

1961.

THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA.

HOUSE OF REPRESENTATIVES.

REPORT

FROM THE

SELECT COMMITTEE

ON

VOTING RIGHTS OF ABORIGINES

PART I — REPORT AND MINUTES OF PROCEEDINGS.

Brought up and ordered to be printed, 19th October, 1961.

(Cost of Paper:—Preparation, not given; 775 copies; approximate cost of printing and publishing, £500.)

Printed and Published for the GOVERNMENT of the COMMONWEALTH OF AUSTRALIA by
A. J. ARTHUR, Commonwealth Government Printer, Canberra.
(Printed in Australia.)

PARL. P. R1 [GROUP H].—F.8478/61.—PRICE 3s.

PERSONNEL OF THE COMMITTEE.

Mr. H. G. Pearce (Chairman).

Mr. C. E. Barnes.

Mr. K. E. Beazley.

Mr. P. G. Browne.

Mr. P. Howson.

Mr. A. S. Luchetti.

Mr. J. N. Nelson.



" In the heart of the Nation "



“Subjects of the Queen”

. . . . residing within the Commonwealth”



EXTRACTS FROM THE VOTES AND PROCEEDINGS.

No. 13 OF 18TH APRIL, 1961.

SELECT COMMITTEE ON VOTING RIGHTS OF ABORIGINALS.—Mr. Freeth (Minister for the Interior) moved, pursuant to notice—

- (1) That a Select Committee be appointed to inquire into and report on—
- (a) whether the entitlement to enrolment and the right to vote presently conferred by the *Commonwealth Electoral Act 1918–1953* on persons referred to in section 39 of that Act should be extended with or without qualifications, restrictions or conditions to—
 - (i) all aboriginal natives of Australia, or
 - (ii) aboriginal natives of Australia included in particular classes, and, if so, what classes;
 and, if so,
 - (b) the modifications, if any, that should be made to the provisions of that Act relating to enrolment or voting to provide for enrolment and voting by aboriginal natives or any particular classes of aboriginal natives.
- (2) That the Select Committee consist of seven members, four to be appointed by the Prime Minister and three to be appointed by the Leader of the Opposition.
- (3) That every appointment of a member of the Committee be forthwith notified in writing to the Speaker.
- (4) That the Chairman be one of the members appointed by the Prime Minister.
- (5) That the Chairman of the Committee may from time to time appoint another member of the Committee to be Deputy Chairman, and that the member so appointed act as Chairman of the Committee at any time when the Chairman is not present at a meeting of the Committee.
- (6) That the Chairman or the Deputy Chairman, when acting as Chairman, shall have a deliberative vote and, in the event of an equality of voting, a casting vote.
- (7) That the Select Committee have power to send for persons, papers and records, to sit during any adjournment of the House, and to move from place to place.
- (8) That the Committee report to the House not later than the 31st day of October, 1961.
- (9) That the foregoing provisions of this resolution, so far as they are inconsistent with the Standing Orders, have effect notwithstanding anything contained in the Standing Orders.

On the motion of Mr. Calwell (Leader of the Opposition) the following amendment was made, after debate:—
Paragraph (8), at the end of the paragraph add the following words :—“, and that any member of the Committee have power to add a protest or dissent to the report”.

Motion, as amended, viz.:—

- (1) That a Select Committee be appointed to inquire into and report on—
- (a) whether the entitlement to enrolment and the right to vote presently conferred by the *Commonwealth Electoral Act 1918–1953* on persons referred to in section 39 of that Act should be extended with or without qualifications, restrictions or conditions to—
 - (i) all aboriginal natives of Australia, or
 - (ii) aboriginal natives of Australia included in particular classes, and, if so, what classes;
 and, if so,
 - (b) the modifications, if any, that should be made to the provisions of that Act relating to enrolment or voting to provide for enrolment and voting by aboriginal natives or any particular classes of aboriginal natives.
- (2) That the Select Committee consist of seven members, four to be appointed by the Prime Minister and three to be appointed by the Leader of the Opposition.
- (3) That every appointment of a member of the Committee be forthwith notified in writing to the Speaker.
- (4) That the Chairman be one of the members appointed by the Prime Minister.
- (5) That the Chairman of the Committee may from time to time appoint another member of the Committee to be Deputy Chairman, and that the member so appointed act as Chairman of the Committee at any time when the Chairman is not present at a meeting of the Committee.
- (6) That the Chairman or the Deputy Chairman, when acting as Chairman, shall have a deliberative vote and, in the event of an equality of voting, a casting vote.
- (7) That the Select Committee have power to send for persons, papers and records, to sit during any adjournment of the House, and to move from place to place.
- (8) That the Committee report to the House not later than the 31st day of October, 1961, and that any member of the Committee have power to add a protest or dissent to the report.
- (9) That the foregoing provisions of this resolution, so far as they are inconsistent with the Standing Orders, have effect notwithstanding anything contained in the Standing Orders—

agreed to.

No. 19 OF 3RD MAY, 1961.

SELECT COMMITTEE ON VOTING RIGHTS OF ABORIGINALS.—Mr. Speaker informed the House of the following appointments of Members as members of the Select Committee on Voting Rights of Aboriginals:—

Mr. Barnes, Mr. Browne, Mr. Howson and Mr. Pearce had been appointed by the Prime Minister and Mr. Beazley, Mr. Luchetti and Mr. Nelson by the Leader of the Opposition.

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* These opinions were received after the Report of the Committee was agreed to and are not referred to in the Report.

REPORT FROM THE SELECT COMMITTEE ON VOTING RIGHTS OF ABORIGINES.

INTRODUCTION.

1. On the 18th April, 1961, upon the motion of Mr. Freeth (Minister for the Interior), the House of Representatives resolved—
That a Select Committee be appointed to inquire into and report on—

(a) whether the entitlement to enrolment and the right to vote presently conferred by the *Commonwealth Electoral Act* 1918–1953 on persons referred to in section 39 of that Act should be extended with or without qualifications, restrictions or conditions to—

(i) all aboriginal natives of Australia, or

(ii) aboriginal natives of Australia included in particular classes, and, if so, what classes;

and, if so,

(b) the modifications, if any, that should be made to the provisions of that Act relating to enrolment or voting to provide for enrolment and voting by aboriginal natives or any particular classes of aboriginal natives.

2. At the first meeting of the Committee, Mr. Pearce was elected Chairman.

3. The Select Committee has the honour to present to the House of Representatives the following Report.

REPORT OF THE COMMITTEE.

PROGRESS TOWARDS INTEGRATION.

4. The aboriginal people are increasing in numbers. Changes have occurred in the customs of the great majority which ensure, in the words of one of our witnesses, "that they will never tend to be out again". Their children are numerous and healthy right across the north of this continent. Education in hygiene is reducing the incidence of disease, and prolonging life, while the birthrate is falling and marriage is tending to be influenced by Christian concepts. Unlike traditional aboriginal marriage it is becoming in more and more cases a partnership between young people of no great disparity of age. The aboriginal people are a permanent part of the Australian community. This makes imperative the recognition of their proper status, and the planning of their integration into the Australian community. Your Committee, while limited by its terms of reference to the franchise, recognizes that the franchise alone is not enough. It hopes that the exercise of the franchise by aboriginal people will lead to policies which meet their needs.

5. Somewhat differently placed are the Torres Strait Islanders. They are a concentrated population. They are not nomadic. They have a high percentage of literacy. The increase in their numbers may give the islands a local problem of over-population. They do not at present possess the Commonwealth franchise, except for ex-members of the Torres Strait Islands Regiment, most of whom appeared to be unaware of their entitlement until your Committee's visit. They are not ethnically related to the Australian aboriginal people, nor is their language similar to that of any aboriginal tribe. They do not feel themselves to be part of any aboriginal community.

6. As well as persons who are fully of aboriginal descent or who are Torres Strait Islanders, there are people of mixed European and aboriginal descent not enfranchised. Many of these have been entitled to the Commonwealth franchise since a definition was set out in a memorandum of the Attorney-General's Department of 25th January, 1929. (See paragraph 33.)

7. The declared policy of the Commonwealth Government towards the aboriginal people is that they should be gradually integrated into the European community.

8. Over the past five years the majority of the remaining nomads have, of their own volition, come to the settlements and missions scattered throughout the Commonwealth and your Committee considers that there are now fewer than 2,000 aborigines living in their traditional tribal cultures, out of contact with European civilization.

9. As the nomadic aboriginal adults are moving to the settlements and missions, gradually renouncing their nomadic and semi-nomadic lives, their children attend schools where their integration commences.

10. It was demonstrated to your Committee that any policy other than integration of the aboriginal people into one Australian society would be impracticable.

11. Your Committee believes that integration does not necessarily mean the loss of aboriginal tribal culture or a division in tribal relationships but, however desirable it may be in theory to endow the tribes with the benefits of modern civilization, it is abundantly clear to your Committee that the tribes themselves are making continuing voluntary contact with European civilization and that in the course of a few years, there will be no aborigines living in the completely tribal state.

12. As a situation of complete integration is inevitable, your Committee considers that the policy of the Commonwealth should be to assist integration to continue as smoothly and speedily as possible.

13. The aborigines need a considerable capital investment in education, including technical and agricultural education, in industries, land tenure and housing.

14. Your Committee found that the period between the ages of 14 and 21 is a difficult one during which more needs to be done for the aboriginal youth and suggests that every effort should be made by the Commonwealth Government to ensure that free secondary and technical education is readily available to all aboriginal children in all States of the Commonwealth, and assistance towards social integration between schooling and employment, in order, amongst other things, to prepare them for the franchise.

15. In respect of housing, it appears to your Committee that it is beyond the resources of the States and the Northern Territory to house satisfactorily even a small percentage of their aboriginal populations and it is suggested that the Commonwealth Government give deep and sympathetic consideration to this major aspect of integration, for purposes of stability of domicile.

16. Your Committee received evidence which indicated that many people believed that the Commonwealth Government should assume full responsibility for the welfare of all people of the aboriginal race. Others considered that Commonwealth assistance to the States for aborigines should be more generous. Your Committee draws the attention of the Government to these matters for its earnest consideration.

DISENFRANCHISED ABORIGINES.

17. Only aborigines living in the Northern Territory and the States of Queensland and Western Australia are disenfranchised. To obtain precise figures of the number of these people in those areas is extremely difficult because there are no systematic records in the Commonwealth Census.

18. However, both States and the Northern Territory have made every effort to enumerate their aboriginal populations and it is from these sources that the following figures have been obtained and except for the reference to Torres Strait Islanders the figures refer to full-blood aborigines:—

<i>Queensland—</i>					
Controlled	..	..	..	..	10,284
Non-controlled	..	..	..	..	1,080
Torres Strait Islanders	..	..	..	..	7,250
					18,614
<i>Western Australia—</i>					
Non-nomadic	..	..	..	..	8,872
Nomads	..	..	..	..	2,000*
					10,872
<i>Northern Territory—</i>					
Non-nomadic	..	..	..	..	17,136
Nomads	..	..	..	..	250
					17,386
					46,872

19. From the total of 46,872, it was necessary for your Committee to obtain the approximate number of adult aborigines who would be involved if the franchise were extended. Figures given by the Director of Welfare in the Northern Territory indicated that 56 per cent. of the total aboriginal population in the Northern Territory are adults and your Committee, therefore, applied this percentage to the total aboriginal population.

20. Your Committee found that approximately 26,000 full-blood aborigines and Torres Strait Islanders would be involved in an extension of the franchise. In addition there is a number of people in Western Australia and Queensland who are not full-blood aborigines but are of preponderant aboriginal descent. Without claiming any precise basis for the calculation it is estimated that the total of these people, as new electors, would not exceed 4,000. Thus, about 30,000 persons are disenfranchised.

21. No person is excluded from the Commonwealth franchise on the ground of race. The Commonwealth exclusion of some aborigines up to the present has not been based upon race but upon the non-incorporation of tribal and nomadic aborigines within the general community and the irrelevance of the general Australian society to their way of life. But more and more they are being integrated into the Australian community and there are no longer any great numbers of nomads.

* A maximum estimate given by the Hon. C. Perkins, Minister for Native Welfare in Western Australia. Other qualified persons gave an estimate of 2,000 and your Committee thinks that the latter figure would possibly be a more accurate estimate.

THE STATUS OF THE AUSTRALIAN ABORIGINAL PEOPLE.

22. In the early history of European settlement in Australia there were sometimes conflicts between the Colonial Office and the local Colonial authorities and settlers concerning the status of aborigines as subjects of the Crown of the United Kingdom. These conflicts clarified the position of the aborigines as British subjects, although, because of their ignorance of the laws and customs of the settlers, they were never able to derive much protection from that status. At Federation there was no doubt of their status as subjects of the Queen and some were on the rolls of Victoria and South Australia. (See Appendix III.)

23. The Constitution clearly envisages the people of the Commonwealth as being "Subjects of the Queen, resident in any State". The meaning of the expression "people of the Commonwealth" would doubtless be today "natural born or naturalized subjects of the Queen permanently residing within the limits of the Commonwealth of Australia". The franchise to elect members of the Senate and the House of Representatives in the Commonwealth of Australia is one expression of the rights of subjects of the Queen, permanently residing within the limits of the Commonwealth of Australia, in the case of the House of Representatives, and the right of "subjects of the Queen permanently residing in any State", in the case of the Senate.

24. The people of the Australian aboriginal race, notwithstanding the implications of the wording of a Statute of one State, are all, without question, natural born subjects of the Queen, permanently resident within the limits of the Commonwealth of Australia.

25. The Constitution of the Commonwealth of Australia has several ways of describing the people whom it unites in "one indissoluble Federal Commonwealth under the Crown" and "under the name of the Commonwealth of Australia." They are described as—

- "Subjects of the Queen"
- "People of the Commonwealth" and
- "People of a State".

These expressions clearly include the people of aboriginal race.

26. The Constitution envisaged the formation of Territories, and, whereas originally all the "people of the Commonwealth" were also "people of a State" there are now "people of the Commonwealth" residing outside of any State in the Northern Territory and the Australian Capital Territory.

27. The terms of reference of your Committee cover only the possession or extension of the franchise of the Parliament of the Commonwealth to people of the Australian aboriginal race. But people of mixed descent are also descendants of the original inhabitants. Torres Strait Islanders are descendants of the original inhabitants of their islands at the coming of European settlement. Your Committee has regarded the question of their franchise as also being within its terms of reference. Capacity to exercise political rights involves education, employment, housing and knowledge of political and civic duties, and your Committee would hope that its recommendations concerning the franchise will be made fully effective by sound policies on these matters.

28. Any examination your Committee has made of the franchise of any State, has been made necessary by the fact that, pursuant to Section 41 of the Constitution, "no adult person who has or acquires a right to vote at elections for the more numerous House of the Parliament of a State shall, while the right continues, be prevented by any law of the Commonwealth from voting at elections for either House of the Parliament of the Commonwealth." The manner in which a State grants or withholds the franchise of aborigines thus affects the Commonwealth franchise.

29. Section 41, while forbidding the Commonwealth to withdraw electoral rights from persons to whom the States grant them, clearly leaves the Commonwealth free to extend the Commonwealth franchise to people not entitled to the vote under the law of a State.

30. Apart from those entitled under Section 41, the franchise for elections to the Parliament of the Commonwealth has so far been extended to the Australian aboriginal people only when they have served or are serving as members of the Australian armed forces.

31. Therefore, the essence of the task of your Committee was to decide whether there were any valid reasons why the Parliament of the Commonwealth should not now provide for the voting rights of Australian aboriginal people and any people now excluded by the law of any State from the State franchise.

THE LAW OF THE COMMONWEALTH OF AUSTRALIA.

32. The Commonwealth Electoral Act was amended subsequent to the appointment of your Committee and the relevant sub-section of Section 39 of the *Commonwealth Electoral Act* 1918-1961 relating to the Australian aboriginal people now reads as follows:—

"(6.) An aboriginal native of Australia is not entitled to enrolment under Part VII. unless he—

- (a) is entitled under the law of the State in which he resides to be enrolled as an elector of that State and, upon enrolment, to vote at elections for the more numerous House of the Parliament of that State or, if there is only one House of the Parliament of that State, for that House; or
- (b) is or has been a member of the Defence Force."

33. A definition of "aboriginal native", for Commonwealth electoral purposes (and in respect of Section 127 of the Constitution), was provided by the Attorney-General's Department to the Chief Electoral Officer by memorandum dated 25th January, 1929, and it is this definition which is still used by the Commonwealth Electoral Office. An "aboriginal native" is defined as a person in whom aboriginal descent preponderates and "that half-castes were not 'aboriginal natives' within the meaning of Section 127 of the Constitution".

34. Your Committee by applying this definition, has established the fact that thousands of such people in Queensland and Western Australia, who are already integrated into the community and are not living in the tribal state, have the right to be enrolled and to vote at Commonwealth elections but are unaware of the fact.

35. An attempt was made by the Commonwealth Electoral Office in 1945 to inform such people resident in Cherbourg Aboriginal Settlement in Queensland of their rights. Information was sought from the superintendent of the Settlement as to the number of persons at the Settlement entitled to enrolment. The matter was referred to the State Cabinet of Queensland, which decided not to supply the information but to allow a Commonwealth officer to visit the Settlement. The superintendent verbally informed the Commonwealth Electoral Officer for Queensland that he would not be permitted to furnish information as to the descent of the inhabitants of the Settlement. In the circumstances, the Commonwealth Electoral Office then prepared a circular informing the people on the Settlement of their entitlement and asked the superintendent to circulate it.

36. Your Committee found in other parts of Queensland and in Western Australia that persons who have not a preponderance of aboriginal descent have not been informed of their rights.

37. A similar lack of knowledge was encountered throughout Australia in respect of an aboriginal ex-serviceman's entitlement to enrol. Torres Strait Islanders, under Commonwealth electoral practice, receive the Commonwealth franchise on the same basis as aborigines. Of 659 Torres Strait Islanders who served in the Torres Strait Islands Regiment, your Committee found that only 57 are enrolled for the Electoral Division of Leichhardt, and from evidence received it would appear that several hundreds are unaware of their entitlement. In other instances your Committee found aboriginal people who, although aware of the rights of aboriginal ex-servicemen, were under the impression that because they were not exempt from the provisions of the Aborigines Protection Act of the State of Queensland, or had not acquired "citizenship" under the Natives (Citizenship Rights) Act of the State of Western Australia, the entitlement did not extend to them.

38. In the State of New South Wales where the aboriginal people have for many years been fully entitled to become enrolled and vote at State elections and, *ipso facto*, Commonwealth elections, your Committee came upon many instances where the entitlement was not being exercised. For instance, at Woodenbong Aboriginal Station, only five of 50 had enrolled and once again your Committee was informed that the people were unaware of their entitlement.

39. In the State of Victoria, the aboriginal people have been entitled to enrolment since the formation of the Commonwealth and your Committee was informed that a very high percentage have enrolled and are exercising the franchise.

40. In the State of South Australia where once again all aboriginal people are entitled to enrol for State elections and, *ipso facto*, Commonwealth elections, a different position exists because of unknown numbers of nomadic and semi-nomadic aboriginal people. The Commonwealth Electoral Officer for South Australia advised your Committee that no action is taken to apply the compulsory provisions of the Act to aboriginal people who are known to be primitive, illiterate, nomadic, periodically nomadic, or associated only loosely or periodically with missions, or with government agencies for native welfare. The compulsory provisions apply only to persons whose names appear on the electoral roll and who fail to vote.

RECOMMENDATIONS.

41. Your Committee recommends in respect of the existing law of the Commonwealth—

- (1) That, because the aboriginal people in New South Wales and Victoria have long been integrated into the Australian community, early administrative action be taken so that the compulsory provisions of the Commonwealth Electoral Act relating to enrolment and voting be applied to them.
- (2) That wherever it is relevant for the Commonwealth Electoral Office to act upon the definition of an Australian aboriginal, that definition should be that which is the practice in the Northern Territory, namely, a person entirely of aboriginal descent.
- (3) That early action be taken by the Commonwealth Electoral Office to inform aboriginal and Torres Strait Islander servicemen and ex-servicemen, and people entitled to the franchise under the terms of the Attorney-General's memorandum to the Commonwealth Electoral Officer of 25th January, 1929, of their entitlement to be enrolled and to vote.

THE LAWS OF THE STATES, AND THE NORTHERN TERRITORY.

Queensland.

42. The Elections Acts 1915-1959, provides—

“(9.) Subject to the disqualifications hereinafter set out, every person, whether male or female, not under twenty-one years of age—

- (a) Who being a British subject has lived within the Commonwealth of Australia for a continuous period of six months; and
- (b) Who has lived in an electoral district of Queensland for a continuous period of three months immediately preceding the day on which he makes his claim to be enrolled as an elector for such district; and
- (c) Whose name is on the electoral roll for such district,

shall be qualified as an elector under this Act.

(11.)

Subject as hereinafter provided no aboriginal native of Australia or the Islands of the Pacific shall be qualified to be enrolled upon any electoral roll.

(11A.) No person—

- (1) Who is an aboriginal native of the islands in Torres Strait or whose parents are aboriginal natives of the islands of Torres Strait (usually referred to as a Torres Strait Islander);
- (2) Who is a half-caste as defined in ‘The Aborigines Protection and Restriction of the Sale of Opium Acts, 1897 to 1901,’ and which half-caste is subject to the control and general supervision of the Protector of Aborigines, whether by being an inmate of any institution for aborigines, or an inmate of any mission station or like institution, or whether hired out for employment with an employer, and who, notwithstanding such hiring-out, is still under the control and general supervision of the Protector of Aborigines,

shall be qualified to be enrolled upon any electoral roll or entitled to vote at any election of Members of the Legislative Assembly.”

43. An aboriginal is defined in Queensland as a person of more than half aboriginal descent but “half-castes” who associate with such people are also considered to be aborigines. A similar definition is applied to Torres Strait Islanders.

44. Even though a person of fully aboriginal descent is exempt from the provisions of *The Aboriginal Preservation and Protection Act 1939-1946*, he is nevertheless entirely excluded from the right to vote. Under the law of the State the right is only extended to exempted “half-castes”.

45. There is no provision under the laws of the State for a Torres Strait Islander to obtain exemption.

46. The franchise is not extended by the State to aborigines who are serving members or ex-members of the Australian armed forces.

New South Wales.

