Factsheet

The Woodward Royal Commission 2022

ANTAR

The Woodward Royal Commission

"The doing of simple justice to a people who have been deprived of their land without their consent and without compensation."[1]

This is how Justice Edward Woodward understood the underlying aim of recognising and protecting the land rights of Aboriginal people in the Northern Territory.

The Woodward Royal Commission was a foundational step in the recognition of Aboriginal and Torres Strait Islander land rights in Australian law. Chaired by Justice Woodward, the Royal Commission was established in 1973 by the Whitlam Government to find an appropriate way to recognise the traditional rights and interests of Aboriginal people in and to the land.[2]

The Royal Commission produced two reports that recommended a package of significant reform. Among other key elements, the Commission recommended the establishment of Aboriginal Land Councils in the Northern Territory, as well as legislation to restore Aboriginal ownership of land. That recommendation eventually became the *Aboriginal Land Rights (Northern Territory) Act 1976* (Cth)—the first Australian law that allowed for First Peoples to have their land rights recognised in Australian law. As a direct result of the Woodward Royal Commission, today about 50 per cent of the Northern Territory and 85 per cent of its coastline is Aboriginal land.

To understand the significance of the Woodward Royal Commission it is important to appreciate its place in history. In this factsheet, we focus on the Yirrkala Bark Petition. See Vincent Lingiari and the Gurindji Strike and the Larrakia Petition for two other key events that helped drive the establishment of the Woodward Commission.

[1]Aboriginal Land Rights Commission, *Second Report* (April 1974) 2 [3](i).
[2]Aboriginal Land Rights Commission, *First Report* (July 1973) iii.

Terra Nullius

When the British colonised the Australian continent, they ignored the rights and interests of Aboriginal and Torres Strait Islander peoples. In the 1889 case of *Cooper v Stuart*, the Privy Council – then the highest Court for Australia – held that when the British arrived, the Australian continent was 'a tract of territory practically unoccupied, without settled inhabitants or settled law'.[3]

This was factually incorrect. However, it was not until the High Court of Australia's decision in *Mabo (No 2)* in 1992 that the ruling in *Cooper v Stuart* was overturned.

In the meantime, Australian law developed on the fiction that Aboriginal and Torres Strait Islander peoples did not possess any legal interests in land. This meant that Australian governments could sell and lease land without asking the Aboriginal and Torres Strait Islander peoples who had cared for their country for at least 60,000 years.

The Yirrkala Bark Petitions

In the 1950s and 60s, large deposits of bauxite were discovered near the Yolngu community of Yirrkala on the Gove Peninsula in Arnhem Land. In 1963, the Australian Federal government announced that it would lease 300 square kilometres of land to a mining company to exploit the resources. The government did not ask the Yolngu people if they wanted a mine to be set up on their country.

The Yolngu people decided to petition the Australian Parliament. Written in both Yolngu and English, the petitions were set on bark and bounded by designs painted in ochre, illustrating both Yolngu law and their rightful connection to Country. In this way, the Yirrkala Bark Petitions were a bridge between Australian and Yolngu law.

[3] (1889) 14 App Cas 286, 292.

The petitions were also clear in their demands. The petitions explained that 'the land in question has been hunting and food gathering land for the Yirrkala tribes from time immemorial' and 'that places sacred to the Yirrkala people, as well as vital to their livelihood are in the excised land'.

The petitions also spoke to the alienation felt by First Peoples in Australia. It noted that the 'people of this area fear that their needs and interests will be completely ignored as they have been ignored in the past'. It concluded by calling on the House of Representatives to 'appoint a committee, accompanied by competent interpreters, to hear the views of the people of Yirrkala before permitting the excision of this land' and to ensure 'that no arrangements be entered into with any company which will destroy the livelihood and independence of the Yirrkala people'.

The Australian Parliament tabled the Bark Petitions – the first time the Australian state had formally recognised Aboriginal and Torres Strait Islander documents – and set up a committee to investigate the issue. The *Select Committee on Grievances of Yirrkala Aborigines, Arnhem Land Reserve* travelled to Darwin and Yirrkala to hear directly from the Yolngu. The Committee's Report recommended that changes should be made. The Committee concluded that the Yolngu must be compensated for the loss of their traditional territory by granting land rights, royalties from the mining operation, and providing financial compensation for the loss of traditional occupancy 'even though these rights are not legally expressed under the laws of the Northern Territory'.[4]

These recommendations were ignored. In 1968, the Federal government granted rights to Nabalco to develop a bauxite mine. The Yolngu were not consulted. This time, they decided to go to Court.

[4] *Select Committee on Grievances of Yirrkala Aborigines, Arnhem Land Reserve*, Parliament of Australia (29 October 1963) [70].

The Gove Land Rights Case

In December 1968, the Yolngu challenged this decision. They sought an injunction in the Northern Territory Supreme Court to stop the mining. The Yolngu asserted they held a communal native title over their lands, and that their legal rights had not been extinguished by Australian law.

