

**REPORT OF THE PITJANTJATJARA
LAND RIGHTS WORKING PARTY
OF SOUTH AUSTRALIA**

June 1978

PITJANTJATJARA LAND' . RIGHTS

WORKING PARTY

SOUTH AUSTRALIA

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Hon. D.A. Dunstan, M.P., Premier,
Victoria Square,
ADELAIDE S.A.

Dear Mr. Dunstan,

On behalf of the Working Party appointed by you on 24th
March 1977, I present the following report
regarding Pitjantjatjara Land Rights.

C. Cocks, S.M.
CHAIRMAN

9th June, 1978.

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INTRODUCTION

Membership

The Pitjantjatjara Land Rights Working Party was appointed by the Premier of South Australia on the 24th March, 1977. Its members are:

Mr. C.H. Cocks S.M. (Chairman)

Mr. H.J. Copley, Regional Director, Northern Country
Region, Department for Community
Welfare.

Mr. D. Hope, Senior Lecturer, Aboriginal Task
Force, S.A. Institute of Technology

Mr. R. Howie, Solicitor, Central Australian Aboriginal
Legal Aid Service

Mr. B.C. Headland, Aboriginal Advancement Committee
Adelaide, (Secretary)

Mrs. E. Johnston, Law Department, Adelaide
(Consultant)

Mr. A. Minutjukur (Observer from Pitjantjatjara Council)

Terms of Reference

The terms of reference are:

- "(1) to examine the feasibility of establishing by legislation a separate Pitjantjatjara lands trust to cover the North West Reserve, Everard Park, Indulkana, Ernabella, Fregon, provided that the inalienability of the land is firmly established and that arrangements proposed do not contravene the wishes of any of the Pitjantjatjara communities. In doing so, to have regard to the question of mineral rights.
- (2) to consider the inclusion of Yalata in such an arrangement, should the Yalata community indicate its interest in such a proposal.
- (3) to propose such consequent amendments to the Aboriginal Lands Trust Legislation or the introduction of new Legislation as may be appropriate."

Inspections and Conferences

Pursuant to its terms of reference the Working Party visited the following communities and places:

Iwantja (Indulkana) Mimili
(Everard Park) Aparawatatja
(Fregon) Pukatja (Ernabella)
Waliny (Cave Hill)

Amata
 Putaputa
 Pipalyatjara (Mount Davies) Yalata
 Maralinga

Two trips were undertaken to the North West. The first occupied 10 days, and was intended:

- (a) to confirm the Government's undertaking, given by the Premier and the Minister of Community Welfare, to vest in the Pitjantjatjara fee simple title to their land;
- (b) to inform the people of our function in advising the Government on the implementation of the policy;
- (c) to consult with the people to that end;
- (d) to obtain such information as was needed for our purposes;
- (e) to become acquainted with the people and their lands.

Our second trip to the North West occupied two days and was intended to meet the Pitjantjatjara Council at Amata to discuss proposals which were, at the time of that trip, being formulated by us. The first trip was in July 1977 and the second in August. We travelled to Yalata in late August.

In early September, having formulated a basic approach, we felt that it was necessary to consult again with the North West people. We wrote to them setting out our proposals and requesting a meeting with Community representatives and advisers at Alice Springs, on 3rd, 4th and 5th October. We also invited Dr. H.C. Coombs, Dr. N. Peterson, Mr. P. Brokensha and Mr. J. Long. Dr. Coombs is presently attached to the Centre for Resources and Environmental Studies at Australian National University; Dr. Peterson is Senior Lecturer in Anthropology at the Australian National University; Mr. Brokensha is General Manager, Aboriginal Arts and Crafts Pty. Ltd. of Sydney; and Mr. Long is Deputy Secretary of the Department of Aboriginal Affairs and Chairman of the Commonwealth Working Party on uniform land rights and uniform services for the Central Australian Reserves. At this meeting Rev. Jim Downing and Rev. Bill Edwards were also present and provided assistance, particularly with interpretation. These consultants were of inestimable value to us and we wish to record our thanks to them. In addition to our various journeys we have conducted numerous meetings in Adelaide.

In October 1977 the Chairman consulted Mr. Justice Brennan, Chairman of the Commonwealth Administrative Appeals Tribunal in Canberra. Mr. Justice Brennan was formerly counsel assisting the Aboriginal Lands Rights Commission conducted by Mr. Justice Woodward.

Finally, in April 1978, we consulted again with representatives of communities and their advisers at Alice Springs. We sought and obtained their approval in principle to the proposals contained in this report.

Written Submissions

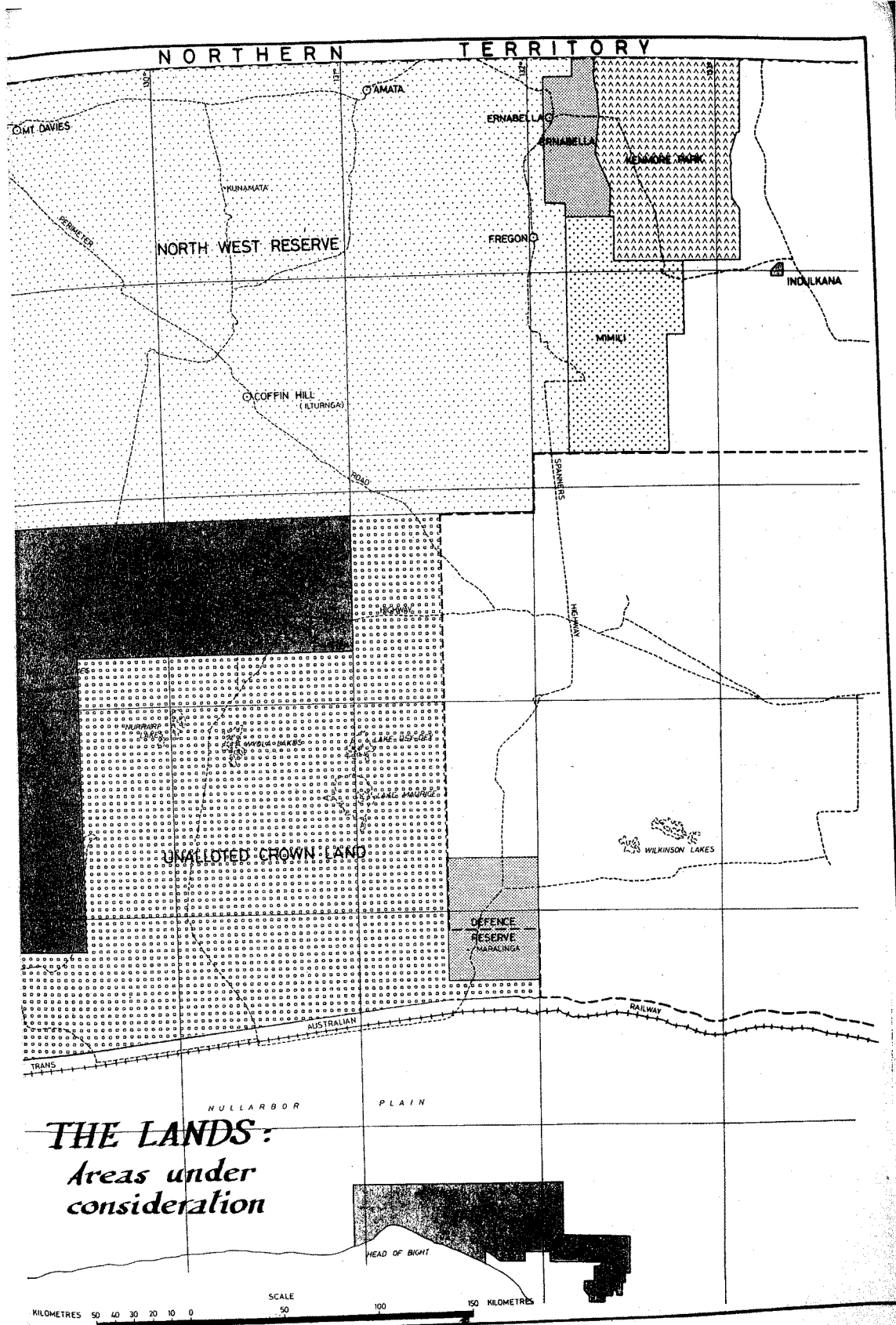
We received written submissions from the following:

- (1) Dr. H. C. Coombs
- (2) C.R.A. Exploration Pty Ltd.
- (3) The Nature Conservation Society of S.A. Inc.
- (4) The Geological Society of Aust. Inc. (S.A.
Division)
- (5) Mr. D. R. Amery
- (6) Mr. J. S. Chappel
- (7) Professor R.W.R. Rutland
- (8) Dr. N. Peterson (9) S.A.
Department of Mines
- (10) Professor C.D. Rowley
- (11) Department of Aboriginal Affairs
- (12) Department for the Environment, South Australia
- (13) Field Geology Club of S.A. Inc.
- (14) Uniting Church in Australia Commission for
World Mission, Sydney
- (15. Mr. N.M. Wallace
- (16) S.A. Department of Lands.

We have had consultations with several of those who made written submissions.

SUMMARY OF RECOMMENDATIONS

1. There should be separate legislation conferring title to the Lands in the North West.
2. The legislation should contain provisions creating a land-owning body called the Pitjantjatjara Peoples. That name, and the Pitjantjatjara equivalent, "Anangu Pitjantjatjaraku" should be given equal status at South Australian Law.
3. Certain terms should be clearly defined, particularly "Aboriginal tradition", "Pitjantjatjara", and "interest" in relation to the Lands.
4. The rights, duties and obligations conferred and created by the conferring of title, should be clearly set out in the Act.
5. Access to the Lands should be controlled by the issue of permits by the Pitjantjatjara Peoples.
6. Certain people should be permitted to enter as of right. They are:
 - (a) Employees, etc., of Pitjantjatjara groups or organisations;
 - (b) Police officers;
 - (c) Inspectors and others with formal functions at law.
7. Provision should be made for applications for permits which should be to the Pitjantjatjara Peoples in the first instance.



THE LANDS:
*Areas under
consideration*

SCALE
KILOMETRES 50 40 30 20 10 0 50 100 150 KILOMETRES

8. Membership of the Pitjantjatjara Peoples should be the right of those Aboriginal people having rights, duties and obligations, by Aboriginal tradition, to those lands comprising the North West Reserve, Ernabella, Kenmore Park, Mimili and Indulkana.

9. There should be provision for claims to extend the area of Lands, but any lands so added should not form the basis of a claim to membership of the Pitjantjatjara Peoples.

10. The community at Yalata should be entitled to membership if they wish. They have attachments to the "nucleus" of Lands and have indicated that they may join with the Pitjantjatjara Peoples in respect of the lands to the north of the transcontinental railway line, if they are satisfied that the Pitjantjatjara Peoples is viable.

11. The Pitjantjatjara Peoples should have full powers of management of lands. This should be carried out by that body in general meeting.

12. There should be an executive committee of the Pitjantjatjara Peoples. Its functions should be limited to the implementation of decisions and resolutions of the Pitjantjatjara Peoples.

13. Certain decisions and resolutions of the Pitjantjatjara Peoples should be appealable to the local and District Criminal Court. Similarly there should be provision for the resolution of disputes by that Court.

14. The provisions as to appeals should not detract from any traditional rite, practice and custom, for the resolution of disputes.

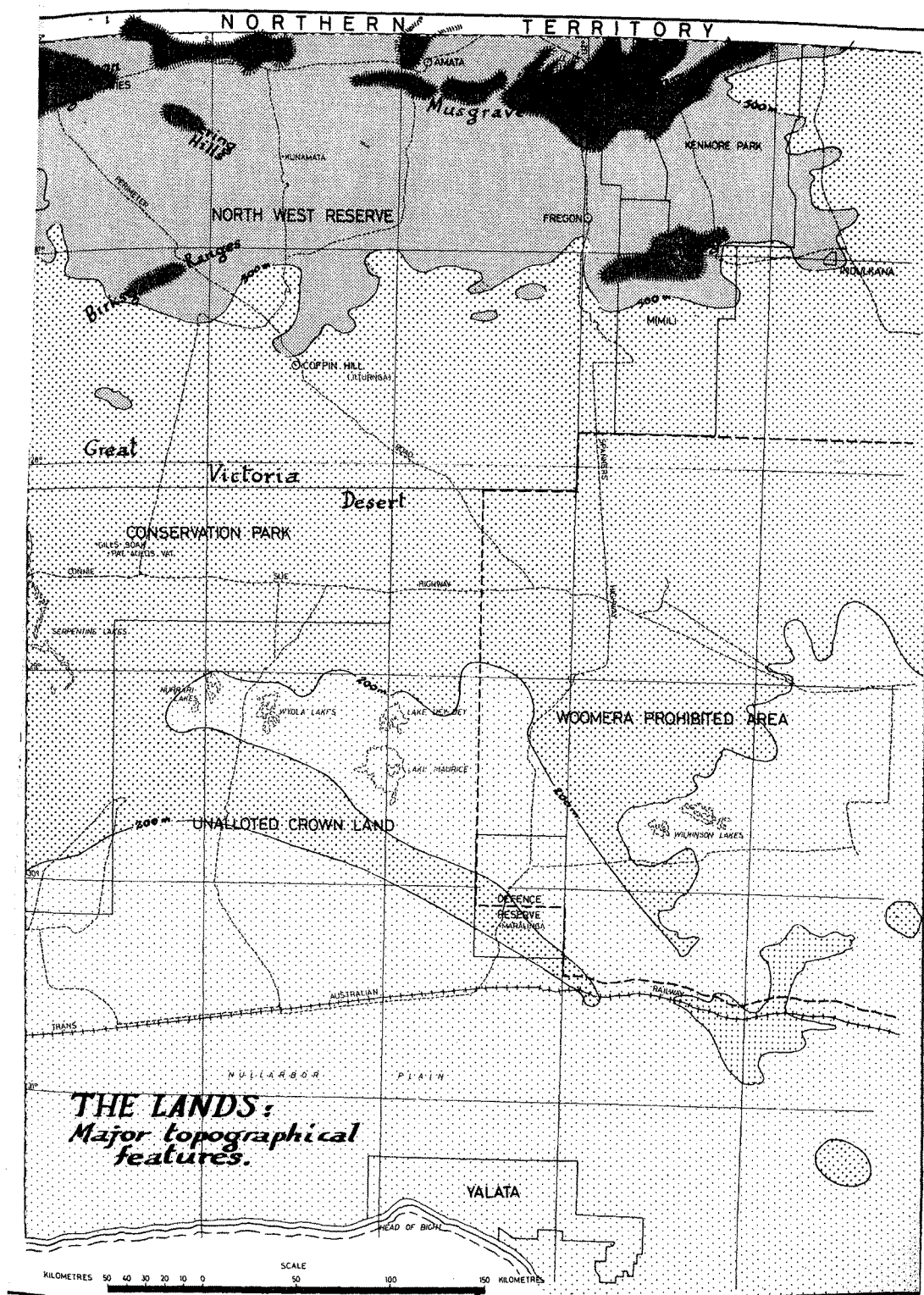
15. The powers, functions and responsibilities of the Pitjantjatjara Peoples should be clearly set out in the Act.
16. There should be a requirement for consultation by the Pitjantjara Peoples with people or groups having specific interests in any portion of the Lands which may be affected by a decision or resolution of the Pitjantjatjara Peoples.
17. The Pitjantjatjara Peoples should have power to make rules regulating its procedures for the management of the Lands, and for the conduct of meetings.
18. There should be requirements for the keeping and auditing of accounts.
19. The control of mining and mineral extraction on the Lands should be shared by the Pitjantjatjara Peoples and the Government.
20. Procedures for applications for mining tenements should be set out in the Act.
21. Such procedures should require applications by all people, including Aboriginals, to the Director of Mines in the first instance who should be obliged to refer such applications to the Pitjantjatjara Peoples and to the Minister having responsibility under the Act.
22. The Pitjantjatjara Peoples should receive all royalties from the recovery of minerals.
23. All mining and mineral extraction should, subject to the special requirements of the proposed Act, be controlled by the Mining Act and the

Mines and Works Inspection Act.

