Radical High Court Divides Australia By Race

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“The decision of the High Court today to exclude a specific group from the scope of the constitutional aliens power is the most radical instance of judicial activism in Australian history,” said Morgan Begg, research fellow at the Institute of Public Affairs.

Today the High Court handed down its decision in Love v Commonwealth of Australia; Thomas v Commonwealth of Australia [2020] HCA 3. A majority of the justices decided that non-citizens who were descended from Aboriginal and Torres Strait islanders did not fall within the scope of the Commonwealth’s power to make laws with regards to “aliens”.

“The High Court has created a new class of citizenship based according to identity which offends the basic moral principle of racial equality,” said Mr Begg.

“This decision has led to the absurd position that a person can be a non-citizen but not subject to Australia’s migration laws.”

“This is a fundamental challenge to the idea of racial equality as well as the sovereignty of the parliament to decide who can be members of our shared political community,” said Mr Begg.

Today’s decision also has implications for the campaign to amend the Australian Constitution to recognise Aboriginal and Torres Strait Islanders.

“The High Court’s decision today should also put to rest the idea that constitutional recognition will not lead to unintended consequences,” said Mr Begg.

“The High Court has become infested with identity politics ideology which divides Australians by their race.”

“If the High Court is willing to create out of whole cloth a race-based exemption to migration laws, what would it do with an assertion of historical facts written into the constitution.”

“The High Court has failed to exercise its powers in a restrained and principled manner.”

“This should be seen as a wake-up call for the federal government to exercise more care in who is appointed to the High Court,” Mr Begg said.