ABORIGINAL LAND RIGHTS
IN AUSTRALIA
BACKGROUND PAPER, DRAFT SURVEY AND RECOMMENDATIONS

By Marcia Langton
Canberra
April, 1981.

ABORIGINAL LAND RIGHTS
IN AUSTRALIA
BACKGROUND PAPER, DRAFT SURVEY AND RECOMMENDATIONS

CONTENTS

1.0 ABSTRACT

1.0 ABSTRACT

1.1 Aboriginal people have been substantially dispossessed by the process of colonization over the last 193 years. The Australian colony was subdivided into several districts, which in 1901, became federated under the Commonwealth of Australia.

1.2 The Commonwealth and the States retained their separate sovereignties until in 1967, a Commonwealth referendum was successful in deleting words from the Australian Constitution, Section 51 (xxvi), which exempted Aboriginal people from Commonwealth legislative power to make laws for any race for whom it was deemed necessary.

1.3 However, despite the Commonwealth Government's constitutional power to intervene in State rights and its often stated intentions to protect Aboriginal rights, it has consistently failed to protect Aboriginal land rights and interests in relation to mining on or near Aboriginal land, particularly in the States.

1.4 Aboriginal people in each State and Territory have faced significantly different legislative and social instrumentalities and tactics, within the continent-wide context of dispossession and suppression. Detailed analyses of these different experiences and their outcomes,to date,form the basis of the background paper.

1.5 The influx of mining companies onto Aboriginal land since the 1950's poses the greatest threat to Aboriginal survival. The National Aboriginal Conference, Aboriginal land councils and other organizations are currently engaging in new strategies, particularly in the international arena, to prevent the further loss of Aboriginal lands and destruction of Aboriginal societies at the hands of the racist State Governments, mining companies and others.

2.0 SUMMARY

2.0 SUMMARY

2.1 For Australian Aboriginal people, land rights are inseparable from two immense areas of experience: firstly, the ancient and Australia-wide cultural, social, linguistic and spiritual tradition embodied in the concept of the Dreaming or Law and physically manifested in the land; secondly, the grim reality of 193 years of dispossession, colonization and brutalization of the Australian Aboriginal people, past and continuing.

2.2 The white invaders failed utterly to perceive the existing socio-cultural organization in Australia at the time of first colonization or afterwards. This resulted in Australia's being seen legally as an occupied rather than a conquered colony. Thus no treaties were made and the indigenous people's continuing struggle for their land has been negated in modern political assemblies and courts as it has been in the history books.

2.3 Reserves and "protection" boards were created to deal with the "remnants" of the dispossessed: that is, those who had not been shot, poisoned or killed by imported diseases.

NEW SOUTH WALES

2.4 What is now called New South Wales was the first area of the continent to bear the brunt of British colonization. Aboriginal life has been severly disrupted and today upwards of 40,000 Aboriginal people are huddled in depressed city areas and on the reserved pockets of land, totallying less than 4,000 hectares. This land is now vested in freehold title in the Aboriginal Lands Trust of New South Wales, a fully-elected Aboriginal body who hold the land on behalf of the Aboriginal people of New South Wales.

2.5 The Trust is an autonomous body, having full mineral rights, except for the Crown minerals, gold and silver. It has faced inadequate funding and administrative difficulties, as well as the intransigence of the Lands Department in transferring further land to it.

2.6 The Commonwealth's Aboriginal Land Fund Commission, now absorbed

into the Aboriginal Development Commission, which was designed to be Aboriginal-controlled, acquired 14 properties for Aboriginal groups in New South Wales for economic and social purposes.

2.7 In 1978, the New South Wales Government appointed a Select Committee of its Legislative Assembly to inquire into, amongst other things, how to recognize Aboriginal land rights in New South Wales. It has recommended recognition of land rights based on prior ownership, tradition, needs and compensation as a basis for a full legislative and administrative structure to ensure Aboriginal people's right to land and self-determination.

2.8 These recommendations have recently been placed before the Parliament of that State, but no further progress has been made.

QUEENSLAND

2.9 In Queensland, land areas are set aside for Aborigines as reserves under the terms of the Aborigines Act 1971. The actual reservation of these lands is provided for under the terms of the Queensland Lands Act and it may also be achieved by proclamation of the Governor of that State. As well, the Local Government (Aboriginal Lands) Act 1978 applies to two former reserves at Aurukun and Mornington Island. These were de-gazetted in August 1978 as a result of the Queensland State Government's intention to remove the administrators of the reserves, the Uniting Church, to allow proposed bauxite mining to proceed without opposition. Despite the inevitable opposition from concerned Australians, these communities have been placed under the administration of the Council of the Shire of Aurukun and the Council of the Shire of Mornington Island, under the terms of the Aboriginal local government Act of Queensland. These communities now fear the large-scale intrusion of bauxite mining companies.

2.10 The Aboriginal Land Fund Commission acquired four properties for Aboriginal groups in Queensland for economic and social purposes, before the Queensland Government refused to allow the registration of titles to further proposed purchases, to prevent Aboriginal ownership of land in Queensland.

2.11 In March, 1981, the Premier of Queensland, Mr. Bjelke-Petersen, announced that he was preparing to repeal the Aborigines Act 1971. Despite the fact that this legislation and its regulations, the administration of the Act and the conditions in which it places Aboriginal people amount to the most racist situation for Aboriginal people in Australia, the repeal of the Act will mean the further dispossession of Aboriginal people in Queensland of 7½ million hectares. Mr. Bjelke-Petersen has announced that no freehold title will be given to Aboriginal people nor will they be allowed any special leasing provisions. He has stated on national radio, "They'll probably be given a lease, the same as anybody else can. . . obtain a lease from the Crown . . . . We don't set people aside on another land and say that's black man's country over there . . . . we're all equal, we're all the same . . . . (there's) no need to discuss the procedure or proposal, that will be known in ample time." Queensland has, in fact, come under constant criticism for its segregationist and racist policies.

2.12 Clearly, Aboriginal people in Queensland will be given no quarter by the Queensland Government and will be sacrificed to the interests of mining companies and the Queensland Government's "development" policy. Queensland Aboriginal people are requesting that the Commonwealth Government intervene under its constitutional powers and legislate for Aboriginal land rights, overriding the State Government.

VICTORIA

2.13 In Victoria, the Aboriginal Affairs Act, 1969, as amended in 1973, provides that all control over Aboriginal affairs is vested in the Minister responsible. This power includes the power to purchase or acquire land, and management of Crown lands for the use or benefit of Aborigines.

2.14 However, the Minister has to date not exercised these powers, and the only land vested in Aboriginal people in freehold title are the former and only remaining reserve areas, Framlingham and Lake Tyers, which are now vested in Aboriginal Trusts.

2.15 As well, there has been one successful purchase of a land

area for an Aboriginal group by the former Aboriginal Land Fund Commission.

2.16 For a population of 14,000 Aboriginal people in Victoria, there is less than 2,000 hectares of land, which is less than one-sixth of a hectare per head.

2.17 Aboriginal organizations have taken the initiative in attempting to acquire more land and to prevent mining activities and other desecration their land. In 1977, the Victorialn Aboriginal Land Council was appointed for one year with funding from the Commonwealth Department of Aboriginal Affairs, and then dissolved. In 1979, members of the Framlingham Aboriginal community blocked road access to a park controlled by the Land Conservation Council. This land had until 1890 been part of their reserve when it was alienated, leaving only a 548 acre remnant for their use. In 1981, the Portland Aboriginal people, the Gunditj Mara, occupied a Comalco mining area protesting the desecration of their sacred sites. Their appeal against the Comalco invasion in the Supreme Court was dismissed.

SOUTH AUSTRALIA

2.18 The South Australian experience is one of startling contrasts: from the familiar picture of near total dispossession in the heavily colonized southern part of the State, to the development of the Pitjantjatjara-speaking peoples and their pitjantjatjara Council, the only unified Aboriginal political force that has been able to negotiate tangible agreements with governmental and commercial interests.

2.18 South Australia has generated the usual array of legislative attempts to deal with Aboriginal people and their land, with some interesting innovations in the form of the South Australian Lands Trust, the unsuccessful Pitjantjatjara Land Rights Bill and the eventual compromise between the Pitjantjatjara peoples and the State Government, and concomitantly the mining lobby.

2.19 The South Australian Aboriginal Lands Trust Act of 1966 gives freehold title to a Trust which in turn gives long term leases to those groups occupying the former reserve areas. Up to 31st March 1980, a total of 485,582.8 hectares of land contained in 43 separate parcels has been vested in the Trust and over which Land Grant titles are held. Up to 1980, 11 Aboriginal community councils had been granted virtually perpetual leases over most of the area.

2.20 To the Pitjantjatjara peoples this was unacceptable, as they had never doubted their ownership and simply sought recognition of their title. The reserve area which they occupied, the North West Reserve, was the only reserve not transferred to the Lands Trust, as the Pitjantjatjara conducted negotiations with the South Australian Government for freehold title vested in their own Council.

2.21 The Pitjantjatjara Land Rights Working Party was established by the State Government to enquire into the desirability of enacting new legislation to deal exclusively with the North West Aboriginal reserve and those lands adjacent thereto in the far north of the State which are utilised by the Pitjantjatjara speaking peoples and to exclude such lands from the special provisions in relation to them which had been written into the Aboriginal Lands Trust Act.

2.22 The Report of the Working Party released in June 1978 resulted in the presentation of the Pitjantjatjara Land Rights Bill in November 1979. The Bill lapsed however, and the Pitjantjatjara Agreement was finally concluded between the State Government and the Pitjantjatjara Council, in 1980 on the 2nd of October, vesting in the Council freehold title over the North West Reserve, except that large concessions were made to the mining interests.

2.23 As well, the former Aboriginal Land Fund Commission acquired five properties in South Australia for social and economic purposes. The Aboriginal Development Commission is now acquiring further property in South Australia for Aboriginal groups.

WESTERN AUSTRALIA

2.24 Recent conflicts over land in Western Australia have been bitter and intransigent. The Government of Sir Charles Court has consistently refused Aboriginal requests for land and overridden Aboriginal opposition to the rush of mining activities, as at Noonkanbah, with tragic consequences.

2.25 The expropriation of Aboriginal land in Western Australia raged violently except for the establishment of reserves and missions to control the Aboriginal population until recent times. Today, the Crown still retains title to the remaining reserve land and allows the Aboriginal Lands Trust of Western Australia to manage them.

2.26 Reserve Lands are controlled by the State Ministry responsible for Aboriginal Affairs, and secondary rights are granted to the Aboriginal Lands Trust. Title remains with the Crown although certain uses of the land are vested in the Trust. The Lands Trust presently has under its management approximately 20,865,789 hectares in the form of reserved lands, some freehold title, pastoral leases and sundry leases.

2.27 In addition, the Federal Government's Aboriginal Land Fund Commission purchased six stations, whose area is included in the above area, because the Western Australian Government does not permit Aboriginal groups to own land. Their title is held on their behalf by the Aboriginal Lands Trust.

2.28 Other attempts by the former Aboriginal Land Fund Commission to acquire land for Aboriginal groups have failed because of this racist refusal by the Western Australian State Government to allow Aboriginal groups to own land.

2.29 Aboriginal opposition to the State's policies on Aboriginal affairs and to its "development" policies, and the influx of mining companies, is mounting in an atmosphere of increasing acrimony.

TASMANIA

2.30 Despite concerted attempts to eliminate the Tasmanian Aboriginal population, Aboriginal culture and the struggle for land rights continues in that State today.

2.31 Today, Aboriginal culture is focussed on the "mutton bird" islands which have been visited continuously for thousands of years.

2.32 The Tasmanian Aboriginal people have petitioned the Tasmanian Government with a claim for the mutton bird islands - the Furneaux Group.

2.33 Chappell and Badger Islands, originally reserved at the end of the nineteenth century, were resumed in 1975. Cape Barren Island was reserved for Aboriginal use in 1910.

2.34 In 1978, the Tasmanian Government appointed a study group to inquire into methods of granting Aboriginal land rights in Tasmania. The group recommended that some form of title to the mutton bird islands be vested in an Aboriginal Lands Trust.

2.35 The former Aboriginal Land Fund Commission acquired one property in Launceston in 1979, and recently, the Aboriginal Development Commission acquired one mutton bird island.

2.36 Aboriginal people in Tasmania are seeking to develop the mutton bird industry under Aboriginal control as an economic base.

THE AUSTRALIAN CAPITAL TERRITORY

2.37 The only Aboriginal community in the Australian Capital Territory, at Wreck Bay, was established as a settlement by

Aboriginal fishermen in the early 1900s.

2.38 In 1928, the Aborigines Protection Board of New South Wales took over the administration of the community as a "station" under the terms of the Aborigines Protection Act.

2.39 In 1954, it became apparent that the boundaries of the reserve had never been delineated, and Aboriginal people then surveyed the area, and are still pressing for that area.

2.40 In 1954 as well, a considerably smaller area was gazetted as a reserve and the community was brought under A.C.T. control and responsibility. This control was in turn delegated back to the N.S.W. Aboriginal Protection Board and Education Department.

2.41 In 1965, Wreck Bay ceased to be a reserve and control was transferred back to the Commonwealth Department of the Interior.

2.42 In 1971, the Jervis Bay Nature Reserve was proclaimed and protracted negotiations between the Commonwealth and the Aboriginal community continue until the present.

2.43 A Bill for an Ordinance "To authorize the grant of leases of land in perpetuity to Wreck Bay Aboriginal Housing Company Limited" was drafted in 1976. It has not gone to first reading stage as the Department of the Capital Territory is still conducting negotiations with the Wreck Bay Community.

NORTHERN TERRITORY

2.44 The Northern Territory land rights legislation is the first instance of any Anglo-Australian legal attempt to recognize prior Aboriginal ownership of the lands.

2.45 The Aboriginal Land Rights (Northern Territory) Act 1976 provides for a system of Aboriginal land councils; for an Aboriginal Land Commissioner, who is a Supreme Court Judge of the Northern Territory, to hear traditional claims for land from Aboriginal groups; and for Aboriginal land trusts in which freehold title to the land is vested.

2.46 To date, 53 Aboriginal land claims have been lodged with the Commissioner, and 7 claim hearings completed, with varying results for the Aboriginal claimants.

2.47 However, the granting of land to Aboriginal people in the Northern Territory has not been as straightforward as it may seem. In its 1979/1980 Annual Report, the Department of Aboriginal Affairs stated:

> Title deeds to former Aboriginal reserves and othe land, presented to Aboriginal Land Trusts in September 1978, were not registered by the Northern Territory Registrar-General because of objections to the terms of the titles in relation to the exclusion from the titles of roads over which the public has a right of way and the way in which mineral rights were reserved to the Crown.
> Following negotiations between the Commonwealth and Northern Territory Governments and the Aboriginal Land Councils, the Aboriginal Land Rights (Northern Territory) Act 1976 was amended in the Autumn session of Parliament, to overcome the objections. At the same time the Northern Territory Legislative Assembly passed complementary amendments to its Aboriginal Land Act. Amended title deeds presented to a number of Aboriginal Land Trusts by the Minister in June 1980 were subsequently registered by the Registrar-General. Amended deeds were to be handed over to the other Land Trusts as soon as practicable.

2.48 As well, difficulties arise for Aboriginal people when the Northern Territory legislation is regarded as a model for land rights throughout Australia. Firstly, it allows only unalienated Crown land to be claimed, and it places the onus on Aboriginal people to prove their traditional affiliation to lands, while the theft of our land by the dominant white society remains unchallenged. No provisions exist in the Act for Aboriginal groups to claim land on the basis of need, compensation or retribution.

2.49 Further, the processes of lodging claims involves a monopolization of the research and formulation of claims by anthropologists, lawyers and bureaucrats, the very same group of people who designed the Act and its implementation. These white adivsers have failed to recognize the wide variation of Aboriginal land tenure patterns and to account for the disruption of Aboriginal people's attachment to land by the process of colonization. Elsewhere

in Australia Aboriginal people are seeking that, rather than the current anthropological model of Aboriginal land rights, the political realities of Aboriginal needs for land and modern adaptations to land affiliation are recognized.

Mining

2.50 The current proliferation of mining activities on Aboriginal land poses an immediate threat to Aboriginal survival. In every part of Australia the conflict between the indigenous people and the mining interests displays in the starkest relief the desperate struggle for survival and the inexorable mechanisms of dispossession.

2.51 Aboriginal people are demanding that we have our rights in land recognised as fully as possible, including full mineral rights excluding the Crown minerals, gold and silver and rights in renewable and non-renewable resources. We are also demanding a full right of veto over mining and exploration proposals on our lands, protected by Commonwealth legislation.

3.0 INTRODUCTION

INTRODUCTION

3.1 For Australian Aboriginal people there is an enormous emotional and psychological burden in the term "land rights". It is impossible to discuss Aboriginal land rights, whether denied or granted, without referring to 193 years of dispossession, colonization and brutalization of the Australian Aboriginal people, and the spectre of continuing dispossession.

3.2 But firstly, it is necessary to explain the traditional cultural significance of land, insofar as it is possible, given the historical conditions of the last two centuries of the white invasion.

3.3 The land, for Aboriginal people, is a vibrant spiritual landscape. It is peopled in spirit form by the ancestors who originated in the Dreaming, the creative period of time immemorial. The ancestors travelled the country, engaging in adventures which created the people, the natural features of the land and established the code of life, which we today call "the Dreaming" or "the Law. The Law has been passed on through countless generations of people through the remembrance and celebration of the sites which were the scenes of the ancestral exploits. Song, dance, body, rock and sand painting, special languages and the oral explanations of the myths encoded in these essentially religious art forms have been the media of the Law to the present day.

3.4 The way in which our people say they are related to each other is an intricate part of the people's relationship to the land. It is estimated that before the white invasion, there were 300,000 people in this land, speaking 500 languages. Today, there are upwards of 160,000 Aboriginal people surviving, speaking 200 extant languages. This great language diversity is the manifestation of each group's identification with 'country' and thus an expression of its difference from another group whose 'country' represents different travels and adventures of the ancestors. Despite the linguistic and, to a lesser extent, cultural diversity, it seems that there was a continent-wide philosophy - now called the Law or the Dreaming.

3.5 For at least 40,000 years prior to the British invasion, the Aboriginal economic mode was one of hunting and gathering according to a seasonal calendar largely within defined clan territories. The social organisation of people into clans did not result in discrete units, such as was the case in tribal Africa, but rather these clans were interlocking units by virtue of the marital, economic, political, and religious relations between them. Each clan consisted at its core of patrilineal or matrilineal descendants of a common ancestor who were the central characters around which the affairs of the clan revolved. It was primarily through marriage that

political bonding of clans was achieved, because wives of clan members remained members of their own different clans and remained co-owners of their clan estates. Thus kinship networks were abstracted to extreme esoteric extents, so that people over large areas were related through cultural and religious precepts.

3.6 The effect of British colonization upon Aboriginal people has been catastrophic. White contact, pastoral, farming and mining activities, and the depradations of the earlier settlers have devastated Aboriginal society in many parts of Australia, and in most of Australia, the Aboriginal relationship to land has been irreversibly altered with tragic consequences. Many of us have become outcasts in our own land. In 1975 the National Population Inquiry had this to say about our current situation:

> In every conceivable comparison, the Aborigines and Islanders ...stand in stark contrast to the general Australian society, and also to other 'ethnic' groups, whether defined on the basis of race, nationality, birthplace, language or religion. They probably have the highest growth rate, the highest birth rate, the highest death rate, the worst health and housing, and the lowest educational, occupational, economic, social and legal status of any identifiable section of the Australian population.

Until the 1960s, most Aboriginal people were forcibly removed from their lands and confined on 'reserves', or areas of 'Crown' land reserved for the use of Aborigines. These reserves and associated government settlements remain today, and in the words of one Australian scholar, form an 'archipelago' of total institutions across Australia. Many others have been fortunate enough to be able to remain on their traditional lands, which were gazetted as reserves, or which were leased or bought from the Crown as pastoral properties. Some of these today, especially in the Northern Territory, are Aboriginal owned properties, bought by the Aboriginal Land Fund Commission, or have been declared Aboriginal land under the terms of the Aboriginal Land Rights (Northern Territory) Act 1976. In South Australia, an Agreement has been concluded between the State Government and the Pitjantjatjara peoples regarding their traditional lands in the north-west of that State, and they have been granted freehold title, limited by the concessions of the State Government to mining companies and pastoralists. The Northern Territory Act is also hedged by special privileges granted to the multinational mining companies in respect of exploration, mining, establishment of towns and to pastoralists and commercial fishing companies in respect of road access and sea access.

3.7 Elsewhere, Aboriginal people regard their situation as one of dispossession, and concomitant deprivation, as a result of the white invasion. Aboriginal people have not agreed with the white Australian legal interpretation of the status of our land, which is based on the British colonialist legal precepts of the eighteenth century. The drachonian status of our land as Crown land was not overriden until 1976 by executive decision of the Australian Government applying only to the Northern

Territory, following the nation-wide land rights struggle which continues today. Only in the Northern Territory and South Australia is there any legal instrument resembling what we conceive of as granting us our proper rights in land. The artificial and arbitrary imposition of State boundaries during the early colonialist era has resulted in a plethora of different and conflicting pieces of legislation relating to Aborigines. Moreover, the Commonwealth Government has refused to exercise its constitutional powers to legislate in at least two States on Aboriginal matters, such as granting land rights, preventing racial discrimination and improving the socio-economic conditions of Aboriginal people.

