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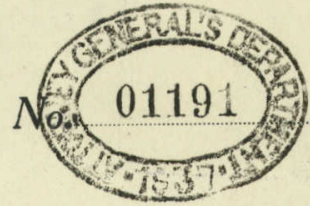
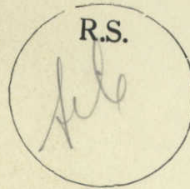
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Australian Aborigines' League, Petition to His Majesty the King - Representation in Commonwealth Parliament.

1937



COMMONWEALTH OF AUSTRALIA.

RD
5524 12.1.1

Attorney-General's Department.

FILE OF PAPERS.

SUBJECT: AUSTRALIAN ABORIGINES' LEAGUE.

PETITION TO HIS MAJESTY THE KING → REPRESENTATION

IN COMMONWEALTH PARLIAMENT.

CC.



REPRESENTATION OF ABORIGINALS IN COMMONWEALTH PARLIAMENT.
CONSTITUTION - SECTIONS 7, 24, 51(xxvi), 122 AND 127.

No 6 of 1938

OPINION.

The Secretary, Department of the Interior, has forwarded to me for advice the following communication:-

"I forward herewith copies of correspondence which has passed between this Department and the Prime Minister's Department with regard to a Petition to His Majesty the King, presented by the Australian Aborigines' League, relating to the welfare of aboriginals in Australia.

It will be observed that one of the requests contained in the Petition is that aboriginals should be afforded representation in the Commonwealth Parliament. Advice would be appreciated as to the Constitutional position so far as the granting of this particular request is concerned."

In a memorandum of 30th September, 1937, relating to the petition of the aboriginals, the Secretary, Department of the Interior, states, inter alia:-

- "The petitioners pray that His Majesty will -
- (a) prevent the extinction of the race;
 - (b) give better conditions for all aboriginals; and
 - (c) afford aboriginals representation in the Federal Parliament, either by an aboriginal or a white person known to have studied the need of aboriginals and to be in sympathy with them."

The following paragraph appears in a letter to the Prime Minister dated 26th October, 1937, from the Honorary Secretary, Aborigines' League:-

Respecting our claim for parliamentary representation, we very definitely submit that the Maori population is approximately the same as our people, with any advantage to us. In an area the size of Victoria they have four members and a Ministry for Native Affairs, which has had a native minister.

-/ We are

A handwritten signature in cursive script, appearing to be "J. H. ...".

We are persisting in our claim for one who can speak for us in Parliament, influencing legislation on our behalf and safeguarding us from administrative officers who, with notable exceptions, interpret their responsibilities to the aborigines in much the same way as a gaol governor does his criminal population. Our desire is a change of heart in the electorate, reflected in Parliament and leading to a policy which will be different from that administered by our gaolers. So far from divided control being allowed to retard our securing representation, we feel that our member should have the right to sit in every legislature, and any constitutional difficulty could be overcome by legislation. If our member were a member of the Senate, perhaps, as this is a States' Rights House, any difficulty might be more easily overcome."

Section 51 of the Constitution enables the Parliament of the Commonwealth to make laws 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 - (placitum xxvi).

By section 7 of the Constitution it is provided that the Senate shall be composed of senators for each State directly chosen by the people of the State. Section 24 provides that the House of Representatives shall be composed of members directly chosen by the people of the Commonwealth.

Section 127 of the Constitution is as follows:-

"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."

It is clear, therefore, in my opinion, that the Commonwealth Parliament has no authority to pass legislation to give representation in Parliament to aboriginals qua aboriginals who live in the States of the Commonwealth.

There remains for consideration the question whether it is competent for Parliament to enact a law granting representation to aboriginals in the Northern Territory. Section 122 of the Constitution reads:-

"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."

The extent of the powers conferred by this section was considered in *The King -v- Bernasconi*, 19 C.L.R. p.629. In his judgment Isaacs J. points out (at p.637) that:-

"It is plain that that section does not consist merely of additional legislative power over territories beyond the powers already conferred upon Parliament in relation to the Commonwealth itself, for its language is unrestricted and covers many of the subjects already specified in sec. 51. It is an unqualified grant yet in a condition to enter into the full participation of Commonwealth constitutional rights and powers. It is in a state of dependency or tutelage, and the special regulations proper for its government until, if ever, it shall be admitted as a member of the family of States, are left to the discretion of the Commonwealth Parliament. If, for instance, any of the recently conquered territories were attached to Australia by act of the King and acceptance by the Commonwealth, the population there, whether German or Polynesian, would come within sec. 122, and not within sec. 80. Parliament's sense of justice and fair dealing is sufficient to protect them, without fencing them round with what would be in the vast majority of instances an entirely inappropriate requirement of the British jury system."

