

## RE: Ngarrindjeri Social Contract

What has been the ongoing legal and equitable impact of the South Australian Governments' "shack owners" and Crown land freeholding policy on salt water and fresh water Aboriginal people around the coast ?

The policy has been of parliamentary and media interest since 1993. In the election of a Liberal Government in 1993 shack owners were promised freehold title to their shacks, which were on Crown Land at the 1993 election. From 2002 the Labor Government extended the impact of this on Aboriginal people through a like policy for Crown land leaseholders.

In 1999 a spokesperson for the Shack Owners Association advised shack owners on radio that the legal period for purchase of the freehold of their shacks from South Australia was fast expiring, and also complained that it was the value of the government's asking price that was delaying the final purchase for some shack owners, who were delaying because of the cost. There was a similar reaction on cost to the Crown lease freeholding policy.

These policies raise relevant issues for all future negotiations by Aboriginal people with the South Australian Government over the future security of Aboriginal heritage and the ongoing protection of Aboriginal land interests.

Were the Ngarrindjeri Traditional Owners officially advised by either of the former Liberal and now Labor Governments of the equitable and legal ramifications for the Ngarrindjeri Traditional Owners of these Government policies of freeholding of Crown land and shacks on Ngarrindjeri lands ?

The shack owners were given the right to upgrade their licences or leases to freehold and this right is being extended to other Crown leaseholders.

There are coastal and waterside shacks all around the Coorong, River and Lakes, which have been freeholded. These shacks are on Ngarrindjeri lands and are around or on burial grounds and significant cultural, dwelling and food sites. There are also Crown leaseholds, which may be being considered for freeholding.

Have the Ngarrindjeri Traditional Owners received the full benefit of the Mabo package: the Native Title, Social Justice and Indigenous Land packages, promised directly to several members of the Ngarrindjeri Tendi for South Australian Aboriginal people by the Commonwealth Government through the Director of the Aboriginal Legal Rights Movement at an adjourned Tendi meeting at Tauondi in November 1993, as part of the Mabo negotiations to enable Ngarrindjeri dispossessed people to repurchase their lands ?

These questions pose significant issues for a Ngarrindjeri equity strategy to negotiate with the South Australian Government for a Ngarrindjeri Social Contract to secure a set of guaranteed equity rights with South Australia.

Aboriginal negotiations to provide for ILUA's (Indigenous Land Use Agreements) should not only ensure reparations for extinguishment of native title. They should also ensure the equitable provision of a complete economic component to meet the unfulfilled promise of this Social Justice package. Compensation for the loss of land and rights from the shack and Crown land freeholding policies needs a Social Contract to guarantee it. Reparations are needed to remedy all the losses that have been suffered by the Ngarrindjeri people, including the legal infringement of their equity.

If the Ngarrindjeri people's equity cannot be confirmed in ILUA negotiations with the Government, then only a indentured Ngarrindjeri Land Act based on the Pitjantjatjara Land

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Rights Act, with "inalienable" title by Parliamentary Indenture could guarantee a suitable Ngarrindjeri regional land agreement.

The indentured Land Act would compensate for the loss of equity and the right to negotiation, which would otherwise have been part of native title.

Only an economic component can fully rectify the rightful land aspirations of Ngarrindjeri people in the legal absence of full Native Title with equity.

The shack and Crown lands "freeholding" policy also has implications for augmenting a minimum component Social Contract or Charter with a third component relating to maintaining cultural heritage rights and interests.

The Ngarrindjeri Traditional Owners have the right to obtain legal advice regarding the equitable, legal and other non-Native Title common law rights of the Ngarrindjeri people in order to have their burial and other sites protected on all Crown leaseholds and shack owners new freeholdings.

A Social Contract or Ngarrindjeri Charter guaranteeing the Native Title of the Ngarrindjeri people in an indentured recognition of their equitable, legal and other common law rights may settle Ngarrindjeri claims for justice from SA.

### **Social contract**

The fundamental relationship between the governed and government in South Australia has never been politically achieved in a democratic, equal and just process over the life of the State, because Aboriginal people lack due Constitutional recognition for their original land rights in the State.

The Constitution of the Parliament of South Australia was drafted by a 19th Century Premier of South Australia, without the full democratic involvement of the people or the community, and without Aboriginal input.

Of main concern for the better future of South Australia is the just, equal and democratic treatment of all South Australians by government, and especially of all Aboriginal people, and in recognition of their prior equity.

At the heart of the principle of a social contract between the people and Government is the right of the community to determine its future by making society accountable to the State, within a just system of laws.

South Australia began in an 1834 Act of a colonising British Parliament in London half- way around the world, and it determined all local Aboriginal people to be *persona nullius*, despite their inherent proprietary rights.

The founding legislation for South Australia was an ignominious start to a 167 year history of infamy for the Aboriginal people, who have never been asked to establish any form of legal relations with the colonising State.

Central to the Wakefield Plan for colonising the Aboriginal lands of South Australia was a repugnance for slavery and the securing of a privileged English social contract for a few, while dispossessing Aboriginal land owners.

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Slavery had been abolished in Britain and its colonies from 1833, and the worst fear of the emigrants to South Australia was being found guilty of enslaving the Aboriginal people. To avoid any legal penalty for slavery and to avoid any allegation of slavery, Aboriginal people were deprived of any right or equity to their lands and were refused a social right to work.

This was a specific design especially incorporated in the establishment of South Australia. Although Aboriginal people were British subjects by law, this was only nominal justice, because taking their lands was justified.

The legal doctrine of *terra nullius* refuted by the Mabo judgment was developed by English law to permanently entrench this injustice in the State's legal and constitutional framework, and to deny Aboriginal equity.

There is an urgent need for the people of South Australia to recognise this ignominy of the past and to go forward together with all local Aboriginal people for a better and more just future in community upholding respect.

It is up to the community to extend the hand of partnership and co-operation to all people and groups in the State, and to reform South Australia to be inclusive of everyone's rights.

The traditional way to achieve unison of this nature, both for Indigenous and immigrant cultures alike, is for a social compact or contract to be formulated to establish the peace.

The whole community must be consulted and all interest groups must have a legal right to negotiate with government in the make-up and terms of a rewrite of the State's Constitution.

A bright and just future for all is only based upon an equal and democratic negotiation by all.