

Aboriginal Land Rights (Northern Territory) Act 1976

Gurindji Land Claim to
Daguragu Station
Report by the Aboriginal Land Commissioner,
Mr Justice Toohey, to the Minister for
Aboriginal Affairs and to the Administrator
of the Northern Territory

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Office of the
ABORIGINAL LAND COMMISSIONER
Supreme Court
Darwin.
Telephone 81 9326.
18 November 1981

Senator the Hon. Peter Baume,
Minister for Aboriginal Affairs,
Parliament House,
Canberra, A.C.T.

Dear Minister,

LAND CLAIM BY GURINDJI TO DAGURAGU STATION

In accordance with s.50(1) of the Aboriginal Land Rights
(Northern Territory) Act 1976 I present my report on this
claim.

As required by the Act I have sent a copy of the report
to the Administrator of the Northern Territory.

Yours truly,

Aboriginal Land Commissioner



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A handwritten signature in black ink, appearing to read 'John Toohey'.

John Toohey
Aboriginal Land Commissioner

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Opening address by Mr Ross Howie, Central Land Council, to the Aboriginal Land Commissioner, Mr Justice Toohey, at Daguragu. Photo: A. B. Palmer.

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History of the claim

1. On 26 February 1979 the Central Land Council lodged an application under the Aboriginal Land Rights (Northern Territory) Act 1976 on behalf of a number of Aboriginals claiming to have a traditional land claim to:

An area of Alienated Crown Land in which all estates and interests not held by the Crown are held by, or on behalf of, Aboriginals comprising all of Dargaragu Pastoral Lease No. 805 together with Northern Territory Portion 1459 (formerly Special Purposes Lease No. 353).

2. In his opening address Mr Howie, counsel for the claimants, commented that this was not a complete description of the land under claim. He added the Seale Gorge Reserve and an area of unalienated Crown land around N.T. portion 1459, excluding the town of Kalkaringi (transcript pp. 3, 6). The area finally claimed is clearly set out in a map, Exhibit 3.

3. In April 1981 the claim book was lodged and in June I issued directions for the service of the application on various individuals, organisations and departments notifying them that the hearing of the application would begin at noon on Wednesday 15 July 1981 at Daguragu. Exhibits I and 53 attest to the steps that were taken to effect service and to advertise the hearing of the application.

4. Evidence was taken and addresses made at the following places and on the following dates:

Daguragu 15-21 July 1981

Darwin 18-19 August 1981

5. Notices of intention to be heard were received from the Commonwealth of Australia, Attorney-General for the Northern Territory, Northern Territory Cattle Council and Ashton Mining Limited. Each was represented at the hearing and tendered evidence.

Status of the land claimed

6. The bulk of the land claimed comprises pastoral lease No. 805 ('P.L. 805') which, according to certificate of title vol. 132 fol. 28, is an area of 3279 square kilometres including portion of a stock route which runs diagonally across the north-western corner of the lease (Exhibit 2).

7. The lease was purchased by Muramulla-Gurindji Company Pty Limited ('Muramulla-Gurindji') in August 1975 with money provided from the Aboriginal Land Fund (Exhibits 2, 4 and 5). One of the powers of the Aboriginal Land Fund Commission (a body corporate created under the Aboriginal Land Fund Act 1974), is to make grants of money out of the Fund 'to an Aboriginal corporation to enable it to acquire an interest in land for the purpose of enabling the members of that corporation to occupy that land' (Aboriginal Land Fund Act s. 19(a)). The purchase of the Daguragu lease appears to have been pursuant to that power.

8. Clause 19 of the agreement for the sale and purchase of P.L. 805 reads:

It is acknowledged by the Purchaser that it represents and is acting on behalf of the Gurindji Tribe and has been authorised by the Gurindji Tribe to enter into this agreement on its behalf (Exhibit 5 p. 9).

The objects of Muramulla-Gurindji are, generally, to advance the interests of the Gurindji people at Wattie Creek. For example one object is:

To foster and promote community group participation and development of the Gurindji Aboriginal tribe of the Wattie Creek area through business interests in the mining pastoral and allied industries suitable to the area (Exhibit 6 p. 1).

9. The directors of the company have an absolute discretion to decline to register any transfer of shares to a person of whom they do not approve and who is not a member. The articles of association state that:

Without prejudice to any special rights previously conferred on the holders of any existing shares or class of shares but subject to the Act, shares in the Company may be issued by the directors only to members of the Gurindji Association ... (Exhibit 6).

The Gurindji Association is defined to mean:

... all Gurindji and other Aboriginal members of the Wattie Creek community over the age of eighteen(18)years whether living permanently at Wattie Creek or elsewhere in the Northern Territory and such other Aboriginal persons accepted by a general meeting of the Gurindji Association as members (Exhibit 6).

10. The original subscribers and shareholders were Michael Jacques Roet and David Morton Geer, solicitors of Melbourne. They continued to hold those shares up to the end of the hearing of this land claim. At a meeting of directors of the company on 29 June 1981 it was resolved that non-Aboriginal people ought not to hold shares in the company and that Messrs Roet and Geer be asked to surrender their shares or transfer them to the directors (Exhibit 8). Instruments of transfer have been executed by both shareholders and at the end of the hearing awaited registration (Exhibit 5 1). I am satisfied that the lease is alienated Crown land in which all estates and interests not held by the Crown are held by, or on behalf of, Aboriginals' (s. 50(1)(a)) and is available for claim.

I 1. Northern Territory portion 1318 (Seale Gorge Reserve) was proclaimed a reserve in Northern Territory Government Gazette No. 13 of 31 March 1971 (Exhibit 9). It has an area of some 203 acres (82 hectares) in the northern part of the pastoral lease, approximately 13 kilometres north-west of Kalkaringi. It is unalienated Crown land. No title has been registered over it and having been reserved under the Crown Lands Ordinance it has not been set apart or dedicated to a public purpose under an Act of the Commonwealth. It is thus available for claim.

12. Northern Territory portion 1459 is an area of 1969 hectares to the north of Kalkaringi. In October 1977 Muramulla-Gurindji surrendered the right to a special purposes lease in respect of that land. It appears from the surrender, the correspondence from the Department of the Northern Territory concerning it (Exhibit 10) and a letter of April 1981 from the Surveyor-General to the Central Land Council (Exhibit I 1) that the land is unalienated Crown land and is available for claim.

13. By reason of s. 3(1) of the Land Rights Act, unalienated Crown land does not include 'land in a town'. In September 1976 the Governor-General proclaimed, under s. 111 of the Crown Lands Ordinance, the town of Kalkaringi. The boundaries of the town are set out in Australian Government Gazette No. G40 of 5 October 1976 (Exhibit 12) and can be seen in the plans, Exhibit 13. That land is clearly not available for claim and was not claimed.

14. Mr Eyre for the Northern Territory Government drew my attention to N.T. portions 1383 and 1384, which are near Daguragu settlement (see Exhibit 3). These have areas of approximately 1618 square metres and 7259 square metres respectively. They were originally set aside by administrative action as sites for a bore and a tank stand for Daguragu. The Government did not submit that these were other than unalienated Crown land.

15. The rest of the land, in a roughly rectangular block in the north-eastern part of the claim area, is also apparently unalienated Crown land. In his letter of 13 April 1981 to the Land Council the Surveyor-General said: 'My understanding is that most of the area

excluded from P.L. 805 is vacant Crown land with the exception of the township of Kalkaringi' (Exhibit I 1). I am satisfied that that is the case.

16. Early in the hearing mention was made of negotiations concerning a surrender of land along the eastern boundary of Daguragu pastoral lease and the western boundary of Wave Hill pastoral lease (P.L. 804). The object of such an exchange is to amend the common boundary between the two leases so that it follows the existing fence line and not the boundary as marked on the lease title. Detailed plans were tendered showing the precise changes sought (Exhibit 26). The result would be that 2735.45 hectares would be surrendered from Daguragu pastoral lease while 1288.1 hectares would be surrendered from Wave Hill pastoral lease. The net result would be the loss of 1447.35 hectares from Daguragu.

17. These negotiations are being conducted pursuant to s. 59A of the Crown Lands Act. That section provides that a pastoral lessee may apply to the Minister for permission to surrender a part of his lease adjoining part of the land included in another pastoral lease. Such an application must be accompanied, among other things, by a written statement of the other lessee that he desires and is prepared to accept for inclusion in his pastoral lease the land included in the part of the lease to be surrendered.

18. Counsel for the Northern Territory Government said that he understood that an agreement had been reached with the Aboriginal residents of Daguragu for the boundary to be varied under s. 59A (transcript pp. 702-03). But Mr Howie said that his instructions were that the claimants do not and never have consented to such a variation (transcript pp. 682-83). As s. 59A only applies to adjoining pastoral leases and not to freehold land it was the Government's submission that arrangements ought to be completed, if they are to be made, before the land becomes Aboriginal land.

19. The status of the land claimed is not affected by non-resolution of this matter. There was no suggestion that the eastern boundary of the claim area followed the fence line rather than the boundary line marked on the title and I shall deal with the lease property so marked. The Government submitted that detriment will flow to the lessees of both pastoral leases 804 and 805 if a new fence has to be constructed along the existing boundary line. I shall deal with the question of detriment later in the report.

Nature of the land claimed

20. The claim area lies over 400 kilometres south-west of Katherine. The landscape varies:

... from stark, poor land and hilly spring country in the south to rolling grassland plains and scrub land in the north. The soils are either shallow and stony or heavy textured grey/brown varieties, supporting vegetation ranging from stunted spinifex and desert oak to mulga, coolibah and bloodwood trees. The basaltic uplands of the Victoria River watershed are open downs of Mitchell grass and lightly timbered forest country (Exhibit 21 p. 7).

21. Water is provided by the Victoria River and its tributaries, and there are several large permanent water holes which provide year-round swimming and fishing. The three major western tributaries which run through the Daguragu lease are MacDonald Creek, Neave Creek and Wattie Creek. The annual rainfall is between 400-500 mm, most of which falls in December and January, the hottest months. Between May and September there is usually no rain.

History of European presence in the area

22. In 1839 a party from H.M.S. Beagle, led by Captain J. C. Wickham, entered the Victoria River (named by him after the newly crowned Queen) and for two months explored the country around the river mouth. But it was not until 1855-56 that a party of

eight men, led by the Gregory brothers, extensively explored the upper reaches of the river and the surrounding countryside. Some members of that party became the first white men to enter Gurindji territory, travelling south along the Victoria River where it forms the eastern boundary of the present land claim, then south-west to Sturt Creek.

23. In 1879 C. B. Fisher and J. Maurice Lyons made claims for leases on the Victoria River and by the end of 1882 held large areas of country in the region. The following year N. Buchanan took up Wave Hill and he and his family became the first permanent white residents of the area.

24. The first 'Wave Hill Station' had its homestead at Lipananyku:

... close to the curious terraced hills which gave it its name and almost opposite the present site of the Kalkaringi police station and township: it was from this waterhole that the township got the name, used before Kalkaringi, Libanangu (Exhibit 21 p. 83, see map Exhibit 17).

It was washed away by flood in 1924 and the homestead was rebuilt at Jamanku, further south from the river. Later it was shifted again, to Jinparrak. After the events of 1967, shortly to be mentioned, it was moved again, to its present site.

25. In 1883 cattle were brought to Victoria River Downs (VRD) and Wave Hill.

Although there had been relatively little violence between Aboriginals and white explorers, the 1880s and 1890s saw an increase in violence with attacks by Aboriginals upon cattle and some retaliation from pastoralists. Pressure for police protection for the pastoralists and their cattle led to the stationing of Mounted Constable W. H. Willshire at Gordon Creek in 1888. He led groups in reprisals against Aboriginals for cattle killing. This period of cattle killing and reprisals seems to have continued until well into the 1920s.

26. By the end of the 1920s direct confrontation between Aboriginals and whites in the area came to an end and the Gurindji seem to have settled in camps close to the homesteads, many working on the stations. A combination of droughts in the late 1920s, the provision of rations and relative absence of violence attracted many Aboriginal people into cattle stations. They provided a large pool of cheap labour and were subject to the control and policies of the station managers, their cattle companies and the Government.

27. Bovril and Vesteys, two British owned meat companies, bought out VRD and Wave Hill respectively in 1910 and 1914. These stations carried more head of cattle than were carried in the area from Herrgott Springs in South Australia to Powell Creek and the Barkly Tableland. By the end of the 1930s Wave Hill had grown to 10 712 square miles (27 733 square kilometres) and VRD to 12 686 square miles (32 844 square kilometres). Vesteys and Bovril or its successors owned almost all the stations in the area with the result that Aboriginals not wishing to move away from their traditional country remained on those stations.

28. A report by R. M. and C. H. Berndt in 1946 showed that Aboriginals were doing a wide range of tasks on the stations, that children under twelve were working illegally, that accommodation and rations were inadequate, that there was sexual abuse of Aboriginal women and prostitution for rations and clothing. No sanitation or garbage facilities were provided nor was there safe drinking water; the Berndts attributed the death of mothers and children at birth partly to the poor rations. (See the discussion of the Berndts' report in C. D. Rowley: *The Destruction of Aboriginal Society* pp. 333-35.)

29. For many years the Gurindji community on Wave Hill station provided labour in return for stores, sugar, flour, tea and tobacco for the group. About 1952 an agreement was reached with the management that in future wages would be paid. However in the following years the community became increasingly dissatisfied with both the wages paid and the conditions provided. (See H. C. Coombs: *Kulinma* p. 159.)



Pincher Numiari gives evidence of traditional ownership of the land and European presence in the region. Photo: G. Neate.

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30. Most of the acts and ordinances dealing with Aboriginals in the Northern Territory before World War 11 did not require the payment of wages. In 1928 the Northern Territory Workers Union attempted to have Aboriginals included in the pastoral award but was unsuccessful on the grounds that they stood outside the provisions of the Arbitration Act. In 1933, for the first time, the Commonwealth exercised the power of prescribing Aboriginal wages and conditions of employment by regulation but it appears to have been effectively enforced only in town areas (Rowley pp. 278-80). Aboriginal wages were excluded from pastoral awards for many years. An application to the Commonwealth Conciliation and Arbitration Commission to have Aboriginals employed in the pastoral industry paid by award was refused in 1948 on the grounds that an agreement reached between the pastoralists and the Northern Territory administration should not be subject to 'interference' by that industrial court. According to Portus C. C.:
Such an interference would not be justified as the Administration is much better equipped than a court of arbitration to attend to the welfare of Aboriginals living and working on cattle stations (quoted in Rowley p. 338).

31. In 1953 Aboriginals became wards of the state and the complementary Wards' Employment Ordinance was passed. The Wards Employment Regulations of 1959 set out a scale of wages, rations and conditions applicable to wards employed in various industries. These rates were lower than those of Europeans employed in similar occupations and by 1966 the rates prescribed were less than half the worth of the unemployment benefits (Rowley p. 348).

32. In 1965 the North Australian Workers Union applied to the Commonwealth Conciliation and Arbitration Commission to delete references excluding Aboriginals from the Cattle Station Industry Award. The Commission granted the request in March 1966 but deferred its implementation for a period of three years. Its decision only applied to Aboriginals who were members of the N.A.W.U.

The walk-off from Wave Hill

33. Although it is unnecessary for the purposes of this report to detail the inadequate conditions under which Aboriginals were employed, the picture already sketched gives some idea of the conditions which gave rise to the strike by the Gurindji at Wave Hill in 1966. Much publicity was given to the walk-off at the time and much has been written about it since. Some of the leaders of those events are among the present claimants, and their accounts of what happened are recorded in the claim book (Exhibit 21 pp. 99-107), and in the transcript. The issue was more than wages; it included accommodation, food, the treatment of women, hours of employment and land.

