

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

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 coastal Traditional Owners officially advised by either of the former Liberal and now Labor Governments of the equitable and legal ramifications for the coastal Traditional Owners of these Government policies of freeholding of Crown land and shacks on Aboriginal 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 shacks all around the South Australian coast which have been freeholded. These shacks are on Aboriginal 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 coastal Traditional Owners received the full benefit of the Mabo package – the Native Title, Social Justice and Indigenous Land packages, promised by the Commonwealth Government to the South Australian Aboriginal people through the Director of the Aboriginal Legal Rights Movement in Adelaide in November 1993, as part of the Mabo negotiations to enable all dispossessed people to repurchase their lands ?

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

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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 Aboriginal people, including the legal infringement of their equity.

If the Aboriginal people's equity cannot be confirmed in ILUA negotiations with the Government, then only a indentured Coastal Aboriginal Land Act based on the Pitjantjatjara Land Rights Act, with "inalienable" title by Parliamentary Indenture could guarantee the sought regional land rights.

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

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

SOCIAL CONTRACT

The fundamental relationship between the governed and government in South Australia has never been politically spelled out in a democratic, equal and just process within the legal life of the State, and solely 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 all the people in the community, and so lacks Aboriginal input about their rights.

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 a just recognition and equal respect for their prior equity.

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At the heart of the principle of a social contract between the people and the Government is the right of the community to determine its future by making society accountable to the State under justice and 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 unjustly appeared to ignore all local Aboriginal people as *persona nullius* outside equity, despite their inherent proprietary rights.

The founding legislation for South Australia was an ignominious start to what is now a shamefully unjust 170 year history of infamy for all Aboriginal people, who are yet to be asked to establish a form of legal relations with our colonising State.

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

Slavery was legally abolished in Britain and its colonies from 1833. The worst fear faced by the English emigrants to South Australia was of being seen to be guilty of enslaving the Aboriginal people. In ensuring against a legal penalty for slavery and avoiding allegations of slavery, Aboriginal people were subsequently deprived of any right of survival or equity in their lands and were refused the right to work.

Aboriginal people were British subjects by law. But this was only a nominal right in justice because taking their lands was claimed to be justified. This designer injustice was especially incorporated in the legal establishment of South Australia.

This false legal doctrine of *terra nullius*, refuted by the 1992 Mabo judgment, was first developed by English law here to permanently entrench this injustice in the State's legal and constitutional framework, denying Aboriginal equity and rights.

There is an urgent need for the people of South Australia to reject and redress this ignominy of our past and to go forward together with local Aboriginal people for a brighter, equitable and just future in a better community upholding respect.

The traditional way to achieve unison of this nature, both among Indigenous and immigrant cultures alike, is for a social compact or contract to be formulated to establish a future pact within the State through the Parliament to uphold justice.

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

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 by instructing the Parliament to enact this by a Bill of Rights.