47. Under New South Wales electoral laws, there have been no restrictions against aborigines as such during the present century, but until 1926 most aborigines were debarred from voting because all persons who were in receipt of State aid, or aid from any charitable institution, were not entitled to be enrolled. It was held that all aborigines living on Stations and Reserves were in receipt of aid and therefore were not entitled to be enrolled.

48. However the State electoral laws were amended in 1926 and since then all aborigines in New South Wales have been entitled to be enrolled and to vote at State elections.

49. Your Committee was informed that compulsion to enrol is not being enforced in respect of the aboriginal people and of 1042 aborigines on Stations in New South Wales who are entitled to enrolment only 487 have enrolled. In so far as this effects Commonwealth law your Committee has made a recommendation in paragraph 41.

Victoria.

50. The State of Victoria, in its electoral laws, makes no differentiation in respect of aborigines.

51. Since the inception of the Constitution of the State in 1855, aborigines have been entitled to enrol and to vote although neither enrolment nor voting became compulsory until 1926.

52. Although the compulsory provisions are not being enforced in respect of the aboriginal people, your Committee was informed that a very high percentage are enrolled and are exercising the franchise. Your Committee has recommended in paragraph 41 that the compulsory provisions of

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Western Australia.

55. At the time of your Committee's enquiry the acts relating to the franchise for aborigines in the State of Western Australia were the Electoral Act, Native Welfare Act, Natives (Citizenship Rights) Act, and the Constitution Acts Amendment Act. The relevant sections are as follows:—

Electoral Act 1907-1959—

"18. Every person shall be disqualified from being enrolled as an elector, or if enrolled, from voting at any election, who—

(e) is a native according to the interpretation of that expression in section two of the *Native Welfare Act 1905-1960*, and is not the holder of a Certificate of Citizenship pursuant to the provisions of the *Natives (Citizenship Rights) Act 1944-1958*."

Native Welfare Act 1905-1960—

"2.

"Native" means—

(a) any person of the full blood descended from the original inhabitants of Australia; and

(b) any person of less than full blood who is descended from the original inhabitants of Australia or from their full blood descendants, except a quadroon or person of less than quadroon blood;

Provided that any person of the full blood or of less than the full blood descended from the original inhabitants of Australia who has served in the Territory of New Guinea or beyond the limits of the Commonwealth of Australia as a member of the Naval, Military or Air Forces of the Commonwealth and has received or is entitled to receive an honorable discharge; or who has served a period of not less than six months' full time duty as a member of the Naval, Military or Air Forces of the Commonwealth and who has received or is entitled to receive an honorable discharge, has all the rights, privileges and immunities and is subject to the duties and liabilities of a natural born or naturalized subject of Her Majesty who is of the same age.

"Quadroon" means a person who is descended from the full blood original inhabitants of Australia or their full blood descendants but who is only one-fourth of the original full blood."

Natives (Citizenship Rights) Act 1944-1958—

"4.—(1) Any adult person who is a native within the meaning of the *Native Welfare Act 1905-1960*, may make application for a Certificate of Citizenship to a Board having jurisdiction in the district in which he ordinarily resides in the manner prescribed by the regulations.

(2) Such application shall be in the prescribed form supported by a statutory declaration signed by the applicant to the effect that he wishes to become a citizen of the State, and—

(a) that he has served in the Naval, Military or Air Force of the Commonwealth and has received or is entitled to receive an honorable discharge; or

(b) that he is otherwise a fit and proper person to obtain a Certificate of Citizenship; and

(c) stating the full names, sex and date of birth of all children under the age of twenty-one years.

6. Notwithstanding the provisions of any other Act the holder of a Certificate of Citizenship whether granted before or after the coming into operation of the *Natives (Citizenship Rights) Act Amendment Act 1958*, and any child whose name is under the last preceding section, included in a Certificate of Citizenship shall have all the same rights, privileges and immunities and shall be subject to the same duties and liabilities as a person who is of the same age as the holder or, as the case may be, as the child, and who is a natural born or naturalized subject of His Majesty."

Constitution Acts Amendment Act 1899-1959—

"15.

(ii) no person who is a native according to the interpretation of that expression in section two of the *Native Welfare Act 1905-1960*, and is not the holder of a certificate of citizenship pursuant to the provisions of the *Natives (Citizenship Rights) Act 1944-1958*, shall be entitled to be registered as an elector."

56. As indicated in the *Native Welfare Act* a "native" is defined as a person with more than 25 per cent. aboriginal blood.

57. Until such time as a "native" acquires "citizenship" rights, he is not entitled to vote under the laws of the State.

58. The Chief Electoral Officer of the State informed your Committee that no differentiation is made in respect of serving members or ex-members of the Australian armed forces. However the proviso in Section 2 of the *Native Welfare Act 1905-1960* read in conjunction with Section 18 (e) of the *Electoral Act 1907-1959*, clearly indicates that those who have served or are serving in the Australian armed forces are not defined as "natives" under the Act and are therefore automatically entitled to the franchise. It would appear to your Committee that this section of the *Electoral Act* is being incorrectly administered, and that the repeal of Section 4 (2) (a) of the *Natives (Citizenship Rights) Act 1944-1958* has been overlooked.

Northern Territory.

59. Section 22 of the Northern Territory Electoral Regulations provide, *inter alia*, that—

“No aboriginal native of Australia . . . shall be entitled to have his name placed on or retained on any Roll or to vote at any election unless—

(a) he, being an aboriginal native of Australia—

- (i) is not a ward as defined by the *Welfare Ordinance* 1953–1960 of the Territory; or
- (ii) is or has been a member of the Defence Forces;”

60. Pursuant to Section 14 (1.) of the *Welfare Ordinance* 1953–1960 a person may be declared a ward, if that person by reason of—

- (a) his manner of living;
- (b) his inability, without assistance, adequately to manage his own affairs;
- (c) his standard of social habit and behaviour; and
- (d) his personal associations,

stands in need of such special care or assistance as is provided for by the Ordinance.

61. Of some 17,000 aborigines in the Northern Territory, only 89 have not been declared wards or have been removed from the Register of Wards.

62. A person of part aboriginal descent is not regarded as an aboriginal in practice in the Northern Territory, and is entitled to all the privileges and required to exercise the responsibilities of the franchise.

THE CONSTITUTIONAL POSITION.

The power of the Commonwealth to extend the Franchise.

63. Geoffrey Sawer, Professor of Law at the Australian National University, extended the following advice to your Committee on the power of the Commonwealth to extend the franchise:—

- (a) “. . . my general conclusion is that nothing in the Constitution prevents the Commonwealth from giving the franchise to aboriginal natives in the States, nor from doing so on terms and conditions different from those applicable to the enfranchised non-aboriginal population.”
- (b) “The Commonwealth’s power to deal with franchise questions . . . is the combined result of ss. 29, 30 and 31, taken together with s. 51 (xxxvi). . . the four sections mentioned give the Commonwealth a general and unqualified power to regulate the franchise and the distribution of electors and electorates in any manner it pleases. This would include giving the vote to aboriginal natives. The number of members of the House of Representatives per State would still have to be calculated without reference to the aborigines, because of s. 127 (and where applicable s. 25), but this would not prevent aborigines from sharing in the choice of such members.” (See Appendix IV.)

The bearing of Section 41 on the power of the Commonwealth to extend the franchise.

64. Section 41 of the Constitution is as follows:—

“41. No adult person who has or acquires a right to vote at elections for the more numerous House of the Parliament of a State shall, while the right continues, be prevented by any law of the Commonwealth from voting at elections for either House of the Parliament of the Commonwealth.”

65. Your Committee requested advice from the Solicitor-General on the bearing of Section 41 on the power of the Commonwealth to grant the franchise to the aborigines in those States of the Commonwealth where there are qualifications on this right.

66. The Solicitor-General replied—

“In short, my advice on this matter is that, though section 41 prevents the Commonwealth Parliament from denying to any person entitled under State law to vote at elections for the Lower House in the State the right to vote at a Federal election, the section does not in any way prevent the Parliament from conferring a federal vote on persons not entitled to vote at a State election.” (See Appendix VI.)

67. Professor Sawer commenting on this section advised—

“. . . it is completely clear that s. 41 has the sole effect of guaranteeing the franchise to the persons described; it contains no prohibition on the grant of the franchise to any particular individual, and cannot be used as the basis for any negative inference of that sort.” (See Appendix IV.)

Special laws referred to in Section 51 placitum xxvi.

68. Section 51 (xxvi) of the Constitution is as follows:—

“51. The Parliament shall, subject to this Constitution, have power to make laws for the peace, order, and good government of the Commonwealth with respect to:—

(xxvi) The people of any race, other than the aboriginal race in any State, for whom it is deemed necessary to make special laws:”

69. By resolution of your Committee, the Solicitor-General was asked “if it is a valid interpretation of the constitutional provision in section 51 placitum xxvi that exclusion of aborigines from the right to vote in section 39 (5.) of the *Commonwealth Electoral Act* 1918–1953 is in fact a ‘special law’ for aborigines prohibited by the Constitution.”

70. As mentioned earlier in your Committee’s Report the *Commonwealth Electoral Act* 1961 came into operation following the setting up of your Committee and the Solicitor-General treated the resolution as referring to the Commonwealth Electoral Act in its amended form.

71. The Solicitor-General’s answer to the question is as follows:—

“In my opinion the short answer to the question asked in this resolution should be ‘No’. The office of section 51 (xxvi) is not to exclude aborigines from the ambit of any other subject with respect to which the Parliament has power to make laws, but only to exclude them from the ambit of the special additional power given in relation to ‘the people of any race’.” (See Appendix V.)

72. Professor Sawyer agreed with the Solicitor-General’s opinion when he advised your Committee, *inter alia*—

“If a particular Commonwealth law was seen to possess the quality of being a ‘special law’ with respect to ‘the aboriginal race in any State’, then it could not claim validity if that validity were rested solely on s. 51 (xxvi)”. (See Appendix IV.)

The power of the Commonwealth to establish aboriginal electorates within States or the Northern Territory.

73. Your Committee asked the Solicitor-General “if, in his opinion, the Commonwealth could establish within States or the Northern Territory, electorates for aborigines, or would that fall within the prohibition in section 51 placitum xxvi which forbids the Commonwealth to make special laws for aborigines.”

74. The Solicitor-General replied—

“Not without doubt, my short answer to this question is that, though it would be constitutionally possible in the Northern Territory to establish electorates for aborigines, it would not be possible in the States.” (See Appendix V.)

75. Professor Sawyer is of similar opinion. (See Appendix IV.)

The power of the Commonwealth to establish an aboriginal electorate throughout the Commonwealth.

76. To the question as to the constitutional possibility of establishing an aboriginal electorate throughout the Commonwealth regardless of State boundaries, on the model of the New Zealand electorates for Maoris, the Solicitor-General’s opinion is as follows:—

“In short, my advice is that it is not possible to establish an aboriginal electorate throughout the Commonwealth and regardless of State boundaries, because section 29 of the Constitution contemplates electoral divisions (i.e. electorates) within each State only. The section expressly declares that ‘a division shall not be formed out of parts of different States’. (I assume that the Committee’s resolution relates to an electorate for the House of Representatives).” (See Appendix VI.)

RECOMMENDATIONS.

77. Your Committee recommends that the *Commonwealth Electoral Act* 1918–1961 be amended to provide—

- (1) That the right to vote at Commonwealth elections be accorded to all aboriginal and Torres Strait Islander subjects of the Queen, of voting age, permanently residing within the limits of the Commonwealth.
- (2) That, for the time being, the enrolment of aborigines and Torres Strait Islanders be voluntary, but when enrolled, compulsory voting be enforced.

REASONS FOR RECOMMENDING VOLUNTARY ENROLMENT.

78. In making these recommendations your Committee is concerned that the extension of the compulsory provisions of the Commonwealth Electoral Act to many aborigines still in the tribal state, or recently emerged from the tribal state, or not completely integrated into the Australian community, could result in grave injustice. These people have not perceived the relevance of parliamentary elections to their lives, so to compel enrolment would be harsh.

79. Your Committee is also concerned at the danger of electoral malpractice and the possible use of undue influence by those having contact with aborigines.

80. Your Committee considers voluntary enrolment a temporary provision in respect of the aboriginal people, and one which creates immediately an entitlement to the franchise for those who desire the franchise, without injustice to those who do not desire it or simply have no use for it in a tribal or nomadic life.

ADMINISTRATIVE PROCEDURES.

81. It is stressed that the extension of the franchise recommended by your Committee is to people who have no history of exercising a franchise and who have no knowledge of electoral and political rights, and, therefore, every help must be given in their enrolment and political education.

82. Your Committee recommends that the matter of enrolment should not be left to welfare officers, private persons, organizations, or political parties and recommends that the administrative procedures of the Commonwealth Electoral Office be altered to provide for specially qualified electoral officers to receive personal applications for enrolment at places accessible to aborigines.

83. It is recommended that the voluntary expression of a wish to enrol by an aboriginal to such officers, should be sufficient for them to help in the completion of an enrolment card.

84. It is recommended by your Committee that a penal provision be inserted in the amending Act in respect of the use of duress or undue influence on aborigines in the exercise of their franchise.

85. It is recommended that the procedures of voting and the structure of the Parliament be explained to aborigines on government settlements and on missions and other convenient locations. In this connexion well prepared visual aids and publications would be helpful.

86. If the recommendations of your Committee are adopted there will be a considerable increase in enrolment in such electorates as the Northern Territory. At present there is a need for more polling places in the Northern Territory and this need will be aggravated by the enfranchisement of aborigines. Polling places should be established at any places where significant numbers of aboriginal electors are concentrated. It is desirable that every facility should be given for those enrolled to vote in person.

EFFECT ON ELECTORAL QUOTAS.

87. Your Committee draws attention to the evidence of the Chief Electoral Officer for the Commonwealth concerning the counting of aborigines for determining the quota for electorates, which reads as follows:—

“They would not be counted for the purposes of Section 127. They would be counted to determine the quota for electoral purposes. They are two different things, as I see it. One is counting the population of the Commonwealth and the other is determining the numbers to be elected under the Representation Act.”

CONCLUSION.

88. Before making its recommendations your Committee considered many suggestions and points of view. It recommends as it does because any other basis of the franchise would either discriminate on the ground of race, or penalise for lack of opportunity.

89. It is considered better that a right be granted before there is a full capacity to exercise it on the part of some individuals, than that others should suffer the frustration of being denied a right that they can clearly exercise.

90. The Crown is a focal point of common allegiance and people with a common allegiance born in a common political territory, such as the Commonwealth of Australia, should have common electoral rights.

91. Your Committee has dismissed proposed tests of literacy, housing standards, permanency of employment or the possession of a bank balance, on the ground that they are not applicable to the electorate at large.

92. Your Committee dismissed the suggestion that a ward of the Commonwealth in the Northern Territory, or a “protected native” in a State, should not vote, because Australians of European origin are not usually disqualified from the franchise by their need for special public assistance.

93. Your Committee considers that the Commonwealth Parliament should refuse to involve its franchise, in any State or Territory, on a concept of rights which are determined in part by an assessment of a person's fitness to consume alcoholic drinks. Your Committee does not question, in any way, the justification of State or Territory liquor laws but merely asserts that they have no bearing on an entitlement to the Commonwealth franchise.

94. A recent official publication referring to Australians of Aboriginal, European, Asian and other descents, refers to them all as "one people". They are indeed "one people", having one allegiance and a common residence within the limits of the Commonwealth of Australia.

95. Electoral law is only one aspect of the rights and duties of subjecthood and national identity. Electoral rights are, nevertheless, a vital manifestation of the status, dignity and freedom of subjects of the Queen, for, by their exercise, a Commonwealth Parliament and an Executive Government of the Commonwealth are formed.

96. The natural tendency of the franchise your Committee recommends, is to ensure the future election of Parliaments which will regard the people forming the national constituency, irrespective of race, as "one united people; possessed of common rights and interests; one in their entitlement to equality before the law; one in their claim to fair and beneficent treatment; one in destiny" (*Quick and Garran*).

PROCEEDINGS OF THE COMMITTEE.

97. Your Committee travelled at least 22,000 miles to obtain evidence from the aboriginal people, welfare officers, clergy, school teachers, pastoralists, policemen, and others who have interested themselves in the advancement of the aboriginal people. Public meetings were held in the Australian Capital Territory, the Northern Territory and all mainland States of the Commonwealth. A map indicating the places visited, is attached as Appendix II.

98. Oral evidence or written statements were received from 327 witnesses, of whom 142 were descended from the original inhabitants of Australia. Apart from those who appeared at the personal invitation of your Committee, members of the public responded well to general invitations advertised through the newspapers. The appreciation of the Committee is expressed to these people for their co-operation. A list of witnesses is attached as Appendix I.

99. Your Committee wishes to record its thanks to all State Governments and the Northern Territory Administration for their valuable assistance, through their officers, in the extension of all possible facilities for the smooth working of the Committee's programme.

APPRECIATION.

100. The Chairman and members of the Select Committee express their appreciation to the Serjeant-at-Arms and Clerk of Committees, Mr. A. R. Browning, who acted as Secretary to the Committee. Appreciation is also expressed to the Clerk of the Papers, Mr. I. C. Cochran, the House of Representatives Transport Officer, Mr. G. C. Pike, and the *Hansard* staff. They gave intelligent, efficient, courteous and untiring service to the Committee.

101. The Committee was able to visit remote areas only because of the service of R.A.A.F. Transport Aircraft. For this we thank the Minister for Air, Senator Wade, and the air crews commanded by Wing-Commander Fairbairn and Squadron Leader Turnnidge. Without this transport it would not have been possible to complete the comprehensive survey necessary to carry out the terms of reference within the time set down by the resolution of the House of Representatives.

Canberra,
17th October, 1961.

GEORGE PEARCE,
Chairman.

MINUTES OF PROCEEDINGS.

TUESDAY, 9TH MAY, 1961, AT CANBERRA, A.C.T.

Present:

Mr. Barnes.	Mr. Howson.
Mr. Beazley.	Mr. Nelson.
Mr. Browne.	Mr. Pearce.

The entries in the Votes and Proceedings No. 13 of 18th April, 1961 and No. 19 of 3rd May, 1961, regarding the appointment of the Committee and the appointment of Members to the Committee, respectively, were read by the Clerk.

On the motion of Mr. Browne, Mr. Pearce was elected Chairman of the Committee.

The Chairman announced that in exercise of his right under paragraph 5 of the Resolution of the House of Representatives he appointed Mr. Barnes as Deputy Chairman. Mr. Nelson recorded his objection to the appointment of a Government Member to the position.

The Committee deliberated.

On the motion of Mr. Beazley, the following motions were agreed to:—

- (1) That the National Library be requested to find, if possible, the Origins and Intentions, underlying Section 51 placitum xxvi of the Commonwealth Constitution and Section 127 of the Commonwealth Constitution.
- (2) That the Clerk request the State Registrars what action is taken by the States to register births and deaths of aborigines and any other vital statistics concerning them; also what procedures are taken to enumerate aborigines.

To ascertain from the State authorities what inquests are held into aboriginal deaths, if at all, when aborigines live in the tribal state.

What are the processes by which their existence as individuals comes under cognisance of the State or the Commonwealth in a Territory.

- (3) That the Clerk be requested to ascertain from the electoral authorities in all States the operation of the franchise for aborigines in the States.
- (4) That an opinion from the Attorney-General's Department be obtained concerning the constitutional possibility of establishing an aboriginal electorate throughout the Commonwealth, regardless of State boundaries, on the model of the New Zealand electorates for Maoris.
- (5) That an opinion be sought from the Attorney-General's Department concerning the bearing of Section 41 of the Constitution on the power of the Commonwealth to grant the franchise to the aborigines in those States of the Commonwealth where there are qualifications on this right.

The Committee deliberated.

Ordered.—That Mr. F. L. Ley (Chief Electoral Officer) appear before the Committee on Wednesday, 10th May, at 9.0 a.m.

The Committee deliberated.

The Committee adjourned until Wednesday, 10th May, at 9.0 a.m.

WEDNESDAY, 10TH MAY, 1961, AT CANBERRA, A.C.T.

Present:

MR. PEARCE (Chairman).

Mr. Barnes.	Mr. Howson.
Mr. Beazley.	Mr. Luchetti.
Mr. Browne.	Mr. Nelson.

The minutes of the previous meeting were read and confirmed.

Mr. Luchetti recorded his objection to the appointment of a Government Member as Deputy Chairman of the Committee.

Mr. F. L. Ley (Chief Electoral Officer) was called and examined.

Witness withdrew.

The Committee deliberated.

On the motion of Mr. Nelson, the broad principles of a draft programme were agreed to.

On the motion of Mr. Browne, a draft advertisement for insertion in main metropolitan newspapers and in the newspapers of the cities and towns where the Committee will meet was agreed to.

On the motion of Mr. Browne, a draft press statement was agreed to.

On the motion of Mr. Browne, it was agreed that written submissions must be in the hands of the Clerk by 5th June.

On the motion of Mr. Howson, it was agreed that a sub-committee consisting of the Chairman, Mr. Barnes and Mr. Nelson meet in Sydney on 6th June to decide the witnesses in Queensland who will be invited to give oral evidence.

The Committee deliberated.

The Committee adjourned until Thursday, 11th May, at 6.45 p.m.

THURSDAY, 11TH MAY, 1961, AT CANBERRA, A.C.T.

Present:

MR. PEARCE (Chairman).

Mr. Barnes.
Mr. Beazley.

Mr. Howson.
Mr. Luchetti.

The minutes of the previous meeting were read and confirmed.

The Committee deliberated.

On the motion of Mr. Luchetti, it was agreed that copies of the press statement be forwarded to (1) churches concerned with aboriginal missions and (2) papers published by aboriginal groups.

The Committee deliberated.

On the motion of Mr. Howson, it was agreed that the sub-committee consisting of the Chairman, Mr. Barnes and Mr. Nelson meet prior to the next meeting of the Committee to arrange the Queensland itinerary.

The Committee deliberated.

On the motion of Mr. Howson, an interim list of those who would be invited to give evidence was agreed to.

The Committee deliberated.

The Committee adjourned until Wednesday, 17th May, at 1.30 p.m.

WEDNESDAY, 17TH MAY, 1961, AT CANBERRA, A.C.T.

Present:

MR. PEARCE (Chairman).

Mr. Barnes.
Mr. Beazley.
Mr. Howson.

Mr. Nelson.
Mr. Luchetti.

The minutes of the previous meeting were read and confirmed.

