

LQ/K1/A26.1

2

ABORIGINAL LAW NOTES

No. 82/5

December, 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 8/82

SYDNEY

16 December, 1982

Next meeting: 5.30 - 7.00 p.m., Tuesday, 22 February,
Staff Common Room, Level 11, Law School, University of
New South Wales.

Meeting 5/82

MELBOURNE

18 November, 1982

Next meeting: 5.30 p.m., Thursday, 10 February, Victorian
Aboriginal Legal Service, 11 Brunswick Street, Fitzroy.

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) 602-2400.

The Unit also publishes the Aboriginal Law Bulletin four
times a year.

Aboriginal Law Notes is distributed to members of the Unit's
Advisory Council. Subscription is \$5.00 p.a.

Registered by Australia Post - Publication No. NBP 5530.

CHAIRMAN'S REPORT

Operating Funds

Current balance: \$100 approx.

Since the November ALN, one member of the Advisory Council has donated \$50.

Project Funds

Legal Services Training. The Department of Aboriginal Affairs indicated by telephone, on 14 December, that it would fund direct expenses for the course for an additional year, 1983.

Publications

MS for conference Human Rights for Aboriginal People in the 1980's has had final editing, and will be delivered to Legal Books for publication in the new year. The Law Foundation of NSW has agreed to subsidise publication. It is proposed that royalties be distributed among ALRU, ICJ (Australia) and the Law Faculty.

A number of requests have been received for copies of Michael Hogan's paper "Legal Recognition of the right of Aboriginal people to hunt, fish and gather in New South Wales" @ \$2 to cover copying and postage.

Several requests have also been received for Meredith Wilkie's paper on self-determination.

A detailed proposal has been put to the Australian Institute of Aboriginal Studies to publish a series of studies to be provided by ALRU under the title Aboriginal Land Rights Law in Australia. The two articles by Richard Bartlett might become part of that project.

House of Representatives Standing Committee on Aboriginal Affairs Members and staff of the Committee visited the University of New South Wales on 1 December for a working lunch with members of the Unit, namely, Garth Nettheim, Meredith Wilkie, Neil Rees, Richard Chisholm and Brad Morse. Matters discussed under the committee's current reference on education included the field officer's course, general University support for Aboriginal education, education for land rights, and child welfare issues.

ALS National Conference

The conference was held on 27-28 November at the University of New South Wales. Some 65 people attended from 15 organizations. There were discussions on the ALRC customary law reference, on the Aboriginal Law Bulletin and on other matters, but the major part of the conference was taken up in establishing a National Aboriginal and Islander Legal Services Secretariat.

Land Rights (NT) Project

Letters had been sent to Northern Land Council, Central Land Council and the Pitjantjatjara Council seeking their views on

how best to handle this project in view of the limited funding provided by ARGC.

CLC lawyers suggested that Graeme Neate might be well-equipped to undertake the project, as former Associate to Justice Toohey, now employed by DAA. Graeme Neate had had preliminary discussions with Garth Nettheim as to whether he could handle the project on a part-time basis within the time scale contemplated.

Correspondence:

Correspondence with Kimberley Land Council proposing exchange of publications.

Letter from Phillip Toyne of Pitjantjatjara Land Council referring to earlier correspondence.

Correspondence with Duncan Graham, Alice Springs, about the Land Rights (NT) Project.

Correspondence with Frank Brennan SJ, Brisbane, about the culmination of his work on new Queensland legislation, and the possibility of forming an ALRU (Qld.).

Letter from Law Librarian, University of New South Wales, saying that it would not be possible to accommodate a separable ALRU collection.

Letter from Harold Finkler in Canada with reminders of deadlines for papers and registrations for the XIXth International Congress Anthropological and Ethnological Sciences, Canada, 1983: Sympos on Folk Law and Legal Pluralism.

Further Projects:

The Law Foundation of NSW, on 2 December, 1982, had a meeting to discuss support for Aboriginal law projects. Pat O'Shane was present, also Garth Nettheim and Murray Chapman. Projects discussed included (1) sentencing of Aboriginals by magistrates and the need for guidelines; (2) exercise of police discretions in Aboriginal areas. The Foundation expressed interest in supporting suitable projects in these or other areas.

Printing:

Copies of the ALRU brochure had been sent out with the November Aboriginal Law Notes.

Letterhead for ALRU and the Aboriginal Law Bulletin will be available soon.

Professional Advice:

The Unit has received another request to brief counsel for advice

LEGAL SERVICE TRAINING REPORT

In John Terry's absence (in Central Australia), Garth Nettheim reported that 14 field officers had finished the course, of whom 11 received University Certificates of satisfactory completion. The Certificates had been presented on Saturday, 11 December.

