

IN THE HIGH COURT OF AUSTRALIA

MELBOURNE OFFICE OF REGISTRY

• BETWEEN:

ROBERT THORPE

Plaintiff

and

•
TOM ROGERS, ELECTORAL COMMISSIONER

First Defendant

AUSTRALIAN ELECTORAL COMMISSION

Second Defendant

•
COMMONWEALTH OF AUSTRALIA

Third Defendant

•
APPLICATION FOR A CONSTITUTIONAL OR OTHER WRIT

The plaintiff applies for the relief set out in Part I below on the grounds set out in Part II below

Part I:

An order that a writ of prohibition be issued directed to Tom Rogers, Electoral Commissioner, prohibiting him from further proceeding with the referendum on Saturday 14 October for the Constitution Alteration (Aboriginal and Torres Strait Islander Voice) Bill 2023 (Cth) [“the Voice Bill”]

Part II

The Voice Bill is beyond the legislative power of Parliament in the Constitution Act 1901.

The proposed Constitutional Alteration is beyond the power of the Australian people voting in a referendum.

The Voice Bill is invalid and the process of alteration is invalid.

Part III

The application should not be remitted to another Court because it involves a matter arising under a treaty and the interpretation of the Constitution.

Part IV

A referendum question and proposed alteration were announced on 23 March 2023 by Prime Minister Anthony Albanese.

The referendum will formally decide on the passage of the Constitution Alteration (Aboriginal and Torres Strait Islander Voice) Bill 2023 (Cth), which was tabled in federal parliament on 30 March 2023 by Attorney-General Mark Dreyfus.

The Bill was passed by the House of Representatives on 31 May 2023 and by the Senate on 19 June 2023.

The referendum date of Saturday 14 October was announced by Mr Albanese on 30 August 2023. On 11 September 2023, Governor-General David Hurley formally triggered the holding of the referendum by issuing writs to the Australian Electoral Commission.

Part V

A brief statement of the Plaintiff's argument.

A. As of 30 September 2022, or 20 September 2023 at the latest, it is now clearly settled law in every country that:

1. Genocide is now undeniably the gravest crime in every country.
2. No country can ever abolish the criminal offence of genocide.
3. Every country now undeniably has a right and a duty forever to prevent and punish the crime of genocide— and no country can abolish this right and this duty to prevent and punish genocide.
4. Every person in every country now undeniably has a right always to live free of genocide— and this right can never be abolished by any country.

B. In Australia right now, it is clearly settled law that:

1. Genocide is undeniably a crime here: and
2. Australia can never abolish the criminal offence of genocide; and
3. Australia undeniably has a right and duty forever to prevent and punish the crime of genocide; and
4. Australia can not abolish this right and duty to prevent genocide; and
5. Every person in Australia always has a right to live free of genocide and Australia can never abolish this right.

C. The other rules for governing Australia are set out in the Constitution Act 1901 and it is open to the citizens of Australia pursuant to the provisions of this Act to alter the Constitution by voting at a referendum.

D. Insofar as the Constitution Act can never be amended to abolish either

1. the criminal offence of genocide, or
2. the right and duty of Australia to prevent and punish the crime of genocide, or
3. the right of every person in Australia to live free of genocide.

then those three principles of law can be said to be embedded in Australia's Constitution Act 1901—and not just embedded but permanently embedded beyond any alteration or amendment. (They are the bedrock which underlie every country's rules for governing— a permanent bedrock, unchanging and unchangeable. Every country, including Australia).

E. It has been internationally recognised since 1949 (but in Australian courts only since 2017) that

1. the criminal offence of genocide is constituted by, inter alia, causing serious mental harm to a group with the intent to destroy the group in whole or in part; and
2. this criminal offence also includes attempted genocide, complicity in genocide and conspiracy to commit genocide.

F. For this next part of the argument the plaintiff needs to refer to the truth-telling of First Peoples as set out in paragraph 8 of my Affidavit affirmed 11 October 2023.

