CHAPTER VIII

'WE HAVE NO HUMAN RIGHTS'

In October 1981 the Senate Standing Committee on Constitutional and Legal Affairs advertised for submissions on 'the feasibility, whether by way of constitutional amendment or other legal means, of securing a compact or "Makarrata" between the Commonwealth Government and Aboriginal Australians'. Its public hearings took it at the end of March 1982 to Alice Springs. (It had already travelled to Darwin, other parts of the Northern Territory and Queensland.) The evidence given by Father Pat Dodson and others at the Alice Springs hearing is important in understanding the situation which followed the National Aboriginal Conference's Makarrata proposals, and the thinking which had led Aborigines to set up a Federation of Land Councils after the September 1981 CHOGM meeting and their failure to arouse the help and interest of African countries and have a boycott declared on the Commonwealth Games. Some of the evidence presented

during the Alice Springs hearing can be briefly summarized.[1]

As the Standing Committee emphasized, its work was only directed towards providing recommendations to the Senate 'about what we think are the most appropriate ways of fitting some form of agreement within the Australian legal and constitutional framework'. But the case was, as far as many Aborigines were concerned, already prejudged by the use of the word 'Makarrata' rather than 'Treaty' and the evident unwillingness of the Commonwealth Government to admit the concepts of 'prior ownership' and of 'sovereignty'. To some Aboriginal leaders (and for that matter, to the NAC if one were to take the Position Paper of April 1981 as their official view), these concepts would have to form the basis of any agreement. At this sticking-point, views and opinions, legal and otherwise, were to remain opposed.

In his opening speech in Alice Springs on 29 March 1982, the Chairman, Senator Missen, said,

> It may assist you if I briefly list some of the different ways in which it has been suggested that an agreement could be legally achieved. They include some form of amendment to the Constitution approved by a referendum of all Australians. Another method is that legislation might be passed by the Commonwealth Parliament or perhaps by the Commonwealth and State Parliaments. Another alternative is a treaty which is recognized in international law. Other possibilities are the enactment of an Aboriginal Bill of Rights by the Commonwealth Parliament, or, finally, a simple contractual form of agreement between the two parties.

Father Dodson, speaking to the submission on behalf of Central Australian Aboriginal organizations, opened the

1 All quotations relating to the Alice Springs hearing on the following pages are taken from the uncorrected proof copy of evidence given to the Senate Standing Committee on Constitutional and Legal Affairs, 24 March 1982.

witnesses' evidence. Their submission clearly put the case for noncompromise. Its preamble stated *inter alia* that

> 1. To the extent that the Makarrata or Treaty will cover Aboriginal people and the invaders it will amount to an agreement by Aboriginal people that a white law takes precedence over Aboriginal law. It is impossible for us as people who continue to exercise our law to agree to a white law taking precedence over it...
> 2. Since 1788 our nation has been invaded by ever-increasing numbers of Europeans who, with superior weapons, have attempted to defeat our people and destroy our law and culture and seize, without compensation, our land. We have never conceded defeat and will continue to resist this ongoing attempt to subjugate us...
> 6. The Aboriginal people have never surrendered to the European invasion and assert that sovereignty over all of Australia lies with them... We demand that the colonial settlers who have seized the land recognize this sovereignty and on that basis negotiate their right to be there. (pp.247–8)

The submission which followed pointed out that the Commonwealth Government already had the power to enact legislation on civil and land rights, and on compensation, under the 1967 referendum; and that the coalition government had already made its position on land rights clear in the matter. In Senator Baume's words:

> To acquire land compulsorily so as to impose a system of land administration upon an unwilling state would be politically, legally and administratively difficult... it would also involve compensation to be paid to the state. It would invite confrontation and divisiveness which could harm not only the interest of the wider community but also the long-term interest of the Aboriginal people who are dependent on the State Governments.[2]

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2 Address to Seminar, 'Human Rights for Aboriginal People in the 1980s', Law Faculty, University of NSW, 30 September 1981.

It was, in fact, the record of the Federal coalition government since 1967 which lay behind the uncompromising stance on any negotiations expressed by the Central Australian Aboriginal organizations. Their first demand in the submission was for recognition of all land councils and funding for them:

> The Federal Government has refused to recognize or to fund the land councils of Queensland, Western Australia, Tasmania, southern South Australia, Victoria or New South Wales. They inadequately fund the councils in the Northern Territory and Pitjantjatjara area. This effectively renders Aboriginal people powerless as they struggle to meet the pressures of European society on their land and people with inadequate money or resources.[3]

No treaty negotiation, the submission contended, could begin before this funding and recognition. This first demand was followed by a series of others relating to mining, return of sacred objects, cultural material and museum-held remains of Aboriginal people, compensation for genocide and loss of land, and funding for Aboriginal welfare services. In later discussion, the stance taken in the submission was modified and elucidated somewhat.

