

91

ABORIGINAL LAW NOTES

No. 82/1

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 4/82

SYDNEY

6 July 1982

(The meeting had been postponed from 17 June - regular members
had been notified by telephone).

Present: Garth Nettheim, Meredith Wilkie, Neil Rees, John
McCorquodale, Bryan Keon-Cohen, David Weisbrot, Hugh Dillon,
James Crawford.

Next Meeting: 5.30 - 7.00 p.m., Tuesday, 17 August, 1982,
at offices of Aboriginal Legal Service Ltd., Cnr. Cleveland
and Abercrombie Streets, Chippendale.

All members of the Advisory Council are welcome to attend:
To check for any late change in arrangements, phone the
telephone number below.

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. Telephone
(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 for \$5 p.a. (The subscription year runs from
1 July to 30 June).

CHAIRMAN'S REPORT

Operating Funds

At the start of the year the Unit had no operating funds. In Notes 2/82 Advisory Council members had been invited to contribute. Three individual members have done so. An account has been opened and stands as follows:

Income to date	\$270.00
Expenses	<u>16.50</u>
Balance	<u>253.50</u>

Project Funds

Aboriginal Law Bulletin - the Law Foundation of N.S.W. and the Victoria Law Foundation have each agreed to contribute \$3000 to support publication until mid-1983.

Land Rights (NSW) - the Law Foundation of N.S.W. has granted \$10,025 to employ a person for six months to research land rights issues while NSW Legislation is developed. A selection committee met on 24 June and appointed Meredith Wilkie who commenced duty on 5 July 1982.

Land Rights, General - Applications have been lodged for funds for a major research project with the Australian Research Grant Scheme and with the Australian Institute of Aboriginal Studies. Results will not be known until late in the year.

Legal Services Training Course - the Department of Aboriginal Affairs and the Department of Employment and Industrial Relations have confirmed funding for the current course for ALS field officers until the end of the year. Letters have been sent to both Departments seeking early decisions on the question whether the course is to be repeated in 1983.

Curriculum Project - funds had been sought, unsuccessfully, from several sources to permit a suitable academic to work full-time for six months or half-time for 12 months to design, test-teach and refine materials for a tertiary course on Aborigines and the Law. The Attorney-General of NSW did include funding for the project in his scheme for distribution of the assets of the Foundation for Aboriginal Affairs (In Liquidation) but another scheme had also been presented. On 14 May 1982 Master Cohen delivered judgment, and the project was not included in the distribution.

Requests for Advice

An important part of the Unit's work is coming to be the handling of requests for legal advice from organizations which are prepared to pay professional fees for such advice. Two major organizations have sought the Unit's assistance in this way, and the Unit has briefed counsel and acted, generally, as instructing solicitor (through Neil Rees). (In the interests of client confidentiality details are not published).

The Unit has also arranged to obtain expert defamation advice concerning proposals to publish a manuscript written by an individual member of the Advisory Council.

The Unit was not able to assist Rev. Chris Budden of the Uniting Church in Darwin who wrote on 10 June for an analysis of the successive changes to the Aboriginal Land Rights (Northern Territory) Act.

A Sydney firm of solicitors had written seeking advice concerning a client's wish to provide in a Will for the education of Aboriginal children from the north coast of NSW in Law and Medicine. In response, the Unit had supplied information about the Peter Tobin Aboriginal Scholarship Foundation.

Legislation

Queensland - Garth Nettheim is maintaining a "watching brief" on developments in Queensland under the amended Land Act with regard to Aboriginal and Islander reserves, and also the proposed services legislation for the communities. Frank Brennan has been closely monitoring events in Brisbane on behalf of the Catholic bishops (and the Anglican and Uniting churches) and has provided up-to-date detailed information to the Unit. He recently completed a tour of Queensland reserves and the Northern Territory, and visited the Unit in Sydney on 18 June when he briefed Garth Nettheim.

New South Wales - It is expected that the recently appointed researcher, Meredith Wilkie, may be able to assist the Ministry of Aboriginal Affairs, the NSW Aboriginal Legal Services and the NSW Land Council in regard to the proposed State land rights legislation.

