ABORIGINAL LAND RIGHTS COMMISSION
SECOND REPORT


Your Excellency,

Following upon my first report to you on the subject of Aboriginal land rights, dated July 19th, 1973, I now present my second and final report.

My terms of reference, conduct of the inquiry, findings and recommendations are all set out in the body of my report.

Dated this 3rd day of May, 1974.

(signed) A. E. Woodward.
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Introduction

The setting up of the Commission

1. By Letters Patent dated the Eighth day of February, 1973 I received a Commission requiring and authorizing me to inquire into and report upon the following matter, namely:

   '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 reasonable aspirations of the Aborigines to rights in or in relation to land, and, in particular, but without in any way derogating from the generality of the foregoing:

   (a) arrangements for vesting title to land in the Northern Territory of Australia now reserved for the use and benefit of the Aboriginal inhabitants of that Territory, including rights in minerals and timber, in an appropriate body or bodies, and for granting rights in or in relation to that land to the Aboriginal groups or communities concerned with that land;

   (b) the desirability of establishing suitable procedures for the examination of claims to Aboriginal traditional rights and interests in or in relation to land in areas in the Northern Territory of Australia outside Aboriginal reserves or of establishing alternative ways of meeting effectively the needs for land of Aboriginal groups or communities living outside those reserves;

   (c) the effect of already existing commitments, whether in the nature of Crown leases, Government contracts, mining rights or otherwise, on the attainment of the objects of recognising and establishing Aboriginal traditional rights and interests in or in relation to land;

   (d) the changes in legislation required to give effect to the recommendations arising from (a), (b) and (c) above; and

   (e) such other matters relating to rights and interests of the Aborigines in or in relation to land as may be referred to the Aboriginal Land Rights Commission by the Minister for Aboriginal Affairs'.

2. On the 18th day of July, 1973 I received a reference from the Honourable the Minister for Aboriginal Affairs, in accordance with sub-paragraph (e) of my Commission, on the following matter, namely:

   'possible arrangements for vesting title to land in the adjoining Aboriginal
reserves in South Australia (North West Reserve), Western Australia (Central Australian, Warburton and Balwina Reserves) and the Northern Territory (Reserve No. R1028, comprising the reserves known as the Petermann, Haasts Bluff and Lake Mackay Reserves) in an appropriate body or bodies and for granting rights in or in relation to that land to the Aboriginal groups or communities concerned with that land, taking into account existing legislation in those two States'.

The aims of Aboriginal land rights

3. In order to achieve recognition of land rights for Aborigines in the best possible form, it is necessary first to be clear as to the aims underlying such recognition. I have assumed these to be:

(i) the doing of simple justice to a people who have been deprived of their land without their consent and without compensation,
(ii) the promotion of social harmony and stability within the wider Australian community by removing, so far as possible, the legitimate causes of complaint of an important minority group within that community,
(iii) the provision of land holdings as a first essential for people who are economically depressed and who have at present no real opportunity of achieving a normal Australian standard of living,
(iv) the preservation, where possible, of the spiritual link with his own land which gives each Aboriginal his sense of identity and which lies at the heart of his spiritual beliefs, and
(v) the maintenance and, perhaps, improvement of Australia's standing among the nations of the world by demonstrably fair treatment of an ethnic minority.

4. I believe that these aims can best be achieved by:

(a) preserving and strengthening all Aboriginal interests in land and rights over land which exist today, particularly all those having spiritual importance,
(b) ensuring that none of these interests or rights are further whittled away without consent, except in those cases where the national interest positively demands it — and then only on terms of just compensation,
(c) the provision of some basic compensation in the form of land for those Aborigines who have been irrevocably deprived of the rights and interests which they would otherwise have inherited from their ancestors, and who have obtained no sufficient compensating benefits from white society, and
(d) the further provision of land, to the limit which the wider community can afford, in those places where it will do most good, particularly in economic terms, to the largest number of Aborigines.
The role of the Commission

5. I have seen my task as being, firstly, to find out what Aboriginal claims and wishes are, so far as land in the Northern Territory is concerned. The place to do this has, of course, been the Northern Territory. I believe that this task is now accomplished, largely through the formation and the activities of the two Land Councils referred to below, but partly also by direct contact with communities and smaller groups. Naturally these spokesmen for the Aboriginal viewpoint do not speak with one voice on all topics, but a clear consensus has emerged on most matters.

6. The second part of my task I see as conveying these claims and wishes to the Government, and this I am doing in this present report.

7. Thirdly I see myself as being required to make suggestions to the Government and to the Aborigines of the Northern Territory, through their Land Councils, as to the best available solutions to the various problems which arise in recognizing Aboriginal land rights.

8. I said in my first report:
   ‘I am convinced that an imposed solution to the problem of recognizing traditional Aboriginal land rights is unlikely to be a good or lasting solution. Although a result reached, so far as possible, by a process of consultation and agreement will undoubtedly take longer to achieve, it is far more likely to be generally acceptable and to have permanent effect’.

9. I stand by that view, and accordingly offer the proposals in this report as a basis for negotiation between the Aboriginal Councils and the Government. I invite the Government to indicate its general attitude to these recommendations and then to give full weight to any further submissions which the Councils or other Aboriginal groups may put to it after considering this report.

10. I have tried, so far as possible, to reconcile any differences between the Northern and Central Land Councils in their approaches to the various topics raised. Subject to this I believe that these recommendations go a long way towards giving effect to the submissions put to me on behalf of the Councils. I believe that they are workable, they are just, and that they make adequate provision for the interests of the whole Australian community.

11. There are however three important areas in which I do not feel able to recommend that the Aboriginal claims should be granted in full. These relate to the ownership of minerals, the extension of present reserve boundaries from the coastline to a distance of twelve miles out to sea and the traditional ownership of land now subject to pastoral leases. In the first two cases I do not see the granting in full of the claims as being necessary for the protection of any important Aboriginal interest. In the third case I feel that more information is needed before the Government could properly consider any such claim. I hope that the Land Councils will accept these limitations of their claims and, to the extent that the Government is prepared to accept the report, that an agreement or understanding
between the Aboriginal people of the Northern Territory and the Government will result.

12. If such agreement cannot be reached then, no doubt, the Government will wish to go ahead with such of the proposals as it is prepared to accept.

The conduct of the Commission

13. I made a first report on July 19th 1973 in which the relevant facts were set out, problems were identified and a number of suggestions made about possible solutions to those problems. The only positive recommendation in that report was for the establishment of two Land Councils, one based on Darwin and the other on Alice Springs. The Councils were to be supplied with independent legal advice and asked to make submissions on the various points raised in the first report and on any other relevant matters which they wished to raise.

14. Such submissions have now been made, both in writing and orally at public hearings. They have been of the greatest assistance to me in my task.

15. In addition, the report was widely circulated among interested persons and organizations (some 2500 copies have been sent out) and it produced a number of helpful responses. With the exception of a few unimportant matters of detail, the facts set out were not challenged. In particular the description of the traditional relationship between Aborigines and their land seems to have been accepted by Aborigines and by others who have studied the subject. As a matter of convenience that description is reproduced at the end of this report as Appendix A.

16. In order to avoid unnecessary reference back to the first report, I have incorporated some other passages from it in this report. I have done so without acknowledgement except in those cases where there is some significance in the fact that a particular statement was made in the earlier report.

17. A list of those who made submissions, or who supplied information and opinions, either before or after the first report, is included as Appendix B. This includes all contributions which could fairly be described as substantial. In addition a number of letters were received.

18. As I stated in the covering letter to my first report, I decided to conduct this inquiry with the minimum of formality. This was done not only in order to save time, but also because I believed that I would get greatest value from informants, particularly Aboriginal informants, by this means. This has proved to be the case, and so, after the first report, I continued this practice of receiving written submissions and conducting informal discussions. In addition to the communities described in Appendix II to the first report, I visited a number of other Aboriginal communities in the north. A list of all communities with whom I have held discussions also appears in Appendix B to this report.

19. Finally I decided that it was desirable to sit in public to receive the
submissions of the Central and Northern Land Councils. Relevant government departments and representatives of the mining and pastoral industries were given notice of these hearings and invited to attend and comment on the Land Councils’ submissions if they wished to do so. In the event a number of persons and organizations did make such comments.

20. These hearings occupied eight sitting days in Alice Springs and Darwin and concluded on Friday, March 1st.

21. Counsel and solicitors appointed to assist the Land Councils were not content simply to take instructions from the members of their Councils at meetings. They decided, very properly, that they should visit as many communities as possible to explain the purpose of the Commission’s inquiries and to gauge the feelings of the people they had been asked to represent. As a result some fifty different communities were consulted.

22. The Central Land Council met twice and the Northern Council three times in giving instructions for the submissions made. The Northern Council members also attended the Darwin hearings.

23. I am confident that everything possible has been done to consult the wishes of the Aborigines of the Northern Territory and that the submissions made on behalf of the Land Councils reflect as accurately as is possible the consensus of Aboriginal opinion in their respective areas.

24. It is true that there has not been as much direct contact with Aborigines living on cattle stations as counsel for the Land Councils as I would have wished. Shortage of time and the seasonal conditions made the difficult task of making such contacts even harder. It will no doubt be said, and indeed the Northern Territory Cattle Producers Council has already made submissions to this effect, that Aborigines on cattle stations are generally unaware of the claims being made on their behalf and, for the most part, have no present wish to take over the running of cattle stations.

25. I have no doubt that there is some truth in this statement; but it must be remembered that many of the people on reserves, to whom Land Council representatives and I have spoken, have lived for many years on cattle stations. Further, the Land Councils did, between them, have representation from some thirty stations and about ten were actually visited by counsel.

26. It must also be remembered that a claim for justice does not lose any of its force because the people on whose behalf it is made do not fully understand it. Certainly it would be wrong to force upon Aborigines responsibilities that they do not want to accept; but I do not believe that anything in this report produces that result.

Visit to North America

27. I received an invitation from the Social Science Research Council of Canada to take part in a symposium on Public Land Usage at the end of October, 1973. I took advantage of this opportunity to discuss native land rights questions with a number of government officers, lawyers and Indian
leaders in various parts of Canada. I also had discussions with officers of the Bureau of Indian Affairs and others in Washington D.C. My enquiries were supplemented by those carried out on behalf of the Commission by Dr Peterson who visited other parts of Canada and the United States, including Alaska.

28. The subjects of my discussions included the ways in which Indian and Eskimo communities are organized, what land rights they have or are claiming, the degree of government control of their activities and spending, the extent of government support for them, their other sources of income and the position of those who no longer belong to communities.

29. Speaking generally, I found that the problems of today are remarkably similar in North America and Australia, although the history of recognition of land rights has been so very different. Paradoxically, Australia now has an enviable opportunity to give belated recognition to such rights, uninhibited by a history of treaties and statutes by which, in North America, many rights were formally surrendered or compulsorily acquired in return for various forms of compensation. In many cases the compensation proved to be illusory or inadequate; often it was soon dissipated. But it has proved very difficult to go back over old ground or re-open old agreements. In particular the large number of Canadian Indians of mixed descent whose ancestors elected to surrender their Indian status in return for certain civil rights and allotments of land or cash payments, now find themselves in a very difficult position.

30. We in this country now have an opportunity to act in a way which would ensure reasonable equality of treatment for all Aboriginal communities and not permit the wide variations which accidents of history have created in North America.

31. It would be presumptuous for me, after a few weeks in North America, and in spite of some fairly extensive reading, to comment in any critical way on the scene there. However, I think it would be fair to say that North American experience suggests a number of pitfalls which are now widely appreciated there and which ought to be avoided in Australia. These include:

(a) the apparent attraction of a 'final settlement' of claims, which fails to make provision for changing needs in the future,

(b) the injustice of a compensation in cash or land made to individuals and terminating all rights of future generations,

(c) the danger of dividing native land into small allotments, which are not economically viable for any pastoral or agricultural purpose, but which become fossilized and unable to be altered because of some inflexible legal provision,

(d) the possibility of overlooking the long-term interests of those who still live largely in a subsistence economy, perhaps by assuming their needs can all be met by welfare payments,

(e) the unacceptable imposition of legislation or of regulations governing native land questions without any consultation with those affected by them,

(f) the unjust results likely to arise from the adoption of a 'formula' approach to land claims — which provides, for example, so many acres per head of population, without regard to the quality of the land or the different purposes to which it could be put,
the stultifying effect of an approach which sees the government in the role of a trustee who has to oversee and approve all items of expenditure by native communities,

on the other hand, the dangers of assuming that native community leadership, suddenly entrusted with large sums of money, will be free of corruption and nepotism,

the large sums of money which can be spent on lawyers fees and the costs of professional witnesses if strict proof of native claims is required for any purpose,

the great harm that can be done if benefits are extended to some native people and not others — whether by reasons of degree of native blood or of historical or geographic factors — particularly if decisions as to entitlement within a community are made outside that community,

the risk that native affairs may fall into the hands of unscrupulous managers, consultants, or advisers, whose only concern is to make as much money as the situation will permit, and

the even greater risk that communities will be left without proper managerial assistance or legal or other advice.

32. It is not suggested that any one of these problems is of general application in North America. However, recent experience has shown that they are all matters which need to be remembered.

33. On the other hand I must stress that there are many aspects of the Indian situation today which provide hope for the Aboriginal future. In particular, the strength of Indian organizations, and the willingness of governments to provide funds to assist those organizations with research into claims, with legal advice and with day-to-day administrative expenses, are all very encouraging.

34. One matter in the United States which is of particular interest for present purposes is the working of procedures for compensating Indians for the loss of their lands.

35. The U.S. Indian Claims Commission was set up in 1946 to determine tribal or band claims for breaches of treaties or agreements, for the taking of land without compensation, or arising from dealings by the government in which it failed to act fairly or honourably.

36. The Commission can only award damages; it cannot restore land to tribal ownership. Damages are based on the value of the land at the time of its taking, with no allowance for changes in the value of money since then or for interest.

37. First the tribe or band must prove that it owned the land when it was taken. To do so, it must prove exclusive use and control of the land at that time, or statutory or treaty recognition of its title. If it can prove ownership, the value of the land must then be established. From this is subtracted any payments already made to the tribe for it, or other voluntary expenditures by the government for the benefit of the tribe.

38. It has taken about fifteen years, on average, for a claims case to be heard and finally determined. Appeals are provided for.

39. Up to October 1973, 214 claims had been successful, with awards totalling $431 million, 176 had failed and 221 were still pending. The
legal, administrative and other costs of this exercise have, of course, been very great.

40. I find it hard to believe that claims based solely on historical circumstances, and depending on the availability of historical evidence, are likely to produce as satisfactory and fair results as claims based mainly on present needs. Such an approach may have been unavoidable in the United States, where Indians have placed so much emphasis on broken treaties. I am not satisfied it would be right here.
Main Principles

41. At the beginning of the year 1788 the whole of Australia was occupied by the Aboriginal people of this country. It was divided between groups in a way which was understood and respected by all.

42. Over the last 186 years, white settlers and their descendants have gradually taken over the occupation of most of the fertile or otherwise useful parts of the country. In doing so, they have shown scant regard for any rights in the land, legal or moral, of the Aboriginal people.

43. There are now about one hundred white citizens of Australia for every one Aboriginal or part-Aboriginal.

44. These are the simple historical facts which provide the background for the Government’s expressed intention to recognise Aboriginal land rights in the most appropriate way possible.

45. These basic facts and the human tragedy which they represent are, I believe, not sufficiently understood by the Australian community.

46. Although it is only on the fringes of my terms of reference, I would like to suggest that the Government should have a white paper prepared which would set out the story behind the bald facts. I believe that this could be done simply by the reproduction, with background notes but without critical comment, of a number of extracts from historical documents describing a selection of events sufficient to paint an overall picture. Such a document could then be used in schools, so that later generations of Australians could have a better understanding than we have of the background to claims for Aboriginal land rights. As an illustration of what might be done, I have set out in Appendix C a number of such extracts. Most of the documents are communications passing between the early Governors of New South Wales and the Secretaries of State for the Colonies.

47. Before considering the detailed recommendations which I wish to put before the Government, I think it is desirable that I should state clearly some of the underlying conclusions which I have reached in the course of my inquiry. These are, with varying emphases, fundamental to my thinking and thus to my recommendations.

48. The Aboriginal people themselves must be fully consulted about all steps proposed to be taken. They must be given every opportunity to consider and criticize proposals and to negotiate with the Government for changes in those proposals.

49. This will involve some delays, which will be criticized by those wanting instant action, but I am satisfied that the need for consultation is of
paramount importance. In this context I should make it clear that consultation is not achieved by a meeting at which decisions already made are explained to Aborigines. Aboriginal involvement in the process of decision-making must be a reality. And the Aborigines involved must be those who will be affected by the decisions.

50. *Any scheme for recognition of Aboriginal rights to land must be sufficiently flexible to allow for changing ideas and changing needs amongst Aboriginal people over a period of years.* This is so for a number of reasons. Surrounding circumstances may change — for example, local employment opportunities; or the needs and aspirations of a community may alter as the result of increasing contacts with the outside world. Further, certain widely held expectations about, for example, the ease of reaching a consensus on certain matters, may prove false. For all these reasons, future generations should not be committed by this generation’s ideas any more than is necessary.

51. A step-by-step approach which allows for Aboriginal planning over time is much to be preferred. A final ‘settlement’ would mean the surrendering of certain claims in return for the recognition of others. This type of agreement cannot be said to have worked well in North America. It is particularly inappropriate in Australia because of the spiritual relationship between Aborigines and their land.

52. Our aim should be to find a just solution for our time and leave future generations to do the same.

53. *Cash compensation in the pockets of this generation of Aborigines is no answer to the legitimate land claims of a people with a distinct past who want to maintain their separate identity in the future.*

54. The terms of reference of the Commission make no mention of cash compensation. I have been urged by some submissions to ask for an amendment of these terms of reference to allow consideration of such compensation.

55. However I believe that the only appropriate direct recompense for those who have lost their traditional lands is other land — together with finance to enable that land to be used appropriately, either for housing or for some economic purpose.

56. *There is little point in recognizing Aboriginal claims to land unless the Aboriginal people concerned are also provided with the necessary funds to make use of that land in any sensible way which they wish.*

57. This does not necessarily require large sums of money at one time. It will usually be better to provide money progressively so that there is the maximum possible degree of Aboriginal involvement in each project. For example, a housing project which involves training Aborigines in carpentry, bricklaying, plumbing and electrical work will take much longer to complete than one built by non-Aboriginal contractors — but the end results in terms of training, employment and sense of achievement are likely to be so much better that the delay will be well worthwhile. In the same way the development of cattle or timber ventures should be at a pace which the Aborigines choose to handle from year to year even if the results in the early years are poor from a profit-making viewpoint.
58. It is important that Aboriginal communities should have as much autonomy as possible in running their own affairs. They should receive, without having to account for them except by way of audit, the necessary funds to cover all administration and other normal recurrent expenditures. Only major decisions involving the expenditure of public monies should have to be approved by outside authority.

59. Aborigines should be free to follow their own traditional methods of decision-making. Concepts of elections and formal meetings, necessary among large numbers of people most of whom are comparative strangers to each other, have no place in traditional Aboriginal society and should not be imposed unnecessarily.

60. Aborigines should be free to choose their own manner of living. In saying this it is necessary to remind some non-Aboriginal enthusiasts that this involves a freedom to change traditional ways as well as a freedom to retain them.

61. In the final analysis there must be some accountability by Aborigines for their use of lands, natural resources and public monies. Lands and natural resources should not be used in such a way that they suffer avoidable damage. There must be regard for principles of conservation. Public monies must not be wasted or misappropriated.

62. Differences between Aborigines should be allowed for, but any artificial barriers, in particular those based on degrees of Aboriginal blood, must be avoided.

63. This is essentially a matter for Aborigines themselves to decide. But others dealing with them should be sensitive to the question.

64. In saying that differences should be allowed for, I have in mind that the Aborigines of mixed descent in New South Wales share only some of the beliefs and aims of the tribal Aborigines of Arnhem Land. People from one background should not readily be accepted as spokesmen for people of the other.

65. On the other hand I believe it is vital that no artificial wedge should be driven between people whose Aboriginal ancestry is the dominant factor in their upbringing and their thinking. Their similarities should be built upon and their co-operation encouraged.

66. I believe that Aborigines will find that these objects can best be achieved by a concentration on the development of local and regional organizations and arrangements, leaving the national level for consultation, co-ordination and public relations. However, as I have said, I see this as a matter for Aborigines themselves to decide.
Aboriginal Reserves

67. Aboriginal reserves in the Northern Territory were established for the protection of Aborigines. The larger reserves consisted of land which was either unsuitable or not then required for white settlement. The small reserves were established to meet particular needs.

68. In most cases there has been a complicated history of proclamations, revocations, fresh proclamations, resumptions of part for other purposes and so on. In some cases doubts have arisen as to the boundaries or legal status of reserves. However there seems to be no point in exploring these problems; provided Aborigines are finally given title to land described by geographic boundaries and not by past history, no difficulties should arise.

69. My terms of reference make it clear that the Government wishes to vest title to these lands in an appropriate Aboriginal body or bodies. The difficulty is to decide the best way of going about this so as to reflect Aboriginal laws and customs in a landholding system which is adapted to modern requirements.

The form of title

70. I have no doubt about the nature of the title which should be granted. In spite of a number of submissions to the contrary effect from pastoral and other interests in the Northern Territory, I regard any form of leasehold title as inadequate to satisfy either the announced intentions of the Government or the expectation of Aborigines. I am conscious of the fact that there is a general trend in the community towards leasehold rather than freehold titles, but I accept the submission of the Central Land Council that any form of leasehold title would simply not be acceptable to Aborigines 'as a satisfactory or proper solution to their aspirations' in the case of reserve lands.

71. The views which I expressed in my first report that title must be communal and inalienable have been amply confirmed by the submissions of both Land Councils.
72. I had suggested that these requirements could all be met by the creation of a new form of statutory title, to be known as Aboriginal Title, but I am reminded by a submission from the Northern Council that it is necessary to tread warily here. It is pointed out that if the title is expressed as being in fee simple, all the normal incidents of such title would be known. This would resolve any doubts about the applicability of the general law and facilitate any future dealing with the land, which may not be envisaged at present but which could be contemplated by later generations.

73. I have said that title must be communal in its effect, but this can best be achieved by granting title in each case to some form of Aboriginal corporation, whether it be a group of trustees, a Land Council, a community council or some other body. Both Land Council submissions agree as to this point.

74. I have also said that the title must be inalienable and this is true in the sense that the land cannot be sold or mortgaged. On the other hand there must be provision for land to be transferred from one Aboriginal body to another. This could occur, for example, as the result of the dividing up of larger areas of land or of the amalgamation of areas or of the adjustment of boundaries.

75. I believe that such transfers should only be made with the consent of the Minister, in case there should ever be any suggestion of coercion, corruption or any other form of impropriety in dealings between Aboriginal councils or communities.

The holders of title

76. This then brings me to the difficult question as to who should hold the legal title to Aboriginal lands. As I pointed out in my first report ( paras. 102-118) there are three substantially different ways in which this could be done and a number of possible variations on these three themes.

77. Broadly speaking the choice lies between a council or trust basis, a community basis and a clan basis. Towards the end of my first report ( paras. 281-301) I suggested the adoption of the community basis. I did so because, in my visits to the various communities in the Territory, I believed that I had been able to detect a fairly clear consensus of Aboriginal opinion in that direction.

78. I also felt that the approach was a sensible one because the community is the basic political and social grouping for Aborigines in modern society. I said (para. 108) ‘Most such communities have, in recent years, become used to electing their own councils and attending general meetings of the community to decide matters of common interest. It is true that living arrangements within the community will often be organised in such a way as to reflect clan or dialect group affiliations but, for most purposes, the community functions as a whole’.
79. The two new major difficulties which I foresaw were those of drawing dividing lines between community areas and of providing for small new communities.

80. Because of these difficulties and because I was conscious of the fact that I had been talking to communities in a setting in which members of community councils were the chief speakers, I stressed that the suggestion should be approached critically.

81. In the event the Central Land Council has generally endorsed the suggested system, but the Northern Land Council has pressed for a council or trust system.

82. I am satisfied that there are good reasons underlying the Northern Land Council’s submission. In the first place I think that my statement of the significance of the community in modern Aboriginal society undervalued the continuing importance of the clan structure. I think it is most significant that the members of the Northern Land Council, who were selected by community councils established in response to outside suggestions, to attend meetings of a new council set up in the same way, and who might therefore have been expected to favour community control, rejected this approach. They did so, after initial acceptance, in favour of one which gave the maximum possible authority to the older men of importance in the clan structure.

83. They appreciated that it was not practicable to vest small areas of land in the individual clans and so they devised a scheme which would achieve substantially the same results through a trust system.

84. I now accept that this is the system which is likely to work best, because it is in harmony with traditional Aboriginal social organization. To extend the role of community councils by making it necessary for them to hold title to land would be an unwarranted interference with the Aboriginal authority system.

85. Community councils now perform useful functions in areas other than land ownership. For many other purposes they are both necessary and desirable. And in cases where communities are living on land that is not theirs traditionally, or have otherwise largely lost touch with traditional values, the community council or its representatives may well be the best body to have land vested in it.

86. Indeed I believe that the most likely development over the next fifty years or so will be a gradual weakening of links with specific areas and sites and the strengthening of community identity with larger tracts of land. If this occurs, community ownership would be appropriate.

87. My point here is simply that such a process should not be forced along by the imposition of such arrangements where they are not wanted and would not willingly be accepted or observed.

88. I see little difficulty in accommodating both points of view and thus providing a choice for Aborigines. The only catch may lie in deciding just who should exercise the choice. The scheme which I now set out, and which is provided for in the suggested drafting instructions for legislation (Appendix D), represents, I believe, the best possible reconciliation of the two approaches.
89. I have recommended the use of a trust in all cases for convenience of legislation and ease of understanding. As I have said, I accept the submission of the Central Land Council that the Council or community councils would be appropriate landholders in some cases. However I believe that substantially the same result would be achieved if those councils were to nominate the trustees, provide administrative services and, in the case of the Central Land Council, give directions on matters provided for in the legislation. The use of the trusts does provide an opportunity to show proper respect for older traditional leaders and thus to temper the growing powers of the community councils with a due regard for traditional values.

The land to be transferred

90. In my opinion, all land presently contained in Aboriginal reserves (other than Bagot and Maranboy), should, by proclamation under the proposed Act, be vested in incorporated trusts. The following table lists the areas concerned, the proposed name of the trust for each area and the organization which should nominate the trustees from at least in the first instance. In case any dispute should arise as to who is entitled to nominate trustees in the future, the responsible Minister will have to make a decision as to whose advice it is appropriate to accept.

91. The proclamation should describe the reserves by their boundaries because in some cases there are doubts about the validity of past reservations or revocations. For reasons which are set out below (paras. 422-5), it is recommended that the definition of Aboriginal land where a coastline is involved should include both off-shore islands and waters within two kilometres of the low tide line. I believe that a case could be made out for including also the waters of some of the wider estuaries and of certain enclosed bays, such as Buckingham, Arnhem and Blue Mud Bays. However the definition of enclosed waters for such purposes is a complex matter and I do not anticipate any problems arising in practice. If I am wrong in this, the Northern Land Council may wish to raise the question again at some later time.

92. Bagot is excluded from this list because it is within the built-up area of the City of Darwin and so needs special consideration. Maranboy is excluded because it is insignificant and there is some doubt about its present status. It should perhaps be added that the Mudburra, Woolner and Manassie reserves may never have been validly revoked, but they are excluded from present consideration because the intention to revoke was clear enough. The first two are now the subject of pastoral leases.

93. The Larakeah reserve, although subject to much the same history as the Woolner and Manassie reserves, appears to have retained its reputation as a reserve and to have been marked as a reserve on recent maps as well as being listed as a reserve in recent publications of the Department of Aboriginal Affairs. Whatever the strict legal position, I think it should now be treated as available for Aboriginal ownership.
94. **Reserve**
   - Arnhem Land
   - Bathurst and Melville Is.
   - Woolwonga
   - Daly River
   - Beswick
   - Wagait (3 areas)
   - Larakeah
   - Amoonguna
   - Jay Creek
   - Warrabri
   - Yuendumu
   - Hooker Creek (Catfish)
   - Lake Mackay
   - Haasts Bluff
   - Petermann

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**The effect of Aboriginal title**

95. I envisage that the proposed Act will provide that the trustees should hold the land for the benefit of those having traditional rights to it and, if that should fail to exhaust the beneficial interests in any land, it would be held in trust for the regional Land Council as to the remaining interests.

96. The legislation would also provide for the preservation of all traditional rights and place an obligation on trustees to consult, through the regional Land Council, with the traditional owners of the land before granting any lease, licence or permit concerning any part of the land.

97. Provision should be made for granting leases, licences and permits to Aborigines, Aboriginal corporations, missions and government. Other non-Aboriginal persons and corporations should normally only be able to obtain leases, licences or permits over Aboriginal land for purposes connected with tourism or the recovery of minerals or petroleum. The limitations on the grant of rights for these purposes are dealt with further below (paras. 481 and 575-587).

98. Both the Land Councils have submitted that no other purpose would normally justify the grant of rights over Aboriginal land to non-Aborigines in the foreseeable future. They have however suggested that the Minister might be given a power to approve a lease or licence in other special circumstances.

99. I agree with the principle that such leases or licences to non-Aborigines ought not normally to be permitted. However I agree also that some unforeseen situation may arise which makes the granting of such a lease or licence desirable in the interests of Aborigines. I cannot see any harm being done if the legislation restricts such grants to special cases and requires the consent of both the regional Land Council and the Minister.
100. I envisage that the proposed Act will set out the powers of trustees and provide that they should accept all lawful directions from the relevant regional Land Council.

101. I believe it would be convenient to refer to the system resulting from such provisions as 'Aboriginal title' but it would be merely fee simple subject to certain statutory qualifications.

102. It has been conceded by both Land Councils, and I entirely agree, that Aboriginal land should generally be subject to the normal provisions of the law relating to freehold Land. Those provisions having general application, and dealing, for example, with questions of health or soil erosion or fire protection or straying cattle, would apply to Aboriginal land. Because of the general prevalence of leasehold title in the Territory it may be that some laws of general application are not expressed in such a way as to apply to freehold land. If this is so, then some convenient legislative method to make them applicable to Aboriginal titles would have to be found.

103. One series of laws to which Aboriginal land would be subject, unless there were special provisions made, would be those relating to compulsory acquisition. While not contesting that such laws must apply for some purposes, the Northern Land Council submitted that they should be limited by statute to those cases where 'no other land is reasonably available elsewhere for the same purpose'.

104. While accepting the spirit of this proposal, I can foresee great difficulty in applying such a test in practice, and I am unable to make any constructive suggestion to improve the wording. I therefore believe that the best safeguard here, as in the case of the grant of mineral exploration licences, is to provide that such compulsory acquisitions shall only be made with the consent of the regional Land Council, or by special proclamation permitting it if the Government is satisfied that the public interest requires it. Any such proclamation should be tabled in both houses of the Parliament, with power in either house to disallow it.

The administration of leases and licences

105. The administration of leases and licences would be the responsibility of the Land Councils in the first instance. However there is no reason why this should not be delegated to the local community if it has staff able to undertake this task.

106. In the submissions of the Central Land Council, any rents received would be payable to the local communities. The Northern Land Council says that they should go to the landowning clan or clans. There would be an obligation on the Land Council to compile a register of clan members for such payments and this register would be accepted as conclusive evidence of entitlement.

107. I can see no easy answer to this divergence of views. At first sight it might seem that the traditional landowning clans are the proper recipients of rent, but when it is remembered that the produce of the land was traditionally shared by a number of land-using groups, each made up of
several clans, and that the community is the nearest modern equivalent to such groupings, the position is not so clear. Certainly it would seem desirable that any large amounts of money should be received by the local community for community purposes.

108. I think the best available solution is to leave each case to the discretion of the Land Council concerned and to provide that it fulfils its obligation if, after deducting a reasonable commission to cover costs, it accounts for rents received either to clans or to communities or, if it sees fit in a particular case, to both.

Control of access to Aboriginal land

109. The question of entry permits presents some difficulties. One of the most important proofs of genuine Aboriginal ownership of land will be the right to exclude from it those who are not welcome. The Land Councils believe that this principle should be supported by a permit system and I agree with them. I accept the Northern Land Council’s view that the system should be administered by the officers of the Land Councils, who would, where necessary, consult with the local community and clan leaders before issuing a permit.

110. It seems however that these arrangements would have to be supplemented by provisions to issue permits locally where, for example, tourists unexpectedly decide to leave a main road to visit a community which accepts tourists, or where the need to obtain a permit has been overlooked.

111. I think there would also need to be some provision to cover cases where people have some over-riding claim to enter Aboriginal land, particularly where their duties require them to do so frequently. The Central Land Council (but not the Northern) conceded this point and gave some examples of the persons they had in mind.

112. Cases which occur to me are:

(i) Policemen in the execution of their duties.
(ii) Ministers of the Crown and members of their staffs accompanying them.
(iii) Officers of the Departments of the Northern Territory or of Aboriginal Affairs in the execution of their duties.
(iv) The Member of the Legislative Council for the area in question.
(v) The Member of Parliament for the Northern Territory.
(vi) Judges, magistrates and court officials in the execution of their duties.
(vii) Medical practitioners, nurses and first-aid officers stationed on Aboriginal land or called to attend to a sick or injured person on such land.
113. These instances and the possible variations of them are sufficient to show how difficult the problem could become in borderline cases. Assuming that a blanket provision is necessary for officers of the Department of the Northern Territory to cover, for example, fisheries inspectors, welfare officers and forestry officers, what is to be done about teachers or officers of the Department of the Environment and Conservation? Should candidates for the Legislative Council or the Parliament have unrestricted access to Aboriginal lands?

114. One particular issue for decision relates to persons of mixed descent. The Councils have suggested that any person having Aboriginal ancestry, however remote, should be exempt from the permit provisions. Since this is their express wish I accept it, but I can see a possibility that they may later change their minds and wish to make special provisions in the case of those having little Aboriginal blood and no relation to the Territory.

115. I can also envisage problems arising in relation to the townships which have been established on Aboriginal land for mining purposes — Nhulunbuy and Alyangula. If visitors to these centres are to be exempt from the permit system, what are their boundaries of movement to be? If they are not exempt, a great deal of wasteful paper work will be involved.

116. Perhaps the best answer, both for such visitors and for the townspeople themselves, is that they should be exempt from permit requirements so long as they confine themselves to the town sites, areas leased for mining purposes, and such other areas as may be agreed upon for purposes of day visits for recreation. It seems to me that, beyond such areas, permits should be required.

117. So far as the other special cases I have mentioned are concerned, I think that the Land Councils should be empowered to issue Territory-wide annual permits to persons having regular legitimate business on Aboriginal land. The Director of Aboriginal Affairs for the Territory should also have power to issue permits to cover cases where the Land Council could not deal with the matter in the time available or unreasonably withheld a permit to a person having legitimate reasons for entering upon Aboriginal land. I would expect this latter power to be exercised rarely, if at all.

118. There should also be an escape clause in the legislation making it a defence that the person concerned was on Aboriginal land for the purpose of carrying out the duties of his office, or as the result of an emergency which did not allow time to obtain a permit.

119. Just as there needs to be power to issue permits, so also must there be power to revoke a permit in appropriate cases. I think that this should be done by delivering to the person concerned a notice of revocation signed on behalf of the authority which issued it.

120. There should also, I believe, be an over-riding power for any community council which desires to get rid of a person to require him to remove himself from the particular community within a given period of time. This period would have to be reasonable having regard to the availability of transport and any other arrangements which the person concerned might have to make. I envisage this power as applying to permit-holders or to Aborigines, but not to any person who was there as of right, either because of Aboriginal tradition or because of the nature of his duties.
121. I think also that any detailed provisions relating to permits should be capable of amendment by regulation so that the system can be developed in the light of experience without having to amend legislation.

122. I should make it clear that all that I have so far said in this section relates to land on reserves or similar traditional lands which may be acquired in the future. There is no reason why other Aboriginal bodies, such as community councils or associations formed for the purpose, should not hold freehold or leasehold titles to land in the ordinary way and subject to the ordinary laws applying to such titles. What is said here relates specifically to Aboriginal traditional lands and excludes areas of residential land in towns, such as the Bagot reserve.

Existing rights in Aboriginal reserves

123. One special problem to which I drew attention in my first report was that of existing rights over Aboriginal reserves. I there suggested (paras. 125-128) a possible arrangement to deal with such rights and I invited comments upon it.

124. My suggestion was as follows:
All existing rights should, to begin with, be preserved by the legislation which gives land title to Aborigines. Once the Aboriginal clans or communities have been incorporated and the boundaries of their land fixed, they should become entitled to all rents and fees payable in respect of any agreements, leases or permits affecting their land. They should then review all such arrangements. If they decide to approve them they should continue to receive, as owners of the land, the rents and fees provided for. If they do not approve any arrangement an attempt should be made to re-negotiate it on terms acceptable to the Aborigines'.

125. I then went on to suggest that where re-negotiation failed, thought would have to be given to the possibility of compulsory acquisition of the rights involved. I see no reason to change the views there expressed.

126. The two Land Councils have expressly accepted these propositions. They recognise that the new Aboriginal owners must take their lands in the first place subject to any existing rights.

127. They do not anticipate any difficulty in negotiating fresh agreements with government departments or authorities, missions, or groups of Aborigines. In each of these cases it is assumed that, over a period of time, fresh leases can be negotiated. In the meantime all rights would be preserved by the proposed legislation.

128. This would account for most of the leases presently existing over Aboriginal reserves. It seems that there is at present only one mission lease still current, which relates to Bathurst Island. In addition the following special purpose leases are in existence:

- Progress Associations and Social Clubs — 23
- Missions — 16
- Housing Associations — 17
Mining Companies (Gemco and Nabalco) — 17
Other commercial (Kailis) — 1
Miscellaneous — 7

129. It is of interest to note that present rental payments amount to:

- Nabalco — $8,630
- Gemco — $478
- Kailis — $5
- Others — $118

130. In addition to these Special Purpose Leases there are also a few pastoral leases held by Aborigines.

131. It will be seen from these figures that the only leases which are likely to create any difficulties are those held by Nabalco, GEMCO, and the successor in title to the Kailis company, namely Gollin Kyokuyo Fishing Co. I am informed by the Northern Land Council that the Aboriginal people concerned will certainly wish to re-negotiate the leases to mining companies. They will at least want to consider the terms of the lease of the prawn factory, particularly since the company is now seeking a further ten acres of land, mainly for housing purposes. The present rental of $5 per year seems incongruous alongside the $1m. recently spent by the company to purchase and expand the business and the further $500,000 or more which it contemplates spending.

132. The position of the two mining companies is further dealt with below under the heading of Mineral Rights.

133. So far as government requirements are concerned, the Northern Land Council takes the view that, where the Government requires land for some purpose which will benefit local Aboriginal communities, it should have a continuing lease without any requirement for rent. This would apply to any land required for schools, hospitals, telephone communications or air strips, for example. If on the other hand the requirement was for some wider community purpose, which would not directly benefit local Aborigines, then the Council feels an economic rent should be paid. This would apply, for example, to a Department of Civil Aviation facility which was designed to aid all aircraft flying in and out of Darwin.

134. So far as the missions are concerned the Council feels that no rent beyond a nominal rent should be payable, but that leases should only be granted from year to year, because the particular community’s views about the value of mission services could change over time. The present attitude of the Council is that the missions are of great assistance to Aborigines and it is unlikely that they would want to sever their connexion with missions in the foreseeable future. This same view was expressed very clearly by the Central Land Council. It is understood by both Councils that leases for mission or government purposes would include the accommodation necessary for the officers who are providing those services.

135. The respective missions have all indicated, either expressly or by failing to respond to the invitation contained in my first report (para. 27) to put a different view, that they have no objection to handing over to Aborigines title to all areas of land which they now control.

136. Naturally they expect to receive, in return, leases to the various buildings which they now occupy. In appropriate cases they should be compensated if those leases are, at some future time, not renewed.
137. I believe that all these suggestions put forward by the Land Councils concerning existing rights in Aboriginal reserve lands are reasonable and should be accepted.

Unbranded cattle and wild horses

138. One other particular matter to be considered under this heading is the ownership of unbranded cattle on reserves. S. 120 of the Crown Lands Ordinance 1931-1972 provides that ‘all unbranded wild horses and horned cattle above the age of twelve months which are at any time remaining or feeding on any Crown lands (including reserved or dedicated lands but not including leased lands or lands occupied under licence or agreement) and which have no reputed or apparent owner shall be the property of the Crown’.

139. The section goes on to provide for the sale of such cattle or horses.

140. The Land Councils have submitted that in the case of all Crown lands which become Aboriginal lands, such cattle should become the property of the relevant Land Trusts.

141. The Northern Territory Cattle Producers Council does not object to this result being reached, but suggests that the Crown should continue to be responsible for establishing its ownership within the meaning of the section and for settling disputes and controlling disposal before handing over the cattle, or the proceeds of their sale, to Aboriginal ownership.

142. It seems to me that this is desirable in the first instance, but that once the Crown has performed this task in any given area, the section would cease to have any effect and the position would in future be the same as for any other adjoining landowners. I think the Northern Territory Administration should, within the next two years, clarify the position in each reserve so that in future such cattle and horses can belong to the landholders.

143. It is agreed by all parties that nothing should be done which would have the effect of disturbing the agreement reached on 24 August 1973 between the UNIA Association Inc., representing Aborigines at Daly River, and the management of the Tipperary cattle station, for joint mustering.

Summary of recommendations

144. (i) Aboriginal reserve lands should be owned by Aborigines in fee simple. The title in each case should be held by an Aboriginal corporation. With the consent of the responsible Minister land could be
transferred from one Aboriginal corporation to another, but it could not be sold or mortgaged.

(ii) The landholding corporations should be called Land Trusts and they should hold the land for the benefit of all those having traditional interests in it or rights over it.

(iii) Regional Land Councils should also be incorporated to direct the Land Trusts in the performance of their duties, to provide the necessary administrative services for the Trusts, to protect the interests of the traditional owners of land, to conduct negotiations concerning any proposed commercial use of the land, and for all these purposes to employ administrative and field officers and engage expert advisers.

(iv) In so far as the trusts in favour of traditional beneficiaries fail to exhaust the beneficial interests in the land, it shall be held in trust for the regional Land Council.

(v) The reserve lands to be vested by proclamation in incorporated Land Trusts should be those specified in the table in para. 94.

(vi) The proclamation should describe the reserves by their boundaries which, where a coast-line is involved, should include both off-shore islands and waters within two kilometres of the low tide line.

(vii) The first trustees should be appointed by the Minister on the nomination of the council set out in the table. If there should be any dispute in future concerning such nominations, the Minister will have to act on the advice he thinks best.

(viii) Legislation should provide for the preservation of all traditional rights over the land concerned and for traditional landowners to be consulted before any leases, licences or permits concerning the land are granted.

(ix) Regional Land Councils should be primarily responsible for the administration of leases, licences and permits. They should account either to the landowning clans or to the local community, or to both, for any monies received. They should be entitled to deduct a reasonable amount, by way of commission, to cover the costs of such administration.

(x) A Land Trust, with the consent of the Land Council, should be able to grant leases, licences and permits to Aborigines, Aboriginal corporations, missions and government. With the additional consent of the Minister, they should be able to grant such rights to non-Aboriginal persons or corporations for the purposes of mineral or petroleum search or recovery, tourism or, in special circumstances, any other approved purpose.

(xi) Apart from the matters specifically dealt with in this report, Aboriginal land should be subject to all laws normally applying to freehold land.

(xii) Powers of compulsory acquisition of Aboriginal land should only be exercised with the consent of the regional Land Council or by the authority of a special proclamation, tabled in the Parliament and subject to disallowance by either house.