34. For several months the group lived at Wave Hill Welfare Centre, 10 miles from the Wave Hill homestead. Attempts by Vestey's and the Welfare Branch to get them to return to work were unsuccessful. In March 1967 a number of men and women walked to Wattie Creek to establish a new living place away from both the station and the Welfare Branch. Others followed and in April that year the Gurindji sent a petition to the Governor-General seeking 'to regain tenure of our tribal lands in the Wave Hill-Limbunya area of the Northern Territory' (Exhibit 21 p. 109).

35. The petition referred to the evolution of culture, myths, dreamings and sacred places 'in this land'. A map marked the boundaries of the sacred places. The petition expressed the intention of the people to build a new home and sought the return to the Gurindji people of some 500 square miles of land, for which they were willing to pay rent. The petition was rejected but the matter was referred to the Office of Aboriginal Affairs established by the Commonwealth in 1967. The position of the Government and its negotiations with Vestey's are described by Dr H. C. Coombs, a member of the Council for Aboriginal Affairs, in his book *Kulinma*:

While there can be little doubt that the shift of emphasis in the Aborigines' demands was stimulated and given coherent expression for English-speaking audiences by the help and ideas of Frank Hardy, a radical Australian writer, and other white advisers, it seems likely that the idea of basing the claim on 'traditional rights' emerged naturally from discussions with the group themselves who certainly would have made clear to their advisers what territory they considered to be 'theirs'. Knowledge of such claims to 'ownership' was common among officials and missionaries familiar with Aboriginal communities and was consistently taken into account in dealing with the groups concerned. Nevertheless at this stage the government and public response was still based upon the industrial and economic components of the claim (*Kulinma* pp. 159-60).

36. The various Government proposals, the inquiry by a committee headed by Prof. C. A. Gibb into Aboriginal communities on pastoral stations and that committee's recommendations, the offer by Lord Vestey to release an area of land from Wave Hill as a gift and other activities related to the eventual transfer of land to the Gurindji are set out in the claim book (Exhibit 21 pp. 112-27).

37. In December 1972 Commonwealth policy on Aboriginal land rights changed and agreement was reached with Lord Vestey early in 1973. In March of that year the Gurindji were granted a lease of 8 square miles for residential and cultural purposes and to depasture stock. On 16 August 1975 the Gurindji were handed a lease for 1250 square miles (3236 square kilometres) of land excised from Wave Hill, by the then Prime Minister Mr E. G. Whitlam.



Plaque commemorating the grant of the lease of Daguragu Station to the Gurindji in August 1975. Photo: G. Neate.

Plaque commemorating the grant of the lease of Daguragu Station to the Gurindji in August 1975. Photo: G. Neate.

38. In his second reading speech on the bill that became the Aboriginal Land Rights (Northern Territory) Act 1976, the then Minister for Aboriginal Affairs, Mr R. I. Viner said:

One of the early tasks for the Commissioner will be the consideration of the strength of traditional claims to the pastoral leases held by Aboriginal groups ... (including) the property held by the Gurindji group at Wave Hill ... The Government will be anxious to see the speedy resolution by the Land Commissioner of claims to the three properties, Willowra, Kildurk and Wave Hill. To that end I would expect the Land Commissioner, in considering the claims, to take account of the history of the properties ...

While that statement cannot influence my findings as to traditional Aboriginal ownership (if any) of the land claimed, it does reflect the widely held feeling at the time that the Gurindji had some legitimate claim to this land.

39. In October 1979 Muramulla-Gurindji received a notice from the Land Administration Branch stating that the Northern Territory of Australia 'intends after 28 days of the giving of this notice to you to forfeit the above lease due to your failure to comply with certain conditions of the above lease'; those conditions were set out in the notice (Exhibit 14). That forfeiture did not proceed and the lease continues to be held by the company.

The claimants

40. The name Gurindji was used in this claim to refer to the Gurindji language and to the speakers of that language. According to Dr P. McConvell, a linguist and co-author of the claim book, the term Gurindji is currently used by Aboriginals at Daguragu, Kalkaringi and nearby cattle stations, in two senses. Broadly speaking it refers to a widespread group of people who speak a number of dialects including Malngin (north-west of the claim area), Wanyjirra (south-west of the claim area), and Gurindji (in the south of the claim area). Although sometimes referred to in the literature as distinct tribes, the current view of the people at Daguragu is that they are Gurindji-'one tribe' (Exhibit 21 p. 12).

41. From a linguistic point of view Gurindji, Wanyjirra and Malngin have almost identical grammars, much shared vocabulary and are mutually intelligible; so they may be classified as dialects of one language. The groups have almost identical traditional material culture, kinship and marriage patterns and ritual. There has been and continues to be trade, social and ceremonial intercourse and intermarriage between these subgroups.

42. In its narrow sense Gurindji refers to the south-eastern dialect group of this larger entity. This group may also be subdivided on the basis of minor linguistic differences. According to Dr McConvell, the 'commonly accepted model' of social divisions among the south-eastern Gurindji is based on the association of the groups with major river and creek systems and the relative elevation of their country. This can be seen on the map Exhibit 21 p. 15. It is said to be a traditional division, before white contact. The map notes the country of the Jiyil (or Jilijurrung) whose numbers were severely reduced in the early period of white settlement. The Jiyil group relates to Wattie Creek and other small creeks in the north of the claim area. They are now socially integrated with the Gurindji and no longer speak a distinct dialect.

43. The claimants in this case are mainly Jiyil Gurindji and 'top' Gurindji from the Victoria River headwaters and its tributaries, that is Gurindji in the narrow sense. The traditional country of the 'top' Gurindji clans extends across the southern half of the Daguragu lease southwards to include the area between the Victoria River and Hooker Creek.



Gurindji claimants observe the land claim hearing at Daguragu. Photo: A. B. Palmer.

Gurindji claimants observe the land claim hearing at Daguragu. Photo: A. B. Palmer.

44. Another linguistic group, the Bilinara (Pilinarra), has connections with the northern fringe of the Daguragu lease. Few speakers remain though some Gurindji and members of other groups have Bilinara ancestors. The Bilinara are associated with the Depot Creek and Gordon Creek area and the hilly sandstone country at the head of these river systems. Although the river systems are to the north of the Daguragu lease boundary, two Bilinara clans, Groups I and 2 in this claim, are said to own certain dreaming sites south of these creeks and within the claim area.

45. Dr McConvell estimated that there are approximately 250 Gurindji speakers at Daguragu and that of the 200-250 people living at Kalkaringi, half speak the language. Other Gurindji speakers live on Wave Hill and surrounding stations, and in Katherine and Darwin, and he estimated that there are between 600 and 700 Gurindji speakers overall. These include people who speak the Malngin dialect (transcript pp. 450-51).

Social categories amongst the Gurindji

46. As with some other Aboriginal groups in the Northern Territory, the Gurindji have an eight subsection system of social categorisation. This system provides 'an idealised framework for assigning people to a social category on the basis of actual or classificatory kinship' (Exhibit 21 p. 21). The 'skin' names for each subsection have a male form (beginning with J) and a female form (beginning with N). The system nominates reciprocal father-son couples, indicating which skin names the children of a man from a particular subsection will bear. A diagram showing these relationships can be found in the claim book (Exhibit 21 p. 22).

47. Previous reports have discussed the basis and operation of subsection systems and it is unnecessary to go into detail again in this report (see Warlpiri Report paras 57-60, Alyawarra Report paras 30-35, Utopia Report paras 18-23, Willowra Report paras 80-84, Warlmanpa Report paras 129-37).

48. The working of the subsection system depends on the observance of marriage rules, prescribing which marriage pairs of skins are 'straight' (jutu or linku). Other types of marriages are referred to as 'wrong' or 'crooked' (waji-waji). Aside from the 'straight' marriage there are two other types which are acceptable to the Gurindji. Although about half of current Gurindji marriages are not 'straight' (within the subsection system), less than 10 per cent fall outside acceptable marriage patterns (Exhibit 21 p. 23, transcript p. 453). The percentage of 'wrong' marriages is not just a recent development; it seems always to have been higher than among neighbouring Warlpiri. Although couples wrongly married may be punished or exiled, they are generally accepted within the community after a time.

49. One of the complications arising from irregular marriages is that children are assigned two skins, one on the basis of the father's subsection and the other on the basis of the mother's. One such name, usually that of the mother, becomes dominant. A choice is made and so the child of parents, each having two skin names, will only have two skin names at most. Complications such as this have not destroyed the subsection system and in Dr McConvell's opinion:

... despite the apparent difficulties in maintaining the subsection system ... the system is still as alive as ever, thoroughly known and constantly in use by all age groups of Gurindji (Exhibit 21 p. 23).

50. Gurindji society is also divided into two patrimoieties, the wedgetail eagle (lirraku or warlawurru-wuny) and the white-faced heron (yilyiku or jalwa-wuny). Their significance is largely confined to sacred ritual during the kajirri (old woman) festival in which the two moieties take opposite or complementary roles.

51. There are other categories of social Organisation which govern many important social relationships but do not have any direct connection with the traditional ownership of and spiritual responsibility for specific areas of land. That function is carried out by descent groups.

Traditional ownership of land

52. Although there is a very real sense in which Gurindji have a deep, general attachment to the land under claim, the area also can be seen in terms of smaller 'estates' for which local descent groups have particular responsibility. Not all the Gurindji, including some of the most important leaders in the community, have traditional country within the boundaries of Daguragu. Some are members of groups associated with land on surrounding cattle stations and at Lajamanu (Hooker Creek) to the south. These people supported the claim but it is my task to determine who are the traditional Aboriginal owners of the land within the boundaries of the claim area.

53. The land tenure system is based on the dreamings which travel through or reside at places within estates. In describing estates there is a tendency to refer to site names and the points at which dreamings are handed over between adjacent groups. Hand-over sites may be jointly owned by adjacent groups. Natural features such as rivers may form boundaries and be thought of as jointly owned. Dr McConvell considered that 'following the songs and the dreamings for that particular country would be the primary (criterion)' that would designate the attachment of a group to an estate (transcript p. 472). Other indicia of that link traditionally included residence for part of a person's life, and death and burial there.

54. People were said to have links with the land which were inherited by them in two different ways. Every Gurindji belongs to a clan consisting of a group of people descended patrilineally from a single male ancestor or group of brothers (Exhibit 21 p. 38). Each clan has responsibility for the dreamings and ritual associated with a particular estate, as does another group known in the local pidgin as 'workers'. While clan members receive their rights from their father and father's father (kakunginyi), workers receive theirs through their mother and mother's father (jawijinginyi). For almost all of the estates, clan members and workers were put forward as together constituting the local descent group.

55. There is no generic word for 'clan' in Gurindji and for the most part particular clans and their estates are not named. The terms 'father's country' or 'father's father's country' (ngurra kakunginyi) express the rights in land of clan members derived from the patriline and 'mother's country' or 'mother's father's country' (ngurra jawijinginyi) express the rights in land which workers derive from the mother's father's line.

56. Claimant groups believe that their country was given to them by the dreaming and has been passed down to them in accordance with the law (yumi). Their affiliations to that land are expressed through ritual and song, the stories for sites on the land, the ritual designs for the area and the objects which go with it. People also talk about 'my law' (ngang yumi) meaning particular rights and responsibilities that have come from the dreaming (transcript p. 546).

57. Clan members refer to their dreamings as father (ngaji) or father's father (kaku) and workers refer to the same dreamings as mother's father (jawiji). Although these members and workers are not exclusively responsible for an estate, they are recognised by the Gurindji as the most important. The term kurdungurlu, which has been used in some other claims to describe 'workers', is not a Gurindji term and was not used in this claim. The Gurindji traditionally used and still use the term parnku (cross-cousin) for the workers' group and the term parnkurlang (mutual cross-cousins) for a clan

member-worker pair. For reasons which Dr McConvell explains in the claim book (Exhibit 21 pp. 40-42), the term *paraku* cannot be used unambiguously to mean 'ritual worker' and the term *kurdungurlu* is also inappropriate. I have adopted the term 'worker' as descriptive of a class of people, but not as a means of defining the role or status of those people for the purposes of the Act.

58. In ritual clan members are generally the actors; they wear ritual decoration and are thought to embody and bestow spiritual power during performances. It is they who usually lead in songs dealing with their clan's dreamings. Workers usually paint up the owners in readiness for ritual dance and action and perform many other important tasks. They are primarily responsible for ensuring that the dreaming designs are correctly produced in body painting and in other contexts and for ensuring that the clan members' dreaming designs are not stolen by another clan. Workers may also have a major role in guarding the estate's sites. When visiting dangerous areas it may be either the clan members or the workers who exhort the spirit not to harm visitors.

59. There will be occasions when workers take an active and even exclusive role in maintaining the country of an estate. Dr McConvell notes in the claim book:

When the clan members associated with an estate are few in number, absent from the area for a long period, senile, uninitiated or lacking in knowledge, the workers may take over the running of the relevant song-cycle completely until such time as competent owners can be found or a new clan succeeds to ownership (Exhibit 21 p. 64).

Although this suggests a custodial role secondary to that of clan members it may be explained simply in terms of descent. As a general rule workers inherit their responsibilities through the patriline until the last previous generation where they are passed to the workers through the mother. Workers do not have their own continuing line of descent, but each generation of clan members may create workers in the next generation. (See transcript pp. 447, 461-62, 534-35.)

60. As I have said in previous reports, there is no difficulty in accommodating both categories within the concept of 'local descent group', given the relatively close genealogical links. Any difficulty in finding that both are traditional Aboriginal owners under the Land Rights Act flows from the differences in responsibilities for sites on the land.

61. In the claim book Dr McConvell asserted that the 'workers' hold primary spiritual responsibility for sites and the estate jointly with the clan members' and that most people at Daguragu 'believe these two groups to hold equal but different responsibilities towards the estate' (Exhibit 21 p. 34). He reiterated this view in his oral evidence and commented on the relative importance of clan members and workers:

Most people here seem to think that they are level; that there is no difference in importance. There are certain aspects that are stronger on one side or on the other side, but generally speaking the opinion of people here is that there is no difference in importance, I think (transcript p. 446).

62. Miss M. Rowell, an anthropologist called on behalf of the claimants, gave evidence relating to the Gurindji women. In her written statement she observed:

During *yawalyu* performances, a clear distinction between the roles of owner and worker does not seem to emerge. Women may wear paintings for either their mother's or their father's country, and the designs are applied to their bodies by whoever is considered to be the best painter or the person with the most knowledge about the design. Owners and workers dance and sing together, sharing the right and responsibility for their ceremony (Exhibit 36 p. 4).

Women also inherit both a right and an obligation to visit their country and these are shared by owners and workers:

There does not appear to be the clear division of roles in relation to site visits which we have witnessed in other land claims (e.g. Willowra, Utopia). It seems that both -owners' and 'workers' are responsible in the same kind of way for the spiritual upkeep of their places (Exhibit 36 p. 5).



Warlpiri women dancing in support of the Gurindji women. Photo: A. B. Palmer.

Warlpiri women dancing in support of the Gurindji women. Photo: A. B. Palmer.

