

# THE WEINTRAUB SYNCOPATORS: THE JEWISH QUESTION AND THE MUSICIANS' UNION OF AUSTRALIA 1937–53

A RESPONSE TO DR ALBRECHT DÜMLING

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*This article has been peer-reviewed*

## **Introduction**

In his article on German-speaking refugee musicians in Australia in the November 2008 issue of the *Australian Jewish Historical Society Journal*, German musicologist Dr Albrecht Dümling compared the Musicians' Union of Australia (MUA, hereafter also 'the Union') and the Reichs Music Chamber (*Reichsmusikkammer*, RMK) in Germany with regard to its exclusion of foreign musicians in the declared interests of 'protecting' native-born musicians.<sup>1</sup> Dr Dümling is not the only scholar to have drawn parallels between elements of Australia's restrictive immigration policy and its treatment of immigrant refugees, past and present, and aspects of Nazism or apartheid. The introduction to Keith Windschuttle's confrontational critique of scholarly readings of the White Australia Policy from the 1960s onwards considers several such examples.<sup>2</sup> Nor is Dümling the only scholar to suggest that at least some of the RMK's regulatory interdictions were as much to do with protectionism as ideology.<sup>3</sup> Dümling's comparison is challenging, but also deeply thought-provoking, since it invites consideration of difficult aspects of Australia's treatment of Jewish refugees in the 1930s and 1940s, and of refugee music professionals in particular. This article explores the legitimacy of even such a limited link by examining three aspects of the Australian situation: the Union's relationship to government, the extent to which Union policy was underpinned by the racist ideologies of the White Australia Policy and the availability of legal remedy to musicians who were excluded from membership. The notion of 'protection' is problematised around the crucial issue of how much it mattered to the formation and implementation of MUA policy in the 1930s that foreign refugee musicians were Jewish.

Australia was a safe haven in which extermination was never a possibility. Nonetheless, it was, at the same time, a 'reluctant refuge';<sup>4</sup> some individuals were treated unfairly, others unjustly. The experience of the Weintraub Syncopators – the group of Jewish musicians from Berlin whose example prompted Dr Dümling's

comparison – was certainly profoundly destructive, though not equally so for each individual member of the group. It is the purpose of this essay to explore the encounter between the Weintraub Syncopators, as exemplifying one class of refugee musicians, and the MUA, though whether the latter organisation can be taken as representative of the profession at large is a question the article seeks to address. The case of John Kurt Kaiser (aka Sydney John Kay), the only individual member of the Weintraub Syncopators mentioned by Dümpling (p. 228), is certainly of importance, by virtue of the legal challenge he successfully mounted against the NSW District of the MUA in 1944. It is also fortuitous that comprehensive documentation exists of Kaiser's interaction with various government agencies and the Musicians' Union.<sup>5</sup>

By withholding membership from foreign musicians, the MUA, like the RMK, sought to isolate them within the profession and, ideally, to exclude them from employment. Beyond that exclusionary objective, however, there are significant differences in the Australian situation. The first concerns the Union's relationship to government. As this essay will show, the MUA was regulated by the State; it was not an instrument of the State, and legal remedy was available to individuals against an 'oppressive or tyrannical' application of a union's rules. This article discusses the legal setting for Kay's challenge within the general context of the Australian arbitration system, and of formal and informal government policy on the admission of foreign and refugee musicians. It examines the matters at issue between John Kay and the Union, and the ongoing consequences of the judgment.

The Union's formal endorsement of the so-called 'White Australia Policy' in its 'Objects' in 1923 would appear to validate Dümpling's comparison since, as Andrew Markus points out, the White Australia Policy was more than a means of excluding non-European immigrants embodied in the *Immigration Restriction Act* of 1901;<sup>6</sup> the ramifications of the policy's racist ideologies also affected some non-British European immigrant groups including, as Dümpling notes, Jewish refugees in the 1930s. Following World War I, 'White alien' (non-British European) immigration was tightly controlled legislatively and through the implementation of quotas, landing money requirements and discretionary criteria governing the issue of landing permits that preferenced certain groups over others.<sup>7</sup> The *Immigration Act* 1925, for example, gave the Governor-General wide powers to prohibit outright or limit the immigration of 'any specified nationality, race, class or occupation'.<sup>8</sup> Philosophically, the emphasis in the pre-World War II period was on restriction rather than encouragement of immigration. While the MUA excluded 'coloured' musicians without exception, and rhetorically asserted a preference for 'British' immigrant applicants over Europeans, the Union's practical realisation of the ideals of White Australia as 'Australia for Australians' also excluded musicians from other Commonwealth countries.<sup>9</sup> I will argue that, like its opposition to Italian

musicians in the 1920s, the Union's resistance to Jewish refugee musicians in the 1930s, though validated by prevailing social concerns and racial attitudes, was driven more by circumstance and a generalised objection to competitive labour.

### **The MUA And The 'White Australia Policy'**

It is a truism of Australian labour history that there was a link between trade union ideology in the first decades of the twentieth century and the discriminatory racial policies of 'White Australia', as expressed initially in the *Immigration Restriction Act* of 1901.<sup>10</sup> The MUA proposed formal allegiance to the principles of the policy at its Annual Conference in 1923, requiring Districts to prevent the admission of coloured races. Once formally incorporated into the Union's 'Objects', this declaration of allegiance remained a pillar of MUA policy until the paragraph was removed from the Federal rule book in 1961.<sup>11</sup>

Although the Union had secured the deportation of four Philippino [*sic*] musicians from the 1916 Gonzalez Opera Company's orchestra,<sup>12</sup> the Australian music industry of the 1920s was not one that was particularly susceptible to infiltration by coloured musicians; minutes suggest that the 'White Australia Policy' resolution was a response to a specific application from a musician who was 'believed to be a coloured person'.<sup>13</sup> One is prompted to ask what practical and ideological uses the Policy was put to by the Musicians' Union? What did the Union take from the idea of a White Australia and how did officials translate its principles into strategy and policy? Julia Martinez identifies Labour PM Andrew Fisher's 'preference to unionists' amendment of the arbitration legislation as representing a second phase of implementation of the White Australia policy.<sup>14</sup> She is discussing the replacement of coloured workers with Europeans, but can one reasonably deduce that the Musicians' Union equated 'foreign labour' generically with coloured labour for its own purposes?

Of more long-term consequence than the admission of coloured members was that portion of the *Immigration Restriction Act* which prevented the entry of any person under contract to perform manual labour within the Commonwealth, a clause that was amended and superseded in the *Contract Immigrants Act* of 1905.<sup>15</sup> Arguments around the applicability of the *Contract Immigrants Act* to the music profession were renewed, unsuccessfully, by the Union with each change of government from 1923 to at least 1937. In April 1937, just three months before the appearance of 'the Weintraubs' (as the band was known in Australia), a deputation was introduced by Mr Holloway MP, to argue the musicians' case for protection against competition by imported bands, under the terms of the *Contract Immigrants Act*, 'even though the personnel of these was British'.<sup>16</sup> However, successive Attorneys-General maintained the view that the Act applied only to manual workers, refusing to extend the Act's provisions to include musicians.<sup>17</sup>

### **The Applicant: Sydney John Kay**

John Kay arrived in Australia from Japan in July 1937 as a member of the band known internationally as the Weintraub Syncopators, then a group of seven musicians under contract to Snider and Dean, a firm of theatrical entrepreneurs owning or controlling 35 cinemas nationwide (see Illustration 1).<sup>18</sup> In accordance with government regulations introduced in July 1928 as a result of intensive lobbying by the MUA, Snider and Dean were obliged to apply to the Department of the Interior for a licence to import this ‘stage and vaudeville act ... all of whom are Europeans’.<sup>19</sup> The firm gave the requisite undertakings: that the importation of the troupe would not be the cause of displacing any Australians at present employed, that the musicians would not become a charge upon the public purse, and that the firm would be responsible for their maintenance and for their departure from Australia at the conclusion of the contract.

When an outbreak of polio in Melbourne forced a curtailment of the original contract, Kay remained with the band, accompanying it on its substitute tour of the firm’s cinemas in regional Australia and subsequent independent tour of New Zealand. The trip to New Zealand was a turning point for the band. It discharged Snider and Dean from their undertaking to ensure the band’s departure at the conclusion of the contract and occasioned some significant changes of personnel after a number of the original group broke away. Of the original seven, (South African) Cyril Schulvater left before the New Zealand tour, having arranged to remain in Australia; (American) Freddy Wise travelled on to Europe from New Zealand. Six musicians left for New Zealand on 28 January; five returned on 21 May: Stefan Weintraub, Leo Weiss, Horst Graff, Emanuel Frischer and John Kay. All five returning members of the group were granted permission to re-enter the country for a 12-month period to fulfil broadcasting engagements.<sup>20</sup> At the same time, Adolph Frischer joined the band as a replacement for Freddy Wise,<sup>21</sup> and the band severed its connection with its former manager, Heinz Barger, who returned from New Zealand to Japan.

