

# LAND RIGHTS FOR VICTORIAN ABORIGINES



**The Labor Government of Victoria is committed to self-determination, self-management and land rights for Victorian Aborigines in recognition of their prior occupation of the land. In the period before land rights legislation can be passed it has taken the following steps:**

1. An interim committee of 14 Aborigines elected from all parts of the State has been set up. This committee will consult with Government bodies and Aboriginal communities and organisations and recommend how best a **Victorian Aboriginal Authority**, to represent Aborigines in Victoria and help them make land claims, can be formed.

2. **The Framlingham Forest Bill:** Because the Framlingham Aboriginal Community had, since it was first settled in the area in 1861, been the victim of successive changes of Government policy, and because action on its well-documented claim to Framlingham Forest near Warrnambool was long overdue, the Government drafted the Framlingham Forest Bill. (This Bill is now being re-drafted by the Framlingham community with the help of the Aboriginal Legal Service).

3. **Freehold title** has been granted to the Aboriginal Advancement League over land at Thornbury on which a Community and Education Centre for Aborigines has been built. This was Crown land.

Other claims for land will only be considered after the framework for making claims has been set out in land rights legislation. A Land Rights Bill is now before Parliament. It will lie over for three months to allow for discussion and amendments.

**The following is a summary of the provisions of the Bill:**

There will be a **Victorian Aboriginal Authority** (called the **Authority**). It will consist of Victorian Aborigines nominated by the Governor in Council<sup>1</sup> to assist Aboriginal groups to make claims for land.

Claims for land will be heard by **The Aboriginal Land Claims Tribunal** (called the Tribunal). This will consist of **one person** with knowledge of Aboriginal affairs who has served for five years as a barrister and solicitor on either the Supreme Court of Victoria, the High Court of Australia or on a Supreme Court of any other State or Territory of the Commonwealth. He will be appointed for not more than five years by the Governor in Council on the recommendation of the Minister after consultation with the **Authority**. He will act as conciliator in any disputes arising from the operation of the Act.

**Assessors:** One or more Assessors who are Aborigines can be appointed by the Minister, after consultation with the **Authority**, to assist the **Tribunal**.

## PROCEDURES FOR MAKING A CLAIM

Any group of seven or more Aborigines can make a claim for Public land.<sup>2</sup> One member of the Aboriginal group making a claim may be appointed by them to act as their agent. He must get their approval for any action he takes.

When an Aboriginal group tells the **Authority** that it intends to make a claim the **Authority** will place a notice of claim in the Government Gazette and in a newspaper which circulates in the area of the claim and inform all other Aboriginal organisations who have asked to receive notices of claims.

The following reasons for claims will be considered:

- To satisfy need
- To enable a group to continue its association with the land claimed
- Because of traditional rights to the land
- As compensation for loss of traditional land.

Claimants will be treated in the following order or priority:

1. Those claiming land on which they live or did live until recently, but were forced off to prevent them claiming priority
2. Those who use the land
3. Descendants of former traditional owners of the land claimed, who live in the tribal area containing the claimed land
4. Those still living in the tribal area who are descendants of Aborigines who lived on the land claimed
5. Those not now living in the tribal area but who are descendants of former traditional owners, or Aborigines who lived on the land claimed.

(The Governor in Council after consultation with the **Authority** will determine tribal boundaries).

A claim must specify the area of land being claimed and the reason for the claim. Completed claims will be lodged with the

1. In effect Governor in Council means Cabinet.

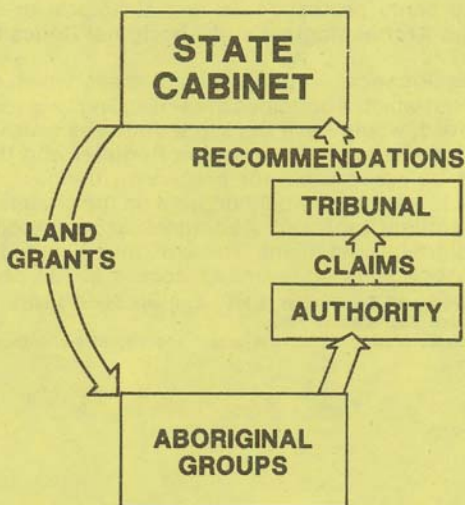
2. Public land means Crown land including reserves where Aborigines may now be living, State Forests and National Parks.

