

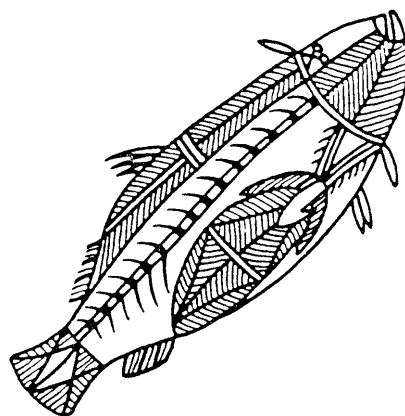
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ABORIGINAL LAW NOTES

86/4

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NEW REPORTS

Three reports have recently been published which are of considerable significance to Aboriginal Affairs in Australia.

1. The Harkins Report - an enquiry into Aboriginal Legal Aid.

This three volume report is very significant. The comprehensive document has been several years in the making and covers every facet of the Aboriginal and Torres Strait Islander Legal Services.

However only 180 copies have been printed. Some legal services have complained that they have not even seen a copy. It is not available from AGPS book shops and DAA are controlling its distribution.

So for copies contact DAA Canberra or the Minister's office (Category No. 85 1758 9)

(contd.)

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.

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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.

Registered by Australia Post Publication No. NBP 5530.

New Reports (contd. from Page 1)

2. Another report is Indigenous Resource Rights and Mining Companies in North America and Australia by Stuart McGill and G.J. Crough.

This report is available from the AGPS bookshops in capital cities at \$7.60.

The nature of this report is conveyed by the interview with Stuart McGill in the June issue of ALB.

(Category No. 852226 3).

3. The third of the recent reports is the long awaited final report of the Australian Law Reform Commission on its Aboriginal Customary Law Reference.

This tome is available once again at capital city AGPS bookshops at \$49.95 for Volumes 1 & 2.

#### DIRECTOR FOR ALC

Applications are invited from anyone with appropriate experience and contacts who might be willing and able to serve for a short term as Director of the Aboriginal Law Centre. Funds are available from the Law Foundation of NSW to employ a suitable person on a part-time basis for some months or, possibly, on a full-time basis for a shorter period.

Garth Nettheim, who is Acting Director, will be away from Australia between September - January (inclusive) and the need is particularly pronounced during that period. One of Garth's aims while abroad is to attempt to secure core funding for the Centre to permit long-term staff appointments.

The Director will work at the Law School, University of NSW in conjunction with Alastair Walton (Editor), members of the Law School (notably Richard Chisholm) and other members of the Centre's Advisory Committee.

#### ABORIGINES AND THE CONSTITUTION

The Constitutional Commission is calling for submissions "from anyone interested in reforming the Australian Constitution". (See the notice below). There have been suggestions that a reformed Constitution should provide express recognition of Aboriginal rights. Reform of the Canadian Constitution in 1982 did recognize Aboriginal rights. See the ALC Briefing Paper supplement to this issue of ALN.

The Aboriginal Legal Rights Movements (ALRM) in Adelaide is writing to other Aboriginal Legal Service organizations to ask if they are interested in developing a submission on Aboriginal rights. The Aboriginal Law Centre would be glad to hear from anyone who might be interested in joining - or contributing to - a working party to develop a proposal to put to the Constitutional Commission. A suitable time and place for a meeting of such a working party might be

14-15 August, 1986 at the University of NSW in Sydney. This immediately precedes the three-day meeting at the University of the Commission on Folk Law and Legal Pluralism which will be attended by a number of overseas experts including Canadians familiar with the Constitutional arrangements there.

Those interested should write to, or telephone, Garth Nettheim.

The Aboriginal Law Centre has a collection of materials documenting the Canadian Constitutional reform process in relation to aboriginal rights.



## CONSTITUTIONAL COMMISSION

### CALL FOR PUBLIC SUBMISSIONS

**The Constitutional Commission would like to hear from anyone interested in reforming the Australian Constitution.**

The Constitutional Commission has been established by the Commonwealth to inquire into and report on revising the Australian Constitution to:

- (a) adequately reflect Australia's status as an independent nation and a Federal Parliamentary democracy;
- (b) provide the most suitable framework for the economic, social and political development of Australia as a federation;
- (c) recognise an appropriate division of responsibilities between the Commonwealth, the States, self-governing Territories and local government; and
- (d) ensure that democratic rights are guaranteed.

