

LETTER TO THE EDITOR

Dear Sir,

I have read with interest and instruction the June issue of the *Sydney Law Review*. It would surely have been quite extraordinary for the High Court to decide in the *Australian Capital Television Case* that Parliament might abolish freedom of speech. How might representative and responsible government proceed if neither the parties, the policies, the candidates nor the issues might be discussed at and between elections? Whether such a ban was total or partial is merely a question of degree.

To say you might discuss such questions only at the dinner table or shout them from the rooftops but not over radio, television or in the newspapers is to forbid their discussion. To say no election issue, nor candidate might be mentioned over radio or television is substantially to forbid their discussion for these days radio and television are the main sources of information and debate and every voter and every candidate is entitled to have his say there.

Part IIID of the Broadcasting Act did substantially forbid the discussion of electoral matter during Federal, State and Territory elections. The effect of the legislation is set out at pp 294-5 of the June issue.

It is incontrovertible that the Constitution provides representative and responsible government for the Commonwealth. Freedom of speech is the postulate of that form of government. Its functioning demands that electors may at and between elections discuss without restriction as to subject matter between themselves and with their representatives any question of fact or law that may arise in the Parliament. And, of course, freedom of speech demands the absence of any arbitrary power that may prevent its exercise. It therefore assumes the citizens' entitlement to those human rights enjoyed in societies whose political structures take the form of representative and responsible government. It follows that in mandating that form of government those rights are also constitutionally guaranteed.

To find these normal human rights to be constitutionally protected is but to spell out the content of the political structures that the constitution in terms requires. A judiciary which performs this task is neither importing American notions into the constitution, nor being "impatient" nor are there valid "epistemological, democratic, ideological and positivist" arguments against the High Court's reasoning in the *Nationwide News* and *Australian Capital Television* cases let alone "false allegiances" and so forth as Mr. Fraser apparently believes.

The Court has to date I suggest, merely educed some of the more obvious postulates of Parts I, II and III of Chapter I and of Chapter II of the Constitution. And it has done so in harmony with the rules of Constitutional interpretation that have been long accepted.

Yours sincerely,
M.H. Byers Q.C.