



SOCIAL  
DEVELOPMENT  
COMMITTEE

Report upon  
**Inquiry into Compensation  
for Dispossession and Dispersal  
of the Aboriginal People**

October 1984

**SOCIAL  
DEVELOPMENT  
COMMITTEE**

---

---

**Report  
upon  
Inquiry into  
Compensation for Dispossession and  
Dispersal of the Aboriginal People**

---

---

EXTRACTED FROM THE MINUTES OF THE PROCEEDINGS OF  
THE LEGISLATIVE COUNCIL

---

Friday, 2 July 1982

34. JOINT INVESTIGATORY COMMITTEES - The Honourable W.A. Landeryou moved, by leave, That, contingent upon the enactment and coming into operation, this Session, of legislation to establish Joint Investigatory Committees:

\* \* \* \* \*

- (e) The Honourables H.G. Baylor, J.L. Dixon, C.J. Hogg, J.E. Kirner and K.I.M. Wright be members of the Social Development Committee.

Question - put and resolved in the affirmative.

---

Tuesday, 31 May 1983

24. SOCIAL DEVELOPMENT COMMITTEE - The Honourable Evan Walker moved, by leave, That the Honourable K.I.M. Wright be discharged from attendance upon the Social Development Committee.

Question - put and resolved in the affirmative.

Ordered - That a message be sent to the Assembly acquainting them of the foregoing resolution and that a vacancy accordingly exists in the membership of that Committee.

EXTRACTED FROM THE VOTES AND PROCEEDINGS OF  
THE LEGISLATIVE ASSEMBLY

---

Thursday, 1 July 1982

36. COMMITTEE APPOINTMENTS - Motion made, by leave and question - That, contingent upon the coming into operation of the Parliamentary Committees (Joint Investigatory Committees) Act 1982 -

\* \* \* \* \*

- (e) Mr. Ernst, Mr. Jona, Mr. Newton, Mr. Saltmarsh, Mr. Shell, Mr. Wallace and Mr. Williams be appointed members of the Social Development Committee -  
- (Mr. Fordham) - put and agreed to.

---

Wednesday, 1 June 1983

23. MESSAGE FROM THE LEGISLATIVE COUNCIL acquainting the Assembly that they have agreed to a resolution discharging the Honourable K.I.M. Wright from attendance upon the Social Development Committee and notifying that a vacancy accordingly exists in the membership of that Committee.
25. SOCIAL DEVELOPMENT COMMITTEE - Motion made, by leave and question - That, Mr. Steggall be appointed a member of the Social Development Committee -  
(Mr. Fordham) - put and agreed to.

## **FOREWORD**

This report concludes a thorough and wide-ranging inquiry which included intensive consultation with non-Aboriginal and Aboriginal communities, public hearings and discussions around the State.

The report was unanimous, and recommends that the Aboriginal people should receive compensation. Further, it recommends that a Victorian Land and Compensation Council, consisting of Aboriginal representatives, should be set up to co-ordinate and administer compensation, and that funding should be provided jointly by the State and the Commonwealth.

The Committee has been meticulous in its investigation of matters contained within its terms of reference. Its recommendations are reasonable, practical and equitable but should not be taken out of the context of the entire report.

As Chairman, I would like to record my thanks to the Sub-committee for its extensive investigations and in particular to the Hon. Caroline Hogg who was Acting Chairperson during my absence overseas, to the Victorian Aboriginal Task Force who acted as consultants to the Committee, and to the Committee staff.

This Committee has taken a unique step for the State of Victoria. It has produced all-party acknowledgement of the necessity for compensation for the dispossession and dispersal of Victorian Aborigines. I believe that with the goodwill of all Victorians, justice for the Aboriginal people of this State can become a reality.

**GRAHAM K. ERNST, M.P.**  
Chairman

## RECOMMENDATIONS

The Committee recommends in respect of:

### (i) constitutional responsibility

- (1) That the following interpretation of the 1967 Constitutional amendment be adopted:
- (a) That the 1967 amendment to the Commonwealth Constitution gave the Federal Parliament the mandate to discharge a national responsibility to the Aboriginal and Torres Strait people of Australia.
  - (b) That, given the fact that the 1967 Constitutional amendment allows for concurrent powers of the Commonwealth and State Governments, the Victorian Government may make valid laws on any matter within its competence regarding Aboriginal Affairs, subject to two limiting conditions:
    - that to avoid the possibility of overrule by Commonwealth laws, any State legislation in regard to Aboriginal Affairs should, as far as possible, be compatible with Commonwealth Government laws on the matter; and
    - that the State Government must be prepared to finance fully or jointly any programs or measures in regard to Aboriginal Affairs which it initiates.

### (ii) legal responsibility

- (2) That the following interpretations of the 1974 Agreement be adopted:
- (a) That the 1974 Agreement which refers to Aboriginal Affairs should be one which gives rise to political obligations only, as opposed to legal obligations enforceable in a court of law.
  - (b) That, as such, the Victorian Government is free to introduce and to implement Aboriginal Affairs programs, and be responsible for their funding, over and above those of the Commonwealth Government. The introduction of any particular program to be a matter of policy within the area of the State's power in the matter.
  - (c) That the Victorian Government be aware of the possibility of persuading the Commonwealth of the importance of a particular program or programs with a view to the Commonwealth funding such program(s).

### (iii) a uniform national approach

- (3) (a) That, to ensure equity and consistency, a uniform national approach to Aboriginal Affairs is desirable at the level of general principles.

- (b) That all policy measures adopted by the Victorian Government be consistent with general principles enunciated by the Commonwealth.
- (c) That, notwithstanding the desirability of a uniform national approach, State and regional differences must be acknowledged.
- (d) That any national approach to Aboriginal Affairs take into full consideration the diversity of Aboriginal lifestyles and cultures, and individual preferences.
- (e) That local Aboriginal communities must articulate the needs of their communities themselves, and be part of both national and State decisions on policies and priorities in Aboriginal affairs.

**(iv) form(s) of benefit, eligibility and equity**

- (4) The Committee, accepting that Aboriginal people as a whole have suffered or been disadvantaged as the result of dispersal and dispossession, recommends that all Aboriginal people be eligible for compensation based on the following principles:
  - (a) each local Aboriginal community to establish and decide upon its priorities regarding the most desirable form(s) of assistance or benefit most appropriate to meet its needs.
  - (b) land, money and the reaffirmation of cultural identity provide the basis of self-determination, through which Aborigines can participate in future development.
  - (c) legislation should allow the proposed Victorian Land and Compensation Council to recommend and the State Government to provide monetary compensation in support of approved projects.
  - (d) the proposed Victorian Land and Compensation Council should examine, as a matter of urgency, the issue of eligibility, with a view to maintaining an Aboriginal roll or register.
- (5) All questions of equity regarding competing demands for benefits, including individual compensation, shall be resolved by the Victorian Land and Compensation Council.

**(v) land rights and benefits**

- (6) That land rights legislation is an integral part of amelioration for dispossession and dispersal of the Aboriginal people, and that, if there is to be legislation concerning land rights or claims, the three dimensions of land, compensation and cultural heritage be included.
- (7) That, regarding sacred and significant sites, the proposed Victorian Land and Compensation Council should have the power to make the following recommendations:

- (a) On Crown land: that the land should be held either under inalienable title or on a negotiated agreement (between the Crown and the local Aboriginal community) of access, maintenance and protection; and
  - (b) On private land: that access, maintenance and protection should be provided on the basis of negotiated agreement, between the owner and the local Aboriginal community.
- (8) That, in order to safeguard Aboriginal sites of significance within Victoria, the proposed Victorian Land and Compensation Council works closely with the Aboriginal communities throughout Victoria to establish a register of such sites of significance and have it produced as soon as possible.
  - (9) That compensation should be paid to non-Aborigines whose livelihood or interest is detrimentally affected by grants of land made on the basis of spiritual, sacred or tribal association, burial grounds, and places of great historical significance to Aboriginal people.
  - (10) That there be an educational and publicity campaign to inform the public of the nature and equity of land rights and compensation and to promote community consultation and discussion.
  - (11) That local government be encouraged to establish official links between local councillors and Aboriginal communities in their area.
  - (12) That much greater priority must be given to the study of Aboriginal history and culture in the curricula of schools and other educational institutions.

**(vi) administrative mechanisms**

- (13) That, subject to the Audit Act 1958, the administration of special forms of assistance or benefit be the responsibility of Aboriginal communities.
- (14) That the model administrative mechanism outlined in recommendations (15) to (26) form the basis of an administrative structure, but that any amendments and improvements presented by the Aboriginal community subsequent to the tabling of this Report, be considered by the Government.

**The proposed administrative mechanism**

- (15) That the South-East Land Council be reconstituted, in line with the principles of self-determination and self-management, to form a co-ordinating body re-named the Victorian Land and Compensation Council.
- (16) That such a Council consist of two delegates from each Aboriginal community, preferably one male and one female. The initial term of office to be for two years, and subsequently for four years.



