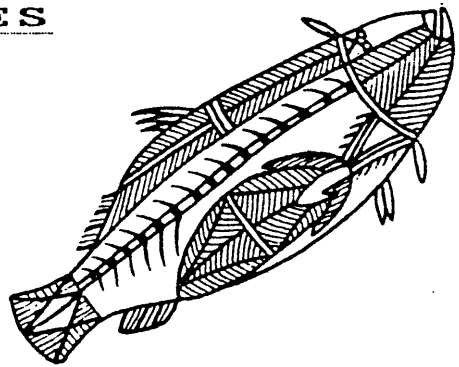


ABORIGINAL LAW NOTES86/1FEBRUARY, 1986.ISSN 0811-9597A.L.R.U. BECOMES A.L.C.

In February, 1986, the University of New South Wales established the Aboriginal Law Centre to take over the work of the Aboriginal Law Research Unit. The new title is shorter and less cumbersome than the earlier name; indeed those who established the Unit initially proposed that it be called the Aboriginal Law Centre. It also reflects the wider range of the organisation's activities. And a Centre has greater recognition within the University than a Unit. A formal advisory committee is to be established shortly. The "charter" of the Aboriginal Law Centre is attached as a supplement to this issue of A.L.N.

The search is on for a full-time Director for the Centre, with support staff. The Law Foundation of N.S.W. has generously agreed to provide funds for a part-time Director at 2 days per week through 1986, and a first priority will be to secure long-term core-funding for the Centre. "Expressions of interest" are invited from anyone with appropriate experience and contacts who might be willing and able to spend 2 (or 3) days per week on the job. In the meantime, Garth Nettheim will act as Director.

THE ABORIGINAL LAW CENTRE

Faculty of Law. University of New South Wales, P.O.Box 1, Kensington, N.S.W., Australia, 2033. Telephone: 697-2256 or 697-2252.

Chair and Acting Director:	Garth Nettheim
Associate Director & Consulting Editor:	Tony Simpson
Editor:	Alastair Walton
Typing:	Mary Johnson

Aboriginal Law Notes are distributed to members of the Centre's Network. Subscriptions \$5.00 per annum.

The Centre also publishes the Aboriginal Law Bulletin.

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### Aboriginal Law Notes / Aboriginal Law Bulletin

Pressure of work made it impossible to produce a December issue of A.L.N., so the last issue was 85/7 (November, 1985).

A special bumper issue of the A.L.B. (No. 17) appeared in December, 1985, on Aboriginal art, culture, etc. with a glossy colour cover. Thanks to the Aboriginal Art Board for financial assistance. No. 18 will be a much more modest offering of eight pages. Contributions are now sought for the April issue (No. 19).

### Aborigines and the Law

The course at Adelaide University Law School is to be offered for a third time in 1986 by Dr. Heather McRae. Sixty-seven students are enrolled. The University of N.S.W. course will be offered again in March-June, 1987.

### Conferences

The Australian Commission for UNESCO is developing plans for a conference to be held on 1-2 May in Canberra on Indigenous Populations in International Law. Copies of the draft programme will be mailed separately to those on the ALN and ALB mailing lists.

The Australian Institute of Aboriginal Studies will hold its General Meeting in Canberra at 10.00 a.m., Thursday 15 May. It is to be preceded by a three-day conference (11-13 May) entitled Social Anthropology in Aboriginal Studies: selected themes 1961-1986. Major themes of the conference are: "Egalitarian and Hierarchical Tendencies in Aboriginal Social Life", "Aboriginal Identity and the Uses of the Past" and major aspects of the social anthropology of Aboriginal studies. Professor John Barnes will conclude the conference with an address entitled "Taking Stock and Looking Forward". On 14 May there will be a separate symposium on Aboriginal Discourse. Inquiries: AIAS, G.P.O. Box 553, Canberra, A.C.T., 2601 (062) 46-1111.

