

APPENDIX

The following is the text of the original advertisement and sponsorship form issued by the Aboriginal Treaty Committee, 1979.

THE ABORIGINAL TREATY COMMITTEE

WE CALL FOR A TREATY — WITHIN AUSTRALIA, BETWEEN AUSTRALIANS

We the undersigned Australians, of European descent, believe that experience since 1788 has demonstrated the need for the status and rights of Aboriginal Australians and Torres Strait Islanders to be established in a Treaty, Covenant or Convention freely negotiated with the Commonwealth Government by their representatives. Australia is the only former British colony not to recognize native title to land. From this first wrong two centuries of injustice have followed. It is time to strike away the past and make a just settlement together. We believe this would be a signal to the world that we are indeed one Australian people, at last.

In New Zealand, at the Treaty of Waitangi in 1840, the Maori chiefs were guaranteed by their conquerors "full, exclusive and undisturbed possession of their lands . . . so long as it is their wish and desire to retain the same", and most of these lands were later bought. In North America, Indian tribes negotiated treaties with their conquerors, who recognized the principle of purchase or compensation for the loss of their lands. The colonial authorities were directed by the government in London to deal with the tribes as "foreign nations". In Papua, in 1884, the conquerors assured the people "your lands will be preserved unto you", again until

they decided to sell. But in Australia there was no recognition of Aboriginal land ownership, no compensation for dispossession, no treaty, despite the resistance of the Aboriginal tribes to their conquerors.

Indeed, the absence of a settlement leads many Aborigines to conclude even today that their resistance is not yet over. It is a sad conclusion, for all of us, after so many generations of living together in this country. We believe there is a deep and wide concern among Australians of European descent that our ownership of this land, as defined in the imported European law, should still be based solely upon force, without any documentary recognition of the quality and courage of those who were conquered. It is time to right this wrong.

In 1979, the National Aboriginal Conference asked unanimously for a Treaty to be negotiated. We call upon the Commonwealth Government to respond and we urge the Commonwealth Parliament to resolve that the Government should:

- (a) enable the National Aboriginal Conference to summon a convention of representatives nominated by Aboriginal communities and associations to choose negotiators, who would propose the bases of negotiation and how any settlement should be confirmed;
- (b) organise the negotiations;
- (c) submit any Treaty, Covenant or Convention to Parliament for ratification.

We believe that any Treaty, Covenant or Convention should include provisions relating to the following matters:

- i) The protection of Aboriginal identity, languages, law and culture.
- ii) The recognition and restoration of rights to land by applying throughout Australia, the recommendations of the Woodward Commission.
- iii) The conditions governing mining and exploitation of other natural resources on Aboriginal land.

- iv) Compensation to Aboriginal Australians for the loss of traditional lands and for damage to those lands and to their traditional way of life.
- v) The right of Aboriginal Australians to control their own affairs and to establish their own associations for this purpose.

We do not all necessarily agree with all the details of these provisions, but we do accept their purpose and we invite other Australians to accept their purpose and support our call to the Commonwealth Parliament and Government and to help us ensure that the concept and the content of a Treaty, Covenant or Convention are widely discussed. We ask you to sign the statement below and make a donation to the cost of this campaign.

The Aboriginal Treaty Committee:
P.O. Box 1242
CANBERRA CITY ACT 2601

Dr H.C. Coombs (Chairman)
Dr Diane Barwick
Mrs Eva Hancock
Mrs Judith Wright McKinney

Mrs Dymphna Clark
Mr Stewart Harris
Professor Charles Rowley
Mr Hugh Littlewood

I/ We agree that a Treaty, Covenant or Convention of Peace and Friendship should be negotiated between Aboriginal Australians and Torres Strait Islanders, and the Commonwealth of Australia.

I/ We enclose a donation of \$..... to the costs incurred by the Aboriginal Treaty Committee, P.O. Box 1242, Canberra City, ACT 2601.

Signed Name
(Donors will receive no publications which the Committee from time to time produces.)

Address Postcode.....
I would (not) be interested in joining/starting a regional support group.

DRAFT RESOLUTION FOR THE CONSIDERATION OF MEMBERS OF BOTH HOUSES OF THE PARLIAMENT OF THE COMMONWEALTH THAT A TREATY OF PEACE AND FRIENDSHIP BE CONCLUDED BETWEEN ABORIGINAL AUSTRALIANS AND TORRES STRAIT ISLANDERS AND THE COMMONWEALTH OF AUSTRALIA