63. In his written statement Dr R. Tonkinson, an anthropologist who acted as my consultant in this claim, took issue with Dr McConvell's assertion that workers and owners hold equal but different responsibilities towards the estates. In Dr Tonkinson's view:

what emerged in the course of Aboriginal evidence ... was an overwhelming impression that these responsibilities are virtually identical rather than complementary ... What is unusual about the Gurindji case is not that people maintain interests in two estates (at least), but that these are held to be equal and undifferentiated (Exhibit 38 pp. 8, 9).

He cited two occasions only when statements were made suggesting inequality of responsibility towards an estate, but when these are 'weighed against the totality of evidence' it is clear that 'the Gurindji do indeed regard both categories of claimants within each estate group as having equal responsibilities towards their estate' (Exhibit 38 p. 10).

64. There was evidence from Aboriginal witnesses that the right to reproduce and use dreaming symbols as body designs and designs on sacred boards extends to both the kaku- and jawiji-related categories of local descent groups. But those rights are, as Dr Tonkinson points out, 'one of the few tangible linkages of individuals to their estate'.

Their main attachment to the land lies in the non-material realm of mythological knowledge. The extent of such knowledge of an estate will vary among individuals in a given group, having regard to the time spent by that person in the country and his or her age and degree of involvement in initiation and other ritual activity. It appears that both clan members and workers have responsibilities to pass on knowledge of estates and I am satisfied that among the Gurindji at Daguragu it is both clan members and workers who meet the requirements of the Act with regard to traditional Aboriginal ownership.

Sites and estates

65. Over 200 places with specific Gurindji names have been recorded on the claim area. Many sites (ngurra) are related to water (water holes, billabongs and rock holes), with nearby associated features such as hills, caves and plains sharing the same name. Water holes at the junction of creeks often provide the name for the tributary creek. Sites sometimes give their name to extensive areas, though particularly important large sites may have a general name with different small features having different names, e.g. different trees around Kuyanpululu and different pools in the water hole Tumurrung.

66. Most site names are related to the dreaming which lived there or passed by, did some action or left some mark or secretion there. Some sites are considered dangerous and others secret and sacred. Those sites should be visited in the company of clan members or workers who precede the visitor and shout or growl to warn the dreaming of the approaching stranger and to ensure the stranger avoids dangerous places.

67. Some dreamings are confined to one estate and localised dreamings are usually associated with sites clearly owned by one clan. As mentioned earlier in this report, the extent of estates can be determined approximately by reference to groups of sites associated with a particular local descent group and by following the song of a travelling dreaming to the hand-over point where one estate ends and another begins. Clan members are said to 'follow' or 'chase' (kayi panana) the dreaming and to 'hand it over' (jayingana) to the new clan when the last site is reached. Clans having responsibility for different stretches of the one dreaming track are often said to be 'company' for each other. They are usually of the same moiety and often the same semi-moiety; they may take over the country of a contiguous clan where that clan becomes very weak or dies out.

68. Traditional estates are further defined by reference to other factors such as main camps (ngurrawiti), usually near permanent water.

69. In some cases a dreaming owned by one group may pass through the territory of another leaving a few sites owned by the clan of the dreaming. The owners of that country may not be company with the owners of the dreaming. Whether in such a situation people fully own the sites or relate to them in some lesser way was not clear (transcript p. 460). But there were examples in this claim of dreamings which pass through or over other estates and in which adjacent clans have interests (Exhibit 21 pp. 56, 61, 64-67, transcript pp. 476-80). Sometimes estates overlap and sites are shared jointly by two groups. Also there are occasions where localised dreamings with which a particular group is associated fall well outside that group's estate.

Group 1

70. Group 1 is a small number of Bilinara whose country lies to the north of the claim area. According to Dr McConvell the Bilinara language is distinct from, though related to, Gurindji and only a few Bilinara speakers remain. Traditionally they were socially separate from the Gurindji and other neighbours though they intermarried with other groups. The Bilinara are associated with Depot Creek and Gordon Creek though they have sites extending as far south as Gill Creek and Blackgin Creek, the former of which is certainly within the claim area.

71. Three women, Wipngarri Nawurla, Rutngarri Nawurla and Rawungali Nawurla were listed as clan members and their six children as workers who take their country from their mother's father (jawiji). Rook Julkiyarri named Freddy Junta as a person holding the country between Gill Creek and Depot Creek through his father's father (kaku), though Freddy Junta suggested that he also took the country through the jawiji side (through his grandfather and uncle) (transcript pp. 276, 277).

72. Dr Tonkinson points out in his statement that all the surviving patriline members are female and the only male claimants are their children, who are said to be succeeding to ownership under the guidance of senior members of the Bilinara group. That is so, apart from Freddy Junta mentioned in the preceding paragraph. Dr Tonkinson argues that, presuming the responsibility would eventually pass patrilineally to the children of the 'workers', this would represent an atypical variant in the line of succession to an estate but would be a valid one 'regardless of what may have been the favoured mode(s) of succession "traditionally" ' (Exhibit 38 p. 4).

73. The spokesmen for Group 1 were Muldoon Jangari, a worker for the group, and Rook Julkiyarri Jurlama. A number of sites were named along Gill Creek, which runs east-west just inside the northern boundary of Daguragu. Others were named farther east just outside the northern boundary of the claim area. The country was said to be Muldoon's from his jawiji (transcript p. 253).

74. At the head of Gill Creek is Kurayawung and farther east are Pirrarli, Kulalulalu and Kakakuny. Yayimpart was also said to be at the head of Gill Creek and to be shared by Gurindji and Bilinara people. It is a sugarbag dreaming site (namawurru); the dreaming is taken over by Bilinara at that place. It is carried north-east across the north-western corner of the claim to Mangkuru, a plain which seems to lie north of Gill Creek. There was some evidence that the plain extends south of that creek but Bilinara country seems to be more or less confined to the northern region. The location of some sites was not precisely plotted but a comparison of the map drawn by Rook Julkiyarri and described by Dr McConvell (Exhibit 47A) and Map 5 in the claim book (Exhibit 2 1), which shows the Gill Creek bore, with the map of sites and dreaming tracks (Exhibit 19) leads me to the view that while Kurayawung, part of Mangkuru plain and possibly Pirrarli lie within the claim area, the other named sites are outside.

75. As well as the ngarlul or honeybee dreaming, which crosses the jurntakal dreaming track at Yayimpart and is carried north-east into Bilinara country, Group 1 also follow the emu dreaming (transcript pp. 248, 249) and parrjita (bandicoot) dreaming (transcript pp. 250, 251). There is a song (jamarla) for the sugarbag dreaming from Yayimpart to Bilyanarri Hill, to the north of the north-eastern corner of the claim area, which is known by Rook and Muldoon (transcript pp. 267, 268, Exhibit 48 p. 4 and Restricted Exhibit 44).

76. Muldoon works around the Depot Creek area on Mount Sanford station and 'looks after' that part of the country. He does the business for the country and is taught by Rook (transcript pp- 268 70). The claimants in Group 1 are accepted as 'bosses' of the Bilinara country between Gill Creek and Depot Creek (transcript pp. 272-77) and are entitled to forage on that land (transcript p. 268). I am satisfied that the members of this group are the traditional Aboriginal owners of country in the north-western corner of the claim area.

Group 2

77. The bulk of country belonging to Group 2 lies to the north of the claim area and includes Stevens Creek, Blackgin Bore, Bilyanarri Hill, Fourteen Mile Creek and some sites along the Victoria River. The south-eastern boundary is Manpiny (Billy Creek) which runs east-west just inside the north-eastern corner of Daguragu. It is a tributary of

Fourteen Mile Creek which includes a water hole (Yirraru) and flows into the Victoria River at Nirnta. Manpiny is karu (children) dreaming and there is a secret song (yarrinti) for which Clancy Janama is boss.

78. Rook Julkiyarri Jurlama, a worker for that country who takes it from his mother's father and mother's brother, said that the children of Dandy Janama and Clancy's sister Dinah Yimpawurngali Namija all know about that country and visit it, hunting particularly for lily roots (mangarriyawung). Clancy Janama said that Clara Juturr Namija followed the same country as he, taking it from her father.

79. I am satisfied that, in terms of the Act, the clan members and workers listed for Group 2 are the traditional Aboriginal owners of that strip of land extending north to the Daguragu boundary from Billy Creek and Fourteen Mile Creek, and of land further west adjoining the country of Groups 3 and 4.

Groups 3 and 4

80. Evidence was taken from spokesmen for these groups together. Mr Howie said:
When I first spoke to them they were inclined to see themselves as being together and ... while it was clear that they saw themselves as two separate groups, I think, basically they were very aware of their closeness together ... (transcript p. 657).

81. One of the principal witnesses for the group, Big Ted Kurlpawuk Jangala, a member of the Group 3 clan, said that the people who took the country from their father or from their mother's father are all part of the one group and that both ought to be listed (transcripts. 117). Polly Lajayi Namija and Lily Punayi Namija, clan members of Group 4, spoke of their country along Wattie Creek around Daguragu which one said she took 'from my father' and the other 'from my father and grandfather' (transcript p. 320).

82. There are some genealogical links between the two groups. Banjo Parrminy Japalyi, Kathleen Yurlngarri Nalyirri and Peanut Japalyi (the children of Big Ted Kurlpawuk Jangala's deceased sister) are members of the clan in Group 4 and workers in Group 3.

83. Groups 3 and 4 have country over most of the northern half of the claim area and follow dreamings which cross much of that land. The warrpawurru (flying fox) dreaming begins south-east of the claim area at Jurrlakkurla, a hill also associated with the sugar bag and jurntakal (snake) dreamings. From there the flying fox is said to fly north-west to Kuyanpululu, a site on Wattie Creek about 12 kilometres due west of the Daguragu settlement. At the gorge there the ceremonial business for the flying fox is concluded. It is also an important site for other ceremonies. Vincent Lingkiyarri Jurlama said of the place:

We all got to come to Kuyanpululu, all up. Doesn't matter what business. Everybody start with that kind of business. Show them young fellows (transcript p. 121).

The time for teaching the young men is known as Kajirri, sometimes called 'high school' or 'big Sunday'.

84. The yiparrartu (emu) dreaming is followed by the Bilinara mob to Karlipirri near the northern boundary of the claim area. Big Ted's mob carries it south of Karlipirri. The Seale mob (Groups 3 and 4) take it from Parrarngka to Wirrun and Tawirt. Some twenty-six sites were named on the southward route of the dreaming track including Nguntulart (a creek junction on Wattie Creek where the emu crossed the river), Lamarnta, Jir-rangalingurru and Jampawurru (both close to the Buchanan Highway) and south through Kurngu (Hughie Spring) to Yulangurlarni, Warrkalman and Jalala near to the Victoria River and about half way along the eastern boundary of the claim area. There was evidence that these groups only take that dreaming to the western side of the river to Yulangurlarni and that another group, 'Jack Calico's mob', takes it on the eastern side and is responsible for Warrkalman and Jalala. Jack Calico is said to be a member of

another group and to take the country from his father, who is now dead. He has many sons and daughters. He and his family were not put forward as claimants and no other evidence was given about them or their responsibility for sites on the claim area. I can make no finding of traditional ownership in their favour. That will be a matter for the Land Council to consider if there is a grant of that land.

85. The ngamanpurru (konkerberry) dreaming is confined to the area around Daguragu settlement and Lawi, a site near to the road, and to Daguragu Hole on the river.

86. These groups are also responsible for the karu (children) dreaming sites from Tartarr (Blackfellows Nob) eastward through Palyilyarra Spring to Nguma (the junction of Wattie Creek and the Victoria River) and south through Kurturturlarni. To the north-east along the Victoria River are Tujkurn and Marrinpi which are rock pigeon dreaming sites. Other sites were named along the Victoria River northwards to Nirnta where Fourteen Mile Creek meets the Victoria River. At this junction and along Manpiny (Billy Creek), the country of Groups 3 and 4 ends and the Bilinara people (Group 2) take over the country to the north. The close link between the groups in that area was expressed by Rook Julkiyarri Jurlama who said:

That tribe and language, you know, been all mixed all the time. Piccaninny been born, brought up and born. All mix in the business, you know ... cousins born in that tribe and another one that way. One business, you know; tribe from dreaming, language and language (transcript p. 141).

87. A cave at Seale Gorge is not only an important palngarrawuny (fish) dreaming site but also an important secret place for ceremonial business, containing the bones of Aboriginal people. To the west along Wattie Creek are Mamarang and other sites for the nyirri (cicada) dreaming and Pirlingkakijja and other sites for the jwayirru (bower bird) dreaming. To the north on to the boundary of VRD are Piriri and Juwarl which border the country of Group 2.

88. Banjo Parrminy Japalyi's mob hold the jalirn (kangaroo) dreaming sites which run from Wirlwarl (to the north-west of Wattie Creek) through Karan and south-east through Maparn, a gorge where the honeyeater birds (jalwakirng) are said to have killed the kangaroo and cooked him. Banjo's group's country extends west of Wattie Creek to include Walkaantalu and Yirrpanta, where the honeybee dreaming crosses, and follows Wattie Creek into Burtawurta Creek to finish at Partuwartu and Warluk near the Daguragu lease boundary. Towards the centre of the claim area it extends southward to take in Pirruntarni, Palyangkalu, Payinta and Nyarnayawung and Jalanypurru.

89. These sites spread right across the northern half of the claim area and some of them are hand-over points for dreaming tracks where those tracks travel into the country of adjoining descent groups.

90. There was evidence from men and women in those groups that the older people are teaching their children the business associated with their country. Ceremonies are performed at Christmas and other holidays and on weekends and people visit and hunt on their country. Polly and Lily Namija said they do not have to ask permission to visit their country to hunt there because 'We're own boss. We know this country' (transcript p. 325). Banjo Parrminy Japalyi said that he asks permission of Big Ted Kurlpawuk Jangala to hunt in some areas because 'he's the boss for that place too' (transcript p. 163). It was also suggested that the approval of Rook Julkiyarri Jurlama and Pincher Numiari ought to be sought though those men are not members of Groups 3 and 4. However both gave evidence in support of the claim by those groups and appeared knowledgeable about the country.

91. I am satisfied that the members of Groups 3 and 4 are a local descent group or groups, having responsibility for sites on the land extending across the northern half of the claim area, that they are entitled to forage over that land and that they are the traditional owners of it.

Group 5

92. Included in the list of claimants as clan members of this group are Peter Punkuyarri Jurlama and his two sons. Although he, Vincent Lingkiyarri Jurlama and Spider Jurlama referred to each other as 'brothers', Peter Punkuyarri does not take the jurntakal (snake) dreaming of the group from his father but from his 'brother' Spider Jurlama. Spider and Vincent take it from their respective fathers who also followed that dreaming. Peter's father did not follow jurntakal but he had the same mother as Spider and said 'I follow the same law' as Spider (transcript p. 32). According to Spider, 'I show him now ... He takes it through me, that Jurntakal' (transcript p. 32). Because of the half-brother relationship he has with other clan members, I accept that Peter Punkuyarri Jurlama and his children are members of the local descent group (See Dr Tonkinson Exhibit 38 p.3).

93. Another dreaming for Group 5 is pit-pit or women's game (see Exhibit 21 p. 135). When the women were dancing during the hearing Emily Nangari and Vera Wirringgali wore the design for that dreaming. Emily said that she took it from her mother, the deceased sister of Vincent Lingkiyarri Jurlama. Emily is put forward as a worker for Group 5. Vera, Vincent's daughter, took the design from Vincent (transcript pp. 312, 313). The design was also worn by Peggy Nanaku, who is the daughter of Emily's deceased brother. As the daughter of a worker for Group 5 she was not put forward as a member of the local descent group (transcript pp. 316, 658).

