The fourteen powers referendum of 1944 and the federalisation of Aboriginal affairs

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The 1967 federal referendum, which gave the Commonwealth government power to legislate for Aboriginal people and count them in the national census, is celebrated as a turning point in the Aboriginal history of Australia. Given the disinclination of Australians to change the Constitution, it is rare to find such apparent unity in Australian politics, with over 90 per cent of the voting population answering 'yes' to the two referendum questions. Although the passage of time and a history of both advances and retreats in Aboriginal policy have led to a more measured assessment of its impact, many people still regard the referendum as a high point in Aboriginal people's struggle for human rights. They see it as a moment of great symbolic and political importance, a significant step in the transition from the politics of citizenship to the politics of Aboriginal self-determination and as the realisation of a long-held dream for a truly national Aboriginal policy, a dream that began as early as Federation itself.¹ However, 1967 was not the first time the Australian people had been asked to pass control of Aboriginal affairs to the Commonwealth by referendum. Clause N of Section 2 of the so-called 'fourteen powers' referendum held in August 1944 – the Curtin Labor Government's attempt to clothe itself with extra powers in order to fully administer its plans for post-war reconstruction – asked the Australian people, as part of that process, to agree to the transfer of power over Aboriginal people to the Commonwealth. The referendum failed and so did the Aboriginal clause. It was a casualty of the government's insistence that all fourteen powers be voted on as one and this meant that power over Aboriginal people remained with the states for a further 23 years.

This article sets out the history and explores the debates surrounding the inclusion of the Aboriginal clause in the 1944 referendum and tries to estimate its importance in the heated arguments about the referendum, post-war reconstruction and the extent of Commonwealth powers. It supports existing arguments that the government added the clause to an already existing list only after representations from the Association for the Protection of Native Races (APNR) and similar bodies. The paper argues that the Aboriginal clause was placed last on the list of powers to be transferred in the referendum – underlining its status as an afterthought – and, in the national and state debates

¹. Attwood and Markus (2007, chapters 8 and 9) set out both sides of the argument about the benefits the referendum brought to Aboriginal people.

about Commonwealth powers in the wider referendum campaign, it was generally marginalised, overshadowed by seemingly weightier issues such as repatriation and employment. Finally it argues that there was a substantial degree of support for the clause among all political parties and, curiously, it was this almost universal support that caused it to be so little discussed.

The historiography of the Aboriginal clause

There are three historiographical contexts for the Aboriginal clause in the 1944 referendum: the histories of the Second World War, citizenship and the federalisation of Aboriginal affairs. In none of the books on the home front during the Second World War is the Aboriginal clause mentioned, even though some writers, such as Hasluck, discuss the referendum at length. Similarly, political biographies of Australia's wartime leaders – Curtin, Chifley, Evatt, Menzies and Page – fail to mention it, although their authors were all interested in the referendum as a whole.² Historians who write about Aboriginal people and World War Two have done better, with Peter Biskup perhaps the first to discuss the Aboriginal clause. In a chapter on the war in *Not Slaves, Not Citizens*, he argues that its inclusion in the referendum must be seen in the context of what he regards as a new wartime idealism about the position of Aboriginal people in Australia and the drive by the Labor Party for the centralisation of power in Canberra, one manifestation of which was the liberalisation of social welfare for Aboriginal people.³ Richard Hall (while not mentioning the referendum) also concludes that a new and more generous thinking about Aboriginal Australians emerged during the war, as a result of interaction between black and white Australians.⁴

In histories of Aboriginal people and citizenship rights, the federalisation of Aboriginal affairs comes into clearer focus. Chesterman and Galligan describe the events in bare outline, but mistakenly separate the 1944 referendum from the 1942 Commonwealth-State constitutional convention (see below), when in fact they were part of one process. They also overestimate the strength of the arguments against the proposal.⁵ Contrary to the position put by Biskup, Peterson and Sanders suggest that the wartime Labor governments did little to improve Aboriginal people's welfare or rights. They describe the Aboriginal clause in the 1944 referendum as little more than a concession to Aboriginal activists, although it is not clear who these activists were or why the government would make such a concession.⁶

Attwood and Markus and their collaborators give the fullest account to date of the Aboriginal clause, in their history of the 1967 referendum, the first part of which is a history of attempts to federalise Aboriginal control. They contextualise it in the long history of demands for federal control; they show that it was inspired by representations from the APNR; they reproduce key documents from the debates; and they repeat the argument that the 1944 referendum was defeated because the government amalgamated all the powers as one.⁷ In their account and in similar writings, however, the

² Day 2001; Tennant 1970; Ross 1977; Lee 1983; Page 1963; Hazlehurst 1979; Perkins 1968; Golding 1996; Porter 1993; Buckley, Dale and Reynolds 1994.

³ Biskup 1973: 197–201.

⁴ Hall 1977, chapter 1.

⁵ Chesterman and Galligan 1997: 154.

⁶ Peterson and Sanders 1998: 13.

Aboriginal clause is no more than a step along the tortuous path to citizen rights and the 1967 referendum. Its specificity, place and time are secondary to its position on this continuum. Fiona Paisley's comprehensive account of the arguments supporting federalising Aboriginal affairs in the 1927–1929 Commonwealth Royal Commission on the Constitution represents a model account of one moment in the history of attempts to federalise Aboriginal affairs, contextualising the place of the Royal Commission in contemporary discourses on race and gender.⁸ As Paisley does with the Royal Commission, I situate the referendum in its place and time. I contend that the history of the Aboriginal clause is much more complex than previously has been supposed and needs to be examined in the broader history of the fourteen powers referendum and the debates about post-war reconstruction. However, this article differs from Paisley's in that it is less about contemporary discourse on Aboriginal people and more about the history of the Aboriginal clause in the referendum as a whole.

The history of the referendum

The history of the fourteen powers referendum began in 1942, when Curtin's first government announced grand plans for radically augmenting its powers in the post-war world. It already had extensive wartime powers under the Defence and National Security Acts, but while these were adequate for the prosecution of the war, constitutionally they could only last for six months after the war was over and were therefore inadequate for the peace. In October 1942 the Attorney-General, HV Evatt, introduced a bill into the Federal Parliament for a referendum to alter the Constitution to give the Commonwealth greater powers. The Bill, entitled the Constitution Alteration (War Aims and Reconstruction) Bill, proposed that the people be asked at referendum to transfer powers over repatriation, employment, production and markets, goods and services, prices, profiteering, the encouragement of population, national works, improvement in living standards, transport (including aviation), national health and fitness, housing and child welfare.⁹ It also proposed to write into the Constitution the so-called four freedoms – freedom of speech, expression, religion and freedom from want and fear – enshrined in the Atlantic Charter, the agreement concluded between Britain and the United States of America in 1942 to develop policies for the post-war new order. The Curtin government mixed this international agenda with Australian politics to shape its own vision of the post-war world. With his role in the creation of the United Nations well known and celebrated, Evatt in particular believed that the post-war new order could only be won and safeguarded by international reforms and agreements. The Atlantic Charter was part of this internationalist agenda and, although it was not binding on the wartime allies, Australia signed up to it. Instituting the four freedoms was also good politics: sufficient riposte, the government hoped, to those who believed that the referendum was a naked grab for power.¹⁰