(xiii) Entry to Aboriginal land should be regulated by a permit system to be administered by the regional Land Councils, with provision for permits to be issued locally in some cases.
(xiv) All Aborigines would be exempt from permit requirements.
(xv) Persons having official duties to perform on Aboriginal land would be expected to obtain and carry permits as a matter of convenience but would not be guilty of an offence if they failed to do so.
(xvi) There should be a further exemption to cover cases of emergency.
(xvii) Residents of Nhulunbuy and Alyangula, and visitors to those towns, should not be required to obtain permits if they confine themselves to the townsites, the areas leased for mining purposes and agreed recreation areas.
(xviii) The authority to issue a permit should carry with it the authority to revoke a permit, by notice in writing delivered to the person concerned.
(xix) Apart from the operation of the permit system, a community council should have authority to require any person not there as of right to leave the community within a reasonable time. Presence ‘as of right’ would cover both traditional Aboriginal rights and the performance of official duties.
(xx) The grant of title to Aboriginal Land Trusts must be subject to the preservation of all existing rights in the land. So far as possible, these rights should be re-negotiated so that they are held directly from the Aboriginal landowners on terms acceptable to both parties.
(xxi) Where this result cannot be achieved, and where the regional Land Council so requests, consideration should be given to the compulsory acquisition of the rights or interests concerned.
(xxii) Leases to government should be for an indefinite term and rent free if they are for the benefit of Aborigines. Otherwise an economic rent should be paid.
(xxiii) Leases to missions should be at a nominal rent and renewable from year to year. There should be appropriate compensation for improvements in any case where renewal of a lease is refused.
(xxiv) The Department of the Northern Territory should within the next two years, do all it can to clarify the ownership of unbranded cattle and wild horses on reserves. It should hand over to Aboriginal ownership or sell all those belonging to the Crown. From that time onwards, all unbranded cattle and wild horses on Aboriginal land, which have no other reputed or apparent owner, would become the property of the Aboriginal landholders.
Other lands claimed by Aborigines including vacant Crown Lands

145. In addition to the lands already reserved for Aborigines there are a number of areas which have been claimed by the Land Councils as being appropriate for immediate Aboriginal ownership. These include in the North:

(a) Delissaville,
(b) The Cobourg Peninsula Wildlife Sanctuary,
(c) The Daly River Mission leases, and
(d) The pastoral property of Kildurk.

146. In the Centre the areas concerned are:

(a) The Tanami Desert Wildlife Sanctuary,
(b) The pastoral property of Willowra
(c) The Special Purpose Lease of Hermannsburg
(d) The Palm Valley Flora and Fauna Reserve, and
(e) The Santa Teresa Mission Special Purpose Lease.

147. It is appreciated that the Ayers Rock and Mount Olga National Park represents a special case which requires particular consideration. This is dealt with below (paras. 510-515). I also refer below to the Palm Valley Flora and Fauna Reserve.

148. So far as the other areas are concerned, I am satisfied from my own enquiries and the material supplied to me that it is appropriate for them all to be transferred to Aboriginal ownership in the near future. It is understood that the three missions concerned will be given appropriate new leases and that if, at any time in the future, those leases are terminated by the Aboriginal lessors, compensation would be paid, wherever it was appropriate, for any improvements.

149. Since the two pastoral properties have, and are likely to have, people living on them with traditional interests in those areas, I see no reason to treat them differently from Aboriginal reserve lands so far as tenure is concerned. It should be appreciated however that there may be cases in the future where pastoral properties are acquired for the use of Aborigines having little or no traditional claim to those areas. If this were so it is
conceded by the Land Councils that different considerations would apply and that some form of title less than Aboriginal title (presumably a special purpose lease or a pastoral lease with appropriate special conditions) would be held by an approved corporation rather than a trust.

150. As for the Cobourg Peninsula and the Tanami Desert, I am satisfied that there are sufficiently close ties between Aborigines still living nearby and those lands to justify their immediate transfer to Aboriginal ownership, but subject to the maintenance of their existing status as wildlife sanctuaries. They would then be in the same position as areas of Aboriginal reserves which have been proclaimed as wildlife sanctuaries. The effect of such proclamations and the desirable way of reconciling Aboriginal interests with the need for conservation in such areas is discussed below (paras. 492-509).

151. I understand that consideration has been given in recent years to declaring the Delissaville area to be an Aboriginal reserve. I think it is clear that this is an appropriate area for Aboriginal ownership. However I do not feel able to make any precise recommendations as to the amount of land which should be covered by such a proclamation.

152. The position on Cox Peninsula is complicated by several factors. The first is that there are several small areas of freehold land on the eastern side. I am not aware of the use to which these areas are being put. Secondly there is a substantial piece of land reserved for government purposes as a radio booster station, and I understand there is also a forestry reserve and a further area reserved for government purposes.

153. It seems to me that the area to be handed over to Aboriginal ownership is a matter for negotiation. It is important that Aborigines should own places that are important to them and a reasonable amount of land having economic value.

154. The necessary negotiations should be conducted by the Northern Land Council. An agreed amount of land should be transferred to Aboriginal ownership as soon as possible, and any area in dispute should be referred in due course to the Aboriginal Land Commission, dealt with below (paras. 709-733).

155. I would not rule out the possibility that either the forestry reserve or the government reserves should be transferred to Aboriginal ownership subject to appropriate leasing back.

156. In the case of all the areas I have listed as being suitable for immediate Aboriginal ownership, the recommendations made above concerning reserves would apply. In particular, all existing rights would be protected. This would include, in the cases of Kildurk and Willowra, pastoral leases held by Aboriginal corporations. In the case of the wildlife sanctuaries the rights of management of the relevant government departments would be preserved.

157. All such rights would be subject to re-negotiation in due course as in the case of reserves.
158. The councils to nominate trustees for the respective areas should be as follows:

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<th>Area</th>
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159. The only area claimed by a Land Council about which I feel any real doubt is the Palm Valley Fauna and Flora Reserve. I think that, on balance, this is a matter which should be left for consideration by the Aboriginal Land Commission. The only evidence before me of traditional claims to this area is somewhat nebulous. I think it is quite likely that such claims can be substantiated but I do not feel that this is sufficiently clear for me to make a positive recommendation about it.

160. This leads me to the question of unalienated Crown lands. The Central Land Council has urged me to recommend that all the large areas of such land be transferred immediately to Aboriginal ownership on the understanding that traditional claims could be established over most of them and that, where this was not so, areas of land could ultimately be handed back to the Crown.

161. I am not prepared to accept this suggestion for two reasons. In the first place I think it is more appropriate that claims should be established before land is transferred. Secondly I think it is undesirable from the point of view of the Aborigines themselves that large areas of country, having little value to them, should be handed over to their ownership. This would inevitably lead to the result that the total area of Aboriginal ownership would be calculated and it could be made to seem that the Aborigines had more than their fair share of land. Already it is quite often said that Aborigines have, in the reserves, 18% of the total area of the Northern Territory and that since they represent less than 25% of the population, this is a reasonable share. However it must be remembered that large areas of the Central Australian reserves are desert or semi-desert country having no economic value, unless minerals should be found upon them. This is equally true of much of the remaining unalienated Crown lands. Aboriginal people should think carefully before laying claim to any areas which are not going to be of value to them — particularly since they have unimpeded access to this country at present if they want to visit it for any traditional purposes.

162. I do however accept the submission of the Northern Land Council that these areas ought not to be alienated until Aborigines have had an opportunity to lodge claims to them with the Aboriginal Land Commission and to have those claims considered.
Accordingly I recommend that, in relation to the parcels of unaliendated Crown land listed below, there should be no granting of any interest in or rights over this land at least until the 1st January, 1976 unless the appropriate Aboriginal Land Council shall first have been consulted and shall have stated in writing that, after enquiries, it understands that there are no Aboriginal claims in contemplation which would be prejudiced by the granting of the particular interest under consideration. The period of the freeze may need to be extended, depending upon the time required to establish the Land Councils and the Commission.

The only exception I would make to this restriction is in cases where negotiations for the grant of a right or interest in such land have reached a point where hardship would be caused to the potential holder of that right or interest if the expectations on which he had been acting were not realised.

I have limited my recommendations to the areas listed below firstly because these are the areas specified by the Land Councils in their submissions and secondly because I believe that any general provision relating to all unaliendated Crown lands could produce many unforeseen and unnecessary problems.

The areas to which I refer are as follows:

1. The large area west of Tennant Creek across to the Western Australian border and north from the Lake Mackay Reserve and the Tanami Desert Wildlife Sanctuary up to Wave Hill and Murrangi pastoral leases in the north;
2. The area of land situated immediately south of Mount Doreen and having on its eastern boundary the Yuendumu Reserve and along the western and most southerly boundary the Lake Mackay and Haasts Bluff Reserves;
3. An area of land being immediately south of Tempe Downs and being bordered on the western side by the Petermann Reserve and proceeding south as far as Mulga Park and having on its easterly boundaries Curtin Springs;
4. The Simpson Desert area in the south-eastern corner of the Northern Territory;
5. The area of land east and south-east of Tennant Creek and extending as far as Georgina Downs;
6. Borroloola area;
7. Daly River Agricultural Area, surrounded by Tipperary pastoral lease;
8. Area between Woolner and Point Stuart pastoral leases;
9. Area between Point Stuart pastoral lease and the South Alligator River extending south to Gimbat pastoral lease;
10. Area north of Munmarlary and Mudginberri pastoral leases;
11. Field Is. and Endyalgout Is. in Van Diemen Gulf;
12. Nicholson River Area, adjoining Queensland border;
13. Area between St. Vidgeon pastoral lease and the Gulf;
14. Area to the south-east of Tipperary pastoral lease, on either side of Dorisvale pastoral lease;
(xv) Area west of the Stuart Highway north of Katherine;
(xvi) Area east of the Stuart Highway north of Katherine;
(xvii) Area north of Anthony Lagoon pastoral lease;
(xviii) Kidman Springs area, south-east of Fitzroy;
(xix) Barkly Tableland District area south of Newcastle Waters and Muckaty pastoral leases;
(xx) Area adjoining Wagait reserves north of Stapleton pastoral lease and west of Adelaide River;
(xxii) Area north of Mount Bundey pastoral lease and east of Adelaide River.

167. I believe that these descriptions will be sufficient to identify the areas concerned. They appear quite clearly on the Northern Territory of Australia Pastoral Map 1 : 2,000,000 which can be obtained from the Map Sales Division of the Department of Minerals and Energy, Canberra, or the Survey Branch, Department of Services and Property, Darwin.

168. Parts of a number of the above areas are already the subject of grazing licences, agricultural leases, special purpose leases or other forms of interests in land. Nothing I have said is to be interpreted as requiring any interference at this stage with any of these existing rights.

169. I can however envisage the possibility that, if Aboriginal claims are made to parts of these areas and it is decided to give effect to those claims, then some existing interests may have to be purchased or compulsorily acquired on just terms.

170. So far as I am aware, the only cases in which a twenty months delay in alienation could cause any serious difficulties relate to the following areas:

(i) Area between Point Stuart pastoral lease and the South Alligator River, extending south to Gimbat pastoral lease;
(xiv) Area to the south-east of Tipperary pastoral lease, on either side of Dorisvale pastoral lease;
(xv) Area west of the Stuart Highway north of Katherine;
(xvii) Area north of Anthony Lagoon pastoral lease;
(xviii) Kidman Springs area;
(xxii) Area north of Mount Bundey pastoral lease and east of Adelaide River.

171. For the most part the difficulties arise because planning for the release of areas as pastoral leases or 'mini-leases' is at a fairly advanced stage. In the case of (xv) above, leases have been advertised and applications are being considered. I think it would be reasonable to exclude from the recommended freeze any areas which have actually been advertised before the day on which this report is released.

172. I would also exclude any small areas needed for town developments at, for example, Katherine or Borroloola. These should not be delayed where they are necessary. Nor should the development of the larger area required for water catchment purposes for the town of Katherine's water supply be delayed.
173. I should also make it clear that nothing said in this section is intended to interfere with or delay the inevitable expansion of the city of Darwin. The claims of Aborigines in this connexion are dealt with in a different section.

174. I am not aware how far the plans to develop an experimental agricultural station on the small Kidman Springs area (xviii) have progressed. If work is well advanced there would be little point in delay at this stage. This could properly be left to the good sense of the Department.

175. So far as other plans are concerned, I believe they should be delayed so that there is time for Aboriginal claims to be formulated and fully-considered along with any competing claims for development or conservation.

176. Only by doing this will the point clearly emerge that Aboriginal claims are to be considered in priority to, or at least along with, other claims — and not considered only when all other claims have been satisfied.

177. Some of the areas concerned may well be suitable as Aboriginal tribal areas, which are dealt with below, and there are obvious advantages in releasing unalienated Crown land for this purpose rather than having to purchase fully developed pastoral leases.

178. Where claims are to be made to any of these areas, they should be made by or through the regional Land Council. In the first instance those claims should be made to the Department of the Northern Territory. If they are accepted by that Department they could then be referred to the Department of Aboriginal Affairs for appropriate action.

179. If agreement cannot be reached between a Land Council and the Department of the Northern Territory, then the claim should be referred to the Aboriginal Land Commission for investigation and recommendation before being considered by the Government.

180. If a claim is based on traditional ties to land it would normally result in a proclamation of Aboriginal title. If not, an appropriate form of lease would be used.

Summary of recommendations

181. (i) The areas listed in para. 158 should be treated in the same way as Aboriginal reserves. Any disputes as to the extent of the area at Delissaville which cannot be resolved by negotiation, should be referred to the Aboriginal Land Commission.

(ii) The areas of vacant Crown land listed in para. 166 should not be alienated to non-Aborigines before 1976, thus giving Aborigines time to formulate any claims they may wish to make to those lands.

(iii) Exceptions should be made in cases where:

(a) the regional Land Council consents,
(b) hardship would be caused if existing plans were not proceeded with,
(c) areas involved are comparatively small and are required for city or town development or for some other community purpose.
(iv) Where claims are made to any of these lands by a regional Land Council they should be considered in the first instance by the Department of the Northern Territory. Unless agreement is reached, they should be referred to the Aboriginal Land Commission for investigation and recommendation.
Pastoral Leases

Present position

182. Pastoral leases, commonly referred to as cattle stations, cover a large part of the Northern Territory. They vary greatly in size and value. There are some in the centre which barely support one man and his family. There are others, for example several in the Gulf District, where little attempt has so far been made to develop the holding. Other stations are expertly managed, carrying huge herds of cattle and represent vast corporate or private investments.

183. The leases are generally for long periods of years and carry certain statutory rights of renewal, thus giving substantial security of title to existing holders, provided that the conditions of the lease are observed.

184. The present terms of leases are such that only one comes to an end before 1990 and only seven more before the turn of the century. The great majority terminate between the years 2010 and 2020.

185. The situation of Aborigines on cattle stations was described in some detail in a report made in December 1971 by a committee headed by Professor C. A. Gibb. Extracts from that report were set out in my first report at paras. 75-91.

186. The main points brought out by that committee's enquiries may be summarized as follows:

   (a) Numbers of Aborigines living on pastoral properties in the Territory have dropped quite sharply in recent years, particularly if they are considered as a percentage of the total Aboriginal population. They now amount to just over 4000 people — in round figures.

   (b) For the most part they are to be found in comparatively small communities. (More recent information than was available to the Gibb committee suggests that there are some 12-15 properties having more than 100 Aborigines living on them.)

   (c) Job opportunities have fallen off in recent years. There is no chance of any significant increase in the number of workers required in future, since the trend is for the industry to rely more on capital expenditure and less on labour.
(d) On the other hand, the number of jobs available to Aborigines could be increased by vocational training of Aborigines in such fields as truck driving, mechanical maintenance, building construction and bookkeeping.

(e) At present many cattle station owners and managers are reluctant to employ Aborigines because, they say, of their unreliability and of cultural factors limiting their usefulness and of additional costs involved in providing medical and social care for the workers and their families.

187. I have no doubt that, generally speaking, there are many advantages to Aborigines in living on cattle stations. I see no reason to doubt the conclusions of Dr. Eastwell, Psychiatrist of the Darwin Hospital, whose opinions on this subject were put before me by the Northern Land Council. He said,

‘In my opinion, the cattle station communities are better than the Missions and Settlements as regards moral, physical and mental health. Alcohol excess is apparently under more control. The positive factors influencing this are thought to be:

(a) they are smaller groups;
(b) the men work in an environment which is satisfying to them . . .
(c) there is a higher economic level in these communities;
(d) their culture is not actively interfered with;
(e) there are more life options open to them; if they do not like one station they can move to another. Accordingly they are less dependent and less institutionalised’.

188. I would add to Dr. Eastwell’s list the fact that, in many cases, the people concerned are living on, or close to, their own land. This gives them both a sense of belonging and a sense of continuity. As Prof. Charles Rowley said in his submission, looking at the matter from the negative viewpoint,

‘... Traditional Aboriginal life is land-based, and a weakening of the traditional relationship with land tends to break down the social organisation, kinship ties, religion and motivation of the Aboriginal people’.

189. For these reasons I think that active steps should be taken to encourage Aborigines to live on cattle stations by making their lives there economically possible and socially satisfying. The recommendations made in this section are designed to achieve those ends.

190. However I have not felt able to recommend the acceptance of all that the Land Councils are seeking with regard to pastoral leases.

Claims to reversionary rights

191. Both the Land Councils have urged that a scheme should be introduced whereby traditional claims by Aborigines to land which is now held on pastoral leases should be heard and determined by an appropriate tribunal. It is envisaged that the special tribunal constituted for this purpose would
be headed by a judge or at least by a person eligible for appointment as a judge. The proposal is that any group establishing traditional claims to such land should have granted to it a reversionary interest in that land.

192. This is seen as having two consequences. The first would be that rental payments (less some proportion for the administrative expenses of the Lands Branch) would be payable to the persons named in the declaration of title.

193. The second result would be that, when the expressed term of the lease was up, the Aboriginal owners would be entitled to assert their right to the occupancy of the land. Counsel for the Land Councils conceded that the Aboriginal claimants could only expect to receive possession of the land if the value of the improvements to the land were paid. The money for such payments would either come from accumulated Aboriginal funds or it would come from some government sources, by way of grant or loan or a mixture of the two.

194. The advantages claimed for such a scheme are that the rental payments, although not large, would represent an acknowledgement of Aboriginal claims to the land in question, which would be of considerable significance to Aboriginal people. The second advantage would come in those cases where the Aboriginal owners ultimately received full title to their land and were able to go into unrestricted occupation of it.

195. It seems to me however that there are a number of disadvantages in any such proposal. The first one that I see relates to the nature of the hearings to be conducted by the special tribunal. I have little doubt that, over the whole range of the Northern Territory, some hundreds of claims would be made. These would vary greatly in strength. At one extreme there would be close religious and cultural ties with the land, evidenced by a detailed knowledge of myths and ceremonies affecting that land. At the other extreme, persons of mixed descent would assert some tenuous connexion through their mother or grandmother which might amount to little more than another man’s saying that he grew up in a particular area and regarded it as his home country.

196. Even where the religious ties are close, considerable problems can arise because of the complex nature of Aboriginal relationship to land. As explained in my first report, (see now Appendix A to this report), such ties may amount to ownership in the sense closest to European understanding of that term, may involve usage or managerial rights or may be based upon some totemic connexion. As Professor Ronald Berndt (quoted by the Northern Land Council) has said, there are for Aborigines two levels of ownership, the primary or religious level and the secondary or economic level. And although the patrilineal descent group (which I have called the clan) is the basic landholding unit, as Professor Berndt points out, ‘... a man or woman can have a stake in more than one site or one local group: moreover, he or she can have rights in the sites and local group territories of maternal relatives, under specific conditions’.

197. If all claims were thoroughly investigated and tested by checking and cross-checking with appropriate informants, a great deal of time, energy and money would be expended. In many cases it would prove necessary to conduct investigations on the spot with a number of informants present. It might well prove necessary to employ lawyers to present the various claims. Particularly if non-Aboriginal interests were represented by lawyers, it would
be easy to imagine a series of hearings lasting over a number of years, involving a great deal of evidence from Aborigines about their oral traditions and further evidence from anthropologists and others who were either familiar with the area and the people related to it or had been specially commissioned to investigate and report.

198. Experience in North America (see paras. 35-40 above) has shown all too clearly that the investigation of traditional native claims is a long and costly business, particularly when you are concerned with hunter-gatherers who ranged over country without settling in any one place.

199. The situation in Australia is even more complicated, for the reasons mentioned in para. 196. When the complex kinship systems and the variable economic living units are brought into account, the threads can become very tangled.

200. They can be unravelled with care and patience, but if this has to be done with sufficient certainty to justify interfering with other people's rights in land, then I believe it would become a huge task.

201. The second disadvantage I foresee in the Land Councils' scheme is that false expectations are likely to be created as to the availability of these lands when the leases fall in.

202. As pointed out above, the great majority of leases will complete their present terms between the years 2010 and 2020. I believe that, in the meantime, constant reference to Aborigines as the legal owners of this land would create an expectation that, as the leases fell in, the land would be handed over to Aboriginal control without any requirement for payment by or on behalf of the Aboriginal people.

203. This is not the way the claim has been put by the Land Councils. They appreciate that the law requires that the outgoing lessee be paid the value of any improvements on the land, and this will only be possible by or on behalf of Aborigines in a limited number of cases. Their counsel have urged on me that there is plenty of time to explain the situation to the Aboriginal people and that no false expectations are likely to be created. However I am still very much concerned that Aborigines would be misled by being told that they are the owners of these lands subject only to existing leases. I believe that this could create a legacy of great trouble for both Aborigines and the wider Australian community in forty years time.

204. Not only Aborigines would be confused and uncertain about the future. I think another likely result would be that present owners of cattle stations would be unwilling to put much capital expenditure into their properties, particularly in the last ten or fifteen years of their leases. They might also find it hard to attract loan moneys. An important industry would suffer, and among the losers would be a number of Aborigines who rely on the industry, directly or indirectly, for support.

205. This leads me to my next point of concern about these proposals. I regard it as generally undesirable to try to find solutions today for a period as far ahead as forty years. I believe, as I have said elsewhere, that we should try to find solutions for today and for the foreseeable future. Any promises made now should be capable of being redeemed within the next ten years or so. We cannot now envisage what the social or economic climate may be like in forty years time and I believe that it would be wrong for us to try to solve today's problems by entering into commitments which later
generations would have to make good. The Aboriginal people should be told what the government is prepared to do for them in the next decade and they should judge both the government and the community in the light of those undertakings. As I indicate later in this report, I think it is important that there should be provision for a formal reconsideration of the situation at regular intervals in the future. I believe that this particular claim can best be considered and decided upon at a later time.

206. This in turn brings me to another reason for not recommending the grant of this claim now. It is that neither I nor the Government have sufficient information about the repercussions of granting reversionary interests in all leased pastoral lands in the Northern Territory to traditional claimants. It is my own belief that claims carrying varying degrees of conviction could and would be brought forward in relation to almost all the pastoral properties of the Territory. On the other hand, counsel for the Central Land Council has expressed the strong belief that this would not occur. Whichever of us is right, I think it is only reasonable that the government should have a clear idea of what is involved before it is asked to decide about the legal ownership of such a potentially vast area.

207. Another possible reason for not granting this claim is that it might tend to be divisive amongst Aborigines. It promises much to those who can establish traditional claims and tends to mark them off from those who are unable to establish such claims. Although it is true that these people can be dealt with and provided for in other ways, I am still reluctant to make a recommendation which would draw such a clear dividing line between persons of the full blood who have had the good fortune to retain close contact with their country and those who, because of their mixed descent or for other reasons, have lost touch with their traditional lands. I am concerned about the danger of creating, by implication, categories of first and second class Aborigines.

208. Finally I am troubled about the difficulties and expectations that may be created in the various States of the Commonwealth by granting this claim in the Northern Territory. It is legally practicable to grant the reversion of the bulk of Northern Territory land to Aborigines because that land is mainly held by way of long term pastoral leases. This is not generally true in the rest of Australia and I see great difficulty in trying to match any such provision in other States. I think it is highly desirable that similar provisions should ultimately obtain throughout Australia and I am most reluctant to make a recommendation with regard to the Northern Territory which cannot reasonably be expected to be matched elsewhere. This is another example of the danger of Aborigines being misled by being given false hopes today which only prove to be without foundation some time in the future.

209. On the other hand I accept this claim as a reasonable one which deserves careful consideration, when its implications are fully understood, before any final decision on it is made. To this end I recommend that the Aboriginal Land Commission, dealt with more fully below, should be asked to investigate the feasibility of handling traditional claims to pastoral leases in the Territory. This would involve a consideration of the methods by which such claims could be dealt with and the extent of the problems which would be likely to be encountered in handling them.

210. I should perhaps say in passing that I do not see boundary problems as presenting any great difficulty. If the claim were ultimately to be granted,
I would suggest that title be given to trustees on behalf of the members of all clans who could establish title to sites within the area leased. This would result in some people having minority interests in more than one lease, where their traditional lands happen to lie on a boundary between leases, but that should cause no problems. There would be a problem where traditional ownership could only be established over a small part of a lease and it seems to me that reversionary interests could only be granted where claims were established to the greater part of the lease. I believe that to try to grant individual clan claims to the reversionary interests in areas within traditional 'boundaries' would create insoluble problems.

211. The Commission should further be asked to create a register of claims in order to obtain some idea as to how widespread they might be expected to be. In establishing such a register, the Commission would gain experience which would help it to make the suggested report on the feasibility of setting up a more formal tribunal to grant claims to land if that should later be thought desirable.

212. I suggest that, at least to begin with, the Commission should concern itself with sites rather than boundaries in creating its register. I do not refer here to sacred sites — particularly since there may be a reluctance to talk of them and they may be important to more than one clan. I refer rather to identifiable geographic features such as hills, waterholes, swamps or rocky outcrops. Such places have their own names (often more than one), are usually identifiable, or capable of being marked, on a map of 1:250,000, and can have their owners assigned to them by name and present living place. Their totemic significance, their 'dreaming', should also be recorded. Where appropriate, the managers of that country should also be set down.

213. Such a register would comply with the Aboriginal approach to land ownership and would record all necessary information for future reference. After, say, two or three years experience of compiling such information, the Commission should be in a position to give sound advice to the Government on the practicality of formally acknowledging traditional claims to land. It would also by then have gained some idea of the extent of the claims likely to be made in the Territory.

214. In the meantime, the creation of the register would serve a very useful purpose in relation to the next two matters dealt with — the setting aside of community areas and the purchase of pastoral leases.

215. I would recommend also that similar enquiries be instituted in the States, particularly in Western Australia and Queensland, in order to obtain an overall picture as to the extent to which Aborigines could today establish traditional claims to land. If it is not thought appropriate for such tasks to be undertaken by a Commission in those States, then I would suggest at least the funding of a research project in selected areas of the States mentioned.

216. When a clearer picture emerges of the claims made by particular groups of Aborigines to traditional lands, the difficulties of establishing those claims with sufficient precision to enable the grant of title, and the number of Aborigines who would be benefited by such a course, it will then be possible for the Government to consider whether or not such claims should be granted and if so upon what terms.
Rights of movement and camping

217. Although I am not prepared to recommend at this stage that Aboriginal claims to the reversion of pastoral properties should be granted, there are a number of other steps which can be taken in the interests of Aborigines living on pastoral leases or having traditional interest in such lands.

218. In the first place their existing rights to enter, travel over, and camp upon such country should be strengthened. The present position is that Aboriginal rights to enter and be upon the land and to use the natural waters and to kill wildlife are all reserved by the terms of pastoral leases. The insertion of such terms is called for by the Crown Lands Ordinance but the only penalty presently provided for their breach is the forfeiture of the lease. This is obviously a very drastic penalty and it is not surprising that it has never been invoked.

219. I have no doubt that most cattle station proprietors and managers accept their responsibilities in this connexion quite willingly. However I have been told of a number of instances where Aborigines have been prevented, or at least discouraged, from exercising their rights.

220. It seems to me that these rights should now be directly protected by legislation, that they should be amended to meet the requirements of the present day, and that realistic penalties should be provided for any breach. It has also been suggested that rights should be limited to those having a traditional interest in the land in question. However no such distinction has previously been drawn and it would create problems in practice. The matter might have to be reconsidered in future if the privilege were being abused by people having no traditional interests.

221. In saying that the rights of Aborigines should be brought up to date I have in mind particularly the present limitation to 'natural waters' of the reservation in the pastoral leases. In many areas the sinking of bores has resulted in a substantial lowering of the water table and, consequently, waters which were once readily available to Aboriginal people, either on the surface or with some digging, are now beyond their reach. For this reason it seems to me appropriate that, for any normal requirements of drinking, cooking or washing, Aborigines should be entitled to make use of bore waters, provided they comply with any reasonable requirements of the pastoral lessee concerning such use.

222. On the other hand, if Aboriginal rights are extended and strengthened in this way, and if further provision is made for the creation of community areas on pastoral properties (dealt with below) then I think it would be reasonable if the right of access were expressed so as to exclude an area of 1 kilometre around each pastoral homestead. This seems to me to be a reasonable recognition of the privacy of the owner of the homestead in return for a parallel recognition of Aboriginal privacy in their community areas.
223. I do not envisage that this would result in Aborigines not visiting the homestead. I would anticipate that those normally living on the pastoral lease would have occasion to visit the homestead quite regularly and that other visitors from further afield would also call from time to time. However such a provision would put beyond doubt the right of the property owner to order away from the homestead any person whose behaviour invited such action.

224. I think it would be realistic to assume that there may be more difficulty in the future than in the past about Aborigines camping on pastoral leases. There have undoubtedly been some cases in recent years in which, when friction developed, Aborigines were persuaded by owners or managers to leave a property. There are a number of ways in which pressures can be brought to bear, including the withdrawal of ration purchasing facilities. The Gibb Committee came across at least one case in which 'the Aboriginal community had been “encouraged” to move off the pastoral property altogether'.

225. With the general upsurge of interest in land rights, Aborigines are likely to become more jealous of their privileges and more ready to assert them. If troubles should arise and persist in a particular place, I think the Aboriginal Land Commission could well play a useful conciliatory role. If this should fail and the tensions reach a point where the cattle station management and the Aborigines cannot live side by side, it should not be assumed that it must be the Aborigines who have to move.

226. If the Land Commission were satisfied that the Aborigines were living on their own land and that they were not mainly responsible for the problems which had arisen, it might well wish to recommend the purchase or compulsory acquisition of the lease or part of it.

227. I would certainly expect the Commission, in its annual reports, to review the working of movement and camping rights and to make suggestions for any desirable changes in these laws.

Community areas

228. I turn now to consider the creation of community areas on pastoral leases. This was a suggestion made by the Gibb Committee in 1971 when it considered the future of Aborigines on cattle stations (see para. 144 of my first report). It is based on the recognition of the right of Aborigines to live more or less permanently on land of their choice whether it is their own traditional land or not. This happens in practice today and the idea is to make formal the right of Aborigines to establish their own communities on their own land. Where appropriate, land would be excised from the pastoral lease concerned and made over to an approved Aboriginal corporation, together with any necessary easements of way or of water necessary to support the community. The form of tenure I envisage for such cases is the special purpose lease. The areas of land would be too small to justify the arrangements for Aboriginal Title set out earlier.
229. This suggestion has received the general support of the Northern Territory Cattle Producers Council, with the qualification that the Council submits that actual excision should not occur except with the consent of the pastoral leaseholder concerned.

230. I believe that in many cases it will prove possible to negotiate an area of land to be taken over by a community and that the excision of this area from the lease and the grant of necessary easements will not present any difficulties.

231. However it is obvious that there will be some cases where agreement either as to the fact of a community area being established or as to its size or location will not be possible. In such cases some provision will have to be made for the reconciling of differences and it is recommended that the Aboriginal Land Commission should be given the task of investigating disputed claims and making recommendations to the relevant authorities as to areas of land which ought to be compulsorily acquired from pastoral leaseholders for this purpose. It is assumed that in all cases of excision appropriate compensation would be paid if sought, although such compensation would have to allow for the fact that there is a legal entitlement for Aborigines to use the land in any event.

232. There are a number of matters which the Commission would have to take into account in arriving at a decision in any particular case. These would include:

(a) the claims actually made by or on behalf of Aborigines,
(b) the number of areas sought in any particular pastoral lease area (it is not envisaged that more than two or at the most three areas would be excised even from the largest leases),
(c) the strength of any traditional claims to the area concerned by the Aborigines concerned,
(d) the length of time during which these Aborigines have been associated with the area in question over recent years,
(e) the conduct of past and present owners or managers of the pastoral property towards Aborigines in recent years (this provision is inserted in order to ensure that Aboriginal claims will not have been prejudiced by pastoral managers or owners who have deliberately deterred Aborigines from living on their properties),
(f) the likely extent of any inconvenience or financial loss to the pastoral lease owner as a result of the excision of an area of land from the lease,
(g) the economic benefits likely to be gained by the Aborigines from the particular area of land to be excised (it is thought that some small farming ventures such as the raising of pigs, dairy cattle or poultry might be encouraged in these areas),
(h) the respective claims to water supply by the pastoral leaseholder and the Aboriginal group concerned,
(i) the overall profitability of the pastoral lease to its owner, and
(j) the availability of alternative areas of land to the Aboriginal group or groups concerned.
233. The final matter to be noted under this heading of community areas is the action which should be taken in the event of such an area being abandoned by its occupants. It seems to me to be reasonable to provide that if any such area remains unoccupied, or substantially unoccupied, for a period exceeding 12 months, then the pastoral leaseholder should be entitled to apply for the return of the area previously excised from his lease. Depending upon whether compensation had previously been paid to him, it might be necessary for him to refund some or all of that compensation to the Crown if his application succeeds.

234. Any such application should be referred to the Aboriginal Land Commission for investigation and report. It may be, for example, that a death has caused the Aborigines to move away from the area, but they will eventually return.

235. Any substantial disputes between such communities and station managements should also be referred to the Land Commission for conciliation and, if that fails, report as to steps that could be taken to resolve the problem.

Aboriginal ownership of cattle

236. This brings me to the related question of the right of Aboriginal communities to run cattle on pastoral leases side by side with the cattle owned by the leaseholder. The Northern Land Council has suggested that this could be appropriate in some cases. On the other hand, the Northern Territory Cattle Producers Council has put forward a number of arguments as to why such a practice would not work.

237. In so far as these arguments deal with the raising of separate herds of cattle, I think they have a good deal of validity. On the other hand, I am not satisfied that there are strong reasons against the inclusion of some cattle owned by Aborigines amongst the leaseholder's herds. However, I certainly would not suggest that any requirement to accept Aboriginal cattle alongside those of the leaseholder should be imposed upon him. I do however hope that a number of cattle station owners will be prepared to experiment in this area.

238. The reasons given by the Cattle Producers Council against such ventures are as follows:

(i) To permit another person to run cattle on a property inevitably leads to disagreement,

(a) if the persons are employees there is conflict of interest with management because the owners of the cattle favour attention to their cattle at the property's expense,

(b) the size of such an enterprise is hard to control,

(c) in bad seasons, if the area occupied by the "outside" herd is affected, the owners expect other country to be provided;
(ii) A specific area would have to be allotted and fenced and improved at the cost of the “outside” owners. If the carrying capacity were eight beasts to the mile, 25 square miles would be required for 200 head. This means 20 miles of fencing at $450 per mile, a watering point, say $12,000, and a small set of yards at, say $5,000, a total of $26,000 which overcapitalises the project;

(iii) With an area defined and fenced, problems of adequacy will arise in varying seasons, controls over overstocking and animal health and husbandry will be sources of dispute;

(iv) Both parties will be open to accusations of theft and misappropriation;

(v) Problems of mixed brands and mixed classes would arise;

(vi) Problems over inadequate maintenance of fences would arise and over the costs of and responsibility for maintenance;

(vii) With national disease control programmes, the lessee needs to have full control within his boundaries. If the Aboriginal management and disease control fell behind the main herd (as it probably would) the individual and overall campaign would be jeopardised;

(viii) There would be problems over use of horses and equipment;

(ix) In determination of most efficient land usage, the excision of one section or one water-hole would upset carefully planned development;

(x) The proposal could lead to large communities settling on the areas’.

239. Provided that the leaseholder agrees to the numbers involved, and is able either to purchase or to approve the particular cattle, and to decide with which of his cattle they will be placed, I do not see that he can be much affected. The Aborigines would at least save some of their costs of food and at best have some income from the cattle. There may be other less tangible advantages to both parties.

Land purchases

240. The third positive step which can be taken towards meeting Aboriginal claims in pastoral areas is the purchase of properties from lessees in order to provide a substantial land base for Aboriginal tribal groups. Both the Land Councils have asked that this be done. They have also asked that a Land Commission be established to investigate claims and needs and to make recommendations as to priorities.

241. Two properties in the Territory, Willowra and Kildurk, have already been purchased for Aboriginal use. However in these cases the emphasis was on purchasing available pastoral leases for use as cattle stations. They are at present subject to all the usual covenants as to stocking and improvements applying to such leases.

242. The Land Councils see the need for an enquiry which begins by asking where Aborigines would be most helped by the purchase of land. This
involves a consideration of both cultural and economic requirements. It is based on an acceptance of the fact that, in the immediate future, it is not financially or politically possible to hand both ownership and exclusive occupation of all traditionally claimed lands back to their Aboriginal owners. A useful first step — whatever the final outcome — would be to ensure that each major tribal group has control of a substantial area of land. If this were done, almost all Aborigines in the Northern Territory would have free access to some area where they would be amongst people who spoke the same language as they do, and who observed the same social organization and ceremonies, even if they were not precisely on their own clan lands.

243. The major language groups represented in the Territory, according to a recent Department of Aboriginal Affairs survey, are shown in the following table. Also shown are the significant areas of tribal land already held by the groups:

<table>
<thead>
<tr>
<th>Language Group</th>
<th>Area</th>
</tr>
</thead>
<tbody>
<tr>
<td>Walpiri</td>
<td>2712</td>
</tr>
<tr>
<td>Aranda</td>
<td>2110</td>
</tr>
<tr>
<td>Tiwi</td>
<td>1404</td>
</tr>
<tr>
<td>Gunwinggu</td>
<td>929</td>
</tr>
<tr>
<td>Pitjantjatjara</td>
<td>874</td>
</tr>
<tr>
<td>Yanmatjiri</td>
<td>841</td>
</tr>
<tr>
<td>Aljawarra</td>
<td>796</td>
</tr>
<tr>
<td>Nunggubuyu</td>
<td>746</td>
</tr>
<tr>
<td>Anintilyaugwa</td>
<td>627</td>
</tr>
<tr>
<td>Pintubi</td>
<td>613</td>
</tr>
<tr>
<td>Luritja</td>
<td>530</td>
</tr>
<tr>
<td>Warramunga</td>
<td>468</td>
</tr>
<tr>
<td>Gupapuyngu</td>
<td>444</td>
</tr>
<tr>
<td>Rembarrnga</td>
<td>433</td>
</tr>
<tr>
<td>Djambarpuyngu</td>
<td>422</td>
</tr>
<tr>
<td>Kaiditj</td>
<td>380</td>
</tr>
<tr>
<td>Murinbada</td>
<td>364</td>
</tr>
<tr>
<td>Garawa</td>
<td>310</td>
</tr>
<tr>
<td>Ritarrngu</td>
<td>303</td>
</tr>
<tr>
<td>Mudbura</td>
<td>280</td>
</tr>
<tr>
<td>Gurintji</td>
<td>277</td>
</tr>
<tr>
<td>Gumaitj</td>
<td>266</td>
</tr>
<tr>
<td>Ngalkbun</td>
<td>253</td>
</tr>
<tr>
<td>Maiali</td>
<td>250</td>
</tr>
<tr>
<td>Yuendumu (part Walpiri and part Yanmatjiri)</td>
<td></td>
</tr>
<tr>
<td>Hermannsburg</td>
<td></td>
</tr>
<tr>
<td>Bathurst and Melville Is.</td>
<td></td>
</tr>
<tr>
<td>Arnhem Land</td>
<td></td>
</tr>
<tr>
<td>Petermann Reserve</td>
<td></td>
</tr>
<tr>
<td>Yuendumu (part Walpiri)</td>
<td></td>
</tr>
<tr>
<td>Groote Eylandt</td>
<td></td>
</tr>
<tr>
<td>Lake Mackay and Haasts Bluff</td>
<td></td>
</tr>
<tr>
<td>Haasts Bluff (eastern section)</td>
<td></td>
</tr>
<tr>
<td>Arnhem Land</td>
<td></td>
</tr>
<tr>
<td>Arnhem Land</td>
<td></td>
</tr>
<tr>
<td>Warrabri</td>
<td></td>
</tr>
<tr>
<td>Daly River</td>
<td></td>
</tr>
<tr>
<td>Arnhem Land</td>
<td></td>
</tr>
<tr>
<td>Arnhem Land</td>
<td></td>
</tr>
<tr>
<td>Hooker Creek</td>
<td></td>
</tr>
<tr>
<td>Arnhem Land</td>
<td></td>
</tr>
<tr>
<td>Arnhem Land</td>
<td></td>
</tr>
</tbody>
</table>

244. It seems from the above list that one claim for tribal land which should have a high priority would be that of the Aljawarra people. Their traditional land included all or parts of what are now the pastoral leases of Macdonald Downs, Derry Downs, Bundey River, Delmore Downs, Utopia, Ammaroo, Elkedra and Murray Downs. At the time of the survey in 1973 the Aljawarra people were living on cattle stations in the following larger groups:
245. The claims that have been made on their behalf by counsel for the Central Land Council include the purchase of Ammaroo or Murray Downs. They also ask for a community area on Utopia.

246. I believe that an independent body is required to weigh the strength of these claims against others that could be made for the Eastern Aranda people, or the Mudbura or Garawa people, for example, in order to determine where the expenditure of money will do most good for the greatest number of people.

247. In this connexion, the purchase of fresh lands must be weighed against the steady development of lands already bought for Aborigines. It is important, I believe, for the public acceptance of expensive land purchases, that those already obtained should be seen as being successful.

248. The test of success for this purpose is not only, or even primarily, an economic one. It would be better for Aboriginal enterprises to advance step by step and not to undertake large commitments that offer economies but could prove to be beyond capacity. If this policy is followed it is unlikely that these enterprises will make profits in the short term. What is important is that areas already purchased for Aborigines should be seen to be achieving the broad purpose of providing a living area which is attractive to Aboriginal people, while at the same time giving employment opportunities and generally encouraging the establishment of homogenous and cohesive communities, of reasonable size but not too large.

249. This last point is important because it seems reasonably clear that a number of communities are now of a size which could never be supported by the surrounding countryside or provide employment opportunities for most men and women looking for them. Where different tribal groupings are involved, there is a tendency for tensions to build up to a dangerous level in these larger communities.

250. In recommending priorities for the acquisition or development of lands, the Commission will have to take a number of matters into account. These include:

(a) the number of people claiming the land as their own,
(b) the number of people having tribal affiliations with the area and expressing an intention of living on it if able to do so,
(c) the cost of the proposed purchase or development,
(d) the comparative cost of providing services to a community in the area suggested — roads, water, electricity, housing, air service, for example,
(e) the viability of suggested development schemes for the area, and
(f) the likely availability of the necessary administrative and expert assistance to the community in the area suggested.
251. In suggesting the need for a Commission to determine competing priorities and to make recommendations for purchases, the Land Councils have faced up to the problem which could occur if such land ceased to be used for the purpose for which it was acquired. They put forward the idea, which I adopt and recommend, that a declaration should be made that the use or uses for which the land was purchased, have failed. This would open the way to a resumption of the land, or the part of it as to which the purpose or purposes had failed. Since there will always be limits as to the public moneys which can be found for such purposes, it is only sensible that an attempt be made to recoup moneys which are not serving the purpose intended, so that they can be put to work elsewhere for the benefit of Aborigines.