Justice Blackburn rejected their claim to land rights. The judge acknowledged that the Yolngu people possessed 'a subtle and elaborate system [of laws] highly adapted to the country in which the people led their lives'.[5] However, Justice Blackburn felt bound to follow the precedent in *Cooper v Stuart*. He held that native title 'does not, and never has formed, part of the law of any part of Australia'.[6]

The decision left the Yolngu 'deeply shocked'. In a statement to Prime Minister William McMahon, the Yolngu outlined their views:

'We cannot be satisfied with anything less than ownership of the land. The land and law, the sacred places, songs, dances and language were given to our ancestors by spirits Djangkawu and Barama. We are worried that without the land future generations could not maintain our culture. We have the right to say to anybody not to come to our country. We gave permission for one mining company but we did not give away the land. The Australian law has said that the land is not ours. This is not so. It might be right legally but morally it's wrong. The law must be changed. The place does not belong to white man. They only want it for the money they can make. They will destroy plants, animal life and the culture of the people.'[7]

[5] *Milirrpum v Nabalco* (1971) 17 FLR 141, 267.
[6] Ibid 245.
[7] The People of Yirrkala, 'Yolngu Statement in the Gupapunyngu Language' (online, 6 May 1971) <http://www.kooriweb.org/foley/resources/pdfs/126.pdf>.

Justice Blackburn may have ruled against the Yolngu, but he believed that their rights to land should be recognised. In a confidential memorandum to the Government and Opposition, he noted that the morality of a system of Aboriginal land rights was 'beyond question'.[8]

A Political Solution

In finding that the Yolngu possessed a 'subtle and elaborate system of laws', Justice Blackburn left open the possibility that native title might be recognised in the future. However, the decision was not appealed to the High Court. Edward Woodward, one of the lawyers for the Yolngu worried that the High Court would not be sympathetic to their case. Instead, the Yolngu deliberately chose to pursue their rights through Parliament.[9]

Prime Minister McMahon rejected the call for land rights. In a speech on Australia Day in 1972, he announced that Aboriginal people would be encouraged to apply for leases. The McMahon government's dismissive policy response sparked the creation of the Aboriginal Tent Embassy. It also prompted renewed calls for land rights.

The Labor Opposition offered an alternative. Opposition leader Gough Whitlam visited the Tent Embassy outside Parliament House. Later, during the election campaign Whitlam announced that a Labor government would:

'Legislate to give aborigines land rights – not just because their case is beyond argument, but because all of us as Australians are diminished while the aborigines are denied their rightful place in this nation.'[10]

[8] Memorandum, from Sir Richard Blackburn, quoted in Frank Brennan, *No Small Change: The Road to Recognition for Indigenous Australia* (University of Queensland Press, 2015) 137-138.
[9] Edward Woodward, *One Brief Interval* (Miegunyah Press, 2005), cited in John Fogarty and Jacinta Dwyer, 'The First Aboriginal Land Rights Case' in Helen Sykes (ed), *More or Less: Democracy and New Media* (Future Leaders, 2012) 174, 186.
[10] Gough Whitlam (Speech, Blacktown, NSW, 13 November 1972) <https://electionspeeches.moadoph.gov.au/speeches/1972-gough-whitlam>.

The Labor party secured election in December 1972. Within two weeks, Prime Minister Whitlam commissioned Edward Woodward to lead a Royal Commission into Aboriginal Land Rights.

The Royal Commission

The Commission produced two reports. The first report, handed down in April 1973, recommended the Federal Government set up a Central and Northern Aboriginal Land Council in the Northern Territory. The second report drew on submissions provided by the new land councils and provided a 'blueprint for an Aboriginal land rights law in the Northern Territory'. Among other elements, the report recommended that:

- All Aboriginal reserve lands be returned to Aboriginal people.
- Aboriginal land and Aboriginal sacred sites should be protected.
- Aboriginal land and Aboriginal land councils should be set up to administer Aboriginal land.
- Entry to Aboriginal land for mining or tourism should be subject to Aboriginal control.
- Mining and other developments on Aboriginal land should proceed only with the permission of the Aboriginal land owners.
- If mining proceeds, royalties must be paid to the traditional land owners.

The Whitlam Government supported these recommendations. In 1975, it introduced into Parliament a Bill based on Woodward's report. Before the Bill could be passed, however, the government was dismissed in the 1975 constitutional crisis.

The new Malcolm Fraser-led Coalition government did not abandon the push for land rights. A revised Land Rights Act was passed by the Parliament in 1976.

The Aboriginal Land Rights (Northern Territory) Act 1976 was the first law by any Australian government to recognise Aboriginal rights to land and to establish a legal basis for Aboriginal people to claim right to land based on native title.

After The Land Rights Act

The persistence of the Yolngu at Yirrkala changed Australia for the better. Through bark petitions, litigation, and a Royal Commission, the Yolngu helped Australians understand the need for ‘simple justice’. In 1978, fifteen years after presenting their bark petitions, the Yolngu were found to possess land rights under the new law.

However, much more was needed to be done. It was not until the passage of the Native Title Act in 1993 that a national system of land rights for Aboriginal and Torres Strait Islander peoples was established in Australian law.

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With thanks:

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ANTAR is proud to acknowledge and pay our respects to First Nations Peoples as the traditional owners of the lands on which we work across the continent.

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