In *Porter -v- The King*, 37 C.L.R. p.432, Higgins J. states that the power granted by section 122 to make laws for the Government of the Northern Territory is so far as appears, unlimited, and that it is difficult to see what right there is to limit it by construction. Starke J. (at p.448) expresses the opinion that the Parliament has, by force of the section, full and plenary powers over the Territories. See also decision of Dixon J. in *Federal Capital Commission -v- Laristan Building and Investment Company Proprietary Limited*, 42 C.L.R. p.583, at p. 585.

Read by the light of these cases, section 122 would appear to be a grant of sufficient authority to Parliament to provide that aboriginals in the Northern Territory may elect an aboriginal member for that Territory to represent them as such. But these elective powers could only be conferred on the aboriginals living in Territories of the Commonwealth and not in Australia as a whole.

(Sgd.) Geo. S. Knowles.

Solicitor-General.

14 / / 1938.

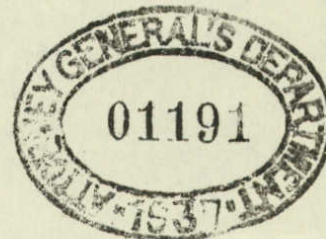
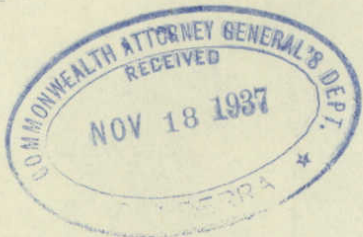
The Secretary,
Department of the Interior,
CANBERRA. F.C.T.

COMMONWEALTH OF AUSTRALIA.

HW.

DEPARTMENT OF THE INTERIOR,
CANBERRA, F.C.T.

15th November, 1937.



The Secretary,
Attorney-General's Department,
CANBERRA, F.C.T.

I forward herewith copies of correspondence which has passed between this Department and the Prime Minister's Department with regard to a Petition to His Majesty the King, presented by the Australian Aborigines' League, relating to the welfare of aboriginals in Australia.

It will be observed that one of the requests contained in the Petition is that aboriginals should be afforded representation in the Commonwealth Parliament. Advice would be appreciated as to the Constitutional position so far as the granting of this particular request is concerned.

(J.A. Carrodus)
Secretary.

THE CHIEF CLERK
24/11/1937
H.

Mr. Legg
24/11/37

AUSTRALIAN ABORIGINES' LEAGUE.

William Cooper,
Hon. Secretary.

43 Mackay Street,
SEDDON, W.11.

Doug. Nicholls,
Hon. Treasurer.

26th October, 1937.

The Rt. Hon. the Prime Minister,
CANBERRA.

Dear Mr. Lyons,

Thank you for your acknowledgment of our petition to His Majesty and the promise of fullest sympathy and consideration. We know you will give this and we do thank you for the definite interest you have in our cause. I would, however, offer the following comment in respect of the penultimate clause of your letter of 17th inst. and would request that these comments be in mind in the consideration promised.

His Majesty is King of Australia, and, on this account, the State control of aborigines should not prevent consideration being given on a national basis. I am not, therefore, able to appreciate the reference to the natives of the Territory in particular and to the jurisdiction of the State Governments. We do trust that the division of the administration over State Legislatures, which is always to our detriment, will not retard our relief. With all respect, since our petition is to the King of Australia, it should not be possible for divided control hurting us in this instance.

Respecting the conference of Chief Protectors, from which we scarcely expected relief, and which, so far as we can see only resulted in one decision which was not previously operative, and that the recognition of the wives of aboriginals married according to Tribal Law being recognised as legal wives and thus not being compellable witnesses. From our point of view the conference was only a waste of time. We did expect a Magna Carta from the Premiers' Conference but from the conference of Chief Protectors we only got the confirmation of our humiliation. Frankly, we are alarmed at the intention to seek advice from countries where Negro populations constitute the dark problem, for we, notwithstanding all our indignity, are allowed to walk on footpaths, ride in public vehicles and trains and put up in many hotels where white men are residing. To add to our sorrows the humiliation of our dark brethren overseas in the curfew and the pass system would be degradation indeed. In due course we will present you with our comment on the published minutes of the conference but meantime we are in protest against the whole result. We do claim that the forwarding of our petition be not clouded with the State aspect or the atmosphere of the Chief Protectors' conference.

Respecting our claim for parliamentary representation, we very definitely submit that the Maori population is approximately the same as our people, with any advantage to us. In an area the size of Victoria they have four members and a Ministry for Native Affairs, which has had a native minister. We are persisting in our claim for one who can speak for us in Parliament, influencing legislation on our behalf and safeguarding us from administrative officers who, with notable exceptions, interpret their responsibilities to the aborigines in much the same way as a gaol governor does his criminal population. Our desire is a change of heart in the electorate, reflected in Parliament and leading to a policy which will be different from that administered by our gaolers.

