

# CABINET-IN-CONFIDENCE

Copy No. 43

## C A B I N E T M I N U T E

### Augmented Expenditure Review Committee

Canberra, 31 July 1986

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Decision No. 8172 (AER)

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Submission No. 4152 - McClelland Royal Commission -  
and Decision Compensation for Dispossession  
No. 8094(ER) (Recommendation 7)

The Committee agreed that \$500,000 be provided in 1986-87 for the provision of services to Aboriginal communities with a traditional interest in sites on the former Maralinga Prohibited Area directly affected by the atomic test program, with amounts for later years to be the subject of further consideration, and with funds to be additional to the on-going resources available to the Department of Aboriginal Affairs.

2. The Committee noted that :-

- (a) there will be consultations with the traditional owners regarding the expenditure with emphasis on the provision of facilities and services of general and lasting benefit to the communities concerned;
- (b) the provision of compensation for this purpose is separate from the broader question of compensation for lost land; and

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2.

Decision No. 8172 (AER) (Contd.)

- (c) prior to announcement, Cabinet will need to consider the presentational aspects of the decision to ensure it is clearly understood to be confined to those Aboriginal communities directly affected by the atomic test program in the former Maralinga Prohibited Area.

(This endorses Decision No. 8094(ER) of 25 July 1986.)



Secretary to Cabinet

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## C A B I N E T M I N U T E

### Expenditure Review Committee

Canberra, 25 July 1986

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Decision No. 8094 (ER)

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Compensation for Dispossession  
(Recommendation 7)

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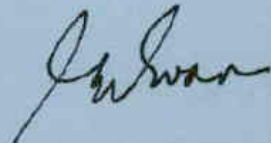
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Decision NO. 8094(ER) (Contd.)

- (c) prior to announcement, Cabinet will need to consider the presentational aspects of the decision to ensure it is clearly understood to be confined to those Aboriginal communities directly affected by the atomic test program in the former Maralinga Prohibited Area.



Committee Secretary

FOR CABINET

Title	MCCLELLAND ROYAL COMMISSION - COMPENSATION FOR DISPOSSESSION (RECOMMENDATION 7).
Minister	The Hon Clyde Holding, MP, Minister for Aboriginal Affairs - 17 July 1986
Purpose/Issues	PLEASE REPLACE THE EXISTING PAGE 10 AND ADD A PAGE 11 (ATTACHED) AT <u>ATTACHMENT A.</u>

CORRIGENDUM

Relation to existing policy

Legislation involved

Urgency: Critical/significant dates

Consultation: Ministers/Depts consulted

Is there agreement?

Cost this fiscal year

year 2

year 3



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10.

ATTACHMENT A

Commission's Recommendation 7 to an acknowledgement of the social upheaval and problems caused by the relocation of former Maralinga inhabitants and an indication of the measures that have been and will be taken under existing State and Commonwealth programs to ameliorate those problems (most of which are consistent with the form of "compensation" recommended by the Royal Commission in any event), without adopting the objective or term "compensation for loss of use and enjoyment of their lands.

3. Finance notes that the Minister's recommendations leave open both the total amount and precise nature of the 'compensation' proposed by way of response to the Commission's recommendation. Finance suggests that the extent and timing of Commonwealth assistance for the provision of community facilities and essential services on the Maralinga area should remain a matter for the Minister in his allocation of existing resources on a priority of needs basis. Quite apart from pressing budgetary conditions, any additional allocation by way of response to Recommendation 7 of the Royal Commission is likely to be construed as acceptance by the Commonwealth of past dispossession as a basis for specific compensation payments.

Department of Prime Minister and Cabinet.

4. The Department of the Prime Minister and Cabinet accepts that funds should be provided to enable Aboriginals who were moved away from the test site areas to re-establish their links with what is now Aboriginal land and that this be agreed to for 1986/87 'in principle' pending consideration of the cleanup program to be undertaken at Maralinga and Emu. Given the provisional nature of any decisions taken now and the need for

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expenditure restraint, the Department considers that the provision of \$500,000 in 1986/87 could be offset to a considerable extent from the expenditure now being incurred on facilities and services on the Maralinga land.

