

September, 1982

ABORIGINAL LAW NOTES

No. 82/3

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.

<u>MEETING 6/82</u>	<u>SYDNEY</u>	<u>28 SEPTEMBER 1982</u>
<u>Next meeting:</u> 5.30 - 7.00 p.m., Tuesday 9 November, 1982 Conference Room, 14th floor, Hooker House, Cnr. Pitt and King Streets, Sydney.		
<u>MEETING 3/82</u>	<u>MELBOURNE</u>	<u>16 SEPTEMBER 1982</u>
<u>Next meeting:</u> 5.30 p.m. Thursday, 18 November 1982, Law Institute, 470 Bourke Street, Melbourne.		

The Aboriginal Law Research Unit is located in the Faculty  
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Nettheim: Telephone (02) 663-0351, Extension 3266.  
Melbourne contacts: Bryan Keon-Cohen (03) 60-1876; Greg  
Lyons (03) 347-1680; Ian Grey (03) 419-3888.

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. Subscription \$5.00 p.a.

## CHAIRMAN'S REPORT

### Operating Funds

Current balance:       \$ 388.00

Resources Development Negotiation : John Coldrey wrote (1 September) expressing his view that the project has great merit and that he would put it before the Central Land Council Executive. He added a postscript that the Executive had met and would like further information.

Ray Plibersek of the Northern Land Council phoned on behalf of Grant Niemann to ask for more information about the project - this was supplied.

### NSW Land Rights:

There may be value in extending the project beyond December to the middle of 1983. The question will be raised with the NSW Law Foundation.

### Publications:

"Human Rights for Aboriginal People in the 1980's" - the manuscript of the conference proceedings is being considered for publication by the Australian Institute for Aboriginal Studies.

NSW Land Rights - it is hoped to produce a publication from Meredith Wilkie's work.

### Research :

Michael Hogan, a law student at the University of NSW, is working on an undergraduate research thesis on hunting, fishing and gathering rights.

### Makarrata Meeting:

On Sunday 22 August a meeting was held at the University of New South Wales Law School to discuss Makarrata matters. The Aboriginal Law Research Unit was host.

Those present were Garth Nettheim, Neil Rees, Bryan Keon-Cohen, Tony Simpson, Lyall Munro Snr., Margaret Mallard, Bill Smith, Graham Paulson, Margaret Paulson, Pat Williamson, Michael Anderson, Les Malezer, Frank Chulung, Vince Forrester, Phillip Hall, Rob Riley.

Discussion turned on such questions as the form of a Makarrata (eg., one big document? or a short document followed by a number of detailed arrangements?); the sovereignty issue; the significance of international politics and federal politics; problems of communication between the NAC and communities, and within the NAC; forthcoming discussions between NAC and Prime Minister and Cabinet; and the relationship between land rights activity and the Makarrata movement.

## Aboriginal Land and Mining Seminar

On Thursday 16 September the Unit was host for a seminar between NSW Government officials and representatives of mining interests.

Those present were: Garth Nettheim and Meredith Wilkie (ALRU); Jon Isaacs, Millie Butt, David Pollard and Tom Whelan (Ministry of Aboriginal Affairs); Don Beattie and Neville Markham (Dept. of Mineral Resources); David Barnett (Peko-Wallsend Ltd.); Ken Horler and Ian Wisken (NSW Chamber of Mines); Keith Orchison (Australian Petroleum Exploration Association Ltd.); Bob Pritchard (President, Natural Resources Section, International Bar Association); Peter Reid (Esso Australia Ltd.); Steve Lonergan (Pan-Continental Mining Ltd.); John McClinchy (Allen, Allen & Hemsley); Mike Bell (C.R.A. Exploration Pty. Ltd.); Judith Marty (NSW Coal Association); Ken Patterson (Australian Mining Industry Council).

Speakers from the Ministry of Aboriginal Affairs presented a summary of the Keane Committee recommendations and referred to various options that the Ministry were considering for legislation. Those present expressed various points of view and raised a number of issues for discussion. At the end of the seminar those present indicated that it had been a useful occasion.

## Publicity

A story appeared in the North Shore Times 22 September on Meredith Wilkie's appointment and work for the Unit.

The editor of the Australian Law Journal will publish a brief account of the Unit in the November issue.

A brochure will be produced if funds are sufficient.

## Media

Information was provided to ABC production people preparing a "Four Corners" TV program for broadcast 2 October on the background to Aboriginal protest at the Commonwealth Games.