24. There should be provision for full disclosure of proposals by a prospective miner, in the nature of an impact statement.
25. There should be provision for the prevention of corrupt and illegal practices by miners. In particular, any breach of the requirements should carry forfeiture of mining tenements as a penalty
26. The Lands should be defined. There should be provision identifying the two main types of lands: those which confer rights of membership of the Pitjantjatjara Peoples (the "nucleus" of Lands) and those which do not (Lands which might be added by claims).
27. There should be provision for land claims. This involves the establishment of a Tribunal to determine the validity and strength of a claim.
28. The Tribunal should be empowered to make recommendations to the Minister in relation to claims. The decision to allow a claim should rest with the Minister. An affirmative decision, and a subsequent proclamation, should invoke the provisions of the Land Acquisition Act.
29. Parties interested in any land claim should have a right of audience before the Tribunal.
30. There should be environmental and land use controls.
31. Environmental controls, through the National Parks and Wildlife Act, should be invoked upon the making of recommendations by the Pitjantjatjara Peoples for the creation of controlled areas.

Such areas should have a similar status to a National Park.

32. There should be provisions protecting the rights of the Pitjantjatjara to take prohibited species in accordance with Aboriginal tradition. This protection should not extend to the taking of such species for the purposes of trafficking or trade other than by Aboriginal tradition.
33. There should be provision for management and control of the Lands by the Pastoral Board in respect of any area of the Lands for which a lease has been created for pastoral purposes. Such pastoral areas should be generally under the same controls as apply to other pastoral properties in the region.
34. Property and other rights of the Pitjantjatjara in the Lands should be protected by appeal provisions. These provisions should not detract from or limit rites, practices and customs operating by Aboriginal tradition.
35. There should be power to make regulations, at the instigation of the Pitjantjatjara Peoples, controlling the possession and consumption of liquor on the Lands.
36. There are a number of general recommendations relating to the procedures to be adopted in implementing the handover of the Lands, contained on pages 112 - 118 of the report.



THE ENVIRONMENTGeneral Description

The area considered by the Working Party comprises over 160,000 km in the western quarter of the State and is shown on the map opposite.

Considered south to north the area takes in a 600 km traverse from the Head of the Bight to the Northern Territory. It skips the Nullabor Plain to a point 9 km north of the transcontinental railway line, then covers all lands including South Australia's share of the Great Victoria Desert through to the Central Australian Plateau. The land elevates from the 100 metre cliffs at the Bight, to the 4-500 metres of the Desert, and to the 5-800 metres of the plateau - with the plateau climaxing in a cordillera of ranges fingered along and across the Northern Territory border.

Although the Nullabor, a treeless wasteland plain of limestone fossils, intrudes over the railway line well into the south-west corner of the Unallotted Crown Lands, much of the southern half of these lands is well timbered with mulga, black oak, mallee, and myall trees either on the tongues of sandhills of the area, or in better parts on calcareous soils. The trees

grow in association with blue bush and salt bush -
or in the poorer areas, seasonal herbages and spinifex.¹

With the rise in altitude north of the Nurrari, Wyala, Halinor, Serpentine, Maurice, and Dey Dey Lakes, eastwest sandhills come to dominate until further to the north they corrugate the Great Victoria Desert with massive switchbacks of close, high dunes 15 metres high and up to 5 Km long. Here, despite unpredictable rainfall averaging perhaps 125 mm, the waves of sandhills provide a habitat for some splendid flora. Some Eucalypt species, particularly the so-called para trees, occur in rolling parklands of trees up to 15m high and alternate with fine stands of umbrella mulga, various mallees, desert kurrajong, Grevillea and Hakea species. Ground cover is characteristically spinifex, though after good rains there can be the spectacle of a wilderness of everlasting daisies. This inhospitable, though often beautiful country, intrudes well into the southern quarter of the North West Reserve, but has not, from all accounts, ever provided "homeland" territory for the central desert people. Travellers would traditionally have been able to obtain water from each of the rare soakages and wells in the Desert, or from the water-bearing roots of certain mallee and Hakea species.

1. Department of Lands 322/67: Far west and North West Interior:
S.A. Pastoral Board Inspection June/July 1967.

No ceremonial sites of importance in the Pitjantjatjara hierarchy of sacredness are known in the Desert itself although there are many sites of considerable importance in the Unnamed Conservation Park between the southern edge of the Desert and the lakes. It is country through which the forebears of people now at Yalata, would have had to have trekked in order to reach sites in the inhabited parts of the North West Reserve. Yalata and Fregon people still have particular interests in the Coffin Hill area on the north of the Desert well into the present Reserve.

The Desert steps up to the higher savannah country of the Central Australian plateau, 5-800m in altitude, which takes in the northern three quarters of the North West Reserve. This is where most of the South Australian Pitjantjatjara now live. In times gone by evidence suggests that people in bands of 6-12 regularly frequented land down to the top of the Desert on immense food gathering cum ceremonial circuits. Nowadays such land use rather takes the form of forays from the settlements and communities located in the range country across the top of the North West Reserve.

In its east west aspect the plateau sweeps colour and the perspective of mountains along the northern extremity of the North West Reserve. The plateau is covered with bright, dry, white and yellow Mitchell grass, skeleton weed, roly poly, and spear grass. From the flatness there obtrude in arresting contrast, red-brown pate-like granitic tors, often associated with springs; or perhaps their red surfaces, papery

with age, fold to form water-bearing creases which support green Tecoma vines, Hakeas, and Acacias. Around their bases, if close to the watertable, there can grow wild fig trees in profusions sometimes of plantation proportions. In good seasons there can be abundant carpets of wildflowers in vast patchworks where single species dominate a given area, then give way to another. The ranges themselves rise sharply from the sand plains. Their surfaces typically lie strewn with red granite boulders which preclude tree growth but permit tussocking.

This country supports comparatively large populations of kangaroo, euro, rabbits, goannas, perenti, emus, bush turkey, galahs, honeyeaters, native pheasant and finches. There are honeyants, witchetty grubs and lesser populations of edible python, possum, native rodents, marsupial moles, bandicoots and wallabies. There is a comparative abundance of edible grass seed, wild tomatoe, quondong fruit, wild plum, edible herbage, as well as the rarer mulga apples (galls), acacia exudant, edible wax scale, and the native tobacco-pitjuri and mingulpa.²

From east to west there are numerous sandy watercourses often lined with splendid specimens of red river gums and black oaks. Alternating with open, well grassed savannah are parklands of corkwood, bloodwood, mallee,

2. B.C. Cotton ed. Aboriginal Man in South and Central Australia Part 1, S.A. Government Printer 1966.

ironwood, dead finish, umbrella mulga and witchetty mulga. There are forests of live and regenerating mulga and vast spiked cemeteries of dead mulga. In good seasons there can be an extravagance of wild geranium, yellow top and everlasting daisies from Indulkana to Mt. Davies: in bad seasons, an anguish of dust and sometimes fire.

Between the Mann and Tomkinson Ranges spreading out wide to the south there is a plateau-desert containing unique plantations of desert oaks - wistful trees occurring in conjunction with desert poplar, mallee, desert kurrajong, and umbrella mulga. The desert occupies about 10% of the present Reserve.

In this range country the perspective constantly changes. In many places one can glimpse ranges 60 km away over bright sheets of savannah. So seen, the ranges evoke the reassurance of the first glimpse of a familiar landfall. Closer to the mountains, ochre-red boulder surfaces seen through the crisp air seem opalescent. In the narrow flat valleys between hills larger than life shadows are cast and unexpected skylines are accentuated. Within the hills themselves unseen things are revealed. Shining masses of granite in poured, bursting, shapes - surfaces fluted and extruded - may form water holes with deep rock shade: great flat stages of worn gneisses, arcane and surrounded by copses of black oaks might display polished, convoluted patterns: unlikely, unexpected piles of great boulders may command contemplation of the mystery of their careful and deliberate placement. At the top,

are high remote places to provide a vantage for the perspective to be reconsidered, for the details to attenuate, and for the pervasive vastness to be felt.

Pastoral Potential

With its unpredictable rainfall varying from 225 mm in the Musgrave Ranges to 125 mm per annum in the heart of the Great Victoria Desert; with summer temperatures up to 47 degrees and stretches of 5 days of 38 degrees not uncommon in the Desert; and with humidity so low that the evaporation rate is 10 times the annual rainfall, heat and lack of water are certainly the most manifest characteristics of the area.³ Yet white observers have always been tantalised by the abundance of flora and often preoccupied with plans to devise an economic turnoff.

Despite the remoteness of the ranges area, observers while acknowledging its great beauty have long debated the pastoral potential. "The well grassed glens in the Musgraves, Mann and Tomkinson and the gaps and flood flats of the foothills are exceedingly promising" wrote an early observer who was assessing the Central Australian position on behalf of the Aborigines Friends Association.⁴

3. B. Acaster: Maralinga: A General Appreciation, Roneod, Maralinga 1963.

4. J.H. Edgar, Exploration of the Great Reserves Set Apart for Aborigines in South and Central Australia reprinted from 'The Register', September 1928.

And another observer accompanying one of the expeditions led by R.T. Morris from Fowlers Bay to Central Australia at the turn of the century, commented in respect of the Nullabor that "from a pastoral point of view one cannot but regret on seeing a considerable portion of this country in good winter season like the past one that it should be unoccupied". And although still impressed with the pastoral potential of the sandhill country north of the Nullabor, he was unable to sustain enthusiasm due to the precarious water position.⁵

This knife-edge has been subject to thorough and continuous testing. In 1967 the Pastoral Board thought that the 38,000 square miles of Unallotted Crown Land and Conservation Park had an ultimate potential of 600,000 head of sheep or 50,000 head of cattle with an annual turnoff in excess of 10,000. However, this recommendation was predicated on the high returns for sheep and wool of the mid-sixties. With the subsequent decline in values the Board in 1972 considered that with all factors taken into account the element of long term stability was lacking, and concluded that no recommendations regarding occupation or development of the area could be made.

In all, marginality is the keynote so far as any pastoral potential goes. The Pastoral Board considered back in 1955 that the 1,485 square miles added to the Reserve in 1949 was the most promising area for pastoral development (blocks 1019, 1018, 953, .950, 964, 915, and 948 - see map p.40). This is the area. the Fregon Aboriginal groups described on page 46 currently wish to use for cattle enterprises. But apart from that, the Board warns that "the North West Aboriginal Reserve and adjacent areas are ecologically fragile and any misuse of the land resource could have a disastrous and lasting effect on the vegetation..." ⁶

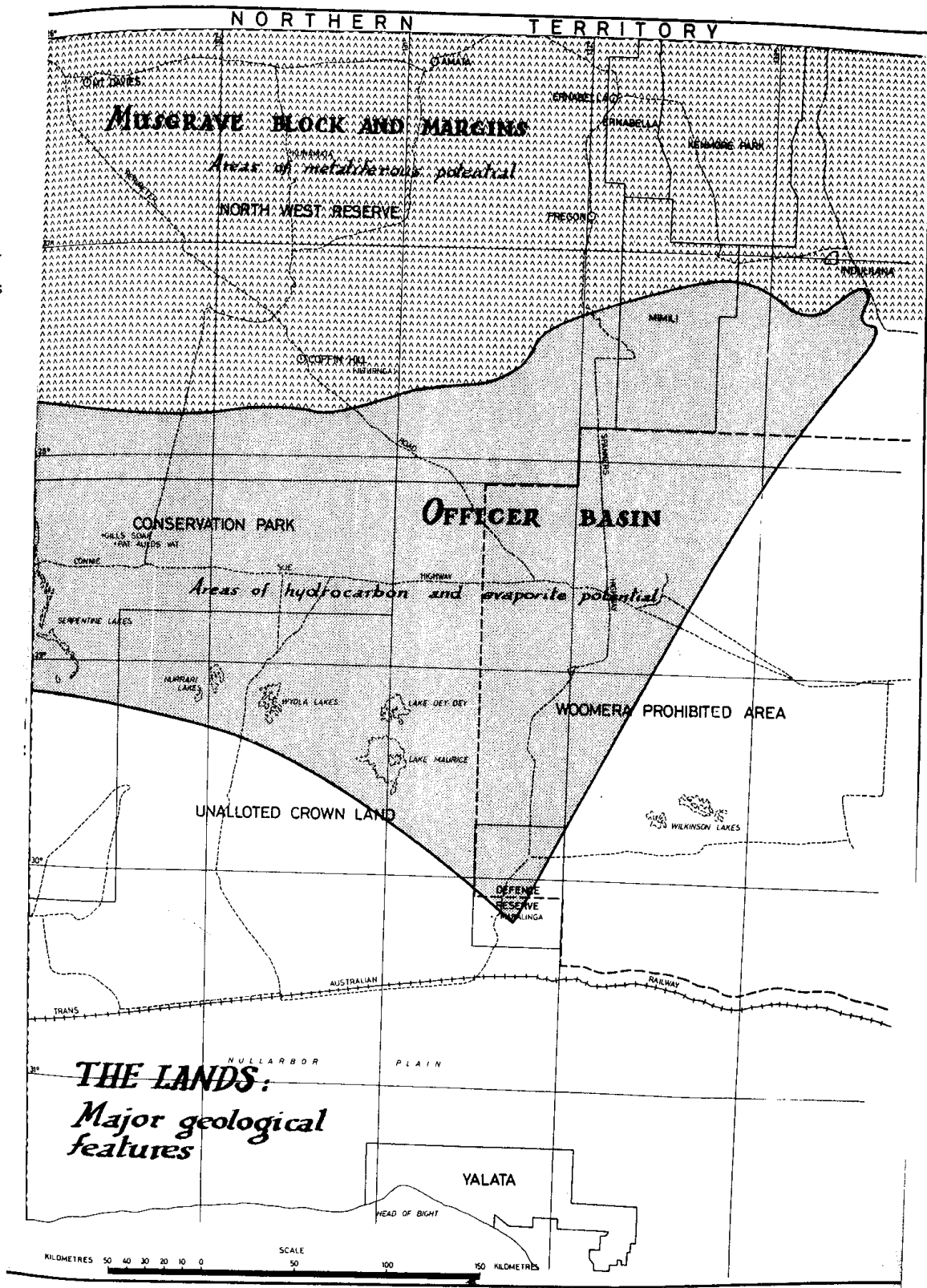
In view of the fact that Kenmore Park, Mimili, Fregon and Amata each run cattle ventures, and in the light of the marginality of the area for efficient cattle production, the Working Party has recommended provisions for the involvement of the Pastoral Board in the area in any new freehold arrangement (pp. 106-107).