5. The Department notes that the payments are to be regarded as compensation relating only to the terms of the Royal Commission's recommendation. In this context, the Department considers that all announcements about the Government's decisions on the recommendation should stress that these payments are to enable Aboriginals to move back to areas that are now legally Aboriginal land.

6. In conformity with the thrust of the Royal Commission's Conclusions and Recommendations on the question of payments, the Department of the Prime Minister and Cabinet considers that facilities or services need only be provided to those Aboriginals who move back on to the Maralinga lands. Further, the Department considers that these facilities should be limited, at least in the interim period, to the provision of roads and water as requested by the traditional owners and provided, as far as possible, by using Aboriginal workers.

**FOR CABINET**

Title	MCCLELLAND ROYAL COMMISSION - COMPENSATION FOR DISPOSSESSION (RECOMMENDATION 7).						
Minister	The Hon Clyde Holding, MP, Minister for Aboriginal Affairs						
Purpose/Issues	To propose that the Government accept in principle the concept of compensation to Aborigines for loss of use and enjoyment of traditional lands in the former Maralinga Zone, and to suggest that a modest program of compensation commence in 1986/87.						
Relation to existing policy	The Government is required to respond to the Royal Commission's recommendations. Submissions required by Cabinet Decision No 7040 of 20 January, 1986.						
Legislation involved	None						
Urgency: Critical/significant dates	Should be considered at the same time as other Submissions relating to the Royal Commission's recommendations.						
Consultation: Ministers/Depts consulted	Resources and Energy, Prime Minister and Cabinet, Social Security, Finance.						
Is there agreement?	No. See paragraph 15 and Attachment A.						
Cost - this fiscal year - year 2 - year 3	<table border="0"> <tr> <td>\$0.5 million</td> <td>Notional only. Amounts to be</td> </tr> <tr> <td>\$1 million</td> <td>determined in the light of</td> </tr> <tr> <td>\$1 million</td> <td>developments.</td> </tr> </table>	\$0.5 million	Notional only. Amounts to be	\$1 million	determined in the light of	\$1 million	developments.
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Implications of proposals

. social

. economic

. environmental

. women

. employment

. administrative

. other

Wider consultation

. state or foreign governments

. unions and industry bodies

. other special interest groups

What general or sectional support can be expected?

What criticism is anticipated and how will it be answered?

Timing and handling of announcement of decision

Amelioration of deprived conditions in dispossessed Aboriginal communities.

Increased economic activity in remote areas.

Minor e.g. through creation of driving tracks.

Share in general betterment of community conditions.

Some employment creation, including for Aboriginals.

Not significant.

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South Australian and Western Australian Governments are generally aware of the consideration of this recommendation, and will be informed of decisions

Aboriginal communities are being consulted.

General public approval of the concept that the affected Aboriginal communities should be compensated for forcible removal from their lands, and the considerable environmental damage done to those lands.

No significant criticism expected, but any response would draw attention to the inherent justice of compensation in the circumstances.

At the same time as other decisions relating to the Royal Commission's recommendations are announced.

**CABINET-IN-CONFIDENCE**Background

1. In Decision No 7040 of 20 January 1986, Cabinet requested that I bring forward a Submission in response to the seventh recommendation of the Royal Commission into British Nuclear Tests in Australia. This reads:-

"The Australian Government should make compensation to those persons and descendants of those persons who have a traditional interest in sites at the former Maralinga Prohibited Area for loss of use and enjoyment of their lands since the beginning, and as a result of the atomic tests program. This should take the form of technology and services which Aboriginal people regard as necessary for them to re-establish their relationships with their land as rapidly as possible and with minimal hardship."