The proposed Bill, however, was criticised for the vagueness of some of its clauses and met with opposition from the states, including the Labor states. The government

7. Attwood and Markus 2007: 11–12.

8. Paisley 1998.

9. Evatt 1943: 115.

10. Evatt 1943: 162–164. For more argument on the relationship between the Australian government and 'the United Nations', see Hasluck 1970, chapter 8.

shelved the referendum bill and settled on an alternative course permitted by Section 51 (xxxviii) of the Constitution by requesting the states to transfer voluntarily those powers it wanted. It called a Constitutional Convention for November 1942, at which Curtin and Evatt met with premiers and federal and state opposition leaders, to hammer out an agreement on the powers to be transferred. Much to the surprise of the delegates, Evatt submitted a rearranged set of powers for discussion, and this included a clause to give the Commonwealth government the power to make laws for 'the people of the aboriginal race'.¹¹

The convention was an often-heated affair – a festival of bluff and counter-bluff, manoeuvrings and machinations, but out of it came surprising agreement. The government was forced to compromise on some of its aims, but the opposition of the United Australia Party (UAP) and Country Party to the wholesale transfer of powers was undercut by a successful proposal from the Tasmanian Labor premier that the powers be voluntarily transferred for a total of seven years (subsequently reduced to five) on the signing of the armistice. A drafting committee – consisting of Evatt, Billy Hughes (UAP) and the six state premiers – drew up legislation incorporating the new list of powers to be transferred. The delegates approved this unanimously and state representatives undertook to take it home and shepherd it through their own parliaments by the end of January 1943. For Curtin's government this was to be an all-or-nothing affair: unless all the states signed up to the full list of powers, it would re-consider the option of a referendum. With state premiers and opposition leaders all supporting the proposal, the federal government had some grounds for optimism. It waited patiently for the state parliaments to come to their decisions.¹²

Unfortunately, it had overlooked the conservative state upper houses. Queensland and New South Wales, both governed by Labor and without difficult upper houses, passed the required legislation in short order. Both South Australia (with a UAP government) and Western Australia (with a Labor government) had conservative upper houses and passed severely truncated versions of the fourteen powers bill. The Country Party government in Victoria passed its Bill, but late in the debate it added a rider that it would only become operational if all other states passed the Bill agreed to by the Convention. In Tasmania the process came further unstuck: piloted through the lower house by the Labor government, it was thrown out by an opposition-dominated upper house. Political manoeuvres by the Tasmanian government failed to overcome the deadlock and the whole arrangement collapsed.

The Curtin government therefore proceeded to its final option. In February and March of 1944, six months after its sweeping victory in the 1943 general election (it won 49 of 74 seats in the House of Representatives and a majority of eight in the Senate),¹³ it introduced the Constitution Alteration (Post War Reconstruction and Democratic

11. *Sydney Morning Herald*, 24 November 1942.

12. The best account of the history of the referendum is in Hasluck 1970: 528–540. The powers sought to be transferred were: 1. Repatriation; 2. Employment and unemployment; 3. Marketing of commodities; 4. Companies; 5. Trust, combines and monopolies; 6. Profiteering and prices; 7. The production and distribution of goods; 8. Exchange and investment; 9. Air transport; 10. Railways; 11. National works; 12. National health; 13. Family allowances; and 14. The people of the Aboriginal race.

13. Day 2001: 396–397.

Rights) Bill of 1944 to set up the machinery for the referendum. Crucially, it required that all the clauses be voted on as one. Apparently Evatt and Chifley insisted upon this, having frequently argued that all the powers were related and it made little sense to separate them. As Curtin said during the referendum campaign:

The powers ... are complementary. If they were divided and only some were accepted, it might be that the powers rejected would prove in the opinion of the High Court, the very ones required to give effect to the wishes of those who voted for the other powers.¹⁴

Menzies ridiculed the strategy. As reported in a Perth speech, '[h]e, for one, refused to believe that the repatriation power ... was interwoven with, for instance, the Commonwealth control of aborigines'.¹⁵

As time passed, the consensus found at the Convention evaporated. The federal opposition, which had previously signed up to the transfer of powers, attacked the legislation for the referendum when it came before parliament and advocated a 'no' vote at the referendum. State UAP and Country Party leaders did the same, although during the referendum campaign divisions surfaced. As Waters has shown, there were divisions within both the UAP and Country Party with some elements advocating a 'yes' vote.¹⁶ Curtin was disappointed but not surprised when, on 19 August 1944, the referendum was comprehensively defeated.¹⁷

Several reasons have been put forward to explain the failure of the referendum. Contemporary sources argued that the 'spectre of industrial conscription' after the war did most to damage the 'yes' case. A desire to be free of increasingly irksome wartime controls was significant in Queensland, where they had been most oppressive. There were suggestions that Curtin was lukewarm about the referendum and did not campaign as hard as he might have (though he was ill for much of the campaign) and that the Australian Labor Party (ALP) was split over the question of Commonwealth powers, especially in New South Wales, where Jack Lang and his Australian Labor Party (Anti-Communist) supported the 'no' case.¹⁸ Historians largely concur with these views. Hasluck argues that by August 1944 the war had been won and people did not want wartime controls to continue.¹⁹ Buckley and his colleagues agree, but also suggest that putting all the questions as one was a 'major tactical blunder'. Yet, as they also say, the government was entitled to think it had a chance, given the apparent unanimity of the 1942 convention and the unrealised possibility that the UAP and Country Party might support it.²⁰ On the other hand, Kylie Tennant attributes the failure to the coincidental heavy-handed campaign against the press by Arthur Calwell, then Minister for Information.²¹ Another common argument attributes the failure to Australians' reluc-

14. *Sydney Morning Herald*, 2 August 1944.

15. 'Report of Menzies' meetings in Perth', in 'Referendum: material requiring reply', Attorney-General's Department, series A467, barcode 99555, National Archives of Australia (NAA), Canberra.

16. Waters 1969.

17. *The Age*, 24 August 1944.

18. *The Age*, 21 August 1944.

19. Hasluck 1970: 539–540.

20. Buckley, Dale and Reynolds 1994: 198–199.

21. Tennant 1970: 160.

tance to change the Constitution and, although this is a judgment coloured by subsequent failures, by 1944 the record was already strongly against change.²² Yet, as Rowse rightly points out, it is unwise to generalise about 'the people's' opposition to the referendum and to constitutional change. After all, 46 per cent of the population voted 'yes' in 1944, and substantial minorities have supported every unsuccessful referendum.²³

Would a vote on the Aboriginal clause alone have passed?²⁴ Jack Horner suggests that the referendum question 'asked too much of uninformed white people and explained too little'.²⁵ This argument, however, seems unlikely, as we will see.

