The Racial Discrimination Act: a 1970s perspective
Sarah Joseph

Introduction

The Racial Discrimination Bill was originally introduced in the first term of the Whitlam government by the then Attorney General, Senator Lionel Murphy. It lapsed with the 1974 election. It was reintroduced in the next Parliament by the new Attorney General, the late Kep Enderby.

How was the Racial Discrimination Act 1975 (Cth) viewed in the Parliamentary debates preceding its adoption? One must remember this was unprecedented legislation, the first statute which implemented Australia’s international human rights obligations.¹ A number of interesting themes arose in the 1975 debates.

Was there a problem of racial discrimination to be addressed?

A number of parliamentarians actually suggested that there was no problem of racial discrimination in Australia. For example, Senator Ivor Greenwood (Liberal, Victoria), then Deputy Leader of the Opposition in the Senate, stated:

‘We in Australia have been singularly free of racial discrimination.’

He mentions these matters as he felt that ‘those who cry racist often create problems where previously none existed.’² Senator Condor Laucke (Liberal, SA) asked if there was any country with ‘more harmonious inter-racial or inter-cultural relationships than Australia’.³

The most extraordinary speech given in the debates on the RDA came from the former mayor of Mackay, Senator Ian Wood (Liberal, Queensland). Wood did not deny the existence of racial discrimination, or in his words, ‘racialism’.⁴ However, he proceeded to talk of the horrors of racism in Nigeria, PNG, Uganda, Malaysia, Fiji, and Hong Kong, that is ‘all the racism in non-white countries’. According to Wood, whatever the issues in Australia, ‘we are only amateurs’.⁵

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¹ Australia did not in fact accede to the relevant treaty, the Convention on the Elimination of all Forms of Racial Discrimination 1966 (‘CERD’) until the RDA was passed but prior to its coming into force.
³ Commonwealth, Parliamentary Debates, Senate, 15 May 1975, 1536 (Condor Laucke).
⁴ Commonwealth, Parliamentary Debates, Senate, 22 May 1975, 1791 (Ian Wood).
⁵ Commonwealth, Parliamentary Debates, Senate, 15 May 1975, 1544 (Ian Wood).
Senator Cleaver Bunton (Independent, NSW) agreed that Australia had no problems of racial discrimination. Rather, he felt that Australians engaged in ‘normal discrimination’, such as discrimination because of people’s likes and dislikes in music, and against men with long hair. Later in the debates, an example of racial discrimination was given of the Myer family being refused access to the Melbourne Club (presumably because they were Jewish): Bunton replied that that was an example of discrimination rather than racial discrimination.

In the House of Representatives, Michael MacKellar (Liberal, Warringah) talked of how most racism in Australia was inadvertent rather than deliberate, as if that somehow meant it was not particularly problematic. To be fair to MacKellar, notions of indirect and substantive discrimination were not well understood at all at that time.

Many of the Liberal opposition did recognise significant racial discrimination. For example, Senator Gordon Sinclair Davidson (Liberal, SA) gave a particularly intelligent speech, pointing out the differences between assimilation and integration, and the value of diversity.

And there was an admonition from Senator Neville Bonner (Liberal, Queensland), the first Indigenous member of Parliament. He reminded his fellow politicians that they were perhaps not in the best position to know if there was in fact egregious racial discrimination in the community. He stated:

I have had the opportunity to read some of the speeches on this Bill. Some have said that there is no discrimination. I say to all and sundry: ask an Italian, a Sicilian or a Greek who has been called, to use some of the denigrating terms that have been used, a wop or a greaser or ask a Jew who has been called a hooknose or a moneybags whether he knows what discrimination is. Ask some of the Aboriginal people who have been called boongs, Abos and such like whether there is discrimination. There is discrimination and we must do something about it.

Is racism bad?