THE BACKGROUND TO OUR DISPOSSESSION: The Law of Nations in relating to the status of Aboriginal land at the time of colonization

3.8 The white intruders who claimed to have acquired the land on behalf of the British Crown by occupation, not conquest or cession, in 1788, failed to perceive the socio-cultural complexity of our society.

3.9 Because Aboriginal people did not traditionally cultivate the land, it was assumed that they lacked a system of law, lacked the capability of transacting intelligently in land, and particularly, lacked concepts of ownership and property. Thus, they were deemed not to inhabit the country in which they lived. The land was according to British colonial law an unowned thing which could be acquired by occupation. Because the Aboriginal concept of land derives from religious affiliations and group subsistence exploitation, the concept is radically different from the English cohcept of land. Land is regarded in a religious way, and cannot be bought or sold. Land in our country is not a commodity to be bought and sold as in Western Industrial Society, but a living thing which must be guarded by the inheritors. Groups of people may be invited to use land other than their own for food purposes or ceremonial purposes. Custodianship remains with groups of people, and the duties and obligations of the task are shared across complex kinship ties.

3.10 The contentiousness of the Aboriginal land issue can be explained by legal history: in the status of Australia as an occupied colony. That view, still maintained by modern Australian courts, is however a legal nicety rather than a reflection of real events. As a result of that status, no legally-binding treaties have been concluded with Australian Aboriginal people as with other indigenous peoples, despite the sporadic but widespread violent conflicts between Aborigines and white settlers for at least one hundred years after colonization, and despite the continuing struggle for our land.

3.11 Australia's status as an occupied colony derives from the writings of

Justice Blackstone in the eighteenth century. Before British colonization of Australia, he wrote:

> Plantations, or colonies in distant countries, are either such where the lands are claimed by right of occupancy only, by finding them desert and uncultivated, and peopling them from the mother country; or where, when already cultivated, they have been either gained by conquest, or ceded to us by treaties. And both these rights are founded upon the law of nature, or at least upon that of nations .

Blackstone left no doubt about the significance of this distinction:

> But there is a difference between those two species of colonies, with respect to the laws by which they are bound. For it is held, that if an uninhabited country be discovered and planted by English subjects, all the English laws are there immediately in force. For as the law is the birthright of every subject, so wherever they go they carry the laws with them. But in conquered or ceded countries, that have already laws of their own, the king may indeed alter and change those laws; but, till he does actually change them, the ancient laws of the kingdom remain unless such as are against the law of god, as in the case of an infidel country .

3.12 In 1971 this justification for the expropriation of our land was reiterated in the Supreme Court of the Northern Territory. The plaintiffs, in this first land rights challenge in the Australian courts, the Yirrkala clans, contended that their proprietary rights had been invaded by Nabalco, a mining company to which the Commonwealth Government had leased part of the Gove Peninsular in 1968. They asserted a doctrine of communal native title, according to which the communal occupation of land by the native inhabitants of a territory acquired by the Crown is recognized by common law as a legally enforceable right which persists and must be respected until validly terminated.

3.13 Mr Justice Blackburn, hearing the case, found, however, that the 'law relating to the application of English law to the overseas possessions of the Crown was, in principle, well settled by 1788', and that Blackstone's expression 'desert and uncultivated' had 'always been taken to include territory in which live uncivilized inhabitants in a primitive state of society'. Thus, that Australia is a settled colony, as distinct from a conquered or ceded colony is, in the Australian legal view, a matter of law, not of fact, and it cannot be reopened by a fresh examination of the evidence.

3.15 Blackburn cited, as binding upon him, the Privy Council's decision in the nineteenth century case of Cooper v. Stuart that the colony of New South Wales, of

which the Yirrkala clan lands (Gove Peninsular) was then a part, was settled or occupied, not conquered or ceded. The Privy Council's judgment includes this passage:

> There was no land law or tenure existing in the colony at the time of its annexation to the Crown; and in that condition of matters, the conclusion appears to their lordships to be inevitable that, as soon as colonial land becomes the subject of settlement and commerce all transactions in relation to it were governed by English law, in so far as that law could be justly and conveniently applied to them. (Cited in Gover Case 243)

3.16 The appeal by the Yirrkala clans to the High Court of Australia against Mr Justice Blackburn's decision was subsequently dismissed.

THE ESTABLISHMENT OF RESERVES.

3.17 At the height of the British imperialist expansion in 1788, Governor Phillip and his entourage of convicts and others arrived in Botany Bay with orders to establish a penal colony to house the overflow of English jails, the result of the English Industrial Revolution. The colony floundered for a time; by 1830 free settlers had arrived in thousands with their multitudes of sheep and expropriated vast areas of Aboriginal land.

3.18 The original Aboriginal society around Sydney Cove was almost extinct by 1860 and the people from the surrounding areas had gathered in Sydney after being pushed off their land by the settlers and their sheep. Starvation, disease, social disruption and massacres left remnants of the Aboriginal nations huddled in small groups around white settlements, disease-ridden and starving.

3.19 By the 1880s there were two reactions to these remnant populations. One was the opinion that Aboriginal people should be exterminated, and in the more remote regions, the settlers themselves took the liberty of massacring Aboriginal people who had waged sporadic guerilla warfare against the settlers and their flocks. The social Darwinian view of Aboriginal people, that this policy was based on survives today. It holds that we are not fully evolved humans and the theory of the "survival of the fittest" justifies the decimation of the Aboriginal population. The other proposal was that Aboriginal people should be removed to reserved lands where they could present no threat to the settlers, and could be controlled for the purposes of cheap labour when necessary. Women from the reserves were trained as domestic servants for the settlers wives and men sent out to work the "runs", or pastoral properties.

3.20 Lesina, M.P. for Clermont, argued against the reserve system in Queensland

in 1901 in the following terms;

> I do not think there is any necessity why we should step out of our way to preserve the Aboriginal population. We have taken possession of this country, and, according to all laws, human and divine ... the Aboriginal population of this country must eventually disappear entirely ... (some) say we ought to step in and preserve them, and coddle them and assist them, and we should put them on reserves and assist them in a battle against evolution. The law of evolution says that the nigger shall disappear in the onward progress of the white man. There is really no hope that at all. Legislation of this kind (for Aboriginal reserves) is absolutely unnecessary and its passage will entail an expenditure which is absolutely unnecessary.

European occupation and settlement of Australia did not occur in one swift blow throughout the continent. It was a gradual, but nevertheless brutal process. Each area of Australia has a peculiar and unique history of both Aboriginal society and of the white settlers. Yet the recorded history of Australia scarcely includes the history of dispossession of the Aboriginal people. The history of whites in Australia is the history of a nation of thieves.

4.0 NEW SOUTH WALES

4.0 NEW SOUTH WALES

4.1 In New South Wales, in 1881, a Protector of Aborigines was appointed by the New South Wales colonial government and two years later a Board for the Protection of Aborigines was established. This Aboriginal Protection Board did not receive statutory authority until the passing of the Aborigines Protection Act in 1909. However, Christian missions to the Aborigines commenced in earnest during the 1820s and it was to them and not to the Aborigines that land grants were made by Governor Brisbane in 1827. If the missions "failed" the land was to revert back to the Crown. During the period from 1861 to 1881, before the appointment of the Protector, ten reserves totalling 1,679 acres had been declared. In 1882, the year in which the Board took office, there were 25 reserves with a total area of 3,500 acres and by 1891 there were 78 reserves with an area of approximately 22,242 acres. Petitions and requests for land by Aboriginal people were made continually throughout this period. Today, in New South Wales, only 3,393 hectares of the original reserved land remains in Aboriginal hands, as a result of continual whittling away of the reserves by the Crown Lands Department, local councils and the Aboriginal Protection Board and Aboriginal Welfare Board, under pressure from the land-hungry settlers.

4.2 Among the duties of the Aboriginal Protection Board were:

S7 (d) to manage and regulate the use of reserves

(e) to exercise a general supervision and care over all matters affecting the interests and welfare of Aborigines, and to protect them against injustice, imposition and fraud.

Under Section 8(1) all reserves were vested in the Aboriginal Protection Board. No unauthorised non-Aboriginal could enter or remain upon a reserve. (Under Section 8(2)). The Board could remove Aborigines from reserves for misconduct or if in its opinion any individual should be earning a living away from such reserve. All buildings erected on reserves, livestock and property financed by the Board were to become the Board's property. Aborigines camped in the vicinity of townships or reserves could be removed by the Board to wherever the Board directed. The Board and its authorised agents, including the police, had the power to inspect any Aboriginal reserve or station.

4.3 From 1909 to 1916, the chairmanship of the Board was in the hands of the Inspector General of Police and membership was made up of private citizens and members of the Legislative Council. A reconstitution of the Board in 1916 provided for the Under Secretary of the Chief Secretary's Department, the Director-General of the Public Health, a member of the Legislative Assembly and the ex-president of the State Children's Relief Department to be included.

4.4 Local committees were set up on reserves some years prior to 1909, but as these committees were "failing to function expeditiously causing long delays in administration", two Inspectors of Aboriginals were appointed by the Government in 1915, and these local committees ceased to function.

PUBLIC SERVICE BOARD INVESTIGATION 1938

4.5 In response to a request by the then Chief Secretary, the Public Service Board, in 1938, carried out an investigation into the protection and development of Aborigines in New South Wales. The Board was also asked to make any recommendations thought desirable to improve the situation. The conclusions of the Public Service Board were referred to in the report of the Joint Committee of the Legislative Council and the Legislative Assembly upon Aborigines Welfare of the N.S.W. Parliament in 1967:

> Herewith is the problem as the Board found it then -
>
> The problem to be faced today, is the method to be adopted in dealing not with what the man in the street probably considers to be the problem, viz., those persons with a preponderance of Aboriginal blood, but with a constantly increasing number of persons who are half-castes, or who have a lesser proportion of Aboriginal blood.
>
> In any case, it appears to be the concensus of opinion of those best qualified to speak, that the only satisfactory solution of the problem is to mould the administration as to ensure, as early as possible, the assimilation of these people into the social and economic life of the general community. In dealing with this problem and in ensuring that the ultimate aim above referred to may be achieved within a reasonable time, it is most essential that the best methods should be adopted to ensure proper education and training of the persons concerned, and this largely means adequate supervision and control by persons best qualified to provide such education and training.

In the intervening stage, of course the present system under which assistance is granted to those unable to work, or to obtain work, and in some cases it is claimed, to those unwilling to work, must be continued.

It has been claimed to the Public Service Board, and elsewhere, that a considerable portion of the difficulties associated with the problems are caused by:

(a) the antipathy of the white community to those possessing Aboriginal blood;

(b) the indolence and absence of a sense of responsibility which is inherent in many persons with Aboriginal blood;

(c) the necessity for close supervision of all such Aborigines.

With regard to (a) the Public Service Board finds that this is true. ... With regard to the other contentions, it may be and is true of these people, as of all others, that some are naturally indolent. On the other hand the Public Service Board has seen that a considerable number are energetic and hard-working, while there is not lacking a great deal of evidence to show that, with proper guidance, encouragement and tuition, a considerable proportion of the Aborigine population (as understood under the Act) can and do become efficient workers in various spheres.

The Report contained many recommendations, not the least of which was that the composition of the Aborigines Protection Board should be changed so that all interests necessary in dealing with this problem would be adequately represented on the Board. This recommendation was adopted and the name changed to the Aborigines Welfare Board .

4.6 Despite the recommendations, there was virtually no change in adminstration attitude by the Board.

4.7 By 1966, two Aboriginal persons represented Aborigines on the Aborigines Welfare Board - Mr J. Morgan and Mr A. Ferguson.

A DAY OF PROTEST AND MOURNING 1938

4.8 At the same time as the Public Service Board reported on its findings in 1938 recommending "proper guidance, encouragement and tuition" for Aborigines, Aboriginal people were organising a "Day of Protest and Mourning" on January 26th, Australia Day, in the Sydney Town Hall. Over 300 Aboriginal people attended, and mourned for their people who had been lost in massacres and murders since white settlement, for the dispossession of their land, and called for land rights, equal rights to employment, education and housing. The organising group were publishing a newspaper, "Abo Call", claiming to represent 80,000 Aborigines throughout the country, which put forward their formulas to end the oppression and exploitation of Aborigines. Some of this group died while fighting overseas during the Second World War and at least one is still today attending Aboriginal meetings.

THE JOINT COMMITTEE UPON ABORIGINES WELFARE 1967

4.9 In September, 1967, the Joint Committee upon Aborigines Welfare recommended

in its report that:

(1) The Aborigines Welfare Board be abolished..

(5) An Aboriginal Advisory Council be created. Such Council to consist of six Aborigines elected by Aborigines; two Aborigines one of whom shall be a woman, to be appointed by the Minister for Child Welfare and Social Welfare. The Director of Aboriginal Affairs shall be Chairman.

(6) The duties of this Advisory Council shall include advice to the Director on all steps proposed or desired by Aborigines for their advancement and the expression of the Aboriginal point of view on proposals initiated by the Director.

THE ABORIGINES ACT, 1969 - Decolonisation

4.10 In February, 1969 legislation based largely on the recommendations of the Joint Committee was in its second reading stage in the Legislative Assembly. Mr Willis, then Minister for Labour and Industry, Chief Secretary and Minister for Tourism, hailed the Aborigines Bill as an end to the "smooth-the-dying-pillow" era, in that it gave expression to the then new policy of assimilation, and signified the Government's realization of "the necessity of consultation with Aborigines in its making of policy which will effect them ..."

4.11 At the time, criticisms were made of the Bill and suggestions were made that:

1. All members of the Aborigines Advisory Council should be elected;
2. The Aboriginal members should be paid sufficient to make it a full-time job;
3. Clause 9, setting out the duties and functions of the council, restricts the matters on which the Aborigines Advisory Council may report to or advise the Minister upon those matters that the Minister has referred to it for report, or upon which he thinks fit to seek advice.

4.12 Mr Willis's reply to 1. was that the joint parliamentary committee recommended the constitution of the council and there would "still be a majority of elected members and it is not felt that the council as proposed will be ineffective or unacceptable to the Aboriginal people". To the second, he replied that "this would be unprecedented and undesirable". To the third, he replied that there was "nothing to prevent the council from tendering advice to the Minister on any matter in respect of which it desires to do so."

THE ABORIGINES (AMENDMENT) ACT, 1973

4.13 The Aborigines Act 1969 was amended in 1973 by the Aborigines (Amendment)Act

1973. The amendments provided for - reconstitution of the Aborigines Advisory Council as a fully elected body; "land rights"; and corrected deficiencies in the principal Act. By "land rights", Mr Waddy, then Minister for Child Welfare and Social Welfare, was referring to the constitution of the Aboriginal Lands Trust and the definition of its powers, authorities, duties and functions under that Bill. The fully-elected membership of the Aborigines Advisory Council pursuant to the Aborigines (Amendment)Act 1973 became the membership of the Aboriginal Lands Trust, although Government's acknowledgement that any link, however tenuous, between a government department and the trust would be unacceptable universally to the Aboriginal people" and because "no good purpose would be served by the setting up of a second elected body when there is available a group of Aborigines already elected and, without any shadow of doubt, competent to discharge both roles." At the present time, the membership of the Aboriginal Lands Trust is holding the meetings of the Aboriginal Lands Trust and the Aboriginal Advisory Council at the same time to save expense. The Secretary of the Aboriginal Advisory Council is a white public servant from the Department of Youth and Community Services, while the staff of the Aboriginal Lands Trust are appointed by the Trust members. The Aboriginal Advisory Council make their resolutions and it is the Secretary's job to refer these resolutions to the Minister and to draft replies on behalf of the Minister to the Aboriginal Advisory Council.

CORPORATION SOLE — THE MINISTER, ABORIGINES ACT 1969

4.14 The Aborigines Act 1969 (as amended) provides that the Minister for Youth and Community Services is a corporation sole in whom is vested all the assets, liabilities etc. of the Aborigines Welfare Board. Section 11 of the Act,(Acquisition of Property by Corporation) states: "the corporation may acquire property by purchase, exchange, gift inter vivos, devise or bequest and may take land on lease". Section 12, Sale and Lease of Land), states: "The corporation may, subject to this Act, cause a building to be erected and may sell or lease land and any buildings thereon to an Aboriginal or to Aborigines and may in prescribed circumstances, sell or lease land to any person for the benefit of Aborigines"; "The terms and conditions of any sale or lease under subsection one of this section shall be as determined by the Minister and, in the case of a sale, may provide for the payment of any balance of purchase money to be made by instalments or to be secured by a mortgage of the land sold"; "this section does not apply to or in respect of land that is a reserve or part of a reserve".

THE ABORIGINAL LANDS TRUST - ACQUISITION OF PROPERTY

4.15 However, at the same time, the Aboriginal Lands Trust, which is not the Crown or an instrumentality of the Crown, may:

... acquire property by grant from the Crown or by purchase,

exchange, gift, devise or bequest." (Section 10)

.....may do or suffer in relation to its property any act or thing that it could lawfully do or suffer if it were a natural person having, in the case of land, the same estate or interest in the property as the Trust and, in particular, but without prejudice to the generality of the foregoing, it may do or suffer any such act or thing to enable it to -

(a) sell, exchange, lease, mortgage or otherwise deal with its property;
(b) improve, or cause to be improved, any land vested in it; or
(c) explore for and exploit, or cause to be explored for or exploited, mineral resources, or other natural resources vested in it".

(Section 10)

4.16 In addition to the above, the Minister may revoke a reserve and grant it to the Trust, and arrange with the Minister administering the Crown Lands Acts for Crown Lands other than reserves to be granted or otherwise disposed of to the Trust.

4.17 Under this last mentioned provision, the total area of reserve land transferred to the Aboriginal Lands Trust by arrangement with the Minister was 3,675.9926 hectares, as at the 30th of June, 1978. The total number of reserves transferred was 159, and the total valuation of land and improvements tranferred to the Trust as at 30th of June, 1978 was over $8 million. No information is available on the area of land vested in the corporation sole, "The Minister, Aborigines Act, 1969". The Aboriginal Lands Trust holds these lands in freehold title.

4.18 In relation to Section 17 (1A) (b) which provides for the Minister to grant to the Trust Crown Lands other than reserve lands, the 1977 Annual Report of the Aboriginal Lands Trust has this to say:

> Whilst there has been some success concern must be expressed by the Trust at an apparent lack of policy by the Government in the area of recognition of entitlement of Aboriginal people to an interest in areas of prior occupation, both traditional and otherwise. Provision has been made within Section 17 (1A) (b) of the Act for the transfer of such areas but that Section isa cover provision and is subject to a broad discretion within (sic) the Minister for Lands and his Department as to whether there is any basis for transfer.
>
> In the view of the Trust it is essential that some firm policy be formulated by the Government to accord with the spirit of the Act.

The Aboriginal Lands Trust of New South Wales is essentially powerless to acquire further lands to add to its present paltry holdings.

NEW DEVELOPMENTS

4.19 The New South Wales State Government announced in 1978 that it would appoint

a select Committee to inquire into matters concerning Aboriginal Affairs. The Select Committee was appointed in November 1978 with the following terms of reference.

(a) to inquire into the causes of socio-economic deprivations and disadvantages suffered by the Aboriginal Citizens of New South Wales and recommend action to eliminate those deprivations and disadvantages;

(b) to examine and report on the general conditions under which Aborigines in this State live, with particular reference to - housing, health, education, employment, welfare, cultural issues; and make appropriate recommendations;

(c) to inquire into and make recommendations regarding land rights for New South Wales Aboriginal Citizens;

(d) to report on the effectiveness of current Commonwealth/State Arrangements for Aboriginal matters.

4.20 When the intention of setting up this Committee was announced it was made clear that the Committee was not to be concerned with whether Aborigines should be granted land rights since the Government had already decided that they should. The task of this committee was to make recommendations on how such rights should be granted.

4.21 In non-traditional areas land rights do not have the strict meaning of the traditional situation. This is because the strict line of descent from ancestors has been disrupted by the white invasion, colonisation disease, massacres and social disruption.

4.22 In New South Wales tribes were forcibly removed to reserves and often after this, groups were continually split up and moved around. Children were taken away from their parents by the Aboriginal Welfare Board and today by the Department of Youth and Community Affairs. In these circumstances it is not possible for Aboriginal people on the land today to definitely identify their association with the original tribal areas and the original types of social organisations. However, Aboriginal people have maintained, to a large extent, their religious and emotional relationship with areas of land, both traditional and post tribal (reserves).

4.23 Some Aboriginal groups who were removed from their traditional lands have now occupied reserve lands for a great number of years and because of Aboriginal cultural values have developed new emotional links with that land which must be recognised and protected and understood as being as important as those of the

traditional groups which have suffered less from the white invasion.

4.24 Therefore in New South Wales some people may be able to identify their traditional links with areas of land, but most people would set out in land claims their need for land based on criteria that incorporate both Aboriginal values and European values. Economic and social needs for land would be important aspects of land claims from New South Wales groups. People need land for housing, community facilities, recreation and economic ventures

RECOMMENDATIONS OF THE 1978 SELECT COMMITTEE

4.25 1. The recognition by the Parliament and the New South Wales Government of Aboriginal right to land will acknowledge their just claim based on prior ownership, tradition, needs and compensation.