A final evaluation of the course should be available before Christmas.

After some political/bureaucratic difficulties, it now appeared that DAA would fund the course for a further year, 1983. But the Department's present view is that the course would not be conducted in NSW after 1983. A similar course might well be run in another State or States.

It is suggested that ALS organizations interested in attracting funding support for field officer training programs should write to DAA and to the Aboriginal Employment and Training Branch of the Department of Employment and Industrial Relations. (The Unit would be interested to be informed of any such applications).

ABORIGINAL LAND RIGHTS (NSW) PROJECT

Meredith Wilkie reported that her paper on proposed funding arrangements was in draft form and would be completed in the light of comments received.

A law student, Lesley Strong, is commencing an undergraduate research thesis on the proposed role of the Land and Environment Court.

There have been requests for various of her discussion papers.

The final stage of the project is designed to produce a study of Aboriginal Land Rights Law in New South Wales.

She will be visiting communities in the Western part of the State during January.

ABORIGINAL LAW BULLETIN

Neil Rees tabled an advance copy of Issue No. 6 (December).

He reported that the Legal Service Bulletin board had decided to adjust subscription rates so as to support the Bulletin with no further need for subsidy.

There is a need for an editor in Sydney during Neil Rees' absence (January-July 1983) to work with Greg Lyons in Melbourne. David Weisbrot and Richard Chisholm agreed to take over this function.

ALRU (NSW)

David Weisbrot and Richard Chisholm will also handle the affairs of ALRU, and production of the Aboriginal Law Notes in the absence (January-April) of Garth Nettheim.

ABORIGINAL LAND RIGHTS (NT) PROJECT

Neil Rees and Garth Nettheim have corresponded with Graeme Neate who may be able to complete a substantial portion of the work for this project on a contract basis. They hope to have arrangements settled before they depart.

ABORIGINAL LAND RIGHTS LEGISLATION - NSW

There was considerable discussion on what role ALRU might play in supporting Aboriginal organizations in the public debate over the proposed legislation. A Green paper and draft bill have been promised before Christmas.

Various suggestions were put forward. It was agreed that a committee be formed to take whatever action might be appropriate. Garth Nettheim, Chris Kirkbright, Meredith Wilkie, Richard Chisholm, Colin Tatz.

CUSTOMARY LAW

Chris Kirkbright tabled copies of ALRC research papers 9 and 10.

ALS DIRECTORY

The revision is complete. Copies will be reproduced and dispatched shortly.

ABORIGINAL LAW RESEARCH UNIT (VIC)

Fifth Meeting, Interim Committee, 18th November 1982,
Victorian Law Institute, Bourke Street, City.
5.30 p.m.

1. Present: Len Hartnett, Dave Parsons, Chris Loorham, Greg Lyons, Richard Brear, Geoff Lester, Bryan Keon-Cohen Professor Brad Morse.
2. Apologies: Bill Morgan-Paylor, Len Brear, Ian Gray.
3. Application for funds: Final draft application for funds for research officer tabled and discussed. Suggested that letters of support from Aboriginal bodies would be appropriate. Discussion of employer/employee relationship, or consultancy relationship. Suggested that the person should be "appointed" rather than employed; preference for project orientation rather than development of an "institute". Suggestion that the person could be funded by ALRU but working under someone else's supervision on a project located wherever was appropriate; New South Wales (ALRU) arrangements discussed; reported that Jim Berg at VALS had indicated that accommodation and support would be available at the VALS office; decided that ALRU (Vic) should apply at the same time for a field assistant/research assistant position, preferably to be filled by an Aboriginal person, to ADC, DAA, Vic Government, Myer Foundation, Law Foundation. Len Hartnett to forward VALS field officer's wages and conditions details.
4. Land claims in Canada: Brad Morse briefed the meeting on the current situation concerning (1) comprehensive land claim and (2) specific claims, being claims relating to treaties. Relevance of litigation, impact of Calder, experience with the James Bay agreement, parallels in Australia, all discussed. Geoff Lester referred to the 1969 Government white paper which recommended; (1) abolishing treaties and the Indian Act and (2) Indians without treaties should get nothing. Incidents of Indian interests in various classes of lands discussed, especially reserve lands. Reserves in Canada had been established in various ways, e.g., missions, treaties, land given to Indians, land given by executive action with reservations.
5. Victorian Aboriginal Reserves: Chris Loorham and Dave Parsons offered to set in train a project designed to discover all areas of land created as reserves in Victoria. Phil Felton paper discussed.