

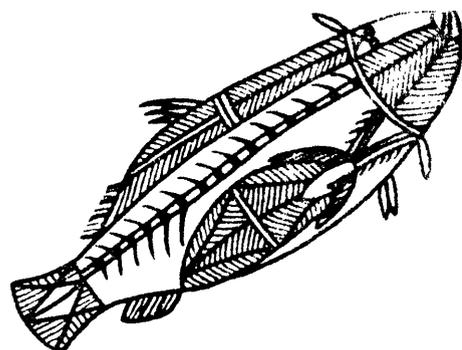
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ABORIGINAL LAW NOTES



No. 84/1

FEBRUARY, 1984

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.

SYDNEY

Next meeting: 5.30 - 7.00 p.m., Tuesday, 14 February 1984
at Tranby Aboriginal Co-operative College,
13 Mansfield Street, Glebe, Sydney.

Major topic: LAND RIGHTS DEVELOPMENTS

Any member of the Advisory Council "network" is welcome to
attend meetings.

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: Tel.
(02) 663-0351, Extension 3266.

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.

ISSN 0811-9597

Registered by Australia Post - Publication No. NBP 5530.

USA CONTACT

Stuart McGill, an Australian lawyer member of the ALRU network is living in New York while pursuing higher degree studies. He writes: "During the rest of my time here, I am interested in doing any available consultancy work in the field of resources law, economics or negotiation. I thought I should at least register this interest with you as you may hear of a case where Aborigines wish to develop some part of their land or evaluate the potential of existing resources".

Direct contact can be made with him by writing to 35 W. 16th St., #8, New York, NY, 10011, USA. His phone number is (212)242-7905.

Legal Retrieval

The Law Library at the University of New South Wales operates a Bibliographical Legal Information Service (BLIS). At least one ALS organization uses the service from time to time and it may be of use to others (and to Land Councils and other bodies). Portion of the BLIS brochure describing the service is attached. Inquiries can be directed to Rob Brian or Jack Moulos, Law Library, University of NSW, P.O. Box 1, Kensington, NSW, 2033 (phone (02) 662-3665).

Parliamentary Resolution "Aboriginal Past: Australia's Future".

The federal Minister for Aboriginal Affairs on 8 December 1983 moved an important resolution in the House of Representatives. A copy is attached.

The Shadow Minister for Aboriginal Affairs, Mr. James Porter, on the same day, offered some critical comments in Parliament. He has since written seeking the views of Aboriginal people, Aboriginal organizations, and others with an interest in Aboriginal Affairs. He writes: "In particular, I would be interested to receive your comments on the five basic land rights principles, the adequacy of the measures proposed in section (2) in freeing the Aboriginal people from the "distress, the poverty and the alienation that has been their lot", and the use of the Bicentennial year of 1988 as a focus for these policy objectives". Mr. Porter would like to receive any comments, sent to Parliament House, Canberra, by mid-February.

CORRESPONDENCE:

With Alternative Publishing Co-operative Ltd. and Law Foundation of NSW concerning publication of Meredith Wilkie's study on Aboriginal Land Rights Law in NSW.

With Tom Tylor, Canadian Indian Rights Collection, National Library of Canada, about ALRU publications.

To Richard Bartlett, University of Saskatchewan, on various matters, and asking permission to make copies of draft articles available to lawyers developing federal land rights legislation.

with Douglas Sanders, University of British Columbia, exchanging articles and publications.

With Stuart McGill in New York on various matters.

From David Buchan, Genstar Development Company in Canada seeking information about development on Aboriginal lands in Australia; reply with some information, some addresses, including Stuart McGill.

To Tasmanian Aboriginal Centre Inc. concerning Aboriginal claim to Oyster Cove site.

From Brad Morse, University of Ottawa, on various matters.

From Diane Bell about proposed 1986 conference on Folk Law and Legal Pluralism and about her Social Justice Project at ANU.

