

FROM ASSIMILATION TO SELF-DETERMINATION: THE REPORT OF THE SELECT COMMITTEE UPON ABORIGINES¹

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In 1983 the NSW Government passed the *Aboriginal Land Rights Act 1983 (ALRA)*. The *ALRA* established the three-tier community driven land council network, a fifteen year funding arrangement to support enterprises and sustain the network into the future and a mechanism for land recovery. The *ALRA* came after nearly 200 years of colonial land dealings. Therefore the recognition of Aboriginal land rights has to necessarily deal with this past activity. But there are other details enmeshed in the passing of the *ALRA*. This paper sets out to demonstrate the connections between land dealings, the economy and the administration of Aboriginal Affairs across the policy eras including 'protection', 'assimilation' and 'self-determination'.

Firstly, it will be shown how land has been of supreme economic and later socio-cultural significance to the establishment and expansion of the Australian Colony. It can be seen that the land-based industries and related social and cultural developments shaped how the NSW Government, and indeed the colonisers, managed or administrated Aboriginal people/families. Therefore the administration of the land based economy came to intricately implicate Aboriginal people. Land dealings, the ups and downs of the rural economy, for example, were also experienced by Aboriginal people. The meaning and relationship to land between Europeans and Aboriginals was contested, but also necessarily interwoven.

Following from this, when the Wran Labor Government announced the 1978 Select Committee Inquiry, which focused initially on how to recognise land rights, it sought to understand and repair this contested meaning and deliver land justice. In the history of the NSW Government land justice for Aboriginal people had never been addressed. The State Government's administration of Aboriginal Affairs was initially one of neglect and dispossession and later from the 1890s a more organised system of so-called 'Protection' under the authority of the Aborigines Protection Board and with the shifting emphasis on welfare to one of 'Assimilation' from the 1930s. These policy shifts can be best understood through changes in the land based economy and related social and cultural change *and* government efforts to regulate the economy and society. The Select Committee Inquiry and the *ALRA* initiated a new policy era. While continuous with Commonwealth Government policies, recognition of land rights in NSW instigated a new policy era of self-determination and the formal ending of assimilation. This serves to highlight how land, in this instance in a more positive way towards

¹ This article has been assessed by independent academic referees with expertise in the field.

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land justice, has been central to the administration of Aboriginal people. The management of land and particular relationships to it has informed the various regulatory activities of Government, whether it be through incarceration on the reserve lands, forced relocation, revocations of reserve lands or land rights.

The third point made in this essay is that in addition to the near two hundred year legacy of dispossession from land and the policy eras that gave rise to this and the policy shift to self-determination that land rights heralded, the Select Committee Inquiry set a precedent for consultation and involvement of Aboriginal people in the processes by which government rules. In doing this, new relations between Aboriginal people and the state of NSW were born.

Land and Economy

Land has been critical to the economic, social and cultural development of the colony. The key industries that built the colonial economy, and amassed considerable wealth for its land holders; pastoralism and agriculture, necessitated good land and water. Business, including export, was booming for the Squatters on the vast tracks of land across the western and north western plains of NSW that they claimed. The discovery of Gold in the 1850s also brought new migration and movement across the land with a host of social and economic effects. The land required for such economic expansion was through the violent dispossession and dis-location of Aboriginal people from their land. Land of course is also deeply significant to Aboriginal people. Land or country can be understood as an entry point upon which knowledge of oneself, ones identity, relationship to others, association to country, knowledge of your physical environment, resources, geographic boundaries and much more are understood from. The colonisers also developed an affection for the 'Sunburnt Country' of 'rugged mountain ranges'.² As Federation approached, a new and uniquely Australian identity was emerging that drew on particular relationships to land as evidenced in Dorothy Mackellar's writing of 'My Country'. While there was largely as WEH Stanner³ suggested a 'great silence' in incorporating or understanding Aboriginal people in this history, Heather Goodall (1996) documents how 'land has been a constant thread running through the actions, statements and demands of Aboriginal people in NSW from the very earliest days of colonization'.⁴ Goodall (1996) outlines the centrality and consistency of land rights from the first public political demands made by Aboriginal people to Government. This demand has been outlined as an ongoing enduring cultural connection to land *and* its meaning under colonial rule. At different times according to changing political imperatives, land demands and justice were never off the agenda for the NSW Aboriginal community. These demands were for housing and employment and at other times against police violence, but largely through the frame of land and its meaning as an economic,

² MacKellar. D. (1982), *My Country and other poems* South Yarra, Vic. Currey O'Neill.

³ Stanner W. E. H. (1968), *After the Dreaming*, Crows Nest, N.S.W ABC Enterprises.

⁴ Goodall H (1996), *Invasion to Embassy: land in Aboriginal politics in New South Wales, 1770-1972*, St. Leonards, N.S.W., Allen & Unwin, 352.

social, political and cultural base.

Land and Colonial administration

In the early period of the colony the granting of land was a key tool in the management and administration of Aboriginal people, especially in the more concentrated area of Sydney. There were early grants to missionaries and 'Native Schools' established at Parramatta in 1815 and later Blacktown⁵ and individual land grants as rewards for co-operation, such as the Sydney Domain to Bungaree and Queen Gooseberry⁶ and for military collusion to Nuringingy and Colebee in western Sydney. While these grants were seen as failures as Aboriginal people didn't make use of the land grants for cultivation or assume sedentary social and cultural lives as anticipated, they are early examples of land dealings.⁷

Although General Bourke's Proclamation in August 1835 made it clear that any pretence of a...

... treaty, bargain or contract for the purchase thereof with the Aboriginal Natives...for the possession, title or claim to any lands lying and being within the limits of the Government of New South Wales...is void and of no effect against the rights of the Crown...any persons...without the license and authority of His Majesty's Government...will be considered as trespassers and liable to be dealt with in like manner as other intruders upon vacant lands of the Government within the said Colony.⁸

This Proclamation made it clear that all land was the possession of the Crown and anyone in possession of land without the permission of the Crown would be considered trespassers. It also confirmed the dispossession of Aboriginal people in NSW from their land, despite what may have been interpreted as land grants.

