addressed the Joint Houses of Australian Parliament**

*"As we grow our economies, we will also remember the link between growth and good governance, the rule of law, transparent institutions and the equal administration of justice, because history shows that, over the long run, democracy and economic growth go hand in hand, and prosperity without freedom is just another form of poverty.*

*This brings me to the final area where we are leading: our support for the fundamental rights of every human being.*

*Every nation will chart its own course, yet it is also true that certain rights are universal—among them, freedom of speech, freedom of the press, freedom of assembly, freedom of religion and the freedom of citizens to choose their own leaders.*

*These are not American rights, Australian rights or Western rights; these are human rights. They stir in every soul, as we have seen in the democracies that have succeeded here in Asia.*

*Other models have been tried and they have failed—fascism and communism, rule by one man and rule by a committee.*

*They failed for the same simple reason: they ignored the ultimate source of power and legitimacy—the will of the people."*

Note: The Council of a local government is a committee".

Source: HOUSE OF REPRESENTATIVES 12851- Extract from Hansard Page 12851

**On 21 September 2016, Prime Minister Malcolm Turnbull, addressing the United Nations General Assembly in his first major policy speech to it, used the term "Rule of Law" no less than four times.**

He said (to the world): *"Where there is peace and the rule of law applies to governors and governed, to large states and small, we have seen remarkable strides in every measure of human progress."*

*"We (Australians) are not defined by race, religion or culture but by shared political values of democracy, the rule of law and equality of opportunity - a "fair go".  
"Australia's experience sheds some light on what the solutions are - strong borders, vigilant security agencies governed by the rule of law, and a steadfast commitment of the shared values of freedom and mutual respect."*

Source: <https://www.pm.gov.au/media/2016-09-22/australias-national-statement-general-debate-71st-session-united-nations-general>

On ANZAC Day, 25 April 2016, Prime Minister Malcolm Turnbull, addressing the Dawn Service at the Australian War Memorial Canberra, ACT, proclaimed:

*"We became a nation that does not glorify war - this day does not commemorate a triumph of arms. It commemorates the triumph of the human spirit, the courage and resolve of those men and women who 100 years ago and ever since and today put their lives on the line to keep us safe, free and defend the interests of Australia and the values of democracy, freedom and the rule of law which we share and for which we stand."*

Source: <https://www.pm.gov.au/media/2016-04-25/anzac-day-national-ceremony-commemorative-address>

In 1987, during his earlier career as a lawyer, Prime Minister Turnbull set a standard for free speech when he personally defended a person's right to freedom of political speech against the UK government's attempt to ban publication of a former MI5 officer's memoirs in Australia

Source: <https://www.theguardian.com/australia-news/2015/sep/14/malcolm-turnbull-spycatcher-lawyer-prime-minister>

In 1991 all 24 judges of the European Court of Human Rights unanimously found the British Government to be in breach of the European Convention on Human Rights when it tried to gag newspapers in the "Spycatcher Affair"

Source: <http://www.mi5.com/security/mi5org/spycatcher.htm>

Federal Member for Canning, Andrew Hastie MHR, whose electorate includes the City of Armadale, said this in February 2016 - since the above ban:

*"Freedom of speech must be non-negotiable. Benjamin Franklin once said that "whoever would overthrow the liberty of a nation must begin by subduing the freeness of speech". Today this freedom is under threat from bullies who would silence those who disagree with them."*

*"This is a future we do not want in Australia."*

Source: "The Sunday Times Perth Now" February 28, 2016  
<http://www.perthnow.com.au/news/opinion/andrew-hastie-why-tender-hearts-are-needed-when-we-discuss-sexuality-and-kids/news-story/2018e5f906c90a5af69e6c23f8061cea>

In her speech to the US Republican Party on 26 January 2017, British Prime Minister Theresa May said:

*"open, liberal, democratic societies will always defeat those that are closed, coercive and cruel."*

*"it is through our actions over many years, working together to defeat evil or to open up the world, that we have been able to fulfill the promise of those who first spoke of the special nature of the relationship between us."*

*The promise of freedom, liberty and the rights of man.*

*"We must never cease," Churchill said, "to proclaim in fearless tones the great principles of freedom and the rights of man which are the joint inheritance of the English-speaking world and which through Magna Carta, the Bill of Rights, the Habeas Corpus, trial by jury, and the English common law, find their most famous expression"*

*in the American Declaration of Independence."*

*So it is my honor and privilege to stand before you today in this great city of Philadelphia to proclaim them again, to join hands as we pick up that mantle of leadership once more, to renew our special relationship and to recommit ourselves to the responsibility of leadership in the modern world."*

In response to a terrorist attack in London on 23 March 2017, British Prime Minister Theresa May said:

*"the values our Parliament represents - democracy, freedom, human rights, the rule of law, command the admiration and respect of free people everywhere. That is why it is a target for those who reject those values."*

In a "Statement on Indulgence" to the House of Representatives on 23 March 2017, Prime Minister Malcolm Turnbull said:

*"As Prime Minister Theresa May said earlier this morning, the values of the British parliament command the admiration and respect of free people everywhere and so they do because they are our values too."*

*We stand, all of us, with the United Kingdom comforted that we share those values—they are ours—freedom of speech, democracy, the rule of law.*

*We will never give in to terror.*

*We will never stop fighting for our hard-won freedoms and standing resolutely side by side with free nations that fight for freedom too by our side."*

In an interview with the ABC's 7.30 Report programme on April 16, 2017, Prime Minister Malcolm Turnbull declared:

*"Let's be clear – we don't define ourselves, like many other countries do, by race or religion or ethnicity. We are defined by a commitment to a common set of political values.*

*They are, as you had me saying on the introduction – freedom, equality of men and women, mutual respect, the rule of law, democracy, a fair go.*

*That's our Australian values".*

*"We're proud of them. We're committed to them. We should celebrate them and we should put them at the core of becoming an Australian citizen."*

source:

<https://www.businessinsider.com.au/turnbulls-values-freedom-equality-of-men-and-women-mutual-respect-the-rule-of-law-democracy-a-fair-go-2017-4>

On 17 June 2017, Prime Minister Turnbull declared to the House of Representatives:

*"As I have often said, and as we reflected today in the debate on national security, Australia is the most successful multicultural society in the world. There is no more-honoured title in our democracy than that of 'Australian citizen'. Australian citizenship should be respected, honoured and valued, and it should be offered to those who respect our laws and institutions and share our values.*

*We are a remarkable country. Unlike many others, we define our national identity by reference to shared values, not by reference to ethnicity, religion or race.*

*They are shared political values: democracy, the rule of law, freedom, equality between men and women and mutual respect.*

*These are fundamental political values that are available to all.*

*That is the key element in the success of our democracy.*

*We are a beacon of harmony around the world, in the midst of our own diversity. We must not take this for granted".*

source:

[http://parlinfo.aph.gov.au/parlInfo/genpdf/chamber/hansard/c717422a-3a6f-4b9a-afbc-673e74b06cf2/0072/hansard\\_frag.pdf;fileType=application%2Fpdf](http://parlinfo.aph.gov.au/parlInfo/genpdf/chamber/hansard/c717422a-3a6f-4b9a-afbc-673e74b06cf2/0072/hansard_frag.pdf;fileType=application%2Fpdf)

The Western Australia Surveillance Devices Act 1998 defines “*the public interest*” in the following terms at Section 24:

*“public interest includes the interests of national security, public safety, the economic well-being of Australia, the protection of public health and morals and the protection of the rights and freedoms of citizens.”*

In relation to the High Court’s condition - “*unless the law is reasonably appropriate and adapted to serve a legitimate end in a manner compatible with the maintenance of the constitutionally prescribed system of government in Australia*” – the burden of proof is upon the City to show I have done something *incompatible with the maintenance of the constitutionally prescribed system of government in Australia*”.

The City of Armadale, by imposing this ban, clearly considers expending Council, Committee or officer time responding to questions as “*incompatible with the maintenance of the constitutionally prescribed system of government*” - an interpretation endorsed by the Department of Local Government and Communities, who has examined and reviewed all the evidence you read in this report.

The City’s position is in direct contrast to the requirement of its own *City of Armadale Local Law Standing Orders 2000* that questions requiring prior research be submitted in writing in advance !!

Obviously “research” incurs time and effort” - i.e. the City's Policies and Standing Orders *demand* “expending officer time”.

Yet another conundrum.

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*"...accountability can only be exacted where those whose responsibility it is to call government to account are themselves possessed of, or are able to obtain, the information necessary to make considered judgements. Information is the key to accountability."*

Source: [Western Australia. Royal Commission into Commercial Activities of Government 24 and Other Matters. Report. Perth, 1992. Part II. para 2.4.2](#)

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This report outlines what 220 years' of fighting for freedom and democracy have produced for the people of Western Australia in relation to their political right to question the motives and performance of their local governments - a right set down in international and Australian law.

It is worth considering that those local government Councillors, CEO's and Executive Officers born in foreign countries and who rule us - particularly those who bear permanent residence status or dual nationality/citizenship - inevitably bring with them the values and standards of the land of their birth and the influences of their upbringing. Consequently it is reasonable to assume it is unlikely they would possess longstanding endemic natural egalitarian Australian national values such as equality, democracy, freedom, a fair go, and the rule of law.