2. In December 1984, the South Australian Government transferred inalienable freehold title to 7.6 m hectares of the Maralinga lands to Maralinga Tjarutja under the Maralinga Tjarutja Land Rights Act. The area ceded to the traditional community excludes Section 400, the Maralinga Test Zone, Section 1487, West Street immediately adjacent to the Zone, and Section 1486, the Emu Test zone.

3. The traditional ownership of this area extends beyond the people living at the Oak Valley community on the Maralinga Tjarutja lands. People recognised as traditional owners also live at Yalata and at communities on the Pitjantjantjara lands in South Australia, and at Coonana in Western Australia.

4. The Commonwealth is already providing services and facilities on the Maralinga lands (and to the other claimant communities). Payments made by my Department totalled \$154,000 in 1984/85 and \$301,500 in 1985/86. The Commonwealth also provides 60 per cent of the administrative costs of Maralinga

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Tjarutja; this contribution amounted to \$ 66,860 in 1985/86.

### Consideration of the Issues

5. The principal issues to be addressed are:

- (a) whether the Commonwealth accepts that compensation for dispossession should be paid, as recommended by the Royal Commission;
- (b) if so, what form that compensation should take and to whom it should be payable;
- (c) whether compensation payments (if any) commence now, or await the outcome of decisions on the cleanup of Maralinga and Emu; and
- (d) the amounts of compensation to be paid.

6. On the first point, we have no option but to accept the principle of compensation for dispossession. The actions of previous Australian Government in shepherding Aboriginal people from their traditional lands for the purpose of conducting atomic tests were both immoral and appallingly executed. The resultant disruption to Aboriginal life has been catastrophic; Yalata, where many were resettled, is testimony to that. If we deny compensation, we shall stand condemned as surely as those who committed the outrage of dispossession in the first place.

7. As to the form of compensation, I am advised that representatives of the traditional owners have indicated a desire for the provision of services to communities such as roads and water. This would be consistent with the recommendation of the Royal Commission. At this stage, it would appear that there is a preference on the part of most people not to establish permanent townships on the Maralinga lands. There would need to be further consultations with the traditional owners before the form of compensation could be finally settled.

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8. I might mention two points here. It is understood that, should particular individuals be successful in claims for personal injury arising from the test programs (Recommendation 1 of the Royal Commission), it is possible that they may choose to make funds available for general community benefit. The second point is that no compensation need arises in respect of the Monte Bello Islands, which were uninhabited.

9. Assuming we agree that compensation should be paid, I believe we should commence doing so in 1986/87 rather than await final decisions on clean-up. These decisions, it appears, may not be made for some time, given the need for further studies identified by the Technical Assessment Group and dealt with in a separate submission by the Minister for Resources and Energy. I do not think it would be appropriate to subject the Aboriginals to significant further delay. There is also the pragmatic point that some services of the kind likely to be sought for compensation purposes are already being provided in the Maralinga lands through the normal programs of my Department e.g. shed tanks at Oak Valley. It would therefore make some sense to accelerate existing programs, with the additional component being given a compensation "tag".

10. The amount of compensation to be paid becomes a matter of judgement, in the absence of any clear criteria for basing calculations, but the underlying principle should be to enable those who wish to return to the lands to do so and to provide reasonable facilities for those who elect to remain in the communities where they have resettled. The numbers of people involved is relatively small, but the area is very large, particularly when taking into account that some communities of traditional owners e.g. those at Coonana in WA, may opt for the

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provision of facilities off the Maralinga lands themselves. Account must also be taken of the possibility that, if some restrictions or prohibitions on access to particular areas remain after whatever cleanup is eventually undertaken, there will be a further case for compensation for continuing dispossession.

11. Bearing all these factors in mind, I suggest that a provision of \$500,000 in 1986/87 would be reasonable. This would in effect be a down payment on an unspecified overall sum, which would need to be calculated at a later stage when more information is available on needs and on the extent of continuing restrictions on use and enjoyment of areas of the Maralinga lands. It will be seen as a low figure, and will be criticized for that; we can counter such criticism by pointing out that it is the first instalment, and that there needs first to be consultation with the traditional owners on what is to be done.