Mineral Potential

Despite efforts since 1921 to uncover mineral wealth from the area, workable lodes of minerals and precious stones have, with small exception, not been found. There are known deposits of low grade nickel ore in the Tomkinson ranges associated with the occurrence

6. Deputy Director General of Lands Submission 19 September 1977.

18 -
sup



of chrysoprase - Australian jade so called - which has been extracted with mixed success for the last ten years by Aboriginal people in the Mt. Davies area.

In 1969 the Bureau of Mineral Resources conducted an aeromagnetic survey of the North West Reserve and in 1970 a gravity survey. We have been informed by the Mines Department that these surveys, taken in conjunction with the mapping reports of ground parties supported by the [Mines Department and University of Adelaide],have riot to date resulted in any findings of ma3or economic interest, except that around the fringes of the ranges particularly in the eastern Musgraves there is potential for the discovery of base metal deposits. Some interest in these areas by exploration companies can be expected in the future. The Mines Department also considers the Officer Basin area has considerable hydrocarbon potential and this could be of future interest for exploration and possible exploitation.

At the same time, the ranges contain outstanding examples of geological features of value to scientific study. Of particular interest is the Giles Complex of ultra basic intrusives in the Mt. Davies region. These are not only unique in South Australia, but are regarded as ranking high in scientific interest by world standards.

It could therefore be expected that there will be requests from time to time for access to be granted to small scientific parties for the purposes of photographing the Complex and possibly obtaining small specimens of rock.

RATIONALE

Need for Freehold Title

From a commonsense point of view it would seem that free hold title is the only way of providing people with the fullest possible set of rights to enable them to enjoy the free use of their property. On the other hand, it may also be argued that such rights could be enhanced by titles other than freehold which, while taking away ultimate ownership, provide practical protections.

It has thus been held that trust, leasehold, or reserve arrangements are each capable of providing sufficient strength of tenure without altering the way in which people relate to their land. !It could even be argued that since no form of land tenure - in Australia at least - will ever enable an individual or community to exercise exclusive, absolute, and totally unrestricted access to, and use of his lands then the matter raised between the Working Party and the Pitjantjatjara is a non-issue.~ The Working Party, in keeping with its terms of reference has, however, adopted a position it feels is shared by most reasonable people and is in line with national Aboriginal Affairs policy: that is there is a need to acknowledge, and then act upon, an ethic of restitution, returning as much as reasonably possible of the land alienated from the Aboriginals in the settlement of the country.

After having said that, we are conscious that many people would find such resort to "simple justice" unconvincing principally because it goes hand in hand with what is seen to be a glaring omission on the part of the Aboriginals themselves: that is their almost total uninterest in using the land "productively". Without wanting to deny in any way

the force of the simple justice argument, a problem for the Aboriginal land rights movement has nevertheless been to find a convincing rationale expressable, or at least understandable, to Western Europeans for whom the very idea of "wasted" land is a blight not lightly tolerated in a culture with an urban, extractive, and agricultural tradition.

Pitjantjatjara Relationship to the Land

The full account of their relationship to land may one day be told to white Australians by the Pitjantjatjara themselves. For the purposes of this report, however, we feel obliged to convey - shortcomings acknowledged - our current perception of this relationship since we are convinced that many Pitjantjatjaras still have an alternative, adult, and fully-fledged culture which needs land to uphold it: and that it is from this viewpoint that their present claims can be convincingly sustained.

One of the great problems of Aboriginal culture for Western Europeans has been its lack of visibility. As people without villages the Aborigines "had no clearly recognisable claim to a particular area of land; his more subtle relationship with his country was either ignored or not understood"⁷. Aborigines for many white Australians are either "cultureless", or else a deservedly outcast minority who have failed to "progress" from a hunting and gathering economy to the supposedly more advanced system of village based agriculture.

7. C.D. Rawley, The Destruction of Aboriginal Society Pelican 1974, P 14.

For Western Europeans, productivity of land has become over several thousand years, an article of faith reflecting the dependency of our culture on land for its survival. Land productivity has been a prerequisite for the establishment of cities which, apart from being highly visible, have provided the centres first for the genesis, then the development of fundamentals like the discovery of logic, harnessing the multiplying capacities of energy, the discovery of navigation and the art of politics. Cities also draw together the mysteries of religion and sovereignty which provide the underpinning values and tenets of our culture. Our attitudes to land take into account the complex relation land has to the total workings of our culture, and this relationship is under continual reinforcement from our values and attitudes.

Thus ownership of land, though firstly the result of a commercial transaction, is ultimately legitimised by the quintessential powers of the Crown; our obligations to land are girded by an onus to demonstrate that-it is being put to satisfactory commercial-or aesthetic use; the need to stay put on our own property generates a diversity of desirable consequences from a development of "roots", the possession of somewhere to hold and accumulate consumables, to the creation of a workable postal and telephone system. People on the move, like the gypsies or surfies, are outcasts.

It is worth bearing in mind that while a practical consequence of urbanisation has often meant a comfortable standard of living for comparatively few, the price until recently in Europe at least, has been high for many; those in the cities, for example, forced into the practice of child labour, or the rural uncountables desolated by famine and lack of fuel.

In contrast to our own predominantly commercial and domiciliary mode of land use, Aboriginal Australians had an alternate adaptation, sometimes described as "firestick farming", where land was systematically worked for economic return by exploiting the seasonal potential of given areas of land by the controlled use of fire.

Firestick farming became an effective food gathering craft alternately described by observers as incipient agriculture or incipient animal husbandry.⁸ Given Australia's temperate climate, its enormous size, together with what appears to have been slow habitation and low population density, there would have been substantial ecological disadvantages in developing to a village based gardening economy. The most effective adaptation to the environment was culture which combined use of fire with wide ranging mobility. In this way plants and animals from different habitats could be harvested according to seasons, giving the inhabitants an extremely wide variety of foodstuffs.

8. D. J. Mulvaney, The Prehistory of Australia Pelican 1975, p 238

There is convincing evidence that Australia-wide this resulted in a very stable arrangement ecologically and provided an abundance of consumables - particularly in lake and coastal regions. It is argued that if the criteria of a good standard of living are adequate food, health, shelter and warmth, then the average Aboriginal in 1800 was as well off as the average European - not matching the wealthy but far better off than the very poor.⁹ One could perhaps add that in terms of aesthetic satisfaction and individual equanimity, Aborigines appear to have been better served by their culture than Westerners are in the 20th Century. We feel there are many tribal people in Central Australia for whom this is still true.

In contrast to Western Europeans, the Pitjantjatjara take mobility over land as axiomatic. The incredible store of fables describing the heroic events of the Dreaming are almost always structured as great traverses punctuated by steps and rests - thereby cementing into the culture a "morality" of movement. As hunters and gatherers they see their obligation to land as one of stewardship; their use of land is regulated by the rights and obligations created for each individual by his place of birth, his membership, in a totemic patriclan, and his relationship to those members of his group required by custom to share aspects of land matters with him. Each man or woman thereby

9. G. Blainey, Triumph Of the Nomads, Macmillan, Melb. 1975 p. 228

acquires a personal and complex set of interests in respect of many sites scattered widely.

At the same time, there are two further major realities which appear to have reinforced mobility and worked against the evolution of a village based gardening economy. One is the problem of diminishing returns experienced by hunters and gatherers in that their exploitation of a particular locality provides continual impetus for moving on to fresh territory. Although it may be tempting to argue that this problem could best be solved by the adoption of animal husbandry and the cultivation of gardens, there is a second reality working against such a "solution".

For hunters and gatherers who find themselves in a relatively bounteous environment there is the reward not merely of more leisure time for any increased efficiency in exploitation but if recent studies are any guide, actually a snowballing benefit. 10 Since in Australia it appears that it was easy to increase efficiency, there would have been little point in trading the greater expenditure of energy

10. Nicholas Peterson "Ethno archaeology in the Australian Iron Age" in Problems in Economic & Social Archaeology Y G. de G. Sieveking, T.H. Longworthh & K.E. Wilson. In Duchworth ND. Also "Hunter-Gatherer Territoriality: the Perspective from Australia" in American Anthropologist v. 77, No. 1, March 1975.

needed for gardening for the existing adaptation. "Savings" made appear to have been invested not so much in leisure but in creating complex social and religious systems; and the adaptation has been assisted until very recently by the freedoms emanating from an almost possessionless culture. In addition, the culture derives what seems to be a certain wisdom from the ethic of generosity which functions to dispose of small daily household surpluses. The Pitjantjatjara have managed to relieve themselves at least of whatever conflict and human failing as may be attributable to all that goes with the many modes of investment practised in surplus producing economies - whether of the Wes or Third World.

The Pitjantjatjara evolved a social structure together with a set of customs which were highly successful in fixing the numbers of people exploiting a given locality, and at the same time made possible flexibility of choice as to which environment would be exploited according to seasons or to personal volition.

The great regulating institutions in this process are not the small continuously changing bands of people actually hunting, but the so called totemic patriclans - the major social groups emanating from the mythical progenitors of the major edible species membership of which each man, woman and child inherits through his father. These groups are centred upon the specific geographical locations previously referred to as "homelands".

At the core of the Pitjantjatjara demand for land rights is the desire on the part of individuals to strengthen clan life and for many this means leaving the missions and government settlements for their homelands to resume responsibility for their clan territory - a trend otherwise known as the "outstation movement". The fundamental implication of granting land rights is the freedom thus guarantee to the Pitjantjatjara to take up, and in many cases rebuild, the whole gamut of rights and responsibilities associated with these centres, revered and desired for their place as the backbone of the relation of the people to their environment.

It would appear that the charge of wasted land can only be sustained in the circumstances of European administrative intervention in traditional life and, of course, land alienation. It seems that traditionally Central Australian land would have appeared as a full larder as a result of sound exploitive practices, and this would parallel the seaboard environment where the subtle mode of land use in conjunction with the skilled use of fire created the well grassed parklands which settlers initially found so attractive for wool and beef production. What settlers saw then, was the visible result of sound land management practise.

System of Belief

In efforts to deal with the problem of visibility of Aboriginal culture, sympathisers of the land rights issue often refer to Aboriginal land as "sacred".

In doing so they invoke the European belief that it is possible to set certain land apart by consecrating it. This becomes the basis of an appeal to hardliners on land rights. It is argued that if Aboriginal land is consecrated then Aborigines are doing something familiar to Europeans and moreover they are not wasting land. It is therefore reasonable for rights of ownership to be restored. This view, however, seems to understate the Aboriginal position.

"In the case of the Pitjantjatjara, all land and all features - not just sacred sites - are accounted for in the Pitjantjatjara epistemology (i.e. their theory of knowledge) with the origin of the explanations to be found in the vast cycles of lore emanating from the distant past - the Dreaming so called:

The Pitjantjatjara believe that in time gone by the land was plastic and the land surface was merely the visible dimension of a fluid world within which were contained whorls of life - the larger-than-life forms of the progenitors of all living things, including man. In long past heroic times, superbeings often taking the forms of man-animals burst through to the earth's surface and performed monumental

and memorable deeds. They sang, talked, philosophised, drew, hunted, ate, slept, copulated, defecated, leaped, made things, uprooted things, threw things and left debris.

These heroic progenitors created each of the mortal species using first the raw material of the environment and then the power of breath. The fabled accounts of their heroic deeds have been handed down, minutia of detail carefully preserved, for the instruction and entertainment of living men, women and children. These accounts answer fundamental questions asked by men and resolve the great mysteries of life - the unity of living species; the relation of the past to the present and the future; the distinction between the sacred and the profane; the juxtaposition of life and death: the form of ritual; the ordering of social relationships; the various stages of life and the rites of passage from one to the other: crime and punishment. For the amusement of the living there is an incredible wealth of anecdotes; for each aspect of doing things there is a precedent; for regulating relations between people there are rules and sanctions; and for man's satisfactory relation to the numinous there are religious obligations.

But more specifically it was the heroic progenitors who became the originators of the totemic patriclans. In turn these are associated with the sites of greatest importance together with the religious rights and obligations reinforcing and underpinning the organisational principles referred to earlier, which regulate the

Pitjantjatjara adaptation to his environment.

However, it was not only the sets of duties and the lore associated with totemic sites which were laid down in the Dreaming. Between then and now the plastic panoply of earth and actors, as it were, crystallised and became what is today visible. This was no transforming catastrophic event but a turn of the screw which made the action stop, the plastic set and the actors retire to their subterranean habitats. The footprint of an ancestor might thus have been left permanently on a rock outcrop with his soul - or substance - now existing within the earth. Each creek bed, mountain, stone, fissure, cave, some trees and stars, fire and water, all owe their form to those events, and in the contemporary present each can be touched and explained. Some stone arrangements, drawings, patterns, songs, rituals and artefacts were handed down and on through countless generations to living men today, as "trust deeds" from the ancestors.

