

1920-1

ABORIGINAL LAW NOTES

No. 82/4

November 1982

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 7/82	<u>SYDNEY</u>	19 November 1982
--------------	---------------	------------------

<u>Next meeting:</u> 5.30-7.00 p.m., Thursday, 16 December, 1982, Tranby College, 13 Mansfield Street, Glebe, Sydney.		
--	--	--

Meeting 4/82	<u>MELBOURNE</u>	14 October, 1982
--------------	------------------	------------------

Meeting 5/82		19 November, 1982
--------------	--	-------------------

<u>Next meeting:</u> A date to be arranged in the second half of December, depending on when Victorian land rights legislation is introduced. Enquiries as to time and place can be directed to the Melbourne contacts noted below.		
--	--	--

The ABORIGINAL LAW RESEARCH UNIT is located in the Faculty of
Law, University of New South Wales, P.O. Box 1, Kensington,
NSW, 2033, AUSTRALIA. Chairman, Garth Nettheim: Tel. (02) 633-0351
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.

Registered by Australia Post - Publication No. NBP 5530.

CHAIRMAN'S REPORT:

Operating Funds

Current balance \$276 - and declining! Very few subscriptions have been received for the Aboriginal Law Notes.

Project Funds:

NSW Land Rights: The NSW Law Foundation has now agreed to continue funding until mid-1983 with an additional grant of \$11,815.

Land Rights - General: The Australian Institute of Aboriginal Studies has decided not to fund this project. The Australian Research Grants Committee has agreed to fund stage 1, in 1983 to the extent of \$13,000, about half the amount requested. Various possibilities for supplementary funding were discussed. It was agreed that application should be lodged with AIAS in 1983 to support stage 2. It was also agreed that views should be sought on the conduct of stage 1 from Northern Land Council, Central Land Council and Pitjantjatjara Council.

Legal Services Training: The question whether to fund the course for 1983 is awaiting decision by the Minister for Aboriginal Affairs.

Publications:

There appears to be a firm proposal for publication by Legal Books of the conference proceedings Human Rights for Aboriginal People in the 1980s.

Michael Hogan's study "Legal Recognition of the right of Aboriginal people to hunt, fish and gather in New South Wales", is complete. Copies can be supplied to interested organizations and individuals for \$2.00 to cover costs of photocopying and postage.

Copies of the following papers by Meredith Wilkie are also available on request:

"Discussion Paper: Self-Determination: Definition".

"Discussion Paper: Mining and Indigenous Lands: Some Issues and Concerns".

"Discussion Paper: A Land Rights Tribunal: Form and Functions".

"Report from Seminar on Mining and Aboriginal Land".

"Background Paper: Mining and Aboriginal Land".

The Unit is to arrange publication of two major articles received from Professor Richard Bartlett:

"Mineral Rights on Aboriginal Lands and Reserves in Australia"

"Aboriginal Sacred Sites: Ownership, Rights and Protection in Australia".

Aboriginal Law Notes:

Registration has been given by Australia Post for concessional rates, and the last mailing went out under these arrangements.

Litigation:

Murray Meats (N.T.) Pty Ltd and the Amoonguna Aboriginal Community Inc. v Northern Territory Planning Authority. The Unit has been kept informed of the action by Peter Benjamin, a principal in Murray Meats which proposed a joint venture meatworks with the Amoonguna community on the Amoonguna land to the north of Alice Springs. The ADC was to assist.

The scheme ran into problems with the promulgation of the 1981 Alice Springs Town Plan which purported to cover the Amoonguna land. The effect of the zoning of that land, according to the Northern Territory Planning Authority, would be to stop the meatworks project from proceeding. It would also significantly affect other uses of Aboriginal land under the Aboriginal Land Rights (N.T.) Act.

The action commenced before Toohy J. in the N.T. Supreme Court in late October.

Mabo v Queensland and the Commonwealth:

The case came before the High Court in October. Queensland is not pursuing at this stage its application to strike out the statement of claim, and both sides are to agree on a statement of facts and questions for the full court. The Minister has now decided that legal aid will be available.

High Court proceedings (12 November) to challenge the N.T. Government's alienation of land subject to the Warumungu land claim were noted.