By January 1938, five of the original group had applied to remain permanently in the country and three of the five who returned from New Zealand had been successful.<sup>22</sup> It is notable that each of the musicians who applied for permission to remain permanently stated his intention of working in a profession other than music: Weintraub proposed to resume his earlier career as a chemist, Frischer thought he might open a café, while Weiss planned to set up as a theatrical entrepreneur.<sup>23</sup> The musicians’ seemingly ‘false’ declarations of intent with regard to their future careers might seem, at first glance, to provide further evidence in support of Dümbling’s assertion that foreign musicians were only welcome in Australia if they ‘gave up their musical professions’ (p. 222). It is true that the MUA sought to prevent musicians from entering the country and, when here, from entering the profession. It is also true that the Union prosecuted individual cases with

noteworthy determination. But while successive Ministers gave assurances to the Union that they would discourage, or even deny, applications for the importation or admission of musicians,<sup>24</sup> the government's consideration of the Weintraubs' situation was relatively benign. The assessing officer observed of Emanuel Frischer that it was unlikely that he would make a success of a café as he appeared to have no experience, and the bohemian class, to which he belonged and for which he proposed to cater, had no money; it was assumed that he would continue in his career as a musician.<sup>25</sup> Each application was made during a period of uncertain employment for the individual musicians, and their 'false' declarations perhaps had more to do with the need to satisfy the authorities that they would not be a drain on the public purse, in the event of not securing appropriate musical employment, than with any deliberate intent to deceive or any coercion by the authorities.

Graff and Kay did not apply for permanent residence in Australia until the early months of 1939 (January and February respectively), by which time, in the face of a heightened demand for admission in the aftermath of the *Anschluss* and the *Kristallnacht* pogrom, government policy and public attitudes towards Jewish refugee migration had changed significantly.<sup>26</sup> Neither Graff nor Kay made pretence of any intention to sever their connection with the band though each provided an overall summary of their skills, including non-musical ones. Indeed, the band's very public success counted in their favour. By this time, the band was featured at a fashionable Sydney nightclub called Prince's and appeared regularly on radio. Accordingly, the Weintraubs' direct engagement with the Musicians' Union had begun.

### **The Respondent: The Musicians' Union Of Australia**

MUA policy on foreign musicians working in Australia took shape through the decade of the 1920s in a series of encounters with entrepreneurs desirous of importing bands and orchestras or groups of musicians under contract, either as attractions in dance palaces or stage acts in theatres and cinemas, or to supplement the orchestras of touring opera companies. Although the Union gave nominal preference to 'British subjects' generally, in fact it opposed all importations with equal resolve, even those from other Commonwealth countries – Canada and New Zealand – and even Britain itself.<sup>27</sup> Because of Australia's constitutional links to the Commonwealth, no government action was possible against British subjects;<sup>28</sup> efforts to obtain protection from government against musicians from America proved equally complex because of the fear of international repercussions.<sup>29</sup> Approaches to government on the question of foreign musicians were potentially more successful when attached to prevailing public concerns about perceived high levels of migration of specific groups. Hence the Union linked its campaign against Italian musicians to the public agitation about Italian migration in the mid to late 1920s. Similarly, in the 1930s, the Union was able to associate

its ongoing general opposition to imported or ‘foreign’ musicians with public concerns about (Jewish) refugee migration and, in the post-war period, about Displaced Persons and other assisted immigrants. The introduction of mechanical music into cinemas in the late 1920s and consequent large-scale unemployment within the music industry gave weight to the Union’s arguments.

### **The Impact of the Depression**

Australian musicians were casualties of the global trauma resulting from the coincidence of the introduction of mechanical sound technologies (talking pictures arrived in Australia in December 1928) and the Wall Street financial crash (October 1929) that precipitated the Great Depression. As in other countries with comparable music industries, the silent picture theatres in Australia had provided employment for thousands of pit musicians. The rapid and widespread installation of sound equipment in theatres saw these musicians thrown onto the street. Union membership was drastically affected. In Britain in 1928, for example, some 5,000 picture theatres were providing employment to about 75 per cent of the 28,000 musicians in the country; by the summer of 1932, 4000 of these theatres had converted to sound; by 1934, Union membership had fallen from 20,000 (in 1929) to 6,700.<sup>30</sup> US figures were analogous: 26,000 American musicians were employed in picture theatres in 1926; their numbers fell to 5,000 in 1930.<sup>31</sup> In Germany, 30,000 musicians out of a total of around 80,000 were believed to be out of work by July 1932.<sup>32</sup> Though numbers were smaller in Australia, a country of some 5.5 million people in 1929, the effects were equivalent. MUA General Secretary Trevelyan wrote to William Hughes in April 1930 that ‘out of a membership of 5,000 we now have 4,000 odd unemployed, and of our present membership I doubt if 50% are financial in their organisation, and the finances of our Union are suffering severely’.<sup>33</sup> By mid-1930, the MUA estimated that 80 per cent of professional musicians in Australia were unemployed, a number far higher than the national average, which peaked at 30 per cent in the second quarter of 1932.<sup>34</sup> Lists of employers cited as respondents to Commonwealth Arbitration Awards vividly chart the contraction in the industry that occurred across the late 1920s and early 1930s.<sup>35</sup>

In most countries, xenophobic attitudes towards foreign musicians and de-liberalising forms of protection against competition were rationalised as a response to high rates of unemployment consequent on the advent of new technologies at the end of the 1920s.<sup>36</sup> However, I have argued against the idea of a causal relationship, at least in the Australian context, given that the Union’s policy on foreign musicians began to evolve from as early as 1918, and persisted with remarkably little modification until the late 1950s, by which time the industry was reformed and full employment had long been restored nationally.<sup>37</sup> Well before sound film technology was introduced, the Union was clamouring against migration, asserting

that ‘Thousands of foreigners – in all callings – are being brought to this country, and Australian workers generally consider there is an organised attempt to swamp the market, break Unionism and install cheap labour. We are against this and will use every means in our power to maintain our position’.<sup>38</sup> Letters were sent to the secretaries of European unions in an effort to discourage musicians from emigrating. Though actual numbers hardly seemed to validate Union concerns, it maintained its view that ‘an over-flooded market in any industry always tends to break down unionism’.<sup>39</sup>

In arguing the Union’s protectionist case, officials drew attention to Australia’s unique demographic features: the small population, vast distances and widely separated population centres. In most of the smaller towns and cities, music was not a livelihood; professional musicians congregated in the larger cities of the coastal fringe. As Trevelyan wrote to the General Secretary of the English Musicians’ Union, a union to which the MUA shows most similarities of history and development, ‘Compared with your Union our members are very few and cover an immense country, whereas you have an immense number covering a very small area’.<sup>40</sup> In consequence of the relatively limited number of employment opportunities available, even in good times, ‘we always have more highly skilled musicians than we can find positions for’.<sup>41</sup> ‘We have more than sufficient musicians to go around and meet all requirements’, Trevelyan wrote on another occasion to his English counterpart, ‘always admitting the fact that, the same as in all other callings, there is always room on top, and there is always a large number of what I might term average performers disengaged’.<sup>42</sup> Out of this conundrum arose the ongoing conflict in this chapter of Australian music history between the Musicians’ Union and entrepreneurs over standards and supply, and the Union’s steadfast argument that ‘any influx of professional musicians from other countries would be prejudicial to the interests of ... the Australian ... musician’.<sup>43</sup> Most areas of the profession were identified as susceptible to competition from foreign musicians: theatre, light, and symphony orchestras, nightclubs and bands for social dancing.<sup>44</sup>

### **Developing a Defensive Strategy**

There were two distinct strands to MUA strategy against foreign musicians: first, its interaction with the legislative arms of government, within the legislature (through an ongoing quest for protective legislation and a relentless pursuit of individual cases) and within the arbitration system (through preferential awards and the registration of rules); secondly, an internal process, whereby the Union sought to incorporate more exclusionist and discriminatory criteria for membership into its rules.

Throughout its public and political campaigns of the 1920s and into the early 1930s, the MUA maintained a distinction between the importation of groups under

contract – which it opposed – and individual musicians who entered the labour market in free and equal competition with local musicians – which it professed to tolerate, if not encourage. For example, members of an MUA deputation protesting the importation of a Canadian band to the Minister for the Interior in April 1937 stated that ‘no exception was taken to individual artists coming here’.<sup>45</sup> The distinction was, however, more apparent than real. By 1929, taking advantage of discretionary powers conferred by legislation and using the economic circumstances of the Depression as justification, the NSW District passed a resolution excluding all foreigners from membership for a limited period.<sup>46</sup> Promptly adopted by the federal body, this resolution was renewed annually until 1935, when a new rule was incorporated and registered requiring all applications by non-naturalised musicians to be voted on by each of the District components of Federal Council, a mechanism that allowed the Union effectively to withhold membership from individual musicians until 1958, when the rule was rescinded and control of admissions was returned to the Districts.<sup>47</sup>

Discussion at Federal Conferences through the 1930s and early 1940s largely continued in the general terms that were established in the 1920s, concerning either strategies to obtain legislative protection against the perceived ‘influx’ of foreign musicians into Australia, discourage entrepreneurs from engaging foreign musicians, and expand or vary procedures for processing (rejecting) applications for membership by non-naturalised resident foreigners. It should be noted that the matter of foreign musicians was only one of the issues dealt with over the several days of a Federal Conference, but it was a persistent one, kept alive by the inconclusiveness of the Union’s ‘victory’ of 1929, when members were informed through the pages of the Union’s official journal *The Professional Musician*, that ‘there are no American or Italian orchestras, nor orchestras of any foreign nationality, here now’.<sup>48</sup> In introducing a licensing system in 1928 for entrepreneurs desirous of importing foreign musicians as attractions, the Minister of Home and Territories had declined to make the MUA a party to the decision-making process, retaining his discretionary power to ‘consider each case on its merits’.<sup>49</sup> Accordingly it was not long before the importation of foreign musicians, driven by commercial competitiveness between prospective employers, was once again an issue. New pressures were created by the entry into the entrepreneurial field of the Australian Broadcasting Commission, with its insistent attempts to import ‘key instrumentalists’ to supplement numbers and standards in its various ensembles.