**Authority** which will forward them to the **Tribunal**. If more than one group makes a claim for the same area of land the **Authority** can recommend to the **Tribunal** which (if any) group should be granted, all, or part, of the land and what restrictions and conditions should be placed on it.

## THE TRIBUNAL

When it receives a claim the **Tribunal** must inform the Treasurer, the Minister for Crown Lands (or other Minister responsible for the land claimed), the minister for Mining,<sup>3</sup> Aboriginal organisations and other persons or groups who have asked to be notified by the **Tribunal**. A notice of the claim must be placed in the Government Gazette and a newspaper circulating in the area likely to be affected by the claim.

## HEARING THE CLAIM



The **Tribunal** must hold a public hearing at least 56 days after receiving the claim and place a notice of the hearing in a newspaper circulating in the area likely to be affected, and in the Government Gazette, at least 28 days before the hearing.

When the **Tribunal** has completed its inquiry into a claim it can recommend that the land be granted if it is satisfied that:

- the reason for the claim has been established
- the land need not continue in its present use
- the land is not needed for public purposes
- It will not seriously affect the Consolidated Fund<sup>4</sup>.

The **Tribunal** may grant part of a claim if it is satisfied that the above conditions do not apply to all the claim. It may recommend that conditions or restrictions shall apply to a grant. (The Aboriginal group receiving the land grant may apply to the **Tribunal** to have these conditions and restrictions varied or removed).

The **Tribunal** must publish the reasons for its recommenda-

3. The Minister administering the Mines Act (1958), the Extractive Industries Act (1966) and the Petroleum Act (1958).

4. The State's combined sources of money.

tions and give copies to the Minister, the claimant group and all parties who made submissions.

Where the **Tribunal** refuses to grant a claim it can refer the matter back to the **Authority** for further recommendations.

## CONDITIONS ON GRANTS OF LAND

When the **Tribunal** recommends that a grant of land be made the Governor in Council can grant the land to the claimant group who must first become incorporated under Victorian law.

- Land grants which were part of Crown land, reserves, State Forests or National Parks will be freed of any restrictions, mining leases and licences<sup>5</sup>, which existed when the **Authority** publicly notified the claim, will continue to operate but may not be renewed or extended without the permission of the Aboriginal owners.

- Aboriginal owners may receive rents from leases and licences on their land.

- A group of Aborigines who receive a land grant may not sell it or dispose of it, or any part of it, except:

1. By transfer to another group of Aborigines who the **Tribunal** determines would be entitled to make a claim for it (all adult members of the Aboriginal community who own the land must agree to the transfer).

2. By a lease or licence to the Crown, a public authority or any other person. (Where a lease to a person other than the Crown or public authority is for three years or more the consent of the **Authority** is needed.

- A Municipal Council may not use its powers under the Local Government Act (1958) (e.g. for extracting road making materials from the land) without the consent of the Aboriginal owners.

- Aboriginal land shall be exempt from land tax except municipal rates and water and sewerage rates.

- If Aboriginal owners fail to pay their rates the Minister may after seven years, in consultation with the **Authority**, revoke the land grant and return it to the Crown.

- Aboriginal groups shall have the care and control of wild life (flora and fauna) other than protected wildlife which has been declared a notable or endangered species.

- The provisions of the Forest Act (1958) except those for the prevention and control of bush fires shall not apply to Aboriginal land.

## MINING ON ABORIGINAL LAND

With the exception of exploration licences under the Mines Act (1958) and the Petroleum Act (1958) mining and exploration cannot take place on Aboriginal land without the consent of a majority of the adult owners, and subject to the conditions and payment of fees which they impose. Persons holding exploration licences or permits may not enter or explore on or under that land, or interfere with the owners' use and enjoyment of the land, without their permission. These conditions can only be overridden by a resolution of both Houses of Parliament.

Fifty per cent of royalties or rents under the Mines and Petroleum Act (1958) (other than those for coal) shall be paid to the **Authority** and 50 per cent to the land owners.