2. Competing claims for land and associated rights between Aboriginal communities and non-Aborigines should be dealt with by conciliation and arbitration, through the Aboriginal Land and Compensation Tribunal.

3. Aboriginal "self determination" should be the essential basis of Aboriginal policy planning.

4. The formation of Aboriginal Community Councils, Aboriginal Regional Land Councils and the Aboriginal Land and Development Commission, will give effect to that policy.

5. The Aboriginal Land Rights Act, and the Aboriginal Land and Development Commission Act, will provide the legal framework for the implementation of future policies.

6. A guaranteed percentage of land tax revenue for a specified period will provide the financial resources for long term planning and implementation of Aboriginal community and commercial enterprises, the payment of compensation and the purchase of land.

7. The establishment of an Aboriginal Heritage Commission will acknowledge the great importance of Aboriginal culture in the State of New South Wales and provide the means whereby the Aboriginal people will have the care, control and management of their sacred and significant sites.

8. A State-wide conference of Aboriginal people held to consider the Committee's recommendations and advise the Government, will be a positive example of Aboriginal "self determination".

9. A beneficial effect on Aboriginal housing, health, education, employment and race relations is anticipated following the granting of land rights in New South Wales.

CHRONOLOGY OF EVENTS IN NEW SOUTH WALES

4.26	1874	Maloga Mission established - only refuge for 9000 surviving Aborigines in N.S.W.
	1883	Aborigines Protection Board established; moved Maloga folk to Cumeroogunga and made 'temporary reservations' of many small areas during 1880s and 1890s.
	1909-40	Aborigines Act 1909 and 1910 Regulations forced 'half castes' to leave reserves; Amendments in 1915 and 1918 increased Board powers to remove children for training as domestic servants; Aborigines forced back to reserves in 1930s depression but given little aid. Former Cumeroogunga residents in Sydney and Melbourne won attention with a 1937 petition to the King; the 26 January 1938 'Day of Mourning' and deputation to the Prime Minister, and the February 1939 'strike' when residents of Cumeroogunga set up a tent camp across the Murray in Victoria. But there was little improvement, despite a 1937 N.S.W. Parliament Select Committee and a 1938 Public Service Board Investigation. A new policy of 'assimilation' proclaimed in Aborigines Act 1940, which established an Aborigines Welfare Board. War priorities prevented real improvements; many reserves closed in 1940s and 1950s.
	1959	The Aborigines Advancement League of Victoria began to help Cumeroogunga residents in fight to regain reserves leased since 1920s; lease on 200 acres ended 1960 and farming began on co-operative basis by "Cumeroogunga Pty Ltd".
	1966	Company became 'tenants at will' of Board under agreement to farm remaining 1430 acres of reserve. The 1965 'Freedom Rides' by students and Aborigines protesting discrimination in certain towns, and protests by La Perouse folk and others against Board alienation of their reserves won public attention.
	1968	Parliamentary Select Committee investigation; the Aborigines Act 1969 transferred control to a Directorate responsible to the Social Welfare Department; an Aboriginal Advisory Council appointed.
	1973	Act amended to establish N.S.W. Aboriginal Lands Trust, whose members are the former Councillors; elections not held until 1977. Cumeroogunga Pty Ltd , which had already received $65,000 from the newly-established Capital Loan Fund in 1970 was able to buy back adjacent properties - 983 acres added for $125,000.
	1975	N.S.W. Aboriginal Lands Trust vested with freehold titles to former Aboriginal reserves, but under the 1969 Act former town reserve land was vested in the Minister (Corporation sole).

1976-78	ALFC purchased twelve properties - holds title to those at Mungindi, Maclean, Coraki, Purfleet, Corolamo Island, Alstonville, Wee Waa, Tucki, Coonamble, Bega Valley and Warren. N.S.W. Aboriginal Lands Trust regained an interest in part of the former Moonah Cullah reserve.
1977	N.S.W. Land Council established in Sydney.
1978	Aboriginal communities between Eden and Wollongong formed the South Coast Aboriginal Regional Council to present a united front on issues, including land rights.
1978	N.S.W. Legislative Assembly appointed a Select Committee upon Aborigines - to inquire into land rights and the conditions of Aborigines in N.S.W. Three land claims prepared by communities (Roseby Park and Wallaga Lake on the South Coast and Terry Hie Hie near Moree) and submitted to N.S.W. Premier.
1979	Aboriginal Lands Trust has title to 144 properties.
1980	Land Rights Report of the New South Wales Select Committee of the Legislative Assembly on Aboriginies tabled in Parliament; no further progress made.

5:0 QUEENSLAND

5.0 QUEENSLAND

5:1 A commission of inquiry was established in 1876 following reports in Britain of the atrocities taking place in Queensland. As a result of its findings, six reserves were gazetted in 1877.

5:2 The purposes of these new reserves were:

1. As a camping ground for the Aborigines where they would not be disturbed.
2. A centre for hunting in the bush.
3. A means of keeping them away from the towns and indiscriminate contact with white civilisation.
4. A resting place for the aged, infirm and young.
5. A convenient centre for the serving out of blankets rations, clothes, etc.

5:3 By 1885, all of these six reserves had been cancelled by the Government under pressure from the white settlers. The pearling industry and the Native Police troops were still creating havoc amongst Aboriginal groups in the late 1890's and in 1881 and 1884, legislation was passed in an attempt to ameliorate the exploitation, violence, kidnapping and other outrages. Five reserves were gazetted in North Queensland by 1891, largely as a result of a downturn in the economy and the white need to dispose of large numbers of blacks no longer useful in the pastoral industry.

5:4 The Government provided no effective support to these reserves and they were only set aside where the land was of no use to the white settlers and where missionaries were prepared to take administrative and financial responsibility. The reserves were not however seen as permanently set aside. By 1896, most of the area known as Queensland had been expropriated by the colonists and Aboriginal people were left destitute.

5:5 At this time, a Special Aboriginal Commissioner, Archibald Meston, was appointed to deal with Aboriginal matters. Meston proposed the setting up of new reserves, run preferably by the government, and the gathering together of 'tribal remnants' from all over the state. The emphasis, he argued, should be on protection, segregation and control combined with self-sufficiency and efficient management.

5:6 Meston's proposals were received favourably by Horace Tozer

the Colonial Secretary, who when set up the legislation necessary to put them into effect. This resulted in the Aborigines Protection and Restricition of the Sale of Opium Act of 1897

5:7 The Act established a new reserve system which provided for the white colonists a means of controlling the Aboriginal population. The Act gave the Minister the power to 'cause Aboriginals within any district to be removed to and kept within the limits of any reserve situated in the same or any other district'. The Governor was given the power to 'proclaim any portion of the colony an Aboriginal area' and to 'proclaim any portion of the colony not being freehold, selected land or land held under license or lease or otherwise for mining or other purposes as a reserve for the exclusive use of Aboriginals'. The Northern groups were to be ignored (until whites demanded control of them too) while all those people living around the towns and settlements were singled out for removal to the reserves.

5:8 Only Aboriginal labourers were exempted from removal to the reserves.

5:9 Large scale forced removals of Aboriginal people to the new reserves began in 1897. The Fraser Island reserve, Yarrabah, Durundur, Baranbah (now Cherbourg), Taroom, later to become Woorabindah, Hull River, and Palm Island were gazetted by 1918. All Hull River residents were removed to Palm Island, the now infamous penal settlement for Aboriginal people from all reserves in Queensland. By 1930, the rampant disease amongst the remaining fringe-dwelling populations had forced the Government to establish ten more reserves on which 'villages' had been erected.

5:10 In the north, Edward River, Lockhart River and Doomadgee reserves had also been gazetted. Despite the 1937 Canberra conference of Native Affairs Department directors and its deliberations on the new assimilation policy, the Queensland Government consolidated its segregationistpolicy and control by means of the ticket of exemption system (which confined Aborigines to reserves unless specifically granted otherwise, and as well by extending the Director's power of removal.

5:11 The several Acts have resulted only in the progressive reduction of Aboriginal access to traditional and European legal systems. Such humanitarian sentiment as existed in the rurally-weighted legislature retreated before the realities of economic expansion. Far from protecting the Aborigines, the Queensland legislation has served only to legitimize the exploitation and brutality which has been the de facto policy of the whites since the invasion.

5:12 As late as 1970, numerous provisions of the Act contravened the customary standards of the European legal and moral code. A person could not leave a reserve without a permit, (issued only by the Director or the Manager), and could be forcibly shifted from one reserve to another. All reserve employees were paid less than the basic wage, and a convenient legal fiction ensured that "slow workers" were paid almost nothing. Indeed, it was not until 1980 that it became compulsory for the Queensland Government to pay award wages to reserve residents, as a result of court action taken by the Yarrabah Aboriginal community. However, there are still numerous breaches. Exemption from the Act could be best won by sycophantic obedience to reserve managers, and the classification of all Aborigines, not so exempted, as State Wards, allowed minute interference in private and family matters.

5:13 State control extended into the largest and smallest domains. In effect, Queensland Aborigines were prisoners of war.

Present Legislation

5:14 Legislation in Queensland relevant to Aborigines and Islanders contravenes the Universal Declaration of Human Rights, the Aboriginal and Torres Strait Islanders (Queensland Discriminatory Laws) Act 1975, the Racial Discrimination Act 1975, and Declarations of the International Commission of Jurists.

5:15 The Director of the Department of Aboriginal and Islander Advancement and administrator of the Acts has sweeping powers. Professor Garth Nettheim has criticised the Acts for the "excessive delegation by Parliament of legislative and other powers to the Administration with inadequate limitation and little real prospect of any effective Parliamentary review."

5:16 The Queensland Acts were amended in 1979, with the effect that:

- an Aboriginal and Islander Commission will be established to advise the Minister, but may only meet as the Minister approves;
- all Aboriginal and Islander Councils will be incorporated;
- permits to enter reserves will be administered by Councils;
- appeals may be made to the Supreme Court on decisions of the Aboriginal Court or District Officer as if they were decisions of a Magistrate's Court.

5:17 From 1975 to 1979, the Acts were administered in direct contravention of Commonwealth legislation, the Aboriginal and Torres Strait Islanders (Queensland Discriminatory Laws) Act 1975 and the Racial Discrimination Act 1975. However, the Commonwealth Government, in its Second Periodic Report under Article 9 of the International Convention on the Elimination of All Forms of Racial Discrimination to the United Nations in 1976, blandly stated:

> *The declared objectives of the Queensland Government in relation to Aboriginals and the law are:-*
>
> *(a) That, Aboriginals be responsible to and benefit from the same laws, whether common or statute, which apply to all citizens and,*
>
> *(b) That special Aboriginal welfare laws diminsh in scope until completely extinguished.*
>
> *The Queensland Government believes that the first of these objectives has been achieved. It says that the scope of special Aboriginal welfare laws in Queensland has diminished over the years and that these laws are again under review in consultation with the elected Aboriginal Advisory Councils and the Aboriginal and Islander Commission. This Commission has delivered a report to the Queensland Government proposing changes to the Queensland Aborigines Acts and Torres Strait Islanders Acts. Amending legislation implementing some of the Commission's recommendations is currently before the Queensland Parliament. (P 36).*
>
> (The Amendments were passed in 1979)

5:18 However, the Foundation for Aboriginal and Islander Research Action Limited found that of the thirty-four pages in the report of the Aboriginal and Islander Commission, thirty-two were apparently

written by an official of the Department of Aboriginal and Islander Advancement. The report recommended the extension of the existing Act for a further five years, a recommendation not supported by the majority of Aboriginal and Islander people resident in Queensland. In a survey conducted by the Foundation for Aboriginal and Islander Research Action and published in 1979, 73.1% of Aboriginal and Islander people questioned wanted the Commonweatlh Government to be responsible for making laws about Aboriginal and Islander reserves in Queensland.

5:19 Professor Nettheim's comments in 1975, a year before the Australian Government's report to the United Nations, sum up the situation:

> *"... the much vilified Queensland system is finally being dragged bit-by-bit into the twentieth century ... But I detect no sign of willingness by the Queensland Government to move further or faster."*

5:20 VIOLATIONS OF FUNDAMENTL HUMAN RIGHTS

The Aborigines Act 1971 and the Torres Strait Islanders Act 1971 violate the following Articles of the Universal Declaration of Human Rights (and fundamental human rights:)

5:21 RESIDENCE

ARTICLE 9 - No-one shall be subjected to arbitrary exile.

ARTICLE 12 - No-one shall be subjected to arbitrary interference with his ... family.

5:22 WAGES

ARTICLE 17 (1) - Everyone has the right to own property..."

(2) - No-one shall be arbitrarily deprived of his property.

ARTOCLE 23 (2) - Everyone, without discrimination, has the right to equal pay for equal work.

(3) - Everyone who works has the right to just and favourable remuneration...

5:23 There are some fears among Aborigines and Islanders, apparently well-based in some instances, that they are actually cheated on their earnings in the Adminstration of the Trust system.

5:24 AGREEMENTS

Agreements made by people whose property is not being managed may be cancelled or varied by the Director - it will probably be very difficult to persuade anyone to enter into any sort of agreement with any Aboriginal or Islander.

5:25 COURT PROCEEDINGS

ARTICLE 11 (1) - is violated in that representation is permissable "subject to the consent of the Court".

ARTICLE 7 - is violated in that Courts are part of the closed reserve system and deal with matters which, elsewhere in the State, would come under very different "equality before the law".

ARTICLE 10 - It is hard to say that Article 10's ideal of an independent and impartial tribunal is met by a Court consisting of unsalaried J.P.'s from a closed community or of the Council for such a community. There is a right of appeal to a District Officer who is frequently the Clerk of the Magistrate's Court.

5:26 It seems that the 1979 amendments allowing appeal as if the decisions of the Aboriginal Court and the District Officer were decisions of a Magistrate's Court do little to change this situation.

REGULATIONS AND BY-LAWS WHICH VIOLATE THE DECLARATION OF DELHI 1959 OF THE INTERNATIONAL COMMISSION OF JURISTS.

The Commission insisted that "it is always important that the definition and interpretation of the law should be as certain as possible, and this is of particular importance in the case of the criminal law, where the citizens' life or liberty may be at stake".

5:27 REGULATION 11/

- requires every resident on or visitor to a reserve or community to "conform to a reasonable standard of good conduct and refrain from any behavious detrimental to the well being of other persons thereon".

5:28 REGULATION 10/

- requires residents and visitors to obey all lawful instructions of the Director, District Officer, Manager, Councillors or other officers of such Reserve or Community.

5:29 REGULATION 12/

- provides that every resident or visitor who does "any act subversive of good order or discipline on such Reserve or Community ... shall be guilty of an offence".

5:30 REGULATION 14/

- requires that a person authorised to be on a reserve "shall conduct himself properly and to the satisfaction of the Aboriginal/Island Council and Manager or District Officer..."

5:31 REGULATION 15/

- provides that a "person shall not bring or attempt to by any means whatsoever to bring on to a Reserve or Community anything which in the opinion of the Aboriginal/Island Council, Manager or District Officer is likely to disturb the peace, harmony order or discipline of such Reserve or Community".

5:32 The By-Laws of the Acts are excessively trivial and enable the Manager to interfere in family life and work life, for example:

5:33 Chapter 3 - "All able-bodied persons over the age of fifteen years residing within the Community-Reserve shall unless otherwise determined by the Manager, perform such work as is directed by the Manager or person authorised by him."

5:34 Chapter 8.6 - "A householder shall allow an authorised person to enter his house for the purpose of inspection."

5:35 Chapter 13.2 - "A person shall not use any electrical goods other than a hot water jug, electric radio, iron or razor, unless permission is first obtained from an authorised person.

5:36 The Foundation for Aboriginal and Islander Research survey published in 1979 shows that Aboriginal people (73.1%), want Commonwealth legislation to be responsible for making laws in Queensland.

PROJECTED REPEAL OF THE LEGISLATION AND RAMIFICATIONS

5:37 In March 1981, the Premier of Queensland, Mr Bjelke-Petersen, announced that he was preparing to repeal the Aborigines Act 1972. Despite the fact that this legislation and its effects amount to the most racist situation for Aboriginal people in Australia, the repeal of the Act will mean the further dispossession of Aboriginal people in Queensland of 7½ million hectares. Mr Bjelke-Petersen has announced that no freehold title will be granted to Aboriginal people nor will they be allowed any special leasing provisions. provisions. He has stated "They'll probably be given a lease, the same as anybody else can..... obtain a lease from the Crown..... We don't set people aside on another land that's black man's country over there.....we're all equal we're all the same.....(there's) no need to dicuss the procedure or proposal, that will be known in ample time."

5:38 This announcement was timed to coincide with the visit to Australia of Mr Abraham Ordia, the President of the Supreme Council for Sport in Africa. Mr Ordia was taken on a Queensland Government guided tour of two of the reserves - Eiddsvold and Cherbourg - known to Aboriginal people as "model" reserves. Queensland Aboriginal people had submitted to the Supreme Council for Sport in Africa that the Commonwealth Games proposed to be held in Brisbane, the capital of Queensland, in 1982, be moved to another venue, to protest the racist conditions of the Aboriginal people of Queensland. Mr Ordia made little comment on these requests, except to say that he thought there was much room for improvement if what he had read was true.

5:39 Clearly, Aboriginal people in Queensland will be given no quarter by the Queensland Government and will be sacrificed to the interests of mining companies and the Queensland Government's "development" policy. The people are requesting that the

Commonwealth Government intervene under its constitutional powers and legislate for Aboriginal land rights, overriding the State Government.

5:40 In a survey of 1791 adult Aborigines and Islanders in Queensland conducted in 1979 by the Foundation for Aboriginal and Islander Research Action and the Aboriginal and Torres Strait Islander Legal Service found that:

- 85.6% of reserve residents wanted land ownership of reserves to be in the hands of the Aboriginal and Islander residents of the reserves;
- 78.1% wanted the Community Councils to control all decision-making related to housing on reserves;
- 86.2% wanted the Councils to control access to reserves;
- 80.3% wanted the Councils to control mining, waterways and forests on reserves.

5:41 In addition, the survey found that 69.1% of Aborigines and Islanders living presently in Queensland towns stated that they would go and live on a reserve if it were controlled by Aboriginal people. 54.4% of the same sample also stated that they felt that houses currently owned by D.A.I.A. should be sold to the people occupying the houses.

THE MINING THREAT

5:42 The clearest examples of the tenuous status of Aboriginal reserve land in Queensland are provided when one looks at cases where minerals have been discovered on reserves.

AURUKUN

5:43 Under Sections 29 and 30 of the Aborigines Act, the Minister for Aboriginal and Island Affairs and the Director of D.A.I.A. as trustee for the reserves can grant authorities to prospect or mine on Aboriginal reserves. In the mid-1960's, the Tipperary Corporation (American), Billiton Aluminium Aust. BV (Dutch) and Aluminium Pechiney Holdings Pty. Ltd. (French) were granted authority to prospect for bauxite on the Aurukun reserve. On August 1968, the Corporation discussed certain access conditions to reserve lands with Aurukun's managing religious organisation (Presbyterians) and the Aurukun

Aboriginal Council, promising continued consultation. In December 1975, however, the Aurukun Associates Agreement Act 1975 was signed which embodied no reference to consultation with Aboriginal residents concerning land usage. It provided the consortium with a special mining lease of 42 years with rights of extension for a further 21 years over 1905 square kilometres, of which 1800 square kilometres were Aboriginal Reserve.

5:44 Agreements were undertaken (under Section 30 of the Aborigines Act) between the mining companies and the Director of D.A.I.A. for 3% of net profits to be paid to the latter for the benefit of Queensland Aborigines in general. In 1976 the Aurukun people challenged the Act in the Supreme Court with respect to the payment of royalties and petitioned the Federal government to refuse export licences until negotiations regarding compensation were held with Aurukun people. In January 1978, the Privy Council upheld the Director's rights to receive money from mining ventures and to dispense them for the benefit of Aborigines in general. The outcome was thus:

1) reserve land area reduction;
2) special leases for mining granted;
3) royalties payably to D.A.I.A.;
4) no compensation for Aurukun Aborigines specifically.

All of this was done, legally under the Act, with no serious consultation with reserve residents or church management.

5:45 In 1978, the Queensland Government attempted to oust the church management, and after general ineffective interventions by the Federal Government, degazetted the reserves - introduced legislation transfering them, against the people's will into Local Government Shires under the Act.

MAPOON

5:46 The Presbyterian Church had also been under strong pressure from the government to close Mapoon, a mission settlement to the north of Weipa. During 1962 the company Alcan sought from the government a lease over the remainder of the Mapoon/Weipa reserve land not taken by Comalco. In 1963 following withdrawal of missionaries but with many Aborigines determined to stay there, the D.N.A. took over control of Mapoon. Using police, the government physically evicted the residents from Mapoon Mission, burning

all houses and other facilities as they left. The government then moved the Mapoon people 110 kilometres north to Bamaga. The Alcan Act was then passed in 1965 and it granted the company a mining lease over 536 square kilometres of Aboriginal reserve until the year 2070.