Resolution

Aboriginal Past: Australia's Future

On 8 December 1983, the Minister for Aboriginal Affairs, Mr Clyde Holding, M.P., moved a resolution in the House of Representatives. The resolution will be debated when Federal Parliament resumes in 1984. The following is the text:

That this House,

Noting that, in 1967, an overwhelming majority of the people of Australia voted to amend the Constitution so that this Parliament would have the power to legislate for the peace, order and good government of the Commonwealth with respect to the people of any race for whom it was deemed necessary to make special laws;

Noting also that the change to the Constitution was made to enable the national Parliament to discharge a national responsibility to the Aboriginal and Torres Strait Islander people of Australia; and

Bearing in mind that the Senate unanimously adopted the following resolution on 20 February 1975:

"That the Senate accepts the fact that the indigenous people of Australia, now known as Aborigines and Torres Strait Islanders, were in possession of this entire nation prior to the 1788 First Fleet landing at Botany Bay, urges the Australian Government to admit prior ownership by the said indigenous people, and introduce legislation to compensate the people now known as Aborigines and Torres Strait Islanders for the dispossession of their land";

(1) **Acknowledges** that

- (a) the peoples whose descendants are now known as the Aboriginal and Torres Strait Islander people of Australia were the prior occupiers and original owners of Australia and had occupied the territory of Australia for many thousands of years in accordance with an Aboriginal system of laws which determined the relationship of Aboriginal responsibility for and to the land to which they belonged;
- (b) from the time of arrival of representatives of King George III of England, and the subsequent conquest of the land and the subjugation of the Aboriginal people, no settlement was concluded between those representatives and the Aboriginal and Torres Strait Islander people;
- (c) as a result of the colonization of the land by Great Britain the rights of the original owners and prior occupiers were totally disregarded;
- (d) since the arrival of European settlers in Australia, the original inhabitants have been dispersed and dispossessed with the result that their descendants are, as a group, the most disadvantaged in Australian society;
- (e) this disadvantage persists, despite measures taken by State, Territory and Australian Governments, and by Aboriginal and Torres Strait Islander people themselves, so that further measures by Australian society as a whole, and by the Parliament of the Commonwealth in particular, will be required to ensure real equality and advancement for the Aboriginal and Torres Strait Islander people.

(2) **Considers**, therefore, that the special measures which must be taken include action in the following main areas:

- (a) the development of effective processes of consultation with Aboriginal people in order that the Aboriginal people may assert control of all aspects of their lives, having regard to the National Aboriginal Conference's responsibility to represent and present the views of Aboriginal and Islander people throughout Australia;
- (b) the recognition by this Parliament of Aboriginal and Torres Strait Islander people's rights to land, in accordance with the following five basic principles:
 - (i) Aboriginal land to be held under inalienable freehold title;
 - (ii) protection of Aboriginal sites;
 - (iii) Aboriginal control in relation to mining on Aboriginal land;
 - (iv) access to mining royalty equivalents; and
 - (v) compensation for lost land to be negotiated.
- (c) the continuation and acceleration of programs designed to ensure Aboriginal equality of opportunity in fields including health, education, housing, employment and welfare;
- (d) the development of programs by all appropriate means to enable Aboriginal people to take part in economic activities for their own advantage;
- (e) the promotion and protection of Aboriginal cultural identity, in ways considered appropriate by Aborigines, including measures designed to:
 - (i) codify in writing Aboriginal languages, and assist in recording oral history;
 - (ii) preserve and protect Aboriginal sites and objects;
 - (iii) restore to Aboriginal people sacred objects relevant to their history, tradition and culture;
 - (iv) enhance the development of traditional or contemporary art forms; and
 - (v) provide interpreter services.
- (f) restoration of the rights of Aboriginal families to raise and protect their own children by means of uniform laws and procedures in respect of child custody, fostering and adoption;
- (g) respect for, and in appropriate circumstances, the application of, Aboriginal customary law and related practices as part of the law of Australia; and
- (h) the development of improved community relations between Aboriginal and non-Aboriginal Australians, which requires a growing understanding on both sides by means of:
 - (i) public education programs; and
 - (ii) fostering the study of Aboriginal history, language, anthropology and archaeology in Australian schools and institutions of learning.