Father Dodson explained:

> It is a question of the time-scale... The whole question of a Makarrata or treaty seems to have been compacted into a small time-slot in order, seemingly, to justify the Australian settler State government position in this country, without adequate understanding by Aboriginal people of what the significance of such an agreement may be... And whilst it may be advantageous from the Government's point of view to look at the procedures under which it might negotiate a treaty, from our point of view the history of its performance has certainly not been one reflecting compassion or preparedness to change its basic posture. (pp.254–5)

3 Uncorrected proof. p.249.

Asked by Senator Ryan whether, if the Senate resolution moved by Neville Bonner in 1975 were to be passed by both Houses and if the matters listed in the submission were addressed, there would still be point in negotiating a treaty, Father Dodson agreed that

> There probably would be. Aboriginal people live in a climate of continual erosion of whatever rights we have acquired by the legislators. A form of protection for the Aboriginal people would need to be worked out. (pp.254–5)

Mr Philip Toyne, solicitor for the Pitjantjatjara Legal Service, commented that

> One of the fundamental issues ... is that any recognition of prior existing ownership of Australia by Aboriginal people carries with it the corollary that they have certain compensation rights as a result of that recognition ... You cannot have one without the other ... The view we have taken is that if the [Commonwealth] government as it now stands has not been prepared to back Aboriginal interests over a whole series of issues with various State governments, then what chance has a Makarrata got of achieving anything meaningful in the way of compensation? (p.265)
>
> We come from underfunded, understaffed, overworked organizations with all sorts of pressures on our time and resources ... You are asking us to embark upon a very very time-consuming and a very great energy-consuming exercise. What does that really mean in terms of the rights of Aboriginal people to achieve and control land, and not just in the Northern Territory? (pp.268–9)

Mr Vince Forrester, National Aboriginal Conference representative for the National Aboriginal Government (whose occupation of Capital Hill during 1980 will be remembered), took a rather different stance. He had, he said, been talking to Aboriginal communities in the southern part of the Northern Territory, and their view was in favour of a treaty.

> It is agreed that a treaty such as a Makarrata should be introduced because it gives Aboriginal people protection of their rights and of their basic human rights... We have no human rights... We do not want to be white Australians... We want Aboriginal sovereignty and nationhood recognized in Australia. (pp.274–5)

But like most of the other Aborigines to give evidence, all around Australia, he asked the fundamental question: 'Can we trust the white person now?'

> If we are to negotiate a treaty... will it be a domestic treaty or will it be under the United Nations Charter, where the United Nations people can come here and oversight a treaty made by Aboriginal people with non-Aboriginal people?.. This is what the people are saying, my people in the Pitjantjatjara area... They support not an agreement but a treaty and in an international sense. (pp.276–7)

Mr Michael Anderson, a research officer for the National Aboriginal Conference, further explained:

> The white man can change his law any time he wants to. The Aborigine cannot change his law... he does not have the power to change his law... Aboriginal people are saying that it might become popular to get out of the treaty... in the future, therefore we need to look at some higher authority where Aboriginal people will have redress... Where do we appeal? (pp.278–9)

And this question of law was further elucidated when Father Dodson pointed out that a treaty with another people, such as the Japanese, depended on a recognition of the existence of that nation and that the law governing the nation 'is a recognized law in itself, and that the nature of the agreement is then worked out in terms of [both laws]'.

Further on in the discussion, Mr B. Eade (Deputy Director, Central Australian Aboriginal Congress) again took up the legal question as Aborigines saw it:

> Each one of those ground rules or basic principles, where they are enshrined in working documents or laws or whatever, will be growing out of the cultural concepts of [the white government]... There is a fear that because they say that they agree to [the terms of a treaty] they agree that white law is dominant where the white law has not said that Aboriginal law is dominant. (p.291)

Mr Toyne further stated that 'there can be no successful negotiation of a treaty in relation to Aboriginal interests in Australia that carries with it a presupposition that Aboriginal law is inferior to the European law'. (p.293) He added that in relation to the Pitjantjatjara negotiations there had in fact been no sense of Aboriginal laws being inferior.