Though Union officials persistently lobbied government on a range of issues including protective legislation, and negotiated preferential awards with entrepreneurs, the MUA was most immediately effective in controlling admission to membership, whether through formally registered rules or through resolutions ratified at district or federal level but not formally registered as rules. Three specific

determinations affected the handling of applications from foreign musicians; their use in rejecting John Kay's application was particularly scrutinised during the hearing of his appeal. The first, a resolution linking membership to naturalisation, was added to federal policy in 1928.<sup>50</sup> Implicit in this resolution was the idea that a non-naturalised applicant could not work in the music profession while fulfilling the mandatory qualifying five-year residency requirement (see Illustration 2). The second was the above-mentioned amendment to the rule governing processing of applications, duly accepted and registered by the Industrial Registrar in August 1935. The third was added to MUA policy in November 1940, when delegates to the Federal Conference resolved to adopt and apply regulation 5 of the National Security Supplementary Regulations, No. 213 of 1940 (introduced in September 1940), under which the committee of any club or association was authorised, its constitution notwithstanding, to suspend or cancel membership of any person who 'is or has been a subject of a country with which His Majesty is at war'.<sup>51</sup> The same amendment was used to justify the rejection of John Kay's application (see below). As in government policy generally, no distinction was made between Jewish applicants and other German-speaking nationals.

Of these three determinations, only the rule registered in 1935 had official status; the other two, though endorsed by the Union's Federal Conference, were no more than 'guiding principles' intended to drive best practice but unsupported by actual rules.<sup>52</sup> There are two points to be noted about the 1935 rule. First, it is quite clear from the files that General Secretary Trevelyan's purpose in proposing the 1935 amendment was to dismantle the blanket embargo against the admission of foreign musicians that had been in place since 1929. Trevelyan had been moved by the story of one Lazar Sverdloff, a highly qualified Russian Jewish refugee musician who arrived in Australia in 1934, and wished to set a mechanism in place whereby individual cases could be assessed more sympathetically.<sup>53</sup> Unfortunately, Trevelyan died in September 1935, and his hard-line colleagues on the MUA Executive realised the rule's exclusionary potential instead. The 1935 amendment was specifically presented to members as part of the Union's efforts to 'oppose in every possible way the importation of musicians, and to safeguard the interests of members'.<sup>54</sup> Secondly, in the case of a trade union such as the MUA that was registered under Australian arbitration law, a rule was not binding until registered by the Industrial Registrar of the Court of Conciliation and Arbitration. The obligations and powers of the Registrar in considering a rule for registration were clearly prescribed. It was his task to adjudicate the rule's compliance with the terms of the Act, in intent and in wording. He did not adjudicate the use or potential misuse of the rule, and in fact the Court in some cases decided that there were no grounds for disallowing a rule which 'though proper in itself' might be applied 'harshly or tyrannically'.<sup>55</sup> Democracy and autonomy were delicately balanced in the relations between the law and the unions within the arbitration system.

### The MUA And The Weintraubs

As noted above, the Weintraubs initially entered the country as imported contracted musicians, a class to which the MUA was uncompromisingly opposed. The official view of the Union, wrote NSW Secretary Frank Kitson in his report to the NSW District in November 1936, was ‘that all importations are undesirable and should be discouraged whilst we have so many capable orchestral and dance musicians resident in Australia unemployed. This applies to foreign and British musicians’.<sup>56</sup> However, the Weintraubs came back from New Zealand as freelance individuals (albeit in a group), and as such were hypothetically acceptable to the Union under its rules. As reported in the music journals of the time, the band had obtained the engagement at Prince’s in open competition with eligible Australian bands. Paradoxically, the fact that the band had entered into active competition with MUA members for the Prince’s job now became a matter of objection by the Union.<sup>57</sup>

There is no record in the file that the Musicians’ Union directly opposed the importation of the Weintraubs (nor indeed that it was consulted). But from the moment of the band’s appointment to Prince’s (December 1938), it became a highly visible symbol of the generic problem and the target of Kitson’s unwavering resistance (Illustration 3).<sup>58</sup> By chance, the band’s engagement at Prince’s coincided with the intensification of migration applications in the aftermath of *Kristallnacht* (November 1938) and the subsequent polarisation of Australian opinion around the refugee question.<sup>59</sup> Opinion was also polarised within the Union movement. Paul Bartrop notes that on 18 November the New South Wales Trades and Labour Council departed from its usual policy of opposition to immigration in order to pass a resolution that called on the government not only to admit Jewish refugees from Germany, but also to accept financial responsibility for doing so. The NSW District of the MUA, however, had once again ‘closed its ranks to foreigners’ in August 1938, reaffirming that decision in a statement to *Tempo*, in which Kitson explained that ‘Even when naturalised, the Musicians’ Union would probably prohibit them [foreigners] from joining the Union while there are so few jobs to go around’.<sup>60</sup>

Prince’s management (J. C. Bendrodt) acceded to Union pressure to the extent of appointing a second, all-Australian band for dancing, thus limiting the Union’s ability to continue to oppose the appointment of the Weintraubs, either in public statements or with government. However, in November 1938 a circular letter was sent to all principal employers of musicians throughout the Commonwealth requesting that ‘any work available in Australia should be the prerogative of Australians’.<sup>61</sup> Timing and context suggest clear links to the Weintraubs and to Prince’s; wording links ‘foreigners’ to ‘exiled Jews’. ‘The policy of the Union is to refuse foreigners admission to our ranks’, the NSW Secretary reported to his District in February 1939. Not surprisingly, the band’s attempts to regularise its professional situation by joining the Union were unsuccessful. An application in

February 1939 was refused in April; a second application in December 1939 was again refused, though there is no evidence that any of these applications were voted on by the constituents of Federal Council, as per the 1935 rule. It is worth noting that in May 1939, the New South Wales Trades and Labour Council recommended the admission of European refugees in Australia to membership of its constituent unions.<sup>62</sup> Far from adopting or even referring to this recommendation, Kitson reported to Federal Conference in November of the 1939 that a favourable reply had been received from a number of the entrepreneurs to his circular letter of November of the previous year urging preference for Australian musicians (Illustration 4). By that time, the Union had begun to recover membership numbers,<sup>63</sup> and to gain strength from organising new opportunities offered by live broadcasting (with the Australian Broadcasting Commission as a major employer of musicians) and social dancing.



*Despite obvious stereotyping in this undated, unattributed drawing by Sydney cartoonist Tony Hudson, the 'Jewishness' of the Weintraubs was not at issue. Sydney John Kay, scrapbooks concerning the Mercury Theatre, 1940s–1950s, State Library New South Wales, MLMSS7164X. Reproduced with permission.*

In general, the trade journals took a generous attitude towards the Weintraubs and their troubles with the Musicians' Union. Unlike the Union, the profession at large seems to have been appreciative of the band's musicianship, largely endorsing Snider and Deans' original claim that there was no other combination like the Weintraubs in Australia.<sup>64</sup> In the opinion of one commentator, the band's ability to play all styles and types of music, plus the musicians' remarkable ability to 'double' on different instruments, made them 'one of the finest small bands in Australia'.<sup>65</sup> Of the band's 'Union troubles', *Tempo* observed:

... union trouble before they become naturalised is just one big bugbear, but, as Meredith said, 'hurdles are made for those who cannot fly' and the Weintraubs have been flying for 15 years so far.<sup>66</sup>

And again:

Being foreigners, they were not allowed to join the Musicians' Union and consequently were unable to accept the many jobs offered to them. They have now applied for naturalisation. In due course it will come, and with it a multitude of new work'.<sup>67</sup>

Further support came from government. When Kitson contacted the Department of the Interior to protest Kay and Graff's applications for permanent residency,<sup>68</sup> the reporting officer, A. R. Peters, Head of the Immigration Branch of the Department, noted in his memorandum of 19 October 1939:

Mr Graff and Mr Kay are both men of superior class in their profession, and the only difficulty standing in the way of granting permanent admission is the objection raised by the Musicians' Union of Australia to the permanent admission of alien musicians who are likely to play in dance bands or orchestras. Several members of the 'Weintraubs' were granted permission to remain permanently before the protest came in from the Union and it would be unsatisfactory to break up the combination by not allowing Messrs. Graff and Kay to continue with the troupe.

Paul Bartrop has described Peters as 'efficient, able, and seemingly incorruptible, and there was no one who knew more about the working of Australian immigration policy. Between 1933 and 1945 this knowledge was more often than not employed so as to deny, rather than assist, the entry of Jewish refugees to Australia',<sup>69</sup> – but not, however, in this case.

