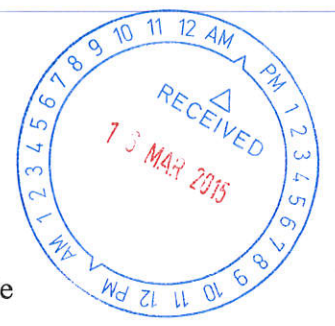


72.



The Executive Director,  
Australian Law Reform Commission  
G.P.O. Box 3708  
Sydney, NSW 2000

Ms Christine Baillie



Date: 14 March 2015

Attention: Professor Rosalind Croucher

Dear Sir/Madam,

**Re: Traditional Rights and Freedoms – Encroachments by Commonwealth Laws  
Issue Paper (IP 46)  
Response to specific questions**

**Introduction**

I refer to the article “Rights and Freedoms in Commonwealth Laws Issues paper (2015) 2 *Law Society of NSW Journal* 13.

I make my submission in response to the specific questions contained in Australian Law Reform Commission (ALRC) *Traditional Rights and Freedoms – Encroachments by Commonwealth Laws* ‘No (IP46) 2014 as I respect the traditional rights and freedoms of all Australians, other people living in Australia, the Rule of Law in Australia and the *Australian Constitution* (Cth) and I believe that some these traditional rights and freedoms have been encroached by Commonwealth laws..

I also believe we should celebrate what is arguably the 800<sup>th</sup> anniversary of the commencement of the Rule of Law, which as I understand is that ‘each person and the government are subject to the law’. (Please refer to Chapters 39 and 40 of the *Magna Carta*).

I have identified that the *Rule of Law* and the *Australian Constitution* (Cth) encroach upon traditional rights, freedoms and privileges of Australians, indigenous people living in Australia and other people affected by Australian Laws.

**Rule of Law**

I have examined that the *Rule of Law* referred to in Chapter 39 of the *Magna Carta*<sup>1</sup> refers to “freemen” and does not include women and encroaches upon *Sex Discrimination Act 1984* (Cth)<sup>2</sup> or people of no gender<sup>3</sup>, and encroaches upon *Sex Discrimination Act 1984* (Cth) or indigenous aboriginal Australians and encroaches upon

<sup>1</sup> <http://www.constitution.org/eng/magnacar.htm>

<sup>2</sup> and *Anti Discrimination Act 1977* (NSW); *New South Wales v Amery* (2006) 80 ALJR 753

<sup>3</sup> Kai Chris Somers xxy, ‘Sexing the Difference in Gender and the Anomalies of Interpretation’ (Paper presented at the 14<sup>th</sup> Annual Conference of The Australian and New Zealand Society of Criminology , The University of Western Australia, 27-30 September 1999; Patrick Parkinson, *Australian Family Law in Context Commentary and Materials* (Lawbook, 5<sup>th</sup> ed, 2012) 347-348.

*Racial Discrimination Act 1975 (Cth)* or people with a disability and encroaches upon *Disability Discrimination Act 1992 (Cth)*.

### Due Process

I have identified that Due Process (referred to in Chapter 40 of the Magna Carta) is a traditional right for all Australians and others affected by Australian laws to receive procedural fairness and access to justice.

In my opinion people including refugees<sup>4</sup> and migrants applying for permanent residence, temporary entry or for an extension to reside and or work in Australia, have been denied procedural fairness under the *Migration Act 1958 (Cth)* and more recently under *Migration and Maritime Powers Legislation Amendment Act 2014 (Cth)*,

Definitions ,

As I understand, a refugee is a person who is outside his or her country of origin and is unable or unwilling to seek protection from that country or to return there for reasons of fear of persecution based on reasons of race, religion, nationality, membership of a particular social group or political opinion. In my opinion this means these people are subject to the rule of law and due process as they have been denied traditional rights and freedoms that Australians enjoy and take for granted every day.

According to the article 'Asylum Seekers Children and the *Migration Act 1958 (Cth)*' (2015) 2 *Law Society of NSW Journal* 25 the Commonwealth Government has reintroduced a program of temporary protection visas originally introduced by the Howard Government , which effectively removes the entitlement of refugees to permanently seek asylum in Australia. According to the article there are already 30 000 asylum seekers already living in the Australian community together with all refugees who have arrived since 19 July 2013.

According to statistics provided by the Australian Human Rights Commission<sup>5</sup> and the Department of Immigration and Border Protection, Immigration Detention many of these refugees that remain isolated and behind fences are young children. Many of these children are without parents. It is common knowledge<sup>6</sup> that these refugees remain isolated and or in detention on Christmas Island and other centres.

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<sup>4</sup> Butterworths Concise Australian Legal Dictionary (Lexis Nexis Butterworths, 3<sup>rd</sup> ed,2004) definition of refugee.

<sup>5</sup> <http://www.humanrights.gov.au/publications/forgotten-children-national-inquiry-children-immigration-detention-2014> tabled in Federal Parliament Wed 11 February 2015; <http://www.immi.gov.au/About/Pages/detention/about-immigration-detention.aspx?tab=3&heading=immigration-detention-and-community-statistics> (published monthly); <http://www.aph.gov.au/~media/Committees/legcon/9.3.2015>; [http://www.aph.gov.au/Parliamentary Business/Senate Estimates/legconcte/estimates/add1415/AGD/index](http://www.aph.gov.au/Parliamentary_Business/Senate_Estimates/legconcte/estimates/add1415/AGD/index) 9.3.2015.