In order to appreciate more fully the perception a Pitjantjatjara has of his environment it is helpful to understand something of his philosophy and for a Western European this need not be insurmountably difficult.

Pitjantjatjara people refer to the life-force within, say, a rock, as kur:ti which translates as essence or substance in-the sense of substance as used in Western philosophical parlance for over 2,000 years to denote the intuition that there is always something more to

an object than the sum of its parts. It overcomes the anxiety one may have that the assemblage of shape, contour, colour, texture, and shadow constituting the data registered by our brains about a given object cannot really be the object - that all these must exist in an unseen "cement" that holds them together giving the object its substantive existence as well as its individuality. This "cement" has been described in the scholastic tradition of Western philosophy as the "substance" of the object, and the rest of its tangible and analysible parts are described as its "accidents".

Despite the classic refutation of substance as "that knowledge of which we neither have, nor can have, by sensation or reflection" a person who believes he has a soul is invoking the concept.¹¹ An orthodox Christian who believes that the substance of particular portions of bread and wine can be converted to the substance of the body and blood of Christ, is employing the notion of substance in the classic context of the Christian communion service. In this use, the accidents (the tangible analysible parts) are conceived to inhere in the "real thing" the substance which is believed capable ^{of} being manipulated supernaturally by the priest, with the accidents remaining unaltered.

When a Pitjantjatjara man embraces a particular rock and calls it "grandfather", speaks to it and expects

it to hear him, he is not making a mistake about its composition as a rock but he does seem to be drawing the distinction between substance and accidents. In this sense a particular rock could be said to be living and it may have a relatively high degree of sacredness. Again, when a Pitjantjatjara lets arm vein blood on to a certain, and in the event, highly sacred patch of ground, he is not performing some inexplicable barbaric right. As his blood contains the substance of his life, so he returns it to the earth which contains the substance of all life. As the earth gave him life by pushing up grasses which contained life for kangaroos to ingest and then pass on to man, so man, in a reasonable and rational act, reciprocates by returning his substance to the earth.

The Pitjantjatjara environment in its entirety is a simulacrum (i.e. an image or account of the heroic past) and is graded into secular and not so secular parts depending on exactly what parts of a given cycle of heroic events took place, and the particular substances that may be present.' Thus one locality may be entirely harmless, but another spiritually "hot" and regarded quite literally as dangerous.

For the Pitjantjatjara, each part of the environment though known and explained, is always a source of wonder since it is alive, not dead. To that extent the Pitjantjatjara culture could be described as romantic - a characterisation reinforced by the Wagnerian

dimensions of the epic undertakings of the culture heroes. However, in Western thought the romantic vision derives its force from an act of imagination fused with observation, and this severely limits the number of romantics in a larger world of realists. In our society romantics are often seen as visionaries and eccentrics.

For the Pitjantjatjara however, the land and its simulacra are not things to be modified into poetry

by exercise of the imagination as a romantic might do, but rather they are the objects of observation fused with the knowledge that they are substantively alive, and this is a uniquely Pitjantjatjara vision. But that is not all. When an Aboriginal views his land he combines a set of beliefs about the environment with his observation of it and these beliefs are capable of verification. The Pitjantjatjara have developed an intellectual position whereby knowledge of the land is a continuous verification of belief about it.

In other words, a man does not have to take someone's word about a particular culture hero and the act

he performed: he merely has to look and touch a rock, for example, in order to see and feel the actor and the event.

The genius of the Pitjantjatjara epistemology is that although there is a profound distinction between sacred and secular ritual and content, there is no special

doctrine about the nature of belief that has to be suddenly invoked in order to be able to cope with spiritual or ritual matters. As there is therefore no need for man to have to decide whether he will have faith in an unseeable and unverifiable mystery, there is no agony of disbelief. The entire landscape contains the totality of simulacra which verify not merely some particulars then stop, but the whole cultural inheritance from the merest anecdote to the most profound ritual.

The Pitjantjatjara philosophic tradition stands squarely in its own right as an intellectually satisfying as well as a wonderfully pragmatic system of belief and knowledge.

As with the evidence for land use, what is again supremely ironic is the very visibility of their epistemology. As all of us only see what we believe we see, it probably has never occurred to a Pitjantjatjara and a European that each is seeing something quite different as they look at the same rock configuration. To a Western European, a place that may be spiritually hot and of extreme importance to a Pitjantjatjara, looks only like any other stretch of earth. The European may be anxious to commence mining, but the Pitjantjatjara may be in a state of speechless panic because not only is he unable to reveal its true nature to an uninitiated man, but even if he could, what could he say? In this context, we see an indisputable

need for the Pitjantjatjara not only to own their own land, but to be facilitated to be in full control of access to it.

A Case of Apartheid?

It is probably worth adding that ten years ago to have supported such a proposition would have been seen to undermine the then policy of assimilation. Today the cultural exclusivism that may follow granting freehold title, with the voluntary formation of bush or "homeland" communities, may be seen by some as constituting incipient forms of apartheid. In fact, we have come to expect from some quarters the almost automatic flaunting of apartheid as some kind of unthinkable consequence following any return to Aborigines of land, and self management of their affairs. Such fears fail to appreciate the contribution of diversity that we, as a pluralist and multicultural society, should be enjoying.

More especially, however, we are conscious that if apartheid as it is usually understood is to be practised - that is enforced separation of races in mixed communities coupled with compulsory residence in "homelands" - it can only be achieved in a police state. What is being proposed bears no resemblance to apartheid.

As a Working Party we wish to stress the need to accept that the Pitjantjatjara have a right to their land in any and every sense that we understand, and in many senses that we do not begin to understand.

THE PEOPLE AND THE COMMUNITIESThe People

As noted previously it is in the broad traverse of ranges and plateau country stretching 450 km from Indulkana in the east to Mt. Davies in the west that most of the 2,000 or so Pitjantjatjara live.

The word Pitjantjatjara is used advisedly. We are conscious that the central desert people have in the past considered themselves to be identified with a series of linguistic and dialectic groups. It is now not certain what these would have been, the position having been obscured not only by migrations but by early accounts which may have been based on incomplete research.

Today the major surviving groups are the Ngadatjara to the west of Mt. Davies; the Pitjantjatjara from Mt. Davies through to Amata and Ernabella; and the Yankutjatjara who are today associated with Fregon and Mimili. The many spokes of obligation and relationships mean that individuals are on the move and the associations given should be treated as notional. It should also be borne in mind that the population generally has social and kinship ties with the Pintubi

as far north as Areonga and Papunya, and with the people of Yalata who may once have regarded themselves as Ngalea or even Kokata, but who nowadays describe themselves as Pitjantjatjara. It has become clear to the Working Party that these differences are not capable of being expressed with any precision territorially.

It seems certain that all people have rights and obligations in many different locations, and we recognise that the patterns of allegiance and the linkages between various people with each other and with their environment are extremely complex.

Given the potential for acrimony if a name is used incorrectly to describe a population, we were at pains from the beginning to test the acceptability of the use of "Pitjantjatjara"; particularly if there were any possibility that it has been used uncritically. We are, however, satisfied the term Pitjantjatjara is accepted throughout the area as either the correct term for people inhabiting the area or else as a satisfactory banner under which others, for example the Yankutjatjar, now say they have a proper place even though they may prefer to maintain allegiance to their traditional dialect in more ceremonial contexts.

For these reasons we have no qualms in accepting the name proposed for the new land holding entity as Anangu Pitjantjatjaraku - the Pitjantjatjara Peoples - denoting the collective ownership of the land by all individuals and groups having rights and obligations to the land. This name was proposed, and agreed upon, by community representatives and this itself reflects a growing trend for all people in the region to group under the term Pitjantjatjara in political contexts.

Political

The trend among people in the North West to see themselves as a broadly related entity has been expressed in the formation of the Pitjantjatjara Council, which was incorporated in July 1976.

The Council meets bi-monthly, the venue varying from place to place within the region. More than 20 communities in South Australia, Western Australia and the Northern Territory are members. Attendance at meetings is generally in excess of 100 people, but has been considerably more on occasions. Many people travel long distances to participate.

While being orderly and under the control of the Council Chairman, the meetings of the Council have a unique vitality and grass roots involvement. Matters of concern are discussed in communities and at Council meetings and any decisions are reached on a basis of consensus.

The Council has nurtured the development of an identification of the Pitjantjatjara as one people with a unity of law 'and land. It is based on an awareness of the greater strength of the communities in united action and their desire to deal with outside bodies as a united people. The Council is the vehicle for the expression of the aspirations of the Pitjantjatjara on a broad range of issues.

It was largely due to the Council's exertions that the present land rights activities have been undertaken.

Historical Background

With the virtual demise of Aboriginal full bloods in South Australia's southern areas by the early part of this century, there grew some support for measures to be adopted by the Government to protect the remaining tribal people in Central Australia¹². Deputations of 7th September 1917, 7th May 197_9, and 10t June 1919 made to the South Australian Government requested the formation of a "reserve for Aborigines" in the North West of the State. Following representations to the Western Australian and Federal Governments conjointly to create an area totalling about 42,000,000 acres (65,000 square miles) or 168,000 I~m² in Central Australia, adjacent reserves were created in Western Australia in August 1918, and January 1920 in the Northern Territory. After some apparent prevarication, South Australia gazetted its portion of 56,721 km ² (21,900 square miles--Block 1031) on 3rd March 1921 under the provisions of the Crown Lands Act. The land was to be "for the use and benefit of the Aborigines" though at the same time the Government reserved the

12. The 1916 Royal Commission reports only 505 Aborigines between Faraina and the Queensland border and makes no reference to the North West. Final Report of the Royal Commission on the Aborigines, Govt. Printer, Adelaide 1916

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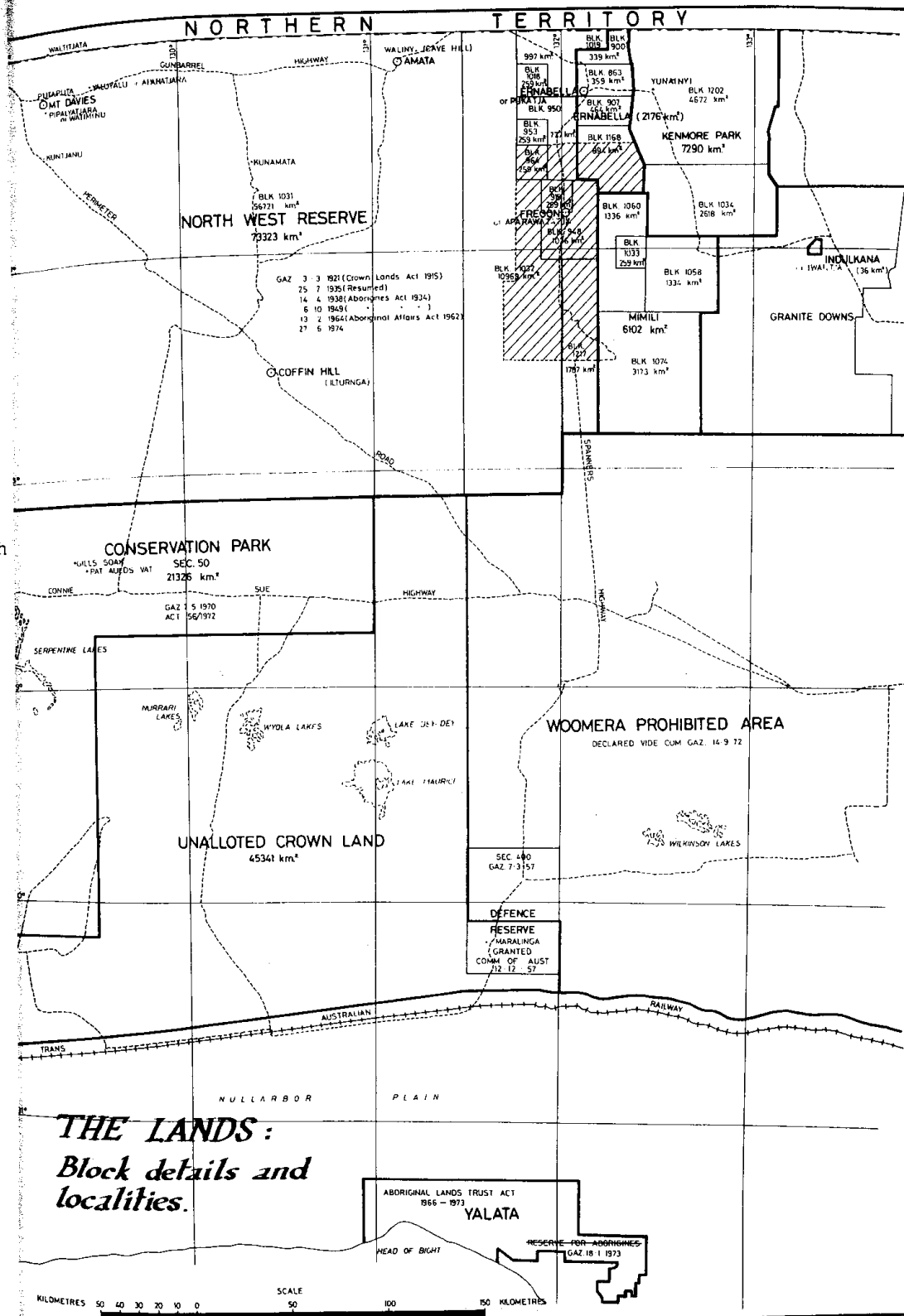
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right of resumption of the area "for other uses should the occasion demand it".¹³

Although the Reserve was excluded from provisions of the Mining Act by Gazettal on 7th July 1921, there were complaints within 12 months that its "mineral wealth" was not being exploited. Accordingly, the north west quarter of this area was put back under the provision of the Mining Act in April 1923. The whole area, however, was resumed on 25th July 1935 and on 14th April 1938 Block 1032 was added and the whole scheduled as "reserve for Aborigines" under the provisions of the new Aborigines Act 1934. After a further addition of seven blocks on the eastern perimeter totalling 3,846 km² (1,485 square miles) the Reserve reached its present size of 73,323 km² (28,400 square miles) on 27th June 1974 with the addition of Block 1217.