The bloody and violent frontier warfare that accompanied the colonial expansion over the western ranges from Sydney in the early 1800s including the 1838 massacre of Gamilaroi people at Myall Creek in the north-western of the state and dispossession of Tasmanian Aborigines came to the attention of the London based International humanitarian movement who were lobbying

⁵ See for example Brook and Cohen's (1991), *The Parramatta Native Institution and the Black Town: A History*, Kensington, N.S.W., New South Wales University Press.

⁶ Eora: Mapping Aboriginal Sydney, exhibition at the Mitchell Library 2006. Accessed August 2006 See: <<http://atmitchell.com/Events/exhibitions/2006/eora/eora-captions4.pdf>> In this account Queen Gooseberry, her husband Bungaree and others occupied the Governor's Domain. The exhibition outlined that, 'In 1822 Governor Lachlan Macquarie reserved land for the 'Sydney Tribe' at Elizabeth Bay, marked 'Native Village' on Cross's map'. Later in 1834 the land was further granted to Alexander Macleay by Governor Sir Ralph Darling and came to be known as Elizabeth Bay House.

⁷ Heather Goodall (1996) develops this in her *Invasion To Embassy: land in Aboriginal politics in New South Wales, 1770-1972*, St Leonards, NSW, Allen and Unwin.

⁸ Governor Bourke's Proclamation is available on-line through National Archives of Australia See: <<http://www.foundingdocs.gov.au/item.asp?sdID=75>>.

Parliament over conditions for native colonized people. Through the politically powerful reforming groups in the British parliament, they pushed for land and cultural recognition. This resulted in the brief period of protection with the appointment of the Chief Protector of Aborigines in the Colony, GA Robinson who spoke out against cruelty in the Colony in referring to 'many acts of gross cruelty committed by white persons on the Aborigines' at a public speech in October 1838.⁹

The passing of the *Land Act 1842* was in some ways related to the reformers humanitarian movement. While the Act recognised Aboriginal interests in land its main intention was to regulate the very powerful pastoralists or Squatters particularly with regards to the distribution of land. The Act made provisions, for the first time in the history of the colony, for Crown land to be reserved for the 'use of' Aboriginal people. The Squatters by now were a very powerful force in economic and political terms, despite attempts by the NSW Government to regulate them, subsequent laws saw over 180 million acres in NSW handed over to 1800 squatters.¹⁰ Efforts to regulate the squatters were understood in the same context as attempts by British Secretary of State for Colonies Earl Henry Grey to formulate a coordinated policy to amongst other things, Aboriginal people's property rights, as a constraint on the pastoral lease arrangements and more broadly the independence and self-government of the colony.¹¹

The reserve lands encouraged small-scale cultivation and hence social and cultural change. Eventually, in 1850, 35 reserves were created. However, the change in industry from pastoralism to mineral exploitation (arising from the so-called *Gold rush*) resulted in a greater call for Aboriginal labour on the land and resulted in different relationships between Aboriginal people, now desirable as successful workers, and the land owners. For other Aboriginal communities who occupied the lands desired for gold panning violence and dispossession ensued for them. Few records of these earlier reserves with many lapsing as the land demands and conditions changed. But other developments, largely motivated by a desire by the NSW Government to have greater control over the Squatters or pastoralists, saw further legislation passed in 1861 that provided for alienation of Crown Lands and occupation of land. The then NSW Premier, John Robertson, initiated a period of free selection whereby up to 320 acres of Crown Land could be claimed with a quarter value down-payment and commitment to live and work the land for three years. Free selection saw intensifying use of land by the white settlers over this period and

⁹Quote from speech made by GA Robinson, Commandment of Flinder's Island and Chief Protector of Aborigines in the Colony, at the public meeting of the Australian Aborigines Protection Society, October 1938. Published online by Macquarie University and State Records NSW. See: <<http://www.law.mq.edu.au/scnsw/Correspondence/vdl%20speech.htm>>.

¹⁰ Goodall, H, (1996) *Invasion to Embassy: Land in Aboriginal Politics in New South Wales, 1770-1972*, St. Leonards, N.S.W., Allen & Unwin, 50.

¹¹ Goodall (1996) 'Recognising Native Title, 1838-52', (Chapter Four) in *Invasion to embassy: land in Aboriginal politics in New South Wales, 1770-1972*, Leonards, N.S.W.: Allen & Unwin, provides an excellent account of this period.

increased encroachment on land 'for the use of' Aboriginal people.

The economic depression of the 1890s; the collapse of the pastoral industry along with the exhausting of gold, led to a new wave of displacement from the land to the newly created Aborigines Protection Board (APB) and their management of the Reserves with powers to assume greater control over the lives of Aboriginal people. The economic downturn and widespread unemployment that ensued saw trade unions organise and form the state based Labor Party (and Australian Labor Party after Federation). Economic recession and the move towards Federation contributed to the emerging articulation of national identity as earlier indicated, especially as it pertained to employment. The White Australia policy came about in this era along with greater surveillance and restrictions on Aboriginal people. The segregation of Aboriginal people on the Reserves that in part resulted from structural economic change allowed the assertion of Australian identity as a white nation.

Segregation and surveillance was accelerated through the passing in 1909 of the *Aborigines Protection Act*¹² which vested all reserves in the Protection Board along with powers to remove children on the grounds of 'neglect' and for 'apprenticeship'.¹³ The Board was increasingly under pressure to revoke reserves as white pressure for land, including for the Soldiers Settlement scheme. Many reserves in this period were closed and families forcibly relocated to less desired land on the fringes of towns.¹⁴ Further amendments to the act at the height of the 1930s depression gave the Board greater powers to forcibly incarcerate families onto centralized reserves.