252. I differ from the Land Councils, however, on the question of procedure. They see the declaration being made by a court of law. I believe it would be sufficient, and indeed preferable, if it were made by the Aboriginal Land Commission.

253. That Commission would be thoroughly familiar with the considerations to be applied to such cases. It would very likely have been responsible for the purchase of the land concerned in the first place and would thus know exactly what had been hoped to be achieved.

254. All cases of resale would relate to land held on leasehold tenure. If land purchased for Aborigines and made the subject of Aboriginal Title were no longer required by Aborigines, this could be one of the special cases envisaged where the Land Council and the Minister might approve a lease to non-Aborigines; but the scheme proposed makes no provision for the sale of such land.

255. As to the way in which land purchases for Aborigines should be funded, I believe that an Aboriginal Land Fund should be established, which could be used for the purchase or compulsory acquisition of land. There should also be an Aboriginal Land Development Fund from which loans could be made for the improvement of lands for economic purposes. Loans would be available for fencing, pasture improvement, private road construction and the purchase of equipment and stock.

256. It is clear from estimates that I have seen that Aborigines could not hope to borrow, at normal lending rates, all the money they would need for purposes such as these, then maintain interest payments and run cattle or agricultural enterprises at a profit. They would have to receive grants or interest free loans or both if they were to have any chance of ultimately showing profits.

257. There are at present a number of different sources from which Aboriginal communities can seek grants or loan funds for their enterprises. Some of these are available only to Aborigines; others, as in the case of financial assistance for finding bore water, are generally available.

258. It would be quite beyond my terms of reference to inquire into the workings of the various funds which now exist. I certainly assume that funds will be made available for Aboriginal housing and for the supply of the basic community services such as sewerage, water supply and, in due course, electricity, which today are normal for any established Australian community. I only repeat what I have said earlier about such works proceed-
ing in accordance with Aboriginal wishes concerning priorities and at a pace which will allow the greatest possible Aboriginal involvement in the work.

259. The two principles which I am concerned to establish, so far as funding is concerned, are:

(a) the setting up of a fund for land purchase which is seen as being by way of compensation to those Aborigines who have lost their lands, and

(b) the use of the same fund or a parallel fund for the economic development of land for Aborigines in cases where loan moneys are inadequate to meet the requirement.

260. The existence of such funds would enable the recovery of some traditional lands, the purchase of other lands which have some meaning for Aborigines (perhaps because of long associations) where traditional connexions have been broken, and assistance in the appropriate development of all lands for Aborigines, whether held by traditional owners or not.

261. I find it quite impossible to suggest any precise figure for the establishment of such funds. All that can be said is that, bearing in mind all other claims on the public purse, and any limitations of men and materials, a sufficient amount should be set aside each year to enable substantial visible progress to be made in this field. In an election policy speech in 1972 the Prime Minister referred to an amount of $5m per year for the next ten years being set aside in such a fund. This was to apply to the whole of Australia. I have no way of knowing whether larger sums could be found or whether they could usefully be spent at a faster rate. Time will tell, and this is the type of matter on which the Land Councils should keep a close watch and make representations to the Government if they are dissatisfied with progress.

262. If the Aboriginal Land Fund which I have described is to be limited, at least for a time, to the Northern Territory, then I believe the Land Commission already referred to in several different connexions would not have great difficulty in recommending priorities of purchase and development.

263. If such a fund is to apply to the whole of Australia, then the amounts involved will be much larger and the conflicting claims to priority more difficult to resolve. In the section below dealing with the Land Commission I have considered its composition and the possibility of such an organization being established on a national basis.

264. It will be seen that the role I have envisaged for the Commission in the area of land purchase and land development is one of investigation and recommendation. It would not, I believe, be the appropriate body to make final decisions or to carry them out.

265. The most obvious place for those functions to be carried out is within the Department of Aboriginal Affairs with final responsibility lying, of course, with the Minister. Certainly this is the appropriate place for all the detailed administration to be done and for smaller claims to be dealt with.

266. However I think it is important that major decisions on priorities of expenditure should normally be made by an independent body which could consider all applications, together with recommendations from the Land Commission or other sources, and reach an impartial decision.
267. The members of this body would be in effect, and could be called, the trustees of the Aboriginal Land Fund(s). I see them making all necessary decisions as to priority of claims for large capital sums for the purchase or economic development of land for Aborigines.

268. The trustees should be established and appointed subject to the following principles. Firstly, there should be some Aboriginal participation from the outset. Secondly, that participation should progressively become majority control and then full voting control as soon as appropriate Aborigines with the necessary experience become available to fill such positions. Thirdly, the Government, as controller of the public purse, should retain the power to veto or to impose conditions on any particular planned expenditure. This should be a matter for Cabinet decision, not for the Minister alone.

269. It will be seen from this and other recommendations that I envisage two different bodies, apart from the Department, operating in this general area. The first is the Commission, which will, among its other responsibilities, investigate and sift claims and classify them in varying degrees of priority. The Commission will then supply the information together with its recommendations, to the trustees controlling the land Fund(s). Claims from other sources will also come to the trustees including claims which have not come to the notice of the Commission or where the claimants are dissatisfied with the Commission's findings. The trustees will then finally decide on expenditures, subject only to government veto or the imposition of conditions (which could include a reduction in the amount allotted for a particular purpose).

270. I do not envisage the trustees as needing any substantial staff support. They could be largely serviced by departmental officers, who could make, or arrange for, any enquiries which the trustees found necessary. Unlike the Land Commission, the trustees would not initiate proposals, but they would rule on them and it would be expected that their decisions would normally be final.

271. I have referred earlier to the possibility of compulsory acquisition of lands. I believe that this should be avoided if possible — there will usually be more than one property which Aborigines would regard as suitable in a region such as the Barkly Tableland or the Eastern Alice Springs District (which are the areas most conspicuously lacking in provision of land for Aborigines at present). The compulsory acquisition from an unwilling owner working his own cattle station would be particularly unfortunate. But where a lessee is quite willing to sell, but is asking an extortionate price, or where the owner is a public company, or not resident on the property, different considerations apply.

272. All these would be matters proper for the Land Commission to consider in making its recommendations. The actual purchases would be negotiated, or acquisitions arranged, by the appropriate government department, following the Government's acceptance of a decision by the trustees of the Fund(s).
Summary of recommendations

273. (i) All reasonable steps should be taken to arrest and reverse the drift of Aborigines away from pastoral lease lands and into towns or larger Aboriginal communities.

(ii) An Aboriginal Land Commission shall be set up to carry out a number of functions concerning Aboriginal land rights. It should, through its members and officers,

(a) inquire into the likely extent of traditional Aboriginal claims to pastoral lease lands,

(b) establish a register of such claims,

(c) consider and report upon the feasibility of determining such claims with sufficient certainty to justify interfering with the rights of others,

(d) consider and make recommendations concerning any disputes between Aborigines and pastoral leaseholders about the setting up, and excision from leases, of community areas,

(e) investigate and report upon any claim by a pastoral leaseholder for the restoration to his lease of a community area following its abandonment by Aborigines for a year or more,

(f) receive, investigate and make recommendations as to priorities for, all major claims for grants for the purchase or economic development of land for Aborigines,

(g) investigate and report upon any cases in which it appeared that land not made the subject of Aboriginal title had been purchased or developed for a purpose or purposes which had failed, and

(h) investigate, conciliate and if necessary make recommendations about any persistent and substantial dispute between Aborigines and the station management arising from the presence of the Aborigines within the boundaries of a pastoral lease, whether within a community area or not.

The likely extent of traditional Aboriginal claims to leasehold or freehold lands in the States, particularly Western Australia and Queensland, should also be investigated. This could be done either by an independent Commission or by a government-funded independent research project.

(iv) The claim of Aborigines to the reversionary rights to Northern Territory pastoral leases should be further considered in about three years time in the light of the results of the inquiries recommended and the comments made in paras. 191-216.

(v) The existing rights of Aborigines to enter, travel over and camp upon pastoral leases should be extended to cover the limited use of bore waters and should be set out in legislation with appropriate penalties provided for breaches.

(vi) These rights should not apply within one kilometre of any station homestead.
(vii) Community areas should be excised from pastoral leases wherever it is appropriate to do so. The areas concerned should be large enough to ensure privacy and provide an opportunity for small farming ventures such as pig or poultry raising, or the keeping of a few dairy cattle to supply the needs of the community.

(viii) Some pastoral leases or substantial parts of such leases should be purchased as tribal lands or as economic ventures, or usually as both. The value to be gained from such purchases must be weighed against the value of spending the same money in developing existing Aboriginal lands.

(ix) A fund or funds should be set up from which lands can be purchased, and grants for capital expenditure made, by independent trustees.

(x) Such fund(s) should be seen as providing compensation in the form of useful land to those Aborigines who have lost their lands. Their size should be sufficient to enable substantial and steady progress to be seen in this direction.

(xi) The trustees should consist of Aborigines to the extent that appropriate people having suitable experience are available.

(xii) The trustees would make decisions as to the expenditure of the fund(s), based on information and recommendations supplied by the Land Commission and others.

(xiii) The decisions of the trustees would be final except for the power of the Government to veto expenditures or to impose conditions before approving them.

(xiv) Any lands purchased would become the subject of Aboriginal Title or of appropriate leasehold tenure, depending mainly on the strength of traditional ties to the land.

(xv) Compulsory acquisition of land should be considered when necessary. It should be avoided where cattle station owners are working their own properties.
City and Town Dwellers

The people concerned

274. As I pointed out in my first report, the 1971 Census showed 2374 Aborigines in Greater Darwin, 1269 in Alice Springs, 174 in Katherine and 119 in Tennant Creek—a total of just over 4000. I then said also that ‘only a very small percentage of city and town dwellers could establish a traditional claim to the areas where they now live’. I later suggested that the problems of these people, although just as urgent and important, were related to social welfare and urban development rather than traditional land rights.

275. A number of later submissions have pointed out, quite rightly, that the difficulties in which many of these people find themselves do arise from the loss of their traditional lands or the loss of their sense of Aboriginal identity caused by their mixed ancestry. Whatever their reasons for living in a town, it can certainly be said that most of the fringe-dwellers of the cities and towns have suffered more from the coming of white settlement than have those still living on reserves or cattle stations.

276. In a review of the position in their area, counsel for the Central Land Council said:

‘In respect of practically all of these township people, certain common features exist. They are all Aborigines who have been over the years dispossessed of their traditional land and have occupied areas of land for a number of years as virtual squatters. They have become attached to these areas of land and generally speaking desire to continue to live there. In no case could it be established that the land in question also constituted the traditional land of the particular persons now occupying it, although it may have formed part of the general tribal area of these people. In practically each case the land upon which they are now living is Crown land. The circumstances in which they are living is totally unsatisfactory to both themselves, to the white population of these towns and to Australian society as a whole’.

277. Certainly these people fall clearly within my terms of reference. Their present requirements were well expressed in the written submissions on behalf of the Northern Land Council, which said:
'Some of the townspeople require a white community style of accommodation, for their desire to live in a wider kind of Aboriginal family has given way to the acceptance of the nuclear family. Others require a 'village' style of living where houses are built around a central courtyard where all the Aborigines can enjoy a community style of living. Others would find even these constraints too much and would prefer to be away from suburbia living under simple cover with more space around them. These respective needs must not be seen as reflecting some ascent upon the social or accommodation scale'.

Principles of land acquisition

278. I am satisfied that land in urban areas must be set aside for Aboriginal living. In doing so a number of principles need to be observed:

(a) The special planning of areas for Aborigines should be an integral part of all town planning in areas where Aboriginal communities live. Whether this requires a special section within the relevant town planning body, as urged by the Northern Land Council, I am unable to say.

(b) Aborigines affected must be involved at the planning stage, their wishes determined and the reasons for those wishes known and properly understood. This may involve painstaking inquiry.

(c) Unless there are very strong arguments to the contrary, and if it is their wish, Aborigines should be provided for in the places where they are used to living. Even if no traditional rights are involved, these areas are often important to them from long association. A good example of a contrary argument which might have to prevail is one based on public health requirements.

(d) Due respect should be paid to tribal differences in setting aside Aboriginal living areas; this will avoid unnecessary tensions.

(e) Attention must also be given to the purpose of the area. If it is required for hospital attendance, for example, it should be within easy reach of the hospital.

(f) Above all, existing Aboriginal living areas should not be seen as convenient sites for further housing development, or even public parks. It is quite unacceptable that Aborigines should be pushed further and further away from the centre of towns by the apparently inevitable urban sprawl.

279. As to the carrying out of the principles here recommended for adoption, it is obvious that a number of different authorities will be involved. The Aboriginal view will be put in some cases by various local organizations which have come into existence in recent years. However there will be many groups of Aborigines who have no such organization to turn to and I see their interests being watched and pursued by the regional Land Councils. I think it is important that each Council should assign a field officer to the task of establishing the wishes and needs of Aborigines in town areas — both those who see themselves as more or less permanent residents and those who are transients.
280. The Land Councils should then publish a list of the requirements they see for:

(i) the properly serviced camping areas
(ii) community housing areas
(iii) hostel-type accommodation
(iv) single family housing,

together with their recommendations as to how these needs can best be met.

281. The Land Council's views should be put to the relevant town planning authority and to the Aboriginal Land Commission, so that the Commission can consider what land purchases or acquisitions appear to be necessary to achieve the aim of satisfactory urban living conditions for Aborigines. The Land Commission would also initiate its own inquiries wherever necessary. It should have the advantage of work already done in this connexion by the Department of Aboriginal Affairs.

282. The Land Commission would obviously have to consult with the planning authority before reporting to the Government in order to see how any recommendations it saw fit to make would fit in with the overall planning of the town concerned. Where moneys were required for acquisition, the Commission would put a case to the trustees of the Aboriginal Land Fund.

283. The aim should be that, within a reasonable time, all Aboriginal groups are living or camping on land in which they have an interest.

284. The necessity to set aside urban land for Aborigines will have two results. In the first place it will compel the specific inclusion of planning for Aborigines amongst other town planning requirements. Secondly, the bare Aboriginal lands will draw attention to housing needs whereas make-shift camps on Crown lands could be, and have been, ignored.

285. I would hope that by the end of 1976 there will be no Aboriginal groups in the Northern Territory, except those actually travelling, living on sufferance on Crown lands. By that time they should all be living on places they have chosen, where they have a recognized right to be, and plans should be well advanced for permanent camping facilities or community housing projects as required. In all such planning the Aborigines themselves, through the responsible officer of the regional Land Council, should be closely involved.

286. As indicated below in relation to two specific cases, I would expect the normal form of tenure for these purposes to be the special purpose lease — held in the first place by trustees nominated by the Land Council and, in due course, by others nominated by the local residents themselves.

287. As well as providing land for groups of Aborigines, it will be necessary to assist individual families in some cases, as pointed out in para. 277 above. I understand that there are over 250 Aboriginal or part Aboriginal families living in government-owned houses in the Territory at present.

288. Since I do not know the number or the circumstances of Aborigines wanting to live in this way, I am unable to say whether special measures, different from those applying to others seeking government houses, should be taken to assist them. This should be disclosed by the Land Council investigations referred to in paras. 279-280 above.
289. Although I do not see it as the function of my Commission to make specific recommendations about particular areas of urban land, there are three cases in Darwin which have been presented to me in some detail, and I think it might be helpful, by way of illustration of my general recommendations, if I referred to them.

Kulaluk

290. I spoke in my first report (para. 157) of the few remaining members of the Larrakia tribe who are claiming, among other things, an area of waterfront land between Bagot and Nightcliff which they call Kulaluk. I was told when I met them that there were some 18 members of the tribe still left, but later information suggested that fewer than this number could trace paternal descent from the Larrakia, although more identify themselves as Larrakia because of maternal links. The Department of Aboriginal Affairs survey shows a total of 28 Aborigines who identify themselves as Larrakia, of whom 17 live in Darwin.

291. I have no doubt that the Larrakia people were the traditional owners of what is now the whole Darwin area. Some of the survivors, together with a few other Aborigines, have formed an organization calling itself Gwalwa Daraniki. The secretary of this organization, a white man, has achieved remarkable results in obtaining press coverage and other forms of publicity for the claims of this group. In the result, Kulaluk has become something of a symbol of the stand which Aborigines, with help and guidance from many different sources, are now making against the past tendency to put their interests last in any consideration of land usage.

292. It is true that only a small number of Aborigines have camped regularly at Kulaluk in recent years, but the publicity their case has received has been sufficient to cause the Government to step in and halt the further development of the area as a residential sub-division, until at least the making of this report.

293. I believe that the Government should now proceed to the acquisition of this general area for Aboriginal living purposes, paying the necessary compensation to those whose interests in the land would be extinguished by such acquisition. This will demonstrate clearly the Government's willingness to give effect to reasonable Aboriginal aspirations to land. It would be entirely consistent with the general principles set out above and I have no doubt that such an area could be put to very good use for Aborigines. When I spoke to the people living there I found some disagreement as to whether the area could best be used for camping or housing. This is a matter to be resolved in the future having regard to:

(i) the wishes of those living on the land,
(ii) the availability of other land for those respective purposes, and
(iii) the availability of funds for housing development if that is decided on.
294. There are two further points I should mention while on this subject. The first is that I have spoken of the area in general terms. I am not in a position to suggest the precise amount of land which should be resumed. However the intent of my recommendation is that the major part of the area now vacant should be resumed. Sooner or later it will be put to a useful purpose and, in the meantime, the preservation of an area of open space will have its advantages.

295. Finally, on the question of tenure, from my observations of the Gwalwa Daraniki it would not be a suitable organization to have this land vested in it. Its numbers are too small and its dependence on its white adviser too great, in spite of his efforts to encourage self-sufficiency. I believe that, for the time being at least, the title should be held by trustees nominated by the Northern Land Council. No doubt the special interests of the Larakia people would be remembered when such trustees were appointed. As the area develops and more Aborigines take up permanent residence there, it would then be appropriate to transfer the title to the local residents.

296. The title in this, as in all other cases of urban landholding, should be the same as applies to other members of the urban community — in this case, leasehold. I say this firstly because I do not believe traditional ownership in the sense in which that expression is used throughout this report, could be established in Darwin, whatever the position might be in Alice Springs. Secondly, I see no point in granting a special form of Aboriginal title to the small minority of urban Aborigines able to establish traditional claims to a particular area, when they are living as part of a largely non-Aboriginal community. Finally, and most importantly, neither of the Land Councils has asked for anything other than leasehold title in towns. The position would, of course, be different if freehold were the normal title, as is the case at present in most towns outside the Territories.

Railway Dam

297. The second case to which I want to refer is that of the area known as One-mile or Railway Dam. This is a place at which a number of Aborigines have been camped over a period of years. They have recently formed themselves into the Raknurara Bootong Association Incorporated and submissions have been made to me by counsel on behalf of that Association.

298. They have obtained the services of an architect to show how this area could be developed as a semi-permanent Aboriginal campsite. They put a case to the Darwin Town Planning Board at the same time that a case was being put that some part of this land should be made available as a campsite for transients other than Aborigines. The Town Planning Board approved the use of the area as a campsite for Aborigines and others but the Administrator’s Council rejected both recommendations in favour, as I understand it, of the use of the land for purposes of a public park.
299. It seems that the proponents of the use of part of the land for non-Aboriginal camping have accepted the defeat of their proposals and are now looking elsewhere. However the Raknurara Bootong Association is pressing its claims on behalf of Aborigines.

300. I can only say that, in pursuance of the principles outlined above, this seems to be a case where Aboriginal wishes should be met. Where else is it suggested that they should camp? Why should they not have reserved for their use the area which they have used for a number of years? There may be answers to these questions but, on the face of it, it seems to me that this claim on behalf of Aborigines is well founded and should receive sympathetic consideration from the relevant authorities—particularly in view of the support of the Town Planning Board.

301. Once again, I have doubt about the strength and permanence of the applicant Association, which has the same secretary as the Gwalwa Dareniki. I therefore believe that any lease granted over this land should be to trustees, nominated in this case by the Northern Land Council in consultation with the Delissaville Council, because of the number of Delissaville people using this area. Again in this instance counsel sought no more than a special purpose lease of the area.

302. I should make it clear that I have no knowledge of the reasons which led the Administrator’s Council to reject the application and the advice of the Town Planning Board in this case. I can only invite the Council to reconsider the matter in the light of the recommendations set out above and of the Government’s attitude to those recommendations when it is made known.

303. In considering this matter it should be observed that the Aboriginal proposal, in the words of their counsel’s submission

‘... does not purport to monopolise the Railway Dam itself and indeed almost half the available space could be made over either for public park land or for a youth hostel or camping ground for the benefit of white transients’.

Bagot

304. The third special case to which I wish to refer is that of the Bagot Reserve. I think it is worth setting out the history of this reserve in some detail, since it illustrates the way in which Aboriginal interests can be lost sight of when other requirements become pressing. It also shows that the general Darwin community owes some land to Aborigines on the basis of past understandings. The history to which I refer appears sufficiently from the following correspondence.

305. On 4th October, 1961 the Administrator of the Northern Territory (Mr Roger Nott) wrote to the Secretary of the Department of Territories (Mr. R. C. Lambert) saying that ‘the question of recommending revocation of portion of the Bagot Aboriginal Reserve has been under consideration... for some time’. The letter went on:
The Bagot Reserve was declared to be a Reserve for aborigines in 1938. It was developed in the first instance, immediately pre-war and was near completion at the outbreak of war when it was taken over by the Services and used as a R.A.A.F. centre. Immediately post-war, owing to the return to the area of large numbers of part-coloured families, it was used for a time to accommodate these people. Over this period the full-blood aboriginal population of the Darwin area was accommodated at Berrimah in old Army huts.

In 1949/50, following difficulties associated with the control of the aboriginal community at Berrimah, it was decided to transfer the part-coloured population from Bagot and to return the full-blood aboriginals from Berrimah to that location. When this transfer to Bagot took place, the aboriginal population at Berrimah would have been approximately 200 with a considerable number of itinerants. Over the past five years this community is becoming more stabilised as more people are coming to regard Bagot and Darwin as their home country; as a result the numbers have been steadily increasing to the present where the population is reasonably static at between 300 and 350.

Whilst the area of the Reserve is approximately 750 acres, at least half of this is swamp or semi-swamp land which would require considerable reclamation and drainage work if it were to be developed for housing sub-divisions . . .

Because the Government has a considerable capital investment at Bagot and having regard to the fact that a large group of people now regard this area as home, many of whom will not move from the settlement into the normal community, I do not think that we could justify movement of the settlement to an area outside the Darwin town area even if a suitable place could be found. Moreover large numbers of the natives from Bagot now undertake employment in the Darwin area and with the Settlement situated as it is, these persons can travel to and from their jobs by normal transport. If the settlement were moved further out of Darwin, quite obviously special arrangements as presently apply at Amoonguna, would have to be made to transport these persons to and from Darwin each day.

In these circumstances I think we should consider retaining the present built up area of the settlement, including the garden area, and should provide a small green belt around this area to give opportunity for possible future development and to provide some insulation from the proposed housing sub-divisions. If this were done, the area of the Reserve would then be approximately 84 acres which, in my view, would be sufficient for the immediate and future needs of this settlement."

306. On 11th December, 1961 the Secretary replied, quoting his then Minister, now Sir Paul Hasluck, as follows:

'No decision of this significance can be made until after the elections. In any case, we cannot reduce an aboriginal reserve on grounds related solely to the need for land for housing. I suggest that the approach has to be from the starting point that the land has been dedicated for the use and benefit of aborigines. That includes not only their present but also their prospective use and benefit. It is true that we hope that the need for separate 'settlements' for them will gradually disappear but it is probable that even in the long term there will be a continuing need for some institutions for them near Darwin. As they progress towards assimilation it is our intention that they should live in and with the rest of the community and that there should be no 'native' quarter in Darwin. To serve this purpose and also to be fair to the aborigines we have to make sure that during the next thirty years there are blocks of land available and within their reach. I could not justify cutting up some hundreds of acres of the
Bagot Reserve for housing if in thirty years' time the only land left for the next generation of aborigines was to be a long way out in the paddocks that nobody else wanted. Any proposal regarding housing on land taken from the Bagot Reserve would have to include provisions that would ensure not only the certainty of access but some degree of preference to aborigines in getting blocks and as they may not have the means to compete for blocks now, that assurance would have to be good for many years to come. I suggest that we have to look at a proposal for the future development and use of the reserve for aborigines and not simply at a proposal for taking away some of it'.

307. On 5th January, 1962 the Administrator wrote again concluding his letter with the following paragraph:

'Perhaps the Minister would be prepared to further consider this proposal on the basis that land withdrawn from the reserve and suitable for residential sub-division would be made available for the Housing Commission on the understanding that there would be a judicious selection of tenants for such sub-divisions to assist in the policy of assimilation and that aboriginal applicants would receive equal consideration'.

308. On 12th March, 1962, the Secretary replied quoting the following minute of the Minister:

'Not approved. The most that I would be prepared to consider at the present stage of advancement of the aborigines would be a proposition to excise a specified area (for example 50 acres) for handing over to the Housing Commission, the size of the area being determined in ratio to the number of aboriginal and mixed blood families ready to move into the tenancy of Housing Commission Homes as soon as the homes are ready. To illustrate my meaning, if we fixed the ratio at 2 to 1, then, assuming that there were 30 aboriginal and part coloured families ready, we could excise enough land to provide 90 residential blocks. From time to time, as more aboriginal families advanced to the stage where they could take tenancies, more land could be excised to meet the further requirements. I am not prepared to reduce the reserve at one sweep but will only approve of a reduction stage by stage in keeping with the growing capacity of the aborigines to use the land in a new way'.

309. On 20th June, 1962 the Administrator wrote again saying:

'Outstanding applications held by the Housing Commission from part-aboriginal persons for tenancies of Housing Commission homes in Darwin as at this date total 49. Outstanding applications from aborigines total 5. The Welfare Branch have advised that the Housing Commission can expect another 7 applications from aborigines in the next two years. It could be expected that in the next two years the Commission will receive applications from another 40 part-aboriginal families for tenancies. Based on these, and remembering that it will take at least two years for housing, the number of aboriginal and mixed blood families ready to move into the tenancies of Housing Commission homes as soon as the homes are ready could be taken as 100. If the ratio of 2:1, to which the Minister's minute referred, were adopted, this would require land to provide 300 residential blocks . . .

If the Minister approves of sub-division to provide 300 residential blocks, it is considered that this might be staged as follows:
Stage I — 40 acres on the Ludmilla side of the Reserve
Stage II — 60 acres immediately on the settlement side of the aerodrome runway approach.
This would leave an area of about 36 acres between any sub-division and the settlement'.

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310. On 10th July, 1962 the Secretary replied as follows:

'After considering the recommendation contained in your memorandum of 20th June, 1962, the Minister approved on 5th July, 1962, your recommendation —

"... on the clear understanding that one out of every three blocks obtained by the resumption and the subsequent sub-division will be kept for aborigines; that the resumption is made in two stages and that the Administrator indicates when stage 2 will be commenced; that the total area resumed does not exceed 100 acres".'

311. The Secretary wrote again on 1st November, 1962 referring to a memorandum of 26th October, 1962 and saying:

'The first matter dealt with in your memorandum is the proposal of the Housing Commission to disperse the 100 blocks to be made available for coloured tenants within the next two years instead of providing them at Bagot in the ratio of 1:3, as was directed by the Minister. Your memorandum does not give your own comments on this and I should be glad to have your views'.

312. On 13th December, 1962 the Minister wrote a minute in which he said:

'I have approved of the excision of part of the Bagot Reserve in successive stages so as to provide blocks for building purposes on the condition that one in three of these blocks is kept for the purpose of housing aborigines. Our policy against segregation would require that the one block in three was set aside throughout the whole sub-division and not in any one section of it. If there are 120 blocks of land, 40 blocks of land have to be kept for aborigines. These 40 blocks need not be built on immediately if there are not enough aboriginal applicants for housing who are waiting at this particular moment. They need not all be found in Stage 1 of the Bagot sub-division, so long as the blocks found outside the Bagot sub-division (Stage 1) are no less eligible than those in the Bagot sub-division (Stage 1) and so long as the interspersing of aboriginal householders with non-aboriginal householders gives no larger a proportion of aborigines to non-aborigines than 1 out of 3'.

313. On 15th March, 1963 the Administrator wrote to the Secretary saying:

'During his recent visit to Darwin, the Minister had some discussion with the Director of Welfare and the Chairman of the Housing Commission and the following represents a statement of the proposals which were then placed before the Minister —

Revocation and sub-division of Bagot Reserve:

(i) This process is to take place, as you know, in two stages, each stage to comprise one residential sub-division. The built-up area on the reserve comprising the present settlement area and the Bagot Hospital will remain as an aboriginal reserve for some considerable time, but may be considered in the long term as a further residential sub-division;

(ii) To ensure that the aboriginal people for whom the reserve was originally set aside, retain some land rights following the revocation, the Housing Commission will make available to equivalent of one in three residential sites from the sub-division of the reserve throughout the other Darwin sub-divisions. This will mean that if there is a total of 240 sites obtained from the two sub-divisional stages, aboriginals will be entitled to 80 blocks throughout the Darwin area, which will, of course, include some blocks in the reserve sub-divisions when these are developed'.

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314. On 14th May, 1963 the Secretary wrote to the Administrator in the following terms:

'On 24th April, 1963, the Minister approved the following proposals:
(a) Funds will be provided to the Housing Commission, additional to its normal funds, for building transitional houses for aboriginal tenants.
(b) These transitional houses will be built on land of the Commission in numbers agreed each year between the Director of Welfare and the Chairman of the Housing Commission, in compensation for the Bagot resumption, though not limited to the numbers that would result from that obligation; the houses to be the property of the Commission'.

315. On 8th April, 1964 the Administrator wrote again, referring to planning delays which had occurred and saying:

'It will be necessary, however, to revoke the Reserve before sub-divisional development may take place, and to obtain the Minister's approval to proceed with this revocation as soon as possible. To this end, the attached design has been prepared showing the boundaries of the present Reserve, the area of the Reserve recommended for revocation, and the proposed development of the lands in the area to be revoked. About 30 per cent of the Reserve is unsuitable for housing, being tidal and covered with mangroves, and these areas as you will note from the plan are to be used for public purposes; i.e. for extensions to the University site and as park lands. Another section is also excluded from housing development because it lies within the 'flight funnel' of the main airport runway area so this area is also to be used as park lands . . .

The Minister's requirement that land comprised in the Reserve should be replaced after revocation in the form of housing sites for Aborigines will be honoured (see your memos of the 14th May and 11th September, 1963) and the first 25 houses are currently being erected by the Housing Commission. A further 50 houses will be constructed next financial year, with the extension of the scheme to other towns. After next financial year, the Commission will continue to build these houses throughout the Territory as the need arises so that it can be expected that the total number of houses eventually made available for Aborigines will comprise a land aggregate well in excess of the present area of the Reserve'.

316. The Secretary (now Mr G. Warwick Smith) wrote to the Administrator on 28th August, 1964 as follows:

'In placing your proposals before the Minister it was noted that Bagot Aboriginal Reserve was proclaimed in 1938 when Aboriginal welfare policy was protection and segregation. There were then very few other persons living in the immediate area. Vehicular access was specially constructed. The reserve is now bordered to the south by a residential sub-division. To the north are some leases; the suburb of Nightcliff has developed and the number of personnel at the aerodrome has increased. The reserve contains a little over 700 acres.

The developed area is small and accommodates Aborigines working in or passing through Darwin. There is an annex to the Darwin hospital for Aboriginal patients. There is a special school. The Welfare Branch is responsible for all welfare and municipal services within the occupied area. The Branch resources are fully taxed and it is unable to develop or improve the unoccupied portion which requires clearing, drainage and beautification. The scrubland and swamps provide the seclusion ideal for drinking and gambling orgies and other forms of anti-social behaviour. The very nature of the land prevents adequate supervision by authority. There is no value in the land as separating the Aborigines from the suburbs.
On 5th July, 1962, the previous Minister approved the release from Bagot Reserve of an area of 40 acres between the existing settlement and Ludmilla Creek to the south, to be followed by 60 acres between the line of approach of the aerodrome runway and the existing Bagot settlement to the north on the clear understanding that one out of every three blocks obtained by the resumption and the subsequent sub-division will be kept for Aborigines; that the resumption is made in two stages and that you indicate when stage 2 will be commenced; that the total area resumed does not exceed 100 acres . . .

It has been agreed that for the land allotted to the Housing Commission from within the Bagot Reserve the Commission will make available to Aborigines at least one block somewhere in Darwin for every three taken at Bagot. You have stated that this will be honoured and the first 25 houses will be built in 1964/65 with the extension of the scheme to other towns. The Commission will continue to build houses for Aborigines throughout the Territory as the need arises and you expect that the total number of houses eventually made available will occupy a land aggregate well in excess of the area of Bagot Reserve suitable for housing. It might be noted also that very few of the Aboriginal occupants of Bagot are descended from the original inhabitants of the Darwin area . . .

You sought the Minister’s approval to —

(1) revoke the Bagot Aboriginal Reserve;
(2) proclaim as an Aboriginal Reserve the portion outlined in red in the attached plan;
(3) proceed with the sub-division of the remainder of the residentially usable 40% for housing purposes (ultimately to provide 500 blocks);
(4) subsequently develop the remainder as park lands.

Your proposal represents a considerable change from the previous Minister’s approval in that it would result in considerably more land being taken for general community housing and much greater vagueness about the numbers and location of houses to be allotted to Aborigines in lieu of land taken from the Aboriginal reserve. It was thought that the only logical use for this land is for sub-divisional development and that the policy of assimilation would be negated by keeping the land as a sub-division exclusively for Aborigines. It was considered, however, that to limit the possibility of the revocation being criticised as depriving Aborigines of their interests in reserves without any proper recompense, the Housing Commission obligation should be more specifically stated as to provide at least one third of the number of houses in Darwin for allocation to Aborigines, as and when suitable Aborigines apply for houses, as the number of allotments made available as the result of the revocation.

On 6th August, 1964, the Minister agreed that the previous Minister’s decision stated at paragraph 4 be revised and approved that, on the understanding that the Housing Commission will make available in Darwin, to Aborigines, houses at least to the number of one third of the allotments taken from the reserve, as and when suitable Aborigines apply for tenancies: (1) the existing Bagot Aboriginal reserve may be revoked;
(2) the area outlined in red in the attached plan be proclaimed as an Aboriginal reserve;'.

317. The explanatory memorandum for the Executive Council minute began as follows:

‘By Proclamation dated 20th January, 1949, the Governor-General reserved the present Bagot Aboriginal Reserve for the use and benefit of the Aboriginal inhabitants of the Northern Territory.

The developed area of the reserve is small and accommodates Aborigines working in and passing through Darwin. The unoccupied part, much of
which is scrub and swamp, requires clearing, drainage and beautification. Since the reserve was originally proclaimed, considerable urban development has taken place in Darwin and the unoccupied part of the reserve could best be used to provide further housing sites which are urgently needed.

It is proposed that the Housing Commission will make available in Darwin, to Aborigines, houses at least to the number of one third of the allotments taken from the reserve. This will aid assimilation and there will be sufficient land within the area proposed to be retained for the living and recreational needs of those Aborigines who require special education, care and training'.

318. On 27th May, 1965 the revocation and the fresh reservation of a decreased area were approved by the Executive Council.

319. On 2nd June, 1965 the Minister made a press release in the following terms:

'The provision of a new housing sub-division is one of several changes in the uses of the Bagot Aboriginal Reserve, near Darwin, which were announced today by the Minister for Territories, the Hon. C. E. Barnes, M.P.

Mr Barnes said that when the 640 acre Bagot Reserve had been set aside in 1938, the policy had been protection and segregation of the Aborigines. Since then progress in two important directions had led to a review of the future of the Reserve.

Social change among the Aborigines living in the Reserve, and among those now ready to move from more remote settlements and missions to employment, had resulted in numbers now being ready to enter the wider community and live in normal suburbs.

With the progress in the development of Darwin, as a city, the Bagot Aboriginal Reserve had changed from an isolated area on its outskirts to a largely developed area in the midst of expanding suburbs.

Since its establishment Bagot had served a very useful purpose, providing a home for Aborigines working in Darwin, and acting as a transit centre for those coming to the city for medical attention or special occasions.

For these people the Reserve had had its own hospital, school and other facilities. There was currently a programme for improvement of the buildings and facilities, and for the construction of individual homes where Aboriginal people could gain experience of normal home life under some guidance, and be fitted to become fully responsible tenants in the general community.

Mr Barnes said that only part of the Reserve was now needed for these institutional purposes.

On the other hand, there was a need for expanding opportunities for Aborigines to obtain normal housing and employment in Darwin, whether they came direct from outlying settlements or through the special housing at Bagot.

The area of the Reserve not needed for the institution was therefore to be used for a housing sub-division. One section was to be kept clear to meet air safety requirements associated with the nearby international airport, and would be developed as a park for people living in the sub-division and reserve sections.

A vital consideration in these plans had been to promote normal housing for Aborigines, but avoiding the segregation of their families into closed groups anywhere in Darwin.

For this reason, and in keeping with its overall assimilation policy, the government had arranged with the Northern Territory Housing Commission that houses for Aborigines should be dispersed throughout new Darwin suburbs and that at least one house for each three blocks in the Bagot sub-division will be made available for Aborigines.

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Mr Barnes said that the action being taken was in keeping with government policy which was to ensure that Aborigines would benefit from the sub-division of any Reserves.

Tenancies of Housing Commission homes in the new Bagot sub-division, elsewhere in Darwin, and in other Northern Territory towns would provide Aborigines with real opportunities to participate in the normal life of Territory communities.

320. It will be seen from the above correspondence that the Minister of the day was adamant in 1961 that the long-term needs of Aborigines should be provided for. In particular his statement that,

'I could not justify cutting up some hundreds of acres of the Bagot Reserve for housing if in thirty years time the only land left for the next generation of Aborigines was to be a long way out in the paddocks that nobody else wanted . . .'

was prophetic of the actual events. It lends force to the urgent requirement to retain Aboriginal living areas such as Kulaluk and Railway Dam.

321. In the event, all the things which the then Minister feared came about. The reserve was reduced ‘at one sweep’ and not ‘in keeping with the growing capacity of the Aborigines to use the land in a new way’.

322. None of the Minister’s three conditions — one out of every three blocks kept for Aborigines, resumption in two stages and total area resumed not to exceed 100 acres — was observed. In fact few of the blocks were retained for Aborigines, the resumption was at one time and it amounted to some 580 acres. I understand that at about this time 25 houses were built specifically for Aborigines, but only twelve were ever occupied by them and only one family remains today in those houses. However the position is not entirely clear because no particular records of Aboriginal tenancies are kept.

323. It will be noticed that the whole tone of the correspondence changed in August 1964 with a new Secretary writing on behalf of a new Minister and putting on record all the arguments which the Administrator had been advancing for the drastic reduction of the area of the reserve. It might be noted in passing that nowhere did the final press release state that the Bagot Reserve was being reduced from an area of 640 acres to one of 57 acres. It is difficult to see today how it was ensured ‘that Aborigines would benefit from the sub-division’. The simple truth of the matter was that the scattered integration of Aborigines was not what they wanted. They lost a large area of useful land and have nothing to show for it.

324. As stated earlier, I have drawn attention to the case of the Bagot Reserve for two reasons. First, it is an interesting recent example of how developments believed to be in the interests of the community generally can be rationalized so that they are thought to be in the best interests of Aborigines also.

325. Secondly, it highlights the strength of the Aboriginal case for more land in the township of Darwin. In spite of submissions to the contrary on behalf of the Gwalwa Daraniki, I take the view that what was done in 1965 cannot now be undone. But this does not mean that compensation in the form of land and houses cannot be made available, in areas acceptable to Aborigines, elsewhere.

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326. So far as the particular case of the present Bagot Reserve is concerned, I stand by what I said in my first report (para. 156), namely that I see no difficulty in vesting title to the reserve in a properly elected and incorporated committee of residents. The interests of transients will have to be protected unless and until other camp or hostel-type arrangements are made for them. In any event I would suggest that the community council should receive an appropriate long-term lease of the land and should have power to sub-lease building allotments to Aborigines. Where houses are erected at public expense or by the efforts of the community, there should be no right to assign the lease or to sub-lease the premises. Where the Aboriginal lessee has himself paid for, or arranged finance for, the construction, he should be able to realize the value of his asset by receiving a longer term lease, with power to assign or sub-let to another Aborigine.

Other places

327. Before leaving this topic of city and town dwellers I should say that I have not dealt specifically with other areas such as Knuckey's Lagoon at Berrimah or the various camps at Alice Springs, Tennant Creek or Finke, because I do not feel sufficiently well informed about them to make any helpful comments. The general principles outlined above should be applied to these cases.

Summary of recommendations

328. (i) Planning for Aborigines in towns must involve consulting them to discover their wishes. Their preferences will range from normal town houses, through clustered community accommodation to permanent facilities for camping.

(ii) Such preferences, along with tribal affiliations, must all be provided for in town planning and in the provision of housing funds.

(iii) Aborigines should, generally speaking, be housed or otherwise accommodated in the places where they are accustomed to live, provided that is their wish.

(iv) Regional Land Councils should each assign an officer to find out the housing requirements of Aborigines in towns within the region.

(v) The Land Councils should then make submissions to town planning authorities and to the Aboriginal Land Commission.

(vi) The Land Commission after considering these submissions, making its own investigations and consulting with planning authorities,
should make recommendations to the Government concerning the acquisition of the necessary land for Aborigines in towns.

(vii) Where moneys are required for such acquisitions, they should come from the Aboriginal Land Fund. It is expected that such purposes would probably receive a high priority because the need is so pressing in many places.

(viii) By the end of 1976 all Aboriginal groups, except those actually travelling, should be living on land where they are content to be and where they have a recognized right to be, because it is held on their behalf by Aboriginal trustees.

(ix) Land held for Aborigines in towns should have the same tenure as is normal in each town. The holders should be trustees, approved corporations or community councils as appropriate in the particular case.

(x) Land should be acquired for Aborigines at Kulaluk and, unless there are very strong arguments to the contrary, Railway Dam.

(xi) The Bagot Reserve should be leased to a committee of residents and the terms of the lease should protect the rights of transients to use the area.
Aboriginal Organizations

Incorporation

329. It is obvious that, in establishing land rights for Aborigines and making provision for Aboriginal ventures on their land, a number of Aboriginal organizations will have to be established. Quite a number have already come into existence and some of these have been incorporated under present laws. In my view all landholding groups and all but the smallest land using groups should be incorporated.

330. However, as I pointed out in my first report (paras. 165-6), no existing legal provisions are really satisfactory for Aboriginal purposes. Accordingly I recommended (para. 280) that the Department of Aboriginal Affairs should proceed with plans to draw up a system of incorporation for Aboriginal communities and groups.

331. I have been kept informed of the progress of these plans and I believe that the Department’s proposals will meet the needs of Aborigines. I have accepted the Department’s invitation to comment on its proposals from time to time. I have assumed for purposes of the suggested drafting instructions for land rights legislation (Appendix D to this report) that legislation for Aboriginal corporations along the lines presently proposed will be introduced to the Parliament either before or at the same time as land rights legislation.

332. The important principles to be observed in formulating legislation for Aboriginal corporations are, I believe, the following:

(i) the legislation must be simple, so that those who are working under it can readily understand it,
(ii) it must be flexible, so as to cover as wide a range of situations and requirements as possible,
(iii) it should, so far as possible, make provision for Aboriginal methods of decision-making by achieving consensus rather than by majority vote,
(iv) it must contain simple provisions for control of the situation if things go wrong within an organization through corruption, inefficiency, outside influences or for other reasons, and
(v) it should be so framed as to avoid taxation of any income which has to be devoted to community purposes.
333. I believe that these principles and the various other points of detail referred to in my first report (paras. 165-184) are adequately covered by the proposed legislation as it stood when I last saw it early in March of this year.

