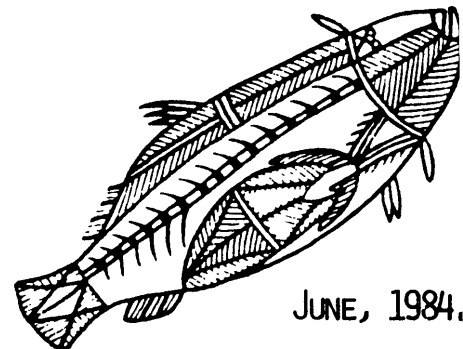


ABORIGINAL LAW NOTES

No. 84/4

JUNE, 1984.

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.

SYDNEYNext meeting:

5.30 - 7.00 p.m., Wednesday, ~~20~~<sup>27</sup> June, 1984.  
Conference Room, Australian Law Reform  
Commission, Level 7, 99 Elizabeth Street, Sydney.

Guest speaker:

Ted Chamberlin, from Toronto, Canada, will speak of recent North American developments concerning indigenous people's land rights, including the overview hearings of the Alaska Native Review Commission.

Any member of the Advisory Council "network" is welcome to attend meetings.

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 - Telephone (02) 663-0351, Extension 3266.

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.  
Subscriptions \$5.00 per annum.

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### Research Program

Meredith Wilkie's study on Aboriginal Land Rights Law in N.S.W. is with the publisher.

Research is proceeding on a study of Aboriginal Land Rights Law in the Northern Territory.

Applications have been submitted for funding other studies, i.e. Aboriginal Land Rights Law in South Australia; Aboriginal Land Rights Law in other jurisdictions; and negotiation of resources development agreements.

Garth Nettheim has written an opinion for FAIRA (Brisbane) on the 1984 Community Services Acts in relation to the 1971 Acts.

### Aboriginal Law Bulletin

Issue No. 10 was published in May. Issue No. 11 will appear in June. Issue No. 12 is scheduled for October - deadline for material is mid-September.

We need a volunteer to work as co-editor with Neil Rees. He or she need not necessarily be in Sydney, as a Melbourne-Sydney link functioned well in 1982. The co-editor should be willing to put in some work. Contact Neil Rees (02) 398-6366 or (02) 398-6455.

### Aboriginal Legal Services

Mr. J. P. Harkins, who is inquiring into Aboriginal legal services, visited the Unit on 7 May. The main focus of discussion, with John Terry, was training for A.L.S. field officers.

### Research Assistance Needed

ALRU needs the services of a legally qualified research assistant for some weeks to work on aspects of the study of Aboriginal Land Rights Law in the Northern Territory. Some prior knowledge and experience in regard to N.T. land rights would be important. Salary range from about \$325 per week, depending on qualifications and experience. Contact Garth Nettheim (02) 663-0351 ext. 3266.

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### CORRESPONDENCE AND OTHER COMMUNICATIONS

- with Graeme Neate about research project on N.T. Land Rights Law.
- with Phillip Toyne, Gary Hiskey and Aboriginal Legal Rights Movement about proposed study on South Australian Land Rights Law.
- with several publishers about land rights project.
- with UNESCO and Australia's delegation about developments on ethnocide and ethnodevelopment.
- with David Weissbrodt, University of Minnesota, USA, about proposals for funds to support indigenous participation in the Working Group on Indigenous Populations.
- with FAIRA, Frank Brennan and Greg McIntyre about new Queensland services legislation.
- with Hermann Giurina, Melbourne, enclosing copies of several papers.
- with Peter Hanks, Monash University, about possible Law curriculum changes that might be prompted by admission of Aboriginal students.
- with David Buchan, Genstar Development Company, Vancouver, Canada, about indigenous suits alleging breach of trust.

- with Sir William Kearney, Aboriginal Land Commissioner, Darwin, about assistance in appointment of a new Associate.
- from Russel Barsh, Seattle, USA, about litigation protecting initiation ceremonies from criminal prosecution and about possible visit to Australia.
- from Ron Witton, Centre for Multicultural Studies, University of Wollongong, about Aborigines and Tertiary Education.
- from Aboriginal Support Group, London, material about Invasions. Tribal Peoples and the struggle for their land, an exhibition of photography and films.
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REPORTS, PUBLICATIONS