NON-RESERVE LAND

5:47 Aboriginal usage of non-reserve land in Queensland comes under a number of categories:

1. Residence in non-reserve rural or urban centres;
2. Residence on pastoral properties;
3. Residence on reserves designated for purposes such as "camping", "police paddock", "public purposes", etc.;
4. Residence ("squatting") on absentee-owner or unoccupied lands;
5. Usage or occupation of State Forest, Timber Reserve or National Park;
6. Residence on land purchased by Aboriginal Land Fund Commission, now part of the Aboriginal Development Commission.

5:48 After the Aboriginal Land Fund Commission had bought four properties in Queensland, the Queensland Government blocked further purchase by refusing to register the titles of the properties. The four successful purchases of the Aboriginal Land Fund Commission are listed below.

5:49 ABORIGINAL LAND FUND COMMISSION PURCHASES IN QUEENSLAND

Property	Area	year Purchased	Tenure	Population
Murray Upper land	1,783 k	1976	part lease part freehold	107
Redlynch land	0.732 h	1977	freehold	1441
Daintree River land	176 h	1978	freehold	324
Kuranda land	36.4 h	1979	freehold	203

SUMMARY

5:50 In summary, with respect to reserve land, Aborigines in Queensland have no rights of control over that land concerning reserve size, location, boundaries, excisions, usage (particularly where mining is concerned), access by persons to reserves and residence thereon.

5:51 The Australian Commission for Community Relations agreed in 1980 that the Queensland Government continues to contravene Commonwealth legislation and the Convention of the United Nations by its discriminatory Laws. The National Aboriginal Conference has been unable to convince the Australian Government of the necessity of taking executive action to prevent the continuation of Queensland's racist legislation, policies and practices.

QUEENSLAND

1897 Aboriginals' Protection and Restricition of the Sale of Opium Act 1897 passed by Parliament; with some amendments in 1901 and 1934 it remained the major statement of Queensland policy until Aboriginals Preservation and Protection Act 1989 passed.

1963 Nationwide attention given to protests of Mapoon Aborigines, forcibly removed from their homes so that Comalco could carry on strip mining.

1965 Aborigines and Torres Strait Islanders Act 1965 restates powers of government authority to control Aborigines and manage Aboriginal reserves.

1975-76 ALFC made a deposit to purchase Archer River Downs but Minister for Lands refused to approve transfer of this lease.

1976-78 ALFC twice tried to purchase Glenore Station near Normantown; Queensland Minister for Lands twice refused to approve transfer of this lease to the Aboriginal community.

1977 ALFC purchased (and holds titles to) land at Murray Upper, partly freehold and partly lease, and land at Redlynch near Cairns. There is no legal barrier to purchase of freehold land.

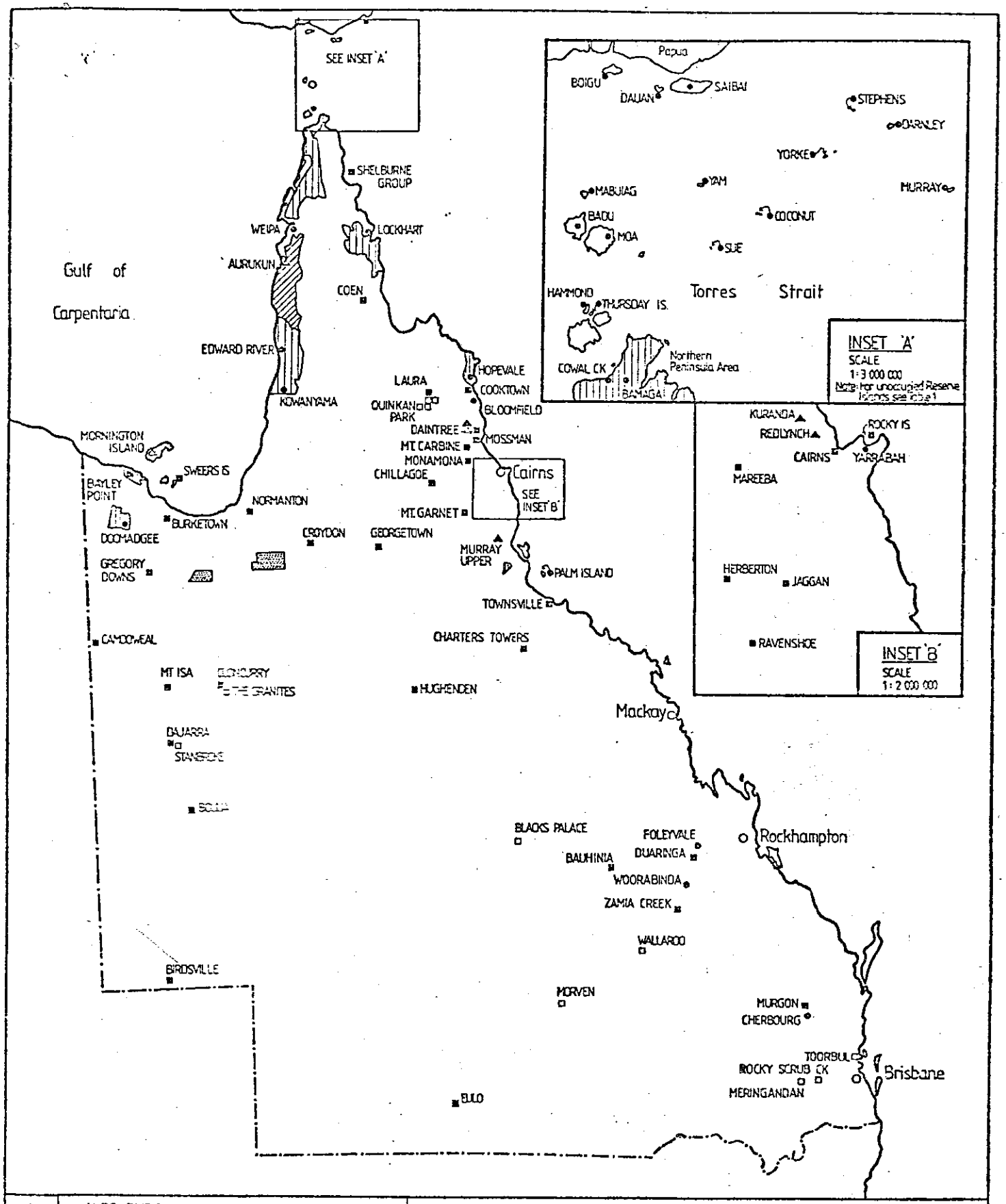
1978 January - North Queensland Land Council established. It receives no government assistance.

1975-78 By the passing of the Aurukun Associates Bill in 1975 an agreement was made between the Queensland government and Aurukun Associates Ltd (wholy owned by foreign interests) on the disposition of reserve land - without consulting the Aboriginal residents. A legal challenge by Aborigines was dismissed by a lower court, but was upheld by the Queensland Supreme Court on appeal. The Queensland government then took the case to the Privy Council (in London) which found that the government had acted within its rights. The Aborigines' case had failed. Until 1978 the government had delegated its authority to administer the Aurukun and Mornington Island reserves to the Uniting Church. In March 1978 the Church was told the government would now take control. Aboriginal residents appealed to the federal government, which drew up the Aborigines and Torres Strait Islanders (Queensland Reserves) Self-Management Act. This

Act, an emergency measure to prevent the takeover, was never proclaimed. Instead an agreement was reached by the two governments, in consultation with the Aborigines. This gave residents the right to elect their own Councils, self-management powers under Queensland local government legislation and 50-year leases to the former reserves (which had been revoked by the Queensland government).

1979 March - elections under local Government legislation for Aurukun and Mornington Island Shire Councils - the first all Aboriginal shire council in Australia.

1979 All other reserves remain Crown land vested in the Director of Aboriginal and Islander Advancement as Trustee. Title to land at Mossman Gorge, purchased by ALFC, was presented to the Wawu Dimbi Council. This community intends to establish tropical crops and a beef cattle herd.



△ ALFC PURCHASE
• RESERVE WITH DAIA OR MISSION COMMUNITY
▪ RESERVE WITH OTHER OR NIL COMMUNITY
△ ABORIGINAL LAND LEASE COMMUNITY
▫ DECLARED SITE (RELICS)
○ MAJOR CITY, TOWN
MAJOR RESERVE AREA
LOCAL GOVT (ABORIGINAL) LAND LEASE AREA
UNALIENATED CROWN LAND (as of March 1980)

LAND SET ASIDE FOR ABORIGINES PLUS DECLARED SITE (RELICS) AREAS AND UNALIENATED CROWN LAND

SCALE 1:10 000 000

PREPARED BY
C ANDERSON
DEPT OF ANTHROPOLOGY
UNIV OF QUEENSLAND
APRIL 1980
DRAWN BY PETER GILLAN

6:0 VICTORIA

Legislation up to 1838

6.1 Today, in Victoria, only two of the former reserves - Lake Tyers and Framlingham - remain. These are now owned by Aboriginal Trusts. Prior to 1860, about 222,280 acres were reserved for Aboriginal use. After 1860, about 32,665 acres in addition were reserved, totalling 225,945 acres. Of this 11,333 acres were at one time or another reserved permanently for Aboriginal use, but much was revoked - apart from Lake Tyers and Framlingham.

6.2 Although legal title to the land is said to have been decided in 1770, when Captain Cook asserted British sovereignty over Eastern Australia and confirmed when Captain Phillip arrived in 1788, there was one unsuccessful attempt by a private individual to negotiate a treaty with Aboriginal people in the Port Phillip district of N.S.W. now part of Victoria. Batman signed a treaty with three Jaga Jaga brothers at Port Phillip, but the deeds were disallowed by Governor Bourke in August 1835.

6.3 In 1837, three reserves were established in the district - at South Yarra, at Dandenong Creek and one just west of Geelong. The Dandenong Creek reserve was established for housing the Native Police Corps. These lasted until 1839.

The Aboriginal Protectorate

6.4 An Aboriginal Protectorate was established in 1838, and George Augustus Robinson who confined the Aboriginal people of Tasmania on Flinders Island in the previous years, was appointed Chief Protector with four assistants. Under his regime, five Aboriginal "stations" were established. None of these remained after 1864.

6.5 Aboriginal reserves were also provided at Warrandyte, Mordiallo Creek, Pirron Yallock, Merri Creek, Maffra and Bacchus Marsh.

6.6 The five great nations around Melbourne, the centre established by the white colonists, were progressively removed from their lands to these reserves:

in 1851, Lake Boga Moravian Mission at Swan Hill, with an area of 25½ square miles;

in 1855, Yelta Anglican Mission, west of Mildura, with an area of 1 square mile;

in 1859 Lake Hindmarsh, near Dimboola (where the Moravians shifted after starting at Lake Boga) with an area of 1,897 acres;

in 1859, Acheron Station (or Mohican Station), near Taggerty, totalling 16,000 acres, and administered by local trustees; at Maffra, 6,000 acres were set aside, but not occupied and finally revoked in 1861; at Steighty, north of Geelong, 640 acres were reserved until 1901.

The Board for the Protection of Aborigines

6.7 In 1860, a central board was established to "watch over the interests of Aborigines in the colony of Victoria", and received statutory recognition in 1869, as the Board for the Protection of Aborigines was abolished in 1957. It assumed responsibility for the four remaining reserves - Mohican Station, Mt Franklin Station, Lake Hindmarsh Mission and Yelta Mission. It closed the first two and sent the residents to the new station it created at Coranderrk. Yelta was closed in 1878, and Lake Hindmarsh in 1904.

6.8 As well as at Coranderrk, it established reserves at Framlingham, Ramahyuck, Lake Condah and Lake Tyers. All these were reduced in size after 1886, and the Board established nine other reserves totalling 3,500 acres. Most of these were also revoked by the turn of the century.

After 1886

6.9 In the period after 1886, when the Victorian Government accelerated its policy of merging Aborigines in the community, by obliging "half-castes" to leave its Stations and Missions, four Missions and Stations were closed, and much of the reserved land reverted to the Lands Department.

6.10 Special Acts of Parliament were required in 1893, 1904 and 1948 to revoke (so-called) permanent Aboriginal Reserves at Lake Hindmarsh and Coranderrk.

6.11 In 1901, a small site of 6 acres on the Common at Mildura was obtained from the Shire of Mildura as a housing settlement, but the site reverted to the Crown. This may have been the first "transitional" housing settlement near a town in Australia.

6.12 By 1957 when the Board for the Protection of Aborigines was abolished, only 4,586 acres remained in two reserves at Lake Tyers and Framlingham.

Welfare Board (1957-1967)

6.13 The Aborigines Welfare Board administered Aboriginal Affairs from 1957 to 1967 and in the period, the two reserves were made permanent - Lake Tyers in 1965 and Framlingham in 1967. During this period, two small "transitional" housing estates were established at Mooroopna and Robinvale but, both were closed as housing estates by 1971.

Ministry of Aboriginal Affairs (1968-1975)

6.14 From 1968 to 1975, the State Ministry of Aboriginal Affairs was responsible for the administration of Aboriginal programmes in Victoria. In 1970, the Aboriginal Lands Act was passed, vesting the two remaining reserves at Lake Tyers and Framlingham in trusts consisting of the Aboriginal persons residing on those lands. On 1 July 1971, the two areas of land were formally handed over to the Trusts.

Commonwealth Department of Aboriginal Affairs

6.15 By the beginning of 1975, various State functions with respect to Aboriginal people were assumed by the Victorian Lands Department, Education Department, Housing Commission and Health Department. Responsibility for policy and funding with respect to Aborigines was transferred by arrangement to the Commonwealth Department of Aboriginal Affairs.

The Position Today

6.16 The prevalent Victorian Government view has consistently been one of self-congratulation in its handling of Aboriginal Affairs, and it is often popularly presumed that there are no 'real' Aborigines in this State.

6.17 There are a significant number of Aborigines in this State totally 14,745 (from the 1976 Census) and this number is growing at a rapid rate. The majority (9,282) live in the Melbourne city areas and the remainder (5,463) in rural districts. The nature of the distribution of the Victorian Aboriginal population, which can be traced back to tribal origins, has been documented by Diane Barwick who stated that "although official policy has long encouraged dispersal and individual assimilation into Australian society, informal discrimination from whites and strong pressures for allegiance to one's membership group still encourage the persistence of Aboriginal enclaves".

> Colonisation.....worked in a vicious circle. The colonisers took the land and debased the Aboriginal people because they claimed they were scarcely human. Having, through a process of terror and exploitation dehumanised those, the colonisers then said, "see, we told you they were barely human" and used the Aboriginal condition as an excuse to exploit them further.

6.18 Attempts to 'civilise' and assimilate the Aboriginal remnants in Victoria on Government and Mission reserves were not successful. Success was perceived in terms of the complete breakdown of traditional lifestyles.

6.19 In short, the end of the 1950's did acknowledge an 'Aboriginal problem' and by the concept of assimilation perceived that 'problem' in terms of the methods necessary to encourage the Aboriginal people to subscribe to the same values as the dominant society; to conform to its requirements, and ultimately to become a part of it on its terms.

6.20 The 'problem' area of Lake Tyers became the main focus of the sixties particularly highlighting the inadequacy of the Aborigines Welfare Board. Attempts to close Lake Tyers and Framlingham in the 1950's resulted in publicity and drew attention to the plight of the Victorian Aborigines. The Welfare Board had pursued its policy objective of assimilation literally by letting the Reserve run down and acting in an authoritarian and unresponsive manner to the residents' needs and initiatives. It had housed residents of the reserve in nearby towns without adequate training or preparation and would not allow them to return to the reserve.

6.21 The Board's policy and lack of management as well as its overall attitude attracted a great deal of publicity. This covered the consequent racial conflict in country towns and bitter recriminations by the public, a minority of the Board members and outside organisations concerned with Aboriginal affairs and welfare. This situation led to a 'Report on the Rehabilitation and Training for Aborigines at the Lake Tyers Reserve' by the Lake Tyers Planning and Action Committee convened by Dr. C.M. Tatz. It recommended development of the reserve and its use as a resource and training centre.

6.22 The confusion and abysmal conditions of Lake Tyers and its inhabitants together with a political climate which brough Aboriginal Affairs into the public limelight created the scene for a revision of the policy of assimilation as practised by the Aborigines Welfare Board.

6.23 This revision included both new machinery and administration and new policy directives. The Aboriginal Affairs Act of 1967 created

a Ministry of Aboriginal Affairs and incorporated an Aboriginal Affairs Advisory Council which was to include at least 6 Aboriginal members elected by Aborigines resident in Victoria. Representation included in this legislation was a direct response to the Aboriginal organisations' call for a say in their own affairs.

6.24 It was during the period of the Victorian Ministry (1968-1974) that the issue of 'meaningful' representation and land rights was expressed through Aboriginal organisations. The response of the Victorian Government was to pass the Aboriginal Lands Act in 1970 which gave full title of the Lake Tyers and Framlingham reserves to their residents in Trusts.

6.25 This Act encompassed 4,000 acres at Lake Tyers owned by 70 trustees, and 235 hectares at Framlingham owned by 17 trustees. It was stated that "this Bill is designed to rectify many of the omissions and commissions of the past with regard to land rights".

6.26 But, as Colin Bourke, a Victorian Aboriginal pointed out, from the Aboriginal point of view, land rights in this State is not simply a matter solved by the granting of land to residents of Lake Tyers and Framlingham. It has a much wider and more subtle significance, in that it is an issue relating to Aboriginal identity and Aboriginal knowledge of the past and its consequences.

6.27 It is not surprising then that the eventual change of policy relating to the transfer of lands to the residents of Lake Tyers and Framlingham was perceived by the Victorian Government as yet another example of their 'progressive' policies. On 6th February, 1971, Mr Worthy (the Director, Ministry of Aboriginal Affairs) stated proudly that "we are the only State which has accepted the principle of unconditional land rights". The reality of this can be seen by the fact that for a population of some 14,000 people of Aboriginal descent, they have title to less than 2,000 hectares of land which is less than one-sixth of a hectare per head.

6.28 After this transfer and the passing of the Land Rights (Northern Territory) Act in 1976, the only avenue left open for land rights in

Victoria was through the Aboriginal Land Fund Commission, now incorporated into the Aboriginal Land Fund Commission. Of the 10 requests put to the former Aboriginal Land Fund Commission from Victoria only 1 had been granted - "Baroona", a 128 hectare property near Echuca purchased for the Echuca Aboriginal Co-operative Society in 1977. Four current proposals and areas of need are still be to considered. In its 1978/79 Report it stated that "the purchase or transfer of property must be the basis of any plan for Aboriginal development." In this sense, Victoria is a low priority.

Victoria

1835 'Purchase' of land from Melbourne tribes by Batman's Treaty - treaty not recognised by government. Land set aside in 1830s and 1840s for Protectorate stations soon alienated.

1859 A deputation of Woiwurrung and Taungerong men interviewed officials in Melbourne to obtain land to farm for themselves; but the 4500 acres they were allowed to select was never reserved; in 1863 they left the Acheron Station for Coranderrk.

1860 A Board for the Protection of the Aborigines established.

1860-79 With great difficulty Board obtained a total of 26,960 acres 'temporarily reserved' for six Aboriginal stations and ten small depot reserves

1886 The Aborigines Act 1869 was amended to exclude 'half castes' from the definition of an Aboriginal person under the Aborigines Protection Act 1886; almost half the residents of the stations were soon forced from their homes.

1910 Aborigines Act 1910 enabled Board to aid half castes at their discretion by licensing needy persons to live on stations. Previous Acts consolidated in 1915 and 1928, no change in policy; by 1928 only the Lake Tyers station and Framlingham reserve remained under Board control; the sites of other reserves were leased to European farmers despite pleas of former residents.

1948 The remnant of Coranderrk, the only 'permanent reservation' for Aborigines in Victoria, alienated by Coranderrk Lands Act 1948. The remainder of lake Condah reserve revoked 1951 despite protests of former residents and descendants.

1957 Aborigines Act 1957 (1958) set up Aborigines Welfare Board empowered to aid any person of Aboriginal descent, but the prevailing 'assimilation' policy discouraged pleas for development of Framlingham and Lake Tyers land for residents.

1959 Aborigines (Houses) Act 1959 encouraged rehousing policy; and Board planned to close Lake Tyers station in 1963.

1963 April 17 - Pastor Doug Nicholls resigned from Board in protest; led Lake Tyers deputation to Chief Secretary on 31 April; Aboriginal protest march to Parliament, where their petition was read on 22 May.

1965-71 The Aborigines (Amendment) Act 1965 altered the constitution of the Board; public concern forced the 'permanent reservation' of Lake Tyers on 18 May 1965 and Framlingham on 24 January 1967. Ministry of Aboriginal Affairs established 1968 under Aboriginal Affairs Act 1967-70. December 12, 1970: Lake Tyers and Framlingham Trusts established by the Aboriginal Lands Act 1970-71. Title deeds handed to Trust members resident at Lake Tyers on 23 July 1971; and to Framlingham Trust members on 28 July 1971.

1975-77 ALFC negotiations for purchase of orange grove at Robinvale; purchased Baroona property for Echuca Aboriginal Co-operative Society in 1977.

1977 Victorian Aboriginal Land Council appointed for one year with D.A.A. funding - and dissolved.

1979 April - Members of Framlingham Aboriginal community blocked road access to park controlled by Land Conservation Council; on 19 April a deputation interviewed the Minister, seeking control of this land (2000 acres which had been alienated from their reserve in 1890, leaving only a 548 acre remnant for their use.)