These changes were not without organized resistance and articulation of clear political demands for land. Aboriginal activism through organizations such as the Aboriginal Progressive Association formed and campaigned for citizenship, land rights and against the abuses of the Protection Board with the 1938 Australia 'Day of Mourning' Aboriginal Conference held in Sydney passing motions to this effect.

Not long after this the Protection Board was abolished and replaced by the Aborigines Welfare Board and the Act amended.¹⁵ This was consistent with the move towards 'assimilation' and for greater control over the many Aboriginal people (estimated to be about 50%) not living on reserves.¹⁶ The policy of assimilation included strategies like encouraging families to move to the cities and regional centres, removal of children and issuing of exemption certificates.

As Goodall (1996) shows, the reserves came to be sites of authoritarian management, force relocation, segregation and surveillance. At other times,

¹² *Aborigines Protection Act, 1909.*

¹³ HREOC (1997) *Bringing them home: report of the National Inquiry into the Separation of Aboriginal and Torres Strait Islander Children from their Families*, Sydney, Human Rights and Equal Opportunity Commission.

¹⁴ Goodall (1996) details the revoking of reserves in the period of the early 1900s, 125-148. For example the moves to revoke Aboriginal land at Bateman's Bay, 147-148.

¹⁵ *Aborigines Protection (Amendment) Act, 1940.*

¹⁶ *Ibid*, 268.

informed by the policy of assimilation and as land became desired by white people the reserves were systematically revoked. The revoking of the reserves underestimated the centrality of the reserves or missions to the renewal of kinship connections and continuity of traditional practices, albeit within a different state shaped community. Despite the reserves being places of, in some instances terrible authoritarianism and deprivation, for Aboriginal communities a deep attachment was formed and new cultural and social practices formed around them. The moves to close down the reserves was viewed as a land rights issue and was a galvanising force for the NSW Aboriginal community.

Assimilation anew: the revoking of reserve lands

In 1965 the NSW Government initiated the 'Joint Committee of the Legislative Council and Legislative Assembly Upon Aborigines Welfare' to investigate the welfare of Aboriginal people, particularly education and housing, and consider 'other proposals necessary to assist Aborigines attain an improved standard of living'.¹⁷ The 1967 Report of the Joint Committee, consistent with the other states and territories, re-affirmed the commitment to assimilation and expressed criticisms of the Aboriginal Welfare Boards delay in assimilating Aboriginal people. The Report recommended the abolition of the Welfare Board and that no new homes be built on the reserves with a view to the Government gradually divesting itself of reserve lands. Aboriginal people's long standing demands for reserve lands and compensation for dispossession were not considerations in the Committees recommendations.

The passing of the *Aborigines Act 1969* repealed the *Aborigines Protection Act 1909*, abolished the Aboriginal Welfare Board and transferred Reserve land to the state Lands Department. It was at this time that the revoking of reserves was stepped up. While the government appointed a nine member Aboriginal Advisory Committee¹⁸, reflected a trend to include or consult Aboriginal people in government decision making and the administration of the lives of Aboriginal people, the policy of assimilation with renewed expression of revoking reserve land continued unabated.

A great deal of the land rights struggles pertained to the preservation of reserve land and continued as a burning issue throughout the 1970s as the government's plans to dispose of Reserve Lands escalated. Goodall explains that the reserve lands were understood by Aboriginal people as the recognition of traditional land ownership, compensation for dispossession and as a promise from the English Crown of inalienable security of tenure. The reserves or Missions had significant meaning despite their history as oppressive institutions under the APB and drastically inadequate housing, at times with no water or electricity. Some missions included burial sites or cemeteries, Burra Bee Dee

¹⁷ Report from the Joint Committee of the Legislative Council and Legislative Assembly Upon Aborigines Welfare, 1967 (1967-68, P.P., V ol.5, 1), 5. Cited in Wilkie (1985), 7.

¹⁸ The Advisory Committee was established in 1969 but didn't meet until 1971.

near Coonabarabran for example, is a very significant and beautiful place.¹⁹

By 1969 it was estimated that 25,000 acres of 'old reserves' had been revoked by the State Government.²⁰ In response to this threat different regional groups became organized and went on to form larger coalitions. On the North Coast as the reserves were threatened with revocation, Pastor Frank Roberts Junior, along with other groups supporting co-operative farming, (despite their relative farming success) along with north-western NSW people, formed a 'Coalition of Land and Rights Council'. This Council held a conference in Sydney in 1970 where the statewide 'Land and Rights Council' was formed. This group was formed out of the North Coast experiences and linked up north western peoples who were experiencing similar threats to their land. In 1972 some residents of the reserve at Mulli Mulli in the state's north participated in a rent strike to highlight the sub-standard housing and government neglect. Sydney based activists, Billy Craigie and Lyn Thompson from Moree, also conducted community research to determine the 'land needs' of the NSW Aboriginal community. Goodall (1996) credits this research as the most significant and thorough land needs study to date.

Changing policy context and land rights

The campaign for land rights recognition, in response to the revocation of reserves, gained considerable momentum in terms of profile and awareness in the wider community and was a coherent and uniting platform for the NSW Aboriginal community. This movement was also related to the broader Commonwealth initiatives that followed the 1967 Referendum, including the pressure on the states (and territories) to soften their authoritarian regimes through initiatives such as devolution of 'Aboriginal welfare' to the relevant functional state departments, such as housing and health and the limited response by Prime Minister McMahon in January 1972 in recognizing land rights in the Northern Territory after the unsuccessful claim by the Yirrkala people in the *Gove Land Rights Case*.