- Whereas before Europeans settled in Australia, the Aboriginal peoples of Australia had lived on their traditional lands from time immemorial and had in Aboriginal law and customs a clear title to those lands; and
- whereas Europeans and other non-Aboriginal people have occupied and used most of the traditional lands of the Aboriginal peoples against their will and without negotiation, compensation or treaty; and
- whereas it has been the practice of nations established in territories previously occupied by indigenous inhabitants to reach a negotiated settlement with those inhabitants; and
- whereas that occupation has seriously damaged the traditional way of life of Aboriginal Australians and has caused poverty and hardship to be the fate of the great majority of their surviving descendants; and
- whereas the surviving descendants of the Aboriginal peoples have expressed a wish to have their rights to land acknowledged, to preserve their link with their Aboriginal ancestors and to maintain their distinctive identity with its own cultural heritage; and

whereas the people of Australia in 1967 voted overwhelmingly that the Commonwealth Parliament should have responsibility for laws relating to Aboriginal Australians; and
whereas it is accepted internationally by the United Nations organization, that each country should work to establish the rights of indigenous peoples to self-determination, non-discrimination and the enjoyment of their own culture; and
whereas the Woodward Commission in 1974 established principles by which Aboriginal rights to land should be acknowledged and realized; and
whereas the Senate of the Commonwealth Parliament in February 1977 resolved that Aboriginal Australians should be compensated for the loss of their traditional lands and for the damage to their way of life; and
whereas the National Aboriginal Conference unanimously resolved in April 1979 in Canberra to ask the Commonwealth Government to negotiate a Treaty with Aboriginal Australians.

Now this House resolves that:

- 1 The Commonwealth Government should invite the Aboriginal people of Australia to negotiate a Treaty with the Commonwealth of Australia.
- 2 The Commonwealth Government should give all necessary financial and other assistance to the National Aboriginal Conference to enable it to call together a convention of representatives nominated by Aboriginal communities and associations to choose negotiators who would determine the bases of negotiations and decide how any settlement should be confirmed.
- 3 When any Treaty, Covenant or Convention has been concluded and agreed to between the parties the Commonwealth Government should submit that Treaty to the Parliament for ratification.
- 4 This House is prepared to use its legislative powers to reserve to itself responsibility for Aboriginal Australians and to give effect to any or all of the terms of any Treaty that invite or necessitate legislative action.

- 5 This House is of opinion that any Treaty should contain provisions relating to the following matters:**
- i The protection of Aboriginal identity, languages, law and culture.**
 - ii The recognition and restoration of rights to land by applying, throughout Australia, the recommendations of the Woodward Commission.**
 - iii The conditions governing mining and exploitation of other natural resources on Aboriginal land.**
 - iv Compensation to Aboriginal Australians for the loss of traditional lands and for damage to those lands and to their traditional way of life.**
 - v The right of Aboriginal Australians to control their own affairs and to establish their own associations for this purpose.**

MAKARRATA: PRELIMINARY FINDINGS OF MAKARRATA RESEARCH

The following points are presented for your information and discussion. While they represent what many Aboriginal people have asked us to include in Makarrata negotiations with the Government, they do not represent the final basis of such negotiations.

1. Land to be acquired by the Commonwealth for and on behalf of Aboriginal people and vested in freehold title to the Aboriginal people and given in perpetuity not subject to mortgage and or sale outside the Aboriginal community and or communities.

It is further suggested that:

- 1a. The Commonwealth acquire all lands that were originally set aside for the use and benefit of Aboriginals since colonization, and where possible the Commonwealth acquire an equivalent size parcel of land adjacent or within close proximity to such reserves and that these lands be given to Aboriginal communities in perpetuity with inalienable Freehold Title, if the original lands are not able to be acquired.

- 1b. That all vacant Crown Land throughout Australia be acquired by the Commonwealth Government and given to Aboriginal Communities who are within close proximity and that such land be given in perpetuity with inalienable Freehold Title.
2. The development of self-Government in each respective tribal territory to take due respect for the culture of Aborigines and to ensure their political, economic, social and educational advancement, and by virtue of this, the right to freely pursue their economic, social and cultural development.
3. A National Aboriginal Bank be established with branches in each State of the Commonwealth.
4. The payment of 5% of the Gross National Product per annum for a period of 195 years to come into effect upon the date of this section being given assent and or upon the signing of the agreement.
5. All national parks and forests to be returned to the Aboriginal communities whose territorial jurisdiction prevails.
6. All artifacts, artworks and items located by archaeological diggings from museums and other art centres in Aboriginal territories where the items were located and or found, be returned.
7. Rights to be granted to hunting, fishing and gathering on all lands and waterways under the jurisdiction of the Commonwealth of Australia.
8. Rights over all minerals and other resources that may exist on all lands be given in perpetuity to Aboriginal people and or communities and all minerals from the earth's surface to the centre of the earth, and all the air space from the earth's surface to the outer perimeters of earth's atmosphere.
9. Recognition be given to Aboriginal customary law in those territories which deem it necessary.
10. Aboriginal schools (pre-schools, infants, primary, secondary and colleges) be established within those Aboriginal territories which deem it necessary.
11. Freehold title and full ownership of all houses currently occupied by Aboriginal people throughout Australia be given in perpetuity.