1980 Portland Aboriginal Community - the Gunditj Mara people - occupy Comalco mining site to prevent desecration of Aboriginal land; they sued Camalco in the High Court.

7:0 SOUTH AUSTRALIA

Early History

7.1 The situation of Aboriginal lands in South Australia shows a startling contrast between the familiar picture of near total dispossession in the southern part of the state and the survival and growth into a significant political force of the Pitjantjatjara-Yankuntjatjarra-Ngaanyatjarra group of peoples in the north.

7.2 Prior to European invasion the Aboriginal people of South Australia enjoyed occupancy and use of vast areas of land; most of the South Australian groups had little conflict and their land rights were largely unchallenged by other groups. Pitjantjatjara Law about land is based on the Malu Dreaming (Kangaroo Dreaming) from the North linking all the Pitjantjatjara peoples and perpetuating strong, cultural and political bonds with the Warlpiri Luritja, Pintubi and Aranda peoples in the north.

7.3 The Ancestral Beings moved over the surface of the land during the Tjukurrpa time, shaping the hills, waterholes, trees sandhills and other physical features giving them the form that we see today. The same kurunypa or spirit which inhabits humans also resides in these natural features and in the animals which are also descended from the Ancestral Beings. Thus the Pitjantjatjara peoples believe that they exist in a special relationship with the land. They say they are dependent on it and it is dependent on them.

7.4 This is the basis of Aboriginal right to land and it is very much a living force in South Australia today. The Pitjantjatjara peoples believe that they occupy their lands today as they always have under a rule of law which must be recognised and respected. While being shown ritual objects in South Australia recently a lawyer employed by the Pitjantjatjara Council was told that these were the power for the country - not the Government in Adelaide. The Malu, the Pukatja, the Mala, the Nyini and other ancestors are the Law, not the government, the police or the courts. The European presence is great, powerful and obtrusive, but is subordinate to this Law.

7.5 Although these articulations of land rightsLaw come from one relatively strong traditional group, it must be stressed that this law and right of relationship to land is basic to every Aboriginal person by virtue of their birth, however far removed they may appear to be from the traditional situation. Groups removed from their traditional lands have nonetheless developed strong links with the land they now occupy which must be recognised as equally valid and vital as those of groups that have been less dispossessed. The need for land is based on both traditional values and modern economic and social needs.

7.6 South Australian Aboriginal people were unaware in 1770 that Captain Cook had annexed the Eastern part of Australia for Britain or that later divisions into States and a Territory would lead to the problems of negotiating with three (and now four- State and Federal) different governments when asserting their claim to the land.

7.7 After Europeans arrived in South Australia, the process of conquest proceeded so inexorably that the only areas left unvanquished were the deserts. People occupying the southern parts of the State were rapidly dispossessed; the grim picture of disease,deliberate poisonings, shootings and concentration ofpeoples on a few small reserves is the typical southern Australian one. Dispossession was ideologically supported by the usual tissue of lies and slurs; Aboriginal people were characterised and caricatured as primitive, unmotivated and thus lacking any right to land they had occupied from the beginning of time.

7.8 In the northwest of South Australia, investigation has shown that the desert lands now being claimed by the Pitjantjatjara have little or no pastoral potential. The peoples of this area escaped the predations of the Australian pioneers precisely because their lands shaded out of the world of economic usefulness into what most Europeans regarded as an inhospitable wasteland.

7.9 In an attempt to preserve the Pitjantjatjara people from the fate of the people in the southern area of the State, an area of 56,721 km^2 in the northwest of the State was gazetted in 1921 as a reserve for the use and benefit of the Aborigines. The Government reserved the right to resume

the land if required. Adjacent areas in Western Australia and the Northern Territory had been set aside as reserves for Aborigines in 1918 and 1920. Additions to the North West Reserve in South Australia were made in 1938 and 1974. During this period the emphasis was on reserving areas of land to provide places for training and adjustment rather than on the granting of lands rights as such. It was the era of the assimilation policy and it was assumed that the people once assimilated would be able to obtain land titles in the same way as white Australians; and that with the problems of developing viable industries in the area, people would eventually move from the area to places where work was available.

The Aboriginal Lands Trust Act

7.10 The first lands rights legislation in Australia was the South Australian Aboriginal Lands Trust Act of 1966. It was not as powerful as the Northern Territory Act because it did not give title to the occupiers of the land but to a Trust which in turn gave a long term lease to those in occupation. To the Pitjantjatjara this was unacceptable as they never doubted their ownership and simply sought recognition of title. It was anathema to initiated tribal people to 'pay rent' on their own land albeit to other Aboriginals in Adelaide who could not be expected to understand the Aboriginal law. In addition the question of mining lands held by the Trust was a troublesome one. The lands, as with the Reserve lands, were exempt from mining, but could by proclamation be classified. This procedure could be completed in 24 hours if need be with no requirement on the part of the Government to consult or compensate the Aborigines.

Aboriginal Land vested in the Trust

7.11 Up to 31st March 1980 a total of 485,582.8 hectares of land contained in 43 separate parcels has been vested in the Trust and over which Land Grant titles are held.

7.12 The major part of this area (or 481,992 hectares) comprise the nine former major Aboriginal Reserves and all of this land has been placed under the control and management of the nine major Aboriginal Communities which have been traditionally associated with that land. This has been effected by the issue of what are virtually perpetual leases from the Trust to the Incorporated Communities (the leases are for 99 years with repeated rights of renewal) at a rental of 10 cents per annum. All the assets on the land, buildings, housing, equipment, machinery, facilities etc., have been transferred to each community at no cost.

7.13 A schedule of these lands is shown hereunder:

Name of land	Area ha.	To whom leased
Yalata	456,150	Yalata Community Inc.
Point Pearce	5,777	Point Pearce Community Council Inc.
Wardang Island	1,800	Point Pearce Community Council Inc.
Point McLeay	1,099	Point McLeay Community Council Inc.
Ngarrinyerri	1,350	Point McLeay Community Council Inc.
Gerard	1,942	Gerard Reserve Council Inc.
Coober Pedy	214	Umoona Community Council Inc.
Koonibba	899	Koonibba Community Council Inc.
Indulkana	3,630	Indulkana Community Inc.
Davenport	81	Davenport Community Council Inc.
Nepabunna	9,050	Nepabunna Community Inc.

7.14 Of the remaining 32 areas of land comprising 3,590 hectares, 23 (containing 3,226 hectares) have been leased by the Trust for varying periods up to 99 years, with right of renewal, to the smaller Aboriginal groups, associations, organisations, partnerships and individuals.

7.15 In 1980, negotiations were proceeding for the formal leasing of the remaining 354 hectares of land contained in 9 areas and varying in size from ¼ acre blocks up to 207 hectares.

7.16 A complete schedule of all Aboriginal land vested in the Trust is as follows:-

LAND TRANSFERRED TO THE ABORIGINAL LAND TRUST		
Date	Name	Area ha.
7.9.67	Bonney	655
7.9.67	Rabbit Island	55
7.9.67	Boundary Bluff	39
7.9.67	Dodd Landing Point	33
7.9.67	Poonindie	126
7.9.67	Wellington West	53
21.3.68	Ngarrinyerri	1350
26.9.68	Baroota	44
26.9.68	Moonta	7
26.1.70	Mallee Park	8
18.11.71	Swan Reach	62
29.6.72	Point Pearce	5777
7.12.72	Murat Bay	174
13.12.73	Gerard	1942
26.4.74	Point McLeay	1099
15.8.74	Coober Pedy	214.2
15.5.75	Yalata	456149.6
14.8.75	Colebrook Home*	6.5
28.8.75	Koonibba	890
4.9.75	Wardang Island	1800
30.10.75	Indulkana	3630
19.8.76	Ceduna*	21.2
19.8.76	Ceduna	0.4
7.10.76	Brinkley	18.7
7.10.76	Fowlers Bay*	0.1
28.10.76	Davenport	81.2
24.3.77	Maree	15.5
31.3.77	Mannum*	0.1
31.3.77	Campbell Point	104
31.3.77	Streaky Bay*	10.5
31.3.77	Needles Island	24
31.3.77	Snake Island*	32
31.3.77	Goat Island*	8
31.3.77	Oodnadatta*	267.1
31.3.77	Berri*	9
15.12.77	Murat Bay	78.4
15.12.77	Nepabunna	9050
15.12.77	Kingston S.D.	128
15.12.77	Bordertown	0.6
30.6.78	Port Augusta	22.1
18.1.79	Ceduna	0.5
18.1.79	Gerard (Bartsch Farm)	1589
1.3.79	Parachilna	8.1
	Total	485582.8

* Land available for lease

(ii) give the body of Pitjantjatjara so created - the Anangu Pitjantjatjaraku - inalienable freehold title to the lands scheduled in the Bill of Nucleus lands,

(iii) enable the Anangu Pitjantjatjaraku to claim certain lands outside the Nucleus lands - the so called Non-Nucleus lands,

(iv) set up a Tribunal to make recommendations to the Government on the matter of land claims made,

(v) empower the Anangu Pitjantjatjaraku to control access to their lands,

(vi) regulate the registration of mining tenements by-

.. requiring the Minister responsible for the legislation and Anangu Pitjantjatjaraku to agree to the registration of mining tenement

.. enabling Anangu Pitjantjatjaraku to demand information before agreeing to the registration of a mining tenement

.. giving Anangu Pitjantjatjaraku royalties normally accruing to the Crown

.. providing severe penalties for unlawful inducements to agreement to register a mining tenement

(vii) set guidelines for the resolution of disputes,

(viii) control activities having adverse environmental effects.

7.22 The Legislation embodied three basic principles -

1. That Pitjantjatjara lands should be freehold, inalienable and owned by all Pitjantjatjara people through an incorporation established for this purpose.

2. That certain lands called the 'Nucleus lands' being the North West Reserve, Ernabella, Fregon, Kenmore Park, Mimili and Indulkana should pass as Aboriginal land immediately. That a tribunal should be established

The Pitjantjatjara

7.17 The only Aboriginal Reserve not transferred to the Trust was the North West Aboriginal Reserve. The Lands Trust invited the Pitjantjatjara communities to have the land of the North West Reserve, incorporated into the Trust and a lease back issued. Mimili Station which had been purchased for the Yankuntjatjara people was to enter the Trust and at the last moment was withdrawn pending the outcome of talks with the Dunstan Government. Indulkana was already a member of the Trust, but was actively participating in the Pitjantjatjara deliberations on a new deal for the North West lands.

7.18 The offer, put by the Lands Trust at a meeting at Ernabella on 15 September 1976, for the Pitjantjatjara people to join the Trust was rejected.

7.19 After this a Pitjantjatjara Land Rights Working Party was established by the State Government to enquire into the desirability of enacting new legislation to deal exclusively with the North West Aboriginal Reserve and those lands adjacent thereto in the far north of the State which are utilised by the Pitjantjatjara speaking peoples and to exclude such lands from the special provisions in relation to them which had been written into the Aboriginal Lands Trust Act when it was originally enacted in 1966.

7.20 The Report of the Working Party released in June 1978 is a document of great importance in the history of land rights in Australia. It resulted in the presentation of the Pitjantjatjara Land Rights Bill in November 1979.

7.21 Basically the Bill made provision to,

(i) incorporate all Pitjantjatjara (as defined in the Bill),

to hear land claims for land outside the areas now occupied. These were known as the Non-Nucleus lands and were defined in the Working Report only in the broadest terms. The claim provisions followed closely the Northern Territory Act and would have been heard by a District Court Judge. Lands so granted, would have been added to the 'Nucleus' and administered in the same way.

3. The Pitjantjatjara would have control of all access to their lands (with some statutory exceptions), including access for mining. This was in effect a veto over all mining and when read with the entitlement to Government royalties for any mining allowed, amounted to an 'ownership' of minerals as well as the area of the lands themselves. There was no reference made to 'national interest' or any other limitation except that no right flowed to the Pitjantjatjara to negotiate directly with miners for either compensation for damage or dislocation or for royalties over and above the Government entitlement to 2%.

7.23 The rationale for this was simple and agreed to wholeheartedly by the Pitjantjatjara : if the Aboriginal people could veto without review, all mining, then they should not be able to use that power to extract large payments or royalties in return for a mining agreement.

7.24 Overwhelmingly obvious was the Pitjantjatjara priority that cultural considerations, and the preservation of their Dreaming places were the top priority. People would gladly reject the promise of great wealth through mining royalties rather than accept any damaging intrusion on their land.

7.25 After the tabling of the Bill in November, 1978, the fate of the original legislation was never certain.

7.26 It was clear that it was meeting solid opposition not only from the Liberal Party which had the numbers to block it in the Upper House, but also from the 'development conscious' sections of the Government.

7.27 The strength of this division in the Government on the issue probably accounts for nearly a year passing after tabling without the Bill being read a last time and sent up to the Legislative Council. Admittedly there had been a Select Committee formed to take submissions on the law but its report recommended the Bill be passed with virtually no alteration.

7.28 On September 15, 1979, the land rights situation, already equivocal, became less certain with the change of government.

7.29 The new S.A. Liberal government was slow to develop and announce its policy on the issue, despite urgent meetings and calls for a statement of intention. On February 3, 1980 the Premier, Dr. Tonkin in a shock announcement gave details of exploration licenses over much of the so-called Non-Nucleus lands.

7.30 The Pitjantjatjara under this grave threat to their lands, travelled in numbers to Adelaide and set up in a tent-camp on Victoria Park Racecourse. The decision was taken that the business to be discussed would be conducted as a regular Council meeting. The opening session of the Council was in the absence of white advisers and an agenda was worked out; during the next two days, members of each political party were invited to address the Council outlining their views on the legislation. The Australian Labor Party and the Australian Democrats pledged total support for the Bill unchanged. But the South Australian Government did not disclose its intention until later, in a closed meeting when the Premier and his ministers outlined their views: no claims to Non-Nucleus

land; no veto over mining on the Nucleus lands, but grants of title.

7.31 An agreement was concluded between the South Australian Government and Pitjantjatjara Council in 1980 on the 2nd October, vesting in the Council freehold title over the North West Reserve, except that large concessions were made to the mining interests.

South Australia

1911 The first Aboriginal legislation, Aboriginal Act 1910, came into force. Slightly amended in 1934.

1939 Aborigines Act 1939 established an Aborigines Protection Board.

1962 This Board and Department reconstituted under Aborigines Affairs Act 1962-68, which also limited mining in reserves by persons other than Aborigines.

1966 Prohibition of Discrimination Act 1966-1970 is a landmark for Australia.

1966 Aboriginal Lands Trust Act 1966-1975 established a Trust composed of Aborigines. The Trust may buy land. The Governor may transfer title to Crown land - and with the consent of Aboriginal Reserve Councils - freehold title of former reserves to the Trust.

1972 Community Welfare Act (Part V) repealed the Aboriginal Affairs Act 1962-1968; Aboriginal welfare now under Community Welfare Department.

1976-77 ALFC purchased four properties; ALFC holds title to Bartlett's Farm, Bartch Farm and Kenmore Park; title to Bell's Farm vested in Lands Trust.

1977 March 24 - Pitjantjatjara Land Rights Working Party appointed by Premier Dunstan.

1978 June - Report of the Working Party recommended that legislation be framed to set up a land-owning body called 'Pitjantjatjara Peoples'. In August Premier Dunstan announced his government's decision to grant land rights by means of legislation.

1978 November 22 - Pitjantjatjara Land Rights Bill 1978 introduced, covering disposition of the North-west Reserve and adjacent lands.

1979 April - Working Party set up to review Lands Trust legislation.

1980 October - Agreement concluded between South Australian government and Pitjantjatjara Council.

8.0 WESTERN AUSTRALIA

8.0 WESTERN AUSTRALIA

8.1 In Western Australia, Reserve Lands are controlled by the State Ministry responsible for Aboriginal Affairs, and secondary rights are granted to the Aboriginal Lands Trust. Title remains with the Crown although certain uses of the land is vested in the Trust.

8.2 The Lands Trust presently has under its management the following areas of land:

Reserved land	1 9242093 hectares
Freehold	762.2 hectares
Pastoral lease	1 565084 hectares
Sundry lease	5 7850 hectares
	20 865 789

8.3 In addition, the Federal Government's Aboriginal Land Fund Commission (now overtaken by the Aboriginal Development Commission), purchased six stations - Noonkanbah, Lake Gregory, Bibluna, Partijan, Dunkam River and Frazier Downs. Some of these areas are included in the above figures because the Aboriginal groups concerned were not permitted by the Western Australian Government to own land. Thus their title is in fact held on their behalf by the Aboriginal Lands Trust of Western Australia.

8.4 Other attempts by the Aboriginal Land Fund Commission to acquire land for Aboriginal groups has failed because of the Western Australian government's refusal to allow Aboriginal people rights to their land. Aboriginal requests for Laurel Downs, Gordon Downs and Corondallo Station have been unsuccessful.

8.5 Recent Legislation

Three State legislative provisions allow Aboriginal people use of land in Western Australia:

a) The Land Act (1904), Section 29 (1) (a), which allows land to be reserved "for the use and benefit of the

Aboriginal inhabitants", and Section 36 which allows land to be temporarily reserved;

b) The Aboriginal Affairs Planning Authority Act 1972, Section 25 (1) (a), which allows "any Crown land to be reserved for persons of Aboriginal descent"; and

c) The Community Welfare Act 1972, which applies generally to the community, allows that, under Section 6, the Minister is constituted a body corporate capable of holding real property, and it is pursuant to this power that the so-called "Community Welfare Reserves" are created. These reserves are small in area and usually in or near town sites.

8.6 The principal legislation in this State relating to Aboriginal people is the Aboriginal Affairs Planning Authority Act 1972.

8.7 The Act provides for, amongst other things:

(a) A "Commissioner for Aboriginal Planning", to be appointed by the Governor, and to have powers of a Permanent Head over the Authority described below. (S.10)

(b) An "Aboriginal Affairs Planning Authority" whose functions include the provision of services for the control and management of land held in trust for Aboriginals. (S.13)

(c) An "Aboriginal Advisory Council" whose function is to advise the Authority. Members and Chairman to be Aboriginals. Number of members to be determined by Minister. (S.18)

(d) An "Aboriginal Affairs Co-ordinating Committee", comprising;

- Commissioner for Aboriginal Planning
- Chairman of Aboriginal Advisory Council
- Permanent Heads of Treasury, Public Health, Community Welfare, Education and the State Housing Commission,

... whose function is to co-ordinate the activities of all persons and bodies providing service and assistance to Aboriginals. (S.19)

(e) An "Aboriginal Lands Trust", a body corporate, with power to own and dispose of property of every kind.

Dealings in real property require Minister's approval. (S. 20)

(f) Trust to comprise a chairman plus at least six members appointed by the Minister. Minister may appoint additional members upon the recommendation of the Trust. All members must be Aboriginals. (S.21(1),(2) and (3))

(g) Functions of the Trust include (S.23):

- to acquire and hold land, and to use and manage that land for the benefit of Aboriginals
- to ensure that land use and management is in accordance with the wish of the Aboriginal inhabitants of the area.

(h) The Aboriginal Affairs Planning Authority may request the Governor to place Aboriginal Reserves under the control and management of the Trust. The Trust may be granted the Authority's powers in relation to this section of the Act. (S. 24)

(i) The Governor may, on the recommendation of the Minister and with the approval of both Houses of Parliament (S. 25):

- declare any Crown lands to be Aboriginal Reserves;
- alter the boundaries of Aboriginal Reserves;
- declare that any land shall cease to be an Aboriginal Reserve.

(j) Crown land which is an Aboriginal Reserve under section 29 of the Land Act, 1933, and which has been declared a Reserve by the Governor under section 25 of this Act, shall be vested in the Authority. (S. 26 (b))

(k) Crown land which, immediately prior to the operation of this Act was an Aboriginal Reserve under section 29 of the Land Act, 1933, and "... was the subject of a proclamation under (section 18(1) (a)) of the repealed Act", shall be vested in the Authority. (S. 26(a))

(l) The Governor may proclaim "... that any power conferred upon the Authority by this Act may be exercised by the Trust". (S. 28)

(m) In relation to land mentioned in (j) and (k) above, the Authority may receive (subject to the Treasurer's approval)

any rental, royalty or other revenue that may be negotiated in relation to the use of the land or its natural resources. (S. 28)

(n) Access to Aboriginal Reserves restricted to Aboriginals and authorised persons. (S. 31)

Amendments to Aboriginal Affairs Planning Authority Act, Regulation 8

8.8 . Regulation No. 8 made in pursuance of the Aboriginal Affairs Planning Authority Act regulates entry onto reserves administered by the Aboriginal Lands Trust. The original Regulation empowered the W.A. Regional Director of D.A.A., in his capacity as W.A. Commissioner for Aboriginal Planning, to recommend to the Minister that permission to enter reserves be granted.

. Mr F. Gare, the W.A. Regional Director, refused to recommend the granting of entry permits to three mining companies with permits for the exploration of minerals on the Oombulgurri (Forest River) Reserve. This led the then W.A. Minister for Community Welfare, Mr A. Ridge, to state that the W.A. Government would amend Regulation 8 to vest in him the authority to grant or withhold entry permits. The amendment was gazetted in November 1978.

