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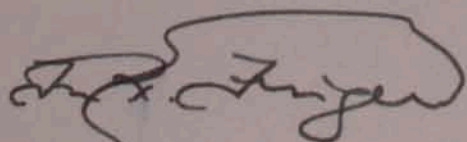
CABINET DECISION

NO. 1863

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Submission No.: 1574  
Title: MAKARRATA AGREEMENT

Cabinet noted the issues for Makarrata but decided to await positive proposals from the National Aboriginal Conference which could be the subject of future discussions.



(M.R. FINGER),  
Secretary to Cabinet.

11 August, 1981.

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FOR CABINET

SUBMISSION No: ..... 1574 .....

Title:	MAKARRATA AGREEMENT
Minister	The Hon. P.A.E. Everingham, M.L.A.
Purpose:	To provide an Information Paper for Cabinet about the present position in relation to Makarrata.
Relation to existing policy:	Not Applicable
Timing/ legislative priority:	Not Applicable
Announcement of decision, tabling, etc:	None
Acting re- quired before announcement:	None
Staffing implications, numbers and costs, etc:	None
Total cost:	None



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Department/Authority ..... PUBLIC SERVICE COMMISSIONER .....

COMMENT ON CABINET SUBMISSION No.

TITLE: ..... INFORMATION PAPER FOR CABINET - MAKARRATA .....

COMMENTS:

This Office has no comment on the Submission. There are no staffing implications.

  
P. J. BARTHOLOMEW

SIGNED: P. J. BARTHOLOMEW  
DESIGNATION: for PUBLIC SERVICE COMMISSIONER

DATE: 25 JUNE 1981

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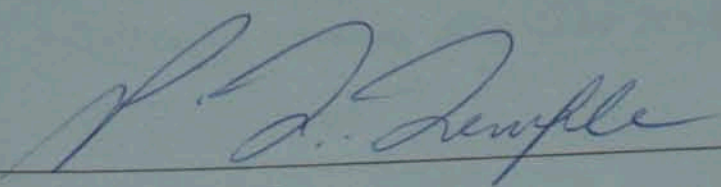
Department/Authority ..... DEPARTMENT OF THE TREASURY .....

COMMENT ON CABINET SUBMISSION No.

TITLE: ..... INFORMATION PAPER FOR CABINET - MAKARRATA .....

COMMENTS:

Submission supported.



SIGNED: P.F. TEMPLE

DESIGNATION: Deputy Under Treasurer

DATE: 26/6/81

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ISSUES

1. At the last meeting of the Australian Aboriginal Affairs Council held in Darwin, March 1981, the Chief Minister and all other Ministers agreed that the Northern Territory Government and their respective Governments would enter into discussions with the National Aboriginal Conference on the question of Makarrata.
2. A central issue is - should the Northern Territory Government, at this stage, develop its own position and adopt a particular posture in relation to Makarrata, or alternatively, should it wait and see what final specific proposals the National Aboriginal Conference has to offer and to respond to these when discussions are entered into?
3. The Chief Minister had earlier stated that the contribution the Northern Territory Government will make will be developed in detail after and when negotiations move closer to reality.
4. Tentative proposals embraced by Makarrata would have significant implications of a legal, constitutional, political and social kind for Commonwealth, State or Territory Government.

BACKGROUND

5. Makarrata is a word in the Yolngu language loosely meaning a coming together after a struggle, facing the facts of wrongs and living again in peace.
6. The Commonwealth Government has agreed the National Aboriginal Conference develop proposals for a Makarrata. The original concept for a Makarrata,

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or for a treaty, was put forward by a group of white Australians headed by Dr. H.C. Coombs and known as "The Aboriginal Treaty Committee".

7. The National Aboriginal Conference has been given the carriage for the consultative process in respect of developing the Makarrata concept. The National Aboriginal Conference believes that the Makarrata provides the framework for Aboriginal economic, social and political advancement.
8. The initial Makarrata proposals put forward were for a Treaty, Covenant or Convention which should include provision relating to the following matters :
  - (1.) The protection of Aboriginal identity, language, law and culture.
  - (2.) The recognition and restoration of rights to land by applying throughout Australia the recommendations of the Woodward Commission.
  - (3.) The conditions governing mining and exploration of their natural resources on Aboriginal land.
  - (4.) Compensation to Aboriginal Australians for the loss of traditional lands and to their traditional way of life.
  - (5.) The right of Aboriginal Australians to control their own affairs and to establish their own associations for this purpose.
9. The National Aboriginal Conference has set up sub-committees and commenced consultations with Aboriginal communities and Aboriginal bodies in all States. Previously, the Governments of Queensland and Western

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Australia had declined to enter into any discussions at the official level with the National Aboriginal Conference on the question of Makarrata. However, at the last meeting of the Australian Aboriginal Affairs Council in Darwin, all State Governments, including the Northern Territory Government, said that they would agree to discussions.