> One of the interesting experiences which happened during that negotiation was Premier Tonkin going to the Pitjantjatjara land and being taken out to a sacred site and shown some spiritual objects. He was told by these old men: You might be the boss of the law in Adelaide but here you are only a boy. You make the law in Adelaide and we make the law here. (p.294)

This question of recognition of Aboriginal law as equal, in areas where it applied, to white law, was clearly fundamental to the possibility of acceptance of any treaty or agreement, as far as the Central Australian organizations were concerned. All of these had had an input into the paper submitted to the inquiry. This made the evidence taken on that and succeeding days highly representative of views in areas in which traditional law subsisted and where questions of land rights and mining were immediately affecting the lives of most Aborigines. But it was also made very clear to the Senate committee, both there and elsewhere, that the idea of a treaty had never been properly explained and discussed in most of the places visited, and that this was mostly due both to lack of funds for the

'Makarrata' subcommittee of the NAC, and to lack of time and of communications.

The question of the NAC's position as a negotiator was also discussed. Again, the land councils saw their own role, as consultants and representatives of traditional 'owners' in the Northern Territory, as essential to any process of negotiation.

As to the word to be used to describe the proposed agreement, Father Dodson considered it better 'to use a white man's word in this regard ... I think it is a futile exercise to get one word from one linguistic group, cultural group or law group that is acceptable to other linguistic and cultural law groups'. (p.314)

Mr Jim Biendurry, in informal discussions which the Committee held at Fitzroy Crossing, said that

> A treaty had to be recognized by all the Aboriginal people and all white people ... Aboriginal people needed a treaty covering compensation and royalties. They did not want just to be shareholders in minerals and other things. It had to be recognized that compensation for the last 200 years had to be paid to all Aboriginal people. (p.396)

He thought that it might take another 60 to 100 years to reach a treaty agreement, and doubted whether the NAC was the right body to negotiate. In the Kimberleys, and elsewhere, he pointed to the language difficulty:

> Before the treaty is signed by Aboriginal people the local language will have to be considered the first language and English the second language; and Aboriginal people would have to know all about it, through explanation and translation into many different languages. But land rights, as such, could not wait for the negotiation of a treaty.

And the NAC member, Mr Peter Yu, at the Senate Committee's hearings in Broome on 1 April, agreed:

> I think the hardships are such that [land rights] are a precondition for discussing a treaty in the Kimberleys. I do not think that people know to what degree traditional life still carries on and how important is the association of law and land. No land means a continual destruction of the law of Aboriginal society. We presently have three communities without land... Most of the communities were pushed off in the 1960s. Pastoralists could not afford to keep them because of the granting of award wages. Therefore, as part of self-determination, they moved from the fringes to the outstation camps where they are at present. (p.413)

These brief extracts from a great volume of evidence and argument heard by the Senate Standing Committee perhaps summarize the views of informed Aborigines in traditional communities, and in full knowledge of their situation of dispossession and loss. A fundamental suspicion of the treaty's possibilities as negotiated between any present or future Commonwealth government, unless it were not a merely domestic treaty but one which could be enforced by 'international oversight', appeared not only in this evidence but in the much more sophisticated submission from the Aboriginal Legal Service in Sydney. The Standing Committee heard this and other evidence on 29 June 1982.[4] The submission laid emphasis on the fact that

> A vital question arises as to whether the Commonwealth would be forced to pay the same compensation to a state as would be payable to an individual in respect of the acquisition of land.
>
> The implementation of a comprehensive Makarrata implementing land rights in the states will necessarily involve the Commonwealth overriding state legislation and acquiring state lands in those cases where states refuse to co-operate... (p.914)

And it pointed out that 'The Government's response to the National Aboriginal Conference's demands illustrates to

4 Senate Standing Committee on Constitutional and Legal Affairs, *Hansard*, 29 June 1982, pp.913 ff.

the writer a total lack of sincerity in the approach of the government to the treaty'. As a further illustration of this, the submission observed that 'It is clear that little or no funded research is taking place into the Makarrata whether by the National Aboriginal Conference or by any other body'.

Nevertheless, the need for an overall agreement made with the participation of other Aboriginal organizations as well as through the NAC was acknowledged both by the Aboriginal Legal Service and by the communities. The urgency of the needs both for research and for a massive programme of information and education both for the dominant community and for Aborigines, if negotiation towards a treaty was to be undertaken — and for the NAC itself to be fortified into fully representational status — was clear. But the situation as between Commonwealth and states was the most important political obstacle to any new deal whatever for Aborigines; and its stubbornness as a problem was made clearer than ever as 1982 progressed.