The origins of the Aboriginal clause

Agitation in support of the federalisation of Aboriginal affairs has a long history, going back to 1901, when it was proposed by Western Australian parliamentarian Hugh Mahon.²⁶ As Paisley shows, it was an important point of debate at the 1927–1929 Commonwealth Royal Commission on the Constitution, with the commissioners divided on the question.²⁷ By the 1940s it had become, as Attwood and Markus say, 'an article of faith' to Aboriginal and non-Aboriginal humanitarian organisations alike.²⁸

When Evatt proposed his original referendum bill on 1 October 1942, there was no Aboriginal clause; by the time of the Convention just six weeks later, it had been included. This is surprising given that both the Minister for Social Security, Ted Holloway, and the Minister of the Interior, Joseph Collings, had been approached by humanitarian organisations over the matter, but had rejected it, arguing nothing could be done until after the war.²⁹ Along with Biskup, Attwood and Markus attribute responsibility for the initiative to the representations of the APNR and its president, Sydney anthropologist AP Elkin, who by this time had considerable influence in Canberra.³⁰ It was his vision of assimilation that had so impressed John McEwen, the Minister for the Interior in the pre-war Lyons government. Tigger Wise has suggested that in the late 1930s Elkin, McEwen and JH Carrodus, the Secretary of the Department of the Interior, had written the first overtly assimilationist policy in Australia, thus changing the direction of Aboriginal policy forever.³¹

Although the federalisation of Aboriginal affairs had been put on the political agenda by non-Aboriginal humanitarians and Aboriginal organisations many years previously, it seems clear that the Aboriginal clause for the Convention was initiated by

22. See for example Galligan 1995: 111.

23. Rowse 1998: 71–72, 81.

24. See for example Bennett 1989: 10; Chesterman and Galligan 1997: 157.

25. Horner 2004: 14.

26. See for example Biskup 1973: 87–89.

27. Paisley 1998.

28. Attwood and Markus (with Edwards and Schilling) 1997: 11.

29. A Grenfell Price to Dr Evatt, 6 January 1942 in Attorney-General's Department, Post War Reconstruction, Australia Internal, Australian Natives, series A989, barcode 185256, NAA, Canberra.

30. Biskup 1973: 199; Attwood and Markus 2007: 11–12.

31. Wise 1985: 143–145. For more discussion on the relationship of Carrodus and Elkin, see Markus (1990), who points out that in the early 1930s the relationship between them could be both strained and cordial.

the APNR. The organisation wrote to the Prime Minister and Attorney-General before the Convention proposing that the new clause be added to the list and contacted like-minded organisations to lobby similarly, and this they did.³² One of these may have been the Victorian Aborigines' Uplift Society (AUS). In early 1943, its president, Gillespie Douglas, wrote to Carrodus, claiming credit for having suggested in 1939 that he, as an office bearer in the Victorian UAP and president of the AUS, had persuaded the Victorian UAP that a referendum should be held to transfer powers, with an addendum that the states voluntarily transfer their powers over Aboriginal people. He concluded:

I believe that it was because of my resolution that, subsequently, when the framework of the Powers Bill was being discussed in Canberra, that the control of aborigines by the Commonwealth was inserted as one of the vital points.³³

The letter is interesting both for Douglas' assertion that the federalisation of Aboriginal affairs was part of UAP policy in Victoria and for the fact that its author straddled humanitarian and orthodox politics. Apart from the eerie similarity to what actually happened, there is, however, no other evidence that the government introduced the Aboriginal clause because of Douglas' initiative.

Similarly there is no evidence of the political discussions that led to the adoption of the clause by those planning the convention and precious little material about the discussions in the Canberra bureaucracy. In December 1942, however, Carrodus wrote a very irritated note to the Secretary of the Prime Minister's Department demanding to know the origins of the proposal to include the Aboriginal clause:

This Department would appreciate any advice you may be in a position to furnish regarding the discussions which led to the inclusion of 'Aborigines' as one of the matters in respect of which the States are prepared to give the Commonwealth the right to legislate. I shall also be glad to learn whether information available as to the extent to which it is proposed that the Commonwealth should exercise control over the aborigines in the states.³⁴

This letter seems to show that Carrodus and his department had effectively been sidelined.

Elkin and the APNR had been long-standing proponents of the federalisation of Aboriginal affairs³⁵ and so the arguments Elkin set out for the referendum campaign in

³². Minutes of meeting held at the Bible House 20 October 1942, and 16 February 1943. Group 55, series 1. APNR minutes of meetings, APNR Collection, University of Sydney Archives, Sydney; A Brown, Hon Sec, Victorian Aborigines' Groups to Miss Swann, 20 November 1942; Hon Sec, APNR to Rev J Sexton, Adelaide and Mr Albany Bell, Perth, 16 November 1942; Hon Sec to Dr HV Evatt, Attorney-General, 10 November 1942, APNR collection, group 555, series 5, folder 1942, APNR collection, University of Sydney Archives, Sydney.

³³. Gillespie Douglas to Rt Hon John Curtin, Prime Minister of Australia, 27 August 1943, Control of Aborigines, series no A472, barcode 101465, NAA, Canberra.

³⁴. JH Carrodus to Secretary, Prime Minister's Department, 10 December 1942, 'Control of Aborigines'; see also Secretary, Prime Minister's Department to Secretary, Attorney-General's Department, 16 February, 1943; and Secretary, Attorney-General's Department to Secretary, Prime Minister's Department, January 1943, Department of Interior file 'Control of Aborigines', series A472, barcode 101465, NAA, Canberra.

³⁵. Elkin 1934.

1944 in his *Citizenship for the Aborigines: A National Aboriginal Policy* were not particularly new. The first point he raised concerned Australia's international reputation. No matter that the Commonwealth had no constitutional power over most Aborigines, it was nevertheless held accountable internationally. Indeed, Australia could expect little sympathy after the war for its claims to its mandated territories and colonies in Papua and New Guinea unless it improved its record on its own Indigenous population. (Like other critics of Commonwealth policy Elkin consistently linked the position of the Aboriginal people to the position of the Indigenous people of Melanesia, in whom the APNR and Elkin himself took particular interest.) Elkin also argued that Aboriginal tribal and social boundaries differed from existing state boundaries; and differed too from what he called the three regions characterised by the degree of European settlement – the so-called isolated, marginal and closely settled regions. Hence it made no sense to administer Aboriginal affairs on a state-by-state basis. As the third strand to his argument, he said that the states all legislated on Aboriginal matters differently and used different definitions of Aboriginality. Finally, he argued that the attitudes to Aboriginal administration, whether by missionaries or government, differed across the states and would be much better centralised as one policy.³⁶ Then followed the statements one associates with Elkin the publicist: the vision of the cultural assimilation he had been promoting for years; the ten principles which should underpin a national government policy; the practical needs of a national Aboriginal policy; the extent to which a new national policy should make use of existing humanitarian organisations; and the need for consistent definition of Aboriginality.³⁷ Elkin's arguments clearly set the scene for the government's campaign on the Aboriginal clause.