The report of the sub-committee appointed to draw up the Queensland itinerary was brought up and on the motion of Mr. Nelson was agreed to.

The Committee deliberated.

Resolved.—That the sub-committee meet in Sydney on Tuesday, 6th June, at 11.00 a.m.

The Committee deliberated.

Resolved.—That the next meeting of the Committee be in Brisbane on Thursday, 15th June, at 9.30 a.m.

The Committee deliberated.

The Committee adjourned until Thursday, 15th June, at 9.30 a.m.

THURSDAY, 15TH JUNE, AT BRISBANE, QUEENSLAND.

Present:

MR. PEARCE (Chairman).

Mr. Barnes.
Mr. Beazley.
Mr. Browne.

Mr. Howson.
Mr. Luchetti.
Mr. Nelson.

The minutes of the previous meeting were read and confirmed.

The Committee deliberated.

Mr. C. O'Leary (Director of Native Affairs) was called and examined.

Witness withdrew.

The Committee deliberated.

Mrs. G. A. Lethbridge was called and examined.

Witness withdrew.

The Committee deliberated.

On the motion of Mr. Beazley, the following motion was agreed to:—

That the Attorney-General's Department be asked if it is a valid interpretation of the constitutional provision in Section 51 placitum xxvi that exclusion of aborigines from the right to vote in Section 39 (5) of the *Commonwealth Electoral Act 1918-1953* is in fact a "special law" for aborigines prohibited by the Constitution.

The Committee deliberated.

Ordered.—That Mr. John Graham of the *West Australian* be invited to appear before the Committee in Perth.

A detailed itinerary for Western Australia was drawn up.

The following witnesses were called, examined and withdrew:—

Mr. H. E. Radford (Principal Electoral Officer for the State of Queensland).

Mr. M. A. Bourke (Assistant Director, Family Allowances Branch, Department of Social Services).

Dr. J. A. Keats (representative of the Queensland Aborigines Advancement League).

The Rev. J. R. Sweet (Secretary, Aboriginal and Foreign Missions Committee, Presbyterian Church).

The Committee adjourned until Friday, 16th June, at 9.45 a.m.

FRIDAY, 16TH JUNE, 1961, AT BRISBANE, QUEENSLAND.

Present:

MR. PEARCE (Chairman).

Mr. Barnes.	Mr. Howson.
Mr. Beazley.	Mr. Luchetti.
Mr. Browne.	Mr. Nelson.

The minutes of the previous meeting were read and confirmed.

On the motion of Mr. Beazley, the following motion was agreed to:—

That the Attorney-General's Department be asked if, in its opinion, the Commonwealth could establish within States or the Northern Territory, electorates for aborigines, or would that fall within the prohibition in Section 51 placitum xxvi which forbids the Commonwealth to make special laws for aborigines.

The following witnesses were called, examined and withdrew:—

Dr. M. W. Poulter (representative of the Australian Labour Party (Queensland Branch) and the Queensland Aborigines Advancement League).
 Mr. J. E. Fitzgerald (Secretary, Seamen's Union of Australia, Queensland Branch).
 Mrs. K. J. Cochrane (representative of the Union of Australian Women, Queensland Management).
 Mr. A. Macdonald (Secretary, Trades and Labour Council of Queensland).
 Mrs. K. J. M. Walker.
 Mr. G. E. Cook.
 Mrs. E. Bennett.
 Mrs. S. Cairns.

Submissions from the following persons were incorporated, by leave, in the *Hansard* report:—

Mrs. J. Wilding (President, the Joyce Wilding Aboriginal Hostel).
 The Rev. E. A. Wells (late Superintendent of the Milingimbi Mission, Northern Territory).

The Committee adjourned until Saturday, 17th June, at 1.0 p.m.

SATURDAY, 17TH JUNE, 1961, AT CHERBOURG ABORIGINAL SETTLEMENT, QUEENSLAND.

Present:

MR. PEARCE (Chairman).

Mr. Barnes.	Mr. Luchetti.
Mr. Beazley.	Mr. Nelson.
Mr. Howson.	

The minutes of the previous meeting were read and confirmed.

The following witnesses were called, examined and withdrew:—

Mr. G. Sturges (Superintendent, Cherbourg Aboriginal Settlement).
 Mr. V. F. Law.
 Mrs. W. S. Fisher.
 Mr. R. A. Fisher.
 Mr. J. Doolah.
 Mr. J. Hegarty.
 Mr. J. McGrath.
 Mr. H. T. Weazel.
 Mrs. M. M. Nuggins.

Mr. G. Sturges was re-called and examined.

Witness withdrew.

The Committee adjourned until Sunday, 18th June, at 11.30 a.m.

SUNDAY, 18TH JUNE, 1961, at WOODENBONG ABORIGINAL STATION, NEW SOUTH WALES.

Present:

MR. PEARCE (Chairman).

Mr. Barnes.	Mr. Luchetti.
Mr. Beazley.	Mr. Nelson.
Mr. Howson.	

The minutes of the previous meeting were read and confirmed.

Ordered.—The the Commonwealth Electoral Officer for Western Australia be invited to appear before the Committee.

Ordered.—That Mr. G. Harwood, 38 Lindsay-street, Perth, be invited to appear before the Committee.

The following witnesses were called, examined and withdrew:—

Mr. L. B. Cowley (Manager, Woodenbong Aboriginal Station).
Mr. D. J. Bray.
Mr. A. Vesper.

The Committee adjourned until Monday, 19th June, at 11.15 a.m.

MONDAY, 19TH JUNE, 1961, AT PALM ISLAND SETTLEMENT, QUEENSLAND.

Present:

MR. PEARCE (Chairman).

Mr. Barnes.	Mr. Luchetti.
Mr. Beazley.	Mr. Nelson.
Mr. Howson.	

The minutes of the previous meeting were read and confirmed.

On the motion of Mr. Beazley, the following motions were agreed to:—

- (1) That the Minister for Native Welfare in Western Australia be asked to make available, officers to testify before the Committee on matters basic to the granting of franchise, viz.:—
 - (a) Literacy among aborigines.
 - (b) Education among aborigines.
 - (c) Civic sense and knowledge among aborigines.
- (2) That the Minister for Education in Western Australia be asked to make available the Director of Education to give evidence on education of aborigines; and also any high school teachers experienced in teaching aborigines at post primary level.
- (3) That the Chief Secretary for Western Australia be asked to make available the State Electoral Officer to testify on the working of State laws on citizenship in relation to enrolment on State rolls; and on the relationship between State and Federal enrolment in this matter.

The Committee deliberated.

The following witnesses were called, examined and withdrew:—

Mr. R. H. Bartlam (Superintendent, Palm Island Settlement).
Mr. G. C. Coolwell.
Mr. J. Garbutt.
Mr. L. Foster.

The Committee adjourned until Tuesday, 20th June, at 9.30 a.m.

TUESDAY, 20TH JUNE, 1961, AT TOWNSVILLE, QUEENSLAND.

Present:

MR. PEARCE (Chairman).

Mr. Barnes.	Mr. Luchetti.
Mr. Beazley.	Mr. Nelson.
Mr. Howson.	

The minutes of the previous meeting were read and confirmed.

The Committee deliberated.

The following witnesses were called, examined and withdrew:—

Sub-Inspector J. B. Chambers (Protector of Aborigines in the Townsville District).
Mr. T. R. Toogood (representative of the Coloured and White Citizens Co-operative Association of North Queensland).
Mr. D. Streader.
Mr. P. E. Stewart.
Mr. K. F. Spencer (Manager of the Native Hostel, Townsville).
Mr. G. A. Idagi.
Mr. D. R. Broad.

The Committee deliberated.

A broad itinerary for the Northern Territory was drawn up.

The Rt. Rev. Ian Shevill (Bishop of North Queensland) was called and examined.

Witness withdrew.

The Committee adjourned until Wednesday, 21st June, at 8.45 a.m.

WEDNESDAY, 21st JUNE, 1961, AT CAIRNS AND MONA MONA MISSION, QUEENSLAND.

Present:

MR. PEARCE (Chairman).

Mr. Barnes.
Mr. Beazley.
Mr. Howson.

Mr. Luchetti.
Mr. Nelson.

The minutes of the previous meeting were read and confirmed.

The Committee deliberated.

On the motion of Mr. Beazley, the following motions were agreed to:—

- (1) That the Serjeant-at-Arms ask the Clerk of the Parliament of Western Australia for eight (8) copies of each of the following:—
 - (a) The Act of the State Parliament governing native welfare.
 - (b) The State Electoral Act.
 - (c) The Bill, proposed by the Hawke Government to amend the law concerning the acquisition of citizenship by aborigines, but defeated in the Legislative Council.
- (2) That a request be made to the Commonwealth Electoral Officer for South Australia, and to the Electoral Officer of the State of South Australia to explain the practice of their Offices in the State regarding the application of the compulsory provisions for enrolment and voting to aborigines known to be primitive, illiterate, nomadic, periodically nomadic, or associated only loosely or periodically with missions or with government agencies for native welfare.
- (3) That the Hon. A. R. G. Hawke, M.L.A., be invited to explain to the Parliamentary Select Committee on Voting Rights of Aborigines the changes in the State law his former government proposed concerning citizenship rights for aborigines in Western Australia, which failed to become law when rejected by the Legislative Council of Western Australia.
- (4) That the Minister for Native Welfare in Western Australia be informed of the actions of the Superintendents of the native settlements at Palm Island, Queensland; Cherbourg, Queensland; and Woodenbong, New South Wales, in arranging meetings in halls with aborigines, from the body of which meetings aboriginal witnesses came forward on the invitation of the Chairman to give evidence. That he be requested to ask his officers at settlements to be visited by the Committee to take similar action.

On the motion of Mr. Pearce, the following motion was agreed to:—

That the Electoral Commissioner of the State of New South Wales and the Commonwealth Electoral Officer for the State be asked to obtain the numbers of those entitled to vote on aboriginal stations and the numbers who have enrolled.

The Committee deliberated.

The following witnesses were called, examined and withdrew:—

Sub-Inspector K. E. F. Hefferan (Protector of Aborigines in the Cairns District).

Mrs. R. Wallace (representative of the Union of Australian Women, Cairns Branch).

Mr. C. N. Dyer (representative of the Cairns and District Trades and Labour Council).

Mr. S. J. Connolly (representative of the Cairns Branch of the Aborigines and Torres Strait Islanders Advancement League).

Mr. K. J. Atkinson.

Mr. W. J. Gallogly.

The Committee having adjourned to Mona Mona Mission—

Mr. C. C. Litster (Superintendent, Mona Mona Mission) was called and examined.

Witness withdrew.

The Committee adjourned until Thursday, 22nd June, at 1.30 p.m.

THURSDAY, 22ND JUNE, 1961, AT THURSDAY ISLAND, QUEENSLAND.

Present:

MR. PEARCE (Chairman).

Mr. Barnes.
Mr. Beazley.
Mr. Howson.

Mr. Luchetti.
Mr. Nelson.

The minutes of the previous meeting were read and confirmed.

The Committee deliberated.

On the motion of Mr. Howson, the following motion was agreed to:—

That a subscription be made to a press cutting agency in order that all relevant press cuttings in respect of the Committee's inquiry are obtained.

On the motion of Mr. Nelson, the following motion was agreed to:—

That the attention of the Chief Electoral Officer of the Commonwealth be drawn to that part of the evidence given by Mr. Sturges (Superintendent, Cherbourg Aboriginal Settlement) concerning voting rights of aborigines of preponderantly European descent and that he be asked for clarification of the definition of "aboriginal".

Ordered.—That the Bishop of Willochra be invited to give evidence to the Committee.

The Committee deliberated.

The following witnesses were called, examined and withdrew:—

The Rt. Rev. S. J. Matthews (Bishop of Carpentaria).
 The Rev. Father O. McDermott (Parish Priest of Thursday Island).
 Mr. T. Nona (representative of the Western Islands of Torres Strait).
 Mr. J. Mosby (representative of the Central Islands of Torres Strait).
 Mr. G. Mye (representative of the Eastern Islands of Torres Strait).
 Mr. D. Mosby.
 Mr. W. Adidi.
 Mr. A. Adidi.
 Mr. L. Bon.
 Mr. L. Gagai.

The Committee deliberated.

On the motion of Mr. Beazley, the following motion was agreed to:—

That the Committee is of the opinion the Commonwealth Divisional Returning Officer at Cairns should visit Thursday Island and other islands in the Torres Strait and ensure that all persons in the Torres Strait Islands who are entitled to vote are enrolled, particularly ex-servicemen.

On the motion of Mr. Luchetti, the following motion was agreed to:—

That the Chief Electoral Officer of the Commonwealth be informed of the resolution of the Committee regarding enrolment of Torres Strait Islanders and that he be requested to take action for its implementation.

The following witnesses were called, examined and withdrew:—

Mr. W. Whaleboat.
 Mr. R. Z. Sambo.
 Mr. N. W. Baira.
 Mr. S. Hosea.
 Mr. M. Gela.
 Mr. C. Gibuma.
 Mr. J. Anau.
 Mr. J. Mooka.
 The Rev. Father C. G. Brown (Superintendent, St. Paul's Mission to the South Sea Islanders, Moa Island).
 Mr. W. G. L. Imms (Registrar, Diocese of Carpentaria).
 The Rev. Boggo Pilot.

The Rt. Rev. S. J. Matthews was re-called and examined.

Witness withdrew.

The Committee adjourned until Friday, 23rd June, at 10.30 a.m.

FRIDAY, 23RD JUNE, 1961, AT WEIPA MISSION AND TOWNSVILLE, QUEENSLAND.

Present:

MR. PEARCE (Chairman).

Mr. Barnes.
 Mr. Beazley.
 Mr. Howson.

Mr. Luchetti.
 Mr. Nelson.

The minutes of the previous meeting were read and confirmed.

On the motion of Mr. Beazley, the following motions were agreed to:—

(1) That the Commonwealth Solicitor-General be asked—

- (a) If the High Court has ever interpreted the meaning of the expression "the aboriginal race in any State" as it occurs in Section 51 placitum xxvi, of the Constitution. If so, in what manner.
- (b) If the High Court has not interpreted the expression, is there any definition in any law of the Commonwealth which would assign a clear meaning to the expression.
- (c) Is the Commonwealth in a particular case obliged to accept the definitions of a particular State in a case in which whether or not a person is an "aboriginal native of a State" is in question.
- (d) Can the expression "of aboriginal race" be constitutionally applied, as a consequence of any State law, or of any Commonwealth law, by the Commonwealth as covering the cases of persons of mixed European and aboriginal descent.
- (e) Could the Commonwealth declare persons of mixed European and aboriginal descent not to be aborigines within the meaning of Section 51 placitum xxvi of the Constitution.
- (f) Has the High Court interpreted Torres Strait Islanders to be aboriginal natives of a State.
- (g) If not could the Commonwealth constitutionally declare Torres Strait Islanders not to be aborigines.
- (h) If they are not aboriginal natives of a State are they a race for whom the Commonwealth is empowered to make special laws.
- (i) Are persons of mixed Torres Strait Islander and European descent capable constitutionally of being declared by the Commonwealth not to be aboriginal natives of a State.
- (j) Can Commonwealth power to declare nationality and citizenship over-ride a State law which declares—
 - (i) aboriginal natives of full aboriginal descent and
 - (ii) persons of mixed aboriginal and European descent
 not to have citizen rights, including voting rights, within a State but to be persons controlled by a State or State wards.

- (k) Is the power of naturalization confined solely to granting immigrants nationality and citizenship. Can it rest on any other section of the Constitution than Section 51 placitum xxvi and Section 51 placitum xix.
- (l) Is it a "special law" prohibited by Section 51 placitum xxvi for the Commonwealth to exclude aboriginal natives from enrolment and the franchise.
- (m) Does Section 51 placitum xxvi prohibit the Commonwealth from legislating for aborigines who have moved interstate and who are not aboriginal natives of the State in which they reside.
- (n) Does Section 117 of the Constitution have any force to ensure the right to enfranchisement of any aboriginal native whose right to enfranchisement is prevented by the law of a State, if the aboriginal has changed his residence from a State where he may vote to one where he may not.
- (2) That the Commonwealth Solicitor-General be asked if Section 25 of the Constitution would prevent the Commonwealth from—
- (a) establishing an aboriginal electorate within a State,
 - (b) enrolling aboriginal natives compulsorily on Commonwealth rolls.

The following witnesses were called, examined and withdrew:—

Mr. J. S. Winn (Superintendent, Weipa Mission).
 Mr. A. Dick.
 Mr. E. Hall.
 Mr. I. Motton.
 Mr. W. George.

The Committee having adjourned to Townsville—

On the motion of Mr. Beazley, the following motions were agreed to:—

- (1) That Sir Kenneth Bailey be notified that the Committee would wish him to be examined on the subject matter of questions which have been referred to him, the likely time being after the resumption of Parliament in August.
- (2) That the Chief Electoral Officer of the Commonwealth be notified that the Committee would wish him to be examined, after the resumption of Parliament in August, on the duties of Divisional Returning Officers to inform of their voting rights—
 - (a) aboriginal ex-servicemen,
 - (b) persons of preponderant European descent in Queensland ruled as eligible to vote in Commonwealth elections and referenda in correspondence with the Queensland Government in 1946,
 - (c) any other persons eligible who may not know of their eligibility.

The Committee deliberated.

On the motion of Mr. Beazley, it was agreed that the Chairman and Officers arrange the transport in Western Australia.

On the motion of Mr. Beazley, it was agreed that the calling of witnesses and allocation of times in Western Australia be left to the Chairman and Secretary.

On the motion of Mr. Luchetti, a vote of thanks was extended to the Officers, Hansard Reporters and R.A.A.F. Crew for the work carried out by them during the Queensland Programme.

The Committee deliberated.

The Committee adjourned until Friday, 7th July, at 8.45 a.m.

FRIDAY, 7TH JULY, 1961, AT PERTH, WESTERN AUSTRALIA.

Present:

MR. PEARCE (Chairman).

Mr. Barnes.	Mr. Howson.
Mr. Beazley.	Mr. Luchetti.
Mr. Browne.	

The minutes of the previous meeting were read and confirmed.

The Committee deliberated.

The following witnesses were called, examined and withdrew:—

The Hon. C. C. Perkins, M.L.A. (Minister for Native Welfare).
 The Hon. A. R. G. Hawke, M.L.A. (Leader of the Opposition).
 Mr. S. Wallace (Acting Director of Primary Education).
 Mr. G. F. Mathea (Chief Electoral Officer for the State of Western Australia).
 Mr. K. S. Mulligan (Commonwealth Electoral Officer for Western Australia).
 Mr. G. A. Wildman (Divisional Returning Officer for Canning).
 Mr. L. T. Kane (Divisional Returning Officer for Stirling).
 Mr. G. Abdullah.
 Mr. E. C. Gare (President, W.A. Native Welfare Council Incorporated).
 Mr. G. Harwood.
 Dr. R. M. Berndt (Reader in Anthropology, University of Western Australia).
 Mr. H. K. Fuller.

The Committee adjourned until Saturday, 8th July, at 12.30 p.m.

SATURDAY, 8TH JULY, 1961, AT NARROGIN, WAGIN AND KATANNING, WESTERN AUSTRALIA

Present:

MR. PEARCE (Chairman).

Mr. Barnes.	Mr. Howson.
Mr. Beazley.	Mr. Luchetti.
Mr. Browne.	Mr. Nelson.

The minutes of the previous meeting were read and confirmed.

The Committee deliberated.

The following witnesses were called, examined and withdrew:—

Mr. C. R. Wright Webster (District Welfare Officer, Southern District).

Mr. K. Riley.

Mr. S. E. Underwood.

Mrs. M. J. Hill.

Mrs. E. M. Hansen.

The Committee adjourned until, Sunday, 9th July, at 9.0 a.m.

SUNDAY, 9TH JULY, 1961, AT GNOWANGERUP, ONGERUP AND BORDEN, WESTERN AUSTRALIA

Present:

MR. PEARCE (Chairman).

Mr. Barnes.	Mr. Howson.
Mr. Beazley.	Mr. Luchetti.
Mr. Browne.	Mr. Nelson.

The minutes of the previous meeting were read and confirmed.

On the motion of Mr. Browne, a detailed itinerary for the Northern Territory was agreed to.

On the motion of Mr. Barnes, a list of witnesses for the Northern Territory was agreed to.

On the motion of Mr. Beazley, the following motion was agreed to:—

That the Minister for Native Welfare in Western Australia be asked if, in view of Section 41 of the Commonwealth Constitution which provides that the Commonwealth franchise may not be withheld from any person to whom a State grants the State franchise for the more numerous House of the State legislature, it is the practice of the Department of Native Welfare when granting State citizenship to inform the aboriginal being granted the citizenship that he may now vote at Commonwealth elections and should enrol on the Commonwealth rolls. Further, does the Department of Native Welfare inform the Commonwealth electoral authorities of the eligibility of the new citizen to Commonwealth enrolment.

The Committee deliberated.

The following witnesses were called, examined and withdrew:—

Mr. S. R. Adams (Assistant District Welfare Officer, Lower Great Southern).

Mr. R. P. Coyne.

Mr. R. Wynne.

Mr. N. Rowe.

Mrs. A. Coyne.

Mr. A. A. Penny.

Mrs. S. Roberts.

Mrs. H. M. Brown.

Mr. W. F. Roberts.

Mr. C. G. Penny.

Mr. S. V. Penny.

Mr. C. J. Flowers.

The Committee adjourned until Monday, 10th July, at 11.30 a.m.

MONDAY, 10TH JULY, 1961, AT KALGOORLIE, WESTERN AUSTRALIA.

Present:

MR. PEARCE (Chairman).

Mr. Barnes.	Mr. Luchetti.
Mr. Browne.	Mr. Nelson.
Mr. Howson.	

The minutes of the previous meeting were read and confirmed.

The following witnesses were called, examined and withdrew:—

Mr. E. N. Woodward (Divisional Returning Officer for Kalgoorlie).

Mr. J. S. Beharell (District Welfare Officer, Eastern District).

Mrs. K. C. Jackson.

Mr. W. Wardell-Johnson.

Mrs. M. M. Bennett.

Mr. B. A. McLarty (District Welfare Officer, Central District).

Mr. S. Gresswell.

Submission from Mr. W. H. Douglas (Superintendent, Language Department of the United Aborigines Mission) incorporated, by leave, in the *Hansard* report.