Pukatja (Ernabella)

Despite reservation measures since 1921 it was not until 1937 that the population came to be serviced in any way. Since 1937 several major settlements or centres have been developed and in doing so have become identified with the definable territory indicated by Pastoral Block, boundaries.

13. F. Wood-Jane, "The Claims of the Australian Aborigine"
Section F. (Anthropology) Address by the President. In
Australian Association for the Advancement of Science

The first of these centres was Ernabella, a mission controlled by the Presbyterian Church, established in November 1937 at the instigation of Dr. Charles Duguid. Fearing that the Pitjantjatjara would drift slowly eastward to the railway line, and in the process become detribalised and demoralised, he sought and obtained land (Blocks 900, 907, 863, 908 and 1165) from the 'South Australian Government to set up a buffer station which would provide means for the mission to graze sheep "to provide meat, work, and income for the Aborigines".¹⁴ Ernabella has drawn its population from the Musgrave, Tomkinson and Everard Ranges country; the desert areas to the south and south-east from the Peterman Ranges in the Northern Territory.

Dr. Duguid's vision was that the north-west of South Australia would be developed by the local Aborigines rather than by well meaning whites on their behalf. The intention at Ernabella was to pursue a policy of live and let live.

There is no inferiority at Ernabella,
no apathy, no sad faces ... Intelligent compromise is called for when race meets race. Our civilisation has something to offer the Aborigines but it first should be offered to them on their own terms in their own tribal land - certainly not forced upon them.¹⁵

14. The Central Australian Aboriginal Reserve, Government Printer, W.A. ND

15. Dr. C. Duguid Relentless Assimilation in Western Australia and Northern Territory. End of the Tribes. 1964 DAA 442/64 Archives.

This intention has in the main been borne out in practice with observers commenting favourably on Ernabella as a "consciously liberal institution". 16

In accordance with the general shift in Australian Government Aboriginal Policy from assimilation to self determination, the Ernabella people with the support of the then successor to the Presbyterian Church, of the then successor to the Presbyterian Church, BOEMAR (Board of Ecumenical Mission and Relations), established an incorporated body in 1973 known as "Pukatja Community Incorporated". Since then, although it has continued to-receive material and human assistance from BOEMAR and its successor, the Uniting Church in Australia Commission for World Mission, the bulk of financial assistance has come from the Australian Department of Aboriginal Affairs in the form of direct grants to the Incorporated Community.

Over years of considerable capital investment there has accumulated a sizable township. The Pastoral Board expressed concern to the Working Party that the considerable value represented is not well protected by the present leasehold title and it hoped that steps could be taken to secure a better form of tenure.

Improvements are owned by the Church, by the Incorporated Community, by the Housing Association, by the several government departments functioning there, and by individuals. The population of Pukatja is about 350.

16. R. S C. Berndt, From Black to White in South Australia, Cheshire 1951

There is a sense in which Pukatja is the most "modern" of the North West communities. An unhurried drift from traditional to western values is evidenced by a township, pepperpotted with new houses owned by Aboriginal members of the community. A trade training establishment under the wing of the Department of Further Education trains mechanics, and it also processes spares as well as reconditioning engines and parts for the large number of cars in the area. There is a crafts centre which annually supplies some \$50,000 worth of batiks, weavings, paintings, carvings and artefacts to marketing outlets in Adelaide and Sydney, as well as having an extensive mail order business. There is even a new cemetery with neatly aligned graves and plaques which in the act of naming the deceased, transgress a fundamental Pitjantjatjara taboo of obliterating all reference to the dead.

The Pukatja supermarket, the church, the choir, the reasonable, restrained debates at well attended meetings: on the Manse lawns, are all aspects of people well in control of their relations with the western world, but without disloyalty to their own values, and without being patronised by the other side.

The Pukatja people though more committed to new values than kinsfolk to the west are nevertheless fundamentally Pitjantjatjara. They claim unequivocal rights to Pitjantjatjara land and the cultural, social and ritual rights and obligations associated with it. In some discussions with the Working Party, Pukatja people foreshadowed a desire to obtain separate title to country to the north of the settlement and in

Kenmore Park where there are important ceremonial (red ochre) sites. Should they wish this to be pursued, further provision is made in the recommendations for individual leases to be drawn up.

The Working Party takes note of the submission of the Uniting Church in Australia Commission for World Mission, which lays down its policy of ceding the Ernabella leases together with Church improvements to a Pitjantjatjara land holding entity at no cost. Such transaction is subject to the agreement of the Ernabella and Fregon people, to indemnification of all claims arising out of the period of trusteeship, and, on the understanding that the new title will be freehold and inalienable, will provide for adequate mineral rights and will not contravene the wishes of any of the Pitjantjatjara communities.¹⁷ This generous offer effectively clears the way for transfer of the Ernabella leases to the proposed Pitjantjatjara land holding entity.

Aparawatatja (Fregon)

In 1961 Fregon, 70 km south on the Officer Creek, was opened as an outstation of Ernabella with the aid of a South Australian government grant. Fregon settlement was established on Block 948 in the North West Reserve and, using about 52,000 km² of Reserve and Mission Land, it developed a mission cattle enterprise which has replaced the sheep disposed of by Ernabella during the early seventies. The area includes about half the Ernabella pastoral leases and half the 1,485 square miles added to the North West Reserve in 1949

17. General Secretary, Uniting Church of Australia
Commission for World Mission. SGE: AE/36 of 22 August
1977.

as well as areas in and out of the North West Reserve south of Fregon in the Officer flood plain. This interest in cattle was much in evidence when the Working Party visited Fregon in July 1977. It was indicated that six cattle 'interest. groups', whose membership was regarded as fluid, wished to develop their own cattle industry and extend it further to the north-east portion of the North West Reserve.

In 1973 the Aparawatatja community became incorporated. Its autonomy notwithstanding, the community still retains strong links with Pukatja and within the Uniting Church. Like Pukatja, Aparawatatja has improvements belonging to the Church, the Community, and the Government departments functioning there. The present population is about 150.

From a cultural point of view, the remarks made about Pukatja, mostly apply to Aparawatatja. But as well as a difference by way of its cattle industry focus, there is a greater interest in land west and south of the settlement. Interest centres on the site Makiri which is the honey ant totemic increase site, on the Coffin Hill area, and on a great many sites south along the Officer Creek and east of the Conservation Park--all associated with important ceremonies but in particular the vast cycle of ritual commonly known as red-ochre. Interests of the Aparawatatja people also take them south-west over the Great Victoria Desert to its southern edge where there are sites of importance in the Conservation Park itself, thus linking the interests of the Aparawatatja people, or at least some of them, with Yalata.

As Fregon does not constitute an independent area, outside the North West Reserve, the question of transfer to the proposed land holding entity does not arise.

Mimili (Everard Park)

Blocks 1060, 1033, 1058 and 1074 adjacent to the Aparawatatja area comprise Mimili - formerly Everard Park. Mimili, although only acquired for Aboriginal use in 1972, has always had a highly autonomous group of people occupying various localities within the lease. This group was fortunate enough to have struck up a workable arrangement with the previous lessees of Mimili whereby work was exchanged for food and medical attention, and the autonomy of the group preserved. These people, primarily identifying as Yankutjatjara, became in 1972 the first South Australian Aboriginals to have pastoral land acquired for their use through the mediation and with the finance of the then Office of Aboriginal Affairs - the predecessor of the Australian Department of Aboriginal Affairs.

In many ways the land rights issue in the north-west of South Australia has been most intense at Mimili. The Betty's Well people have persistently regarded Mimili as their "homeland" and have been critical of attempts to acquire land on their behalves on a title that is anything but unequivocally freehold with them as titleholders. This criticism first became manifest in relation to management practices resulting from a desire on the part of the Commonwealth to see that

acquisition expenses were being responsibly amortised. As noted above, (page 18) the marginality of the country requires highly skilled and finely tuned management practices. The tension between the dictates of good management practices and the aspirations of local autonomy was never so well manifest as at Mimili during the first five years of its present owners. After polarising in 1974 the issue was resolved with the doctrine of good management giving way to local autonomy. The property is now managed in an interim arrangement by Mr. Jim Lester, himself a Yankutjatjara, and there seems no desire on the part of the Department of Aboriginal Affairs to return, in the short run, to the conventional arrangement of white manager with an open ended charter to operate profitably.

The Mimili community sought incorporation in 1975, and in addition there is the Mimili Pastoral Company, incorporated under provisions of the Companies Act in 1973. Improvements at Mimili are vested partly in the pastoral company and the community. The Mimili population is about 120.

The position at Mimili has been complicated by the surrender of the pastoral leases in March 1977. The land is now Unallotted Crown Land. This was done pending the transfer of the land in fee simple to the South Australian Aboriginal Lands Trust. In fact it was the representations of the Mimili people to delay this changeover which was one of the reasons for the creation of the present Working Party. Experiences had

by Mimili people in relation to title have given them a heightened sensitivity in matters of tenure. The Working Party had expressed to it a fear that if the Pitjantjatjara as a whole were to have vested in them freehold title for the land now being considered, there may be a possibility that Mimili would find itself subject to a new and possibly more difficult form of suzerainty. On one hand it was acknowledged that the people in the area follow a common tradition, but on the other hand it was emphasised that Mimili has particular interests which might be best served by possession of its own freehold title. For this reason recommendation 6.1.3, pp. 85-86 below, allows for leases to be made in respect of given blocks of land where this is required by the local community.

Following its observations of land and communities east of the Musgraves, the Working Party has given considerable thought to the question of pastoral activity on any land transferred to the Pitjantjatjara people. After consultations with members of the Pastoral Board, the recommendations on pp. 107-108 below were designed to ensure that adequate advice may be obtained and that adequate environmental oversight may be exercised in respect of any pastoral venture in the area.

There do not appear to be any real difficulties in regard to transferring Mimili to the proposed land holding entity, although prior consultations with the Department of Aboriginal Affairs and the South Australian Lands Trust are indicated.

Iwantja (Indulkana)

Some 42 miles east of Mimili, and just off the plateau country, is the 36 km ² of Indulkana, a microscopic "homeland" surrounded by a perimeter dog fence and visible as a lonely conglomerate of transportable buildings on a low gibber ridge.

Such sentiments do little justice to the relentless endeavours of the South Australian Department of Aboriginal Affairs for nearly the whole of the sixties to obtain the area. Though hard won, Indulkana contains within it a population fervently wishing to be linked to the surrounding property (Block 1077 of the Granite Downs Pastoral Run) and in this way gain contiguity through the Mimili leases with the North West Reserve.

With regard to such ambitions, we have made recommendation: on pp. 95-96 below for claims to additional land. We consider it outside our terms of reference to make any specific recommendations with regard to the wishes of the Indulkana people to acquire further land, but note their strong representations in this regard.

The people at Indulkana regard themselves as Pitjantjatjara and custodians of land invested with sacredness by kangaroo totemic ancestors, who, in heroic traverses from the Mt. Davies area - the very heart of the Pitjantjatjara country, touched upon Indulkana. Thus while it is true that some people at Indulkana may look east and south to Oodnadatta and Coober Pedy in

social and kinship matters, the dominant link is to the north-west.

In 1973 the Indulkana people incorporated themselves as the Iwantja Community Incorporated. The land originally gazetted Aboriginal Reserve on 27th March 1969, and transferred in fee simple to the South Australian Lands Trust on 30th October 1975, was administered by the Department for Community Welfare under the provisions of the Community Welfare Act 1972-76. Improvements at Iwantja are owned in part by the Iwantja Community, the Indulkana Housing Association and government departments functioning there. The population of Iwantja is 250. Transfer to the proposed land holding entity is clearly desired by the Indulkana people but this would have to be done in consultation with the South Australian Aboriginal Lands Trust.

Amata

Established in April 1961 as the headquarters of a potential cattle enterprise in the North-West, Amata is the major settlement on the North West Reserve, and administrative headquarters of the region. As a cattle enterprise Amata was in a sense doing something to justify the "huge concession" created in the minds of many people since 1921, when the vast area of the Reserve was first set aside for Aboriginals. At the same time, during the sixties, Amata evolved into an institution nurturing the articles of faith of

assimilation - good working habits for the men; education for the children; cooking, sewing, and clinics for the women. In these terms Amata may have enjoyed only qualified success with the once neat, almost aseptic institution now asserting more independent values. There is, however, an inescapable sense of optimism and goodwill among both Aboriginal and European inhabitants.

Amata has in fact come to reflect two dominant themes of endeavour in the north-west. One is a "modern" attempt to create economically viable industries - cattle, crafts, gardening, and mining. The other is a more conservative urge to accommodate the pull of tradition by creating bush communities of people in their totemic "homelands".

The first endeavour tends to associate Amata with Mimili, Aparawatatja, and Pukatja as the cattle producers of the North West - even though the attempt to create a cattle industry by the Department for Community Welfare appears to have met with a lukewarm response at Amata. With the emphasis changing to Aboriginal autonomy and a decrease in the direct intervention of the Department for Community Welfare in reserve matters, there may be some danger that the present cattle population or part of it could create environmental problems in the future. The Working Party is not in a position to comment beyond this but provisions have been made in the recommendations on pp.103-108 below for the community to consult relevant departments and instrumentalities in matters relating to the environment, as well as to the management of cattle enterprises.

The second thrust of effort takes place west of Amata and is endeavouring to combine the traditions of a very ancient culture with the amenities of a modern world. 225 km west this process is being established at Pipalyatjara (Mt. Davies or alternatively Watiminu) - at the moment a small collection of caravans, concrete pads and building materials. More importantly, it is the area from which the kangaroo mythology and the wealth of cultural activity flowing from it stems. Pipalyatjara is now the tangible end-point to a long cherished ambition of people previously at Amata to get back to their totemic country. In its turn it has become the centre of other smaller communities, whose members likewise have come from major centres both in South Australia and over the borders, to fulfill what they see as a right to exist in contiguity with their totemic land. These are the communities of Kuntjanu, Yaluyalu (or Aparatjara), Waltjijata (or Pi :wara), Putaputa, Kunamata, Iltur (or Indurnya). Closer to Amata a community has been established at Waliny, better known as Cave Hill.

These communities on the North West Reserve have been incorporated, and each receives its grant direct from the Department of Aboriginal Affairs. To that extent each is autonomous. However, under the provision of S85 (1) of the Community Welfare Act 1972-76 administrative responsibility for all Reserve lands is still vested in the Minister of Community Welfare.

In the North West Reserve there is a large capital investment outlay for improvements by the Department for Community Welfare, the incorporated communities, incorporated housing associations, the various government departments functioning in the area and some individuals.