12. Aboriginal medical centres be established in the Aboriginal territories which deem it necessary.
13. Aboriginal legal aid offices be established in all territories which deem it necessary.
14. Land vested in freehold title to Aboriginal people throughout Australia for a period of 195 years from the commencement of this section and or agreement be exempt from all forms of taxes.
15. Any monies derived by Aboriginal businesses and or commercial ventures within their respective territories for a period of 195 years from the commencement of section or agreement be exempt from all taxes.
16. Any monies derived from the Commonwealth as cash compensation from the Gross National Product for Aboriginals for a period of 195 years from the commencement of section and or agreement be exempt from all taxes.
17. That Parliament make laws for the carrying out by the parties thereto on any agreement.
18. Any laws established for Aboriginals by the Federal and State parliaments prior to the commencement of this section become null and void upon the commencement of this section (129) or agreement. Except for those pieces of legislation that refer to land.
19. Any such agreement may be varied or rescinded by the parties thereto and every such agreement and any such variation thereof shall be binding upon the Commonwealth and the Aboriginals who are a party to such agreement thereto, notwithstanding anything contained within this section and or agreement.
20. The Parliament make laws for validating any such agreement contained in this section and or agreement.
21. The powers conferred by this section not be construed as being limited in any way by the provisions of section and or agreement.
22. Timber rights to all forests and timbered areas within Aboriginal territories including rights to all waterways be granted.
23. The right to move freely across State borders without

- prejudice due to the differences in State Laws be granted.
24. The right to have all Laws and By-Laws of Aboriginal self-governed territories apply equally across State borders where Aboriginal territories involve two or more States be granted.
 25. One seat be made available in both Houses of Federal Parliament per State and that one seat per House be available for Torres Strait Islander Representation, further, that each State Parliament make available one seat in each House for representation from each Aboriginal territory and the Torres Strait Islands. And that all these representatives be elected by Aboriginal people at the time of ordinary State and Federal elections: such election will not jeopardise their normal voting rights.
 26. The studying and diggings of all lands by Anthropologists and Archaeologists cease, and that any further studies by the said groups be conducted with the approval of those Aboriginal people whose Territorial Jurisdiction prevails.
 27. The rights of all waterways flowing between Australia and the Torres Strait Islands including the rights to control the shipping lanes.

ANALYSIS OF POINTS

1. In relation to this point the NAC means that for the purposes of Land Rights in this country we ask the Federal Government to acquire lands for and on behalf of Aboriginal people for the purposes of this Makarrata (Treaty). We are aware of the fact that the states have title to all land but the Commonwealth can acquire land for our purposes in accordance with Section 51, sub-section 31, but this does raise another issue particularly with all minerals and other resources. This is yet to be resolved.
 - 1a. In relation to this point we are asking initially that the Australian Government acquire all those lands which were originally designated as land being set aside for the use of Aborigines and where it is difficult to acquire such lands we ask for an equivalent size of land.
 - 1b. We merely intend for the Government to acquire vacant

crown land to enable Aboriginal people and Torres Strait Islanders to develop these lands or should they wish to use them in any other way they should have the right.

2. As you know, Australia has many tribal groupings. However, we must make the point at this time that although we are many, there are in fact distinct linkages in various parts of Australia. Example: if we were to draw a line from Dubbo in NSW to Lake Frome, South Australia, and then draw a line directly to the Gulf of Carpentaria using the Northern Territory Queensland Border, then draw an arc from Dubbo taking in Quirindi, Tamworth, in NSW, then drawing a straight line through Tamworth to Mackay, Queensland, we find the Aborigines who refer to themselves as Murris. This is only one area in Australia that we can identify as being one sovereign group of people whose only difference is in their dialects. This is what we call the Murri Nation whose various tribal clans have their own distinctive territories and who only come together when it is time for the initiation ceremonies. It is these tribal and clan interests in respect to their territories that we refer to.
3. This is only raised for the purposes of establishing our own economic system and security and should we wish to use this bank as a means of dispersing monies received as cash compensation.
4. Five per cent of the gross national product means, from our point of view, a way of overcoming taxing and seeking from the Government on each prospective subject matter that the Commonwealth acquires money through taxes. For example, past mining operations, past land taxes and other businesses that have given the Government a return over the years by use of lands that have been expropriated from Aboriginal people since colonization.
5. Aboriginal people and Torres Strait Islanders feel that should we gain control of the national parks and forests we would be able to identify in a traditional way the meaning of certain areas and their significances and more importantly we are much more sensitive to the need to protect the flora and fauna as we have successfully done for the last forty to fifty thousand years.