The International Academy of Comparative Law is to hold a Congress in Sydney and Melbourne in August. On the first working day of the Conference, 19 August, there is to be a session on "The Aborigine in Comparative Law" with papers from many countries. People involved in that session will be invited to take part in a three-day meeting at the University of N.S.W., immediately preceding the Congress on 16-18 August. The meeting is under the auspices of the Commission on Folk Law and Legal Pluralism. Further details to follow.

### Publications Received

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Kayleen M. Hazelhurst (ed.), Justice Programs for Aboriginal and other Indigenous Communities (Australian Institute of Criminology, 1985).

W. Clifford, An Approach to Aboriginal Criminology (Australian Institute of Criminology, 1982).

Bruce Swanston (ed.) Aborigines and Criminal Justice, An annual guide to written materials and innovations, current research and quantitative data (Australian Institute of Criminology, 1983).

David Biles, Groote Eylandt Prisoners. A Research Report (Australian Institute of Criminology, 1983).

A Profile of Aborigines in Prison, 1981, Dept. of Corrective Services, N.S.W., Research Publication No. 5, December, 1982.

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Intoxicated Persons, 1981, Bureau of Crime Statistics and Research, N.S.W., 1984.

Judith Wright, We Call for a Treaty (Collins, Fontana, 1985).

Dr. John McCorquodale, Aborigines : A History of Law and Injustice, 1829-1985 (Doctoral thesis, not yet published, 1985).

Survival International News No. 11, 1985.

Survival International News "Brazil : Rio Negro. Gold War on Indian Lands", Urgent Action Bulletin BRZ/9/Jan, 1986.

Survival international News, An End to Laughter? Tribal Peoples and Economic Development, Survival International Review No. 44 (1985).

#### CANADA

Indian Band Membership, an information booklet concerning new Indian Band membership laws and the preparation of Indian Band membership codes, Department of Indian and Northern Affairs, Canada, 1985.

Jeff Richstone, Securing Human Rights in Nanavut : A Study of a Nanavut Bill of Rights, Working paper No. 4, Nanavut Constitutional Forum, Canada, 1985.

National Native Alcohol Abuse Program (Dept. of Health and Welfare, 1981).

Native Self-Reliance through Resource Development, proceedings of the International Conference "Towards Native Self-Reliance, Renewal and Development" (July, 1985).

Native Studies in Canada. A Research Guide (Dept. of Indian Affairs and Northern Development, 1981).

R. J. Thompson, Case Management Review. North West Region. (Dept. of Social Services and Community Health, Alberta, September, 1984).

Response to Case Management Review. Northwest Region (September, 1984).

William R. Morrison, A Survey of the History and Claims of the Native Peoples of Northern Canada, Dept. of Indian Affairs and Northern Development, 1983.

North of 60. United States Indian Tribal Courts : A Bibliography (Dept. of Indian Affairs and Northern Development, 1976).

Native Claims. Policy, Processes and Perspectives (Dept. of Indian Affairs and Northern Development, 1978).

Indian Board Membership (Dept. of Indian Affairs and Northern Development, 1985).

Daniel Francis, A History of the Native Peoples of Quebec, 1760-1867 (DIAND, 1983).

Gordon J. Burrell and Douglas E. Sanders, Handbook of Case law on the Indian Act (DIAND, March, 1984).

Indian Acts and Amendments, 1868-1950 (DIAND, July, 1981).

The First nations Bill C-52, Assembly of First Nations, October, 1984.

Native People in the Administration of Justice in the Provincial Courts of Alberta, Alberta Board of Review.

Handbook to Indian Self-Government in Canada, Assembly of First Nations.

Dennis Madill, British Columbia Indian Treaties in Historical Perspective (DIAND, 1981).

W. Daugherty, Maritime Indian Treaties in Historical Perspective (DIAND, 1983).

Submission to the Ministers of Justice and Indian Affairs by The Alliance of the Musqueam, Sechelt and Squamish Indian Bands, February, 1975.