- Native Rights, Student Seminar Papers, 1977 and 1978, University of Ottawa Law Faculty.
- Australian Law Reform Commission, Aboriginal Customary Law - The Criminal Law, Evidence and Procedure, Discussion Paper No. 20, March, 1984; Aboriginal Customary Law: The Recognition of Traditional Hunting, Fishing and Gathering Rights, Research Paper No. 15, May, 1984.
- International Work Group for Indigenous Affairs (Denmark), IWGIA Newsletter Nos. 35 and 36 (October and December, 1983); also Klaudine Ohland and Robin Schneider (eds.) National Revolution and Indigenous Identity. The Conflict between Sandinists and Miskito Indians on Nicaragua's Atlantic Coast (IWGIA Document 47).
- UNESCO, Meeting of Experts on the Study of Ethno-Development and Ethnocide in Africa, Final Report (1983); Meeting of Experts on the Study of Ethno-Development and Ethnocide in Europe, various studies (1983).
- Greg McIntyre, Cairns, several papers on new Queensland land rights and services legislation.
- Frank Brennan, Brisbane, "An Analysis of the Community Services Bills", Consultation Document No. 8 (12 April, 1984); "The New Laws. Deed of Grant in Trust and Services", Consultation Document No. 9 (8 May, 1984); Right Reasons for Aboriginal Land Rights, paper delivered at conference "Towards Justice and Peace", Brisbane 2 May, 1984.
- Barbara Glowczewski, Paris, sections on Aborigines in special issue of magazine Autrement entitled "Aventure Australie" (in French).
- Australian Law Reform Commission, Aboriginal Customary Law Reference, Notes of Regional Consultants Meeting, 29 February, 1984.
- Survival International, S.I.News No. 4, 1984; also Urgent Action Bulletins "Brazil: Xingu Indians Take Hostages as Land Conflicts Escalate", "Brazil: Government Resists Yanomami Land Claim", "Papua.Tribal Refugees Face Repatriation and Death".
- Aboriginal Land Rights Support Group Newsletter, No. 23, May, 1984.

## SEVEN YEARS ON

In September, 1983, Mr. Justice Toohey of the Federal Court of Australia (and formerly Aboriginal Land Commissioner) was asked by the Minister for Aboriginal Affairs to review the Aboriginal Land Rights (Northern Territory) Act, 1976 (Cth.). In December, 1983, Mr. Justice Toohey's report entitled Seven Years On was presented to the Minister. It examines many aspects of the Act and makes many recommendations. For the benefit of those who may not have access to the full report, it is worth quoting three paragraphs from the final chapter.

**877.** Consideration of reports is often assisted by drawing together all recommendations made. To do so in the present case would merely inflate the report and be of little assistance, given the diversity and multiplicity of recommendations, most of which need to be studied in the context of the chapter in which they appear. An attempt to summarise the recommendations is likely to be misleading. But it may help if I simply draw attention to the principal recommendations of the report and indicate what their implementation is likely to achieve. I shall do so largely, though not entirely, in the sequence of the chapters of the report, not intending thereby to suggest any order of priority.

**878.** I have recommended that there be:

- (a) legislation providing for community living areas on pastoral leases;
- (b) greater security of title for Aboriginals living in town camps;
- (c) adequate machinery in the Land Rights Act, by way of undertakings, agreements, conditional grants and statutory powers to make Aboriginal land available for public purposes where necessary, without affecting title to that land;
- (d) prohibition of alienation of unalienated Crown land while it is the subject of a land claim;
- (e) maintenance of the concept of traditional Aboriginal owners of land as currently defined in the Act;
- (f) more emphasis on areas of agreement by those participating in land claims as a means of simplifying and expediting the disposition of applications;
- (g) decentralisation of Land Councils at the level of decisionmaking in regard to Aboriginal land, achieving greater representation of women on Land Councils and extending the functions of Land Councils to include assisting with applications for community living areas and other matters referred to in the report;
- (h) removal of the obligation to maintain registers of traditional Aboriginal owners of land;
- (i) further consideration of the notion of 'group consent' in relation to dealings with Aboriginal land;
- (j) clarification of the position of existing mining interests in relation to Aboriginal land and mining interests on land under claim;
- (k) provision of a more practicable scheme for agreements for the exploration and mining of Aboriginal land, including separate agreements for exploration and mining;
- (l) more detailed provision for arbitration in default of agreement as to the terms and conditions upon which exploration and mining may be carried out on Aboriginal land;
- (m) clarification of the position with regard to access to Aboriginal land for mining, including ancillary mining interests;
- (n) removal from the consent to mining provisions of the Land Rights Act of any reference to extractive minerals;
- (o) consideration of the formulae for distribution of moneys to and by Land Councils;
- (p) maintenance of the basis upon which mineral royalty equivalents are paid to Land Councils and some modification of the basis upon which financial agreements for mining on Aboriginal land are concluded;
- (q) consideration of the operation of the Aboriginals Benefit Trust Account;
- (r) amendment to the legislation concerning income tax liability on certain mining payments;
- (s) some changes to the role of the Minister for Aboriginal Affairs under the Land Rights Act; and
- (t) some changes to legislation for the protection of sacred sites and sacred objects

**880.** The number of amendments recommended to the Land Rights Act may be thought to suggest substantial defects in the legislation. It would be a mistake to draw that conclusion. Given the legislative novelty of the subject matter of the Act and the need to marry complex notions of traditional Aboriginal law and culture with European institutions and administrative procedures, the Act has worked surprisingly well. But it is inevitable that after 7 years cracks in the edifice have started to show. This report seeks to show how these cracks might be mended while leaving the overall structure intact.