The Committee adjourned until Tuesday, 11th July, at 3.45 p.m.

TUESDAY, 11TH JULY, 1961, AT BROOME, WESTERN AUSTRALIA.

Present:

Mr. PEARCE (Chairman).

Mr. Barnes.	Mr. Howson.
Mr. Beazley.	Mr. Luchetti.
Mr. Browne.	Mr. Nelson.

The minutes of the previous meeting were read and confirmed.
The Committee deliberated.

On the motion of Mr. Beazley, the following motion was agreed to:—

That the Private Secretary to the Minister for Native Welfare be asked to refer to the Minister the question of how persons of quadroon and less than quadroon blood in paragraphs (ii) and (iii) of Section 2 of the Native Welfare Act know that they are attaining eligibility for State, and as a consequence, Commonwealth, voting rights, when the section is read in conjunction with Section 18 (e) of the State Electoral Act.

Ordered.—That the Minister for Native Welfare be asked to re-appear before the Committee at his convenience on Friday afternoon, 14th July.

The following witnesses were called, examined and withdrew:—
Mr. H. R. Tilbrook (District Welfare Officer, Northern District).
Mrs. L. Shaw.
Mr. J. Marshall.

Mr. H. R. Tilbrook was re-called and examined.

Witness withdrew.

The following witnesses were called, examined and withdrew:—
The Rev. Father B. T. Murray.
Mr. R. Hunter.
Mr. P. Cox.

The Committee adjourned until Wednesday, 12th July, at 8.0 a.m.

WEDNESDAY, 12TH JULY, 1961, AT BROOME, KALUMBURU AND DERBY, WESTERN AUSTRALIA.

Present:

Mr. PEARCE (Chairman).

Mr. Barnes.	Mr. Howson.
Mr. Beazley.	Mr. Luchetti.
Mr. Browne.	Mr. Nelson.

The minutes of the previous meeting were read and confirmed.
The Committee deliberated.

Ordered.—That Mr. Morgan (Assistant District Welfare Officer, Broome) and Mr. Male (representing the Shire Council of Broome) be asked to appear before the Committee at 8 p.m. this day.

The Committee having adjourned to Kalumburu—

The following witnesses were called, examined and withdrew:—
The Rt. Rev. G. Gomez (Lord Abbott of New Norcia).
Mr. J. Maraltj.
The Rev. Father S. Sanz (Superintendent, Kalumburu Mission).
Mr. A. Ungango.

The Committee having adjourned to Derby—

The following telephone message was received:—

Please notify Serjeant-at-Arms that Mr. Male has declined to give evidence as notice was insufficient. Any remarks he has to make will be through the press.

On the motion of Mr. Beazley, the following motion was agreed to:—

That Mr. Male be informed that the nature of the evidence being sought requires no preparation as it arises from evidence previously given on points of fact. He is hereby summoned to attend at 9 p.m. this day.

Mr. Male was informed accordingly by the Serjeant-at-Arms of the Committee's resolution and indicated that he would be in attendance at the time stated.

The following witnesses were called, examined and withdrew:—

Mr. R. M. Rowell, J.P.
Mr. J. Hunter.
Mr. G. Jungine.
Mr. E. H. McLarty.
Mr. L. Harron.
Mr. F. Wanadda.
Mr. K. R. Morgan (Superintendent, Derby Mission Centre).
Mr. F. Johnstone.
Mr. T. Yumbanan.
Mr. B. Buck.
Mr. T. Butler.
Mr. L. Kunamara.
Mr. N. S. Vawser (Superintendent, Presbyterian Aborigines' Mission, Derby).
Mr. L. J. Coleman.
Pastor B. Mason.

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The Committee having adjourned to Broome—

Mr. K. I. Morgan (Assistant District Welfare Officer, Broome).

Mr. A. P. Male.

The Committee adjourned until Thursday, 13th July, at 8.0 a.m.

THURSDAY, 13TH JULY, 1961, AT BROOME, ONSLOW AND PORT HEDLAND, WESTERN AUSTRALIA.

Present:

MR. PEARCE (Chairman).

Mr. Barnes.

Mr. Beazley.

Mr. Browne.

Mr. Howson.

Mr. Luchetti.

Mr. Nelson.

The minutes of the previous meeting were read and confirmed.

The Committee deliberated.

On the motion of Mr. Beazley, the following motions were agreed to:—

- (1) (a) That the Minister for Native Welfare be informed of the evidence of Mr. A. P. Male which indicated his belief that citizenship rights were still revocable, although revocation rested on doubtful legal grounds, whereas Native Welfare Officers advise that they are not.
- (b) That the Committee would be grateful for the Minister's official pronouncement on the subject.
- (2) That the Minister for Native Welfare be asked if there is any procedure of appeal to any higher court than the Citizenship Board if claims for citizenship rights are rejected.

On the motion of Mr. Luchetti, the following motion was agreed to:—

That the Minister for Native Welfare be asked—

- (1) (a) the number of applications for citizenship rights,
- (b) the number rejected, and
- (c) the number revoked—
in the past three years.
- (2) Are there significant variations in percentage claims accepted as between different citizenship boards.

The Committee having adjourned to Onslow—

The following witnesses were called, examined and withdrew:—

Mrs. P. B. Downes.

Mrs. I. J. D. Wheelhouse.

Mr. A. G. Downes (Superintendent, Onslow Native Hostel).

Constable L. P. Rinaldi.

The Committee having adjourned to Port Hedland—

Mr. E. Roberts (Assistant District Welfare Officer, Port Hedland).

Mr. V. F. Clarke.

Mr. K. G. Winder.

The Rev. Father J. O'Sullivan.

The Rev. T. Blackwell.

Mr. P. Coffin.

Mr. A. H. Barker (Headmaster, Port Hedland State School).

Mr. V. F. Clarke was re-called and examined.

Witness withdrew.

The Committee adjourned until Friday, 14th July, at 2.0 p.m.

FRIDAY, 14TH JULY, 1961, AT PERTH, WESTERN AUSTRALIA.

Present:

MR. PEARCE (Chairman).

Mr. Barnes.

Mr. Beazley.

Mr. Browne.

Mr. Howson.

Mr. Luchetti.

The minutes of the previous meeting were read and confirmed.

On the motion of Mr. Beazley, the following motions were agreed to:—

- (1) That the Minister for External Affairs be asked to nominate an officer, or officers, of the Department of External Affairs to testify to the effect, if any, of the present social status and legal rights of aborigines in Australia on the standing and good name of Australia, in the United Nations, in Asia, in Africa and in the Commonwealth of Nations.
- (2) That the Minister for Social Services be asked to nominate an officer or officers to testify to any effect the recent extension of social services to aborigines has had upon their status, their outlook, their capacity for citizenship, if any survey has been made by the Department or any information is available to the Department.
- (3) That the Minister for Health be asked to nominate an officer or officers to testify before the Committee on any surveys on health, nutrition, intelligence, and incidence of notifiable diseases among aborigines under Commonwealth jurisdiction, which may have been made under the aegis of the Department.

(4) That the Prime Minister be asked to nominate an officer or officers to testify to the findings of any survey which may have been made by the Commonwealth Office of Education on the intelligence, educable capacity, and results of education, of aboriginal children.

(5) (a) That Professor Geoffrey Sawer, of the Australian National University, be invited to testify as to the bearing of the following sections of the Commonwealth Constitution on the problem of granting an aboriginal franchise, or establishing special aboriginal electorates:—

Sections 25, 31, 41, 51 placitum xxvi, 127.

(b) That he be further invited to testify as to the constitutional status of Torres Strait Islanders under Section 51 placitum xxvi.

(6) (a) That the attention of the Commonwealth Solicitor-General and Professor Geoffrey Sawer be drawn to the wording of the Act of the Parliament of Western Australia entitled "An Act to amend the Native Welfare Act 1905-1954", No. 3 of 1960 (9 Elizabeth II No. III), at Section 2 c wherein referring to aborigines granted citizenship by the State, it provides that they will have "all the rights privileges and immunities" and be "subject to the duties and liabilities of a natural born or naturalized subject of Her Majesty who is of the same age".

(b) What meaning, if any, has this passage?

(c) That the Commonwealth Solicitor-General and Professor Sawer be asked to testify on the following point:—

Are aboriginal natives of Australia natural born subjects of Her Majesty at common law, by the Constitution of the Commonwealth, or the Constitutions of the States, or by any Act of the United Kingdom Parliament antecedent to the formation of the Commonwealth of Australia. (See also section 6 of Natives (Citizenship Rights) Act of Western Australia (No. 23 of 1944 as amended by No. 44 of 1950 and No. 27 of 1951).)

(7) That the Minister for External Affairs be asked if Australia has subscribed to the Charter of Human Rights and if it constitutes a Treaty.

(8) That the Solicitor-General be asked to testify on the following points:—

(a) if there is constitutional warrant for any other designation of Australian people in the Constitution than "Subjects of the Queen resident in a State or Territory".

(b) are aboriginal natives of Australia and persons classed as "natives" under the laws of Queensland and Western Australia "Subjects of the Queen resident" in those States.

(c) if Torres Strait Islanders are not aborigines are they people who come under the description of "people of any race" for whom the Commonwealth could make "special laws". If so, could the Commonwealth supplant by its own legislation all Queensland legislation in respect of them as a people.

(9) That the Committee request the State Minister for Justice if he would graciously ask the State Crown Law Authorities with respect to the wording of the amendment of the Native Welfare Act 1905-1954 entitled "An Act to amend the Native Welfare Act 1905-1954", No. 3 of 1960 (9 Elizabeth II No. III), wherein the expressions are used "all the rights privileges and immunities" and "subject to the duties and liabilities of a natural born subject of Her Majesty"—

(a) is this an assertion by the State of Western Australia, that, prior to the conferring of these rights on a native under the Act, such a native is not a natural born subject of the Queen.

(b) if natives are natural born subjects of the Queen without any application of the Act to them, what meaning can be assigned to it since these rights privileges and immunities of a natural born subject of the Queen could include merely their existing status, and natural born subjects of the Queen may have widely differing status. In this case the declaration, failing to enumerate rights, privileges, immunities and duties, and which are among the possible status of natural born subjects of the Queen appears difficult to understand.

(c) the Committee has encountered the view of two aborigines that the passage means that they have no allegiance to the Queen and are stateless persons, since they have not assumed the privileges and duties, not having sought them under the Act. Is the section a claim to be creating allegiance to Her Majesty.

(d) is it a claim by the State to a concurrent power with the Commonwealth to legislate for naturalisation.

(e) is it a claim by the State to legislate for nationality.

(f) the same questions are asked of Section 6 of the Natives (Citizenship Rights) Act (Act No. 23 of 1944) (8 and 9. George VI. No. XXIII).

(g) That the Crown Law authorities be asked if the legislation means that the State claims for aborigines in Western Australia any other basic status than that of "Subjects of the Queen resident in the State of Western Australia" within the meaning of the expression in Section 117 of the Commonwealth Constitution "Subjects of the Queen resident in any State".

(h) These questions are contingent upon the sections being still in force.

The Committee deliberated.

On the motion of Mr. Pearce, the following motion was agreed to:—

That the Chief Electoral Officer of the Commonwealth be asked—

Are special instructions issued to the Commonwealth Electoral Officers in South Australia, Victoria and New South Wales in regard to enrolment and voting of aborigines and the penal provisions of the Electoral Act in respect of aborigines who fail to enrol and/or vote.

On the motion of Mr. Howson, the following motion was agreed to:—

That the Secretary write to the District Welfare Office, Derby, informing him that Mr. Thomas Scott, C/o Post Office, Derby, approached a Committee member saying that he had wanted to give evidence to the Committee, but had missed his opportunity. Could he take a statement from Mr. Scott, or if Mr. Scott is literate could he ask him to write to the Secretary so that Mr. Scott's views may be studied and incorporated in the record.

Submissions from the following persons were incorporated, by leave, in the *Hansard* report:—

Mr. D. W. Hardwick (Managing Secretary, District Hospital, Busselton).

Mr. J. K. Robinson (Secretary of the Churches of Christ Federal Aborigines' Mission Board).

Mrs. M. G. Lester (State Secretary, Union of Australian Women) was called and examined.

Witness withdrew.

The Hon. C. C. Perkins, M.L.A. (Minister for Native Welfare) was re-called and examined.

Witness withdrew.

The following witnesses were called, examined and withdrew:—

Mrs. D. I. Quayle (State President, Women's Service Guilds of Western Australia).

Mrs. D. E. Trainor (Vice-President, Association for the Advancement of Coloured People).

Mr. G. L. Penny.

Mr. J. L. Graham.

Miss A. Bromham (representative of the Women's Christian Temperance Union of Western Australia).

Miss. C. M. A. Harrison.

Sister E. Wakefield-Kent.

The Committee adjourned until Saturday, 15th July, at 8.45 a.m.

SATURDAY, 15TH JULY, 1961, AT MOUNT LAWLEY AND NEW NORCIA, WESTERN AUSTRALIA.

Present:

MR. PEARCE (Chairman).

Mr. Browne.

Mr. Luchetti.

The minutes of the previous meeting were read and confirmed.

The Committee deliberated.

On the motion of Mr. Browne, a vote of thanks was extended to the *Hansard* Reporters for the work carried out by them during the Western Australian Programme.

Mr. R. McKeich was called and examined.

Witness withdrew.

The Committee having adjourned to New Norcia—

The following witnesses were called, examined and withdrew:—

Mrs. P. Willaway.

Mr. R. T. Taylor.

The Rev. Father B. Nosedo.

Mr. T. J. Taylor.

Mr. L. A. Taylor.

Mr. R. J. Drayton.

The Rev. Father W. Saenz.

The Committee adjourned until Thursday, 27th July, at 8.45 a.m.

THURSDAY, 27TH JULY, 1961, AT DARWIN, NORTHERN TERRITORY.

Present:

MR. PEARCE (Chairman).

Mr. Barnes.

Mr. Howson.

Mr. Beazley.

Mr. Luchetti.

Mr. Browne.

Mr. Nelson.

The minutes of the previous meeting were read and confirmed.

On the instructions of Mr. Pearce (Chairman), Mr. Nelson was appointed Deputy Chairman during the absence of the Chairman this day, pursuant to paragraph 5 of the Resolution of the House of Representatives.

The Committee deliberated.

On the motion of Mr. Beazley the following urgent telegram was agreed to and sent over the Deputy Chairman's name to the Minister for Territories (Mr. Hasluck)—

Indications have been given that Administration staff here are not free to express any personal views but simply to give facts and figures and the official attitude. I have been appointed Acting Chairman pending arrival of Mr. Pearce. Clarification needed before Chairman arrives at two o'clock. Has this direction which defeats purposes of Committee come from you. Grateful information immediately.

The following witnesses were called, examined and withdrew:—

Mr. H. Brennan, M.L.C.
Mr. F. W. Drysdale, M.L.C.
Mr. P. Carroll (Secretary, North Australia Workers' Union).

Mr. Pearce having taken the Chair—
The Committee deliberated.

The following telegram from Mr. Hasluck was read to the Committee:—

No communication has been made by me to any prospective witness. In conversation with Permanent Head of the Department over problem which arises for public servants under his control I expressed following views for his guidance. Any public servant called before Committee should assist Committee to the full by giving information about situation in Northern Territory. Their position is the same as that of public servants appearing before Joint Public Works Committee or Joint Public Accounts Committee on which senior officers already have had experience. They recognize that policy decision will eventually be made by Government and as they are required to carry out whatever policy decisions may be made it is customary for public servants to avoid advocacy of any particular policy or the expression of personal view. These are well established public service principles and my discussion with Permanent Head was concerned solely with public service principles irrespective of the subject with which the Parliamentary Committee is concerned.

The Chairman called on His Honour the Administrator (the Hon. Roger Nott) who indicated that officers of the Administration may express their personal views to the Committee.

The Chairman made a statement regarding the protection of witnesses in respect of anything that may be said by them in their evidence.

The following witnesses were called, examined and withdrew:—

Mr. R. Marsh (Assistant Administrator).
Mr. H. C. Giese (Director of Welfare).

The Committee adjourned until Friday, 28th July, at 8.45 a.m.

FRIDAY, 28TH JULY, 1961, AT DARWIN, NORTHERN TERRITORY.

Present:

MR. PEARCE (Chairman).

Mr. Barnes.	Mr. Howson.
Mr. Beazley.	Mr. Luchetti.
Mr. Browne.	Mr. Nelson.

The minutes of the previous meeting were read and confirmed.

The Committee deliberated.

Ordered.—That the Crown Law Officer for the Northern Territory be asked to appear before the Committee at 5.30 p.m. this day.

The Committee deliberated.

The Chairman made a statement to the Committee regarding the premature publication of a Committee's Proceedings or Evidence and reminded members that the deliberations of a Committee are confidential and must not be disclosed.

The following witnesses were called, examined and withdrew:—

Mr. Jack White.
Mr. E. V. Cooper.
Mr. R. C. Ward, M.L.C.
Mr. H. M. Carolin (representative of the Darwin Branch of the Australian Labor Party).
Mr. Holder Adams.
Mr. B. R. Behrndt (representing the Divisional Returning Officer for the Northern Territory).
Mr. J. F. Bowditch, (Editor, *The Northern Territory News*).
Mr. J. B. K. Williams (Acting Crown Law Officer).
Mr. Jacob Roberts.
Mr. W. Donnelly (representative of the Darwin Workers' Club).

Mr. H. Brennan, M.L.C., was re-called and examined.

Witness withdrew.

The following witnesses were called, examined and withdrew:—

Mr. Philip Roberts.
The Rt. Rev. J. P. O'Loughlin (Bishop of Darwin).

The Committee adjourned until Saturday, 29th July, at 10.30 a.m.

SATURDAY, 29TH JULY, 1961, AT ROPER RIVER AND GROOTE EYLANDT, NORTHERN TERRITORY

Present:

MR. PEARCE (Chairman).

Mr. Barnes.	Mr. Howson.
Mr. Beazley.	Mr. Luchetti.
Mr. Browne.	Mr. Nelson.

The minutes of the previous meeting were read and confirmed.

The following witnesses were called, examined and withdrew:—

Mr. P. E. Leske (Superintendent, Roper River Mission).
 Mr. Dennis Daniel.
 Mr. Andrew Joshua.
 Mr. Peter Bush.
 Mr. Silas Roberts.
 Mrs. G. Huddleston.

The Committee having adjourned to Groote Eylandt—

The Rev. J. A. Taylor (Superintendent, Groote Eylandt Mission).
 Deaconess D. N. Farley (Head Teacher, Groote Eylandt Mission).
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 Mr. R. B. Dent.

The Committee adjourned until Sunday, 30th July, at 10.0 a.m.

SUNDAY, 30TH JULY, 1961, AT BATHURST ISLAND AND SNAKE BAY, NORTHERN TERRITORY.

Present:

MR. PEARCE (Chairman).

Mr. Barnes.	Mr. Howson.
Mr. Beazley.	Mr. Luchetti.
Mr. Browne.	Mr. Nelson.

The minutes of the previous meeting were read and confirmed.

The following witnesses were called, examined and withdrew:—

The Rev. Father A. Corry (Superintendent, Bathurst Island Mission).
 Brother F. J. Quinn.
 Mr. B. Munkara.
 Mr. E. Johnson.
 Mr. M. Ulungura.
 Mr. B. Tipuamanturimmi.
 Mr. A. Croker.

The Committee having adjourned to Snake Bay Settlement, Melville Island—

Mr. H. M. Sidgwick (Superintendent, Snake Bay Settlement).
 Mr. P. Farmer.
 Mr. Dan Daniel.
 Mr. E. McKay.
 Mr. B. Hetherington.
 Mr. E. Brook.

The Committee adjourned until Monday, 31st July, at 11.25 a.m.

MONDAY, 31ST JULY, 1961, AT KATHERINE, NORTHERN TERRITORY.

Present:

MR. PEARCE (Chairman).

Mr. Barnes.	Mr. Howson.
Mr. Beazley.	Mr. Luchetti.
Mr. Browne.	Mr. Nelson.

The minutes of the previous meeting were read and confirmed.

The Committee deliberated.

The following witnesses were called, examined and withdrew:—

Mr. A. H. Pitts (District Welfare Officer, Gregory District.)
 Mr. Bob Brolga.
 Mr. A. J. Fox.
 The Rev. H. T. Jamieson.
 Mr. J. D. Nott.
 Mr. F. Lansdowne.
 Mr. Dick Brumby.
 Mr. P. McCracken.
 Mr. Don Blitner.
 Mr. A. Nixon.
 Mr. Robert Riley.
 Mr. Leo John.
 Mr. J. N. Martin.

The Committee adjourned until Tuesday, 1st August, at 10.0 a.m.

TUESDAY, 1ST AUGUST, 1961, AT VICTORIA RIVER DOWNS AND HOOKER CREEK,
NORTHERN TERRITORY.

Present:

MR. PEARCE (Chairman).

Mr. Barnes.	Mr. Howson.
Mr. Beazley.	Mr. Luchetti.
Mr. Browne.	Mr. Nelson.

The minutes of the previous meeting were read and confirmed.

The following witnesses were called, examined and withdrew:—

Mr. Charcoal Dulung.
Mr. Wallaby Jangbagari.
Mr. Humbert Tommy Nguringari.
Mr. Kelly Miwud.
Mr. Peter Du'ulmaki.
Mr. Frank Dangaro.
Mr. Jabaru Kinji'or.
Mr. Cloud Kanalagari.

The Committee having adjourned to Hooker Creek Settlement—

Mr. Abe Jangala.
Mrs. Annie Ngajita.
Mr. Sandy Jurra.
Mr. Morris Jibarula.
Mr. Peter Blacksmith.
Mrs. Florrie Blacksmith.
Mr. Freddie Jigali.
Mrs. Molly Namajimba.
Mr. D. G. W. Drysdale (Manager, Hooker Creek Settlement).

The Committee adjourned until Wednesday, 2nd August, at 9.30 a.m.

WEDNESDAY, 2ND AUGUST, 1961, AT TENNANT CREEK, NORTHERN TERRITORY.

Present.

MR. PEARCE (Chairman).

Mr. Barnes.	Mr. Howson.
Mr. Beazley.	Mr. Luchetti.
Mr. Browne.	Mr. Nelson.

The minutes of the previous meeting were read and confirmed.

The Committee deliberated.