E. Now, examining the content of the Voice Bill it is immediately apparent that:

1. The Sovereignty of First Peoples is still denied by Australia— one more act/Act causing serious mental harm.
2. Not only that, but instead of acknowledging and recognising rights to First Peoples the Voice Bill commits to forming a mere advisory committee of a few selected First Peoples who the government can call on if and when it pleases. This committee has no legally-enforceable rights to speak to Australia and Australia has no legally-enforceable duty to listen. So, a further denial of First Peoples Sovereignty.
3. Not only that, but Australia will absorb First Peoples in a token and powerless place in the Constitution Act with the weasel word “recognise”. So, once again, a denial of Sovereignty.

F. First Peoples analyse the Voice Bill like this:

1. It denies First Peoples Sovereignty because there is still no treaty.
2. It doesn't recognise any right to be listened to and have action taken.
3. It doesn't recognise any right to treaty but just to be assimilated in racist genocidal rules for governing.
4. But it does “cause serious mental harm” to First Peoples “with the intent to destroy” First Peoples “in whole or in part”.

G. This alteration to the Constitution then, when viewed through the lens of the three genocide principles embedded under the Constitution Act itself (as set out in paragraph D above), constitutes:

1. the criminal offence of genocide— including attempted genocide, complicity in genocide and conspiracy to commit genocide (see paragraph E above)— by causing serious mental harm to First Peoples with intent to destroy First Peoples (whilst claiming to do the opposite!);
2. a clear breach by Australia of its duty to prevent genocide to First Peoples; and
3. a denial of the right of everyone of the First Peoples in Australia to live free of genocide.

H. Thus the Parliament has no legislative power to pass a Bill that conflicts with the genocide principles set out in paragraph D and paragraph E above and applied in paragraph G above.

J. Further, the cohort of Australian citizens over the age of 18 years has no amending power to enact by vote a Bill/Act that likewise conflicts with the genocide principles set out in paragraph D and paragraph E above and applied in paragraph G above.

Part VI: *[Any reasons why an order for costs should not be made in favour of the defendant in the event that the application is refused.]*

The Plaintiff is an indigent indigene.

The Plaintiff's only asset is a current Health Care Card used to make an Application for Exemption from Paying Filing and Hearing Fees.

The First Defendants has incurred no costs or out of pocket expenses personally and continues to enjoy an above-average salary as a high-level officer of the Second and Third Defendants (which entity is a self-described model litigant).

- There is a public interest in stopping and preventing genocide and the Plaintiff, like everyone, including the Defendants has a right and a legal duty to stop and prevent genocide, especially genocide against First Peoples.

It is unconscionable for the Defendants to ask for costs.

Part VII: *[A list of authorities on which the plaintiff relies, identifying the paragraphs at which the relevant passages appear.]*

- Thorpe v Commonwealth of Australia [No. 3][1997] HCA 21 at 21

Nulyarimma,/Coe/Craigie/Thorpe/Trevorrow/Watson/Buzzaccott [1998] ACTSC 136 at 136

Thorpe v Kennett [1999] VSC 442 at 442

Part VIII: *[The particular constitutional provisions, statutes and statutory provisions applicable to the questions the subject of the application set out verbatim—attached as an annexure.]*

Dated 11th October 2023



..... Robert Thorpe

To:

Tom Rogers, Electoral Commissioner
First Defendant
(Legal Rep Australian Government Solicitor)

Australian Electoral Commission

Second Defendant

▪ (Legal Rep Australian Government Solicitor)

Commonwealth of Australia
Third Defendant
(Legal Rep Australian Government Solicitor)

Australian Government Solicitor

Level 34, 600 Bourke St

▪ Melbourne VIC 3000

TAKE NOTICE: Before taking any step in the proceeding you must, within 14 DAYS from service of this application enter an appearance and serve a copy on the plaintiff.

The plaintiff is self-represented.

ANNEXURE

to application of Robert Thorpe,
Thorpe v Rogers, 11 October 2022

PLAINTIFF'S LEGISLATIVE PROVISION

INDEX**Criminal Code Act 1995 Schedule— The Criminal Code.**

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268.3 Genocide by killing

A person (the *perpetrator*) commits an offence if:

- (a) the perpetrator causes the death of one or more persons; and
- (b) the person or persons belong to a particular national, ethnical, racial or religious group; and
- (c) the perpetrator intends to destroy, in whole or in part, that national, ethnical, racial or religious group, as such.

