

No 18

RECEIVED

- 1 APR 2003

LEGAL, CONSTITUTIONAL AND
ADMINISTRATIVE REVIEW
COMMITTEE

Submission to the
Legal, Constitutional and
Administrative Review Committee

on an
Inquiry into Aboriginal and Torres Strait Islander Peoples'
Participation in Queensland's Democratic Process

By
Anti-Discrimination Commission Queensland

1 April 2003

1. Background

The Anti-Discrimination Commission Queensland (ADCQ) is established under the Queensland *Anti-Discrimination Act 1991*. One of the functions of the Commission is to promote an understanding of and acceptance and public discussion of human rights in Queensland. It is in this role that the Commission makes this submission to the Parliamentary Committee.

2. What are the rights of Aboriginal and Torres Strait Islander Peoples in relation to the democratic process?

a. International Conventions

There are several International Conventions that pertain to the rights of Aboriginal and Torres Strait Islander people in relation to their participation in the democratic process.

Article 21 of the Universal Declaration of Human Rights proclaimed by the General Assembly of the United Nations in 1948 states:

1. *Everyone has the right to take part in the government of his country, directly or through freely chosen representatives.*
2. *Everyone has the right to equal access to public service in his country.*
3. *The will of the people shall be the basis of the authority of government, this will shall be expressed in periodic and genuine elections which shall be by universal and equal suffrage and shall be held by secret vote or by equivalent free voting procedures.*

Article 25 of the United Nations Covenant on Civil and Political Rights states:

Every citizen shall have the right and the opportunity, without any of the distinctions mentioned in Article 2 [which include race or colour, language, social origin, birth or other status] and without reasonable restrictions;

(a) to take part in the conduct of public affairs directly or through freely chosen representatives;

(b) to vote and to be elected at genuine periodic elections which shall be by universal and equal suffrage and shall be held by secret ballot, guaranteeing the free expression of the will of electors;

(c) to have access, on general terms of equality, to public service in his country.¹

The International Convention on the Elimination of all Forms of Racial Discrimination² includes the following:

Article 5

... States Parties undertake to prohibit and to eliminate racial discrimination in all its forms and to guarantee the right of everyone, without distinction as to race, colour or national or ethnic origin to equality before the law, notably in the enjoyment of the following rights and

- (a) ...*
- (b) ...*
- (c) political rights, in particular the right to participate in elections – to vote and to stand for election – on the basis of universal and equal suffrage, to take part in the Government as well as in the conduct of public affairs at any level and to have equal access to public service.*

Of particular relevance to the present inquiry, are Articles 1(4) and 2(2) which state:

1(4) Special measures taken for the sole purpose of securing adequate advancement of certain racial or ethnic groups or individuals requiring such protection as may be necessary in order to ensure such groups or individuals equal enjoyment or exercise of human rights and fundamental freedoms shall not be deemed racial discrimination, provided, however, that such measures do not, as a consequence, lead to the maintenance of separate rights for different racial groups and that they shall not be continued after the objectives for which they were taken have been achieved.

2(2) States Parties shall, when the circumstances so warrant, take, in the social, economic, cultural and other fields, special and concrete measures to ensure the adequate development and protection of certain racial groups or individuals belonging to them, for the purpose of guaranteeing them the full and equal enjoyment of human rights and fundamental freedoms. These measures shall in no case entail as a consequence the maintenance of unequal or separate rights for different racial groups after the objectives for which they were taken have been achieved.

¹ Ratified by Australia on 13/8/1980.

² Ratified by Australia on 30 September 1975.

The draft United Nations Declaration on the Rights of Indigenous Peoples (yet to be proclaimed) deals with issues important to Indigenous peoples that are not adequately covered in existing human rights instruments. In particular the collective rights of Indigenous peoples are addressed and there is an active discussion also occurring on the inherent rights of Indigenous peoples. The right to participate in the political, social and economic life of the society in which Indigenous people live is also covered. Whilst the draft declaration is still in its formative stages, the UN General Assembly has affirmed that adopting a declaration is a major objective of the International Decade of the World's Indigenous Peoples which ends in 2004.