The land rights struggle in NSW was long standing and had endured the tyranny and authoritative rule under the Aborigines Protection Board and later the Welfare Board administration. The dispossession of Aboriginal people from their land in NSW was a long process but also one that was in living memory of losing land and your family home. In protest against the Commonwealth's limited land rights response many NSW Kooris and Murriss living in the Redfern community travelled to Canberra and initiated the 'Aboriginal Tent Embassy' protest. For the Federal Government it came as something of a shock that the assumed assimilation of south-eastern peoples was being so demonstrably challenged and that land rights was being

¹⁹ A useful account can be found at: *In Sad But Loving Memory: Aboriginal burials and cemeteries of the last 200 years in NSW*, 1998, Department of Environment and Conservation NSW, Government Printing NSW.

²⁰ NSW Ministry of Aboriginal Affairs, *Aboriginal Reserves in NSW: A Land Rights Research Aid*, Occasional Paper, No. 4, Compiled by A. McGuigan, (1984).

connected-up as a national demand.

The election of the progressive Gough Whitlam led ALP National Government, saw land rights, and Indigenous rights more broadly, for the first time strongly supported and funded. Whitlam appointed Justice Woodward to conduct a Commission of Inquiry into appropriate ways to recognize Aboriginal Land Rights in the Northern Territory with the *Aboriginal Land Rights Act 1976* statutory recognition of land rights following in 1976.

Aboriginal Lands Trust

Developments at the Commonwealth level as earlier indicated and the increasingly organized land rights movement saw the NSW Government enact the Aboriginal Lands Trust in 1973.²¹ The amendments to the *Aborigines Act (1969)* to establish the Aboriginal Lands Trust had implications for reserve lands. It was initially thought the Trust made up of the same nine members as the Government's appointed *Aboriginal Advisory Committee* formed following the abolition of the Aborigines Welfare Board would hold title to all remaining reserves on behalf of Aboriginal people, but while it was not an entirely clear process it seemed the Minister continued to hold title to the reserve lands and a process established to receive applications from Aboriginal communities for a lease over their land.²² The amendments establishing the Trust were widely denounced and protested against due to concern about the security of reserve land and that the Trust was an inadequate response and set-back for real land rights recognition.

While some 4,300 hectares of reserve lands held by the Lands Department were transferred to the Trust freehold and mechanism established for communities to make application to self manage their land, Wilkie (1985) suggests 250 claims were lodged with the Trust but only a few were processed and actioned.²³

The actions of the Trust and the criticism of its limitations in addressing land rights further galvanized support and clarified the demands for land rights. The formation of the New South Wales Aboriginal Land Council following a meeting in Redfern in 1977 as an independent non-statutory, non-government funded body with Kevin Cook as the first chairperson, stepped up the demand for reserve lands with initial claims made for Terry Hie Hie in north western NSW that had been revoked in 1961.

Wilkie (1985) suggests three claims over Crown Land including mission state forest land revoked in 1971, Orient Point near Nowra by the Roseby Park community and Wallaga Lake, in 1978 prompted the state government to announce the Select Committee Inquiry of the Legislative Assembly, after the

²¹ The Yirrkala people's *Gove Land Rights Case* refers to *Milirrpum v. Nabalco Pty. Ltd.* (1971) 17 FLR 141.

²² Aboriginal Land Rights Act 1983, Background Paper, Prepared by the Department of Aboriginal Affairs, Accessed December 2005 See: <<http://www.alc.org.au/news/alra/files/ALRA%20Background%20Paper.pdf>>.

²³ Wilkie (1985), 11.

state election in 1978.²⁴

The Select Committee of the Legislative Committee Upon Aborigines

The Terms of reference for the Select Committee were to inquire into:

- The causes of socio-economic disadvantages of Aboriginal people, particularly in the areas of housing, health, education, employment, welfare and cultural issues;
- Effectiveness of commonwealth / state arrangements in Aboriginal Affairs; and
- Land rights for Aboriginal people in NSW.

The Select Committee dealt initially with land rights and held over the other terms of reference for the Second Report. The Select Committee's First Report, known as the 'Keane Report', released its first findings in August 1980 with the Second Report focusing on socio-economic deprivations made available in April 1981.²⁵ The Keane Report departed from the policy of assimilation in recommending the establishment of a land rights system and heritage protection commission. The Committee understood the granting of land rights as 'an act of elementary justice' and due compensation for wrongful dispossession. The Committee outlined that Aboriginal people would be given the right to claim lands including Crown, lease and freehold on the basis of needs, compensation, long association or traditional rights. The report also recommended an Aboriginal Land and Compensation Tribunal in the event of disputes over land and the establishment of an Aboriginal Heritage Commission to protect and maintain sites. It was proposed that the land rights system would be funded through the allocation of 7.5% of land tax collected each year. The Keane Report's proposal for land rights recognition were well received among the Aboriginal community.²⁶

The work of the Committee broke new ground in the way it sought to deal with Aboriginal people. The Committee consulted widely, appointed an Aboriginal Task Force that included researchers and liaison officers, circulated a newsletter 'Koori-Murri' to inform the community of their work and was open to the public. The Task Force recruited distinguished Aboriginal people including Marcia Langton, Kevin Gilbert and coordinator Pat O'Shane from the outset.

The Task Force conducted extensive community visits and gained the

²⁴ Goodall (1996), 11.

²⁵ New South Wales. Parliament. Legislative Assembly. Select Committee upon Aborigines, First report from the Select Committee of the Legislative Assembly upon Aborigines, Sydney, Govt. Printer, 1980. New South Wales. Parliament. Legislative Assembly. Select Committee upon Aborigines, Second Report from the Select Committee of the Legislative Assembly upon Aborigines Sydney, Govt. Printer, 1981.