94. The main dreaming for this group is jurntakal which is carried from Spring Creek in Western Australia through Mistake Creek to Daguragu lease. Numerous sites were named, most of which are well west of the claim area. The dreaming track comes through Jatuwarriny (a swamp north-west of Daguragu) and then through Putjuwarriny, Lurlunginyi (at the head of G.B. Creek), Jarlpurlurla and Kapirtija, (a creek running into G.B. Creek). The group's responsibility for that dreaming ends somewhere to the east of Jikirrij (Grave Creek junction) at Wangi Marluka. This site does not appear on any of the maps but was said to be the boundary of Group 5's country and near Partuwartu. According to Spider Jurlama, the Malngin people own all the places up to Wangi Marluka and Partuwartu. 'Malngin mob finish there now ... Gurindji take it all now' (transcript p. 46).

95. There is ceremonial business for jurntakal to Wangi Marluka with songs, painting and dancing for all the places along the track. Sacred boards are stored on Daguragu for that dreaming and the business is being taught to the young men by Vincent and Spider. The people visit jurntakal country during holidays and are taught about it. The group does not ask permission to hunt there. As Victor Vincent Jurnykali Jurlama put it, 'we wouldn't go around and ask people because we've got responsibility for that place' by Aboriginal law (transcript p. 54).

96. Although most of the country traditionally owned by Group 5 lies west of the claim area, there are sites in the easternmost part of the jurntakal dreaming track, for which Group 5 is responsible, well within the north-western part of the claim area. I find that the members of this group satisfy the criteria of the Act and are traditional Aboriginal owners of that country.



Peter Punkuyarri Jurlama, Spider Jurlama and Vincent Lingkiyarri Jurlama give evidence for Group 5 to the Commissioner at Daguragu. Photo: A. B. Palmer.

Peter Punkuyarri Jurlama, Spider Jurlama and Vincent Lingkiyarri Jurlama give evidence for Group 5 to the Commissioner at Daguragu. Photo: A. B. Palmer.

Group 6

97. Group 6, presented in the genealogies and lists of claimants as Groups 6(a) and 6(b), has country across the lower half of the claim area following the Neave and McDonald Creeks to the Victoria River. Dr McConvell said that in preparing the claim different but adjacent areas of country were mentioned in relation to 6(a) and 6(b). The country of 6(b), known as Captain Major's group, was centred on the area of Neave Gorge with the country of 6(a) further west. The two groups are linked together genealogically. Dr McConvell commented that:

6A and B are identified as being the same group, . . . a group that is generally considered to own the same country but there is some emphasis on one side or the other, and then there has been just a slight rearrangement of how people look at this (transcript p. 536)

98. More than half the claimants in Group 6 are workers who take the country from their mother's side, from their mother's father. Donald Jurlama, though not a claimant in this group, was knowledgeable about the sites and dreaming stories associated with the country and said: 'We've got business in two country-1 mean juju. That's the way we go' (transcript p. 92). The role of mother's brother was also mentioned and Dr McConvell explained:

... They call that group bungalung. That means cross-cousins together. One side takes it from ngamirni-that means mother's brother-and one side takes it from father (transcript p. 92).



Pincher Numiari (left) and Captain Major Japangayarri Jampijina give evidence at the hearing. Photo: G. Neate.



Gurindji claimants observe the claim hearing at Daguragu. Photo: A. B. Palmer.

Pincher Numiari (left) and Captain Major Japangayarri Jampijina give evidence at the hearing. Photo: G. Neate.

Gurindji claimants observe the claim hearing at Daguragu. Photo: A. B. Palmer.

99. Witnesses stated that people taking the country in either of these ways ought to be listed as being responsible for that country and that workers and descendants of clan members are being trained in the ceremonial business for it (transcript pp. 87, 90, 94). It was clear that some people other than those listed as members of the local descent group share in the ceremonial activity related to sites on the land. Among these are Pincher Numiari who said he has 'to look after that country all over' by camping out there and that he acts to 'back up' Captain Major's mob when they go hunting on the country. He also helps to announce the approach of strangers to dangerous sites and participates in the singing of the juju (transcript pp. 88, 95, 96).

100. Similarly Donald Juriama knows the juju for the country, having been taught it by the old people who owned that country before they died (pp. 96-97). Donald sings for the ceremonies but it is Captain Major and his group who are painted up and who dance. Pincher, when speaking of Captain Major, said 'You're the boss' (transcript p. 95).

101. Group 6 carries the jurntakal (snake) dreaming from Nunyja, a site just east of Partuwartu Creek (Burtawurta Creek) where Group 3 hands it over. More than fifty sites were named through which jurntakal passed, travelling in an easterly direction across the claim area through the country of Group 6. Many of these do not appear on Exhibit 19 but a general indication of the direction of the dreaming track can be gleaned from the sites marked. The track runs from Nunyja south-east to Murlmurlka, Karnanjaj, Pirrintilp and then eastward along Neave Creek to Kurrpkarra and Litngayarri, then southward towards McDonald Creek and sites such as Jarlartu, Lurlngu, Jurinykali and Kuyira. At Jalminta McDonald Creek joins the Victoria River and the jurntakal dreaming travels to Puul along that river. The dreaming is handed over to Group 8 at Parunyja, a site east of the Victoria River on the Wave Hill side of the Daguragu fence. There is juju for the jurntakal dreaming along the entire track for Group 6.

102. Mention was also made by Captain Major of a lion or tiger dreaming in Neave Gorge (transcript pp. 94, 95), a dangerous place which had to be approached with caution. Molly Nampijina, a clan member, also spoke of the Mulukurr lion at that place (Purrpungu) (transcript p. 304). She spoke of having the kalpun (hawk) dreaming at the same place and jawurawara (brown snake) dreaming as well as jurntakal and kawurla (coolamon) dreaming (transcript pp. 302-06). When some of the women were dancing Amy Nimarra, Captain Major's wife, wore the design of the mirntaarraj (lily) dreaming which Molly Nampijina said was the dreaming of the country of herself and her brother, Captain Major, and which she had lent to Amy. Molly took that dreaming from her father; it is centred on the country around Neave Gorge (transcript pp. 301-03).

103. There was evidence of ceremonial activity connected with sites on the land involving groups of men and women and of visits to and hunting on the country. Group 6 does not have to seek permission to hunt there 'because it's their place ... Nobody can stop them' (transcript p. 89).

104. The members of Group 6 meet the criteria of the Act, and I am satisfied that they are the traditional Aboriginal owners of land in the southern half of the claim area.

Group 7

105. Commencing at Mucka Yard in Riveren station south-west of Daguragu, Group 7 follows the paliny-paliny (kestrel) dreaming eastward across the southern part of the claim area. Passing through Jalwi, on the Riveren side of the boundary, the dreaming track continues through sites such as Pirnti-Pirnti (Mount Farquharson) and nearby hills, south-east to Paala, Kurllkaru (a billabong) and to Liku, the main springs at Mountain Spring. The Mountain Spring area is known as Parntamirn. There is juju singing and

dancing for this country. The same group runs the dreaming for ngatijirri (budgerigar) in Mountain Spring.

106. Group 7 is responsible for a number of places along McDonald Creek starting with Warrarrangawung, (the hills at the head of McDonald Creek in the south-west of the claim area) and places to the north-east which are lamawurt (witchety grub) dreaming sites. At Lurlngu McDonald Creek meets up with the jurntakal dreaming of Captain Major's country.

107. This group also takes the yawarlwarl (crested pigeon) dreaming from Buchanan Springs north of Jalwi eastward to Pururu (McDonald Yard). At Jalminta, where McDonald Creek joins the Victoria River, Captain Major's mob has that dreaming. The group is also responsible for many sites on the western bank of the Victoria River in the south-east of the claim area up to Punupkurla where the jurntakal dreaming comes across from the west and Group Ts country meets with the country of Captain Major's group.

108. There are ceremonies, songs, dances and paintings for these dreamings which are practised by men and women and are passed on to the children of the local descent group. I am satisfied that the claimants listed for Group 7 have common spiritual affiliations and primary spiritual responsibility for the sites on the land and for the land. Members of the group visit the country, camping there and hunting over it. They do not need permission to do so and are clearly the traditional Aboriginal owners of that land.

Group 8

109. No evidence was called on behalf of the members of Group 8 as it emerged that its estate lies completely outside the claim area (transcript p. 651, Dr Tonkinson's report Exhibit 38 p. 2).

Group 9

110. The principal dreaming for Group 9 is kilipi or ngawurrurraka (bush banana), the design for which was worn by Blanche Nawurla, a clan member. The main spokesman for the group was Rook Julkiyarri Jurlama, a clan member who took the dreaming from his father and his father's father. He said that his children follow the same country, taking it from his father's father (kaku) and that his sister's children follow the country from him and his kaku. It was stressed that other children of male members of the clan took the country through their father and father's father, and the children of female members of the clan took the same country from their jawiji (their mother's father).

111. The bush banana dreaming sites run from Pitpayawung, a creek in the central south of the claim area, to Neave Gorge and Neave wireyard area and south-west along Lily Creek to Mangurlurla near the boundary with Riveren station.

112. There is juju for this dreaming which is painted onto young men at marntiwa time. The business for this country is being passed on to the young people and I am satisfied that the members of this group have common spiritual affiliations with and primary spiritual responsibility for sites on the land and for the land. The group may hunt on the country in accordance with Aboriginal law and I am satisfied that they are the traditional Aboriginal owners of that part of the claim area.

Group 10

113. The country of Group 10 lies outside the claim area to the west in the Gum Creek, Victoria River and Horse Creek area. The yawarlwarl (crested pigeon) dreaming crosses the Victoria River in Group 10's country and flies eastward where it is followed by Group 7.

Group 11

114. The country for Group 11 lies immediately to the south of the claim area and follows the Victoria River from at least Horse Creek in the west to Spring Creek in the east where it meets up with the country for Group 12. A small part of Group 11's country is said to fall within the claim area. It is that portion south of the Victoria River in the south-western corner of the claim area. As appears from the maps, Exhibits 19 and 49, sites were named to the north-west, south and south-west of this triangular section but none was mentioned within that small part of land in the claim area (see transcript p. 343).

115. This raises a difficult problem. While it is clear that in the eyes of the claimants this small area is part of the country of Group 11, there is no named site within the claim area. Hence the question—must there be a site or sites on the land claimed in order for me to make a finding of traditional ownership and a recommendation to the Minister?

Must there be a site on the land claimed?

116. Mr Howie for the claimants submitted that it is not necessary for there to be sites on the land claimed for a claim to be successful. As long as the traditional country of a local descent group encompasses land available for claim and there are sites on some part of the traditional country, even if they fall outside the claim area, the claim ought to succeed. This argument is based on the absence of any reference in the definition of 'traditional Aboriginal owners' in s. 3(1) of the Land Rights Act to the land available for claim under s.50 of the Act. That definition reads:

'traditional Aboriginal owners', in relation to land, means a local descent group of Aboriginals who

- (a) have common spiritual affiliations to a site on the land, being affiliations that place the group under a primary spiritual responsibility for that site and for the land, and
- (b) are entitled by Aboriginal tradition to forage as of right over that land.

(emphasis added)

If the claimants can make good their case to be traditional Aboriginal owners of an area of land including a portion on which there are no sites but which is available for claim, then, so the argument runs, the claim to that part of the land on which there are no sites ought to succeed.

117. The definition of traditional Aboriginal owners serves many functions, only one of which relates to land claims heard by the Commissioner. It is not surprising therefore that there is no particular reference in that definition to 'land available for claim under this Act' or some similar expression. The question as I see it is whether, when one purpose of the definition is to give content to s. 50, it ought there to be read to relate only to land available for claim. Mr Howie urged me not to read it so narrowly. As he pointed out, and as I have commented in this and other reports, the boundaries of land available for claim by traditional Aboriginal owners are often established by means which bear no relationship to traditional patterns of ownership. Usually they are determined by the boundaries of leasehold or freehold land or by towns which may cut across or enclose portions of land traditionally held by particular groups. That may mean that from time to time areas which are rich in sites for the traditional owners fall within land unavailable for claim and areas lacking in site density or even lacking any sites at all are available for claim. To ignore the country richer in significance would be to distort the overall picture.

118. Although that submission has much force it does not solve the problem of what the Act means. Section 50 speaks of an application being made 'by or on behalf of Aboriginals claiming to have a traditional land claim to an area of land' and one of the Commissioner's functions is to ascertain whether those or any other Aboriginals are 'the traditional Aboriginal owners of the land'. It seems to me that when the definition of the

expression 'traditional Aboriginal owners' is read into s. 50(l)(a)(i) with reference to the land claimed, it takes on the narrower meaning. There must be a site or sites on the land claimed with which the claimants have common spiritual affiliations which place them under a primary spiritual responsibility. A similar result is reached when the definition of traditional Aboriginal owners is read into the definition of 'traditional land claim' in s.3(l) of the Act.

119. In my view this conclusion is inevitable on a proper reading of the Act. But it does not mean that country surrounding the land claimed and sites on that country ought to be ignored when considering traditional Aboriginal ownership of land claimed. I repeat what I said in para. 175 of the Finnis River Land Claim Report:

In assessing traditional ownership, the Act dictates that regard must be had to sites on the land claimed. That does not mean that sites off the claim area, particularly those nearby, should be ignored. The overall picture may be one of a pattern or cluster of sites with the presence of only one or two on the claim area itself explained by the nature of the country or by some other circumstance. Within the claim area there may be only scattered sites but it may be reasonable to infer that there is a local descent group with responsibility for the general area. Conversely the picture presented may be one in which sites are absent or so few that it is not reasonable to find traditional ownership of the land claimed. There is some discussion of these matters and of the way in which they arise in Uluru Report paras. 71, 72, 74, 92 94, 108 and I 10.

120. If I am right in my reading of this part of the Act and the members of Group 11 are not the 'traditional owners' of that country, is there anyone else who fits that definition? The evidence was unequivocal that the Victoria River was a boundary between the country of Group 11 and Group 7. There was no suggestion that this was jointly held or mixed country. So the rather anomalous situation arises whereby although this portion is part of a larger area traditionally owned by Group 11, traditional ownership in terms of the Act has not been established. I shall discuss the implications of this later in the report.

Group 12

121. There is only one clan member of this group, Minnie Waria many; the workers are Lizzie Nawurla, who takes the country from her mother and the children of Lizzie's deceased half-sister. It was Mr Howie's submission that:

They are there by reason of descent ... but not by the direct line of descent of taking it either from mother or from father, and they are there in what I suppose is generally called a succession situation (transcript p. 67 1).

This, he argued, made good sense as both Minnie and Lizzie are the last survivors of a group, both are old and so there is a need to bring other people into the group to care for the land and the ritual associated with it. Dr McConvell explained that as there is no surviving male member of the clan and the surviving woman in the patriline has no children, a line of descent through the mother's mother's brother was an option for ensuring continuous ownership of the country. Such an option is found:

...not in the majority of cases but it seems to be only in this extreme case where the group is on the verge of dying out (transcript p. 461).

122. Dr Tonkinson pointed out that the linkage of the Campbell children to the estate group is unusual 'in that the line of descent eligibility would normally end with their mother' (Exhibit 38 p. 3). However, in the light of the evidence that a decision had been made to recruit successors to this estate according to descent principles rather than having a contiguous estate group assume primary responsibility and, 'given the central importance of kinship in Aboriginal Australia', it was his view that 'the choice of a descent criterion is perfectly congruent with the Aborigine's cultural values' (Exhibit 38 p. 4). He also noted that the children concerned are members of the same patrimoiety as their mother's mother's brother, who is in kinship much like a 'brother', a form of succession well known in northern Australia.

