

ABORIGINAL LAW NOTES

No. 83/2

April 1983

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

Meeting 83/2

SYDNEY

29 March 1983

Next meeting:

14 June 1983, 4.30 p.m., at place to be determined (inquiries to Marj Saul, (02) 633.0351 Ext. 3266).

Meeting 83/2

MELBOURNE

26 March 1983

Next meeting:

to be fixed

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. Chairman, Garth Nettheim: Tel. (02) 633-0351 Ext. 3266.

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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.

Registered by Australia Post - Publication No. NBP 5530.

WHITHER ALRU?

There was some discussion of the role of ALRU. It was felt that for several reasons it is appropriate to clarify its role and directions:-

(1) Meredith Wilkie's draft submission (see below) drew reactions from ALRU members so diverse that they seemed to reflect important differences about ALRU,s function.

(2) Attendance (and particularly Aboriginal attendance) at meetings has been low.

(3) Meredith's contract will run out at the end of June this year. What next?

(4) Apart from Meredith's work, ALRU played no part in the debate and political work relating to the NSW Green Paper. Nor has it been approached by Aboriginal organisations, in relation to the major issue in Aboriginal affairs. If ALRU is to be useful to Aboriginal people, there seems to be a need to reconsider what it can offer Aboriginal people, and communicate this effectively.

It was agreed to have a special meeting to discuss further developments for ALRU at the next meeting.

YOUR VIEWS WOULD BE APPECIATED: PLEASE SEND THEM TO PROFESSOR NETTHEIM.

CORRESPONDENCE

Received from Ken Coghill M.P., Parliamentary Secretary of the Cabinet assisting the Premier in Aboriginal Affairs, a copy of the ALP Victorian Branch's policy on Aboriginal Affairs, the Aboriginal Land Claims Bill 1983 (with "notes for second reading"), the Terms of Reference for the

Parliamentary Social Development Committee, and Guidelines for the Victorian Aboriginal Interim Committee.

A letter was written to The Hon. P. Sheahan, Minister for Energy and Finance in support of the N.S.W. Law Foundation, which is threatened by the Financial Institutions Duty on funds in solicitor's trust accounts. The Law Foundation has funded Meredith Wilkie's position.

Letter received from Pam Ditton on Yipirinya School case (noted in ALN 83/1) seeking some research assistance. As to C.A.A.L.A.S. funding, Pam writes

"Thank you for your offer of support in this case. You haven't heard from me for some time as the run-down of funding for this Aboriginal Legal Service under the Wilson era combined with the rapid increase in number of arrests, has left us in a totally exhausted state only running a skeleton Service. You were no doubt aware of the fact that we have been forced to cease attending all Bush Courts and informing the Supreme Court that we were unable to arrange representation in the last Supreme Court Sittings. That involved one of our clients on a Murder charge and three on Culpable Driving charges. It has just been reported to us that one of the Magistrates while doing a Bush Circuit recently at Yuendumu without a Legal Aid Lawyer being present, was asking children if they agreed that they had "done it" and then accepted pleas of guilty. What can one do, one begins to feel very helpless when one goes into our back yard and looks at the fleet of broken down Toyotas that we cannot afford to repair and then reflects on the consequences. However, hopefully another era is starting."

Pam also comments on ALRU's future role:

"I will be interested in what thoughts the Aboriginal Law Research Unit is having about its future now that there may be more options available. The Aboriginal Law Bulletin is, I believe, fulfilling a most important role. However, can I make a tentative suggestion that the Aboriginal Law Research Unit might become directly accountable to a much strengthened N.A.C. and that might also provide the possibility of obtaining one or more paid workers."

ABORIGINAL FIELD OFFICERS' TRAINING COURSE

John Terry's exercise in Alice Springs apparently went well: it is to be written up and published in the Legal Services Bulletin, probably with a brief

note in ALB. The present course is under way at the University of New South Wales.

Consideration will have to be given to future developments in this area. Possibilities include similar courses elsewhere in Australia, modified courses for people working in other Aboriginal organisations, or "bridging" courses for Aboriginal people wishing to study law (and perhaps other disciplines) at tertiary level.

YIPIRINYA SCHOOL AND OTHER EDUCATIONAL MATTERS

See Pam Ditton's letter in "CORRESPONDENCE".

Mrs. McNamara advised that she believed that the Minister of Aboriginal Affairs, Mr Holding, would move to assist Yipirinya School.