The following witnesses were called, examined and withdrew:—

Mr. Smiler Major.
Mr. Constantine Perry.
Mr. Stephen Morton.
Banjo.
Mr. Charlie Rex.
Paddy.
Mrs. M. E. Millgate.
Mr. J. K. Walsh.
Mr. F. J. Kittle.
Sgt. A. F. Metcalfe.
Mr. B. D. Greenfield (Acting District Welfare Officer, Lindsay District).

The Committee adjourned until Thursday, 3rd August, at 10.30 a.m.

THURSDAY, 3RD AUGUST, 1961, AT PAPUNYA AND HERMANNSBURG, NORTHERN TERRITORY.

Present:

MR. PEARCE (Chairman).

Mr. Barnes.	Mr. Howson.
Mr. Beazley.	Mr. Luchetti.
Mr. Browne.	Mr. Nelson.

The minutes of the previous meeting were read and confirmed.

The following witnesses were called, examined and withdrew:—

Mr. G. F. Holden (Acting Superintendent, Papunya Settlement).
Mr. S. A. Luck (Teacher-in-charge, Papunya School).
Karpa.
Mr. Tommy Doolan.
Mr. Johnny Lynch.

The Committee having adjourned to Hermannsburg—

Pastor P. A. Scherer (Pastor of Hermannsburg Mission).
 Mr. H. O. Leditschke (Manager, Hermannsburg Mission).
 Sister I. A. Wurst.
 Mr. Manasse Armstrong.
 Mr. Colin Malbangka.
 Mr. Benjamin Ebatarinja.
 Mr. Edwin Parerultja.
 Mr. N. M. Hueppauff.
 Mr. K. Williams.

The Committee adjourned until Friday, 4th August, at 9.0 a.m.

FRIDAY, 4TH AUGUST, 1961, AT ALICE SPRINGS, NORTHERN TERRITORY.

Present:

MR. PEARCE (Chairman).

Mr. Barnes.	Mr. Howson.
Mr. Beazley.	Mr. Luchetti.
Mr. Browne.	Mr. Nelson.

The minutes of the previous meeting were read and confirmed.

The Committee deliberated.

On the motion of Mr. Nelson a vote of thanks was extended to Wing-Commander Fairbairn and his crew of Richmond R.A.A.F. Base for their services during the Northern Territory Programme.

On the motion of Mr. Nelson a vote of thanks was extended to the Hansard Reporters for their work during the Northern Territory Programme.

The following witnesses were called, examined and withdrew:—

Mr. L. N. Penhall (Acting Assistant Director of Welfare, Southern Division).
 Miss O. M. Pink.
 Mr. A. G. W. Greatorex (Secretary, Centralian Pastoralists' Association).
 Pastor F. W. Albrecht.
 Mr. W. H. F. Petrick, M.L.C.
 Mr. R. E. Battarbee.
 Mr. F. W. Johnson (representative of the Alice Springs Branch of the Australian Labor Party).

Submissions from the following persons were incorporated, by leave, in the *Hansard* report:—

The Rev. G. J. Symons (Chairman, North Australia District of the Methodist Church).
 Mr. D. N. Mathieson, M.L.C.
 Mr. N. C. Hargrave, M.L.C.
 Mr. W. E. Harney.

Submission from Mrs. G. D. Wright was incorporated, by leave, in the *Hansard* report of the Western Australian evidence.

The Committee adjourned until Thursday, 17th August, at 9.15 a.m.

THURSDAY, 17TH AUGUST, 1961, AT CANBERRA, A.C.T.

Present:

MR. PEARCE (Chairman).

Mr. Barnes.	Mr. Howson.
Mr. Beazley.	Mr. Luchetti.
Mr. Browne.	Mr. Nelson.

The minutes of the previous meeting were read and confirmed.

The Committee deliberated.

Resolved.—That the Committee meet at the following places on the dates and at the times mentioned:—

Melbourne	.. .. .	Friday, 8th September, at 9 a.m.
Sydney	.. .. .	Monday, 11th September, at 9 a.m.
Adelaide	.. .. .	Monday, 2nd October, at 9 a.m.

Ordered.—That a representative of the Department of External Affairs appear before the Committee on Tuesday, 22nd August, at 11.45 a.m.

Ordered.—That Dr. W. F. H. Crick of the Department of Health appear before the Committee on Wednesday, 23rd August, at 9.15 a.m.

Ordered.—That Mr. F. L. Ley (Chief Electoral Officer) re-appear before the Committee on Wednesday, 23rd August, at 9.45 a.m.

Mr. R. G. Withers (President, Western Australian Division of the Liberal Party of Australia) was called and examined.
 Witness withdrew.

Submission from Mr. T. Scott was incorporated, by leave, in the *Hansard* report of the Western Australian evidence.

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 at 9.15
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Ordered.—That Mr. G. M. Bryant, M.P., be invited to appear before the Committee on Thursday, 24th August, at 9.15 a.m.
The Committee adjourned until Tuesday, 22nd August, at 11.45 a.m.

TUESDAY, 22ND AUGUST, 1961, AT CANBERRA, A.C.T.

Present:

MR. PEARCE (Chairman).

Mr. Barnes.	Mr. Howson.
Mr. Beazley.	Mr. Nelson.

The minutes of the previous meeting were read and confirmed.

The following witnesses were called, examined and withdrew:—

Mr. P. R. Heydon (First Assistant Secretary, Department of External Affairs).
Mr. A. H. Body (Legal Adviser, Department of External Affairs).

The Committee adjourned until Wednesday, 23rd August, at 9.15 a.m.

WEDNESDAY, 23RD AUGUST, 1961, AT CANBERRA, A.C.T.

Present:

MR. PEARCE (Chairman).

Mr. Barnes.	Mr. Luchetti.
Mr. Beazley.	Mr. Nelson.
Mr. Howson.	

The minutes of the previous meeting were read and confirmed.

Dr. W. F. H. Crick (Senior Medical Officer, Department of Health) was called and examined.

Witness withdrew.

Mr. F. L. Ley (Chief Electoral Officer) was re-called and examined.

Witness withdrew.

The Committee adjourned until Thursday, 24th August, at 9.40 a.m.

THURSDAY, 24TH AUGUST, 1961, AT CANBERRA, A.C.T.

Present:

MR. PEARCE (Chairman).

Mr. Barnes.	Mr. Howson.
Mr. Beazley.	Mr. Luchetti.

On the motion of Mr. Beazley, it was agreed that all other business be postponed until after the examination of Mr. G. M. Bryant, M.P.

Mr. G. M. Bryant, M.P. (President, Aborigines Advancement League (Vic.)) was called and examined.

Witness withdrew.

The minutes of the previous meeting were read and confirmed.

A list of witnesses for Victoria, New South Wales and South Australia was agreed to.

The Committee deliberated.

The Committee adjourned until Tuesday, 29th August, at 6.45 p.m.

TUESDAY, 29TH AUGUST, 1961, AT CANBERRA, A.C.T.

Present:

MR. PEARCE (Chairman).

Mr. Barnes.	Mr. Howson.
Mr. Beazley.	Mr. Luchetti.
Mr. Browne.	Mr. Nelson.

The minutes of the previous meeting were read and confirmed.

The Committee deliberated.

The Committee adjourned until Wednesday, 30th August, at 9.15 a.m.

WEDNESDAY, 30TH AUGUST, 1961, AT CANBERRA, A.C.T.

Present:

MR. PEARCE (Chairman).

Mr. Barnes.	Mr. Howson.
Mr. Beazley.	Mr. Luchetti.
Mr. Browne.	Mr. Nelson.

The minutes of the previous meeting were read and confirmed.

The Committee deliberated.

On the motion of Mr. Beazley, it was agreed that a sub-committee consisting of the Chairman, Mr. Howson and Mr. Luchetti be appointed to consider the incorporation of photographs in the Report.

The Committee deliberated.

The Committee adjourned until Friday, 8th September, at 9.15 a.m.

FRIDAY, 8TH SEPTEMBER, 1961, AT MELBOURNE, VICTORIA.

Present:

MR. PEARCE (Chairman).

Mr. Barnes.	Mr. Luchetti.
Mr. Beazley.	Mr. Nelson.
Mr. Howson.	

The minutes of the previous meeting were read and confirmed.

The following witnesses were called, examined and withdrew:—

Mr. T. N. Garnet (Secretary, Aborigines Welfare Board).
 Mr. J. D. McGinness (President, Federal Council for Aboriginal Advancement).
 Mrs. D. A. Blackburn (representative of the Women's Christian Temperance Union (Vic.)).
 Pastor D. R. Nicholls.
 Dr. B. E. Christophers (President, Council for Aboriginal Rights).
 Mr. E. W. P. Chinnery.
 Mr. S. Fowler (Federal Secretary, United Aborigines Mission).
 Mr. C. J. A. Lack (Commonwealth Electoral Officer for Victoria).
 Mr. F. E. Cahill (Chief Electoral Officer for the State of Victoria).

Submissions from the following persons were incorporated, by leave, in the *Hansard* report:—

Hon. Murray V. Porter, M.L.A. (Minister for Local Government).
 Miss S. Andrews (Secretary, Council for Aboriginal Rights).
 Mr. P. E. Felton (Superintendent of Aborigines Welfare).
 Mrs. M. Broadbent.
 Mr. H. F. Dawson (Federal Secretary, United Nations Association of Australia).
 Mr. I. Spalding.
 Mrs. N. Nickels (Acting Secretary, Montmorency Peace Discussion Group).
 Miss A. N. Brown (Secretary, Victorian Aboriginal Group and National Association for the Advancement of the Native Race).
 Mr. M. Clark (National Secretary, Aboriginal Scholarships National Committee).
 Mr. F. Kearney.

The Committee adjourned until Monday, 11th September, at 9.15 a.m.

MONDAY, 11TH SEPTEMBER, 1961, AT SYDNEY, NEW SOUTH WALES.

Present:

MR. PEARCE (Chairman).

Mr. Beazley.	Mr. Luchetti.
Mr. Howson.	Mr. Nelson.

The minutes of the previous meeting were read and confirmed.

The Committee deliberated.

The following witnesses were called, examined and withdrew:—

Mr. H. J. Green (Superintendent of Aborigines Welfare).
 Mr. M. Sawtell (Chief Secretary's Appointee on the Aborigines Welfare Board).
 Professor A. P. Elkin (Vice-Chairman, Aborigines Welfare Board).
 Mrs. P. Elphinston (National Secretary, Union of Australian Women).
 Mr. J. C. Horner (Secretary, Aboriginal-Australian Fellowship).
 Mr. W. E. L. de Vos (Secretary, Northern Territory Pastoral Lessees' Association).
 Mr. R. F. Mallon (Commonwealth Electoral Officer for New South Wales).
 Mr. J. M. O. McDonnell (Electoral Commissioner for the State of New South Wales).

Submissions from the following persons were incorporated, by leave, in the *Hansard* report:—
 Mr. J. W. Warburton (President, Armidale Association for the Assimilation of Aborigines).
 Mr. E. R. Woolmington (President, University of New England Teachers' Association).
 Hon. C. A. Kelly, M.L.A. (Chief Secretary).
 Lady Jessie M. G. Street.
 Mr. A. G. Kingsmill (Chairman, Aborigines Welfare Board).
 The Rev. E. V. Newman (Secretary, National Missionary Council of Australia).
 The Committee adjourned until Wednesday, 27th September, at 9.15 a.m.

WEDNESDAY, 27TH SEPTEMBER, 1961, AT CANBERRA, A.C.T.

Present:

MR. PEARCE (Chairman).

Mr. Barnes.	Mr. Luchetti.
Mr. Beazley.	Mr. Nelson.
Mr. Howson.	

The minutes of the previous meeting were read and confirmed.

The Committee deliberated.

On the motion of Mr. Barnes, it was agreed that a sub-committee consisting of the Chairman, Mr. Beazley and Mr. Howson be appointed to consider the form of a draft Report.

The Committee deliberated.

The Committee adjourned until Thursday, 28th September, at 9.15 a.m.

THURSDAY, 28TH SEPTEMBER, 1961, AT CANBERRA, A.C.T.

Present:

MR. PEARCE (Chairman).

Mr. Barnes.	Mr. Luchetti.
Mr. Beazley.	Mr. Nelson.
Mr. Howson.	

The minutes of the previous meeting were read and confirmed.

The Committee deliberated.

The Committee adjourned until Monday, 2nd October, at 9.30 a.m.

MONDAY, 2ND OCTOBER, 1961, AT ADELAIDE, SOUTH AUSTRALIA.

Present:

MR. PEARCE (Chairman).

Mr. Barnes.	Mr. Howson.
Mr. Beazley.	Mr. Nelson.

The minutes of the previous meeting were read and confirmed.

The following witnesses were called, examined and withdrew:—

Mr. C. E. Bartlett (Secretary, Aborigines Protection Board of South Australia).

Mrs. I. Schulz (representative of the Aborigines' Advancement League of South Australia).

Mr. F. H. Sharley (Secretary, Proportional Representation Group of South Australia).

Dr. C. Duguid.

Mr. F. B. Phillips (Commonwealth Electoral Officer for South Australia).

Mr. N. B. Douglass (representing the Clerk-in-charge, Electoral Department of South Australia).

Mrs. A. I. Richardson (President, League of Women Voters of South Australia).

Submissions from the following persons were incorporated, by leave, in the *Hansard* report:—

The Rev. G. Rowe (Secretary, Aborigines' Friends' Association of South Australia).

Senator H. G. J. Cant.

Mr. D. W. McLeod.

Mr. J. H. T. Taylor.

Mr. C. Perkins.

Mr. G. Hutchesson (Clerk of the Religious Society of Friends, South Australia).

The Committee adjourned until Thursday, 5th October, at 9.15 a.m.

THURSDAY, 5TH OCTOBER, 1961, AT CANBERRA, A.C.T.

Present:

MR. PEARCE (Chairman).

Mr. Barnes.	Mr. Howson.
Mr. Beazley.	Mr. Nelson.
Mr. Browne.	Mr. Luchetti.

The minutes of the previous meeting were read and confirmed.

The Chairman submitted his Draft Report.

Howson and

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The Committee proceeded to the consideration of the Draft Report.

Paragraphs 1-5 agreed to.
Paragraph 6 amended and agreed to.
Paragraphs 7-13 agreed to.
Paragraph 14 amended and agreed to.
Paragraphs 15-19 agreed to.
Paragraph 20 amended and agreed to.
Paragraphs 21-27 agreed to.
Paragraph 28 amended and agreed to.
Paragraphs 29-40 agreed to.
Paragraph 41 amended and agreed to.
Paragraphs 42-81 agreed to.
Paragraph 82 amended and agreed to.
Paragraphs 83-93 agreed to.
Paragraph 94 amended and agreed to.
Paragraphs 95-101 agreed to.

Resolved.—That the Draft Report, as amended, be the Report of the Committee.
On the motion of Mr. Howson, a vote of thanks was extended to the Chairman.
The minutes of this meeting were read and confirmed.
The Committee adjourned *sine die*.

APPENDIX I

LIST OF WITNESSES.

- Abdullah, Mr. G.
 Adams, Mr. H.
 Adams, Mr. S. R., Assistant District Welfare Officer, Lower Great Southern, Western Australia.
 Adidi, Mr. A.
 Adidi, Mr. W.
 Albrecht, Pastor F. W.
 Anau, Mr. J.
 Andrews, Miss S., Secretary, Council for Aboriginal Rights (Victoria).
 Armstrong, Mr. M.
 Atkinson, Mr. K. J., a pastoralist.
 Baira, Mr. N. W.
 Banjo.
 Barker, Mr. A. H., Headmaster, Port Hedland State School.
 Bartlam, Mr. R. H., Superintendent, Palm Island Settlement, Queensland.
 Bartlett, Mr. C. E., Secretary, Aborigines Protection Board, South Australia.
 Battarbee, Mr. R. E.
 Beharell, Mr. J. S., District Welfare Officer, Eastern District, Western Australia.
 Behrndt, Mr. B. R., representing the Divisional Returning Officer for the Northern Territory.
 Bennett, Mrs. E.
 Bennett, Mrs. M. M.
 Berndt, Dr. R. M., Reader in Anthropology, University of Western Australia.
 Blackburn, Mrs. D. A., representative of the Women's Christian Temperance Union (Victoria).
 Blacksmith, Mrs. F.
 Blacksmith, Mr. P.
 Blackwell, Rev. T.
 Blitner, Mr. D.
 Body, Mr. A. H., Legal Adviser, Department of External Affairs.
 Bon, Mr. L.
 Bourke, Mr. M. A., Assistant Director, Family Allowances Branch, Department of Social Services, Queensland.
 Bowditch, Mr. J. F., Editor, *The Northern Territory News*.
 Bray, Mr. D. J.
 Brennan, Mr. H., Member of the Northern Territory Legislative Council.
 Broad, Mr. D. R.
 Broadbent, Mrs. M.
 Broilga, Mr. B.
 Bromham, Miss A., representative of the Women's Christian Temperance Union (Western Australia).
 Brook, Mr. E.
 Brown, Miss A. N., Secretary, Victorian Aboriginal Group and National Association for the Advancement of the Native Race.
 Brown, Rev. Father C. G., Superintendent, St. Paul's Mission to the South Sea Islanders, Moa Island.
 Brown, Mrs. H. M.
 Brumby, Mr. D.
 Bryant, Mr. G. M., M.P., President, Aborigines Advancement League (Victoria).
 Buck, Mr. B.
 Bush, Mr. P.
 Butler, Mr. T.
 Cahill, Mr. F. E., Chief Electoral Officer for the State of Victoria.
 Cairns, Mrs. S.
 Cant, Senator, H. G. J.
 Carolin, Mr. H. M., representative of the Darwin Branch of the Australian Labor Party.
 Carroll, Mr. P., Secretary, North Australia Workers' Union.
 Chambers, Sub-Inspector J. B., Protector of Aborigines in the Townsville District.
 Chinnery, Mr. E. W. P.
 Christophers, Dr. B. E., President, Council for Aboriginal Rights (Victoria).
 Clark, Mr. M., National Secretary, Aborigines' Scholarship National Committee.
 Clarke, Mr. V. F.
 Cochrane, Mrs. K. J., representative of the Union of Australian Women, Queensland Management.
 Coffin, Mr. P.
 Coleman, Mr. L. J.
 Connolly, Mr. S. J., representative of the Aborigines and Torres Strait Islanders' Advancement League, Cairns Branch.
 Cook, Mr. G. E.
 Coolwell, Mr. G. C.
 Cooper, Mr. E. V.
 Corry, Rev. Father A., Superintendent, Bathurst Island Mission, Northern Territory.
 Cowley, Mr. L. B., Manager, Woodenbong Aboriginal Station, New South Wales.
 Cox, Mr. P.
 Coyne, Mrs. A.
 Coyne, Mr. R. P.
 Crick, Dr. W. F. H., Senior Medical Officer, Commonwealth Department of Health.
 Croker, Mr. A.
 Dangaro, Mr. F.

Daniel, Mr. Dan.
 Daniel, Mr. Dennis.
 Dawson, Mr. H. F., Federal Secretary, United Nations Association of Australia.
 Dent, Mr. R. B.
 de Vos, Mr. W. E. L., Secretary, Northern Territory Pastoral Lessees' Association.
 Dick, Mr. A.
 Donnelly, Mr. W., representative of the Darwin Workers' Club.
 Doolah, Mr. J.
 Doolan, Mr. T.
 Douglas, Mr. W. H., Superintendent, Language Department of the United Aborigines Mission.
 Douglass, Mr. N. B., representing the Clerk-in-Charge, Electoral Department of South Australia.
 Downes, Mr. A. G., Superintendent, Onslow Native Hostel.
 Downes, Mrs. P. B.
 Drayton, Mr. R. J.
 Drysdale, Mr. D. G. W., Manager, Hooker Creek Settlement, Northern Territory.
 Drysdale, Mr. F. W., Member of the Northern Territory Legislative Council.
 Duguid, Dr. C.
 Dulung, Mr. C.
 Du'ulmaki, Mr. P.
 Dyer, Mr. C. N., representative of the Cairns and District Trades and Labour Council.
 Ebatarinja, Mr. B.
 Elkin, Professor A. P., Vice-Chairman, Aborigines Welfare Board, New South Wales.
 Elphinston, Mrs. P., Secretary, Union of Australian Women (National Committee).
 Farley, Deaconess D. N., Head Teacher, Groote Eylandt Mission, Northern Territory.
 Farmer, Mr. P.
 Felton, Mr. P. E., Superintendent of Aborigines Welfare, Victoria.
 Fisher, Mr. R. A.
 Fisher, Mrs. W. S.
 Fitzgerald, Mr. J. E., Secretary, Seamen's Union of Australia, Queensland Branch.
 Flowers, Mr. C. J.
 Foster, Mr. L.
 Fowler, Mr. S., Federal Secretary, United Aborigines Mission.
 Fox, Mr. A. J.
 Fuller, Mr. H. K.
 Gagai, Mr. L.
 Gallogly, Mr. W. J.
 Garbutt, Mr. J.
 Gare, Mr. E. C., President, Western Australian Native Welfare Council (Inc.).
 Garnet, Mr. T. N., Secretary, Aborigines Welfare Board, Victoria.
 Gela, Mr. M.
 George, Mr. W.
 Gibuma, Mr. C.
 Giese, Mr. H. C., Director of Welfare, Northern Territory.
 Gomez, Rt. Rev. G., Lord Abbott of New Norcia, Western Australia.
 Graham, Mr. J. L.
 Greatorex, Mr. A. G. W., Secretary, Centralian Pastoralists' Association.
 Green, Mr. H. J., Superintendent of Aborigines Welfare, New South Wales.
 Greenfield, Mr. B. D., Acting District Welfare Officer, Lindsay District, Northern Territory.
 Gresswell, Mr. S.
 Gula.
 Hall, Mr. E.
 Hansen, Mrs. E. M.
 Hardwick, Mr. D. W., Managing Secretary, Busselton District Hospital, Western Australia.
 Hargrave, Mr. N. C., Member of the Northern Territory Legislative Council.
 Harney, Mr. W. E.
 Harrison, Miss C. M. A., an anthropologist.
 Harron, Mr. L.
 Harwood, Mr. G.
 Hawke, Hon. A. R. G., Leader of the Opposition in the Western Australian Legislative Assembly.
 Hefferan, Sub-Inspector K.E.F., Protector of Aborigines in the Cairns District.
 Hegarty, Mr. J.
 Hetherington, Mr. B.
 Heydon, Mr. P. R., First Assistant Secretary, Department of External Affairs.
 Hill, Mrs. M. J.
 Holden, Mr. G. F., Acting Superintendent, Papunya Settlement, Northern Territory.
 Horner, Mr. J. C., Secretary, Aboriginal-Australian Fellowship.
 Hosea, Mr. S.
 Huddleston, Mrs. G.
 Hueppauff, Mr. N. M.
 Hunter, Mr. J.
 Hunter, Mr. R.
 Hutchesson, Mr. G., Clerk of the Religious Society of Friends, South Australia.
 Idagi, Mr. G. A.
 Imms, Mr. W. G. L., Registrar and Secretary, Diocese of Carpentaria, Queensland.
 Jackson, Mrs. K. C.
 Jamieson, Rev. H. T