123. I am satisfied that the people listed in Exhibit 46 as members of Group 12 and noted on Exhibit 45 as such are members of a local descent group in terms of the Act. Most of Group 12's country lies to the south-east of the claim area. It adjoins the country of Group 11 to its west and of Group 7 to the north-west, on the western side of the Victoria River. The main dreamings for this country are warlamaj (wind) and warrija (crocodile) and kirrang (goanna). These dreamings travelled northwards along the Victoria River; the crocodile and goanna stopped at Warralamarn. Group 12's country is the strip of land to the east and south of the Victoria River and as far north as Punupkurla. It seems that while the Victoria River forms a clear boundary between the countries of Group 7 and Group 12, both have joint responsibilities for sites along the river including the water hole on the Victoria River, Mirriwang (transcript pp. 356, 365).

124. The crocodile and goanna dreaming has a story but no juju and the Campbell children are painted up for it at marntiwa (initiation). There is a story for the wind dreaming which they also know and about which Donald Nangkayarri can teach them. They are allowed to hunt on the country. I am satisfied that the traditional owners of that strip of land in the south-east of the claim area between the Victoria River and the boundary are the members of Group 12.



Donald Nangkayarri Jurlama gives evidence to the Commissioner. Photo: G. Neate.

Donald Nangkayarri Jurlama gives evidence to the Commissioner. Photo: G. Neate.

Findings on traditional ownership

125. I am satisfied that save for that small triangular area in the south-western corner of the Daguragu lease associated with Group 11, traditional ownership has been established in regard to the land claimed. I am also satisfied that the traditional owners are the members of Groups 1-7, 9 and 12 as set out in Exhibit 46 and that the relationship of those claimants sufficiently appears from the genealogies (Exhibit 45). The only exception is in respect of Group 1 where no sufficient basis for the inclusion of Freddy Junta as a clan member was made out. The entitlement of the traditional owners to the use or occupation of the whole of the land was established. (See for instance the evidence of Dr McConvell at pp. 463, 464.)

126. I make the following findings for the purposes of this hearing and in accordance with s. 50(1)(a) of the Aboriginal Land Rights (Northern Territory) Act 1976.

A. The land claimed is in part unalienated Crown land and otherwise is alienated Crown land in which all estates and interests not held by the Crown are held by or on behalf of Aboriginals.

B. There are Aboriginals who are the traditional owners of that land save for an area in the south-western corner bounded to the east by the Victoria River.

C. The names of those traditional owners are set out below.

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D. The traditional owners so named are in each case entitled by Aboriginal tradition to the use or occupation of the whole of the land found to be the subject of traditional ownership although that entitlement may be qualified as to place, time, circumstance, purpose or permission.

Group 1

Clan members

Wipngarri Nawurla
Rutngarri Nawurla
Rawungali Nawurla

Workers

Captain Langma Jangari
Muldoon Jangari
Chook Jangari
Josephine Nangari
Ivy Kulpngarri
Smiler Major Purrarnga Purrarngarna

Group 2

Clan members

Clara Juturr Namija
Nangala
Clancy Janama
Dandy Janama
Jarrki Jungurra
Dinah Yimpawurngali
Carol Nalyirri
Susan Nalyirri
Rita Nalyirri
Allan Douglas Japalyi

Workers

Rook Julkiyarri Jurlama
Alice Kuwarlang Nawurla
Arthur Jampijina
Kevin Jampijina
Mildrene Nampijina
Namija Josephine Nampijina

Group 3

Clan members

Big Ted Kurlpawuk Jangala
Ronnie Jarrmayarri Jangala
Lorna Yakapulu Nangala
Amos Jangala
Edwardson Jangala
Dick Jarrnga Jangala
Daisy Nangala
Mona Nangala
Adam Jampijina
Nampijina
Nampijina

Workers

Peanut Japalyi
Kathleen Nalyirri
Banjo Parrminy Japalyi
Suzy Campbell Nangari
Billy Campbell
Noel Campbell
George Campbell
Joy Campbell
Doreen Campbell
Nancy Campbell
Marie Campbell
Gus George
Michael George
Robert George
Janice George
Nalyirri

Group 4

Clan members

Namija
Nyirri Julngarri Nangala
Jack Brumby Janarrpu Jungurra
Lily Punayi Namija
Polly Lajayi Namija
Jilpang Namija
Peanut Japalyi
Kathleen Yurlngarri Nalyirri
Banjo Parrminy Japalyi
Marie Nangkirri Nangari
Lizzie Nangala
Kitty Jakarta Nangala
Al Peanut Janama
Gwennie Peanut Nanaku
Rosemary Peanut Nanaku
Rodney Peanut Janama
Raymond Peanut Janama
Philip Peanut Janama

Workers

Molly Nampijina
Captain Major Jampijina
Joe Egan Jampijina
Josepha Nampijina
Stuart Jampijina
Daisy Ramangkarni/Jalpngarri
Nampijina
Ida Malyika Nampijina
Douglas King Pamayarri Jangala
Roger King Jiman Jangala
Brian Jangala
Jill Nangala
Marjorie Nangala
Diane Nangala
Wilfred Jangala

Group 5

Clan members

Vincent Lingkiyarri Jurlama
Lipayi Nawurla
Miplayi Nawurla
Spider Jurlama
Victor Vincent Jurnykali
Jurlama
Harry Nupuyarri Jurlama
Jack Kumayarri
Tim Rilji
Vera Wirringgali
Andrew Warnnguyarri
Polly Wapngarri
Peter Wapngayarri
Velma Kijngarri Nimarra
Tilmarnya Nimarra
Kathleen Nangala
Sonny Jangala
Deborah Nangala
Geoffrey Japarta
Ben Japarta
Peter Punkuyarri Jurlama

Workers

Oscar Jangari
Emily Nangari

Group 6(a)

Clan members	Workers
Daisy Ramangkarni Jalpnyarri	Jilpang Namija
Nampijina	Violet Nanaku
Ida Malyika Nampijina	Kitty Nanaku
Sonny Dodds Manji Jangala	Al Peanut Janama
Bruce Mijnga	Gwennie Peanut Nanaku
Bobby Tarrja	Rosemary Peanut Nanaku
Gilbert	Rodney Peanut Janama
Rosemary Karnki	Raymond Peanut Janama
Luke Wulpnga	Philip Peanut Janama
Ross Nyamnga	
Christopher Tumnga	
Marilyn	
Jason	

Group 6(b)

Clan members	Workers
Louise	Billy Mitiyarri Janama
Doris	Ned Kurrangaru Janama
Mona Nampijina	Lala Nanaku
Molly Nampijina	Nanaku
Captain Major Lapnga	Mabel Nanaku
Jampijina	Russell Janama
Smiler Major Purrarnga	Bobby Janama
Purrarngarna	Margaret Nanaku
	Diane Nanaku
	Violet Nanaku
	Cecil Janama
	Janpurayi
	Tarntawurr
	Horace

Group 7

Clan members	Workers
Happy Partku Jangari	Sonny Manji Jangala
Iris Nangari	Bruce Mijnga
Scott Jangari	Bobby Dodds Tarrja
Micky Jangari	Gilbert Dodds
Tony Timpurrngman Jangari	Rosemary Karnki
Molly Tupngarri Nangari	Marianne Nangala
Topsy Nganjali Nangari	Albert Jangala
Bulla Jurrang	Luke Wurlpnga Jangala
Nancy Warungali	Ross Nyamnga
Hazel Nanaku	Christopher Tumnga
Jaylene Nanaku	Kathleen Nangala
Nanaku (baby)	Sonny Jangala
	Deborah Nangala

Group 9

Clan Members	Workers
Martartayarri Nawurla	Iris Nangari
Rook Julki Jurlama	Happy Partku Jangari
Alice Kuwarlang Nawurla	Scott Jangari
Roy Yarnka Jurlama	Micky Jangari
Blanche Pulngarri Nawurla	Maria Japngarri Nangari
Blanche Jingaya Nalyirri	Stanley Hooker Creek Jangari
Jimmy Bird Japarta	Charlie Pincher Jangari
Lorna Bird Nimarra	Marie Japan Nangari
Dawn Nimarra	Peter Wapngayarri
Frankie Japarta	Polly Wapngarri
Tanya Marie Nimarra	Andrew Warnnguyarri
Robin Japarta	Vera Wurringgali
Katie	Tim Rilji
Eileen	Jack Kumayarri
Johnnie	Harry Nupuyarri
Robert	Victor Vincent Jurnykali
Glenys	Jurlama

Group 12

Clan members	Workers
Minnie Warlamany	Lizzie Ngilyawurr Nawurla
	Suzy Campbell
	Billy Campbell
	Noel Campbell
	George Campbell
	Joy Campbell
	Doreen Campbell
	Nancy Campbell
	Marie Campbell

Strength of attachment

127. Section 500) of the Land Rights Act directs the Commissioner, in making a report in connection with a traditional land claim, to have regard:

to the strength or otherwise of the traditional attachment by the claimants to the land claimed.

128. Evidence was given by each group and more generally by anthropologists regarding the knowledge and performance of ritual concerned with sites on the land claimed, the frequency of ritual performance, the storage and display of sacred objects, visits by the traditional owners to sites on their land for ceremonial and hunting purposes and the passing on of knowledge from one generation to the next. The evidence of Aboriginal witnesses is collected in Exhibit 48. Although Daguragu is and has been run as a cattle station ceremonial activity continues, especially on weekends and at holiday times. During the course of the hearing some dancing relating to sites on the land claimed was performed (both publicly and in private) and I was shown sacred objects on which are recorded some of the stories of the dreamings.

129. The level of understanding which people have varies, having regard to age, place of employment and extent of involvement in ritual activity; some know a wide area of country while others have more localised knowledge. According to Dr McConvell:

Country is something that is talked about very frequently not only in business but just in discussions between people. As long as people are involved in those discussions they learn (transcript p. 435).

In recent years he has observed ritual activity including initiations or marntiwa ceremonies and has seen groups of people visiting their traditional country and instructing young people in the sites, stories and songs for that country. It has not been easy to maintain this type of activity, especially on a cattle station where at times it was necessary to hide what was happening.

130. Writings of Prof. R. M. and Dr C. H. Berndt in the 1940s recorded ritual carried out by the Gurindji people and give support to the continuity of attachment to the land which was evidenced in this claim. (See C. H. Berndt: *Women's Changing Ceremonies in Northern Australia*, 1950; transcript pp. 435-39). The history of European contact in the area and the strike and establishment of the settlement at Wattie Creek, are further evidence of the strong attachment which the claimants have to their country.

131. Much of the evidence was directed at the wider community rather than at specific local descent groups. For example, Rook Julkiyarri Jurlama said:

Bilinara people and Gurindji people were living here. They all right. They been living all around with everybody-Bilinara and Gurindji, Malngin, Mudbura ... Before that cattle and horse come into this country, you know ... Yes, they been walking, all friends ... (transcript p. 168).

He explained that the jurntakal came over the sea and gave names to the different tribes and their languages, Mick Inverway said:

Ngarinman, Mudbura, Gurindji people come along one group, along Gurindji now. It's like a big city, all coming in. All been live together from early days, from beginning time. It's really Gurindji tribe and all coming in and living with Gurindji ... Malngin too ... Yirliny part come in here and Wadjira (transcript pp. 170, 171).

132. Sacred objects are stored for a number of the claimant groups at a place near the Daguragu settlement, closed to all except initiated men. The importance of these objects to the people and their significance for the country around was obvious.

133. I am satisfied that there is a strong attachment by the claimants to the land claimed. This has been heightened by the struggle to obtain the land and the relative autonomy of the residents since the grant of the lease in 1975.

Desire to live on traditional country

134. Section 50(4) of the Act requires the Commissioner, in carrying out his functions, to have regard to certain principles which relate to the living or non-living of Aboriginals on the traditional country of the tribe or linguistic group to which they belong.

135. The situation here is similar to that existing at Utopia and Willowra. As in those cases s. 50(4) of the Act has not much to say. Paragraph (a) of sub-s. (4) speaks of Aboriginals who by choice are living at a place on the traditional country of the tribe or linguistic group to which they belong, but for the paragraph to operate those persons must have no entitlement to live at the place in question. In the present case, by virtue of the lease granted to Muramulla-Gurindji, the people living on their traditional country do have a right or entitlement to live there.

136. Paragraph (b) has no application because it relates to Aboriginals who are not living at a place on the traditional country of the tribe or linguistic group to which they

belong. Any traditional owners of this land not presently living at Daguragu are free to do so.

137. Section 50(4) then plays no part in this report; any recommendations must be based upon the other considerations mentioned in the Act.

Recommendations

138. In the light of the findings I have made as to traditional ownership, the identity of traditional owners, the strength of their traditional attachment to the land claimed and the principles spelt out in s. 50(4), I recommend that there be a grant to a Land Trust of the land claimed save for the south-western corner bounded to the east by the Victoria River. The grant should be for the benefit of Aboriginals entitled to the use or occupation of the land, whether or not the traditional entitlement is qualified as to place, time, circumstance, purpose or permission.

139. I wish to say something about the south-western corner of the claim area even though it is not the subject of a recommendation. If the Minister is satisfied in terms of s. 11 of the Act that there should be a grant of the land recommended, it will leave a very small area, presumably still the subject of a pastoral lease held by Muramulla-Gurindji. It will serve no useful purpose in that form. In that event it seems to me that one of two things may happen; there may be others.

140. The first is that if further enquiry establishes the existence of a site or sites on that land it may be possible to renew the claim in regard to that area. Whether such a course is permissible under the Land Rights Act is a matter I have not yet had to decide and I express no view on it.

141. The other possibility is this. Section 59 of the Crown Lands Act permit sales see of a pastoral lease, with the consent of the Minister, to surrender his lease. On ordinary principles of interpretation I would take that to allow the surrender of part of a lease. Section 6 of the Crown Lands Act forbids the alienation of land from the Crown otherwise than in pursuance of the Act. But sub-s. (2) provides that the section shall not affect:

- (c) the granting of an estate in fee simple under the Aboriginal Land Rights (Northern Territory) Act 1976.

Section 4(3) of the Land Rights Act empowers a Land Trust to 'acquire, hold and dispose of real and personal property'. Section 3(1) of the same Act defines 'Aboriginal land' to mean:

- (a) land held by a Land Trust for an estate in fee simple.

If by prior arrangement Muramulla-Gurindji surrendered the south-western corner of the claim area and, contemporaneously with a grant to a Land Trust under s. 12 of the Land Rights Act, the Crown in right of the Northern Territory made a grant of that portion to the Land Trust, the entire claim area would become Aboriginal land in the hands of the one Land Trust.

142. I appreciate that these suggestions are outside the scope of my ordinary functions as Land Commissioner. But if the general entitlement of the claimants be recognised, no purpose would be served by leaving such a small area outstanding.

Matters for comment-number of Aboriginals advantaged

143. Section 50(3)(a) of the Land Rights Act requires the Commissioner to comment upon:

the number of Aboriginals with traditional attachments to the land claimed who would be

advantaged, and the nature and extent of the advantage that would accrue to those Aboriginals, if the claim were acceded to either in whole or in part.