### **Get rid of the Germans**

Once war was declared in September 1939, the parameters of engagement changed as control of aliens passed from the Minister for the Interior to the Department of Defence. The circumstances of war and the involvement of the military authorities, with their very different values and concerns, altered the ways in which the

MUA's rejection of the Weintraubs was understood by those army officers who were responsible for domestic security, particularly when read in conjunction with the (unproven) accusation that the band had been engaged in espionage on behalf of the German government while touring in Russia. There is no indication that any Union officials were aware of the denunciation. However, on 15 September 1939, Kitson wrote to Senator Foll, Minister for the Interior, requesting information about the nationality of the six musicians employed at Prince's.<sup>70</sup> The Minister's reply of 29 September 1939 was read to the meeting of the NSW District committee on 6 October 1939, whereupon the meeting determined that the Secretary should 'endeavour to terminate the employment of the Weintraubs, particularly in the case of the three Germans'.<sup>71</sup> Kitson reported to Federal Conference in November 1939 that he was working to discourage the management of Prince's from continuing to employ the Weintraubs. Letters were sent to the Department of Information and the Returned Sailors' and Soldiers' Imperial League of Australia protesting the continued employment of the Weintraubs (at Prince's and on radio),<sup>72</sup> and their renewed application for Union membership was again refused, despite their efforts to conciliate Union concerns.<sup>73</sup> At this time, Kitson contacted a different branch of government, forwarding the Weintraubs' letter of application and advice of the Union's rejection to Major W. J. R. Scott of Military Intelligence, expressing his hope that it might be of assistance in 'curtailing their employment while we have competent Britishers capable of carrying out the same work'.<sup>74</sup> The two letters became part of the Crown Solicitor's brief for opposing Stefan Weintraub's application for release from internment, though the transcripts do not show that any use was made of them.<sup>75</sup>

J. C. Bendrodt (of Prince's) withstood Kitson's approaches and extended the band's engagement until April 1940.<sup>76</sup> But in the event, the whole situation was radically changed when, in June 1940, three of the musicians were interned and, as Dümmling rightly observes (p. 228), the band known as the Weintraub Syncopators dissolved, at least under that name. What is not quite so correct is the implication that the musicians 'got no more engagements', but the details of that story lie outside the scope of the present article.

### **The John Kay summons**

By 1944, John Kay and Leo Weiss were the only members of the original group of seven musicians still involved professionally in music in Australia. Kay made no effort to rejoin the band at Prince's after his release from internment;<sup>77</sup> after an eight-month hiatus, he found employment as head of the musical arrangements department with the Colgate Palmolive Radio Unit 'writing musical arrangements and supervising the other arrangers for all music necessary for the broadcasts conducted by this company'.<sup>78</sup> Entrepreneurial by nature, he had his own group in Berlin before joining the Weintraubs, and had begun to develop his independent music ventures before his internment.

On 16 March 1944 John Kay applied to become a member of the MUA, using the official membership application form (see Illustration 5). Kitson, acting unilaterally and against the requirements of the Federal Union's 1935 rule for the processing of applications by non-naturalised musicians, rejected the application.<sup>79</sup> He gave as his reason, for both rejection and his handling of the matter, that Kay's was a 'repetition of a previous application which was dealt with by the Federal Council in November 1939' (the reference here is to the collective application by the Weintraubs mentioned above). Shortly after this exchange, Kitson advised General Secretary Lamble that Kay had taken action under the NSW State Act to compel his admission. Only at this stage did Kitson, in accordance with Federal rules, submit Kay's membership request to the vote of all Districts.<sup>80</sup> The application was rejected on the grounds that 'our rules do not permit of the admission of foreigners to membership'.<sup>81</sup>

Kay lodged his application with the Industrial Commission of NSW under section 115 of the State's Industrial Arbitration Act 1940–43,<sup>82</sup> which allowed the Commission to resolve any dispute as to the character of the applicant or the reasonableness of the Union's admission fee and rules, and gave it the power to direct any alteration deemed necessary 'to bring [the Union] into conformity with what [the Commission] declares to be reasonable in the circumstances' and for such alterations to be binding. As was made clear during the hearing, the judge was not empowered to direct the Union to admit Kay, but only to rule on his eligibility for membership under the terms of the Act, which provided for the admission to a union of 'all persons who are, by the nature of their occupation or employment, of the class of which a trade union is constituted and who are not of generally bad character ... so long as they comply with the rules of the union'.<sup>83</sup> Kitson advised Lamble that 'as the decision will effect [sic] future applicants and the Federal body, I have briefed Counsel to defend it'.<sup>84</sup> Kay was also represented by counsel.

The Union gave four grounds for its rejection of Kay's application: (1) that the applicant was not working as an instrumentalist but as an arranger and had therefore not established that he was by profession or employment of the class embraced by the Union; (2) that the applicant was an enemy alien and thus not entitled to the aid of any of the King's Courts;<sup>85</sup> (3) that the Union was entitled lawfully, under regulation 5 of the National Security Regulations (Supplementary), to exclude him from membership; and (4) that the application, as submitted, was invalid as it did not tender the subscription fee.<sup>86</sup>

Addressing each of these points in ruling on Kay's eligibility for membership, Mr Justice E. P. Kinsella determined that Kay was, in fact, an instrumentalist; that, since his claim to Peruvian nationality was not proven he was also an enemy alien, but that the fact of his registration as such in Australia, whereby he disclosed himself to the Executive Government and was permitted to remain in the country, conferred on him the right, shared with friendly aliens and British subjects, to approach the tribunal for 'such relief as he deems he is entitled to';<sup>87</sup> and that the

words in paragraph 5 of the National Security Regulations had no application to trade unions. The judge dismissed the issue of the fee as trivial. On the Union's grounds for refusing Kay's application, namely that he 'happened to be by birth a foreigner', the judge declared:

It is not within my province to discuss the social or ethical aspects of the union's attitude, nor the results which might follow if all unions should adopt the same policy towards persons coming to this State from other countries. I am concerned only to determine the rights and obligations of the parties according to the existing law.<sup>88</sup>

The judge compared the statement in the Union's letter to Kay with the constitution and rules of the NSW District of the MUA (Numbers 18, 19 and 26), which set out the conditions of eligibility for members, including its special provision for the admission of unnaturalised foreigners. He found that the Union's rejection of Kay's application was not supported by its rules and pronounced his ruling accordingly: 'I declare that Ned John Kurt Kaiser (known as Kay) is entitled to be admitted to membership of the Musicians' Union of Australia, New South Wales District, and to remain a member thereof and to enjoy all advantages of membership so long as he shall comply with the rules of the union'.<sup>89</sup> Kay reapplied immediately and was admitted to membership of the NSW District.<sup>90</sup>

### **Union reception of the judgement and its consequences**

The John Kay summons and the judgment received extensive coverage in the press, not least because the hearing coincided with a public controversy linked to a report on the ABC's symphony orchestras by visiting American conductor Eugene Ormandy.<sup>91</sup> The debate over the Ormandy report and the outcome of the Kay challenge ran concurrently in the Sydney papers of August 1944. The two issues are specifically linked in Kitson's response, published in *Truth* on 13 August 1944. Among other recommendations, Ormandy noted that in order for Australia to develop ensembles of quality, it was necessary to import first-class players capable of taking key positions in the orchestras, emphasising that in America 40 years earlier virtually all orchestral musicians had been foreign-born. Without naming the Union directly, Ormandy referred to the consequences of its exclusionist policy. 'I have learned that quite a few artists who were forced to leave their homeland have sought refuge in your wonderful country', he wrote.

Many former members of great orchestras in Europe are now in this country, and do not have the opportunity to give of their talents. No country can afford to waste artistic resources in this way. Some of these people have been forced to take up other professions in order to have the minimum necessities of living. This I consider a short-sighted action because it is doing great music and Australian culture a serious disservice.<sup>92</sup>

Ormandy urged Australia to take advantage of the redistribution of musical talents throughout the world that had occurred because of world developments. The ABC concurred. The MUA did not.

Kitson, ever the strategist, immediately addressed the question of how the Kinsella judgment was to be accommodated polemically and administratively, without compromising or modifying the Union's position on foreign musicians. The propaganda aspect was dealt with relatively swiftly. In his published rejoinder, Kitson simply exploited the propaganda value of the fact that Kay was earning £25 per week in his job while 258 of the MUA's 958 members were in uniform, observing that 'the mere mention of money and opportunity in the offing has attracted the interest of foreign musicians like flies to the honey pot'. The administrative situation was more difficult, since the judgment challenged the criteria on which the MUA was excluding its foreign applicants, at least within the NSW District. A legal opinion commissioned from the Union's solicitors identified the problem: that although the federal body had incorporated a number of special rules regarding foreign musicians, the NSW District, with its separate constitution and an older set of rules that were binding under the state system, had never taken steps to register any federal amendments.<sup>93</sup> To some extent this was a generic problem, resulting from the dual registration of unions that necessarily operated concurrently at a state and federal level within the Australian arbitration system.<sup>94</sup> The result in this case was a critical anomaly between the rules of the state district and those of the federal organisation,<sup>95</sup> which the Union dealt with by corraling the NSW District within the organisation. Members admitted in NSW were no longer assumed automatically to be members of the federal body (of which the NSW District was a part).<sup>96</sup>

The Kinsella opinion continued to influence MUA policy towards foreign applicants for at least another decade. For example, an internal exchange between District and Federal Secretaries in 1953 referenced the Kay judgment:

As you are aware, the NSW State Union is compelled by the law to admit applicants who, briefly, are musicians and are not of general bad character. We had not accepted members who were not eligible for Federal membership until the Kay Kaiser case (now John Sydney Kay). We discourage and delay applications as far as we are able.<sup>97</sup>

The Union, including the NSW District, continued to deny applications on the basis of naturalisation – overtly, in the case of the federal body, since its rules were not affected by the judgment – covertly in the case of the NSW District, since its rules had been enforced.