On 17 June 2017, Prime Minister Turnbull declared to the House of Representatives:  
*"those who seek to be Australian citizens should clearly demonstrate that they share our values and are integrating in our community.  
Australian citizenship should not be the end-product of a political administrative process that does not seek to establish that a person who wants to be part of the Australian political family, one of our citizens, a citizen in our nation, shares our values".*

source:  
[http://parlinfo.aph.gov.au/parlInfo/genpdf/chamber/hansard/c717422a-3a6f-4b9a-afbc-673e74b06cf2/0072/hansard\\_fraq.pdf:fileType=application%2Fpdf](http://parlinfo.aph.gov.au/parlInfo/genpdf/chamber/hansard/c717422a-3a6f-4b9a-afbc-673e74b06cf2/0072/hansard_fraq.pdf:fileType=application%2Fpdf)

On the other hand there are many in the local government industry who have served in the Australian Military and, by that oath of service, should vigorously manifest their Australian heritage and the values they fought for - but remain active participants in the destruction of democratic government.

In contrast, the *Ambassador for Peace Medal* is being presented by the Korean Government for all UN Korean War Veterans to acknowledge and commemorate their service.

<https://www.rslwa.org.au/Assets/2016/Media-Alert--Korean-Peace-Medal.pdf>  
<https://thewest.com.au/news/south-western-times/sw-veteran-bestowed-with-s-korean-peace-medal-nq-b88465653z>

More than 17,000 Australians served during the 1950-1953 Korean War.

340 were killed, more than 1200 wounded and 29 were prisoners of war.

The official Peace Medal citation reads in part:

***"It is a great honor and pleasure to express the everlasting gratitude of the Republic of Korea and our people for the service you and your countrymen have performed in restoring and preserving our freedom and democracy"***

Their *freedom* may well have been restored - but ours is being progressively taken away.

Their *democracy* may well have been restored - but ours is being replaced with autocratic executive government.

\* \* \* \* \*

Then there are others who have served their respective countries in the same cause – i.e. "freedom and democracy".

The primary sponsor of this ban is City of Armadale Mayor Henry Zelones AOM JP, who served in the US Air Force.

source: <https://au.linkedin.com/in/henry-zelones-oam-jp-9ba84a21>

The *Oath of Allegiance* for that service is as follows:

***"Enlistment Oath.— Each person enlisting in an armed force shall take the following oath:"***

***"I, (state name of enlistee), do solemnly swear (or affirm) that I will support and defend the Constitution of the United States against all enemies, foreign and domestic; that I will bear true faith and allegiance to the same; and that I will obey the orders of the President of the United States and the orders of the officers appointed over me, according to regulations and the Uniform Code of Military Justice. So help me God."***

The pledge: ***"I will support and defend the Constitution of the United States"*** and ***" I will bear true faith and allegiance to the same"*** has direct relevance to that document, which is set out hereunder:

The US Constitution states:

***"Amendment I - "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances."***

***Note: Mayor Zelones is currently listed as the Secretary of the Kelmscott-Roleystone Branch of the Returned and Services League of Australia WA Branch Inc. – an organisation whose office bearers must be former or current service men or women and committed to the values of the RSL.***

Source: <http://rslwahq.org.au/Contact-RSLWA/RSL-Branch-Detail.aspx?bid=7e68ab99-3c5b-42ef-aa54-0558c97a5a67>

***Note: If it is the case that Mayor Zelones did not renounce his US Citizenship when migrating to Australia, then, as a US Citizen, Mayor Zelones would still be bound by that oath of allegiance and the principles it espouses.***

***An oath is an oath.***

***As it happens, in May 2017 the Trump Administration in the USA announced it would vigorously pursue extradition of Australia National Julian Assange from the UK to the USA on the grounds he is not a US citizen – and is therefore not protected by the First Amendment of the USA Constitution as set out above.***

***It follows then that if a person IS a USA Citizen then the First Amendment does apply – regardless of that person's location anywhere in the world.***

***In this case that right to freedom of speech is further protected by the Australian Constitution and High Court determinations.***

It is therefore surprising the sacrifices made by Australians in the cause of "freedom, democracy, liberty and the Rule of Law", have been largely lost to history by the local government industry. Despite sponsoring Anzac Day ceremonies each year, making speeches and laying wreaths, the flame of freedom is quickly extinguished by real world local government governance policies, practices, decisions and conditions, abuse of discretionary power, coercion and bullying.

It is ironic that places and buildings of dubious heritage value receive more attention and protection than the civil and political rights of the citizens who own them.

The evidence clearly shows the local government system in Western Australia as designed by the WA Parliament suppresses rights to freedom under the Rule of Law because the political and legal framework established and maintained by Parliament has given local government an autonomy which it exploits.

Since 1995, when the WA Local Government Act was created, there have been well over 100 amendments passed by the Parliament of Western Australia - but not even one has been effected to increase or change public accountability mechanisms, rights of access, communication or interface to Electors and the public.