Over 200 people were listed as claimants, either as owners or workers in the 12 groups originally put forward. In the end Groups 8, 10 and 11 either had country off the claim area or were unable to make a claim to part of the claim area. That reduces the number of traditional Aboriginal owners to approximately 170.

144. Given the way in which the claim was presented, the unity of the Gurindji people and their interest in the land as a whole, it is reasonable to expect that at least 200 of them would be advantaged by the grant of land to a Land Trust. That number would certainly include the members of Group 11. Most of these people live either in Kalkaringi or Daguragu settlement. According to the statement tendered on behalf of the Department of Aboriginal Affairs (Exhibit 40), the community of Daguragu has a population of 180 and Kalkaringi has 225 inhabitants. There are no outstations on the claim area. Some of those people are Europeans; others are Warlpiri and members of other Aboriginal groups not having traditional country within the claim area. Others are Gurindji whose traditional country falls outside the boundaries of the claim area.

Matters for comment-nature and extent of advantage

145. The next question is the nature and extent of any advantage that would accrue to Aboriginals having traditional attachments to the land. The bulk of the land claimed is presently leasehold; in that respect the situation is similar to the Utopia and Willowra claims. As I said in the Utopia Report:

In my view the real advantage of a grant under the Act lies in the assurance of security of title and in the acknowledgement that this land, although a pastoral lease and capable of carrying cattle, is seen by the claimants as a home ... The pastoral side is an important but not essential component. In those circumstances, a grant of freehold title under the Land Rights Act more truly accords with the situation than a pastoral lease (para. 176).

146. Security of tenure is a very real issue in the minds of at least some of the claimants especially since the possibility of the lease being forfeited was raised in October 1979 (see Exhibit 14 and para. 39 of this report). This concern was expressed by Pincher Numiari:

We've got the lease but we want freehold ... Well, we've got a lot of children and children are going to work this place. If I pass away, what are they going to do? Break it up? I want it for the children (transcript p. 204).

If I pass away-not only me but a lot of these blokes, a lot of these people here-we want freehold for our children so that they can run it themselves if we pass away (transcript p. 206).

147. Some of the land claimed, especially that around Daguragu and adjacent to Kalkaringi, is unalienated Crown land. The benefit here is that the claimants would have title to the land on which most of them live and on land which contains a number of important sites. A grant of title under the Land Rights Act would represent the culmination of attempts by the Gurindji to secure a place of their own.

Detriment-other Aboriginals

148. The Land Rights Act requires the Commissioner to comment on:

the detriment to persons or communities including other Aboriginal groups that might result if the claim were acceded to either in whole or in part (s. 50(3)(b)).

149. Among those people living at Daguragu settlement and Kalkaringi area number of non-claimants. Some are Warlpiri people who have lived in the area for a number of years; others are Gurindji whose main country lies off the claim area. There was no suggestion in the evidence that either of these groups would suffer if the land became Aboriginal land, with the traditional owners identified as those whose country lies within the claim area

boundary. Rather the impression was more of a united claim supported by others, including some leaders whose traditional country lies beyond Daguragu (transcript pp. 454-55, Exhibit 38 p. 14).

150. The lease to Daguragu station is subject to a reservation in favour of the Aboriginal inhabitants of the Northern Territory (Exhibit 2).

Pursuant to s. 24(2) of the Crown Lands Act this reservation is read:

as a reservation permitting the Aboriginal inhabitants of the leased land and the Aboriginal inhabitants of the Northern Territory who are in accordance with Aboriginal tradition are entitled to inhabit the leased land

to enter and be on the land, to take and use natural water and springs on it, to take or kill for food or ceremonial purposes animals found there and to take for food or ceremonial purposes vegetable matter growing naturally on the leased land.

151. It may be that the grant of this land to a Land Trust will restrict the existing rights of some people. But although my function is to make a recommendation on the basis of findings of traditional ownership, s. 11 of the Land Rights Act expresses a grant to be:

for the benefit of Aboriginals entitled by Aboriginal tradition to the use or occupation of that area of land, whether or not the traditional entitlement is qualified as to place, time, circumstance, purpose or permission.

Most if not all of the non-owners whose interests are protected by the reservation in the lease would also fall within the scope of s. 11 of the Land Rights Act.

Picture 1211

Gurindji women dance in support of the claim. Photo: G. Neate.

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152. If there is disharmony the detriment may be off-set if, as Dr Tonkinson suggested: these people would be able to shift to Kalkaringi settlement, which is not part of the Daguragu claim, thus assuring them of continuity of residence in the general area of the claim (Exhibit 38 p. 14).

I am satisfied that as things stand no detriment would be suffered by Aboriginals presently living in the claim area if that land becomes Aboriginal land.

Detriment-Northern Territory Cattle Council

153. In its notice of intention to be heard the Northern Territory Cattle Council listed four matters: the exclusion of certain roads from any grant of land, detriment arising from difficulties of access to Aboriginal land, fencing problems including the recovery of costs of fencing, and the inadequacy of disease control measures on the claim area.

154. The question of roads is discussed elsewhere in this report. No detailed submission was made on the question of access. Mr W. E. L. de Vos, executive secretary of the Council, referred me to and was content to accept the comments made in the Utopia Report paras 193-200. The Council's chief concerns were with the construction and maintenance of boundary fences and with the effective implementation of the national brucellosis and tuberculosis eradication campaign on Daguragu. I shall deal with these separately.

Detriment-fences

155. Evidence was given by pastoralists from properties adjacent to Daguragu of the need for proper boundary fencing for stock and disease control. It was argued that unless adequate fencing is maintained diseased cattle may stray and jeopardise the clean status of an adjoining lease. Also, as mentioned earlier in this report, there was a submission by the Northern Territory Government that unless the eastern boundary of Daguragu with Wave Hill station is amended before the land becomes Aboriginal land, detriment may flow to the lessee of Wave Hill and the owners of Daguragu because a new fence would have to be constructed along that boundary line.

156. It is unnecessary to look in detail at the evidence of those pastoralists, not because the matter is unimportant but because fencing rights and obligations exist irrespective of the status of land. Section 74 of the Land Rights Act reads:

This Act does not affect the application to Aboriginal land of a law of the Northern Territory to the extent that that law is capable of operating concurrently with this Act.

The Fences Act defines 'owner' to include every person who is 'entitled to land for any estate of freehold in possession' (s. 5(1)). An Aboriginal Land Trust, which is a body corporate, holds title to land in fee simple and, subject to the Land Rights Act, 'may acquire, hold and dispose of real ... property and may sue and be sued in its corporate name' (s. 4(3)). A Land Trust as 'owner' in terms of the Fences Act is liable to join in or contribute to the construction of a sufficient fence dividing the land from adjoining lands, whether in whole or in part (s. 6). It would also be liable to contribute to the cost of repairs to such a fence (s. 14).

157. As the Northern Territory Government's submission (Exhibit 26) demonstrates, there is some question whether or not the existing fence between Daguragu and Wave Hill is a dividing fence for the purposes of the Fences Act. 'Dividing fence' is defined to mean:

a fence separating the adjoining lands of different owners ... whether the fence is on the line of or, in an appropriate case, on a line on the common boundary of the adjoining lands or on a line other than the line of or a line on the common boundary or partly on any one of those lines and partly on the other or others (s. 5(1)).

Detriment-disease control

160. The Northern Territory Cattle Council presented written evidence concerning the operation of the national brucellosis and tuberculosis campaign in the Northern Territory. It also called witnesses from pastoral properties adjoining Daguragu. Those people described the programs operating on their properties and the effect on those programs of the intermingling of potentially disease-carrying cattle from adjacent stations.

161. Dr G. C. Calley, a senior veterinary officer in the Department of Primary Production in charge of the brucellosis and tuberculosis campaign, spoke of the effectiveness of the campaign to date and the importance of involving all properties in the area. He pointed to the need for secure fencing and said that although a program could be approved with some defective fencing, inadequate fencing can result in infected cattle moving into an area provisionally free of disease and so affect the disease status and marketability of cattle in that area.

162. Mr P. W. Flanagan, a stock inspector with the Department of Primary Production based at Wave Hill, also spoke of the effect that potentially diseased cattle have on the status of stations. Tests carried out at Daguragu in 1980 showed no brucellosis (Exhibit 34), but as a result of tests in 1981 brucellosis and tuberculosis reactor cattle were found. Although only two animals were involved, Daguragu is now classified as infected with tuberculosis and brucellosis. At the time of the hearing, the disease control program started at Daguragu had been in abeyance for some months but people involved in the cattle operations were planning to attend disease eradication courses and it was hoped that the program would soon be revived.

163. There have been difficulties, due in part to some of the terrain, in having a complete muster at Daguragu and so the testing of cattle has not been comprehensive. But Mr Flanagan commented:

This place had a very clean status, it would beat most places in the Territory, and it was way above everybody around here until they got that one reactor and then everything has been stopped but I do not know why (transcript p. 518).

164. The insistence by Government 'that what should be done to eradicate these diseases is in fact done' was made clear in a statement by the Minister for Primary Production (Exhibit 28). And the concern of neighbouring pastoralists that their programs and disease-free status might be jeopardised by ineffective management on Daguragu was also evident. However, it would not seem that the conversion of the Daguragu lease to freehold with the addition of the other portions of land under claim would affect the implementation of the disease eradication campaign. The Stock Diseases Act was amended earlier this year (Act No. 51 of 1981) to ensure its application to 'land held by a person under any form of tenure'(s. 5). The Act provides for the appointment of inspectors with power to enter land to inspect, treat or seize stock, to order the mustering of stock, to seize stock which is infected or diseased or which an inspector has reasonable cause to believe is infected or diseased, to destroy or cause to be destroyed any such stock, to test stock, to prevent stock entering or leaving specified portions of land, together with other wide-ranging powers. The Minister may establish a quarantine area or declare land to be a protected area and control the movement of stock into and out of those areas. Provisions such as these will continue to apply to Daguragu whether it be leased or freehold land.

165. Counsel assisting, Mr P. M. Barr, pointed out in his final submission that the existing lease contains covenants to build specified lengths of internal fencing and that this covenant is enforceable ultimately by forfeiture of the lease. He submitted that as the

Stock Diseases Act does not give the Chief Inspector of Stock power to order fencing, there may be a detriment suffered by adjoining land owners or those who seek to control disease in the area if the land becomes freehold and those fencing covenants no longer exist. An inspector is given the power under s. 42(1)(h) to order the owner or person in charge of stock to provide such yards as he deems necessary to examine and treat stock believed to be infected. But beyond this limited power is the real possibility that, without adequate fencing and other management procedures, approval would not be given to a disease eradication program and the movement and sale of stock from Daguragu would be restricted.

166. The question of disease eradication or control is a serious and important one but does not directly touch on my functions under the Land Rights Act. It is sufficient to say that in recent times a program has operated, apparently successfully, at Daguragu and it is hoped that such a program will continue. In any event the Government has legislative power to enforce its policy of brucellosis and tuberculosis eradication.

Detriment-Ashton Mining Limited

167. A written submission was received from Ashton Mining Limited in its capacity as manager of the Australian Diamond Exploration Joint Venture, parties to which are Ashton Mining Limited, A.O.G. Minerals Limited and Aberfoyle Exploration Pty Ltd. Those companies have an interest in four applications for exploration licences over the bulk of the claim area. They are E.L.A. 2700 and 2701 for which Ashton Mining is the applicant and E.L.A. 2555 and 2556 for which A.O.G. Minerals has applied.

168. Ashton Mining argued that it would suffer detriment 'if the joint venture is unable to explore in the area'(Exhibit 39 p. 1), contending that the detriment would extend to the Australian economy generally. There was no evidence of any expenditure by the companies in the area and there is no certainty that economic deposits of minerals will be found. The joint venture did not support the conclusions contained in a Department of Mines technical report on the geology of the claim area (Exhibit 25) that the potential for finding minerals other than base metal deposits and small kimberlite intrusions is low. It argued that the area had not been sufficiently explored to reach such a conclusion.

169. There was no evidence that a necessary consequence of a grant of land to a Land Trust would be a refusal to allow exploration activity. The companies would have to comply with the provisions of the Land Rights Act, which include gaining the consent of the traditional owners. But, as I have said in previous reports, any cost flowing from such negotiations of itself is a detriment arising from the Act and not from the grant of a particular area.

Detriment-Dampier Mining Company Ltd

170. On 13 March 1981 Dampier Mining Company Ltd lodged an application for exploration licence 3067 which includes a small portion of the north-eastern corner of the land claimed. I only became aware of the company's interest just before the hearing began but the company was given written notice of the hearing. I am satisfied that the company knew of the hearing and was given sufficient opportunity to present evidence had it wanted to. No evidence was called by it nor were any submissions made on its behalf-, so I can make no comment as to any detriment which it might suffer if the claim to that part of the land is successful.

Land usage

171. Section 50(3)(c) of the Land Rights Act obliges the Commissioner to comment on: the effect which acceding to the claim either in whole or in part would have on the existing or proposed patterns of land usage in the region.

172. Elsewhere in the report I refer to the proposed activities of Ashton Mining Limited and its joint venturers but the question of mining in the area is a more general one. The Northern Territory Government tendered a technical report entitled 'Geology and Mineral Potential of the Dagaragu/Kurintji Aboriginal Land Claim' which sets out the geology of the area and investigations already carried out. The report concludes:

More detailed exploration could result in the discovery of small or moderate size base metal deposits, (such as lead and zinc), and/or the small, igneous Kimberlite intrusions, although none of these have been found to date ... The potential of finding other minerals is low (Exhibit 25 pp. 11, 12).

173. As well as exploration by mining companies, part of the claim area was mapped by Muramulla-Gurindji during 1971-72. The objects of that company include investigating economic methods of mining or dredging, taking out the appropriate mineral rights to selected areas for development, and fostering and promoting community group participation and development through business interests in the mining industry (Exhibit 6).

174. Current interest in the area is evidenced by the application for exploration licences by A.O.G. Minerals Limited, Ashton Mining Limited and Dampier Mining Company Limited. These companies were described as 'experienced operators in the quite specialised field of diamond exploration and have developed a high degree of expertise' (Exhibit 25). If the licences were granted to them and there is economic mineralisation in the area, it is likely that they would discover it. Any mineral exploration and subsequent mining development is subject to the provisions of the Land Rights Act, Part IV in particular, and so would need to be done with the consent of the traditional owners.

Roads

175. Four roads within the claim area were said to be roads over which the public has a right of way and which therefore should be excluded from any grant of land. These were:

- A. the Buchanan Highway—a road running roughly east-west across the claim area and crossing the Victoria River at Kalkaringi;
- B. the road between Kalkaringi and Daguragu settlement;
- C. a road described as the Mount Sanford access road—commencing just north of Kalkaringi and running northward to cross the northern Dagaragu boundary;
- D. a road from Daguragu settlement to Mount Sanford access road—commencing at Daguragu and running east then north.

The location of these roads, subject to the variations which I shall mention later, can best be seen on the maps Exhibits 22 and 41.

176. The claimants did not dispute that the Buchanan Highway is a public road. Constable K. Dailly, a policeman stationed at Kalkaringi, estimated that one hundred vehicles a week use the road during the dry season. Apart from a stretch of bitumen through the township, the road is a gravel road to the border of Western Australia and is graded by a person contracted by the Northern Territory's Department of Transport and Works (transcript pp. 99, 100). Counsel for the Northern Territory Government spoke of the cost of maintaining that road and of a traffic survey which recorded an average of ten vehicles per day (transcript p. 111).