Advisory Council:

Kim Wilson, on a recent visit from Darwin, asked that he and Bob Collins (ALP Opposition leader) be added to the network.

The Aboriginal Land Rights Support Group in Sydney has also been added on a straight "exchange of publications" basis.

Publications Received:

"Land Rights Wrongs", the Northern Land Councils' response to proposed amendments to the Aboriginal Land Rights (NT) Act, 1976.

Aboriginal Treaty News No. 5.

Aboriginal Land Rights Support Group Newsletter, No. 18, (August 1982).

Consultation Document No. 4, "Services Legislation (Qld), What has been said about the new laws", by Frank Brennan, S.J.

Consultation Document No. 5, "A proposal for services legislation and administration" by Frank Brennan, S.J.

Native People and Justice in Canada special issue, parts 1 and 11 of the Canadian Legal Aid Bulletin (1982), edited by Brad Morse. (The tables of contents of the two volumes are attached).

The Destruction of American Indian Families (1977) edited by Steven Unger, Association on American Indian Affairs, New York. (Table of contents attached).

Indian Tribes. A Continuing Quest for Survival (1981), A report of the United States Commission on Civil Rights.

Miscellaneous materials from the Council of Energy Resource Tribes, Washington, D.C., U.S.A.

Arrangements are being made for ALRU materials to be held in the Law Library, University of New South Wales, under distinctive cataloguing codes.

International Contacts:

Further correspondence with Robert M. Goldberg, Anchorage, Alaska.

Correspondence with Dr. Kenneth Liberman, Secretary, Northern Hemispheric Association for the Advancement of the Australian Aborigines, La Jolla, California.

Professor Richard Bartlett from the University of Saskatchewan has sent two articles completed on his recent visit to Australia on "Mineral Rights on Aboriginal Lands and Reserves in Australia" and "Aboriginal Sacred Sites: Ownership, Rights and Protection in Australia".

He has invited the Unit's assistance in publication.

Professor Bradford Morse of the University of Ottawa has arrived in Australia for a stay between October-March. He will be based mainly at the University of New South Wales but will travel widely. He is a leading researcher and writer on Native Law issues in Canada and seeks to explore a number of Australian developments.

A revised version of the program has been received for the Symposia on Folk Law and Legal Pluralism to be held in Canada in August 1983.

Other Correspondence:

Aboriginal Legal Rights Movement had sent 500 copies of the information pamphlet "Aborigines and the Commonwealth Games". Copies were mailed with the September Aboriginal Law Notes.

Further correspondence with Dr. Coombs on the proposed seminar on Aborigines and International Law.

Letter from Phillip Toyne, Pitjantjatjara Council, seeking consultation with the Council on the resource development negotiation project, and also seeking details of the November ALS Conference.

House of Representatives Standing Committee on Aboriginal Affairs

Members and staff of the Committee are to be in Sydney on Wednesday, 1 December in regard to their reference on education and have sought a "working lunch" meeting at the University with those members of the Unit who are able to attend.

Professional Advice:

The Unit has once again been asked to provide legal advice on a professional basis.

Printing:

Letterhead for the Unit and for the Aboriginal Law Bulletin is being prepared, also a brochure about the Unit.

ABORIGINAL LAND RIGHTS (NSW) PROJECT

Meredith Wilkie reports -

Research: I spent the week beginning Monday 27 September in Canberra working at the libraries of the Australian Institute for Aboriginal Studies and the Department of Aboriginal Affairs.

I spent much of the week commencing 18 October at the Crown Titles Branch of the Registrar General's Department searching Western Lands Leases for Western and North-Western Regional Land Councils. They were concerned to know which leases will expire in the relatively near future, so that potential claims can be properly prepared. I was given access to the tenure cards free of charge: normal fee is \$1 per card, therefore my week's work was worth about \$14,000 to the R-G's Department. A letter of thanks from the Unit has been forwarded.

A number of Aboriginal organisations, especially the Aboriginal Lands Trust, have expressed interest in knowing what is the situation with respect to mineral rights on Indian lands in Canada and the U.S. I have been researching this question as part of research for a paper on comparative mineral rights generally.