²⁶ Wilkie (1985) makes this point but also notes that concerns were raised over rates.

confidence of the Aboriginal community in the work of the Select Committee. They actively sought to engage Aboriginal people in the process, for example the Committee met at different places including reserves, community halls and open-air gatherings. They received representations from South Coast elders and informally consulted throughout the community. Submissions were received from 55 individuals, 5 local Governments, 57 other organisations and 145 witnesses.²⁷

The Keane Report contained a range of far reaching recommendations including the basis for land entitlement that included traditional rights as well as long association, compensation and needs. While specific recommendations were made, the Report made the significant point, by way of introduction, that articulated the violent and bloody history of dispossession that Aboriginal people experienced at the hands of white Australia and the rightful compensation that is due. This was understood in terms of justice and compensation for wrongs of the past. Aboriginal people's land rights were understood in very broad terms as traditional relationship to place / country and the relationship that had developed over time. The Report reflected an understanding of cultural continuity and change as inevitable consequences of colonisation. The historical association also incorporated traditional relationship to place including the reserves and missions, despite their at times oppressive context.²⁸

The Report proposed to repeal the *Aborigines Act 1969* and replace it with an *Aboriginal Land Rights Act* and *Aboriginal Land and Development Commission Act*. The recommendations also included the establishment of Aboriginal community councils reporting to regional Aboriginal land councils. The proposed Aboriginal Land and Compensation Tribunal would hear and determine land claims, grievances and report to Parliament. While the Aboriginal Land and Development Commission would function to support the regional land and community councils in land purchasing advice and financing. The Report also recommended a funding model based on 7.5% of state land tax with half of this allocation stipulated as going into a capital investment fund and the remaining for immediate projects and administration.

The First Report recognized that all Aboriginal people including urban, rural and reserve communities are equally entitled to land rights and that they would have different needs and uses for land.²⁹ The Select Committee recommended that any category of land in NSW could be claimed, including privately held land with title held communally.

The Second Report examined the cause of socio-economic deprivation. The report concluded that the causes of deprivations were poverty, discrimination and indifference.³⁰ The Report's introduction says, 'the white

²⁷ Ibid, 19.

²⁸ 'Foreword', First Report from the Select Committee of the Legislative Assembly Upon Aborigines, Part 1 – Report and Minutes of Proceedings, 1980.

²⁹ Ibid, 85, para 6.14.

³⁰ Keane, M., Second Report from the Select Committee of the Legislative Assembly Upon Aborigines (1981), NSW Parliament, Legislative Assembly Select Committee Upon

citizens of this state have founded their present affluence on the seizure of land that belonged for 40,000 years to the Aborigines' and that 'In less than 200 years whilst waxing fat ourselves, we have reduced our unwilling benefactors to penury.'

The Second Report made a number of recommendations about housing, health, education, employment, welfare and culture and for the renegotiation of Commonwealth/State funding and programs. These recommendations were couched in the broader framework of rights, including to self-determine 'in respect of their social, economic, political and cultural affairs' and to heritage, customs, languages and institutions.³¹

The Select Committee, its terms of reference and efforts towards genuine consultation and the involvement of Aboriginal people in the process through the Task Force, amounted to a significant change in how the NSW Government related and engaged Aboriginal people in government decision making. Wilkie, a researcher for the Committee in reflecting on their work, said they genuinely incorporated, sought advice and consulted Aboriginal communities in its inquiry into how to recognize Aboriginal land rights and that 'Something of the unique relationship to land got across to Select Committee members'.³² She also highlights how the Select Committee found themselves in conflict with other state government departments. For example, while the Select Committee were hearing submissions and gathering materials, logging was approved at the significant site of Mumbulla Mountain on the South Coast.³³ The Select Committee responded by placing a freeze on any further approvals that impacted on sacred sites.

Some of the criticisms of the Committee included that decisions were made independent of research materials or discussion papers, including the proposal for the three-tier land council structure and funding arrangements. Many of the recommendations of the Select Committee were premised on concepts that were political aspirations rather than legally defined or understood concepts, such as customary law and self-determination although the Second Report did clarify this further.

Support for the Select Committee's land rights recommendations was widespread. A loose coalition of supporters from union, church / religious and student groups lobbied to support the Select Committee recommendations and generate public support through education and awareness and distributed a 'Land Rights Lobby Kit'. The Premier's Department ten member 'Aborigines Advisory Unit', the 'Aboriginal Land Issues Field Force' (TALIFF) throughout 1981 travelled extensively consulting with communities across NSW on the Select Committee's land rights recommendations. The Report was widely

Aborigines, Foreword x, Government Printers, Sydney.

³¹ Second Report, 'List of Recommendations'.

³² Wilkie 1985:23.

³³ Denis Bryne's (1984) Occasional Paper No. 5, for the NSW Ministry of Aboriginal Affairs, *The Mountains Call Me Back: A history of the Aborigines and the Forests of the Far South Coast of NSW*, describes the significance of the mountains to the Yuin people and their desire to stop logging.

supported and endorsed by the Aboriginal community and gained considerable public support and unified Aboriginal people across the state.

The Aboriginal Land Rights Act, 1983: a limited response

While the Keane Report was widely supported by the Aboriginal community there was growing opposition to the Select Committee recommendations. The *Sydney Morning Herald* in August of 1980 quoted the Premier, Neville Wran and Attorney-General Frank Walker, saying 'financial constraints would limit the implementation of the Select Committee recommendations.'³⁴ Other groups opposed to the recommendations, included forestry, mining, tourism and pastoral industries which were well placed with the support of their respective government departments and with ministerial representation in Cabinet. These groups represented a strong lobby inside and outside Parliament and the bureaucracy.

In the lead up to the NSW State election in September 1981, the Premier announced that a Ministry for Aboriginal Affairs would develop draft land rights legislation and that former reserve lands held by the Aboriginal Lands Trust would be returned to local Aboriginal community ownership.³⁵ The draft legislation distributed as the Green Paper was seen as an enormous betrayal of the recognition of land rights and of the framework proposed in the First Report of the Select Committee.

Two years after the Select Committee's First Report on land rights and second welfare related Report, the Ministry for Aboriginal Affairs circulated 200 copies of the Green Paper draft legislation. The Green Paper was released days before Christmas, in December 1982 and officially published in February 1983, just seven weeks before it was debated in Parliament and without the last minute amendments by Cabinet. The Green Paper was widely criticized. Initially this was over the absence of consultation over the period of the drafting of the legislation and the short time frame between circulation of the Green Paper and its going to Parliament. The further amendments made in Cabinet were committed to without any possibility or intention of consultation with Aboriginal people.