12. There may be some concern that the provision of compensation in this case could be seen as a precedent for the general issue of compensation for lost land, which is one of the 5 five principles of our land rights policy. I believe any such concern can be met by reference to the specific features of this case - the fact of the Royal Commission's recommendations, the particular purposes for which the land was used, and the like. As to the general compensation issue, I intend to put that to examination and to develop proposals that can be put before Ministers in due course.

### Financial Considerations

13. An additional \$500,000 would need to be provided in my Department's 1986/87 estimates. It is neither appropriate nor feasible for these funds to be taken from within ongoing allocations. Funding requirements for future years would be

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identified in the light of developments; the best I can say at this stage is that I believe we are looking at only a few millions at most, which can be spread over a number of years. I do not think we can look to contributions from the State or United Kingdom Governments.

Employment Considerations

14. The funds provided would provide employment in areas of job scarcity. Employment of Aboriginals would be enhanced. There are no departmental staffing implications.

Consultation

15. The Department of Resources and Energy agrees with the Submission's approach. DR&E, however, notes that the clean up of the test sites to unrestricted habitation standard is unlikely and considers that additional compensation for land that remains uninhabitable should not be payable. The Department of Finance is concerned that unless the Government's response to Recommendation 7 is restricted to acknowledgement of social upheaval it could lead to widespread Aboriginal demands for compensation for loss of use and enjoyment of land. Finance considers that if additional funding is provided the Government's response could be construed as compensation. The Department of Prime Minister and Cabinet largely supports these views. Full comments are at Attachment A.

Recommendation

16. I recommend that Cabinet:

- (a) accept in principle that compensation for loss of use and enjoyment of their lands be paid to Aboriginals with a traditional interest in sites on the former Maralinga Prohibited Area, as recommended by the Royal Commission;

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- (b) agree that \$500,000 be provided in 1986/87 towards this end, for the provision of services to communities, with amounts for later years to be the subject of further consideration, and with funds to be additional to the on-going resources available to my Department;
- (c) note that there will be consultations with the traditional owners regarding the form of compensation, but with emphasis on the provision of facilities and services of general and lasting benefit to the communities concerned; and
- (d) note that the provision of compensation for this purpose can be seen as separate from the broader question of compensation for lost land, which will be addressed on an appropriate future occasion.

10 July 1986

(Clyde Holding)

**CABINET-IN-CONFIDENCE**CO-ORDINATION COMMENTSDepartment of Resources and Energy

1. The Department of Resources and Energy agrees with the approach adopted in this Submission. While it would be premature at this stage to settle a final figure for appropriate compensation the Department notes nonetheless that when a final settlement is negotiated it should have regard to the possibility that clean-up of the former test sites may not achieve the standard of unrestricted habitation, i.e. there may be ongoing denial of use of some part of the Maralinga land to the traditional owners. Any such settlement figure should be genuinely final, and not capable of being treated as a base upon which still further claims for compensation can be subsequently erected.

Department of Finance

2. Finance notes that the provision of compensation to Aborigines for past dispossession and dispersal is not existing Government policy, and that endorsement of the Minister's recommendations would open this Pandora's Box, setting a precedent for compensation claims from Aborigines in all parts of the country, at considerable cost. Contrary to the Minister's suggestion at Recommendation (d), Finance sees no substantive difference between "compensation for loss of use and enjoyment of their lands" (Recommendation (a)) and "compensation for lost land", as aboriginals did not hold formal title to the Maralinga lands at the time of the atomic tests. Finance suggests that Ministers confine the Government's response to the Royal Commission's Recommendation 7 to an acknowledgement of the social

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upheaval and problems caused by the relocation of former Maralinga inhabitants and an indication of the measures that have been and will be taken under existing State and Commonwealth programs to ameliorate those problems (most of which are consistent with the form of "compensation" recommended by the Royal Commission in any event), without adopting the objective or term "compensation for loss of use and enjoyment of their lands.

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