## Advisory Council

Michael Mansell and Heather Sculthorpe in Tasmania have joined the Advisory Council. Letters have also been sent to the Aboriginal Land Rights Support Group and the NSW Trade Union Committee on Aboriginal Rights.

## Aboriginal Law Notes

Application has been lodged with Australia Post for registration for concessional rates.

## Legislation

The Victorian discussion paper on proposed Aboriginal Land Rights legislation has been received.

## Litigation

Richard Brear had visited Sydney from Melbourne for archival research for the Mabo case and would return for several days further work.

### Correspondence

"A Question of Balance" has been received from Kim Wilson, Darwin - a reply to the NT Government's campaign about the Aboriginal Land Rights legislation; also received - John Coldrey's critical analysis of the campaign.

A request for funds from the North Australian Aboriginal Congress to assist NT Aboriginal people to go to Brisbane at the time of the Commonwealth Games.

Letters on various matters from Greg Lyons and Bryan Keon-Cohen in Victoria.

Letter from Ed Rayment, Aboriginal Lands Trust enclosing copy of a joint statement by the Trust and NAC (Eastern Branch) opposing the NSW Government's plans to adopt the Keane Committee report and stating that the organizations are developing an alternative blueprint for land rights which they propose to submit to Aboriginal people.

### ABORIGINAL LAW BULLETIN REPORT

Deadline for copy for the December issue is 15 November. Contributions and comments are particularly invited from Aboriginal Legal Service workers.

### LEGAL SERVICE TRAINING COURSE REPORT

Procedures are under way to produce an interim evaluation of the course. The evaluation will assist DAA and DEIR in deciding whether to fund the course again in 1983. Information will also be needed on the number of people wishing to enrol.

## NSW LAND RIGHTS PROJECT REPORT

Meredith Wilkie tabled the following report:

PROGRESS OF LEGISLATION:      The Minister for Aboriginal Affairs, following the Land Rights conference which he called in Sydney on August 20, announced that although a land rights bill will be tabled in Parliament before December 7 this year, he will not seek to have it passed until the Autumn Session 1983. This is to give all interested persons time to consider the bill and lobby the Minister and other M.P's. Unfortunately, a bill is difficult to amend in accord with pressure from affected persons: witness the Community Welfare Act, 1981. Lobby groups, including some from the Aboriginal community and some representing mining interests, have requested that a draft bill be circulated for comment before tabling. Alternatively, the Aboriginal community would wish to be given an idea of policy proposals to be presented on their behalf to State Cabinet. The Minister, however, has stated that no policy proposals will be discussed until Cabinet has had a chance to approve them. As for circulation of a draft bill, this is a matter for the Minister alone to decide.

MY ROLE:      In view of the fact that there will be opportunity for consultation on the bill once tabled, I have turned my attention away from urgent consultation with Aboriginal communities. Once the bill is tabled I intend to prepare a

critique of it from the point of view of its compatibility with the policy of self-determination, as well as discussing its likely effects and how it differs, if it does, from the Keane recommendations.

In preparation for this exercise, I am writing a paper on the concept of self-determination both in international law and as applied or demanded in Australia. This will shortly be circulated for comment. No such exercise has been undertaken within the Ministry of Aboriginal Affairs to date. As yet there has been no government commitment to this policy.

OTHER RESEARCH PAPERS: I have planned 4 other major research papers in consultation with Aboriginal organisations. These are currently in various stages of preparation. In order of probable completion they are:

(1) Mineral resource (and other natural resource?) development on Aboriginal land: some concerns. The paper will consider some models for dealing with these resources and examine some of the issues needing consideration in the event of development.

(2) Consultation with Aborigines in New South Wales about land rights, being a paper prepared primarily from my own experience, with possible collaboration with Aboriginal people so that this paper could be a useful educative and background document for those soon to be involved in implementing land rights legislation.

(3) The Funding Proposal recommended by Keane has the support of the Minister. It has never been examined from the perspective of Aboriginal aspiration. Moreover, there is always the fear that funding from the Federal

government will be substantially decreased. Land Rights will fail unless funds are adequate. The subject needs careful attention from an economist. I intend simply to raise some issues; to produce the sort of paper which might stir an economist into action.

(4) The suitability of the Land+Environment Court as a forum for dealing with Aboriginal land issues. In particular, how sympathetic could the Court be to Aboriginal values, perspectives and aspirations? What predictions can be made from an examination of the Act? from an examination of past decisions?

