

L9/K1/A26-1 **46****ABORIGINAL LAW NOTES**

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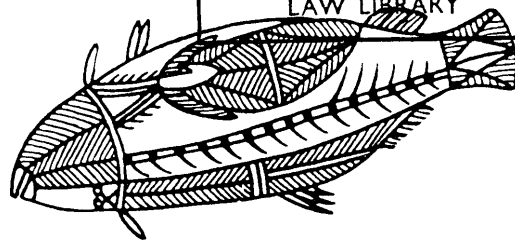
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**ALC MEETING**

The next meeting of the Aboriginal Law Centre's Management Committee will be held at 5.30 - 7.00 on Tuesday 27th September 1988 at the Law School, University of New South Wales (Library Tower, level 11, Staff Common Room). Any member of the "network" who is in Sydney is welcome to attend. Phone 697 2252.

Matters for discussion will include possible seminar/conference activity in relation to:

- (1) the revision of International Labour Organization Convention No 107 (See Briefing Paper with this issue);
- (2) proposals for a Treaty;
- (3) draft Universal Declaration on Indigenous Rights.

An account of developments in Geneva in relation to items (1) and (3) above will appear in Aboriginal Law Bulletin Vol 2 No 34, October 1988.

**THE ABORIGINAL LAW CENTRE**

Faculty of Law, University of New South Wales, PO Box 1, Kensington, NSW, Australia, 2033. Telephone: 697-2256 or 697-2252.

Chair and Acting Director: Garth Nettheim.

Editors: Aileen Kennedy, Terry Libesman and Kathy Bowrey.

Aboriginal Law Notes are distributed to members of the Centre's Network.  
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## **ALB EDITORS**

The new editors (job-sharing) are Kathy Bowrey, Aileen Kennedy and Terry Libesman, who bring to the task legal qualifications, desk-top publishing skills and a commitment to justice. Their first issue, Vol 2 No 33 (August 1988) came out last month.

Deadline for copy for Vol 2, No 34 (October 1988) is 1 October.

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## **RALLY FOR BLACK RIGHTS**

One year of the Royal Commission ... the killings continue. Why are black people still dying? Hear relatives and prominent members of the Aboriginal and non-Aboriginal communities speak.

**Public Meeting:** 7.00 pm Tuesday 20th September 1988

Teacher's Federation, 300 Sussex Street.

## **RALLY ON THE 5TH ANNIVERSARY OF JOHN PAT'S DEATH**

Commemorate the deaths of all Aboriginal and Torres Straits Islanders who have died in custody.

**Saturday 1st October 1988**

meet 10 am on the corner of Cope and Redfern streets to march through the City, Midday Rally at Hyde Park Cenotaph. Please wear all black or the colours.

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## **PUBLICATIONS - etc, RECEIVED**

### **Books**

Survival in Our Own Land: Aboriginal Experiences in 'South Australia' since 1836, edited by Rev. Ken Hampton and Mrs Christobel Mattingly. Available from Sandra Kanck, 41 George street, Norwood SA 5067

Survival: A History of Aboriginal Life in New South Wales, by Nigel Parbury.

Published by the Ministry of Aboriginal Affairs NSW.

The Activist Kit, by Helen Bell, Dalmeny Michie and Patrick McCosker. Published by Boobook Publications, Sydney 1987.

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## Reports

Statement during the 75th Session of the International Labour Conference, Geneva, on Monday, 13 June 1988, by the National Coalition of Aboriginal Organisations, Australia.

Report on the Royal Commission into Black Deaths in Custody by Minnesota Lawyers International Human Rights Committee, May 1988.

Australian report to the UN Committee on the Elimination of Racial Discrimination (CERD) on the legislative, judicial, administrative or other measures which have been adopted to give effect to the provisions of the Convention on the Elimination of All Forms of Racial Discrimination.

Prison: The Last Resort, A Christian Response to Australian Prisons. Published by Collins Dove, 1988.

