A WEEKLY COMMENTARY

ON TARGET

- NEWS HIGHLIGHTS
- BACKGROUND INFORMATION
- COMMONWEALTH AFFAIRS

The price of Freedom is eternal vigilance —

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THOUGHT FOR THE WEEK: "Nothing so upsets some people as an exposure of the pedigree of the ideas they hold." - Lord Acton

THE VICTORIAN ELECTIONS AND POLITICAL REALITIES by Eric D. Butler:

Contrary to what some superficial observers have said, what the Victorian elections demonstrated was the old political truism that generally speaking, governments are voted OUT, very rarely voted IN because of what are perceived to be better policies. John Hyde of the Institute of Public Affairs makes the comment that "industrial relations was made the central campaign issue". The enraged Victorian electors who swept Labor from office gave little thought to what Mr. Jeff Kennett was saying. Mr. Kennett shrewdly avoided spelling out any specific policy promises for debate. He concentrated upon stressing what a series of disasters the Cain and Kirner Governments had inflicted upon Victorian people. No one could attempt to defend the Kirner Government, but the basic cause of the disastrous state of the Victorian economy were the policies imposed from Canberra, one of the most devastating being the scaling down of protection for Australian industries. A close survey of election results reveals that by concentrating on the protection issue, Joan Kirner actually managed to hold much of the traditional Labor vote in industrial areas. The massive losses were in Melbourne's Eastern Suburbs, among the middle classes.

The writer has never witnessed over the past 50 years such a build up of sullen hatred of a government. Large numbers of electors were primarily concerned with one simple approach: "Let us hit back at a government which has hurt us so badly." But having vented their pent-up hatred, electors will before long be looking for alleviation of their pain. But if they carefully study what Premier Kennett has been saying they will find little evidence that he has any concrete policies to start alleviating pain. Typical of the generalities in which he talked during the election campaign was the following. He said he was working to see "a risk appetite develop, see an attitude emerge where people want to work rather than clock-gaze; a change in the laws and the rules, so as to prevent the parliaments of this

country determining peoples' lives and to allow them to control their own destiny".

Mr. Kennett correctly outlined the enormity of the debt burden in Victoria, but his only suggested solution has been to sell off more of the State's assets. This is, of course, no genuine solution at all. It can be predicted with complete certainty that the Kennett Government can do little about debt and taxation unless it is prepared to challenge centralised financial dictation from Canberra. Unemployment must continue at its present high level while the programme of removing protection for Victorian industries continues. Should Premier Kennett and his colleagues start to attack this programme, they will be in direct conflict with Dr. John Hewson. This would delight Prime Minister Keating who has, as the writer has predicted, skilfully started to create the impression that he is not going to abolish all protection in the same way that Dr. Hewson proposes. Keating and his strategists are, so far from being dismayed by the anti-Labor electoral backlash in Victoria, quietly welcoming it. It will be recalled that the Hawke Labor Government was nearly defeated at the last Federal elections by the massive swing to the Liberal Party. At the very best, the Liberals can only expect to win perhaps another two Victorian electorates at the next Federal elections, this of itself not sufficient to win government. But as the certain turn of the recent electoral tide against Labor recedes, and it becomes clearer that the Kennett Government is not improving the overall situation, the prospects for the Federal Liberals weaken. Should there be some short term improvement, Prime Minister Keating will hail this as evidence that his strategy is working.

There has been some dismay about the decline of the potential Independent vote at the Victorian elections. Because of the major factor already mentioned, the determination by the electors to punish as severely as possible, Independents were not seriously considered. Those who were enthusiastic about the prospects of a massive Independent vote completely misread what had happened in the Wills by-election. Wills electors felt betrayed by a number of factors, one being what was regarded as the rather shabby behaviour of former Prime Minister Hawke. But most important was the savaging of local industries by the cut in tariff protection. And it became clear that there was no real difference between Keating and Hewson. The high profile and local sporting figure Phil Cleary was provided with an opportunity to step in and act as a focal point of the wide discontent in the electorate. The situation for Independents at the coming Federal elections will be different, but the writer's view is that the only Independents with any realistic prospects of being elected will be those with a high profile in their electorates who have done an enormous amount of grassroots campaigning. Independent Ted Mack has demonstrated what has to be done.

Those who believe there will be a new era in Victoria under Jeff Kennett should note that one of his first major proposals is a change in the Victorian Constitution abolishing by-elections should a vacancy

occur for any reason. Instead of electors having the right to select a new Member, this would be done by the Parties. It appears that Premier Kennett fears that his programme is going to be unpalatable and that electors would use a by-election to censure it.