#### OTHER RESEARCH:

A couple of smaller projects are in progress. The Aboriginal Lands Trust is concerned about the effect of the Petroleum Act 1955 on section 101, Aborigines Act 1969-1973. The Western Regional Land Council wants to know what Western Lands leases are coming up for renewal in the next 10 or 15 years, as National Parks are already moving to acquire some of these areas.

#### ASSOCIATED RESEARCH:

The project on hunting, fishing and gathering rights by Michael Hogan, a UNSW law student, is progressing well. A discussion paper, circulated to all communities and Aboriginal organisations, is attached. Interest from Aboriginal communities is already high and feedback positive.

The project on Aboriginal housing administration by Esther Alvarez, a UNSW law student, is also progressing. This

is an important issue right now because much land to be transferred to Aboriginal organisations by the proposed Act, contains Aboriginal housing.

1983: Particularly as the Land Rights Act will not be passed until mid-1983, I believe there is every justification for my position continuing until then. In early 1983 there will be a need for persons to explain the bill to communities and to record their comments and submissions. Another project which has so far received a good deal of support is the preparation of a book on land rights in New South Wales, being a history of the struggle to the present and including an analysis of the proposed Act.



### NATIONAL ALS CONFERENCE PROPOSAL

It had become evident that the proposed conference in Brisbane, 1-3 October, would not eventuate.

A number of ALS organizations had indicated interest in attending a November conference in Sydney, and had suggested topics for discussion.

Planning is under way to hold a conference at the University of New South Wales on Saturday 27- Sunday 28 November. ALS organizations will be sent information. In the meantime, inquiries can be directed to Neil Rees, Kingsford Legal Centre, 11 Rainbow Street, Kingsford, 2032, Tel.: (02)396-6366.

### LAND RIGHTS PROJECT

It appears that the Unit will receive funds in 1983 for Stage 1 of a two-stage project on Aboriginal Land Rights Law in Australia. The objective is to produce a coherent and definitive study for all Australian jurisdictions. The major focus for Stage 1 would be the Northern Territory.

The Unit would be happy to hear from anyone wishing to work on the project.

### LAWYER NEEDED

The Central Australian Aboriginal Legal Aid Service in Alice Springs needs an additional lawyer urgently. Contact Pam Ditton, P.O. Box 1670, Alice Springs, N.T., 5750.

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### ABORIGINAL LAW RESEARCH UNIT (VIC.)

THIRD MEETING, INTERIM COMMITTEE, 17th SEPTEMBER 1982  
VALS OFFICE, BRUNSWICK STREET, FITZROY, 6.00 p.m

1. Present: Bette Moore, Herb Pettit, Reg Blow, Greg Lyons, Wendy Peter, Brendon Kissane, Kate Orty, Ian Gray, Sean McLaughlin, Jim Boag, Michael Cosgrave, Brian Keon-Cohen.
2. Apologies: Neil.
3. Minutes of previous meeting: Approved.
4. Victorian Land Rights Legislation: This was discussed. Reg Blow outlined current activities. The Government remained open to suggestions and criticisms. Many communities appeared to be submitting, as their own submissions, a draft criticism forwarded by BKC to Nessie Scuta. This draft submission circulated to the meeting for comment, criticism and redrafting. It appears

legislation is to be introduced this Spring Session. However, a report of the Archaeological Relics Advisory Committee was to hand. This concerned living aboriginal culture. It was intended for discussion and amendment concerning the Archaeological Act. ALRU to make submissions.

5. Employment of Land Rights etc. Researcher:  
This was further discussed. The Government, said Reg Blow, remained open to suggestion, draft proposal to be devised for submission to Ken Coghill. Discussion of full time researcher to be employed by VALS. He was to concentrate on land rights. Need to liase and avoid duplication between ALRU and VALS. Matter to be further discussed following demising of draft submission to Government.
6. Police Interrogation:  
Ian Gray reported he was writing a paper for the Aboriginal Law Bulletin on this topic. To be finished soon. From this might be devised a submission to Government by himself; and second, a further perhaps amended submission to Government by ALRU. An element in the paper concerned the enshirement of standing orders in legislation.
7. Police Training:  
Reg Blow reported on aboriginal input to Police Cadet Training. Some limited lectures were currently given at the Training Academy. Jim Boag noted that in his view, the lectures were too late in the course, were not more than a token gesture, and a series of lectures was required. Lectures were being developed and it was suggested that these in draft form be brought to the next meeting.