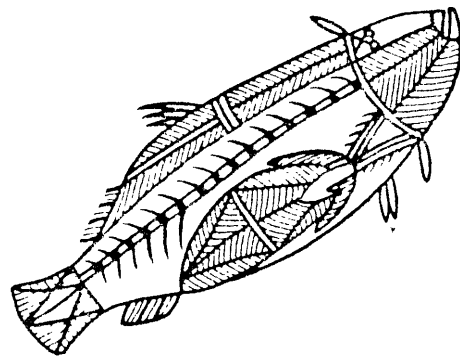
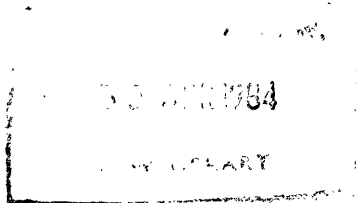


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ABORIGINAL LAW NOTES



No. 84/3

MAY, 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.

SYDNEY

Next Meeting: 5.30 - 7.00 p.m., Wednesday, 2 May, 1984, Conference Room, Australian Law Reform Commission, Level 7, 99 Elizabeth Street, Sydney.

Subjects: Various topics will be discussed including the Aboriginal Treaty Committee funds, and forward research activities of the Unit.

Guest Speaker: Sgt. Bill Galvin of the Aborigine Liaison Unit, N.S.W. Police Department, on "Aboriginal-Police Relations".

Any member of the Advisory Council "network" is invited to attend meetings which are held at approximately 6-weekly intervals.

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 4 times a year.

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A.L.R.U. RESEARCH

As mentioned in Aboriginal Law Notes 84/2 (March) the A.T.C. has proposed transferring its remaining funds to ALRU. ALRU would still welcome suggestions from members of the Advisory Council "network" as to appropriate uses for the money.

The Unit has several research projects under way and others in contemplation. Any substantial project requires funding. ALRU would welcome suggestions from members of the "network" (i.e. those who receive Aboriginal Law Notes) about research projects that might be considered and about possible funding or informational support for such projects.

Criminal Justice - At the Unit's February meeting, there was some comment about the fact that ALRU, as such, has not undertaken any research in the criminal justice area. Several organizations are interested to fund research into criminal justice issues affecting Aboriginal people, but no one, so far, has come up with a specific proposal. It is partly for this reason that ALRU has invited Sgt. Bill Galvin of the Aborigine Liaison Unit, N.S.W. Police Department, to speak at the May meeting.

Land Rights - The Unit does have a continuing project on Aboriginal Land Rights Law. Meredith Wilkie's study on N.S.W. will be published shortly. Work is under way on the Northern Territory. And discussions have commenced concerning a South Australian study to start in 1985. Any organization or individual willing to contribute in some way to these studies or, especially, to studies about W.A., Queensland, Victoria and Tasmania, is asked to get in touch.

Makarrata - ALRU has contributed to the debate about the legal and constitutional issues involved in the Makarrata or Treaty proposal. It has provided professional advice to organizations involved, it has participated in seminar and conference discussions, and individual members have written articles and prepared submissions for the Senate Standing Committee on Constitutional and Legal Affairs. ALRU has, of course, avoided taking sides on the question whether there should be a Makarrata, and has also recognized that it is for the Aboriginal people to decide what they would want such a "compact" to deal with. There may be nothing more for ALRU to do in this area, but if there is, that might be a prime claimant to a share of the Aboriginal Treaty Committee funds.

Customary Law - ALRU has recognized that it cannot match the resources, and should not attempt to duplicate the work of the Australian Law Reform Commission. It has, however, interacted continually with the ALRC in a variety of ways throughout the period of the reference. The ALRC expects to complete its work and to produce its report during the course of 1984. A question then arises whether ALRU ought to take on a role in following up the report and monitoring subsequent developments. Thoughts on this matter would be appreciated.

Aboriginal Legal Aid - The various Aboriginal Legal Service organizations are in "the front line" on these issues, are in direct contact with their client communities, and are best placed to deal with the political and bureaucratic machinery. ALRU has seen its role in this area purely as a back-up to the ALS organizations, when needed, and as a possible mechanism for co-ordination and clearing-house activity. Thus, ALRU has produced and distributed a directory of ALS organizations and staff. It publishes the Aboriginal Law Bulletin as a means of pooling information on legal developments. It participated in piloting (and repeating) a full-year training course for ALS Field Officers. And it convened a conference of ALS organizations which led to the establishment of the National Aboriginal and Islander Legal Services Secretariat (NAILSS). If NAILSS can attract adequate funding, it would be the logical body to take over some or all of ALRU's functions

in this area. In the meantime, there may be other things that ALRU might usefully do. Suggestions would be welcome.

International Law - ALRU has been able to advise a number of Aboriginal organizations about relevant principles, procedures and agencies at the international level. Several ALRU Briefing Papers have been about such matters. ALRU also helped to arrange the November, 1983, conference on "Aborigines and International Law". The Unit has also developed a growing list of international contacts with whom information is exchanged and sometimes visits are arranged. This, too, has been useful to Aboriginal organizations. We would propose to continue such activities at a general level. But any specific suggestions would be welcome.