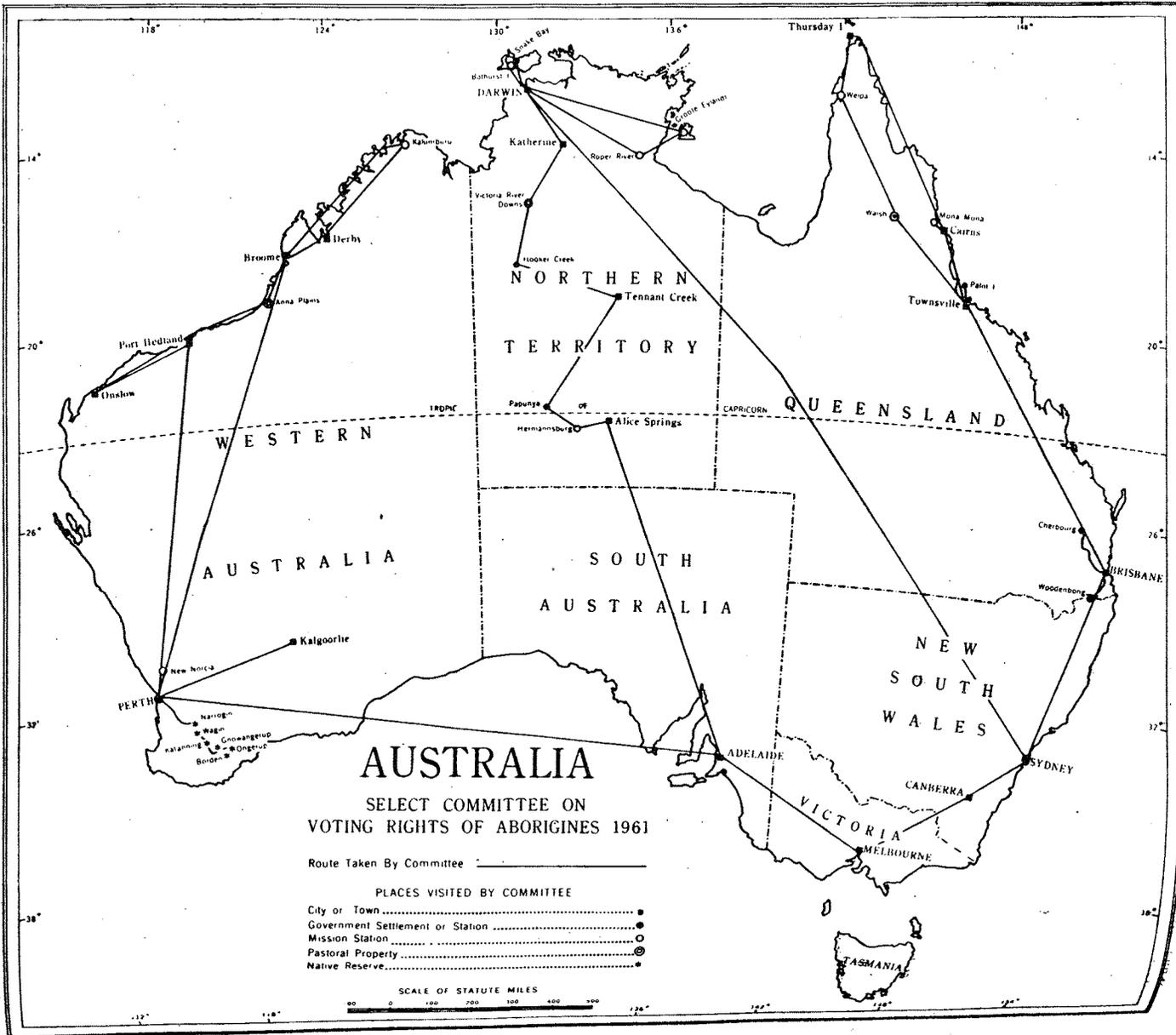
Jangala, Mr. A.
 Jangbagari, Mr. W.
 Jibarula, Mr. M.
 Jigala, Mr. F.
 John, Mr. L.
 Johnson, Mr. E.
 Johnson, Mr. F. W., representative of the Alice Springs Branch of the Australian Labor Party.
 Johnstone, Mr. F.
 Joshua, Mr. A.
 Jungine, Mr. G.
 Jurra, Mr. S.
 Kanalagari, Mr. C.
 Kane, Mr. L. T., Divisional Returning Officer for Stirling, Western Australia.
 Karpa.
 Kearney, Mr. F.
 Keats, Dr. J. A. representative of the Queensland Aborigines Advancement League.
 Kelly, Hon. C. A., M.L.A., Chief Secretary in the Government of New South Wales.
 Kingsmill, Mr. A. G., Chairman, Aborigines Welfare Board, New South Wales.
 Kinji'or, Mr. J.
 Kittle, Mr. F. J.
 Kunamara, Mr. L.
 Lack, Mr. C. J. A., Commonwealth Electoral Officer for Victoria.
 Lansdowne, Mr. F.
 Law, Mr. V. F.
 Leditschke, Mr. H. O., Manager, Hermannsburg Mission, Northern Territory.
 Leske, Mr. P. E., Superintendent, Roper River Mission, Northern Territory.
 Lester, Mrs. M. G., Secretary, Union of Australian Women, Western Australia.
 Lethbridge, Mrs. G. A.
 Ley, Mr. F. L., Chief Electoral Officer of the Commonwealth.
 Litster, Mr. C. C., Superintendent, Mona Mona Mission, Queensland.
 Luck, Mr. S. A., Teacher-in-Charge, Papunya School, Northern Territory.
 Lynch, Mr. J.
 Major, Mr. S.
 Malbangka, Mr. C.
 Male, Mr. A. P.
 Mallon, Mr. R. F., Commonwealth Electoral Officer for New South Wales.
 Maraltj, Mr. J.
 Marsh, Mr. R., Assistant Administrator, Northern Territory.
 Marshall, Mr. J.
 Martin, Mr. J. N.
 Mason, Pastor B.
 Mathea, Mr. G. F., Chief Electoral Officer for the State of Western Australia.
 Mathieson, Mr. D. N., Member of the Northern Territory Legislative Council.
 Matthews, Rt. Rev. S. J., Bishop of Carpentaria, Queensland.
 McCracken, Mr. P., a pastoralist.
 McDermott, Rev. Father O., Parish Priest of Thursday Island, Queensland.
 Macdonald, Mr. A., Secretary, Trades and Labour Council of Queensland.
 McDonnell, Mr. J. M. O., Electoral Commissioner for the State of New South Wales.
 McGinness, Mr. J. D., President, Federal Council for Aboriginal Advancement.
 McGrath, Mr. J.
 McKay, Mr. E.
 McKeich, Mr. R.
 McLarty, Mr. B. A., District Welfare Officer, Central District, Western Australia.
 McLarty, Mr. E. H., a pastoralist.
 McLeod, Mr. D. W.
 Metcalfe, Sgt. A. F., a police officer.
 Millgate, Mrs. M. E.
 Miwud, Mr. K.
 Mooka, Mr. J.
 Morgan, Mr. K. I., Assistant District Welfare Officer, Broome.
 Morgan, Mr. K. R., Superintendent, Derby Mission Centre.
 Morton, Mr. S.
 Mosby, Mr. D.
 Mosby, Mr. J., representative of the Central Islands of Torres Strait.
 Motton, Mr. I.
 Mulligan, Mr. K. S., Commonwealth Electoral Officer for Western Australia.
 Munkara, Mr. B.
 Murray, Rev. Father B. T.
 Mye, Mr. G., representative of the Eastern Islands of Torres Strait.
 Nabilya.
 Namajimba, Mrs. M.
 Newman, Rev. E. V., Secretary, National Missionary Council of Australia.
 Ngajita, Mrs. A.
 Nguringari, Mr. H. T.
 Nicholls, Pastor D. R.
 Nickels, Mrs. M., Acting Secretary, Montmorency Peace Discussion Group, Victoria.

Nixon, Mr. A., a pastoralist.
 Nona, Mr. T., representative of the Western Islands of Torres Strait.
 Nosedá, Rev. Father B.
 Nott, Mr. J. D., a pastoralist.
 Nuggins, Mrs. M. M.
 O'Leary, Mr. C., Director of Native Affairs, Queensland.
 O'Loughlin, Rt. Rev. J. P., Bishop of Darwin.
 O'Sullivan, Rev. Father J. F.
 Paddy.
 Parerultja, Mr. E.
 Penhall, Mr. L. N., Acting Assistant Director of Welfare, Southern Division, Northern Territory.
 Penny, Mr. A. A.
 Penny, Mr. C. G.
 Penny, Mr. G. L.
 Penny, Mr. S. V.
 Perkins, Mr. C.
 Perkins, Hon. C. C., M.L.A., Minister for Native Welfare in the Government of Western Australia.
 Perry, Mr. C.
 Petrick, Mr. W. H. F., Member of the Northern Territory Legislative Council.
 Phillips, Mr. F. B., Commonwealth Electoral Officer for South Australia.
 Pilot, Rev. B.
 Pink, Miss O. M.
 Pitts, Mr. A. H., District Welfare Officer, Gregory District, Northern Territory.
 Porter, Hon. M. V., M.L.A., Minister for Local Government in the Government of Victoria.
 Poulter, Dr. M. W., representative of the Queensland Branch of the Australian Labour Party and the Queensland
 Aborigines Advancement League.
 Quayle, Mrs. D. I., State President, Women's Service Guilds of Western Australia.
 Quinn, Brother F. J.
 Radford, Mr. H. E., Principal Electoral Officer for the State of Queensland.
 Rex, Mr. C.
 Richardson, Mrs. A. I., President, League of Women Voters of South Australia.
 Riley, Mr. K.
 Riley, Mr. R.
 Rinaldi, Constable L. P., a police officer.
 Roberts, Mr. E., Assistant District Welfare Officer, Port Hedland.
 Roberts, Mr. J.
 Roberts, Mr. P.
 Roberts, Mr. S.
 Roberts, Mrs. S.
 Roberts, Mr. W. F.
 Robinson, Mr. J. K., Secretary, Federal Aborigines Board, Churches of Christ in Western Australia.
 Rowe, Rev. G., Secretary, Aborigines' Friends' Association of South Australia.
 Rowe, Mr. N.
 Rowell, Mr. R. M.
 Saenz, Rev. Father W.
 Sambo, Mr. R. Z.
 Sanz, Rev. Father S., Superintendent, Kalumburu Mission, Western Australia.
 Sawtell, Mr. M., Chief Secretary's Appointee on the Aborigines Welfare Board, New South Wales.
 Scherer, Pastor P. A., Pastor of Hermannsburg Mission, Northern Territory.
 Schulz, Mrs. I., representative of the Aborigines Advancement League of South Australia.
 Scott, Mr. T.
 Sharley, Mr. F. H., Secretary, Proportional Representation Group of South Australia.
 Shaw, Mrs. L.
 Shevill, Rt. Rev. I., Bishop of North Queensland.
 Sidgwick, Mr. H. M., Superintendent, Snake Bay Settlement, Northern Territory.
 Spalding, Mr. I.
 Spencer, Mr. K. F., Manager, Townsville Native Hostel.
 Stewart, Mr. P. E.
 Streader, Mr. D.
 Street, Lady Jessie M. G.
 Sturges, Mr. G., Superintendent, Cherbourg Aboriginal Settlement, Queensland.
 Sweet, Rev. J. R., Secretary, Aboriginal and Foreign Missions Committee of the Presbyterian Church.
 Symons, Rev. G. J., Chairman, North Australia District of the Methodist Church.
 Taylor, Rev. J. A., Superintendent, Groote Eylandt Mission, Northern Territory.
 Taylor, Mr. J. H. T., a pastoralist.
 Taylor, Mr. L. A.
 Taylor, Mr. R. T.
 Taylor, Mr. T. J.
 Tilbrook, Mr. H. R., District Welfare Officer, Northern District, Western Australia.
 Tipuamanturimmi, Mr. B.
 Toogood, Mr. T. R., representative of the Coloured and White Citizens Co-operative Association of North
 Queensland.
 Trainor, Mrs. D. E., Vice-President, Association for the Advancement of Coloured People, Western Australia.
 Ulungura, Mr. M.
 Underwood, Mr. S. E.
 Ungango, Mr. A.

Vawser, Mr. N. S., Superintendent, Derby Presbyterian Aborigines Mission.
 Vesper, Mr. A.
 Wakefield-Kent, Sister E.
 Walker, Mrs. K. J. M.
 Wallace, Mrs. R., representative of the Cairns Branch of the Union of Australian Women.
 Wallace, Mr. S., Acting Director of Primary Education, Western Australia.
 Walsh, Mr. J. K., a pastoralist.
 Wanadda, Mr. F.
 Warburton, Mr. J. W., President of the Armidale Association for the Assimilation of Aborigines, New South
 Wales.
 Ward, Mr. R. C., Member of the Northern Territory Legislative Council.
 Wardell-Johnson, Mr. W.
 Weazel, Mr. H. T.
 Wells, Rev. E. A., late Superintendent of the Milingimbi Mission, Northern Territory.
 Whaleboat, Mr. W.
 Wheelhouse, Mrs. I. J. D.
 White, Mr. J.
 Wilding, Mrs. J., President, Joyce Wilding Aboriginal Hostel, Brisbane.
 Wildman, Mr. G. A., Divisional Returning Officer for Canning, Western Australia.
 Willaway, Mrs. P.
 Williams, Mr. J. B. K., Acting Crown Law Officer, Northern Territory.
 Williams, Mr. K.
 Winder, Mr. K. G.
 Winn, Mr. J. S., Superintendent, Weipa Mission, North Queensland.
 Withers, Mr. R. G., President, Western Australian Division of the Liberal Party of Australia.
 Woodward, Mr. E. N., Divisional Returning Officer for Kalgoorlie, Western Australia.
 Woolmington, Mr. E. R., President, University of New England Teachers' Association, New South Wales.
 Wright, Mrs. G. D.
 Wright Webster, Mr. C. R., District Welfare Officer, Southern District, Western Australia.
 Wurst, Sister I. A.
 Wynne, Mr. R.
 Yumbanan, Mr. T.

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APPENDIX II

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APPENDIX IV.

OPINION OF GEOFFREY SAWER, PROFESSOR OF LAW, AUSTRALIAN NATIONAL UNIVERSITY

GRANT OF FRANCHISE TO ABORIGINES BY THE COMMONWEALTH.

We can put aside one special problem as probably not of major interest to the Committee, namely the grant of franchise to aborigines in the Northern Territory. It is reasonably clear that under s. 122 of the Constitution the Commonwealth could grant such franchise on any terms it pleases, including the creation of special aboriginal constituencies. But I take it that the Committee is mainly concerned with the position of aboriginal natives living in the area of the six States. As to that, the Constitution certainly creates puzzles. I am doubtful whether in that area the Commonwealth could create special aboriginal electorates, but this doubt arises not so much from the sections of the Constitution to which the Committee has referred me as from the assumption of purely geographical "divisions" within the States made by s. 29 of the Constitution. If it so happened that a geographical division was one inhabited entirely or mainly by aborigines, there would be no difficulty. But I assume that by "special aboriginal electorate" the Committee contemplates not a geographical division but a "racial" division—all aborigines wherever living voting for a representative or something of that sort. Apart from that difficulty, my general conclusion is that nothing in the Constitution prevents the Commonwealth from giving the franchise to aboriginal natives in the States, nor from doing so on terms and conditions different from those applicable to the enfranchised non-aboriginal population. But the path of greatest constitutional safety would be, as indicated hereafter, to grant the franchise to the aborigines on the same conditions as those applicable to non-aborigines and to treat the aborigines as capable of exercising this vote on the same geographical basis as non-aborigines.

The Commonwealth's power to deal with franchise questions does not derive only from s. 31 as the questions addressed to me assume; it is the combined result of ss. 29, 30, and 31, taken together with s. 51 (xxxvi). Since *placitum* (xxxvi) is like all the matters in s. 51 "subject to this Constitution", it follows that any limitations on the "franchise" power which may arise directly or by implication elsewhere in the Constitution will be applicable to laws made by the Commonwealth under s. 51 (xxxvi) in association with 29, 30, and 31. (In any event, the maxim *generalia specialibus non derogant* would reach the same effect.) But taken by themselves, the four sections mentioned give the Commonwealth a general and unqualified power to regulate the franchise and the distribution of electors and electorates in any manner it pleases. This would include giving the vote to aboriginal natives. The number of members of the House of Representatives per State would still have to be calculated without reference to the aborigines, because of s. 127 (and where applicable s. 25), but this would not prevent aborigines from sharing in the choice of such members.

Then we come to the other provisions of the Constitution which might be regarded as qualifying what I have called the "franchise" power.

S. 24 and s. 25 establish self-explanatory restrictions on the way in which electorates must be distributed among the States. S. 25 is adapted from the Fourteenth Amendment to the American Constitution and was from the first recognized as an incentive to the States to grant the franchise to groups which for racial reasons any State might feel tempted to deal with adversely in this connexion. Probably the fear was ill-founded on the facts of Australian history and this is another example of somewhat uncritical copying from the Americans. However, it was not beyond question that Kanakas, Chinese, Indians or even (following negotiations between South Australia and Japan in the 1890's) Japanese would stay or come in appreciable numbers and would be discriminated against because of hostility to such groups in some colonies. This section obviously contains no kind of prohibition on the granting of franchise to aborigines either by the Federal Parliament or by a State Parliament. Its sole relevance was and is the calculation of the quotas and consequent numbers of representatives from each State in the House of Representatives under s. 24. The only possible significance of the section for our purpose is that it raises some questions as to the purpose of s. 127 and its operation may be cut down by that section; this matter is referred to in the discussion of s. 127.

S. 41. This was briefly referred to in *Muramats v. Commonwealth Electoral Officer* (W.A.) 32 C.L.R. 500, and see Nicholas, *The Australian Constitution*, 2d. ed. p. 75. The only point referred to by Nicholas and inferentially by Higgins J. as cited was whether s. 41 is prospective in operation, or applies only to those who were qualified at the date when the first Commonwealth Franchise Act came into operation. The prospective view seems clearly the correct one, though s. 39 (5) (a) and (aa) of the Commonwealth Electoral Act for caution covers both possibilities. But whatever the answer to this question, it is completely clear that s. 41 has the sole effect of guaranteeing the franchise to the persons described; it contains no prohibition on the grant of the franchise to any particular individual, and cannot be used as the basis for any negative inference of that sort.

S. 51 (xxvi). There is a brief reference to a possible operation of this section in *Robtelmes v. Brennan* 4 C.L.R. 395 at p. 415. I have had the advantage of reading the memorandum on the origins of this section prepared by the staff of the Parliamentary Library, and adopt with respect what they have to say. It is not easy to set precise limits to the power, but an example in the centre of the power would be a law providing for the settlement of the Nauruan Islanders on an island within Australian territorial waters which was acquired as Federal Territory, and restricting in various ways traffic and access as between them and the mainland so as to protect them from various possible or supposed forms of exploitation by the more advanced white community. (I must not be thought to advocate any such course, which in any event would be more in accordance with late 19th Century than with contemporary notions.) But the main importance of the section for present purposes is the obvious basis it provides for a negative inference—namely that no federal law on any subject is to deal with the aboriginal race in any State. In my opinion, no such inference ought to be drawn from the section, and notwithstanding a tendency of the present High Court and Privy Council to draw negative inferences, I do not think that they would do so in this case. S. 51 (xxvi) is the grant of a power. If a particular Commonwealth law was seen to possess the quality of being a "special law" with respect to "the aboriginal race in any State", then it could not claim validity if that validity were rested solely on s. 51 (xxvi). But that is as far as the section goes. If the Commonwealth law in question is also a law falling under some other head of Commonwealth power; for example, a law dealing with "divorce and matrimonial causes", or with "invalid and old age pensions", then its validity would not be affected by the fact that looked at in one aspect it is also a law concerning the aboriginal race in any State. The type of law obviously not affected by s. 51 (xxvi) is a law which on its face and by its operation applies to all persons in the Commonwealth

including aborigines, without making any special provision for the latter. Obviously such a law is the antithesis of a "special law" concerning aborigines and could not be affected even if a negative inference were drawn from s. 51 (xxvi). But I would go further and say that since no negative inference should be drawn from the latter section, it follows that a law on any other subject of Commonwealth power which does deal specially with aborigines would also be valid; e.g. a law with respect to "divorce and matrimonial causes" which laid down a completely different system of divorce for Australian aborigines from that provided in the case of the rest of the population. The only reason why the Commonwealth could not pass a law such as the Western Australian Native Welfare Act in relation to the aboriginal population of the States is that, federal territory apart, the general civil rights of the individual in the Australian system come within the sphere of State residual authority under s. 107; no general power over such matters is given to the Commonwealth other than that which may be drawn from s. 51 (xxvi), which excludes aborigines.

