



Sovereign Union of First Nations and Peoples in Australia
Asserting Australia's First Nations Sovereignty into Governance
www.sovereignunion.mobi

14 November 2013

NB. NOTIFICATION to 100 EMBASSIES in CANBERRA

Your Excellency,

Re: URGENT ALERT

Australia about to wind back its commitment to CERD Convention

The purpose of this correspondence is to alert you to the winding back of the powers of the *Racial Discrimination Act 1975* by the newly elected Tony Abbott conservative government. It is reported far and wide¹ that the first legislation Senator George Brandis, Federal Attorney-General, is planning to introduce to the 44th parliament is to repeal Section 18C of the *Racial Discrimination Act 1975*. Section 18C creates a punishable offence so that an Australian Court can deal with offensive behaviour because of race, colour or national or ethnic origin.

RACIAL DISCRIMINATION ACT 1975 - SECT 18C

Offensive behaviour because of race, colour or national or ethnic origin

- (1) It is unlawful for a [person](#) to do an act, otherwise than in private, if:
- (a) the act is reasonably likely, in all the circumstances, to offend, insult, humiliate or intimidate another [person](#) or a group of people; and
 - (b) the act is done because of the race, colour or national or ethnic origin of the other [person](#) or of some or all of the people in the group.

Note: Subsection (1) makes certain acts unlawful. Section 46P of the *Australian Human Rights Commission Act 1986* allows people to make complaints to the Australian Human Rights [Commission](#) about unlawful acts. However, an unlawful act is not necessarily a criminal offence. Section 26 says that this Act does not make it an offence to do an act that is unlawful because of this Part, unless Part IV expressly says that the act is an offence.

- (2) For the purposes of subsection (1), an act is taken not to be done in private if it:
- (a) causes words, sounds, images or writing to be communicated to the public; or
 - (b) is done in a [public place](#); or
 - (c) is done in the sight or hearing of people who are in a [public place](#).
- (3) In this section: "*public place*" includes any place to which the public have access as of right or by invitation, whether express or implied and whether or not a charge is made for admission to the place.

Australia is a country that hides its racism and the subtleties of Australian racism have always been couched in a manner that is represented by a joke, or the Australian colloquial term 'taking the micky' out of someone or a group, that belongs a racial or ethnic minority. These jokes are always designed to offend, insult or humiliate people or persons of a group. In Australia this has always been described as being acceptable, because it is argued that it is part of the Australian

¹ Chris Merritt, *The Australian*, 'A-Gs first task: repeal 'Bolt laws' in name of free speech', 8 November 2013.

ockerism. Radio broadcasters and commentators on talk-back radio defend themselves by arguing that it is 'freedom of speech' and that any attempt to curb such vilification on radio talk-back programmes is viewed by the Australian media as a restriction on the freedom of the press.

As the Convenor of the Sovereign Union, I need to draw your attention to what was said during the introduction of the Natal Act in 1901, which was used as the basis for Australia's introduced first *Immigration Restriction Act 1901*. It is worth noting that the first Federal government cut and pasted word for word from the Natal Act and just replaced 'South Africa' with 'Australia'. The design of Australia's Constitution had the backdrop of a racist colonial frontier, where the first Federal Attorney-General, Mr. Alfred Deakin MP, who in later years became Prime Minister, said on 7 August 1901 during the House of Representatives' debate on Australia's new immigration law:

[P4817] Members on both sides of the House, and all sections of all parties – those in office and those out of office – with the people behind them, are all united in the unalterable resolve that the Commonwealth of Australia shall henceforth mean a "white Australia," and that from now henceforward, all alien elements within it shall be diminished. We are united in the resolve that this Commonwealth shall be established on the firm foundation of unity of race, so as to enable it to fulfil the promise of its founders, and enjoy to the fullest extent the charter of liberty under the Crown which we now cherish.²

In the same debate the first Australian Prime Minister, Edmund Barton MP, quoted Professor Pearson at length:

The fear of Chinese immigration which the Australian democracy cherishes ... is, in fact, the instinct of self-preservation, quickened by experience ... We are guarding the last part of the world in which the higher races can live and increase freely, for the higher civilisation ... The day will come ... when the European observers will look around the globe girdled with a continuous zone of the yellow and black races. It is idle to say that if all this should come to pass our pride and place will not be humiliated. We are struggling among ourselves for supremacy in a world which we thought of as destined to belong to the Aryan race; and to the Christian faith; to the letters and arts and charms which we have inherited from the best of times.³

The language of newly elected politicians like Senator George Brandis and the Prime Minister Tony Abbott on the current immigration debate can be traced back to these foundation political ideologies. This is exacerbated by knowing that Australia's most famous conservative Prime Minister, Sir Robert Menzies, expressed his admiration of Hitler after traveling to Germany on a fact-finding tour in 1938. On his return to Australia, Menzies was in support of David Lloyd George MP in England, who said he:

...was not afraid of Hitler; he admired him. This was one of the reasons why Menzies found him [Hitler] intriguing. He had once said that Hitler was a 'great leader' and he shared the view that Menzies himself had formed on his visit to Germany in 1938.⁴

Menzies' open support for Hitler became a talking point for the Labor party by Curtin in opposition. The discussion revolved around winning the next election or the parliament being a hung parliament. It was said within the party room:

How could anyone who calls himself a labor man consider governing with Menzies? ... The man who came back from Germany in 1938 and told us we have a lot to learn from

² Hansard, House of Representatives, 7 August 1901.

