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ABORIGINAL LAW NOTES

No.83/1

March, 1983

Being notes on matters of current interest concerning Aborigines and the Australian legal system, as reported to, or discussed at meetings of the Aboriginal Law Research Unit.

Meeting 1/83	SYDNEY	22 February, 1983
<u>Next meeting:</u> 5.30 - 7.00p.m., Tuesday, 29 March, at 14 Jane St, Balmain.		
Meeting 1/83	MELBOURNE	2 March, 1983
<u>Next meeting:</u> 2 p.m., Saturday, 26 March, at 23 Alfred Cr., Fitzroy.		

THE ABORIGINAL LAW RESEARCH UNIT is located in the Faculty of Law, University of New South Wales, P.O. Box 1, Kensington, NSW, 2033, AUSTRALIA. Acting Chairpersons, David Weisbrot and Richard Chisholm. Tel. (02)663-0351 Extensions: 3266, or 3493, or 2585.

Melbourne contacts: Bryan Keon-Cohen (03)60-1876; Greg Lyons (03)712-0284; Ian Gray (03)602-2400.

The Unit also publishes the Aboriginal Law Bulletin four times a year.

Aboriginal Law Notes is distributed to members of the Unit's Advisory Council. Subscription is \$5.00 p.a.

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PUBLICATIONS

The proceedings of the I.C.J. and ALRU - sponsored November 1981 Conference on Human Rights for Aboriginal People in the 1980's will be published by Legal Books (Sydney) in the near future.

Issue No.7 (April 1983) of the Aboriginal Law Bulletin is now being prepared, with a deadline of 20 March in Sydney, 22 March in Melbourne for submissions. For further information, contact Greg Lyons in Melbourne, or David Weisbrot or Richard Chisholm in Sydney (numbers on the cover of this ALN). Accepted thus far for publication are articles by Brad Morse (on the Canadian Land Rights situation), Martin Sides (on the Eric Murphy Case in NSW), and Meredith Wilkie (on the NSW Green Paper on Aboriginal Land Rights), and a number of book reviews, case notes, and brief items and announcements.

As Meredith Wilkie's article was quite critical of the NSW Government's Green Paper, it was resolved to solicit a reply article from the Minister for Aboriginal Affairs, Mr. Frank Walker, Q.C., M.P.

Issue No.8 is planned for June, with a deadline of 20 May (23 May in Melbourne). Other ALB's are planned for October and December.

YIPIRINYA SCHOOL CONTROVERSY

Colin Tatz filed a report from the Northern Territory on the court case concerning the re-application by Yipirinya for registration as a school. The school is run by Tangatjira, as incorporated body which represents the 29 fringe communities in Alice Springs. The school was established in 1978, because of disenchantment with the existing schools, and is meant to combine standard school studies with subjects specifically relating to Aboriginal culture and affairs. It has received some funding from the Australian Institute for Aboriginal Studies.

The application of the school for registration has been opposed by the Director of Education, Southern Division, Alice Springs and, apparently, by the Minister for Education, Mr. Jim Robertson. The legal issue is whether the school, which is under the control of Aboriginal people, can provide "suitable and effective" bilingual education as required by statute.

It looks as if the legal costs for the school will be in excess of \$20,000, and \$10,000 is needed most urgently. The case is set down for 21 March and 22 April, before O'Leary J. The interested and the generous should contact Ken Yuile on Alice Springs (089)525-633.

The Committee resolved to write in support of the school, and to offer to undertake supporting legal research.

CONFERENCE ON ABORIGINES AND INTERNATIONAL LAW

H.C. "Nugget" Coombs has written to ALRU on behalf of the Aboriginal Treaty Committee, suggesting a seminar or conference on the possibility of international legal action to support Aboriginal claims to land and other rights in Australia. The tentative date is the August university holidays.

Expressions of interest in presenting papers have been received from Dr. James Crawford of the Australian Law Reform Commission, Prof. Alice Ehr-soon Tay of Sydney University, Prof. Geoffrey Bolton (lately) of the Institute of Commonwealth Studies at the University of London, and Ms. Barbara Hocking of the Melbourne Bar. Interest in organizing the conference has been somewhat less forthcoming.