6. Aboriginal people and Torres Strait Islanders are extremely sensitive to this demand primarily perpetrated against our people and that we seek to protect ourselves from further injustices of this kind.
7. Right throughout Australia there are many Aboriginal and Torres Strait Islander people who still hunt, fish and gather their native foods for their own consumption. We feel insulted when we are told that we have to have a permit, but in fact we do not kill for game, we do not fish for game, we merely carry on our custom in order to sustain our needs as we have done from time immemorial.
8. In defining Land Rights granted we not only want the minerals on the surface of the earth but we want title to all that which is below them. Secondly we want to have control over the air space above our lands in order to protect our own interests, particularly in relation to military aircraft. We feel that man is only human and all that he creates is not perfect. Therefore we would like to have some degree of control over military aircraft which may one day have problems over our lands. We do not want to have to suffer the consequences of man's inability to be perfect.
9. We are aware of the Australian law reforms commission rule in advising the Commonwealth and State Government of how we may be able to integrate Aboriginal customary law into the Australian legal system. We see this as a major step forward and would like to only suggest that customary law must be recognized in its entirety. Failing this we can only see the Australian Government as patronizing.
10. It is essential in our future to have independent Aboriginal schools as we are more sensitive to the difficulties of Aboriginal and Torres Strait Islander children coming to terms with the white man's educational system, for the education system in Australia has and still is failing Aboriginal people. This has been the result of Aboriginal people being denied the opportunity to determine their own futures in education.

The education system still reinforces negative and racist attitudes in a classroom and it has yet to teach a true account of Australian history. This can only be done by incorporating

Aboriginal history as an important and necessary component in school curricula.

Aboriginal people are now taking positive action to ensure that changes in Aboriginal education are made. The move to set up more Aboriginal independent schools in Australia is seen by many Aboriginal people as crucial to the future success of Aboriginal education.

But more importantly we also understand the health problems associated with the low performance of Aboriginal and Torres Strait Islander children in the present schooling system, which is not recognized by any education department in Australia.

11. This point is raised only because Aboriginal people feel that because their lands have been taken away from them over the years the houses that they currently occupy can only go toward compensating them for being dispossessed of their original homes.
12. Earlier we talked about territories being established and realise that we must also recognize the need to establish medical centres in these areas to upgrade the health of Aboriginal and Torres Strait Islander peoples.
13. In the past, now in the present, and in the future there will always be a clash of cultures which will inevitably see Aboriginal and Torres Strait Islander people falling foul of the white man's law. If we were to produce the statistics over the last three years of Aboriginal and Torres Strait Islander people coming before the courts in Australia we will see an increase in the crime rate and this point can only serve as an attempt to curb this now escalating difficulty.
14. We seek exemption only because since settlement the British and now the Australian Government have received numerous wealth without ever compensating the Aboriginal and Torres Strait Islander people. Therefore, we seek the same as another form of compensation. This also applies to points 15 and 16.
17. This point is raised only to establish the fact that in order to implement these demands the Commonwealth, by way of legislation, should create the proper laws.
18. The NAC are seeking from this point a national code on Aboriginal issues if we can no longer tolerate the ambiguities

- and inconsistencies associated with State and Commonwealth legislation pertaining to Aboriginal affairs.
19. In a way this point is self-explanatory. We merely wish to add that there will always be a need to vary, rescind some of the systems involved in the final Makarrata (Treaty), and this enables us to do that.
 20. We are only asking in this demand for the Government to create legislation making the Makarrata (Treaty) legal and applicable to Australian law.
 21. This is, in fact, a very important point in that nothing in the Makarrata (Treaty) can be taken as the final chapter in Aboriginal affairs, as this demand will enable our children and their children sometime in the future to enter into other agreements that may be applicable to their time and need.
 22. This merely identifies the fact that we do want the right to log the forest under our care, for the purposes of regenerating the growth of each forest in accordance with the need and that we shall also have power to allow independent logging when the need arises. Further, we want the rights to the waterways merely to protect those waters that are on our lands, in order to protect ourselves from unwarranted usage both upstream and downstream.
 23. and 24. Where we identify Aboriginal tribal and clan territories crossing over into another or several States we seek the right to implement any laws or by-laws that may be developed for the purposes of that tribe or clan. In other words, we do not want the present situation of having one people divided by State barriers.
 25. In respect to the demand concerning Aboriginal and Torres Strait Islander people representation we must make the following point. In terms of the Federal Parliament we seek one Senator per State and one Member of the House of Representatives for that State, thus increasing the House of Representatives and the Senate by at least eight members respectively. However, of course we recognize the fact that in order to have this implemented we need to come to terms with the States concerned. For example, in Queensland it would mean the addition of nine persons per House, in NSW we would be looking for seven Reps per House. In Tasmania we

- would require one and in Victoria we would require two, etc.
26. In terms of this point we are seeking a law that prohibits anthropological research and archaeological diggings if they are being carried out without the approval of Aboriginal people concerned with those particular areas. Where there are no identifiable groups, Aboriginal museums and other associated authorities are to be consulted for the purpose of seeking approval to carry out any such research in those areas.
 27. It is the wish of the Aboriginal people and Torres Strait Islanders to have control over the shipping lines that are used through Torres Straits. This, in their view, will enable them to derive an income as well as have some degree of control over the usage of the waterways without disturbing their traditional and customary practices.