### How much did membership matter?

One question that occurred during the John Kay hearing and that also presents itself generally is this: How much did it matter to the early history of the band that the musicians could not become members of the MUA? Clearly the fact that they were not unionists did not prevent J. C. Bendrodt from hiring them for Prince's, described as one of the most desirable musical jobs in the country at the time.<sup>98</sup> Similarly, Union counsel argued that John Kay had managed to secure a plum job with the Colgate Palmolive Radio show without benefit of membership.

Kay argued convincingly that, as a non-unionist, his musical activities were circumscribed; his ability legitimately to employ or work with unionists would have been an ongoing difficulty.

For example, in 1942 the Union threatened to pull out the orchestra if entrepreneur Frank Tait employed Heinrich Krips, an émigré and non-unionist, as conductor.<sup>99</sup> While it is true that internment, not the MUA, was responsible for breaking up the Weintraubs, files document at least three occasions on which the Union's rejection of the band's applications for membership is clearly linked to key decisions by military intelligence and other government agencies. So, for example, the report on Horst Graff's financial situation in the context of his application to bring his parents and brother to Australia, dated April 1939, includes the comment, 'The Weintraubs orchestra can only get specialised employment as members are not and cannot become members of the Prof. Musicians Union'.<sup>100</sup> The application was refused and Graff's parents perished. The musicians' failure to achieve membership is given as one of the reasons supporting the case for Weintraub's internment: 'this band has been refused admission



A. Stuart Peterson caricatures Union ongoing insistence on preference for Australian musicians in the *Sun*, 28 January 1949. Press cuttings 1938–52, MUA NBAC Z401 Box 13. Reproduced with permission.

to the Musicians' Union on two occasions, after they had made application in writing'. With no reason given for this refusal, the context makes it seem like a judgment of the band's integrity.<sup>101</sup> Finally, in a document dated 21 August 1943 supporting the assignment of Stefan Weintraub to the 'Security Service Black List "A"', we read 'Here [in Australia] they commenced playing at Prince's Cabaret ... and there, despite various efforts by the responsible authorities [the Union?] to have them deported, some of the troupe still remain'.<sup>102</sup> On the balance of credibility, Kitson, as an elected officer of a registered organisation entrusted with the regulation of a trade/profession, carried more weight than did a band of musicians who, individually and collectively, were the objects of suspicion of the security services. While Kitson, as a union official, could be seen to be part of what Robert Gellately calls 'the apparatus of surveillance and control',<sup>103</sup> motivated by concern for and solidarity with the community of people he represents (his membership), the musicians appeared variously as shifty and unreliable and worse.<sup>104</sup>

## Conclusion

In their study of 'Individual Rights and the Law in Australian Industrial Relations', Richard Mitchell and Stuart Rosewarne have pointed out a fundamental inconsistency that prevails in situations of economic conflict, namely, 'that one set of freedoms must be sacrificed to another'.<sup>105</sup> In the situation of the late 1930s we have on the one hand the Union's obligation to seek, secure and protect preferential employment for its members; on the other the ethical question of the migrant musician's right to work – a right acknowledged by spokesmen within the profession at large and within society generally. In the John Kay hearing, Justice Kinsella is reported as having said: 'It would be extraordinary if aliens allowed to enter Australia were condemned to starve because unions would not accept them'.<sup>106</sup> Abraham Landa, Member of Parliament, refugee advocate and John Kay's solicitor, wanted the Union's anti-foreign regulations declared illegal.<sup>107</sup> Kim Rubenstein has written of 'notions of exclusion being more important than inclusion in determining membership of the Australian community'.<sup>108</sup> By withholding membership from foreign musicians, the Musicians' Union sought to isolate them as a pariah group within the profession, disadvantaged by the Union's legislative ability to negotiate preferential employment for Unionists under the awards in many but not all situations, and to enforce prohibitions against members working with non-members.

To what extent is it feasible to sustain even the limited comparison between the Musicians' Union of Australia and the *Reichsmusikkammer* proposed by Dr Dümling? Fundamentally, the validity of the comparison rests on the extent to which the exclusionist policies of each organisation were driven by State-sponsored racist ideologies, and the ultimate objectives of those ideologies. There are certainly ironies involved in the fact that it was their exclusion from work in

Germany in the early years of the Third Reich that set this group of musicians on the journey that brought them to Australia,<sup>109</sup> and that once here they encountered such determined opposition from the MUA. Yet it is the varied experience of the members of the group that enables us to approach some of the complexities involved in the comparison that Dümling suggests.

The MUA formally adopted the White Australia policy into its rules in 1923 and accepted its core categories of admissible (European) and non-admissible (non-European) immigrants. ‘Coloured’ musicians were excluded without exception. Both groups implicated in the evolution of the Union’s pre-World War II exclusionary policy towards foreigners were ‘low status’ European groups – Italians and central-European Jews<sup>110</sup> – but I believe this is coincidental, driven more by historical circumstance than a racist ideology. This is not to say that individual unionists did not hold racist or even antisemitic views. However, the fact that the MUA worked equally strenuously to exclude bands from England, to prevent the entry of musicians under contract from Commonwealth countries, and designated British musicians as a special (albeit privileged) group within the foreigner class, suggests that the primary objective of at least this part of the Union’s ‘ban’ against foreigners was protectionism, irrespective of the organisation’s lip service to the principles of the country’s restrictive immigration policy. Nonetheless, the formal inclusion of a statement of allegiance to the principles of White Australia, and the rules and resolutions that flowed from it in the closing years of the 1920s, signalled a turning point in the Federal Union’s attitude towards foreign musicians, enabling the development of a binary opposition of the kind that provides ‘a building block for ideas of inequality’.<sup>111</sup>

The MUA was not an instrument of government and, as has been argued, attempts to position itself in an instrumental relationship to government were largely unsuccessful. Indeed, by virtue of the Union’s official registration under the Commonwealth and State arbitration systems, the government acted through the industrial tribunals as a regulatory body overseeing the development, articulation and application of Union rules, including membership rules. Kitson was unsuccessful in persuading management or government to take any steps against the Weintraubs, whether dismissal or deportation. Indeed, in the case of John Kay’s appeal, the machinery of government supported him – an enemy alien and a Jew – against the Union. As was clearly shown by the John Kay judgment, the Union’s exclusion of individual foreigners from membership was not supported by its rules. The rules of the NSW District included provisions for the admission of foreign members and many of the provisions introduced by the federal body of the Union to exclude or delay the admission of foreigners – for example, the requirement for naturalisation – were similarly not reflected in the rules as registered, and were thus open to challenge and remedy. The early career of the Weintraubs demonstrates clearly that the Union’s efforts to segregate resident foreign musicians

from the mainstream of musical life were neither wholly successful nor supported by the profession at large. Even in cases where the Union was more effective in frustrating the careers of some refugee musicians (and it was), the moment an individual was naturalised, s/he could demand admission. Naturalisation, unlike Aryan status under the Third Reich, could be and was acquired.

There is no question that the MUA's hard-line pursuit of unnaturalised resident musicians caused enormous hardship and loss of profession for many individuals and was a flagrant ethical breach of the concept of the 'right to work'. Nor was every situation open to remedy. Stefan Weintraub's appeal to the civic authorities (the police) in 1941 against the collusion of interests that was attempting to keep him out of employment as a musician, following his release from internment, was unsuccessful.<sup>112</sup> Frank Kitson's public 'outing' of Stefan Weintraub as a decorated German World War I veteran (*Truth*, 16 November 1941) is a shameful incident, and not one to be justified as an industrial relations strategy since its purpose was clearly to humiliate and discredit Weintraub as an individual. The Union's most extreme positions were enunciated in the press, as MUA mouthpiece Frank Kitson sought to give issues leverage by mobilising 'different coalitions around different issues'<sup>113</sup> and to create mythic slogans out of appropriations of popular vocabulary.<sup>114</sup> In general, in its interactions with officials of the government or the industrial courts, the MUA's positions and rhetoric were tempered by the provisions of the law, though supported by the prevailing ideologies of race and gender that the law embodied.

The RMK was, from its establishment by the Reich Cabinet in September 1933, an instrument for the articulation and execution of the State's cultural ideology, under the direct political control of Goebbels's Ministry of Propaganda.<sup>115</sup> It was also a theatre in which the vested interests and personal rivalries of the Nazi leadership were acted out. Even the notion of 'protection' is challenging in the context of Third Reich cultural policy. It was not a 'benign' objective – the protection of German musicians – which the RMK shared with unions in other countries at this time, since it also worked against many German nationals. The exclusionist policies of the RMK, unlike those of the MUA, were primarily directed inwards and their end objective was *ausmerzen* [to eradicate].<sup>116</sup> The basis for expulsion was the notion of 'reliability and fitness' or 'aptitude'. As Alan Steinweis writes 'From the standpoint of National Socialist ideology, the eradication of the unhealthy went hand in hand with the promotion and "care" of the healthy'.<sup>117</sup> Aryan ancestry was the basis for reliability and 'foreigners', by definition, were those 'for whom cultural activity in the services of German cultural policy could not be expected'.<sup>118</sup> From as early as November 1933, foreign musicians were subject to the same regulations as those that governed the professional life of native-born German musicians, including the requirement to prove 'Aryan' status.<sup>119</sup> Regulations were enforced with the

assistance of the police (who often used physical violence to remove non-member musicians from performance venues), the civil service and the judiciary.<sup>120</sup> As against the democratic, self-governing structure of the Australian trade unions, the ‘authoritarian framework of the chamber system [was] structured ... according to the Nazi *Führerprinzip*’.<sup>121</sup>