334. Both regional Land Councils and local Land Trusts will be able to be incorporated under the joint effect of the incorporation and land rights acts. This is a convenient point at which to note a number of matters concerning these organizations.

**Land Councils**

335. I think it is clear that the two Land Councils, set up pursuant to my first report, have so far proved to be an unqualified success.

336. It became necessary to create regional councils of Aborigines which went beyond anything natural to Aboriginal social organization. The obvious danger was that the representatives sent by communities would be those thought to be most acceptable to outside authorities, since each Council constituted yet another imposed institution.

337. In these circumstances it is important to note the emphasis placed on traditional leadership and traditional rights by both the Councils. I endorse the statement of the legal advisers to the Northern Land Council, who said:

> '... the NLC demonstrated its corporate identity as the representative of Aboriginal land interests, and as the guardian of those land interests. The importance of this sense of identity should not be under-estimated, and the role proposed for the NLC in the scheme for vesting title flows from its corporate willingness to guard the Aboriginal land interests'.

338. I believe, from the submission made to me, that much the same could be said of the Central Land Council. I think it is clear that these regional councils must each play a vital role in putting Aboriginal land rights into effect.

339. So far as the composition of these councils is concerned, I found considerable difficulty in making appropriate recommendations in my first report. I still feel the same difficulties and the councils themselves have not been able to resolve them satisfactorily.

340. Some things are clear. The members of the councils must all be Aborigines and they must be chosen, by some appropriate method, to represent the people who send them. Here lies the first difficulty. The people of any particular community are likely to consist of several, perhaps many, different tribal or dialect groups. Certainly many clans will be represented. The representative chosen would probably not be seen by most Aborigines as having authority to commit people outside his own language group to any particular course of conduct. Even within his own group his authority would depend upon his age and personal standing.

341. Therefore much will depend upon the ability and willingness of the representative to consult the people of his community widely to ascertain
their views and on his ability to apply those views to the particular questions which have to be dealt with in Council.

342. Obviously this places great strain on a lone person doing his best to represent his people. The task would be much easier if he could consult with others during the course of council meetings. I think I may have been unduly concerned in my first report about the councils becoming unwieldy if too many representatives were invited to attend. It is certainly entirely consistent with recent Aboriginal practice to have decisions taken at large meetings where a few people do most of the talking, while many others participate as listeners and in fringe discussions.

343. The difficulty of maintaining some equality of representation can be overcome if only one person is the accredited voting representative of each community.

344. The Northern Land Council is still investigating the possibility of representation on a language group rather than a community basis; but the practical difficulties, in such a case, of selection and of communication between representative and those represented, seem to me to be very difficult to overcome. Nevertheless I repeat what I said in my first report, that representation should be determined by the Councils themselves.

345. They have both informed me that they will be content if those who have so far represented each respective community at Council meetings were nominated as the initial members of the Council on its incorporation. Where the same community has already sent different representatives to different meetings of the Council, a choice will have to be made as to which will be the nominated member. There must be provision for these persons to be changed for any particular meeting and for further communities to be added as desired by the Council. There should also be power to co-opt additional Aboriginal members.

346. In the words of the Central Land Council's submission:

‘... It is impossible at this stage to be satisfied that all significant Aboriginal peoples or communities in the area in question are presently represented upon the Central Land Council although it is believed that this is now substantially the case. Nevertheless it is important that the the constitution of the Central Land Council remain sufficiently flexible to ensure that representatives of additional peoples or communities may be added to it when it is considered appropriate to do so.'

347. The effect of these arrangements will be that the Central Council, when initially incorporated, will consist of representatives of the following communities:

- Amoonguna
- Jay Creek
- Hooker Creek
- Warrabri
- Yuendumu
- Papunya
- Haasts Bluff
- Areyonga
- Hermannsburg
- Docker River
- Santa Teresa
- Napperby
- Coniston
- Mt. Allan
- Mt. Denison
- Neutral Junction
- Lake Nash
- Mt. Nancy
- Todd River Camps
- Ilpapa
- Aileron
- Ammaroo
Willo-wra Wattie Creek Amata Ernabella Fregon Indulkana Mimili Balgo Wingellina Warburton Yaiyai McDonald Downs Utopia Tea Tree

348. In the case of the Northern Land Council the communities initially represented would be:

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349. There still remains the very real problem of the cost of meetings of the Land Councils. Particularly in the North, where air travel is unavoidable in many cases, the expense of bringing even one representative from each community produces an overall cost of $8,000 to $10,000 for each meeting. Any large number of observers would obviously add considerably to this cost. This is something which the Councils fully appreciate and will have to work out for themselves.

350. The first requirement is that the Councils should function effectively. If this involves, for example, more people attending fewer but longer meetings, then this should be done.

351. The Central Land Council in its submission raised the possibility of an executive committee meeting more frequently between general council meetings. In view of what I have already said about difficulties of representation and of binding others, I doubt if there is much that such a committee could do that could not be done by the permanent employees of the Council. However this is clearly a matter for the Councils themselves and as they develop their activities there may well be an administrative role for such an executive committee.

352. This brings me to the question of employees for the council. On this matter the Northern Land Council has said that it wants to find the best available men and women for the jobs it has in mind and that their race is a
secondary consideration. I accept the good sense of this approach and would only stress the desirability of looking ahead to the time when all such employees will be Aborigines. To this end, I suggest that whenever a non-Aboriginal is hired to do a job, he should be given an Aboriginal assistant as soon as a suitable applicant can be found and the necessary funds made available. It would then be his responsibility to train that Aboriginal assistant to take his place in the course of time.

353. Because this could mean some lack of security for non-Aborigines concerned, it is important that they be well paid and have in their contracts suitable provisions concerning the termination of their employment. It is particularly important that public servants should be able to be seconded to such jobs for a period of years without loss of seniority or entitlements.

354. This is a convenient point at which to stress the importance of continuity in such jobs wherever it can be achieved. One of the most bewildering things for Territory Aborigines over the years must have been the constant movement of government officers from one post to another. Even the best of such officers will take some time to gain the confidence of a community or council of Aborigines and everything possible should be done to ensure that good working relationships, once established, are retained as long as possible.

355. I have already referred, at several points, to the importance of organizations such as the regional Land Councils having their own secure funds to cover all normal administrative expenses. Leaving aside for the time being the precise source of these funds, as to which I have made a suggestion in paras. 602-9 below, I have no hesitation in endorsing the submission of the Northern Land Council that it should be in the position of submitting to the government an annual budget showing anticipated expenditure. That budget, unless it infringes government policy, should be approved, and the Council should then be free to make expenditure within the framework of the budget, subject only to ordinary auditing procedures. If any significant departure from the budget became necessary, an appropriate submission for amendment would be put forward.

356. I regard this sort of funding as essential to the proper working of the land rights system. It would be an impossible situation if the Land Councils had to seek specific government approval for each meeting, each salary increase for an employee, or each item of office equipment. On the other hand the expenditure of public moneys requires a degree of public control. I see this as a case in which that control must be as relaxed as possible. It must be accepted that some mistakes will be made and some losses incurred. The alternative of strict control of the purse strings would cut right across the aim of making Aboriginal groups and communities self-sufficient and independent. This is just one of the many ways in which Aborigines must be given control over their own lives. There is no reason to believe that such mistakes as will be made by Aborigines will be any more serious than those that have been made in their name in the past by non-Aboriginal administrators.

357. It appears from some figures calculated by the Northern Land Council’s advisers, that the initial budgets of the Councils may call for capital expenditure of at least $150,000 for housing, office equipment and vehicles. Recurrent annual expenses would probably come to about the same figure by the time salaries, rents, office expenses, vehicle running costs, travelling
expenses for members and officers and professional fees have been provided for.

358. It is envisaged that each Council would require the services, initially, of a director, who would combine the roles of secretary, treasurer and office manager, a typist/clerk and two or three field officers. The quality of the people found to fill these roles would be crucial to the success of the land rights system recommended.

359. It is convenient to summarize here the main functions of the regional Land Councils as I see them. No doubt they will tend to develop directions of their own over time, but the main tasks I see for them are:

(a) providing the main meeting places for developing Aboriginal policies on matters relating to land;
(b) representing Aborigines in negotiations with the Government on all matters relating to land rights in their regions, particularly any proposed legislation or regulations;
(c) protecting the interests of traditional owners in all negotiations concerning the use of land;
(d) acting for traditional owners and for communities in all discussions and negotiations with departmental officers, mining companies, tourist interests or others, concerning land usage;
(e) establishing a register of traditional owners of Aboriginal lands, similar to that recommended to be established by the Land Commission for pastoral lands (see paras. 211-12 above);
(f) investigating and reporting on the land requirements of Aborigines in towns;
(g) co-ordinating and making claims to vacant Crown lands;
(h) making representations to the Land Commission about priorities in the expenditure of moneys for land purchase and land development;
(i) nominating appropriate trustees to hold lands for Aborigines;
(j) providing administrative services to such trustees and directing them in the performance of their duties wherever necessary;
(k) conciliating disputes between Aboriginal groups or communities over matters concerning land ownership or usage; and
(l) issuing entry permits to non-Aborigines visiting Aboriginal lands and arranging for rangers and others to check that the permit system is observed.

360. One final matter for consideration, so far as the regional Land Councils are concerned, is their boundaries. Although communities from Western Australia and South Australia are represented on the Central Land Council, I am not able, for legislative and other reasons, to recommend at present that the formal boundaries of the Councils go beyond the borders of the Northern Territory. This matter is dealt with further below. The boundary between the two councils, unless they agree to change it, should run along the southern boundaries of Rosewood, Kildurk and Humbert River pastoral leases; then by a straight line across Victoria River Downs from the south-eastern tip of Humbert River to the north-western tip of Camfield; then along the southern boundaries of Camfield, Dungowan and Murranji:
then along the western boundaries of Newcastle Waters, Helen Springs, Muckaty and Banka Banka. It should then follow the boundary of the Barkly Tableland District south and east to the Queensland border.

Land Trusts

361. As explained above, I have accepted the submission of the Northern Land Council that Land Trusts should be the basic landowning entity. That Council sees such Trusts as having only nominal responsibilities, acting upon the directions of the Land Council in all administrative matters. Nevertheless the symbolic importance of the Land Trusts should not be underestimated. If the right people are appointed to them, they will represent the maintenance of traditional values. The idea is that the trustees should be drawn from the most important tribal leaders in the area concerned. They would be informed and assisted in their duties by employees and representatives of the regional Land Council.

362. No doubt if they did not approve of what the Land Council wanted them to do, they would refuse to do it, and the matter would then have to be further debated or resolved by court proceedings.

363. I would vary this formula, to meet the wishes of the Central Land Council and of the northern communities represented by the Tiwi people and those of the Daly River area, by providing that the trustees should be nominated in appropriate cases by local community councils. I also believe that they should, in some matters, take their instructions from those community councils rather than the Land Councils. As I see it, this would have to be by arrangement with the Land Council, because of the need for uniform legislation on this point.

364. I would also add that the trustees in each case, although respected members of their communities and language groups, must be fit enough to undertake the travel which will be required of them from time to time for meetings, and sufficiently informed about contemporary matters to be able to understand the significance of what they are being asked to agree to or sign.

365. It is envisaged that the costs of these Land Trusts, apart from travelling expenses in some cases, would not be great and would, in any event, all be provided from the funds of the council nominating the trustees, which would also arrange all necessary meetings. The Land Trusts would be required by the legislation to account to Land Councils, communities and clans for all moneys received by way of rents or fees.
Community councils

366. If the recommendations in this report are finally accepted, community councils will not play such an important role in the development of land rights as was envisaged in my first report. This is because it has been urged on me, and I have accepted, that these are institutions created in effect by outside authority, and the strengthening of their roles in this area is likely to cut across traditional Aboriginal social organization and thus cause confusion and uncertainty.

367. Nevertheless I believe it to be inevitable that community councils will, over a period of time, come to play a more and more significant local government role. I think it is only being realistic to say that the likely development over the next 50-100 years will be the gradual weakening of links with specific areas and sites and the strengthening of community identity with larger tracts of land.

368. This will create problems for Aborigines over the period, but it will ultimately generate both a new approach to landowning and land use and of new leadership structure. I believe that this will be a natural development and that the general community, through its laws and other pressures, has no more right to prevent such a development by artificially bolstering traditional institutions than it has to try to bring about any such changes.

369. Here, as elsewhere, a choice made by the Aboriginal people themselves in a free and unhurried fashion, should be the aim of policy makers. The legislation should provide for such a choice by calling for consultation with community leaders while at the same time giving the final decision to the traditional owners of the land. Since the Land Council representatives will normally work through community councils in approaching traditional owners, the influence of the former is bound to have its impact. If differences arise, the Land Council representatives should encourage discussions to settle those differences.

370. This impact will, of course, be most marked in those cases, referred to in para. 363, where the community council nominates the trustees and has delegated to it some of the Land Council's powers of control.

371. The protection given to traditional values by the proposed legislation should suffice to preserve any minority rights that might otherwise be threatened. Traditional Aboriginal law certainly gave minority groups full protection in the enjoyment of land. But it is one thing to say that a minority must not be disadvantaged and quite a different proposition to assert that some other minority group must not be specially advantaged. This the legislation will have to do specifically.

372. In particular because of Aboriginal acceptance of obligations to kinsmen and totemic relatives in a situation where personal property was virtually unknown, there are dangers of nepotism and what could be seen by some as corruption, when similar obligations are recognized in a society which has personal property.

373. In these circumstances any right of community or clan leaders to give advantages to relatives by way of leases, loans or grants of money must be clearly defined. Ordinary audit procedures, together with the controls of the
Land Trusts and the Land Councils, should be sufficient to ensure that rules laid down are obeyed.

Summary of recommendations

374. (i) Legislation concerning Aboriginal corporations should be simple and specially tailored to Aboriginal requirements.

(ii) Aboriginal corporations should not pay tax on income which is required to be spent on community purposes.

(iii) All landowning bodies should, as a matter of convenience, be incorporated. The same is true of land-using groups wherever more than three or four people are involved.

(iv) The two regional Land Councils should be incorporated and given substantial responsibilities in relation to land rights. Those responsibilities are listed in para. 359.

(v) The Councils should consist of one representative from each nominated community, with power to add or delete communities, change representatives for particular meetings and co-opt other Aborigines as individual members.

(vi) Attendance of other non-voting representatives of communities should be encouraged so far as costs will permit.

(vii) The communities represented on first incorporation will be those listed in paras. 347 and 348.

(viii) The Land Council boundaries will be those set out in para. 360.

(ix) The members of Land Trusts should be nominated by the regional Land Council or community council set out in paras. 94 and 158 above.

(x) The Land Trusts should be incorporated and their duties, which will be mainly formal, should be prescribed by the land rights legislation.

(xi) The same legislation should provide that the Trusts must account to Land Councils, communities and clans for all moneys received by way of rents or fees.

(xii) Community councils as well as traditional owners of land should be consulted about any proposed developments or use of land in their areas.

(xiii) The legislation should ensure that particular groups of Aborigines do not obtain special advantages over others having the same entitlements.
Land Usage

375. To give to Aborigines the ownership of substantial areas of land is a vital first step in the recognition of land rights. It is however just as important to make proper provision for their use of such land. This involves a consideration of such questions as their rights and duties as landowners and also of the best use of available moneys for development.

376. In the discussion which follows I leave aside the question of housing development. This has already been referred to so far as city and town dwellers are concerned and I assume that in larger areas the housing requirements of the people will not be lost sight of (see para. 258 above). I only wish to stress again that the wishes of the people themselves should be observed — both as to the type of housing to be built and as to the priority which it should have by comparison with other community developments.

377. My own view is that housing in each area should be pushed ahead in accordance with locally approved plans and at a rate which provides for the greatest possible use of Aboriginal labour, and materials produced by Aborigines. I think this would be in keeping with Aboriginal wishes, but if any particular community felt that housing should have a completely dominant priority or alternatively a lower priority than other community projects or economic developments, then that view should be respected. It is in precisely these areas that Aborigines should be permitted and encouraged to regulate their own lives instead of having all such decisions made for them as in the past.

378. The position will be complicated by the fact that funds for different purposes will come from different sources, but each community should still be able to decide the directions in which its main efforts should lie.

General survey

379. In order to assist Aborigines in reaching the best decisions on questions of land usage, it is important that they should have the best advice on the choices which are open to them.
If each community is left entirely to its own devices in deciding whether to raise cattle, grow fruit or vegetables or encourage forestry in its area, it is likely that many bad or doubtful decisions will be made. The situation would be even worse if made on a clan basis by traditional owners.

It is true that projects involving substantial grants would be sifted and allotted priorities by the Land Commission if these recommendations are accepted. Presumably there would also be a proper investigation before funds from other sources were made available. But this is not the most sensible way of dealing with the more difficult questions of land usage. It could at times put the authorities concerned in a difficult position and might lead to an unjustified sense of grievance on the part of those whose applications for funds were unsuccessful.

There would obviously be great advantage in an overall government land survey which would show up areas suitable for different uses and grade them in an appropriate way. This would be of real value both to the communities and to the Commission and other authorities concerned with the allocation of moneys. Such a survey would presumably not stop at the boundaries of Aboriginal lands but would also take in neighbouring related country. It would weigh the relative potential of different areas in terms of pastoral and agricultural use, forestry and conservation purposes. It is to be hoped that potential for mineral production could also be covered in a parallel survey (see paras. 571-4 below).

I do not mean to suggest that communities should be closely bound by the results of any such surveys. It would make a mockery of land rights to plan away all their freedom of choice. And certainly Aborigines from each area would need to be involved in any on-the-ground aspects of such surveys. The purpose of them would have to be carefully explained so that no unnecessary fears were aroused.

However it would clearly be of great assistance to communities and others to have such information available when plans were being considered or recommendations made.

Traditional use

The first type of land usage calling for consideration is what, for want of a better description, I call traditional. There is an increasing tendency in the last year or two for Aborigines to want to go back to their land and to live in a way which is closer to their old way of living than settlement life can be.

Their reasons for doing this vary no doubt from case to case, and motives are often confused. But, generally speaking, it is probably true to say that they want to get back to a place where they feel spiritually at home and to get away from the tensions and frustrations of living in multi-tribal communities which are, in a practical sense, dominated by a few non-
Aboriginal people. What those who make this decision are looking for is peace of mind, self-respect and greater control over their families.

387. It is misleading, however, to think of these people as reverting to the type of life that their ancestors followed. In the first place they want to maintain contacts with the outside world, so that their food supplies can be supplemented and varied and so that they have access to medical assistance when required. Thus in Arnhem Land, where much of this activity is taking place, one of the first tasks undertaken at any new outpost is the construction of a rough airstrip.

388. Where the proposed settlement is large enough to warrant it, the new community usually hopes that it will receive, in time, resident teachers and nurses.

389. In many cases it is intended that cattle raising and market gardening ventures will be established. These may only be modest projects designed to produce self-sufficiency for the community, but in some cases more ambitious ideas are being considered.

390. Even in those cases where a small family group elects to live mainly off the land, they may well wish to use a rifle as well as traditional weapons and to obtain extra rations by making occasional trips to settlements or outposts which obtain regular supplies.

391. How strong this trend to return to traditional land will prove to be, can only be a matter for speculation. My own estimate is that it will continue to be significant and will need to be provided for in any land rights scheme. If funds and other forms of support are available, a number of new communities will become more or less permanently established at new sites.

392. There must inevitably be some mixed feelings about these new communities. If there are too many isolated villages, the provision of services for them becomes difficult and in some cases impossible. The development of a cohesive Aboriginal society may also be retarded.

393. On the other hand, the fact that they will be smaller than most of those already existing will be all to the good — provided that they are large enough to make health care and education facilities practicable. Some such division into smaller communities is particularly desirable in view of the tensions already existing in the large settlements and the present high rate of increase of population on the reserves. Perhaps the ideal result would be villages of several hundred tribally-related people. This could well be the level reached in the natural course of events.

394. I certainly see the return of smaller family groups to their own land as a phase in present developments which will probably not become entrenched in Aboriginal social arrangements. The tendency, I believe, will always be to settle fairly permanently in a community at a particular place, and to look on excursions into the bush as holidays rather than as a normal way of living.

395. So far, the attractions of community living, in spite of all its tensions and other disadvantages, have almost uniformly triumphed over the pull of life in the bush. The more congenial community living becomes, the stronger will be these attractions.
Nevertheless I accept, as the Land Councils have urged I should, that the freedom of all Aborigines to exercise their traditional rights to live off the land must be expressly preserved in any new legislation. One of the aims of that legislation must, as I said at the outset, be to offer a real choice between alternative ways of living and to allow Aborigines to make any changes in their ways as and when it suits them to do so.

Grazing, farming and agriculture

In those cases where Aborigines wish to turn their land to commercial profit, the most likely usage will be grazing. Various forms of farming or agriculture will also be in the minds of many communities, although probably on a small scale in most cases.

In either case it is accepted by the Land Councils, and I agree, that such developments must be subject to the same local ordinances as any other projects conducted by non-Aborigines, so far as matters such as water control, soil erosion, bushfire control and disease prevention are concerned. These considerations are important in establishing Aborigines as good neighbours to existing pastoral lessees. In the same spirit there should be a give-and-take approach to fencing when it is not sensible to follow the precise map boundaries. Generally speaking, there should be no reason why fencing or mustering should present any special problems on the boundaries of Aboriginal land.

On the other hand, since Aboriginal land occupation has motives other than economic, it would be wrong if their projects were compelled to be pushed ahead at the rate which is appropriate for purely commercial development of land. On the contrary, it is important that Aboriginal land usage should advance only at the pace which Aborigines feel that they can cope with. Thus any provisions about minimum stocking rates or the extent of fencing or the value of other improvements to be carried out within given times would be inappropriate to the Aboriginal situation.

It has been urged by the Northern Territory Cattle Producers Council that a clear line should be drawn between those Aboriginal enterprises which are meant to be on a commercial footing and those which are not. The former, it is said, should be subject to the same requirements and restrictions as if they were being conducted by non-Aborigines. I am satisfied, however, that no such dividing line would be practical or useful. In the foreseeable future, all Aboriginal land-use projects are going to require a degree of special consideration and treatment.

For example, since some Aboriginal ventures might be established on land which is only marginally suitable, and which would not normally be released for the purpose, it would be appropriate in such cases if the Department of the Northern Territory used such powers as it has to control clearing or to lay down maximum stocking rates in order to protect the land.
402. What I have in mind in saying this is that projects designed to produce self-sufficiency in proteins for a community might be appropriate on land which could not support a profit-seeking industry. Such a special case might call for special controls.

403. Although the Land Councils spoke only of Aborigines accepting the same obligations as others not to damage or permanently destroy any of the natural resources of the land, I think it is right that, if they wish to use land where the ecological balance could be disturbed by normal pastoral activities, they should accept special restrictions appropriate to the nature of the country.

404. The same responsible approach to land development would also involve Aboriginal communities seeking and accepting the best available advice before starting grazing or agricultural activities. Unfortunately, only a small part of the total areas having pastoral or agricultural potential in Aboriginal reserves have been surveyed by experts in the detail necessary to plan their development.

405. I believe, therefore, that communities should be encouraged, subject to necessary controls, to set up projects such as beef cattle grazing, dairy farming, pig or poultry raising, and market gardening wherever their intention is simply to feed themselves and their neighbours. Where the venture is to have a substantial commercial significance, public moneys should only be made available for it in the light of general surveys of the potential land uses of the area and detailed advice as to the viability of the particular project.

406. The question of the management of any substantial enterprise is of vital importance. In almost every case, Aborigines recognize the need to employ skilled managers. In the near future this will usually mean non-Aboriginal managers, because it is clear that few, if any, Aborigines have been trained in or acquired the necessary skills of management, expert though many of them are as stockmen.

407. It is essential that managers be well paid and secure in their jobs, because their work will require tact and patience as well as technical skills. Aboriginal employers must be able to compete on the open market for the best managers available. Although commercial profits should not be the test of the success or failure of such schemes, it is important both for Aboriginal self-respect and for public support for their developments, that they achieve reasonable results. The quality of management will be the most important single factor in achieving such results.

408. Before leaving this subject I should add that one view which has been urged on me is that no further land should be handed over to Aborigines for pastoral purposes until good pastoral country on reserves has been fully developed and results on Willowra and Kildurk have been assessed after a reasonable time.

409. Certainly I agree that the Aboriginal efforts in this direction should not be over-extended — in particular the availability of suitable skilled assistance must always be a factor — but I believe that the suggested approach overlooks two important matters.

410. In the first place, it is no consolation to the Aljawarra people to know that there is good cattle country in Arnhem Land or the Haasts Bluff
reserve waiting to be developed. They would like to control some of their own country and, since it is all presently broken up into pastoral leases, that is the obvious use for them to put it to.

411. Secondly, as is pointed out again below, Aboriginal lands represent most of the unspoiled natural country of the Territory. Wherever the balance between conservation and development may eventually be struck, it seems clear that not all of the Aboriginal country suitable for cattle raising should be used for that purpose. If Aborigines as a whole are to be deterred in one way or another from realizing the full economic potential of their existing lands, it seems only reasonable that they should be compensated by having made available to them some of the lands already developed. This argument applies even where there are no traditional claims which can be established.

Forestry

412. Since 1961 it has been government policy to investigate and develop forest resources on Aboriginal reserves. Royalties, after deduction of 50% for development costs, have been paid to the Aborigines Benefits Trust Fund in accordance with sec. 21 of the Northern Territory (Administration) Act 1910-1973.

413. These forestry resources are all in the northern part of the Territory and it is significant that so far there are 50,000 hectares off reserves and 230,000 hectares on Aboriginal reserves which are the subject of management and protection. Much larger areas, including 2.24 million hectares on reserves, have been noted as suitable for forestry projects in the longer term; but, for present purposes, the areas of interest are those actually being managed although not necessarily exploited.

414. The claim of the Northern Land Council as to the development of these forest areas is that the Forestry Branch of the Department of the Northern Territory should receive long-term (99 years) leases of these areas from the Aboriginal owners at a nominal rental. Such leases should provide for the protection of sacred sites. If harvesting licences are to be granted, Aborigines should receive preference. The two sawmills at Maningrida and Snake Bay (Melville Is.) should be handed over to Aboriginal ownership. (The Maningrida mill is owned and operated by the Forestry Branch and the Snake Bay mill is also operated by the Branch but owned by the Department of Aboriginal Affairs. It is understood that there is no objection on the part of either Department to the principle of Aboriginal ownership.)

415. It is recognized that, for the protection of the forests, the Branch must be entitled to exclude unauthorised people and it is not expected that this will, in practice, create any difficulties. Aborigines having traditional interests in that land would normally be authorised to go upon it. The controls would no doubt vary, depending on the nature of the forest and the time of year, but the Branch would have the ultimate authority to exclude people when and where it was essential to do so.
416. The Northern Land Council has said further that it should collect the royalties. After deducting an amount to cover its administrative expenses in the field of forestry, it would divide the balance equally between the traditional owners of the land and the Aborigines Benefits Trust Fund. I assume that royalties would continue at the present rate for the time being. The Northern Land Council may, at some time, wish to review the government deduction for development costs.

417. It has also asked that Aborigines should continue to be trained in forest management and timber work. The Branch in fact has a policy of training Aborigines for unskilled and semi-skilled work in these areas. No doubt it would be pleased to advance Aborigines further wherever the opportunity offers.

418. I endorse all these proposals of the Land Council as being both fair and sensible. The only note of caution I am concerned to sound is that Aborigines may not fully appreciate the effects of a development for woodchip purposes or the planting of a new non-indigenous forest. I think that the leases to the Forestry Branch should provide that any activities involving the complete clearing of substantial areas of natural forest should only be carried out with the consent of the Land Council, which would first ensure that the traditional owners knew what was intended and did not object to it.

Fisheries

419. The policy of the Department of Primary Industry is that there should be open access by Australian fishermen to all fisheries which government is in a position to control.

420. Although there has been some doubt about the legal position in the past, the estuaries and tidal flats of Northern Territory Aboriginal reserves have been generally regarded as being part of the reserves and therefore out-of-bounds to commercial fishermen.

421. The Northern Land Council has now asked that this principle be recognized and extended and that an area stretching 12 miles out to sea should be treated as part of Aboriginal land for purposes of protection of land rights. Such a claim would be relevant both to fishing and to off-shore exploration for petroleum or minerals.

422. I accept that Aborigines make traditional claims to most, and probably all, off-shore islands. Their legends link those islands with the mainland because of the passage of mythical beings from one to the other. The effect of this is that the sea between also has significance. Certainly Aborigines generally regard estuaries, bays and waters immediately adjacent to the shore line as being part of their land.

423. However I am unable to endorse a claim to an area of sea as great as twelve miles from the coast. It seems to me that the legitimate interests
of Aborigines will be protected if their traditional fishing rights are pre­served and their right to the privacy of their land is clearly recognized by the establishment of a buffer zone of sea which cannot legally be entered by commercial fishermen or holiday makers. An exception would have to be made in cases of emergency.

424. To establish these principles some arbitrary figure has to be arrived at, which I have already suggested (para. 91) might be two kilometres from low tide. Since all the fishing is done by netting or the use of hand-lines in comparatively shallow water, this should suffice for both the purposes to which I have referred.

425. All transfers of land to Aboriginal ownership should, unless there is some strong argument to the contrary in a particular case of which I am not aware include off-shore islands.

426. The Northern Territory Department of Fisheries has pointed out to me that Aborigines now have access to technology which has increased their potential fishing capacity to the point where they could damage stocks. In this connexion the barramundi and threadfin are particularly vulnerable. The Department goes on to say that controls must be exerted by an authority recognized by the Aborigines, which need not necessarily be the government.

427. The Northern Land Council has made no request for special exemption for Aborigines from laws designed to protect stocks of fish. Any rules concerning the size of nets, their placement or other similar restrictions would apply to Aborigines, and I have no doubt that if problems arose they could be amicably resolved.

428. There is great potential for Aboriginal involvement in more intensive fishing of Northern Territory waters. Several ventures so far tried have had mixed success, largely it seems because of lack of firm management in the case of those that have failed. Fishing can give employment to a number of Aborigines, boost community income and give a better protein diet for the people concerned. But if these results are to be achieved, there must be some firm control of boat usage, and expert management to ensure quality control and proper marketing. This appears to be another area where development should proceed in stages — concentrating first on local supply and only going in for more ambitious ventures when the ability to maintain such an operation has been demonstrated and the commercial possibilities fully investigated.

429. One matter which has caused me some doubts is the possibility of Aboriginal landowners being able to license commercial fishermen to use their waters. At first sight this seems to be an option which ought to be open to communities, since it could be productive of some income and should not deplete any natural resource. If such licences were confined to ship-based rather than land-based operators, there would only be the minimum or direct contact between fishermen and the local people.

430. However the Northern Land Council has not sought any such right and I believe that this is a matter in which the general Aboriginal view should prevail. I say this particularly because I foresee the possibility that if the existing reservation of these waters for Aborigines were once breached, it might prove politically difficult to regain when Aborigines were better
equipped to compete themselves. The lesson of history is that any privileges which Aborigines have should not lightly be put aside or reduced.

431. Before leaving this subject I should say that I have not overlooked the claims made to me by some Aborigines for the preservation of deep-sea prawn fishing grounds for their eventual use. This claim was not put by the Northern Land Council, except in so far as the twelve miles claim incidentally covered such grounds, and I can see no real merit in it from a traditional viewpoint or otherwise. In particular, the financial backing required by such an enterprise is such that I cannot imagine Aborigines undertaking it in the foreseeable future. There are many more obvious uses for available funds.

Summary of recommendations

432. (i) A general land use survey of Aboriginal lands should be carried out so that decisions made on the subject are soundly based.

(ii) Aborigines should be involved in any field work required for such surveys.

(iii) The right of all Aborigines to use Aboriginal lands for traditional purposes, in accordance with their traditional rights to do so, should be protected as a first priority.

(iv) Communities should be encouraged to run cattle, to raise pigs and poultry and to grow fruit and vegetables, even if only for their own consumption, wherever possible.

(v) In establishing farming, agricultural or grazing projects, Aborigines should have the benefit of detailed advice in addition to any guidance they may receive from a general survey.

(vi) Such projects should be subject to all the normal laws designed to protect the industry concerned or the environment. They should not be subject to conditions intended to compel development.

(vii) In some cases, special controls to protect the environment, and thus the long-term interests of the particular project, may be necessary.

(viii) Public moneys should only be lent or granted for the purpose of establishing a commercial enterprise after expert investigation has shown the project to have reasonable prospects of success and to be in accordance with the proper use of the land in question. ‘Success’ in this context involves considerations of employment opportunities, self-sufficiency in certain foods and the general well-being of the community as well as profit-making.

(ix) The expert and sympathetic management of substantial pastoral, agricultural, or farming projects will be vital to their success. Good salaries must be paid to attract the right people.

(x) Forestry on Aboriginal lands should be conducted by the grant of long-term leases to the Forestry Branch of the Department of the Northern Territory.
(xi) These leases should provide for the protection of sacred sites, for the training and employment of Aborigines in forestry and timber-getting work and for the obtaining of Land Council consent before any substantial area is clear-felled.

(xii) The Forestry Branch must be able to exclude Aborigines from forest areas leased to it when it is necessary to do so.

(xiii) Royalties should be paid to the Land Council, which after deducting an amount to cover its expenses in this field, would divide the balance between traditional owners and the Aborigines Benefits Trust Fund.

(xiv) Any sawmilling activities on Aboriginal land should be owned by or on behalf of the local community.

(xv) Fishing enterprises should be encouraged wherever firm management can be assured. The first aim should be local self-sufficiency, with commercial development following only after careful investigation.
Government Services

433. With regard to the possible rights and responsibilities in relation to Aboriginal land of various government departments and instrumentalities, I drew attention to this problem in my first report at paras. 216-233 and particularly para. 227.

434. The questions there raised have been drawn to the attention of all government departments concerned and I have received submissions from a number of them. The only ones that I need to set out specifically are the following.

Department of Civil Aviation

435. This Department, in its submission, stated that it has:

'... an extensive and growing network of en-route aids for civil aviation usage and some of these may already be located, or there may be a future requirement for additional facilities to be located, in areas discussed in the report. These facilities usually have little or no relevance to the particular area in which they are located but are important in the overall aviation system and their locations are to some extent fixed by operational requirements. There would need to be some arrangements made to ensure continuity of existing and provision for future facilities of this type.'

436. The possibility of aerodromes being required on the lands under discussion is not specifically covered in the report. It is most unlikely that this Department would have any requirement for a government aerodrome but it seems that there could be requirements possibly by cattle stations or mining ventures. The provision of any such aerodromes would be the responsibility of those authorities.

437. In so far as Aboriginal communities are concerned there would seem to be a need for aerodromes for aero-medical and other Governmental purposes primarily. In this case the question arises as to whom should be responsible for providing and maintaining these facilities'.

438. The submission then goes on to say that the financing of aerodromes for Aboriginal communities is being discussed by the Departments of Civil Aviation and Aboriginal Affairs. It concludes with the statement that the
Department of Civil Aviation would continue to provide expert technical advice on such matters and would, where practicable, assist in construction and maintenance.

439. None of this would seem to represent any problems, provided that there is proper consultation between the Department and Aboriginal landholders. If land were required for an air navigation aid, then I have little doubt that agreement could be reached with the local community as to an appropriate site in the relevant area. Since the installation would be of no direct benefit to the local inhabitants I see no reason why appropriate compensation should not be paid for any disturbance involved and for the loss of use of the land in question. I assume that an appropriate form of lease or licence would be all that would be required and that the compensation referred to above would be provided by the lease or licence fee (see para. 133 above).

440. The only difficulty I can envisage in this connexion is the possibility that an installation may require height above ground in an area where the only such features are of special significance to Aborigines.

441. Even in a case such as this I am confident that consultation would produce agreement and, failing agreement, the Department would have to exercise whatever powers it has in relation to freehold land — subject to the political oversight of the Parliament (see para. 104 above).

442. The possible construction of aerodromes seems to present no problems. If they are required by a mining venture then they will have to be taken into account by the Aboriginal landowners in deciding whether or not to agree to such a venture. If they are required by an Aboriginal community itself then no doubt there would be consultation as to siting and no questions of leasing or payment to the landowners would arise.

Department of Education

443. This Department requires land for schools, associated buildings and playgrounds and teacher accommodation. Since all these uses are directly for the benefit of Aboriginal communities, there should be no difficulty in agreeing upon suitable sites or in arranging leases.

444. The Department is keen to do everything possible to provide outpost schools for small communities. Obviously there will always be some difficulty in providing fully trained teachers who are prepared to live in very isolated places for months at a time. The costs of housing for the teacher and of providing a school building or buildings will also be great, even if movable prefabricated units are used.

445. These matters are beyond my terms of reference and I make no comment on them beyond drawing attention to the difficulties which the Department faces whenever Aborigines decide to establish new and comparatively small communities.
446. In its submission the Department drew attention to the need for consultation and co-ordination in its field. In particular it is concerned that community movements should only take place after there has been a detailed investigation and proving of water supplies in the new area.

447. It also makes the point that, because expenditure on community works can be funded from several sources other than those normally available for public works, there is a special need for co-ordination if such works are to be properly designed and integrated into an overall development plan. This seems to me to be an area in which the regional Land Councils could assist by obtaining expert advice where required.

448. The Department is also concerned that, in the case of the larger communities, they may not yet realize the amount of land that will be needed in some cases for government activities and the accommodation of government employees— including teachers, nurses, police officers and various technical workers and clerical officers. The warning is timely and certainly it would be desirable for government departments to give as much notice as possible of their requests so that they can be allowed for in any planning by the respective communities for future developments.

449. There is one major problem concerning Aboriginal lands which falls within the responsibilities of the Department of Works and that is road construction. The Department draws attention to the difficulties it experiences in consultations with Aborigines about the siting of roads so as to avoid sacred sites. The Northern Land Council has also drawn attention to this difficulty. It arises because any long road will pass through the country of a number of different clans. The members of those clans may be scattered and hard for an outsider to identify. Others may be ignorant of the sacred sites or reluctant to talk about them. The result is a fruitful field for misunderstandings.

450. This problem can best be dealt with, I believe, through the field officers of the Land Councils. It should be their responsibility, when furnished with the initial plans for survey parties, to make contact with the traditional owners of the land to be traversed, to discuss with them any sites in the general line of the road which must be avoided, and to arrange for knowledgeable guides to accompany survey parties. This latter precaution is necessary because a road route can only be roughly planned on a map or aerial photograph and may have to be departed from on the ground. Once a route has been tentatively chosen, there would need to be a further opportunity to check it to make sure that it did not give offence to traditional owners. This would again be the responsibility of the Land Council and its officers. The Department must be in a position to rely upon what it is told by or on behalf of the Council.

451. The same precautions as for route planning would have to be taken in relation to camp sites for construction workers and, more particularly, the sites from which any road building materials were to be obtained.

452. Apart from the planning of road construction, however, there is an even more basic difficulty relating to roads over Aboriginal land. This is
that much of the value in giving Aboriginal people control over non-Aboriginal entry to their lands is lost if they cannot also control the making of roads.

453. Inevitably a road brings with it other serious problems in addition to the possibility of direct damage to sacred sites. Such problems include easier access to alcohol that is not controlled by the community, unwanted visitors unaware of or infringing permit requirements, increased demands for entry as of right, the desecration of sacred sites close to roads and unregulated hunting.

454. It may be answered that roads will bring benefits to communities in the form of cheaper goods and readier access to health and other services. No doubt this will in some cases be true, and a community may in fact welcome a particular road. But I believe that the decision on such matters should be left as far as possible to the Aborigines themselves. I say 'as far as possible' because I appreciate the difficulty of consulting Aboriginal opinion about a road covering a wide area and affecting a number of communities — as a road such as the foreshadowed Arnhem Land Highway would do. And in some cases the wider public interest may require the building of a road from one part of Australia to another which virtually has to traverse some Aboriginal land.

455. I think that before the construction of any new major road over Aboriginal land is finally decided upon, the following steps should be taken:

(i) A cost/benefit analysis should be undertaken to show that there is a substantial case for building such a road by comparison with the use or development of other existing roads or other forms of transport (such as barge and air transport in the case of Arnhem Land). This should be made available to the regional Land Council.

(ii) The estimates of the use likely to be made of the road, including traffic volume and types of vehicles and purposes of travel, should also be made available to the Land Council.

(iii) Any representations of the Land Council should be fully considered and if the Land Council, after consulting the communities concerned, asks that the proposed road should not be built, then only very cogent contrary arguments should prevail over that request.

(iv) If the Land Council agrees to the road being built, or if its views are overruled, then any recommendations or requests it makes as to the route the road should follow must be given great weight, particularly if it asks that a community be by-passed by the main road at an appreciable distance. It goes without saying that sacred sites must be avoided.

(v) Only the main road should be dedicated to public use. There should be signs at all turn-offs to Aboriginal communities forbidding entry without a permit. Manned check-points should be set up where necessary. All hunting along the road by non-Aborigines should be strictly forbidden and punished.

(vi) Any franchises on or adjacent to Aboriginal land for the sale of petrol, food, drinks or other travellers' requirements should be given to Aborigines.

(vii) If Aboriginal consent was, in the view of the Department, unreasonably withheld from a necessary road-making project, the
Department would have to use its powers of compulsory acquisition and, as indicated elsewhere, table its decision to do so in the Parliament.

Postmaster-General's Department

456. Radio communications require a number of sites, usually about 60 metres square, for the erection of steel towers. Access roads are necessary for maintenance visits and ancillary departmental facilities may require water, electricity or sewerage connexions.

457. The same comments made above about Department of Civil Aviation facilities would apply to these.

Department of the Northern Territory

458. There are obviously many ways in which the Department of the Northern Territory will be involved in the provision of services to Aboriginal communities and in other matters concerning the use of Aboriginal lands. The Forestry, Fisheries, Wildlife, Environment and National Parks Branch and the Animal Industry and Agriculture and the Lands and the Mines Branches will all be closely associated with Aborigines and their lands.

459. In a series of detailed submissions to me from the various branches, my attention has been drawn to a number of matters which I have considered and, so far as possible, dealt with under their appropriate headings.

460. I do not believe the Department will find any particular difficulty in carrying out its various functions in relation to the proposals in this report. If a number of communities were all to ask at once for guidance from the Animal Industry and Agriculture Branch, for example, the professional staff of the Branch would obviously be unable to cope with the demand. But I do not expect anything of the sort to occur, because different communities will move towards such projects at different rates.

461. Although it obviously has many other objects to pursue also, nothing in the submissions from the Department leads me to expect anything but the fullest co-operation from its various branches in achieving the aims of Aboriginal land rights.
Department of Tourism and Recreation

462. This Department also appears to be fully aware of its responsibilities so far as the Aboriginal people of the Northern Territory are concerned.

463. It sees that the tourist industry has a good deal to offer Aborigines in material terms but could also do considerable damage if not handled carefully.

464. These matters are dealt with further in the next section, headed ‘Tourism’.

Department of the Environment and Conservation

465. As will be seen in the section headed ‘Conservation’ below, there are ways in which the proper concerns of this Department will tend to run counter to the wishes of Aborigines in some places. My suggestions on this matter are set out in the section referred to.

466. The Department is anxious to assist Aborigines in the conservation management of all Aboriginal land and to train Aborigines as rangers and for other work in the management of National Parks.

467. It is therefore clear that in a number of ways there will need to be co-operation between Aboriginal organizations on the one hand and the Department and any National Parks and Wildlife instrumentality it may establish on the other. I would expect such co-operation to be given willingly on both sides and to be fruitful in a number of ways.

Department of Aboriginal Affairs

468. I think it is clear that putting into effect the proposed scheme of Aboriginal land rights will involve some readjustment of the functions of the Department of Aboriginal Affairs. The same would be true of any scheme which gave to Aborigines greater control over their own affairs.