This leads us to the next issue, a surprising one of whether racism is indeed bad. Here, I return to the inimitable Senator Wood.
Sometimes people have an aversion to others either because of personality, race, creed, or whatever it might be. Does that mean that is such a bad thing? … The fact of somebody having a racial attitude towards a person should not worry that person. It should not affect him.\textsuperscript{11}

His proof of this thesis was the Jewish people:

one of the most intelligent, best educated and most creative people in the world despite all that has been done against them, because of the character within them.\textsuperscript{12}

Basically, according to Wood:

if people have the right character, thinking and ability within themselves adversity and things against them often give them a determination to dig deep within themselves and to build themselves into better and richer persons mentally and in other ways.\textsuperscript{13}

Senator Wood came remarkably close to saying that racism is actually good for you.

Of course, there were many responses and interventions attesting to the evil of very real racism, the majority concerning Indigenous people. For example, the Minister for Aboriginal Affairs, Senator Jim Cavanagh (ALP, SA) spoke of the fact that Indigenous people had been hated and exterminated.\textsuperscript{14} Ted Innes (ALP, Melbourne) spoke of the history of white colonisation, and the fact that Indigenous people were treated like vermin to be hunted, poisoned and scattered. He spoke of genocide, physical death, being replaced by assimilation, cultural death.\textsuperscript{15}

These statements by Cavanagh and Innes are interesting, as they were not specifically challenged. Such statements today, particularly by a Minister, would be treated with outrage in the Parliament and in sections of the media. It seems that the backlash against the so-called ‘black armband’ of history in the 1990s under the government of John Howard has silenced mainstream discussion of this matter. The shocking history of barbaric treatment of Aboriginal people is simply not mentioned these days in the federal legislature.

\textsuperscript{11} Commonwealth, \textit{Parliamentary Debates}, Senate, 22 May 1975, 1792-3 (Ian Wood).
\textsuperscript{12} Ibid 1792.
\textsuperscript{13} Ibid.
\textsuperscript{14} Commonwealth, \textit{Parliamentary Debates}, Senate, 22 May 1975, 1806-7 (Jim Cavanagh).
\textsuperscript{15} Commonwealth, \textit{Parliamentary Debates}, House of Representatives, 8 April 1975, 1295 (Ted Innes).
How was racism to be countered?

The majority in Parliament did agree that racism was an evil that existed in Australia. However, there was disagreement over the best way to address racism.

In the House of Representatives, a very young John Howard (Liberal, Bennelong) warned that ‘the real path to tolerance between the races and between persons of difference race is not primarily to be found through legislative coercion’. 16

The former Liberal Prime Minister Billy McMahon (Liberal, Lowe) went further. He did not believe that a statute was the appropriate instrument to ‘carry out basic reforms relating to individual attitudes or reforms of a moral or sociological nature’. He did not think that the Whitlam government could ‘do anything but create greater difficulties than those attempting to be cured by introducing’ the Bill. 17

Senator Magnus Cormack (Liberal, Victoria) added that ‘it is not possible to solve the problems of human nature by passing Acts of Parliament’. 18

Others warned of abuse of the Bill for spurious claims. 19 These claims were mocked by Senator John Button (ALP, Victoria), when he noted rumours that the RDA could be used to force people to marry people of other races. 20 That same sort of argument seems to be made today about same sex marriage, given the fears that it somehow poses a threat to traditional marriage.

There were also concerns over the creation of a ‘race relations industry’, for example from Senator Davidson. 21 The parallel argument today are claims about a ‘human rights industry’ in Australia, often raised by conservative commentators with an uneducated view of the actual powers of the Australian Human Rights Commission, and of human rights in general.

In the Senate, running a close second to Senator Wood in terms of astonishing interventions, was Senator Glen Sheil (National Party, Queensland).