Resource Negotiations - For some time, ALRU has considered that a manual about negotiating resource development agreements (mining, tourism, etc.) would be valuable to Aboriginal communities and organizations. The Northern Territory Land Councils, of course, probably have no need of such a manual; instead, their experience could be of great benefit to communities and organizations elsewhere. It would also be valuable to incorporate experience and ideas from other parts of the world such as Papua New Guinea, North America. Many of the specific requests for advice and assistance that we have received have related to resource development issues. Any ideas about the value of such a manual, or of a "model" mining agreement, would be welcome.

Aboriginal Children - The ALS organizations and, particularly, the several Aboriginal Child Care organizations, have been active on issues concerning Aboriginal children and the law. ALRU has made some small contribution in this area, notably by supporting the valuable research being done by one of its members, Richard Chisholm.

There are other areas in which ALRU and individual members of ALRU have been associated with research and other work; And there are areas in which ALRU might usefully undertake new or expanded activity. To date, the Unit has only had funding for specific projects, so that we have no personnel to undertake general research or to deal with specific issues that arise from time to time. If good projects can be suggested, we can seek the funding to set people to work on them. We would not want to confine all action to Sydney - the ALRU "network" spreads throughout Australia and it should be possible, with co-operation, to get researchers operating in other parts of the country.

ALRU is designed largely as a resource facility for Aboriginal organizations and communities and their advisers. It can perform that role more effectively if it is told from time to time what sort of research and other activity is needed.

ABORIGINAL LAW BULLETIN

There has been a gap in publication because of editorial difficulties, but Issue No. 10 is expected to appear in April.

Deadline for material for Issue No. 11 (June) is mid-May.

CORRESPONDENCE (to 12 April, 1984)

- With various bodies about support for a return visit to Australia by Russel Barsh, Seattle; and with Russel Barsh.
- To Chairman, Indonesian Legal Aid Foundation about ALRU and the Field Officers' Training Course.
- To Hon. E. G. Whitlam, seeking further UNESCO material.
- With Doug Sanders, Vancouver, and others, about proposal for a comparative session on "The Evolution of State Policies on Indigenous Peoples" at the Twelfth International Congress of Comparative Law to be held in Australia in August, 1986; also about Alaska Native Review Commission hearings.
- From Australian Institute of Aboriginal Studies about Michael Hogan's paper on hunting, fishing and gathering rights.
- Various subscriptions and requests for back numbers of Aboriginal Law Notes.
- With Frank Brennan on Queensland land rights developments.
- With various people about finding a lawyer to work for ALS (Sydney) on asbestos litigation.
- With Brad Morse, Seattle, and Heather McRae, Adelaide, about teaching materials on "Aborigines and the Law".
- With Stuart McGill, New York, about Warmun Community submission to Seaman Inquiry, discussing resource negotiation matters, and enclosing publications.
- To Native Law Centre, Saskatchewan, Canada, enclosing publications.

PUBLICATIONS, REPORTS ETC. RECEIVED

- Russel Barsh "Aboriginal Rights, Human Rights and International Law" (a developed version of his paper given at the "Aborigines and International Law" conference in Canberra, November, 1983).
- Survival International, Urgent Action Bulletins "Tin Mines Threaten Yanomami", "Brazil Indians Murdered, Justice Undermined".
- Frank Brennan SJ, "Law Reform and Land Rights. Shaping Morality and Doing Justice? Or Just Plain Politics?" (March, 1984)
- Frank Brennan SJ, "Aboriginal Land Rights in Western Australia"
- Stuart McGill, "Issues for Governments when formulating mineral agreements" from Materials and Society, Vol.8, No.1, (1984) pp.115-125.
- D. A. Gulley and S. C. McGill, "Host Government Returns from Natural Resource Projects".

PUBLICATIONS, REPORTS ETC. RECEIVED (Contd.)

- Resource Development and Indigenous Peoples: A Comparative Bibliography, compiled by Jeremy Norby and Shelton Davis, Anthropology Resource Center, Boston, Mass., U.S.A. (September, 1983)
- L. Little Bear, M. Boldt and J. A. Long, (eds.), Pathways to Self-Determination. Canadian Indians and the Indian State (U. Toronto Press, 1984)
- UNESCO - various papers on Ethnocide and Ethnodevelopment.
- High Court judgments (23 March, 1984) on the Aboriginal Land Rights (Northern Territory) Act, 1976 (Cth) in respect of: The Jawoyn (Katherine Area) Land Claim; the Warramungu/Alyawarra Land Claim; and the Gurindji Land Claim to Daguragu Station.
- Pat O'Shane, speech to N.S.W. Aboriginal Affairs Seminar "NSW Aborigines and the Government. Changing Perspectives and Policies", (11 April, 1984).
- Adam Jamruzik, Empowerment and Welfare. The Issue of Power Relationships in Services for Aborigines, N.S.W. Ministry for Aboriginal Affairs, Occasional Paper (No. 2).
- Gai Smith, Aboriginal Land Rights in N.S.W.: A Preliminary Bibliography, N.S.W. Ministry of Aboriginal Affairs, Occasional Paper (No. 3)
- Ritchie Howitt and John Douglas, Aborigines and Mining Companies in Northern Australia (1983)
- David Weissbrodt, memorandum on proposed fund to support attendance of representatives of indigenous populations at Geneva meetings of the Working Group on Indigenous Populations, plus a draft resolution on the matter.

CONFERENCES

30 July - 3 August, 3rd Session, Working Group on Indigenous Populations, Geneva.