469. This is a matter to be worked out by the Department in accordance with government policy and I only wish to make several comments which I hope may be helpful.

470. I think it is important that persons working as community advisers, project managers, administrators or field officers should be seen as being
directly responsible to the Aborigines in whose interests they are working. A significant part of their value will be lost if they constantly have to refer matters to higher authority, if they are moved from post to post without regard to Aboriginal wishes or their own, or if they are unable to give advice which is contrary to current government plans or policies.

471. On the other hand, the main field for recruitment of people who have had experience in dealings with Aborigines and who understand their needs, is within the Department of Aboriginal Affairs. In spite of its own recruitment problems, I hope that the Department can devise a method whereby some of its officers with field experience, chosen by Aborigines to work with them, can be seconded for a period of years on terms which are attractive to the officers concerned.

472. I expect that many of the tasks which have been done in the past by officers of the Department in Darwin or Alice Springs, or their predecessors in the Welfare Branch of the Northern Territory Administration, will in future be done by the officers of the Land Councils. There will, however, be many matters falling outside the jurisdiction of the Land Councils, and others when those Councils have to ask for outside assistance, in which the Department's Northern Territory Branch will remain the proper channel of communication.

473. It is obviously essential that the closest possible liaison should exist between the people working directly for Land Councils or community councils and the Department's officers with their general supporting role. I have no reason to doubt that a close working relationship will be achieved.

Summary of recommendations

474. (i) Aborigines should be encouraged to consider the difficulties of providing services such as education before they decide to establish a new living place. They should certainly not move until there has been a full investigation of the water supply on which they will be depending.

(ii) Because communities may receive funds for, and assistance with, public works from a number of different sources, they should be careful to see that all such works conform to an overall development plan. The Land Councils should arrange expert advice where necessary.

(iii) As the larger community centres develop, more land will be required for governmental and semi-governmental purposes. Allowance should be made for this expansion when the town planning of such centres is carried out.

(iv) Unless there is an overriding national requirement, roads should only be built over Aboriginal land when the regional Land
Council requests or consents. To enable Aborigines to consider the matter properly the fullest information should be given about the need for the road and the extent and type of use likely to be made of it.

(v) They should by-pass Aboriginal communities unless the community, through the Land Council, agrees otherwise. Only the main highways, and not the roads into Aboriginal villages, should be dedicated to public use.

(vi) All necessary steps, including detailed consultation with Land Council officers and the employment of guides, should be taken to see that sacred sites are not damaged in the course of road construction.

(vii) Only Aborigines shall be permitted to sell requirements to travellers on or near Aboriginal lands.

(viii) Non-Aboriginal travellers should not be permitted to hunt near roads or to leave the road reserve without a permit. Signs or manned check-points should be set up wherever they prove to be necessary.

(ix) People working for Land Councils and community councils should be independent of outside control. A scheme should be devised under which government officers chosen by Aborigines can be seconded to this work for a period of years on terms which are attractive to them.
Tourism

475. The attitude of Aboriginal communities toward tourism is varied. Some communities have shown opposition or, at least, disinterest. Others have actively encouraged it, especially where the sale of artifacts now constitutes a significant source of income.

476. Both the Northern and the Central Land Councils have submitted that tourism should only be established where the particular community, and the traditional landowners concerned, wish it. The Councils have suggested that there should be a continuation of entry by permit in such cases. Neither Council anticipates any difficulty in establishing a simple system, quite easy to administer, to cover places regularly visited by tourists. However the Northern Land Council agrees that there should be a review of this system wherever a major tourist development is established within a particular area.

477. The Councils stress that, by one means or another, the basic privacy of the Aboriginal community must be protected. Thus, for example, if a road were constructed across Arnhem Land, tourists would not be at liberty to leave the road and wander over the countryside. The Northern Land Council recommends that, in order to prevent such behaviour, Aboriginal officers be appointed, wherever necessary, to escort tourists and administer entry regulations. Perhaps a moderate charge could be made for tourist permits, which would help to pay the wages of rangers and guides.

478. The Department of Tourism and Recreation has submitted that a widespread interest in the unique traditional culture of Aborigines could be used to the advantage of both the Aborigines and the Australian tourist industry.

479. It says that, from the Aboriginal viewpoint, tourism would provide an opportunity for preserving and presenting traditional Aboriginal skills. Employment would also be provided for guides, custodians and interpreters of traditional sites of significance, players, dancers, singers and traditional craftsmen. The need for commercial services such as accommodation, food sales and transportation would provide additional employment.

480. The Department recognizes, however, that it is the right of the Aborigines to determine their own involvement in the tourist industry. If a community elects to encourage tourists, the Department suggests that the current system of entry permits be reviewed to allow for the waiver of permits in certain cases — for example, through travellers. I believe that all these questions of tourist permits can be resolved without much difficulty and will be worked out sensibly in the light of experience.
481. The possibility of joint ventures in tourism involving Aborigines and commercial companies is also envisaged by the Department, especially where the commercial company could provide managerial expertise. The Northern Land Council has similarly made provision in its suggested legislation for the leasing of land to non-Aborigines for tourist purposes where such a venture is desired by Aborigines but is beyond their resources.

482. Finally, the Department has submitted that there is a danger in creating too many competing tourist enterprises. The Department would be prepared to assist Aboriginal handling of this problem by providing assistance with feasibility studies and advice relating to employment opportunities in the tourist industry.

483. In all these submissions I detect no conflict of opinion or approach and I foresee no difficulties in this area, provided that Aboriginal people are fully informed as to the consequences of any decision they make on the subject, and ground rules for tourists are clearly laid down. In this connexion I have in mind in particular the use of cameras and the placing out of bounds of certain areas.

484. For the rather special problems affecting tourism in the Ayers Rock and Mt. Olga National Park, see the section headed 'Conservation' below.

Summary of recommendations

485. (i) Aboriginal communities and traditional landowners must be able to decide for themselves whether or not they want tourists in their areas.

(ii) Tourists should be generally subject to the permit system, but this will have to be sensibly administered, and special arrangements may have to be made for tourist centres.

(iii) Tourists should clearly understand what things they may not do and which places they may not visit within the limits of their permits.

(iv) This is one of the very few cases in which the general rules could, if Aborigines wish it, be relaxed to allow non-Aboriginal enterprises to be established on Aboriginal lands. It is to be hoped that any such arrangements would take the form of a partnership or joint venture with the local community.

(v) Aboriginal rangers and guides should be employed as appropriate to control and assist tourists.
Conservation

Land Categories

486. There are a number of land categories related to conservation and it is convenient to begin this section by repeating basic information that was set out in the first report.

WILDLIFE SANCTUARIES

487. At present almost 50,000 square kilometres of the Northern Territory are declared as wildlife sanctuaries. These are areas of reserved or unoccupied Crown land and, once they have been declared, a permit is necessary to enter them. The major sanctuaries are Woolwonga, Murganella and Daly River, all of which are on Aboriginal reserves, and the Cobourg Peninsula and Tanami Desert, both of which would become Aboriginal land if these recommendations are accepted.

WILDLIFE PROTECTED AREAS

488. There are 235,000 square kilometres of country in which wildlife is declared to be protected and it is an offence for anyone other than an Aborigine to carry a fire-arm or trap. This area is almost entirely made up of Aboriginal reserves, which are automatically protected areas.

FLORA AND FAUNA RESERVES

489. These are areas reserved for the conservation, preservation and control of the environment. They are immune from all mining activity. The main areas so reserved are the Cobourg Peninsula (also a wildlife sanctuary, see above) and Palm Valley, west of Alice Springs, which is also a National Park.

NATIONAL PARKS

490. The largest of these is the park which incorporates Ayers Rock and Mt. Olga. It covers 1261 square kilometres. Other National Parks of interest to Aborigines in the Territory include:

Finke Gorge (Palm Valley) 458 sq. km
Simpsons Gap 307 sq. km
Katherine Gorge 228 sq. km
Ormiston Gorge 47 sq. km

491. These parks are administered at present by the Reserves Board of the Northern Territory, but I understand that there are plans to hand them all over to be administered by a newly established National Parks and Wildlife Commission. The same Commission would also be responsible for the wildlife sanctuaries of the Cobourg Peninsula and the Tanami Desert.

Reconciling Aboriginal interests with Conservation

492. As I said in my first report, conservationists properly argue that the interests of man, even of Aboriginal man, should in certain circumstances be subordinated to those of other forms of life. Aboriginal man lived in harmony with his environment in the past, but that was before the use of modern hunting equipment or the introduction of tourist and pastoral activities.

493. I went on to suggest that, once areas which are worthy of special protection have been identified, an attempt should be made to reconcile Aboriginal interests with those of conservation. In many cases this should not present any problems. It should be possible to employ Aboriginal rangers and guides in protected areas. A scheme of Aboriginal Title, combined with National Park status and joint management should be acceptable to all interests.

494. The Central Land Council has said that, in order to avoid any difficulties regarding title, Aborigines would be prepared to accept that lands presently constituted by the National Parks or wildlife sanctuaries, which become part of Aboriginal lands, should remain subject to their present status. An exception to this proposition is Ayers Rock which is dealt with by the Central Land Council separately. The Council says that it is both reasonable and realistic that Aborigines should be the care-takers of the sanctuaries.

495. The Northern Land Council submission seeks the return of wildlife sanctuaries to Aboriginal ownership. If it is necessary to regulate the protection of wildlife, then the Northern Land Council submits that those regulations should be enacted by a jointly constituted committee of Aborigines and officers of the Department of the Environment and Conservation. Enforcement of the regulations should be by rangers, many of whom would be Aborigines. It is also urged by the Northern Land Council that there be consultation regarding Aboriginal use of the land and its proper management.

496. The Department of the Environment and Conservation has submitted that conservation management can be achieved without conflict with the traditional use of land by Aborigines. Land which has been set aside as a National Park or nature reserve should remain in the management control
of the Department or a new National Parks and Wildlife Authority. The Department envisages co-operation between itself, any such authority and the Department of Aboriginal Affairs in assisting Aborigines in conservation management of their land. In particular, the training and education of Aboriginal rangers and the employment of Aborigines in park management, is seen as a function of such an authority. The establishment of an advisory council would provide for representation of Aborigines either generally or in specific areas.

497. The Department also recognizes a need for the special protection of rights of access to traditional Aboriginal sites and suggests that Aboriginal requirements could be met by the zoning of areas of special significance to Aborigines.

498. Both the Department of the Environment and Conservation and the Department of the Northern Territory, as well as the Australian Conservation Foundation, have urged that present reserve lands should not be converted to uses beyond their capacity. They say that there is a need for land use planning which involves a multi-disciplinary survey, designed to assess the value of land for nature conservation.

499. The Department of the Northern Territory in particular submits that it is unrealistic to expect small and inexperienced groups of Aborigines to cope with the complexities of environmental management. It suggests that Aboriginal communities take advantage of the broad expertise provided by government departments. A reconciliation between conservationist and exploitative interests could be effected through expert multi-disciplinary surveys in consultation with Aborigines. The Department sees the desirability of reserving for conservation selected areas within present Aboriginal reserves. These areas would be determined by the Land Councils with government advice.

500. The scheme suggested at para. 138 of my first report for the combined status of wildlife reserves is suggested by the Department as possibly the best solution.

501. The Australian Conservation Foundation also suggests that a scheme involving joint management offers a solution for the mutual benefit of both Aboriginal and white communities. It sees a mutuality of interest in many areas. The conservation of natural areas of Aboriginal land would, in the Foundation's view, provide areas for the traditional pursuits of Aborigines as well as wilderness areas for the wider community.

502. The C.S.I.R.O. in its submission raises the problem which might be created in scientific research, much of which has conservational objectives, if access to large tracts of Aboriginal land were unduly restricted. The C.S.I.R.O. also submits that there should be some overriding power to restrict Aboriginal hunting and other activities in view of the increase in non-traditional methods of hunting.

503. The Northern Territory Reserves Board has submitted that there be joint management of National Parks. The Board considers that there is an opportunity for the Departments of Aboriginal Affairs and Education to assist in a scheme to train and employ Aborigines as National Park rangers and field maintenance workers. Management is seen as initially a cooperative effort leading ultimately to control by Aborigines. The Board's
involvement would probably be restricted to areas in which it has special expertise, for example, the handling of tourists so as to prevent ecological damage.

504. I see no substantial conflict in these various submissions. Certainly, as I have said earlier, there should be a thorough survey of land use to ensure areas are neither arbitrarily proclaimed for conservation nor overlooked. This should include a review of areas already proclaimed.

505. I see no reason why Aboriginal ownership of areas proclaimed as National Parks or Wildlife sanctuaries should not be recognized.

506. I accept the view that Aboriginal interests have much in common with those of conserving the environment. However it would be foolish to ignore the fact that there are some areas in which they will come into conflict.

507. The principle of joint management seems to be generally accepted — there would need to be provision for independent resolution of possible conflicts between Aboriginal representatives and others on such management committees.

508. It is difficult to make precise suggestions as to how joint management can best be achieved when the whole basis of the administration of such areas is likely to be changed. However, the principles to be observed are, firstly, that there should be a group of Aborigines working together on any such Board. They are entitled to the confidence of numbers. Secondly, they must not be able to be out-voted by conservation interests without having their point of view considered by an independent adjudicator — either on the Board or outside it. Thirdly, it must not be expected that Aborigines should provide, on their lands, all the conservation areas necessary to placate the conscience of the wider community. Fourthly, attempts should be made, so far as possible, to reconcile Aboriginal needs and the best interests of conservation by compromise within a given area, even though the result may not be in accordance with best conservation planning. Finally, Aboriginal interests should only be overruled where the case for conservation is a strong one. This could occur, for example, if some species such as the turtle or alligator or magpie goose were threatened by Aboriginal activities.

509. The type of problem that I have in mind in suggesting these principles is well illustrated by Aboriginal desires that buffalo or wild cattle should not be eliminated in particular sanctuaries but should be culled by Aborigines for food or for sale. I believe it should be possible to arrive at a compromise based on numbers or on particular localities. This would depend upon the real extent of the risk to indigenous species if buffalo or cattle were allowed to remain — which would have to be weighed against the importance of the food source to local Aborigines.
Ayers Rock and Mt. Olga

510. The Central Land Council has submitted that Ayers Rock, which is the subject of a claim to traditional land, should be brought under Aboriginal control. This control would include the right to regulate tourism and to retain any monetary gain derived from it, and the specific power to exclude non-Aborigines from visiting the Rock for approximately two to four weeks during annual ceremonies.

511. Information received from the Northern Territory Reserves Board indicates that Ayers Rock is run at a substantial loss, with an income of $70,000 and general running costs of approximately $200,000 per year. Extensive rehabilitative works are required including the restoration and, in some cases, re-siting of roads and the relocation of the air field.

512. Apart from the general interest of this Commission and of the Committee of Inquiry into the National Estate, there have been two detailed inquiries in recent months into the steps necessary to protect the ecology of the region. One of these has been a Parliamentary Committee of Inquiry, the other has been the drawing up of a detailed draft proposal by the Reserves Board.

513. It seems to be clear already that large capital sums will be required if the area is to be preserved while still catering for hundreds of thousands of tourists each year.

514. I am not in a position to make any detailed suggestions as to the future management or control of this area. The case is obviously an exceptional one which may well call for special arrangements to be made.

515. However the following points should not be lost sight of in planning the future of this National Park:

(a) Aborigines, through the Central Land Council, should be consulted and their views taken into account, before any schemes for the development or management of the area are adopted.

(b) Aborigines should be well represented by people of their own choice on any board or committee which is finally made responsible for the area.

(c) Others appointed to such a board or committee should be persons who have some understanding of, and sympathy with, the relationship of Aborigines to their land.

(d) The clear wishes of Aborigines on any matter relating to the land should not be able to be over-ruled without reference to some independent authority who can determine the particular issue in an informed and impartial way.

(e) Development plans for the area should make allowance for any Aborigines, and particularly those having traditional claims to that land, who wish to live there.
Summary of recommendations

516. (i) As part of the general land use survey of Aboriginal lands already referred to, areas worthy of special attention for conservation purposes should be identified.

(ii) Areas already set aside for such purposes should be reconsidered. Any areas confirmed would remain subject to existing arrangements until fresh arrangements for joint management with Aborigines could be worked out.

(iii) Any new areas should only be proclaimed after full consultation with Aborigines, through the regional Land Councils, and bearing in mind the injustice of requiring Aboriginal lands to bear an excessive share of the provision of land for conservation purposes.

(iv) Any system of joint management should provide for the resolution of disputes in an appropriate impartial way.

(v) Disputes should often be able to be resolved by the zoning of different areas in a way which will permit Aborigines reasonable freedom of action in some proclaimed areas but restrict that freedom in others.

(vi) Every opportunity should be taken to train and employ Aborigines in conservation work and the general management of conservation areas.

(vii) Aboriginal traditional claims to areas of National Parks or other conservation land categories should be recognized where they are endorsed by the Aboriginal Land Commission. There need be no conflict between Aboriginal ownership and joint management.

(viii) The Ayers Rock and Mt. Olga National Park represents a special problem because of the financial loss involved in managing it and the large capital expenditures necessary to rehabilitate and preserve the area.

(ix) The points listed in para. 515 should be remembered when planning the future of Ayers Rock and Mount Olga.
Sacred Sites

517. In referring to places which are said to be ‘sacred’ to Aborigines, it is important to remember that no clear dividing line can be drawn between those which are sacred and those which are not. I mean by this that, although some sites clearly fit the description, there will be many others about which different views could be taken.

518. Land generally has spiritual significance for Aborigines but, because of the form and content of the myths relating to it, some land is more important than other land. Certain places are particularly important, usually because of their mythological significance, but sometimes because of their use as a burial ground or important meeting place for ceremonies.

519. For this reason it is often better to refer to ‘sites of special significance’; but this description omits the important fact that the significance is not only social and historical, but also spiritual or religious.

520. I have therefore elected to use the expression “sacred sites” as the simplest and most convenient for my purpose. It must be remembered though, that other places not so designated are still important to Aborigines in a spiritual sense. It is not possible merely to protect sacred sites and treat other land as unimportant.

521. Nevertheless such sites must be protected. Too often in the past grave offence has been given and deep hurt caused by their inadvertent or wanton destruction. Because of the Aboriginal’s personal identification with his land, such places are even more important to him than are places of worship to members of other religions. It is hardly necessary to say that all relevant legislation must continue to protect Aboriginal rights of access to sacred sites.

522. Although there is general agreement about the need to protect such places from destruction, damage or desecration, the best methods of doing so are not clear.

523. It is probably true to say that a necessary first step is the identification of sacred sites. A committee of the Australian Institute of Aboriginal Studies has undertaken this task as part of a survey of all places of Aboriginal significance, and an elaborate programme of investigation, on a nation-wide basis which will take several years, is under way. It is intended that all the information obtained will be recorded on a computer, so that the details for any given area can later be quickly retrieved.
524. Apart from the obvious time and cost involved in such an exercise, the only difficulty I foresee is that it is contrary to normal Aboriginal practice to disclose the whereabouts of sacred sites to strangers. Many custodians of such sites will need to be convinced of the benefits to be obtained in keeping official records. Nevertheless I have no doubt that the exercise is a necessary one.

525. What should follow after the establishment of a register of sacred sites is not so easily determined. Even if such a list were publicly available, it would hardly be possible to make it a criminal offence in all circumstances to damage or desecrate any place named in it. There will be thousands of sites named throughout Australia, many of them places of public resort. It would be quite unrealistic to expect people to know which places were on the list unless some notification was given at the site. To erect fences or warning notices would be to draw unnecessary attention to many sites, and there are enough perverse people in the community for this to create a risk of vandalism.

526. I believe that what is required is to make such a register conclusive evidence in all courts that the place named is a sacred site. In all other cases the fact that a site was sacred would have to be proved by the person alleging it. In either case, the decision as to whether the special nature of the place should be brought to the notice of the public should be left to the custodians (by which I mean the traditional owners and managers) of the site.

527. There should then be a law of general application making it an offence knowingly to damage or desecrate such a site. Thus those who had local knowledge, or had been warned, that it was a sacred site would be guilty of an offence if damage were done, but those who had no reason to know its status would not.

528. The custodians would have to decide whether a particular site was at risk and, if so, what steps should be taken, by way of fences, warning notices or otherwise, to protect it.

529. The operation of the permit system, together with special measures discussed elsewhere (paras. 449-51 and 611) to provide for cases of possible damage from roadmaking or mining operations, should suffice to protect most sacred sites on Aboriginal lands.

530. In the case of pastoral properties, the owner or manager should be clearly informed as to those places on his property which are classified as sacred. His good sense should then see to it that Aborigines are not offended by the actions of his family, staff or visitors. Measures to prevent damage by cattle might be necessary in some cases.

531. In other places, such as vacant Crown lands, it may be that it will be necessary to resort to notices or fences to prevent injury to such sites, but this should only be done if the Aborigines directly concerned wish it.

532. So far I have been dealing with those instances where sites are of sacred significance to living Aborigines. In the case of sites which have been sacred to Aborigines in the past, but where there are no present custodians of the place, a general policy will have to be devised in consultation with regional and national Aboriginal organizations.
533. The problem of identifying and protecting sacred sites, along with other Aboriginal sites of historic or artistic significance, is under review by the committee of the Australian Institute of Aboriginal Studies referred to earlier. Because these sites make up an important part of the cultural heritage of Australia, they are also being considered by the Committee of Inquiry into the National Estate. I do not wish to say anything further about the management of those sites which are only of historic or artistic interest (because of rock paintings or engravings) but not related to Aboriginal land claims.

534. I have set out as part of Appendix D the best suggestions I am able to make for legislation to protect sacred sites. The only further comment I wish to make on those proposals is that the definition of ‘desecration’ becomes a difficult task when the very presence of women or children at most sacred sites would be a serious act of desecration in Aboriginal eyes. I do not believe that it is possible to draw any distinction based on age or sex in legislation. If some sites are to be closed to all unescorted non-Aboriginal visitors, that fact would have to be made very clear by notices and, perhaps, fences.

535. I should perhaps say that, in making suggestions for legislation, I have studied the relevant laws presently applying in five States of the Commonwealth and in the Northern Territory. The main emphasis of these Acts is concerned with the preservation of places and objects of archaeological or artistic interest. In framing my recommendations, I have drawn upon those provisions which are concerned with the protection of places of contemporary religious importance.

Summary of recommendations

536. (i) An official, legally-recognized register should be compiled of all sacred sites which their custodians are willing to declare.

(ii) Warning notices, fences and other protective steps should be entirely at the discretion of the custodians of each site.

(iii) All necessary precautions should be taken to safeguard sacred sites in the course of activities such as roadmaking and mining.

(iv) It may be appropriate to place some sacred sites out of bounds to all non-Aborigines unless they are accompanied by an authorized guide.

(v) It should be an offence knowingly to damage or desecrate a sacred site.

(vi) Policy for the protection of artistic and historic sites no longer of special religious significance to living Aborigines, should be worked out in consultation between regional and national Aboriginal organizations and others interested in their preservation.
Mineral Rights

The effect of the terms of reference

537. Of all the questions I have had to consider, that of mineral rights has probably caused me the most difficulty and concern.

538. My terms of reference refer to 'arrangements for vesting title to land in the Northern Territory of Australia now reserved for the use and benefit of the Aboriginal inhabitants of that Territory, including rights in minerals and timber, in an appropriate body or bodies . . . .'

539. A number of submissions, including that of the Northern Land Council, have urged that this leaves me with no discretion and that what the Government intends is that full ownership of minerals should go with the land.

540. I do not read the terms of reference as being so explicit and, since there is a doubt in my mind, I think I should resolve it by taking a broader view of my Commission. I do not believe that the terms of reference in a Commission such as mine should be interpreted as if they were contained in an Act of Parliament. It is much better to answer a question which was not intended to be asked than to risk leaving unanswered an important question which was intended. No doubt if the Government already has a clear view on this matter it will follow that view.

541. A further consideration which, to my mind, makes a full examination of the subject of mineral rights necessary, is that the reference quoted above is confined to present Aboriginal reserves. It says nothing about other lands which may in future fall into Aboriginal ownership.

The significance of traditional claims

542. A useful starting point in considering mineral rights under a new system of Aboriginal landholding is to ask what traditional Aboriginal laws and customs had to say on the subject.
543. In the first place, 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 spirit essences still pervade those places and are retained in the soil and the rocks.

544. In practical terms the only minerals used by Aborigines were flints, ochres and, of course, water. Places specially favourable for flints and ochres had great significance, particularly the ochre deposits because of the religious purposes to which they were often put. The ownership of such places was a matter of importance.

545. On the other hand, it must of course be conceded that Aborigines had no traditional use for petroleum, manganese or bauxite.

546. This then is the traditional background against which modern Aboriginal claims have to be considered.

The Land Council claims

547. 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.

548. In the words of the Central Land Council's submission, as put by their counsel,

'It was clear from our instructions that the title to be given to the Aborigines in respect of their traditional land must include the absolute right to all both on and in the soil itself including all minerals as well as gas and oil. This is a matter of particular importance to the Aborigines. We believe that any attempt to compromise in relation to this question of mining or minerals may largely undo the benefits of granting to them ownership of their land. To grant to Aboriginal communities with the one hand a title to their land and to take from them with the other the capacity to regulate or prevent the entry upon that land of other persons to conduct what may turn out to be extensive mining operations, may be to largely destroy the rights being given. . . . The whole purpose of giving back to Aborigines their land is to enable them to enjoy the traditional rights of ownership in respect of such land. . . . The existence of extensive and largely (from the Aboriginal viewpoint) uncontrolled mining operations, the existence of large numbers of workers in an Aboriginal setting with the inevitable presence of liquor in large quantities, may do much to destroy what the granting of traditional land is aimed at preserving'.

549. The Northern Land Council's submission was to the same effect, and it particularly stressed the point that before 1964 it was impossible to obtain a prospecting or exploration permit on Aboriginal reserves which carried with it any right to develop any minerals found. The result was that mineral
exploration on reserves before that time was, for the most part, confined to small prospectors with entry permits. In 1964 the law was changed to encourage mining activities on Aboriginal reserves.

The present legal situation

550. Under the Mining Ordinance 1939-1972, exploration licences are granted for large-scale mineral exploration and give the successful explorer the right to apply for production leases.

551. Exploration licences have a maximum term of one year but can be renewed, subject to an automatic reduction in area by at least 50% except in the case of first renewal, for a total period of five years.

552. There is no right to renewal. Any renewal is a matter of discretion for the Administrator, and one of the things he is required to consider, in the case of land in an Aboriginal reserve, is ‘the continued interests, well-being and employment of Aboriginals in the vicinity’.

553. An application for renewal has the effect of continuing the existing licence in force, over the land applied for, until the application is either granted or refused.

554. The form of licence recently in use contained provisions intended to protect Aboriginal sites of special significance and to avoid interference with the social and cultural life of Aborigines. It also called for the greatest possible employment of Aborigines by the licence holder.

555. The licence holder was also warned that if his search was successful, his mining lease would provide for full consultation with Aborigines about the protection of sacred sites, and about contacts between company employees and Aborigines. Aborigines had to be kept informed of company activities and of areas likely to be affected by those activities. The lease would also provide for the employment, including job training, of local Aborigines, for the development of subsidiary enterprises by them to provide goods or services to the company and its employees, and for the ‘equity or other financial participation’ of Aborigines in the enterprise.

556. The lessee was also asked to note that ‘approval for the grant of a mining tenement to the land to which the licence relates may be withheld for a period not exceeding ten years, if in the opinion of the Administrator the granting of the tenement would be detrimental to the interest and well-being of the Aboriginal community affected’.

557. The Ordinance further provides for the holder of a mineral lease to pay a rental of fifty cents per acre per year and a royalty, in the case of Aboriginal reserve lands, of 21½% of the selling price of the mineral less costs of treatment and transport.

558. In recent years the income to Aborigines from mineral royalties from Groote Eylandt and the Gove Peninsula has been running at over $600,000
per year. It is expected to rise in a few years to between $1.5 million and $2 million.

The mining industry's submissions

559. The Australian Mining Industry Council has made several submissions to me on behalf of its members, which 'include virtually all mining companies of any substance'. The theme of those submissions can, I think, be fairly summarized as follows:

(a) The mineral wealth of this country is vital to its well-being; nothing should be done to stifle initiatives towards discovery and development.

(b) That wealth belongs to the whole community. No landowners should be in a position to lock away such valuable resources, and this is the present position in Australia.

(c) While the special problems and needs of the Aborigines call for government action, the interests of the rest of the community must not be forgotten.

(d) 'Any form of assistance which would significantly set the Aboriginal people apart from the rest of the community would result in the type of disruptive pressures which would be to the detriment of everyone, including the Aborigines.' A time would come when the Aborigines' special requirements for assistance had been met and they would then be placed 'in a position of privilege with respect to other Australians'.

(e) 'Before European settlement of Australia, the Aborigines' interest in minerals was restricted to the collection of various stones for cooking, weapon making and artwork. Traditionally, the minerals and metals of modern civilisation had never been a part of Aboriginal Life.'

(f) 'Geological formations and zones in which minerals can be found recognise no land boundaries, coastlines, man-made structures, townsites, reserves or land in use for other purposes. To maintain adequate access to the community's minerals, therefore, Governments must retain the power to grant exploration and mining titles over areas independent of other land use.'

(g) In granting land rights to the Aboriginal community, the land titles should not carry with them any measure of mineral ownership. 'Nor should the Aboriginal landholders be given the right of veto as against the Crown over access to the mineral within their lands.'

(h) In fact, mining development 'will occupy a minute proportion only' of the areas presently reserved for Aborigines in the Northern Territory. Only a few economically viable mineral deposits will be discovered.
(i) In the interests of the community as a whole, the rights of Aborigines in relation to any mineral activity which might take place on their lands should be granted within the same existing legal framework, and under the same governmental control, as apply already to other Australians. There would be no harm in the Aboriginal landholders being entitled to:

- rental payments,
- monetary compensation for temporary or permanent disruption or damage to the land surface, depending on the use being made of the land before mining took place,
- receipt from the Government of royalty payments imposed by it.

560. The submissions also explain why, in the view of the Australian Mining Industry Council, a right to negotiate for an interest based on the value of the minerals in the land would be undesirable. The existence of such a right in Aborigines (or other landowners), it is said, would inhibit mineral search because of the uncertain outcome of negotiations if minerals were found. A prescribed equity interest is said to be just as inappropriate. In some cases such a provision might make the difference between a viable project and one which is not viable for the mining company. Where the mining is part of an integrated process of metal manufacture there could be great difficulty in establishing the appropriate return to the landowner.

561. On the other hand it is conceded that negotiated equity participation is appropriate where the landowner has 'held the mining titles and taken the initiatives which have led to the development proposals'.

562. Further, it is not suggested that a company would not be permitted to offer equity participation by an Aboriginal community in its operations. This would be a matter for each company to consider in the light of the particular project it had in mind.

563. A practical argument in favour of royalty payments from an Aboriginal viewpoint is that they accrue earlier than dividends and are more consistent than equity earnings, thus allowing more certainty in economic planning by those receiving them.

564. One special submission by the Australian Mining Industry Council is that mining companies which had been operating and spending large sums of money before the change in government policy was announced in December 1972, should not be affected by any changes now made.

565. In particular, existing mineral agreements should not have to be re-negotiated because this would be unjust to the developer and 'could be viewed as making nonsense . . . of the legal system under which they were negotiated'.

566. On the other hand the Council concedes that 'if a full Aboriginal ownership of minerals policy were to be implemented it would be most difficult to treat established mineral enterprises separately from the new'. However it regards this as another argument against any such policy.

567. Submissions to the same general effect have been made by B.H.P., Queensland Mines and by the companies involved in the joint venture on the Gove Peninsula.
The right of veto

568. I have set out the mining industry's submissions in some detail, because, while accepting many of the points made, I am unable to accept the main result contended for. I believe 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.

569. The key words here, of course, are 'without consent'. I think it is likely, particularly in the longer term, that consent will generally be given. But this should be for the Aborigines to decide — with the one qualification that their views could be over-ridden if the government of the day were to resolve that the national interest required it. 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.

570. Having indicated the general nature of my main recommendation, I now proceed to deal with a number of detailed questions which arise.

Mineral survey

571. The first point I wish to make is one that I touched on in my first report. I said,

'If the government wishes or is willing to undertake a detailed survey of mineral resources on Aboriginal land, that would open up some possibilities which would not appear to apply to exploration by private enterprise. I have in mind, for example, the calling of tenders for development of prospective areas. Presumably such surveys would be made only after consultation with Aboriginal landowners. Whether those landowners would have any power to veto either the surveys or resulting mineral developments is a matter for further consideration'.

572. I still 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. I would see such surveys as an important part of the overall land use surveys referred to earlier.

573. With the results of such surveys available, Aborigines would be in a much better position to make considered decisions about mining developments.
574. I believe that, when it was properly explained, such a survey would not be opposed either by the Land Councils or by particular landowners. But in view of the concern that might be caused by the laying out of exploration grid lines or by test drilling or seismic surveying, it is my view that activities such as these should not be carried out without Land Council consent. Certainly mining developments should only follow in one or other of the circumstances referred to above — that is to say, by consent or where the national interest requires it.

Consent to mining ventures

575. 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 chances of mining later taking place or of the likely impact on them of such developments.

576. The Northern Land Council suggests, and I agree, that all applications for exploration permits should continue to be processed, in the first place, by the Mines Branch of the Department of the Northern Territory. In this way, before Aborigines are asked to consent, they can be assured that the mining company concerned is reputable and has the first claim to any right to develop a particular area by virtue of priority of application or previous work.

577. 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.

578. It will then be the responsibility of the Land Council and its officers to explain the offer and its implications to the Aboriginal community and the landowners directly involved and to see if they consent.

579. In order that the Aborigines can be shown as clearly as possible what they are being asked to agree to, the company will have to supply a form of impact statement, setting out what its purpose is, what it hopes to achieve, 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.

580. 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.
581. 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.

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

583. I appreciate the difficulty of a mining company in making such forecasts beyond the exploration stage without knowing the extent of any discoveries that may be made. However they must have some ideas on such subjects before entering on the very expensive task of exploration; they certainly would have far more idea of the probabilities than would the Aborigines they were dealing with.

584. It is only reasonable that they should take into their confidence the people who would be directly affected by their activities. And they could not be heard to say that Aborigines had agreed to the mining of their land unless those Aborigines were well informed as to what would be involved.

585. In addition to the consent of the traditional owners of the land, I think 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.

586. It is submitted by both Land Councils that their consent also should be required, and I endorse this stand. The Councils should have the necessary expertise available to them to ensure that they receive good advice. They will learn from case to case and will be able to secure uniform minimum conditions. They will also be able to take into account the interests of other Aborigines remote from the point of search but, for example, on the main route in and out from it, who could be adversely affected by the proposed operations.

587. Finally I think it is necessary that the Minister for Aboriginal Affairs should be required to give his approval before an exploration licence is granted. The obtaining of the other consents depends entirely upon the regional Land Council. It has the responsibility for saying that they have been obtained and the mining company must be entitled to rely on that. In case there is any suggestion of inefficiency or impropriety in the actions of the Council or its employees, I think it is a necessary safeguard that the Minister should be able to have a final power of veto or delay. I would expect him to act on the recommendation of the Land Council unless there was something in the agreement reached or in the surrounding circumstances to put him on his guard. It is not suggested that he, or anyone on his behalf, should go over all the ground again unless there was something about the proposals which caused concern.
The nature and amount of mineral payments

588. The terms and conditions to be offered, in return for Aboriginal consent to explore, would have to be a matter for negotiation in each case. They would no doubt depend to a large extent on the keenness of the explorer to obtain a permit. Aboriginal communities and their advisers will be well aware that offers already made in two or three cases involve payments of tens of thousands of dollars per year over the period of exploration.

589. I think it is important that any such payments should go to the relevant community or communities which would be affected by the exploration activities, and not to individual landowners. Provided the monies are to be spent on community purposes they will appear in their true light as a compensation for disturbance and not as an inducement.

590. On the other hand, statutory permit or licence fees should go to the clans, for equal division among adult clan members, as a recognition of clan ownership of the area. Where more than one clan is concerned the proportions will have to be at the discretion of the Land Council, which would also be responsible for actual distribution of the monies. Clan members resident in the area would of course benefit both directly and also indirectly as members of the community.

591. I realise that this negotiation of payments for the right to an exploration licence represents a departure from the tentative scheme I set out in my first report and asked all concerned to consider (paras. 252-9). However I am now convinced that the circumstances of each mineral venture are so different that it is simply not possible to lay down in advance conditions which will be fair both to Aborigines and to mining companies. I might add that the Department of Aboriginal Affairs has put the same view to me in its submissions.

592. In several instances already, mining companies have negotiated terms with Aboriginal communities and their advisers, though some of those negotiations have been suspended pending the outcome of this Commission’s inquiry. Certainly mining companies are frequently called upon to negotiate terms with existing licence holders before entering into a joint venture or a farm-out arrangement. Indeed the Australian Mining Industry Council has made it clear that its members would be quite prepared to negotiate with Aboriginal groups holding mining permits. I can see no difference in principle in negotiating with Aboriginal groups having land rights which include a degree of control over mining.

593. I appreciate that mining companies may be reluctant to negotiate with Aborigines who have no properly qualified advisers or negotiators to represent them. It is essential that Land Councils have the necessary funds to secure such assistance and that government should also accept an ultimate responsibility to see that no injustice occurs.
594. Such negotiations will become particularly important if minerals are found in commercial quantities.

595. As I have already said, it must be accepted in principle that a successful explorer must have the right to develop on fair terms. I would only limit this by saying that the proposed development must be broadly within the description given at the time permission to explore was sought. For example, if permission were given on the understanding that there would be no treatment of ore on the site, and the nature of the discovery led the developer to propose such a treatment works, the Aborigines would clearly be entitled to reconsider their consent.

596. The fair terms to be negotiated would include royalty payments and might include some equity in the enterprise.

597. I do not recommend that Aborigines should be legally entitled to an equity. I say this partly because of the difficulty of legislating for any particular share, bearing in mind the differing profitability of different enterprises. There is, however, an even more cogent reason for my unwillingness to make such a recommendation. It is that I believe royalty payments will often prove to be more valuable to Aborigines and I think they should be given most attention.

598. I see the right to appoint a Board member to the enterprise (sometimes given as a supporting reason for an equity holding) as a doubtful benefit. There may well be advantages to an Aboriginal community in remaining at arm's length from a mining company rather than being implicated in its decisions.

599. On the other hand it is clear that each percentage of royalty payment is worth several percentage of equity involvement. This is necessarily so, firstly because of the operation of company tax at a rate close to half profits, and secondly because royalties are calculated on the sale price before production costs are deducted. The comparison will vary from one enterprise to another depending on the ratio of those costs to selling price, but it is significant that one mining company in the Northern Territory offered Aborigines the option of various levels of royalty and equity. In their offer they equated each one per cent of royalty with eight per cent of equity. I understand a similar result is arrived at by studying the sales income and the profits of one of the major mining companies over the last few years and assuming that their mining operations had been carried out on Aboriginal land.

600. As to what the appropriate royalty rate should be, I can only say that this would have to be either laid down by legislation as at present, or negotiated by government in a particular case (as with Nabalco), since the royalty is payable in the first instance to government and I do not suggest any change in that arrangement. If the mining company had agreed at the time it received its exploration licence to any higher rate, or to a cash payment, or to a share of equity, that agreement would of course be observed.

601. The Northern Land Council has suggested that the basic royalty rate for mining on Aboriginal land should be raised from 2½% to 3½% (the amount paid by B.H.P. at Groote Eylandt because the mission had an exploration permit on behalf of Aborigines which B.H.P. purchased). This
seems to me to be a reasonable claim, but I do not feel able on the information available to me to make a firm recommendation that it should be accepted. This would depend upon a careful consideration of the economics of the various branches of the mining industry. I can only ask the Government to give careful consideration to this claim and also to amend the relevant section of the Mining Ordinance 1939-72 so that royalties higher than the minimum could be negotiated in appropriate cases.

The receipt of mineral payments

602. This brings me to the difficult question as to how such mineral payments as may be made should be divided between the Aboriginal groups, communities and organizations concerned.

603. The Northern Land Council has submitted that all statutory payments for licence and lease fees should go to the traditional owners of the land — the adult members of the clan or clans concerned. It would accept responsibility for such distribution. Apart from any special arrangements a mining company might make with a local community, all other payments, including all statutory royalty payments, would come to the Land Council for distribution. The Land Council would retain a portion of these for its own administrative purposes and would divide the remainder between the local community and the Aboriginal Benefits Trust Fund. This organization, for the distribution of royalty payments for Aboriginal enterprises and community purposes, seems to be working well and to have the confidence of Aboriginal people. It has a majority of Aboriginal members and there is no good reason to suggest any changes in its structure or method of operating.

604. The proportion which the local community should receive was a matter of debate within the Land Council, where opinions ranged from 20% to 80% but there was a general view in favour of an even division.

605. The Central Land Council, on the other hand, saw all the monies from mining coming to it for distribution according to needs.

606. I think this is a matter which must be reviewed by the Government on request from the Land Councils from time to time in the light of the amounts of money involved and the respective needs of Land Councils, local communities and other communities. At present there is so much money to be spent in each community to bring living conditions and job opportunities to a reasonable level that there is no possibility of any Aborigines becoming rich from mineral income. This would tend to justify suggestions that higher proportions should be spent locally. Further, any imbalance could be met to some extent by directing other available funds elsewhere.

607. On the other hand it is important to control expenditures so that areas of greatest need are attended to first and funds are not lying idle,
having been put aside for a particular local community project which is perhaps delayed for some planning reason.

608. I also see great merit in the Land Councils having a substantial source of income not dependent on government approval.

609. In the final analysis an arbitrary decision has to be made and tested in practice to see how it works. Accordingly I recommend that:

(i) all statutory payments for permits and leases be paid over by the Government to the regional Land Council for distribution among traditional owners,

(ii) all royalty payments be paid over by the government to the regional Land Council for distribution as follows:
   - two tenths to be retained by the Land Council,
   - two tenths to be paid to the other regional Land Council,
   - three tenths to be paid to the local community, and
   - three tenths to be paid to the A.B.T.F.,

(iii) if there is no community established within 60 kilometres of the mineral lease at the time it is granted, the local community share of royalties is to go to the A.B.T.F. for distribution as it sees fit, but having particular regard to any community which may be affected by the development, or having among its members any of the traditional owners of the land concerned,

(iv) if there is more than one community established within 60 kilometres of the mineral lease the three tenths share of royalties is to be apportioned between them as the regional Land Council may from time to time decide.

(v) any additional payments negotiated with the mining company are to go to the Aboriginal council or approved corporation named in those negotiations, but it shall be an offence for any payment, other than a statutory rental payment, to be made to individual Aborigines or groups of Aborigines either directly or indirectly in connexion with the granting of any licence, permit or lease.

610. So far, in discussing negotiations between mining companies and representatives of Aborigines, at both exploration and development stages, I have referred only to questions of money. I would expect that any such negotiations would also deal with other matters such as Aboriginal employment, the protection of sacred sites and arrangements for liaison between mining company officers and local Aborigines.

611. The protection of sacred sites is a particularly difficult matter at the exploration stage because such large areas may be involved and it will not always be possible to nominate in advance the routes to be followed by survey parties and others. A number of different clan areas may be affected. The careful listing of known sites together with the regular employment of the right guides, seem to offer the best prospects of avoiding trouble. The Land Council must lay down its reasonable requirements and the mining company must observe them.

612. Difficulties could arise between the mining company and the Land Council at the stage when the lease is being negotiated. These could relate, for example, to any of the matters listed in the second last paragraph or to
the adequacy of the statement referred to earlier in which the company
described the mining operations it envisaged if its exploration were success-
ful.