It is true that the RMK had social, economic and professional objectives in addition to its better-known purge and censorship activities. However, according to Steinweis, the goals of the Chamber’s exclusion policy, ‘especially with regard to the Jews, remained clearly in view at all times. The exclusion of Jews and other supposed enemy groups from the culture chambers was integral to the Third Reich’s improvised but purposeful program of racial and political persecution’ (p. 175). While there is no doubt that Australia’s restrictive immigration policy had problematic features, as did MUA ideology in the 1930s and 1940s, it is not possible to say that discrimination of any colour is discrimination of every colour. Whereas the Union’s leadership cohort used its appeals to nationalistic slogans like ‘Australia for the Australians’ to rationalise its protectionist agenda, the RMK bureaucracy used its protectionist policies to implement the State’s ultimately murderous program of cultural purging.<sup>122</sup>

Finally, then, there is the question of how much it mattered to the MUA that the Weintraubs were Jewish, an issue of fundamental importance to both German and foreign musicians excluded from the RMK on racial grounds. Dümling wrote (p. 228), ‘Given that aspect, the Musicians’ Union of Australia was no less restrictive than the Reichs Music Chamber in Germany, which protected German musicians only’. Since the RMK explicitly discriminated against Jewish members, this statement at once raises the question: were German Jews not Germans? It is noteworthy in this context that the MUA leadership’s wartime attacks on individual members of the band, as in the case of Stefan Weintraub mentioned above, centred on the musicians’ nationality (or on the ‘formative years’ argument in the case of the non-Germans<sup>123</sup>), rather than on race or ethnicity. The fact that they were Jewish is rarely mentioned. Nor is ‘Jewishness’ a significant element in the Union’s efforts to resist pressures from the Australian Broadcasting Commission to import key instrumentalists from overseas, or to make use of those European musicians who made their way independently to this country as refugees in the 1930s and 1940s. It is this latter struggle with the ABC over so-called ‘nationality quotas’, I believe, that provides the context in which the Union’s attitude towards foreign musicians in the 1930s and 1940s is to be properly understood.

## Acknowledgments

Primary source research for this article is based on the archives of the Musicians' Union of Australia, Noel Butlin Archive Centre, Australian National University, Canberra (NBAC MUA). My thanks go to the Centre's staff for their courtesy and helpfulness, to Monash University for travel assistance, and to Professor Andrew Markus, Professor Alistair Thomson, Dr Suzanne Robinson and the anonymous referees for their critical readings of the text.

## Notes

- 1 Albrecht Dümmling, 'Uncovering Traces: German-speaking Refugee Musicians in Australia', *Australian Jewish Historical Society Journal* Vol. XIX, Part 2 (November 2008), pp. 219–36 and esp. pp. 227–8.
- 2 Keith Windschuttle, *The White Australia Policy* (Sydney: Macleay Press, 2004), pp. 1–3, 12.
- 3 See, for example, Erik Levi, *Music in the Third Reich* (Houndmills and London: Macmillan Press Ltd., 1994), pp. 120–1 (for the ban on jazz) and Michael H. Kater, *Different Drummers: Jazz in the Culture of Nazi Germany* (New York: Oxford University Press, 1992), pp. 27, 36–8 (for a nuanced treatment of the situation of foreign musicians, before and under the RMK).
- 4 The phrase is from Glen Palmer, *Reluctant Refuge: Unaccompanied Refugee and Evacuee Children in Australia, 1933–1945* (East Roseville NSW: Kangaroo Press, 1997).
- 5 Sydney [Sidney] John Kay, as he became known professionally in Australia, arrived in the country with a Peruvian passport in which his birth name appears as John Kurt Kaiser, by which name he is generally identified in government files. He was interned under the name Ned John Kurt Kaiser, a name that also appears on other official documents, such as his application for naturalisation. He seems to have enjoyed playing with his name. His band in 1920s Berlin was known as 'Sid Kay's Fellows' and he also admitted to using the pen-name Raymond Maurice. I will refer to him by his chosen business name, John Kay; footnotes will, however, show his name as it appears in the cited document. Much of the detail in this essay comes from the named Kay/Kaiser files in the National Archives of Australia (NAA) and the Archive of the Musicians' Union of Australia, Noel Butlin Archives Centre, Australian National University (NBAC). I would like to thank the staff of the NBAC for their courtesy and helpfulness during my several research trips to the Centre.
- 6 Andrew Markus, *Australian Race Relations 1788–1993* (St Leonards: Allen & Unwin, 1994), pp. 110–11.
- 7 See Paul Bartrop, *Australia and the Holocaust 1933–1945* (Melbourne: Australian Scholarly Publishing, 1994), pp. 27–32; Michelle Langfield, *More People Imperative: Immigration to Australia, 1901–39*, National Archives of Australia Guide 7 ([Canberra]: Commonwealth of Australia, 1999), Chapter 4, especially pp. 85–6.
- 8 Geoffrey Sawer, *Australian Federal Politics and Law 1901–1929*, (Carlton: Melbourne University Press, 1972), p. 231. Sawer writes that the 1925 Act 'for the first time broke in on the principle of the dictation test as the sole formal ground for excluding migrants when the real ground was race or colour'.

- 9 For the idea of ‘Australia for Australians’ as the popular and practical evolution of ‘White Australia’, see Jim Bradley, ‘And What of Our Home Front?’, *Music Maker*, 29 June 1940, p. 3.
- 10 Andrew Markus, *Fear and Hatred: Purifying Australia and California 1850–1901* (Sydney: Hale & Iremonger, 1979), p. 228. Peter Love suggests a further link between working class antisemitism and the radical nationalism of labour politics. Peter Love, ‘The Kingdom of Shylock: A Case-Study of Australian Labour Anti-Semitism’, *Journal of the Australian Jewish Historical Society*, Vol. 12, No.1 (1993), pp. 54–62.
- 11 NBAC MUA Z391/73 File ‘Rules 1958–61’.
- 12 Secretary’s Report to Federal Conference, August 1916, pp. 2–3. NBAC MUA E156/6/6.
- 13 NBAC MUA T7/1/7, Minutes of the NSW District, 1923–26, p. 58.
- 14 Julia Martinez, ‘Questioning “White Australia”: Unionism and “Coloured” Labour, 1911–37’, *Labour History*, no. 76 (1999), p. 2. Fisher was a ‘firm advocate’ of ‘White Australia’.
- 15 Langfield, *More People Imperative*, p. 211.
- 16 Memorandum, T. Paterson, Minister for the Interior, to Attorney-General R. G. Menzies, 6 April 1937. NAA A432, 1937/383.
- 17 In 1937, the Attorney-General advised the Minister that ‘It [the Act] applies to manual labourers only and the introduction of professional musicians into the Commonwealth falls completely outside the intention of the Legislature when passing the Act’. Memo from the Attorney-General (Robert G. Menzies) to the Minister for the Interior, 1 June 1937. NAA A432, 1937/383.
- 18 Internal report forwarded to the Secretary, Department of the Interior, 2 June 1937. NAA A434, 1944/3/690, ‘Snider and Dean’.
- 19 Snider and Dean to Secretary, Department of the Interior, 29 May 1937. NAA A434, 1944/3/690.
- 20 Internal memorandum, Department of the Interior, 4 April 1938. NAA A434, 1944/3/690.
- 21 Secretary, Department of the Interior to Horst Graff, 7 April 1938. NAA A434, 1944/3/690.
- 22 Stefan Weintraub, Emanuel Frischer and Leo Weiss. Secretary, Department of the Interior to F. Kitson, 22 May 1939. NBAC MUA E156/2/2).
- 23 Internal memorandum, Department of the Interior, 20 March 1939. NAA A444, 1952/16/2762/2768.
- 24 For example, an internal memorandum to the Collector of Customs, Sydney, dated 28 February 1935 (from the Secretary of an unidentified department) stated that ‘it is not the practice to grant authority for the introduction of alien dance band musicians, although due consideration would be given to the question of authorising the temporary admission of a foreign conductor of special standing’. NAA A444, 1952/16/2762/2768.
- 25 Inspector D. R. B. Mitchell, to Director, Commonwealth Investigation Branch, 11 January 1938: ‘I am of the opinion that he is a musician, and as such would continue to earn his living by joining an orchestra, radio work, etc.’. NAA A434, 1944/3/690.
- 26 In addition to the landing money requirements, ‘Migrants had to pass medical examination, be of suitable character, able to find employment without detriment