Specific Claims in Canada. Status Report (DIAND, August, 1984).

Contemporary Indian Legislation 1951-1978 (DIAND, April, 1981).

In Print Current publications from DIAND, June, 1985.

- of general interest
- of interest to native communities and organizations
- of scientific and academic interest

#### CORRESPONDENCE ETC.

from Rev. Jim Downing, Darwin about Aboriginal Resource and Development Services (ARDS).

with Northern Land Council about resource development agreements.

from Adelaide law School student seeking copies of papers.

- from Noel Loos, James Cook University, Townsville, with copies of media release by Murray Islander<sup>s</sup> (see 18 ALB).
- from NAIHO about DAA funding rules.
- with ALS and William L. Richter (NY) about his wish to work in Australia.
- with Brad Morse, Ottawa, about exchanges of materials, etc.

#### Victoria - Aboriginal Cultural Heritage

The Victorian Government is reviewing existing legislation protecting archaeological and Aboriginal relics in the state.

The Relic Act Review Committee (RARC), comprised of ten people of whom six are Aboriginals, has prepared a Discussion Paper and a Summary of that paper to obtain comments.

The papers can be obtained from and comments directed to the -

Ministry for Planning and Environment,  
9F1, 500 Collins Street,  
MELBOURNE. VIC. 3000

PHONE: 628-5101

Unfortunately comments officially closed on the 28 February, 1986. But if your contribution is significant, do not hesitate to contact Mr. Alistair Brooks on 617-0228 to make an enquiry. Mr. Brooks is co-ordinating the review on behalf of RARC.

# End of the dreaming

THE FEDERAL Government has only itself to blame for much of the criticism that is inevitable in the wake of its decision to abandon plans for national land rights legislation. The decision comes as no surprise. The Minister for Aboriginal Affairs, Mr Holding, accepted the inevitability of it last October when he said he did not mind whether a national land rights regime was established or whether the States granted land rights in their own ways. That statement was made in the run-up to the West Australian elections and was widely seen at the time as a capitulation by the apostle of national land rights legislation in the face of short-term political necessity.

But it was not a case of short-term political necessity but fundamental reappraisal. Contrary to the expectations of many Aborigines and a section of the Labor Party, Cabinet has not, now that the West Australian elections are out of the way, simply returned to party policy. It has instead buried the idea of national land rights legislation for good.

One of the unpalatable ironies in this for many Labor supporters is that by abandoning the field to the States, the Labor Party has made its land rights policy even more indistinguishable from the policy the Liberal Party unveiled in August 1984, whose cornerstone was State rights. Another irony, of course, is that the land rights legislation the Fraser Government introduced for the Northern Territory has been found by the Hawke Government to be too generous for a national model.

It is difficult to distinguish the causes of the Labor Government's abandonment of a policy which, when it was

enunciated by Mr Hawke before the 1983 election, seemed invested with such high purpose. Undoubtedly, the mining lobby has been effective. But it is not clear to what extent it has also been deceptive, shifting the blame for its reduced exploration activity away from the economic imperatives that are mostly the cause and on to the reality of land rights in the Northern Territory and the prospect of them in Western Australia. In addition, support in the community generally for the land rights cause has also waned. But, again, it is not clear whether that has been a reasoned process or the result of scare-mongering that would have been corrected by a national education campaign which the Government promised but has now abandoned.

The referendum of 1967 granting the Commonwealth power to legislate for Aborigines suggested a clear mandate for Federal intervention in the land rights field. It was widely seen at the time as a recognition that some States, notably Queensland and Western Australia, could not be relied upon to do justice to their Aboriginal people in a way that most Australians thought necessary and desirable. The referendum was very much the basis of the now discarded Labor policy. Perhaps the attempt to introduce nationally some aspects of the policy, such as the controversial mining veto, was doomed from the start, and for that reason alone should never have been made, or should have been tackled differently. And in the event, the policy now spelt out is no disaster for Aborigines. But the Government deserves no credit for the erratic course it has taken to reach this point, by way of expectations unnecessarily raised, then cruelly dashed.