Aboriginal and Torres Strait Islander Peoples' human right to participate in the democratic process is recognised in the Commonwealth and Queensland legislation. However, in both the Commonwealth and Queensland on only two occasions has an Aboriginal or Torres Strait Islander person from Queensland stood for election and been voted into Parliament. The critical question is why Aboriginal people are not exercising or not being able to exercise their human right to stand for election or be elected to the Parliaments of Queensland or Australia.

b. Reasons for the low rate of participation of Aboriginal and Torres Strait Islander Peoples in the democratic processes and institutions

Aboriginal people in Queensland represent 3% of the population, yet there has only ever been one Aboriginal Member of Parliament in the Queensland Parliament, Mr Eric Deeral, in 1974-1977. In the Commonwealth Parliament the only Aboriginal or Torres Strait Islander representative to have come from Queensland is Mr Neville Bonner, who was a Federal Senator for Queensland for the period 1971-1983.

The Royal Commission into the Aboriginal Deaths in Custody, the Human Rights Commission Inquiry "Bringing them Home", and the Council for Aboriginal Reconciliation have all examined in detail, many of the obstacles and discriminatory practices that have resulted in high levels of Indigenous disadvantage in life expectancies, standards of living and access to services. Systemic discrimination, alienation from and lack of connection to the democratic processes, as well as the high levels of Indigenous disadvantage are immense barriers to participation by Aboriginal and Torres Strait Islander peoples in the democratic institutions and processes.

Coupled with the issue of Indigenous disadvantage, is the fact that the Queensland system of government, based on the Westminster system, is alien to Aboriginal and Torres Strait Islander traditional Indigenous ways of governance and decision making. The ADCQ submits this is a critical issue to be addressed in trying to identify suitable strategies to enable

more effective participation by Aboriginal and Torres Strait Islander peoples in the democratic process.

The Committee has recognised and discussed the key role of self-determination by Aboriginal and Torres Strait Islander peoples, and has also touched upon the debates about a treaty between Indigenous peoples and government and the sovereignty of Indigenous peoples. The Committee has stated these matters are outside the scope of the current Inquiry.

c. Strategies outlined by the Committee to enhance participation

The Committee has identified five strategies to increase the voice of Indigenous peoples in the democratic process. The ADCQ does not wish to comment specifically upon any of these strategies, other than to articulate what it understands are some primary concerns of Indigenous people. Those concerns are that whatever strategy is adopted, it must be fully accountable to the Aboriginal and Torres Strait Islander people who are represented by that strategy; it must truly be a part of the decision making process (not simply an advisory role); and Aboriginal and Torres Strait Islander people have a healthy scepticism of strategies/processes that are tokenistic. Further, whatever strategies are established, they should as much as possible reflect Aboriginal and Torres Strait Islander ways of decision making, and not introduce yet another alien system.

If the Committee after consultation comes to a view that one or several of the strategies is worthwhile, and government decides to implement those strategies, the ADCQ is of the view that there are legitimate arguments that such implementation could be considered a special measure as contemplated by the human rights instruments discussed above, and as discussed and endorsed by the High Court of Australia in the case of *Gerhardy v Brown* (1985) 159 CLR 70.

Thus, the argument that may be put forward by opponents of the strategies, that discrimination is occurring against non-Aboriginal and Torres Strait Islander persons because similar strategies do not apply to them, would not be sustainable, particularly whilst on objective socio/economic indicators, Aboriginal and Torres Strait Islander peoples do not have equal enjoyment of human rights and fundamental freedoms as non-Indigenous citizens.

Separate rights for different racial groups ought not be continued if the time comes that all groups are fully able to exercise their human rights and fundamental freedoms, as discussed by the High Court in *Gerhardy v Brown* [Supra]. However, there is an argument that the basis for stating Indigenous people have a right to sovereignty and have inherent rights, may provide the basis for separate rights to continue if and when in the

future the argument for special measures is no longer justified on socio/economic indicators.

3. Other strategies:

While not within the direct purview of this Committee, the ADCQ would urge all political parties to examine in detail their pre-selection processes for candidates standing for election and their efforts to recruit Aboriginal and Torres Strait Islander members to their party membership. The ADCQ would urge the political parties to consider an affirmative action program to attract Aboriginal and Torres Strait Islander party members and candidates for elections. In particular, in Queensland, where a number of Federal, State and Local Government seats have significant populations of Aboriginal and Torres Strait Islander voters, the political parties could give a much greater effort to these measures to increase Aboriginal and Torres Strait Islander participation in the democratic process.

4. Conclusion

The ADCQ welcomes the Inquiry being undertaken by the Committee to identify and attempt to address the barriers to Indigenous representation and participation in the Queensland democratic process.

The right to take part in public affairs, to vote and to be elected at elections is a fundamental human right. It is of major importance that Aboriginal and Torres Strait Islander peoples are able to exercise these rights in every sense, and that our democratic institutions, including Parliament, have representatives from the Aboriginal and Torres Strait Islander members of the community.