CONSIDERATION OF THE ISSUES

10. Arguments advanced in support of a Makarrata include:

It could provide some compensation for those Aboriginal descendants who have suffered injustices, been dispossessed etc:

It would provide a basis for Aboriginals to further social, economic and political advancement as part of the Australian Community.

It would bring Australia to the position of parity with equivalent nations in the area of civil and political rights and would lessen international pressures:

It would overcome historical legal doctrines which are inimical to Aboriginal interests:

It would be a logical extension of current Commonwealth policies to promote self-management and self-determination:

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It would conform with the wishes of the majority of Australians that Aborigines require a better deal.

11. Arguments advanced in opposition to Makarrata include :

A policy of assimilation is preferable. A situation which allows Aborigines to have a separate and unique place in Australian society should not be fostered;

A Treaty involving people within one Nation State is a contradiction in terms and is divisive and unnecessary;

Historical errors cannot be resolved by turning back the clock;

The best course is not to foster more rights in Aborigines but is to adjust existing institutions and processes to help Aborigines advance. Adjustments to the current situation is all that is needed;

Overseas experiences show that Treaties do not necessarily lead to improved circumstances for indigenous people;

A meaningful treaty is not realistic in view of the complexities involving Commonwealth, States and Aboriginal people.

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12. In an earlier submission concerning Makarrata the Department of Law notes that the proposals for a Treaty originally put by the Aboriginal Treaty Committee would be unlikely of achieving success because of the constitutional impediment. The Department of Law also saw the Treaty proposal as being divisive. Policy proposal attitude should be to minimise the polarising effect where possible and therefore oppose the Coombs (Aboriginal Treaty Committee) proposal.
13. However, an item in the Australian Law Journal (Volume 54 May 1980) generally lends support to the concept. Referring to Stuart Harris' book "It's Coming Yet ..... An Aboriginal Treaty within Australia Between Australians" the Law Journal states that what is most significant is that the material presented serves to challenge some of the central assumptions on which the case-law, unfavourable to Aboriginal claims of nationhood and sovereignty, is founded. It emerges from a number of the facts referred to that it is not at all clear that the whole of Australia was acquired by settlement, that is to say by a form of international occupation, rather than by - at least in certain areas of Australia - a form of dispossession tantamount to conquest according to the traditional 19th Century rules of international law but preceding the foundation of the League of Nations, and the establishment of its successor, the United Nations. If an Aboriginal Treaty or Pact is to be concluded, it would seem that this should be preceded by the very fullest enquiry into the historical and sociological facts so that nothing favourable to the Aboriginal claims is overlooked.



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14. The Law Journal article goes on to state that from the legal stand point, it seems that the proposed Treaty or Pact will need to be underpinned by legislation of the Federal Parliament and for abundant caution, by uniform statutes of the State Parliaments. The objection that there will be discrimination against the white inhabitants of Australia is clearly untenable in the light of the current experience in the United States, where, with the backing of the Supreme Court of that country, "affirmative" race programmes have not only been constitutionally validated but have gained such de facto acceptance as now to be of a commonplace nature."
15. In response to questions in the Senate on 25 March and 31 March 1981, Senator Baume made the following points concerning the Commonwealth Government's position in relation to particular aspects of Makarrata:
- a) The Government is prepared to acknowledge prior occupation of Australia by Aborigines;
  - b) The Government is not prepared to act unilaterally in those areas where the States have an interest;
  - c) The Government cannot negotiate a Treaty which implies an internationally recognised agreement between two Nations;
  - d) The Government cannot agree to any fixed financial commitment into the future;
  - e) The Government cannot support the proposal for reserved seats in the parliament for Aborigines;

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- f) The Government does not believe that a system where Aboriginal employment is subject to a rigidly fixed formula is appropriate.
- g) The Government is prepared to acknowledge prior occupation of Australia and is prepared to acknowledge dispossession and disadvantage suffered by the Aboriginal people;
- h) The only agreement reached at the moment is the agreement of several of the States to negotiate with the National Aboriginal Conference.
- i) The Government has suggested to the National Aboriginal Conference that it may wish to put a series of proposals to the Government about outcome objectives which it might aim for in a wide range of Aboriginal advancement programmes.

OPTIONS

- 16. (1.) Cabinet take note of the issues including pros and cons of Makarrata and await positive proposals which the National Aboriginal Conference could be invited to put forward at later discussions with the Northern Territory Government.
- (2.) Cabinet consider and weigh up the pros and cons for a Makarrata and develop a policy position for later discussion with the National Aboriginal Conference and the Commonwealth Government.

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17. The first option is preferred.