Penalty: Imprisonment for life.

268.4 Genocide by causing serious bodily or mental harm

(1) A person (the *perpetrator*) commits an offence if:

- (a) the perpetrator causes serious bodily or mental harm to one or more persons; and
- (b) the person or persons belong to a particular national, ethnical, racial or religious group; and
- (c) the perpetrator intends to destroy, in whole or in part, that national, ethnical, racial or religious group, as such.

Penalty: Imprisonment for life.

(2) In subsection (1):

"*causes serious bodily or mental harm*" includes, but is not restricted to, commits acts of torture, rape, sexual violence or inhuman or degrading treatment.

268.5 Genocide by deliberately inflicting conditions of life calculated to bring about physical destruction

(1) A person (the *perpetrator*) commits an offence if:

- (a) the perpetrator inflicts certain conditions of life upon one or more persons; and
- (b) the person or persons belong to a particular national, ethnical, racial or religious group; and
- (c) the perpetrator intends to destroy, in whole or in part, that national, ethnical, racial or religious group, as such; and
- (d) the conditions of life are intended to bring about the physical destruction of that group, in whole or in part.

Penalty: Imprisonment for life.

(2) In subsection (1):

"*conditions of life*" includes, but is not restricted to, intentional deprivation of resources indispensable for survival, such as deprivation of food or medical services, or systematic expulsion from homes.

268.6 Genocide by imposing measures intended to prevent births

A person (the *perpetrator*) commits an offence if:

- (a) the perpetrator imposes certain measures upon one or more persons; and
- (b) the person or persons belong to a particular national, ethnical, racial or religious group; and
- (c) the perpetrator intends to destroy, in whole or in part, that national, ethnical, racial or religious group, as such; and
- (d) the measures imposed are intended to prevent births within that group.

Penalty: Imprisonment for life.

268.7 Genocide by forcibly transferring children

(1) A person (the *perpetrator*) commits an offence if:

- (a) the perpetrator forcibly transfers one or more persons; and
- (b) the person or persons belong to a particular national, ethnical, racial or religious group; and

(c) the perpetrator intends to destroy, in whole or in part, that national, ethnical, racial or religious group, as such; and

(d) the transfer is from that group to another national, ethnical, racial or religious group; and

(e) the person or persons are under the age of 18 years; and

(f) the perpetrator knows that, or is reckless as to whether, the person or persons are under that age.

Penalty: Imprisonment for life.

(2) In subsection (1):

"forcibly transfers one or more persons" includes transfers one or more persons:

(a) by threat of force or coercion (such as that caused by fear of violence, duress, detention, psychological oppression or abuse of power) against the person or persons or against another person; or

(b) by taking advantage of a coercive environment.

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BETWEEN:

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Plaintiff

and

TOM ROGERS, ELECTORAL COMMISSIONER

First Defendant

AUSTRALIAN ELECTORAL COMMISSION

Second Defendant

COMMONWEALTH OF AUSTRALIA

Third Defendant

AFFIDAVIT OF ROBERT ALAN THORPE

Affirmed 11 October 2023

 

I, Robert Alan Thorpe, of Bunjil's Fire, Radio 3CR, 21 Smith St, Fitzroy VIC 3065, community radio host, affirm and say as follows:

FIRST PEOPLES

1. I am Djuran Bunjilene, land under Booran and land under Bunjil, my totems are the Pelican (Booran) and the Eagle (Bunjil); and I have family connections to many mobs across this island continent now known as "Australia".

THE FACTUAL BACKGROUND TO THE APPLICATION

2. A referendum question and proposed alteration were announced on 23 March 2023 by Prime Minister Anthony Albanese.
3. The referendum will formally decide on the passage of the Constitution Alteration (Aboriginal and Torres Strait Islander Voice) Bill 2023 (Cth), which was tabled in federal parliament on 30 March 2023 by Attorney-General Mark Dreyfus.
4. The Bill was passed by the House of Representatives on 31 May 2023 and by the Senate on 19 June 2023.
5. The referendum date of Saturday 14 October was announced by Mr Albanese on 30 August 2023.
6. On 11 September 2023, Governor-General David Hurley formally triggered the holding of the referendum by issuing writs to the Australian Electoral Commission.