Meetings: I was invited by the Local Government and Shires Association to address its meeting on Land Rights held on Wednesday afternoon, 6 October. I summarised the Report of the Select Committee and answered questions. The alternative view put to the meeting was that of the Western Division of the Shires Association.

I attended ALRU (Vic.) meeting in Melbourne on Thursday, 14 October to discuss land rights developments in New South Wales. While in Melbourne, I also met with Bette Moore and Reg Blow of Dr. Ken Coghill's staff, who are working on the Victorian Land Rights legislation.

Papers: On 13 October I delivered copies of my draft paper on definition of self-determination to a number of persons and organisations for comment. The final draft involved restructuring and a closer analysis of past and present policies. Copies of this paper are available from ALRU.

On 29 October I sent letters to all State Government Ministers and some Labor M.P's on the issue of policies for land rights.

My report on the Mining Seminar held by the Unit on

16 September was distributed to all participants on 28 October. My paper on Mining and Aboriginal Land is completed.

The paper on funding will be the next to be completed.

ABORIGINAL LAW BULLETIN

Neil Rees reported that the December issue is going to press. It will be 16 pages and will include a large number of case notes. Deadline for copy for February issue is mid-January.

NSW and Victorian Law Foundation funding will cease in mid-1983. Subscriptions are insufficient to cover costs, and the Legal Service Bulletin is unlikely (at the December annual general meeting) to agree to increase its subscription sufficiently to make up the difference. It appears that subscription revenue (direct and indirect) may meet about half the cost but that an additional \$2000 p.a. or more will be needed to keep the journal in existence. The market appears to comprise, mainly, ALS organizations and academics. It was suggested that ALS organizations may be willing to each provide a contribution to support the Bulletin - this may be discussed at the national ALS conference in November.

Neil Rees will be on leave in the first half of 1983. Volunteer assistance is needed in Sydney to edit the ALB during that period. Anyone able to assist should contact Neil Rees (02) 398-6366.

LEGAL SERVICE TRAINING COURSE

John Terry reported that the 1982 course concludes at the end of November. He will be recommending certificates of satisfactory completion for 12-14 of the students. A TERC evaluation of the course is being completed.

The Chief Stipendiary Magistrate is not prepared to direct magistrates to give field officers leave to appear but is confident that any problems can be overcome. Indeed, some FO's have been given leave to appear in courts. Barristers and others report improved confidence and competence in FO's during the course.

Peter Mason, of the Department of Employment and Industrial Relations, is to visit the course on Wednesday, 24 November, on behalf of the Minister, Mr. McPhee.

The question whether DAA will fund the course again in 1983 is still undecided and is, apparently, awaiting the Minister's personal decision.

BIBLIOGRAPHY

John McCorquodale reported that his annotated bibliography on Aborigines and the Law is now being edited for publication by AIAS. It will comprise some 420 reported and unreported cases, all legislation from all Australian jurisdictions relating to Aborigines, and secondary materials (articles, etc.) Publication is expected in March-April 1983, and the likely cost will be \$15.95.

ALS DIRECTORY

Neil Rees reported that updating for a revised edition is completed, but that he proposes to delay reproduction and distribution until after the national ALS conference in November.

ALS NATIONAL CONFERENCE

Plans are well advanced for the conference. Representatives of most ALS organizations will be attending. Numbers expected are between 50-75. The sessions will be 'closed'. Several guests will be invited to address delegates e.g. James Crawford, Pat O'Shane. The agenda will be largely left to the delegates to settle in the opening session.

The NSW Law Foundation has donated \$500 to help defray organizational expenses. Otherwise delegates will cover their own expenses. Volunteers are needed to help with telephoning during the last week, and with arrangements during the Conference. (Contact Neil Rees (02) 398-6366). It is hoped that ALS (NSW) will arrange a social function on Saturday evening, 27 November.

CUSTOMARY LAW

Colin Tatz reported that AIAS will provide money to John von Sturmer and himself to organize a 2-3 day workshop on the ALRC reference in Sydney in March or April 1983 with the aim of producing specific responses to the ALRC's discussion and research papers from anthropologists, lawyers and others. Those interested to attend should contact him (02) 88-9372.