Mrs. McNamara also advised that the Aboriginal Training & Cultural Institute is conducting a national workshop in Adelaide for "Independent" Aboriginal Schools, 6-11th April. The workshop will include Yipirinya School representatives.

Mrs. McNamara also advised that she would be conducting a management program for pre-school/child-care agencies. In this program the skills used in the Aboriginal Field Officers Training Course may be of some use. Mrs. McNamara will speak to the staff of the AFOTC regarding some mutual programs which may be conducted.

ABORIGINAL LAW BULLETIN

Issue No 7 is in press. Includes papers by Brad Morse, and Meredith Wilkie, and an Editorial on Aboriginal policy of Federal Government.

REPORT TO ALRU MEETING 29 March 1983

FROM: Meredith Wilkie

1. Land Rights Bill:

The NSW government's Land Rights Bill, as amended in Cabinet last week, was tabled in Parliament on Thursday, 24 March. [Ed.note. The bill was debated and passed that night, whilst a large demonstration against the bill was held outside Parliament House by Aboriginal organisations. See below.]

In tandem with the Land Rights Bill is the Bill of the Minister for Lands, Mr Gordon, retroactively validating the illegal revocation of Aboriginal reserves by the Aborigines Protection and Welfare Boards. [Ed.note. This bill was also enacted.]

The effect of the Bills is illustrated by the following table:

<u>1983 Bills</u>	<u>PRESENT POSITION</u>
1. Funding commitment by State Government of 7.5% of land tax revenues for 15 years.	1. State government funded the Aboriginal Lands Trust and Advisory Council with Federal Government.
2. Title to Aboriginal land to vest in Local Aboriginal Land Councils.	2. Lands Trust owns 4.6 thousand hectares of former reserves. Had power to vest freehold or leasehold in reserve communities. Has signed about 16 99-year leases.
3. Three tiered structure of Aboriginal Land Council determined by Minister and Registrar (head of Ministry). All funded from 7.5% of land tax allocation.	3. Aboriginal Lands Trust owned land; DAA funded local Aboriginal Housing Associations to build houses on Trust-owned land.
4. Claims to Crown land granted at discretion of Minister for Lands.	4. Claims to Crown land granted at discretion of Minister for Lands.
5. Ownership of all minerals but gold, silver, coal and petroleum. No right to share royalties on non-owned minerals.	5. Ownership of all minerals but gold, silver, coal and petroleum. No right to share royalties on non-owned minerals.

6. No provision for return of sacred and significant sites.

7. Restricted right to apply to Land and Environment Court for permit to enter private land to hunt and fish for traditional foods. No recognition of traditional hunting, fishing and gathering rights.

8. Retrieval of former reserves now only possible by purchase on the open market. A potential use of Minister's compulsory acquisition power in exceptional circumstances. No compensation to be paid.

6. No provision for return of sacred and significant sites.

7. No recognition of traditional hunting, fishing and gathering rights.

8. Aboriginal Legal Service legal action in Supreme Court to challenge legality of revocations of reserves. Possible to lobby government for return and/or compensation.

2. Other News:

On Thursday and Friday 24-25 March I attended a Seminar conducted by the NSW Law Foundation entitled Social Science Research Techniques in the Law. Two points of particular interest to ALRU were: (a) the Public Interest Advocacy Centre has taken up the cause of Aborigines at Baryulgil who suffer very poor health and living conditions in the vicinity of an asbestos mine. Most workers have been Aborigines, and the death rate is very high among 40-50 year old men. Autopsies invariably show internal organs to be riddled with asbestos, yet the NSW Health Commission denies that asbestosis can be said to be the cause of death.

(b) Matt Foley, formerly a social worker with one of the Queensland Aboriginal Legal Services, spoke on the issue of participation and control in research work. He noted that the World Health Organisation and UNICEF when funding research "seek to encourage ... an involvement of the researcher with the community in an identification of the problem, decision making as to how the problem is to be addressed, gathering information about the problem, interpreting that information, sharing the information as widely as possible within the community, and planning action at community level to respond to the

problem". He noted further that "At a grass-roots level the researched are beginning to demand participation in the research process. Aboriginal people have pointed out forcefully that they are the most researched and studied group in Australian society, yet they remain the most profoundly disadvantaged... The First National Black Researchers Workshop held at the University of Queensland in July 1980 passed a number of resolutions demanding Aboriginal participation in any research project involving Aboriginal people and set up a national Aboriginal Islander Research Network".