The Federal Government broke its promise this week and decided not to grant national land rights to Aborigines. MARY-LOUISE O'CALLAGHAN reports

## Land rights gone wrong

IN 1976, the then Prime Minister, Malcolm Fraser, took a piece of legislation created by Gough Whitlam, the man he had just ousted from office, and passed the Northern Territory Land Rights Act 1976.

Although one of the most bitter events in Australian politics separated these two men, the need for Aborigines to have control over their land had such overwhelming support from all sectors of the Australian community there was no question that even this should hold up such long-awaited legislation.

This week, the Hawke Labor Government finally climbed down from its promises to extend the rights enshrined by this Whitlam-Fraser legislation to Aborigines in the rest of Australia.

It is a decision that has left few people happy, least of all the Minister for Aboriginal Affairs, Mr Clyde Holding, although true to his political form, he is admitting neither disappointment nor defeat.

The retention of a mining veto in the Northern Territory has angered the mining lobby who have been counting on its abolishment, and the abandonment of national legislation has brought cries of betrayal from Aborigines who still can't quite believe that this is the actions of a Labor government.

In fact the only person smiling at the end of the day is Brian Burke, the Labor Premier of Western Australia, who graciously declined to "crow" at a press conference this week announcing that the Federal Government had finally accepted with some window dressing a "land rights" proposal he first put forward nearly a year ago.

For Clyde Holding, who took the portfolio of Aboriginal Affairs because he was determined that the issue of land rights should be handled properly and not just "managed" by a junior minister biding time, this "compromise" agreement with Western Australia must be difficult to swallow.

Except for an injection of funds for social services to Aborigines, the deal in reality takes land rights in Western Australia no further than commitments the Burke Government had already made — 99-year leases of Aboriginal reserves. It gives control of mining not to Aboriginal people but to a token Aboriginal minister who is there only because Burke wanted it that way. And for the people of the Kimberleys, Pilbara and other areas, the deal offers nothing.

On Monday, Mr Holding defended all

this as a "significant" breakthrough, suggesting that to confront Western Australia would have achieved less. He did this only because Cabinet had granted him a major concession, the retention of the mining veto in the Northern Territory.

This final trade-off between the Hawke Government's moral obligations and political pragmatism has produced a clumsy compromise that, in effect, saw the Government back track on its promises to both Aborigines and mining groups.

It is also a political somersault that many claim could have been avoided if the Labor Government had thought more carefully about the consequences of promising national land rights legislation in a climate of already strong opposition to the original Northern Territory Act.

The fact that Cabinet decided this week it could afford to ignore party policy commitments on national land rights that would give all Aborigines secure title over land and a right of veto over mining means such a decision could have been made in 1983.

**“This final trade-off between the Hawke Government's moral obligations and political pragmatism has produced a clumsy compromise.”**

This week's "backdown" by the Government could very well have been described as a breakthrough if the Hawke Government had not originally sold national land rights as politically possible and had instead stuck with a state-by-state approach which has already brought some land rights to Aborigines in South Australia, Queensland and the Northern Territory.

Opposition politicians, including two former Ministers for Aboriginal Affairs, blame this stand by the Hawke Government for the break-down in bipartisan support for land rights in Australia.

“Ever since the 1967 referendum, it was accepted that land rights in some form were an essential element for the development of Aboriginal people. And this bipartisan position remained in place until the Hawke Government and the Federal party conference decision to push for national land

rights legislation,” the Opposition spokesman for Aboriginal Affairs, Mr D. Conaolly, says.

According to Senator Baume, a former Aboriginal Affairs Minister, it was Fraser Government's decision to state to formulate their own land rights legislation that eventually led to development trusts being headed over occupants of Aboriginal reserves in Queensland.

