

## Comment: Sensible and Silly

### Hon. Dr Gary Johns

Sensible and silly still reign in Aboriginal affairs. Two events recently make Aboriginal affairs so frustrating. Alan Tudge, the new member for Aston has written a sensible piece in [The Australian](#) about more definite goals for Aboriginal education, which reflect our own--- for example, the government 'should ... ensure that every disadvantaged region has a school reform program with a sharp clarity as to the ultimate goal: successful mainstream education leading to economic integration.'

The silly, indeed the outrageous, was reported in *The Age* on 18 September 2010 that *Herald Sun* columnist Andrew Bolt is being sued under the *Racial Vilification Act* by a group of Aborigines led by 73-year-old activist Pat Eatock over two columns he wrote last year.

In the first column, published under the headline 'It's so hip to be black' in the paper on 15 April 2009, and on his blog under the headline 'White is the new black', Bolt enumerated a list of light or white-skinned people who identified themselves as Aboriginal, and suggested their choosing to do so was proof of 'a whole new fashion in academia, the arts and professional activism'. He added that 'for many of these fair Aborigines, the choice to be Aboriginal can seem almost arbitrary and intensely political'. Pat Eatock was one of those identified. She is acting on behalf of at least six others.

On 21 August 2009, Bolt revisited the topic in a column headlined 'White fellas in the black', in which he derided the granting of an award for Aboriginal artists to white-skinned painter Danie Mellor and an indigenous scholarship to white-skinned academic Mark McMillan. According to the statement of claim lodged in the Federal Court on 7 September, law firm Holding Redlich is acting on behalf of a group who 'by a combination of descent, self-identification and communal recognition are, and are recognised under law as, Aboriginal persons'.

The document also states that the applicants 'were offended, insulted, humiliated or intimidated' by Bolt's writings. Financial damages are not being sought, but the group has asked for an order restraining Bolt and the *Herald Sun* from publishing any material containing 'substantially similar' content in the future, and for the removal of the two columns from the website.

'We see this as a really important case,' said Joel Zyngier, an employment and discrimination lawyer at Holding Redlich, which is running the case pro bono.

'We see it as clarifying the issue of identity---who gets to say who is and who is not Aboriginal. Essentially, the articles by Bolt have challenged people's identity. He's basically arguing that the people he identified are white people pretending they're black so they can access public benefits.'

Bolt's first column pointedly stated he was not making any such claim, though the sincerity of that statement has been questioned.

'I'm not saying any of those I've named chose to be Aboriginal for anything but the most heartfelt and honest of reasons,' he wrote in the piece published in April 2009. 'I certainly don't accuse them of opportunism, even if full-blood Aborigines may wonder how such fair people can claim to be one of them and, in some cases, take black jobs. I'm saying only that this self-identification as Aboriginal strikes me as self-obsessed, and driven more by politics than by any racial reality.'

Liberty Victoria president Michael Pearce, SC, said his organisation had concerns about the potential impact on freedom of speech. 'It is easy to imagine that it caused offence and hurt to the people against whom it was directed. However, hurt and offence are caused by all sorts of speech all the time. It would be impossible to proscribe all speech which causes hurt and offence.'

Although the action seeks to prevent Bolt from expressing such views again, Mr Zyngier is adamant it is not an attempt to impose a gag order on the columnist. 'We're not seeking to make this a case about freedom of speech, because it's not,' he said. 'The issue is essentially about whether or not other people can define identity, and in particular Aboriginal identity, based on how you look.'

The matter is listed for a determination hearing on September 29.

There is in these two stories a larger issue---the difference between identity and prejudice and the public policy consequences. If one suffers prejudice, then public policy intervention is warranted and there are ample means of redress and support. If one wants to assert one's identity, then there is no public policy consequence. Indeed, in the case of Aboriginal school children, there is a case for strong public intervention to have them comply with the minimum criterion necessary to survive in the modern world---our initiation ceremony---school attendance until 15 years of age. The point that Bolt makes, and with which I agree, is that for those who could not possibly have suffered prejudice because no-one could tell that they were Aboriginal, no public policy intervention or public support should be available. Those Aborigines claiming that Bolt has insulted them are simply demonstrating the weakness of their cause, that is, their 'identity' is so weak that it has to be supported by public intervention. It is an identity of which one would not be proud. It is a sign of failure, not strength.