16 Commonwealth, Parliamentary Debates, House of Representatives, 8 April 1975, 1303 (John Howard).
17 Commonwealth, Parliamentary Debates, House of Representatives, 9 April 1975, 1415 (Billy McMahon).
18 Commonwealth, Parliamentary Debates, Senate, 22 May 1975, 1795 (Magnus Cormack).
21 Commonwealth, Parliamentary Debates, Senate, 27 May 1975, 1878 (Gordon Sinclair Davidson); Commonwealth, Parliamentary Debates, Senate, 15 May 1975, 1527 (Glen Sheil).
No country on earth has solved the problem of inter-racial relations especially when those races are living side by side. The problems seem to me to be worse in those countries that have legislated. … Forced integration has been tried, for example, in the United States of America and it has proven a monumental failure. Forced segregation has been tried, for example, in South Africa and Rhodesia and it has led those countries into international ostracism, unjustifiably in my opinion because the multiracial and multinational problems in South Africa appear to be of much less magnitude than they are in other countries.\textsuperscript{22}

As an aside, I note that Senator Sheil later became Australia’s shortest serving Minister (43 hours). He was dumped by PM Malcolm Fraser as the nominated Minister for Veterans Affairs after making pro-apartheid statements.\textsuperscript{23}

It must be noted that other Senators were highly critical of Senators Wood and Sheil, on both sides of politics. Perhaps the most scathing rebuttal of these two Senators came from their own side of politics, from Senator Alan Missen (Liberal, Victoria).\textsuperscript{24}

The Attorney-General, Kep Enderby (Labor, Canberra), agreed that law alone could not change attitudes, but he argued that law ‘could express the feelings of a civilised society’. He also responded by referring to the ‘dismal failure’ of the common law to combat racial discrimination, meaning that a statutory response was needed.\textsuperscript{25} Indeed, the common law is more likely to recognise the right of a person or a business to hire or associate with whoever they want, regardless of any discriminatory motive. Senator Missen also conceded the failures of the common law, which had for example allowed for slavery and child labour.\textsuperscript{26}

These comments are interesting as I am personally a sceptic over the common law’s record as a protector of human rights, an issue which relevant in today’s discourse given the Attorney-General’s preferred focus on so-called traditional rights and freedoms rather than internationally recognised human rights.\textsuperscript{27}

\textsuperscript{22} Commonwealth, \textit{Parliamentary Debates}, Senate, 15 May 1975, 1526 (Glen Shiel).
\textsuperscript{25} Commonwealth, \textit{Parliamentary Debates}, House of Representatives, 9 April 1975, 1416 (Kep Enderby).
\textsuperscript{26} Commonwealth, \textit{Parliamentary Debates}, Senate, 27 May 1975, 1881 (Alan Missen).
\textsuperscript{27} See Fletcher, A. and Joseph, ‘Traditional Rights and Freedoms: Encroachments by Commonwealth Laws’, Submission to the ALRC, February 2015, at
The Al Grassby factor

Significant responsibilities under the RDA were to be, and were, conferred on the Commissioner for Community Relations (‘CCR’). These days the equivalent powers are conferred on the Race Discrimination Commissioner in the Australian Human Rights Commission. One constant iterated concern for the opposition during passage of the RDA was the powers of the CCR, and indeed they succeeded in having them watered down. One must wonder if that concern was due, in part, to the intended identity of the CCR, one Al Grassby.

Grassby had been Minister for Immigration in the first Whitlam government, and is often called the father of multiculturalism. He narrowly lost his seat in the 1974 election in the seat of Riverina (NSW) after a viciously racist campaign against him, run by opponents of immigration rather than his political opponents in the Liberal party. Grassby’s unhappiness over the manner of his loss was obvious after the election.

In the Senate debates, Ivor Greenwood referred to Grassby as being paranoid over the loss of his seat. He implied that Grassby would use his new powers under the RDA to retaliate against people.28 In response, ALP Senators laid out some of the details of the campaign against Grassby. Senators Arthur Gietzelt (ALP, NSW) and Button spelt out some of the material that circulated in the Riverina.

The campaign against Grassby in the 1974 election was echoed in a grassroots campaign against the RDA consisting, again, of vile racist material. At one point in the debate, Senator Ruth Coleman (ALP, WA), one of very few women in Parliament, sought leave to have some of that material incorporated into Hansard. Permission was refused, so she proceeded to read extensive excerpts into Hansard.29

Racial vilification provisions

The campaigns against Grassby and the RDA bring up the issue of racial vilification. There were criminal provisions in the original Bill regarding racial vilification. Ultimately, the Senate forced the removal of these provisions, for free speech reasons.


