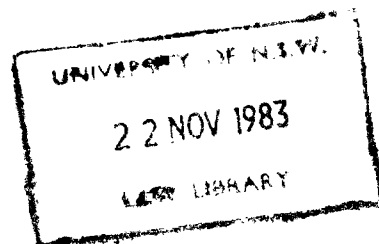


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ABORIGINAL LAW NOTES

No. 83/7

November, 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.

SYDNEY

Next Meeting: 5.30-7.00 p.m., Tuesday, 7 December, 1983, at the conference room, Australian Law Reform Commission, level 7, 99 Elizabeth Street, Sydney.

Topics for discussion:

1. Aboriginal customary law - the future of the project (and the holdings) after the ALRC produces its report.
2. Forward planning for the Unit and for the Aboriginal Law Bulletin.
3. Any other business. Discussion may continue informally over a restaurant meal after 7 pm.

Any member of the Advisory Council who happens to be in Sydney is welcome to attend meetings of the Unit.

The ABORIGINAL LAW RESEARCH UNIT is located in the Faculty of Law, University of New South Wales, P.O. Box 1, Kensington, N.S.W. 2033, Australia. Chairman, Garth Nettheim: Tel. (02) 663-0351, Extension 3266.

The Unit also publishes the Aboriginal Law Bulletin 4 times a year.

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

PLEASE NOTE:

* Subscriptions for 1983-84 are now due.

(Organizations with whom ALRU has an "exchange of publications" arrangement are exempt).

Please advise if you need more than one copy of Aboriginal Law Notes.

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LAST MEETING - 18 October 1983, at ALRC, Sydney

Matters discussed included subscriptions to Aboriginal Law Notes; the Baryulgil inquiry; the November conference on Aborigines and International Law; possible publishers for Aboriginal Land Rights Law in NSW; news that the proposed Queensland field officers' training course would not take place in 1984; and the future of the Aboriginal Law Bulletin. Andrew Crocker, on a visit from London, spoke about the work of Survival International on Aboriginal issues.

COMMISSION ON FOLK LAW AND LEGAL PLURALISM

James Crawford, at the October meeting of ALRU, gave an account of the Australian session at the 1983 Symposium of the Commission held in Vancouver. He also spoke of proposals that a future meeting of the Commission be held in Australia in 1985 or 1986. He and Diane Bell (who was also present) are co-ordinating with the National Aboriginal Conference to revise the policy of the Commission.

It was agreed that ALRU should agree in principle (within the limits of its resources) to participate in such a meeting and should write to the NAC to this effect.

ABORIGINAL CUSTOMARY LAW

At the October ALRU meeting, James Crawford also discussed his observations of the new constitutional context in which indigenous people's issues are being considered in Canada. In particular such issues as customary law recognition (and child welfare, health, etc.) are subsumed under debate about self-government. He suggested that this may not be an option available to the ALRC in its customary law reference, so that there would be limits to what the ALRC could propose on the topic of community justice mechanisms.

There followed a lively discussion on these matters involving, in particular, Daryl Gunter and Di Bell.

ABORIGINAL LAW BULLETIN

Issue No. 9 appeared in early November. Issue no. 10 will be published in December.

The ALB is now being funded from subscriptions to the Legal Service Bulletin with which it is published. However there may be problems about this arrangement in the future. Each issue costs about \$1500 to produce. The editors are unwilling to seek DAA financial support (even though there are indications that DAA may be willing to help) because this may be seen as diverting funds from Aboriginal bodies such as ALS organizations. The Unit has written to ALS organizations to seek their views.

It may be possible to get funding to employ an assistant to help produce the ALB.

FIELD OFFICER TRAINING

The NSW course will cease after 1983. The federal government had agreed to fund a course in Queensland in 1984, but it has now been learned that that course will not proceed in 1984 because only two field officers had been nominated. There may, therefore, be a chance for ALS organizations in other States to seek funding for field officer training (if they move swiftly).

HUMAN RIGHTS FOR ABORIGINAL PEOPLE IN THE 1980s

The book has now been published. It comprises the proceedings of a two-day conference of which ALRU was a co-organizer. Details were set out in Aboriginal Law Notes, 83/6 (September 1983). Copies at \$8.50 may be obtained from the publisher, Legal Books Pty. Ltd., 39 Martin Place, Sydney, or from Black Books, 13 Mansfield Street, Glebe, 2037, or from bookshops. ALRU will get a share of any royalties.