613. Such difficulties would have to be resolved by conciliation and, if
necessary, arbitration, sponsored by the Government. Without trying to
prescribe a complete system, I envisage a person or persons appropriate to
the particular circumstances, being appointed by the Ministers for Abori-
ginal Affairs and Minerals and Energy in consultation.

614. I have said at the outset of this report that I have not felt able to
endorse all that Aborigines have asked for under the heading of mineral
rights. In particular I feel that the Government must be able to act if it
is, on balance, contrary to the national interest for a particular mineral
prospective to be locked up by the Aboriginal landowners of the area. In
reaching its decision, the Government will no doubt have regard not only
to the need for the particular mineral but also to the fact that the national
interest requires respect for Aboriginal rights and Aboriginal wishes.

615. I have made it clear that, with this qualification, Aborigines should
be able to exercise most of the rights of an owner of minerals — particularly
the rights to decide when exploration for minerals shall not take place and
to negotiate some of the terms on which it may take place.

616. I have stopped short of recommending Aboriginal ownership of
minerals for several reasons. The chief of these is my belief in the general
approach adopted in this country that minerals belong to all the people. 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 lands and their privacy than other citizens would lose in similar
circumstances. But this does not justify a claim to ownership.

617. 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.

618. Thirdly, the whole of Australian mining law is based on the
assumption that minerals belong to the Crown. To provide otherwise in a
particular case could well create problems and sorting these problems out
could delay necessary legislation. One point which occurs to me, for
example, is that the Government is at present able to prevent mineral
development for strategic reasons or for economic reasons or to protect the
environment. This situation could well be complicated by an unfamiliar
declaration of mineral ownership in persons other than the Crown. As it is,
the recommendations I have made on this subject could be largely adopted
by administrative action and any amending legislation could wait.

619. I am conscious also that my recommendations set out earlier about
the seaward limit of Aboriginal lands, reduce the chance of Aborigines
securing a direct financial benefit from any offshore petroleum or minerals.
Of course the chances of such developments occurring even within a twelve
miles seaward limit of Aboriginal lands are slight. In any event I can see no
good reason for recommending otherwise than I have done.
Existing rights in minerals

620. Because of the freezing of exploration licences on Aboriginal reserves in December 1972 there is now none expressed as being current in the Northern Territory (although some are continued in operation by the fact that applications to renew have been received and not determined). There are however a number of companies which can say that they have spent varying amounts of money in the reasonable expectation that permits previously held would be converted into the newer form of exploration licences.

621. There are in fact 29 exploration licences which were granted in 1972 to 17 different applicants. Five of these licences were taken out by Aboriginal communities and, in relation to four of those, farm-out agreements were entered into with an outside exploration company.

622. In addition there are 175 applications for licences on reserves pending. A number of these are by or on behalf of Aborigines. Most others contemplate Aboriginal involvement, following on a policy statement calling for such involvement made by the Government in January 1972. In 22 cases, involving 8 applicants, the applicant previously held an authority to prospect.

623. No doubt all those companies which can show substantial expenditures should and will receive priority when any areas of Aboriginal land become available for exploration under any new arrangements that may be decided upon.

624. However I think it is essential that they should all be required to adhere to the new arrangements and should not, as the Australian Mining Industry Council has urged on me, be exempt from them.

625. When the understandable expectations of these companies that they would be able to continue exploration under the rules which governed them to begin with, are weighed against the equally reasonable expectation of Aborigines that their wishes about reserve lands will now be respected, I have no doubt in my mind which expectation must be disappointed.

626. The capital involved in exploration was risk capital and companies have been on notice for several years that Aboriginal wishes could no longer be ignored.

627. I deal in detail a little later with the various companies holding mineral or petroleum leases in the Territory, but before doing so I should say that I think it is important that the freeze on exploration licences should continue for some time yet.

628. It should certainly remain for a period sufficient to enable decisions to be reached on this report, necessary land rights legislation to be introduced, and Land Councils (if their recommended role is approved) to engage staff and to become used to carrying out their more straight-forward functions under the new system, so that they can handle any mining applications referred to them appropriately when the time comes.
629. In these circumstances I think it should be accepted that no exploration licences over Aboriginal land will be issued before at least January 1st 1977. On the other hand I see no reason why such applications should not be brought forward for consideration by the Mines Branch and the Land Councils during 1976 if the necessary legislative and administrative steps to initiate the new arrangements are completed by mid-1975.

630. It has been suggested to me, particularly by the Council for Aboriginal Affairs that there should be a much longer freezing, for at least 20 years, of mineral exploration on Aboriginal lands. I well understand the reasons behind this submission but I feel that Aborigines should be given a choice in the matter. It is, as I have said before, vital that that choice should be made on full information and be a free choice in the fullest attainable sense of that term.

631. There are several cases in which mineral leases over Aboriginal reserves are already held by mining companies. Each of these calls for some special consideration in the light of what is said above (paras. 123-6) concerning the re-negotiation of rights and agreements which were granted or entered into on the assumption that Aborigines had no land rights.

B.H.P. (GEMCO) at Groote Eylandt

632. In 1961 the Church Missionary Society took out a permit on behalf of the Aboriginal community at Groote Eylandt, entitling it to prospect and seek mining titles in that area.

633. Approached by B.H.P., the Church Missionary Society surrendered its permit in favour of the company. In an agreement executed on the 7th June 1963, B.H.P. undertook to pay the sum of $10,000 annually to the Society for as long as the company retained mining titles. In addition, a royalty is paid, which in 1967 increased to 1 1/2% of the value (as determined by the Northern Territory Mining Ordinance for statutory royalty purposes), of all ore shipped in excess of 100,000 tons in any one year. The $10,000 and the royalties, which now exceed $150,000 per year, are paid into the Groote Eylandt Aboriginal Trust Fund for Aboriginal community purposes on the island. There are seven Aboriginal trustees and four non-Aboriginal advisers on the board administering the fund. Additional royalties are paid under the Northern Territory Mining Ordinance which go mainly to the Aborigines Benefits Trust Fund, with one tenth of them also going to the Groote Eylandt communities.

634. Groote Eylandt Mining Company (GEMCO), is a wholly owned subsidiary of B.H.P. Special mining leases covering in total an area of 33 sq. km were granted to GEMCO, commencing on 25 July 1964, for a period of 21 years with the right of renewal for at least a further 21 years. These leases contain provisions protecting the right of movement of Aborigines over the leased land.
635. In a letter of understanding of 13 May 1965, agreement was reached between the Commonwealth and B.H.P. on various matters which included an agreement by the company to consult with Aborigines and the Church Missionary Society before applying for further mineral leases.

636. On 30 May 1966, four special purpose leases for a wharf, town site, industrial site and green belt were granted to GEMCO for a period of 99 years.

637. On 9 September 1969, the Commonwealth, GEMCO and B.H.P. entered into an agreement whereby the Commonwealth agreed to grant to GEMCO special mineral leases of the 'western areas'. These leases have not yet been formally executed.

638. Generally speaking, relations between GEMCO and the Groote Eylandt communities at Angurugu and Umbakumba have been quite good. The company employs quite a few Aborigines on its payroll and has undertaken a training scheme designed to teach young Aborigines to handle heavy equipment.

639. The company is required by the terms of its lease to reinstate country from which the manganese has been taken and, in the areas where mining is completed, those reinstatement works are beginning to take effect.

640. The works township at Alyangula is reasonably remote from the two main Aboriginal communities and, probably because it has no hotel, does not seem to constitute any social problem for those communities.

641. It is expected that the extraction of manganese will continue for a number of decades yet and so it is important that good relations between the company and local Aborigines be cemented. For this reason I believe that the arrangements for royalty payments, Aboriginal employment, the designation of further areas for mining, liaison generally and any other matters the communities wish to raise, should be formally negotiated between the company and the Northern Land Council on behalf of the two communities.

642. Matters to be discussed will include the termination of existing special purposes leases in favour of new leases from the Arnhem Land Trust. 643. The company has submitted to me that, in its case, no re-negotiation is called for. It has said further that in all cases of re-negotiation of existing agreements 'this must be a matter for government alone, with the government accepting full responsibility for any compensation either to the Aborigines or to the companies whose rights may be affected'.

644. However the Aborigines of Groote Eylandt are very conscious of the fact that they were hardly consulted at all before the original agreements were entered into.

645. I believe that the time has now come when they should, through their Land Council, have direct control of their own affairs. As the landowners of Groote Eylandt they must now inevitably have a number of direct dealings with the company. I do not think it likely that any great difficulties will be encountered in conducting the negotiations I have suggested. If these recommendations are accepted, the company will be able, if it chooses, to insist on the maintenance of all its existing rights and interests and offer no concessions at all. I do not imagine that it will do so.
646. The project at Gove is a joint venture in which Swiss Aluminium Australia Limited has a 70% interest and the Australian partner, Gove Alumina Limited, has a 30% interest.

647. The statutory rights and obligations of the two companies in the joint venture are found in the Mining (Gove Peninsula Nabalco Agreement) Ordinance 1968, which approves and incorporates the agreement entered into between Nabalco Pty Ltd. and the Commonwealth of Australia on 22 February 1968. On 30 May 1969, Nabalco Pty Ltd. assigned its interests in the agreement to the two abovementioned companies. The project is managed by Nabalco Pty Ltd. and all undertakings with the Government have been entered into by the participants in the joint venture.

648. A special mineral lease provided for by the agreement, was entered into on May 30th 1969. It was expressed to be for a period of 42 years with a right of renewal for a further 42 years. The lease contains a clause protecting the right of Aborigines to move across the land covered by it. It also provides for the calculation of royalty payments and a review of these payments every 7 years. In addition to the special mineral lease, covering over 20,000 hectares, a number of special purpose leases have been granted, presently covering a total area of approximately 1800 hectares. This includes over 650 hectares for the town site of Nhulunbuy, which now has a population of some 3500 people.

649. The Yirrkala community in its submission has said that leases to the mining company were granted without the consent of the Aboriginal community and that in future there should be real consultation between the community and the company. A specific proposal of the Yirrkala community is that royalties with the company be re-negotiated. Their submission regarding re-negotiation of the agreement with Nabalco extends also to other matters affecting the community, in particular the close proximity of the mining lease to Yirrkala.

650. The community, for the purpose of re-negotiation of the Nabalco agreement, seeks the transfer from the Commonwealth of its interests in that agreement so far as they relate to the question of royalties or other matters of a commercial nature.

651. I understand from the companies engaged in the joint venture that they would resist any substantial increase in royalty payments, either now or at the time provided for review, on the ground that the enterprise is only marginally profitable.

652. It is I think conceded that the Gove bauxite supplies a vital need of the Swiss company by ensuring a secure supply for the foreseeable future. This came at a time when the company had recently lost its main previous source of supply. But the vertical structuring of the industry is such that there are said to be only marginal profits, if any, in alumina production at Gove. Indeed it is said that the Australian joint venture company is only able to participate because of its right to export on its own account forty million tons of untreated bauxite in the first twenty years.
653. I have no reason to doubt these statements, but I also have no way of establishing whether the comparative unprofitability referred to is unavoidable or derives from the way that international companies in this industry have seen fit to arrange their affairs.

654. The establishment of the alumina plant at Gove is said to have been at the insistence of the Australian Government; it would have suited the Swiss company better to have simply exported the raw material. The plant now has a capacity of one million tons of alumina per year.

655. Because of the huge sums involved (over $300 million of capital investment) and the physical size of the undertaking, it is obviously not possible to retrace many of the steps already taken.

656. Indeed the joint venturers have urged on me that the whole of the Gove Peninsula should be regarded as 'an area requiring special consideration', and Gove Alumina Ltd. has specifically submitted that all dealings in the future, as in the past, should be with the Government only. The Government would then make any necessary arrangements with Aboriginal landowners.

657. I agree that the area must receive special consideration, but it would be quite impossible to exclude the Yirrkala area from the general operation of Aboriginal land rights. It was, after all, the Aborigines of this area who first sought to establish such rights.

658. Since the general recommendations I have made include the preservation of all existing rights over Aboriginal lands, the joint venturers would be in a position, if these recommendations are accepted, to stand upon those rights. These rights include a condition of the agreement that the Government will not 'take or permit to be taken any ... discriminatory action that would deprive the Company ... of full enjoyment of the rights granted or to be granted to the Company' under the agreement.

659. However this is yet another case where the companies and the local Aborigines will have to live together for many years and the new landowning status of Aborigines must, in my opinion, be brought into account.

660. Accordingly I believe that, in due course, there are a number of matters to be negotiated between the companies and the Northern Land Council on behalf of the local Aborigines.

661. In the first place, existing special purpose leases should be rescinded in favour of similar leases granted by the Aboriginal landowners. The rents presently provided for should be paid to the Arnhem Land Trust as soon as it becomes the legal owner of the land. The Northern Land Council, on behalf of the local Aborigines, may wish to attempt to re-negotiate those rental levels.

662. In passing I note that counsel for the Yirrkala community submitted that the amounts presently paid by the companies for the town site appeared inadequate and that house and shop rents should be paid directly to Aborigines. It has also been suggested by the Council for Aboriginal Affairs that businesses should be required to pay some share of profits to Aboriginal landowners. I am not prepared at this stage of events to make any recommendation along these lines, firstly because at least some of the largest businesses are already heavily subsidized by the companies and apparently
would not otherwise operate in Nhulunbuy, and secondly because I believe the administration of individual rentals in Nhulunbuy would be quite beyond the capacity of the emerging Aboriginal organizations for a number of years yet.

663. Perhaps the greatest problem I can foresee in the future will come when the companies seek further land for the disposal of the red mud effluent from the alumina works. Already a substantial area of swampland is covered by this material which is obviously deadly to all living things. The present special purpose lease for this purpose covers over 70 hectares and the joint venturers are now seeking the use of further land, already the subject of leases for other purposes. A letter of understanding from the Government to Nabalco dated 23 February 1968 undertook to grant progressively and at the rental rate already fixed, such additional areas 'as are reasonably required for red mud disposal for each next succeeding period of 15 years' after the first 16 years of operation.

664. I feel sure that Aborigines will need to be convinced that no other course is available to the companies before they would agree to the handing over of any further land for this purpose. They will no doubt also require expert advice from ecologists concerning the likely effects of using any particular proposed area.

665. I believe that careful and frank discussions would produce agreement even on this difficult issue when the time comes. If not, then as I see it the Government would have to use its over-riding power to determine where the national interest lay and to dictate terms which it considered fairest to both the companies and the Aborigines, consistent with its obligations to both.

666. The same comment applies to other needs which the joint venturers may find for additional land. For example, there is likely to be a need to expand the town site. This could occur not only for reasons relating to the joint venture, but also because of the Government's plans to treat Nhulunbuy as a regional centre for north-eastern Arnhem Land.

667. This brings me to the further problem that the joint venturers would like to hand over responsibility for the township if they could arrange suitable terms with the Government. There would no doubt be good reasons, so far as the residents of Nhulunbuy are concerned, for the establishment of normal local government in place of company administration.

668. I do not feel able to comment usefully on any such development beyond saying that the views of the Aboriginal landowners must be sought, through the Northern Land Council, before any such steps are taken. Their financial and social interests would be very much involved in such a move and would have to be properly protected.

669. Finally, before leaving the question of Nabalco, I draw attention to the fact that the company, apparently as a matter of policy, employs and trains practically no Aborigines. When I visited Nhulunbuy in May 1973 there was one Aboriginal girl in the company's office. The company does offer contracts to Aboriginal groups to provide goods and services of various types and I agree that this is often the best way of providing work opportunities for Aborigines. But if the local community wishes to raise questions of training and employment, Nabalco should give them close consideration.
This is particularly so since the letter of understanding dated 23 February 1968 provided 'The lessee will employ local residents of the Gove Peninsula so far as it is practicable, commensurate with skill and training of the personnel . . . The lessee will endeavour wherever possible, to train Aboriginal personnel so as to fit them for employment by the lessee . . .'.

Queensland Mines Limited at Nabarlek

670. The company's present title to the Nabarlek deposit devolves primarily from a non-assignable authority to prospect originally granted to Mrs G. D. Stevens.

671. On 23 December 1969, Queensland Mines entered into an agreement with Mrs Stevens, in consideration of the payment of $42,500 to her, to prospect, explore, test and evaluate the area for a period of two years, with an option to purchase.

672. In 1970, as a result of this exploration, the Nabarlek uranium deposit was discovered. During this period Aborigines of the Oenpelli community raised objections to activity being conducted in certain areas of importance to them near the Nabarlek hills. When additional leases were applied for in a westerly direction, objections were lodged on the grounds that the area covered by lease applications was a sacred site. A compromise was reached which provided some protection for the immediate area of the site. The objections were withdrawn and a payment of $5,000 was made by the then Managing Director of the company to the Aboriginal community, apparently as a goodwill gesture.

673. On 2 December 1971, a new agreement was entered into between Mrs Stevens and Queensland Mines Limited, whereby, in consideration of the payment of $600,000 plus royalty equal to 1% of the value of uranium mined from the areas. Mrs Stevens agreed to transfer to the company any exploration licences issued to her in respect of the authority to prospect.

674. On 22 December 1971 a mineral lease was granted to Mrs Stevens and subsequently transferred to Queensland Mines Limited. The lease was granted solely for the purpose of effecting settlement of the agreement entered into between Mrs Stevens and Queensland Mines Limited, pending issue of a special mining lease over Nabarlek.

675. In a letter dated 8 May 1972 from the Superintendent of Oenpelli Mission, to the Secretary of the Department of the Northern Territory, doubts were expressed as to the accuracy of the stated facts which led to the withdrawal of the Aborigines' objection to mining lease applications in the Nabarlek area, referred to in para. 672 above. A formal objection was lodged by the Oenpelli Aborigines in a letter to the Administrator dated 22 June 1972.

676. Queensland Mines applied for, and was granted, additional exploration licences in its own right. These expired on 31 December 1972. Renewal
was effected late in 1972 to date from 1 January 1973. 50% of the exploration areas were surrendered. The company is thus the registered holder of exploration licences which by virtue of renewal applications are still in force. These licences cover the same area as the original authority to prospect, but are now subject to the 50% reduction referred to.

677. Discussions between the Government and Queensland Mines relating to the grant of further exploration licence applications and the grant of a special mineral lease for a 21 year period over Nabarlek resulted in a draft agreement being put forward for discussion. The agreement was to provide, among other things, for the protection of Aboriginal interests such as employment, opportunity for equity, or other financial participation, and protection of sacred sites. A letter from the solicitors for the Nabarlek Aborigines, dated 22 June 1972 expressed dissatisfaction with these clauses, particularly because they were insufficiently positive to create covenants binding upon the company.

678. Subsequent correspondence between the solicitors for the Nabarlek group and Queensland Mines has involved negotiations regarding the community's participation in the Nabarlek development.

679. In a letter dated 19 December 1972 the Secretary of the Department of the Interior wrote to Queensland Mines saying that he was authorised to assure the company of the grant of leases subject to several matters, one of which was 'the outcome of discussions between the company and the legal representatives of the Aborigines concerning arrangements for the Aborigines to share in the financial and other benefits of the venture and to provide safeguards for reasonable Aboriginal concerns in the area'.

680. On 26 July 1973, Queensland Mines made the Aborigines an offer which I can only describe as contemptuous, which amounted to arranging the sale to them of 173,040 shares in the company at the then full market price of $1.70 per share. This offer was rejected by the Nabarlek Aborigines who reiterated their opposition to any further exploration or mining development at Nabarlek or upon the other exploration licences held by Queensland Mines Limited.

681. In a letter of 22 February 1974, Queensland Mines made a new offer to the Nabarlek group of a lump sum payment of $600,000, and an extra royalty on all minerals extracted from any mining lease areas within the Arnhem Land reserve which the company might acquire, at a rate of 1½% of the value calculated in accordance with the Northern Territory Mining Ordinance.

682. The solicitors for the Nabarlek Group in a letter to Queensland Mines, have now indicated that the new offer is not acceptable to the Aborigines and their objection to the mining development would be maintained.

683. I have no hesitation in recommending that this is a case in which the Aboriginal view should prevail.

684. The proposed mining activity is said to involve only some forty workmen working with bulldozers and trucks for two dry seasons to dig out an open cut mine of ten acres. After some 440,000 tons of ore had been removed from stockpiles, waste dump and stockpile areas (but not, of course, the open cut mine) would be regenerated. Even if further ore bodies
were discovered 'it is not in contemplation' that there would be any treat­
ment works at Nabarlek.

685. In spite of these facts and the not unreasonable financial offer now
made to the Aborigines by the company, it is to my mind unthinkable that
a completely new scheme of Aboriginal land rights should begin with the
imposition of an open cut mine right alongside a sacred site. The fact that
a very poor group of people (in terms of private or community property)
have turned down an offer which would bring them $600,000 at first and
much more over a few years, shows how strongly they feel about it.

686. I am also conscious of the fact that if the company were to decide to
develop some of the nearby lower grade deposits which it has discovered,
the impact of its activities would be much greater and would last much
longer than is suggested in para. 684.

687. I have expressed my opinion on this matter because it is my under­
standing from the submissions made to me that both the Aborigines con­
cerned and the company have invited me to do so. There is the additional
reason that I believe much of the good which may be expected to flow
from the introduction of a land rights scheme would be undone if a
different result from the one I have recommended were reached in this
case.

688. It is no part of my function to make recommendations as to how the
company's contracts to supply uranium should be fulfilled or otherwise dealt
with, nor to suggest ways in which any claims which the company might
make for compensation should be handled. I have however given the com­
pany's arguments on behalf of its customers and its shareholders full weight
before reaching my conclusion on this matter.

Western Nuclear (Australia) Pty. Ltd.
in the Bulman area.

689. These leases were originally granted in 1955 and come up for renewal
in 1976. I understand the leaseholder is not active at present. The principles
discussed in relation to other cases would also apply to this case.

G. F. Parkinson at Wagait

690. I have no details concerning this small lease and, again, the same
principles would apply.
Utah Development Co. at Daly River

691. In addition to the mineral leases set out above, the Utah Development Co. holds a coal licence under the Northern Territory Coal Ordinance. I understand that the licence covers 1000 square miles (2590 sq. km) and was granted in 1971 for a nominal term of five years, but on the understanding that it would be reviewed each year. There are a number of special conditions applying to the licence which are designed to protect Aboriginal interests. I understand that the company is, in fact, not active in the area.

692. In my view the licence should not be renewed except with the approval of, and on terms accepted by, the Northern Land Council acting on behalf of the traditional owners and local communities.

Petroleum permits and licences

693. I see no reason why the general principles applying to mineral exploration should not also apply to petroleum exploration. I suggested this in my first report (para. 243) and have received no submissions to the contrary.

694. Under the Petroleum (Prospecting and Mining) Ordinance 1954-1968, only petroleum permits (exploration titles) and oil licences (an intermediate form of tenure to permit the study of possible developments) have so far been issued. No production titles have been granted in the Territory.

695. Four of the petroleum permits granted cover parts of Aboriginal reserves. The Ordinance provides that permits and leases relating to reserve lands may be made subject to conditions and restrictions for the protection of the interests and well-being of Aborigines on the reserve.

696. The Ordinance provides also for payment of royalties at the rate of 10% which, in the case of reserves, would be payable to the Aborigines Benefits Trust Fund.

697. The four permit holders and the reserves over part of which they hold their titles, are as follows:

- Magellan Petroleum Australia
- South Pacific Petroleum
- Magellan Petroleum (N.T.) Pty. Ltd.
- United Canso Oil & Gas (N.T.) Pty. Ltd.
- Aust. Aquitaine Petroleum Pty. Ltd.
- Yuendumu and Lake Mackay
- Haasts Bluff
- Daly River and Wagait

698. Very large sums of money, running into millions of dollars have been spent and are planned for each of these permit areas.
699. The two oil licences referred to relate to the Mereenie oil and natural
gas field which is in the Haasts Bluff reserve. The development of this field
depends upon the finding of a market for the products which the Govern-
ment is willing to approve. The same is true of the natural gas field known
as the Palm Valley field which is situated almost entirely on the Hermanns-
burg special purpose lease and will therefore also be on Aboriginal land if
the recommendations of this report are accepted.

700. Magellan Petroleum Australia Ltd., the holder of the largest interest
in the Mereenie and Palm Valley fields, has made a submission to the
Commission in which it says that the licencees have, with the concurrence
of the Government, refrained from taking out the leases over the Mereenie
field to which they are entitled under the Ordinance. This is because of the
absence, at present, of a market for production from the field. The Palm
Valley permit holders are also, it is said, ‘entitled as a right to the grant of
a lease’.

701. The company goes on to say that,

‘any deprivation or diminution of such rights other than in accordance with
the requirements of the Ordinance in contemplation at the time at which
such expenditures were incurred would, it is submitted, constitute
expropriation’.

702. So far as Aboriginal land rights are concerned, the company says,

‘Any provision of means to satisfy the reasonable aspirations of Aborigines
to rights in or in relation to land ought properly to be accomplished at
the public expense or by means of conditions attached to the grant of
future concessions for exploration for minerals or petroleum. Provision of
such means cannot, with due deference to the rule of law, be accomplished
by the expropriation of the existing vested proprietary rights of individual
persons or corporations.

The wellhead and other facilities which will require to be installed for the
production of the Mereenie and Palm Valley fields will occupy a negligible
portion of the surface area of the lands in question. The exploitation of
these fields, therefore, would not interfere with the vesting in or to
Aborigines of surface rights to the lands which contain these fields’.

703. I do not see the future development of either of these fields as con-
stituting any great problem in the field of Aboriginal land rights.

704. The financial interests of Aborigines would be well served by the
appropriation of the 10% royalty payment for their benefit.

705. There are ample powers in the Government to control the way in
which any development takes place. The Government will no doubt use
these powers to see that Aboriginal interests are protected. In particular,
any damage to sacred sites can be avoided by these means.

706. In view of the nature of the work, and the small numbers of workers
involved by comparison with mining ventures, there will probably not be
any substantial opportunities for Aboriginal employment. However the oil
companies would no doubt be prepared to offer jobs to local Aborigines
wherever it was possible to do so. This could be made a requirement of their
leases.

707. The important consideration, in my view, is that the companies
should be prepared to discuss and negotiate with the Central Land Council,
community life. The Government should, if necessary, use the powers it has to control the companies’ activities, for the protection of the interests and well-being of Aborigines, to bring this about.

Summary of recommendations

708. (i) Minerals and petroleum on Aboriginal lands should remain the property of the Crown.

(ii) However Aborigines should have the right to prevent exploration for them on their traditional lands.

(iii) This Aboriginal power of veto should only be over-ridden if, in the opinion of the Government, the national interest requires it.

(iv) Any such decision of the Government should be subject to disallowance by either house of the Parliament.

(v) An expert survey of the mineral and petroleum potential of Aboriginal lands, carried out by experts on behalf of the Government, would be most desirable.

(vi) Such a survey should, however, only be made with the consent of the regional Land Council and any field parties should be accompanied by Aborigines.

(vii) If mining or petroleum companies are seeking exploration licences over Aboriginal lands these applications should be processed, as in the past, by the appropriate government departments.

(viii) However, before any such licence is granted, both the regional Land Council and the Minister of Aboriginal Affairs should be asked to consent.

(ix) The Land Council would conduct all negotiations, and give or refuse its consent on behalf of the traditional owners and any communities likely to be affected by the application, as well as having its own power of veto in the matter.

(x) Matters to be negotiated, if the Aborigines concerned are prepared to consider the proposal, would include payments for exploration rights, royalty payments and, perhaps, an equity interest in the venture.

(xi) Other matters for negotiation would include the protection of sacred sites, Aboriginal employment and the setting up of appropriate liaison arrangements between Aborigines and the company.

(xii) As a basis for the negotiation the company should produce a statement showing as clearly as possible just what the Aborigines are being asked to agree to at the respective stages of exploration, proving, development and production.

(xiii) All payments to be made in connexion with any licence or lease should be received by the regional Land Council as agent for the appropriate Land Trust. All statutory rental payments should be paid by the Land Council to the landowning clans concerned. All
other payments, except royalties, should be made to the community or approved corporation named in the agreement under which they are paid.

(xiv) All royalty payments should initially be divided as follows:
  two tenths to each regional Land Council, three tenths to the local community or communities (if any), and the balance to the Aborigines Benefits Trust Fund.

(xv) The right to develop any minerals or petroleum discovered should be subject only to the adequacy of the notice referred to in sub-para. (xii) above and the final negotiation of appropriate terms and arrangements as referred to in sub-para. (x) and (xi). Any disagreements on any of these matters would have to be conciliated or arbitrated by a person or persons appointed to do so by the Government.

(xvi) The Government should amend the existing legislation so that royalties higher than those prescribed can be negotiated in appropriate cases. It should also consider the desirability of increasing the prescribed rate of mineral royalties from its present level of 2¼%, perhaps to the 3¾% claimed by the Northern Land Council.

(xvii) It should be an offence to make any payment, other than a statutory rental payment, to individual Aborigines or groups of Aborigines either directly or indirectly in connexion with the granting of any licence, permit or lease.

(xviii) Any exploration licences granted in future should be subject to the arrangements outlined in this summary even if the company concerned has been the holder of previous licences or permits.

(xix) No exploration licences over Aboriginal land should be issued before 1977.

(xx) All existing rights of mining and petroleum companies will be preserved by the new legislation, but it is desirable that any existing special purpose lease be replaced by a similar lease from the Aboriginal Land Trust and that, where appropriate, the terms of these and government mineral leases be re-negotiated so that the new landowning status of Aborigines is properly recognized.

(xxi) All these arrangements would apply only to land which is the subject of Aboriginal Title, not to land which may in future be leased to Aboriginal communities or groups.

(xxii) Queensland Mines Limited should not be permitted to develop mineral deposits in the Nabarlek area without Aboriginal consent.
The Aboriginal Land Commission

709. I have already indicated that both the Northern and Central Land Councils see a need for an independent Commission to carry out several functions concerning Aboriginal lands.

710. Although the tasks I see for such a Commission are not quite the same as those proposed by the Land Councils, I am satisfied that there would be very important work for it to do.

711. Even if traditional Aboriginal claims to land now subject to pastoral leases are not to be recognized by the grant of reversionary interests in such land (paras. 191-216 above), I have nevertheless recommended that such traditional claims should be invited and registered so that the information on which to base future actions will be available. Even though this registration will not create or define any rights, I think it is important that the task be approached judicially, in the sense that only those claims which appear to be able to stand up to challenge and scrutiny would be registered.

712. The second task I have suggested for the Commission is as adviser to the government on land rights questions as they emerge in practice.

713. I would hope that, as the Land Councils develop, there will be more and more direct contact between them and the government. However, there are bound to be some matters on which the government would be glad of independent advice, particularly as the new arrangements experience their inevitable early problems.

714. I have also suggested (paras. 240-254 above) that the Commission should consider all claims for substantial financial grants for the purchase or development of land for Aborigines and should recommend priorities. It should initiate its own inquiries in areas where it feels that claims ought to be being made and they are not. In particular, it should make recommendations about the purchase of any pastoral leases, or areas required for Aboriginal housing in towns, which it thinks necessary to satisfy the land needs of Aboriginal people. It should invite comments from the regional Land Councils on claims wherever it considers this to be desirable.

715. It should also consider, and make recommendations concerning, any Aboriginal claims to Crown lands, including areas such as the Palm Valley Flora and Fauna Reserve as well as vacant Crown lands, or those subject only to grazing licences.

716. In considering claims under paras. 714 and 715 the Commission should have regard to:

(a) the strength of any traditional claims being made,
(b) the number of Aborigines who would be advantaged if the claim were granted,
(c) the nature and extent of the likely advantages to Aborigines,
(d) the cost of purchasing or developing the land in question, and
(e) any detriment which might be caused to others by the granting of the claim.

717. The Commission should regard as neutral any possibility of minerals being found on the land in question. In other words Aboriginal claims to land should neither be granted nor refused because of the possibility that minerals might be discovered on that land.

718. One of the Commission’s most important roles will be to attempt the resolution of any conflicts between pastoral lessees and Aboriginal groups about community areas (see paras. 228-235 above). If agreement cannot be reached, the Commission should make a recommendation to the government as to the area which it thinks should be excised for the purpose and as to any conditions which ought to apply to the lease of the excised area to the community.

719. All these activities will put the Commission in an excellent position to keep the government informed as to the degree of success being achieved by its measures and as to further steps which could or should be taken. In particular I have suggested that, after two or three years of experience, the Commission should report on the feasibility and desirability of granting the fee simple of pastoral leases to traditional claimants, which I have not been prepared to recommend.

720. However, in addition to this special report, I believe the Commission should make an annual report, to be tabled in the Parliament, so that there will be a critical independent review available each year of progress in the field of land rights for Aborigines.

721. I turn now to consider the composition of the Commission. Both the Land Councils have recommended that it should be headed by a judge or a person qualified for appointment as a judge. Particularly because of the function relating to community areas, I think it is probably desirable that such a person be appointed if available. However I hesitate to make a firm recommendation to this effect because of the various options which I see open to the government in setting up the Commission.

722. The Northern Land Council recommended that other members of the Commission should have expertise in the fields of agricultural science and anthropology.

723. Because of the possible difficulty in finding the right people for this work in the Territory, I prefer to leave such questions open and thus to give the government the greatest possible freedom in recruitment.

724. It seems to me that expertise in Aboriginal affairs and agricultural science, as well as town planning, the law, and general administration, will all be required. But these need not all be found amongst the members of the Commission. Some of the special knowledge and experience might well be at staff level or obtained from consultants. And if the staff level is strong enough, it is probably not necessary that any of the Commission should be full-time appointments.
725. I would suggest for consideration that the first task should be to find the right Chairman — preferably, but not necessarily, a lawyer. If he is able and willing to accept a full-time appointment, so much the better. If not, then a really capable executive officer must be found.

726. At least one member of the Commission (perhaps part-time) and one senior member of staff, should be experienced in Aboriginal affairs. If Aborigines with the necessary experience and training can be found to fill either or both of these positions, that would be an advantage.

727. It would be a help if other members of the Commission were familiar with the pastoral industry and other rural activities and with local government, particularly in its planning aspects.

728. However all these are only intended as suggestions. I believe the vital consideration is that the Commission should be tailored to fit the best people available to run it, rather than an arbitrary decision made as to the qualifications required for each position.

729. These suggestions as to composition are drawn up on the assumption that the Commission would operate in the Northern Territory only. If it should be decided to establish a nation-wide Commission which would cover the functions outlined above, then these suggestions would apply to the Territory arm of that Commission. I do think it is essential that there should be at least a strong Territory element among the people carrying out those functions, particularly at the level at which recommendations are first prepared. Whether that be at staff or Commission level would depend upon the nature of the organization.

730. It is obviously necessary that the Commission should be financed in such a way as to enable it to attract persons of quality and experience and to carry out its tasks efficiently.

731. I envisage the Commission conducting its proceedings like any other independent administrative body called upon to conduct investigations and make recommendations. It should be able to determine its own procedures so far as the holding of public hearings or permitting parties to be represented, for example, are concerned.

732. Its recommendations and reports would be made to the Minister for the Northern Territory or the Minister for Aboriginal Affairs, as appropriate.

Summary of recommendations

733. (i) An Aboriginal Land Commission for the Northern Territory, or an arm of a national body, should be established with the following functions:

   (a) preparing a register of traditional claims to pastoral lease lands,
(b) advising the government on the feasibility of a tribunal making binding determinations about such claims,
(c) advising the government as to the likely extent of such claims,
(d) investigating and making recommendations concerning Aboriginal claims to Crown lands,
(e) investigating and making recommendations concerning claims for substantial grants for the purchase or development of lands for Aborigines,
(f) initiating investigations into cases where Aborigines need land for housing or economic purposes, even though no claim has been made, and making recommendations,
(g) resolving disputes between Aborigines and pastoral leaseholders concerning the excision from leases of community areas, and making recommendations about such excisions where agreement cannot be reached,
(h) advising the government on any question referred to it concerning Aboriginal land rights, and
(i) reporting each year to the Parliament on the progress being made in this field.

(ii) The members of the Commission, whether full-time or part-time, and the senior members of its staff, should, between them, have appropriate qualifications and experience in law, Aboriginal affairs, primary industry and, if possible, town planning.

(iii) The Commission should conduct its affairs as an independent administrative body and should be free to determine its own procedures.
Conclusion

734. There are a number of unrelated matters that need to be dealt with before I conclude this report.

Necessary legislation

735. Since both the Land Councils have provided me with suggestions concerning the necessary legislation to put their claims into effect, I have thought it proper to append to this report some tentative drafting instructions. Their purpose is to set out in a concise and convenient form some of the more detailed and technical recommendations which I wish to make. In this sense the appendix is an integral part of this report. The exercise has served the very useful purpose of throwing up some of the practical difficulties which can arise when general recommendations are put into practical form.

736. To the extent to which the recommendations in this report are accepted, the appendix may also help to lighten the burden of Parliamentary Counsel, but I hasten to add that neither counsel for the Land Councils nor I claim any special skill in parliamentary drafting and it must not be thought that I am trying in any way to dictate the actual terms in which any resulting legislation may be couched.

737. I have based my draft substantially on that of the Northern Land Council because it was more detailed and produced later than that of the Central Council. It was thus possible to incorporate in it many of the points which arose during the final hearings.

738. I have not made any comprehensive attempt to foresee necessary consequential changes in other legislation applying to the Northern Territory. I am satisfied, from a submission I have received from the Department of the Northern Territory, that necessary changes have generally been foreseen and can safely be left to the Department to bring forward.

739. However there are a few points which do require special mention. These are as follows:

(i) The suggested legislation will expressly preserve rights under existing leases over Aboriginal lands. Until any such lease terminates
The Australian States

or is replaced by a lease from the Land Trust, the Crown will have to continue to administer the lease and enforce any lease covenants. It should account to the Land Trust for any rents received less, if it sees fit, any direct expenses of administration. In the meantime all existing legislation relating to leases within reserves will have to be preserved.

(ii) Because of these and other rights and duties now relating to reserves it will be necessary to retain, for a time at least, the status of reserves.

(iii) It will be necessary expressly to negative the over-riding effect of S.6 of the Northern Territory Real Property Act and Ordinance 1886-1965 so that the proposed legislation can prevail where necessary.

(iv) The most convenient way to carry out the suggestions contained in paras. 401-3 may be by amendments, having general effect, to the Soil Conservation and Control Ordinance.

(v) S.112 of the Crown Lands Ordinance, making special provision for leases of small areas of Crown Lands to individual Aborigines, has never been used and would seem to have no place among the arrangements proposed. In my opinion it could properly be repealed.

740. There remains one general point to be made about legislation, and that is that I have proceeded on the assumption that the basic legislation would be introduced into the Australian Parliament. I think it is important that it should be protected in such a way that its provisions cannot be eroded by the effect of any Northern Territory Ordinances.

741. My terms of reference, although initially expressed in general language, go on to direct my attention specifically to the Northern Territory. A number of submissions have urged me either to treat my terms of reference as applying to the whole of Australia or to seek an extension of those terms. I have not done so for the simple reason that it has taken me over a year to find out the wishes of Territory Aborigines and consider all the other facts and submissions which have gone to make up this and my previous report.

742. Had my inquiries been extended to all States they would not have taken seven times as long, but it would certainly have doubled and perhaps trebled the time necessary to do justice to them. In my judgment it was more important to establish basic principles and apply them first in one area than to try to cover all of Australia at one time.

743. However 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.

744. I must stress, however, that I have not attempted to investigate the present position of Aborigines outside the Territory and I do not know their wishes or expectations so far as land rights are concerned. What I have said elsewhere, about the importance of finding out what Aborigines want, is relevant again in this context. The Aborigines of Walgett, Redfern or Cape York may have quite different ideas from those of Alice Springs or Arnhem Land.

745. What I do recommend is that the approach be followed in the States as has been followed in the Territory. By this I mean that regional councils of Aborigines, if not already in existence, should be encouraged to establish themselves. It may be that each State could constitute a region for this purpose or it may be that, in some States, Aborigines would find it more convenient to adopt two or three regions.

746. Whatever is decided, each regional council should be provided with independent legal assistance, and whatever administrative help is needed to enable it to formulate its ideas and claims. I anticipate that the Aboriginal legal aid services could arrange the legal aid in most cases, but I stress that the aid must come from experienced lawyers who are fully qualified to give it.

747. Before any claims are finally decided upon, it is important that there should be consultation between the regions, because it is obviously desirable that the basic approaches should be as similar as possible. On the other hand it is probably inevitable that differing problems and ideas will produce some differences between regions—at least on matters of detail. Inter-regional conferences could presumably be held under the guidance of the National Aboriginal Consultative Committee. No doubt that Committee will also want to express its own views, both to the regional councils and to the government.

748. I suggest that the recommendations in this report could represent a starting point for discussions within each state or regional council. When it has arrived at its decisions in the light of its legal advice, its discussions with other councils, and its own deliberations, those views and claims should be sent to the government. No doubt the government will indicate whether it intends to establish some authority to collect, co-ordinate and advise on such claims or whether it prefers to deal directly with the various councils.

The Central Australian Reserve

749. I referred at the outset of this report to the extension of my terms of reference to cover those parts of what might be called the Central Australian Reserve which are situated in Western Australia and South Australia.
750. I have borne them in mind throughout this report, but I find that there is very little that I can say about them specifically.

751. It is obviously sensible that these areas of land should be jointly administered. Aboriginal tribal areas extend across the borders and there is constant movement across those borders by Aborigines.

752. Certainly I think that Aborigines from both States should be represented on the Central Land Council because of their interest in Northern Territory land, and it will be noted that Balgo, Warburton, Wingellina, Amata, Ernabella, Fregon, Indulkana and Mimili are all included in the list at para. 347 above.

753. However the carrying out of the scheme recommended here in those areas would involve the acceptance by the two State governments of legislative changes similar to those ultimately decided upon for the Northern Territory. As I have just said, it seems to me that other Aborigines in those States should be consulted before any decisions are made. It would hardly be practicable to have different State laws applying to different regions within the State. No possibility of transfer of powers has been raised with me and so I make no comment on that subject.

754. If substantially similar legislation were finally enacted for the Territory and the two States, I see no reason why a particular Land Trust should not have vested in it land on either side of a border. One matter which would have to be carefully provided for is income from minerals. It would be premature to make any suggestions on that subject at this stage.

755. In the meantime there could be a substantial measure of co-operation extending across the State borders. While the Central Land Council would not be in a position to give directions to the Trust or other authority having ownership of, or effective control over, State reserves, its recommendations concerning those areas would no doubt have persuasive influence. This would be particularly so where the action sought ran parallel with some steps being taken within the Northern Territory.

756. The only difficulty I see in this first-stage of co-operation relates to the expenses of the Land Council. It would not seem appropriate for the attendance of representatives from the States at Council meetings, or the visits of Council officers to the States, to be paid for out of Northern Territory mineral royalties. I believe the Council should receive a specific reimbursement of these expenses from some appropriate government source.

Future review of arrangements

757. In arriving at these recommendations, I have experienced great doubt on a number of issues — particularly those relating to mineral rights and to additional claims in pastoral lease areas. Although I believe the steps recommended to be those most likely to achieve the aims set out at the
beginning of this report, there must be uncertainty as to the way in which many of the proposals will turn out in practice.

758. Further, I am still concerned that Aboriginal opinion on some of these matters is only at a formative stage and may change.

759. Finally, the passage of time may well bring about changes in Aboriginal aims or needs or in surrounding circumstances such that today's best solutions become inappropriate.

760. For all these reasons I think it important that all arrangements made should have a built-in flexibility about them which will encourage and permit desirable changes.

761. On the other hand it is important for all concerned to be able to plan on the assumption that the broad basis of the arrangements will remain undisturbed and that they will not be amended at frequent intervals.

762. Accordingly I suggest that the operation of the arrangements, which I hope will take the form of an unwritten agreement or understanding between the Land Councils and the government, should be formally reviewed in conference between those parties after three years and thereafter at seven year intervals.