/So

So far from divided control being allowed to retard our securing representation, we feel that our member should have the right to sit in every legislature, and any constitutional difficulty could be overcome by legislation. If our member were a member of the Senate, perhaps, as this is a States' Rights House, any difficulty might be more easily overcome.

Hoping to hear shortly of the granting of our requests.

I remain, etc.

(SGD.) W. COOPER, Hon. Sec.

(WRITTEN IN MELBOURNE)

17th October, 1937.

W. Cooper, Esq.,
Honorary Secretary,
Aust. Aborigines' League,
43 Mackay Street,
SEDDON. W.11. VIC.

Dear Sir,

I am desired by Mr. Lyons to refer again to your letter with which you enclosed a Petition to His Majesty the King in regard to matters affecting the welfare of aborigines in Australia.

From an examination of the Petition, it appears that of the signatories approximately half are from Queensland, 550 from Western Australia, 350 from South Australia, less than 100 each from New South Wales and Victoria and 9 from the Northern Territory.

As you are aware, Commonwealth control of aborigines is limited to those living in the Northern Territory - aborigines in the States coming under the jurisdiction of the various State Governments. The Governments of the Commonwealth and of the States are doing everything possible to prevent the extinction of the aboriginal race and to provide better conditions for aborigines generally. The discussions that took place at the recent Conference of Commonwealth and State officers charged with the protection of aborigines indicated that all Governmental authorities in Australia fully appreciate their responsibility in this connection.

The Prime Minister desires me to say, however, that he has the fullest sympathy with the desire of your League that the interests of the aborigines of Australia should be adequately safeguarded. The fullest consideration will be given at the earliest possible date to the matters referred to in your petition, and you will then be further communicated with.

Yours faithfully,

(SGD.) F. STRAHAN.

Secretary.

30th September, 1937.

MEMORANDUM;

The Secretary,
Prime Minister's Department,
CANBERRA, F.C.T.

With reference to your memorandum of the 17th September, No. A.300/1, I desire to submit the following observations in regard to the petition from Australian aboriginals to His Majesty the King:-

The petition is signed by 1,814 Australian aboriginals, many of whom have affixed their "mark". There is no indication on the petition as to whether the petitioners are full-blood aboriginals or persons of part aboriginal blood. According to the names it is reasonable to assume that many of the signatories are not full-bloods.

Of the signatories approximately half are from Queensland, 550 from Western Australia, about 350 in South Australia, less than 100 from New South Wales, less than 100 from Victoria and 9 from the Northern Territory (Goulburn Island Mission Station).

Of those from Queensland, all but twelve are from the Palm Island aboriginal settlement.

The petitioners pray that His Majesty will -

- (a) prevent the extinction of the race;
- (b) give better conditions for all aboriginals; and
- (c) afford aboriginals representation in the Federal Parliament, either by an aboriginal or a white person known to have studied the need of aboriginals and to be in sympathy with them.

This Department can speak with authority only in regard to the aboriginals of the Northern Territory, because Commonwealth control of aboriginals is limited to that Territory, the aboriginals in the States coming under the jurisdiction of the various State Governments.

With regard to the prevention of the extinction of the race and the provision of better conditions for aboriginals generally, the Commonwealth Government and the various State Governments interested are doing everything possible. It was evident from the discussions that took place at the recent Conference of Commonwealth and State officers charged with the protection of aboriginals that all governmental authorities in Australia fully appreciate their responsibility in connection with the welfare of aboriginals generally. It is not seen what good purpose would be served by submitting those request to His Majesty the King.

/The

The granting of the request that aboriginals should be represented in the Federal Parliament would not have the beneficial results which the petitioners apparently think would accrue from such representation. As previously stated, the Commonwealth Government has jurisdiction only in respect of aboriginals in the Northern Territory and a Federal Member representative of aboriginals could deal only with the natives in that Territory. He would have no control whatever over the aboriginals in the various States.

So far as the Commonwealth Parliament is concerned, the Minister for the Interior is virtually a representative of the aboriginals of the Northern Territory. He is responsible for carrying out the Government's policy in the Northern Territory and for bringing forward new legislation in the form of Ordinances and Regulations which must be submitted to Parliament.

It is considered that nothing would be gained by transmitting the petition to His Majesty. If, however, it is decided to send it on, it is suggested that it would be desirable that the State Governments, other than Tasmania, be given an opportunity of submitting their views on the requests made by the petitioners.

The petition is returned herewith.

(J.A. Carrodus)
Secretary.