Our own efforts to help provide at least some of the research and information needed, from the legal and practical points of view, were now facing a problematic future. The publicity given to the Federation of Land Councils' statement against the Makarrata idea was already affecting our flow of donations and support. The ATC's meeting of 4 March discussed this situation. Our options were: to close down at the end of 1982, operating meanwhile on our capital obtained from the paintings exhibition and the donors' fund; or to continue as long as possible, trying to raise more money, and to complete our programmes with a book outlining the Aboriginal Treaty Committee's work and the possibilities ahead for agreement as we saw them. But there were other demands on our now shrinking finances, and on our human resources as well.

Nugget had accepted the invitation of the Central Land Council to advise on its administrative structure and

functions, and would be away in Alice Springs and Central Australia for a good deal of the next year or more as a result. Charles Rowley agreed to act as deputy chairman in his absence. Dymphna Clark's family commitments were again heavy and she felt it necessary to resign formally from the Committee (though in fact she continued to help us very significantly). Another of the newly recruited members, Paul Kauffman, also had to resign for job-connected reasons. Stewart Harris's work on the *Canberra Times* and his other commitments would prevent his editing and producing further issues of *Aboriginal Treaty News* and it was proving difficult to recruit another trained journalist for the job, even though we could offer payment, since those who were interested in the Aboriginal question were already almost as overcommitted with work as Stewart himself. Peter Read, who was working on the tape programme for radio, was also doing much other outside work; and the ATC would have to present evidence to the Senate Standing Committee's inquiry — evidence which had to be collated and prepared. Though we already had much legal and other evidence to present, with Peter Bayne's paper written for us, the summary of the legal seminar in April 1981 and of the Townsville seminar of August 1981 and other papers, both Nugget and Charles would present evidence of their own.

It would be a busy year for those who made up the executive of the Committee. And the first signs of discouragement were appearing among members of some of the Treaty Support groups elsewhere, as a result of the publicized statements of the Federation of Aboriginal Land Councils disclaiming the Makarrata. (Nevertheless in that year we also gained another support group in Geelong.)

Meanwhile, the situation in Queensland demanded such help as we could give. The Premier announced on 1 March 1982 that a new form of land tenure under the Queensland Lands Act would be applied to the Aboriginal reserve lands. The elected Aboriginal councils on the reserves would be

given 'deeds of grant in trust' over the land. This form of tenure was used for land reserved for public purposes—such as roads, hospitals, racecourses and cemeteries. The Federal Cabinet met in Brisbane the following day, but was apparently not quite as delighted with the proposals as Mr Bjelke-Petersen had predicted, and referred them to the Attorney-General's Department for study.

Nor was the Opposition enthusiastic. Senator Susan Ryan's bill for the granting of land rights on Queensland reserves was not withdrawn. Aborigines were emphatically against the proposal. Mr Steve Mam, Chairman of the Queensland branch of the National Aboriginal Conference, called the offer 'totally unacceptable' and said the protests being planned for the Commonwealth Games would not be called off. Kath Walker, Aboriginal writer, declared the new status would be 'an utter sellout'. Mick Miller, Chairman of the (unofficial) North Queensland Land Council, said it was a 'gimmick to con the rest of Australia'. Already it was clear that the proposals meant a great deal less than freehold rights, and that Cabinet would retain complete power to withdraw the leases and revert the land to the Crown.

Deeds of grant in trust to the reserve councils could be withdrawn if the trust itself became inoperative; the trust's affairs were not properly managed 'in the public interest'; the land was being used in a manner contrary to the purposes of the trust; or for any other reason decided by the Queensland government.

No mineral or timber rights went with the deeds. Mining leases might be taken out by the councils, but they would have to prove they had the necessary capital for development and actually carry it out; they could not refuse other applications for mining; and there would be no royalties from mining exploitation. Existing schools, hospitals and police stations on the reserves would still remain the property of the Queensland Government. As to

the security of tenure over inalienable freehold land, which almost all the Reserve Council chairmen were now at last agreed on demanding, questions immediately arose.