Further information may be obtained from the Aboriginal Treaty Committee, P.O. Box 1242, Canberra City, A.C.T. 2601, or telephone (062)47-0648 or 49-4277.

HOW THE POLITICAL PARTIES STACK UP

The Aboriginal Treaty Committee has prepared a poster which compares the positions of the major political parties on issues of direct concern to Aborigines, such as land rights. Further information, as above.

ABORIGINAL FIELD OFFICERS' TRAINING COURSE

In an eleventh hour reprieve, the Federal Minister for Aboriginal Affairs has approved funds for 1983 for the Aboriginal Field Officers Training Course offered at the University of New South Wales, and coordinated again by John Terry. The bad news is that the programme will definitely not be funded for a third year (1984), at least not in New South Wales. The DAA has suggested that the programme be shifted to accommodate field officers in another state, but no specific proposals have been made.

A.L.R.U. AND ABORIGINAL LAW STUDENTS

The Committee resolved to take advantage of the presence of A.L.R.U. on the campus of the University of New South Wales and try to take a more active role in the recruitment of Aboriginal law students and support of those already at the institution.

In particular, a sub-committee, comprised of David Weisbrot, Richard Chisholm, Meredith Wilkie and current Aboriginal students, would look into: recruitment programmes which promote the idea of Aborigines doing law studies; special orientation and remedial programmes for prospective students; academic and personal counseling for Aboriginal students; institution of a common room for all Aboriginal students on campus; scholarships and other funding assistance; assisting field officers who have successfully completed the training course to move into the LL.B. programme; encouraging and assisting Aboriginal students to undertake research related to Aboriginal legal concerns; and offering summer programmes for talented Aboriginal high school students with possible interests in law.

CORRESPONDENCE NOTED

From Eve Fesl, Director of the Aboriginal Research Centre at Monash University, details of the new Monash University Orientation Scheme for Aborigines (M.O.S.A.), which "aims to accelerate access by Aboriginal people to university qualifications, thereby increasing Aboriginal participation in the professions, public service, management and community leadership, and contributing to Aboriginal self-management".

From Pam Ditton, Senior Solicitor at Central Australian Aboriginal Legal Aid Service, a copy of the Transitional Laws establishing Land Rights for the Passamaquoddy Tribe, which "provides probably the most interesting model to come out of the USA".

REPORT ON N.S.W. ABORIGINAL LAND RIGHTS PROJECT BY MEREDITH WILKIE

On 22 December the N.S.W. Minister for Aboriginal Affairs published Draft Aboriginal Land Rights. Legislation in the form of a Green Paper. Copies of this document are available from the Ministry of Aboriginal Affairs ph: (02)241-3901.

Since then I have had a number of requests from Aboriginal organizations and their advisers to research various aspects of the Bill. Four short papers - called Briefs because they are - were prepared and distributed widely in January. They are available by calling me on (02)662-3381.

Brief One: The Mining Provisions
Brief Two: Land and Environment Court
Brief Three: Claimable Crown Lands
Brief Four: Hunting, Fishing and Gathering Provisions

Other activities on the subject have included the preparation of 2 articles: one to appear in April 1983 Aboriginal Law Bulletin, and the other submitted to the Legal Services Bulletin.

I have attended 2 land rights conferences at the invitation of the N.S.W. Land Council. Most such conferences, however, are closed to outsiders. I helped to prepare a draft submission on the Green Paper for the N.S.W. Aboriginal Land Council.

A third discussion paper has been completed. It is entitled Funding for Land Rights in N.S.W. and, among other things, questions the government's estimate of the amount of compensation to be paid to Aborigines over 15 years under the Bill. The paper is available by phoning me.

Michael Hogan's thesis on Hunting, Fishing and Gathering Rights had been in much demand. A copy, along with copies of my 3 discussion papers, has been placed in the Library of the Australian Institute of Aboriginal Studies, and in the DAA Library in Canberra.