- (17) That the role of the Council be:
- . to overview and co-ordinate all submissions;
  - . to utilise specialist groups for advice on submissions;
  - . to refer submissions and suggestions back to communities for final decisions;
  - . to present final submissions to the Minister and oversee progress; and
  - . to process only land and compensation claims.
- (18) That delegates to the Council be elected by the local Aboriginal communities.
- (19) That each family group in the local Aboriginal community have one representative on a Family Monitoring Group, such a group to provide an accountability mechanism from representatives to the community.
- (20) That all decisions of the Council be referred back to the communities for ratification before finally being moved by the Council.
- (21) That community decisions on community matters cannot be over-ridden by the Council.
- (22) That the Council will have an education function which will be provided through an Education Group which will:
- . support members of the Council in informing local communities on land claims issues; and
  - . consult with non-Aboriginal groups to ensure correct information is disseminated about claims.
- (23) That the Council have the power to appoint specialist advisers, as needed, in those areas it deems necessary.
- (24) That the Council be served by a small secretariat to assist with organisational activities associated with the functioning of the Council.
- (25) That the Council have direct access to the Minister concerned and not be subject to or answerable to an Aboriginal bureaucracy or bureaucracy for Aborigines.
- (26) That, for the purposes of forward planning by the Council, triennial program funding be established to ensure a funding flow-on between each financial year.

**(vii) the sources of benefit**

- (27) That, having regard to justice and equity, all taxpayers should bear the cost of funding for compensation.**
- (28) That both State and Federal governments should bear the responsibility of providing finance for benefits for the Aboriginal people.**
- (29) That the benefits of compensation should extend for more than one generation.**
- (30) That an appropriate guideline for the funding of compensation in Victoria is a guaranteed minimum annual amount of \$5 million, indexed for inflation.**
- (31) That the operation of the proposed Victorian Land and Compensation Council be financed from within the guaranteed minimum annual compensation payment.**

## **TABLE OF CONTENTS**

	<b><u>Page</u></b>
1. Functions of Committee	1
2. Terms of reference	1
3. Comment on the terms of reference	3
<b><u>PART 1</u></b>	
<b><u>The context of the Inquiry</u></b>	
4. Guiding propositions and principles	6
5. Consultation	7
6. Victorian Aboriginal population	11
<b><u>PART 2</u></b>	
<b><u>The Terms of Reference</u></b>	
7. Constitutional responsibility	16
8. Legal responsibility	19
9. A uniform national approach	22
10. Form(s) of benefit, eligibility and equity	24
11. Land rights and benefits	28
12. Administrative mechanisms	31
13. The sources of benefit	35
Appendix 1: Definition and explanation of terms	38
Appendix 2: Receipt of submissions	41



## R E P O R T

The **SOCIAL DEVELOPMENT COMMITTEE**, appointed pursuant to the provisions of the Parliamentary Committees Act 1968, has the honour to report as follows:-

### 1. FUNCTIONS OF COMMITTEE

The functions of the Committee are "to inquire into, consider and report to the Parliament on:

- (a) any proposal, matter or thing concerned with the social development of the people of the State;
- (b) how the life of individuals, families and communities in the State may be improved; and
- (c) the role of Government in promoting the welfare of the people of the State." <sup>1</sup>

### 2. TERMS OF REFERENCE

The Social Development Committee received a reference from the Governor in Council dated 21 December 1982:

To inquire into, consider and report to Parliament, on the steps, including special forms of assistance or benefit, desirable to ameliorate the effects of the dispossession and dispersal of the Aboriginal people and in particular to make recommendations in respect of -

- (i) constitutional responsibility having regard to the amendment to the Commonwealth Constitution consequent upon the 1967 referendum;
- (ii) legal responsibility having regard to the 1974 Agreement transferring Aboriginal affairs responsibilities from Victoria to the Commonwealth;
- (iii) the desirability of a uniform national approach to the issue;
- (iv) the most desirable form or forms of any such assistance or benefit, including the criteria for eligibility, having regard to equity;

---

1. Parliamentary Committees Act 1968, Section 4E

- (v) the relationship of land rights to any forms of assistance or benefit and any special provisions which should be incorporated in Aboriginal land rights legislation;
- (vi) the most desirable manner of administration having regard to the principles of Aboriginal self-determination and self-management and to Aboriginal culture;
- (vii) the sources of any special assistance or benefit having regard to justice and equity.

### 3. COMMENT ON THE TERMS OF REFERENCE

3.1 The Committee has been concerned during the conduct of its inquiry at the misunderstanding and confusion on the part of many members of the public, over the source of the terms of reference of its inquiry. The Committee emphasises that the inquiry was referred to the Social Development Committee under section 4F (1) (a) (ii) of the Parliamentary Committee Act 1968, which provides (inter alia) that the Governor in Council by Order published in the Government Gazette may refer any proposal, matter or thing relevant to the functions of the Joint Investigatory Social Development Committee under the said Act for inquiry, consideration and report to the Parliament.

The Committee does not therefore write the terms of reference. It must proceed from the principles detailed by the Governor in Council, and follow its legal requirement to inquire into, consider and report to Parliament on the matters contained in the terms of reference. All matters forming the substance of the terms of reference are the basis of this Report. The Committee cannot go beyond the terms of reference, nor can it argue the validity or otherwise of implicit or explicit concepts therein.

In practice this means, for example, the Committee does not debate:

- that the Aboriginal people in the State of Victoria have been dispossessed;
- that the Aboriginal people in the State of Victoria have been dispersed;
- that the effects of the dispossession and dispersal of the Aboriginal people of Victoria require amelioration;
- that steps, including special forms of assistance or benefit, are desirable;
- that recommendations on such forms of assistance or benefit must have regard for equity and justice; and

- that recommendations concerning the proposed administrative machinery must have regard for the principles of Aboriginal self-determination and self-management, and Aboriginal culture.

### 3.2 The relationship between this Report and the Aboriginal Land Claims Bill 1983

The Committee has noted that there are a number of matters concerning Victorian Aborigines currently the subject of inquiry, consultation and negotiation. These include Federal initiatives and inquiries as well as the discussions preceding and subsequent to the tabling in Parliament of the Victorian Aboriginal Land Claims Bill (1983) and any other legislation.

The Committee is aware of the general misunderstanding and confusion regarding the nature and terms of the inquiry. The Committee wishes to make it clear that it is concerned with compensation and related matters and not with the Victorian Government's Bill, or any other Federal or State legislation.

To many, the issues of compensation, land rights and claims are inextricably linked. However, the Committee emphasises that in its approach to the inquiry and methods of research, it remains independent of other initiatives.

The Committee considers, however, that the recommendations of this Report should be included in land rights legislation. It believes that no meaningful resolution of the land rights issue can be achieved without a parallel development of compensation.

### 3.3 "Special forms of assistance or benefit": Compensation; "Pay-the-Rent"; Reparation

The Committee recognises that there are several terms used by the public at large to describe the process of restoration "desirable to ameliorate the effects of the dispossession and dispersal of the Aboriginal people", and that differences between the terms used are not merely semantic. The Committee has decided upon a broad concept of compensation in this inquiry concluding that it relates to a group of people as distinct from individuals,



and that it includes the notion of reparation. Professor Colin Tatz of Macquarie University, an authority on restoration and restitution, points out that a reparation model is relevant to Aborigines today in the following ways:

- (a) the giving back of that which can be given ...;
- (b) the restoration of that which can be restored ...; and
- (c) recompense for that which can neither be given back nor restored.<sup>2</sup>

In common, civil, criminal and international law the principle exists that wrongs are not only punishable but carry an obligation for some forms of reparation. In the context of this inquiry, that wrong is the dispossession and dispersal of the Victorian Aborigines.

---

2. Submission by Colin Tatz, 27 July, 1983, p. 13, also in "Aborigines and the Age of Atonement" in Australian Quarterly, Sept. 1983.

## **PART I**

## **THE CONTEXT OF THE INQUIRY**

### **4. GUIDING PROPOSITIONS AND PRINCIPLES**

#### **4.1 Guiding propositions**

The Committee bases its report on two main propositions. The first is a recognition that the circumstances of this inquiry require a statement and adherence to principles as well as an understanding of practicalities. The second is a related proposition, and is the process for achieving such principles. These propositions are expanded below.

##### **4.1.1 A concern with principles**

The Committee believes that at this stage its task must be, in the main, to present principles relating to Aboriginal compensation, while at the same time investigating the procedures and measures spelt out in the terms of reference intended to attain those principles.

##### **4.1.2 Aboriginal self-determination**

The Committee has been fully aware of the need to refrain from trying to impose structures, administrative machinery, criteria and goals on Aboriginal communities. It has considered that such an imposition would result in a new form of welfare. It has therefore striven in its Report, through consultation with Aboriginal communities, to give meaning to the concept of "self-determination". Aboriginal communities have stated their concerns and interests. The Committee has not drawn up a blueprint for compensation, rather it has, together with Aboriginal communities developed a framework within which a system of compensation can be discussed, planned and negotiated.

## 5. CONSULTATION

### 5.1 Request for submissions

The inquiry commenced with a press release issued by the Chairman on 17 March 1983. General public comment was sought through city and country newspaper advertisements on 28/29 March 1983. At the same time Aboriginal groups, appropriate government agencies and interested organisations were invited to make a submission to the inquiry. Due to the lack of response to these initiatives, a further extensive mailing was conducted in November 1983, advising that the deadline for receipt of submissions had been extended.

In all, a total of 213 submissions were made to the inquiry. A list of those who made submissions is contained in Appendix 2.

### 5.2 The consultative process

From the start of its inquiry the Committee has been fully committed to consultation both with the Aboriginal community and also with the wider non-Aboriginal community. To this end, in addition to a general request for submissions, the investigative methodology has been three-pronged consisting of the engagement of the Victorian Aboriginal Task Force as the Aboriginal consultant group; the arrangement of public hearings at urban centres throughout the State; and the publication (June 1984) of a Discussion Paper.