S. 127 presents great difficulties of interpretation because when read alone it seems almost unintelligible. It must be read as qualifying some constitutional operation in the course of which it becomes necessary to "reckon" the "numbers" of the "people" of the Commonwealth, &c. On this matter also I have had the advantage of reading the memorandum submitted by the Parliamentary Library and have discussed the question at length with the responsible Library officers, who as a result are pursuing their researches in some further papers left by Sir Samuel Griffith which are in the Mitchell Library in Sydney. I have seen a description of those papers which together with the Library memorandum enables me to give a confident opinion on this matter; it is an opinion I would have reached in any event, but the historical material strongly supports it. S. 127 was in Griffith's first draft of the Constitution. It was cut out and replaced at various stages. It was from the first intended to govern any clauses in which the proportion of the population of the several colonies to the total population of Australia might be important for any constitutional purpose. There was good sense in putting such a provision either in a definition clause at the beginning, or among miscellaneous clauses at the end, because the draftsman could not be certain how many clauses of the Constitution would ultimately depend for their operation on a count of proportionate populations. The two main types of question where such a count could occur were the representation of the States in the Federal political system, and the financial relations between the States and the Commonwealth (which could include contributions by States to the Commonwealth, or contributions by the Commonwealth to the States, or the distribution of the taxing competence). As the Constitution finally emerged, there were in fact left only two generally important purposes for which s. 127 could be relevant, namely the quota system for the House of Representatives in s. 24 and the debiting of Commonwealth expenditures to States under s. 89 (ii), (and consequently under s. 93 (ii)). There was also the possibility (actually realized) of grants to the States under s. 93 and s. 96 being on a population basis, though it is disputable whether s. 127 would apply for that purpose. Notice that these sections are widely separated, so it still remained natural enough to put a general qualifying clause like s. 127 under "miscellaneous" provisions. It might be thought that so far as s. 24 is concerned, s. 25 ought to be the sole qualifying section, and some of the dicta in the Convention debates rather support that view. But other dicta suggests that s. 24 is qualified by s. 127 as well as by s. 25, and in my view that is clearly the proper construction; hence so far as the aboriginal population is concerned, s. 127 cancels out the "incentive" otherwise provided by s. 25 as mentioned above. S. 127 is solely directed, as its terms suggest, to reckoning the numbers of the people; the Founders, in the light of the conditions of that time, thought a count of aborigines would be difficult to achieve accurately, and might give an unfair advantage to particular States; possibly the then current view that the aborigines were a dying race led to the view that s. 127 would in course of time cease to have any practical significance. But s. 127 does not prohibit either directly or by implication any particular Commonwealth or State policy as to the enfranchising of aboriginal natives.

I have also been asked to comment on the position of the Torres Strait Islanders. I regret that I cannot do so with any confidence because this depends upon a number of geographical, anthropological and historical facts as to which I have no instructions. However, the following comment may be relevant to the problem before the Committee. Assuming that the Torres Strait Islands are within the geographical limits of the State of Queensland, and that their native population consists of people racially distinct from the mainland aborigines and always so regarded and described, then they would come within the potential scope of s. 51 (xxvi). It would, however, be a historical problem of great difficulty to determine whether they also come within the excepted "aboriginal race in any State"; in a literal sense of that expression, clearly they would, but it is arguable that the expression was not used in its original literal English significance but referred to what are now often called "the Australian aborigines", and in this event the Torres Strait Islanders would not (on the assumption stated) be excluded. But in any event, for the reasons indicated above it is my opinion that the solution to this problem has no relevance to the question whether or not the Commonwealth can enfranchise the Torres Strait Islanders; I think the Commonwealth can clearly do so, and can keep out of any possible constitutional trouble if it does so on the same terms as apply to all other persons having the federal franchise.

GEOFFREY SAWER.

28th July, 1961.

APPENDIX V.

3rd August, 1961.

The Secretary,
Select Committee on Voting Rights of Aborigines,
Parliament House,
Canberra, A.C.T.

DEAR SIR,

VOTING RIGHTS OF ABORIGINALS.

I refer to your letter dated 20th June, 1961, in which you ask, on behalf of your Committee, for advice on two matters relating to voting rights for aboriginal natives.

2. The Committee agreed to two resolutions requesting advice from this Department, which it will perhaps be most convenient to deal with separately.

Resolution (a):

3. The first resolution was as follows:—

(a) "That the Attorney-General's Department be asked if it is a valid interpretation of the constitutional provision in section 51 placitum xxvi that exclusion of aborigines from the right to vote in section 39(5.) of the *Commonwealth Electoral Act 1918-1953* is in fact a 'special law' for aborigines prohibited by the Constitution."

4. On 16th June, 1961, the *Commonwealth Electoral Act 1961* came into operation, making certain amendments of the 1918-1953 Act to which the Committee's resolution referred. An amendment relevant for present purposes was the replacement of sub-section (5.) of section 39 by a new sub-section, sub-section (6.), which is as follows:—

"(6.) An aboriginal native of Australia is not entitled to enrolment under Part VII. unless he—

(a) is entitled under the law of the State in which he resides to be enrolled as an elector of that State and, upon enrolment, to vote at elections for the more numerous House of the Parliament of that State or, if there is only one House of the Parliament of that State, for that House; or

(b) is or has been a member of the Defence Force."

Accordingly, I shall treat the resolution as referring to the Electoral Act in its present (i.e., amended) form.

5. In my opinion the short answer to the question asked in this resolution should be "No". The office of section 51 (xxvi) is not to exclude aborigines from the ambit of any other subject with respect to which the Parliament has power to make laws, but only to exclude them from the ambit of the special additional power given in relation to "the people of any race".

6. Section 51 (xxvi) of the Constitution is as follows:—

"51. The Parliament shall, subject to this Constitution, have power to make laws for the peace, order, and good government of the Commonwealth with respect to:—

(xxvi) The people of any race, other than the aboriginal race in any State, for whom it is deemed necessary to make special laws:."

7. The Constitution by sections 8 and 30 respectively prescribes what, "until the Parliament otherwise provides", are to be the qualifications of electors for the two Houses. Section 51 (xxxvi) gives the Parliament express power to make laws with respect to matters in respect of which the Constitution makes provision "until the Parliament otherwise provides". Section 39 (6.) of the Electoral Act seems to me squarely to answer the description of a new provision regarding the qualifications of certain electors.

8. Section 51 (xxvi) does, it is true, preclude the Commonwealth Parliament from making any special law under the paragraph with respect to the aboriginal race in any State but this fact does not, in my view, affect the ambit of any of the powers conferred upon the Parliament by the other paragraphs of section 51.

9. If the power to make a law can be found in one or more of the other paragraphs of section 51, then it is a valid law and its validity is not affected, in my view, by the fact that, along with general provisions and for reasons that are relevant to the exercise of the power in question, it contains special provisions with regard to aborigines.

10. The Commonwealth Electoral Act disqualifies certain aboriginal natives from voting at federal elections, and permits others to vote, by reference to factors which, in my opinion, can properly be regarded as relevant to the question whether or not individuals should be allowed to vote at federal elections. Accordingly these provisions retain their character as a law with respect to the qualifications of electors, and are in my opinion plainly valid.

Resolution (b):

11. The Committee's second resolution was as follows:—

(b) "That the Attorney-General's Department be asked if, in its opinion, the Commonwealth could establish within States or the Northern Territory, electorates for aborigines, or would that fall within the prohibition in section 51 placitum xxvi which forbids the Commonwealth to make special laws for aborigines."

12. Not without doubt, my short answer to this question is that, though it would be constitutionally possible in the Northern Territory to establish electorates for aborigines, it would not be possible in the States.

13. The power of the Commonwealth Parliament to establish electorates, like the power to determine the qualifications of electors, is to be found in section 51 (xxxvi) of the Constitution, operating in this case in conjunction with section 29. That section lays down the rules which "until the Parliament otherwise provides", are to govern the establishment of electoral divisions in the States. Section 29 is as follows:—

"29. Until the Parliament of the Commonwealth otherwise provides, the Parliament of any State may make laws for determining the divisions in each State for which members of the House of Representatives may be chosen, and the number of members to be chosen for each division. A division shall not be formed out of parts of different States.

"In the absence of other provision, each State shall be one electorate."

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14. What is meant in this section by a "division" is not defined in the Constitution, and is not so far as I am aware covered by any judicial authority. Nevertheless I think there are sufficiently clear indications in the wording of the section itself that the "divisions" in the States, contemplated by the section, are territorial areas rather than, for instance, ethnic groups. Thus the rule laid down in the second sentence ("A division shall not be formed out of parts of different States") seems to me necessarily to imply an area within a State.

15. Once the conclusion is reached that Parliament's power under section 29 extends only to the creation of territorial divisions in the States for electoral purposes, it follows I think that the Parliament cannot create what may perhaps best be described as an ethnic division.

16. I make clear that the inability to establish in a State an ethnic electorate for aborigines does not spring from the fact that in section 51 (xxvi.) the aboriginal race is excluded from the powers of the Parliament to make special provision under that paragraph for the people of any race. The form of the question asked by the Committee suggests that the Committee thought perhaps that it was only this express exclusion that would prevent Parliament from establishing an electorate for aborigines alone. But this is not so. Indeed the position would in my opinion be exactly the same if the expressed exclusion of the aboriginal race were eliminated, by constitutional amendment, from section 51 (xxvi.). Even with those words out, there would still be no power for the Parliament to set up electorates for aborigines, because the only power (under section 51 (xxxvi.) and section 29) to determine electoral divisions is a power to establish territorial divisions, and the power given by section 51 (xxvi.) to make what I may call special racial laws is expressly made "subject to this Constitution".

17. So far as the Northern Territory is concerned, the position is quite different. The Parliament derives its power to legislate for the Territory from section 122 of the Constitution. Section 29 has no application, it being expressly confined to electoral divisions in States. Section 122 is as follows:—

"122. The Parliament may make laws for the government of any territory surrendered by any State to and accepted by the Commonwealth, or of any Territory placed by the Queen under the authority of and accepted by the Commonwealth, or otherwise acquired by the Commonwealth, and may allow the representation of such territory in either House of the Parliament to the extent and on the terms which it thinks fit."

18. The words "may allow the representation of such territory in either House of the Parliament to the extent and on the terms which it thinks fit" are extremely wide and, in my view, would clearly cover the establishment of an electorate or electorates for aborigines within the Northern Territory.

Yours faithfully,
K. H. BAILEY.

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APPENDIX VI.

7th June, 1961.
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MEMORANDUM for—

The Secretary,
Select Committee on Voting Rights of Aborigines,
Parliament House,
Canberra, A.C.T.

VOTING RIGHTS OF ABORIGINALS.

I refer to your memorandum dated 11th May, 1961, in which you ask, on behalf of your Committee, for advice on two matters relating to voting rights for aboriginal natives.

2. The Committee agreed to two resolutions requesting advice from this Department, which it will perhaps be most convenient to deal with separately.

Resolution (a).

3. The first resolution requested advice on the following matter:—

(a) The constitutional possibility of establishing an aboriginal electorate throughout the Commonwealth, regardless of State boundaries, on the model of the New Zealand electorates for Maoris.

4. In short, my advice is that it is not possible to establish an aboriginal electorate throughout the Commonwealth and regardless of State boundaries, because section 29 of the Constitution contemplates electoral divisions (i.e. electorates) within each State only. The section expressly declares that "a division shall not be formed out of parts of different States". (I assume that the Committee's resolution relates to an electorate for the House of Representatives.)

5. Section 29 deals with electoral divisions, and is as follows:—

"29. Until the Parliament of the Commonwealth otherwise provides, the Parliament of any State may make laws for determining the divisions in each State for which members of the House of Representatives may be chosen, and the number of members to be chosen for each division. A division shall not be formed out of parts of different States.

"In the absence of other provision, each State shall be one electorate."

6. It is to be noted that though the first sentence of this section leaves it open to the Commonwealth Parliament at any time to determine "the divisions in each State" for which members of the House may be chosen, and lays down a rule to operate "until the Parliament otherwise provides", the second sentence is not covered by the words "until the Parliament otherwise provides". Parliament must therefore act in conformity with the rule laid down in that sentence, viz., "a division shall not be formed out of parts of different States". This entirely excludes all possibility of an aboriginal electorate regardless of State boundaries.

Resolution (b).

7. The second resolution requested advice on the following matter:—

(b) The bearing of section 41 of the Constitution on the power of the Commonwealth to grant the franchise to the aborigines in those States of the Commonwealth where there are qualifications on this right.

8. In short, my advice on this matter is that, though section 41 prevents the Commonwealth Parliament from denying to any person entitled under State law to vote at elections for the Lower House in the State the right to vote at a Federal election, the section does not in any way prevent the Parliament from conferring a federal vote on persons not entitled to vote at a State election.

9. Section 41 is as follows:—

"41. No adult person who has or acquires a right to vote at elections for the more numerous House of the Parliament of a State shall, while the right continues, be prevented by any law of the Commonwealth from voting at elections for either House of the Parliament of the Commonwealth."

10. Whatever view is taken of the operation of section 41 (and several views are open), it is clear that it operates to preserve or confer, in respect of elections for either House of the Parliament of the Commonwealth, rights to vote given by State laws. Thus it is possible that it preserves to or confers upon certain aborigines a right to vote at federal elections. It clearly cannot, in my view, operate to restrict the power of the Commonwealth to grant the franchise to any or all aborigines. This power in my opinion exists, and is unaffected by the fact that in certain States there are qualifications upon the right of aborigines to vote at State elections.

K. H. BAILEY.

APPENDIX VII.

Solicitor-General,
Canberra,
6th October, 1961.

The Secretary,
Select Committee on Voting Rights of Aborigines,
Parliament House,
Canberra, A.C.T.

DEAR SIR,

VOTING RIGHTS OF ABORIGINALS.

I refer to your letter dated 28th June, 1961, in which you ask, on behalf of your Committee, for advice on a number of questions relating to voting rights for aboriginal natives.

General Observations:

2. The Committee has agreed to three resolutions as set out in your letter. The first of these is, for the most part, concerned with section 51 (xxvi) of the Constitution and, as incidental thereto, with the definition of "aboriginal native". It may be useful to offer some general observations on two points involved in the Committee's questions before proceeding to answer them seriatim. These points are—

- (a) the true office of section 51 (xxvi); and
- (b) what the Commonwealth Parliament can, and cannot, do in the way of construing expressions in the Constitution.

3. Section 51 (xxvi) is as follows:—

"51. The Parliament shall, subject to this Constitution, have power to make laws for the peace, order, and good government of the Commonwealth with respect to:—

(xxvi.) The people of any race, other than the aboriginal race in any State, for whom it is deemed necessary to make special laws:"

4. The words "other than the aboriginal race in any State" contained in section 51 (xxvi.) often give rise to misunderstanding because they are read as constituting a limitation upon the powers of the Parliament to make laws generally. The true position is, however, that they constitute a limitation only upon the power to make "special" laws with respect to "the people of any race"—that is, upon the power contained in section 51 (xxvi) itself. This is a power which has been used very seldom.

5. The whole of the *Commonwealth Electoral Act* 1918–1961—including section 39 (6.)—is, in my view, a law made in reliance upon the power contained in section 51 (xxxvi) of the Constitution, operating in respect of the matters provided for in sections 29–31. This power is unaffected by the limitation contained in section 51 (xxvi). I have explained the office of paragraph (xxvi) more fully in my letter of 3rd August last, and for present purposes need do no more than refer to that letter.

6. With regard to point (b), it may be taken as definitely established that, where expressions are used in the Constitution but without definition, only the Courts can give an ultimately binding interpretation of those expressions. The Parliament can, of course, for legislative and administrative purposes attribute its own meaning to a constitutional expression. But it plainly cannot, by so doing, enlarge or alter the scope of the constitutional expression itself, though it may very well be able, in some cases, to occupy a field narrower than that which the Constitution permits. The field of conciliation and arbitration offers a simple illustration. The constitutional expression is "industrial disputes". Parliament, in setting up the Conciliation and Arbitration Commission, has used the phrase "industrial dispute", and has given to it an express statutory meaning. The Commission can only act within the scope of the statutory definition. Theoretically this may be narrower than the field that could be assigned to the Commission by virtue of the Constitution. But the Parliament could not, by statutory definition, assign to the Commission the power to deal with anything which did not constitute an industrial dispute in the constitutional sense. Parliament cannot enlarge the area of a constitutional power. Nor for that matter can it reduce the area of a constitutional exclusion or prohibition. The application of these general considerations to sections 51 (xxvi) and 127 (counting of aboriginal natives) will appear more clearly in my answers below to the Committee's individual questions.

7. The *First Resolution* of the Committee is that I be asked the following questions:—

(a) Q. Has the High Court ever interpreted the meaning of the expression "the aboriginal race in any State" as it occurs in Section 51 placitum xxvi of the Constitution? If so, in what manner?

A. The High Court has never, so far as I am aware, given an interpretation of this expression. I should, perhaps, add that the Court has on one or two occasions dealt with questions as to the race to which a person belonged but not in the present context and without laying down any rule useful for present purposes.

(b) Q. If the High Court has not interpreted the expression, is there any definition in any law of the Commonwealth which would assign a clear meaning to the expression?

A. The expression is not defined in any law of the Commonwealth.

(c) Q. Is the Commonwealth in a particular case obliged to accept the definitions of a particular State in a case in which whether or not a person is an "aboriginal native of a State" is in question?

A. I hope I shall not be thought to be merely quibbling if I express doubt about what is meant by the phrase "aboriginal native of a State". This particular expression is not used either in section 51 (xxvi) or in section 127 of the Constitution, and I do not know of any Commonwealth law in which it occurs. If the question is intended to ask whether in applying either of these constitutional provisions the Commonwealth is bound to treat as a member of the aboriginal race in a State any person who is defined by the law of that State as an "aboriginal native", the answer is clearly No. Subject to the

Constitution, the Commonwealth Parliament could no doubt adopt such a State definition for any relevant purpose of its own. See paragraph 6 above. But the Parliament could not, merely by statutory definition, exclude from the count, for the purposes of section 127, persons who are not "aboriginal natives" within the true meaning of that expression in the Constitution.

(d) Q. Can the expression "of aboriginal race" be constitutionally applied, as a consequence of any State law, or of any Commonwealth law, by the Commonwealth as covering the cases of persons of mixed European and aboriginal descent?

A. I do not know of any State law, or any Commonwealth law, which answers, or purports to answer, the question whether for constitutional purposes the expression "person of aboriginal race" applies only to aboriginals of the full-blood. But it has been the consistent view of this Department, expressed first by Sir Isaac Isaacs as Attorney-General in 1905, that certain persons of mixed blood properly belong to the constitutional category of aboriginal natives. The test, metaphorically rather than scientifically stated, is whether the aboriginal blood preponderates. Thus a half-caste, strictly so called, e.g. the offspring of one parent of pure aboriginal and another of pure European descent would not answer the description of a person of "aboriginal race". Persons of the half-blood, strictly so called, "cannot be regarded as persons of any race", as the then Solicitor-General Sir Robert Garran, put it in an Opinion given in 1921. But a person, for example, three of whose grandparents were full-blood aboriginals would I think answer the description of a person of "aboriginal race". The question therefore is basically one of descent. I may add that the views expressed over the years by this Department are in complete accord with the law as laid down by the courts in South Africa, which as the Committee will know has had long experience of this particular problem.

(e) Q. Could the Commonwealth declare persons of mixed European and aboriginal descent not to be aborigines within the meaning of section 51 placitum xxvi of the Constitution?

A. If the views stated above in the answer to question (d) are correct, such a declaration by the Parliament would be entirely without legal effect. In my opinion the Constitution has excluded from Parliament's power to make "special laws" under section 51 (xxvi) all persons in whom there is a preponderance of aboriginal blood. In other words, the Constitution excludes some persons who have an admixture of European, or other non-aboriginal blood. It follows that Parliament cannot cut down the scope of that exclusion by saying that it shall not apply to any person who has any admixture of European or other non-aboriginal blood. Any legislative attempt to do so would be invalid and of no effect.

In dealing with this question however there is a further difficulty to be considered. Persons of "mixed European and aboriginal descent" belong to one or other of three categories: (a) persons in whom aboriginal blood preponderates; (b) persons in whom European blood preponderates; (c) persons of the half-blood—i.e. in whom neither preponderates. In my opinion persons in category (a) are properly classified as persons of the aboriginal race; persons in category (b) as persons of European race, and persons in category (c) as belonging to no race. It follows that the Commonwealth Parliament cannot derive from section 51 (xxvi) power to make special laws with respect to any one of these categories. Mixed bloods belonging to the aboriginal race—category (a)—are expressly excluded by paragraph (xxvi) itself. Mixed bloods belonging to the European race—category (b)—cannot, in my view, be regarded as coming within paragraph (xxvi); that paragraph was clearly intended to refer to races other than the European race to which broadly speaking the people of the Commonwealth belong. And persons of the half-blood cannot in my opinion be called "the people of any race" at all.

It occurs to me that on one reading this question may be intended to ask whether the Commonwealth could by its own legislation prevent a State from so defining the term "aboriginal native", for State purposes, as to include any person of mixed European and aboriginal descent. The answer must, I think, be No, for the reasons given above. The Commonwealth does not have, under section 51 (xxvi) or under any other provision of the Constitution, power to make special laws with respect to persons of mixed European and aboriginal blood.

If I am wrong in thinking that people of the aboriginal race include people in whom aboriginal blood preponderates, then the alternative seems to be that people of that race include only those in whom there is no admixture of blood. This involves the concept of purity of descent, with the consequence, in my view, that a person of mixed blood belongs to no race.

(f) Q. Has the High Court interpreted Torres Strait Islanders to be aboriginal natives of a State?

A. So far as I am aware, No.

(g) Q. If not, could the Commonwealth constitutionally declare Torres Strait Islanders not to be aborigines?

A. No. I am not clear whether in this question the Committee is thinking of section 127 or of section 51 (xxvi), or both, but would make the same answer in both cases. So far as section 127 is concerned, I think the position is pretty clear. The Torres Strait Islanders are known to differ ethnically from mainland aborigines, and have been accorded protection under different laws of the State of Queensland, to which the Islands were annexed in 1879. But I think that the Islanders certainly answer the description of "aboriginal natives" for the purposes of section 127. The test seems to be whether they are descended from the race that was inhabiting the islands when European settlement or control began; see the discussion by the High Court in *Muramats v. Commonwealth Electoral Officer (W.A.)* of the expression "aboriginal native of Asia or the Islands of the Pacific:" (1923) 32 C.L.R. 500. Whether the Torres Strait Islanders answer equally the description of "the people of the aboriginal race in any State", for the purposes of section 51 (xxvi) is, I think, not quite so clear. It could be contended that the reference is exclusively to the race to which the "Australian aborigine", in popular parlance, belongs, or even that the Islanders are so mixed ethnically as not really constituting a "race" at all. But I do not think it is correct to read the constitutional expression so strictly or so narrowly. There were, after all, still some Tasmanian aboriginals surviving in 1900 (though no full-bloods), and the Tasmanian aboriginals were certainly distinct ethnically from those of the mainland. And ethnically there are strong Malay traces in the north-coast aboriginals which

are not found elsewhere on the mainland. It seems the sounder opinion to adopt for section 51 (xxvi) also the criterion used by the High Court in the case of *Muramats (supra)*. This involves asking only whether the people concerned are descended from the race that inhabited the land when the European came there. The Torres Strait Islanders satisfy this test, and must therefore be regarded as belonging to the aboriginal race in Queensland: or at any rate those in whom Islander blood preponderates. It follows that the Commonwealth Parliament, as explained above, cannot effectively, under the guise of an authoritative interpretation, narrow in respect of those Islanders the scope of the constitutional exclusions.