In recent years, the Council of the City of Armadale Local Government has been reminded several times through minuted public questions of the huge personal risks and sacrifices currently being made by oppressed citizens of foreign lands in diverse places of the world in their pursuit of democratic representation and freedom of expression, but this evidence has been met with disinterest by our esteemed Councillors, who refuse to shift from the repressive status-quo as set down in City of Armadale Local Law Standing Orders 2000, City of Armadale Management Policies and discretionary decisions.

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"There is but one law for all, namely, that law which governs all law, the law of our Creator, the law of humanity, justice, equity — the law of nature, and of nations."

"To execute laws is a royal office; to execute orders is not to be a king.

However, a political executive magistracy, though merely such, is a great trust."

Edmund Burke (1729 – 1797)

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## **The Commonwealth of Australia Constitution Act prescribes at Section 109:**

### **"109 Inconsistency of laws**

**When a law of a State is inconsistent with a law of the Commonwealth, the latter shall prevail, and the former shall, to the extent of the inconsistency, be invalid."**

**The Western Australia Local Government Act 1995 prescribes:**

### **3.7. Inconsistency with written laws**

**A local law made under this Act is inoperative to the extent that it is inconsistent with this Act or any other written law.**

**The Western Australia Crown Suits Act 1947 prescribes:**

### **3. Interpretation of "Crown"**

**In this Act, the term Crown means the Crown in right of the Government of Western Australia.**

### **7. Statutory rights preserved where already given**

**Nothing in this Act shall affect —**

- (a) the rights or liabilities of any corporate body or instrumentality of the Crown created by any Act of Parliament;
- (b) any right of action which is conferred on the subject by any Act of Parliament against any corporate body or instrumentality of the Crown or any official or person nominated as a defendant on behalf of the Crown;

The Parliament of Western Australia has published its guide - ["How to read legislation, a beginner's guide"](#)

This useful document, which every citizen should study, says at Page 3:

"Subsidiary legislation is made 'under' an Act because it is only an Act that can give a person power to make subsidiary legislation. Acts that say someone can make subsidiary legislation say who can make it and say what things the subsidiary legislation can deal with.

**A person making subsidiary legislation must not exceed the powers they have to make it. If they do, the subsidiary legislation will not be valid.**

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The Governor usually cannot make subsidiary legislation without being advised to do so by the Executive Council, which is established by the Letters Patent Relating to the Office of Governor of the State of Western Australia dated 14 Feb 1986 (Government Gazette 28 Feb 1986 p 683-6). Conventionally, the members of the Executive Council are the ministers of the government of the day.

A reasonable interpretation would be that the Minister for Local Government has authorised the local law which empowers a local government or a local government official to impose bans as described.

See also [Part 17: Standing Orders](#) on this website

However the [second reading speech to the Legislative Council of the Parliament of Western Australia](#) , which introduced the relevant Bill to create the Local Government Act 1995, explained that the INTENT of the new legislation was to:

"The intent of the Bill is:

More efficient and effective local government;

- greater accountability of local governments to their communities;
- better decision making by local governments;
- and **greater community participation in the decisions and affairs of local governments.**

The Bill provides for a system of local government in Western Australia by providing for the constitution of elected local governments in this State;

- describing the functions of local governments;
- providing for the conduct of elections and other polls;
- providing a framework for the administration and financial management of local governments and for the scrutiny of their affairs.

This new legislation will take local government in Western Australia into a new era as the current prescriptive legislation gives way to legislation which will provide a broad framework for the operations of local governments.

This will bring about significant benefits for the efficiency and effectiveness of local governments and will improve management structures.

However, there will be many checks and balances.

**In particular, the public will be given much more information about the operation of their local government and have many opportunities to participate in and influence the decision making process.**

The Government will also have power to ensure that local governments operate appropriately in all key areas."

With the benefit of hindsight, all of the above assertions have failed to materialise. The proposed "new era" has not displaced the "status-quo".

Anyone familiar with local governments will know that the statement: *"The Government will also have power to ensure that local governments operate appropriately in all key areas."* has not been fulfilled – i.e. the government (the Minister) **DOES NOT** have power *"to ensure that local governments operate appropriately in all key areas."*

(the much publicised 2017 City of Perth saga illustrates this point).

Having regard to all of the above references to International Law and Commonwealth Law and Western Australia Law, it follows the Western Australia Local Government Act 1995, Western Australia Local Government Administration Regulations 1996 and City of Armadale Local Law Standing Orders 2000 are invalid insofar as the claimed lawful authority to impose this ban.

Therefore, on a number of counts, the ban is unlawful.

Therefore, on a number of counts, those who imposed the ban have acted unlawfully.