Discrimination by any other name: Language tests and racist migration policy in Australia

Australia has a proud national narrative of migration and multiculturalism. It also has an equally prevalent history of exclusionary and discriminatory migration policy. Perhaps the most famous is its “White Australia Policy”, which sought to restrict the migration of “non-European” people. While the Australian government still uses language tests for a variety of visas, the *Immigration Restriction Act 1901* implemented a race- and colour-based approach through what is perhaps Australia’s most infamous language policy. Section 3 (a) of the Act prohibited the immigration of:

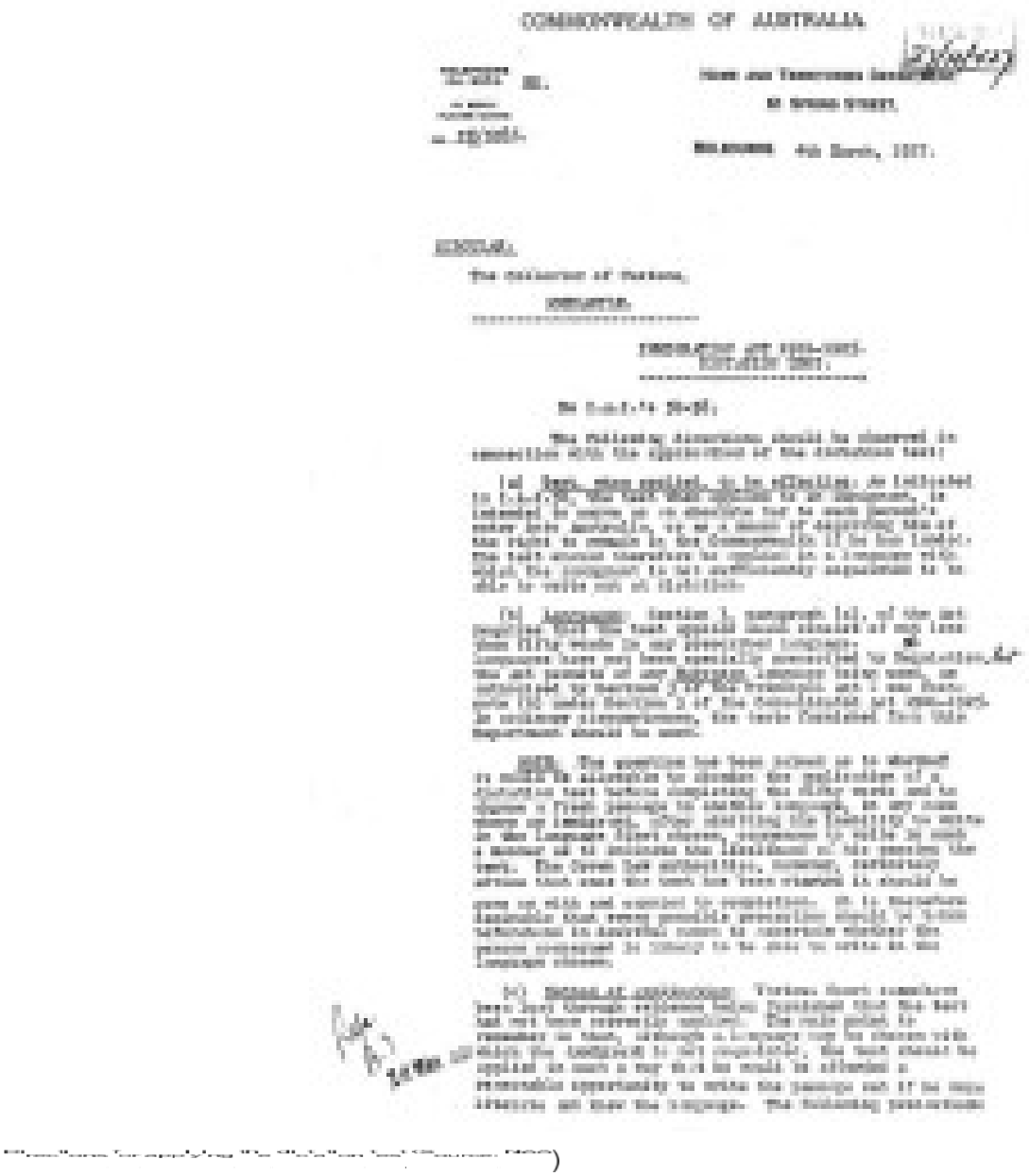
> Any person who when asked to do so by an officer fails to write out at dictation and sign in the presence of an officer a passage of fifty words in length in an European language directed by the officer.

This law was used, up until 1958, to restrict the migration of “undesirable” people, including anyone who was visibly non-white. This was achieved by the immigration official choosing a language which they expected would be unknown to the would-be migrant.

What is particularly striking when looking at the law is that there is no explicit mention of the discriminatory way in which it would be implemented. This is even clearer when compared with the laws that proceeded it, such as the *Coloured Races Restriction Bills* (passed in various parts of Australia) and the *Chinese Act 1881* (Victoria). Debates in Parliament in the lead-up to the Act’s creation indicate that the test would not apply to “qualified European immigrants” and that officers were to intentionally choose a language that the unwanted immigrants would not know (Crock & Berg 2011). Yet, there was clearly a desire to present the legislation itself in a much more neutral form than previous statute, balancing the need for diplomacy with Asia against ongoing white-centrism (Mason 2014).