RACE RELATIONS

Colin Tatz reported that Christine McIlvanie's thesis on Wee Waa, titled "What Killed Eddie Murray?" has now been submitted, and he is discussing publication possibilities.

ABORIGINAL CHILDREN

Richard Chisholm mentioned a number of factors which, in his opinion, indicated that the time has come for seminar/conference activity in regard to child welfare and justice issues in regard to Aboriginal children. One of those factors is the presence in Australia (until March) of Brad Morse from Canada. There was general discussion and it was agreed, in principle, that the Unit would be willing to support proposals which Richard Chisholm and others might develop.

ALRU 1983

Garth Nettheim noted that Neil Rees would be overseas for the first half of 1983, and that he himself will be away from January until April. Proposals for the management of ALRU (NSW) will be presented at the December meeting.

TABLE OF CONTENTS

TABLE DES MATIÈRES

Préface	iv
Note from the Editor	vi
The Original Peoples of Canada. <i>Bradford W. Morse</i>	1
Le Service de la Police Amérindienne au Québec. <i>Maurice Tassé</i>	17
La Cour Itinérante du District d'Abitibi. <i>Juge Jean-Charles Coutu</i>	23
Corrections in the Northwest Territories, 1967-1981, With a Focus on the Incarceration of Inuit Offenders. <i>Harold W. Finkler</i>	27
Native Indian Delinquency and the Juvenile Court: A Review of Recent Findings. <i>Carol Pitcher LaPrairie & Curt Taylor Griffiths</i>	39
Le Programme de Conseillers Para-Judiciaires au Québec. <i>Eddie Gardner</i>	47
Native People and the Criminal Justice System: the Role of the Native Courtworker. <i>Native Counselling Services of Alberta</i>	55
The Role of the Native Courtworker in the Delivery of Legal Services to the Native People. <i>Jack Hardy, Pauline Watson, Tony Cornelius</i>	65
The Regina Native Counsel Project: A Civilian Perspective on the Delivery of Legal Services to People of Indian Ancestry in the City. <i>Paul Havemann</i>	69
L'Aide Juridique et les Populations Autochtones du Nord Québécois. <i>Jean-Guy Leclerc</i>	93
Representing Native Groups in Canada, A Shared Experience. <i>John Bayly</i>	97
La Femme Autochtone et les Services Juridiques au Québec. <i>Bibiane Coutons, Lise Gill</i>	107
The Indian Status Question: A Problem of Definitions. <i>Shun Inua, Katherine Laird</i>	113
Tactical Remedies & Referrals for a Native Person. Alleging Racist Discrimination <i>Maryka Omatsu</i>	125
Les Droits des Autochtones et les Territoires du Nord-Ouest. <i>Alan Bissomette</i>	133
La Justice Incomplète des Civilisés. <i>Robert Vachon</i>	173
The Incomplete Justice of the Civilized. <i>Robert Vachon</i>	177
Le Tribunal Russell Condamne les Violations des Droits des Indiens d'Amérique. <i>Alan Bissomette</i>	181

International Declarations of Principles of Indigenous People/
Déclarations de Principe Internationales des Autochtones 185

Chroniques Departments

Case Comment: Commentaire d'arrêt 199
Book Reviews/Revue de livres 205
Native Organizations Associations Autochtones 221
Maps Cartes 250

