



MEDIA RELEASE

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***ILUAs Indigenous Land Use Agreements Surrender homelands***

Ghillar Michael Anderson, Convenor of the Sovereign Union, Head of State of the Euahlayi Republic and co-founder of the 1972 Aboriginal Embassy reports from Walgett today:

At a meeting held recently in Atherton, north Queensland, with leaders and members of Mbarbrum, Ngardjon, and Yidinji Nations, the extent of the fraud that is being committed against First Peoples in this country was further revealed.

In presenting evidence to these Nations it was pointed out how England and the colonialists were in full knowledge of the wrongdoings and the extent of the illegalities that were occurring. In fact, in the early 1800s Ellis Bent, the Deputy Judge Advocate, addressed his concerns to Lord Bathurst about the illegalities that were going on in the colony of New South Wales. He expressed deep concern that not only was the Governor exercising power and authority he did not have, but Bent also stated in his correspondence to Lord Bathurst dated 1 July 1815 that he found it impossible to permit the Governor to abrogate acts of parliament and *to create a system wholly adverse to the spirit of the law* [emphasis added].

Ellis Bent drew attention to the excesses of the Governor's power when he asked about the general orders passed from time to time to the Governor (Macquarie):

‘Will it satisfy your lordship that a Governor of this colony claims and exercises a power to make laws . . ., not merely bye-laws and police regulations, but general laws, upon all subjects, intended to be binding upon all classes, highly penal in their consequence, and in many instances directly contrary to the spirit principles of the law of England.’

In 1815 Lord Bathurst withdrew Ellis Bent and his brother from the colony of New South Wales and returned them to England, in a feeble attempt to protect the illegalities of Governor Macquarie's proclamations. In their place John Wylde was commissioned to be the Deputy Judge Advocate on 1 January 1816 and Baron Field was appointed judge on 14 May 1816, but, although Lord Bathurst had personal relations with these two men the changes made little difference. The two judicial appointees were unable to admit the illegalities of any of the Governor's proclamations.

By 1819 Lord Bathurst had found himself in a difficult situation because he finally admitted that it was necessary to obtain parliamentary sanction from England for that which had been done by Governor Macquarie without authority (*ultra vires*).

Lord Bathurst managed to get protection for Governor Macquarie's proclamations dealing with the levying of rates and duties in the colony of New South Wales, but did not obtain any other protections in respect to other proclamations, including proclamations of martial law against the Wiradjuri in central New South Wales and others.

Governor Macquarie realised that the restrictions of the English parliament to validate his actions were of great deal of concern for him, because the sanctions did not deal with the whole of the problem. Macquarie was very disturbed about these decisions and he was forced to understand the dangers of his position and his lack of authority. In this regard, Governor Macquarie wrote to Lord Bathurst on 23 February 1820:

‘Your Lordship may deem the time suitable ..., to obtain an act of indemnity for the levying of duties for the time past, I trust your Lordship will embrace it; as however supported I have been by the authority of His Majesty's Government who levied the duties in question, yet, as they appear to have been not strictly warranted in law, I have no doubt personal actions will instituted against me, as soon as I have returned from this government, unless protected against them by such acts.’

So Governor Lachlan Macquarie's land grants, proclamations of martial law against First Peoples and other proclamations of governance in the colony of New South Wales, along with other actions of the Governor, must now be scrutinised very closely.

These illegal acts of the past are fraudulent acts.

The *Colonial Law Validity Act 1865* only dealt with certain types of proclamations of governance. Close study of the *Colonial Law Validity Act 1865* does not provide for the legalising of land grants and/or proclamations of martial law against the Aboriginal population. This certainly could not be admitted given that they erroneously suggested from the outset this country had not had previous settled populations, with settled laws and customs of their own. The Aboriginal defiance and resistance was indeed an Act of State based on pre-existing and continuing sovereignty.

In 1875 Queen Victoria in all her wisdoms, no doubt with the advice of her Privy Council, issued Orders-in-Council that were incorporated into the *Pacific Islanders Protection Act 1875* at Sections 7 and 10:

**7. Saving of rights of tribes.** - Nothing herein or in any such Order in Council contained shall extend or be construed to extend to invest Her Majesty with any claim or title whatsoever to dominion or sovereignty over any such islands or places as aforesaid, or to derogate from the rights of the tribes or people inhabiting such islands or places, or of chiefs or rulers thereof, to such sovereignty or dominion, and a copy of every such Order in Council shall be

laid before each House of Parliament within thirty days after the issue thereof, unless Parliament shall not then be in session, in which case a copy shall be laid before each House of Parliament within thirty days after the commencement of the next ensuing session. [2243]

...