The Green Paper, was in three parts:

1. Why land rights?
2. Explanatory notes to the draft Bill.
3. Draft *Aboriginal Land Rights Act, 1983*.

The legislation outlined four key principles:

- Land in the State of NSW was traditionally owned and occupied by Aborigines;

³⁴ *Sydney Morning Herald*, (14.08.1980), cited in Wilkie (1985) 35.

³⁵ Christine Jennett, cited in Wilkie, 36.

- Land is of spiritual, social, cultural and economic importance to Aborigines;
- It is fitting to acknowledge the importance which land has for Aborigines and the need of Aborigines for land; and
- It is accepted that as a result of past government decisions the amount of land set aside for Aborigines has been progressively reduced without compensation.³⁶

The legislation established a three-tier land council network of local, regional and state office. The *ALRA* replaced the *Aborigines Act 1969* and abolished the existing Aboriginal Lands Trust and its nine member council. The Green Paper outlined that membership of Local Aboriginal Land Councils (LALC's) was open to all Aboriginal people residing in the LALC boundaries, that they were entitled to claim Crown land not required 'for essential public purpose' or lawfully used or occupied and to purchase land. Successfully claimed Crown land was restricted to the leasing under certain conditions of land and could not be sold or developed.

The legislation was extremely disappointing for the Aboriginal community. It was thought there was inadequate consultation and limited ability to recover land. The Ministry for Aboriginal Affairs did not conduct consultation on the Green Paper, but rather made available a small amount of money for communities to initiate discussion of the Green Paper and invite the Minister and Ministry along.³⁷ Despite the challenging release time and minimal circulation, the Green Paper was circulated, discussed and debated amongst the land council network that was rapidly forming. With assistance from legal officers from the Aboriginal Legal Service community gatherings were able to scrutinize the draft legislation. Despite these limitations in time, resources, expertise, advice and organised support from Government, many communities did manage to gather together and scrutinize the Green Paper. The Wiradjuri Regional Land Council began holding meetings days after the Green Paper was circulated on Christmas Eve of 1982.

The NSWALC state conference in February 1983³⁸ with representatives from all affiliated Regional Aboriginal Land Councils (RALCs), were very critical of the draft legislation and said the Green Paper was not a 'land rights settlement' and, 'It does not compensate us for our loss or suffering'.³⁹ Others, such as Bob Bellar, Chair of the State ALP Aboriginal Affairs Policy Committee, along with the Uniting Church Board for Social Responsibility, said the Green Paper was out of step with the Select Committee proposals, 'lacked principles' and amounted to a 'betrayal'.

³⁶ *Aboriginal Land Rights Act, 1983*, S 1.

³⁷ Initially the Ministry circulated a draft document, which Wilkie (1985:39) described as 'poorly developed'.

³⁸ The state conference of the NSW Aboriginal Land Council was held at Morpeth on the weekend of February 19 and 20, 1981.

³⁹ Cook, K., Chairperson NSWALC statement following the state meeting held in Morpeth, February 1981. Reproduced in Wilkie (1985), iv.

The *ALRA* excluded mineral rights in gold, silver, coal and petroleum, some of which had previously been held in land vested in the Aboriginal Lands Trust in 1973. While all other mineral rights were to be transferred with the title of the land with land councils retaining the right to negotiate with miners over approval of applications, provisions for royalties and oversight of mining agreements.

At the same time the draft legislation was being developed, RALCs were also forming. Gaynor Macdonald in her study of the Wiradjuri RALC outlines how the Wiradjuri RALC with support from the NSW Aboriginal Land Council formed in November 1982 with the election of six interim delegates. Other RALC's were likewise forming across the State. The Wiradjuri RALC formed across the greater western area of the Wiradjuri nation or language group lands and as Macdonald explains the very establishment and naming of the RALC as 'Wiradjuri' was a process of reclamation, renewing and re-making of identity as Wiradjuri people and that the RALC drew on both the state government regime for land rights and the outcome of Wiradjuri social and political organization predating the legislation.⁴⁰ She says the formation of the Wiradjuri RALC by Wiradjuri people drew on 'their roots in their own traditions of shared cultural practices...'.⁴¹

Some of the more specific criticisms of the Green Paper included that it omitted reference to Aboriginal people's traditional fishing and hunting rights or heritage protection. The recommendations contained in the Select Committee Report were not taken up in the *ALRA* in 1983. Wilkie suggests that the definition of Crown Land under the Act precludes land councils claiming identified sites of significance and sites contained within National Parks and nature reserves under the *National Parks and Wildlife Act 1974*. The Minister for Aboriginal Affairs flagged the establishment of an Aboriginal Heritage Commission Bill 'for the protection and ownership of sacred and significant sites' although this was never pursued.⁴²

The *ALRA* constituted land councils as non-statutory bodies governed under the Act, rather than as a company and subject to rules of a company. However, concern was expressed that the Act gave the Minister considerable power over the land councils such as appointing an administrator and amending the Act.

There was further concern that the compensation provisions, 7.5% of land tax revenue over 15 years, outlined in the *ALRA* was inadequate financial compensation for the loss of land, culture and other deprivations in light of the limited availability of claimable land under the *ALRA*.

The Green Paper was perceived as a fundamental failing on the part of the Government to honour the promises made to Aboriginal people. Macdonald says at the Wiradjuri meetings 'everyone agreed that the land rights offer to the Aboriginal people of New South Wales in this Green Paper was a

⁴⁰ Macdonald, G (2004) *Two Steps Forward, Three Steps Back*, Southwood Press, Marrickville, 24.

⁴¹ *Ibid*, 24.