**NATIVE PEOPLE AND JUSTICE IN CANADA, special issue,
part 11, Canadian Legal Aid Bulletin (1982).**

TABLE OF CONTENTS TABLE DES MATIÈRES

NOTE FROM THE EDITOR iii

LES PEUPLES AUTOCHTONES DU CANADA.
Bradford W. Morse 1

THE ONTARIO NATIVE COUNCIL ON JUSTICE: A UNIQUE
OFFSPRING OF A FEDERAL-PROVINCIAL CONFERENCE
Stan Jolly 17

THE USE OF NATIVE PARALEGALS: THE KENORA EXPERIENCE.
Peter Kirby 35

THE NATIVE LAW CENTRE, UNIVERSITY OF SASKATCHEWAN.
Donald J. Purich 39

AUSSI LONGTEMPS QUE CETTE TERRE DURERA. LA LUTTE
DE LA NATION DÈNÈ.
René Fumoleau 45

DENENDEH: L'ÉMERGENCE D'UNE NOUVELLE PROVINCE
PLURALISTE?
Alan Bissonnette 63

THE NATURE OF INDIAN TITLE.
Clem Chartier 71

A CONCEPT OF NATIVE TITLE.
Leroy Little Bear 90

ROLE OF TRADITIONAL LAW IN CONTEMPORARY CASES.
Peter R. Grant 107

LES RIVIÈRES À SAUMON DE LA CÔTE-NORD OU "DÉFENSE
DE PÊCHER — CETTE RIVIÈRE EST LA PROPRIÉTÉ DE...".
Anne-Marie Panasuk, Jean-René Proulx 111

A UNIQUE COURT: S. 107 INDIAN ACT JUSTICES OF THE PEACE.
Bradford W. Morse 131

REPRESENTING THE INDIAN DEFENDANT: THE ROLE OF THE
LAWYER.
William T. Badcock 151

LES RAPPORTS ENTRE LES MÉTIS FRANCOPHONES ET LES
CANADIENS FRANÇAIS AU MANTOBA DEPUIS 1900.
Antoine S. Lussier 155

THE STATUS OF CHILD WELFARE SERVICES FOR THE INDIGENOUS PEOPLES OF CANADA: THE PROBLEM, THE LAW AND THE SOLUTION <i>Clem Charter, Ovide Mercredi</i>	163
THE CRISIS OF NATIVE CHILD WELFARE. <i>Patrick Johnston</i>	175
NATIONALISME FRANCOPHONE ET NATIONALISME AUTORITONNI <i>Roni S. and</i>	181
NATIVE JUSTICE IN AUSTRALIA, CANADA AND THE U.S.A.: A COMPARATIVE ANALYSIS. <i>Beverly E. Keen-Gibson</i>	187
DEPARTMENTS/CHRONIQUES	
Case Comment/Commentaire d'arrêt	259
Book Reviews/Revue de livres	279

THE DESTRUCTION OF AMERICAN INDIAN FAMILIES

(ed. Steven Unger, 1977, Association on
American Indian Affairs, New York)

CONTENTS

Editor's Preface	iii
------------------	-----

CONTEMPORARY OVERVIEWS

The Destruction of American Indian Families <i>William Byler</i>	1
The Role of the Federal Government: A Congressional View <i>The Honorable James Abourezk</i>	12

HISTORICAL PERSPECTIVES

The Effects of Boarding Schools on Indian Family Life: 1928 <i>Lewis Meriam</i>	14
"Kid Catching" on the Navajo Reservation: 1930 <i>Dane Coolidge</i>	18

THE HUMAN COST

"The Drunken Indian": Myths and Realities <i>Joseph Westermeyer</i>	22
The Wasted Strengths of Indian Families <i>Carolyn Attneave</i>	29
The Human Cost of Removing Indian Children from Their Families <i>Robert Bergman</i>	34
Child-Welfare Services to Indian People in the Albuquerque Area <i>Evelyn Blanchard</i>	37
Indian Child Welfare in Oregon <i>Ailcen Red Bird & Patrick Melendy</i>	43
The Ravage of Indian Families in Crisis <i>Joseph Westermeyer</i>	47
The Question of Best Interest	57

The Placement of American Indian Children— The Need for Change <i>Carl Mindell & Alan Gurwitt</i>	61
---	----

A LEGAL PERSPECTIVE

Parent and Child Relationships in Law and in Navajo Custom <i>Leonard B. Jimson</i>	67
---	----

TRIBAL ACTIONS

Indian Children and Tribal Group Homes: New Interpretations of the Whipper Man <i>James H. Shore & William W. Nicholls</i>	79
Tribal Resolutions: National Congress of American Indians, Navajo Nation, Standing Rock Sioux Tribe, Sisseton-Wahpeton Sioux Tribe, Three Affiliated Tribes of the Fort Berthold Reservation, Oglala Sioux Tribe	84
Notes on Contributors	89

ABORIGINAL LAW RESEARCH UNIT (VIC)

FOURTH MEETING - INTERIM COMMITTEE, 14 OCTOBER 1982,

VALS OFFICE Brunswick Street, Fitzroy 6. p.m.