On the further question of what title if any might be granted to the smaller 'country reserves' near Queensland towns, which were in fact little more in most cases than camping grounds under the supervision of the local Aboriginal Protector (generally the officer in charge of the police station), nothing was said. Except on the main reserves — which cover 1.74 per cent of the state, while Aborigines themselves comprise 2.05 per cent of the population of Queensland — Aborigines would have no right to claim even vacant Crown land, of which there was much.[5]

The Committee soon learned that the distrust of Queensland Aborigines of the security of the 'deeds of grant in trust' was justified. An analysis of the new status by Fr Frank Brennan, for the combined Anglican, Catholic and Uniting Churches in Queensland, demonstrated this with clarity. Since the Queensland Government and its supporters were continuing to proclaim the advantages to Aborigines and Torres Strait Islanders of the new legislation, we placed in the *Weekend Australian* an advertisement setting out its disadvantages.[6] It read, in part:

> Existing provisions of the Land Act for such reserves under Deeds of Trust are wholly unsatisfactory to Aborigines and would be so to any person:
>
> They include:
>
> - Liability of the trustees to pay all survey fees.
> - The Deed of Grant may be varied or cancelled at any time by the authorities (i.e., the Governor-in-Council, which in effect means the Queensland Cabinet).
> - The authorities may revert the land to the Crown at any time 'if thought desirable'.

5 *Aboriginal Treaty News* 4, p.3.

6 *Weekend Australian*, 27–28 March 1982, Magazine section, p.7.

- Any Trustee may be removed from office. New trustees may be appointed '*by the authorities*' (no election is necessary).
- Land cannot be leased to particular families without written approval from the Minister for Lands.
- Trustees *must* charge 'the highest rent which can be reasonably obtained' on leased land or houses.
- The Minister may cancel any lease if he is satisfied its conditions are not being met. No compensation for improvements is payable on cancelled leases. Police have power to remove any tenant whose lease is cancelled.
- No occupant of reserve land can stay on it more than a month without written consent of the Minister.
- Any land needed for 'public purposes' can be resumed at any time. This includes e.g. air-strips, roads, experimental farms, and 'departmental purposes'.
- Prospectors and miners can enter without permission either from the trustees or the Mining Warden.
- There are other severe restrictions on reserve leaseholders.

The advertisement ended with a recommendation to readers who wished to support Queensland Aborigines in their organization of peaceful demonstrations at the Commonwealth Games to send donations to their organizations (the National Campaign for Land Rights and Self-Management in Queensland, then operating in Canberra, and the Foundation for Aboriginal and Islander Research Action in Brisbane).

This advertisement, whose facts could not be denied, sent the Premier of Queensland into such a passion that he denounced the Aboriginal Treaty Committee in Parliament as part of a Communist plot, and held a later press conference on the subject. The main document he produced was a statement from a former Communist unionist and organizer of the Victorian Pastrycooks and Biscuitmakers Union, whose statutory declaration, Mr Bjelke-Petersen explained, demonstrated a 'clear distinction between the true aims of self-promoted activists supporting the land rights movement and those with a genuine interest in the

welfare of Aboriginal and Islander people'.[7] The objective of the former, it appeared, was to 'create a separate black nation, outside the laws of Australia'; the objective of the latter he did not define. However, the 'so-called land rights campaign' was, he considered, linked with questions of defence, security and Communist subversion, and supported, according to a letter also tabled, from Lady Cilento, by a Communist long-range plan evolved apparently in the 1950s for 'alienation of Aboriginal lands from the Australian nation'.

As an excuse for refusing to grant true land rights to the reserves in northern Queensland into which Aborigines had been herded at the beginning of the century, this did not much impress reporters at the press conference. According to journalists on the *Age* the Premier had in fact been somewhat short-circuited in his co-operation with Federal and state negotiators on the land rights issue.

> In the battle of the past year, it has not so much been the Commonwealth against the State but increasingly almost everyone against the Premier and one or two entrenched paternalists like Pat Killoran, director of the State Aboriginal and Islander Affairs Department... The Queensland National Party has fought harder than it ever expected to get some advance towards Queensland Aboriginal land rights... In the end, the officials believed they had achieved a very good outcome [in the Queensland deal]... But when Senator Baume [Federal Minister for Aboriginal Affairs] saw it, he was horrified. He had not expected the State Government to retain the power to revoke titles.[8]

No doubt some of the other implications of the Land Act under which the deeds of grant were established soon gave him even more cause for anxiety. Moreover, Aborigines,

7 *Aboriginal Treaty News* 5, unedited report of speech by J. Bjelke-Petersen in Queensland Parliament.

8 *Age*, 'Land offer breaks paternalistic cycle', 1 March 1982.

and Torres Strait Islanders, now thoroughly distressed by the lack of consultation and information procedures, feared that the reserve boundaries would be interfered with and portions excised for other interests, and were accusing both state and Federal governments of collusion to deceive the United Nations Commission on Human Rights into the belief that Queensland was now complying with international conventions.