(3) **It is therefore of the view that**

- (a) the Australian people will be truly free and united only when the Aboriginal and Torres Strait Islander people of this nation are free of the distress, the poverty and the alienation that has been their lot; and
- (b) the Bicentennial year of 1988 provides an immediate focus point towards which all Australians can work together to achieve the objectives set out in this resolution.

Bibliographical Legal Information Service

WHY 'BLIS' ?

Busy lawyers are finding it more and more difficult to consult the ever increasing number of legal information sources and thus to be confident that the advice they offer to clients has been fully and thoroughly researched. Access to a reasonably comprehensive law library is not always readily available. On the other hand the law appears to be constantly growing more complex, while at the same time a more aware public is demanding ever improved service.

The recent proliferation of statutory, case and regulatory law has increased the possibility of crucial authorities and other legal material being overlooked. Effective legal research is an essential part of the lawyer's work. This is costly in terms of the lawyer's time and in terms of the capital outlay that is required to establish and maintain an adequate library. Even so, no individual lawyer's library can compete with a well-stocked law library.

The law library at the University of New South Wales is generally considered to be one of the best law libraries in Australia. Through UNISEARCH LIMITED the University of New South Wales is making this valuable resource more readily available to the legal community by setting up BLIS - Bibliographical Legal Information Service.

WHAT DOES 'BLIS' OFFER ?

BLIS utilises the resources of the University of New South Wales law library to provide a bibliographical legal information retrieval service for the practising profession. BLIS does not provide legal advice. It is up to the lawyer to make use of the citations and material provided by BLIS as a result of a literature search requested by the lawyer.

BLIS may occasionally utilise the resources of other libraries, but normally the legal information retrieval service will be restricted to the resources of the University of New

WHO DOES THE SEARCHING ?

BLIS is directed by qualified law librarians. All research undertaken by BLIS will be done under the supervision of the Director and the Deputy Director, both experienced law librarians.

WHAT WILL BE SEARCHED ?

The BLIS searchers will do research in the legislation of the jurisdiction(s) specified, the relevant law reports, relevant treatises and journal articles. For the moment the well established manual research tools will be used as well as some tools less well-known among lawyers. Computerised legal information retrieval services will be used as they become available in Australia. BLIS is closely monitoring developments in this area.

WHO WILL USE 'BLIS' ?

BLIS is directed exclusively at the practising profession, both solicitors and barristers, and legally qualified staff in business firms, government departments and instrumentalities. Since BLIS does not provide legal advice it is not available to the general public.

A variety of lawyers will make use of BLIS. A country solicitor, for example, who needs to research a point, but has limited library facilities at hand, may ask BLIS for assistance. A barrister, who has to write an opinion, may ask BLIS to retrieve relevant information, thus saving much valuable time, as well as having a much broader legal information resource available to him than his own library. BLIS may likewise be used by corporate lawyers, lawyers in government departments, Law Reform Commissions, commissions of

HOW CAN I USE 'BLIS' ?

Initially the lawyer will complete the enclosed research request form. Established clients may subsequently phone in their requests by ringing (02) 662 3665. Requests can also be accepted by telex (telex number: UNITECH AA 20467). The client should indicate the jurisdiction(s) and the type of material to be researched. Obviously the more relevant information the client can provide in relation to the problem to be researched the more effective the results of the research are likely to be.

HOW MUCH WILL 'BLIS' COST ?

BLIS will be charged at the rate of \$25 per hour, with a minimum charge of \$25, which covers the time of the researcher together with a margin for the provision of the service generally and for the use of the resource base.

As far as the Copyright Act allows, copies of relevant material may be supplied and these will be charged for at cost as required by the Act.

WHY NOT GIVE 'BLIS' A TRY ?

Our examples indicate how BLIS might be utilised. By using BLIS you will not only avail yourself of the resources of one of the best law collections in the country, but you will also be helping to maintain and expand this valuable resource to the benefit of all lawyers, present and future.

If you are still doubtful that BLIS can actually provide the service why not pay us a visit in the Law Library, level 3 of the library tower at the University of New South Wales. We will happily show you around.

BLIS confidently expects that you will not