#### 5.2.1 The Aboriginal consultants

The Victorian Aboriginal Task Force was engaged by the Committee to provide an acceptable and efficient mode of consultation, whereby the Committee could canvass the views of the Victorian Aboriginal community as fully as possible.

The Committee has been aware since the commencement of the inquiry of the complexity, sensitivity and significance of the inquiry, and the need for

close liaison and consultation with the Aboriginal community. This requirement for proper appropriate consultation was reinforced by the stated principles of "Aboriginal self-determination and self-management" contained in the terms of reference, and as defined in Appendix 1.

The procedure followed during this process of consultation included attendance by Committee members and staff at workshops organised by the Victorian Aboriginal Task Force throughout the State. The goal of these workshops was to obtain information from Aboriginal individuals, families and communities to provide community-based input into reports written by the Task Force on land rights and compensation. Additional direct consultation with members of the Aboriginal community was achieved through visits by the Committee and staff to various Aboriginal communities for informal discussions, including Lake Tyers, Framlingham, Robinvale, Mildura, Swan Hill, Echuca, Shepparton, Mooroopna and Bairnsdale.

Reports received from the Task Force include:

- . "Outline for Research Reports" (20 October 1983).
- . "Progress Report No. 1" (15 December 1983).
- . "Final Report" (September 1984).

#### 5.2.2 Public Hearings

The Committee decided that because of the significance of the matter under investigation it was incumbent upon itself to seek out public comment upon its terms of reference. The low level of response to the Committee's original advertising and publicity was of concern to the Committee, and it was decided that the additional strategy of holding public hearings was necessary to attract submissions from the general public, organisations and institutions, particularly in country areas. To this end, public hearings were arranged in:

Warrnambool (cancelled: no public response to advertisements)

Ballarat - 9 April 1984

Bairnsdale - 28 May 1984

Mildura - 16 July 1984

Swan Hill - 18 July 1984

Shepparton - 30, 31 July 1984

Melbourne - 7, 8, 9 August 1984

Appendix 2 provides a list of those who made submissions to the Committee's public hearings.

It was in the course of the public hearings that the Committee became convinced of the widespread confusion and misunderstanding regarding its inquiry, terms of reference, role and identity. In an attempt to focus public attention upon the specific terms of reference given to the Committee so that the public hearing process would produce evidence to the inquiry, the Committee published a Discussion Paper.

### 5.2.3 Discussion Paper

Part (iv) of the terms of reference states that the Committee is to inquire into "the most desirable form of (any such) assistance or benefit". The Discussion Paper was published in June 1984 to assist those individuals or groups who wished to participate in the inquiry to formulate their submissions with regard to "forms of assistance or benefits".

The Committee made it clear that material in the Discussion Paper was not intended to be exhaustive or conclusive and did not necessarily reflect the opinions or views of the Committee. It consisted of matters which had been put before the Committee and were considered by the Committee in its deliberations.

The material detailed in this paper was derived from:

- submissions received by the Committee;
- reports received from the Victorian Aboriginal Task Force;
- discussion with individuals; and
- a search through available literature.

The suggestions, ideas and propositions put to the Committee and collated from the above sources were intended to serve as a focus for further discussions and to develop practical possibilities. Such information would be of major interest to the proposed Victorian Land and Compensation Council (see Chapter 12).

The Discussion Paper set out the various suggested forms of compensation under the following headings:

- money;
- housing;
- employment;
- education;
- cultural heritage and affirmation;
- recreation and sport; and
- parliamentary representation.

## 6. VICTORIAN ABORIGINAL POPULATION

### 6.1 Introduction

The Committee received evidence indicating that there is considerable controversy regarding the reliability of official statistics on the number of Aborigines in Victoria. Submissions argued that there was a serious under-enumeration of Victorian Aborigines in the 1981 Census of Population and Housing, in which each person was asked if he or she was of Aboriginal or Torres Strait Islander origin.

### 6.2 Unofficial population estimates.

Several researchers and various Aboriginal organisations have expressed doubt about the validity of the 1981 Census claiming that it grossly understated the number of Aborigines living in communities throughout Victoria.

6.2.1 In response to such claims a joint investigation was undertaken by the Department of Aboriginal Affairs (DAA) and the Australian Bureau of Statistics (ABS) on 19, 20 April 1983 to determine the differences in the Aboriginal population of Robinvale, Swan Hill and Echuca as enumerated by the 1981 Census, compared with lists of the population compiled by the representative community organisations.

Table 1 below shows the resulting differences:

**TABLE 1** Indications of under-enumeration of Aborigines in 1981 Census<sup>3</sup>

Locality	1981 Census Count	Aboriginal Organisation Count	Difference	% of under-enumeration
Swan Hill (Town)	155	218	63	29
Robinvale (Town)	218	291	73	25
Echuca (Town)	98	185	87	47

3. DAA - Reports of joint DAA & ABS Investigation on Aboriginal Population at Robinvale, Swan Hill and Echuca, 3 May 1983, p.2.

This investigation did not draw any conclusions relating to the extent of under-enumeration but identified those factors which contributed to this occurrence. Such factors include:

- in 1976, an attempt was made to use Aboriginal staff in the conduct of the census in areas with concentrations of Aboriginal population. By contrast, no such attempt was made in the conduct of the 1981 census. <sup>4</sup>
- an unwillingness on the part of the tenants of State Housing Commission dwellings to admit that anyone other than the approved tenants were living there.<sup>4</sup>
- a significant proportion of respondents did not either fully or partially complete the census forms due to the following reasons: <sup>5</sup>
  - . illiteracy;
  - . misunderstanding;
  - . mistrust of Government agencies;
  - . reluctance to request assistance from Census collectors; and
  - . deliberate avoidance of enumeration (predominantly by families at the lower end of the socio-economic level).

The Committee acknowledges that the Census figure is not open to amendments and that the DAA/ABS study only gives an indication that the 1981 Census figure appears to be inaccurate.

6.2.2 Late in 1981, a study of the demography of Aborigines in Victoria, entitled "No Reliable Records" was made by P. Felton. As the title suggests, this study concluded that there are no reliable records available on the number of Aborigines in Victoria. However, the following conclusions were made in regard to this study:

- . "My general conclusion was that the Victorian Aboriginal population has been growing rapidly over 25 years and is expected to continue to grow." <sup>6</sup>

---

4. A. Gray and L. R. Smith, "The size of the Aboriginal population" from Australian Aboriginal Studies 1983, No. 1, pp. 8-9.

5. DAA - op. cit., p.4.

6. P. Felton, "Confusing Information on the Census Aboriginal Population - 1981", 1982, p.1



- "In reality, I believe the extent of under-recording in Victoria (in the 1981 Census) was about 40%." <sup>7</sup>

On the basis of the latter conclusion, the 1981 Census figure estimates to 10,095.

- 6.2.3 In another comment on the Census figures, J. Bryant also considers that the Victorian Aboriginal population has been under-enumerated. Using the records kept by various administrators of Aboriginal dwellings, she has estimated that the population could be 14, 693. <sup>8</sup>
- 6.2.4 Estimates of the population by the Aboriginal community are higher. Both Felton and Bryant refer to the belief by community organisations that the 1976 population was more likely to have been around 20,000. <sup>9</sup>
- 6.2.5 In summary, Table 2 gives the various unofficial population estimates available of Aborigines in Victoria, together with the official Census figures:

**TABLE 2** Victorian Aboriginal Population: Census figures and unofficial estimates

Year	Unofficial Estimates			Census <sup>10</sup> figures
	Aboriginal community organisations	Felton	Bryant	
1976	20,000	-	-	14,760 *
1981	-	10,095	14,693	6,057 *

\* These figures include Torres Strait Islanders

- 
- 7. Ibid., p.8
  - 8. J. Bryant, "The 1981 Census: an attempt to more accurately enumerate the Victorian Aboriginal population." Monash University, (undated) p.4
  - 9. Felton, op. cit., p.1; Ibid., p.1
  - 10. ABS Information Paper Catalogue No. 2164.0, 17 August 1982, p.1.

### 6.3 Conclusion

The Committee is concerned at the possibility of a considerable degree of under-enumeration of the Victorian Aboriginal population. This under-enumeration has been estimated variously as 25% (at Robinvale), 40% (by Felton) and 59% (by Bryant). The Committee is unable to determine to what extent the 60% decline in the official Census figures on the Victorian Aboriginal population between 1976 and 1981, is due to under-enumeration.

The Committee considers that an accurate enumeration of the Victorian Aboriginal population is highly desirable for the purposes of compensation. One suggestion which is taken up in Part 2 of this Report, is that a register of all Aborigines in Victoria be established, through the proposed Victorian Land and Compensation Council.