. The new Regulations requires the Minister, before granting or refusing an entry permit, to consult with the Aboriginal Lands Trust. There is provision for reporting to Parliament whenever the decision of the Minister is at variance with the recommendation of the Aboriginal Lands Trust. Since such tabling does not delay entry, the reporting procedures does not seem to be an effective measure.

. Under the terms of the transfer arrangement agreed between the Commonwealth and Western Australian Government, prior consultation was required before the State Act, and Regulations made under the Act, were amended. Consultation was conducted in correspondence between the State and Commonwealth Ministers concerned; but the Western Australian Government proceeded with the amendment notwithstanding continued objection by the Minister for Aboriginal Affairs.

8.9 The Land Act, Section 30, allows for the classification of reserves into "Class A, B or C Reserves". A number of reserves vested for the use and benefit of Aboriginal inhabitants are classed under lack of the three classifications, the distinction being as follows:

> Reserves classified "A"
> require an Act of Parliament to change the classification;
>
> Reserves classified as "B"
> require notice published in the Government Gazette and a special report by the Minister for Lands to both Houses of Parliament setting forth the reasons for the cancellation and the purpose to which it is intended to devote the land;
>
> Reserves classified "C" are all remaining reserves.

8.10 The classification of a Reserve as "A" class is the strongest and most desirable classification. However, it seems that the Authority including the Trust are unsure of which Reserves have been classified into each category.

8.11 Land tenure for Aboriginal people is further weakened by Section 30 of the Aboriginal Affairs Planning Authority Act. This Section exempts the Mining Act and Petroleum Act from the Authority's decisions to grant "any interest right, title or estate in proclaimed land". Thus mining and petroleum exploration companies who pose the greatest threat to Aboriginal communities, have free reign.

8.12 The Aboriginal Heritage Act has been found to be appallingly defective. Aborigines do not regard it as providing strong enough protection for their sites of sacred or other significance, for which it was designed.

Mineral Leases

8.13 The new Mining Act in Western Australia provides that mining can be carried out on reserved land once the written consent of the Minister for Mines has been obtained after he has consulted with the Minister for Community Welfare. It is unclear as yet whether mining companies will be required to apply for an entry permit under the Aboriginal Affairs Planning Authority Act.

8.14 The Aboriginal Communities Act 1979 allows for Aboriginal communities, when proclaimed to be communities to which this Act applies, to pass by-laws over certain activities occurring on Community land. For breach of the by-laws, a person would be tried at the community before Justices of the Peace appointed by the Community. It is not however an Act designed to recognize traditional law.

Mining in Western Australia

8.15 There is significant Aboriginal opposition to the present State of affairs in W.A. regarding Aboriginal rights to land. The Kimberley Land Counil, established in 1978, has consistently opposed the W.A. Government's "open-door" policy for mining companies. In 1978 alone, 5775 mineral claims, totalling an area of 700,000 hectares, were lodged during the "diamond rush". The W.A. Government has facilitated this process by granting more than 270 temporary reserves for diamond prospecting in the last two years over an area of almost 54,000 square miles.

8.16 In 1980, the National Aboriginal Council delivered a submission to the U.N.'s Subcommission on the Prevention of Discrimination and Protection of Minorities on the events at Noonkanbah. This Aboriginal owned station was invaded by the Amax Petroleum Company's oil-rig crew escorted by a convoy of 50 trucks, police and other agents, paid for by the W.A. Government. No oil was found but significant Aboriginal sacred sites were destroyed.

8.17 This process of dispossession will continue in W.A. but it is unlikely that under the present Government, any land rights legislation can be secured.

Western Australia

1886 Aborigines Protection Act 1886; amended 1897; the colony gained control of Aboriginal affairs in 1898.

1905 Aborigines Act 1905, amended 1911 and 1929, was the basic policy instrument until repealed in 1963. Other Acts were: Native Administration Act 1936, Native Mission Stations Act 1923, Natives (Citizenship Rights) Act 1944, and a clause in the Land Act 1933-1963 (Sec. 9,29A, 107(2))enabling the

Governor to grant or lease areas of Crown land to any Aboriginal descendant who seemed disadvantaged in applying for land under this Act.

1963 The Native Welfare Act 1963 changed the definition of an Aboriginal person and eligibility for aid. The Electoral Act 1907-1970 affected Aboriginal rights by its definition of a 'native' (Sec. 45). The Wildlife Conservation Act (Sec. 23,56) also affects Aborigines.

Aboriginal protests - notably the cattle station walk-offs in the Pilbara during the 1940s which became the Pindan movement - won more public attention in postwar years. Aboriginal land needs and anxiety about land increased with the mining development boom. Policy changed slowly despite the protests.

1972 Control of Aboriginal affairs and reserves came under a new body with the passage of the Aboriginal Affairs Planning Authority Act 1972. Amendments to this Act brought Aboriginal representation, but final authority rests with the Minister or Governor. The government has retained its power to declare and revoke Aboriginal reserves on Crown land, and to alter the boundaries of reserves. The Planning Authority, like the W.A. Aboriginal Land Trust, the Aboriginal Advisory Council, and the Aboriginal Co-ordinating Committee, includes Aboriginal members; but, they remain advisory bodies to the Minister, who is not bound to follow their recommendations.

1974 Pantijen land acquired by ALFC for the Mowanjum community.

1975-79 ALFC purchased eleven properties on the open market, and vested the titles to eight in the W.A. Aboriginal Land Trust. The properties were: Billanooka/Walgun stations, Coongan/Warralang stations, Dunham River, Lake Gnangara, Noonkanbah, Pandanus Park, Arbuckle's Farm, Frazier Downs, Lake Gregory/Billiluna, Argyle Downs and Morells Farm.

1978 May - Kimberley Land Council set up by representatives from 35 Aboriginal communities to discuss land and legislation needs. This Council (like the North Queensland Land Council) has no government recognition or funding.

1980 Amax Petroleum's oil-rig invaded Noonkanbah, the Aboriginal owned pastoral station, desecrating sacred sites, following protracted and unsatisfactory negotiations; the NAC took their case to the United Nations.

9.0 TASMANIA

9.0 TASMANIA

9.1 Aboriginal culture in Tasmania today is focussed on the "mutton bird" islands - the Furneaux group - and to some extent in the cities. Little is known about Aboriginal culture prior to the early nineteenth century, because of the massacres which decimated the Aboriginal population as elsewhere in Australia.

9.2 In 1804, the massacres began at Risdon where 50 Oyster Bay people were killed. In 1829, Tasmanians were forbidden to enter European settlements. The colonialists' Executive Council concluded in the same year: "to inspire them with terror ... will be found the only effectual means of security for the future." In 1829, all the settled areas were put under martial law. The Governor offered a reward for every adult and child captured. Finally, late in 1830, the whole island was put under martial law and 5,000 whites mobilised to march in a "Black line", each man nine feet apart, to drive the Aboriginal people into a narrow peninsula in the south east. This drive lasted two months - and was a total failure with no Aboriginal families or warriors captured.

9.3 George Augustus Robinson was appointed to isolate the Aboriginal population on Flinders Island. He went round Tasmania, some of the way with Truganini, and eventually persuaded about 400 people to go with him, at least half died within the first few years.

9.4 Despite these concerted attempts to eliminate the Tasmanian population, Aboriginal people today still return to the mutton bird islands. Aboriginal people have visited these islands for thousands of years to gather the mutton birds and their eggs. A ritual took place during the collection of the birds.

9.5 The first demand placed on Government by Aboriginal people, so far as can be ascertained, was in 1886. Lucy Beeton and Elizabeth Everett, along with other Aboriginal people, petitioned the Government for Chappell Island to be reserved for Aboriginal mutton birders, and to prevent white people destroying the mutton bird rookeries on the island by running sheep. Their efforts were successful. Chappell was set aside for Aboriginal 'birders, and

sheep were banned.

9.6 The same women led a delegation to the Governor before the turn of the century concerning Badger Island. Lucy Beeton lived on Badger and that island has significant historical and emotional ties with living Aborigines, who either lived on or visited the island regularly. A section of the island was set aside for the Beetons and Everetts. The land was never to be sold.

9.7 Both Chappell and Badger islands are part of the Furneaux Group, on the North East coast of Tasmania. A large number of Aboriginal people have inhabited these islands, and the Governments decision to reserve areas of land for Blacks, conflicted with their policy of attempted genocide.

9.8 Cape Barren Island was also made a reserve for Blacks, but this decision was repealed following the end of World War II. The State Governments policy of attempted genocide was replaced by its policy of assimilation.

9.9 Chappell and Badger Islands were resumed by Government; the latter was late as 1975.

9.10 With the inception of the Tasmanian Aboriginal Centre in 1973 came renewed approaches to Government for land to be set aside for Aborigines. However no actual claim as such was lodged, and discussions centred mainly around the possibility of leases for Aboriginal mutton birders.

9.11 In 1977, Aborigines set up a parliament tent outside Parliament House. As a result, a petition was placed before Parliament listing the Aboriginal Land Claim. An enquiry was then set up by the State Government. The enquiry recommended that a Lands Trust be set up and a mutton bird island be "granted" to Aborigines. Their recommendation represented less than .01% of the actual claim. Draft legislation is currently before the Tasmanian Parliament.

THE A.L.F.C.'s EFFORTS

9.12 At a national meeting of the Council in 1979, Tasmania

was given priority of land purchase on the basis of need for land. Later in 1979 the A.L.F.C. purchased a small building site in Launceston which has not been utilised by any more than a handful of Aborigines. The A.L.F.C. followed the advice of white politicians and bureaucrats instead of consulting Aboriginal people in the community, and thus an unsatifactory piece of land and building has been acquired for Aborigines in Tasmania.

9.13 One mutton bird island - Trefoil Island - has recently been acquired by the Aboriginal Development Commission, in addition to 0.10 hectares bought by the Aboriginal Land Fund Commission. Except for Trefoil Island and one owned by a white individual, all other mutton bird islands remain Crown Land. White commercial mutton-birding companies have exploited Aboriginal labour on these islands blatantly. These white interests, endeavouring to increase their profits from the mutton bird industry, have been and still are, gradually destroying the industry, through ruthless land use and poor preparation of the birds. Aboriginal people are interested in developing the industry under their control as an economic base.

TASMANIA

1876 Death of Truganini; after this Tasmanian government refused to recognize the Aboriginal status of the population of Aboriginal descendants. Land was set aside on Flinders Island eventually, but not on the basis of Aboriginal entitlement.

1970 National Parks and Wildlife Act 1970; areas at Sundown Point, West Point and Mt Cameron West named as Aboriginal sites under the Act.

1976 ALFC tried to purchase land in the Bass Strait Islands but as it was already a reserve could not obtain title.

1977 Department of Aboriginal Affairs acquired a 6-ha. property for the Flinders Island Community Association.

1978 March - Tasmanian Aboriginal Land Rights Centre made a claim to unalienated land, including the surrounding islands, and also sought exclusive rights to harvest mutton-birds. A government inter-departmental committee appointed to study the claims.

1978 November - Report of the Aboriginal Affairs Study Group tabled in state parliament; a Ministerial Committee is considering legislative means to implement some of the recommendations, including setting aside land for the use of Aboriginal communities.

1979 April - Tasmanian Aboriginal Education Consultative Committee established - a recognition of the identity of Aborigines as a distinct group in Tasmanina society.

10.0 AUSTRALIAN CAPITAL TERRITORY

10.0 AUSTRALIAN CAPITAL TERRITORY

10.1 The only Aboriginal community in the A.C.T. is at Jervis Bay, on the seacoast, eighty-seven miles to the east of Canberra.

10.2 Shortly before the First World War, families of Aboriginal fishermen initiated a settlement at Wreck Bay in New South Wales. In 1915 this area was acquired as part of the Jervis Bay Territory, to be a port for the new Commonwealth's capital. About 25 Aborigines were in residence at Wreck Bay in 1922. By 1928 the New South Wales Board for the Protection of Aborigines accepted the Commonwealth's plea to administer the "station" under the provision of the N.S.W. Aborigines Protection Act.

10.3 This situation continued until 1954. A few years earlier Mr B. Brown, the first Aboriginal Station Manager in N.S.W. attempted to remove a person from the reserve. It was then pointed out that the boundaries to the reserve had never been delineated. Mr Brown and two members of the Wreck Bay Community then surveyed with chains the boundaries of the area they felt was important to them. This is the boundary they are presently pressing for - see Map. However, in 1954 a considerably smaller area was gazetted as a reserve. At that time about 166 people lived at Wreck Bay. In November of 1954 the provision of the New South Wales Aborigines Protection Act were no longer applicable upon introduction of the Australian Capital Territory Aborigines Welfare Ordinance. The Minister for the Interior then delegated his power to the New South Wales Aborigines Protection Board and to the New South Wales Education Department. Aborigines living on the reserve experienced liquor controls under discriminatory sections of the Liquor Ordinance as well as preferential fishing rights under the Fish Protection Regulations.

10.4 In 1965, the Aborigines Welfare Ordinance and relevant sections of the Liquor Ordinance and Fish Protection Regulations were repealed. At that time Wreck Bay ceased to be a reserve and control was transferred back to the Department of the Interior.

10.5 In 1971, the Jervis Bay Nature Reserve was proclaimed over the majority of the Jervis Bay Territory including all "non residential" land of the previous reserve. This aroused a response from the

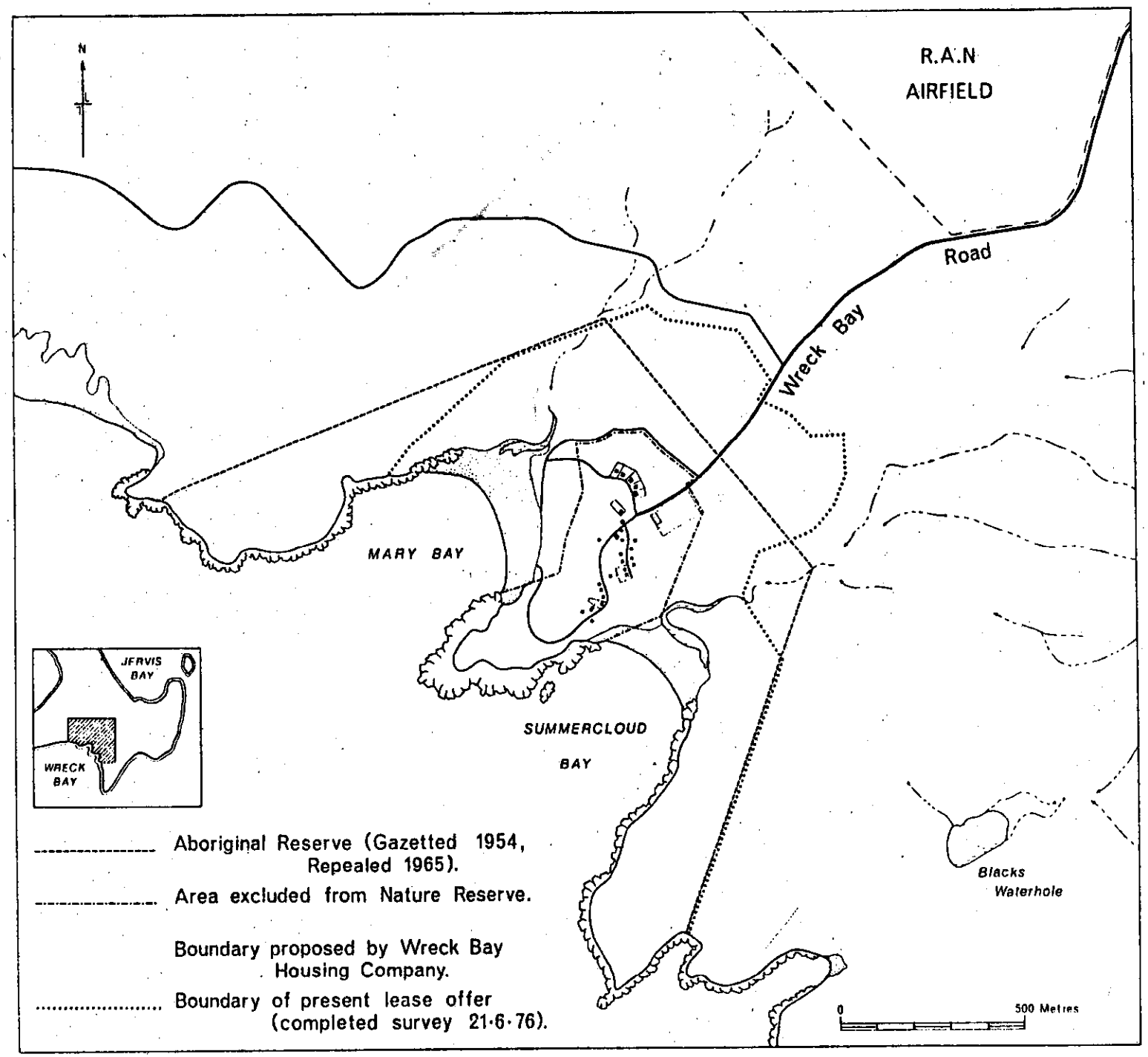
community which has resulted in protracted negotiations. A Bill for an Ordinance "To authorize the grant of leases of land in perpetuity to Wreck Bay Aboriginal Housing Company Limited" was drafted in 1976. At this time the boundary offered to the Housing Company has been extended but does not meet with theDirectors of the Company's complete request. Negotiations on the ordinance continue.

Summary

10.6 At this time the Australian Capital Territory has no legislation specifically applying to Aborigines. No land is specifically "legally" held by Aboriginal groups in the A.C.T. The Wreck Bay Housing Company is involved in protracted negotiations for a lease in perpetuity.

AUSTRALIAN CAPITAL TERRITORY

1954	Aboriginal Welfare Ordinance 1954. Before this Aborigines in the A.C.T. came under the N.S.W. Act. This ordinance was repealed in 1965.
1977	Leases (Wreck Bay Municipal Housing Co. Ltd) Ordinance 1977. Wreck Bay community negotiating for lease of land.
1981	There is no A.C.T. Legislation for the preservation of sites of significance to Aborigines.


N
R.A.N
AIRFIELD
Road
Wreck Bay
MARY BAY
SUMMERCLOUD
BAY
Blacks
Waterhole
JERVIS
BAY
WRECK
BAY
Aboriginal Reserve (Gazetted 1954, Repealed 1965).
Area excluded from Nature Reserve.
Boundary proposed by Wreck Bay Housing Company.
Boundary of present lease offer (completed survey 21·6·76).
0
500 Metres

11.0 ABORIGINAL LAND RIGHTS IN THE NORTHERN TERRITORY

11.0 ABORIGINAL LAND RIGHTS IN THE NORTHERN TERRITORY

The Woodward Commission

11.1 The Aboriginal Land Rights (Northern Territory) Act 1976 (hereafter referred to as the N.T. Land Rights Act) results mainly from the recommendations of the Woodward Commission, although it differs in some major ways from recommendations, usually against the wishes of Aboriginal people.

11.2 In February 1973, the federal government commissioned Mr. Justice Woodward to inquire into and report on:

> the appropriate means to recognise and establish the traditional rights and interests of the Aborigines in and in relation to land, and to satisfy in other ways the reasonsable aspirations of the Aborigines to rights in or in relation to land ...

11.3 The Commission's findings and recommendations were published in two reports in July 1973 and April 1974.

11.4 The Commissioner found that traditional Aboriginal rights to land involved a "highly complex" social order, a "close spiritual association with particular tracts of land" held by clan groups, and a "spiritual connection" which involves "both rights (unrestricted use of its natural products) and duties (ceremonial)". It stated that "the connection of Aborigines with their land is timeless, commencing before birth and continuing after death".

11.5 The Commissioner set out nine principles which were central to the Report and its appended draft legislation:

- full consultation with Aboriginals;
- flexibility to allow for changing ideas and needs;
- the need to provide funds to that Aboriginals could make use of the land;
- Aboriginal communities should be allowed to run their own affairs;
- Aboriginals should be free to follow their own traditional methods of decision making and manner of living;

- Aboriginals should be accountable in some ways for the use of lands, natural resources and public monies.

11.6 The first bill to be drafted according to these recommendations was the Aboriginal Land Rights (Northern Territory) Bill 1975. This bill lapsed when the Labor Government was removed from office following the double dissolution on November 11, 1975.

11.7 Following the election of the Liberal - National Country Party Government in December 1975, the Minister for Aboriginal Affairs, Mr Viner, introduced the amended bill into the House of Representatives in June 1976. The Act was proclaimed on the 26th of January, 1977.

11.8 The N.T. Land Rights Act was amended twice during 1978, and is affected by a number of other pieces of legislation - the Aboriginals Councils and Association Act 1976, the State Grants (Aboriginal Assistance) Act 1976, the Aboriginal Land Fund Act 1974, which established the Aboriginal Land Fund Commission now the Aboriginal Development Commission to purchase Land of behalf of Aboriginal groups on the open market. These are Federal Acts.

11.9 The Northern Territory was required under the Northern Territory Land Rights Act to pass complementary legislation. Ten Acts were proclaimed on February 1, 1979.