The Commission is chaired by Sir Maurice Byers Q.C., former Solicitor-General, and its other members are the Hon. E.G. Whitlam Q.C., former Australian Prime Minister, Sir Rupert Hamer, former Victorian Premier, the Hon. Mr Justice Toohey, of the Federal Court, Professor Leslie Zines of the Australian National University, and professor Enid Campbell, of Monash University.

Five Advisory Committees have been appointed to assist the Commission in its work. The Committees are to examine specific subject areas of constitutional reform. Those areas, and the chairmen of the relevant committees, are:

- (a) executive government (Sir Zelman Cowan, former Governor-General)
- (b) distribution of powers (Sir John Moore, former President, Australian Conciliation and Arbitration Commission)
- (c) trade and national economic management (Mr Justice Everett, President, Inter-State Commission)
- (d) individual and democratic rights under the Constitution (Mr Terry Purcell, Director, N.S.W. Law Foundation); and
- (e) the Australian judicial system (Mr Justice Jackson, of the Federal Court).

**The Commission and the Advisory Committees are anxious to obtain the maximum possible public involvement in their work. They are seeking submissions from anyone interested in any area of constitutional reform and will hold public hearings and public meetings and endeavour to stimulate public discussion and awareness of issues being considered by the Commission.**

**The Commission and the Advisory Committee invite any person or group interested in making submissions to write to the Commission. Submissions are welcome from individuals, business, trade unions, financial, social and political institutions. Submissions may deal with single issues or range across any number of issues.**

Any person or group or organisation proposing to make a submission is invited to write to:

**The Chairman  
Constitutional Commission  
P.O. Box E2  
ST JAMES, N.S.W. 2000**

ABL 60


### ABORIGINAL LAND RIGHTS LAW IN SOUTH AUSTRALIA

Work is commencing on the project, funded by the Australian Research Grants Scheme. It follows two other ALC projects on Aboriginal land rights law in NSW and the NT.

Research and writing is in the hands of a high-powered team consisting of Irene Watson (who will be research assistant to the project as well as co-author), Andrew Collett, Dr. David Hope of SAIT, and Dr. Heather McRae of the University of Adelaide Law School (who will serve as co-ordinator to the project). The project will proceed under the overall management of Garth Nettheim at the University of NSW.

It is hoped that work will be completed in early to mid 1987 and that the study will be published soon afterwards.

# four directions council



## conseil des points cardinaux

## consejo de los cuatro vientos

10 May 1986  
T.235-86 LIMITED

### URGENT ACTION NEEDED TO PROTECT THE WORKING GROUP ON INDIGENOUS POPULATIONS

1. This is an appeal for immediate action by all indigenous organizations.
2. A growing number of governments have fallen behind in their mandatory annual financial contributions to the United Nations. Last autumn, the United States indicated that it would be withholding up to half of its 1986 commitments (\$100 million). This has precipitated a financial crisis immediately threatening all United Nations programmes for the remainder of this year.
3. The General Assembly last week accepted a number of emergency cost-saving measures proposed by the Secretary-General, including cancelling the August 1986 meetings of the Sub-Commission and its three Working Groups (Slavery, Communications, Indigenous Populations). As a result there will not be a regular meeting of the Working Group on 4-8 August as originally planned.
4. There is still a possibility of rescheduling this year's Working Group meeting, if we can find some other way of paying for it. The conference room, translation, printing and other services have cost about \$60,000 when we met at the Palais des Nations in Geneva.
5. In Geneva last week we met with representatives of three Governments (Australia, Norway, The Netherlands) which have already made pledges to the United Nations Voluntary Fund on Indigenous Populations, totalling about \$50,000. We suggested that they either (a) use this money to pay for the 1986 meeting of the Working Group, or (b) make an additional voluntary contribution for that purpose. We raised the same possibility with Canada, which is still considering an initial contribution to the Fund.
6. Although the Fund itself can only be used to pay for indigenous representatives' travel to Geneva, it is not expected to be ready to receive applications until the end of 1986, and in the mean time we may lose the Working Group altogether.
7. The Governments consulted generally described the Working Group as one of their highest priorities in human rights, but were very concerned about establishing a precedent for voluntary financing--and worried that this could make the Working Group's work seem less official and less universal. While we appreciate these concerns, we feel this is a one-time emergency situation, and that the risks are outweighed by the importance of keeping up the momentum on the draft Declaration on the Rights of Indigenous Peoples.
8. Indigenous organizations in Australia, Canada and Norway should urge those Government to provide financial support for a special 1986 meeting of the Working Group, which we suggest be rescheduled for the week of 15-19 September.