<sup>6</sup> <http://www.humanrights.gov.au/news/speeches/forgotten-children-national...>



In my opinion our Australian Society has evolved because of modern technology and the increased use of social media such as Facebook, Twitter, Blue Tooth, MySpace, the internet, international travel, global companies and communication, awareness of global events and the United Nations millennium goals.<sup>7</sup>

The Australian Constitution must change and adapt to society now and for future generations of Australians so that we as a society do not become complacent because of our busy lives and neglect or lose our freedom(s) of speech, expression, movement, religion, association, sexual preference, right to privacy and right to due process. Everyone including the government is accountable according to the Rule of Law.<sup>8</sup>

#### Remove discrimination from *Australian Constitution (Cth)*

In my opinion there is a need for constitutional reform to the extent that section 25 of the *Australian Constitution (Cth)* and its intention, must be removed as it discriminates against people because of race<sup>9</sup>. Constitutional reform is needed in Australia to protect our fundamental freedom of association, freedom of speech and freedom of expression to vote<sup>10</sup>.

#### Implement treaty

In my opinion, according to the history books Australia was settled by the British, on the basis of a concept called *Terra Nullius*. Terra Nullius means land belonging to no one or land without a sovereign exercising its authority<sup>11</sup>. However it is well documented that indigenous peoples did exist and inhabit Australia before British colonisation<sup>12</sup>.

Therefore in my opinion the concept of Terra nullius encroaches upon the Commonwealth laws of *Racial Discrimination Act 1975 (Cth)*, the *International Convention of all forms of Racial Discrimination* and *International Covenant on Civil and Political Rights*.

In my opinion it is time to consider another option. Following the majority decision in *Tasmania v Commonwealth (Tasmania Dam case)*<sup>13</sup>, the Commonwealth may invoke its constitutional power using the external affairs power in *Australian Constitution (Cth)* s 51(xxix) to implement the terms of the international treaty obligations by Australia as a signatory to the *International Convention on the Elimination of All Forms of Racial Discrimination*<sup>14</sup> in *Racial Discrimination Act 1975 (Cth)*<sup>15</sup>.

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<sup>77</sup> <http://www.un.org/millenniumgoals/> 30/8/2014; Sabrina Baillie, 'Global Inequalities' Year 8 Assignment, Broughton Anglican College, 2014.

<sup>8</sup> Robert French IP 46 Australian Law Reform Commission, Traditional Rights and Freedoms – Encroachments by Commonwealth Laws Issue Paper No 46 (2014) [1.6] Robert French, 'The Common Law and the Protection of Human Rights.' 2.

<sup>9</sup> *Kartinyeri v Commonwealth (Hindmarsh Island Bridge case)* (1998) 195 CLR 337; 689; Larissa Behrendt, 'Constitutional Recognition of Indigenous Australians' (2015) 2 *Law Society of NSW Journal* 32.

<sup>10</sup> *Rule of Law* Chapter 39 of *Magna Carta*.

<sup>11</sup> Butterworths Concise Australian Legal Dictionary (LexisNexis Butterworths, 3<sup>rd</sup> ed 2004) 425.

<sup>12</sup> *Mabo v Queensland (No 2)* (1992) 175 CLR 1, 35-43 Brennan J.

<sup>13</sup> *Tasmania v Commonwealth (Tasmania Dam case)* (1983) 158 CLR 1.

<sup>14</sup> Neil Rees, Katherine Lindsay and Simon Rice, *Australian anti discrimination law Text cases and materials* (The Federation Press, 2008) [3.3.1]; *Australian Constitution (Cth)* s 51(xxix) External Affairs; *Tasmania v Commonwealth (Tasmanian Dam case)* (1983) 158 CLR 1; *Koowarta v Bjelke-Petersen* (1982) 153 CLR 168; *R v Burgess; Ex parte Henry* (1936) 55 CLR 608.

<sup>15</sup> *Canadian Charter of Rights and Freedoms; Canada Act 1982 (UK)* c 11, sch B ('*Constitution Act 1982*');

**Fact**

The *Australian Constitution* (Cth) must change and adopt Rule of Law.  
The Australian Constitution is outdated and requires amendment.

The current preamble does not recognise: the traditional peoples of Australia; all Australians, refugees, Indigenous law or Rule of Law, does not include Western Australia, Northern Territory or Australian Capital Territory, Norfolk Island, Lord Howe Island, or Christmas Island ; does not refer to or recognise International Covenants, conventions or Rights. does not refer to the Prime Minister of Australia.

The Commonwealth of *Australia Constitution Act 1900* (Cth) s 6 refers to other Australasian colonies including New Zealand.

**Reasons for change**

The Rule of Law provides traditional freedoms and rights to all and the *Australian Constitution* (Cth) protects those freedoms and rights.

I look forward to hearing from you. If you have any further questions please do not hesitate to contact Christine Baillie on [REDACTED]

Yours Sincerely,



Christine Baillie

Postscript: I apologise for the lateness of my submission.