⁴² Hansard, Legislative Assembly, Thursday, 24 March 1983, p. 5090.

disgrace'.⁴³ The Wiradjuri people's meeting in January 1983 passed two motions condemning in the strongest terms the Green Paper. In writing to the Minister Frank Walker, the Wiradjuri Land Council said:

That the Green Paper on Aboriginal Land Rights in New South Wales is totally unacceptable to the Wiradjuri Land Council and therefore is not to be table in the New South Wales Parliament. It is further moved that funds for local and regional meetings of Aboriginal people be allocated immediately to allow for proper consultation to occur. The results of such consultations are to form the basis for amended legislative proposals to be drawn up.

That the lands allocated in the proposed legislation, the compensation based on seven and one half per cent of the New South Wales Land Tax, the length of time such compensation is to be paid, and the restrictions on mining rights are totally inadequate and are not acceptable.⁴⁴

Macdonald observed that these meetings were very spirited and filled with enthusiasm and optimism. Collections were taken at meetings to cover costs such as for correspondence where it was thought this was about 'doing things for ourselves' and 'not relying on Government'.⁴⁵ Macdonald says Aboriginal people got to know the Green Paper very well and assisted others in comprehending and analyzing the implications. Chris Kirkbright for instance worked on the Select Committee's Task Force and went on to work with the Aboriginal Legal Service in Redfern. The ALS played a key role in disseminating information about the Green Paper and assisting communities in understanding and interpreting the proposed legislation.

There was pressure to accept the Bill. The Minister Frank Walker in meetings with Wiradjuri and in Parliamentary debate acknowledged the Bill wasn't 'perfect' but that it was a 'start' that could be further amended and taken up with the Commonwealth Government. Debate amongst the Wiradjuri RALC and presumably others came to be split over rejecting the flawed bill and seeing it as 'opening a door' to Parliament House.⁴⁶ It was also suggested that if the Bill was to be delayed opposition to land rights would further develop and would run the risk of no land rights legislation at all.

The consultation in the development of the draft Land Rights legislation came to be a key source of the concerns relating to the Bill. While the Green Paper referred to 'exhaustive' consultation much concern was expressed about the lack of consultation and that this was reflected in the inadequacy of the draft legislation in meeting the needs of the community. Consultation was never going to be possible or intended for some parts of the legislation that had already been endorsed by Caucus.

The Wiradjuri RALC for example, wrote to the Minister in March 1983 asking that the land rights bill be deferred until such time as consultation and

⁴³ Macdonald, (2004), 12.

⁴⁴ *Ibid*, 12-13.

⁴⁵ *Ibid*, 13.

⁴⁶ This argument was made, amongst others, by Millie Butt in her capacity as liaison officer with the Ministry in a meeting of the Wiradjuri RALC.

then response to community needs and priorities be taken into account.⁴⁷ Their concerns were that the three tier structure would create conflict in that it centralised power with the state office and created a level of bureaucracy and administrative overload and there were insufficient funding provisions given for the level of administration. Wiradjuri RALC were advocating further consultation so that the different needs – be they historical or cultural – from one community to the next can be built into any legislative proposal.

When the Bill was debated in Parliament the national party led by Gerry Peacocke spoke against it on the grounds that it gave ‘special privileges’. The Liberals, while generally supportive, spoke against the alignment of land rights with the state land tax that they opposed. Progressive Members, including the Democrats and Greens, spoke against the limited compensation and claimable land provisions. Some Members of the Labor Government spoke against the Bill, but referred to the Bill as a ‘start’ that can be amended and that land rights can be further pursued at the Federal level. Outside the NSW Parliament many thousands of Aboriginal people gathered in protest at the inadequacy of the legislation. It was argued that it ‘was not a land rights settlement’ and does not compensate us for our loss or our suffering’. The Organization for Aboriginal Unity argued the legislation was ‘totally inadequate and insufficient in granting full and meaningful Land Rights to the Aboriginal People’ of NSW. While others argued against government claims that the Bill provided compensation, granted land rights and introduces the policy of self-determination were false.⁴⁸

Perhaps the biggest concern with the process related to another piece of legislation was put before Parliament. The *Crown Lands (Validations of Revocations) Act 1983* retrospectively validated the revoking of reserve lands that had been occurring since the late 1800s described earlier in this paper. The Act retrospectively validated or legalized the illegal revocations of reserve land by governments. The reserves amounted to thousands of acres of land that in many cases were forcibly revoked by the government from Aboriginal families. It is estimated this land amounted to about 25,000 hectares gazetted as ‘especially for Aboriginal use’.

The struggle for land rights as developed in this paper related to the ongoing practice and looming threat to revoke reserve lands. The forming of state and regional land council bodies was in response to renewed threats to reserve lands following the 1967 Joint Committee recommendations. There was of course a broader articulation of rights and entitlement that flowed from the wrongful dispossession, however, the desire to protect and preserve reserve lands was immediate and uniting.

Wilkie explains that the Ministry was aware validating legislation was being considered, but no one in the Ministry for Aboriginal Affairs was responsible for its drafting. Wilkie also explains that at no stage, at the various forums that Ministers and staff attended, was the validating legislation mentioned to the Aboriginal community.⁴⁹ In correspondence to the Minister

⁴⁷ Macdonald (2004), 18.

⁴⁸ Wilkie, M., (1985) *Aboriginal Land Rights in NSW*, Blackbooks, Sydney.