ABORIGINAL CHILDREN

A Seminar paper by Richard Chisholm entitled "Aboriginal Children: Political Pawns or Paramount Consideration?" has been published in Jo Jarrah (ed.) Child Welfare: Current Issues and Future Directions (July 1983) obtainable for \$4 from the Social Welfare Research Centre at the University of New South Wales, P.O. Box 1, Kensington, 2033.

CORRESPONDENCE:

- from Kevin Cook, Co-operative for Aborigines Ltd., expressing appreciation for the assistance of John Terry in assisting the preparation of a Tranby submission to the federal Attorney-General's Task Force review of the Racial Discrimination Act.
- to Attorney-General's Task Force on Human Rights enclosing joint article (for ALB) by Neil Rees and Garth Nettheim, and a submission by Garth Nettheim.
- from Gary Hiskey, Adelaide, about supplying information concerning Roxby Downs to Survival International.
- with T.E. Cain, School of Law, QIT, and with Greg McIntyre, Cairns, about cancellation of proposed field officer training course.
- with Brad Morse, Ottawa, Canada, on various matters.
- from Australia Post confirming registration of ALN for following year.
- with Associate Professor Sidney L. Harring, CUNY Law School, New York about work of ALRU and ALB.
- from David Hewitt, ALS (WA), Carnarvon, with criminal justice statistics for the area.
- to Greg Snowden-Jones, Ngaanyatjarra Council, with material to assist in preparation of a submission to the WA Aboriginal Land Inquiry.

REPORTS, PAPERS, etc. RECEIVED

- Collected Papers for Australian session at Symposium on Folk Law and Legal Pluralism, Canada, August, 1983.
- Survival International News, No. 1 1983
- Survival International Information Pack "Brazil: Polonoroeste - Development threatens Indians".
- Land Rights News, Central Australia, No. 18, Spring, 1983.

CONFERENCES:

Aborigines and International Law, 21-22 November 1983 at Burgmann College, ANU, Canberra. Enquiries (062) 49-2892.

ALRU BRIEFING PAPER

NOVEMBER 1983

PROTECTING INDIGENOUS CULTURE

The United Nations Educational Scientific and Cultural Organization (UNESCO) has established procedures which enable it to examine matters involving the exercise of human rights "in the spheres of its competence" (i. e. education, science, culture and information). These procedures may be of potential interest to organizations who may want to raise, before an international forum, some threat to Aboriginal culture such as a proposed desecration of a sacred site.

The UNESCO procedures authorise its Committee on Conventions and Recommendations to consider communications addressed to UNESCO "concerning cases and questions of violations of human rights within UNESCO's fields of competence".

Such a communication is admissible if it originates from a person or group "who, it can be reasonably presumed, are victims of an alleged violation" of human rights in the field of education, science, culture and information. "It may also originate from any person, group of persons or non-governmental organization having reliable knowledge of those violations".

There are several other conditions of admissibility of such a communication eg., it must not be anonymous, offensive or an abuse of the right to submit communications; it must not be based exclusively on information disseminated through the mass media; it must be compatible with relevant international instruments in the field of human rights; it must not be manifestly ill-founded and must appear to contain relevant evidence; it must be submitted within a reasonable time; it should indicate whether an attempt has been made to exhaust available domestic remedies, and with what result.

When he receives such a communication the UNESCO Director-General shall, with the author's agreement, transmit it to the government concerned for its response and to the Committee. The Committee will consider the communication and other material in private session, may request additional information and may put questions to the representative of the government concerned. The Committee shall decide whether the communication is admissible. If it is admissible, the Committee shall dismiss it if, upon examination of the merits, it does not appear to warrant further action; communications which do warrant further consideration "shall be acted upon by the Committee with a view to helping to bring about a friendly solution....".

The Committee shall submit confidential reports about its work under these procedures to the Executive Board of UNESCO at each session. "The reports shall also contain recommendations which the Committee may wish to make either generally or regarding the disposition of a communication under consideration".

Certain questions may be considered by the Executive Board and the General Conference of UNESCO in public session, namely "questions of massive, systematic or flagrant violations of human rights and fundamental freedoms - including, for example, those perpetrated as a result of policies of aggression, interference in the internal affairs of States, occupation of foreign territory and implementation of a policy of colonialism, genocide, apartheid, racialism, or national and social oppression - falling within UNESCO's fields of competence".

These procedures cannot produce a judicial decision or any sort of coercive action. But they can allow a genuine complaint, properly presented, to be ventilated before an influential international agency with whatever persuasive effect that may have on the government concerned.

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