PUBLIC IMPACT

18. If the first option is adopted public impact is likely to be minimal.

If the second option is adopted and if the Government comes out in opposition to Makarrata, Aboriginal response is likely to be unfavourable. If, on the other hand, Government comes out in support of Makarrata there is likely to be an adverse reaction from some Northern Territory Europeans. However, the overall national response from Europeans could be favourable. European opposition in the Northern Territory is likely to be minimised if the Northern Territory Government exercises similar reservations as those stated above by the Commonwealth Government.

FINANCIAL CONSIDERATIONS

19. Not applicable

EMPLOYMENT CONSIDERATIONS

20. Not applicable

COMMONWEALTH AND LOCAL GOVERNMENT RELATIONS

21. Not applicable

CO-ORDINATION AND CONSULTATION

22. This will be an ongoing process between the National Aboriginal Conference, State and Territory Governments and the Territory and Commonwealth Governments.



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23. Department of Law have no specific comments to make. (Refer attachment).
24. The Office of the Co-ordinator General has no comments to make. (Refer attachment).

LEGISLATION

25. No new Legislation required at this stage.

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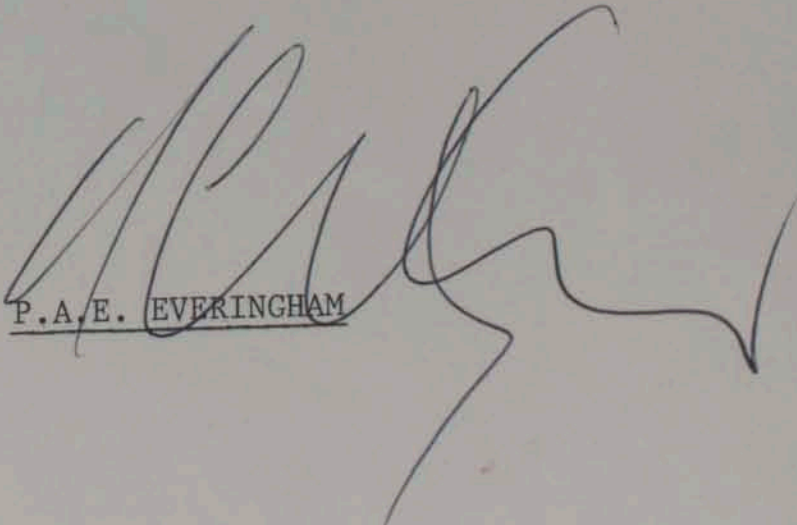
26. None.

TIMING

27. Not applicable

RECOMMENDATIONS

28. That Cabinet take note of the issues including the pros and cons for Makarrata but await positive proposals from the National Aboriginal Conference which could be the subject of future discussions.

  
P.A.E. EVERINGHAM

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NORTHERN TERRITORY OF AUSTRALIA

DEPARTMENT OF LAW

OUR REF: SB:KF

YOUR REF: 79/1026

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P.O. BOX 1722,

DARWIN, 5794

TELEX: NTLAW AA 85436

WELLS BUILDING  
MITCHELL STREET,  
DARWIN

13 July 1981

Office of Aboriginal Liaison  
Department of the Chief Minister  
P O Box 4396  
DARWIN NT 5794



Attention: Mr T White

RE: INFORMATION PAPER FOR CABINET - MAKARRATA

I refer to Mr Gallagher's letter of 22 June 1981 and to our telephone conversation earlier today.

I confirm that this Department has no specific comments to make on the content of the draft information paper and agrees with the recommendation to await specific proposals from the National Aboriginal Conference. When such proposals are received, this Department would be pleased to provide you with assistance in evaluating their likely validity and effect.

S.R. BAILEY  
(DIRECTOR,  
EXECUTIVE & POLICY)



ATTACHMENT  
MEMORANDUM

TO: DIRECTOR, ABORIGINAL LIAISON

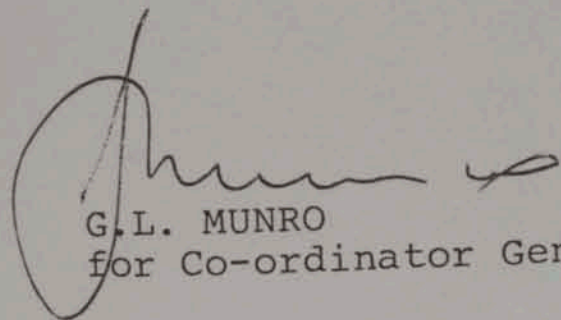
DATE: 15/7/81

FROM: CO-ORDINATOR GENERAL

REF:

RE: CABINET INFORMATION PAPER - MAKARRATA

Further to your minute of 22 June (reference 79/1026), this Office has no comments to offer on your Cabinet Information Paper concerning Makarrata.

  
G.L. MUNRO  
for Co-ordinator General