The population of Amata is about 300, and the decent, realised communities about 300.

Transfer of the North West Reserve to the proposed land holding entity does not appear subject to any impediment but would be a matter for Cabinet decision and amendment to the Community Welfare Act 1972-76 and the Aboriginal Lands Trust Act 1966-75.

Kenmore Park (Yunya:inyi)

Kenmore Park was purchased by the Aboriginal Loans Fund Commission from Kenmore MacLachlan Pty. Ltd. in September 1975, and all improvements are vested in the Commission. While at the moment there is no Pitjantjatjara community on the property, the Ernabella people have expressed strong desire to have access to, and make use of, sacred sites in the Sentinel Hill area.

With regard to the status and future of Kenmore Park, the Working Party has had communications with the South Australian Regional Office of the Department of Aboriginal Affairs, and with the Department's Central Office.

We have been able to discuss with the Department the possibility of transferring Kenmore Park to the proposed land holding entity and it appears that subject to negotiation there are no insurmountable difficulties.

Yalata; Defence Reserve (Maralinga: Unallotted Crown Lands (Formerly part of the Maralinga/Woomera Prohibited Area and Conservation Park

(a) Yalata

Yalata was acquired by the South Australian Department of Aboriginal Affairs in 1951 to create an alternative living area for AborigirraLs in the original Maralinga Prohibited Area in order to "assist the Commonwealth Government to ensure that the area could be used by the Commonwealth for defence purposes, and for the safety of the AborigirraLs during atomic testing..." 18

The original allotments of sections and pastoral leases were declared reserves for AborigirraLs on 1st July 1954 and_ by agreement with' the South Australian Department of Aboriginal Affairs were administered by the Lutheran Church of Australia.

Since 1954 further allotments, sections and blocks have been added in a series of gazettals, namely 9th June 1955 (p. 1325), 28th November 1957 (p. 1278), 13th February 1964 (p. 274), 3rd February 1972 (pp. 430/431) 30th March 1972 (p. 1169) and 18th January 1973 (p. 189). The whole of Yalata was transferred to the Aboriginal Lands Trust on 15th May 1975. In July 1976 the Yalata Community was incorporated.

Although the village is located near the Eyre Highway, 204 km north-west of Ceduna on the far west coast of South Australia, Yalata people regard themselves as Pitjantjatjara, having traditionally lived around the perimeter of the Great Victorian Desert, north of the transcontinental railway on the Nullabor and south of the Birksgate ranges on the North West Reserve. 19

Links with their kinsmen north in the ranges area and north-east at Aparawatatja are still intact and often activated. Similarly, the Yalata men often trek into the Unallotted Crown Land area and the Conservation Park to fulfill obligations relating to their original homeland. Present population of Yalata is about 500.

19. Yalata, Yalata Lutheran Mission. See also P. 38 above where actual and possible cultural ties are discussed.

The Yalata people while supporting the concept of a Pitjantjatjara land holding entity, and basically identifying themselves with it, are for the time being happy to retain their present connection with the South Australian Aboriginal Lands Trust. They did, however, express a different opinion in regard to the land north of the transcontinental railway and this is now discussed below.

(b) Defence Reserve (Maralinga)

The Defence Reserve is the 3,108 km² (1,200 square miles) area surrounding the Maralinga village, described as Section 400 North out of Hundreds. It was the subject of a land grant made by the State of South Australia to the Commonwealth. (v. Vol. 2563, folio 43 of 12/12/57).

The South Australian Government accepted responsibility for control of the Maralinga Village from 13th March 1974. Subsequently, Cabinet approval was given for the Yalata Community Inc. to have full demolition and salvage rights of the Village.

Maralinga Village comprised about 120 buildings of various sizes in the village proper in addition to about 10 buildings at the airstrip, eight at the Watson Railway Siding, 44 km to the south, and numerous(other buildings

scattered through the area of main activity.

The village, originally capable of accommodating up to about 500 men and as well supplying the administrative logistical and technological supports for atomic bomb testing, is now being salvaged by the Yalata community. 20

The relinquishment of the Section 400 Land Grant has been delayed pending the completion of the scientific reports on detectable levels of residual radioactivity around the areas where major trials were conducted. A major on-site survey was undertaken during July-August 1977 and it is hoped that definition of any area to be retained by the Commonwealth Government will be completed in the near future.

Whatever the outcome of these investigations, only a relatively small area is likely to be retained by the Commonwealth.

(c) Unallotted Crown Land

The Unallotted Crown Lands of 45,341 km² (17,506 square miles) was part of the original area of 48,000 square miles known as the

20. Maralinga Committee Report: SA Interdepartmental Committee, June 1973
(D.C.W. 50/7/21)

Maralinga Prohibited Area over which prohibitions were placed by virtue of the provisions of the Defence (Special Undertaking) Act 1952-66, and the Supply and Development Act 1939-66. The area concerned was that bounded on the north by the southern boundary of the North West Aboriginal Reserve; on the west by the South Australian/Western Australian border; on the south by a line parallel to the transcontinental railway line but 9 km to the north; and on the east by the western boundaries of pastoral occupation.

The prohibitions were rescinded by virtue of Commonwealth gazettals 100 of 1969 and 87 of 1972. However, in the gazettal 87 of 1972 the Woomera Prohibited Area boundary was redefined to its present configuration as shown in the map - see p. 40 - the redefinition taking in part of the eastern sector of the old Maralinga Prohibited Area and including the northern part of Section 400 which contains former atomic test sites and burial grounds for radio-active debris.

The balance of the lands presently unencumbered and denoted Unallotted Crown Lands (45,341 km²) do not therefore include any part of Section 400 and exclude the Maralinga Village. The Aboriginal Lands Trust has been offered and has accepted the transfer of this land, but this is in abeyance.

(d) Unnamed Conservation Park

As well as these alterations, the South Australian Government in May 1970 proclaimed an area of 21,362 km² (8,234 square miles) - appearing as an inverted "L" in the north western corner of the old Maralinga Prohibited Area - to be a National Park, known firstly as the North West National Park, and subsequently changed to Unnamed Conservation Park. As early as 1962 the possibility of adding this area to the North West Reserve was mooted - but since the proclamation of May 1970, the approval of both Houses of Parliament would be required before any such addition could be made.

Although as far as can be ascertained the Unallotted Crown Lands and the Defence Reserve (Maralinga) are not of great cultural importance to living Aboriginal people now living at Yalata retain ownership of and interest in sites known as Wayakula and Te:te to the north-west of the Maralinga village. There would undoubtedly be many other sites of significance which anthropological investigation would reveal. However, evidence collected to date suggests the absence of any living totemic increase sites - that is those sites which may be considered to rank highest in importance and sacredness in Pitjantjatjara culture. It would appear that AboriginaLs moved through rather than

lived in the Great Victoria Desert en route between the Tomkinson -- Mann - Musgrave Mountain areas in the north, and the areas around Ooldea in the south.

The most important area culturally would appear to be the east/west arm of the inverted "L" of the Conservation Park on the southern edge of the Great Victoria Desert. People from Mimili, Aparawatatja, and Yalata in particular have rights and obligations in respect of sites and rituals associated with the area. The Working Party is not aware of the existence of any systematic anthropological account of the area but it is known that Patrol Officers (since retired or died) from the Weapons Research Establishment frequently visited the area and collected a considerable miscellany of ethnographical data.

While the Yalata people do not wish to sever present ties with the Lands Trust, they thought that the land north of the transcontinental railway line should be regarded as contiguous with the settled Pitjantjatjara lands in the range country along the Northern Territory border, and might come within the scope of the proposed land holding entity. However, since the area is at the moment uninhabited, the Working Party feels that there is a need for the area to be more thoroughly investigated and for surviving ethnographical material to be sought and analysed.

For this reason we recommend that the present offer of the Unallotted Crown lands to the South Australian Aboriginal Lands Trust be rescinded, and that both this area, and the present Unnamed Conservation Park be left open to claims under the provisions recommended on pp. 95-96 below. The Yalata area proper, and Section 400 - the Defence Reserve - should remain unaltered for the time being.

GENERAL PRINCIPLES

Ownership

To the Pitjantjatjara and to the Working Party, the central issue was simply the matter of ownership. The Working Party found its most difficult task was to dispel the suspicion that if the issue were so clear why were our consultations even necessary, unless they were designed to deceive.

The critical question to be decided was how the concept of communal ownership could be expressed. An answer had to be adduced which would be understood by the Pitjantjatjara and at the same time be capable of recognition in law.

We were concerned to avoid what we considered the pitfall of vesting title in any particular group - for example, clan, community, linguistic entity, councils, traditional or pseudo traditional classes of people. Such vesting could pre-suppose organisational principles which may not be paramount and which may fail to reflect modes of Pitjantjatjara decision-making and tenure not understood by us.

The Working Party in fact elucidated eight possible models of custodianship and aired them extensively but it was the Pitjantjatjaras themselves who rejected the vesting of custodianship in anything but the totality of all Pitjantjatjara people. They saw the vesting of title in a group of trustees such as the old men, council or community representatives, heads of totemic patriclans, or a single figure head as granting to such particular people prerogatives in the land which the culture could not recognise.

In the light of these discussions, we have recommended that title to the lands be vested in a body corporate to be known as Anangu Pitjantjatjaraku - the Pitjantjatjara Peoples (see page 82: see also p. 38)

Membership will comprise all Pitjantjatjaras having an interest (which term includes, by definition, social, economic, and spiritual affiliations and responsibilities required by Aboriginal tradition) in and towards the lands even though some such people may regard themselves primarily as belonging to an associated group - for example the Yangkutjatjara.

It is expected that the effect of the legislation will be to ensure that all those groups of people who regard themselves by operation of Aboriginal tradition as members will have the opportunity of full and proper fulfilment of their traditional and spiritual attachments to the land.

The degree of certainty which will be required in order to protect the rights both of the Pitjantjatjara and of the rest of the community will derive from a clear definition within the legislation of the lands subject to the legislation. We are recommending that these will include in the first instance the present North West Aboriginal Reserve, the pastoral properties known as Kenmore Park, Mimili, and Ernabella, and the former reserve of Indulkana (the title to which is presently vested in the Aboriginal Lands Trust)

From our investigations we understand that included with those who can by Aboriginal tradition be said to have spiritual and traditional rights and obligations to these lands are people who may not physically reside on any of the lands. Thus the people living in Yalata, for example, would be entitled under the legislation to membership of the Pitjantjatjara Peoples.

Similarly, there are recommendations for the inclusion of additional lands in the definition of Pitjantjatjara Lands, though any such additional land should not form the basis of a claim to membership of the Pitjantjatjara Peoples, based on affiliations to any new lands so included. The purpose of such a provision is to place a limit on the area of land over which this legislation has application.

The Need for the establishment of a Pitjantjatjara Land Holding Entity

Considerable thought was given to the desirability of creating a new land holding entity given the existence of the South Australian Aboriginal Lands Trust and the extensive goodwill it enjoys from various Aboriginal communities.

Fundamental to our deliberations were the views expressed by the Pitjantjatjara who overwhelmingly supported a new land holding entity. These views followed those expressed to the Premier at a meeting at Amata on 4th May 1977 where it was said:

The Pitjantjatjara Council have talked about land rights and also lease and the freehold. The Council said at each meeting "the land is ours and we, as Aboriginal people should ask for special freehold so that the land cannot be sold". Also at the meeting .they said a lot about Aboriginal Lands Trust and Pitjantjatjara Lands Trust. The Council make important point that Aboriginal people down Adelaide who are holding the Aboriginal Lands Trust are not men in our Aboriginal Law ... so we Pitjantjatjara people want freehold and to have a special Pitjantjatjara Lands Trust right here at Amata held by the Pitjantjatjara Council, and also helped by our Solicitors.²¹

21. Minutes of meeting with the Premier, Mr. Don Dunstan and Party Wed. 5th May, 1977.

Therefore, the recommendation establishing a new entity follows from the clear wish of the Pitjantjatjara, and this wish reflects the living links the Pitjantjatjara have with their land. The Working Party supports the principle followed by Mr. Justice Woodward that such links should be preserved and strengthened.²² Moreover, the very size of the land; its relevance in supporting a scattered but culturally homogenous group; its remoteness and separation from southern interests, aspirations, and cultures all added credence to the notion of creating a new entity.

In creating a separate entity the Working Party is aware that recognition will be given to the polarisation in South Australian Aboriginal Affairs between urban and tribal people. However, we believe that the resolution of this duality is something that only the Aboriginal people will be able to deal with and it does not appear prudent for us to provide a bridge by the imposition of a single land holding entity when this would clearly be resented. The Woodward Commission, in citing points taken from the North American experience warns of the dangers of any "unacceptable imposition of legalisation or of regulations governing

22. Aboriginal Land Rights Commission Second Report April 1974
Government Printer, Canberra 1975 p. 2.

Active land questions without any consultation with those affected by them"²³ It seems to us that if the uppermost tribal priority is a sense of autonomy flowing from security of land tenure, its fulfillment might then satisfy a precondition for the long term working out of tribal and urban aspirations.

In making these proposals we have endeavoured to recognise the integrity of the whole culture, and have tried to avoid imposing an alien notion like trusteeship, with the consequent complication of prescribing who the trustees would be, and all that that entails.

At the same time, our proposals will place the Pitjantjatjara within the legal framework of the State; and although this will necessarily result in some strictures it will guarantee the rights, protections, and redresses the people would not otherwise have. They will thus gain legal parity with the rest of the community and at the same time enjoy full access to their own culture.

We also had to take into account the diversity of interests among the many different groups and anticipate problems that might arise in the whole area of disputes, particularly if in the act of creating a new legal entity existing guarantees

23. Aboriginal Land Rights Commission Second Report April 1974, Govt. Printer, Canberra 1975 p. 6.

to the rights of individuals and groups may be jeopardised.

In relating a new land holding entity to the existing South Australian Aboriginal Lands Trust, there appears a need to define the areas of operation of each entity to ensure there are adequate guidelines for determining which is the appropriate one to deal with a riven area of land. Confusion and possibly even fragmentation of the desert area could result if this were not done. Our recommendations in this matter appear on p. 112.

Individual v. Corporate Rights

Having made recommendations which seek to confer upon all Pitjantjatjaras ownership of their land, and by operation of the law, all the rights, duties and obligations which go with ownership, it needs emphasising that the actual owner of the land, the incorporated body called the Pitjantjatjara Peoples, is a separate legal entity from the people for whom the land is owned. At law it is common for a trustee to be appointed in a situation in which a large group of people or people with limitations at law, own land. The trustee owns the land for the beneficiaries who have rights at law, and the trustee has duties to them.