## Conference

1988: The Aboriginal Challenge to White Australia: 200 Years of Insistence, 21 Years of Citizenship.

October 7 -9 St Albert's College, University of New England, Armidale NSW.

Contact: Ruth Lovelock,  
Centre for Multicultural Studies  
Armidale CAE  
Armidale NSW 2350  
Registration fee: \$40.

### Proposed Conclusions

1. The term "(peoples/populations)" should be used in the proposed Convention, pending a final decision by the Conference at its 76th Session.

#### I. SCOPE OF THE REVISED CONVENTION AND DEFINITIONS

2. The revised Convention should apply to:

- (a) tribal (peoples/populations) in independent countries whose social, cultural and economic conditions distinguish them from other sections of the national community, and whose status is regulated wholly or partially by their own customs or traditions or by special laws or regulations;
- (b) (peoples/populations) in independent countries who are regarded as indigenous on account of their descent from the populations which inhabited the country, or a geographical region to which the country belongs, at the time of conquest or colonisation and who, irrespective of their legal status, retain some or all of their own social, economic, cultural and political institutions.

3. Self-identification as indigenous or tribal should be regarded as a fundamental criterion for determining the groups which the provisions of the revised Convention should apply.

4. The indigenous and tribal (peoples/populations) mentioned above should be referred to in the revised Convention as "the (peoples/populations) concerned".

#### II. GENERAL POLICY

5. Governments should have the responsibility for developing, with the full participation of the (peoples/populations) concerned, co-ordinated and systematic action to guarantee respect for the integrity of these (peoples/populations) and their rights.

6. Such action should include measures for:

- (a) enabling members of the said (peoples/populations) to benefit on an equal footing from the rights and opportunities which national laws and regulations grant to other members of the population;
- (b) promoting the full realisation of the social, economic and cultural rights of these (peoples/populations), with respect for their social and cultural identity, their customs and traditions, and their institutions;
- (c) assisting the members of the (peoples/populations) concerned to raise their standard of living to that enjoyed by other members of the national community, in a manner compatible with the aspirations and ways of life of these (peoples/populations).

7. Indigenous and tribal (peoples/populations) should enjoy the full measure of human rights and fundamental freedoms without hindrance or discrimination.

8. No form of force or coercion should be used in violation of the human rights and fundamental freedoms of the (peoples/populations) concerned, including the rights contained in the revised Convention.

9. Special measures should be adopted as appropriate for safeguarding the institutions, persons, property, labour and environment of the (peoples/populations) concerned.

10. Such special measures of protection should not be contrary to the wishes of the (peoples/populations) concerned.

11. Enjoyment of the general rights of citizenship, without discrimination, should not be prejudiced in any way by such special measures of protection.

12. In applying the provisions of the revised Convention:

- (a) due account be taken of the cultural and religious values and practices of these (peoples/populations), and of the nature of the problems which face them both as groups and as individuals;
- (b) the integrity of the values, practices and institutions of these (peoples/populations) should be respected;
- (c) policies aimed at mitigating any difficulties experienced by these (peoples/populations) in adjusting to new conditions of life and work should be adopted, with the full participation and co-operation of the (peoples/populations) affected.

13. In applying the provisions of the revised Convention, governments should:

- (a) consult fully the (peoples/populations) concerned, through appropriate procedures and in particular through their representative institutions, whenever consideration is being given to legislative or administrative measures which may affect them directly;
- (b) establish means by which the said (peoples/populations) may freely participate at all levels of decision-making in elective institutions and administrative and other bodies responsible for policies and programmes which may affect them directly;
- (c) make available to these (peoples/populations) opportunities and resources for the full development of their own institutions and initiatives.

14. The improvement of the conditions of life and work and level of education of the (peoples/populations) concerned should with their participation and co-operation, be a matter of priority in plans for the overall economic development of areas inhabited by them. Special projects for development of the areas in question should also be so designed as to promote such improvement.

