Ngarrindjeri Aboriginal people in South Australia are appealing for help from a United Kingdom legal practitioner or solicitor's firm

The Ngarrindjeri intend to undertake civil proceedings against the Crown in the High Court in London, including for such equitable relief by way of orders in the nature of a declaration of title to land, and compensation for moneys had and received on the sale of Ngarrindjeri land from one (1) shilling per acre from 1837, as is actionable.

Being a subjugated nation within the overlordship of the Crown, and kept without the full occupation and enjoyment of their vested rights, the Ngarrindjeri have no pecuniary means to maintain these proceedings without pro bono legal assistance, for which they appeal. In the first instance, advice and opinion is sought on the prospects of success of maintaining action for equitable relief.

The merits, relevant facts and applicable law are summarised as follows:

By the Proclamation of South Australia on 28 December 1836 within the prerogative of Governor Hindmarsh for the Crown and pursuant to Letters Patent issued on 19 February 1836, the British Crown incurred a still incumbent lawful duty to account for the incapacity of the native inhabitants of South Australia (including their Ngarrindjeri descendants today), equally to exercise and enjoy their vested equitable rights as are comprised within the dominium of the lands they and their descendants have occupied and enjoyed, and as arising in the Crown's grant to them of British subjectivity, prior to legally depriving them and their descendants of that dominium over their traditional lands, and prior to alienating their traditional lands for sale into fee simple.

Of equal import is the statutory acquisition by the Crown in 1836 of fifty-five thousand (55,000) pounds paid to the Exchequer from the South Australia Company as an initial first instalment for the Crown's authorisation for the sale of the lands of the native inhabitants to English freeholders, which capital sum and the interest thereon remains identifiable in equity as part proceeds of the inequitable sale of the lands of the native inhabitants, which the Ngarrindjeri intend to trace for compensation for such of their lands sold into fee simple, and for reparations for any of their lands now inequitably alienated to the Crown in the right of South Australia were the Crown in the right of South Australia to have subrogated for the rights of the British Crown and the equity of the Ngarrindjeri in their traditional lands otherwise extant from 28 December 1836, be now held by the Crown in the right of South Australia.

Dominium is the highest form of English land holding recognised by a sovereign. It is NOT equal with dominion.

DOMINION is an international Sovereign power over a territory. A sovereign may have dominion without any land holding, and therefore without having any dominium in a territory. The United States war against Iraq gave it dominion in Iraq without dominium.

Dominium is the highest legal level of a sovereign's interest in land as a landholder. Dominion is the exercise of a sovereign power over a territory not depending on a prior or concurrent sovereign dominium to validate its exercise. Dominion is the exercise of an international sovereign power over a territory without requiring any prior or concurrent legal act of LAND HOLDING in the territory.

It is simply sufficient to successfully invade or to conquer another territory to gain dominion. Dominium requires legal land holding.

The exercise of DOMINIUM under English law is the legal act of holding land at the highest level capable of being maintained by the sovereign, and occurs where there is land legally available to be held within the legal authority of the sovereign. When English law provides for the exercise of the highest land holding by the English sovereign, the Crown holds the resulting dominium.

It equals the level of land holding held by the Ngarrindjeri Tendi in the land occupied by the Ngarrindjeri and that was constituted in English law on 19 February 1836, and which was capable of being recognised as such by the British Crown on 28 December 1836.

The Ngarrindjeri have NEVER surrendered this DOMINIUM because, on 19 February 1836, in an EXERCISE of the PREROGATIVE (a form of LEGAL power the CROWN exercises by EXECUTIVE act not otherwise authorised by LEGISLATION of the Parliament or the exercise of JUDICIAL power by a judge of a Court), Letters Patent were issued establishing the legal power of the Crown to hold land in South Australia, but which declared the traditional owners could legally continue to occupy and enjoy the lands they inhabited and that their descendants were equally entitled to continue to occupy and enjoy these lands their ancestors inhabited.

The 1836 Letters Patent constitute, in part, legal notice from the Crown to the native inhabitants and the world that, in the Crown attaining English sovereign dominion over the territory of all the inhabited lands of a future South Australia (including all the lands occupied by the Ngarrindjeri in their own territory), or asserting English sovereign dominion over this territory by a future act, the Crown could not be taken thereby to have obtained any land holding in the lands, because it abided the dominium of the land so occupied by traditional owners in their territory, which dominium was in the traditional owners and extended to their descendants.

This occupancy of the native inhabitants and their descendants until today, included the dominium of the Ngarrindjeri as traditional owners because in as far as the Letters Patent preserved the occupancy of inhabited lands, the lands inhabited by the Ngarrindjeri constituted the dominium of the Ngarrindjeri owners under the applicable English law constraining the exercise of the prerogative to the extent that the English common law and equity were applicable in all acts of the Crown of Great Britain over South Australia.