Turbulent days are ahead.

HIGH COURT DEBATE INTENSIFIES by David Thompson:

Press reports of an address by High Court judge, Justice John Toohey in Darwin last week, indicate a significant new initiative by some judges of the High Court. Justice Toohey has apparently argued that if it can be successfully argued that the legislative powers of Parliament are limited by "fundamental common law liberties", then the High Court could develop its own "Bill of Rights".

This ominous suggestion has enraged the Minister for Justice, Senator Tate, who suggests that the High Court is attempting to usurp the role of Parliament in some matters. Any proposal that an unelected body of jurists, like the High Court, should independently develop a Bill of Rights for the Australian people should be vigorously opposed. Senator Tate seems to reject strongly the High Court's implication that the right to free speech, although not found in the Constitution, is implied within undefined common-law rights. The truth is that it is not up to the Parliament or the High Court to give Australians "rights".

WHAT IS "LAW"? In the ancient British tradition, which we largely inherit, "the law" is not something to be chopped and changed at the whim of Parliament. "The law" derives from the accepted customs and attitudes of the people themselves, which, in turn, derive from what the people believe. A Christian people gradually adopt Christian habits and customs, and the Crown, according to the ancient oaths of all monarchs as they are crowned, is obliged to govern us according to our laws and customs. That is, laws and customs are not the prerogative of government or courts, but are an expression of what the people believe.

This is the reason that Australia's formal "law" - the Constitution - was not handed down to us by jurists, politicians or even kings. Australians approved the Constitution by referendum, and have the right to approve any change in the same way! The High Court does have the power to over-rule the Parliament on Constitutional matters. If politicians hate this, then their recourse is to go to the people with a suggested Constitutional change. If such a change would reflect changed community customs and attitudes, presumably the people would sanction Parliament's Constitutional change.

ROLE OF THE STATES: It should always be remembered that, as Dr. David Mitchell pointed out in his excellent Seminar address, the Commonwealth Government is the creature of the States. It should also be remembered that the States have their own British legal heritage, and it is probably true to claim that all States inherit the British Constitutional statutes. For example, in Victoria the Imperial Acts Application Act explicitly counts the British 1688 Bill of Rights as

one of Victoria's statutes. Victorians certainly do not need a High Court to develop another Bill of Rights!

AN "ACTIVITIST" HIGH COURT: It is now almost ridiculous to argue that the High Court does not take some 'political' or 'activist' role. All appointments to the Court come from the Cabinet, and some judges were clearly chosen ideologically. Justice Lionel Murphy was a prime example.

It is also impossible to argue that the High Court has not changed the intent of the Constitution. The 1983 Franklin River Dam case was a dramatic shift in traditional interpretation of Section 51's (external affairs) provision. (Justice Murphy's vote made the difference.) The background and views of the judges should be closely scrutinised. It will be found, for example, that Justice McHugh, appointed by Hawke, is a 'liberal' and a 'progressive'. He is the husband of Jeannette McHugh, a prominent A.L.P. left-wing Minister in the Federal Cabinet. Justice Brennan and Justice Deane could also be described as 'progressives', while Justice Dawson is most conservative. The long-term record shows that in decisions which affect the rights of States, the interests of the commonwealth usually prevail; such is the composition of the Court. If a "do-gooder" High Court is now attempting to guarantee rights and liberties not enshrined in the Constitution or the common law, it is usurping its role, which is to interpret the Constitution. Our rights and freedoms are of ancient character, and so much taken for granted, that they were never defined even in common law.

Perhaps one useful suggestion concerning the High Court is that the States should have some sanctions in its operation. For example, rather than the Cabinet choosing the judges, perhaps the States should be somehow consulted. The States may even insist that each State be represented on the Court, and perhaps even that the States should select High Court judges. Whatever mechanism is used, the over-riding principle should be that which is reflected in the Constitution itself: that power should be divided, and the powers of the Commonwealth strictly limited. But the proposal that the High Court interpret the Constitution in the light of what it believes are contemporary community attitudes, or even "international standards", should be firmly rejected.

BASIC FUND OFF TO GOOD START: A small number of contributors have got the 1992-93 Basic Fund off to a good start. With the small surplus from the previous year's Basic Fund, the total now stands at $3,453. But this rate of support must be greatly expanded. All donations to Box 1052J, G.P.O., Melbourne, 3001.

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