

**COMMISSION ON HUMAN RIGHTS**

Sub-Commission on Prevention of  
Discrimination and Protection  
of Minorities  
Working Group on Indigenous Populations  
Sixteenth session  
27th-31st July 1998  
Item 4 of the agenda

**REVIEW OF DEVELOPMENTS PERTAINING TO THE PROTECTION  
OF HUMAN RIGHTS AND FUNDAMENTAL FREEDOMS  
OF INDIGENOUS PEOPLES**

**Verbal statement by Mr. John Scott, on behalf of the New South Wales Aboriginal Education Consultative Group, Australia and the NSW Teachers Federation.**

Madame Daes, thank you for the opportunity to speak at this time.

Greeting to you and your colleagues of the Working Group.

Greetings to our Indigenous Elders, and Brothers and Sisters from all over the world.

Greetings to other participants at this forum.

Madam Daes

You work for Indigenous people has ensured you have a special place in our hearts ~ you have stood on the edge and you have made it the centre and the whole world moved over.

However the current Australian government believes that the pendulum has swung to far in favour of Australia's most disadvantaged group.

Although we still our statistics of disadvantage indicate that Aboriginal and Torres Strait Islander peoples still have the worst health statistics, the shortest life expectancies, the highest unemployment and imprisonment rates and the poorest educational outcomes of any group in the Australian community, the last twelve months has seen an unprecedented attack on Indigenous rights in Australia.

You and you colleagues are well aware of the rise of a right-wing extremist political party, ironically called *One Nation*. Although this minority party is currently polling at 15% across the nation and in some provinces 25%, the politics of these divisive fanatics has influenced the national agenda and the policies of the ruling conservative parties, to the point where equity has been oversimplified and is now interpreted as *sameness*.

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Of particular concern is the recently the proposed Federal Government's Aboriginal and Torres Strait Islander Heritage Protection Bill.<sup>1</sup>

An interesting case study of the *lack* of Federal government leadership in Indigenous issues arises from this proposed legislation

This proposed Bill:

- < *restricts access to the Commonwealth Act;*
- < *proposes accreditation of the majority of State and Territory laws without substantial or significant improvement in these laws or their administration;*
- < *imposes a new consideration of national interest<sup>2</sup>, which fundamentally changes the nature of Commonwealth's involvement in Indigenous heritage protection and the relationship between Commonwealth, State, and Territory regimes.<sup>3</sup>*

Aboriginal people are not automatically against reform of the 1984 Heritage Act. We see value in the reform of process, increased protection of culturally sensitive information and the emphasis on conflict resolution through mediation and negotiation. However, the clear and underlying attempt by the Federal Government to *wash its hands* of Aboriginal people and our issues, goes against the grain of the 1967 Referendum, in which the vast majority of Australians<sup>4</sup> voted for Commonwealth involvement in Indigenous affairs in what was viewed by many as *a vote for Aborigines*. It is the view of Aboriginal people that *Indigenous Heritage Protection* should demand the *attention* of the Federal Government, not its *withdrawal*.

The Commonwealth Government's direction in heritage protection, coupled with the amendments to the Native Title legislation<sup>5</sup> represents a double jeopardy for Indigenous people and our heritage, given that the amendments to the Native Title Act remove the right of many native title holders to negotiate over acts affecting our native title rights.

Clearly, *constitutional recognition* of the rights of Indigenous Australians would go a long way to see that Indigenous issues are not captured and used by political parties for political advantage and that politically hostile times do not see an erosion of the hard won gains of the past.

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<sup>1</sup> This Bill is intended to replace the current Aboriginal and Torres Strait Islander Protection Bill 1984.

<sup>2</sup> The Federal Government's Heritage Protection Bill erodes this sole remaining option by effectively withdrawing Commonwealth involvement except in relation to cases involving the *national interest*. Of the current track record the *national interest* appears to exclusively involve *economic considerations*.

<sup>3</sup> As reported in the Koori Mail Page 8 *Heritage at Risk* dated 20/11/98.

<sup>4</sup> Aboriginal people did not vote in this referendum - although it was primarily about our rights, however over 90% of non-Aboriginal Australians voted in what was seen as a vote *for* Aborigines.

<sup>5</sup> John Howard' 10 point Plan (Scam) 1997.

The Commonwealth has an obligation arising from the 1967 Referendum to take a leadership role in Aboriginal affairs. Culture and Heritage protection, for instance, should not be left to the States. National standards are required and these national standards must reflect the unique characteristics of the Indigenous rights, such as their collective nature. Indigenous people believe that national standards should reflect international standards.

A comparison can be drawn to the need for national environmental laws to adhere to international standards, in recognition that these issues are in the national interest and yet go beyond national boundaries. This is also true of human rights issues.

Indigenous rights have not been well served by present laws or are unlikely to be protected by a mainstream *individual-rights* based legal system. Laws must address the *collective* nature of Indigenous rights. This is especially relevant to rights such as *native title rights, culture and heritage protection, and the protection of intellectual property*. Such Collective Rights recognise the unique nature of inter-generational knowledge, kinship patterns and social obligations. Indeed the very concept of knowledge must be rethought by *Western* minds if any understanding of Indigenous knowledge is to be achieved and if this epiphany is to be successfully transmitted into adequate law reform.

Unfortunately we seem possessed by a government that considers the national interest to be little more than the figures on an economic balance sheet.

Madame Daes, thank you once again for the chance to share these disturbing developments with you all, here today

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