15. The (peoples/populations) concerned should have the right to decide their own priorities for the process of development as it affects their lives, beliefs, territories, institutions and spiritual well-being, and to exercise control, to the extent possible, over their own economic, social and cultural development. In addition, they should be involved in the formulation and implementation of plans and pro-

grammes for national and regional development which may affect them directly.

16. Governments should ensure that studies are carried out, in collaboration with the (peoples/populations) concerned, to assess the social, spiritual, cultural and environmental impact of planned development activities on them.

17. In the application of national legislation to the (peoples/populations) concerned, due regard should be had to their customary laws.

18. These (peoples/populations) should have the right to retain their own customs and institutions, where these are not incompatible with fundamental rights defined by the national legal system or with internationally recognised human rights.

19. The application of Points 17 and 18 should not prevent members of these (peoples/populations) from exercising the rights granted to all citizens and from assuming the corresponding duties.

20. To the extent compatible with the national legal system and internationally recognised human rights, the use of methods customarily practised by the (peoples/populations) concerned for dealing with crimes or offences committed by members of these (peoples/populations) should be respected.

21. The customs of these (peoples/populations) in regard to penal matters should be taken into consideration by the authorities and courts dealing with such cases.

22. The exaction from the members of the (peoples/populations) concerned of compulsory personal services in any form, whether paid or unpaid, should be prohibited and punishable by law, except in cases prescribed by law for all citizens.

23. The (peoples/populations) concerned should be safeguarded against the abuse of their fundamental rights and should be able to take legal proceedings for the effective protection of these rights. Members of these (peoples/populations) should have the right to use their own languages in any legal proceedings.

24. In imposing penalties laid down by general law on members of these (peoples/populations) account should be taken of their economic, social and cultural characteristics.

25. Preference should be given to methods of punishment other than confinement in prison.

### III. LAND

26. The rights of ownership and possession of the peoples concerned over the lands which they traditionally occupy should be recognised.

27. Governments should take steps as necessary to identify the lands which the peoples concerned traditionally use and occupy, and to guarantee effective protection of their rights of ownership and possession.

28. Special measures should be taken to safeguard the control of the peoples concerned over natural resources pertaining to their traditional territories,

including flora and fauna, waters and sea ice, and other surface resources.

29. Governments should seek the consent of the peoples concerned, through appropriate mechanisms, before undertaking or permitting any programmes for the exploration of mineral and other subsoil resources pertaining to their traditional territories. Fair compensation should be provided for any such activities undertaken within the territories of the said peoples.

30. Subject to Points 31, 32 and 33 below, the peoples concerned should not be removed from their habitual territories.

31. Where the removal of the said peoples is considered necessary as an exceptional measure, such removals should take place only with their free and informed consent. Where their consent cannot be obtained, such removals should take place only following appropriate procedures established by national laws and regulations, including public inquiries, which provide the opportunity for effective representation of the peoples concerned.

32. In such exceptional cases of removal, these peoples should be provided with lands of quality and legal status at least equal to that of the lands previously occupied by them, suitable to provide for their present needs and future development. In cases where the chances of alternative employment exist, and where the peoples concerned prefer to have compensation in money or in kind, they should be so compensated under appropriate guarantees.

33. Persons thus removed should be fully compensated for any resulting loss or injury.

34. Procedures for the transmission of rights of ownership, possession and use of land which are established by the customs of the peoples concerned should be respected, within the framework of national laws and regulations.

35. The consent of the peoples concerned should be sought when considering the adoption of national laws or regulations concerning the capacity of the said peoples to alienate their land or otherwise transmit rights of ownership, possession and use of their land.

36. Persons who are not members of these peoples should be prevented from taking advantage of the customs referred to in Point 34 or of lack of understanding of the laws on the part of the members of these peoples to secure the ownership, possession or use of land belonging to them.

37. Unauthorised intrusion upon, or use of, the lands of the peoples concerned should be considered as an offence, and appropriate penalties for such offences and other appropriate recourse procedures should be established by law.