- to Australian workers and undertake not to work below award rates'. Numerical quotas on the number of Jewish immigrants were set on 9 June 1938; they were reviewed but not changed after the *Kristallnacht* pogrom. Andrew Markus, 'Jewish Migration to Australia 1938–49', *Journal of Australian Studies* No. 13 (November 1983), pp. 18–19, 21, 23.
- 27 NAA A432, 1937/383.
- 28 See internal memorandum, Department of the Interior, 15 March 1935. NAA A444, 1952/16/2762/2768; Minister for the Interior to Attorney General, 6 April 1937. NAA A432, 1937/383.
- 29 Secretary, Prime Minister's Department to MUA General Secretary, 23 May 1928: 'The international aspect of the matter must be considered and it is almost certain that action such as you suggest would indubitably result in repercussions in other countries, particularly America'. NBAC MUA E156/2/6 (ii).
- 30 These statistics are from Beatrix R. Hoffman, 'Workers and Players: The Musicians' Union 1928–1940', MA thesis, University of Warwick, 1989, p. 2. Cyril Ehrlich, *The Music Profession in Britain since the Eighteenth Century: A Social History* (Oxford: Clarendon Press, 1985), p. 210, estimates musicians' unemployment as 'more than double the average and from nine to 20 times worse than that in the professions'.
- 31 Hoffman, 'Workers and Players', p. 31 and n. 66.
- 32 Michael H. Kater, 'The Revenge of the Fathers: The Demise of Modern Music at the End of the Weimar Republic', *German Studies Review* Vol. 15, no. 2 (May 1992), p. 303 and n. 16. Changes from semi-private to civic funding, and general fiscal pressures in the late 1920s also contributed to the German situation (p. 302).
- 33 Cecil Trevelyan to Rt. Hon. W. M. Hughes MP, 1 April 1930. NBAC MUA E156/2/6(ii).
- 34 Bronwen Arthur, '“Ban the Talkies!” – Sound Film and the Musicians' Union of Australia 1927–1932', *Context* No. 13 (Winter 1997), p. 47. Arthur, p. 50, gives details of musician dismissals town by town.
- 35 At the end of the 1920s, as many as 1800 employers could be nominated as respondents to a federal award (for example, *Commonwealth Arbitration Reports* Vol. 28 (1 July 1929–31 March 1930), pp. 141–169).
- 36 See, for example, Hoffman, 'Workers and Players', p. 3; Alan E. Steinweis, *Art, Ideology and Economics in Nazi Germany: The Reich Chambers of Music, Theatre, and the Visual Arts* (Chapel Hill; London: The University of Carolina Press, 1993), p. 15; Kater, *Different Drummers*, p. 27; Bronwen Arthur, 'Industrial Relations', in John Whiteoak and Aline Scott-Maxwell (eds.), *Currency Companion to Music and Dance in Australia*, (Strawberry Hills: Currency Press, 2003), pp. 348–9; Dümpling, 'Uncovering Traces', p. 227.
- 37 See Kay Dreyfus, 'The Foreigner, the Musicians' Union, and the State in 1920s Australia: A Nexus of Conflict', *Music and Politics* Vol. 3, no. 1 (Winter 2009), at <http://www.music.ucsb.edu/projects/musicandpolitics/>.
- 38 General Secretary MUA 'Circular Letter to Foreign Musicians' Unions', 9 January 1928. NBAC MUA E156/2/4(i).
- 39 General Secretary MUA to General Secretary, English MU, 18 August 1927. NBAC MUA E156/2/4(i). There are no statistics available for the number of foreign

- musicians active in Australia in the early 1930s to compare with those given for Germany by Steinweis, *Art, Ideology and Economics in Nazi Germany*, p. 15.
- 40 General Secretary MUA to General Secretary, English MU, 9 November 1925. NBAC MUA E156/2/4(i).
- 41 General Secretary MUA to General Secretary, English MU, 7 March 1924. NBAC MUA E156/2/4(i).
- 42 General Secretary MUA to General Secretary, English MU, 22 October 1928. NBAC MUA E156/2/4(i).
- 43 General Secretary MUA to General Secretary, English MU, 7 March 1924. NBAC MUA E156/2/4(i).
- 44 See, for example, MUA President to Harold Holt, Minister for Labour and National Services, 12 December 1951. NBAC MUA Z401, Box 5.
- 45 Minister for the Interior (T. Paterson) to Attorney General, 6 April 1937. NAA A432, 1937/383.
- 46 The resolution read, 'That no foreign musician be admitted to this Union for at least 12 months when the position may again be reviewed'. NSW District Minute Book 1926–1930, p. 287, NBAC MUA T7/1/8.
- 47 Rule 6, clause ii, sub-clause (a) (b) (c) and (ci) [1935]. For the repeal, see NBAC MUA Z391/73, File 'Rules 1958–61'.
- 48 *The Professional Musician*, September 1929, 12. NBAC MUA E156/11/1.
- 49 For the license, see *Sydney Morning Herald*, 21 July 1928, Press cuttings 1927–29, NBAC MUA Z401 Box 12. Assistant Secretary, Home and Territories Department to MUA General Secretary, 3 September, 1928. NBAC MUA E156/2/6(ii) (each case).
- 50 The Victoria District resolved, 12 January 1928, that 'no foreigners [*sic*] be admitted as a member of this district unless and until such foreigner has become a naturalised British subject'. NSW District Minute Book 1926–1930, p. 143, MUA NBAC T7/1/8.
- 51 Minutes of Federal Conference, November 1940, p. 6. NBAC MUA E156/6/5.
- 52 General Secretary to Federal Council, 2 November 1934. NBAC MUA E156/2/2(xx), '1938–52'.
- 53 On 5 October 1934, Trevelyan wrote to his colleagues on Federal Council, 'Hitler's action in Germany has driven many estimable people out against their will and their position must be extremely difficult. Can we not make some gesture of sympathy?' NBAC MUA E156/2/2 (xx), '1938–52'. An account of the Union's treatment of Sverdloff may be found in Arthur, 'Ban the Talkies!', pp. 55–6.
- 54 Secretary's Report, NSW District, November 1935, NBAC MUA T7/1/10, Minute Book No. 12.
- 55 *Commonwealth Arbitration Reports*, Misc. 61 of 1953, Harry Pole challenge to the rules, 1953. NBAC MUA T7/15/8.
- 56 NBAC MUA 7/1/10.
- 57 Secretary's Report, NSW District, February 1939. NBAC MUA T7/1/10.
- 58 On the Weintraubs as exemplary, see Secretary's Report, NSW District, May 1940, NBAC NUA T7/1/10: 'Representations have again been made to the Minister for the Interior to prohibit foreign musicians coming to Australia, particularly in regard to stage acts. The danger of members of such acts remaining in Australia in

- competition with local musicians outside the sphere of stage acts was emphasised and the example of the “Weintraubs” was quoted’.
- 59 Bartrop, *Australia and the Holocaust*, p. 97.
- 60 Minutes of the NSW committee 5 August 1938. NBAC MUA T7/1/10: ‘Embargo on Foreign Musicians’, *Tempo*, September–October 1938, p. 1.
- 61 Secretary’s Report, NSW District, February 1939, p 2. NBAC MUA T7/1/10. The letter was sent out in November 1938. Minutes of Federal Conference, NBAC MUA E156/6/4.
- 62 *Sydney Morning Herald*, 6 May 1939, cited in Bartrop, *Australia and the Holocaust*, p. 176.
- 63 Lambie to Kitson, 26 July 1939, gave the total financial membership as 3,170. NBAC MUA E156/2/2(ib).
- 64 *Tempo*, December 1939–January 1940, p. 2
- 65 *Australasian Music Maker and Dance Band News*, March 1940, p. 4.
- 66 ‘Who are the Weintraubs?’, *Tempo*, December 1938–January 1939, p. 8.
- 67 *Tempo*, December 1939–January 1940, p. 4.
- 68 Kitson to H. S. Foll, 24 May 1939. NAA A444,1952/16/2768
- 69 Bartrop, *Australia and the Holocaust*, between pp. 144 and 145.
- 70 NBAC MUA Z401/5, ‘Letters to State and Federal Parliamentarians’.
- 71 See NBAC MUA Z401/5 for the Minister’s letter and T7/1/10. NSW District Minutes, 6 October 1939.
- 72 NBAC MUA E156/6/4, Minutes of Federal Conference, 1939, fourth day, pp. 5–6. NBAC MUA T7/1/10, NSW District Minutes, 29 December 1939. At the meeting of 9 February 1940, the District Secretary reported on a conversation with the Department, in which he was informed that the Department could do nothing about the Weintraubs, ‘it being more a matter of government policy than one controlled by regulation’. NSW District Minutes, 9 February 1940. NBAC MUA T7/1/10.
- 73 NSW District Minutes, 5 December 1939. NBAC MUA T7/1/10.T7/1/10. On behalf of the band, Horst Graff undertook that they would ‘never work individually but only in our present combination’. He also suggested ‘If your present rules forbid you to accept alien members, we would be very glad to become associate members until such time as our status allows us to achieve full membership’. Letter to Frank Kitson, 23 November 1939. NAA MP529/2, ‘WEINTRAUB/S’.
- 74 Kitson to Major Scott, 29 November 1939. NAA MP529/2, ‘WEINTRAUB/S’.
- 75 NAA MP529/3, ‘Tribunal 1/Weintraub’.
- 76 Kitson report to Federal Conference, November 1939. NBAC MUA E156/6/4, p. 6; John K. Kaiser to Department of the Interior, 6 September 1939. NAA A434, 1944/3/690.
- 77 Three of the original six musicians – the Frischer brothers and Leo Weiss, a German national – formed a new group at Prince’s, the ‘Polish Sextette’, that continued until the Frischers were drafted into the army in August 1943. Three musicians (two Australians and a Canadian), resigned from the NSW District of the Union in order to play with the non-Union survivors of the Weintraubs group, as was reported to Federal Conference on 17 November 1941. See Minutes p. 8. NBAC MUA E156/6/5. Leo Weiss remained at Prince’s until December 1952.
- 78 For a complete transcript of the hearing, see ‘Kay v. Musicians’ Union of Australia’,