The sovereign of Ngarrindjeri lands on 19 February 1836 was the Ngarrindjeri through their Tendi, even if the actual sovereign was factually unknown then to the British Crown. The recognition of the legal sovereignty of the traditional owners was implied in the 1836 Letters Patent, because on their face they undertook a legal guarantee for the continued occupancy and enjoyment of their lands by the traditional owners and their descendants (including until today). This guarantee comprised the legal dominium of the traditional owners, which it expressly recognised - a dominium which English law constituted in the sovereign as its legal holder.

The recognition of a Ngarrindjeri dominion over Ngarrindjeri territory is an integral part of the implicit recognition of the dominion of the native inhabitants over their own lands, which the Letters Patent intended be dealt with without displacing its native occupants.

Accordingly, the dominium of native occupancy and enjoyment of inhabited lands recognised by the Letters Patent extended to the dominium of the Ngarrindjeri sovereign - the Ngarrindjeri Tendi, which maintains the Ngarrindjeri rights of occupancy and enjoyment.

The Ngarrindjeri land holding has remained within the dominium of the Aboriginal lands remaining with the traditional owners here.

In the absence of a further prerogative, legislative or judicial act, effective in canceling dominium, the Crown could NOT assert any dominium against the traditional owners in all that it did in South Australia, at least until 28 December 1836, when it failed to do so.

Instead, on 28 December 1836 Governor Hindmarsh, in the first exercise of the British Crown's prerogative in South Australia that established the Province of South Australia, recognised all Aboriginal people and their descendants as British subjects with all the privileges of subjects including the right to sue in equity to protect their property as the Traditional Owners, including whatever real property that had accrued to the traditional owners in the lands they inhabited, including their dominium in the lands they occupied.

This was NOT an exercise of the prerogative, or any other vested statutory power capable of divesting per se the Ngarrindjeri or the other traditional owners of their pre-attained dominium, even if it were a legal divestiture of the sovereignty of the traditional owners.

Once having attained the rights of British subjects to sue and maintain property in the lands comprised by their dominium, the Crown had an equitable obligation to protect these subjects from any injustice in the future treatment of their property by the Crown.

The Crown could not by further act deprive the traditional owners of their dominium, except by an exercise of power directed to that end which was just. The Crown granted the native inhabitants interests that extended to their descendants today and in the future.

In respect of this duty to treat the traditional owners justly over their property, the Crown remained subject to the authority of the English court of equity to displace any executive act of the Crown or exercise of the prerogative, which was unjust, or which was a denial of the incidents of dominium that was not in accordance with justice. This power of equity remains to be invoked for justice.

The British Crown was in 1836, and remains from 28 December 1836, subject to an incumbent lawful duty to have regard to the capacity of the traditional owners, as equal British subjects under the Crown, to exercise their equitable rights contained within their dominium prior to legally depriving the traditional owners and their descendants of their dominium over their traditional lands.

The Crown has neither met this obligation nor complied with this duty. The Ngarrindjeri have not been deprived of their dominium in any of these Ngarrindjeri 'dominium' lands that remain within the control of the Crown today despite the alienation of fee simple land.

In respect of all the lands in South Australia that have been alienated by the Crown and granted in fee simple to non-descendants of the traditional owners in South Australia, there is an equal equitable obligation incumbent on the British Crown to provide justice to the descendants today. The legal alienation of lands vested within the dominium of the native inhabitants in 1836 needs redress.

This obligation is within the purport of the Letters Patent of 1836, and the Proclamation of South Australia on 28 December 1836.

The duty incumbent on the British Crown to provide justice to the descendants of the traditional owners for any unjust disturbance to their dominium was established within the prerogative by, and continues to arise with, the Proclamation of South Australia by Governor Hindmarsh for the British Crown on 28 December 1836, by which the present descendants of the traditional owners have been assured of all the privileges of British subjects to sue the British Crown for injustice they may have suffered over their property.

READ THE ORIGINAL DOCUMENTS:
http://www.foundingdocs.gov.au/places/sa/sa2.htm
http://www.foundingdocs.gov.au/text_only/places/sa/sa2.htm
http://www.foundingdocs.gov.au/places/transcripts/sa/sa_rtf/sa2_doc_1836.rtf
http://www.foundingdocs.gov.au/explore/picture_album/sa_pics.htm
http://www.foundingdocs.gov.au/text_only/explore/picture_album/sa_pics.htm
http://www.foundingdocs.gov.au/explore/picture_album/sa_pics/e_sa3_72_p1_1836.jpg
http://www.foundingdocs.gov.au/explore/picture_album/sa_pics/e_sa3_72_p2_1836.jpg
http://www.foundingdocs.gov.au/explore/picture_album/sa_pics/e_sa3_72_p3_1836.jpg
http://www.foundingdocs.gov.au/explore/picture_album/sa_pics/e_sa3_72_p4_1836.jpg
http://www.southaustralianhistory.com.au/proclamation.htm

In announcing to the Colonists of His Majesty's Province of South Australia, the establishment of the Government, I hereby call upon them to conduct themselves on all occasions with order and quietness, duly to respect the laws, and by a course of industry and

sobriety, by the practice of sound morality, and a strict observance of the Ordinances of Religion, to prove themselves worthy to be the founders of a great and free Colony.