⁴⁹ *Ibid*, 40.

by the Wiradjuri RALC there was no mention of the prospect of validating the revocations. The *ALRA* provided for the government to transfer the remaining land, that had not been revoked, 'for Aboriginal use'. Estimated at about 4,300 hectares of land it was to be transferred directly to local land councils as communal ownership.⁵⁰

As the two pieces of legislation were being debated, Aboriginal people gathered in the thousands. Macdonald says:...'The mood was anger frustration and betrayal', the protesters outside shook the fence as the Parliament met in closed session to Debate the two Bills.⁵¹

While some understood what was happening, the main concern was with the *ALRA*. The validating legislation complicated and confused the situation. Macdonald suggests it was difficult to mount two campaigns at once, even though they were so entwined.⁵²

The legislation retrospectively approved the revoking of land. Many have argued that this revoking of 'Aboriginal land' was illegal. The retrospective powers of the legislation knocked any possible challenge to the legality of the Government's actions on the head.⁵³

The reserve land and life on missions came to be intimately connected with traditional knowledge and relationship to land under the experience of colonial rule. The many thousands of Aboriginal people and their supporters who gathered outside Parliament House as the legislation was being debated understood this as an 'act' of treachery. The reserve lands or 'old reserves' were central to the struggle for land rights in NSW and were a key lobbying point throughout the 20th century.

The First Report of the Select Committee relating to land acknowledged wrongful dispossession, the cultural rights of urban, regional and remote Aboriginal peoples, committed the Government to self-determination, (however contested such a concept is) and ended the assimilation era. The translation to land rights legislation and the deception in passing validating legislation provides some insight to the operations of modern political power. In hindsight the *ALRA* has delivered significant benefits to Aboriginal communities.

The *ALRA* recognised traditional meaning and association with place as well as adaptation and change through relationship to, (for the most part) reserve lands, at least until 1983. The passing of land rights legislation - a Government mechanisms to recognize and manage this association to land - while seen as a grave betrayal of Aboriginal people and of the Select Committees recommendations, has also brought about, over the 25 years of land council activity, new debates and new imperatives that align land rights with the means to economic and social independence.

Since this time there have been several reviews and subsequent

⁵⁰ Macdonald (2004), 20.

⁵¹ Ibid, 6.

⁵² Ibid, 20.

⁵³ The Redfern based Aboriginal Legal Service (ALS) unsuccessfully pursued legal action in relation to the legality of the revocations.

amendments to the *ALRA*. Firstly in 1986, 1990, 1994, 2000, the announcement of a 'major overhaul' in 2004 with the sacking of the elected Council by the Minister for Aboriginal Affairs, the appointment of an administrator in 2004 and amendments to the *ALRA* in 2006.

The *ALRA* established the mechanisms for funding the NSWALC network and developing an investment base. Half of the moneys - an amount equivalent to 7.5% of NSW Land Tax for a period of 15 years was set aside in the Statutory Investment fund. This land tax payment, referred to as the 'sunset clause', ceased in December 1998 with the balance at \$281million. In June 2005 the Statutory Investment Fund held \$583.8million. When the *ALRA* was being debated concern was expressed about the ability of the land tax arrangement to deliver sufficient compensation. Many of the earlier estimates have since been eclipsed. In addition, land assets claimed under the *ALRA* for the same period total 80,036 hectares equivalent to 1% of the State of NSW with a conservative estimated value of \$771.6 million. Additional property transferred to the ALC network including former reserves, property purchases and transfers to LALC's total over 616,461 hectares with an unimproved capital value of approximately \$952.6million⁵⁴.

Murray Chapman the government appointed Administrator of the NSWALC, said that the *ALRA* 'has delivered significant and valuable assets to the ALC network'. He went on to say that 'the existing and future land base of land councils provides Aboriginal people in NSW with a degree of economic influence that too few of us appreciate fully'.⁵⁵

The *ALRA* has introduced new dimensions, continuous with the longer struggle that Goodall and Macdonald have documented, that has brought about dramatically different relationships to land. The *ALRA* and the motto picked up by NSWALC is to 'Liberate and empower Aboriginal people of New South Wales through economic and social independence'. In this configuration land is viewed as key to economic and social independence. More recently amendments to the *ALRA* compel LALCs to develop a 'Community Land and Business Plan' and in order to continue to support their community have to sell, develop or otherwise become entrepreneurial with their land assets. This activity brings about new relationships to land. This is not to suggest a criticism of these developments, but rather to trace these changes within the context of the history of land and economic relations.

The establishment of the NSW Aboriginal Land Council (NSWALC) and its network of Local Aboriginal Land Councils under the *ALRA* formalized relations with the state. When we consider the authoritarian rule that characterized the administration of Aboriginal Affairs prior to the Select Committee Inquiry and its outlining of a framework of self-determination based on land claims and compensation and repeal of the *Aborigines Act 1969*, it is clear that the *ALRA* and the Inquiry that led up to this moment changed forever the relationship between Aboriginal people and the state. The election

⁵⁴ NSW ALC Annual Report 2004-2005, 13.

⁵⁵ *Ibid*, 6.

of Aboriginal members as Councillors to run the NSWALC and Executives at the LALC level brought Aboriginal people into decision making roles and as a non-statutory authority the rules and regulations of such a body. For example the NSWALC reports annually to the Minister for Aboriginal Affairs in accordance with the provisions of the ALRA, the *Public Finance and Audit Act 1983* and the *Annual Reports (Statutory Bodies) Act 1984*. LALC's have to present audited accounts to the state office in order to receive their annual funding and continue community governance. Failure to comply with these regulations can result in the appointment of an administrator and sacking of the elected Executive. While it's not suggested these are inappropriate impositions, it is a quantum leap from the authoritarian rule under the Aborigines Welfare Board (including for example taking welfare payments and wages) to self-rule or self-determination in compliance with the rules and regulations of an administered society.

This paper has traced the dealing in land – particularly Crown land as it pertained to Aboriginal people through to the significant Keane chaired Select Committee and Report. The Select Committee's recognition of land rights marked a manifest change in how government recognized, articulated and responded to Aboriginal demands. While the recommendations of the Inquiry – the shift from assimilation to the beginnings of the language of self-determination as it translated to legislation was seen as a limited take-up of the Keane Report and the related approval of revocations of land an act of treachery, the most significant dimension about the Wran Government Inquiry and subsequent legislation brought Aboriginal people into close relations with the state as citizens actively involved in self-rule.

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INQUIRIES AND OUR COMMUNITIES



Issue 7

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