## ABORIGINAL LAND

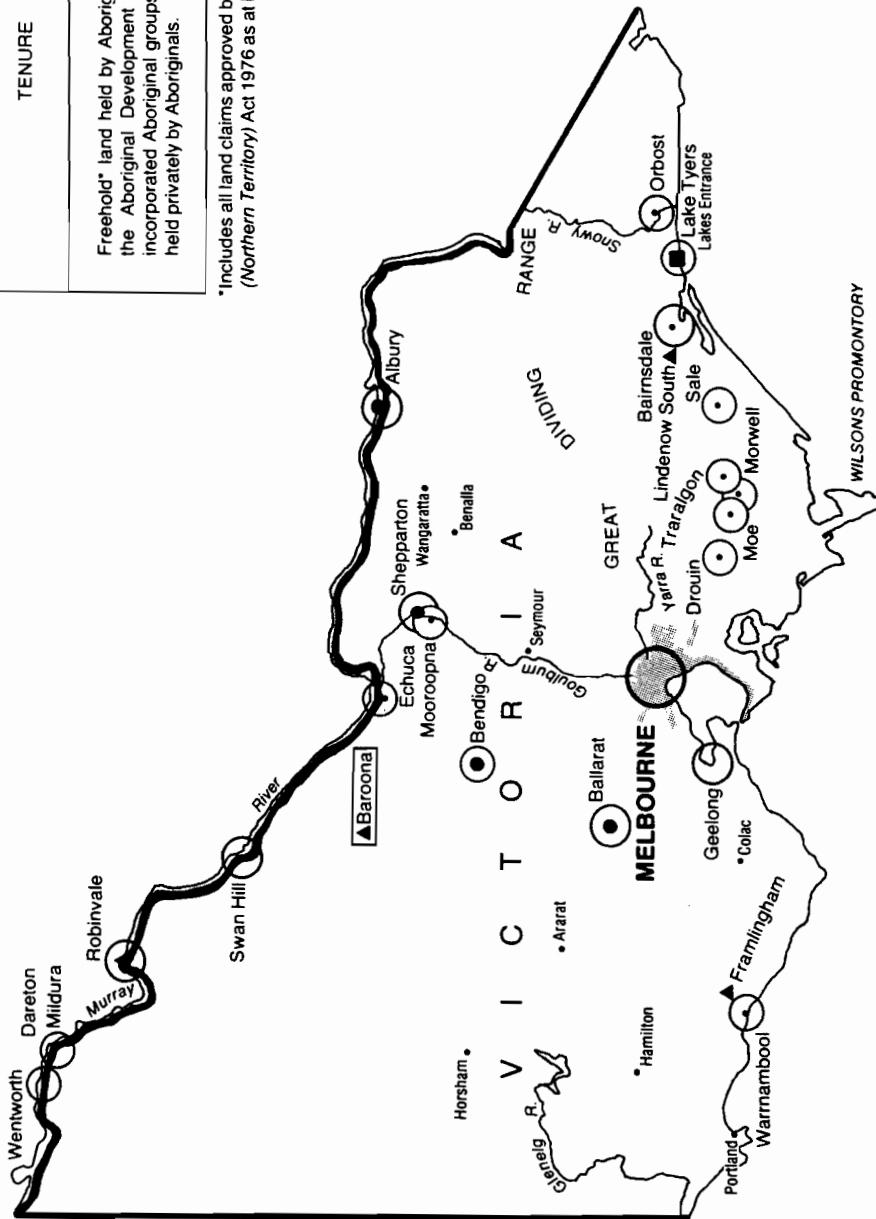
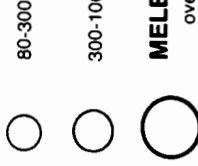
Areas of 10 hectares or more at late 1980

TENURE	AREA (hectares)	
	10-1000	1000-10 000
Freehold* land held by Aboriginal land trusts, the Aboriginal Development Commission or incorporated Aboriginal groups. Excludes land held privately by Aboriginals.	▲	■

\*Includes all land claims approved by the Minister under the Commonwealth Aboriginal Land Rights (Northern Territory) Act 1976 as at late 1980

## ABORIGINAL POPULATION OF VICTORIA 1980

Numbers of Aboriginal people



SOURCES:  
 Prepared from information supplied by the  
 Commonwealth Department of Aboriginal Affairs;  
 supplemented by published and unpublished maps and reports.  
 Ref No. NMP 79/112  
 C. of A., 1982

## PART 2

## THE TERMS OF REFERENCE

In Part 2 of its Report, the Committee sets out its recommendations on the terms of reference, together with its rationale and arguments.

### 7. CONSTITUTIONAL RESPONSIBILITY

Term of reference (i) reads:

(i) constitutional responsibility having regard to the amendment to the Commonwealth Constitution consequent upon the 1967 referendum;

#### 7.1 Consultation

It was emphasised to the Committee in its consultation with Aborigines, that a mandate had been given to the Commonwealth government to act on behalf of the Aboriginal people. The Committee also sought legal opinion to clarify the constitutional responsibilities in question.

#### 7.2 Background to the 1967 constitutional amendment

The purpose of the amendment was considered to be two-fold, viz.:

"First, it will remove words from our Constitution that many people think are discriminatory against the Aboriginal people.

Second, it will make it possible for the Commonwealth Parliament to make special laws for the people of the Aboriginal race, wherever they may live, if the Parliament considers it necessary." 11

The result of this amendment was that Section 51 of the Commonwealth Constitution was altered by omitting from paragraph (xxvi) the words:

"other than the Aboriginal race in any State."

The amended section of the Constitution now reads:

"The Parliament shall, subject to this Constitution, have power to make laws for the peace, order and good government of the Commonwealth with respect to:

• • • • •  
(xxvi) "The people of any race for whom it is deemed necessary to make special laws."

---

11. "The Arguments for and against the Proposed Alteration together with a Statement Showing the Proposed Alteration" p.13.

### 7.3 Implications of the amendment

Although the Commonwealth has an unqualified power to legislate for the Aboriginal race in any State, this power is not an exclusive Commonwealth power; the Constitutional amendment allows for concurrent powers of the Commonwealth and State Governments. <sup>12</sup>

The use of 'deletion' effects a grant of power, i.e., the deletion from the Constitution of the phrase "other than the Aboriginal race in any State" brings about a grant of power to the Commonwealth Parliament to make laws for those previously excluded. In other words, since the 1967 Constitutional amendment, the Commonwealth has the power to legislate for the Aboriginal people in any State.

This power, granted to the Commonwealth to make laws for the Aboriginal people, is considered by the Commonwealth to be a 'plenary' power, i.e. one which is absolute and unqualified.

Furthermore, this grant of power to the Commonwealth raised the possibility of the overruling of State laws if they were inconsistent with Federal legislation. The Commonwealth is also in a position to override inconsistent provisions in State Acts.

The only limitation to this power of the Commonwealth is, according to one commentator, that Commonwealth laws made under section 51 (xxvi) be "subject to this Constitution", i.e., that:

"There is, subject to this qualification, an unfettered discretion in the Parliament to make laws which have a connection with the race of the person on whom they operate.

The limit imposed by the qualification would probably be that an acquisition of lands in a State could not be made without it being on 'just terms'." <sup>13</sup>

- 
12. Submission from the Department of the Premier and Cabinet, April 1984, p.3
13. Eastick, J. "The Australian Aborigine: Full Commonwealth Responsibility under the Constitution." Melbourne University Law Review, Vol. 12, Dec.1980, p.540

## **RECOMMENDATION**

- 1. The Committee recommends that the following interpretation of the 1967 Constitutional amendment be adopted:**
  - (a) That the 1967 amendment to the Commonwealth Constitution gave the Federal Parliament the mandate to discharge a national responsibility to the Aboriginal and Torres Strait people of Australia.**
  - (b) That, given the fact that the 1967 Constitutional amendment allows for concurrent powers of the Commonwealth and State Governments, the Victorian Government may make valid laws on any matter within its competence regarding Aboriginal Affairs, subject to two limiting conditions:**
    - . that to avoid the possibility of overrule by Commonwealth laws, any State legislation in regard to Aboriginal Affairs should, as far as possible, be compatible with Commonwealth Government laws on the matter; and**
    - . that the State Government must be prepared to finance fully or jointly any programs or measures in regard to Aboriginal Affairs which it initiates.**

## 8. LEGAL RESPONSIBILITY

Term of reference (ii) reads:

- (ii) Legal responsibility having regard to the 1974 Agreement transferring Aboriginal Affairs responsibilities from Victoria to the Commonwealth;

### 8.1 Consultation

The Committee's consultation with Aboriginal people indicated their belief that the transfer of legal responsibility to the Commonwealth does not abrogate State responsibility to Aborigines. The Victorian Aboriginal Task Force report indicated that the views of many Aborigines are that:

"...for the larger part of 196 years of the European presence in our country, Aboriginal people have, and are continuing to suffer as a result of action taken at the local or State level. Therefore, it is incumbent upon State governments to accept responsibility in matters of restitution and compensation." <sup>14</sup>

The Committee again also consulted a number of lawyers to clarify the legal responsibilities in question.

### 8.2 Commonwealth/State Arrangement (1974)

This Arrangement was entered into on 22 November 1974 by the Commonwealth with the State of Victoria, pursuant to the provisions of Section 5 of the Aboriginal Affairs (Arrangements with the States) Act 1973 (Commonwealth), whereby it was agreed inter alia that:

Clause 2 - Subject to the provisions of this arrangement, the Australian Government shall assume full responsibility for the administration of Aboriginal Affairs within the State.

Clause 3 - The Australian Government will establish in the State an Office of the Department for the administration in the State of the responsibilities of the Australian Government for the development of the Aboriginal people, including responsibilities for the planning, co-ordination and financing of such activities as are designed to promote the economic, social and cultural advancement of that people.