It is also, at this time especially, my duty to apprize the Colonists of my resolution, to take every lawful means for extending the same protection to the NATIVE POPULATION as to the rest of His Majesty's Subjects, and of my firm determination to punish with exemplary severity all acts of violence or injustice which may in any manner be practiced or attempted against the natives, who are to be considered as much under the safeguard of the law as the Colonists themselves, and equally entitled to the privileges of British Subjects.

I trust therefore, with confidence to the exercise of moderation and forebearance by all Classes, in their intercourse with the Native Inhabitants, and that they will omit no opportunity of assisting me to fulfill His Majesty's most gracious and benevolent intentions towards them by promotingtheir advancement in civilization, and ultimately, under the Blessing of Divine Providence, their conversion to the Christian Faith.

By His Excellency's Command,
ROBERT GOUGER,
Colonial Secretary,

Glenelg, 28th December, 1836.

GOD SAVE THE KING.

This first document is in the possession of South Australia in State Records.

It is very important to recognise that it has been ALTERED after it was written (the words "the Province of") were added after it was FIRST drafted. They are written in different ink. These additional words are an exercise of the powers vested in the Governor Hindmarsh under the 1834 British South Australia Foundation Act.

They establish South Australia as ONE and NOT more than one Province.

Advice is needed whether this action may be construed by a court of law in the correct jurisdiction so as NOT to defeat the prior rights vested in the ancestors of today's South Australian Aboriginal descendants and for all Ngarrindjeri and their descendants, and which were given an EXPRESS recognition of their legitimacy under the Letters Patent of 19 February 1836 more than TEN (10) months prior to the Proclamation.

The construction of the Proclamation would need to be placed in the hands of a judge in a court that has jurisdiction over a matter in which the construction of the 1836 Proclamation would be necessary.

Such a judge could agree with the right of the Ngarrindjeri descendants today to claim that in the legal step of defeating the creation of more than one province in South Australia, which Governor Hindmarsh had undertaken, the Governor must be constrained by law or equity to have legally preserved the rights of the Aboriginal ancestors, and all their descendants (extending to all Ngarrindjeri descendants) as they were recognised in the prior 1836 Letters Patent.

Such a step would have occurred if the Proclamation is construed to be a unilateral treaty with the occupiers of their lands from 19 February 1836 that legally extends to all their descendants today, in as far as the terms of the Proclamation conferred British subjectivity and all its legal rights on those occupiers and their descendants, which include Ngarrindjeri today.

This is something that needs to be CAREFULLY assessed in an English Court of Law having jurisdiction to summon or order the Proclamation to be brought to the court for examination.

PLEASE SEE:

http://www.foundingdocs.gov.au/explore/picture_album/sa_pics/e_sa3_72_p1_1836.jpg

Page two (2) establishes the legal status of South Australia as a free colony. This cuts both ways. If South Australia's establishment in legal freedom from military law arises in this document, then the identical status may be accorded by law to what ever else it establishes - Ngarrindjeri rights.

http://www.foundingdocs.gov.au/explore/picture_album/sa_pics/e_sa3_72_p2_1836.jpg

THUS the following page three (3) is DIRECTLY relevant to the endowment by unilateral treaty of the privileges of British subjectivity, which the Ngarrindjeri are fully entitled to claim today in an English Court of Law extends today to full legal rights to have the terms of the 1836 Letters Patent upheld.

http://www.foundingdocs.gov.au/explore/picture_album/sa_pics/e_sa3_72_p3_1836.jpg

FINALLY, this page four (4) establishes the naming of Glenelg as a matter of fact for the first time in law.

The original intention was to make this legal proclamation in Adelaide. However, "Adelaide" was crossed out and "Glenelg" inserted to establish that as a matter of English law the place at which South Australia was proclaimed was in fact Glenelg. The location was therefore known in fact and equally so was the fact of the existence of Aboriginal ancestors as British subjects on the same day.

This alteration needs to be examined by an English Court of Law and it needs to be interpreted in the same case in which any descendants claim their rights to be enforceable by unilateral treaty from 28 December 1836 as they previously arose on 19 February 1836 under the Letters Patent that first implement them.

http://www.foundingdocs.gov.au/explore/picture_album/sa_pics/e_sa3_72_p4_1836.jpg

The follow up implementation of Lord Grey's Act (1851) regarding pastoral Leases in South Australia should NOT be overlooked in any legal case.

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