**10. Proclamation of Act.** - This Act shall be proclaimed in each Australasian colony by the governor thereof within six weeks after a copy of it has been received by such governor, and shall take effect in the said colony from the day of the proclamation. [2246]

[ <http://nationalunitygovernment.org/content/australia-using-superior-force-suppress-movement> ]

When we search the government gazetted notices of this time and soon thereafter none of the colonies adhered to these Orders-in-Council. The rulers of these colonies were committing treasonous acts. The laws of England relating to Orders-in-Council and Letters Patent issued by the monarch are absolute law for England, its colonies and dominions and can only be undone by another Order-in-Council by the reigning monarch for that law to cease. In respect of the *Pacific Islanders Protection Act 1875* this has never been done. Lawyers today cannot win the argument that the *Pacific Islanders Protection Act 1875* did not relate to the mainland of Australia and its islands, because the 1875 Act had to be read as one with the *Pacific Islanders Protection Act 1872* which defined the reach of the act as:

2. Definition of terms.—The term “Governor” shall include the officer for the time being administering the government of any of the Australasian Colonies, and “Governor in Council” shall mean the Governor acting by and with the advice of the Executive Council of the Colony under his Government :

The term “Australasian Colonies” shall mean and include the colonies of New South Wales, New Zealand, Queensland, South Australia, Tasmania, Victoria, and Western Australia :

The term “vessel” shall include a ship or boat :

The term “master” shall include any person for the time in command or charge of a vessel. [2215]

The definition of “Australasian Colonies” has been extended to include the colony of Fiji by s. 3 of the *Pacific Islanders Protection Act, 1875* (c. 51), p. 723, *post*. Part of s. 2 as to “oaths” was repealed by the S. L. R. (No. 2) Act, 1893 (c. 54).

Former PM John Howard's pathetic attempt repeal the imperial *Pacific Islanders Protection Act 1875* in the Commonwealth of Australia *Criminal Code Amendment (Slavery and Sexual Servitude) Act 1999* was a sloppy act of legislative draughtmanship. Moreover, he and his legislative draughtmen knew full well that the laws that were created by the *Pacific Islanders Protection Act 1875* remained in force.

And so the fraud continues.

Now we see how the *Native Title Act 1993* as amended is a sleazy deceitful and fraudulent way of trying to correct the illegalities of the past. This is very evident when we read the Indigenous Land Use Agreements (ILUAs). It must be first

observed that they are only contracts. Contracts can be overturned if one of the parties is not fully aware of the intent, purpose and functions of that contract. I now asked whether Aboriginal people who are parties to these contracts, as native Title applicants and claimants, understand what they have signed up to?

Some of these ILUAs have no commencement date and no end date, or, in the alternative, have a start date but no end date. Furthermore, there are open-ended indemnity clauses with no specification as to what the proponent parties are indemnified against. There are also clauses in these ILUAs, which seek consent for the validating of all agreed acts. The definition of an Agreed Act is:

'All acts necessary to give effect to this agreement.'

This is not a proper definition because it does not relate to any specific matter. Moreover, one specific part of an ILUAs states that part of the agreed act is for strategic land management purposes under the trusteeship of Shire Councils, and the compliance of all other state rules and agreements that have had no Aboriginal input in the past. Another absolute legal arrangement in these ILUAs is that it is agreed that the Native Title claimants:

'... validate any invalid Agreed Acts done on the agreed Agreement Area prior to the Registration Date, to the extent that they are future acts.'

In other words the wrongdoings of the past colonial era are now in the same category as future acts! It is totally illegal to try and bind anyone to an unspecified future act. A future act would need to be defined in a statement to that effect in the ILUA itself and the claimants need to be made aware of this.

On the question of Right To Negotiate (RTN) regarding future acts, it is written into ILUAs:

'To avoid any doubt, Part 2 Division 3 subdivision P of the NTA does not apply to the doing of the Agreed Acts.'

So the Commonwealth Government tries to free itself from the law by another fraud. The ILUA also adds two other factors, which I am confident most applicants and claimants have no knowledge of the ramifications and consequences of.

On the question of the surrendering of Native Title the ILUA states that:

'1. The Surrender is intended to permanently relinquish Native Title Rights and interests that may exist in relation to the Surrender Area.'

The ILUA goes on further to state:

'The Surrender will take effect immediately before a deed of grant is issued to the shires over the Surrender Area.'

This speaks for itself and I am sure our people do not understand the true nature of the consequences. We can assume that in the vast majority of cases the ramifications and consequences have not been fully explained to our people by their lawyers.

On the question of Compensation, it is generally agreed in these ILUAs that compensation arises and is described in section 24EB of the *Native Title Act*, but it is generally followed by a statement in the ILUA which reads:

'The Native Title Parties release the State from liability for any Claim and acknowledge that this Agreement may be pleaded as an absolute bar against any claims by the ..... [claimant parties] ... People to any further right or entitlement to compensation in respect of the Agreed Acts.'

How in the world can any of our people agree to something like this, if it was explained clearly? Was the ILUA ever translated into the mother tongue?

Surely our people understand that our fight is worth fighting.

Our people have to stop thinking about themselves and the now and look long term to the future of their children and their grandchildren's children.

No longer can our people be too easily swayed into agreeing with 'I may as well benefit now, never mind our children'. This happens with the politics of poverty.

Grinding poverty is the ace of the government, but there is no statute of limitation on fraud.

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