---

14. Consultant's Report, September 1984, p.12

Clause 4 - The Australian Government will establish and provide for the operation of a consultative body which shall be empowered to perform in relation to the responsibilities of the Australian Government assumed under this arrangement the functions that the Aboriginal Affairs Advisory Council was established by section 10 of the Victorian Act to perform for the purposes of the operation of that Act; and

Clause 5 - This arrangement shall not in itself or by its implementation derogate from or affect the existing authority of the Victorian Government to introduce and implement measures to meet the special needs of the Aboriginal people in the ordinary course of the provision of services of the Victorian Government such as education, health, housing and community welfare.

The Committee notes that the terms of reference mention "the 1974 Agreement", but it has decided, for the sake of consistency with the 1973 Act, to use the term "Arrangement".

### 8.3 Implications of the Arrangement

Clauses 2 and 3 appear to make it clear that the responsibilities assumed by the Commonwealth Government would encompass, inter alia, the funding of Aboriginal Affairs programs in the State of Victoria.

However, Clause 2 is expressed to be "Subject to the provisions of this arrangement...". Thus, this clause should be read taking into account the provisions of Clause 5. It appears then that the Commonwealth Government would not, by virtue of the Arrangement, be responsible for the funding of Aboriginal Affairs programs which may be introduced or implemented by the Victorian Government in accordance with the provisions under Clauses 3 and 5.

### 8.4 Advice of the Victorian Crown Solicitor's Office

The view expressed by the former Victorian Crown Solicitor is that the 1974 Arrangement between the Commonwealth and the State Governments is political rather than contractual in nature. His view is:



"...that the arrangements under s.5 of the Commonwealth Act are not intended to be legally enforceable contracts justiciable in a court of law,...that the 1974 Arrangement with respect to Aboriginal affairs gives rise to political obligations only and not to legal obligations enforceable by a court." <sup>15</sup>

It may be concluded that the 1974 Arrangement with respect to Aboriginal Affairs is a political arrangement - where "political" is used to refer to promises and undertakings of governments - and is therefore one which is not legally enforceable.

There is always the possibility of this Arrangement being breached either by the existing or future Commonwealth or State governments.

### **RECOMMENDATION**

2. **The Committee recommends that the following interpretations of the 1974 Agreement be adopted:**
  - (a) **That the 1974 Agreement which refers to Aboriginal Affairs should be one which gives rise to political obligations only, as opposed to legal obligations enforceable in a court of law.**
  - (b) **That, as such, the Victorian Government is free to introduce and to implement Aboriginal Affairs programs, and be responsible for their funding, over and above those of the Commonwealth Government. The introduction of any particular program to be a matter of policy within the area of the State's power in the matter.**
  - (c) **That the Victorian Government be aware of the possibility of persuading the Commonwealth of the importance of a particular program or programs with a view to the Commonwealth funding such program(s).**

---

15. Memorandum for the Acting Secretary of the Law Department from the Crown Solicitors's Office (Re. Agreement with reference to Aboriginal Affairs in Victoria (1974)), 30 March 1983, p.4.

## 9. A UNIFORM NATIONAL APPROACH

Term of reference (iii) reads:

(iii) the desirability of a uniform national approach to the issue;

### 9.1 Consultation

It became clear to the Committee in the course of its consultation with the Aboriginal community, that many Aborigines were cautious in supporting a uniform national approach due to regional differences in lifestyles, conditions and history of contact with non-Aborigines. Concern was expressed by some Aboriginal people over the fact that successive Federal governments, by their lack of action, had shown that they were unwilling to act against State governments.

### 9.2 Federal initiatives

Given the primary responsibility of the Commonwealth Government and the reason for Constitutional amendments to ensure equity and consistency throughout Australia with respect to Aboriginal Affairs, it is desirable that a uniform national approach should be taken, at least in matters of principle.

### 9.3 Regional differences

The Committee believes that to ensure uniformity of principle, all policy measures adopted by the Victorian Government should be consistent with the general principles enunciated by the Federal Government. However, notwithstanding the need for a uniform national approach, it is imperative that regional differences should be acknowledged and that Aboriginal communities should be involved in decisions and priorities relating to measures to be taken. The Committee concurs with the finding of the Consultants that:

"In approaching the matter whether it be at State or Federal level, the diversity of Aboriginal lifestyles and cultures, and within these groups, the individual preferences, must be taken into consideration. Needs have to be articulated by Aborigines themselves NOT determined by government then thrust upon Aborigines as has been done in the past." 16

---

16. Consultant's Report, September 1984, p.14

### **RECOMMENDATION**

- (3) The Committee makes the following recommendation regarding a uniform national approach:
- (a) That, to ensure equity and consistency, a uniform national approach to Aboriginal Affairs is desirable at the level of general principles.
  - (b) That all policy measures adopted by the Victorian Government be consistent with general principles enunciated by the Commonwealth.
  - (c) That, notwithstanding the desirability of a uniform national approach, State and regional differences must be acknowledged.
  - (d) That any national approach to Aboriginal Affairs take into full consideration the diversity of Aboriginal lifestyles and cultures, and individual preferences.
  - (e) That local Aboriginal communities must articulate the needs of their communities themselves, and be part of both national and State decisions on policies and priorities in Aboriginal affairs.

## 10. FORM(S) OF BENEFIT, ELIGIBILITY AND EQUITY

Term of reference (iv) reads:

- (iv) the most desirable form or forms of any such assistance or benefit, including the criteria for eligibility, having regard to equity;

10.1 The Committee accepts the definition <sup>17</sup> of self-determination as:

"...the right of Aboriginal people to have power over decision-making processes on matters which affect their lives, such as the setting of priorities and the allocation of resources for Aboriginal programs and associated policy determination."

The Committee accepts the definition of self-management as:

"...a related term which is defined as the right of Aboriginal people to have managerial and administrative control over matters affecting Aborigines and their own programs."<sup>18</sup>

Self-determination and self-management do not mean immunity from the law or a separate nation.

Both Commonwealth Government and the Victorian State Government are committed to self-determination and self-management.

10.2 Forms of benefits proposed to the Committee

The Committee received many suggestions and propositions concerning the most desirable form(s) of assistance or benefit from a variety of sources, including written submissions, evidence at public hearings and reports from the Consultants. As a means of encouraging more detailed discussion and development of ideas on the forms of compensation relevant to contemporary Victorian society, the Committee issued a Discussion Paper <sup>19</sup> in June 1984, consisting of matters relating to form(s) of benefits which had been put before the Committee.

---

17. See Appendix I for "Definition and explanation of terms".

18. Joint submission from the Working Group on Aboriginal Matters, (WGAM) Province of Victoria, Anglican Church of Australia, and Aboriginal Affairs Committee, Division of Ecumenical Mission, Synod of Victoria, Uniting Church in Australia, March, 1984, p.25.

19. Social Development Committee, Discussion Paper on matters before the Committee conducting an inquiry into Aboriginal Compensation, June, 1984

As a result of consultation, public hearings and responses to the Discussion Paper, the Committee has concluded that a detailed listing of forms of benefit desirable to ameliorate dispossession and dispersal is inappropriate. Such a listing would run counter to the guiding principle of self-determination, and would present an externally-imposed blueprint on the Aboriginal and non-Aboriginal communities. Furthermore, such a list might lead to an erroneous supposition that it contained fixed maximum or minimum benefit claims.

- 10.3 The Committee recognises the central role of the Aboriginal community in determining its own needs. However, notwithstanding self-determination, it has received a clear indication in the process of consultation of the significance of land, money, and the reaffirmation of the value of Aboriginal culture. The Committee believes that the future development of the Aboriginal people in this State depends on the solid foundation of these three elements. Land as a spiritual base, a home and an economic base; the money to support such grants of land and the means to combat the accrued disadvantage due to cultural dominance by any group, were consistently presented to the Committee as the minimum infrastructure necessary for future development. The Committee believes, therefore, that any proposed legislation on forms of assistance or benefit for the Aboriginal people must co-ordinate these three components.

10.4 Criteria for eligibility

The Committee has decided in principle that since Aboriginal people have suffered or been disadvantaged as the result of dispossession and dispersal, Aboriginal people as a whole are eligible for compensation.

However, issues of eligibility and equity are very complex, and contain within them the seeds of future dissension. Such complexity was not of the Aboriginal community's making for, as the submission of the Aboriginal Land Council put it:

"The South Eastern Aboriginal communities have been the most severely affected from the early custom of removing groups from one area and transferring them to another...Forced removal of children from kin and area of origin resulted in an injustice that can never be compensated. Adoption and fostercare practices further demoralized our people and our communities are still suffering the results." 20

The Committee believes that the issue of eligibility is one that is best settled by the Aboriginal community itself through the duly elected and accountable mechanism outlined in Chapter 12. The recommended Victorian Land and Compensation Council should, as a matter of urgency, examine the issue of eligibility, with a view to maintaining an Aboriginal roll or register.

#### 10.5 Equity

The Committee considers that the question of equity should have maximum input from local Aboriginal communities. Decisions on equity may take into account any existing ownership of land, individual and community resources, relative number of people to benefit and the existing level of services available.

The proposed administrative mechanism outlined in Chapter 12 provides for collective decision-making in response to community needs and the basis of equity is provided through the political structure of decision-making. Decisions of equity regarding competing demands for benefits will be made by the Victorian Land and Compensation Council which will be accountable to the local Aboriginal communities. In carrying out its function it will be essential for the Victorian Land and Compensation Council to facilitate maximum information and discussion in local communities between Aboriginal and non-Aboriginal.