1. Present: Anna Radonic, Meredith Wilkie, Eve Fesl
Ian Grey, Brian Keon-Cohen, Sean McLaughlin, Reg Blow,
Betty Moore, Len Hartnett, Herb Pettit.
2. Apologies: Michael Dodson, Richard Brear, Barbara
Hocking, Wendy Peter.
3. New South Wales Land Rights: Meredith Wilkie, research
officer ALRU (N.S.W.) reported on her activities
concerning the development of land rights legislation
in New South Wales. She stated the Bill was with a
drafting committee; would be tabled before Christmas;
would lie over until Autumn 1983; would be based on
the policy recommendations of the Kean Committee; but
would contain amendments of Kean proposals;
there was a need for regional land councils and six
such regional councils had been proposed, eg. Western
Region, North West, South Coast and North Coast.
These would probably be recognised; though the Redfern
ALS opposed this.

Meredith tabled a report
which was circulated to
the meeting.

Discussion developed concerning the various issues.
The current land councils in New South Wales had no
legal standing; they operate by donation; it appears
that the New South Wales government has not committed
itself to land rights or any particular type of scheme
or funding; the Premier, Mr. Wran had promised that only
the current 4,500 hectares would be vested in communities.

It appears the Minister, Mr. Frank Walker,
had rejected the judicial model; further the Aboriginal
Ministry appears to have rejected the judicial model.

Three possible schemes of vesting land remained;
(1) former reserve to be transferred automatically;
(2) as to vacant Crown land, claimants would apply to
the Minister; (3) purchase on the open market.

A backlash was developing in New South Wales country
districts. There were funding problems as between the
Commonwealth and the State and the role of the Commonwealth
A.D.C., if any. The A.D.C. has funds to buy land and also
maintains land and houses. A Ministry discussion paper
(June 1982) had been issued, mainly regarding the role
of regional land councils.

Discussion continued concerning the desirability or
otherwise of uniform land rights legislation in South
Eastern Australia. Discussion concerning whether

complementary programmes (e.g. employment) were being considered in New South Wales along with land rights. Noted that assimilation was still New South Wales government policy, and was still actively pursued by DAA in New South Wales. The Kean committee recommended the rejection of DAA type "self management", and New South Wales assimilation and proposed "self determination". Mr. David Pollard had prepared a paper on the failings of assimilation policies.

Meredith intended to analyse the Bill when it appeared and develop comments.

Apart from the above land rights work, Meredith was identifying areas of concern with communities; identifying areas where the Ministry was not operating; developing a model for mineral development and mineral rights arrangements.

4. Victorian Land Rights: Reg Blow and Betty Moore reported on developments. Consultation had ended; legislation was now being drafted to be circulated for comment. Other interest groups, e.g., graziers were being approached. Reg Blow was to speak to local government councils. Bill was expected in early December.

Eve Fesl suggested that the main points resulting from community discussions might be circulated. Compensation was still not included.

As to the proposed ADA, Cabinet had approved an interim elected Aboriginal committee to discuss issues regarding the setting up of the authority with communities. Draft Bill expected by the Autumn.

5. Relations with Government: Les Hartnett suggested we write a formal letter to Cain noting the existence of ALRU (Vic) and our interest in various issues and requesting to be kept informed, and put on mailing lists etc.

6. Submission for funds: To be settled and forwarded to New South Wales and Vic. law foundations and Vic. government. Need to fund specific projects.

7. Police notification system: Ian Grey reported that his report was under preparation being in the form of a submission to police authorities. Noted the last meeting was with Deputy Commissioner Thompson last August. Nothing appeared to have resulted.

8. Relationships with VALS: Information was sought concerning contact with VALS' directors and their attitude to ALRU. Reported that the matter had been discussed with directors and they were happy to be informally kept in touch. ALRU could use the building. Suggested minutes be sent regularly to the directors; and that ALRU reps seek to attend their meetings.

Agreed that ALRU's expertise should be made available to discuss issues with communities around Victoria, via

i

VALS contacts. VALS might suggest communities requiring such advice from ALRU from time to time.

9. Next Meeting: Thursday 18 November 5.50 Law Institute of Victoria Bourke Street, Melbourne.