“What we had originally was quite a high degree of commonality on a par between the two parties,” says Senator Chaney, who was Fraser's Minister for Aboriginal Affairs from 1978 to 1982.

“The Northern Territory legislation is seen as an example, but then the Labor Party in opposition developed policies which were totally unrealistic and persistent on holding out the mirage of national rights. They bought a lot of votes with promises and now they are not delivering.”

For the Aborigines who finally beat long-awaited rights were to be granted there is some anger that the Government should raise expectations and infuse opposition to land rights and then not firm on its decision.

In fact the turn-around on the Government's original promises was remarkably fast even for politics. Just over a year after the 1984 election, Prime Minister Hawke, in a 1984 election campaign, signalled the Government would not hold firm on its commitment to land rights.

And despite constant calls from Aboriginal groups and concerned groups within the white community for funds for a public awareness campaign to counteract very effective propaganda by organisations opposed to land rights, the Government declined to back its original promises with any such support.

There has been anger among the Labor Party that a policy originally trumpeted by the Government should be easily demolished by a State Premier, Brian Burke without any real gain in return. Weeks ago the caucus committee of the Aboriginal Affairs passed a resolution unanimous across all factions, calling the Government to implement land rights legislation in this session of Parliament. Instead, amendments to the Northern Territory Act are all that will be enacted.

In the end, it may have been this last, any real attempt at leadership on the part of the Government as much as the political difficulties of implementing such a policy that closed the window on national land rights indefinitely.

ALC BRIEFING PAPER

Supplement to Aboriginal Law Notes,  
86/1 February 1986

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ABORIGINAL LAW CENTRE

General Aim

The Aboriginal Law Centre shall be established as a Unit within the Faculty of Law to develop and co-ordinate research, teaching and dissemination of information in the multi-disciplinary area of the relationship between Aboriginal peoples and the law.

The Aboriginal Centre will take over the role of the existing Aboriginal Law Research Unit, which was established on 23 April 1981, and will continue projects initiated by the Unit.

Specific Objectives

The objectives of the Centre shall be:

(a) Research:

to provide a focus for, and to foster research concerning Aboriginal peoples and the law;  
to co-operate with research workers in this field elsewhere in Australia and abroad;  
to provide opportunities for post-graduate and undergraduate scholarly work in the field.

(b) Resources:

to develop and maintain a specialised collection of materials relating to Aboriginal peoples and the law;  
to co-operate with other appropriate bodies with holdings of such resource materials;  
to provide access to the collection to lawyers and others working in the field.

(c) Publication:

to achieve publication of the results of research undertaken by individuals working with the Centre or independently of the Centre;  
to disseminate information concerning Aboriginal peoples and the law to interested individuals and bodies throughout Australia and abroad;

(d) Conferences and Seminars:

to organize and participate in conferences and seminars from time to time.

(e) Teaching:

to encourage the development of curricula and teaching materials in the field of Aboriginal peoples and the law for use in the University of New South Wales and elsewhere;

Management

Director

The Centre shall be managed by a Director in consultation with an Advisory Committee. The Director shall be appointed by the Vice-Chancellor. The Director shall report to, and be responsible to, the Dean of the Faculty of Law.

Advisory Committee

There shall be an Advisory Committee to advise the Vice-Chancellor and the Director on matters relating to the operation and development of the Centre.

The composition of the Advisory Committee shall be:

- (a) A Chairperson appointed by the Vice-Chancellor;
- (b) The Dean of the Faculty of Law or the Dean's nominee;
- (c) The Director of the Centre;
- (d) Up to six members appointed by the Vice-Chancellor for terms of three years (which may be extended).

Annual Report

The Director shall prepare an Annual Report on the operation of the Centre for transmission to the Advisory Committee and the Vice-Chancellor.

Review

The operation of the Centre shall be reviewed by the Vice-Chancellor within five years of its establishment.