Federal - Criminal Investigation Bill 1982. Senator Evans had responded to the letter of 22 March 1982 from Pam Ditton, Neil Rees and John Terry.

Publications

Alwyn Peter case - Greg Lyons has obtained the agreement of Hugh Dillon to undertake editing of the transcript. Two students in the UNSW Aborigines and the Law course had worked on the case and may be able to assist. Frank Brennan (who had been junior counsel in the case) is to ask University of Queensland Press whether they might be interested in publishing.

Colin Tatz' book Aborigines and Uranium and other Essays has been published.

Curriculum Project

The project has proceeded despite the absence of funding. Garth Nettheim taught the subject "Aboriginals and the Law" at UNSW in the first half of the year. Bryan Keon-Cohen had assisted with reading lists, etc, from Melbourne. A set of materials had been produced but will need further refinement.

Letters have been sent to all Australian law schools offering to provide sets of the materials for teaching the subject there, in return for collaboration in improving and developing the materials. Several law schools have responded positively, and the materials are being dispatched.

The subject, as taught at UNSW, had gone well, despite some teething problems. Twenty-four students had enrolled. Guest speakers during the course included Colin Tatz, Pam Ditton, Pat O'Shane, Bob Bellear, Neil Rees, John Terry, Stuart McGill, Greg McIntyre, Murray Chapman, James Crawford.

Research

Students in the Aborigines and the Law course had produced a number of research papers. Most have agreed that copies may be disseminated (in some cases the paper was produced for a 'client'). The papers are:

- | | |
|-------------------|--|
| Esther ALVARES | "An overview of sniffing in Aboriginal communities" |
| Margaret LAURENCE | " <u>R. v. Alwyn Peter</u> " |
| Gary NICHOLLS | "The legal status of Aboriginal reserves in NSW" |
| Margaret LEIDEN | "The structure, function and history of the Aboriginal Lands Trust of NSW" |
| Graham JONES | "The removal of Aboriginal children from Aboriginal control. Suggested legislative reform based on the provisions and operation of the Indian Child Welfare Act 1978 (US)". |
| Gil SHAW | "Makarrata. Problems and possibilities of implementation". |
| Nick HUFTON | "Declaratory Action and Aboriginal Reserves in New South Wales" |
| Phady SOLOMON | "What is Terra Nullius - Review of common law doctrines concerning when land may be properly so called. What are the applicable tests in Australia?" |
| Lesley STRONG | "An analysis of the effects of the welfare system, reinforced by the criminal justice system, on Aboriginal children specifically, and their more general effects on the Aboriginal race as a whole". |
| Sarah WADDELL | "What are the prospects of successful application of international law and the international law processes (especially the International Court of Justice) in a claim by Aboriginal Australians for self-determination?" |

Michelle CORNWALL "The recognition of Aboriginal customary law by white courts".

Bernard BOERMA A Discussion of R. v Alwyn Peter.

Brad FORRESTER "Interrogation of Aborigines - some aspects"

Knox SINCLAIR "Pastoral leases: the forgotten land rights - waiting for the uncertain"

The Human Rights Commission, on 11 May 1982, invited submission (by 15 June) of research proposals for a one year participant observation study of human rights issues in a country town with a sizeable Aboriginal population. Garth Nettheim and Colin Tatz discussed whether the Unit should lodge a submission and decided not to, especially in view of Christine McIlvanie's ongoing work in Wee Waa.

Litigation

The statement of claim in Mabo v Queensland was filed in the High Court in May. With the agreement of solicitor and counsel, publicity was given (in the SMH etc) to the action as a major land rights test case. An account is also included in 4 Aboriginal Law Bulletin (June 1982).

The case will need financial support. The solicitor Greg McIntyre, ALS Cairns, has written to the federal Minister seeking specific funding support. If this is declined money will be needed from other sources.

The judgment of the High Court in Koowarta v Bjelke-Petersen has been welcomed as upholding the validity of the Racial Discrimination Act 1975 (Cth), and as confirming federal legislative power to implement human rights treaties. A brief account is published in 4 Aboriginal Law Bulletin June 1982. Denis Davis is working on a fuller study of the case, and a short version may appear in the Legal Service Bulletin (August 1982).

