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ABORIGINES AND ISLANDERS (ADMISSIBILITY OF CONFESSIONS)
BILL 1986

(Private Senator's Bill)

Date introduced: 5 December 1986
House: Senate
Presented by: Senator the Hon. Michael Macklin

DIGEST OF BILL

Purpose

To regulate the circumstances in which confessions by Aborigines and Torres Strait and Pacific Islanders will be admissible.

Background

The statistics relating to the imprisonment of Aborigines were considered by the Law Reform Commission in its report No. 31 titled The Recognition of Aboriginal Customary Laws. In part the Commission reported 'the result of its (i.e. the general criminal law) application are now so well-known as to be notorious. Aborigines are grossly over-represented in Australian criminal statistics, both in terms of conviction rates and imprisonment. In her 'pioneering study', Dr Eggleston pointed out that in Western Australia in 1965, Aborigines, who constituted 2.5% of the State's population, were convicted of 11% of offences and made up 24% of the prison population. In South Australia in the same year, Aborigines (0.7% of the population) accounted for 14% of the admissions to prison. This over-representation, she found, was not only the result of different patterns of criminality, but of differences in arrest, prosecution and sentencing practices. Although the distribution of offences has changed since the 1960s, the overall situation remains similar.' The report went on to note that in 1984 Aborigines accounted for less than 2% of the population while comprising approximately 10.5% of the prison population. The percentage of prison population ranged from 51% in the Northern Territory, 31.9% in Western

Australia, 15.6% in South Australia, 9.1% in Tasmania, 7.2% in New South Wales and 2.5% in Victoria. No figures were available for Queensland.[1]

There are a number of reasons for the high rate of conviction and this Bill will approach two. First the possibility that Aborigines are being convicted on unsupported verbal confessions at a higher rate than the general public and secondly that Aborigines fail to understand the legal process more than the general public.

Main Provisions

The interpretation provisions are contained in clause 3. The more important are authorised persons - a religious minister, medical practitioner, social service bodies representatives, a legal aid representative or a prescribed person and prescribed person - an Aborigine, Torres Strait or Pacific Islander.

Confessions by prescribed persons will not be admissible unless made voluntarily, the effects of the confession were understood and this Bill has been complied with (clause 5).

A prescribed person is not to be questioned unless first cautioned (clause 6). The form of caution is contained in clause 16. The officer is to give the standard caution and then ask what it means. If the person is unable to explain, the caution is to be explained.

Persons being restrained must be cautioned (clause 7).

Except to prevent escape or damage, an officer shall, on request, provide reasonable facilities to communicate with a friend or relative (clause 8).

Unless the person under restraint objects, the officer is to inform the relevant legal aid body that the person is under restraint. Any objection must be made to a representative of the legal aid body without the officer being present (clause 9).

Prescribed persons are not to be questioned as to whether they have committed a serious offence unless an authorised person is present, the person is cautioned in the presence of an authorised person and the authorised person is satisfied that the person understood the caution and the

person has been interviewed in private by a representative of a legal aid body. In addition, the interview is to be sound recorded (clause 11).

A prescribed person under restraint wishing to make a written statement is to be told that there is no obligation to make a written statement (clause 13). If such a statement is made, the officer is to take all practicable steps to ensure that an authorised person sees the statement and shows the statement to the person and asks if they wish to make any corrections or alterations (clause 14).

People unable to communicate in English are to be provided with an interpreter (clause 17).

Confessions made contrary to this Bill are not to be admitted (clause 19).

For further information, if required, contact the Law and Government Group.

24 March 1987

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Reference

1. The Law Reform Commission, Report No. 31, The Recognition of Aboriginal Customary Laws, p.280.

This Digest does not have any official legal status. Other sources should be consulted to determine the subsequent official status of the Bill.

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