The Pacific Islanders Protection Acts

The ***Pacific Islanders Protection Acts*** of 1872 and 1875 are ***misconstrued*** by many Aboriginal activists as preventing the colonial governments from expanding their territories or otherwise interfering with the sovereignty and rights of the indigenous peoples in Australia without their consent. Both the *Pacific Islanders Protection Acts* of 1872 and 1875 were repealed by Schedule 2 of the ***Criminal Code Amendment (Slavery and Sexual Servitude) Act 1999***. Following the previous notion, is the assertion that the repeal of these Acts were unlawful, as it is contended that they offered protections granted by Queen Victoria's Orders in Council.

The *Pacific Islander Protection Acts* of 1872 and 1875 are Imperial legislation passed by the UK Parliament. Section 2 of the *Colonial Laws Validity Act 1865* once provided that colonial laws were invalid if they were repugnant with UK law. However, since the Statute of Westminster 1931 was passed, and adopted in Australia by the ***Statute of Westminster Adoption Act 1942***. Pursuant to section 2 of the Act, the Commonwealth Parliament had the legislative powers to repeal any such Imperial legislation as it applied here.

The Pacific Islanders Protection Acts never applied to the Australian aborigines.

Prior v South West Aboriginal Land and Sea Council Aboriginal Corporation [2020] FCA 808 (at 70):

> *"These settled propositions are not affected by the Pacific Islanders Protection Act 1875 (UK) (1875 Act) or the Pacific Islanders Protection Acts 1872 (UK) to which Mr Prior refers. The effect of s 6 and s 7 of the 1875 Act was to extend the Crown's authority to British subjects living in the Pacific islands, while preserving the rights of non-British subjects. These sections said nothing about the status (sovereign or otherwise) of indigenous peoples in Australia, where the Crown had already acquired sovereignty by the time the Acts were passed. Section 6 expressly did not apply to places that were 'within Her Majesty's dominions', such as the colonies of Australia: see Walker v South Australia (No 2) (2015) 215 FCR 254 (at [53]-[56])."*

[Walker v State of South Australia (No 2) [2013] FCA 700](#) (at 10-11):

> *"Second, Mr Walker contends that the Pacific Islanders Protection Act 1875 (Imp) 38 & 39 Vict, c 51 (1875 PIP Act) also has the effect of "barring" the Crown from "extending … sovereignty or dominion over the Ramindjeris' lands and people…" The sections of that Act that are said to support this argument are ss 6 and 7. Section 7 appears to be most relevant to the argument. In conjunction with that provision, he refers to an Order in Council of 2 August 1875 (Imp) by which the 1875 PIP Act "was made"."*

(at 53-56)

> *"Contrary to Mr Walker's contention, the Pacific Islanders Protection Act 1872 (Imp) 35 & 36 Vict, c 19 (1872 PIP Act) and the 1875 PIP Act have no application to the Indigenous people of Australia.*
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> *The 1872 PIP Act (then given the short title of The Kidnapping Act 1872) was passed to protect the indigenous populations of the islands of the Pacific Ocean from kidnapping for the purpose of labour, a practice known as "blackbirding". It expressly referred to "natives of islands in the Pacific Ocean, not being in Her Majesty's dominions". Section 3 made it unlawful for British vessels to carry native labourers absent a licence granted by a Governor of any of the Australasian Colonies of New South Wales, New Zealand, Queensland, South Australia, Tasmania, Victoria, and Western Australia. Section 9 established offences relating to the kidnapping and enforced labour of the natives, conferring jurisdiction on any Supreme Court in any of the Australasian Colonies for the trial and punishment for any such offences.*
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> *Section 6 of the 1875 PIP Act gave the Queen the power to exercise jurisdiction over her subjects "within any islands and places in the Pacific Ocean not being within Her Majesty's dominions nor within the jurisdiction of any civilised power", and conferred the power to establish courts of justice with jurisdiction over those subjects within those islands. However, s 7 contained the proviso that:*
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> *"...nothing herein or in any such Order in Council contained shall extend or be construed to extend to invest Her Majesty, her heirs or successors, with any claim or title whatsoever to dominion or sovereignty over any such islands or places … or to derogate from the rights of the tribes or people inhabiting such islands or places … to such sovereignty or dominion."*
>
> *On their own terms, those Acts do not apply to the Indigenous people of Australia. Their application is clearly with respect to the peoples of the islands in the Pacific Ocean, who did not have the protection of the law. Hence, jurisdiction to try the offences created by the Acts was conferred upon the Supreme Courts of the Australasian colonies. Further, their application is with respect to the islands of the Pacific Ocean "not being within her Majesty's dominions". As at the passing of the 1872 PIP Act, the Province of South Australia had been for some time within Her Majesty's dominion, as had all the other colonies of Australia."*

According to ***Encyclopaedia Britannica***, the *Pacific Islanders Protection Acts* concerned blackbirding:

> "*Blackbirding was the 19th- and early 20th-century practice of enslaving (often by force and deception) South Pacific islanders on the cotton and sugar plantations of Queensland, Australia*

(as well as those of the Fiji and Samoan islands). The kidnapped islanders were known collectively as Kanakas. Blackbirding was especially prevalent between 1847 and 1904. The Queensland government's first attempt to control it came only in 1868 with the Polynesian Labourers Act, which provided for the regulation of the treatment of Kanaka labourers—who theoretically worked of their own free will for a specified period—and the licensing of "recruiters." Because the Queensland government lacked constitutional power outside its own borders, the regulations could not be enforced; moreover, the fact that notorious and brutal blackbirders were able to retain their licenses seemed to indicate that the government was not seriously trying to end the practice. British government acts of the 1870s—especially the 1872 Pacific Islanders Protection Act (the Kidnapping Act)—provided for agents on British recruiting vessels, stricter licensing procedures, and patrol of British-controlled islands; these measures reduced the incidence of blackbirding by British subjects. Because of the continuing heavy demand for labour in Queensland, however, the practice continued to flourish. Blackbirding died out only in 1904 as a result of a law, enacted in 1901 by the Australian commonwealth, calling for the deportation of all Kanakas after 1906."

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