³ Pearson, Charles H. 1893, *National life and character: a forecast*, Macmillan, London.

⁴ Williamson, K. 1984, *The Last Bastion*, Lansdowne, Sydney, p. 86.

Hitler?⁵

May I also remind Your Excellency that the current Section 25 of the Australian Constitution and the *Electoral Act 1918* and its electoral process, continue to have a legislative mechanism (which is relaxed only currently) that has the ability to prevent anyone who is of Chinese descent, or who belongs to a Black race currently living within Australia, to cast a vote, despite their Australian citizenship status. If the courts were to take this legislation as black letter law, then a challenge to the validity of the vote of someone belonging to a Black race, or 'coloured' background, may well succeed to invalidate the votes cast in any election. There has never been any effort to repeal Section 25.

Australia is now recognised as the only country in the world with a Constitution that permits racially discriminatory laws.⁶ In his judgment in the *Hindmarsh Island case*⁷ Justice Kirby delivered a chilling warning about the Australian Constitution:

The experience of racist laws in Germany under the Third Reich and South Africa under apartheid was that of gradually escalating discrimination. Such has also been the experience of other places where adverse racial discrimination has been achieved with the help of the law. By the time a stage of "manifest abuse" and "outrage" is reached, courts have generally lost the capacity to influence or check such laws.... [at para 163]

The laws of Germany and South Africa to which I have referred provide part of the context in which par (xxvi) is now understood by Australians and should be construed by this Court. I do not accept that in late twentieth century Australia that paragraph supports detrimental and adversely discriminatory laws when the provision is read against the history of racism during this century and the 1967 referendum in Australia intended to address that history. They knew the defects in past Australian laws and policies. And they would have known that the offensive legal regimes in Germany during the Third Reich and South Africa under apartheid were not the laws of uncivilised countries. Both in Germany and in South Africa the special laws enacted would probably have been regarded as unthinkable but a decade before they were made. They stand as a warning to us in the elaboration of our Constitution. [at para 164]

In conclusion, Australia is the only country in the world, which has within its constitution a legal right to pass laws for any race they deem necessary and Australian does not have a Bill of Rights at all. The only protection of Human Rights values based on the UN Charter and other international instruments is the Federal *Racial Discrimination Act 1975*.

An attack of the kind being proposed by the Tony Abbott conservative government to repeal Section 18C of the *Racial Discrimination Act 1975* is a direct assault against Australia's population in respect to civil and political rights and as such takes away protections against racism in law within Australian society.

All this is in addition to the fact that Australia has reservations to article 4(a) of ICERD and the CERD committee consistently recommends that Australia remedies the absence of this legislation:

17. The Committee reiterates its concern about the State party's reservations to article 4 (a) of the Convention. It notes that acts of racial hatred are not criminalized throughout the State party, pursuant to article 4 of

⁵ *ibid* p. 44.

⁶ Chair of Oxfam Ms Hedy D'Ancona, *Sydney Morning Herald*, 30 October 2000

⁷ *Kartinyeri v Commonwealth* [1998] HCA 22; 195 CLR 337; 152 ALR 540; 72 ALJR 722 (1 April 1998)

the Convention, and also that the Northern Territory still has not enacted legislation prohibiting incitement to racial hatred (art. 4).

In light of the Committee's general recommendations No. 7 (1985) and No. 15 (1993), according to which article 4 is of mandatory nature, the Committee recommends the State party to remedy the absence of legislation to give full effect to the provisions against racial discrimination under article 4 and withdraw its reservation to article 4 (a) relating to criminalizing the dissemination of racist ideas, incitement to racial hatred or discrimination, and the provision of any assistance to racist activities. The Committee reiterates its request for information on complaints, prosecutions and sentences regarding acts of racial hatred or incitement to racial hatred in States and Territories with legislation specifying such offenses.⁸

We respectfully ask you to raise this matter with Australian diplomats as Aboriginal Peoples are exceptionally vulnerable to any further winding back of protections from racial discrimination.

Sincerely

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CERD/C/AUS/CO/15-17 *Concluding observations of the Committee on the Elimination of Racial Discrimination Australia*, 27 August 2010