However, in our proposals there is no such relationship. The beneficial owners of the land, the extant Pitjantjatjaras, in the absence of

specific provision, have no enforceable rights as owners of the Lands. Those rights are exercisable at law by the legal body, the Pitjantjatjara Peoples, and by none other. We have found it essential, therefore, to include provisions which ensure that individuals or groups of Pitjantjatjaras have some recourse against decisions of the Pitjantjatjara Peoples which are contrary to their interests. On p. 108 we have recommended the establishment of a procedure for appeal to the Local and District Criminal Court in cases where review of any decision of the Pitjantjatjara Peoples is required by an aggrieved party.

Access

The provisions for control of access which we recommend on page 83 are intended to enable the owners of the land, the Pitjantjatjara Peoples, to prescribe by issue of permits those who may enter upon their land and those who may not. Certain people, however, may enter as of right; for example, police officers in the lawful execution of their duties, inspectors carrying out their proper functions under legislation such as weeds, vermin, and pastoral legislation; in fact any official or officer who would by operation of law be entitled to enter any land without the consent of the owner in any part of the State.

For the most part, nevertheless, entry of non-Pitjantjatjaras is restricted to permit holders. Our proposals for permit provisions are made necessary partly because of the size of the land and partly because of the number of people living on it. To leave the regulation of entry to informal processes could lead, we think, to abuse.

One of the greatest difficulties encountered by us in determining the appropriate procedures to be followed was to decide which body or bodies within the lands should determine any application for a permit.

The Pitjantjatjara consider such matters by a process of consensus. It is essential therefore, that any proposals contained in the legislation for the issue of permits for entry upon the lands be sufficiently flexible for consensus methods to continue, but at the same time be sufficiently certain to ensure that any person issued with a permit as a result of an application be able to rely upon that permit.

We envisage that the present structures involving decentralised self-determining communities continue but that in addition there be a central management body made up of representatives from all communities. We were told in discussions with the Pitjantjatjara that some matters, for example, large scale exploration for minerals, should be referred in the first instance to the central body for consideration. On the other hand, an application for a permit to visit the community should be considered by the community itself. In addition, there may be times when both the central body and one or more communities may wish to consider the question of access, particularly relating to access to more than one part within the lands. In the recommendation on p. 83 it is proposed that all applications for entry permits be referred to, and be issued in the name of, the Pitjantjatjara Peoples - but we envisage conventions of delegation which will determine how applications are dealt with on a day to day basis.

Mining

As noted previously, the attachment people have for the lands relates not just to the surface of the countryside but to the whole of the substance and essence of the land itself. What is clearly desired by the Pitjantjatjara, and has been assured to them, is that there shall be no mining whatsoever without their consent. This control must be guaranteed. To give the Pitjantjatjara

title to their land but to take from them the power to control entry upon that land and the conduct of what may eventually become extensive mining operations would destroy the rights given. To deny the Pitjantjatjara the right to prevent mining on their land is to deny the reality of their land rights. Recognition should be given to the rights of the Pitjantjatjara Peoples to exercise control over the extraction of minerals from their lands. As noted on pp. 18-19 above there is substantial potential for mining in various parts of the North West.

There are very cogent arguments, which appear to be gaining international support, for conferring upon minority groups privileges, particularly in economic terms, over and above those enjoyed by the majority.

There should thus be no provision in the legislation qualifying the full control by the Pitjantjatjara Peoples over mining development on their land, by allowing a given authority to override Pitjantjatjara wishes. The reality is that if the Parliament considers that the national interest requires the overriding of the wishes of the Pitjantjatjara it can enact the appropriate legislation or amendment to give this effect. This would require the public airing of the issue by debate in Parliament.

Although it may be objected that our proposal on p. 100, for the involvement of the Minister in the matter of mining development smacks of paternalism, our intention is to ensure the full protection of the Pitjantjatjara Peoples from exploitation, fraud or corruption. There can be no guarantee that unscrupulous people and organisations will not adopt any means they think suitable, honest or otherwise, to secure their own ends. Similarly, there is no certainty that penalty provisions, even measured in fines of thousands of dollars, will deter a mining company with millions at stake. To say that the Pitjantjatjara Peoples, even with legal advice, would be able to resist a determined and persuasive mining executive, underestimates the powers of persuasion that such a person may have. We think that the Pitjantjatjara Peoples should have the full protection and support, in such matters, of the State Government.

Financial Support

It is clear that it is essential for Pitjantjatjara Peoples to have the assistance of legal and other advice. A submission has been made to the Minister of Aboriginal Affairs for a Pitjantjatjara Legal Service. The people see the need to have their own lawyers and officers to protect and care for their land and in particular to deal with outside bodies such as mining companies. We would stress the importance of funds being made available to enable the Pitjantjatjara to engage their own

lawyers and advisers to assist in negotiations, to ensure a full understanding of proposals received and in other ways to assist them to protect their lands.

Environmental Control

We have recommended that effective environmental and land use controls be introduced into the Pitjantjatjara Lands (see p. 103). In making these recommendations the Working Party is aware that the imposition of such controls on traditional Aboriginal people is potentially a matter of considerable contention.

However, with the acceptance by traditional people of European technology there is now the potential for large-scale environmental destruction. The Pitjantjatjara have adopted, for example, the use of motor-cars and fire-arms for hunting and have embarked upon pastoral enterprises on a substantial scale with two pastoral properties having been purchased for them by the Commonwealth Government. At Amata there is a residue of the original herd of cattle and at least one of the communities in the western regions of the North West Reserve desires to introduce cattle for its own food. It is possible that the horticultural project commenced at Ernabella may extend to other centres.

These activities are non-traditional and their widespread practice may have a deleterious effect on the environment. The provisions we recommend are concerned to reach a balance between the growth of self sufficiency (in the western sense) and the continuing need to conserve the environment.

Liquor

One effect of transferring the Lands to private ownership will be to remove them from the operations of the Regulations under the Community Welfare Act which restrict the possession and consumption of liquor on Aboriginal Reserves.

For many years it was conventional wisdom that Aboriginals should be protected by the community from the depredations of alcohol. This was reflected in laws which were, in the final analysis, discriminatory, though in the recent past, most such laws have been repealed thereby conferring "equality" upon the Aboriginal people.

Ironically it is now the Pitjantjatjara who are insisting that alcohol is steadily causing the destruction of their culture, and are consequently most concerned at the proposals to repeal regulations under the Community Welfare Act.

The Working Party originally took the view that it should not concern itself with this question; that it was not its function to consider questions of a largely social nature when considering the question of land rights. However, it was forcibly pointed out to us that the effect of our recommendations was to remove what was seen by many people in the North West as a buttress against the worst effects of liquor in the area.

We therefore feel obliged to make recommendations for liquor control in the areas under consideration, though we stress that restrictions on the possession and consumption of liquor on the Lands should come in the first instance from the Pitjantjatjara themselves. Moreover, the restrictions should be readily variable and thus contained in regulations, and should apply only to the Lands.

Effects of Proposals on Existing Legislation

If the various changes proposed are to be implemented then the provisions of certain Acts will require amendment.

These include:

National Parks and Wildlife Act 1972-1974

Aboriginal Lands Trust Act 1966-1975

Community Welfare Act 1972-1976

Aboriginal and Historic Relics
Preservation Act 1965

Mining Act 1971-1976

Mines and Works Inspection Act.1920-1970

Compatability of proposals with Interstate lands
and legislation

As mentioned earlier the Working Party in arriving at its conclusions and recommendations took full account of the findings of the Woodward Commission and the provisions of the ensuing Aboriginal Land Rights (Northern Territory) Act 1976. We also consulted Mr. J. Long, Deputy Secretary, Department of Aboriginal Affairs in view of the formation of a Commonwealth/State Working Party on uniform land rights and uniform services for the Central Australian Reserves. In these ways, we sought both to draw upon the findings of Justice Woodward and then to ensure the maximum compatability between the South Australian proposals and Northern Territory provisions. In doing so we support the notion of Pitjantjatjara ownership of the contiguous lands now divided by state borders.

We believe the legislation we propose is compatible with the Aboriginal Land Rights (Northern Territory) Act and we hope that Western Australia might use similar principles as a basis for legislation for the Western Australian Central Reserve.

RECOMMENDATIONS

A. LEGISLATIVE

In making the following recommendations the Working Party is invoking the principles outlined so far in the report - particularly those contained in the previous section "General Principles".

1. We recommend that the legislation be structured as follows:

Preamble

Part I- Introduction and definition

Part II - Title to the Land

Part III - The Pitjantjatjara Peoples

Part IV - The Lands

Part V - Mining

Part VI - The Tribunal

Part VII - Environmental and Land Use Controls

Part VIII - Disputes

Part IX - Miscellaneous

2. We recommend that the preamble state the object of this legislation as being:-

"To vest in all of those groups of people known as the Pitjantjatjara Peoples title to those parcels of land known as Pitjantjatjara Lands upon and subject to the provisions of this Act:'

3. We recommend that in Part I of the Act the name of the Act be cited as Pitjantjatjara Land Rights Act.
4. Apart from the definitions which will be required in the normal course of drafting legislation, there are a number of terms which are unique to this legislation.

We recommend the inclusion of the following:

- 4.1 "Aboriginal Tradition" - means the body of traditions, observances, customs and beliefs which binds together those Aboriginal people living on or having rights, duties and obligations in relation to the lands and from which those Aboriginals derive their identity and their culture.
- 4.2 "Pitjantjatjara" in relation to a person, includes any Aboriginal person who shall have an interest in the Lands.
- 4.3 "Interest" - in relation to the lands includes social, economic and spiritual affiliations and responsibilities to the land required by Aboriginal tradition.

5. We recommend that in Part II of the Act the following provisions be made:

5.1 Conferring of Title

Title to the lands should be conferred upon the body corporate established pursuant to Part III of the legislation and known as the Pitjantjatjara Peoples. Such title should vest upon the date upon which the legislation is proclaimed to come into operation.

5.2 Nature of Title

The title so conferred should carry with it the following rights, duties, limitations and obligations:

- a. The lands or any part of them shall not be sold or otherwise disposed of, mortgaged charged, or encumbered.
- b. The lands shall not be leased, let or in any way demised otherwise than in accordance with the legislation.
- c. Subject to the permit provisions of the legislation no person other than a Pitjantjatjara shall be permitted to enter or remain upon the Lands.
- d. All Pitjantjatjaras shall have free and unrestricted rights of entry and egress to and from the land and shall be entitled by virtue of the legislation to carry on all ceremonies rites and traditional and other activities to enable them to maintain their way of life as they see fit.

5.3 Certificate of Title

The Pitjantjatjara desire that the title be issued in their own language. They recognise that the object of the proposed legislation is to signify to all people that title at South Australian Law has been conferred upon them. Thus they acknowledge the desirability, in the legislation, and on the face of the title, that English be used. To accommodate both of these aims, the Pitjantjatjara words "Anangu Pitjantjatjaraku" meaning "Pitjantjatjara Peoples" should be incorporated wherever possible in public documentation concerning, and official references to, the Pitjantjatjara Peoples. Reference should be made in the proposed legislation to this use of the Pitjantjatjara language and in particular the following provision should be inserted,

"In this Act, and in all public Acts and documents, the Pitjantjatjara words "Anangu Pitjantjatjaraku" be synonymous with the English words "the Pitjantjatjara Peoples".

A Certificate of Title under the Real Property Act should issue forthwith upon the date of proclamation of the legislation, in the name "Anangu Pitjantjatjaraku - the Pitjantjatjara Peoples". This of course, will require certain administrative acts within the Department of Lands. There should be as little delay as possible in these processes to enable the title to be issued at the earliest time. There should be a clause in the legislation preventing the Registrar-General from registering any instrument

or document purporting to transfer, mortgage, encumber or deal with any interest in the land otherwise than in accordance with the legislation.

5.4 Control of Access

There should be a section regulating entry upon the lands. There should be provision for applications to the Pitjantjatjara Peoples for permission to enter and remain upon the lands and any such application should specify:

- a. the nature and purpose of such a visit;
- b. the duration;
- c. the method, time and place of arrival; and d. such other information as the Pitjantjatjara. Peoples shall from time to time require.

The Pitjantjatjara Peoples may on receipt of any such application:

- a. refuse the application; or
- b. issue a permit subject to such conditions as it thinks fit.

Entry of any person upon the land otherwise than in accordance with the permit provisions should be an offence carrying monetary penalty.

5.5 Right of Entry

The following classes of persons should be permitted as of right to enter and remain upon the lands.

- a. Employees, agents, attorneys of and contractors to the Pitjantjatjara Peoples or any Community Councils or other Pitjantjatjara groups or organisation on the land;
- b. Police officers in the lawful execution of their duties;
- c. Any person exercising any law enforcing or inspectorial function under any Act of Parliament having application on the lands.

6. We recommend that Part III of the legislation be set out in three Divisions, namely, Division 1 The Pitjantjatjara Peoples; Division 2 , The Powers Functions and Responsibilities of the Pitjantjatjara Peoples; Division 3, The Executive Committee. We recommend that the following provisions be made:

6.1 Division 1 - the Pitjantjatjara Peoples

6.1.1 Body Corporate - There should be a Body Corporate called the Pitjantjatjara Peoples established by the legislation.

6.1.2 Membership of the Pitjantjatjara Peoples

Membership of the body corporate should comprise those Aboriginals who shall from time to time have an interest in the Nucleus Lands within the meaning of the legislation.

6.1.3 Rights, Powers, Duties and Obligations of the Pitjantjatjara Peoples

- There should be provisions in the legislation prescribing the rights, powers, duties and obligations of the Pitjantjatjara Peoples. In particular, there should be specific provisions conferring upon the Pitjantjatjara Peoples, subject to the Act:

- a. All the rights, duties and obligations attached to the ownership of Real Property;
- b. The power to commence or continue any action, claim, proceeding or demand in any court or tribunal of competent jurisdiction;
- c. The power to lease any portion of the Lands to any Pitjantjatjara individual, group or organisation. This power is included particularly to enable portions of the lands, such as the pastoral properties of Mimili, Kenmore Park, Ernabella and Fregon to be leased to their respective community councils;

- d. The power to lease any portion of the lands to any non-Pitjantjatjara organisation, e.g. in relation to a mining enterprise.

