

## CHAPTER 3

### THE ABORIGINAL LAND RIGHTS ACT: POLITICS AND THE ART OF THE POSSIBLE

The greatest aspect of the political process [from the 1978 Inquiry to the ALRA] was that whole procedure — the Select Committee, meetings all over the state and for that matter over the country and going out and literally sitting with them in the dirt ... It was total commitment ... that was the biggest thing to come out of it, the legislation, yes, but much more than that, the people understood for the first time, in their experiences, in their forebears experiences, they were truly being listened to; were truly part of the process ... were being invited to be part of that process and actually being listened to. — Pat O’Shane<sup>1</sup>

We weren’t capitalists; we saw this as a political structure, cells if you like; with power devolved to the local level. — Hon. Frank Walker<sup>2</sup>

To establish a relationship of governance it is necessary to first re-constitute the poor and powerless as acting subjects.

To govern then means first to stir up the desire, the interest and will to participate or act politically. — B Cruikshank<sup>3</sup>

Following the tabling of the fulsome and sympathetic reports of the 1978 Inquiry Select Committee (1980 and 1981), in late 1982 a draft of the government’s proposed Aboriginal Land Rights laws, the *Green Paper on Aboriginal Land Rights in New South Wales*, was circulated for public feedback.<sup>4</sup> In quick succession, the new laws were debated in the NSW Parliament in March 1983, for commencement just a few months later. After many generations of activism, the moment had finally arrived where the government of the day was to acknowledge the pre-existing and enduring Aboriginal rights to land and the legitimacy of cultural identity in order to achieve social, political and economic justice.

However, the laws that went to the parliament were viewed as deeply flawed. In a flood of anger and disappointment, thousands of Aboriginal people and their supporters protested late into the night as the parliament

debated their fate. The passage of what was, and continues to be, the most significant change in NSW Aboriginal policy, with the creation of an enduring land and capital base and representative network, was mired in controversy and the Labor government bitterly accused of betrayal, deception and duplicity.

Little is understood of the highly controversial period following the far-reaching recommendations of the 1978 Inquiry and passage of the NSW *Aboriginal Land Rights Act* in March 1983. This chapter, drawing on interviews with leading government figures, access to Cabinet-in-confidence documents and the archive, examines the politics and ideas that shaped the Aboriginal Land Rights Bill put to the NSW Parliament in March 1983.

### **The development and passage of the *Aboriginal Land Rights Act***

During the period from August 1982 to March 1983, several processes were simultaneously underway in the development of the *Aboriginal Land Rights Act 1983*. One key event was the hosting by Minister Frank Walker in August 1982 of some 150 Aboriginal community leaders to talk through the Land Rights proposal. While this gathering demonstrates the ongoing engagement, optimism and 'buy-in' of Aboriginal community leaders, it was viewed by government in very different terms: for Walker, as the responsible Minister and drafter of the laws, this gathering marked an end-point in negotiation and consultation. Whereas extensive consultation and input from the Aboriginal leadership and community had characterised proceedings to date, and progressive white Australian grass-roots support had sustained the government's actions, different consultations and tactics were required to secure the next step. After the meeting of Aboriginal community leaders in August 1982, Walker believed it was time to 'move on'. He recalled: 'Aboriginal people, they love to talk, they wanted to talk and talk ... be consulted endlessly'; however, in his political assessment, 'the time for talking had come to an end'.<sup>5</sup>

The delimiting of Aboriginal involvement in the development of the laws was a contributing factor in the sense of betrayal the following year. While this does not suggest the wholesale severing of conversations and interactions between government and Aboriginal leadership over the form and content of the laws, there was a certain reality that prevailed in relation to this delimiting. As the lead negotiator of the government's Land Rights response, Walker teases out two important points. In his view, and with specific reference to his getting the Land Rights laws 'across the line', the development of the new laws (and statutory laws more broadly) took place

in the inner sanctum of government, shaped by processes and pressures unknowable to all but a handful of politicians and powerful elites. Second, he was very concerned that those same forces would defeat any Land Rights response. On these points, Walker emphasised in an interview that 'once you get into a Cabinet room, there's a whole different world of issues, there's two different worlds, there really is'.<sup>6</sup> In Walker's account, powerful groups exert influence in ways unrealised by the public:

There's the ostensible lobby group ... then there's the *real lobby group*. They are the ones that never appear on the surface, or in the media ... they get their ideas into Cabinet. Often decisions are made differently to what researchers think, they don't appear in the media or anywhere public.

At the same time, many Aboriginal activists saw themselves as contributing to the drafting of the land laws, and are indeed credited with shaping much of the content. Although difficult to establish precisely, it is clear that these 'organic' intellectuals were front-footed and respected contributors. Kevin Cook, the chair of the non-statutory NSW ALC, established in 1977, held and continues to hold the strong view that the 'NSW ALC wrote the legislation, we put the ideas forward ... we did most of the work on it', but he adds (significantly), 'then the government put in what they wanted'.<sup>7</sup>

The shaping of the laws by Aboriginal people continued the rapport that developed between the Aboriginal leadership, Walker and other parliamentarians who they came to know more closely through the 1978 Inquiry. MP Bill Knott, member for Kiama and committee member of the 1978 Inquiry, whose electorate covered the Wallaga Lake area, held a long and close association with his Aboriginal constituents – including, as noted in his parliamentary biography, 'honorary' membership of the Yuin nation. Of this association Cook explained,

We used to use Bill Knott's, and Frank Walker's office too, when people would come down from country areas, we used to take them in and talk about Land Rights, [they were] open to us all the time, never knocked us back. We had a good rapport.<sup>8</sup>

With some irony, given the criticism of the Bill that followed, Pat O'Shane also noted the input of key Aboriginal intellectuals, saying:

A lot of what was implemented was put forward by the likes of [Paul] Coe and [Bob] Bellea where, in meetings with the ministry, it was common to agree, 'Yes that's not a bad idea, yes we'll go with that'.<sup>9</sup>