

8 August 2014

The Secretariat  
Parliamentary Select Joint Committee on Constitutional Recognition of Aboriginal and  
Torres Strait Islander Peoples  
P.O. Box 6100  
Canberra  
ACT 2600  
(by Email)

Dear Secretary

After further thought I would like to make a second submission.

Whilst my preference was to see Aborigines recognised in the body of the Constitution, I don't think any of the interim report options enabling this will be supported by a majority of voters; for the following reasons

1. The majority will not vote for an Amendment which enables the Commonwealth to make laws applicable to one race only.

(The Expert Panel have put themselves in a bind by using today's shallow interpretation of "race" referring to skin colour or facial characteristics only, thus a Constitutional reference to race is considered "odious" or "racist" and the offending Section – S51(26) – must be removed. In fact a definition of race more applicable to the Federation era is "house, family, tribe or nation regarded as of common stock". (Oxford). The versatility and utility of 51(26) in enabling the Commonwealth to pass special laws, either positive or negative in their effect on different races, as circumstances dictate, is discussed below).

At the 1967 referendum the majority recognised the fairness of an Amendment to include Aborigines in 51(26) thereby empowering the Commonwealth to make special laws applicable to all races. After the 1967 Amendment, various special laws have been passed which benefit Aborigines only. Other Australians did not object to this exclusivity, knowing that in the past special laws had been passed which benefitted them also. During the two World Wars last century, civilian men of the German, Japanese and Italian races were interned in Australia under special laws enabled by 51(26). Who can say when such laws will be needed again in the future?

I doubt a majority of Australians will vote to repeal 51(26) which benefits all races with special laws when necessary nor will they vote for any replacement section which benefits Aborigines only.

2. Compounding the Panel's error in replacing 51(26) with proposals to give the Commonwealth power to make laws for a single race only, is the contradiction inherent in

their decision to widen their brief by amending the Constitution so that Parliament cannot pass laws which discriminate on racial grounds. (The proposed new S116A).

How can the Commonwealth pass laws which benefit Aborigines only if the Constitution also says it cannot pass laws which discriminate by race? How could the Commonwealth have passed laws allowing internment of certain resident races during war time if the Constitution had also said it cannot pass laws which discriminate by race?

The fact is that the Constitution provides for the Commonwealth to pass special laws, when necessary, which do discriminate on racial grounds; in the event mostly positively but, when necessary, negatively. It would be foolish to deprive Parliament of this ability.

One must be pragmatic if the Referendum is to succeed.

I want to see Aborigines recognised as Australia's first peoples in the Constitution, their continuing cultures, languages and heritage and their ongoing relationship with their traditional lands and waters maintained and so I believe these aims should be spelt out in the preamble to the Constitution, that Section 51(26) be retained and that Section 25 (being redundant) should be repealed.

I believe these changes will result in a successful Referendum.

Yours faithfully

Paul Nolan