Matt described the project in Queensland which he had been involved in and which resulted in the book Beyond the Acts. A team of researchers surveyed black Queenslanders' opinions on laws affecting them. He stated, "The survey was conducted on the principle of black control with a black management committee having decision-making power over all aspects of the survey".

N.S.W. LAND RIGHTS - RESOLUTIONS BY ABORIGINAL PROTESTORS

There was a major protest outside Parliament House when the "land rights" legislation was passed, viz., the Aboriginal Land Rights Act, 1983, and the Crown Lands (Validation of Revocations) Act, 1983. The following resolutions were passed:-

That failing the intervention of the Federal Government, a tent Embassy be erected in front of the New South Wales Premier's office, on the lawns of Federal Parliament, and in front of the United Nations Building in New York.

This Conference of Aboriginal people rejects the Green Paper (Draft Aboriginal Land Rights Bill) 1983, in its entirety and demands that the New South Wales Government refrain from introducing the Green Paper into Parliament and that an Aboriginal proposal for just and equitable land rights be submitted in its place.

This conference moves a vote of no confidence in Ms Pat O'Shane, the permanent head of the New South Wales Aboriginal Affairs Ministry and hereby calls for her immediate dismissal.

This conference immediately calls upon the Prime Minister and the Federal Minister for Aboriginal Affairs to intervene in N.S.W. to stop the introduction of the proposed Green Paper (Land Rights Bill 1983) on Aboriginal Land Rights into Parliament. The Federal Labor Party Policy of conciliation is being ignored by the N.S.W. Government, whose Premier is the Federal President of the National A.L.P.. By bulldozing this Land Rights Legislation through the N.S.W. Parliament, despite rejection by the Aboriginal population, the N.S.W. Government is acting in contravention of the National Labor Party Policy on Aboriginal Land Rights.

This proposed Land Rights Legislation is not seen as a just and equitable settlement.

SEMINARS AT U.N.S.W. LAW SCHOOL

Two very successful seminars have recently been held at the Law School. The first was by Professor Brad Morse of the Law Faculty, University of Ottawa. His subject was "Common Roots but Different Evolutions: The Development of Aboriginal Rights at Common Law in Australia, Canada and the U.S.A.". The second was delivered by Dr. James Crawford, the Commissioner in charge of the reference on Aboriginal Customary Law at the Australian Law Reform Commission: Dr. Crawford presented a valuable analysis of the structural problems facing law reform bodies in this area.

BRAD MORSE

Brad Morse attended the ALRU meeting on what was the last night of his Australian visit. During the few months that he has been here, he has made a considerable and beneficial impact, and has been a stimulating visitor and a mine of information. He has become a good friend. We are sorry to lose him, but look forward to keeping in touch.

ARRERENTE PEOPLE CAMP AT WELATYE-THERRE TO PROTECT SACRED SITE (Press Release)

Fifty traditional owners and custodians of the Mbantua area (Alice Springs) have occupied an old camp site on ground next to the registered sacred site 'Welatye-Therre'.

This important sacred site is just to the north of the old telegraph station. The site is registered under the Northern Territory Law, but the Everingham government is threatening to build a dam on the site this winter.

Howard Stevens, a man in his sixties who is leader of the occupying group, said: "I'm going to stay camping here. We won't let them build a dam here."

The group of campers is calling on people everywhere for support.

"We particularly want support from Aboriginal people from the whole Northern Territory and Central Australia, and the rest of Australia too," said Thomas Stevens, another of the group's leaders.

"We want the national Aboriginal conference to organise a meeting of all Aboriginal organisations in the Northern Territory to stop this dam. We want Everingham to know he can't kill another one of our important sacred sites, and we want support from the department of Aboriginal Affairs and the new minister, Clyde Holding."

The group occupying the site also called for immediate assistance from Aboriginal organisations and european supporters.

Basil Stevens, another of the group's leaders, said: "We need warm clothes for the kids and old people, and blankets and ground sheets. We also need a two-way radio, a food safe and a medical kit."

Donations can be marked 'Welatye-Therre Defence Committee and left with John Liddle at the Central Australian Aboriginal Congress in Hartley Street, Alice Spring, or c/- The Welatye-Therre Defence Committee, P.O. Box 2363, Alice Springs.

For further information: Michael Rice (089) 52.3377
Rosie Ferber " 52.5633
Veronica Golder " 52.2688

NB. Welatye-Therre pronounced 'Wol-art-ja-turra'