

## REFERENDUM - THE BACKGROUND

On 27th May all enrolled voters in the six States of Australia (but not in the Australian Capital Territory and the Northern Territory) must answer “YES” or “NO” to each of two questions. These questions are: “Do you approve the proposed law for the alteration of the Constitution entitled ‘An act to alter the Constitution so that the number of Members of the House of Representatives may be increased without necessarily increasing the number of Senators’.” and “Do you approve the proposed law for the alteration of the Constitution entitled ‘an Act to alter the Constitution so as to omit the words relating to the people of the Aboriginal Race in any State and so that Aborigines are to be counted in reckoning the population’.”

The question will be in the above order and must be answered separately by “YES” or “NO” in the appropriate boxes. An informal vote on one question will not invalidate a formal vote on the other.

Our concern here is with the second question which concerns Aborigines. The relevant Act would omit from paragraph (xxvi) of Section 51 of the Constitution the words “other than the Aboriginal race in each State,” and would repeal Section 127. It was passed unanimously by both Houses of the Commonwealth Parliament.

Section 127 reads, “In reckoning the numbers of the people in the Commonwealth, or of a State or other part of the Commonwealth, Aboriginal natives shall not be counted.” This section was originally included in the Constitution for two reasons, both of which are no longer valid. Firstly, some sixty or seventy years ago there was genuinely difficulty in counting Aborigines because many were nomadic, which is not the case today. Secondly, Aborigines were at that time not considered worthy of a vote, and therefore were not to be counted in the numbers determining electoral boundaries. Today Aborigines are entitled to vote in all States and Territories of the Commonwealth, and therefore ought to be counted in the census which determines the size of the electorates. There is no reason for the retention of this Section of the Constitution and all parties are agreed on the desirability of its repeal.

Section 51 reads: “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.”

The proposed deletion of the words, “other than the Aboriginal race in any State,” will thus have the effect of enabling the Commonwealth to make special laws in relation to Aborigines anywhere in Australia.

The Commonwealth power to legislate on Aboriginal affairs would be a power held concurrently with the States, and need not conflict in any way with State powers. Indeed Commonwealth power ought to complement the State powers, facilitating, for instance, Commonwealth financial assistance for State projects such as Aboriginal housing or vocational training. This would particularly benefit those States, such as Western Australia and Queensland, which have large Aboriginal populations.

In addition, Commonwealth power would enable the Commonwealth to take the initiative in setting up such bodies as an Aboriginal Education Foundation (along the lines of the very successful Maori Education Foundation in New Zealand) and an Aboriginal Arts and Crafts Board (similar to the Indian Arts and Crafts Board in the United States) which would be most effective on a nationwide basis.

In its original form, Section 51 (xxxvi) was apparently designed to protect Aborigines from Commonwealth laws discriminating against them. However, with the change of Australian (and world) opinion on the rights of racial minorities it is

now apparent that any Commonwealth laws in relation to Aborigines would be favourable to Aborigines. In view of the special disadvantages of lack of capital, education and “know-how” suffered by the Aborigines, the well known principle of justice that “it is as unjust to treat unequals equally as to treat equals unequally” is a strong argument for special legislation to enable Aborigines to overcome their disadvantages.

This principle is widely applied to other classes of peoples - for instance, ex-Servicemen under the Repatriation Act. Something similar is needed for Aborigines.

Australians are held collectively responsible for the treatment and conditions of the Aboriginal people by world opinion. Proper race relations is a national and international issue which therefore ought to be dealt with by Australia at a national level as well as at the State and local levels. Australia ought, for instance, to be able, at a national level, to ratify Convention 107 of the International Labor Organization which deals with the right of indigenous minorities such as the Aboriginal people. At present there are six different Aboriginal administrations with six different policies, and only one (South Australia) is endeavouring to satisfy Convention 107.

Aborigines are a national responsibility. We must see to it that the National Parliament is able to accept that responsibility. We can make this possible by voting “YES” for Aborigines on 27th May.

#### THE CASE FOR CHANGING SECTION 51 (XXXVI)

Section 51 (xxvi) reads:

“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 the people of any race, other than the Aboriginal race in any State, for whom it is deemed necessary to make special laws.”

Therefore, 1 per cent of Australia’s citizens (100,000) have not the full benefit of Commonwealth law or the fundamental protection available to any other person in Australia whether Australian born, migrant or even illegal entry.

At present the Commonwealth may make laws for the Aborigines in the Northern Territory and Australian Capital Territory. WHEN OUT OF AUSTRALIA, an Australian Aborigine in New Zealand or Britain is an Australia, subject to all the benefits of Commonwealth law - for instance, full social service benefits under our reciprocal Social Service Agreement, whereas there are still areas of social service benefits not readily available to Aborigines within Australia.

Nor may the Commonwealth make laws for the specific benefit of Aborigines in any State; that is, any Aborigine in Victoria, New South Wales, Queensland, Western Australia, S.A., Tasmania - approximately 84 per cent of Australian area and 80 per cent of the Australian Aborigines.

the Commonwealth acts in favour of many separate groups in the community. For instance, it has established schools in which it teaches English to migrants in many parts of Australia, but does not, and in strict fact, would not, have the Constitutional power to establish schools for Aborigines.

The Commonwealth has an extensive Repatriation Act, including educational assistance, for Service men and women, but while a similar system is desirable, even essential, for Aborigines, the Commonwealth cannot establish such a system.

The Commonwealth offered the Nauruan people a home on Curtis Island with substantial cash advances for housing, etc., and special rights there. It has not, and

probably could not, do so for any group of Australian Aborigines displaced by mining or other developments in a State.

The Commonwealth has established secondary and tertiary scholarships for a wide variety of Australian students including, of course, Aborigines, but because of Section 51 (xxvi) could not make a special case of the Aborigines, although one doubts whether it would be challenged if it decided to do so.

Great legal battles over illegal entrants and the Government's power to deport them are frequent. They have access to the courts in a way denied to some Aborigines because of the absolute paramountcy of State laws.

The Aborigines of Australia are discriminated against without any benefits being available in lieu thereof. We asked that Section 51 (xxvi) be submitted to a referendum to remove this limitation on Commonwealth action in the belief that all Australian laws ought to apply equally to all Australians and that no one should be excluded from Commonwealth benefits on account of race. For the foreseeable future the Commonwealth would be expected to DISCRIMINATE IN FAVOUR of the Aborigines by special beneficial legislation. Only the Commonwealth has the resources to do this, but a change would not remove from the States the right to act, any more than the Social Services legislation prevents the States having Child Welfare Services.