Aboriginal Land (Lake Condah and Framlingham Forest) Bill 1987

Date Introduced: 25 March 1987
House: House of Representatives
Presented by: Hon. Clyde Holding, M.P., Minister for Aboriginal Affairs

Digest of Bill

Purpose
To grant inalienable title to land in the Lake Condah and Framlingham Forest areas of Victoria to its traditional owners and to provide for the management of that land.

Background
This Bill is the result of a request by the Victorian Government for the Commonwealth to enact legislation to achieve the major aims of Victorian legislation that was likely to be amended by the Opposition.

In 1986 three Bills were introduced into the Victorian Parliament to transfer title of certain land to its traditional owners and to give Aborigines a greater say in the preservation of Aboriginal cultural heritage. The Aboriginal Land (Framlingham Forest) Bill (No. 2) 1986 intended to grant inalienable title to 11 sq km of land adjacent to an area previously granted to the traditional owners, the Koori-Wurroon clan. The Aboriginal Land (Lake Condah) Bill 1986 sought to grant title to 0.5 sq km to the Kurrup-Jmara clan. The Aboriginal Cultural Heritage Bill 1986 sought to directly involve Aboriginal communities in the preservation of objects and places of religious, historical or cultural significance to them.

The Aboriginal Land (Lake Condah) Bill 1986 passed the Legislative Assembly and amendments were sought by the Opposition controlled Legislative Council. The Opposition's disagreement with the Bill centered on the nature of the title to be given to the traditional owners. Rather than an inalienable title that could not be disposed of, the Opposition sought to grant freehold title. This would enable the owners to sell the land or use it as security for the raising of funds. Under the proposed amendment the elders of the community would be required to agree unanimously before the land was disposed of. The Opposition also objected to the provisions of the Bill relating to mining which would require the approval of the traditional owners before mining could commence. While there are no mining prospects at Lake Condah the
Opposition saw the provisions as a possible precedent for mining elsewhere. As a result of the amendments sought by the Legislative Council the Bill was not put to a vote in that chamber. The other land grant Bill was introduced in the Legislative Assembly but, as it was facing the same complaints as the Lake Condah Bill, was not passed by that chamber.

The Aboriginal Cultural Heritage Bill 1986 also passed the Legislative Assembly but faced defeat in the Legislative Council. The Opposition argued that issues other than the cultural heritage of Aborigines were relevant to certain discoveries and that these should be considered when drawing up guidelines for protection. Again there was no vote on the Bill in the Legislative Council.

Following the problems encountered with the passage of the Bills the Victorian Government in late 1986 requested the Federal Government to use its powers to implement, as far as possible, the purposes of the three Bills. The Commonwealth can legislate in this area by virtue of the amendment to paragraph 51 (XXVI) of the Constitution passed by referendum in 1967. The Commonwealth’s preference for inalienable title is expressed in the Aboriginal Land Rights (Northern Territory) Act 1976.

The decision by the Commonwealth to legislate in this area caused considerable reaction from the Victorian Opposition. The decision was seen as undermining State rights and the leader of the Victorian Opposition Mr Kennett is reported as stating ‘the Cain Government is thumbing its noses at the Victorian community and setting a precedent that is totally horrendous’. The Victorian Government defended the decision on the grounds that inalienable title had been requested by the traditional owners in question and had been granted to other traditional owners in Victoria, the special relationship with land in Aboriginal culture and the desire to implement the proposals without further delay.

A similar situation arose in South Australia in 1984 when the opposition blocked passage of legislation for land rights in the Maralinga area. Though the Commonwealth threatened to legislate on the matter, it was eventually passed with amendments.

The major purposes of the Aboriginal Cultural Heritage Bill 1986 will be implemented by the Aboriginal and Torres Strait Islander Heritage Protection Bill 1987.