5. Under the Mines Act (1958), the Extractive Industries Act (1966), the Petroleum Act (1958) and the Land Act (1958).

# ABORIGINAL CRITICISM OF THE DRAFT BILL

Victorian Aborigines are not satisfied with the way in which the **Interim Committee** of the **Victorian Aboriginal Authority** has been set up or with the responsibilities assigned to the **Tribunal** and the **Victorian Aboriginal Authority** under the proposed Bill.

The following are the main points of their criticism:

## The Interim Committee

They fear that this will become the **Victorian Aboriginal Authority**. They want more information and time to discuss the representation and functions of the **Authority**. In particular they want its representatives to be elected from Aboriginal communities and organisations, rather than on a regional basis. Representatives elected on a regional basis may not have first-hand knowledge of claims from some areas and also representatives of large Aboriginal groupings could control the Authority and favour claims by their people. All Aboriginal groups, no matter how small, should be ensured an equal chance of their claims being granted.

**The Authority** should have direct access to the Minister.

## The Bill

Power rests with the Cabinet —

- It appoints the one-man **Tribunal** and the Aboriginal **Assessors** (who are only to be used as a source of information).
- It decides tribal boundaries (it is unlikely that any Cabinet member has expert knowledge of them).
- It can accept or reject the **Tribunal's** recommendations and can impose conditions or restrictions on land grants.
- It can give licences and leases to mining interest and decide how the **Aboriginal Authority** may use royalties and rents.

## The Tribunal

That one man can make recommendations without adequate consultation with Aborigines is unacceptable.

**The Victorian Aboriginal Authority** is appointed by Cabinet, not elected by Aborigines. Its main role is to process claims which is little more than routine office procedure. It may make recommendations and be consulted but there is no guarantee that its view will be listened to or acted upon.

Its consent is required only when land is to be transferred from one Aboriginal group to another, or when Aboriginal land is to be leased to a person (not the Crown or a public authority) for more than three years.

There is a real danger that in the interim, before a Land Rights Bill becomes law, public land which Aboriginal groups have a reasonable prospect of claiming may be sold to private interests thus pre-empting their claim before it can be heard.

Finally, Aborigines note that the Bill contains no provision to negotiate a **Treaty of Commitment** as was proposed by the State ALP in 1980, or to negotiate the return of reserve and mission land, or equivalent, as a whole, and as a separate matter from other land claims.

## SACRED SITES

The proposed Bill makes no provisions for the preservation of Aboriginal sacred sites, but a report of the **Archaeological and Relics Advisory Committee**<sup>6</sup> recommends that an **Advisory Committee** be set up to hear sacred site claims. It should consist of seven members not less than four to be Aborigines (two males and two females) and one of the Aboriginal members to be chairperson.

In assessing claims the committee would consider:

1. Use, or former use by Aborigines, or its significance in historical or Aboriginal oral tradition and custom.
2. Scientific interest. (Post-contact Mission sites were not considered by the report).

Every possible precaution would be taken to ensure that secret information given to the committee remained secret.

Sites would be classified as:

1. **Places of Significance** — whose location and reasons for significance has been given to the committee. These, if approved, would have the same protection as archaeological areas protected under the **Archaeological and Aboriginal Relics Preservation Act** (1972).
2. **Areas of Significance** — geographical areas which contain sacred sites about which Aborigines are not willing to give details. These, if approved, would have the same status as areas placed on the **Australian Heritage Commission Register** and the Government would be responsible for preserving them.

Access to sites and areas would depend on the circumstances of each case. It might be for all Aborigines or restricted to the Aborigines who are its custodians. There might be limited access for some non-Aborigines or unlimited access for all persons.<sup>7</sup>

6. 'Aboriginal Sacred and Significant Sites'. **Archaeological Relics Advisory Committee Report. September, 1982.**
7. **Other Acts, such as Mining Acts, may affect the conditions imposed.**

Prepared for the Aboriginal Treaty Committee by Mildred Kirk with advice from Dr C. D. Rowley and Dr D. E. Barwick.

For a wider understanding of Aboriginal Land Rights:

Aboriginal Treaty Committee, P.O. Box 1242, Canberra City, A.C.T. 2601.

Telephone (062) 470648.

## **Aboriginal Treaty Committee Papers**

AIATSIS Library, MS 1867 Box 22, Items 193-199

“Land Rights For Victorian Aborigines”, pamphlet prepared for the Aboriginal Treaty Committee by Mildred Kirk.

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