Robert Thorpe



7. The First Defendant, Tom Rogers, is the Electoral Commissioner and is in charge of the Australian Electoral Commission of the Commonwealth of Australia. which is conducting the referendum election to be held this Saturday 14 October 2023.

8. I refer to paragraph F of Part V of my Application herewith where I say “For this next part of the argument the plaintiff needs to refer to the truth-telling of First Peoples (as set out in paragraph 8 of my Affidavit affirmed 11 October 2023 herewith)”. First Peoples say:

-
1. *Australia has at all material times undeniably refused to acknowledge the unceded Sovereignty of any First Peoples.*
 2. *Australia has undeniably continued and continues in a well-documented and premeditated plan to deny and destroy the Sovereignty of every First Peoples.*
 3. *The Mabo case may have abolished the genocidal colonial lie that Australia was “terra nullius” but it reinforced the equally genocidal fiction that the First Peoples had no Sovereignty (“sovereignty nullius”?)*
 4. *Many Australian citizens holding high office, past and present, in the three branches of government set out in the Constitution Act— legislative, executive and judicial—have conspired to continue the denial of all First Peoples unceded Sovereignty. Many more have been and continue to be accomplices to this denial of Sovereignty.*
 5. *Most if not all Australian citizens are beneficiaries of the invasion and occupation of First Peoples lands and the purported usurpation of First Peoples law and Sovereignty.*
 6. *The continuing denial of First Peoples Sovereignty has caused and is causing serious mental harm to each and every First Peoples, who have survived generations of*
 - (i) *killing (including massacres and mass poisoning),*
 - (ii) *removal from their country (with which they have such deep and ancient and sacred relationship),*

Robert Thorp

Adrian

(iii) removal of their children, and

(iv) having such conditions of life imposed on them that it destroyed each First People in whole or in part.

7. Each of these four crimes in paragraph 6 above constituted acts of genocide but were not recognised by courts in Australia as crimes until 2017— and even now in 2023 Australian courts do not have to recognise that the denial of First Peoples Sovereignty constitutes the genocidal “intent to destroy”.

8. The Criminal Code was changed in 2017 to add new offences of “War Crimes”— while Australia has kept silent about the undeclared war on First Peoples at least it has quietly admitted the acts of genocide are generally classed as war crimes.

8. Given the generations of unacknowledged genocide First Peoples have endured and somehow still survive, it doesn't take much to trigger serious mental harm in many First Peoples.

9. Australia has never sought the consent of any First Peoples to occupy their Lands and usurp their Laws and is the only first world nation never to have had a treaty process.

10. Australia has also refused to enact the UN Declaration on the Rights of Indigenous Peoples and implement the recommendations of the Royal Commission into Aboriginal Deaths in Custody and the Bringing Them Home Report (commission into removal of Aboriginal Children).

9. I also refer to the Written Observations of Australia, 30 September 2022, filed in the International Court of Justice in the genocide case of Ukraine v Russian Federation— accessed and downloaded on 10 October 2023 from

<https://www.icj-cij.org/sites/default/files/case-related/182/182-20220930-WRI-01-00-EN.pdf>
October 2023.

10.. Please note the paragraphs numbered 21, 22, 26, 28-33, 35, 37, 38-44, 48-51, 54-55.

Robert Thorn

[Signature]

11. I also refer to the Verbatim Record of Australia's oral submissions in that same case at the hearing on 20 September 2023 at pages 38-42 are also on the Court's website at <https://www.icj-cij.org/sites/default/files/case-related/182/182-20230920-ora-01-00-bi.pdf>.

AFFIRMED by the deponent

at Melbourne in the State of

Victoria on Wednesday 11 October 2023.

Robert Thorpe

Before me:



Christopher Leavel within Casey
level 9/54 Wellington & Collyer St Vic 3066
An historical legal practitioner within the
meaning of the legal profession under law (Victoria)