AN ORGANISATION IN CONSULTATIVE STATUS, CATEGORY II, WITH THE  
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Supplement to Aboriginal Law Notes 86/4, June 1986.

ALC BRIEFING PAPER

Aboriginal Provisions in Canada's Constitution

When Canada recently "patriated" its Constitution it introduced three new elements to the British North America Act, 1867. One was an amending formula; the other two were a Charter of Rights and Freedoms and provisions on the rights of aboriginal peoples.

I set out sections 25, 35 and 37 of the Constitution Act, 1981, as originally enacted:

25. *The guarantee in this Charter of certain rights and freedoms shall not be construed so as to abrogate or derogate from any aboriginal, treaty or other rights or freedoms that pertain to the aboriginal peoples of Canada including*

(a) *any rights or freedoms that have been recognized by the Royal Proclamation of October 7, 1763; and*

(b) *any rights or freedoms that may be acquired by the aboriginal peoples of Canada by way of land claims settlement.*

35. (1) *The existing aboriginal and treaty rights of the aboriginal peoples of Canada are hereby recognized and affirmed.*

(2) *In this Act, "aboriginal peoples of Canada" includes the Indian, Inuit and Metis peoples of Canada.*

37. (1) *A constitutional conference composed of the Prime Minister of Canada and the first ministers of the provinces shall be convened by the Prime Minister of Canada within one year after this Part comes into force.*

(2) *The conference convened under subsection (1) shall have included in its agenda an item respecting constitutional matters that directly affect the aboriginal peoples of Canada, including the identification and definition of the rights of those peoples to be included in the Constitution of Canada, and the Prime Minister of Canada shall invite representatives of those peoples to participate in the discussions on that item.*

(3) *The Prime Minister of Canada shall invite elected representatives of the governments of the Yukon Territory and the Northwest Territories to participate in the discussions on any item on the agenda of the conference convened under subsection (1) that, in the opinion of the Prime Minister, directly affects the Yukon Territory and the Northwest Territories.*

I also set out amendments to those sections proclaimed on June 21, 1984.

1. *Paragraph 25(b) of the Constitution Act, 1982, is repealed and the following substituted therefore:*

*"(b) any rights or freedoms that now exist by way of land claims agreements or may be so acquired".*

2. Section 35 of the Constitution Act, 1982, is amended by adding thereto the following subsections:

*Land Claims Agreements*

"(3) For greater certainty, in subsection (1) 'treaty rights' includes rights that now exist by way of land claims agreements or may be so acquired.

*Aboriginal and treaty rights are guaranteed equally to both sexes -*

"(4) Notwithstanding any other provision of this Act, the aboriginal and treaty rights referred to in subsection (1) are guaranteed equally to male and female persons."

3. The said Act is further amended by adding thereto, immediately after section 35 thereof, the following section:

*Commitment to participation in constitutional conference-*

"35.1 the government of Canada and the provincial governments are committed to the principle that, before any amendment is made to Class 24 of Section 91 of the Constitution Act, 1867, to section 25 of this Act or to this Part,

(a) a constitutional conference that includes in its agenda an item relating to the proposed amendment, composed of the Prime Minister of Canada and the first ministers of the provinces, will be convened by the Prime Minister of Canada; and

(b) the Prime Minister of Canada will invite representatives of the aboriginal peoples of Canada to participate in the discussions on that item."

4. The said act is further amended by adding thereto, immediately after section 37 thereof, the following part:

*"PART IV.1  
CONSTITUTIONAL CONFERENCES*

*Constitutional Conferences*

37.1(1) In addition to the conference convened in March, 1983, at least two constitutional conferences composed of the Prime Minister of Canada and the first ministers of the provinces shall be convened by the Prime Minister of Canada, the first within three years after April 17, 1982, and the second within five years after that date.

*Participation of aboriginal peoples*

(2) Each conference convened under subsection (1) shall have included in its agenda constitutional matters that directly affect the aboriginal peoples of Canada, and the Prime Minister of Canada shall invite representatives of those peoples to participate in the discussions on those matters.

*Participation of Territories*

(3) The Prime Minister of Canada shall invite elected representatives of the governments of the Yukon Territory and the Northwest Territories to participate in the discussion on any item on the agenda of a conference convened under subsection (1) that, in the opinion of the Prime Minister, directly affects the Yukon Territory and the Northwest Territories.

*Subsection 35(1) not affected*

(4) Nothing in this section shall be construed so as to derogate from subsection 35(1).