Meanwhile, early in May 1982, a case brought by John Koowarta and the Winychanam Aboriginal community in the High Court, against the Queensland Government, went in favour of the plaintiff in an historic decision. A station in the Gulf country of Northern Queensland, Archer River, had been bought by the Aboriginal Land Fund Commission for transfer to the community. This deal was blocked in 1976 by the Queensland Government, which refused to transfer the land to the Aborigines. The Racial Discrimination Act of 1975 was invoked in the case brought by Koowarta, but the Queensland Government joined by the Victorian and Western Australian Governments, argued that under the Australian Constitution, the Federal Government could not legislate on matters in which states had primary responsibility.

The Commonwealth's defence went to the Constitution's delegation of power to make laws over 'external affairs' to the Commonwealth Government, and argued that its Racial Discrimination Act came under this heading. Moreover, the Constitution provided it with power to make laws for the people of any race (and the 1967 referendum had resulted in the power to make laws for Aborigines under this heading). Thus the question of racial discrimination was one of international concern and Australia's signing of the International Convention on the Elimination of All Forms of Racial Discrimination gave it responsibility to implement the convention in a law which could override state law.

The decision, which was made by a majority of four to three in the full High Court, confirmed the Commonwealth's power and placed the question of Queensland land rights squarely in the Prime Minister's court. He could now, if he so decided, insist that the Queensland Act giving 'deeds of grant in trust' to Aboriginal councils be repealed or amended to meet the demands of Aborigines and Torres Strait Islanders; and it was clear that only this would prevent Aboriginal protest from reaching high levels at the Commonwealth Games in the coming spring.

Meanwhile, the Queensland Government had taken its own action on the Archer River station. In apparent conformity with conservationist pressures, the Premier transferred its status to that of a national park. Not only Archer River, but land at Glenmore, at Ayr and Theodore, and another station named Dorunda, had been bought for Aboriginal groups and was similarly refused transfer.

As the *Canberra Times* leader of 13 May 1982 said:

> It is difficult to write with restraint of an Australian Premier who can behave with such brutality against selected Australians and, at the same time, say that these same Australians can buy, sell and own land like other Australians. He made the statement last September, and added:
>
> The process of obtaining land is the same for all, as it should be in a democratic society.

Other newspapers, too, urged the Federal Government to action.

The Federal election of March 1982 had resulted in the return once more of the Fraser Government, and Senator Baume had been replaced as Minister for Aboriginal Affairs by Mr Ian Wilson. For years, the Northern Territory's Government had been attempting to convince the Commonwealth that the Aboriginal Land Rights (NT) Act 1976 was depriving pastoralists and mining companies of

opportunity to exploit the Territory's potential. Mr Paul Everingham, the NT's Chief Minister, quickly convinced Mr Wilson of his arguments. Where the previous Federal Minister had cautiously held off Everingham's proposals and referred the NT Government to negotiations with the Northern and Central Land Councils, Mr Wilson now announced that the negotiations would cease.

This left Aboriginal groups and the land councils losing on almost all points. Aborigines could not have land excised for living purposes from the pastoral leases unless they actually lived on them already; there would be no conversions to freehold title, nor could Aborigines claim rights to disused stock routes. Said the *Age's* correspondent:

> With the issue of Queensland reserves legislation still rankling many Aborigines in that State, and with the Commonwealth Games in Brisbane approaching, the NT changes may sour relations between Aboriginal groups and the Government even further.[9]

But the Federal Minister had miscalculated. Both the Northern Territory's Land Councils and the National Aboriginal Conference reacted with immediate condemnation. In the Senate, both the ALP and the Democrat Party announced that they would oppose the measures unless they were satisfied that Aboriginal communities affected by the proposed changes had been consulted and had agreed. The Minister backed down for the time being at least.

But the issue was to continue to simmer, and also it was to reinforce the determination of Queensland Aborigines and Torres Strait Islanders that nothing less than freehold on an inalienable basis would finally meet their needs. For in the

9 S. Mills, 'Anti-Land Rights Lobby Sways in "New-boy" Minister', the *Age*, 4 June 1982.

Northern Territory, leasehold land on perpetual lease remained subject to government dictation on its uses. This could ensure that it was used for pastoral purposes rather than as 'homeland' outstations.