The 1942 Convention and debates in the states

There seems to have been a broad consensus at the 1942 Convention that Aboriginal affairs should pass to the Commonwealth. This can be inferred from the fact that there was little debate about it. In introducing the list of powers to be transferred, both Curtin and Evatt referred to the exclusion of Aboriginal affairs from the federal Constitution as 'curious' and Evatt, without naming names, referred to the 'strong representations' that had been made to him to include it.³⁸ The only other delegate to speak on the question was Alexander Mair, the New South Wales opposition leader, who said:

In my opinion this is so much padding. I do not wish to speak disrespectfully of those from whom we have taken this country. I may be considered harsh, but I believe the best way in which to treat them would be to set aside for their use and benefit, a part of the country and keep white people out of it.³⁹

³⁶. Elkin 1944: 9–10.

³⁷. Elkin 1944: passim. Elkin also had a fall-back position: 'convergence', in which the Commonwealth government would pay most of the costs of Aboriginal administration but administration itself would remain with the states. Thus the Commonwealth and states' policies would 'converge', see Gray 1998: 56–57.

³⁸. Convention of Representatives of the Commonwealth and State Parliaments on proposed Alteration of the Commonwealth Constitution (hereafter Convention) 1942: 9 (Curtin), 178 (Evatt).

³⁹. Convention 1942: 102.

He did not, however, explicitly reject the clause. Evatt responded that 'the trouble is that there is no uniformity as between the various states on the matter'.⁴⁰ In the committee stage of the conference, while there was strong argument about some other clauses – and a great deal about the Cosgrove amendment limiting the powers to seven years – there was none about the Aboriginal clause.⁴¹

Once the Constitutional Convention was over, the debate moved to the states, as each state parliament was asked to pass the necessary legislation to hand the fourteen powers to the Commonwealth for the agreed five years. Here the apparent unanimity achieved in Canberra fractured. Generally it could be said all state Labor governments (Queensland, New South Wales, Western Australia and Tasmania) and Labor oppositions (Victoria and South Australia) supported the referendum *in toto*. On the other hand, UAP and Country Party leaders reneged on the Canberra deal (Victorian Premier Dunstan inserted his qualification, probably once he knew that the Tasmanian upper house would reject the Bill)⁴² while their domination of the upper houses in Western Australia, South Australia and Tasmania ensured that the originally-agreed-to list of powers would fail. In South Australia and Western Australia the bills were passed but with a reduced number of powers and other powers watered down. Yet, in all states except Tasmania, the Aboriginal clause emerged unscathed from the debates about the range of powers to be transferred.⁴³

In state parliaments debate raged over two issues – the changes the proposal would make to the federal compact and the shape of post-war Australia – in which discussion of the Aboriginal clause was muted or non-existent. In the Queensland debates the Aboriginal question was not mentioned at all.⁴⁴ In the Victorian parliament there was little discussion. Premier Dunstan was prepared to pass control to the Commonwealth but thought the issue was 'inconsiderable' in Victoria. H Thonemann, a UAP member from Melbourne who had pastoral interests in the Northern Territory, agreed that the issue was largely irrelevant in Victoria, but concluded that the federal government had done badly in the Northern Territory and so did not deserve to be entrusted with national control of Aboriginal people. Labor Party speakers did not mention Aboriginal people at all.⁴⁵

The situation was similar in New South Wales. After an interjection by an Independent member, Christopher Lethbridge, that the clause was not important to post-war reconstruction, Premier William McKell replied that 'strictly I am opposed to it, but it is difficult for one to argue that it is outside the scope of post-war reconstruction', especially since Aboriginal people had been doing such excellent work for the war effort. Another Independent, Donald McDonald, agreed that power over Aboriginal

⁴⁰. Convention 1942: 102.

⁴¹. *The Age*, 26 November 1942; Convention 1942.

⁴². *Victorian Parliamentary Debates* (VPD), session 1942–3, vol 214: 2562. The Victorian government introduced its qualification on 27 January. The Tasmanian Legislative Council rejected the bill on 3 February (*West Australian*, 28 January and 4 February 1943).

⁴³. Waters 1969.

⁴⁴. *Queensland Parliamentary Debates* (QPD), vol 130: 1385–1515.

⁴⁵. VPD, session 1942–1943, vol 214: 2096 (Dunstan), 2303–2304 (Thonemann). Thonemann also produced a pamphlet entitled *The Referendum? How should you vote?* (Thonemann 1944).

people might be passed to Canberra, but held out little hope of its usefulness, as the 'poor aborigines' were living 'the last moments of that dying race'.⁴⁶

In South Australia, UAP Premier Tom Playford and the leader of the Labor Opposition, Robert Richards, both supported a 'yes' vote on the Aboriginal clause. Playford thought it 'strange' that the Constitution specifically excluded Aboriginal people from Commonwealth powers and the arguments of humanitarian organisations (supporting transferring the power) were 'probably correct'. He further commented that the Commonwealth government had a good record in the Northern Territory and could be entrusted with the national responsibility.⁴⁷ The only other South Australian reference to the debate was by a local member who thought the transfer of powers over Aboriginal people should, along with several others, be open-ended, and not restricted to five years.⁴⁸

The debate in Tasmania was different because of the common belief that the power was irrelevant since there were no Aboriginal people in the state. The Aboriginal clause was not raised in the parliamentary debates at all. An editorial in the *Hobart Mercury* supporting a 'yes' vote, however, argued that the clause should have been voted on as a separate question and was not sufficient grounds on its own for anybody to support the referendum. There was nothing in the editorial to suggest that it was a Tasmanian issue.⁴⁹

Only in Western Australia did the Aboriginal clause cause political controversy. The first action of the state government was to send the legislation for the transfer of all fourteen powers to a four-member select committee, comprising the premier, one of his ministers, the leader of the opposition and the leader of the Country Party. The Committee sat for several days, heard many witnesses and produced a divided report. Most of the evidence concerned the usual issues of the Commonwealth-state relationship and the post-war future, but several witnesses spoke at length about the Aboriginal clause. By virtue of its large Aboriginal population, Western Australia claimed a special role in this part of the debate. The evidence given to the Select Committee both reprised and rehearsed the wider debates and was split mainly on the issue of who should control the day-to-day running of Aboriginal affairs. Local humanitarian groups forcefully supported Commonwealth control and so advocated a 'yes' vote: indeed, one submission from the Organisation for Reconstruction called for a root-and-branch adoption of the Atlantic Charter, in effect calling for self-determination for Aboriginal people.⁵⁰

The Commissioner of Aboriginal Affairs, Francis Bray, however, wanted the state to retain the power to control Aboriginal people and get more money. Bray put strongly anti-centralist arguments. A central government, he argued, would be unable to

46. *New South Wales Parliamentary Debates* (NSWPD), session 1942-3, vol 169: 1316 (Premier), 1345 (McDonald).