Any decision on land use must conform with Victorian laws and regulations which govern all land.

---

20. Submission of Aboriginal Land Council Victoria, 17 January, 1984, pp. 2-3

## **RECOMMENDATIONS**

- (4) The Committee, accepting that Aboriginal people as a whole have suffered or been disadvantaged as the result of dispossession and dispersal, recommends that all Aboriginal people be eligible for compensation based on the following principles:
- (a) each local Aboriginal community to establish and decide upon its priorities regarding the most desirable form(s) of assistance or benefit most appropriate to meet its needs.
  - (b) land, money and the reaffirmation of cultural identity provide the basis of self-determination, through which Aborigines can participate in future development.
  - (c) legislation should allow the proposed Victorian Land and Compensation Council to recommend and the State Government to provide monetary compensation in support of approved projects.
  - (d) the proposed Victorian Land and Compensation Council should examine, as a matter of urgency, the issue of eligibility, with a view to maintaining an Aboriginal roll or register.
- (5) All questions of equity regarding competing demands for benefits, including individual compensation, shall be resolved by the Victorian Land and Compensation Council.

## 11. LAND RIGHTS AND BENEFITS

Term of reference (v) reads:

- (v) the relationship of land rights to any forms of assistance or benefit and any special provisions which should be incorporated in Aboriginal land rights legislation;

### 11.1 Consultation

The Committee found unanimous agreement in its consultation with Aborigines, with the view that land was the cornerstone of existence. "The land - my mother" expressed the nature of this relationship. Aside from being an economic base and source of food it became clear to the Committee that land provided the cultural and spiritual pivot of Aboriginal society and that to have at least some of one's own sacred or tribal land is of prime importance to Aboriginal communities. Such evidence reinforced an increasing understanding of both the real and symbolic significance of land to Aboriginal life throughout Australia. In many States and Territories this understanding is demonstrated practically, through legislation which formalises the belief of governments that land rights are an integral part of amelioration for dispossession and dispersal. The Victorian Government is currently involved in such a process.<sup>21</sup>

### 11.2 Land Rights and Benefits

The Committee believes that if there is to be legislation on land rights then because of the close relationship between land, cultural heritage and compensation, such land rights legislation should include these three elements.

### 11.3 Land Title

It is the view of the Committee that in making decisions on sacred and significant sites, the Victorian Land and Compensation Council should have the power to make the following recommendations:

---

21. See: Victorian Government's Aboriginal Affairs Bill; and the Victorian Government's Aboriginal Affairs Discussion Paper, September 1984.



- (a) On Crown Land: that the land should be held either under inalienable title or on a negotiated agreement (between the Crown and the local Aboriginal community) of access, maintenance and protection; and
- (b) On private land: that access, maintenance and protection should be provided on the basis of negotiated agreement, between the owner and the local Aboriginal community.

#### 11.4 Sacred and significant sites register

In order to safeguard Aboriginal sites of significance within Victoria, this Committee recommends that the Victorian Land and Compensation Council works closely with the Aboriginal communities throughout Victoria to establish a register of such sites of significance and have it produced as soon as possible.

#### 11.5 Non-Aboriginal compensation

The Aboriginal community made it clear to the Committee that direct grants of land made on the basis of spiritual, sacred or tribal association, burial grounds, and places of great historical significance such as massacre sites should not be at the expense of non-Aborigines. As one witness stated at a public hearing:

"We do not want to create any bitterness and we believe white people would become bitter if they were to suffer the same affliction as did our people. We do not want to practice what we preach against by dispossessing people."<sup>22</sup>

The Committee concurs and believes that compensation should be paid to non-Aborigines whose livelihood or interest is detrimentally affected by any such grants of land.

#### 11.6 Information and Education

The Committee believes that in such a sensitive area as land, compensation and the cultural heritage of Aborigines, rumour, misinformation and misinterpretation are rife. To counter alarmist responses to statements of

---

22. Mr. Stewart Murray: Swan Hill public hearing, 18 July, 1984, p.350

generally doubtful accuracy the Committee believes that there is a pressing need for clear and accurate information to be made available to the general public in a form which promotes community consultation and discussion. Further that local government be encouraged to establish official links between local councillors and Aboriginal communities in their area.

The Committee believes that much greater priority must be given in the curricula of schools and other educational institutions to the study of Aboriginal history and culture.

### **RECOMMENDATIONS**

- (6) That land rights legislation is an integral part of amelioration for dispossession and dispersal of the Aboriginal people, and that, if there is to be legislation concerning land rights or claims, the three dimensions of land, compensation and cultural heritage be included.**
- (7) That, regarding sacred and significant sites, the proposed Victorian Land and Compensation Council should have the power to make the following recommendations:**
  - (a) On Crown Land: that the land should be held either under inalienable title or on a negotiated agreement (between the Crown and the local Aboriginal community) of access, maintenance and protection; and**
  - (b) On private land: that access, maintenance and protection should be provided on the basis of negotiated agreement, between the owner and the local Aboriginal community.**
- (8) That, in order to safeguard Aboriginal sites of significance within Victoria, the proposed Victorian Land and Compensation Council works closely with the Aboriginal communities throughout Victoria to establish a register of such sites of significance and have it produced as soon as possible.**
- (9) That compensation should be paid to non-Aborigines whose livelihood or interest is detrimentally affected by grants of land made on the basis of spiritual, sacred or tribal association, burial grounds, and places of great historical significance to Aboriginal people.**
- (10) That there be an educational and publicity campaign to inform the public of the nature and equity of land rights and compensation and to promote community consultation and discussion.**
- (11) That local government be encouraged to establish official links between local councillors and Aboriginal communities in their area.**
- (12) That much greater priority must be given to the study of Aboriginal history and culture in the curricula of schools and other educational institutions.**

## 12. ADMINISTRATIVE MECHANISMS

Terms of reference (vi) reads:

- (vi) the most desirable manner of administration, having regard to the principles of Aboriginal self-determination and self-management and to Aboriginal culture.

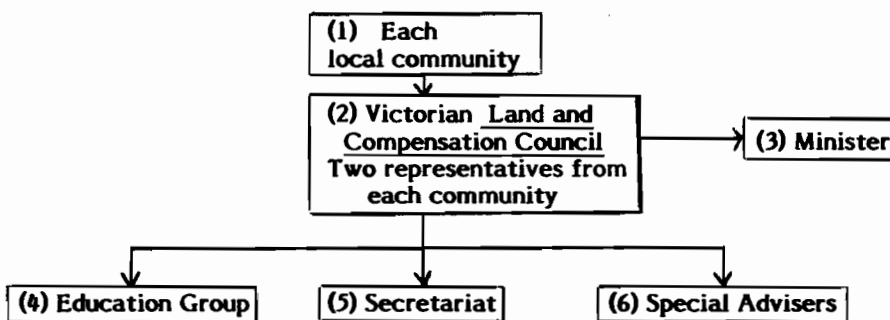
### 12.1 Introduction

The Committee considered several models on which to base its recommendations. The Committee had regard to an administrative mechanism which was efficient, fair, and economic.

### 12.2 Structure for the administration of land and compensation claims

12.2.1 The following diagram <sup>23</sup> sets out the recommended structure:

Diagram 1



12.2.2 The following notes (1) - (6) as indicated in the above diagram, provide further detail:

- (1) Each local community elects two representatives (preferably one male, one female) to the Victorian Land and Compensation Council. The initial term of office should be for two years, and thereafter for four years.

---

23. Diagram 1 and the following explanatory notes are derived largely from the Consultant's Report (Victorian Aboriginal Task Force) September 1984, pp. 21-23.

The Committee also sees merit in the Consultant's recommendation that each family group in the local community should have one representative on a "family monitoring group" whose task it is to support the elected representatives and monitor their performance. In this way, greater accountability of the representatives to the local groups will be encouraged.

(2) The Council has the following functions:

- . to overview and co-ordinate all submissions;
- . to use specialist groups for advice on submissions;
- . to refer submissions and suggestions back to communities for final decisions;
- . to present final submissions, as ratified by community meetings, to the Minister; and
- . to follow up progress of such submissions.

In addition, the Committee sees merit in the Consultant's recommendation that the Council should not be empowered to override the community decision on community matters, and that there should be no appeals mechanism.

(3) Direct access to the Minister(s) is envisaged, and the concept of an Aboriginal bureaucracy or bureaucracy for Aborigines has been rejected.

(4) The Council will also have an education function, which will be provided through an Education Group who will:

- . support members of the Council in informing local communities on land claims issues; and
- . consult with non-Aboriginal groups to ensure correct information is disseminated about claims.

(5) A small Secretariat comes directly under the authority of the Council, with organisational activities associated with the functioning of the Council.

(6) The Specialist Advisers are called upon by the Council as needed.

## RECOMMENDATIONS

- (13) That, subject to the Audit Act 1958, the administration of special forms of assistance or benefit be the responsibility of Aboriginal communities.
- (14) That the model administrative mechanism outlined in recommendations (15) to (26) form the basis of an administrative structure, but that any amendments and improvements presented by the Aboriginal community subsequent to the tabling of this Report, be considered by the Government.