In Queensland, the approach of the Commonwealth Games set off more concern within the National Party over the reception of the legislation on 'deeds of grant in trust'. A 'Black Protest Committee' had been set up in January. This committee announced that if the state wanted to avoid confrontation and demonstrations at the games, it would have to amend the legislation, but that demonstrations would be 'cultural' and peaceful.

The Premier remained obdurate, and mustered a body of support in the League of Rights (a far-right organization which had for many years attempted to work within the National Party) and a new *ad hoc* organization set up in Western Australia to oppose the land-rights movement there, Crusade for Freedom. Queensland newspapers' letter columns carried much material on the 'Communist plot' and against land rights for Aborigines and Torres Strait Islanders. The police legislation introduced for the games was draconian, and quite certainly infringed international civil rights conventions. The Police Minister, Mr Hinze, made intimidatory statements on what would happen to demonstrators. In Japan on a visit, the Premier of Queensland declared that Aborigines 'had the taste of blood in their teeth'.

The Queensland Government succeeded in blocking an Aboriginal Development Fund purchase of land and buildings in Torres Strait for a fishing industry base for Torres Strait islanders, and in preventing the use of part of the Griffith University campus by the Black Protest Committee for cultural and nonviolent land rights demonstrations. The NAC's Brisbane representative, Stephen Mam, forecast that the 'fear propaganda' of the Queensland government would have frightened off many of

the Aborigines and Torres Strait Islanders who had hoped to come to Brisbane to join the demonstrations.

Since the 'deed of grant in trust' legislation had been rushed through in March, the Premier and his Department of Aboriginal and Islander Affairs had continued to declare that it, and the government, had the full support of the reserve Councils; but in July, a full meeting of the councils was held at Bamaga which voted 36–1 against the legislation. Even this did not cause the government to amend or revise the Act.

Media comment, with the Commonwealth Games now close, became more critical of the Queensland Government and of the inaction of the Federal Government; NAC members and Aborigines within and outside Queensland spoke bitterly of the situation of Aborigines, of the legislation and of the reserve system itself. The Premier demanded that the Prime Minister take action to sack the NAC in a body and 'dismantle the whole operation'. The Federal Government remained inactive on this issue too, but refused to fund the Black Protest Committee's proposed peaceful Cultural Revival Festival which could find no venue anywhere in Brisbane.

The September issue of the NAC Newsletter contained a 40-page central section with articles giving the background of the protest action, both in Queensland and for Australia. The Aboriginal Legal Rights Movement (Inc.) of South Australia contributed an article summarizing the statistics of the situation of Aborigines:

> In 1979 the unemployment rate of Aborigines in cities was 69 per cent; rural unemployment rate was 90 per cent. Average per capita income in 1976 was $780 a year ... In Queensland in 1974 there were 16.1 babies per 1000 who didn't reach their first birthday as compared with 69.8 per 1000 deaths of Aboriginal babies. A 1977 survey found 25 per cent of Aboriginal children in Sydney were suffering serious malnutrition; 80 per cent of the 1500 malnourished children were under 3 years of age and

> therefore likely to have brain damage... The average life span of an Aboriginal person is 20 years less than that of a white person. In Queensland Aborigines make 2 per cent of the State's population but are 14 per cent of the prison population... About half of Queensland's 58,000 Aborigines live on the reserves today (about 2 per cent of the State's land)... In 1980 people employed on Yarrabah Reserve won a legal battle to get the same wages as whites. The Queensland government now pays Aboriginals on the reserve no more than the minimum wage [which] can be as little as a third of the wage payable to a white person for the same type of work.

As for the 'deed of grant in trust' legislation, the Legal Rights Movement commented: 'No white man would tolerate such incredible government interference with their title to land'.

Another article, contributed by Fr Brennan, the lawyer who had analysed the effect of the legislation for the three major churches of Queensland, pointed out that

> The Governor-in-Council could issue a deed of grant today and cancel it in a week's time for any reason it thought desirable... By way of contrast, State forests and National Parks cannot be revoked until Parliament has had a chance to scrutinize the order.

We ourselves printed a large number of pamphlets summarizing the Queensland land rights situation and the deed of grant legislation, and sent these to our various support groups for distribution in Queensland and elsewhere as information background. In Queensland, these could not be distributed during the period of operation of the special police legislation which forbade the dissemination of even informational leaflets. But no attempt was made to discredit the factual information in the ATC pamphlets, or in the pamphlet which had been produced earlier by the National Campaign for Land Rights in Queensland working from Canberra. (The latter

organization had its files and records ransacked and lists of donors and supporters stolen during the weeks before the Games. We half expected the same treatment, but so far as we knew our records remained uninspected.)