11.10 These are some provisions in the N.T. Land Rights Act which should be remembered when considering land rights in the rest of Australia:

- only traditional land claims may be heard under the Act;
- the Act automatically vests freehold land title to former N.T. Reserves in Land Trusts on behalf of Aboriginals, but apart from these areas, only unalienated crown land is subject to Aboriginal land claims. (The former reserve areas and Hermannsburg and Santa Teresa Mission areas in Central Australia and the Delissaville area near Darwin amount to about 18.4% of the N.T. or 249,013 sq. miles. Titles to these areas were granted over in September, 1978, but have still not been registered. Unalienated crown land amounts to a further 10% of the N.T.);
- all mineral rights remain with the Crown;

- Aboriginals have a right of veto over mining except where it conflicts with the "national interest" or those companies which applied for mining or exploration leases before the introduction of the bill for an act in June, 1976;
- land claims are heard by an Aboriginal Land Commissioner, but the Commissioner's findings amount only to recommendations which must be approved by the Federal Minister for Aboriginal Affairs, before land can be granted to Aboriginals.

Definition of Traditional Owners

11.11 The Act defines traditional owners in respect of an area of land as:

> "a local descent group of Aborigines who have common spiritual affiliations to a site or sites within the area of land, which affiliations place the group under a primary spiritual responsibility for that site or sites and for that land, and who are entitled by Aboriginal tradition to forage as of right over that land."

Title

11.12 The Aboriginal title is a restricted freehold title, i.e. it can not be sold. The land can be leased to non-Aboriginals with the permission of the Minister.

Aboriginal Land Trusts

11.13 Land titles are held by Aboriginal Land Trusts established by the Minister for Aboriginal Affairs. The members' names must be set out in a register maintained by a Land Council. The Land Trusts may consist of traditional owners who live within the area of the Land Trust and outside of it. More than one Land Trust may be established in each area. Administration of the land is handled by the Land Councils, but the Act requires that the Land Councils consult with the traditional owners of the land and to act in accordance with their wishes. Land Trusts must act at the direction of the Land Councils.

Aboriginal Land Councils

11.14 There are three land councils in the N.T. at present - the Central Land Council, the Northern Land Council and the Tiwi Land Council. The Act does not limit the number of Land Councils that may exist.

11.15 Members of Land Councils must be Aboriginals living in the area of the Land Council (including registered traditional owners) and chosen by Aboriginals living in the area of the Land Council. Methods of choice must be approved by the Minister.

11.16 Meetings are convened by the Chairman who is elected by the Council and the Minister is given the power to convene a meeting of the Land Council and appoint a member to preside when he considers circumstances require it.

11.17 The functions of Land Councils are:

- to represent Aboriginal opinion in its area;
- to protect Aboriginal interest in land;
- to consult with Aboriginals about land;
- to assist Aboriginals claiming land particularly by arranging legal assistance at the expense of the Land Council;
- to negotiate on behalf of Aboriginals for land and mining on Aboriginal land;
- to compile and keep registers of members of the land council, of the land trusts, and of descriptions of each of Aboriginal land;
- to supervise and provide administrative assistance for land trusts;
- to investigate and make representations about the requirements for land and use of land by Aborigines;
- to perform any functions that may be conferred on the land council by N.T. law, subject to the approval of the Minister in relation to the protection of sacred sites, access to Aboriginal land and schemes for the management of wildlife on Aboriginal land.

The Aboriginal Land Commissioner

11.18 The Land Commissioner must be a Judge of the Supreme Court of the N.T. and is appointed by the Governor-General. The main function of the land commissioner is to consider applications by or on behalf of Aboriginals claiming to have a traditional claim to unalienated Crown land (and some alienated crown land where the interest is held by the Crown or Aboriginals). The Commissioner must find out who are the traditional owners and other matters and make recommendations to the Minister for Aboriginal Affairs. The Commissioner hears objections from interested parties such as miners, pastoralists and tourist interests. The recommendations are in the form of a confidential report to the Minister. The Minister makes the final decision.

11.19 The Commissioner must also find out the likely extent of Aboriginal claims to unalienated crown land and report to the Minister and the Minister of the Northern Territory; keep a register of traditional land claims; advise the Minister on matters referred to him by the Minister and perform, with the approval of the Minister, any function required by the law of the Northern Territory.

Aboriginals Benefit Trust Account

11.20 The Act established an Aboriginal Benefit Trust Account into which amounts equal to any mining royalties from Aboriginal land received by the Crown are to be paid. Where there is an increase in the rate of royalties the excess can only be paid into the A.B.T.A. if the Minister agrees.

11.21 Where mining is carried out on Aboriginal land under the Atomic Energy Act or any other act by the Commonwealth or any Authority, equal amounts must be paid to the A.B.T.A. out of consolidated revenue as would be paid to the Crown, unless a higher rate is determined.

11.22 The money that goes into the A.B.T.A. is divided up between the land councils, the communities affected by mining and generally, as the Minister directs, to Aboriginal communities living in the N.T.

Mining

11.23 Minerals on or under Aboriginal land remain the property of the Crown, but, with some exceptions, exploration and mining cannot take place without the consent of Aboriginals. The areas exempted from Aboriginal veto are those for which mining companies had applied for a mineral lease before June 4, 1976, or had applied for a petroleum lease before the land was granted to Aboriginals. The Ranger uranium area and the mining areas on Groote Eylandt were also exempt from Aboriginal veto.

11.24 Where Aboriginals do not agree to mining, the Government can give it the go-ahead by saying that it is in the "national interest". The Governor-General has to declare this by proclamation, and Parliament cannot reject it.

11.25 Land Councils can negotiate mining agreements,including provision for royalty payments, environmental conditions and compensation.

11.26 The Minister may appoint an Arbitrator where Land Councils and mining companies cannot agree on the terms and conditions under which mining takes place. Arbitration may apply where mining companies have not been required to obtain Aboriginal consent.

Northern Territory

1963 August - Yirrkala Bark Petition presented to Parliament.
September - 'Select Committee on grievances of the Yirrkala Aborigines' appointed; report tabled and published in October.

1963 An agreement signed by Broken Hill Proprietory and the Church Missionary Society, Groote Eylandt, provided for lump sum payments and royalties for Aborigines from the use of their land by the mining company.

1966 August - Gurintji walk-off from NT cattle stations began their seven-year struggle to get title to their land.

1967 April - Gurintji Petition to Governor-General, asked to have 500 square miles of their land excised from Wave Hill pastoral lease.

1968 An Agreement was made between Nabalco and the Commonwealth of Australia to the grant of a Special Mining Lease for 42 years to

mine bauxite near Yirrkala in Arnhem Land Reserve.

1970-71 Hearings of the Gove Land Claim. Mr Justice Blackburn found that Aboriginal communal title to land could not be recognised under existing Australian law.

1973-74 Aboriginal Land Rights Commission. Mr Justice Woodward's inquiry included direct consultation with the Aboriginal people of the NT. First Report July 1973. Second Report April 1974.

1975-76 Following the Woodward recommendations, Mr Justice Ward was appointed Interim Aboriginal Land Commissioner and the Interim Northern and Central Land Councils were set up. In November 1975, reports on four Land Claims heard by Judge Ward were tabled in Parliament. Due to the double dissolution of Parliament on that day no action was taken. The claims were for Kulaluk and Railway Dam (town claims which could not subsequently be heard by the Aboriginal Land Commissioner, Mr Justice Toohey); Goondal at Emery Point and Supplejack Downs.
(An agreement was reached between the Warlpiri Aborigines and the lessee of Supplejack in 1978).

1975 August - Gurintji received leasehold title to their land from Prime Minister Whitlam.

1975-76 Ranger Uranium Environmental Inquiry conducted by Mr Justice Fox. First Report October 1976. Second Report May 1977. Judge Fox recommended granting the claim of traditional owners in the Alligator Rivers region. This was the first claim made under the Aboriginal Land Rights (Northern Territory) Act 1976. Mining tourism and conservation interests all continue to operate in this land.

1977 January 26 - Northern and Central Land Councils established by the Act.

1977 April - The Aboriginal Land Commissioner, Mr Justice Toohey, was appointed to administer the Act. The NT government retained its right to pass complementary legislation on entry to Aboriginal land, protection of sacred sites and sea limits (see below).

1976-78 The ALFC purchased seven properties on the open market for Aborigines in the NT: Mt Allan, Ti Tree, Utopia, Wattie Creek (excised from Wave Hill), Chilla Well, Bazzo's Farm near Alice Springs (all in the southern part of the NT); and Lynchs Farm (68 ha) near Katherine in the 'Top End'. An attempt to purchase Bing Bong for the Borroloola people was foiled by its sale to Mt Isa Mines, a company with substantial overseas capital. The same company has also purchased Tarwallah and McArthur River pastoral stations in the Borroloola area.

1978 August - Tiwi Land Council set up.

1978 September - Minister for Aboriginal Affairs presented land titles (unregistered) to 15 Aboriginal Land Trusts which were established under the 1976 Act in July for that purpose. The lands were formerly gazetted as Aboriginal Reserves, with the exception of Delissaville and Kakadu.

1978 November - Northern Land Council and Commonwealth government representatives signed the Ranger Uranium Mining Agreement.

1979 Angarapa Health Service at Utopia cattle station became the first body in the NT to be incorporated under the Commonwealth Aboriginal Councils and Associations Act 1978,

N.T. Legislation:

1931-76 Crown Lands Ordinance

1964 Social Welfare Ordinance

1968 May - Mining (Gove Peninsula Nabalco Agreement) Ordinance

1970 July - Special Purposes Leases Ordinance

1976 Parks and Wildlife Conservation Ordinance

1978 December - Town Planning Ordinance, (and Regulations, no. 53)

1979 The following NT Ordinances, known as the Complementary Legislation, were assented to in 1978 and all but one (*) proclaimed in February 1979.

Aboriginal Land Ordinance
NT Parks and Wildlife Conservation Ordinance
Aboriginal Sacred Sites Ordinance*
Mining Ordinance
Petroleum (Prospecting and Mining) Ordinance
Coal Ordinance
Crown Lands Ordinance
Social Welfare Ordinance
Special Leases Ordinance
Cemeteries Ordinance

Aboriginal Land Rights (Northern Territory) Act 1976:
Land Claim Applications lodged with the Aboriginal Land Commissioner, Darwin, NT.

• Hearing Commenced
•• Hearing Completed, Report Published

1.	••	Borroloola land claim	hearing concluded, report tabled, Minister's decision given
2.	••	Warlpiri & Kartangarurru-Kurintji land claim	hearing concluded, report tabled, Minister's decision given
3.	••	Alyawarra land claim	hearing concluded, report tabled, Minister's decision given
4.	•	Alligator Rivers Region land claim	received 31 March 1978, later replaced by Alligator Rivers Stage II land claim
5.	•	Limmen Bight land claim	received 31 March 1978, hearing concluded
6.	•	Cobourg Peninsula land claim	by request, hearing adjourned to a date to be fixed pending outcome of negotiations between Northern Land Council and Northern Territory Government
7.		Daly River land claim	received 31 March 1978
		Gregory Tree area (Victoria River) land claim	received 31 March 1978 notice of withdrawal received 24 July 1978
9.		Vernon Islands land claim	received 31 March 1978
10.		Woolner land claim	received 31 March 1978
11.		Douglas land claim	received 31 March 1978
12.		Umbrawarra Gorge (Jindare) land claim	received 31 March 1978
13.		Katherine land claim	received 31 March 1978
14.		Cox River land claim	received 26 April 1978
15.		Murranji land claim	received 26 April 1978
16.		Wombaya land claim	received 26 April 1978
17.	••	Montejinnie land claim, later known as Yingawunarri (Old Top Springs) Mudbura land claim	hearing concluded, report tabled, Minister's decision given
18.	•	Dum-in-Mirrie Island land claim	hearing commenced, later consolidated with Kenbi (Cox Peninsula) land claim
19.	•	Alligator Rivers Region Stage II land claim (a consolidated claim for Stage II of the proposed Kakadu National Park, Gimbat Resumption and Waterfall Creek Reserve)	received 27 July 1978
20.		Nicholson River land claim	received 16 October 1978
21.	••	Utopia land claim, later known as Anmatjirra and Alyawarra land claim to Utopia pastoral lease	hearing concluded, report submitted to Minister
22.		Warramunga Alyawarra land claim to an area between Dalmore Downs and Tennant Creek	received 20 November 1978
23.		Tjila (Chilla Well) Warlpiri land claim	received 20 November 1978
24.	••	Willowra land claim by Warlpiri later known as Lander Warlpiri Anmatjirra land claim to Willowra pastoral lease	hearing concluded, report submitted to Minister
25.		Kaititja, Warlpiri land claim to an area between Willowra and McLaren Creek Stations	received 20 November 1978
26.	•	Walmanba Warlpiri land claim to an area between Wave Hill pastoral lease and Tennant Creek	received 20 November 1978
27.		Kartangarurru Warlpiri and Walmajeri land claim to an area between Mongrel Downs and Wallamunga Stations	received 20 November 1978
28.	•	Lake Amadeus Luritja area land claim	received 1 December 1978 see next claim listed
29.	••	Uluru (Ayers Rock) National Park and Lake Amadeus Luritja land claim (amends preceding claim)	hearing concluded, report tabled, Minister's decision given
30.		Borroloola land claim No.2	received 25 January 1979
31.		Kidman Springs Jasper Gorge land claim	received 6 February 1979
32.		Collah Water Hole Jinduckin Creek Mount Bowman land claim	received 9 February 1979
33.		Dargaragu Kurintji land claim	received 26 February 1979
34.		Ukuri and Andthawarra land claim (Borroloola area)	received 5 March 1979
35.		Larrimah vacant Crown land claim	received 12 March 1979
36.		Minganini vacant Crown land claim	received 15 March 1979
37.	•	Kenbi (Cox Peninsula) vacant Crown land claim	received 22 March 1979, part heard and adjourned pending outcome of proceedings in High Court
38.		Ti Tree Station land claim	received 5 July 1979
39.	•	Fogg Bay to the Adelaide River land claim, now known as Finniss River land claim	received 20 July 1979, listed for hearing on 11 August 1980
40.		Mount Allan Station land claim	received 2 November 1979
41.		Simpson Desert land claim	received 19 February 1980
42.		Wakaya Alyawarra land claim	received 24 March 1980
43.		Western Desert land claim	received 5 June 1980
44.		Lake Amadeus land claim	received 18 June 1980.
45.		Amanbidji	" 20 Aug 80
46.		Ngadi + Warlpiri	" 21 Aug 80
47.		Ormiston Gorge	" 21 Aug 80
48.		Palm Valley	" 22 Aug 80
49.		Simpsons Gap	" 22 Aug 80
50.		Tarlton Downs	" 22 Aug 80
51.		Ooratippra	" 22 Aug 80
52.		Ammaroo	" 22 Aug 80
53.		Deep Well	" 22 Aug 80
		Beetaloo	" 18 Sept 80

12.0 SPECIAL INADEQUACIES OF THE NORTHERN TERRITORY LAND RIGHTS LEGISLATION

12.0 SPECIAL INADEQUACIES OF THE NORTHERN TERRITORY LAND RIGHTS LEGISLATION

THE ACT IN FOCUS

12.1 The Northern Territory land rights Act places the onus on Aboriginal people to prove their rights in the land, despite the overwhelming evidence that it is the dominant white society that should prove its right of occupation and ownership.

12.2 The Act sets out four main criteria for determining the "traditional owners" of land claimed by Aboriginal groups:

i. they must be a local descent group;
ii. they must have a common spiritual affiliation to a site on the land;
iii. their affiliation must place the group under a primary spiritual responsibility for the site and for the land; and
iv. they must be entitled to forage as of right over the land.

12.3 These criteria of the "traditional owners" require that Aboriginal claimants under the terms of the Northern Territory legislation argue that they live in almost a pristine state, a state in which few Aboriginal people anywhere in the country live today. Colonization and change in Aboriginal social organization has meant that Aboriginal people require the advice and research back up of anthropologists and others to prove their traditional affiliation to lands within these criteria.

12.4 As well, these criteria are a poor translation of the features and concepts of Aboriginal local organization into jurisprudential parallels of Anglo-Australian law. This translation is based on certain anthropological views about which there is little certainty. White Australians have great difficulty in understanding Aboriginal land tenure and the variations and diversity of the land tenure patterns which exist in Australia.

12.5 Aboriginal concepts of the way people are related to land have no parallel in European law: for instance, that religious rites constitute a form of title deed; that there are "owners" and "managers" of land who are related to each other in particular genealogical ways, as well as religious ways.

12.6 Anthropologists have rarely understood Aboriginal land tenure, yet they have designed the land rights legislation in the Northern Territory, and thereby ensured their career security at the expense of Aboriginal interests.

12.7 Each land claim lodged by an Aboriginal group in the Northern Territory involves in its preparation for the hearing before the Aboriginal Land Commissioner, usually two white anthropologists, sometimes more, white lawyers and others. Academic research in Aboriginal affairs has been elevated to the level of an industry in Australia. Therefore, not surprisingly, we now have anthropological consultants establishing their offices in large cities, collecting government and other funds to advise Aboriginal groups on such matters as mining negotiations, protection of sacred sites, national park development and so on.

12.8 Anthropologists have foisted their myths about traditional Aboriginal life upon the policy-makers, decision-makers and legislators, ostensibly in the Aboriginal interest, and then allow large areas of land to slide into the mining companies hands, because the Aboriginals people themselves do not fit the anthropological models they have built.

12.9 Thus, problems arise when the Northern Territory legislation is viewed as a model for the states. While it is the clearest example of the Commonwealth Government using its constitutional powers under Section 51 (xxvi) to legislate for Aboriginal people's special needs, it is dangerous to regard it as a model for granting land rights in the States.

12.10 Particularly because the Northern Territory legislation does not provide for claims to be made on unalienated land, nor for needs claims, Aboriginal people in the States will be seeking to ensure that Aboriginal patterns of land tenure are not confined in any forthcoming legislation to the white academic myths. We will be seeking as well as traditional rights in land, land rights based on need, on compensation and on the political realities of our situation in Australia.

13.0 MINING ON ABORIGINAL LAND

13.1 The influx of mining companies onto Aboriginal land, whether vested in Aboriginal groups or not under the prevailing legal system, poses the greatest danger to our survival.

13.2 There is significant Aboriginal opposition to exploration and mining on our lands, and which different groups, particularly the Aboriginal land councils, have brought to public attention, nationally and internationally.

13.3 However, despite increasing opposition from the general community, it is clear that the mining companies are forging ahead with little or no regard for Aboriginal people or for our concerns.

13.4 As well, various committees of inquiry appointed by the Commonwealth Government have documented their concern about the dangers posed by exploration and mining for Aboriginal well-being. The social monitoring programme of the Australian Institute of Aboriginal Studies in the Alligator Rivers region, the site of the largest uranium mines in Australia, has brought and will bring to light not only the advantages but also the disadvantages of mining for Aboriginal people in the region.

13.5 A common theme in these conflicts is the fact that although various inquiries have said that the Commonwealth must be involved as an arbitrating presence, the Commonwealth has been reluctant to assume its full role in the States, in providing protection for Aboriginal interests in the processes of consultation, negotiation, the actual exploration and mining processes, and subsequent monitoring.

13.6 Another is the unsatisfactory nature of the relationships, means of communication, certain negotiations and agreements that concern Aboriginal communities and organizations, the mining companies and, in some cases the State Governments.

13.7 It is apparent that Aboriginal interests and those of the State Governments in relation to mining are in conflict with respect to some important matters.

13.8 While Aboriginal groups throughout the country are attempting to establish viable and worthwhile lifestyles, economic pursuits, and a stable niche within the Australian milieu, State Governments support a "development" strategy that is largely dependent on the exploitation of non-renewable resources, particularly minerals, with the consequent risk of jeopardising the reconstruction of Aboriginal society.

13.9 For Aboriginal people, the most desirable alternative to the present situation is complete ownership of minerals. For Aboriginal Australia, complete ownership of minerals presupposes ownership of the land that closely resembles traditional ownership, and that allows a broadening of the presently accepted terms of ownership, such that it will be possible to reconstruct Aboriginal society without further intrusion and compromise of Aboriginal interests.

13.10 Present government attitudes, the few legislative measures to give Aboriginal people some control over their land and the attitudes of the mining companies, however, combine to create a situation in which Aboriginal people must face the inevitability of mining and develop strategies which will protect their interests.

THE RECOMMENDATIONS OF THE ABORIGINAL LAND RIGHTS COMMISSION - THE COMMONWEALTH GOVERNMENT INQUIRY

13.11 Mr. Justice Woodward in the Second Report of the Land Rights Commission found that with regard to mineral rights, traditional laws and customs could be interpreted as follows:

> . . . it is clear that Aboriginal ownership was not expressed in terms merely of the land surface. In many of the legends which gave expression to man's spiritual connexion with his land, his mythical forbears emerged from the ground and returned to it at different points in their sagas. Their

13.0 MINING ON ABORIGINAL LAND

> spirit essences still pervade those places and are retained in the soil and the rocks.

He found that in the Northern Territory the "two Land Councils have each pressed for the grant to Aborigines of full ownership of minerals on their traditional lands. They say that anything less than this would simply not satisfy the people they represent".

13.12 He concluded that

> . . . to deny to Aborigines the right to prevent mining on their land is to deny the reality of their land rights. I find it quite impossible to inspect developments on Groote Eylandt or the Gove Peninsula or proposed works on uranium deposits in Arnhem Land and to say that such developments, without consent, could be consistent with traditional land rights for Aborigines. . . .