47. *South Australia Parliamentary Debates* (SAPD), House of Assembly, session 1942-3, vol 2: 1388, 1406-1407 (Richards).

48. SAPD, session 1942-3, vol 2: 1420 (Rudall).

49. *Hobart Mercury*, 10 August 1944. The information on the parliamentary debates comes from the *Mercury*; there was no Hansard for parliament at the time.

50. Select Committee on the Commonwealth Powers Bill, report and evidence, Western Australia, Premier's Department file, Commonwealth Powers Bill, consignment 5716, file no 21/44, Public Records Office of Western Australia (PROWA).

respond quickly to changing events; a Labor government might insist on Aboriginal pastoral workers being paid, which would lead to their expulsion from stations; the position of native reserves and the network of police protectors would be threatened; the education of 'light coloured and de-tribalised' natives might also be affected; the state would lose its power to 'discipline' Aboriginal people and might find itself dominated by Commonwealth parliament, which, of course, was based in the east. Bray also raised the question of exactly whom the Commonwealth would control, as the definition of Aborigine differed from state to state. He himself thought that 'the colour' or 'half caste' question, as he called it, was more important than the 'Aboriginal question', by which he meant issues relating to 'full-blood Aborigines'.⁵¹ A major part of his submission was an annotated 'wish list' of all he wanted for his department, which he thought could be obtained through Commonwealth subsidy of £3 for every £2 from the state. From extra office staff to improvements to institutions like Moolla Bulla station in the north and Carrolup native settlement in the south, to training and subsidies for clothing, his list totalled £94,350 at a time when the Western Australian Aboriginal budget was about £50,000 a year.

In the Western Australian parliament, finance was the government's main argument. Premier Willcock claimed that, even though the amount had doubled in the last seven years, only limited money was available for Aboriginal affairs; the Commonwealth with its greater financial resources could do much better.⁵² The large number of Aboriginal people in the state and the state's small financial base clearly spurred the government to seek the transfer. He made much of the 'fact' that while Tasmania had no Aboriginal people, and Victoria had but a few, there were over 20,000 in Western Australia. Thus it would be inequitable (if Aboriginal welfare were to become a national issue) for Western Australians to disproportionately pay for their upkeep.⁵³

The leader of the Country Party offered the more traditional Western Australian response by endorsing Bray's view, which doubted the wisdom of handing control to people 2,000 miles away in Canberra.⁵⁴ On the other hand, the UAP was reluctant to hand over control to the Commonwealth because, as the opposition leader claimed, it had no notable achievements in the Northern Territory:

With regard to the aborigines, I cannot for the life of me see why we should inflict upon these poor creatures – whom I will call our black brothers – Commonwealth Government control. I have not noticed that Commonwealth Government control of the Northern Territory – which has continued for approximately thirty years – has improved the conditions of the aboriginal inhabitants. ... It seems to me that there has definitely been no improvement in their conditions; there might have been some retrogression therein.⁵⁵

51. Select Committee on the Commonwealth Powers Bill, report and evidence, Western Australian Premier's Department file, Commonwealth Powers Bill, consignment 5761, file no 21/44, PROWA.

52. *Western Australian Parliamentary Debates* (WAPD) 1942–3: 2100.

53. WAPD 1942–3: 2806.

54. McDonald, WAPD 1942–3: 2124.

55. Mr Watts, WAPD 1942–3: 2110–2111.

Another argument peculiar to Western Australia was that the 'trust' the British government had imposed on Western Australia on the granting of responsible government in 1890 required Aborigines to remain a state responsibility. On the granting of responsible government in 1890, after initially refusing to give Western Australia control of Aboriginal affairs, the British government prescribed an annual sum of money to be spent on Aboriginal affairs. Such a 'trust' should not be willingly relinquished to the Commonwealth.⁵⁶

Seeking the best of both worlds – more money while retaining control – the Western Australian opposition proposed an amendment to the bill, requiring the Commonwealth to finance Aboriginal affairs while the state continued administration of it. That the UAP amendment failed in the Labor-dominated lower house was expected, but that it also failed in the Legislative Council – after the casting vote of the UAP President produced a draw – was surprising. Another short and ambiguous amendment, which added the phrase 'in cooperation with the State', passed the upper house on the voices, and the federalisation of Aboriginal affairs was incorporated into the overall bill.⁵⁷

The referendum

Once the state debates had concluded and it became clear that the Tasmanian Legislative Council had scuppered the consensus from the convention, the action shifted back to Canberra, where the government introduced the bill to initiate the referendum. Now the opposition parties felt free to oppose the transfer of all the powers to the Commonwealth. There was a little more debate on the Aboriginal clause than there had been in the state parliaments and a similar level of relative support. In the House of Representatives Evatt repeated his observation about the 'curious exception' and observed that 'such an anomaly would be all the greater in the post-war years when Australia will be assuming special responsibilities towards the native population of the South West Pacific'.⁵⁸ Australia's international reputation and the possibility that scrutiny of its Aboriginal policies could undermine its claim to post-war control of post-war Pacific territories had clearly become paramount to the government's case. Lesley Haylen, a Labor member from Victoria, who directed the government's publicity for the referendum, was also alive to the post-war international context, observing that 'after the war Australia may have other dark-skinned people under its mandate or control, and unless the aborigines are properly cared for this country would be subjected to criticism levelled at Hitler and his followers when they oppress the minority populations under their control'.⁵⁹ The Independent member for Henty, Arthur Coles, criticised the government for doing little for Aboriginal people in Northern Territory and suggested that assimilation was the answer to the Aboriginal problem: 'The people of the aboriginal race should be granted full citizenship rights such as have been granted to the Maori people of New Zealand'.⁶⁰ The leaders of the Country Party, Arthur Fadden and Earle Page, both pointed out that every mainland state had agreed to transfer the power over

56. The Premier, WAPD 1942-3: 2806.

57. WAPD 1942-3: 3083.

58. *Commonwealth of Australia Parliamentary Debates* (CAPD) vol 178: 152.