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Draft/ April 28, 1981

INTERNATIONAL COVENANT ON THE RIGHTS OF INDIGENOUS PEOPLES

PREAMBLE

The parties to the present covenant

Considering that the recognition of the inherent dignity and the equal and inalienable rights of individuals and of peoples is the foundation of freedom, justice and peace in the world, and considering that these principles are recognized and proclaimed in the Charter of the United Nations, the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights, the International Covenant on Economic, Social and Cultural Rights, the European Convention on Human Rights and the Inter-American Convention on Human Rights,

Conscious of the need for the creation of conditions of stability and well-being and peaceful and friendly relations based on respect for the principles of equal rights and self-determination of all peoples, and of universal respect for and observance of human rights and fundamental freedoms for all without distinction as to race, sex, language or religion,

Recalling that Convention 107 and Recommendation 104 of the International Labour Organization, 5 June 1957, recognized the need for the adoption of general international standards to govern the relations between Indigenous Peoples and states,

Recalling that the Declaration of the General Assembly on the Granting of Independence to Colonial Countries and Peoples, Resolution 1514 (xv), 14 December 1960, recognized the ardent desire of the peoples of the world to end colonialism in all its manifestations,

Recalling that the inter-relationship of racial equality and decolonization was recognized in the Resolution of the General Assembly, Resolution 20166 (xx) B, 15 December 1965, associated with the adoption of the International Convention on the Elimination of All Forms of Racial Discrimination,

Considering that colonialism and the consequences of colonialism have not been eradicated for Indigenous Peoples, and, in consequence, indigenous peoples are frequently denied their political, economic, social and cultural rights,

Recognizing that the right of Indigenous Peoples to self-determination is accepted in international law and has been increasingly given effect in the domestic law of States, and

Recognizing the long struggle by Indigenous Peoples to have their rights recognized in international law,
agree upon the following articles:

PART I

SELF-DETERMINATION

Article 1. All peoples have the right to self-determination. By virtue of that right Indigenous Peoples may freely determine their political status and freely pursue their economic, social and cultural development.

Article 2. The term Indigenous People refers to a people

(a) who lived in a territory before the entry of a colonizing population, which colonizing population has created a new state or states or extended the jurisdiction of an existing state or states to include the territory, and

(b) who continue to live as a people in the territory and who do not control the national government of the state or states within which they live.

Article 3. One manner in which the right of self-determination can be realized is by the free determination of an Indigenous People to associate their territory and institutions with one or more states in a manner involving free association, regional autonomy, home rule or associate statehood as self-governing units. Indigenous People may freely determine to enter into such relationships and to alter those relationships after they have been established.

Article 4. Each state within which an Indigenous People lives shall recognize the population, territory and institutions of the Indigenous People. Disputes about the recognition of the population, territory and institutions of an Indigenous People shall initially be determined by the state and the Indigenous People. Failing agreement, such questions may be determined by the Commission of Indigenous Rights and the Tribunal of Indigenous Rights, as subsequently provided.

PART II

CIVIL AND POLITICAL RIGHTS

Article 1. Each Indigenous People has the right to determine the persons or groups of persons who are included within its population.

Article 2. Each Indigenous People has the right to determine the form, structure and authority of its institutions of self-determination. Those institutions, their decisions and the customs and practices of the Indigenous Peoples shall be recognized by domestic and international law on a basis of equality and non-discrimination.

Article 3. Where an Indigenous People exercise their right of self-determination within one or more states and that state or states has some extent of jurisdiction over the Indigenous People or over individual members of the Indigenous People,

(a) the individual members of the Indigenous People are entitled to participate in the political life of the state or states on the basis of equality with citizens of the state or states,

(b) the Indigenous People is entitled to representation in the legislative and executive branches of government, the courts and

civil service. The state is under an affirmative duty to promote that participation,

(c) it is recognized that it is desirable for the Indigenous People to have a national organization or organizations of their own choosing and structure, independent of the organs of the state, to represent their interests in dealing with the state. Where the poverty or dispersed character of the indigenous People inhibit the development of such an organization or organizations, the state shall provide funding to the Indigenous People to facilitate the establishment and maintenance of such an organization or organizations.

PART III

ECONOMIC RIGHTS

Article 1. Indigenous Peoples are entitled to the lands they use and to the protection of the extent of use in areas where the use of land is shared in a compatible manner with others, and to those parts of their traditional lands which have never been transferred out of their control by a process involving their free consent.

Article 2. The need to protect the integrity of the lands of an Indigenous People is recognized. The land rights of an Indigenous People include surface and subsurface rights, full rights to interior and coastal waters and rights to adequate and exclusive coastal economic zones.

Article 3. All Indigenous Peoples may, for their own ends, freely use and dispose of their natural wealth and resources, without prejudice to any obligations arising out of international economic co-operation, based upon the principle of mutual benefit and international law. In no case may a people or a component unit of a people be deprived of its own means of subsistence.

Article 4. Where an Indigenous People have an economy reliant in whole or in part on hunting, fishing, herding, gathering or cultivation, they have the right to the territory and the waters used and needed for those pursuits. States are bound to respect such territories and waters and not act or authorize acts which could impair the ability of such lands and waters to continue in such use.