### The proposed administrative mechanism

- (15) That the South-East Land Council be reconstituted, in line with the principles of self-determination and self-management, to form a co-ordinating body re-named the Victorian Land and Compensation Council.
- (16) That such a Council consist of two delegates from each Aboriginal community, preferably one male and one female. The initial term of office to be for two years, and subsequently for four years.
- (17) That the role of the Council be:
- . to overview and co-ordinate all submissions;
  - . to utilise specialist groups for advice on submissions;
  - . to refer submissions and suggestions back to communities for final decisions;
  - . to present final submissions to the Minister and oversee progress; and
  - . to process only land and compensation claims.
- (18) That delegates to the Council be elected by the local Aboriginal communities.
- (19) That each family group in the local Aboriginal community have one representative on a Family Monitoring Group, such a group to provide an accountability mechanism from representatives to the community.
- (20) That all decisions of the Council be referred back to the communities for ratification before finally being moved by the Council.
- (21) That community decisions on community matters cannot be over-ridden by the Council.

- (22) That the Council will have an education function which will be provided through an Education Group which will:
- support members of the Council in informing local communities on land claims issues; and
  - consult with non-Aboriginal groups to ensure correct information is disseminated about claims.
- (23) That the Council have the power to appoint specialist advisers, as needed, in those areas it deems necessary.
- (24) That the Council be served by a small secretariat to assist with organisational activities associated with the functioning of the Council.
- (25) That the Council have direct access to the Minister concerned and not be subject to or answerable to an Aboriginal bureaucracy or bureaucracy for Aborigines.
- (26) That, for the purposes of forward planning by the Council, triennial program funding be established to ensure a funding flow-on between each financial year.

### 13. THE SOURCES OF BENEFIT

Term of reference (vii) reads:

- (vii) the sources of any special assistance or benefit having regard to justice and equity.

#### 13.1 Funding principles

Evidence presented to the Committee suggested that rather than collect from only some sections of the community, all taxpayers should bear the cost and Government should bear the responsibility of raising the funds.

#### 13.2 Consultation

During the consultations the Committee was presented with a range of different formulae for provision of special benefits, the two most frequently suggested were:

- . a straightforward proportion of the gross revenue of the State or the Commonwealth be assigned annually; and
  - . a proportion of the gross revenue of the State equivalent to a given percentage (say 7.5 per cent) of the State land tax be assigned annually.
- (i) A proportion of gross revenue:

An argument was advanced that there was a precedent for such a scheme. As one submission stated:

"When in 1889 the Imperial authorities granted Sovereign Rights to the West Australian Parliament, they wrote into the Constitution Act (s.70) that a minimum of \$10,000 or 1% of the gross revenue, whichever was greater, should be paid annually into a fund beyond the reach of the W.A. Parliament for the exclusive use of Aboriginal natives as compensation for being dispossessed of their lands. (See Peter Biskup: Not Slaves, Not Citizens, p.25 Univ. of Queensland Press, 1973; Patsy Adam Smith: No Tribesman, p.47, Seal Books Rigby, 1974)." <sup>24</sup>

---

24. Submission of S. Pelczynski, 28 August, 1984, pp.10-11.

(ii) A land tax formula:

The most commonly quoted formula was that provided for under the New South Wales Aboriginal Lands Act 1983 which attempted to give Aborigines an economic base and also an assured source of adequate funding over a long term. The Act provides for an annual amount equivalent to 7.5 per cent of land tax revenue received by the New South Wales Government to be set aside for a period of 15 years, to provide a fund to enable Aboriginal communities to acquire and develop land, and to meet administrative costs. Fifty per cent of the annual allocation is to be invested and fifty per cent is to be allocated to the Aboriginal community bodies.

13.3 Joint responsibilities

The Committee considers, and emphasises that it also represents views received from the Aboriginal community, that both State and Federal Governments have a responsibility to provide finance for assistance or benefits to the Aboriginal people. It considers that ultimately funding of compensation must be a joint State/Commonwealth responsibility. The Committee is concerned that there should be no delay occasioned by fruitless Commonwealth/State conflicts, and that both Governments should accept their financial responsibilities.

13.4 The extended time period

The Committee believes that the time period allowed in the N.S.W. legislation is too short as it would directly benefit only one generation. In many cases it was considered that the effects on Aboriginal families of dispossession and dispersal would take more than one generation to overcome. Many families are so far below minimum living standards and conditions that it would take at least one generation to reach such minimum levels. A re-assessment of the situation should occur when the first generation to benefit reaches maturity.

13.5 The Committee considers an appropriate guideline for funding of compensation in Victoria is a minimum annual amount of \$5 million,



estimated on the basis of \$300 per Aboriginal person. This sum should be met by an equal grant from the Victorian Government and the Federal Government. The operation of the Council should be financed from within this amount. However the Committee notes that the final decision about the amount of funding provided rests with the government of the day.

**RECOMMENDATION:**

- (27) That, having regard to justice and equity, all taxpayers should bear the cost of funding for compensation.
- (28) That both State and Federal governments should bear the responsibility of providing finance for benefits for the Aboriginal people.
- (29) That the benefits of compensation should extend for more than one generation.
- (30) That an appropriate guideline for the funding of compensation in Victoria is a guaranteed minimum annual amount of \$5 million, indexed for inflation.
- (31) That the operation of the proposed Victorian Land and Compensation Council be financed from within the guaranteed minimum annual compensation payment.

Committee Room  
25 October 1984.

## APPENDIX I

### DEFINITION AND EXPLANATION OF TERMS

1. Aborigine: Those persons of Australian Aboriginal descent who identify as such and who are recognised by members of the Aboriginal community as such. This accords with the Commonwealth definition. <sup>25</sup>
2. Aboriginal: The adjectival form of "Aborigine" defined in 3.1.
3. Affirmative Action: An action to correct the effects of past discrimination to eliminate present discrimination, or to prevent discrimination in the future.
4. Compensation
- 4.1 General definition: The making up or making amends for some form of loss or damage - something being given or received as recompense such as an equivalent for services, debt, loss, suffering etc. <sup>26</sup>
- 4.2 The legal definition: Compensation in British law is usually defined as:

"the pecuniary recompense which a person is entitled to receive in respect of damage or loss which he has suffered" <sup>27</sup>

Two of many examples of compensation are:-

- (i) payments by public authorities in respect of land or other property lawfully acquired under statutory powers or injuriously affected by or under statutory provisions (known as compulsory acquisition).
- (ii) payments by government departments or statutory bodies in respect of damage to property or personal injuries. <sup>28</sup>

---

25. "An Aboriginal or Torres Strait Islander (is) a person of Aboriginal or Torres Strait Islander descent who identifies as an Aboriginal or Torres Strait Islander and is accepted as such by the community in which he or she lives." Year Book of Australia 1983, p.751

26. Concise Oxford Dictionary, 6th edition, OUP, 1980, p.206;  
Macquarie Dictionary, latest edition, p. 387.

27. Halsbury's Laws of England, Vol. 12, 4th edition, Butterworths, London, 1973, p.426.

28. Ibid.

- 4.3 Australian examples: The concept of compensation is deeply ingrained in the Australian notion of justice,<sup>29</sup> such as:
- worker's compensation for injury sustained in connection with an employee's work;
  - compensation for loss of amenities or for resumed properties, including compulsory acquisition of land;
  - cash sums are awarded to victims of crime; and
  - compensation is sought through libel suits if an individual believes that his/her reputation has been wronged.
5. Direct Discrimination: Exclusion from a benefit or opportunity on the grounds of an irrelevant personal characteristic such as race or sex. The explicit exclusion of women, migrants or Aborigines from a particular occupation constitutes direct discrimination.
6. Discrimination: Denial of a benefit (including employment) on the basis of an irrelevant personal characteristic such as race, sex, or marital status. It may be intentional or unintentional.
7. Dispossession: Describes the effects that the European settlement of Victoria had, and still has, on the Aboriginal people. It is the process and end result of European settlement which took over land occupied by Aborigines, often through violent means, and without provisions for adequate negotiation, bargaining, treaties or compensation, and the subsequent treatment of the Aborigines by the settlers.
8. Dispersal: Describes a process concurrent with dispossession, involving Aboriginal tribal groups being scattered and fragmented, and families separated.
9. Indirect Discrimination: An employment policy or practice, however neutral in intent, which has a negative impact on members of disadvantaged groups. A policy or practice having this impact of disproportionately excluding members of a group constitutes unlawful discrimination. The requirement of continuous service for permanent employment constitutes indirect discrimination against females who experience breaks in service during their child-bearing years.

---

29. Sutton, "Land Rights and Compensation in Settled Australia," Social Alternatives, Vol 2, no.2, 1981, pp. 6-10

10. Racism: Any attitude or practice that results from attitudes or beliefs that place the members of any race into a category, or ascribes characteristics to any race that are consciously or unconsciously based on culturally induced race-related stereotypes.
  
11. Self-determination and self-management: "Self-determination" is the right of Aboriginal people to have power over decision-making processes on matters which affect their lives, such as the setting of priorities and the allocation of resources for Aboriginal programs and associated policy determination.

"Self-management" is a related term which is defined as the right of Aboriginal people to have managerial and administrative control over matters affecting Aborigines and their own programs. <sup>30</sup>

Self-determination and self-management should not be misunderstood to mean, respectively, immunity from the law and hopes for a separate nation.

Both the Commonwealth Government and the Victorian State Government are committed to self-determination and self-management.