Duncan Graham in Alice Springs has sent transcript of proceedings in Police v. Terry Pollard Jambajimba in which Mr. Murphy S.M. threatened contempt proceedings against an Aboriginal witness who would not take the oath; material concerning Press Council consideration of press reporting of the Ti Tree shooting incident; and material about the Yipirinya school issue.

Conferences and Seminars:

Dr. H.C. Coombs has discussed with Garth Nettheim the idea of a seminar on Aborigines and International Law. He had been asked for some assistance from the Federation of Land Councils. A scheme for a one-day seminar has been developed with several international lawyers, with 3 major topics:- "Sovereignty and Self Determination; how can they be asserted?"; "International human rights principles and procedures and their relevance to Aborigines" and "International law regarding indigenous minorities".

Dr. Coombs speaks of the seminar probably being conducted in Canberra in February with assistance from the ANU Research School of Social Sciences.

Advisory Council

New members: Duncan Graham, Central Australian Research and Media, Alice Springs; Frank Brennan SJ, Brisbane; A.R. Castan, QC, Melbourne; Greg Lyons, Melbourne; Pat O'Shane, Ministry of Aboriginal Affairs, Sydney.

International Contacts

Letter to Harold Finkler in Ottawa inquiring for details of the proposed 1983 Symposium of the Commission on Folklaw and Legal Pluralism.

Professor Richard H. Bartlett from Saskatoon is back at the University of Western Australia for a visit until the end of August, and hopes to visit the Unit in Sydney.

Professor Brad Morse of the University of Ottawa plans to visit Australia from about September 1982 to March 1983. The Unit has sent him information and has offered him facilities and assistance during his stay.

Pam Ditton, now at the Dakota Plains Legal Services, Eagle Butte, S.D., USA, had written in May about her contacts established with the Association of American Indian Affairs, Inc. (New York); Institute for Development of Indian Law (Washington); Indian Law Resource Centre (Washington); Native American Rights Fund (Washington); Council of Energy Resource Tribes (Washington); American Indian Lawyer Training Program. Material had been sent from some of these organizations.

International Law Developments

Pam Ditton had sent, from the Indian Law Resource Centre, information about the U.N. Human Rights Commission's approval in March of a scheme for a Working Group on Indigenous Populations to meet prior to annual meetings of the Sub-Commission on the Prevention of Discrimination and Protection of Minorities. The Working Group is expected to commence in August. A note has been placed in 4 Aboriginal Law Bulletin (June 1982).

ABORIGINAL LAW BULLETIN REPORT

Neil Rees tabled copies of issue No. 4 which had just been published.

Issue No. 5 will appear in August. The deadline is the end of July. Material that is expected includes statements on the Makarrata by Ian Wilson, Minister for Aboriginal Affairs and Senator Don Chipp of the Australian Democrats; Geoffrey Blainey's speech on land rights with comments by John Coldrey; case notes, etc.

Subscription for the next year will be \$10 p.a.

LEGAL SERVICES TRAINING COURSE REPORT

In the absence of the Director, Garth Nettheim reported that the course is proceeding very satisfactorily, that a start has been made on evaluating the course, and that discussions are about to commence with Commonwealth Government Departments on the question whether the course should be offered again in 1983.

It might be appropriate at this time for ALS organizations in other parts of Australia to contact the Department of Aboriginal Affairs and the Department of Employment and Industrial Relations if funding is wanted for field officer training programs.

LAND RIGHTS (NSW) PROJECT REPORT

Meredith Wilkie reported that she had commenced work the previous day. Her initial priorities will be to gather all available relevant material and to make contact with organizations and individuals with particular interest in the subject.

BIBLIOGRAPHY

John McCorquodale reported that discussions were still proceeding for publication of his annotated bibliography on Aborigines and the Law.

He added that the Bicentennial Authority is likely to appoint a researcher to prepare a Digest by subject matter from the bibliography.

MAKARRATA INQUIRY

Bryan Keon-Cohen reported that he had presented a submission to the Senate Standing Committee on Constitutional and Legal Affairs.

He also reported on the submission by the Makarrata sub-committee of the National Aboriginal Conference.

