

## Affirm<sub>press</sub>



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Helen Aitchison

Trevor Conomy was a musician, working the pubs and writing songs around the same time as Men at Work. He followed the 'Down Under' case and has always believed that the story behind it is a great tragedy. Born in 1958, he played in rock bands during the 1980s and later taught English in Sydney. He now lives in central western New South Wales, where he is building a house in the bush.

# **DOWN UNDER**

**TREVOR CONOMY**



# Introduction

19 April 2012: It was my fifty-fourth birthday, and I'd just got home from a pizza dinner with my family. On the news at nine, a grim-faced reporter stood outside a home in Melbourne. Someone's dead: a musician. Not famous ... well, not since the eighties. He was in that band that had that song, you know?

Of course you do. The one with the flute and the reggae beat, about the overseas travel experiences of a naive Aussie. A Kombi van, Vegemite ... and chunder? It's a strange song. And not one you'd expect to become an alternative national anthem.

'Down Under' was born in a marijuana-laced jam session and first performed in the back room of a dingy Richmond tavern, before being consigned to the musical wastebasket. It was then given a second chance, and went on to conquer the biggest music charts in the world.

But there's another thread to the story, and it has no happy ending. In 2009, 'Down Under' was busted for copyright infringement, its writers and publishers taken to court. Many, many people were angered by this clash between legal principles and musical creativity. It stirred up antipathy and conflict – and perhaps worse.

I couldn't stop thinking about that news report from Melbourne. Over the next few days, some details about the musician emerged. He'd lived alone. He'd been struggling. There were no suspects, just what seemed to be a sad story with an even sadder ending.

This book is about the law and music and a group of musicians, but it's not the biography of a band. It's mainly the story of one particular song and its place in Aussie history and culture. A huge song and, since that news report, one forever associated with tragedy.



On 27 October 2009, Colin James Hay, the former lead singer and guitarist for Men at Work, fronted up to the Federal Court. This was a gig unlike any other in his career. Away from his Los Angeles home, accompanied not by bandmates and roadies but by suits and wigs, Hay was out of his element. On any other day he might still have been in bed at this hour, enjoying the unrushed timetable that is a successful musician's privilege. Today, however, he'd risen early, and hotel comforts were hollow. An ordeal, long anticipated, lay ahead: people were expecting him in Phillip Street, Sydney, for the first day of a trial.

In the world outside the courtroom, many would be watching with concern over the potential setting of legal precedents. Yet no crime had been committed. No one had been arrested or charged or held in remand. This wasn't the kind of trial we see on television dramas. No, this was all about a song, and a composer accused of copyright infringement. Hay had been summoned to appear before a judge in order to contest that allegation. One of the men behind

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one of the most famous tunes in pop history was about to face the music. Welcome to the Copyright Tribunal.

Those with serious legal business to conduct enter the Law Courts Building in the Queens Square tower via a grey-stone, stainless-steel and glass foyer that evokes airport terminals rather than the Old Bailey. And just like Qantas passengers heading for the departure lounge, they're required to place their belongings on an X-ray scanner conveyor belt before shuffling through the metal detector gate. Security guards run narrow eyes over anyone who doesn't look like a lawyer or a business exec. At street level there's little else to see. Nothing decorates the ground floor aside from half a dozen red leather seats. Not that anybody sits there: reception is up on Level 17. And the elevators are many and fast.

A visitor won't be overwhelmed upon walking into Courtroom 18D. It's about the size, and has the ambience, of those double-space classrooms that were all the rage in the open-plan schools of the seventies. Tiers of mainly empty shelves cover the bottom half of the beige walls and, apart from the clock and a couple of flat-screen TVs, there's not a lot to distract the eye from the judge's raised bench. Lawyers and their files are arrayed along two or three rows of parallel pine-top tables facing the judge, ready for business. A couple of court staffers, perched at the side, record the proceedings of the day. Those with evidence to present and those with a stake in the proceedings are there as well: the expert witnesses and the adversarial parties. For a seasoned muso like Colin Hay, this room must have seemed about as far from rock'n'roll as you can get.

The one-time pop star would be fronting Justice Peter Jacobson as the fifth respondent in the matter of *Larrikin Music v EMI Songs*.

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There was a microphone before him, but Hay wasn't about to sing. Instead he would sit and listen as two teams of lawyers, backed by their respective forensic musicologists, tore apart his biggest hit single.

On the surface the case was simple: had 'Down Under' incorporated part of the Australian classic children's song 'Kookaburra Sits in the Old Gum Tree', penned more than seventy years ago by Aussie teacher Marion Sinclair, without permission of its owner?

But finding an answer to this question would become a forensic inquiry to test even a modern-day Aristotle. Here in Courtroom 18D, traditional principles of ownership would be challenged by the ethics of art and creativity. Consequences would carry outside the courtroom and into the garrets of humble songwriters, as well as the boardrooms of the global music business. The judicial findings would influence a storm of protest, a verbal lynching of legal and corporate entities and, most poignantly, what seems to be the final scene of a tragedy. One brief snatch of melody had helped take a band from Melbourne corner pubs to huge overseas arenas. In the years following, a flute refrain and the song in which it featured became an enduring motif of a nation's culture. That little riff may also in the end have helped kill its creator, Greg Ham.