13.13 However, Mr. Justice Woodward recommended in the end that "minerals and petroleum on Aboriginal lands should remain the property of the Crown". He gave a number of reasons for this decision, including the following:

> In particular I feel that the Government must be able to act if it is, on balance, contrary to the national interest.
>
> ....The chief of these is my belief in the general approach adopted in this country that minerals belong to all the people. . . . Secondly I think that the legitimate objectives of Aborigines in this connexion would be met if the recommendations I have made were accepted. To go further would be unnecessarily divisive and could lead to reactions among other members of the community which, in the long term, would not be in the best interests of Aborigines . . . .Thirdly, the whole of Australian mining law is based on the assumption that minerals belong to the Crown. To provide other wise in a particular case could well create problems and sorting these problems out could delay necessary legislation."

13.14 However, mineral rights have been granted to Aborigines

in the case of the Aboriginal Lands Trust of New South Wales, with the exception of rights in gold and silver which remain with the Crown. This provision was made without the detrimental results predicted by Mr. Justice Woodward in the Northern Territory.

13.15 The situation in the Northern Territory involves one where the greatest regard is taken for Aboriginal negotiating rights, royalty rights and to some extent, environmental safeguards, in this country. Mineral rights remain with the Crown, but Aboriginal land owners, under the terms of the land rights legislation, have a restricted veto over mining proposals. The Government may override this veto if a mining proposal is seen to be in "the national interest". As well, if negotiations are unsatisfactory, between an Aboriginal Land Council and a mining company or another party (including in some cases, the Commonwealth, itself), the Commonwealth may appoint an arbitrator. This situation has forced Aboriginal Land Councils to consent to agreements, under pressure that a Commonwealth-appointed arbitrator would have little sympathy for their case, with the result that compromises have been made in respect of access to land, road usage, environmental safeguards, royalties and so on. Royalties have been negotiated in particular cases and are payable to the Land Councils, the Aboriginal Benefit Trust Account, and the community most affected by mining.

13.16 In South Australia, all mineral rights remain with the Crown, but royalties must be paid to the Trust. The Trust also has powers in relation to right of entry, prospecting, exploration and mining on its lands. The Governor can make a proclamation to override the decision of the Lands Trust.

13.17 In Victoria, mineral rights remain with the Crown, but the Archaeological and Aboriginal Preservation Act 1972 may be relevant in restricting exploration and mining operations if they endanger land where there are sites of scientific interest. The provisions do not extend to Aboriginal reserve land.

13.18 In Queensland, the regulation of mining on reserves is entirely in the hands of the Director (as Trustee of the reserves) and the State Minister for Aboriginal and Islander Advancement, under the terms of the Aborigines Act 1971, discussed previously. They can grant leases for mining purposes and exploration on Aboriginal reserves without consulting Aboriginal residents. The State Government can make agreements with mining companies and the Trustee of the reserve, the Director, who shares in the royalties from the mining. Royalties may be spent for the benefit of Aborigines on reserves, but as far as can be ascertained, there is no public statement of such expenditure.

13.19 In Western Australia, the new Mining Act provides that mining can be carried out on reserved land once the written consent of the Minister for Mines has been obtained after he has consulted with the Minister for Community Welfare. To date, mining companies have been required to apply to the Aboriginal Lands Trust of Western Australia for permits and are required to pay royalties to the Trust. The Trust has negotiated a number of agreements with mining companies. Under the new legislation, it is still unclear whether mining companies will be required to apply for an entry permit under the Aboriginal Affairs Planning Authority Act, which establishes the Trust. Mineral rights remain with the Crown.

PROTECTION OF ABORIGINAL COMMUNITY RIGHTS

13.20 While the findings of Mr. Justice Woodward refer only to communities in the Northern Territory, it is important to recognize that he may well have been referring to any Aboriginal community with traditional or other links to land in Australia. The two arguments Woodward advances in this respect are stated thus:

> . . . it is necessary that any community likely to be affected by a substantial mining development should also consent. It is they who would be affected by a substantial influx of non-Aboriginal workers and, to my mind, these consequences can be even more serious than the devastation of an area of land. They

> should not be forced on an unwilling community

and

> I have made it clear that . . . Aborigines should be able to exercise most of the rights of an owner of minerals - particularly the rights to decide when exploration for minerals should not take place . . . . I think Aborigines should have special rights and special compensations because they stand to lose so much more by the industrial invasion of their traditional land and their privacy than other citizens would lose in similar circumstances.

13.21 Woodward set out the terms under which Aboriginal consent to exploration and mining should be sought. Clearly, he felt that Aboriginal groups and communities were not in a sufficient position of power to cope with the demands of consultation and negotiation. His recommendations on impact statements, the need for consent of traditional owners, communities, Land Councils, and as well, the approval of the Minister for Aboriginal Affairs, before any exploration license is granted, show his concern for a process of consultation and negotiation with checks and safeguards to protect the interests of Aboriginal people.

13.22 Woodwards recommendations have largely been ignored, and few his recommendations remain today in the final version of the Northern Territory land rights legislation after numerous amendments.

13.23 Likewise, in the States, Aboriginal people are offered little protection by the existing legislation.

13.24 That Aboriginal people in the States, as well as in certain areas of the Northern Territory, feel that the Government, administrators and business interests are indifferent to their rights and aspirations is evident in how they achieved considerable self-organization through land councils, which in the States have no recognition from the Commonwealth, and in the international campaign currently being conducted to bring

attention to the reprehensible activities of mining companies.

The Findings of the Ranger Uranium Mining Inquiry

13.25 At least a third of the Ranger Uranium Environmental Inquiry Second Report deals with the effect of mining on Aboriginal people, their land and rights in it, and related matters. The extent of the implementation of those recommendations has been in many respects inadequate. It is not necessary here to refer in detail to those recommendations, which are stringent, and reflect the concern of the Commission for the future of Aborigines.

13.26 However, it is relevant to refer to the statements of Commissioners on Aboriginal rights and aspirations:

> ...there was a general conviction that opposition was futile. The Aboriginals do not have confidence that their own view will prevail; they feel that uranium mining development is almost certain to take place at Jabiru, if not elsewhere in the Region as well. They feel that having got so far, the white man is not likely to stop. They have a justifiable complaint that plans for mining have been allowed to develop as far as they have without the Aboriginal people having an adequate opportunity to be heard. Having in mind, in particular, the importance to the Aboriginal people of their right to self-determination, it is not in the circumstances possible for us to say that the development would be beneficial to them.

13.27 The Commissioners continued in a later section of the Second Report:

> The great need, constantly explained in the evidence before us, is to provide them with the means of making their lives meaningful in their own terms, and of thus restoring their own dignity and self-assurance. It is thought that a recognition of their association with the land and the grant to them of title to it, albeit in white

> man's terms, are basic means to that end... It is possible that if part of their land is to become subject to mining the spiritual satisfaction and psychological benefit will be lost. This is not an argument for rejecting their claim; what it does point to is the desirability of recognising their title as fully as that can reasonably be done ...

13.28 The various recommendation, fears and rebukes that have been quoted here do not indicate that the Commonwealth has universally accepted its responsibilities to protect Aboriginal interests in relation to mining. On the contrary, the Commonwealth has not, from an Aboriginal point of view, granted title to land "as fully as that can reasonably be done", and I refer here particulary to the States, nor has it acted upon Woodward's recommendations regarding exploration and mining on or near Aboriginal communities.

13.29 The Woodward Commission made it clear that exploration and mining should not proceed without Aboriginal consent, and that Aboriginal consent could only be overridden if "the government of the day were to resolve that the national interest required it".

He stated:

> In this context I use the word 'required' deliberately so that such an issue would not be determined on a mere balance of convenience or desirability but only as a matter of necessity.

13.30 Aboriginal people disagree with Woodward's recommendations on this matter. Because of the enormity of the issue for Aboriginal people and the high stakes for us, Aboriginal people should have total veto over whether an exploration or mining proposal should proceed, despite the "national interest" criterion proposed by Woodward to coerce Aboriginal groups to consent to cultural genocide.

13.31 Mr Justice Woodward recommended that, on the application of his terms of reference outside of the Northern Territory, the approach he had instigated in the Territory be followed in the States: "By this I mean that regional councils of Aborigines, if not already

in existence, should be encouraged to establish themselves".

Woodward stated that:

> ... I have borne in mind the probability that what is done in the Territory will be regarded by many as setting some sort of precedent for action elsewhere. I have therefore tried, so far as possible, to frame my recommendations in such a way that they could be adapted for use beyond the Territory in any case where that was thought to be appropriate.

13.32 Clearly these recommendations have been in the main acceptable to Aboriginal people in the States. The establishment of the North Queensland Land Council, the Kimberley Land Council, the Victorian Land Council and the New South Wales Land Council is evidence of this. The continuing obstacles to their successful representation of their constituents on matters of land rights, mining and others, is largely the result of the failure of the Commonwealth Government to grant them full and statutory recognition and adequate funding.

13.33 It is clear from the policy of these land councils that they are not satisfied with the State Governments' policies on mining on Aboriginal land (with the possible exception of New South Wales), and that they desire to have the Commonwealth exercise its powers to protect Aboriginal interests in exploration and mining.

13.34 There is, then, a need for full recognition and for adequate guidelines to enable Aboriginal groups, mining companies and Government to negotiate more effectively; it is also important that procedures are established which take account of certain inequalities in the bargaining postions of Aboriginal communities, mining companies and Government.

14.0 ABORIGINAL RECOMMENDATIONS ON LAND RIGHTS AND MINING.

14.0 ABORIGINAL RECOMMENDATIONS ON LAND RIGHTS AND MINING

14.1 Events in Aboriginal Affairs in relation to land rights and mining are proceeding at such a pace that Aboriginal people in Australia must now request from the Australian Government, the United Nations, the World Council of Indigenous Peoples and others, support to attain a respite from the mining incursion and inexorable process of dispossession.

14.2 As can be seen in the foregoing paper, land rights for Aboriginal people and fair dealings from the mining companies is not a foregone conclusion. Indeed Aboriginal people face a bleak future unless strategies are now devised to ensure that land rights are granted to the dispossessed, that what land rights have been granted to the fortunate few are not lost, and that structures exist which enable Aboriginal people to cope with the onslaught of mining on or near Aboriginal land.

ABORIGINAL RECOMMENDATIONS ON LAND RIGHTS

14.3 Given the denial of Human Rights, Aboriginal land rights and rights to self determination in the States, including particularly Queensland, Western Australia and the Northern Territory, Aboriginal people are requesting that our supporters nationally and internationally combine with us to force the Australian Government to exercise its constitutional powers under Section 51 (xxvi) and (xxxi) to rectify the continuing dispossession of the indigenous people.

Those Sections read:

* The Parliament shall, subject to this Constitution, have power to make laws for the peace, order and good government of the Commonwealth with respect to:
* (xxvi) The people of any race for whom it is deemed necessary to make special laws.
* The Parliament shall, subject to this Constitution, have power to make laws for the peace, order, and good government of the Commonwealth with respect to:
* (xxxi) The acquisition of property on just terms from any State or

person for any purpose in respect of which the Parliament has power to make laws.

14.4 The Australian Government must grant land rights to Aboriginal people on the basis of traditional affiliation with land, on the basis of historical occupation since colonization, and on the basis of land and compensation:

a) by proclaiming relevant and appropriate legislation for this purpose

b) by allocating federal funding to the Aboriginal Development Commission to acquire pastoral leases and to purchase freehold land for Aboriginal communities

c) and by proclaiming legislation which will give complete protection to Aboriginal sites of sacred and other significance.

AN ABORIGINAL LAND RIGHTS PROTECTION AUTHORITY

14.5 In conjunction with these measures, it is necessary that an Aboriginal statutory authority be established by the Commonwealth Government with powers to enquire and investigate, without hinderance, matters concerning Aboriginal land rights and mining activities and proposals anywhere in Australia.

14.6 Such a body must also have the power to set in motion through the relevant government departments, bodies, Aboriginal organisations and the courts of Australia, any measures which are deemed necessary to protect Aboriginal rights in land, Aboriginal community rights and those rights which the Australian Government subscribes to through its ratification of various United Nations instrumentalities.

14.7 It is essential that such an Aboriginal body establish long term goals for the acquisition of land for the Aboriginal people, which may be revised from time to time given the rapid population increase and the profound changes occurring in Aboriginal social organisation, with the advent of the outstation movement, or movement to return to tribal homelands, occurring across northern and central Australia.

ABORIGINAL RECOMMENDATIONS IN RELATION TO MINING ON OR NEAR ABORIGINAL LAND

14.8 It is essential that there be a complete moratorium on mining and exploration on Aboriginal land or near Aboriginal land which may be detrimental to local communities, until the measures as set out below in the proposed strategy are implemented.

14.9 Aboriginal people should be granted land rights as fully as possible, including all mineral rights, and where desired, rights to other non-renewable and renewable resources.

14.10 Aboriginal people should have full veto over mining and exploration. All provisions in existing legislation denying or compromising Aboriginal veto over mining and exploration should be repealed. The Commonwealth should legislate according to its powers under the Australian Constitution, Section 51, (xxvi) and (xxxi), to override State intransigence on this matter and grant Aboriginal people full veto.

THE PROPOSED STRATEGY

14.11 In his second report, Mr. Justice Woodward recommended that a mineral survey should be conducted:

> I . . . see considerable merit in a planned approach to the whole subject of mining on Aboriginal lands, beginning with a survey conducted by mining experts appointed by the Government. They should be accompanied in the field by Aboriginal representatives, so that the Land Councils, and through them the communities, would know just what was happening.... With the results of such surveys available, Aborigines would be in a much better position to make considered decisions about mining developments.... If such survey work on behalf of government is not practicable or is thought to be undesirable, this leaves the Aboriginal people in the position of being asked to consent to mineral search with very little idea of the chance of mining later taking place or of the likely impact on them of such developments.

14.12 However, no such Government-community mineral survey has occurred. Since Woodward proposed the idea, the activities of mining companies and exploration companies have proceeded apace. Mining proposals that Woodward referred to in his report are now in the initial stages of development or quite advanced, and the Land Councils have since consented to a number of mining and exploration proposals. It is essential then that a national mineral survey be commissioned by a national Aboriginal body, so that the Aboriginal people of Australia have some indication of the area of land, the impact of mining companies and other effects involved over a long-term period.

A NATIONAL CONFERENCE

14.13 Because of these developments in the Northern Territory and because of the nebulous state of affairs in the States, it is recommended that a national conference of Aboriginal land councils, Land Trusts, Aboriginal community leaders, the relevant Commonwealth Government Departments, and mining and exploration companies and particularly the State Governments be convened to discuss and prioritise the issues of Aboriginal land and the threat of mining.

14.14 The recommendations of Mr. Justice Woodward in the Second Report of the Aboriginal Land Rights Commission require considerable coordination and attention to detail. Thus, the national conference would have to form a continuous process consultation established through legislation, so that all relevant information would be made available to Aboriginal communities. In the initial stages, the concept of regions such as Woodward had in mind for the areas of the Land Councils be adapted by the conference in order to orhanize the consultation process into such regional areas as would be represented by existing and future land councils throughout the country.

14.15 Such a regionalised approach would strengthen the possibilities for a rational, planned approach. The advantages would accrue not only to Aboriginal communities, but as well, to non-Aboriginal communities, local governments, and others involved

who are just as detrimentally affected by mining as Aboriginal people, however much they may believe the multinational lobby's propaganda.

14.16 Regionalisation would also mitigate against the possibilities of anarchical and unrestrained exploration and mining, which can only have adverse effects socially, economically, and environmentally.

IMPACT STATEMENTS PREPARED BY EXPLORATION AND MINING COMPANIES

14.17 Woodward went on to recommend the need for a form of impact statement for all exploration and mining proposals, the need for consent of communities and Land Councils, and again the final approval of the Minister for Aboriginal Affairs before any exploration licence is granted.

14.18 Mining and exploration companies should make available to Aboriginal interests the exact nature and extent of their involvement on Aborignal land - their exploration licences, mining reserves, tenements, etcetera, the areas and locations of these, their purposes and what is hoped to be achieved.

14.19 Woodward made the following recommendations:

> It will then be for that company to make a proposal to the regional Land Council, setting out clearly the area to be searched and the terms it is proposing. These will include:
>
> (a) any payments offered for the right to explore,
>
> (b) the royalty payments proposed in the event of the search being successful and mining taking place,
>
> (c) any equity offered in the resulting venture.

14.20 What will be involved at the exploration stage by way of road or airstrip construction, test drilling, seismic surveying, tree felling, ground clearing, bulldozing and building construction.

14.21 The Statement should then go on to give the best possible picture of activities and land and water requirements in the proving, developmental and production stages if the search is successful. It would need to set out the likelihood of any processing works being located in the region.

14.22 Many Aboriginal communities are giving consent to exploration without a full understanding of the consequences. Mining companies, if their exploration proves successful, tend to regard a consent to exploration as a green light for mining, and have criticized Aboriginal people for consenting to exploration and not to mining on the grounds that Aboriginal people have committed the mining companies to large investments without the possibility of returns. In most cases the Aboriginal people, when consenting to exploration, have had no conception of what it means - particularly that companies would mine if exploration turns up an exploitable find. This shows the degree of suspicion and the kind of false accusations that characterise Aboriginal/ mining company relations. Only a planned and considered national approach can resolve the problems that are the consequence of the present arbitrary approach.

14.23 For all these stages, estimates would have to be given of the number of employees likely to be involved and the works required for their maintenance.

Woodward was here referring to white employees of mining companies, who pose, through their introduction of alcohol and their abuse of Aboriginal women, one of the greatest danges to Aboriginal community cohesion.

14.24 This presentation should be illustrated with such maps, photographs and diagrams as may be necessary to convey a clear picture of what is proposed.

14.25 Woodward's recommendations fall short of the expectations of Aboriginal people of exploration and mining companies in preparing impact statements. The following are further requirements expected of these companies:

a. As well as the requirements for impact statements as outlined by Woodward, it is essential that these impact statements, other documents and the proceedings of the conference, other consultations and negotiations be interpreted and translated, and produced on audio tapes and video tapes where necessary.

b. Another matter which should be the subject of impact statements is monitoring, for instance the present monitoring of blast effects in the Uranium Province of the Northern Territory by devices inserted into rock faces. Other types of monitoring may need to be discussed with the Aboriginal communities and their effects taken account of.

14.26 These additions to Woodward's recommendations on impact statements are not intended to comprise an exhaustive list, but intend to to show the ways in which Aboriginal people may participate more fully in the process of assessing the mining companies' proposals. It is essential that Aboriginal people, the Commonwealth Government and independent advisory bodies assess the quality and requirments of impact statements from time to time.

14.27 These impact statements should at all times be available to those who are affected, Aboriginal communities, groups, such as traditional owners, and the Land Councils which represent them.

ABORIGINAL COMMUNITIES TO BE FUNDED BY THE COMMONWEALTH GOVERNMENT IN ORDER TO PRODUCE/COMMISSION IMPACT STATEMENTS IN REPLY TO MINING COMPANY STATEMENTS

14.28 Mining company statemants will rarely take into account the Aboriginal interests in the area proposed to be mined, in the

same way that Aborigina people would present them. Except for the normal dialogue with the responsible Government Departments, the evidence in some land claim hearings in the Northern Territory, the monitoring programme being conducted by the Australian Institute of Aboriginal Studies, inquiries by judicial and parliamentary committees, there is little formal opportunity for Aboriginal groups to argue, in full, their interest in, investment in, and usage of areas of land.

14.29 It is imperative that Aboriginal communities and groups be given the opportunity to reply to mining company impact statements setting out the advantages and disadvantages as they see them. Commonwealth funding is essential for this to occur, so that expert staff can formulate their statements.

14.30 For a number of reasons, it is considered of little consequence by the mining companies and governments, if Aboriginal hunting and gathering activities, social and religious activities and daily life are disrupted by mining. Nor is it considered of consequence if Aboriginal economic ventures, such as cattle stations, are disruped. Rarely is exact information about such disruption recorded in the way that mining company interests in an area are recorded. This imbalance of representation must be corrected.

14.31 Therefore, no exploration or mining licences should be issued before impact statements from both mining companies and Aboriginal communities are produced and discussed before the National Conference, and consent of Aboriginal communities is obtained.

CONSULTATION AND NEGOTIATION GUIDELINES

14.32 It is a fact of life for Aboriginal people under State jurisdiction that, if consultations and negotiations occur, they are treated as an arbitrary and ad hoc matter by some State Governments and mining companies. While negotiations are continuing between the Commonwealth and State Governments about the base guidelines for negotiation with Aboriginal communities, it is imperative that Aboriginal people have the

opportunity to be heard on this matter.

14.33 Therefore, the Aboriginal Statutory Authority for the protection of land rights should also have as its mandate, the responsibility of overseeing consultation and negotiation processes throughout Australia, providing professional services, such as legal advisers, economic advisers, interpreters, translators, negotiators, and others as may be required. Land Councils, both those recognized and not recognized by the Australian Government will need to be involved in the establishment and functioning of such an authority. Given the current lack of resources available to Aboriginal communities in dealings with mining companies, it is essential that the statutory authority ensure that trained personnel be present at all consultations and negotiations, and be responsible for ensureing that Aboriginal people fully understand the processes; they should be available to give any assistance required and prevent foul-play, such as infringement of laws by State Governments and mining companies.