177. According to Constable Daillyt the highway is closed for two weeks each year due to flooding in an area just south-east of the Victoria River. Exhibit 22 shows the location of a pegged line for the proposed re-alignment of the highway. There was no suggestion that the land within the proposed re-alignment is an existing road though counsel for the Northern Territory Government urged me to recommend that this strip of land be excised from a grant to a Land Trust (transcript pp. 704, 705). On the view I have previously taken of my functions I do not think I can do this, at least not as part of my recommendations. I can and do draw attention to the obvious need for the re-alignment and the benefit it will be to everyone in the area. That becomes a matter for the consideration of the Minister. If a grant of that land is made, any variation of the Buchanan Highway will require the written consent of the Central Land Council pursuant to s. 68 of the Land Rights Act. Counsel for the claimants submitted:

As the proposed variation is intended to avoid the inconvenience of the close of the road due to flooding it is not likely that the consent of the traditional owners or the Land Council will prove a difficulty (Exhibit 50 p. 1).

178. Much evidence was given on the use of the road between Kalkaringi and Daguragu settlement. This is a graded dirt road about 12 kilometres long. Regular use is made of it by residents of both communities, Northern Territory Government employees in departments such as health and education, a transport company bringing supplies to the Daguragu store every week, hawkers from Kununurra and Katherine, Aboriginals from Hooker Creek, Halls Creek and Wave Hill, employees from Mount Sanford station and occasional drivers of cattle trucks, mining company employees and tourists.

179. The maintenance of the road seems to be shared between a person contracted by the Northern Territory Department of Transport and Works, who grades the road, and the Daguragu Council, which repairs the causeway across Wattie Creek and cattle grids and damaged parts of the road. There was no evidence of permission being required to travel along the road between the two communities or of anyone being prevented from travelling. There was however evidence of concern by Aboriginals at Daguragu that people entering or passing through that settlement seek permission before doing so. While there seemed to be a standing invitation for people resident at Kalkaringi, both Aboriginal and European, to enter Daguragu, people coming from outside that community ought to seek permission to enter the settlement. (See evidence of Pincher Numiari transcript pp. 206-209, 427, 428.) Thus, although members of the public at large may use the road and go to Wattie Creek for recreational purposes, it is only those who have an invitation (implied or otherwise) or have sought permission to enter Daguragu settlement or who go there in the course of their business or as Government officers exercising their duties who may properly go beyond the Daguragu fence line. Although, as I have said in previous reports, my opinion is not binding, I am satisfied that the road from Kalkaringi as marked on Exhibit 41 to the fenced border of Daguragu settlement is a road over which the public has a right of way.

180. The Mount Sanford access road is marked on Exhibit 41 as running in a northerly direction from Kalkaringi, crossing Wattie Creek some 3 kilometres east of Daguragu settlement and running north and north-west to the northern boundary of Daguragu lease, then continuing in a north-westerly direction. The evidence of Mr P. Vandeleur, pastoral superintendent for Hooker Pastoral Company, was that the road now begins a short distance along the Kalkaringi to Daguragu road rather than at the police station (transcript p. 624). To his knowledge the road was put in as early as 1946 and was maintained to some extent by a government grader until the late 1970s. Since then it has been maintained by VRD and Mount Sanford stations (transcript pp. 621, 622, 625). Use of the road has increased since the construction of the Buchanan Highway and it is especially important during the wet season from October until May as the only way to get

across the Victoria River (transcript pp. 627, 628). Mr D. A. Twine, the manager of Mount Sanford station, said that all livestock from Mount Sanford is transported along that road to the Buchanan Highway (transcript p. 523). Mount Sanford station maintains the road though it can only carry single-deck trailers and not double-deck trailers. Evidence was given of significant numbers of cattle moved on and off Mount Sanford station via that road (transcript pp. 524, 525, 631) and of the cost of maintaining the road (transcript pp. 527, 632). Once the road crosses over the northern Daguragu boundary, access can be gained from it to a number of bores, to Pigeon Hole and south to Farquharson's Gap yard (transcript pp. 102, 555, 557, 623, 631, 632).

181. Even though this road in part crosses the Daguragu lease it is clear that many people who use it are bound for Mount Sanford station or other destinations and their use of the road has nothing to do with Daguragu. Those people must be seen as using the road as members of the public exercising a right of way.



Mr D. A. Twine (centre) marks a map for the Commissioner (left) as Mr K. Pointon, Mr W. E. L. de Voss and Mr P. M. Barr watch. Photo: G. Neate.
Mr D. A. Twine (centre) marks a map for the Commissioner (left) as Mr K. Pointon, Mr W. E. L. de Voss and Mr P. M. Barr watch. Photo: G. Neate.

182. The fourth road, which may be viewed either as a continuation of the Kalkaringi to Daguragu road, or as a separate road linking Daguragu with the Mount Sanford access road, runs east from Daguragu and then north to meet the Mount Sanford road some 2,1 kilometres north-east of Daguragu. This road is used periodically for the transport of cattle in double-deck cattle trucks to and from the Buchanan Highway and by other Mount Sanford vehicles when the Wattie Creek crossing on the Mount Sanford access road is out of use during the wet season. Mr Twine, when cross-examined by Mr Howie, said that he considered the road similar to one going into a homestead and that the permission of the Daguragu people had been sought for the use of it. Mount Sanford station has maintained the road 'down to the settlement' after discussions about putting in a new access road to link up with the cement crossing of Wattie Creek just west of

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Daguragu (transcript p. 526). He said that other existing tracks eastward of Mount Sanford were longer and more expensive to maintain and less suitable for trucking cattle to the Buchanan Highway than the Mount Sanford access road and the road linking it with Daguragu (transcript pp. 526, 527). Mr Vandeleur also spoke of the superior quality of the Wattie Creek crossing near to Daguragu and the use of the diversion through Daguragu from the Mount Sanford access road by people travelling to and from Mount Sanford station. He said that that road was used as an alternative to the direct route to the Buchanan Highway and that he had not sought permission to travel through Daguragu nor had he known of anyone doing so (pp. 626, 629).

183. The evidence of some Aboriginal witnesses and of Mr Twine suggests that permission ought to be sought before vehicles travel along that access road and through Daguragu to the Kalkaringi-Daguragu road. (See summary of evidence in Exhibit 50 paras 9-13.) The permissive use of this road rather than a use as of right suggests that it is not a public road. Its importance, however, to the operations of Mount Sanford station, and it appears to some mining interests, is clear. If that land becomes Aboriginal land and is closed to Mount Sanford station employees, some detriment will be suffered by the station. Again the main concern expressed by the Aboriginal witnesses was with vehicles coming through Daguragu settlement and it may be that some arrangement can be made for an access road to incorporate the cement crossing of Wattie Creek but to circumvent the Daguragu settlement.

Cost of acquiring interests

184. Section 50(3)(d) of the Land Rights Act provides that where a claim relates to alienated Crown land (and that means alienated Crown land held by or on behalf of Aboriginals) the Commissioner shall comment on:
the cost of acquiring the interests of persons (other than the Crown) in the land concerned.

185. The title to that part of the claim area under P.L. No. 805 is held by Muramulla-Gurindji, some of whose directors are claimants in this claim. The effect of a grant of land would be to extinguish the title of the company but Mr Howie submitted that there would be no cost involved in the creation of Aboriginal land. There was no submission to the contrary.

186. In the course of the hearing counsel for the Northern Territory Government tendered a document relating to buildings located at Daguragu settlement which are the property of the Departments of Health and Education (Exhibit 23). The Department of Health has a demountable health clinic, a small powerhouse, a toilet block and incinerator which have been maintained by it. The Department of Education has a classroom and ablution block. Both departments operate regular programs from those buildings.

187. The Land Rights Act provides that where land becomes Aboriginal land and is being occupied or used by the Crown, the Crown is entitled to continue that occupation or use for such period as the land is required by it (s. 14(1)). During that period the Crown is entitled to the occupation or use of the land and any buildings and improvements on it are deemed to be the property of the Crown. Officers of those departments would continue to have the right of entry on to Aboriginal land by virtue of s.70(1) of the Act. The Northern Territory Government also advised that as part of the brucellosis and tuberculosis eradication program it is necessary for a veterinary officer based in Katherine to visit the area to inspect cattle on a regular basis. That officer's right to enter and remain on Aboriginal land is also preserved by s.70.

Summary of findings, recommendations and comments

188. I now summarise the findings, recommendations and comments in this report.

- (1) The land claimed is in part unalienated Crown land-N.T. portion 1318 (Seal Gorge Reserve), N.T. portion 1459 and an area around that portion excluding the town of Kalkaringi, N.T. portions 1383 and 1384. Primarily the claim is to alienated Crown land in which all estates and interests not held by the Crown are held by or on behalf of Aboriginals (Daguragu pastoral lease No. 805).
- (2) The claimants are mainly Jiyil Gurindji and 'top' Gurindji from the Victoria River headwaters and its tributaries. Some are Bilinara.
- (3) The traditional Aboriginal owners of the land claimed comprise clan members and 'workers'.
- (4) The claimants presented as twelve local descent groups. Groups 1-7, 9 and 12 are traditional Aboriginal owners (as that term is defined in the Land Rights Act) of land in the claim area.
- (5) There are Aboriginals who are the traditional owners of all of the land claimed save for an area in the south-western corner bounded to the east by the Victoria River.
- (6) The names of the traditional owners are set out in para. 126 of the report.
- (7) The traditional owners so named are in each case entitled by Aboriginal tradition to the use or occupation of the whole of the land found to be the subject of traditional ownership although that entitlement may be qualified as to place, time, circumstance, purpose or permission.
- (8) The traditional attachment of the claimants to the land claimed is strong.
- (9) Section 50(4) of the Land Rights Act plays no part in this report.
- (10) I recommend that there be a grant to a Land Trust of the land claimed save for the south-western corner bounded to the east by the Victoria River.
- (11) If the Minister is satisfied that there should be a grant of the land so recommended, it would be appropriate to consider whether that south-western corner may become Aboriginal land. It may be possible to renew the claim in respect of that area; alternatively Muramulla-Gurindji Company Pty Limited, the holder of pastoral lease No. 805, may be able to surrender the corner to the Crown in right of the Northern Territory for the Crown to make a grant of the land to the Land Trust created as a result of these recommendations.
- (12) Some 200 Gurindji people would be advantaged by a grant of the land to a Land Trust.
- (13) The advantage of a grant would be to assure security of tenure to the claimants. It would represent the culmination of attempts by the Gurindji to obtain a place of their own.
- (14) No detriment is likely to be suffered by other Aboriginals if the land becomes Aboriginal land.
- (15) Problems may arise in regard to the construction and repair of boundary fencing between Aboriginal land and pastoral leases, particularly in regard to access to Aboriginal land. If so, the remedy lies in amending the Fences Act.
- (16) A particular problem of access may arise if there is a re-alignment of the boundary between Daguragu and Wave Hill and the existing boundary fence is no longer a dividing fence for the purposes of the Fences Act.

- (17) The matter of brucellosis and tuberculosis control is an important one. But it is within the power of government to enforce its policy of brucellosis and tuberculosis eradication whether the land is Aboriginal land or not.
- (18) There was no evidence of expenditure in the claim area by the joint venture of Ashton Mining Limited, A.O.G. Minerals Limited and Aberfoyle Exploration Pty Ltd; nor is there any certainty that economic deposits of minerals will be found in the area. The conclusion of the Department of Mines is that the potential for finding minerals other than base metal deposits and small kimberlite intrusions is low. As any cost flowing from negotiations between a Land Council and a mining company is of itself a detriment arising from the Act rather than from a grant of a particular area of land, I am not satisfied that the joint venture would suffer any detriment if a grant were made.
- (19) As to Dampier Mining Company Ltd, no submissions were made and I am unable to make any comment as to any detriment which that company might suffer if the claim is successful.
- (20) Within the claim area there are three roads over which the public has a right of way and which therefore should be excluded from any grant.
- A. The Buchanan Highway-a road running roughly east-west across the claim area and crossing the Victoria River at Kalkaringi. A re-alignment of that road is proposed just south-east of the Victoria River to keep the highway open during heavy rains.
 - B. The road between Kalkaringi and Daguragu settlement.
 - C. A road described as the Mount Sanford access road-commencing just north of Kalkaringi and running northward across the northern Daguragu boundary.
- (21) I am not satisfied that the road from Daguragu settlement to Mount Sanford access road-commencing at Daguragu and running east then north-is a road over which the public has a right of way.
- (22) The effect of a grant of land under the Land Rights Act would be to extinguish the title of Muramulla-Gurindji Company Pty Limited to pastoral lease No. 805. There was no evidence that this would involve any cost in terms of s. 50(3)(d) of the Land Rights Act.
- (23) Within the claim area the Department of Health has a demountable health clinic, a small powerhouse, a toilet block and an incinerator which have been maintained by it. The Department of Education has a classroom and ablution block. I was asked by the Northern Territory Government simply to note the existence of these buildings.
- (24) By reason of s. 14(1) of the Land Rights Act the Crown is entitled to continue the use or occupation of any land occupied or used by it at the time of the grant. That would extend to the land used by the Departments of Health and Education. Officers of those departments would continue to have a right of entry on to Aboriginal land by virtue of s. 70(1) of the Land Rights Act. The right of other officers, e.g. veterinary officers, to enter upon the land is also preserved by s. 70. also preserved by s. 70.

Darwin

18 November 1981

LEGAL REPRESENTATIVES

Mr K. R. Howie for the claimants

Mr B. T. Dargan for the Commonwealth of Australia

Mr P. A. Eyre for the Attorney-General of the Northern Territory

Mr P. W. Walker for Ashton Mining Limited

Mr P. M. Barr, counsel assisting the Commissioner

CONSULTANT

Dr R. Tonkinson, anthropologist

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WITNESSES

Gordon Peter Bauman
Graham Chalmers Calley
George Campbell
Kevin Dailly
Peter William Flanagan
Roderic Hagen
Mick Inverway
Captain Major Lapngayarri Jampijina
Clancy Janama
Big Ted Kurlpawuk Jangala
Smiler Katata Panguyu Jangala
Muldoon Jangari
Richard Hilton Janson
Banjo Parrminy Japalyi
Peanut Japalyi
Freddy Junta
Donald Nangkayarri Jurlama
Jerry Rinyngayarri Jurlama
Paddy Jurlama
Peter Punkuyarri Jurlama
Rook Julkiyarri Jurlama
Spider Jurlama
Victor Vincent Jurnykali Jurlama
Vincent Lingkiyarri Jurlama
Long Jack Mantayarri
George Manyu
Patrick McConvell
Roderick Powell McKenzie
Dolly Lajayi Namija
Lily Punayi Namija
Molly Nampijina
Peggy Nanaku
Malyika Nangala
Emily Nangari
Molly Tupngarri Nangari
Topsy Nganjal Nangari
Lizzie Nawurla
Blanche Nawurla
Amy Nimarra
Pincher Numiari
William Arthur Purdie
Meredith Leslie Rowell
Dennis Alec Twine
Patrick John Underwood
Paul Vandeleur
Cecil Thomas Watts
Vera Wirringgali

EXHIBITS

1. Affidavit of Jeanette Louisa Heintze sworn 9 June 1981.
2. Copy of Pastoral Lease No. 805.
3. Map entitled Daguragu Land Claim.
4. Extract from Aboriginal Land Fund Commission Annual Report 1975-76.
5. Agreement between The Wave Hill Pastoral Company Pty Limited and Muramulla-Gurindji Company Pty Limited made 13 August 1975.
6. Memorandum and Articles of Association of Muramulla-Gurindji Company Pty Limited.
7. Annual Return for year ended 31 December 1979 of Muramulla-Gurindji Company Pty Limited.
8. Photocopy of minutes of meeting of directors of Muramulla-Gurindji Company Pty Limited held on 29 June 1981.
9. Letter from Deputy Registrar-General, Northern Territory, to Central Council dated 9 May 1980 and attached extract from Northern Territory Government Gazette No. 13, 31 March 1971.
10. Letter from Department of the Northern Territory to Central Land Council dated 28 October 1977 with copy of surrender form.
11. Letter from Surveyor-General to Central Land Council dated 13 April 1981.
12. Extract from Australian Government Gazette No. G40, 5 October 1976.
13. Plan of Kalkaringi township.
14. Notice from Delegate of Minister administering Crown Lands Act, dated 1 October 1979.
15. Map of Wave Hill 1:250 000 scale.
16. Plan of Pastoral Lease No. 805.
17. Map of Daguragu sites.
18. Map of Daguragu dreaming tracks.
19. Composite map of Daguragu sites and dreaming tracks.
20. Genealogies.
21. Claim Book.
22. Status map showing roads within claim area.
23. Northern Territory Government's submission regarding access to and use of N.T. Government assets within claim area.
24. Map showing applications for exploration licences.
25. Northern Territory Government's submission regarding mineral potential of the claim area and attached report: Geology and Mineral Potential of the Dargaragu/Kurintji Aboriginal Land Claim.
26. Northern Territory Government's submission regarding proposed variation of the eastern boundary of P.L. No. 805 and five attached maps.
27. Map of Limbunya-1:250 000 scale.
28. Ministerial statement by Hon. Roger Steele on brucellosis and tuberculosis eradication campaign.
29. Requirements of approved program for brucellosis and tuberculosis control.
30. Campaign definitions for eradication of brucellosis and tuberculosis.