My Discussion Papers have also been placed in the N.S.W. State Parliament Library.

I spent the first 2 weeks of January in Broken Hill, Wentworth, Wilcannia and

Ivanhoe. I was able to make a number of valuable contacts but at that stage there was little discussion of the Green Paper. The Green Paper was not widely available until February 7.

During the week 7-11 March I will be in Canberra speaking to Charles Perkins and others about land rights issues in N.S.W.

Finally, I wish to express my appreciation for the assistance and support for the Land Rights Project of Prof. Brad Morse. The value of his input would be difficult to express.

ABORIGINAL PEOPLE AND INTERNATIONAL BODIES

Garth Nettheim writes (from England and Switzerland):

There is growing interest in the problems of indigenous populations among a number of international bodies. I have taken the opportunity to establish direct contact with people at some of these bodies. The following notes may be of interest to Aboriginal organisations and support groups.

The International Labour Organization, based in Geneva, has been concerned with the working conditions of indigenous peoples for many years. It also expressed concern with broader issues in its 1957 Convention No. 107. This is the only international convention that gives any recognition to the notion of land rights. However, it also refers to a goal of integration of indigenous peoples in the dominant society, and this may require revision of the treaty. Australia has not ratified the Convention, so it is not legally bound by it. The I.L.O. maintains a general interest in the position of indigenous peoples, and has a substantial collection of relevant material.

Australia has ratified certain international human rights conventions that do have some relevance to the position of Aboriginal people: the International Covenant on Economic Social and Cultural Rights; the International Covenant on Civil and Political Rights; and the International Convention on the Elimination of All Forms of Racial Discrimination. It is possible to demonstrate breaches of these conventions in regard to Australian Aboriginal people. But there is no direct way for Aboriginal organizations or individuals to bring such breaches to the attention of the international monitoring bodies. Individual members of those monitoring bodies, however, may use information obtained by them in their private capacities as a basis for questioning government representatives presenting their government's reports.

But the U.N. Human Rights Commission and its subordinate bodies are not so limited. In particular, procedures have been developed whereby "communications" to the United Nations alleging substantial violations of human rights may be considered. Such communications are looked at by a Working Group of the Sub-Commission on Prevention of Discrimination and Protection of Minorities, and some are referred to the Sub-Commission. The Sub-Commission can then decide to refer particular situations to the Human Rights Commission. In August 1980, at the time of the Noonkanbah controversy, a three-man delegation from the National Aboriginal Conference addressed the Sub-Commission in Geneva.

There are limitations on this recourse. There are procedural rules to be complied with. The human rights violations complained of must be

substantial. And only NGO's (non-governmental organizations have consultative status) are entitled to address the Sub-Commission or the Human Rights Commission.

But in 1982 the Sub-Commission was authorised to establish a new Working Group on Indigenous Populations. This body, which meets for a week in Geneva each August, can receive written submissions and oral testimony from organizations of indigenous people even though they may not be NGO's. At its first meeting in 1982 the Working Group received a statement on behalf of the National Federation of Land Councils. (Written submissions for the 1983 meeting must be lodged by 10 May 1983).

There are three organizations of indigenous peoples that have formal NGO status: the International Indian Treaty Council (New York); the Indian Law Resource Centre (Washington, D.C.); and the World Council of Indigenous Peoples (Canada). The first two are primarily concerned with North and South America, and only the W.C.I.P. has world-wide scope. The National Aboriginal Conference is affiliated with the W.C.I.P.

There are, however, other NGO's whose interests would lead them to speak on behalf of indigenous peoples. One is the Anti-Slavery Society for the Protection of Human Rights (based in London) which has an important range of activity in regard to indigenous peoples generally. The Society sponsored the National Federation of Land Council's statement to the Working Group on Indigenous Populations. Another is Survival International Limited (also based in London). (The Aboriginal Law Research Unit has established exchange-of-publications arrangements with both). Yet another London-based NGO is the Minority Rights Group. And there are other NGO's whose interest could be attracted.