59. CAPD, vol 177: 1106.

60. CAPD, vol 177: 1268.

Aboriginal people.⁶¹ This was important because they also argued that the government was seeking too many powers and should have restricted itself to a smaller, less contentious number. Menzies agreed:

Most people will support the power relating to 'the people of the aboriginal race' although they will have some doubt as to whether it is in its nature a five-year power and not a permanent one. I say no more about it because, whether the proposal be for five years or permanently there can be no doubt that the welfare of the aboriginal race deserves far more attention in the future than we have given it in the past.⁶²

In opposing the referendum bill in parliament Menzies moved an amendment that would have struck out several powers but would have preserved the Aboriginal question intact.⁶³ During the referendum campaign he reiterated his belief that the care of Aboriginal people 'should not only be a national responsibility but that it should be so in perpetuity'.⁶⁴ Attwood, Marcus and Gray both doubt his sincerity in this, claiming that Menzies never favoured increasing Commonwealth powers under any circumstances, but here Menzies was on the record as arguing the need for greater powers and, at least in this campaign, consistently supported the case for Commonwealth control of Aboriginal affairs.⁶⁵

The terms of the debate were repeated in the Senate. Dorothy Tangney, the Labor Senator from Western Australia, argued that 'the treatment which these poor people have received is a blot upon our national life and none of us can be proud of the record of the Commonwealth in that regard'.⁶⁶ During the debate the argument was repeated that the Commonwealth in the Northern Territory had failed to do any better than the states and therefore the states should be left with responsibility.⁶⁷ Little that was new was added at this stage, although the debate did provide an opportunity for federal parliamentarians to reiterate their positions. The bill as a whole passed through both houses and the government set the date for the referendum for mid-August 1944.

The referendum campaign began in June 1944, but it is clear from a survey of the advertisements in the daily press, on radio and in other publications produced by both sides that the Aboriginal clause played little part in the campaign. Nowhere in the *Age*, the *Sydney Morning Herald*, or the *West Australian* was it mentioned; nor did it appear in any report of meetings, letters to the editor, editorials, speeches or opinion pieces. There was a small flurry of interest (no more than five letters) in the *Adelaide Advertiser* after federal UAP member of parliament and historian Grenfell Price wrote a letter supporting federalisation (which he long advocated), but pointing to a woeful lack of interest in parliament in the issue of Aboriginal people.⁶⁸

⁶¹. CAPD, vol 177: 1043–1044 (Fadden), 1078 (Page).

⁶². CAPD, vol 177: 466.

⁶³. CAPD, vol 177: 1027–1028.

⁶⁴. 'Report of Menzies' meetings in Perth', in 'Referendum: material requiring reply', Attorney-General's Department, series A467, barcode 99555, NAA, Canberra.

⁶⁵. Attwood and Markus 2007: 12; Gray 1988: 70, but see Menzies in the *West Australian*, 7 August 1944.

⁶⁶. CAPD, vol 178: 1899.

⁶⁷. CAPD, vol 178: 1865 (Senator Wilson), 1899 (Senator Mclean).

⁶⁸. *Adelaide Advertiser*, 29 July, 2 August, 9 August, 14 August and 18 August, 1944.

A typical government advertisement advocating a 'yes' vote read:

By voting yes ... you will secure –
 Full employment for all
 Economic security for servicemen and women
 Stabilised prices and markets for primary producers
 Modern hygienic homes
 Family endowment and widows' pensions
 Free health and hospitalisation and other social services
 Stabilised cost of living by eliminating profiteers and black markets
 National development instead of economic depression.⁶⁹

Evatt summed up the 'yes' campaign in an article in the *Sydney Morning Herald* on 14 August:

Our objective must be to make full-time employment for all the rule in peace-time, not only during the supreme crisis of war; to help the trader by maintaining the highest possible level of purchasing power; to safeguard the interests of the housewife, and to protect her against the profiteer; to guarantee the continuance of stable prices and conditions to the primary producer; to carry out housing and national works throughout Australia; to safeguard Australia, first against inflation, which is ruinous to all persons on salaries, wages and pensions, or other fixed incomes, and second, against the usual sequel of inflations, deflation and depression and their mass unemployment, poverty and the dole.⁷⁰

The Aboriginal question was nowhere to be seen.

Those arguing the negative case did no better. The 'no' advertisements concentrated on allegations of industrial conscription, overweening regulation, the prospect of dictatorship and the unregulated powers of anonymous, unaccountable bureaucrats. They argued that the Commonwealth already had the powers it needed, that prosperity would arrive after the war no matter what the government did and that a referendum should not be held in wartime. The only variation on these themes came from South Australia where the centralisation of power in Canberra was an issue.⁷¹

Both sides used commercial radio, and transcripts of nearly 100 commercial radio broadcasts can be found in Department of Information files given to the Commonwealth Censor for vetting. Speakers from a wide range of organisations – the ALP, Victorian Country Party, Communist Party, Henry George League and the Constitutional League among others – and a few interested individuals participated. No Aboriginal or humanitarian organisation was amongst them. The Aboriginal clause was mentioned only once, by a Labor speaker who criticised Menzies' argument that the Aboriginal clause could have been passed if voted for alone.⁷²

^{69.} This was in the *Sydney Morning Herald*, 27 July 1944, in '1944 referendum on post-war reconstruction and democratic rights', in Department of Information, series no C394, barcode 1810343, NAA, Sydney. This file contains dozens of such advertisements placed in Melbourne, Sydney, Adelaide and some country newspapers in New South Wales.

^{70.} *Sydney Morning Herald*, 14 August 1944.

^{71.} This summary is taken from the collection of advertisements ('1944 referendum on post-war reconstruction and democratic rights', in Department of Information, series no C394, barcode 1810343, NAA, Sydney).

The Australian Broadcasting Corporation (ABC) did a little better. For example, the transcript of a speech given by Curtin on the local ABC station in Perth shows how alert he was to local sensibilities: 'If there is one thing which is a Commonwealth matter, it is the welfare of the aborigines. At present those states which have the most natives incur the largest financial responsibility, which is to the detriment of WA'.⁷³ In another broadcast, this time for the 'no' case, on the Melbourne ABC station, Harold Holt showed no such sensitivity, effectively excising Aboriginal people from the Australian people:

As for the care of the aborigines – while of direct importance to that race, what action taken for their welfare could have any appreciative effect on the social conditions of the Australian citizen?⁷⁴

Only in government pamphlets and notes produced for speakers at public meetings do we find any real discussion of the Aboriginal clause. The government planned to distribute about ten different pamphlets, three million in all, to households. While several pamphlets ignored the clause,⁷⁵ one promoting the 'yes' case pointed out that the Commonwealth government had already begun to make provision for improved social security for Aboriginal people, and that '[p]ower to further this humanitarian development is needed if we are to live up to the principles of the Atlantic Charter'. It went on to argue that the fourteen powers were so interrelated as to make it impossible to vote for them individually, although, in the interests of reader comprehension, it separated the powers into four categories: social security, jobs, homes and farming. Clause 14, the Aboriginal clause, was lumped with clauses 1, 2, 12, and 13 under the heading 'social security', as if social security were the only heading of relevance to Aboriginal affairs.⁷⁶ Another 'yes' pamphlet, printed by the New South Wales Trades Hall, summoned 'decency' and 'democracy' to the side of a 'yes' vote on the Aboriginal clause.⁷⁷ In a question-and-answer pamphlet produced by the Perth branch of the ALP, Evatt linked recognition of the particular conditions of Aboriginal people in Western Australia with a recognition of their contribution to the war effort.