Garth Nettheim reported that the Secretary of the Senate Committee had provided the Unit with copies of the principal

submissions received by the Committee.

CUSTOMARY LAW INQUIRY

James Crawford reported that 15 research papers are currently being produced and will be circulated to interested persons. At a later stage the Australian Law Reform Commission will produce three short discussion papers based on the research papers. Further public hearings are proposed.

He also announced that Chris Kirkbright had been appointed to work on the reference.

ABORIGINAL LAW NOTES

Garth Nettheim raised the question of converting the former "notes of meetings" of the steering committee to a newsletter "Aboriginal Law Notes". He proposed little change other than that change of format to recognize what the note had in fact become. The steering committee had never become a fixed body, and the steady increase in size of the advisory council seemed to make the Newsletter concept more rational. This was accepted.

He also suggested a subscription of \$5 p.a. to cover costs of reproduction and mailing. The meeting agreed that the Unit should attempt to become self-supporting.

ORGANIZATION AND FUTURE OF THE UNIT

Melbourne meeting

Garth Nettheim and Bryan Keon-Cohen reported on plans for a meeting in Melbourne at VALS offices at 6 p.m. Thursday 15 July. Garth Nettheim is to deliver a lecture earlier in the day at Monash University's Aboriginal Research Centre. Greg Lyons and Bryan Keon-Cohen have convened the later meeting for VALS people, practitioners and academics with an interest in the field. Garth Nettheim will speak about the work of the Unit. One possible outcome might be the establishment of a Melbourne 'chapter'.

Advisory Council and Steering Committee

It was agreed to allow fluidity at this stage so that the organization can continue to evolve freely. New members can join the 'network'.

Operational Funding

One of the most serious impediments to development of the Unit is lack of funding to permit a person to work full-time (or part-time) on the Unit's affairs. Attempts to attract substantial grants for the purpose have not been successful.

It was noted that an appeal to the network (Notes 2/82) had produced negligible response.

Various suggestions were considered: it was suggested that an ALS organization might release a person; it was also suggested that a portion of project funds or legal costs might be set aside for the Unit's operational expenses.

Further suggestions would be welcome.

Project Funding

The Unit would like to fund a project on resources development negotiation with the aim of producing a manual for Land Councils, ALS etc.

It was suggested that approaches might be made to the NT Land Councils, the East-West Centre in Hawaii, or the Law Foundation.

Proposals for other suitable projects are invited from Advisory Council members.

Possible Conference

The Unit has considered for some time arranging a Conference which might be attended by representatives of the ALS organizations, Land Councils and others.

Such a conference would focus on one or two current issues of general interest plus organizational matters such as the overall needs of ALS organizations (and the extent to which ALRU might meet such needs).

Neil Rees suggested that such a Conference be held in Sydney in mid-November. He thought that ALS would probably be able to fund attendance by their own people i.e. one lawyer, one director.

Bryan Keon-Cohen suggested that DAA be asked to give some financial support. He recommended that Pam Ditton or Brad Morse be invited to talk about North American research/back-up centres

It was agreed that planning would commence for such a Conference

QUEENSLAND LAND RIGHTS - COMMONWEALTH GAMES

Gary Hiskey, ALRM Adelaide, has proposed that ALRU assist in preparation of a document on behalf of ALS organizations about Queensland issues for publication at the Games in Brisbane. It would take the form of a 2-3 page pamphlet.

It was agreed in principle that the ALRU would provide any information needed for the purpose, and it was suggested that Frank Brennan would be well placed to draft a statement.

However it was also agreed that Garth Nettheim should contact the Black Protest Committee (Brisbane), and the National Campaign for Land Rights and Self-Management in Queensland (Canberra) to ask whether they are planning anything similar and, if not, would they welcome a combined Legal Services document.

ALWYN PETER CASE

Hugh Dillon raised for discussion a number of questions about the proposed publication of an edited version of the evidence in the Alwyn Peter case.

CURRENT RESEARCH

John McCorquodale recommended that Aboriginal Law Notes or Aboriginal Law Bulletin (or both) should set out to publish information on current research into issues of Aborigines and Law.