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Euahlayi Rates dispute subpoena 'oppressive' for the Crown

In a dramatic follow-up to the "rates dispute" between the Brewarrina Shire Council and the Euahlayi Peoples of far north-western New South Wales and southwest Queensland, the New South Wales Supreme Court has dismissed the Euahlayi People's subpoena claiming the Euahlayi are "oppressing" the State of New South Wales.

In a statement issued from Sydney today Ghillar Michael Anderson said:

"The legal intrigue never ceases to amaze me. In a debate in the NSW Supreme Court on 22 April 2014 for the return of subpoenas the NSW government claimed that the subpoena was considered to be too wide; without forensic purpose; was oppressive to the Minister and was for other 'collateral purposes'.

"My subpoena requested the following from the General Manager of Brewarrina Shire Council and from Ms Katrina Hodgkinson MP, Minister for Primary Industries, who is responsible for lands.

1. All original documents including but not limited to deeds, file notes, contracts, records of conversations, instructions and orders by virtue of which the Crown, the New South Wales Government and the Brewarrina Shire Council claim to be the proprietor of the ancient Allodial Title from time immemorial of the lands over which it claims it lawfully operates a Shire Council.

2. All original documents including but not limited to deeds, file notes, contracts, records of conversations, instructions and orders by virtue of which the Crown, the New South Wales Government and the Brewarrina Shire Council claim as the source of their alleged head of power, through which they are entitled to rule over the Euahlayi Peoples and their lands, waters and natural resources and thereby entitling them to charge rates on the said lands of the Euahlayi.

3. All original documents including but not limited to deeds, file notes, contracts, records of conversations, instructions and orders by virtue of which the Crown, the New South Wales Government and the Brewarrina Shire Council claim title and right to operate a Shire Council, by which they each claim their title is superior to the ancient Allodial Title of the lands owned in Allodial Title by Euahlayi Peoples Republic, and the Euahlayi Peoples from time immemorial.

4. All original documents including but not limited to deeds, file notes, contracts, records of conversations, instructions and orders by which the Crown, the New South Wales Government and the Brewarrina Shire Council claim they operate a Shire Council with the express permission, through the free, prior and informed consent of the Pre-existing and Continuing Euahlayi Nation State or, in the alternative, the free prior and informed consent and rights conferred by the authorised Elders of the Euahlayi.

5. All original documents including but not limited to deeds, file notes, contracts, records of conversations, instructions and orders by which the Crown, the New South Wales Government and the Brewarrina Shire Council operate a Shire Council by virtue of their succession in Crown title from a military occupation (initiated by the British Admiralty) of

the ancient lands of the Euahlayi held in Allodial Title from time immemorial.

6. All original documents including but not limited to deeds, file notes, contracts, records of conversations, instructions and orders by which the Crown, the New South Wales Government and the Brewarrina Shire Council claim to operate a Shire Council by virtue of an expressed and public social compact published to all the nations of the continent of Australia on the ancient Lands of the Euahlayi who hold Allodial Title from time immemorial.

7. All original documents including but not limited to deeds, file notes, contracts, records of conversations, instructions and orders by virtue of which the Crown, the New South Wales Government and the Brewarrina Shire Council claim they are not continually and flagrantly committing criminal trespass and/or crimes against humanity on the ancient lands of the Euahlayi who hold Allodial Title from time immemorial.

8 i) All original documents including but not limited to deeds, file notes, contracts, records of conversations, instructions and orders by virtue of which the Crown, the New South Wales Government and the Brewarrina Shire Council relating to the massacre of the Euahlayi people and others in or around the summer of 1848 at Hospital Creek 9 miles (14.5 kms) northeast of Brewarrina.

ii) All original documents including but not limited to deeds, file notes, contracts, records of conversations, instructions and orders by virtue of which the Crown, the New South Wales Government and the Brewarrina Shire Council of all children removed under the 1909 *Aboriginal Protection Act NSW* [25] from Angledool and the Brewarrina Aboriginal government mission station.

“We understood that Brewarrina Shire Council's frustration, because they are merely a construct from the Letters Patent and by a subsequent NSW legislative Act. This council was imposed upon the region and the Euahlayi Nation and Peoples without any free prior and informed consent and commenced an illegal occupation by way of a fraud. We did not expect them to have any of the documents that were sought regarding land title transfer. As a consequence Brewarrina Shire yielded to the powers of the NSW Minister responsible for lands to protect their illegitimate regime.

“Ms Katrina Hodgkinson MP, Minister for Primary Industries was represented by Daniel Bryes, solicitor for Mr I V Knight, the NSW Crown Solicitor. The Notice of Motion from the Crown sought Orders from the Supreme Court to dismiss the subpoena and claimed that:

b. The subpoena to produce lacks a legitimate forensic purpose; or in the alternative

c. The subpoena to produce amounts to an abuse of process.

The document went onto request that:

In the alternative, orders be made in relation to the timeframe for the Minister to file evidence in relation to:

a. The oppressive nature of the subpoena to produce; or

b. The collateral purpose of the subpoena to produce.

Mr Anderson continued: “There is no excuse for a Minister of the Crown to claim that the subpoena was 'oppressive'. Clearly, the NSW government has no such documents regarding land titles, other than an exercise of a deceit by fraud, using the protection of the right of the English Crown. This is their protection as they have no legitimate law of their own that comes from the consent of the Euahlayi Peoples.

"They do, however, have all the records relating to the removal of children since 1909. When the Duty Judge, Justice Campbell, enquired of my reason in respect of the subpoenas I pointed out that the State is illegally occupying our lands as a consequence of the murder of the Euahlayi Peoples under the colonial regime of 'clearing the land of vermin'.

"Moreover, this was exacerbated by the legislatively approved acts of the State to forcibly remove children of the Euahlayi, and others, in order to de-Aboriginalise them and thereby deny them a future claim to their inherent right to their Country and heritage. The NSW State said my request was "oppressive" to the Minister. I need not say more on this matter.

"The defendants claimed there was no forensic purpose to the subpoena. We feel this was a denial of natural justice, because all we were asking for is evidence that the NSW government, in right of the Crown, acquired the land by legitimate means. But the Duty Judge made a finding that my request was not reasonable, because he agreed with the State that the subpoena had no forensic purpose.

"Justice Campbell agreed with the Crown's argument that the subpoena was a 'fishing expedition' for 'collateral purposes' and was 'oppressive' for the Minister. He also said that the subpoena was an abuse of process.

"In rounding up his judgment on the subpoena His Honour stated that, on the issue of Euahlayi sovereignty, this matter is not justiciable within this court. It is now clear that the courts in this country accept the fact that the continuing sovereignty of Aboriginal Nations, whether right or wrong in their view, is not justiciable in their courts, confirming what was held in the Mabo No.2 judgment."

Anderson expressed concern that: "if the Crown had true radical title to the land of the Euahlayi Peoples then surely one would think that they would be only too pleased to hold it up in neon lights for all to see, rather than consider the subpoena 'oppressive'. … I take the Crown's application to have the subpoena set aside as being an admission against their own interest.

"This confirms my personal long held view that the nature of Australian society and its laws are a fraud and that they operate a nation state on lands seized not by consent, but by murder."

This matter has now been put over until 20 June 2014.

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