PART IV

SOCIAL AND CULTURAL RIGHTS

1. The cultures of the Indigenous Peoples are part of the cultural heritage of mankind. The shared beliefs of Indigenous People in co-operation and harmonious relations are recognized as a fundamental source of international law.
2. The primary responsibility for the protection and development of the cultures and religions of the Indigenous People lies with the Indigenous People. To this end the original rights to their material culture, including archaeological sites, artifacts, designs, technology and works of art lie with the Indigenous People or members of the Indigenous People. Indigenous People have the right to reacquire possession of significant cultural artifacts presently in the possession of public or semi-public institutions, where possession of those artifacts was not obtained from the Indigenous People in a just and fair manner or where the artifacts are of major cultural or religious significance to the Indigenous People.
3. The Indigenous People have the right to fully control the care and education of their children, including the full right to determine the language or languages of instruction.
4. The Indigenous Peoples have the responsibility for the preservation and development of their languages. Their languages are to be respected by states in all dealings between the Indigenous People and a state on the basis of equality and non-discrimination.

PART V

RATIFICATION AND IMPLEMENTATION

Article 1. This Covenant shall be open to ratification by states and by Indigenous Peoples.

Article 2. To ensure the fulfillment of the provisions of this Covenant there shall be established a Commission of Indigenous Rights and a Tribunal of Indigenous Rights.

Article 3. The duties of the Commission of Indigenous Rights are:

(a) to receive and assess the reports of the states and of the Indigenous Peoples who are parties to this Covenant.

(b) to receive and assess petitions alleging the violation of the rights of Indigenous Peoples in contravention of the provisions of the present Covenant.

(c) to determine the appropriate recognition of the population, territory and institutions of an Indigenous People by a state, in compliance with Part I, Article 4.

(d) to investigate any petitions alleging the violation of the rights of Indigenous Peoples, with the power to require documents from states parties, with a right to access to officials of the states parties and with access to Indigenous lands, institutions and people within a state.

(e) to attempt to achieve a peaceful settlement of disputes involving indigenous rights, by mutual agreement of the parties.

(f) to determine whether there has been a violation by any state or any Indigenous People of the provisions of the present Covenant.

(g) to conduct or commission research on matters of indigenous rights, to conduct or support educational programs and to publish any reports, studies or determinations.

(h) to determine, in cases of dispute, the groups that are Indigenous People with a right of self-determination, subject to an appeal to the Tribunal of Indigenous Rights as subsequently provided. The Commission shall review all ratifications of the present Convention by Indigenous People to determine whether the ratifying group is an Indigenous People with a right of self-determination.

Article 4. The Commission will be composed of no fewer than 6 and no more than 19 persons. Each commissioner will be an indigenous person of good moral character.

Article 5. Three persons will be nominated to the Commission from every state affected by the Covenant. A state is affected by the Covenant if

(a) it has ratified the Covenant, or

(b) an Indigenous People living wholly or partly within the state has ratified the Covenant.

Article 6. If a state has ratified the Covenant, or if an Indigenous

People living wholly or partly within the state has ratified the Covenant, three indigenous persons will be nominated by the most representative indigenous organization or organizations in the state. The organization or organizations so qualified shall be designated by the Executive Council of the World Council of Indigenous Peoples. If sufficiently representative organizations do not exist, the Executive Council of the World Council of Indigenous Peoples shall designate an individual of the state to make all or some of the nominations.

Article 7. The members of the Commission shall be selected from the nominees by the Executive Council of the World Council of Indigenous Peoples, which shall also determine the number of Commissioners. Members shall serve terms of four years.

Article 8. The duties of the Tribunal of Indigenous Rights are to determine, after an investigation and determination by the Commission of Indigenous Rights:

(a) the groups which are Indigenous Peoples with a right of self-determination,

(b) any question of compliance with this covenant.

Article 9. A matter may be taken before the Commission by a state party, an Indigenous People party, the World Council of Indigenous Peoples or a person or persons affected by an alleged violation of the rights of an Indigenous People. A matter may be taken before the Tribunal, after the investigation and determination of the Commission of Indigenous Rights, by the Commission of Indigenous Rights.

Article 10. The Tribunal may request an advisory opinion from the International Court of Justice on any question of law arising in the course of its work.

Article 11. The Tribunal will hold public hearings and receive oral or written submissions. Parties may be represented by counsel. No rules of the Tribunal shall exclude any category of evidence.

Article 12. The Tribunal shall consist of up to 15 persons, 4 of whom will serve on a full-time basis. The members of the Tribunal may be indigenous or non-indigenous, shall be of good moral character and shall serve in their individual capacities.

Article 13. Each state party may nominate one candidate for the Tribunal. Each Indigenous People signatory to the present Covenant may nominate one candidate for the Tribunal. The

members of the Tribunal shall be elected by secret ballot by the states and the Indigenous Peoples who have ratified the present Covenant. The elections will be conducted in a manner to ensure that a majority of the members of the Tribunal will be indigenous people.