⁷². GL Dethridge, August 1944, 'Copies of publicity material relating to the referendum of 19 August 1944', series no A11745, barcode 259384, NAA, Canberra.

⁷³. Referendum speech broadcast on national station, no name or date. Found in Western Australian Premier's Department file, Commonwealth Powers Bill, consignment 5761, file no 21/44, PROWA.

⁷⁴. Transcript, 'After the War, then What? The Referendum and the Constitution', ABC Series, Department of Post War Reconstruction, series no AN 989, barcode 185609, NAA, Canberra. These debates were run by the ABC for so-called 'listening groups', which were then edited for broadcast. Holt was debating Cyril Chambers for the 'yes' case.

⁷⁵. For example see 'Alteration to the Constitution: Federal Referendum, Case for and Against', 1944, Government Printer, Perth, found in Western Australian Premier's Department file, Commonwealth Powers Bill, consignment 5761, file no 21/44, PROWA.

⁷⁶. 'You and the Referendum', Pamphlet by the Department of Information for the Commonwealth of Australia, nd. Found in Western Australian Premier's Department file, Commonwealth Powers Bill, consignment 5761, file no 21/44, PROWA.

⁷⁷. Citizens' Yes Committee, Trades Hall, Sydney, nd, in Ephemera Collection, National Library of Australia (NLA), Canberra.

Does the Commonwealth recognise that Western Australia has the greatest aboriginal problem of any State and will this State, therefore, figure in the forefront of any schemes for the betterment of the Aboriginal population?

Definitely, yes. We have a responsibility to both aboriginals and half-castes, many of whom are today doing their part in many ways in the war effort.⁷⁸

There were two sets of speakers' notes for public meetings provided to supporters of the 'yes' case. The first dealt with broad questions concerning the issue of Commonwealth powers and ignored the Aboriginal clause. The second dealt with each power individually, so necessarily the Aboriginal power was mentioned, but in the same general terms – the need for a national policy and the justice of the federalisation proposal.⁷⁹

The 'no' campaign pamphlets either ignored the Aboriginal question or simply reiterated what had been said already in state parliaments. The only pamphlet to put a different case was written and produced by the Victorian UAP member, HE Thonemann, who repeated his argument in parliament that the Commonwealth had done badly in the Northern Territory and did not deserve the power.⁸⁰ It proved impossible to find speakers' notes for public meetings for the 'no' case.

It is significant that nowhere in its public discourse did the government set out what it would actually do with new powers for Aboriginal people, a lacuna that was pointed out more than once by humanitarian organisations.⁸¹ Similar organisations kept up correspondence with the government throughout the campaign, making suggestions on future policy.⁸² Further, it is worth noting the almost complete absence of both humanitarian and Aboriginal organisations from the public campaigns. There are no references to the campaign in the minutes of the APNR, other than a decision to spend £20 to distribute Elkins' *Citizenship for Aborigines* to interested parties.⁸³ On the whole, humanitarian organisations seemed not to use the public domain; they seemed content to confine their cases for the clause to their own pamphlets and booklets. For example, Tom Wright, a Sydney communist and supporter of the Aboriginal cause, produced a second edition of his 1939 pamphlet, which called for federalisation 'to ensure a uniform policy'.⁸⁴ If the Aboriginal organisations used the public domain,

78. 'As a Loyal Western Australian You Should Vote Yes', TG Davies, Labor Campaign Director, Western Australia, in 1944 Federal Referendum, Ephemera Collection, NLA, Canberra.

79. Speakers' notes, compiled for speakers who wish to advocate for the referendum. Found in Western Australian Premier's Department file, Commonwealth Powers Bill, consignment 5761, file no 21/44, PROWA.

80. Thonemann 1944.

81. South Australian League for the Protection and Advancement of Aboriginal and Half Caste Women to Acting Prime Minister, 5 June 1944, in Prime Minister's Department, Control of Aborigines, series no A 472, barcode 101465, NAA, Canberra.

82. See for example M Sawtell, to Prime Minister, nd [but mid 1944]; Gillespie Douglas to Right Honourable John Curtin, 27 August 1943; Anti-Slavery and Aborigines Protection Society, London, to the Right Honourable Prime Minister, 30 June 1943, in Prime Minister's Department, Control of Aborigines, series no A 472, barcode 101465, NAA, Canberra.

83. J Burton, General Secretary, Methodist Overseas Mission to Miss R Swann, Secretary APNR, APNR Records, folio 1944. Otherwise see the minutes of meetings in the APNR collection, group 55 series 1, University of Sydney Archives, Sydney.

84. Wright 1944: 31. This was an updated edition of a 1939 pamphlet.

then their involvement was rendered invisible. This may have been because their voice was excluded or because their leaders were pre-occupied with other issues. There was no sign of the surviving leaders of interwar Aboriginal politics: William Cooper of the Australian Aborigines' League had died in 1941, John Patten of the Aborigines' Progressive Association was working for the Civil Construction Corps in the Northern Territory, while his colleague, William Ferguson, seems to have been immersed in his work with the New South Wales Welfare Board.⁸⁵

The fourteen powers referendum was defeated by a majority of 56 per cent to 44 per cent. Despite the support of their state governments, both Queensland and New South Wales voted 'no', Queensland overwhelmingly so. Victoria voted 'no' by a tiny margin, Tasmania by a large margin.⁸⁶ South Australia and Western Australia both voted 'yes'. The Western Australian vote was a surprise, since just 11 years earlier Western Australian voters had voted overwhelmingly to secede from the Commonwealth. Service personnel, who formed a separate electorate, voted 'yes', probably persuaded by the government's arguments that it needed a definitive power over repatriation. The referendum therefore failed on two fronts: a majority of states opposed it, as did a majority of people. The Aboriginal clause disappeared from sight.