NGO's have established their own linking Special NGO Committee on Human Rights (Geneva). This Committee has a Sub-Committee on Racism, Racial Discrimination, Apartheid and Decolonisation. The Sub-Committee, in 1977, ran an International NGO Conference on Discrimination against Indigenous Populations in the Americas. In 1981 it ran an International NGO Conference on Indigenous Peoples and the Land. The Sub-Committee is developing a Documentation, Information and Research Centre on Indigenous Populations (DOCIP) in Geneva.

The headquarters of the World Council of Churches is in Geneva. In the late 1960s the WCC established a Programme to Combat Racism (PCR). PCR collects information about racism and provides material to WCC constituent churches. It also has some funds to distribute to victims of racism, and it has assisted several Aboriginal organizations. In 1981 the PCR sent a team to Australia which produced the influential report Justice for Aboriginal Australians. So the WCC, through PCR, retains an interest in the problems of indigenous peoples.

Further information can be provided on request.

CONFERENCES

24 July - 10 August 1983. World Assembly of the World Council of Churches, Vancouver, B.C., Canada. There will be some discussion of racism and the position of indigenous peoples.

1 - 12 August 1983. Second World Conference to Combat Racism and Racial Discrimination, Palais des Nations, Geneva, Switzerland. This Conference is the major event at the conclusion of the United Nations Decade for Action to Combat Racism and Racial Discrimination.

8 - 12 August 1983. Second meeting of the Working Group on Indigenous Populations, Geneva, Switzerland. The Working Group, which reports to the U.N. Sub-Commission on Prevention of Discrimination and Protection of Minorities, was set up in 1982. Any written submissions should be forwarded by 10 May, 1983, to the Director, Centre for Human Rights, United Nations Office, Geneva. (ALRU has further details).

18-25 August 1983. International Commission on Folk Law and Legal Pluralism, meeting in Vancouver, British Columbia, Canada. Considering indigenous law and state law.

18-25 August 1983. International Work Group on Indigenous Affairs, meeting in Vancouver as well. Discussing self-determination, self-government and indigenous peoples.

Minutes of the A.L.R.U. (Vic.) Meeting held on 2 March 1983 at the Victorian Aboriginal Legal Service, 5.30 p.m.

Present: Jim Goff, Brendan Kissane, Bryan Keon-Cohen, Geoff Lester, Greg Lyons, Sean McLaughlin, Bette Moore, Herb Pettit.

Apologies: Ian Gray

1. Bryan Keon-Cohen reported that the Victoria Law Foundation had requested further information concerning A.L.R.U. (Vic.)'s submission for funds to enable a full-time research officer to be retained. The information has been supplied.

2. Len Hartnett is to be asked about progress regarding a submission for funds to enable an Aboriginal research worker to work with the researcher mentioned in 1 above.

3. Garth Nettheim is at present on study leave in the U.K. He will return to the University of N.S.W. in April. In the meantime, Richard Chisholm and David Weisbrot (both of the Law Faculty, University of N.S.W.) are dealing with A.L.R.U. (N.S.W.) matters.

4. Ian Gray is to be asked about responses to his article in A.L.B. No. 6 concerning the breakdown of the Victoria Police's notification system (to V.A.L.S. when an Aboriginal person is arrested). A.L.R.U. (Vic.) should consult with Ian about appropriate steps in liaison with the Police.

5. Jim Goff (Research Officer, V.A.L.S.) reported on Aboriginal reaction to the Aboriginal Land Claims Bill (Vic.) 1983. Discussion centered on the role of the proposed Aboriginal Authority.

There was discussion concerning A.L.R.U. (Vic.)'s role regarding the Bill. There was a general consensus that A.L.R.U. ought to analyse the Bill in a strictly legal fashion. Issues for further discussion include:

Section 7 of the Bill

The role and powers of the authority under the Bill

The Preamble's meaning

The precise nature of the legal interest in land to be granted under the Bill.

Analysis of the Bill is to be continued at the next A.L.R.U. (Vic.) meeting, to be held at 23 Alfred Crescent, Fitzroy, on Saturday 26 March at 2 p.m.