38. National agrarian programmes should secure to the peoples concerned treatment equivalent to that accorded to other sections of the national community with regard to—

- (a) the provision of more land for these peoples when they have not the area necessary for providing the essentials of a normal existence, or for any possible increase in their numbers;

conditions as well as their traditional preventive care, healing practices and medicines.

53. The health care system should, to the extent possible, allow for the training and employment of local community health workers, and focus on primary health care while maintaining strong links to other levels of health care services.

54. The provision of such health services should be co-ordinated with other social, economic and cultural measures in the country, with the full participation of the (peoples/populations) concerned.

## VII. EDUCATION AND MEANS OF COMMUNICATION

55. Measures should be taken to ensure that members of the (peoples/populations) concerned have the opportunity to acquire education at all levels on at least an equal footing with the rest of the national community.

56. In addition, governments should recognise the rights of these (peoples/population) to establish their own educational institutions and facilities. Appropriate resources should be provided for this purpose.

57. Education programmes and services for the (peoples/populations) concerned should be developed and implemented in collaboration with them to address their special needs, and should incorporate their histories, their knowledge and technologies, their value systems and their further social, economic and cultural aspirations.

58. The competent authority should ensure the training of members of these (peoples/populations) and their involvement in the formulation and implementation of education programmes, with a view to the progressive transfer of responsibility for the conduct of these programmes to these (peoples/populations).

59. Children belonging to the (peoples/populations) concerned should be taught to read and write in their own indigenous language or in the language most commonly used by the group to which they belong, as decided by these (peoples/populations).

60. Adequate measures should be taken to ensure that these (peoples/populations) have the opportunity to attain fluency in the national language or in one of the official languages of the country.

61. Effective measures should be taken to preserve and promote the development and practice of the indigenous languages of the (peoples/populations) concerned.

62. The imparting of general knowledge and skills that will help children belonging to the (peoples/populations) concerned to participate fully and on an equal footing in their own community and in the

national community should be an aim of education for these (peoples/populations).

63. Educational measures should be taken among all sections of the national community, and particularly among those that are in most direct contact with the (peoples/populations) concerned, with the object of eliminating prejudices that they may harbour in respect of these (peoples/populations). To this end, efforts should be made to ensure that history text books and other educational materials provide a fair, accurate and informative portrayal of the societies and cultures of these (peoples/populations).

64. Governments should adopt measures appropriate to the traditions and cultures of the (peoples/populations) concerned, to make known to them their rights and duties, especially in regard to labour, economic opportunities, education and health matters, social welfare and their rights deriving from the revised Convention.

65. If necessary this should be done by means of written translations and through the use of mass communications in the languages of these (peoples/populations).

## VIII. ADMINISTRATION

66. The governmental authority responsible for the matters covered in the revised Convention should create or develop agencies of other appropriate mechanisms to administer the programmes involved, and provide them with the means necessary for the proper fulfilment of the functions assigned to them.

67. The programmes referred to above should include planning, co-ordination, execution and evaluation, in co-operation with the (peoples/populations) concerned, of the measures provided for in the revised Convention.

68. These programmes referred to above should also include proposals to the competent authorities for legislative and other measures and supervision of the application of these measures, in full co-operation with the (peoples/populations) concerned.

## IX. GENERAL PROVISIONS

69. The nature and scope of the measures to be taken to give effect to the revised Convention should be determined in a flexible manner, having regard to the conditions characteristic of each country.

70. The application of the provisions of the revised Convention should not adversely affect rights and benefits of the (peoples/populations) concerned pursuant to other Conventions and Recommendations, or under treaties, international instruments, or national laws, awards, custom or agreements.

The draft above represents the outcome of discussion at the ILO Conference held in June 1988. Discussion will resume and be completed at the Conference in June 1989. Two matters awaiting resolution are the choice of the terms "peoples" or "populations" and Part III Land Rights.