For example, Neville Bonner supported deletion. In doing so, he noted how they could be used against racial minorities.

Because of past discrimination and things that have happened in the past, a group of young Aboriginal men and women could become angry, and outside this place they could shout ‘Down with the whitey’ or something about some race of people. Under this Bill they can then be summoned, taken to court and gaoled or what have you.30

Senator Laucke also spoke against the provisions, and argued that class hatred was a worse problem than racial hatred, resulting in for example the French revolution and the communist system.31

Racial vilification provisions were not inserted until 1995, and then by way of civil rather than criminal enforcement provisions. These provisions became controversial in 2011 when prominent conservative commentator Andrew Bolt fell foul of them, by publishing two articles which questioned, in a mocking tone, the identification of certain lighter-skinned Indigenous people as Indigenous.32

Interestingly, there were early echoes of this episode in the debate, unsurprisingly in the speeches of Senator Wood. He repeatedly questioned whether Charlie Perkins, then a public servant who had condemned Australia as a racist country, was in fact an Indigenous person, by referring to his mixed ancestry.33

Constitutionality

There were naturally concerns over the constitutionality of the legislation.34 The legislation was based on the Commonwealth’s power under s 51(XXIX) of the Constitution, the external affairs power. The scope of that power with regard to the incorporation of international treaties into


33 Commonwealth, *Parliamentary Debates*, Senate, 15 May 1975, 1543; Commonwealth, *Parliamentary Debates*, Senate, 22 May 1975, 1791; Commonwealth, *Parliamentary Debates*, Senate, 29 May 1975, 2035. Perkins’ public condemnation of Australia’s race relations in international forums was a source of consternation for many members of the Parliament on both sides. Senator Greenwood used Perkins as a reason not to accede to the CERD, as he feared such accession might have given Perkins an avenue of individual complaint to the UN against Australia.

domestic was not settled in 1975. The law was passed anyway, and its constitutionality was finally confirmed in the Koowarta case in 1982.\textsuperscript{35}

Conclusion

Of course, the Bill ultimately passed, an achievement which must not be underestimated. After all, it was a radical statute for the time, and survived the extraordinary rancour of that particular Parliament. It passed both Houses only a few months before the battle over supply which led to the dismissal of the Whitlam government.

The opposition, with its blocking power in the Senate, won some serious concessions. As noted, the racial vilification provisions were removed. The powers of the CCR were reduced, including a proposed power to bring proceedings against people, and to apply to a judge to obtain evidence against a person. Vicarious liability was also removed.

I leave the penultimate word to Senator Bonner. His words resonate today, in light of contemporary debates over the meaning of 'freedom':

Sure, we can say that the people in Australia are free. We say that there are opportunities for all. What are opportunities if one is not able to take advantage of them? Take this example: One is living in pretty appalling conditions, and sees an advertisement in a paper that flats are available in a certain area or a house is available to rent. One rings the number that is quoted in the newspaper and says to the person: 'I saw your advertisement in the newspaper. You have a house to rent'. The person replies: 'Yes'. One says: 'Look, I am coming round to see you'. The person replies: 'By all means do'. One goes to the address and knocks on the door. A man comes to the door. He says: What do you want?' One replies: 'I am here in answer to your advertisement'. He says: 'Sorry, the house is not available. It was taken 5 minutes ago'. One cannot say that he was doing that because one is an Aborigine, but it seems very strange that within fifteen or twenty minutes, somehow or other, the house has been taken and is not available. The man has seen that one is black. Is that freedom?\textsuperscript{36}

Implicitly, Bonner felt ‘no’. I agree, hence the RDA was and remains a major step towards real freedom for many.

\textsuperscript{35} Koowarta v Bjelke-Petersen (1982) 153 CLR 168.
\textsuperscript{36} Commonwealth, Parliamentary Debates, Senate, 27 May 1975, 1885 (Neville Bonner).