

23 MAY 2011

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**AMENDED PETITION: PARLIAMENTARY ELECTORATES  
AND ELECTIONS ACT 1912**

(Petition under the *Parliamentary Electorates and Elections Act 1912*)

*By leave of court 20<sup>th</sup> May of Justice Grove*

**COURT DETAILS**

Court	Supreme Court of New South Wales Sitting as the Court of Disputed Returns
Division	Common Law
Registry	Sydney
Case number	2011 /

**TITLE OF PROCEEDINGS**

Petitioner	<b>Pauline Lee Hanson</b>
First Respondent	<b>Sarah Johnston also known as Sarah Mitchell</b>
Second Respondent	<b>Jeremy Buckingham</b>

**FILING DETAILS**

Filed for	<b>Pauline Lee Hanson, Petitioner</b>
Legal representative	David Leamey
Legal representative reference	DL:11/0335
Contact name and telephone	(02) 9281 1160
Contact email	<a href="mailto:David@Leamey.com">David@Leamey.com</a>

**STATEMENT**

This Petition concerns the election for the New South Wales Legislative Council held on 26th March 2011 pursuant to the Writ of Election for the Legislative Council issued on the 5th March 2011. It is brought pursuant to the *Parliamentary Electorates and Elections Act 1912* ("the Act"). The election was for the New South Wales Legislative Council and related to the whole of New South Wales and no specific Electoral District. The Petitioner also seeks to rely upon the Common Law of Parliamentary Elections.

**Return of Writ**

The Writ of Election for the Legislative Council was returned on 13th April 2011.

**Entitlement to file this petition**

The petitioner is entitled to file this petition because she was a candidate and contested the election for the New South Wales Legislative Council held on 26th March 2011. She was not returned as elected and has a grievance with the ballot sorting,

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classification and counting process which resulted in valid votes cast for her not being included in the ballot tally.

## PETITION

### To the Court of Disputed Returns:-

#### Statement of facts

1. The Petitioner disputes the validity of the election of the First Respondent and the Second Respondent and relies on the facts as set out in the following paragraphs to invalidate that election.
2. The Petitioner is an individual and an Australian Citizen.
3. The Petitioner was a candidate and contested the election for the New South Wales Legislative Council held on 26th March 2011.
4. The First Respondent since the election has married and changed her name to Sarah Mitchell.
5. An election for members of the Legislative Council of New South Wales was held on 26th March 2011 pursuant to the said writ.
6. The Petitioner's name was in 'Group J' on the ballot paper.
7. The writ was for the election of 21 members of the Legislative Council.
8. There were 4,635,810 electors enrolled in NSW at the time of the election.
9. 4,306,285 persons voted at the election for the Legislative Council.
10. There was two ways electors could cast their vote on the Legislative Council ballot paper, either by voting above or below the line. The line divides the ballot paper into a top section of groups, and a bottom section of the candidates within those groups, which includes an additional column for ungrouped candidates.
11. The initial scrutiny of Legislative Council ballot papers is done in the polling places on election night, where the ballot papers are sorted to ascertain the number of above-the-line votes for each group. Blank ballot papers are isolated and counted and all other ballot papers reported in the Other category.
12. The Legislative Council ballot papers are finally counted at the NSW Electoral Commission's Central Count Centre at Riverwood, NSW.
13. The ballot papers arrive at the Central Count Centre at Riverwood having been sorted within each polling place by those marked above the line; those marked below the line; those that are blank and those in the other category.
14. Unissued ballot papers are also accounted for.

15. According to the 'Final Count- First Preferences by Group and Candidate' results published by the NSW Electoral Commission, there were a total of 230,261 informal votes which included blank ballot papers cast as votes. There being a total of 4,306,285 votes cast. The Petitioner receiving 20,004 votes in her own name and a further 77,926 votes for Group J.
16. There are unexplained discrepancies in relation to the number of 'blank votes' between the final result and an earlier progress result published by the NSW Electoral Commission as being the 'Statewide Summary Progressive First Preference Group Vote' wherein there was 155,207 'blank votes' and 188,032 Other (including informal) making a total of 343,239 informal votes (as contrasted with 230,261 informal votes in the final result including the blank votes) and there was a total of 4,292,224 votes cast (presumably including postal votes & overseas posts).
17. Certain persons being electors entitled to vote in the election cast valid votes for the Petitioner and those votes were not included in the tally count of valid votes for the Petitioner and the failure to include those votes has affected or may have affected the result of the election.
18. The Petitioner became aware during the sorting and processing of ballot papers that there were instances of valid votes for her which had been incorrectly sorted into the 'blank pile' (that is blank ballot papers cast as votes by electors) before the votes were counted and not being included in the tally.
19. At approximately 2pm on Sunday 3<sup>rd</sup> April 2011 a scrutineer was positioned at table 17 observing the checking of blank ballot papers from the East Hills Division, Padstow Public School Polling Booth. During a check of what purported to be a bundle of fifty blank ballot papers, ~~more than~~ 30% of the bundle (15) was found to contain valid votes for "Group J". The matter was reported by a the table worker ~~named William, an agent~~ to a supervisor. An agent for the Electoral Commission, William, at the supervisor's post told the scrutineer that he had the 15 ballot papers and that he would prepare and lodge a report on the issue .
20. This matter was also reported to the NSW Electoral Commissioner on behalf of the Petitioner. The NSW Electoral Commission did not deny the allegation.
21. The Petitioner later became aware from a different source that the NSW Electoral Commission knew about the incorrect sorting of valid votes for her