Shohamy (2006) introduces the idea of hidden or “de facto” language policies that accompany official policy. In the case of the *Immigration Restriction Act,* it is clear that while the official policy (as presented in the law) seems to be aimed solely at the need for immigrants to speak a European language in this new “European” country, the way the Act was implemented indicated that covert policy hinged less on issues of language and much more on race. Thus the language test here is used politically, as a “two-edged sword” made to include some, at the exclusion of others (McNamara 2012).

In some cases, the White Australia Policy separated the Asian spouses and children of Australian citizens, sometimes leading to public outcry and successful lobbying by their local communities. For example, in the 1940s, the Jacobs, an Indonesian family, fled Australia after the arrival of the Japanese military in their home region. After Samuel Jacob died in an accident, Annie, his wife, and children were left stranded. When the war ended and the Australian government sought to expel Asian evacuees, Annie and her children were desperate to stay and fought their repatriation. An Australian citizen, Jack O’Keefe took the family in and married Annie. The Immigration Department denied that this gave the family any rights to reside in Australia, and insisted that they must be repatriated. It was only thanks to significant lobbying from the local community, and with the assistance of media support, that the O’Keefes successfully challenged the application of the White Australia policy in the High Court.



In other cases the policy was used against persons who were deemed unworthy of citizenship on apparently moral grounds, as was the case for Mabel Freer. Born in India, Freer was a white, English-speaking British subject, who was coming to Australia to marry her Australian lover, who intended to divorce his first wife. Her lover's family were unhappy about the impending divorce and must have been well-connected within the government, because Freer was made to do the dictation test in Italian to prevent her from remaining in Australia.

However, the case that caught the public's attention more than any other involved the application of the dictation test on an educated, white European, for clearly political reasons. In 1934, Egon Kisch, a communist writer and activist, came to Australia to speak at a series of anti-Fascism rallies. Following instructions from the British secret service, the Australian government sought to deport him by using the dictation test. Although Kisch was literate in several European languages, including English, he was made to do the dictation test in Scottish Gaelic, so that he would fail. In this highly publicized case, Kisch and his supporters challenged the use of the test in the High Court. Kisch was ultimately successful, but only because the Court ruled that Scottish Gaelic was not a European language for the purposes of the Act (Mason 2014).

Over time, the language of the Parliament changed. By the 1950s, the public seemed to have less of a taste for policy that was explicitly racist in its aims and language. Yet, once again, the way law was implemented maintained its race-based focus, simply operating in an increasingly covert manner. Previously classified (confidential) government communications, stored in the Australian National Archives, show that while the official language of migration policy becomes more progressive over time, the covert policy may take some time to catch up. The language of private Immigration Department communications in the 1950s remained very much the same as it had been in the past.

One particularly interesting case is that of would-be migrants, the Ioannou family from Greece. In a de-classified 1955 memorandum to the Minister, the Acting Secretary, A. L. Nutt sets out the "behind-the-scenes" policy in clearly race-based terms. The Ioannou family's application had been rejected "because the husband was dark skinned" and there was some concern that this could cause controversy, if it meant that the policy was publicly viewed at restricting Europeans on the grounds of colour.

Nutt responded:

> In years gone by it used to be the practice to refer quite openly…to the "coloured" races and the preference for "white" people. Since the war, with growing awareness both here and in Asia, we have, of course, dropped such terms from our official vocabulary and we speak of "non-Europeans" or, where suitable, "Asians".
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> This change in terms was not, however…accompanied by any corresponding change in policy which has continued to be that a person who, whether by cast of feature or by the colour of his skin or by mode of living, is not readily "assimilable" here, should not be admitted for permanent residence. The implicit assumption is that Australians would regard a very dark-skinned person as being "non-European" just as much as they would a person who has the cast of features of a negro or Chinese.

[illegible])

Nutt also draws support from contemporary media discourse, which had criticised the arrival of ships "carrying very dark Cypriots, Lebanese and Greeks". He then goes on to argue that suitable European-ness is connected closely to whiteness, explaining that the policy is that "anyone who in appearance shows any marked departure from the 'white' European type, should be refused entry… even though they and their families may have lived in

Europe for generations". He notes that since applicants are not generally provided with reasons for rejection, there was no need to mention the colour bar, "whatever suspicion our individual decisions may arouse".

This communication raises two important issues. Firstly, the giving of reasons may provide some ground upon which to challenge migration decisions. Having said that, the earlier lesson of the dictation test shows that legal mechanisms can be used for ulterior reasons. Further, while reasons are more commonly given now, applicants for a number of visas even today have no right to reasons (for example, family-sponsored humanitarian visas). Secondly, this is a clear example of how publicly available law and policy may depart significantly from the confidential instructions given to officials. Decisions may appear to align closely with official policy, however there may be other guidance or influence at play which external investigators can only guess at.

While noting the general advances in official migration law and policy over time, we should ask what the "hidden policy" is today. And just as Nutt suggests back in 1955, in many cases we can only rely on "whatever suspicion individual decisions may arouse", especially given the concerted lack of transparency in parts of the current regime. It is possible that much will remain guess work, until such time when some future researchers will have access to the de-classified files from 2015 and have their turn to – perhaps – experience shock at the covert policies behind our current migration regime.

References

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