Article 14. The costs of the institutions created pursuant to the present Covenant shall be borne by the United Nations Organization.

Article 15. Nothing in the present Covenant may be interpreted as implying for any state, group or person any right to engage in any activity or perform any act aimed at the destruction of any of the rights recognized herein or at their limitation to a greater extent than is provided for in the present Covenant.

Article 16. There shall be no restriction upon or derogation from any of the rights recognized or existing in any state party to the present Covenant pursuant to law, conventions, regulations or custom on the pretext that the present Covenant does not recognize such rights or that it recognizes them to a lesser extent.

PART VI

REPORTING

Article 1. Each state and each Indigenous People which has ratified the present Covenant shall report to the Commission on Indigenous Rights every three years, describing fully the situation of the Indigenous People and the extent of compliance with the provisions of domestic and international law, including those of the present Covenant.

NOTE: The draft produced at the Third Assembly of the WCIP was incomplete and is reproduced as it then stood.

PART VIII

COMING INTO FORCE

Article 1. The present Covenant is open for signature and ratification by any state and by any Indigenous People. Instruments of ratification shall be deposited with the Secretary-General of the United Nations.

Article 2. The present Covenant shall enter into force three months after the date of the deposit with the Secretary-General of the United Nations the sixth ratification by a state and the sixth ratification by an Indigenous People. Until the establishment of the Commission of Indigenous Rights, the Executive Council of the World Council of Indigenous Peoples shall certify groups to be Indigenous People with a right of self-determination for the purposes of ratification of the present Covenant.

**LIST OF PAPERS PRESENTED AT SEMINARS AND
CONFERENCES PROVIDED TO THE SENATE
STANDING COMMITTEE ON CONSTITUTIONAL AND
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FEASIBILITY OF MAKARRATA**

1. Gervaise Coles: 'International Implications of an Aboriginal Treaty'.
2. Royal Australian Historical Society, *Journal and Proceedings*, Vol. xxvi, 1940, Part I, 'Taking Possession of Australia — the Doctrine of Terra Nullius (No Man's Land)' by the late Sir Ernest Scott, pp.1-19.
3. Conference organized by James Cook University of North Queensland and Townsville Treaty Committee:
 - a) 'Land Rights and the Future of Race Relations in Australia', 28-30 August 1981. Papers: 'Aboriginal Land Rights: a Definition of Common Law', G. McIntyre.
 - b) 'Is Might Right? An argument for the recognition of traditional Aboriginal title to land in the Australian courts', Barbara Hocking, Barrister-at-Law, Victoria.
 - c) 'Black Resistance Past and Present: An Overview', by Noel Loos and Jane Thomson.
 - d) 'The Queensland Acts, Human Rights and Possible Commonwealth Action', Garth Nettheim (Professor of Law, University of New South Wales).
 - e) Resolutions presented to the Conference.

- f) 'Homelands and the Law: Torres Strait Islanders', Nonie Sharp.
- g) 'The Future of Community Relations', The Hon. A. J. Grassby, Commissioner for Community Relations. Paper no.16, August 1981.
- h) 'DAIA, the Role of the Protector Then and Now', Jim Keefe.
4. Dr Robin Sharwood: 'Aboriginal Land Rights — the Long Shadow of the Eighteenth Century' (Address at a meeting of the Medico-Legal Society of Victoria, 15 August 1981).
5. Peter Bayne: 'The Makarrata', Summary of a meeting sponsored by the Aboriginal Treaty Committee and the Aboriginal Law Research Unit of the University of New South Wales, 2 May 1981. With reference footnotes.
6. N. Sharp: 'Homelands and the Law': as in 3(f) above, revised for publication in *Arena* no.58.
7. P. Loveday: 'Aborigines and Politics: a Northern Territory Perspective': NARU (not for quotation) Australian Political Studies Association, 23 Annual Conference, 28-30 August 1981.
8. Rolf Gerritsin: 'Australian Politics', NARU. (as above).
9. Geoffrey Bolton: 'The Kimberley Land Council', as above.
10. Fourth Russell Tribunal on the Rights of Indians: Rotterdam, no.3 1980. no.6.1. The Document of the Maori (with copy of speech by C. Clark).
11. G. Whitlam: 'Why a Treaty with Aborigines?': speech introducing Professor C. Rowley, and speech itself given to University House. (See paper submitted on behalf of ATC by Professor Rowley titled 'Natural Justice...')
12. 'The Makarrata': A proposal for a treaty or agreement with Aboriginal Australians. Legal Research Service, Department of the Parliamentary Library. Basic Paper no.11, 1981.
13. Implications of an Aboriginal Treaty: symposium conducted by the Anthropological Society of Western Australia.
Professor Geoffrey Bolton: 'The Historical Context'
Graham Macdonald: 'The Legal Implications'
H. C. Coombs: subsequent reply (in absentia)
14. Diane E. Barwick, BA, PhD
1980 'Making a treaty: the North American experience.'