Ben Chifley's Labor government had two further opportunities to take on power to legislate for Aboriginal people: the 1946 referendum to give the Commonwealth extra powers over social services (which passed in every state) and over marketing and industrial employment (both of which passed in only three states and therefore failed); and the 1948 referendum on increased powers over rents and prices (which failed in every state). Attwood and Markus suggest that, by 1946, the moment had passed. Chifley had apparently lost interest and although his Minister for the Interior, HV Johnson, was keen, state Labor premiers were now not.⁸⁷ After the 1946 referendum, a disappointed Gillespie Douglas wrote to Elkin that 'the ministry as a whole is ... apathetic or hostile to the idea of taking over the burden of the Aborigines throughout Australia', and he may have been right.⁸⁸ Douglas had become cynical in respect of the 1944 promises as well, claiming in the *Melbourne Herald* that the Aboriginal clause was 'merely a bait to catch votes for the questions of permanent importance'.⁸⁹ In 1988 Paul Hasluck accused the government of using the failure of the 1944 referendum as an excuse for inaction later.⁹⁰ Chesterman and Galligan seem equally cynical. They argue that if the government really believed the clause was important, it would have sought an amendment to Section 51 (xxvi) of the Constitution, the section that excludes the Commonwealth from legislating for Aborigines.⁹¹ That Menzies never reconsidered the

85. For Ferguson, see Attwood and Markus 2004: 23; *Australian Dictionary of Biography* 1981. For Patten, see *Australian Dictionary of Biography* 1988. None of the histories of contemporary Aboriginal organisations or biographies of leaders – for example Markus 1988; Horner 1974; Attwood and Markus 2004 – mention the referendum.

86. *The Age*, 24 August 1944.

87. Attwood and Markus 2007: 12.

88. Quoted in Attwood and Markus 2007: 12.

89. *Melbourne Herald*, 25 June 1946.

90. Hasluck 1988: 72.

91. Chesterman and Galligan 1997: 133–154.

issue, despite 16 years as Prime Minister, also speaks eloquently about his ongoing commitment to the federalisation of Aboriginal affairs.

Summing up

The history of the Aboriginal clause in the fourteen powers referendum raises several questions. The answer to the question 'Why it failed?' is clear: when the referendum as a whole failed, so did the Aboriginal clause. Did the referendum campaign throw up any new arguments about Aboriginal people and government power? For the most part, existing arguments about the future of Aboriginal people were recycled in the debates, but given a contemporary spin. The view that Australia had international and humanitarian or social justice obligations to Aboriginal people was promoted, especially among humanitarian and Aboriginal organisations, but the war and declarations like the Atlantic Charter gave a specific language and a potent symbolic appeal to war-time demands for the Aboriginal clause. Pointing out that Australia's post-war colonial ambitions in the Pacific might hinge on Commonwealth control of Aboriginal affairs was also an important new argument. That Western Australia suffered financially because of its large Aboriginal population and therefore might expect to benefit from a national commitment to Aboriginal welfare was also new, although the idea may have already existed in Western Australia; the argument for Western Australia as a special case was clearly recognised by both Curtin and Evatt. Finally there seems to have been widespread acceptance of the argument that, as Aboriginal people had played a role in the defence of Australia during the war, Australia owed them a debt which could be repaid by including them in post-war reconstruction.

As to the question of what persuaded the Curtin government to adopt the Aboriginal clause, Biskup correctly points out the importance of the centralisation of power in the ALP's platform, and so the federalisation of Aboriginal affairs could easily be incorporated.⁹² Arguments that the Commonwealth should apply its humanitarian principles to Aboriginal welfare may also have been important; after all, the government had recently liberalised and expanded Aboriginal welfare. Indeed, the two were explicitly linked in government pamphlets.⁹³ It may also have regarded Aboriginal people as workers, exploited by pastoral and other interests and therefore in need of protection. According to Horner, Mick Sawtell, a left-wing activist and supporter of Aboriginal people in New South Wales, once observed of New South Wales Premier McKell, that 'any reform propaganda [regarding Aborigines] had to be put in terms that McKell could understand, that is to say, of raising the social standards of the workers'.⁹⁴ It may have been that the government was trying to avoid international criticism of Australia's plans for its colonial possessions after the war. Paul Hasluck, then working in the Department of External Affairs, was well aware of what he called 'international interest in the welfare of dependent people and the clear indication that, in the post-war settlements, the treatment of native races is likely to be made the subject of international discussion'.⁹⁵

⁹² Biskup 1973: 197–201.

⁹³ 'Constitution Alteration Official', Attorney-General's Department, special file 44, bundle 100, item 2, series no A467, barcode 99493, NAA, Canberra.

⁹⁴ Horner 2004: 114.

It is possible, too, that many politicians simply did not know or had not thought about the exclusion of Aboriginal people from the Commonwealth's purview and, once it had been pointed out to them, agreed that it was an anomaly that should be remedied. Curtin and Evatt thought it 'curious'; Playford called it 'strange'; McKell prefaced his remarks in the New South Wales parliament by saying 'there is a complete absence of power in the Commonwealth Parliament today'.⁹⁶ If so, it speaks volumes about their limited knowledge of the position of Aboriginal people in the Constitution.

One final question concerns the importance of the Aboriginal clause in the debates about the fourteen powers. The answer must be that it was marginal. There are several possible explanations for this. The first may be that Australians were indifferent to the question. Hasluck suggests that there was a hiatus in interest in Aborigines during the war, manifest in their absence from public discourse, parliamentary debates and post-war planning in the Commonwealth bureaucracy.⁹⁷ Horner might have been right to say that Australia was not ready for the transfer of such a power. Another explanation may have been that the Aboriginal clause was irrelevant, marginal to the debates and in the face of the seemingly great issues raised, was simply overwhelmed. Harold Holt may have been right in asserting that the Aboriginal power had nothing to do with the wider issues. Indeed, Professor Kenneth Bailey, seconded from Melbourne University law school to help with the campaign, wrote in a long draft paper about the Aboriginal question:

Nobody would place this power in the same category as the powers that must underpin [sic] at the centre of any plan of national reconstruction – eg powers with respect to employment and prices, or production. But few will deny that the care of aborigines should be a national responsibility.⁹⁸

The third and most likely possibility was that, while most other clauses in the referendum were contentious, the Aboriginal question was not and so did not merit special mention because there was widespread support for it. As Fadden and Page both suggested in the Commonwealth debate on the second referendum bill, every mainland state government had supported it, as had the leaders of all three political parties in Canberra. If this is so, then in the long campaign for the federalisation of Aboriginal policy, the fourteen powers referendum was truly a wasted opportunity. Although the humanitarian and Aboriginal organisations continued to lobby governments on the virtues of federalisation,⁹⁹ it took 23 long years of agitation before the Holt government finally agreed to a new referendum and the federalisation of Aboriginal affairs became a reality.

^{95.} Paul Hasluck, Memorandum on Commonwealth Administration of Native Races, External Affairs Department, Post-War Reconstruction, Australia Internal, Australian Natives, series A989, barcode 185256, NAA, Canberra.

^{96.} NSWPD, vol 169: 1316.

^{97.} Hasluck 1988: 73–74.

^{98.} 'Referendum Campaign, The 14 powers: Why they are necessary for re-construction', 17 January 1944. Constitutional Alteration, series no M 1504/1, barcode 111602, NAA, Canberra.

^{99.} Attwood and Markus 2007: 12.

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