(Group J) into the 'blank pile' and that it was thought that at least 1,200 votes could be involved.

22. On 13 April 2011 the Petitioner received a copy of an internal NSW Electoral Commission email that is attributed to an officer of the NSW Electoral Commission communicating with a second officer to the effect:

"Thank you for your enquiry regarding advice on media enquires relating to today's pushing of the button for the Upper House preferences. Just stonewall them as much as possible when it comes to Hanson and her issues with the count. Do not mention that there is any possible provision for a recount. We know some of her people and the media are looking at the blank ballots and are trying to get them all rechecked because one of her scrutineers was meant to of found some of her votes in amongst the blanks (I have heard through the chain that there could be as many as 1200 across the state that are in with the blanks as there were a few dodgy electoral staff on, but don't offer that)."

23. The Petitioner believes that the email is authentic. She is aware that at least 1,200 valid formal primary votes for her were incorrectly sorted into the blank pile and/or the other pile thus reducing her total formal primary vote.

23a At least 1,200 valid primary votes for Group J and/or the petitioner have not been correctly classified and counted and included in the total formal primary vote for Group J and/or the petitioner .

24. In relation to the said incorrectly sorted valid formal primary votes, those formal ballot papers were determined to be informal ballot papers contrary to the provisions of sections 129F and s.129B of the Act.

25. The proportional representation voting system is used to count the votes, which aims to allocate seats in the Legislative Council in proportion to the votes cast, once a certain quota has been reached. The process includes random sampling with votes being redistributed such that a small variance in the number of primary votes would have a magnified effect on the overall outcome after the distribution of preferences.

26. In the circumstances, the failure to properly count the formal primary vote for the Petitioner would have had an effect on the distribution of preferences such that the result of the election has been affected or may have been affected.

27. The Petitioner does not dispute the election of the first 19 candidates returned.

28. The NSW Electoral Commissioner, the Returning Officer for the Legislative Council election, on the 13th April 2011 declared the result of the counting for

the said election and declared that Jeremy Buckingham was elected to the 20th seat and Sarah Johnston elected to the 21st and final seat.

29. The said Returning Officer did by endorsement on the said writ certify Jeremy Buckingham and Sarah Johnston as two of the duly elected members to serve in the Legislative Council for New South Wales and returned the writ on 13th April 2011 so endorsed to Her Excellency the Governor.
30. The Petitioner received more primary votes than Jeremy Buckingham and Sarah Johnston.
31. The Petitioner received 2.41% of the state-wide votes.
32. The Petitioner was unsuccessful in the election after the distribution of preferences was announced by the NSW Electoral Commissioner on the 13th April 2011.
33. After the 17th count of votes when allocating preferences, Niall Blair was distributed as a successful candidate for the seventeenth seat leaving four seats to be distributed.
34. As at the 18th count of votes during the allocation of preferences Jeremy Buckingham had 80,171 votes, Sarah Johnston had 87,385 votes and the Petitioner had 98,393 votes.
35. Following the 308th count, the candidates Jeremy Buckingham, Sarah Johnston, Robert Green and Paul Green were returned as elected after the Petitioner was excluded after the allocation of preferences based on the then primary vote count, which excluded the valid votes that the Petitioner asserts had been incorrectly sorted or incorrectly classified.
36. After the final allocation of preferences Jeremy Buckingham had 105,472 votes and Sarah Johnston 104,341 and the Petitioner 103,035.
37. The Petitioner asserts that if the formal primary votes as cast were properly sorted and counted then she would have been elected to the New South Wales Legislative Council.