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- 1981 'Equity for Aborigines? The Framlingham case', in Patrick N. Troy ed. *A just society? Essays on equity in Australia*. George Allen & Unwin, Sydney: 173-218. (Originally delivered to Seminar on Equity, Research School of Social Sciences, ANU, 1979.)
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**RESOLUTION MOVED BY THE MINISTER OF
ABORIGINAL AFFAIRS IN THE HOUSE OF
REPRESENTATIVES, 8 DECEMBER 1983, AS
REPORTED IN *HANSARD*.**

That this House—

Noting that, in 1967, an overwhelming majority of the people of Australia voted to amend the Constitution so that this Parliament would have the power to legislate for the peace, order and good government of the Commonwealth with respect to the people of any race for whom it was deemed necessary to make special laws;

Noting also that the change to the Constitution was made to enable the national parliament to discharge a national responsibility to the Aboriginal and Torres Strait Islander people of Australia; and

Bearing in mind that the Senate unanimously adopted the following resolution on 20 February 1975:

That the Senate accepts the fact that the indigenous people of Australia, now known as Aborigines and Torres Strait Islanders, were in possession of this entire nation prior to the 1788 First Fleet landing at Botany Bay, urges the Australian Government to admit prior ownership by the said indigenous people, and introduce legislation to compensate the people now known as Aborigines and Torres Strait Islanders for the dispossession of their land;

- (1) Acknowledges that
 - (a) the people whose descendants are now known as the Aboriginal and Torres Strait Islander people of Australia were the prior occupiers and original owners of Australia and had occupied the territory of Australia for many thousands of years in accordance with an Aboriginal system of laws which determined the relationship of Aboriginal responsibility for and to the land to which they belonged;
 - (b) from the time of arrival of representatives of King George III of England, and the subsequent conquest of the land and the subjugation of the Aboriginal people, no settlement was concluded between those representatives and the Aboriginal and Torres Strait Islander people;
 - (c) as a result of the colonization of the land by Great Britain the rights of the original owners and prior occupiers were totally disregarded;
 - (d) since the arrival of European settlers in Australia, the original inhabitants have been dispersed and dispossessed with the result that their descendants are, as a group, the most disadvantaged in Australian society;
 - (e) this disadvantage persists, despite measures taken by State, Territory and Australian governments, and by Aboriginal and Torres Strait Islander people themselves, so that further measures by Australian society as a whole, and by the Parliament of the Commonwealth in particular, will be required to ensure real equality and advancement for the Aboriginal and Torres Strait Islander people.
- (2) Considers, therefore, that the special measures which must be taken include action in the following main areas:
 - (a) the development of effective processes of consultation with Aboriginal people in order that the Aboriginal people may assert control of all aspects of their lives, having regard to the National Aboriginal Conference's responsibility to represent and present the views of Aboriginal and Islander people throughout Australia;
 - (b) the recognition by this Parliament of Aboriginal and Torres

Strait Islander people's rights to land, in accordance with the following five basic principles:

- (i) Aboriginal land to be held under inalienable freehold title;**
 - (ii) protection of Aboriginal sites;**
 - (iii) Aboriginal control in relation to mining on Aboriginal land;**
 - (iv) access to mining royalty equivalents; and**
 - (v) compensation for lost land to be negotiated.**
- (c) the continuation and acceleration of programs designed to ensure Aboriginal equality of opportunity in fields including health, education, housing, employment and welfare;**
- (d) the development of programs by all appropriate means to enable Aboriginal people to take part in economic activities for their own advantage;**
- (e) the promotion and protection of Aboriginal cultural identity, in ways considered appropriate by Aboriginals, including measures designed to:**
- (i) codify in writing Aboriginal languages, and assist in recording oral history;**
 - (ii) preserve and protect Aboriginal sites and objects;**
 - (iii) restore to Aboriginal people sacred objects relevant to their history, tradition and culture;**
 - (iv) enhance the development of traditional or contemporary art forms; and**
 - (v) provide interpreter services.**
- (f) restoration of the rights of Aboriginal families to raise and protect their own children by means of uniform laws and procedures in respect of child custody, fostering and adopting.**
- (g) respect for, and in appropriate circumstances, the application of, Aboriginal customary law and related practices as part of the law of Australia; and**
- (h) the development of improved community relations between Aboriginal and non-Aboriginal Australians, which requires a growing understanding on both sides by means of:**

We Call for a Treaty

- (i) public education programs; and
- (ii) fostering the study of Aboriginal history, language, anthropology and archaeology in Australian schools and institutions of learning.

(3) It is therefore of the view that

- (a) the Australian people will be truly free and united only when the Aboriginal and Torres Strait Islander people of this nation are free of the distress, the poverty and the alienation that has been their lot; and
- (b) the Bicentennial year of 1988 provides an immediate focus point towards which all Australians can work together to achieve the objectives set out in this resolution.