12. Systemic Discrimination: A pattern of discrimination through a society, a place of employment, or within a program that is the result of pervasive and inter-related action, policies, or procedures. Race segregation in housing, access to services, and employment is a form of systemic discrimination. (See also Indirect Discrimination).

---

30. Joint submission from the Working Group on Aboriginal Matters, (WGAM) Province of Victoria, Anglican Church of Australia, and Aboriginal Affairs Committee, Division of Ecumenical Mission, Synod of Victoria, Uniting Church in Australia, March 1984, p.25

## APPENDIX 2

### RECEIPT OF SUBMISSIONS

#### 1. LOCAL GOVERNMENT

Borough of Kerang  
City of Camberwell  
City of Castlemaine  
City of Colac  
City of Collingwood  
City of Echuca  
City of Fitzroy  
City of Hamilton  
City of Horsham  
City of Mildura\*  
City of Sale  
City of Shepparton\*  
City of South Melbourne  
City of Swan Hill  
City of Wangaratta  
Shire of Alberton  
Shire of Avon\*  
Shire of Bacchus Marsh  
Shire of Ballan  
Shire of Bairnsdale\*  
Shire of Belfast  
Shire of Bellarine  
Shire of Bright  
Shire of Buln Buln  
Shire of Bungaree\*  
Shire of Charlton  
Shire of Cobram  
Shire of Colac  
Shire of Daylesford and Glenlyon  
Shire of Diamond Valley

\* Provided verbal submission (at public hearings)

1. **LOCAL GOVERNMENT** (continued)

Shire of Dimboola  
Shire of Dundas  
Shire of Eltham  
Shire of Gisborne  
Shire of Gordon  
Shire of Hampden  
Shire of Kerang  
Shire of Lilydale  
Shire of Lowan  
Shire of Maffra  
Shire of Marong  
Shire of Mildura \*  
Shire of Mortlake  
Shire of Myrtleford  
Shire of Narracan  
Shire of Nathalia  
Shire of Numurkah  
Shire of Omeo  
Shire of Phillip Island  
Shire of Rippon  
Shire of Rosedale  
Shire of Seymour  
Shire of Shepparton  
Shire of Swan Hill \*  
Shire of Talbot and Clunes  
Shire of Tambo \*  
Shire of Tungamah  
Shire of Upper Murray  
Shire of Waranga  
Shire of Wycheproof  
Shire of Yackandandah  
Shire of Yarrawonga  
Town of Bairnsdale  
Town of Camperdown  
Town of Kyabram

## 2. ORGANISATIONS

Aboriginal Education Services \*

Aboriginal Hostels Ltd \*

Aboriginal Land Council of Victoria \*

Aborigines Advancement League \*

Anglican Diocese of Melbourne and Uniting Church,  
Synod of Victoria - joint submission \*

Australian Land Rights Movement \*

Ballarat and District Aboriginal Co-operative Limited

Barmah Forest Preservation League

Carngham R.S.L. Sub-branch \*

Catholic Commission for Justice and Peace

Concerned Parents' Association Mildura \*

Council of Adult Education

Dandenong and District Aborigines Co-operative Society Limited

Kaarimba Fire Brigade District \*

Koorie Information Centre \*

Mirambeek Aboriginal Corporation \*

Municipal Association of Victoria

Narioka Recreation Reserve

Nathalia Agricultural Society \*

Nathalia and District Concerned Citizens Group \*

National Aboriginal Conference, Canberra \*

National Aboriginal and Islander Health Organisation \*

National Action Group \*

Picola Uniting Church Ladies Guild

Prospectors' and Miners' Association of Victoria Inc. \*

Robinvale District Development Association

Rumbalara Aboriginal Consultative Group \*

Rumbalara Aboriginal Welfare Consultative Group \*

Stratford Uniting Church (Parish of) \*

Victorian Aboriginal Education Consultative Group \*

Victorian Aboriginal Health Service \*

Victorian Farmers and Graziers Association \*

Wemen Community Group

Western Mining Corporation Limited \*

Windemere Young Farmers

Yorta Yorta Tribal Council \* - 43 -

3. GOVERNMENT DEPARTMENTS

Department of Community Welfare Services

Department of the Premier and Cabinet

Ministerial Advisory Committee on Multicultural and Migrant Education \*

Ministry of Aboriginal Affairs, N.S.W. \*

4. INDIVIDUALS

Ms R. Adams, Warana Beach, Queensland

Mr. J. Alexander, Brighton

Mr. D.R. Anderson, Brunswick

Mr. B. Andjelkovic, Traralgon

Cr. L. Andriske, Mildura \*

Mr. J. Ansell, Swan Hill \*

Mr. K. Atkinson, Shepparton \*

Mr. W. Atkinson \*

Mr. J. Austin

Mrs. E.J. Bamford, Morwell

Dr. D.E. Barwick, Farrer, A.C.T.

Mr. R. Bell, Horsham

Mr. P.S. Bestwick, Myrtleford

Mr. J. Bijkersma, Ballarat \*

Mr. W.J.D. Bowen, Croydon

Mrs. F.E. Boyd, Lower Templestowe

Ms W. Brabham \*

Mrs. U. Branfield \*

Mr. M. Bull, Lake Tyers \*

Mr. D. Byrne, Cobram

Mr. H. Cahir, Albert Park

Mrs. R.M. Campbell, Glen Waverley

Mr. P.A. Carroll, Cockatoo.

Mr. L.R. Cook, Numurkah \*

Mr. P. Cummings, Swan Hill \*

Mrs. J. Day, Nagambie

Ms O. Day, Rumbalara \*

Mr. B.K. Dungey, Stratford



INDIVIDUALS (continued)

Mr. P. Edwards, Swan Hill \*

Mr. B.J. Evans, MLA \*

Mr. P. Felton, North Balwyn \*

Mrs. E. Fesl \*

Ms S. Firebrace, Rumbalara \*

Mr. S. Foulkes, Carlton

Mr. J. Francese, Wangaratta

Mrs. P. Fraser, Swan Hill \*

Ms F. Gardner, Rumbalara \*

Mr. T. Garwood \*

The Rev. Canon D. Gibson, Shepparton \*

Mr. R. Grant, North Geelong \*

Mrs. E. Griffiths, Bundoora

Mrs. E. Halden, Shepparton \*

Mr. C.J.P. Hedges, Beaufort \*

Mr. K.H. Herde, Beaufort \*

Mr. I. Hickey, Swan Hill \*

Ms B. Hocking \*

Mr. D.R. Hogarty, Mt. Waverley \*

Mr. R. Howie, Melbourne

Mr. B. Hughes, Newmerella

Ms E.R. Jewson, Swan Hill

Mr. J. Johnstone, Caulfield

Ms E. Kagan, Moonee Ponds \*

Mr. E.G. Kennedy, Wycheproof

Mr. K. King, Mildura \*

Mr. K. Kitto, Croydon

Mr. W.J. Kuch

Mr. M.J. Kuilboer, Puckapunyal

Mr. J.D. Lever, Mildura

Cr. N. Lever, Mildura \*

Ms B. McCartney, Swan Hill \*

Mr. J. McCorquodale, Killara, N.S.W.

INDIVIDUALS (continued)

Mr. J. McDonald, Tongala  
Mr. W.F. McFadden, Westmeadows  
Mr. A. McIvor, Lake Corangamite \*  
Ms F. Mathysen, Rumbalara \*  
Mr. J. Morieson, Hawthorn \*  
Mr. A. Mullett \*  
Mr. S. Murray, Glenroy \*  
Mr. P. Nelson, Mildura \*  
Mr. M. Newman \*  
Mr. B. Nolan, Learmonth \*  
Mr. B. Northayne, Frankston  
Ms H. O'Brien, Porepunkah  
Mr. V.J. O'Meara, Wangaratta  
Mr. S. Pelczynski, Malvern East  
Mr. P. Pepper \*  
Mr. C. Perkins, Canberra  
Mr. P. Pinnington \*  
Mr. P. Prosser \*  
Mr. E.W. Reedy, Robinvale  
Ms J. Rinaudo, Myrtleford  
Mr. L.M. Robertson, Kyabram  
Mrs. H.B. Ronald, Toorak  
Mr. D. Rose, Swan Hill \*  
Mr. D. Rowe \*  
Mr. W. Sawyer, Burrumbeet \*  
Mr. T. Shaw, Buronga via Mildura  
Mrs. B. Simmons, Swan Hill \*  
Fr. B. Smith, Beaufort \*  
Mr. K. Smith, Myrtleford \*  
Mr. F. Stewart, Swan Hill \*  
Dr. L. Stewart, Swan Hill \*  
Mr. D. Tan, Healesville \*  
Mr. R.H. Tate, Alexandra

INDIVIDUALS (continued)

Prof. C. Tatz, Macquarie University  
Mr. A.P. Taylor, Curlwaa, N.S.W.  
Mr. G. Taylor, Black Rock  
Ms K. Thorpe \*  
Mr. R. Thorpe, Fitzroy \*  
Dr. L.J. Tierney, University of Melbourne  
Mr. I. Tripcony \*  
Mr. J. von der Putten, Mildura  
Mr. A. L. Walker, Burrumbeet \*  
Dr. A. Ward, La Trobe University \*  
Mr. J. Ward, Swan Hill \*  
Mrs. G. Warne, Swan Hill  
Mr. E. Wright, West Doncaster  
Mr. N. Yarram \*