- 31A. Map showing eradication areas for brucellosis.
- 31 B. Map showing eradication and control areas for tuberculosis.
32. Letter from Mr P. W. Flanagan to Mr P. J. Underwood dated 14 June 1981.
33. Copy of map accompanying Exhibit 21 as marked by Mr P. J. Underwood.
34. Telex from Department of Primary Production Alice Springs.
35. Profit and loss account and balance sheet for year ended 30 June 1980 of Muramulla-Gurindji Company Pty Limited.
36. Ms M. L. Rowell: Women and Land at Daguragu.
37. Photographs taken by Ms M. L. Rowell (numbered 1-5).
38. Dr R. Tonkinson's report.
39. Letter from Ashton Mining Limited to Associate to Aboriginal Land Commissioner dated 14 August 1981 and attachments.
40. Submission by Department of Aboriginal Affairs.
41. Topographic map (1: 1 00 000 scale) of Wave Hill.
42. Stock Diseases Act as amended by No. 51 of 1981.
43. Letter to Northern Territory Cattle Council from Sly and Russell dated 16 June 1981.
44. Activities performed at sacred spring during Daguragu land claim hearing (Restricted).
45. Final genealogies.
46. Lists of claimants.
- 47A. Dr P. McConvell's reconstruction of sand map made by Rook Julkiyarri.
- 47B. Dr P. McConvell's reconstruction of sand map drawn by Donald Nangkayarri.
48. Local descent groups-summary of evidence.
49. Copy of Exhibit 19 with notations by Mr R. Howie.
50. Central Land Council, summary of evidence on public roads.
51. Transfer of shares executed by David Morton Geer and Michael Jacques Roet.
52. Final submission by Northern Territory Government.
53. Statement by Marian Matthew Podobnik.
54. Submission by Mr P. M. Barr.
55. Extract from Northern Territory Government Gazette G29, 23 July 1981.

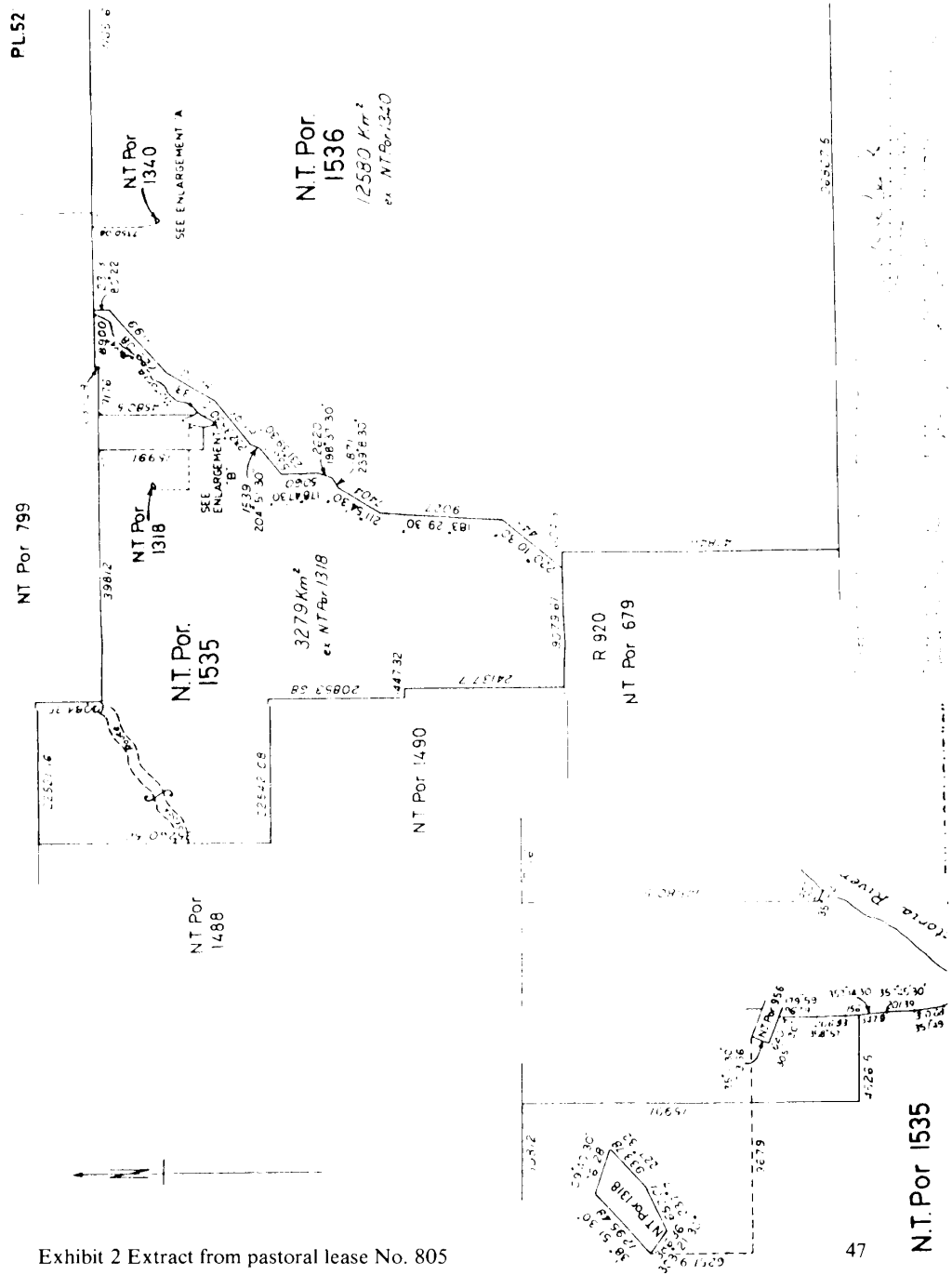


Exhibit 2 Extract from pastoral lease No. 805

Exhibit 2 Extract from pastoral lease No.

PL 680
VICTORIA RIVER DOWNS

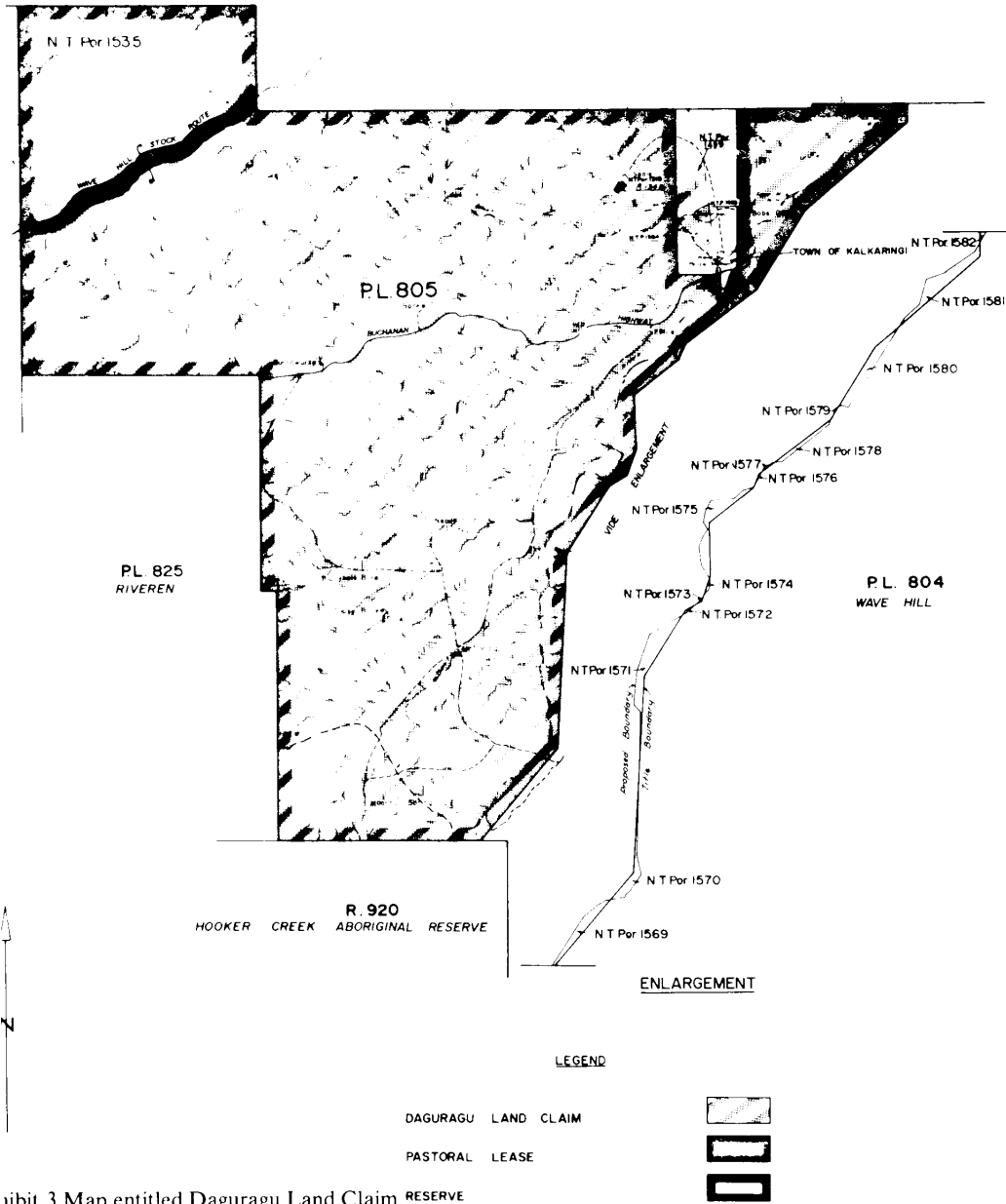


Exhibit 3 Map entitled Daguragu Land Claim Reserve

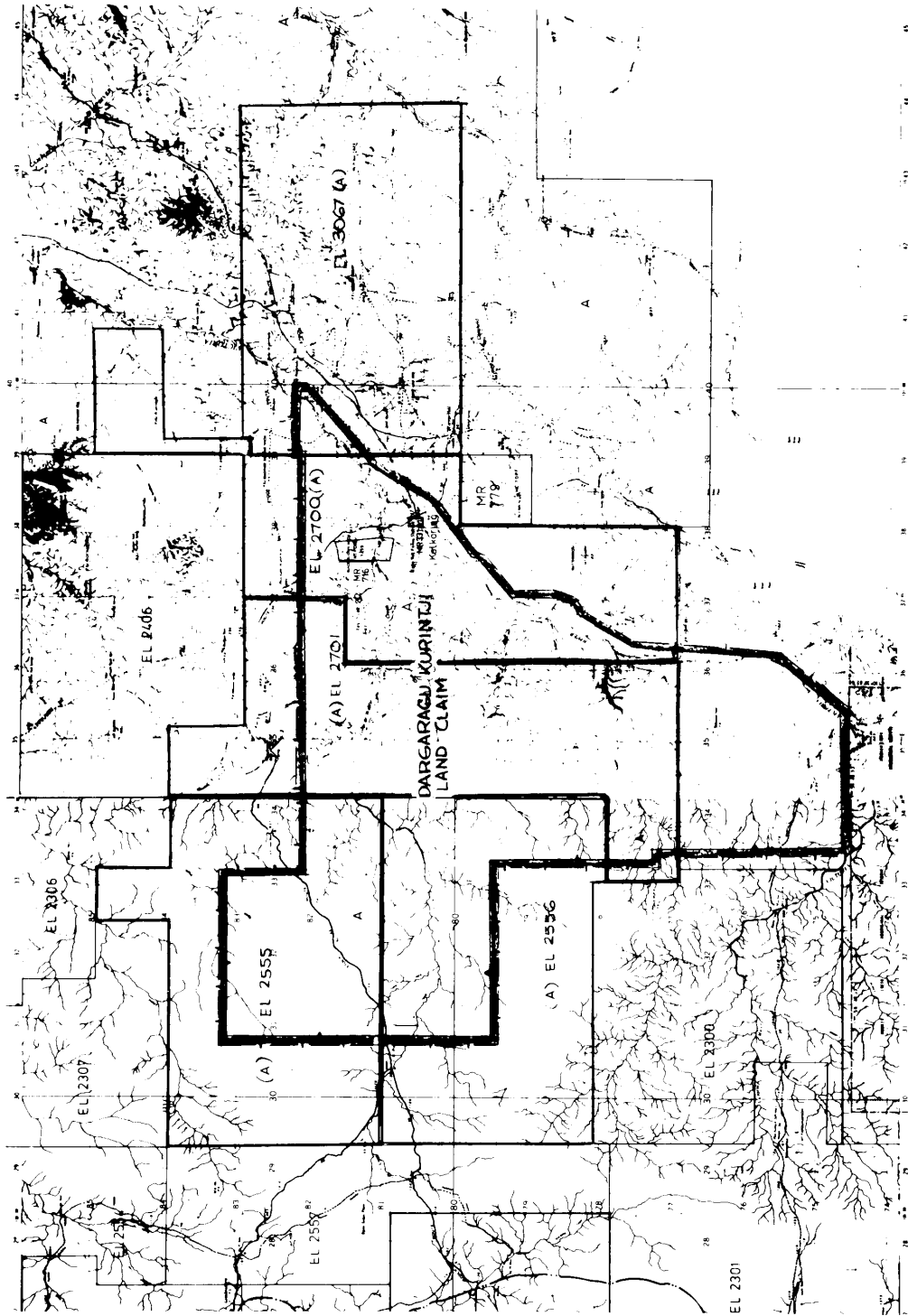


Exhibit 24 Map showing applications for exploration licences

Exhibit 24 Map showing applications for exploration licences