- Industrial Commission of New South Wales Transcripts of Proceedings*, Vol. 198, August 1944, p. 645–63. Details of Kay’s career emerge in presentation of evidence and cross-examination, pp. 646–50.
- 79 Kitson to W. H. S. Lamble, 27 June 1944. NBAC MUA E156/2/3(ii)–(v), ‘John Kay’.
- 80 Ibid. Five of the six states canvassed opposed the application. The Tasmanian District however, responded positively, observing that, ‘they consider his having been in Australia for six and a half years entitles him to become a member. It will also be in the best interests of the Union to accept him’. Secretary, Tasmanian District to Lamble, 5 July 1944. NBAC MUA E156/2/3(ii)–(v), ‘John Kay’. Not for the only time, the moderate voice of Tasmania was overruled.
- 81 Letter tendered to the NSW Commission, read into the transcript at p. 646, and cited in Kinsella’s judgment at p. 342. The complete text of the judgment may be found in *The Industrial Arbitration Reports, New South Wales 1944*, Vol. XLIII, 1944 (Sydney: Government Printer, 1946), pp. 341–48.
- 82 Industrial relations legislation in NSW, as in the Commonwealth, evolved over decades. The *Industrial Arbitration Act 1940* replaced the *1912 Act*.
- 83 The reference to persons of bad character echoes exclusions under the *Immigration Restriction Act* of 1901. For the same reason, official reports on applications for permanent residency include an assessment of ‘character’.
- 84 Kitson to Lamble, 27 June 1944. NBAC MUA E156/2/3(v) ‘John Kay’.
- 85 The Union’s categorisation of Kay as an enemy alien ignores the fact that the Union was advised on 20 September 1939 that Kay was a Peruvian. NAA A434, 1944/3/690.
- 86 For summary, see *Industrial Arbitration Reports*, p. 343.
- 87 *Industrial Arbitration Reports*, p. 346. While there is extended discussion in the transcript of the validity of Kay’s claim to Peruvian nationality, his Jewishness is never mentioned.
- 88 *Industrial Arbitration Reports*, p. 347.
- 89 *Industrial Arbitration Reports*, pp. 347–8.
- 90 The Union solicitor, while supporting Justice Kinsella’s rulings and reasoning, made it clear that he did not and could not order that Kay be admitted as a member of the federal organisation. H. H. Hoare, ‘Opinion on Branch Membership’, 22 September 1944, p. 5. NBAC MUA E156/2/3(v) ‘John Kay’.
- 91 For reports of the hearing and the Kinsella judgment, see *Sun*, 8 and 9 August 1944; *Daily Mirror*, 8 and 9 August 1944; *Daily Telegraph*, 9 and 10 August 1944 (together with report on the Ormandy recommendations); *Sydney Morning Herald*, 10 August 1944; *Tempo*, June [sic] 1944. For Kitson’s rejoinder, see *Truth*, 13 August 1944. The Ormandy report may be found at NAA SP13/1, ‘Report on orchestra – all states’. Clippings reporting the two events are found in Press cuttings 1938–52, MUA NBAC Z401 Box 13 and across various files, including John Kay’s security file A6126, Item 1236.
- 92 Eugene Ormandy to Deputy Prime Minister Francis Forde, 11 July 1944. NAA SP613/1, p. 2.
- 93 Hoare, ‘Opinion re Branch Membership’, p 4. NBAC MUA E156/2/3(v) ‘John Kay’.

- 94 See M. R. Cockburn and D. Yerbury, 'The Federal/State Framework of Australian Industrial Relations', in Kathryn Cole (ed.), *Power, Conflict and Control in Australian Trade Unions*, (Ringwood: Penguin Books, 1982), pp. 52–84 and especially pp. 61–4.
- 95 'Kay v. Musicians' Union of Australia', p. 653.
- 96 General Secretary to Mrs E. Anthony, 24 August 1948, NBAC MUA E156/2/2(xx), 1945–50, or General Secretary to George Kraus, 20 March 1952, NBAC MUA E156/2/3(v). This largely affected an individual's ability to work in another state and was particularly onerous for musicians employed by the ABC.
- 97 'Secretary' (Mr V. Massey) to C. Wheatland, 12 May 1953, Series E156/6/17. Files on foreign applicants show that they were all rejected. E156/2/3(v) (three files, 1945–55).
- 98 Kitson to District Secretaries, 1 December 1938. NBAC MUA E156/2/2(ic).
- 99 Lambie to Kitson, 10 March 1942. NBAC MUA E156/2/2 (ib)
- 100 Inter-departmental report by CIB official Mitchell, 17 April 1939. NAA ST1223/1, N22597, 'Horst Graff'.
- 101 Undated, unsigned report from MPI Section, Police Headquarters, Sydney. NAA MP529/2, Weintraub/S.
- 102 Recommendation dated 21 August 1943. NAA File A367, C38143.
- 103 'Denunciation as a Subject of Historical Research', *Historical Social Research* Vol. 26, No. 2/3 (2001), p. 18.
- 104 Suspicion attached to all members of the band from the moment of the Russian espionage allegation, September 1939. Police officers investigating that charge concluded, 'We are of the opinion that these troupe [*sic*] of artists and their wives are subjects which cannot be looked upon without a grave doubt as to their bona fides'. Report to Inspector Keefe, 29 September 1939, NAA ST1233/1, N19220, 'S. Weintraub'. Comments of this kind occur across the named NAA files. To some extent this assessment was influenced by suspicions attaching to the profession of 'musician' and to the itinerant nature of the band's lifestyle before arriving in Australia. For example, in assessing Manny Fisher's application for naturalisation, the Director General of Security concluded 'that the itinerant nature of his profession ... does not suggest that his motives are inspired by a strong sense of nationalism'. Letter to Deputy Director of Security, 22 December 1942, NAA C123/1, E & M Fisher–1211.
- 105 Richard Mitchell and Stuart Rosewarne, 'Individual Rights and the Law in Australian Industrial Relations' in Cole, *Power, Conflict and Control in Australian Trade Unions*, p. 190.
- 106 Reported in *Daily Telegraph*, 9 August 1944. Press cuttings 1938–52, MUA NBAC Z401 Box 13.
- 107 *Daily Telegraph*, 14 January 1949. Press cuttings 1938–52, MUA NBAC Z401 Box 13.
- 108 Kim Rubenstein, 'An Unequal Membership: The Constitution's Score on Citizenship', in Laksiri Jayasuriya, David Walker and Jan Gothard (eds.), *Legacies of White Australia: Race, Culture and Nation* (Crawley, WA: University of Western Australia Press, 2003), p. 146.

- 109 John Kay's account of the circumstances in which the band left Germany links both 'foreigners' and 'Jews' as constituting the 'racial reasons' why the band could not obtain further employment and was dismissed from existing contracts after the elections at the beginning of March 1933. Undated statement [1945?], NAA A6126, item 1236, doc 64.
- 110 For categories and low status Europeans, see Markus, *Race Relations*, pp. 129–31.
- 111 Markus, *Race Relations*, p. 6.
- 112 See report, prepared by Sergeant F. P. Fyfe and Det. Sgt. John W. Swasbuck for Inspector 2<sup>nd</sup> Class Wilson, 12 November 1941. NAA File ST1233/1 N19220.
- 113 Macintyre and Mitchell, 'Introduction', in Stuart Macintyre and Richard Mitchell (eds.), *Foundations of Arbitration: The Origins and Effects of State Compulsory Arbitration 1890–1914* (Melbourne: Oxford University Press, 1989), p. 12.
- 114 A good example would be the MUA's alliance with the extreme nationalist rhetoric of William Hughes in public debate over Italian migration in 1928.
- 115 Erik Levi (*Music in the Third Reich*, p. 32) writes that from late 1937, when a unified policy for the Chamber was spelled out publicly, 'it was the Ministry which would direct the policy, and the RMK that would effect its implementation'. On the RMK as an instrument of cultural regulation by the State, see Steinweis, *Art, Ideology and Economics in Nazi Germany*, p. 1.
- 116 See Eva Weisswieler, *Ausgemerzt! Das Lexikon der Juden in der Musik und seine mörderischen Folgen* (Köln: Dittrich-Verlag, 1999).
- 117 Steinweis, *Art, Ideology and Economics in Nazi Germany*, p. 103. Levi, too, writes of contemporary propaganda about the RMK tended to echo Goebbels's 'utopian and protective view', in accordance with which, however, 'membership of the RMK was confined to those deemed to be racially and politically "reliable"'. *Music in the Third Reich*, p. 28.
- 118 Steinweis, *Art, Ideology and Economics in Nazi Germany*, pp. 108–9, 158.
- 119 Kater, *Different Drummers*, p. 37.
- 120 Steinweis, *Art, Ideology and Economics in Nazi Germany*, p. 45.
- 121 Steinweis, *Art, Ideology and Economics in Nazi Germany*, p. 49. A diagrammatic representation of the structure of the RMK may be found in Levi, *Music in the Third Reich*, p. 25.
- 122 Steinweis, *Art, Ideology and Economics in Nazi Germany*, p. 107: 'The founding of the *Kulturkammer* was the next major step in the creeping institutionalisation of this cultural purge'.
- 123 The 'formative years' idea was articulated in a memo from the Secretary of the Army to the Secretary of the Department of Defence on 12 March 1942, and referred to the doubtful security status of 'any person who spent his formative years in an enemy country'. Paul R. Bartrop, 'Enemy Aliens or Stateless Persons? The Legal Status of Refugees from Germany in Wartime Australia', *Journal of the Australian Jewish Historical Society*, Vol. X, Part 4 (November 1988), p. 276. This argument was used to reject Emanuel Frischer's application for naturalisation, Deputy Director of Security NSW to Director-General of Security, 22 October 1942. NAA C123/1, E & M Fisher–1211.