Stewart Harris took some time from work to attend the early days of the games and to march with the demonstrators. In Canberra, we organized an Aboriginal film festival over the two weekends of the Commonwealth Games (the last weekend in September and the first weekend of October) and appealed for financial support for the Release Bail Fund of the Foundation for Aboriginal and Islander Research Action in Brisbane for Aborigines and Islanders arrested during the demonstrations. Later we produced a twelve-page issue of *Aboriginal Treaty News* (no.6, September–October 1982), summarizing all the main events in Queensland leading up to and during the games, from the Aboriginal point of view, and containing an article by Charles Rowley explaining the situation of reserve Aborigines. In it we reproduced a number of press reports, including the full-page report in the magazine *Newsweek* of 11 October, of the marches, the attempts to march, and the impromptu Musgrave Park cultural festival (unfunded by any government or official organization).

As to the Commonwealth Government, Mr Fraser's influence was reported to have resulted in the legalization of one march on 29 September. (Two other illegal marches took place.) For the rest, he clearly sided with the Premier over the issue, supporting the 'deed of grant in trust' legislation. This, he said, would give as much security of tenure 'in a sense' as would freehold ownership (a claim entirely unsupported by legal analysis); and he argued that the land rights argument in Queensland was 'very much a semantic one about words' [sic]. He added, ambiguously, that if in fact the tenure proved less secure, the Commonwealth had 'reserve powers'. As we pointed out in *Aboriginal Treaty News* (no.7, p.4) these had inhered in the

Commonwealth all along, and the Queensland government's victory over the Aurukun and Mornington Island reserves gave Aborigines and Torres Strait Islanders no confidence whatever that the powers would ever be used. By the end of the Commonwealth Games, some 380 or more arrests had been made, and those arrested in the marches were mainly Aborigines and Islanders, few of whom could find bail. But as one of them said, 'We've got to take the risk. Our position is already desperate — many lives are hardly worth living anyway. We've little to lose'.

The chance of any overriding of the Queensland deed of grant in trust legislation passed with the end of the games. Senator Ryan's Bill, intended to facilitate the taking over of the reserves, had been passed by the Senate. It lay still on the table of the House of Representatives. If it were to reach the point of being debated, eight Liberal members would have to cross the floor and almost three times that number would have to abstain from voting in order for it to pass. Mr Fraser's attitude made it certain that this would not happen. It was clear that the Commonwealth Government had learned nothing from the past and forgotten none of the ploys which, to Aborigines and their supporters, had discredited its record in the matter of relationships between Aborigines and Australian governments.

One journalist wrote:

> As of yesterday, there was overwhelming State Cabinet support for the view that ... the land rights issue is dead. Any lingering notions that the Federal Government is ready to fight Queensland on the issue had to be abandoned on Friday when the Prime Minister, Mr Fraser, defended the Queensland policy.[10]

And we ourselves wrote in *Aboriginal Treaty News* (no.6, p.10):

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10 D. Broadbent, 'Land Rights: new problems ahead'. *Age*, 11 October 1982.

The situation in all States and Territories is... highly unsatisfactory from the point of view of Aboriginal land rights, and though the Commonwealth Games gave Aborigines and Islanders a vantage point to throw light on the Queensland problem in particular, that light fell only by the way on the situation of Aborigines elsewhere.

The Aboriginal Treaty Committee's concern is of course with the situation of Aborigines in Australia, not only in the separate States and Territories, and therefore it is the Commonwealth's relationships with the Aboriginal people as a whole which we emphasize.

Until there is a binding commitment by the Commonwealth Government itself to grant Aborigines as a people the rights and recognition they so urgently need, there can be no real improvement in the present tragic situation where State and Territory governments dictate the conditions under which Aborigines live and are unilaterally able to grant or withdraw rights to land, education and other vital factors.

We wholly respect the views of those Aborigines who consider that, to use the words of Father Pat Dodson in evidence on behalf of the Central Land Council to the Senate Committee inquiry: 'Nothing in the current proposals for the Makarrata or Treaty (on the part of the Federal Government) has given us reason to have confidence... that the exercise would result in... a meaningful advance of Aboriginal people towards self-management of our own affairs.'

We also entirely respect Aboriginal views that 'the Aboriginal nation has never ceded its sovereignty'.

In response to the Land Councils' request, we will help to organize a major legal seminar in 1983 to examine the possibilities of an International Court of Justice case on the question of Aboriginal status as a people... It will be a legal milestone in Australian history.