Main Provisions

The preamble to the Bill deals with Victoria’s request for legislation and the relationship between the traditional owners and the land and states that the Victorian Government acknowledges that the land was taken from its traditional owners by force without consideration of compensation. The preamble also states that the Commonwealth does not acknowledge the matters acknowledged by Victoria but has agreed to this Bill.
Condah land is defined to be the area shown in Schedule 1 to the Bill while Framlingham forest is the area shown in Schedule 2 (clause 3).

The Minister will be able to delegate any or all of the powers conferred by this Bill to a Victorian Minister and that Minister will be able to delegate to certain persons (clause 5).

Part II of the Bill deals with the vesting of land. Condah land, other than any minerals in that land, will be vested in the Kerrup-Jmara Elders Aboriginal Corporation by clause 6 and Framlingham forest, other than mineral rights, will be vested in the Kirrae Whurrong Aboriginal corporation by clause 7. Any person with an interest in the land is to be notified as soon as possible after the vesting (clause 9).

The compensation provisions of the *Lands Acquisition Act* 1955 will apply to any land compulsorily acquired by virtue of this Bill (clause 11).

Part III will deal with the management of Condah land. The land is to be managed by the Kerrup-Jmara Elders Aboriginal Corporation (the Corporation) and that body will be able to transfer the land to another Aboriginal community provided no adult member of the Corporation objects. Leases to persons other than the Crown or a public authority of Victoria or the Commonwealth for a period exceeding three years are not to be granted unless approved by the Minister (clause 13).

Rights of access, except for the hatched road shown in Schedule 1, will be maintained (clause 14).

Clause 15 will allow the Corporation to make by-laws that are not inconsistent with Commonwealth or Victorian laws for a number of matters including use of the land, the declaration of significant sites, the protection of fauna and flora, the cutting of timber and the control of visitors and entrance fees. The by-laws may also provide that it will be an offence to breach a by-law with maximum fines of $500 for natural persons and $2,500 for corporations.

The Corporation will be required to keep a register of sacred and significant sites (clause 16).

The Committee of Elders will determine whether a person is a member of the Corporation and matters relating to spiritual or cultural significance, the management of sacred sites, the maintenance of traditional customs and practices and the harvesting of animals and plants (clause 18).

If the Corporation is wound up and the land has not been transferred to another Aboriginal group it will vest in the Commonwealth (clause 19).

Part IV (clauses 21 to 29) provide for the same matters to apply to the Kirrae Whurrong Aboriginal Corporation in relation to the Framlingham Forest.
Part V will deal with mining. It will be an offence to carry out mining or enter land for mining without permission otherwise in relation to a mining tenement in force, renewed or extended before the land becomes vested in the traditional owners (clause 30). A person may, with the Ministers approval, apply to the relevant Corporation for permission to mine on the land and the Corporation may refuse permission or attach conditions that are not inconsistent with Commonwealth or Victorian law (clause 31). The Corporation may require reasonable consideration for the granting of a mining right (clause 32).

Clause 33 provides for conciliation and arbitration of decisions to refuse mining or to attach conditions. Having regard to the matters mentioned in the clause (e.g. the protection of the lifestyle, the wishes of the traditional owners and the preservation of the environment) the arbitrator, who is to be appointed by the Minister, may confirm or vary the Corporations decision or substitute its own. The arbitrators decision will be deemed to be that of the Corporation.

It will be an offence to, without Ministerial approval, give or offer any payment to obtain permission to mine other than the payments authorised by this Bill (clause 36).

Clause 39 will establish trust funds. There will be a Condah Land Trust Fund and a Framlingham Forest Trust Fund and, from time to time, sums determined by regulation will be paid into the Funds from the Consolidated Revenue Fund. Half of each Fund will be paid to the relevant Corporation and half to the Aboriginal Advancement Trust Fund.

The land subject to this Bill will be exempt from tax under the Land Tax Act 1958 of Victoria (clause 40).

Compensation will be payable for property acquired (clause 41).

Reference
1. The Age, 23 January 1987, 'Kennett hits land rights move'.

For further information, if required, contact the Law and Government Group.