- (h) Q. If they are not aboriginal natives of a State, are they a race for whom the Commonwealth is empowered to make special laws?
- A. Torres Strait Islanders, as explained above, belong in my view to the aboriginal race in the State of Queensland. This question therefore does not arise.
- (i) Q. Are persons of mixed Torres Strait Islander and European descent capable constitutionally of being declared by the Commonwealth not to be aboriginal natives of a State?
- A. The position with regard to Torres Strait Islanders of mixed descent is the same as with persons of mixed aboriginal and European descent in other States, as to which see my answer to question (e) above. Such a declaration would be unnecessary and ineffective in cases where European blood preponderates, or in cases strictly of the half-blood, because these persons are not, in my opinion, "aborigines" for the purposes of the Constitution. Such a declaration would be ultra vires and void in cases where there is a preponderance of Torres Strait Islander blood—because, in my opinion, these persons are "aborigines" for the purposes of the Constitution.
- (j) Q. Can Commonwealth power to declare nationality and citizenship override a State law which declares—
- (i) aboriginal natives of full aboriginal descent, and
- (ii) persons of mixed aboriginal and European descent
- not to have citizen rights, including voting rights, within a State but to be persons controlled by a State or State wards?
- A. No. The subject "nationality and citizenship" is not specifically listed as a subject matter of Commonwealth legislative power. Section 51 (xix) of the Constitution however gives a power to make laws with respect to "naturalization and aliens", and the Nationality and Citizenship Act rests mainly on this power (including of course what is reasonably incidental to it), but in part, no doubt, on the powers also with respect to external affairs and with respect to immigration—section 51 (xxix) and (xxvii). The power to determine who shall be Australian citizens is concerned with national status, but not with the rights of citizens or the disabilities of non-citizens. These flow from the exercise, by either the Commonwealth or the State as the case may be, of other legislative powers—cf. the power to determine the qualifications for voting at elections. The Commonwealth has no power to affect or interfere with voting rights at State elections under State laws. Nor can the Commonwealth override a State law conferring or imposing on aborigines or persons of mixed blood the status of wards of the State. A State on the other hand cannot validly deny to any person the status of Australian citizen conferred or recognized by Commonwealth law, or rights conferred on such a person by any other valid law of the Commonwealth.
- (k) The two questions set out under this item may conveniently be dealt with separately:
- (i) Q. Is the power of naturalization confined solely to granting immigrants nationality and citizenship?
- A. In effect, Yes. To "naturalize" is to admit an alien to citizenship and, since by Australian law persons born in Australia are citizens, any person who is an alien must necessarily be, or have been, an immigrant also.
- (ii) Q. Can this power rest on any other section of the Constitution than section 51 placitum xxvi and section 51 placitum xix?
- A. The power to grant naturalization does not, in my view, rest on section 51 (xxvi) at all. It might, however, rest on section 51 (xxvii) as well as on section 51 (xix) and on other powers.

This question may, I think, be founded on a misconception. Speaking generally, all persons born in Australia are Australian citizens and British subjects by the operation of the Nationality and Citizenship Act. All full-blooded aboriginals and all persons of mixed blood born in Australia are therefore Australian citizens and British subjects. A person who is an Australian citizen and a British subject is not, however, by reason of that fact alone entitled to vote at either State or Commonwealth elections. So far as Commonwealth elections are concerned, he must, subject to section 41 of the Constitution, find his right to vote in the Commonwealth Electoral Act. As that Act stands at present, an aboriginal native, even though he is an Australian citizen and a British subject, is not entitled to be enrolled or to vote at Commonwealth elections unless he has either, or both, of the qualifications set out in paragraphs (a) and (b) of section 39 (6.) of the Act.

- (l) Q. Is it a "special law" prohibited by section 51 placitum xxvi for the Commonwealth to exclude aboriginal natives from enrolment and the franchise?
- A. No. It is a law with respect to the qualification of electors: Constitution, sections 8 and 30 and section 51 (xxxvi). I have dealt at length with this question in my advice dated 3rd August, 1961.
- (m) Q. Does section 51 placitum xxvi prohibit the Commonwealth from legislating for aborigines who have moved inter-state and who are not aboriginal natives of the State in which they reside?
- A. Yes. The "people of . . . the aboriginal race in any State" referred to in section 51 (xxvi) are simply the people of that race who are, at any given time, physically present in that State. Section 51 (xxvi) would therefore have the effect of prohibiting the Commonwealth from making a "special law" with respect to the people of the aboriginal race present in any State at any given time.
- (n) Q. Does section 117 of the Constitution have any force to ensure the right to enfranchisement of any aboriginal native whose right to enfranchisement is prevented by the law of a State, if the aboriginal has changed his residence from a State where he may vote to one where he may not?

A. No. Section 117 is as follows:—

“117. A subject of the Queen, resident in any State, shall not be subject in any other State to any disability or discrimination which would not be equally applicable to him if he were a subject of the Queen resident in such other State.”
In the case supposed, the aboriginal has become a resident of the State that imposes the disability. The section does not apply in respect of any disability suffered in the State of a person's residence.

8. The *Second Resolution* of the Committee is that I be asked the following questions:—

(a) Q. Would section 25 of the Constitution prevent the Commonwealth from establishing an aboriginal electorate within a State?

A. No. Section 25 is as follows:—

“25. For the purposes of the last section, if by the law of any State all persons of any race are disqualified from voting at elections for the more numerous House of the Parliament of the State, then, in reckoning the number of the people of the State or of the Commonwealth, persons of that race resident in that State shall not be counted.”
It will be noted that this section relates only to the counting of people, and then only for the purposes of section 24 which deals, not with the matter of voting for the House of Representatives, but with the matter of the composition of that House.

Whilst section 25 would not, in my view, prevent the establishment of an aboriginal electorate within a State, section 29, in my opinion, would. I have dealt with this question at some length in my advice dated 3rd August, 1961.

(b) Q. Would section 25 of the Constitution prevent the Commonwealth from enrolling aboriginal natives compulsorily on Commonwealth rolls?

A. No. Section 25 is not concerned with enrolment nor does it, in my view, affect the matter of enrolment. No provision of the Constitution, in my view, would operate to prevent the Commonwealth from making compulsory the enrolment of aboriginal natives on Commonwealth rolls.

9. The *Third Resolution* of the Committee calls for no reply, since you have intimated in your subsequent letter dated 13th September that the Committee does not now wish me to attend for examination.

Yours faithfully,

K. H. BAILEY.

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APPENDIX VIII.

Solicitor-General.
Canberra, A.C.T.
6 October, 1961.

The Secretary,
Select Committee on Voting Rights of Aborigines,
Parliament House,
Canberra.

DEAR SIR,

VOTING RIGHTS OF ABORIGINALS.

I refer to your letter dated 19 July, 1961, in which you ask, on behalf of your Committee, for advice on several matters relating to voting rights for aboriginal natives.

2. The Committee adopted two resolutions, the text of which I set out below, dividing them into the separate questions they raise, together with the answers that I would give.

Resolution (1).

3. "(a) That the attention of the Commonwealth Solicitor-General be drawn to the wording of the Act of the Parliament of Western Australia entitled ' An Act to amend the Native Welfare Act 1905-1954 ', No. 3 of 1960, (9 Elizabeth II No. III) at section 2c wherein referring to aborigines granted citizenship by the State, it provides that they will have ' all the rights privileges and immunities ' and be ' subject to the duties and liabilities of a natural born or naturalized subject of Her Majesty who is of the same age '.

(b) What meaning, if any, has this passage? "

4. Section 2 of the Native Welfare Act 1905-1960 of the State of Western Australia contains a definition of " Native " for the purposes of the Act. Not only aborigines of the full blood but persons of mixed aboriginal and other blood, except quadroons or persons of less than quadron blood, fall within the definition. But there is also a proviso which as amended by Act No. 3 of 1960—the Act referred to by the Committee—is as follows:—

" Provided that any person of the full blood or less than the full blood descended from the original inhabitants of Australia who has served in the Territory of New Guinea or beyond the limits of the Commonwealth of Australia as a member of the Naval, Military or Air Forces of the Commonwealth and has received or is entitled to receive an honourable discharge; or who has served a period of not less than six months' full time duty as a member of the Naval, Military or Air Forces of the Commonwealth and who has received or is entitled to receive an honourable discharge, has all the rights, privileges and immunities and is subject to the duties and liabilities of a natural born or naturalized subject of Her Majesty who is of the same age."

5. I hesitate to express a definitive view on the effect of a provision in a Western Australian statute because, of course, any such provision needs to be considered not only in its immediate context but also in the context of all other relevant laws in force in the State. I understand however that the Committee did not desire to seek the views of the State authorities on this point. I have refrained accordingly from doing so myself. Broadly speaking, however, I think I have correctly understood what the Act does.

6. The effect of the provision referred to by the Committee cannot be understood in isolation from the other State legislation in the field of native rights and welfare. The principal Acts are three—The Native Welfare Act, 1905-1960, the Natives (Citizenship Rights) Act, 1944-1958 and the Electoral Act, 1907-1959—which for the sake of brevity I shall call the Welfare Act, the Citizenship Act and the Electoral Act respectively. For present purposes, I am disregarding the possible effect on the Citizenship Act of the Bill to amend that Act which was recently introduced into the Western Australian Parliament. Even if this Bill is enacted in the form that I have before me, it will not affect what I say below in regard to Certificates of Citizenship.

7. The Welfare Act establishes a Department charged with the duty of promoting the welfare of natives (as defined), expending for that purpose moneys provided by Parliament. The Act also imposes on natives a number of restrictions, as to movement, employment and the management and disposition of property, which are not applicable to persons in the State other than natives.

8. The Citizenship Act authorizes any adult person who is a native within the meaning of the Welfare Act to make an application to a Board " the the effect that he wishes to become a citizen of the State ". If the application is granted, the Board issues to the applicant a " Certificate of Citizenship ". The Act further provides (section 6) that notwithstanding the provisions of any other Act the holder of a Certificate of Citizenship and any child whose name is included in a Certificate " shall have all the same rights, privileges and immunities and shall be subject to the same duties and liabilities as a person who is of the same age as the holder or, as the case may be, as the child, and who is a natural born or naturalized subject of His Majesty ".

9. Section 2 of the Citizenship Act is an interpretation section in familiar form, requiring the Act to be construed subject to the Commonwealth Constitution, and so as not to exceed the legislative power of the State, to the intent that it is to be " read down " to any extent necessary to avoid excess of power.

10. The Electoral Act—by section 18 (e)—disqualifies from State voting rights any native within the meaning of the Welfare Act who is not the holder of a Certificate of Citizenship under the Citizenship Act.

11. It will be noted that the proviso in the Welfare Act about aboriginals who have served in the Defence Force, in its present form, uses a formula similar to that in the Citizenship Act to state the effect of a Certificate of Citizenship under that Act. Such a person " has all the rights, privileges and immunities and is subject to the duties and liabilities of a natural born or naturalized subject of Her Majesty who is of the same age ". The language is not very apt because of course under the law of the Commonwealth an Australian aboriginal is a natural-born subject of Her Majesty, and the terms of the proviso rather imply the contrary. But the intention is clear enough, to exempt the person concerned from the restrictions and disabilities imposed on an aboriginal native as such—as, for example, by the Welfare Act.

12. The Committee may well wonder why, if this is the effect of the formula about the rights and duties of a subject of Her Majesty, the Acts did not say so simply and explicitly. The proviso in the Welfare Act did indeed, in its original form, say just that—i.e., than an aboriginal who had given defence service "shall be deemed to be no longer a native for the purpose of this or any other Act". Similarly, section 6 of the original Citizenship Act 1944 provided that the holder of a Certificate of Citizenship "shall be deemed to be no longer a native or aborigine" notwithstanding the provisions of any other Act. In explaining the 1951 amendment deleting this formula from the Citizenship Act, the Minister said that it was objectionable because it involved for the aboriginal a statutory denial of his race. He should not be asked to repudiate, or be anything other than conscious and proud of his aboriginal blood (*see* Western Australian Parliamentary Debates, vol. 129, p. 317).

13. It is not absolutely clear whether under the proviso in the Welfare Act a native who has given the specified defence service is entitled to vote in State elections even without taking out a Certificate of Citizenship. I think he probably is, the 1960 amendment of the Welfare Act impliedly amending in this regard the earlier provisions of the Electoral Act. But the point does not seem to be germane to the Committee's purposes, and I express no concluded opinion on it.

14. The grant of a State Certificate of Citizenship, with the effect of giving full civil rights under the law of the State, does not, and was not intended to, trench in any way upon the status of an aboriginal as an Australian citizen by virtue of the Commonwealth Nationality and Citizenship Act, or upon any rights or duties arising under any other law of the Commonwealth. State law could not have such an effect. The three State Acts mentioned above deal only with the position of an aboriginal in and under the law of the State. I shall deal with this point further under question (e) below.

15. The resolution of the Committee proceeds:

"(c) That the Commonwealth Solicitor-General be asked to testify on the following point:—

Are aboriginal natives of Australia natural born subjects of Her Majesty at common law, by the Constitution of the Commonwealth, or the Constitutions of the States, or by any Act of the United Kingdom Parliament antecedent to the formation of the Commonwealth of Australia. (*See also* section 6 of the Native (Citizenship Rights) Act of Western Australia (No. 23 of 1944) as amended by No. 44 of 1950 and No. 27 of 1951)."

16. My answer to this question is that antecedently to the establishment of the Commonwealth aboriginal natives of Australia, like other persons born within Her Majesty's dominions and allegiance were by virtue of the common law (but not by virtue of any of the other instruments mentioned by the Committee) natural-born subjects of Her Majesty. Since the enactment of the Nationality and Citizenship Act 1948 (Commonwealth), aboriginal natives of Australia, like other persons born in Australia, have by virtue of sections 10 and 25 of that Act the status of Australian citizens, and by virtue of that citizenship have also the status of British subjects—i.e., in their case, of natural-born subjects of Her Majesty. What I have said above will I think have made clear that nothing in the State laws referred to by the Committee is rightly to be understood as derogating from the Commonwealth Act.

Resolution (2).

17. The second resolution of the Committee was as follows:—

(a) is there constitutional warrant for any other designation of Australian people in the Constitution than "Subjects of the Queen resident in a State or Territory".

18. An unqualified answer either "yes" or "no" to this question would I fear be misleading. The Commonwealth Constitution does not deal substantively with questions of nationality or citizenship, and indeed the whole concept of "citizenship" in relation to a Dominion was then still in the future. So for that matter was the statutory definition of "British subject", contained in the British Nationality and Status of Aliens Act, 1914 (U.K.). There are, however, in the Constitution at any rate two references, in the course of laying down substantive rules on particular matters, to Her Majesty's subjects, and these as might be expected are both in what may be called "common law" form. There is first section 34 (Member of the House of Representatives must be a subject of the Queen either natural-born or at least five years naturalized). Second, there is section 117 (rights of subjects of the Queen resident in a State), which I think the Committee has in mind. But I do not think it follows from these two provisions that there is any lack of authority for the status and designation of "Australian citizen" provided for in the Nationality and Citizenship Act 1948-1960.

19. The next question asked by the second resolution is as follows:—

(b) are aboriginal natives of Australia and persons classed as "natives" under the laws of Queensland and Western Australia "Subjects of the Queen resident" in those States.

20. Subject to what I have said above, my answer is that the persons referred to may properly be described as "subjects of the Queen resident in (the relevant State)". It would however be perhaps more correct to say that their contemporary official designation in Commonwealth law is Australian citizens (and British subjects) resident in the State concerned.

21. The final question asked by the second resolution is as follows:—

(c) if Torres Strait Islanders are not aborigines are they people who come under the description of "people of any race" for whom the Commonwealth could make "special laws". If so, could the Commonwealth supplant by its own legislation all Queensland legislation in respect of them as a people.

22. In my opinion Torres Strait Islanders are properly regarded as "aborigines". On that view, it would of course follow that the Commonwealth would have no power under section 51 (xxvi) to make "special laws" for the Islanders. I have dealt with the position of the Islanders more fully in a separate letter of to-day's date (my reference 60/3289), and need not repeat here what I have there said. The Commonwealth cannot, in my view, supplant by its own legislation all the existing Queensland legislation with regard to the Islanders as a people.

Yours faithfully,

K. H. BAILEY.

APPENDIX IX.

SECTIONS OF THE CONSTITUTION REFERRED TO IN THE REPORT AND APPENDICES.

8. The qualification of electors of senators shall be in each State that which is prescribed by this Constitution, or by the Parliament, as the qualification for electors of members of the House of Representatives; but in the choosing of senators each elector shall vote only once.

24. The House of Representatives shall be composed of members directly chosen by the people of the Commonwealth, and the number of such members shall be, as nearly as practicable, twice the number of the senators.

The number of members chosen in the several States shall be in proportion to the respective numbers of their people, and shall, until the Parliament otherwise provides, be determined, whenever necessary, in the following manner:—

- (i) A quota shall be ascertained by dividing the number of the people of the Commonwealth, as shown by the latest statistics of the Commonwealth, by twice the number of the senators:
- (ii) The number of members to be chosen in each State shall be determined by dividing the number of the people of the State, as shown by the latest statistics of the Commonwealth, by the quota; and if on such division there is a remainder greater than one-half of the quota, one more member shall be chosen in the State.

But notwithstanding anything in this section, five members at least shall be chosen in each Original State.

25. For the purposes of the last section, if by the law of any State all persons of any race are disqualified from voting at elections for the more numerous House of the Parliament of the State, then, in reckoning the number of the people of the State or of the Commonwealth, persons of that race resident in that State shall not be counted.

29. Until the Parliament of the Commonwealth otherwise provides, the Parliament of any State may make laws for determining the divisions in each State for which members of the House of Representatives may be chosen, and the number of members to be chosen for each division. A division shall not be formed out of parts of different States.

In the absence of other provision, each State shall be one electorate.

30. Until the Parliament otherwise provides, the qualification of electors of members of the House of Representatives shall be in each state that which is prescribed by the law of the State as the qualification of electors of the more numerous House of Parliament of the State; but in the choosing of members each elector shall vote only once.

31. Until the Parliament otherwise provides, but subject to this Constitution, the laws in force in each State for the time being relating to elections for the more numerous House of the Parliament of the State shall, as nearly as practicable, apply to elections in the State of members of the House of Representatives.

34. Until the Parliament otherwise provides, the qualifications of a member of the House of Representatives shall be as follows:—

- (i) He must be of the full age of twenty-one years, and must be an elector entitled to vote at the election of members of the House of Representatives, or a person qualified to become such elector, and must have been for three years at the least a resident within the limits of the Commonwealth as existing at the time when he is chosen;
- (ii) He must be a subject of the Queen, either natural-born or for at least five years naturalized under the law of the United Kingdom, or of a Colony which has become or becomes a State, or of the Commonwealth, or of a State.

41. No adult person who has or acquires a right to vote at elections for the more numerous House of the Parliament of a State shall, while the right continues, be prevented by any law of the Commonwealth from voting at elections for either House of the Parliament of the Commonwealth.

51. The Parliament shall, subject to this Constitution, have power to make laws for the peace, order, and good government of the Commonwealth with respect to:—

- (xix) Naturalization and aliens:
- (xxvi) The people of any race, other than the aboriginal race in any State, for whom it is deemed necessary to make special laws:
- (xxvii) Immigration and emigration:
- (xxxvi) Matters in respect of which this Constitution makes provision until the Parliament otherwise provides:

89. Until the imposition of uniform duties of customs—

- (ii) The Commonwealth shall debit to each State—
 - (a) The expenditure therein of the Commonwealth incurred solely for the maintenance or continuance, as at the time of transfer, of any department transferred from the State to the Commonwealth;

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Qualification
of electors.

Constitution
of House of
Representatives.

Provision as to
persons
disqualified
from voting.

Electoral
divisions.

Qualification
of electors.

Application of
State laws.

Qualifications
of members.

Right of
electors of
States.

Legislative
powers of the
Parliament.

Payment to
States before
uniform duties.

(b) The proportion of the State, according to the number of its people, in the expenditure of the Commonwealth.

93. During the first five years after the imposition of uniform duties and customs, and thereafter until the Parliament otherwise provides—

- (i) The duties of customs chargeable on goods imported into a State and afterwards passing into another State for consumption, and the duties of excise paid on goods produced in a State and afterwards passing into another State for consumption, shall not be taken to have been collected not in the former but in the latter State;
- (ii) Subject to the last sub-section, the Commonwealth shall credit revenue, debit expenditure, and pay balances to the several States as prescribed for the period preceding the imposition of uniform duties of customs.

96. During a period of ten years after the establishment of the Commonwealth and thereafter until the Parliament otherwise provides, the Parliament may grant financial assistance to any State on such terms and conditions as the Parliament thinks fit.

107. Every power of the Parliament of a Colony which has become or becomes a State, shall, unless it is by this Constitution exclusively vested in the Parliament of the Commonwealth or withdrawn from the Parliament of the State, continue as at the establishment of the Commonwealth, or as at the admission or establishment of the State, as the case may be.

117. A subject of the Queen, resident in any State, shall not be subject in any other State to any disability or discrimination which would not be equally applicable to him if he were a subject of the Queen resident in such other State.

122. The Parliament may make laws for the government of any territory surrendered by any State to and accepted by the Commonwealth, or of any Territory placed by the Queen under the authority of and accepted by the Commonwealth, or otherwise acquired by the Commonwealth, and may allow the representation of such territory in either House of the Parliament to the extent and on the terms which it thinks fit.

127. In reckoning the numbers of the people of the Commonwealth, or of a State or other part of the Commonwealth, aboriginal natives shall not be counted.

Payment to States for five years after uniform Tariffs.

Financial assistance to States.

Saving of power of State Parliaments.

Rights of residents in States.

Government of territories.

Aborigines not to be counted in reckoning population.



"One united people"



"Possessed of common rights and interests"

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" One in their entitlement to equality "



" One in destiny "