763. Such a deliberate and planned examination of the workings of the system, at regular but infrequent intervals, should ensure that anomalies are brought to light and that the system does not become rigid and unresponsive to changing needs.

764. This recommendation is independent of the earlier one that an Aboriginal Land Commission should regularly report developments and any need for change to the government. No doubt that Commission would play a part in the review now proposed, but my point here is that there should be a formal review of arrangements at regular intervals.

The working of the proposed arrangements

765. It will be seen from the matters dealt with in this report that the granting of Aboriginal land rights is no simple matter. It raises a number of complex questions, to many of which there is a choice of answers.

766. I have no doubt that the answers proposed in this report will be criticized, in some cases trenchantly, by a number of different interests.

767. However I believe that these answers do observe the principles which I set out early in this report (paras. 48-66) and are designed to achieve the aims identified in para. 3. I believe further that they satisfy the requirements of International Labour Organization Convention No. 107 of 1957 dealing with Indigenous and Tribal Populations.
768. No doubt there will be difficulties and delays in putting some proposals into effective operation and, when they are operating, mistakes will be made by people unused to exercising authority.

769. There will be no immediate and dramatic change in the Aborigines' manner of living. In truth, the granting of land rights can only be a first step on a long road towards self-sufficiency and eventual social and economic equality for Aborigines.

770. But it is an essential step, even though its outcome may not be fully apparent for many years. The next step will be the fresh assertion of personal and community identity by Aborigines. This will come because they will have a secure territorial base and control over their own lives. They will be able to regulate for themselves their contacts with the dominant outside society and come to terms with it in their own way and at their own pace.

771. There is every reason to believe in the long-term benefits of recognizing Aboriginal land rights now. It is important both for Aborigines and others not to expect too much too soon and then, in disappointment, lose sight of the ultimate goals.

Explaining land rights to Aborigines

772. It is clearly most important that Aborigines should understand just what the granting of land rights means for them. This will involve a series of discussions with each community to be arranged by the community's advisers and, no doubt, co-ordinated by the Department of Aboriginal Affairs. Much of this will have to wait until decisions on the various matters covered by these recommendations have been arrived at. In the meantime I offer in Appendix E a summary of the more important recommendations, written in a way which will, I hope, lend itself to translation into Aboriginal languages.

The terms of reference

773. I believe that I have, in this report, dealt with all the matters which were required of me by my terms of reference.
774. I have elected to set out my report under the headings of relevant topics and sub-topics because I believe that this will make it easier for all to follow. For the benefit of anyone wanting to pursue a particular term of reference, I have set out, in Appendix F, a guide to the discussion and recommendations relevant to each term of reference.
Acknowledgements

775. Apart from the very demanding requirements of typing and retyping these reports, I have relied entirely on two people for direct assistance in conducting this Commission.

776. Miss Denise Goodman has borne the whole administrative burden with complete efficiency and Dr Nicolas Peterson has provided me with all the benefits of his extensive knowledge and understanding of the Aboriginal people of the Northern Territory. I am very much indebted to both of them.

Summary of recommendations

777. (i) Aboriginal land rights legislation should be introduced into the Australian Parliament. It should not be capable of being affected by Northern Territory Ordinances.

(ii) A number of consequential changes to Ordinances of the Northern Territory will be required.

(iii) The operation of existing legislation relating to Aboriginal reserves should be preserved, at least for some time.

(iv) The establishment of Aboriginal regional councils in the States should be encouraged.

(v) Those councils should have administrative assistance to hold meetings and legal aid to formulate land rights claims.

(vi) There should be consultation between regions, which could be arranged under the guidance of the National Aboriginal Consultative Committee.

(vii) The respective claims of the regional councils should finally be sent to the government for consideration.

(viii) The Central Australian Reserves in Western Australia, South Australia and the Northern Territory should be jointly administered if common or reasonably parallel legislation can be agreed upon.

(ix) In the meantime there should be as much co-operation as possible across the State borders. The communities in the States having affiliations with Northern Territory communities should be represented on the Central Land Council. Any requests by the Central Land Council for action in the States should be sympathetically considered. The costs of the Council of its involvement across State borders should be separately funded from appropriate government sources.

(x) All arrangements resulting from this report should be formally reviewed in conferences between the Land Councils and the govern-
ment at regular intervals. The first such conference should be held after three years and thereafter at seven year intervals.

(xi) The main recommendations of this report should be carefully explained to Aboriginal communities in the Northern Territory. To assist in achieving that purpose they should be translated into Aboriginal languages.
Appendix A

ABORIGINES AND THEIR LAND

(Taken from first report, paras. 20-65)

In the first place, it is accepted that, wherever else man may have evolved, it was not on this continent. The Aborigines came here from the north and came to an uninhabited land.

The origins of these people who found their way here are obscure. But they must have come, over a period of time, by way of what are now Indonesia and New Guinea. In doing so, they must have covered at least forty miles of water in what can only have been bark canoes.

What is clear is that the Aborigines are genetically a unique people and that they have been here for a very long time. The small parties which landed initially must have taken many hundreds of years to spread, as they did, over the mainland. In spite of some dissimilarities between the Tasmanian Aborigines and those of the mainland, there seems to be no cogent evidence to suggest that the Aborigines of Australia did not have a common origin.

As to the length of time over which Aborigines occupied Australia before 1788, it can only be said that recent archaeological work has established a period of upwards of 30,000 years.

The Aborigines lived entirely by food gathering and hunting. They tended no herds and planted no crops. In good seasons they lived well; in bad years they suffered.

Anthropologists are agreed that different groups of Aborigines claimed identifiable areas of land as their own. There was no part of the continent left unclaimed, although higher mountainous regions may have been seldom visited.

It has been estimated that, in 1788, the Aboriginal population of Australia may have been in the order of 300,000. So far as the Northern Territory is concerned, it has been suggested that a typical population density for semi-desert country would have been one person to thirty or forty square miles. In the more productive areas closer to the coast, six or eight square miles per person would have been more likely.

This then is the background against which the social organization of the Aborigines must be considered, and, in particular, meaning given to the 'traditional rights and interests of the Aborigines, in and in relation to land'.

On enquiry, it soon becomes clear that the social organization of the Aboriginal people is highly complex. The problem of understanding it is
made worse by a number of factors. These include, firstly, the difficulty of expressing many Aboriginal ideas and arrangements in English terms. Even simple words such as ‘owner’ and ‘tribe’ can be misleading. Some words used by anthropologists such as ‘horde’, ‘clan’, and ‘band’ have been given more precise meanings in their writings on the subject, but they have not always been used in the same way and so require definition each time they are used.

Further, some Aboriginal concepts related to land-owning have no parallel in European law. The most important and widespread of the rights in land that lie outside European arrangements is the managerial interests of a nephew in the country of his maternal uncle. Everywhere the religious rites owned by a clan were the “title deeds” to the land and could only be celebrated by clan members. Such rites, however, could not be held without the assistance of the managers whose essential task it was to prepare the ritual paraphernalia, decorate the celebrants and conduct the rite. The agreement of managers had to be secured for the exploitation of specialized local resources such as ochre and flint deposits and for visits by the clan owners to their own sacred sites.

Yet another difficulty arises from disagreement among anthropologists as to the exact nature of the relationship between Aboriginal organization for land holding and for land usage. These disagreements may be mainly matters of emphasis, but they are still quite important.

It may be that much of this professional disagreement stems from the lack of reliable information as to the situation which existed before white contact. In almost every case, detailed study by trained anthropologists has occurred a number of years after Aboriginal ways of life have been influenced, if not radically changed, by contact with Europeans. Much recorded information comes from older men and women talking of the past — often at some distance from the scene of the events being discussed.

A further difficulty arises from the fact that Aboriginal social organization differs from one area to another. What is true of north-east Arnhem Land may not even be true of the Daly River area south of Darwin, let alone the Macdonnell Ranges, Western Australia or Queensland.

In spite of the difficulties referred to, the following statements can be made with some confidence that they are generally true of the Northern Territory and likely to be true of many other parts of Australia.

It is common to speak of Aboriginal ‘tribes’ and this is a useful description of people such as the Aranda and Pitjantjatjara. The distinguishing marks of such a group are a common language, a commonly used name for that language and thus for the people speaking it, and an identifiable tract of country where those people live or used to live.

The term has also been used for a group of related people, speaking different languages but living in adjacent areas. However, to avoid confusion, I shall refer to such a grouping as an ethnic bloc.

In neither of these cases — the tribe or the ethnic bloc — is there any attempt to achieve political or social unity. The relationship between the different segments of a tribe are often no closer than those between such segments and groups from other tribes. In no sense can the tribe be regarded as the basis of Aboriginal social organization. Smaller groupings have to be identified for this purpose.

The sub-divisions of a tribe can usually be identified by dialectic variations. Although sharing a common language, some words will be different, sentence
construction may not be the same and differences in pronunciation will usually be noticeable also.

In some cases this dialect group within the tribe does represent the key social unit. In other cases this is to be found one step lower down the scale—at the level of the clan. I use this expression to mean a local descent group—a sub-division of a dialect group larger than a family but based on family links through a common male ancestry, although those links may be back beyond living memory.

Since the clan appears to be more commonly the key unit, I now turn to consider it in more detail.

Membership of such a clan is determined at birth, since, for land-owning purposes, the child automatically becomes a member of the father’s clan. (The word ‘father’ is used throughout although it would be more correct to speak of the mother’s husband. This presented no problems to the Aborigine because conception was believed to be the work of spirits.)

Mother and father will come from different clans, for a child cannot marry within the clan, but must marry a member of another clan. The rules or preferences which decide that clan vary from place to place, but can be quite strict. They have had to be relaxed in some areas as clans have dwindled in size or disappeared.

The members of a clan retain that membership throughout their lives and, indeed, thereafter. The link between an Aborigine’s spirit and his land is regarded as being timeless. The land-owning clan is merely a group of people who share the same links with the same land.

Thus these clans have close spiritual associations with particular tracts of land. Their religion or mythology teaches them that particular areas were given to them, or claimed on their behalf, by their spirit ancestors in the Dreamtime. For this reason there are specific stories, songs and ceremonies linking these spirit ancestors with particular places. The more important the place is to the legend, the more sacred it is.

These spirit ancestors were in some cases part animal, bird, insect or plant. They could also, for example, be related to rain, wind or stars. But in all cases they had human characteristics, whatever their outward form may have been.

Some country, because of these legends or of its natural resources (which are frequently linked together) is more important than other country. But, although boundaries may be blurred, all country is of some importance and is identified with some clan or other grouping.

The spiritual connexion between a clan and its land involves both rights and duties. The rights are to the unrestricted use of its natural products; the duties are of a ceremonial kind—to tend the land by the performance of ritual dances, songs and ceremonies at the proper times and places.

One further point remains to be made. It is apparent that a clan, being of only moderate size, can die out. This must have happened on occasions even in the days before white contact. With the coming of the white man, such instances must have occurred more frequently even in the Northern Territory. Since the produce of all land is important and, in Aboriginal belief good seasons depend on ritual observances, it was normal for the sacred objects and ceremonies of that clan to be taken over or cared for by another closely related clan. Since, as I have said, the connexion of Aborigines with their land is timeless, commencing before birth and continuing after death, this taking over should be seen as a form of trusteeship rather than a transfer of rights.
All that has been said above about the clan is equally true of the dialect group referred to earlier except that, being larger, marriage within the group is likely to be quite common. It will still be governed by strict rules as to kinship which will determine which members are acceptable as spouses.

It may help to clarify the complicated position I have been describing if the situation is considered from the point of view of a typical Aborigine of Arnhem Land in the years before white contact.

Let us assume the case of a mature man. His immediate family consists of one or more wives and their respective children together, in all probability, with some older people—perhaps one of his or his wife’s parents or an elder brother or brother-in-law. Even when food is scarce, this family unit is likely to be added to by relatives or friends. The father and his children, of course, belong to one clan along with his father, brothers and sisters (who may not be in the group).

The wife or wives come from, and still belong to, a different clan. If there are several wives, they may not belong to the one clan, although it is quite likely that they will. The mother, if she is present, will almost certainly belong to a third clan. Because of the intricate kinship systems observed, it is unusual for a man to take a wife from his mother’s clan. Friends and other relatives could come from any one of a group of neighbouring clans with which there are friendly relations. In the group the dialect of the central clan will predominate, but other clans will use their own dialects and will be understood.

The other members of the central clan in this example will be scattered among a number of similar family groups. They will all be related by patrilineal descent but the exact relationship may have been forgotten with the passage of time. In several other cases, as in this one, the clan will provide the nucleus of the group. In other instances, some other clan will provide the nucleus and members of this clan will be present as wives, relatives or guests. The total membership of the clan—men, women and children, may be about 30 to 50.

The family group which has been described may move about by itself, or, particularly when food is relatively plentiful, may join with other groups to constitute quite a large band—perhaps 30 to 40 people. Whether large or small, this band constitutes the hunting and food gathering social unit. It moves over the country in a predictable but not rigid pattern which depends on the availability of food resources at particular places and particular times. It varies in numbers as groups or individuals join and leave. In doing so, it will probably spend a good deal of time on the country which is held by the clan, but the head of the family will certainly expect to be welcome in the country of his mother’s clan. He will also visit freely his wife’s country or that of any other member of his group. Indeed he may decide to go to any of the neighbouring areas except, perhaps, those where some ill-feeling has arisen or is traditional between his clan and the local landholding group.

The trouble he takes to obtain express or tacit permission will depend upon the strength of his claim to hospitality, arising from personal ties of relationship, traditional clan affiliations or totemic relationships (which are explained below).

Where the band is a large one, it may be difficult to say that it has any one clan as a nucleus. This is particularly true when large groups gather at a special time and place for major ceremonies of ritual songs and dances. On
these occasions several related clans will have special responsibilities to perform or to manage the ceremonies, but many other clans will also be represented.

The head of the family will know exactly where his clan’s land begins and ends. If circumstances take him away from it for any length of time, he will make a point of returning for major ceremonies if and when he can and, in particular, for the initiation of his sons.

This is his country in the clearest sense of that term. He may however speak of some other place or places as being his country, either because he was born there, or because his mother first became aware of her pregnancy there and so believed that the spirits conceived him there, or because the place is associated in mythology with a totemic or spirit figure which is either his personal totem also or the totem of his clan. The clan, for example, may have the bandicoot as a totemic figure, but the head of this family may have been born at a ‘honey-bee Dreaming’ place, which is imbued with the spirit essence of a mythical honey-bee man. He will then have a special relationship with other Aborigines sharing the same totemic figures. Each of his relationships with these spirit ancestors will be substantiated by stories and songs which include their doings in the Dreamtime on the clan’s land and at the place of his birth.

The picture so far painted is, I believe, accurate for North Eastern Arnhem Land. Even here there is some doubt as to just how much time, before white contact, a typical clan member spent on his own land.

In other parts of the Northern Territory, some different considerations apply. Thus on Melville and Bathurst Islands the Tiwi people, largely cut off from outside contact, developed some rules of their own. In some parts of the Territory, clan social membership was inherited from the mother, although landholding seems always to be inherited from the father. In others, where the landholding clans or dialect groups were larger and their country more extensive, they seem to have lived almost entirely on their own land except in times of severe drought. Even so, their wives had to come from other groups and this led to a good deal of visiting, sometimes for protracted periods.

Up to this point I have concentrated on the situation which existed before white contact. In those days of intimate association between men and their land there would, I believe, have been no difficulty experienced in recording the allocation of country between landholding clans or dialect groups. Today the degree of difficulty will vary from place to place.

Because of the spiritual beliefs of the Aborigine about his land, his connexion with it is not broken by the fact that he may have lived away from it for many years. Certainly traditional ways of life have, to varying extents in different places, been departed from. Missions and settlements, with their assured food supplies, medical attention and other material advantages, have attracted Aborigines to settle, more or less permanently, in one place. Very often this is miles from their own country and, as older men die, accurate information becomes harder to obtain. Rituals are observed less often and not at the traditional sites.

For the present-day inquirer, the problem is made much worse by the fact that Aborigines had no need, in the past, to be specific in their use of names for clans or other groups. Perhaps the most commonly used description was the name of the language or dialect spoken by a particular people. However, as I have said, it seems clear that the larger language group was never a social or political unit and so never a land-holding group. In some cases the
dailect group would constitute the land-holding unit and in other cases land would be held by a sub-division of that dialect group—a clan. In either case its membership was determined by common patrilineal descent. But even if the land-holding group was identical with the dialect group, it was not in its capacity as a dialect group that it held the land. It did so as a descent group and, usually, by another name. This name might well be the same as, or derived from, the particular totem of the group. In fact there could be several different names, some of them sacred and used only in ceremonies, for the same people.

Common usage complicated the position further because the people themselves would have little use for a group name, speaking only of ‘us’; and neighbouring groups might refer to them by reference to totemic relationships or to the name of a leading figure in the group or to a particular place frequented by the group. Indeed in some cases it is hard to discover whether a sub-group of a particular dialect group holds a piece of country to the exclusion of the other sub-group, or whether they are merely specially associated with that area, which is nevertheless held by the whole group. Aborigines further afield might well group a number of clans together and refer to them as ‘the people of the north’ or ‘the people of the desert’. Such a description could easily be mistaken for a tribal name.

I have no doubt that, even today, the necessary information is available to divide much, if not all, of the Northern Territory into dialect group or clan regions. If the right people could be taken out to the right places, to demonstrate the position on the ground, I believe that there would be little disagreement. I have so far come across no case in which ownership of land has been disputed among full-blooded Aborigines. But the task of obtaining the necessary information from different informants, having different degrees of knowledge, and then converting it into clear terms for record purposes, could undoubtedly be a very long and difficult one. Since detailed surveying would be necessary, the job would certainly take a number of years and the expense would be very great.
Appendix B

SUBMISSIONS AND INFORMATION

The following is a list of all persons, companies and organizations that have made substantial submissions or supplied information to the Commission:

Aboriginal Action

Aboriginal Development Foundation
Albrecht, P. (Rev.)

Anderson, D.

Australian Council of Churches
Australian Mining Industry Council
Australian Nomads Research Foundation

Biernoff, D. (Dr)

Blutcher, D.
Braitling, W. W.
Brandl, M. M. (Dr)

Brennan, H. (Hon.)
Brodney, A. T.
Broken Hill Pty. Co. Ltd.
Butler, R. J. T.

Calley, M. (Dr)

Campbell, F. D.

Canadian Superior Mining (Aust.) Pty. Ltd.
Carroll, P. J.
Central Land Council
Clancy, J. F. (Fr)

Working Group of the Victorian Council of Churches Community and Race Relations Commission
Darwin, N.T.
Finke River Mission, Alice Springs, N.T.
Aboriginal Affairs Advisory Council (Vic.)
Brickfield Hill, N.S.W.
Canberra, A.C.T.
North Melbourne, Vic.

Dept of Anthropology, University of Queensland, Qld.
Roper Valley, N.T.
Mt. Doreen, N.T.
Aboriginal Education Branch, Dept of the Northern Territory, N.T.
Darwin, N.T.
Mt. Evelyn, Vic.
Melbourne, Vic.
Perth, W.A.

Dept of Anthropology, University of Queensland, Qld.
Gollin Kyokuyo Fishing Co., Groote Eylandt, N.T.
Sydney, N.S.W.
Church Missionary Society, N.T.
Alice Springs, N.T.
Santa Teresa Mission, N.T.
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<tr>
<td>Council for Aboriginal Affairs</td>
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<td>Condie, Janice</td>
<td>Springwood, N.S.W.</td>
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<td>Coppock, G. A.</td>
<td>Newhaven Station, N.T.</td>
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<td>Denham, W. W. (Dr)</td>
<td>University of Washington, Seattle, U.S.A.</td>
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<td>Department of Aboriginal Affairs</td>
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<td>Department of Civil Aviation</td>
<td>Melbourne, Vic.</td>
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<td>Department of the Environment and Conservation</td>
<td>Canberra, A.C.T.</td>
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<td>Department of Labour</td>
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<td>Department of the Northern Territory (Dept of) Postmaster-General</td>
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<td>Eggleston, E. (Dr)</td>
<td>Richmond, Vic.</td>
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<td>Federal Council for the Advancement of Aborigines and Torres Strait Islanders</td>
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<td>Northern Territory Administration, Darwin, N.T.</td>
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<td>Goldring, J.</td>
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<td>Goodluck, J. (Rev.)</td>
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<td>Grover, J.</td>
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<td>Gwalwa Daraniki Association</td>
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<td>Hiatt, L. R. (Dr)</td>
<td>Department of Anthropology, University of Sydney, Toorak, Vic.</td>
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<td>Kent, L. A. (Rev.)</td>
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<td>Kentish, R. J. (M.L.C.)</td>
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<td>Lee, H.</td>
<td>Katholieke Universiteit, Nijmegen, Netherlands</td>
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<td>Leeden, van der A. C. (Dr)</td>
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<td>Rigby, F. &amp; Gold, H.</td>
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<td>Tomlinson, J.</td>
<td>University of Queensland, Qld.</td>
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<td>Turner, D. H. (Dr)</td>
<td>Department of Sociology, Aust. National University, A.C.T.</td>
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UNIA Association Inc.       Daly River, N.T.
Wallace, N. M.               Australian Institute of Aboriginal Studies, A.C.T.
Wells, E. A. (Rev.)         Margate, Qld.
Wesley-Smith, R. N.          Darwin, N.T.
Wilders, J.                  Roper River, N.T.
Williams, N. (Prof.)        University of Washington, Seattle, U.S.A.
Woenne, Susan Tod. (Dr)     Department of Anthropology, University of Western Australia, W.A.

Yirrkala Village Council     Yirrkala, N.T.

Communities visited by the Commission:
Amoonguna                  Maningrida
Angurugu                    Milingimbi
Bagot                       *Mirrngadja
Bathurst Island             Ngukurr
Delissaville                Oenpelli
Docker River                Papunya
*Doyndji                    Port Keats
Galiwinku                   Santa Teresa
Hermannsburg                Snake Bay
Jay Creek                   Todd River camps
*Kopanga                    Umbakumba
Kulaluk                     Yirrkala
*Lake Evella                Yuendumu

*Out-stations visited by Dr Peterson

In addition the Commission held discussions with representatives from the following communities who travelled to other places for the purpose:
Areyonga                  Haasts Bluff
Daly River                 Minjilang
Garden Point               Numbulwar
Goulburn Island

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Appendix C

HISTORICAL SURVEY OF TREATMENT OF ABORIGINES IN RELATION TO LAND

GOVERNOR PHILLIP'S INSTRUCTIONS
25th APRIL 1787

'... You are to endeavour by every possible means to open an intercourse with the natives, and to conciliate their affections, enjoining all our subjects to live in amity and kindness with them. And if any of our subjects shall wantonly destroy them or give them any unnecessary interruption in the exercise of their several occupations, it is our will and pleasure that you do cause such offenders to be brought to punishment according to the degree of the offence. You will endeavour to procure an account of the numbers inhabiting the neighbourhood of the intended settlement, and report your opinion to one of our Secretaries of State in what manner our intercourse with these people may be turned to the advantage of the colony ...'

GOVERNOR PHILLIP TO LORD SYDNEY DESPATCH No. 5
10th JULY 1788

'When I shall have time to mix more with them every means shall be used to reconcile them to live amongst us, and to teach them the advantages they will reap from cultivating the land, which will enable them to support themselves at this season of the year, when fish are so scarce that many of them perish with hunger, at least, I have strong reasons to suppose that to be the case. Their number in the neighbourhood of this settlement, that is within ten miles to the northward and ten miles to the southward, I reckon at 1,500.'

GOVERNOR PHILLIP TO LORD SYDNEY
12th FEBRUARY 1790

'... Not a native had come near the settlement for many months, and it was absolutely necessary that we should attain their language, or teach them ours, that the means of redress might be pointed out to them if they are injured, and to reconcile them by showing the many advantages they would enjoy by mixing with us ...'
GOVERNOR KING TO LORD HOBART
20th DECEMBER 1804

‘Wishing to be convinced myself what cause there was for these alarms, three of the natives from that part of the river readily came on being sent for. On questioning the cause of their disagreement with the new settlers they very ingenuously answered that they did not like to be driven from the few places that were left on the banks of the river, where alone they could procure food; that they had gone down the river as the white men took possession of the banks; if they went across white men’s ground the settlers fired upon them and were angry; that if they could retain some places on the lower part of the river they should be satisfied and would not trouble the white men. The observation and request appear to be so just and so equitable that I assured them no more settlements should be made lower down the river. With that assurance they appeared well satisfied and promised to be quiet, in which state they continue.’

GOVERNOR MACQUARIE’S PROCLAMATION
4th MAY 1816

‘...His Excellency therefore hereby proclaims and makes known to them (the black natives) that he shall always be willing and ready to grant small portions of land, in suitable and convenient parts of the Colony, to such of them as are inclined to become regular settlers... His Excellency the Governor therefore earnestly exhorts, and thus publicly invites the natives to relinquish their wandering idle and predatory habits of life, and to become industrious and useful members of a community where they will find protection and encouragement.

...And the Governor desires it to be understood, that he will be happy to grant land to the natives in such situations as may be agreeable to themselves and according to their own particular choice, provided such lands are disposable, and belong to the Crown. And finally His Excellency the Governor hereby orders and directs that on occasions of any natives coming armed, or in a hostile manner without arms, or in unarmed parties exceeding six in number, to any farm belonging to or occupied by British subjects in the Interior, such natives are first to be desired in a civil manner to depart from the said farm, and if they persist in remaining thereon, or attempt to plunder, rob, or commit any kind of depredation, they are then to be driven away by force of arms by the settlers themselves; and in case they are not able to do so, they are to apply to a Magistrate for aid from the nearest Military Station...’

GOVERNOR MACQUARIE TO LORD BATHURST
24th FEBRUARY 1820

‘The rapid increase of British population, and the consequent occupancy of the lands formerly dwelt on by the natives having driven these harmless creatures to more remote situations...

For the purpose of erecting a village, and holding out ample encouragement to the industry of the natives, who are expected to enter into the Institution. I propose to assign a proportion of land to the extent of 10,000 acres for their permanent benefit; and I beg to express the confident hope that Your Lordship will approve of this measure, as one worthy of British
feelings to a harmless race, who have been without struggle driven by the progress of British industry from their ancient place of inhabitation.'

GOVERNOR MACQUARIE TO LORD BATHURST  
27th JULY 1822

'Considering the poor Black natives or aborigines of the Colony entitled to the peculiar protection of the British Government, on account of their being driven from the sea coast by our settling thereon, and subsequently occupying their best hunting grounds in the Interior, I deemed it an act of justice, as well as of humanity, to make at least an attempt to ameliorate their condition and to endeavour to civilize them in as far as their wandering habits would admit of . . .

Many of the natives agreed to take lands and settle permanently on them, and they all seemed highly pleased with the idea of sending their children to school . . .

The adults, however, are naturally very indolent and averse to labour, and I had consequently great difficulty in prevailing on any of them to become regular settlers. But determined to persevere in my endeavours to civilize these poor inoffensive human beings, I at length prevailed on five different tribes to become settlers, giving them their choice of situations. Three of the tribes chose to settle on the shores of Port Jackson in the vicinity of Sydney, on account of the convenience of fishing, for which purpose I furnished them with boats and fishing tackle. The two other tribes preferred taking their farms in the Interior, from the produce of which they now maintain themselves, and appear much pleased with their change of condition . . .'

GOVERNOR DARLING'S INSTRUCTIONS  
17th JULY 1825

'... And it is our further will and pleasure that you do, to the utmost of your power, promote religion and education among the native inhabitants of our said Colony, or of the lands and islands thereto adjoining; and that you do especially take care to protect them in their persons, and in the free enjoyment of their possessions, and that you do by all lawful means prevent and restrain all violence and injustice, which may in any manner be practised or attempted against them; and that you take such measures as may appear to you . . . to be necessary for their conversion to the Christian Faith, and for their advancement in civilization.'

RT. HON. T. SPRING-RICE TO GOVERNOR BOURKE  
1st AUGUST 1834

'The House of Commons have presented a humble Address to His Majesty, praying "that His Majesty will take measures, and give such directions to the Governors and Officers of His Majesty's Colonies, Settlements and Plantations, as shall secure to the natives the due observance of justice and the protection of their rights, promote the spread of civilization among them, and lead them to the peaceful and voluntary reception of the Christian religion".

And His Majesty having been graciously pleased to accede to this Address, I feel that I cannot take more effectual means for realizing the wishes expressed by the House of Commons and sincerely entertained by His
Majesty, than by directing your attention to the principles contained in the Address adverted to. I am quite aware that these principles are not now laid down for the first time, but that they will be found to have governed the conduct of my Predecessors in this Office, and to have been embodied in such Instructions, as have been issued by this Department for the improvement of the condition of the aboriginal inhabitants of His Majesty’s Colonies . . .

LORD GLENELG TO GOVERNOR BOURKE
26th JULY 1837

‘. . . all the natives inhabiting those Territories must be considered as Subjects of the Queen, and as within Her Majesty’s allegiance. To regard them as aliens with whom a war can exist, and against whom Her Majesty’s troops may exercise belligerent right, is to deny that protection to which they derive the highest possible claim from the Sovereignty which has been assumed over the whole of their ancient possessions.’

LORD GLENELG TO GOVERNOR GIPPS
31st JANUARY 1838

‘In transmitting to you a duplicate copy of the last report of the Select Committee of the House of Commons on Aborigines, I have the honour to communicate to you that Her Majesty’s Government have directed their anxious attention to the adoption of some plan for the better protection and civilization of the native tribes within the limits of your Government . . . With that view, it has been resolved to appoint at once a small number of persons qualified to fill the office of Protector of Aborigines . . .

It remains for me to explain my general view of the duties which will devolve on the Protectors, and to refer to the points which will form the Instructions which you will issue to them.
1. Each Protector should attach himself as closely and constantly as possible to the aboriginal tribes, who may be found in the district for which he may be appointed; attending them, if practicable, in their movements from one place to another, until they can be induced to assume more settled habits of life; and endeavouring to conciliate their respect and confidence, and to make them feel that he is their friend.
2. He must watch over the rights and interests of the natives, protect them as far as his personal exertions and influence, from any encroachment on their property, and from acts of cruelty, of oppression or injustice, and faithfully represent their wants, wishes or grievances, if such representation be found necessary, through the Chief Protector, to the Government of the Colony.’

LORD GLENELG TO GOVERNOR GIPPS
10th NOVEMBER 1838

‘From my communication to your predecessor, you will perceive the importance which I attach to the civilization and moral improvement of the aborigines, and I am persuaded you would yourself be most unwilling, except in a case of the most urgent exigency, to run the risk of marring one of the few efforts that are in operation to atone to that injured race for the wrongs which we have inflicted on them . . .’
REVEREND DANDESON COATES TO LORD GLENELG
31th OCTOBER 1838

'Had the Missionaries to labour among the aborigines apart from the influence of such an European population, as is everywhere in the interior planted among them, or had the Aboriginal Natives those resources which they possessed when they were the sole proprietors of the soil, the Mission would have few difficulties to encounter and the annual expenditure would be comparatively trifling. But it is a well known fact that, wherever Europeans have been located for any length of time, the natural resources of the aborigines for food are in a great measure cut off; hence these houseless wanderers are seldom found living in the Bush except when on a fighting expedition, etc., but generally in the immediate neighbourhood of Europeans.'

LORD RUSSELL TO GOVERNOR GIPPS
21st DECEMBER 1839

'You cannot over-rate the solicitude of Her Majesty's Government on the subject of the aborigines of New Holland. It is impossible to contemplate the conditions and the prospects of that unfortunate race without the deepest commiseration . . . it is impossible that the Government should forget that the original aggression was our own, and that we have never yet performed the sacred duty of making any systematic or considerable attempt to impart to the former occupiers of New South Wales the blessings of Christianity, or the knowledge of the Arts and advantages of civilised life . . . You may calculate with the utmost confidence on the cordial support of the Crown in every well directed effort, for securing to the aboriginal race of New Holland protection against injustice, and the enjoyment of every social advantage which our superior wealth and knowledge at once confer on us the power and impose on us the duty of imparting to them.'

REPORT OF LAND AND EMIGRATION COMMISSIONERS TO UNDER SECRETARY STEPHEN
17th JULY 1840

'... Both for the sake of controlling those who hold any land which may have been set apart for the use of the natives, and of providing against the contingencies affecting the eligibility of the position, we think that the Government should retain the right of property in such land in its own hands and generally that, from the responsibility under which it acts, Government is the only safe trustee which the natives can have for any purpose. At the same time while we object to making free grants of land to private parties who may undertake the protection of the natives, we are far from insensible to the claims which the natives themselves have upon the humanity of those who enter upon the occupation of the waste lands of their country. The different settlements in New Holland have been planted without reference to the feelings and to the necessities of the natives, who wander over the land; and it appears just that, as appropriation proceeds, reserves of land should be made for their use and benefit in order that the best means may be taken for enabling them to pass from the hunting to the agricultural and pastoral life, and that they may have spots upon which to place themselves whenever they may have been induced by any means to
abandon their wandering habits. In so extensive a Colony as New South Wales, where the native inhabitants are thinly scattered over every part of it, we think that these reserves would probably require to be made in several different places;...

As regards the natives in New South Wales, great difficulty appears to be found in inducing them to settle in any fixed spot. The present Bishop of Australia informed the Committee:

"That assignments of land were made to the natives by Governor Macquarie, but that it was found impossible to attach them to the soil."

LORD RUSSELL TO GOVERNOR GIPPS
25th AUGUST 1840

'I proceed now to communicate some remarks on the Report and on the general subject (of the aborigines):

1. We should run a risk of entire failure if we should compound in one abstract description of aborigines the various races and people, some half civilised, some little raised above the brutes, some hunting over vast Tracts of country, others with scarcely any means or habits of destroying wild animals at all, who have encountered the discovering or invading nations of Europe over the face of the globe. One tribe in Africa often differs widely in character from another at 50 miles distance; the red Indian of Canada and the native of New Holland are distinguished from each other in almost every respect. We, indeed, who come into contact with these various races, have one and the same duty to perform towards them all; but the manner, in which this duty is to be performed must vary with the varying materials upon which we are to work . . .

You, however, who are acquainted with the circumstances in which you have to act can decide in what manner you can best execute the intentions of the Queen’s Government to do justice and show kindness to the Natives of the Colony over which you preside.

2. There appears to be great difficulty in making reserves of land for the Natives, which shall be really beneficial to them. Two sources of mischief mar the most benevolent designs of this nature; the one arising from the inaptitude of the natives to change their desultory habits and learn those of settled industry; the other from the constant inroad of Europeans to rob, corrupt and destroy them . . . Nothing can be more painful or more laborious or more dangerous than to take up a post in the midst of a race of suspicious, ignorant savages, and to defend their cause and their existence against rapacious, violent and armed Europeans. Yet such is often the position of the Missionaries.'

LORD STANLEY TO GOVERNOR GIPPS
20th DECEMBER 1842

'I cannot conclude this Despatch without expressing my sense of the importance of the subject of it, and my hope that your experience may enable you to suggest some general plan, by which we may acquit ourselves of the obligations which we owe towards this helpless race of beings . . . I cannot acquiesce in the theory that they are incapable of improvement, and that their extinction, before the advance of the white settler, is a necessity which it is impossible to control. I recommend them to your protection and favourable consideration with the greatest earnestness, but at the same time with
perfect confidence; and I assure you that I shall be willing and anxious to co-operate with you in any arrangement for their civilization, which may hold out a fair prospect of success.'

LORD GREY TO GOVERNOR FITZROY
11th FEBRUARY 1848

'It is of the highest importance that we should not suffer ourselves to be discouraged by the failure of experiments hitherto tried, but should pursue with unabated zeal the execution of those measures which appear to promise the best, and seek watchfully for any opportunity which may present itself of rectifying errors and devising improvements in our policy towards this helpless portion of our fellow subjects . . .

I am anxious, in the next place, to call your attention to the following passage which occurs towards the conclusion of the Chief Protector’s Report. Speaking of the aboriginal population in the district of Port Phillip, he observes that:

“another subject deeply affecting the future condition of the aborigines is the probability that, unless suitable reserves are immediately formed for their benefit, every acre of their native soil will shortly be so leased out and occupied as to leave them, in a legal view, no place for the sole of their feet. If the occupation of Crown Lands is to be settled by the Crown granting leases for years, the natives will be deprived of all legal right to hunt over their own native lands, and, according to the dicta of certain high legal authorities, may be forcibly excluded by the Lessee from the tract of Country so leased”.

I am not certain that I rightly understand the meaning of this suggestion for the formation ‘of suitable reserves’ for the benefit of the natives. Among the plans which have tried in different parts of the world for the protection of natives in the middle of an advancing population of European settlers, one has been that of setting apart large tracts of land as remote as possible from the districts in actual occupation by those settlers, on which the natives might maintain themselves according to that mode of life to which they are addicted, without interference on the part of the colonists or their government. But I think it has been generally agreed that this system is inapplicable to the circumstances of Australia. The necessity under which proprietors of flocks are placed of extending their occupation of land, such as it is, over wide tracts of country in a manner altogether different from the slow process of agricultural settlement, the barren and inhospitable character of large tracts of the Australian soil, the migratory habits of the scanty tribes in search of sustenance which the earth very sparingly affords them, all seem to render the establishment of native reserves of land on a large scale of very doubtful utility, even if practical. If, therefore, I am to understand in this manner the meaning of the Chief Protector, it appears to me, that without further inquiry and better evidence than is at present before me, I could not authorize or recommend the adoption of such measures on an extensive scale.

But the very difficulty of thus locating the aboriginal tribes absolutely apart from the settlers, renders it the more incumbent on Government to prevent them from being altogether excluded from the land under pastoral occupation. I think it essential that it should be generally understood that leases granted for this purpose give the grantees only an exclusive right of pasturage for their cattle, and of cultivating such land as they may require
within the large limits thus assigned to them; but that these leases are not intended to deprive the natives of their former right to hunt over these districts, or to wander over them in search of subsistence in the manner to which they have been heretofore accustomed, from the spontaneous produce of the soil, except over lands actually cultivated, or fenced in for that purpose.

This is a subject to which I wish you to turn your attention . . .

INSTRUCTIONS TO NORTHERN TERRITORY PROTECTOR OF ABORIGINES
14th APRIL 1864

`. . . In the absence of any reliable information as to the numbers and condition of the aborigines of the Northern Territory, I must at present content myself with merely indicating for your guidance the general course of action with reference to them which the Government are desirous should be adopted by you, in your capacity as Protector of Aborigines.

It is a matter of great importance, not only to the natives themselves, but to the expedition which you accompany, that a friendly feeling should exist between them and the Europeans; and you should, therefore, be careful to lose no opportunity which may present itself of bringing about and fostering such a desirable state of things.

You should endeavour to make them comprehend, as clearly as possible, that they are British subjects, and that, as such, they are amenable to, and protected by, our laws. Care should be taken at the outset to let the natives understand that their lives and liberties will be protected by the Government as long as they are peaceable and well disposed . . .

'The Government surveyors will be instructed to leave reserves of land for the use of the aborigines so as to secure them free access to water and an ample supply of wood for canoes, implements of the chase, etc.; and the knowledge of the habits of the natives which you will acquire will, probably, enable you to assist in selecting the best sites for these reserves, so as not to interfere with their favourite hunting grounds, or places of resort . . .'

GOVERNMENT RESIDENT'S REPORT ON NORTHERN TERRITORY — 1889

`. . . the reports from the outside country, east and west, are that the blacks are beginning to understand the conditions under which the white man holds the country of which they consider they have been robbed. A station­manager informed me some time ago, that an ‘old man’ blackfellow said to him, “I say, boss, whitefellow stop here too long with him bullocky. Now time whitefellow take him bullocky and clear out. This fellow country him blackfellow country”.

‘After careful inquiry I am of opinion that this is the attitude of the aborigines towards Europeans. Entrance into their country is an act of invasion. It is a declaration of war, and they will halt at no opportunity of attacking the white invaders.

In accord with this experience of my own are the reports I have received from the inland stations. The primary fact which philanthropists must accept is that the aborigines regard the land as theirs, and that the intrusion of the white man is a declaration of war, and the result is simply ‘the survival of the fittest’.

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I am well aware that there are many odious things done by whites, but I believe I express the opinion of nine-tenths of those who have taken their lives in their hands and gone into the back blocks when I say that occupation of the country for pastoral purposes and peaceable relations with the native tribes are hopelessly irreconcilable. There is a straight issue presented for the philanthropist, the statesman, and the capitalist to consider. Does the land inalienably belong to the aborigines, who have from time immemorial occupied it and exercised tribal rights over it? If so the pastoralist must clear out, and the philanthropist and the missionary must come in. If the land is, however, too wide for the nomadic population, how shall the 'real property' interests of the aborigines be preserved?

During the period I have been Government Resident I have pressed upon successive Governments the absolute duty of the State to consider the conditions and provide for the future protection of the wild tribes who are living on this coast. Up to date all my suggestions, which have been printed in the Government Resident's annual or bi-annual reports, have been passed without much attention from either Parliament, press, or pulpit. This fact, however, remains; there are thousands of aborigines here, who, from a physical point of observation, are fitted for all the conditions of an active, useful life. What will the Government do with them?

I state most confidently that the first duty of the State is to declare reserves, and within these reserves to give the native tribes absolute rights and sole control. There are on the north coast of Australia strong tribes of natives, who, so far as I can learn, live in amicable relations, with each other, who have distinct tribal boundaries which are never passed except by notice. They do not wish to enter upon one another's country, and they feel they have sufficient for themselves in their own territory . . .'

REPORT TO THE COMMONWEALTH GOVERNMENT PREPARED BY MR J. W. BLEAKLEY, CHIEF PROTECTOR OF ABORIGINALS, QUEENSLAND IN 1928

'... The only areas of any extent, where now it can be said that the natives' hunting grounds have not been encroached upon, are Arnhem Land, in the north-east of the North Australian Peninsula, the desert country east of Tanami gold-fields and the large reserve between the McDonnell and Petermann Ranges in the south-western corner of Central Australia. Although varying estimates were offered as to the number of natives on these areas, it would appear that they would probably not exceed 5000 altogether. Men who claim to have been through Arnhem Land give the probable population as 3000, most of whom are gathered around the watered districts near the coast.

The idea of establishing special reserves in good country with ample native game and water, where the natives are as yet unspoiled, is an excellent one. The suggestion that they should then be left to live their own life would also be the right one, if the exploiter would equally respect that wish. The need for some benevolent supervision is exemplified in Arnhem Land, where alien and even white traders and fishermen have exploited the ignorant coastal natives for many years.

This care can best be provided by reserving suitable areas, where these primitive people are most numerous, and establishing missions from which benevolent supervision can be exercised. It should be clearly defined that the aim, at the beginning, is not to draw the people away unnecessarily
from their tribal life, but to win their trust by kindly ministrations, relieving them in distress or sickness and guarding them from abuse.

Arnhem Land Reserve. The large number of primitive natives in Arnhem Land calls for effective measures for their protection and supervision. The whole of this country north of a line, say, from the South Alligator River to the Roper or Phelp Rivers, but omitting or skirting any existing pastoral holdings, should be reserved for aboriginals. There should be no obstacle to this, as the country is very poor, no one requires it, and those who previously have taken some of it up have abandoned it. The present missions are admirably situated for fitting in with a scheme, for a chain of institutions around this area, to ensure the necessary supervision.
Appendix D

SUGGESTED DRAFTING INSTRUCTIONS
FOR PROPOSED LEGISLATION

ABORIGINAL LAND (NORTHERN TERRITORY) ACT 1974

No.  of 1974

An Act

To provide for the acquisition and administration of land for Aboriginal people in the Northern Territory of Australia and for other purposes.
BE IT ENACTED by the Queen, the Senate and the Houses of Representatives of Australia, as follows:

Part I — Preliminary

1. This Act may be cited as the Aboriginal Land (Northern Territory) Act 1974.

2. This Act shall come into operation on a date to be fixed by proclamation.

3. In this Act, unless the contrary intention appears:

‘Aborigine’ means a descendant of an indigenous inhabitant of Australia;

‘Aboriginal tradition’ means the traditions observances customs beliefs and social organisation of the indigenous inhabitants of Australia as modified by those who follow those traditions observances customs beliefs and social organisation and as applied to particular persons, sites, tracts of land, things or relationships.

‘Aboriginal land’ means land, an estate in fee simple in which is vested in a Land Trust under or pursuant to this Act;

‘Aboriginal enterprise’ means a partnership or joint venture, co-operative association, company or other corporation, in which all the members are Aborigines;

‘Alienated interest’ means any estate or interest in or over land granted or agreed to be granted by the Crown (other than any estate or interest held by a Land Trust), any estate or interest granted or agreed to be granted by a Land Trust pursuant to this Act and any right of exclusive possession acquired pursuant to this Act;

‘Commission’ means the Aboriginal Land Commission established by this Act;
'Community purpose' means a public purpose which is calculated to benefit primarily the members of a particular community;
'Court' means the Supreme Court of the Northern Territory;
'Director' means the Director of the Northern Territory Division of the Department of Aboriginal Affairs;
'Land Trust' means a Land Trust incorporated by proclamation pursuant to this Act;
'Land Council' means a Land Council incorporated by proclamation pursuant to this Act;
'Minerals' include gold, silver and any liquid or gas which may be obtained from or under the surface of the land; the term does not include water but does include any mineral suspended in subterranean water;
'Minister' means the Minister for Aboriginal Affairs or other Minister administering this Act from time to time;
'Mission' means any religious society, association or corporation which, pursuant to its objects is engaged in working for the spiritual cultural or economic welfare of Aborigines;
and the term includes a person or persons entitled to hold interests in land on behalf of any such society association or corporation;
'Mission purposes' includes the provision of buildings and services ancillary to the work of a Mission;
'Mining interest' means any lease, tenement, licence or permit of a kind provided for in the Mining Ordinance or in the Petroleum (Exploration and Mining) Ordinance or a lease for quarrying purposes;
'Permittee' means any person other than an Aborigine authorised to enter upon Aboriginal land pursuant to section 36 of this Act;
'Public purpose' means a public purpose as defined in the Lands Acquisition Act or that Act as amended from time to time;
'Traditional Aboriginal owners' means in respect of an area of land, a local descent group of Aborigines who have common spiritual affiliations to a site or sites within that 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.

Part II — Division I —
Establishment of Land Councils and Land Trusts

4. The Governor-General may incorporate a Land Council or a Land Trust under this Act by proclamation in that behalf setting forth the name of the Land Council or Land Trust and the names of the first members of the Land Council or Land Trust as the case may be, who have accepted appointment.

5. A Northern Land Council may be incorporated to perform the functions of a Land Council in respect of that part of the Northern Territory which lies north of the line described in Schedule 1, and a Central Land Council may be incorporated to perform the functions of a Land Council in respect of that part of the Northern Territory which lies south of that line.

6. (1) A Land Council shall consist of persons each of whom is respectively ordinarily resident in or near one of the respective communities named in Schedule 2, and who may be accompanied at any meeting of
the Council by such additional residents of that community as may wish to do so provided that the Chairman of the meeting may, in the interests of order, limit the number of persons who may accompany each Council member.

(2) Council members shall be selected by Aboriginal communities or groups in such ways as the Director may from time to time approve.

(3) The first members of a Land Council shall consist of those persons named in the proclamation constituting the Land Council until, in each respective case, some other selected person attends a meeting of the Land Council in his place, when that other person shall become a member of the Council and thereafter attendance by a selected person in the place of a member shall effect a change in the membership of the Land Council.

(4) The Governor-General may from time to time by proclamation, at the request of a Land Council, amend the list of communities, as set out in Schedule 2, entitled to send representatives to the meetings of that Land Council.

(5) A Land Council may with the approval of the Governor-General make by-laws providing for the co-option of up to five additional Aboriginal members at any one time.

7. The functions of a Land Council shall be:

(a) to express Aboriginal opinion as to the management of Aboriginal land and as to appropriate legislation and regulations concerning such land;

(b) to protect the interests of traditional owners and other Aborigines interested in Aboriginal land;

(c) to consult with traditional owners of particular areas of Aboriginal land and other Aborigines interested in such land with respect to any proposal relating to the use of that land;

(d) to negotiate on behalf of traditional owners of particular areas of Aboriginal land and others interested in such land with persons desiring to use or occupy or obtain any interest in that land;

(e) to conciliate disputes between or among Aborigines in matters of Aboriginal tradition, land ownership or land usage;

(f) to engage on its own behalf or on behalf of other Aborigines expert advice and assistance with respect to any matter which falls within the Land Council's functions;

(g) to nominate members of a Land Trust when requested to do so by the Minister;

(h) to provide all administrative and financial assistance required by Land Trusts;

(i) to give all lawful directions to Land Trusts concerning the performance of their duties;

(j) to compile and keep registers recording the names of the members of the Land Council and of the Land Trusts within its areas, and the names of traditional owners of particular areas of Aboriginal land;

(k) to compile and keep maps or other references showing the sites belonging to traditional owners of particular areas of Aboriginal land;

(l) to receive monies due to it or to any Land Trust within its area and to give a valid discharge for such monies;
(m) to apply any monies received by it for its own approved expenditure and to account for the balance to those who are entitled to it and otherwise to dispose of the balance for the benefit of Aborigines within its area;

(n) to investigate and make claims, reports or representations concerning the land requirements of Aborigines in towns;

(o) to investigate and make claims, reports or representations concerning the ownership or use of unalienated Crown lands by Aborigines;

(p) to investigate and make claims, reports or representations concerning priorities in the expenditure of public monies for the purchase or development of land for Aborigines;

(q) to issue permits to persons other than Aborigines entitling them to enter and remain upon Aboriginal lands subject to such conditions as the permit may contain;

(r) to revoke any such permit by notice in writing to the holder;

(s) to take such steps as it sees fit to enforce the observance of such a permit system; and

(t) generally to administer Aboriginal land in consultation with the traditional owners of it.

8. Each Land Trust shall consist of four or more members and any act or thing done by the Trust may be done with the consent of a majority (who shall number at least three).

9. (1) A member of a Land Trust shall cease to hold office when:

(a) he resigns by writing addressed to the Minister, or

(b) he fails in the opinion of the Land Council properly to perform the duties of his office and the Land Council resolves to request the Minister to remove him and the Minister by notice in writing to the member so removes him.

(2) Any vacancy in the membership of a Land Trust may be filled by the Minister on the nomination of a Land Council or a community council invited by him to make such a nomination.

10. The functions of a Land Trust are:

(a) to hold the title to Aboriginal land;

(b) subject to this Act and to the lawful directions of the Land Council to exercise the powers of an owner of land for the benefit of those entitled to the profits and enjoyment of the land under this Act;

(c) to account for moneys paid to it in accordance with this Act.

11. All Courts, Judges and persons acting judicially shall take judicial notice of the common seal of each Land Council or Land Trust affixed to a document and shall presume that it was duly affixed.

Part II — Division 2 —

Vesting of Title

12. An estate in fee simple in the respective parcels of land described in Column 1 of Schedule 3 shall on the incorporation of the Land Trust named opposite that parcel in Column 2 of Schedule 3 be vested in the Land Trust so named subject to alienated interests.
13. (1) This section applies in respect of lands which do not lie within the boundaries of a town or municipality or within the boundaries of any land described in Schedule 3 or vested by the Crown in an approved corporation pursuant to section 25 or granted by the Crown in fee simple.

(2) An application may be made to the Commission by or on behalf of any of the traditional owners of an area of land for an inquiry by the Commission as to the desirability of purchasing or otherwise acquiring any alienated interests in the said land and proclaiming it to be Aboriginal land.

(3) If after making due inquiry (which shall be made without regard to legal forms or rules of evidence) and after considering such material as the applicants and the Crown and the holders of any alienated interests desire to place before the Commission, the Commission is of the opinion that all or some of the said interests should be purchased or otherwise acquired and all or part of the said land should be proclaimed as Aboriginal land, it shall report its opinion to the trustees of the Aboriginal Land Fund and the Minister.

(4) In reporting its opinion the Commission shall set out the boundaries of the land the subject of its report, recommend a suitable name for the Land Trust which would have the said land vested in it and nominate suitable persons to be members of the said Land Trust.

(5) On receipt of the Commission's report the trustees of the Aboriginal Land Fund may appropriate the monies necessary and the Minister may in his discretion authorise the purchase or acquisition of the said alienated interests and recommend to the Governor-General the incorporation of the said Land Trust and the proclamation of the said land as Aboriginal land.

(6) The Governor-General on the advice of the Minister is hereby empowered by proclamation in that behalf to incorporate any Land Trust and to vest in any Land Trust an estate in fee simple in the land described in the proclamation subject to such alienated interests as may be specified in the said proclamation.

(7) No proclamation of Aboriginal land may be revoked and no Aboriginal land may be resumed or compulsorily acquired by the Crown or any instrumentality of the Crown unless

(a) the Land Council shall first have consented in writing to the said revocation, resumption or compulsory acquisition, or

(b) notice of such intended revocation, resumption or compulsory acquisition shall first have been laid before each House of the Parliament and the proposed action shall not have been disallowed by either House within 21 sitting days.

14. When an estate in fee simple is vested in a Land Trust by proclamation, the Land Trust shall lodge a gazette copy of the proclamation with the Registrar General, who shall thereupon issue a Certificate of Title under 'The Real Property Act and Ordinance 1886 to 1968' (as amended from time to time) for an estate in fee simple in the land to which the proclamation relates subject to alienated interests.
15. Any Aborigine or group of Aborigines entitled by Aboriginal tradition to the use or occupation of Aboriginal land (whether the entitlement is or is not qualified as to place, time, circumstance, purpose or permission) is or are entitled to the like use or occupation under this Act subject to alienated interests.

16. A Land Trust shall, subject to this Act, hold the land vested in it in trust for the Land Councils.

Part II — Division 3 — Alienated Interests

17. (1) If at the time when an estate in fee simple in a piece of land referred to in Schedule 3 is vested in a Land Trust the Crown or a Crown instrumentality is using or occupying a part of that piece of land or a building on that piece of land for any public purpose, the Crown or Crown instrumentality in question shall, subject to the terms of any lease into which it may enter, be entitled to exclusive possession of that piece of land or of that building and its curtilage for so long as it is required for use or occupation for a public purpose.

(2) If the curtilage of a building is not defined by any fence or other boundary it shall be deemed to include the land lying within fifty metres of the building or within a line midway between that building and any adjacent building (whichever is the less).

(3) If the land in respect of which the Crown or Crown instrumentality is entitled to exclusive possession pursuant to sub-section (1) or pursuant to a lease granted by a Land Trust is not being used or occupied for a community purpose the Crown or Crown instrumentality shall pay to the Land Trust a sum equal to the full economic rent of the land, payment to be made at the end of each six months in respect of the periods during that six months in respect of which the sum accrued.

(4) For the purposes of this section, the conservation of forests established in accordance with proper silvi-cultural and ecological practice shall be deemed to be a public purpose and a community purpose, but forestry purposes shall not otherwise be deemed to be public purposes.

(5) For the purposes of the last preceding sub-section an established forest is one which is under the management and protection of the Forestry Fisheries Wildlife Environment and National Parks Branch of the Department of the Northern Territory.

18. (1) When the Crown is entitled to exclusive possession of Aboriginal land on which a forest is standing, it may, subject to sub-sections (2) and (3) of this section, grant to any person a forestry licence as provided for in the Forestry Ordinance 1959-1965 or that Ordinance as amended from time to time.

(2) Preference shall be given to Aborigines in the issue of forestry licences on Aboriginal land.

(3) No forestry licence shall be issued except with the written consent of the Land Council.

(4) All forest royalties shall constitute a debt due to the Land Trust payable at intervals of 14 days from the date when the first royalty accrued.
19. (1) Subject to section 44 of this Act the Crown may layout and construct such roadworks upon Aboriginal land as may be expedient from time to time.

(2) The constructing authority shall consult with the Land Council as to the route of the roadworks to be constructed prior to commencing any construction.

(3) When the constructing authority and the Land Council agree upon the route and a programme for the construction of roadworks the constructing authority may obtain exclusive possession of any area (not being an area which is held under an alienated interest other than a mining interest) for any period of time for the purposes of construction of the roadworks in accordance with that programme, by publishing in the Gazette a notice to which the Land Council has consented specifying the areas required and the period for which each area is required.

(4) When roadworks have been constructed on Aboriginal land the Governor-General may by Proclamation declare that the roadway is open either to the public generally or to Aborigines and permittees only and the roadway shall be deemed to be dedicated as a road for use by those respective classes as the case may be, provided that if new roadworks are constructed in place of the roadworks first constructed, the new roadway when opened for use shall be deemed to be dedicated in like manner, and the first roadway shall cease to be deemed to be dedicated.

20. (1) If at the time when the title to a piece of land referred to in Schedule 3 is vested in a Land Trust a mission is using or occupying a building on that piece of land for mission purposes, the mission shall, subject to the terms of any formal lease into which it may enter, be deemed to hold that building and its curtilage, under a lease from year to year commencing on the date on which this Act comes into force at an annual rent of ten cents.

(2) If the curtilage of a building is not defined by any fence or other boundary it shall be deemed to include the land lying within fifty metres of the building or within a line midway between that building and any adjacent building (whichever is the less).

(3) If the renewal of a lease referred to in sub-section (1) hereof is refused by a Land Trust, the mission shall be entitled to compensation from the Land Trust for the value as at the time of refusal of any buildings included in the said lease which were wholly or substantially erected by the use of mission funds.

21. A Land Trust shall not grant, issue, transfer or assign, or agree to grant, issue, transfer or assign any estate or interest in Aboriginal land except:

(a) an estate in fee simple transferred with the prior written consent of the Minister to another Land Trust; or

(b) a lease or licence (whether with or without an interest in land or other property) granted or agreed to be granted with the prior written consent of the Land Council and otherwise in accordance with this Act.

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22. (1) Subject to this Act a Land Trust may grant a lease or a licence (whether with or without an interest in land or other property) in respect of any Aboriginal land vested in it—

(a) to an Aborigine or to an Aboriginal enterprise:
   (i) for personal residence of the grantee and his family;
   (ii) for the conduct of a business by the grantee of the
        land leased, provided that no non-Aborigine is or becomes
        entitled to any of the profits of the business or to any
        benefit which varies in accordance with the profits of the
        business;
   (iii) for the purpose of residence by an employee of an
        Aborigine or of an Aboriginal enterprise; or
   (iv) for any community purposes;
(b) to the Crown for any public purpose;
(c) to any mission for any mission purpose;
(d) with the consent of the Minister to any person for any
    purpose connected with the working of a mining interest; or
(e) with the consent of the Minister to any person for tourist
    purposes or for the purpose of adjusting boundaries of pastoral
    enterprises or for such other purposes as the Minister may in
    special circumstances approve.

(2) (a) No lease or licence (whether with or without an interest
     in land or other property) granted to any person under this
     section shall be transferable to any other person who is not a
     member of a class entitled to be granted the lease or licence in
     question.

     (b) No sublease or other interest dependent upon any such
         lease or licence shall be capable of being granted to any person
         who is not a member of a class entitled to be granted the lease
         or licence in question.

23. Except with the consent of the Minister no lease or licence (whether
with or without an interest in land or other property) shall be granted for
a term exceeding 5 years (including options which the lessee may exercise).

24. (1) The Land Council shall not give any such consent as that
required by section 21 unless it is satisfied that:

(a) the traditional owners (if any) understand the nature of
    the proposal in respect of their land;
(b) the proposal to which the Land Council's consent is
    required is not opposed by the traditional owners (if any);
(c) the terms and conditions of the proposal are reasonable;
(d) any Aboriginal community which may be affected by the
    proposal has been consulted and has had an adequate oppor­
    tunity to express opinions on the proposal to the Land Council;
(e) the carrying out of the proposal will comply with the
    provisions of this Act.

(2) Any failure by the Land Council to comply with the provisions
of the last preceding sub-section shall not invalidate the grant by the
Land Trust of any lease or licence (whether with or without an interest
in land or other property) unless the grantee procured the consent of the Land Council by fraud or, at the time of the grant, knew that the Land Council had failed to comply with the last preceding sub-section.

Part III — Approved Corporations

25. (1) The Governor-General may by proclamation vest in a corporation approved by him the title to any estate or interest in land to be held and applied by the corporation for one or more of the purposes specified in sub-section (2) (c) or some other purpose to be specified in the proclamation.

(2) A corporation shall not be approved under sub-section (1) unless:

(a) all members of the corporation are Aborigines;
(b) the constitution of the corporation prohibits the application or distribution of the assets of or vested in the corporation for the benefit of any individual except for a benefit derived in accordance with sub-paragraph (c) of this sub-section; and
(c) the constitution of the corporation requires it to apply its assets either for the maintenance and improvement of the accommodation, housing, health, education or spiritual or social amenities (including the development of outstations) of the Aboriginal residents of an area which includes the land referred to in sub-section (1) or for the other purpose to be specified in the proclamation or for two or more of these purposes.
(d) the Governor-General is satisfied that the corporation is capable of controlling the use of the land either permanently or for a time sufficient to permit the substantial fulfilment of the purpose specified in the proclamation.

(3) An approved corporation shall not be capable, while the title to any estate or interest in land is vested in it pursuant to this section, of amending its constitution so that it ceases to conform with the provisions of sub-section (2) of this section.

(4) The Governor-General may amend a proclamation made under sub-section (1) by adding a purpose or, with the consent of the approved corporation, altering a purpose.

(5) An approved corporation may for any of the purposes for which the title to an estate or interest in land is vested in it, exercise any of the powers conferred upon a Land Trust by section 22 (1) of this Act.

(6) The Governor-General acting on the advice of the Minister following a report from the Commission may, as to the whole or part of the said land, revoke a proclamation made under sub-section (1) if an approved corporation—

(a) is not applying the assets vested in it in accordance with its constitution; or
(b) cannot apply or is not applying an asset vested in it for the purpose or one of the purposes for which the asset in question is vested in it.

(7) When a proclamation is revoked pursuant to sub-section (6) of this section, the title to so much of the land vested in the approved corporation by the proclamation as is specified in the revocation shall...
revest in the Crown subject to any interests lawfully granted or created by the approved corporation.

(8) No compensation shall be payable to any person in respect of any revocation pursuant to sub-section (6) of this section.

Part IV — The Aboriginal Land Commission

26. (1) There is established by this Act a commission by the name of The Aboriginal Land Commission.

(2) In addition to the functions specified in section 13, the functions of the Commission are:

(a) The ascertainment of the needs of individual Aborigines or of Aboriginal groups or communities in the Northern Territory for land to be used for residential, employment or other purposes;
(b) The ascertainment of the availability of land suitable to satisfy the needs of Aborigines or Aboriginal groups for land;
(c) The ascertainment of the feasibility of Aborigines or Aboriginal groups developing and using land and the ascertainment of the financial and other assistance required by the Aborigines or Aboriginal groups;
(d) Consultation with planning authorities to ensure that areas within municipalities and towns can be set aside for the varying uses for which land may be required for Aborigines;
(e) Determination of the priorities in which the various needs for land and to develop land ought to be satisfied;
(f) Maintenance of maps and other records showing Aboriginal traditional claims to lands other than Aboriginal land as defined;
(g) Advice to the Minister for the Northern Territory concerning the resumption and excision from pastoral leases of areas required for Aboriginal community purposes, or the return of such areas to the pastoral lessee if they are later abandoned by Aborigines;
(h) Advice to the Minister for the Northern Territory or the Minister for Aboriginal Affairs on any matters referred to the Commission by either of the said Ministers;
(i) Advice to the Minister pursuant to section 25(6) hereof.

(3) In discharging its functions the Commission shall act on its own motion or on an application by or on behalf of any Aborigines or groups of Aborigines, and shall, in the case of an application made to it, give an answer to the person who makes the application, stating what investigation was made into the subject-matter of the application and the result of that investigation.

(4) The Commission shall annually or at such more frequent periods as it deems advisable make a report of its activities to the Parliament stating:

(a) its findings as to the needs of Aborigines for land and for the development of land;
(b) the feasibility of satisfying those needs and the steps which require to be taken to satisfy them;
(c) the estimated cost of satisfying the respective needs reported upon; and
(d) the recommendations made by the Commission for the satisfaction of the respective needs reported upon, the purpose for which any expenditure should be made, and the priority recommended for satisfying those needs in turn.

27. In exercising its functions under section 26 the Commission shall be guided by the principles that:

(a) Aborigines who by choice are living at a place on the traditional country of the tribe or linguistic group to which they belong but who do not have any right or entitlement to live at that place ought where practicable to be able to acquire secure occupancy of such a place.

(b) Aborigines who are not living at a place on the traditional country of the tribe or linguistic group to which they belong but who desire to do so ought where practicable to be able to acquire secure occupancy of such a place.

Part V — Finance

28. (1) At the first meeting in each calendar year the Land Council shall adopt a budget for its financial year which shall commence on 1st July of each year. The budget so adopted shall be submitted to the Minister for approval, and, if approved, or if, when amended and re-submitted it is approved, it shall constitute the budget of the Land Council for the ensuing financial year. Any budget as approved may be amended with the Minister's approval before the expiration of the financial year to which it relates.

(2) The Land Council may borrow from any banking institution with the approval of the Minister an amount equivalent to 10% of the approved budget.

29. (1) All royalties received by the Crown in relation to Aboriginal land shall be paid to the Land Council as agent for the Land Trust in which is vested the title to the land from which the royalties are derived.

(2) The Land Council shall retain such amount as it is entitled to and pay the balance so received to persons thereunto entitled.

30. (1) (a) All payments received by the Crown in relation to the grant of a mining interest shall be paid to the Land Council for distribution amongst the traditional owners of the land from which payments are derived.

(b) Before distributing such payments the Land Council may deduct such amount as it determines, not exceeding five per cent of the amount received, by way of payment for its services.

(2) All mineral royalties shall be retained or paid by the Land Council as follows:

(a) two tenths to be retained by the Land Council;
(b) two tenths to be paid to the other regional Land Council;
(c) three tenths to be paid to the Councils, being approved corporations, of any such communities as were, at the time of granting of the mining interest which led to the discovery of the mineral concerned, living within 60 kilometres of the site of the
said discovery and, if more than one, in such proportions as the Land Council may from time to time determine; and
(d) the balance to be paid to the Aborigines Benefits Trust Fund.

(3) All forestry royalties received by the Land Council shall be paid as to one half to the traditional owners of the land from which the royalty is derived and the balance to the Aborigines Benefits Trust Fund.

31. All rents and licence fees and any money or other property (whether by way of capital or income) derived from land vested in an approved corporation or from Aboriginal land, received by a Land Council or Land Trust which is not otherwise obliged to account for the money or property so received, shall be applied either to:

(a) the traditional owners of the country which includes the land from which the money or property was derived; or
(b) a corporation of the kind referred to in paragraphs (b) and (c) of sub-section 2 of section 25.

32. (1) The Land Council shall ascertain and record by means of maps and lists the names of the traditional owners of sites within Aboriginal land and the Land Council shall amend those maps and lists from time to time for the purpose of keeping them up to date.

(2) The records so kept by the Land Council shall be conclusive evidence of the identity of the traditional owners of such sites and the land around and between such sites, and any payment required to be made to traditional owners of land and made in good faith in accordance with those records shall be a valid payment.

Part VI — Aboriginal Land Fund

33. (1) There shall be established an Aboriginal Land Fund for the purpose of making grants for the purchase or development of land for Aborigines.

(2) There shall be payable to the Fund such monies as are appropriated from time to time by the Parliament.

(3) The Governor-General is hereby empowered to appoint by proclamation suitable persons to be trustees of the Fund.

(4) The trustees may, with the approval of the Minister, make such payments from the Fund as they see fit for the purchase or development of land for Aborigines.

(5) Before making or refusing any payment from the Fund the trustees shall consider the recommendations of the Commission pursuant to section 13 of this Act.

(6) Any grants from the Fund shall be made only to Land Trusts or approved corporations. Any land purchased by the Trust shall be vested by proclamation in a Land Trust or approved corporation pursuant to either section 13 or section 25 of this Act as the case may be.

Part VII — Interests Granted by the Crown

34. (1) This Part applies:

(a) to an estate or interest in land granted by the Crown prior to the date when that land becomes Aboriginal land pursuant to
this Act and which the grantee or his successor in title holds on that date;

(b) to a right binding upon the Crown prior to the date when land becomes Aboriginal land pursuant to this Act to the grant of an estate or interest in that land and to which a person is entitled to the benefit on that date;

(c) to any right conferred by statute on a person holding such an interest to apply for a renewal or for a conversion to any other interest and to any renewal or conversion granted pursuant to this section.

(2) Any such estate interest or right is referred to in this Part as a vested interest.

(3) Any person holding or entitled to the benefit of a vested interest shall, notwithstanding the transfer of an estate or interest in land to a Land Trust, be entitled to enjoy the benefit of the vested interest and to discharge any obligations which the vested interest imposes upon him as though this Act (other than this Part) had not come into force.

(4) The Crown by its respective Departments or Branches of Departments shall continue to receive any payments due or enforce any obligation owed by the holder for the time being of the vested interest and shall be entitled to act, subject to section 35, in all matters concerning the vested interest in question as though this Act (other than this Part) had not come into force.

(5) The Crown shall pay to the Land Council as agent for the Land Trust the whole of any monies received by it pursuant to sub-section (4) hereof.

35. (1) In exercising its powers under section 34 the Crown shall act with due regard for the rights and interests of the holder of the estate or interest, the Land Trust, and the Aborigines who may benefit from the vesting in the Land Trust of the estate in fee simple in the land in question.

(2) When the holder (not being the holder of an option for renewal) applies for renewal or conversion of any interest in Aboriginal land, the Crown or any board or committee empowered to grant or to recommend the granting of a renewal or conversion shall refuse the renewal or conversion or a recommendation in favour of a renewal or conversion unless it is satisfied that the hardship which would be occasioned to the holder by a refusal to renew or convert is greater than the hardship which would be occasioned to the Land Trust and to the Aborigines who might benefit by a refusal to renew or convert if the application for renewal or conversion were granted.

(3) Any application for renewal or conversion by a holder (not being the holder of an option for renewal) shall be made at least ten years before the expiration of the interest in question or within two years from the date when this Act came into force, whichever is the later, and shall give notice to the Land Council.

(4) When an application for renewal or conversion is granted the Land Trust shall, notwithstanding the provisions of this Act, issue any instrument required to give effect to the renewal or conversion in question.
Part VIII — Mining Interests

36. No mining interest in Aboriginal land shall be granted unless:
   (a) the Land Council and the Minister shall have consented in writing to the grant, or
   (b) the Governor-General shall have by proclamation declared that the national interest requires the granting of the said mining interest.

37. Any proclamation under section 36(b) of this Act shall be laid before each House of the Parliament and shall be subject to disallowance by the resolution of either House made within 21 sitting days.

38. In negotiating for the consent of the Land Council to the grant of a mining interest, the applicant may validly agree to pay a higher royalty rate than is prescribed by the Mining Ordinance 1939-72.

39. It shall be an offence for any applicant for a mining interest to make any payment other than a statutory rental payment, directly or indirectly, to an Aborigine or group of Aborigines (not being a Land Trust or an approved corporation) in connexion with the granting of any mining interest.

Part IX — Miscellaneous

40. (1) Aboriginal land shall not be nor continue to be a reserve for wildlife or a sanctuary under any legislation in force in that behalf unless, within one year from the date when this Act comes into force, the power to make regulations with respect to that area is vested in a committee (as hereinafter provided) with the consent of the Governor-General or of the Administrator of the Northern Territory in Council.

   (2) The Committee shall consist of a Chairman and not less than three persons to be nominated by the Land Council and an equal number of other persons to be nominated by the Administrator of the Northern Territory.

   (3) The Chairman shall be appointed by the Administrator of the Northern Territory after consultation with the Land Council.

   (4) It is the duty of the Chairman to endeavour to reconcile any conflicts of opinion on the committee. The Chairman shall have a casting vote but no deliberative vote.

   (5) Aborigines shall wherever practicable be appointed as rangers on wildlife reserves and sanctuaries on Aboriginal land.

41. (1) Subject to alienated interests and to sub-section (2) of this section any Aborigine may enter and remain upon Aboriginal land.

   (2) Any person other than a traditional Aboriginal owner of the land or a person specified in sub-section 5 hereof, who is upon any part of Aboriginal land may be required to leave that land by a person authorized in that behalf by a community council constituted for the area in question and any person who fails to comply within reasonable time with the direction so given shall be guilty of an offence.

   (3) A person who is not an Aborigine and who is not the holder, or the invitee of the holder, of a vested interest shall not enter or remain on Aboriginal land unless he is authorized in writing by:
(a) the Land Council,
(b) a community council acting within authority delegated to it by the Land Council, or
(c) the Director.

4. (4) Any such authorization may be issued subject to such conditions as to time or place or otherwise as the issuing authority may see fit to impose and may be revoked at any time by a notice in writing signed on behalf of the issuing authority.

5. Any person who enters or remains on Aboriginal land in breach of sub-section (3) hereof shall be guilty of an offence unless he can show:

(a) that in entering or remaining on the said land he was acting in the course of his duties as a member of the police force or an officer of the Australian Public Service, or
(b) that he was a member or a candidate for election as a member of the Australian Parliament or the Legislative Council of the Northern Territory for the area in question, or
(c) that in entering or remaining on the said land he was acting of necessity or in an emergency in which it was impracticable to obtain prior authorization, or
(d) that he was a resident of or a visitor to the town of Nhulunbuy or of Alyangula and had not moved outside the town area, the areas of mineral leases, or such other areas as may have been approved by the community council for recreation purposes and the roads connecting such areas, or
(e) that he was otherwise exempt from liability pursuant to regulations made under this Act.

42. (1) Subject to section 41, Aboriginal land and the land vested in an approved corporation shall be deemed to be a reserve within the meaning of that term in and for the purposes of the Social Welfare Ordinance 1964-1972 (other than sections 17 and 18 thereof) and the Ordinances of the Northern Territory shall apply to Aboriginal land and land vested in an approved corporation accordingly provided however that:

(a) this section shall not affect the status of such lands as freehold or leasehold lands respectively, and
(b) no Ordinance shall have any effect so as to diminish any benefit conferred upon Aborigines by this Act or to restrict any Land Council, Land Trust or the Commission in the discharge of their respective functions.

(2) When any obligation with respect to travelling stock is imposed by Ordinance upon the holders of pastoral leases a Land Trust shall, in respect of any land vested in it and used for pastoral purposes be subject to a like obligation.

43. (1) Any dispute which arises between Aborigines or Aboriginal enterprises with respect to any matter arising under this Act and any question which depends upon an understanding of Aboriginal tradition, shall not be litigated until the matter or question is brought to the notice of the Land Council.
(2) The Land Council will endeavour to conciliate the parties who are involved in any matter or question referred to in sub-section (1), and no action shall be brought or any proceeding instituted until the Land Council has had an opportunity to effect conciliation and then only if the party instituting the proceeding or action has followed the directions (if any) given by the Land Council for the purposes of conciliation.

(3) In ascertaining the content of Aboriginal tradition or the identity of traditional Aboriginal owners for the purpose of this Act, the Court or Commission may inform itself by such evidence either with or without an oath or affirmation.

44. (1) Any person who knowingly damages or desecrates a site of significance to Aboriginal custom and belief shall be guilty of an offence.

(2) A site of significance shall be deemed to have been desecrated by an act done by a person at or near the site if that act would in law amount to sacrilege or offensive behaviour if performed in a church.

(3) Where the site is proclaimed as a prescribed site or is within a prescribed area under the Native and Historical Objects and Areas Preservation Ordinance that shall be conclusive evidence that the site was of significance within the meaning of this section.

(4) It is a defence to a charge under this section to prove that:
   (a) the doing of the act which damaged or desecrated the site was accidental; or
   (b) the defendant had no reasonable grounds for suspecting that the site was of significance to Aboriginal custom and belief.

(5) In order to be entitled to the benefit of the provisions of sub-section 4(b), any person who was, when the site was damaged or desecrated, engaged in road construction or mining operations or any activity involving the use of bulldozers or other earthmoving equipment, on Aboriginal land must prove that he had sought the services of a guide from the traditional owners of the country in which the site is situated and the guide had not been provided or had failed to identify the site as sacred.

(6) The services of a guide from the traditional owners may be sought by application in reasonably sufficient time from the Land Council.

45. (1) All Aborigines shall be entitled to enter and be upon the land contained within any pastoral lease and to take and use the natural waters of the said land and to kill wildlife for food on the said land.

(2) In cases where there are no convenient natural waters, Aborigines may use bore waters for drinking, cooking, washing or watering horses, provided that they comply with any reasonable requirements of the lessee concerning such bore waters.

(3) The provisions of sub-sections (1) and (2) of this section shall not apply anywhere within a distance of one kilometre from any homestead on any pastoral lease.

(4) Any person who without just cause, proof of which shall lie upon such person, in any way prevents or obstructs or attempts to prevent or
obstruct an Aborigine from exercising his rights under this section shall be guilty of an offence. For a first offence he shall be liable to a fine of not more than $50; for a second or subsequent offence he shall be liable to a fine of not more than $250.

46. A Land Council may with the approval of the Governor-General make by-laws prescribing all matters which are necessary or convenient to be prescribed for carrying out or giving effect to this Act and in particular for prescribing all matters for or in relation to:

(a) the procedure to be followed in applying for any estate or interest in Aboriginal land;
(b) the procedure to be followed in dealing with any such application;
(c) the receipt and payment of monies by the Land Council and Land Trusts;
(d) the keeping of books of accounts, records and maps;
(e) the duties of staff:
(f) the regulation of access to forests:
(g) the forms of authorizations and applications;
(h) the protection of sites of significance;
(i) the delegation of the powers of the Land Council under section 41.

SCHEDULE 1

(1) From a starting point at the junction of the Western Australian border and the southern boundary of the Rosewood pastoral lease, then
(2) East along the southern boundary of Rosewood, then
(3) South along the western boundary of Kildurk pastoral lease, then
(4) East along the southern boundary of Kildurk pastoral lease, then
(5) South along the western boundary of Humbert River pastoral lease, then
(6) East along the southern boundary of Humbert River until it reaches the south eastern corner of Humbert River pastoral lease near Mount Stevens, then
(7) By a straight line to the north western corner of Camfield pastoral lease, then
(8) South along the western boundary of Camfield pastoral lease, then
(9) East along the southern boundaries of Camfield, Dungowan and Murranji pastoral leases, then
(10) South along the western boundary of Newcastle Waters pastoral lease, then
(11) East along the southern boundary of Newcastle Waters, then
(12) South along the western boundary of Helen Springs pastoral lease, then
(13) West south and east along the boundaries of Muckaty pastoral lease, then
(14) South along the western boundary of Banka Banka pastoral lease,
East and south along the boundary of the Barkly Tablelands District of the Northern Territory to the Queensland border.

**SCHEDULE 2**

*Central Land Council*

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<td>Tempe Downs</td>
<td>Lynton Bore</td>
</tr>
<tr>
<td>Amburla</td>
<td></td>
</tr>
</tbody>
</table>

*Northern Land Council*

<table>
<thead>
<tr>
<th>Location</th>
<th>Location</th>
</tr>
</thead>
<tbody>
<tr>
<td>Bathurst Is.</td>
<td>Ngukurr</td>
</tr>
<tr>
<td>Snake Bay</td>
<td>Oenpelli</td>
</tr>
<tr>
<td>Garden Point</td>
<td>Beswick</td>
</tr>
<tr>
<td>Crocker Is.</td>
<td>Port Keats</td>
</tr>
<tr>
<td>Goulburn Is.</td>
<td>Daly River</td>
</tr>
<tr>
<td>Maningrida</td>
<td>Bagot</td>
</tr>
<tr>
<td>Kopanga</td>
<td>Delissaville</td>
</tr>
<tr>
<td>Milingimbi</td>
<td>Borroloola</td>
</tr>
<tr>
<td>Galiwinku</td>
<td>Mudginberri</td>
</tr>
<tr>
<td>Yirrkala</td>
<td>Roper Valley</td>
</tr>
<tr>
<td>Angurugu</td>
<td>Victoria River Downs</td>
</tr>
<tr>
<td>Umbakumba</td>
<td>Brunette Downs</td>
</tr>
<tr>
<td>Numbulwar</td>
<td>Bamyili</td>
</tr>
</tbody>
</table>

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**SCHEDULE 3**

**Column 1**

To contain descriptions by boundaries, including where appropriate off-shore islands, and waters within two kilometres of seaward of the low tide lines, of the following reserves and other land areas:

<table>
<thead>
<tr>
<th>Location</th>
<th>Location</th>
</tr>
</thead>
<tbody>
<tr>
<td>Arnhem Land</td>
<td>Arnhem Land</td>
</tr>
<tr>
<td>Bathurst and Melville Is.</td>
<td>Tiwi</td>
</tr>
<tr>
<td>Woolwonga</td>
<td>Arnhem Land</td>
</tr>
<tr>
<td>Daly River</td>
<td>Daly River/Port Keats</td>
</tr>
<tr>
<td>Beswick</td>
<td>Beswick</td>
</tr>
<tr>
<td>Wagait (3 areas)</td>
<td>Wagait</td>
</tr>
<tr>
<td>Larakeah</td>
<td>Larakeah</td>
</tr>
<tr>
<td>Amoonguna</td>
<td>Amoonguna</td>
</tr>
<tr>
<td>Jay Creek</td>
<td>Iwupataka</td>
</tr>
<tr>
<td>Warrabri</td>
<td>Warrabri</td>
</tr>
<tr>
<td>Yuendumu</td>
<td>Yuendumu</td>
</tr>
<tr>
<td>Hooker Creek (Catfish)</td>
<td>Hooker Creek</td>
</tr>
<tr>
<td>Lake Mackay</td>
<td>Central Australian</td>
</tr>
<tr>
<td>Haasts Bluff</td>
<td>Central Australian</td>
</tr>
<tr>
<td>Petermann</td>
<td>Central Australian</td>
</tr>
<tr>
<td>Delissaville</td>
<td>Wagait</td>
</tr>
<tr>
<td>Cobourg Peninsula Wildlife Sanctuary</td>
<td>Arnhem Land</td>
</tr>
<tr>
<td>Tanami Desert Wildlife Sanctuary</td>
<td>Central Australian</td>
</tr>
<tr>
<td>Kildurk</td>
<td>Kildurk</td>
</tr>
<tr>
<td>Willowra</td>
<td>Willowra</td>
</tr>
<tr>
<td>Hermannsburg</td>
<td>Hermannsburg</td>
</tr>
<tr>
<td>Santa Teresa</td>
<td>Santa Teresa</td>
</tr>
<tr>
<td>Daly River Mission Leases</td>
<td>Daly River</td>
</tr>
</tbody>
</table>
SUMMARY

These words are for the Aboriginal people of the Northern Territory. These are the most important things which I have said in my report to the Government in Canberra and to the Aboriginal people of the Territory. I have asked the Government to talk to the Land Councils about these things before finally deciding what to do.

1. All the Aboriginal reserves (except Bagot) and the mission places and the Cobourg Peninsula and the Tanami Desert and Kildurk and Willowra should be handed over to full Aboriginal ownership.

2. Bagot should be leased to the Bagot Council. All other Aboriginal lands should be owned and looked after by Land Trusts. The members of the Land Trusts should be Aborigines chosen by the Aboriginal people who live there, or by a Land Council.

3. The Land Councils would find out what the owners of the land and other Aboriginal people want and would tell the Land Trusts what to do.

4. New leases of Aboriginal land would only be given if the owners agree and usually only to Aborigines, missions or the Government.

5. All payments for leases should go to the owners of the land or to the local community.

6. There should be no new mining on Aboriginal land for over two years and then only if the owners of the land and other Aboriginal people want it or if the Government says it is very important for Australia. The Government should still own the minerals.

7. Royalties from mining should be divided between the Land Councils, the local community and the A.B.T.F.

8. Royalties from forestry should be divided between the land owners and the A.B.T.F.

9. Anybody who is not an Aborigine would have to get a permit from the Land Council to go onto Aboriginal land, unless he was on police or government business.

10. The Government should put aside money so that land can be bought for those Aborigines who have lost their land. Some of the people to decide
how this money should be spent should be Aborigines. In time they should all be Aborigines.

11. More cattle stations like Kildurk and Willowra should be bought for Aborigines in places where there is no Aboriginal land.

12. In the towns, land should be leased to Aborigines to be used for community housing, hostels and camping places. Kulaluk should be bought for this purpose.

13. Aboriginal communities living on cattle stations should have a lease of a village area where they want to live.

14. In a few years time there should be very few Aborigines living on land that is not owned or leased by Aborigines.

15. There should be clear laws to protect sacred places and to make certain the right of Aborigines to visit cattle stations for a holiday, for ceremonies or to hunt for food.

16. The Land Councils should have offices in Darwin and Alice Springs to help Aborigines in all things to do with land.

17. The Government should not give any more leases for Crown lands until Aborigines have had a chance to make claims for more land. There should be a Commission to look into any claims that Aborigines want to make and to recommend which claims should be granted.

18. The Government should help Aborigines, with money and advice, to make the best use of their lands.

19. Aborigines should work with National Parks and Wildlife men to look after places like national parks on Aboriginal land.

20. Roads over Aboriginal land should only be built if Aborigines agree or if it is important for Australia.

21. There should be no tourism on Aboriginal land unless the people want it.

22. Aboriginal rangers and guides should help to control any tourists.

23. Even if the Land Councils and the Government agree with these ideas it will take some time to make the new laws which will be wanted, because it is important that they be done carefully.
THE TERMS OF REFERENCE

The appropriate means to recognize and establish the traditional rights and interests of the Aborigines in and in relation to land, and to satisfy in other ways the reasonable aspirations of the Aborigines to rights in or in relation to land, and, in particular, but without in any way derogating from the generality of the foregoing:

(a) arrangements for vesting title to land in the Northern Territory of Australia now reserved for the use and benefit of the Aboriginal inhabitants of that Territory, including rights in minerals and timber, in an appropriate body or bodies, and for granting rights in or in relation to that land to the Aboriginal groups or communities concerned with that land;

(b) the desirability of establishing suitable procedures for the examination of claims to Aboriginal traditional rights and interests in or in relation to land in areas in the Northern Territory of Australia outside Aboriginal reserves or of establishing alternative ways of meeting effectively the needs for land of Aboriginal groups or communities living outside those reserves;

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‘alternative ways of meeting the needs for land’
Paras. 148-155, 158, 160-1, 177, 181 (i), 190-273, 277-88, 293, 300, 325, 328, 505, 517-36

(c) the effect of already existing commitments, whether in the nature of Crown leases, Government contracts, mining rights or otherwise, on the attainment of the objects of recognizing and establishing Aboriginal traditional rights and interests in or in relation to land;

(d) the changes in legislation required to give effect to the recommendation arising from (a), (b) and (c) above;
Paras. 329-334, 601, 735-40, 777 (i)-(iii), Appendix D.

(e) possible arrangements for vesting title to land in the adjoining Aboriginal reserves in South Australia (North West Reserve), Western Australia (Central Australian, Warburton and Balwina Reserves) and the Northern Territory (Reserve No. R1028, comprising the reserves known as the Petermann, Haasts Bluff and Lake Mackay Reserves) in an appropriate body or bodies and for granting rights in or in relation to that land to the Aboriginal groups or communities concerned with that land, taking into account existing legislation in those two States.
Paras. 741-54, 777 (iv)-(ix)
Australia. Aboriginal Land Rights Commission

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