In relation to any leasing or letting of land under this power there should be a limitation of time;

- e. That the Pitjantjatjara Peoples be bound in all things by such directions of any kind whatsoever lawfully and properly imposed, ordered or directed by or under any Act, Regulation, Proclamation of Law not inconsistent with the Act;
- f. That in the event of any such direction, order, licence, rule of court, regulation, judgement or requirement being made in which there is a penalty or forfeiture imposed, the Pitjantjatjara Peoples be bound by such penalty or forfeiture as if it were a natural person.

6.1.4 Common Seal - There should be provision for a common seal of the Pitjantjatjara Peoples and for the affixing only by resolution of a general meeting of the Pitjantjatjara Peoples. Such affixing should be in the presence of not less than three members of the executive committee.

6.2 Division 2 - Powers, Functions and Responsibilities of
Pitjantjatjara Peoples

6.2.1 This division should specify the powers, functions and responsibilities in relation to the land of the Pitjantjatjara Peoples. It is anticipated that the Pitjantjatjara Peoples will, at least in the early years of ownership, carry on its affairs in the same way as the Pitjantjatjara Council which was incorporated in South Australia under the Associations Incorporations Act in July 1976.

Because of this we have recommended that it will be general meetings of the Pitjantjatjara Peoples which consider all but the most routine of administrative matters in relation to land ownership. The executive committee's functions will be that of implementation of decisions by the Pitjantjatjara Peoples. Accordingly, our recommendations prescribe the functions of the Pitjantjatjara Peoples on the basis that they will be carried out by that body itself rather than by delegation to the executive committee.

6.2.2 Functions - The following functions of the Pitjantjatjara Peoples should be listed in the legislation:

- a. To ascertain and express the wishes and opinions and protect the interests of Pitjantjatjara individuals, groups and organisations as to the management, use and control of the Lands;
- b. To consult with any Pitjantjatjara having a particular interest in any area or portion of the Lands as to the use of that area or portion;
- c. To negotiate with persons desiring to use, occupy or gain access to the Lands;
- d. To formulate, prepare, pursue or assist in the making of any application under Part IV of the legislation (dealing with land claims);
- e. To determine, in the first instance, the question whether or not any person is, or is entitled to be, a member of the Pitjantjatjara Peoples;
- f. To determine, in the first instance, any dispute in respect to the Lands or any interest in the Lands between any two or more Pitjantjatjara individuals, groups or organisations;

g. To make recommendations under Part VII.

6.2.3 Requirement for Consultation - In relation to the functions of the Pitjantjatjara Peoples there should be a provision in the following terms:

"In carrying out its functions the Pitjantjatjara Peoples shall have regard to the interests of, and consult with, those persons or communities having a particular interest in any area or portions of lands and shall not take any action with respect to any proposal for the use or development of those areas or portions of lands unless satisfied that those persons or communities understand the nature and purpose of the proposal and have had the opportunity to express their views to the Pitjantjatjara Peoples".

6.2.4 Incidental Powers - There should be a provision in the following terms:

"Subject to this Act the Pitjantjatjara Peoples may do all things necessary or expedient for the full and effectual carrying out of its functions under this Act and without limiting the generality of the following may:-

- a. Employ staff;
- b. Obtain the advice and assistance of persons who are expert in any matter with which the Pitjantjatjara Peoples is concerned;
- c. Receive and pay any money;
- d. Give directions to the executive committee as to the carrying out of any functions of the Pitjantjatjara Peoples by the executive committee;
- e. Dispose and distribute any monies accruing to the Pitjantjatjara Peoples by virtue of its ownership of the land;
- f. Make rules including the regulation of the following matters:
 - (1) The conduct of the internal affairs of the Pitjantjatjara Peoples;
 - (2) The conduct of any meetings of the Pitjantjatjara Peoples;
 - (3) The issuing of any permits and the granting of any rights of access;
 - (4) The conduct of the finances of the Pitjantjatjara Peoples;
 - (5) The resolution of disputes;
 - (6) Such other matters as fall for consideration by the Pitjantatjara Peoples.

6.2.5 Annual General Meeting - There should be an Annual General Meeting at least once in every year with not less than 15 months between each Annual General Meeting. The first Annual General Meeting should be within three months of the date of proclamation of the legislation.

6.2.6 Ordinary General Meetings - In addition to the Annual General Meetings, there should be procedures for the calling of ordinary general meetings either by the executive committee or by a request from not less than ten members of the Pitjantjatjara Peoples. We think it is important that this procedure be as simple as possible given our conclusion that the bulk of the business to be considered by the Pitjantjatjara Peoples will in fact be considered by that organisation in general meeting. To ensure proper representation at, and notice of, such general meetings, notice should be required to be issued under the hand of the chairman whose responsibility it shall be to ensure that copies thereof be sent to each incorporated community and each incorporated community should be required to display further copies of that notice in conspicuous places within the area of influence of the incorporated community. Such notice should be given not less than fourteen days and not more than three months before the holding of the general meeting the subject of that notice. It should be incumbent upon the

chairman to send copies of all such notices to the Yalata Community Incorporated as well as to all communities situated on the Lands.

6.2.7 Audit Requirements - The Pitjantjatjara Peoples should be subject to the same audit requirements as are now imposed on the Aboriginal Lands Trust. In addition, there should be a requirement as to the keeping of proper accounts and records of the transactions and affairs of the Pitjantjatjara Peoples.

6.2.8 Interim Functions of Pitjantjatjara Council During the period from the date of proclamation of the Act until the first Annual General Meeting of the Pitjantjatjara Peoples the functions of the Pitjantjatjara Peoples and the Executive Committee should be carried out by the Pitjantjatjara Council. The Pitjantjatjara Council should also be authorised to give notice of the first Annual General Meeting.

6.3 Division 3 - The Executive Committee

The membership of the Executive Committee should comprise a Chairman, a Vice-Chairman, a Secretary and two other ordinary members; the office bearers should be elected for a period of one year by an Annual General Meeting and any retiring office bearer should be eligible for re-election. In the event of any casual vacancies such should

be filled by the executive itself but any vacancy so filled should be declared vacant at the next Annual General Meeting and the temporary holder of that office retire as if he had been elected at the previous general meeting. The functions of the Chairman of the Executive Committee may be carried out by a Vice-Chairman in his absence. No rights may be conferred by, or obligations placed upon, the Pitjantjatjara Peoples by the Executive Committee without a resolution of the Pitjantjatjara Peoples. There should be a specific provision precluding the Executive Committee from conferring any rights or creating any obligations at law for or on behalf of the Pitjantjatjara Peoples without the authority of a resolution of the Pitjantjatjara Peoples. Our intention is to ensure that any person willing to gain legal benefit from the Pitjantjatjara Peoples should deal directly with that organisation. There should be no power of delegation in such matters.

7. Part IV - The Lands

7.1 Nucleus of Lands

As stated previously on p. 65 the Lands should consist in the first instance of the present North West Reserve and contiguous Lands.

7.2 Schedule of Lands

Provision should be made in the legislation for schedules in which the Lands (the term "Lands" being the subject of definition in the definition section to the legislation) be fully described. The area of land which will eventually comprise the Lands can be divided into two parts:

- Part 1 - Nucleus Lands - that is, lands which form the basis of entitlement, under recommendation 6.1.2 on page 85 of the report, to membership of the Pitjantjatjara Peoples.
- Part 2 - Non-Nucleus Lands - that is, lands which, although comprising lands to which the Pitjantjatjara have social, economic and spiritual affiliations and responsibilities, do not form the basis of membership of the Pitjantjatjara Peoples. We use the term "Non-Nucleus" simply to indicate their somewhat peripheral geographical nature in relation to the more central "Nucleus" lands.

Part 1 comprises the North West Aboriginal Reserve, Mimili, Ernabella, Indulkana and Kenmore Park. Part 2 comprises Unallotted Crown Land, Unnamed Conservation Park, Defence Reserve (Maralinga), and unspecified pastoral properties east of the North West Reserve.

7.3 Land Claims

Provision should be made for land claims by the Pitjantjatjara Peoples, or by any person on or group eligible for membership of the Pitjantjatjara Peoples as provided in Part VI, pp.84-85 above. Such claims should be made in the first instance by or through the Pitjantjatjara Peoples to the Minister responsible for the administration of the legislation and should disclose how the interest is to be established under the legislation.

Upon receipt of any such application, the Minister should be required to refer it to the Tribunal (see pp.102-103 below) and to any person or persons or instrumentality affected. The Tribunal will then be required to undertake an investigation and, upon being satisfied that the land claimed is land which by Aboriginal tradition should be included as portion of the lands, may recommend to the Governor that such land be subject to a proclamation under the legislation.

7.4 Matters to be considered by Tribunal

In considering any such application the Tribunal shall consider the following matters:

- a. the number of Pitjantjatjaras with interests in the land claimed who would be advantaged and the nature and extent of the advantage that would accrue to those people if the claim were acceded to either in whole or in part;
- b. 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;
- c. 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; and
- d. where the claims relate to alienated Crown Land or to private land, the cost of acquiring the interest of persons (other than the Crown) in the land concerned.

It should be noted that the above criteria follow very closely the provision of section 50 (3) of the Aboriginal Land Rights (Northern Territory) Act 1976.

7.5 Effect of proclamation

The effect of a proclamation by the Governor should vary depending on whether the land is Crown Land or otherwise.

- a. If the land is Crown Land it will forthwith vest in the Pitjantjatjara Peoples who will be entitled to the issue of a Certificate of Title of freehold tenure.
- b. If the land is Freehold Land or alienated Crown Land the proclamation shall for the purposes of the Land Acquisition Act 1969 constitute the Minister an Authority for the purpose of acquiring the land or, in the case of alienated Crown Land, the interest held, and the Minister may then acquire the land in accordance with the provisions of the Land Acquisition Act for the purpose of vesting the land in the Pitjantjatjara Peoples.

7.6 Rights of interested party to be heard

A person having an interest in such private land should be entitled to be heard:

- a. in the first instance, when the Tribunal is considering the validity of the claim; and

- b. before the Land and Valuation Court when the compensation payable is being assessed. The purpose in constituting the Minister an acquiring Authority for the purpose of the Land Acquisition Act is to ensure that normal procedures of acquisition are followed and that any person affected by those procedures has a right to apply to the Land and Valuation Division of the Supreme Court for a valuation of his interest in that land.

7.7 Rights Conferred

Any Crown Land the subject of a proclamation under the proposed legislation, and any private land acquired in accordance with the legislation, should be vested in the Pitjantjatjara Peoples and should, with the exception of determining under the legislation the membership of the Pitjantjatjara Peoples, become Lands under the legislation and be transferred from the Minister of Lands to the Pitjantjatjara Peoples.

8. Mining

8.1 Mining Act to Apply

Subject to the modifications set out below, the Mining Act 1971-1976 and the Mines and Works Inspection Act 1920-1970 should apply to the Lands. However, as stated previously, the Pitjantjatjara Peoples should have the power to control the search for, and exploration of, minerals, and the exploitation of any minerals so discovered.

8.2 Modification of Rights of Entry

Rights of entry conferred by the Mining Act should be modified. At present a mining tenement confers upon the holder thereof the right to enter private lands subject to compliance with the statutory requirements as to notice and subject to the right of the landowner to object in the Warden's Court. In relation to the Lands, the holder of a mining tenement should have no right of entry other than by permit issued under the proposed legislation. Thus the holder of a Miner's Right, Exploration Licence or Mining Lease will have no right of entry per se, but will need to obtain a permit from the Pitjantjatjara Peoples. Any conditions contained

in any entry permit so obtained should be supported by penalty provisions and by provisions requiring restoration and reinstatement in respect of any disturbance of the lands occasioned by the operations undertaken pursuant to the permit.

8.3 Consents to be Obtained

The Director of Mines should be precluded from registering any Permit, Claim, Licence or Lease without first having referred the matter to the Minister responsible for administration of the proposed Act and to the Pitjantjatjara Peoples and obtaining their respective consent. Any such consent may be unconditional or subject to such conditions as the Minister and the Pitjantjatjara Peoples think fit.

8.4 Requirements as to Particulars

Any applicant for mining tenements may be required to make a full and precise statement to the Pitjantjatjara Peoples of what is proposed including:

- (a) the proposed financial arrangements; for example, any payments being offered for the right to explore, whether any payments are proposed if the search succeeds and mining takes place, any equity offered in the resulting venture;

- (b) an impact statement making clear what will be involved at the exploration stage by way of road or airstrip construction, test drilling, seismic surveying, tree felling, ground clearing, bulldozing and building construction;
- (c) a statement outlining as clearly as possible what will take place if the exploration is successful and mining takes place;
- (d) maps, photographs, diagrams, models, and any other aid to make it clear as possible to people what will be involved;
- (e) estimates as to the number of people likely to be employed.

8.5 Control of corrupt and illegal practices

Section 47 of the Aboriginal Land Rights (Northern Territory) Act 1976 provides for the prevention of bribery and similar practices.

The Pitjantjatjara Land Rights Act should contain similar provisions, but also should provide that any person or company receiving the consent of the Pitjantjatjara Peoples to a mining tenement by fraud, misrepresentation, duress, bribery or other illegal or corrupt practices, be liable to forfeiture of that tenement as well as the imposition of a monetary penalty.

8.6 Payment of Royalties

Royalties on minerals extracted on the Pitjantjatjara Lands should be at the same rate and upon the same terms and conditions as are contained in Part III of the Mining Act but should be paid in full to the Pitjantjatjara Peoples to be dealt with by the Pitjantjatjara Peoples in such manner as it thinks fit.

8.7 Same procedures for Pitjantjatjaras

Pitjantjatjara individuals, groups and organisations should be required to comply with the same requirements, both procedural and substantive, as are imposed upon other applicants.

9. Part VI - The Tribunal

9.1 Structure of Tribunal

The Tribunal should comprise three people having knowledge of and experience in matters relating to Aborigines and having the following specific qualifications or experience, as the case may be:-

- a. A Judge;
- b. An anthropologist or a person with extensive anthropological knowledge and experience;
- c. A person with extensive knowledge or experience in ecology and/or land use.

9.2 Tribunal Practices

The Tribunal should conduct its hearings as informally as possible and such hearings should if possible, take place on or near the Lands.

All persons claiming to be interested in the outcome of a hearing should be entitled to be heard. The terms of Tribunal members and other formal administrative matters should be similar to those pertaining to other quasi-judicial tribunals.

10. Part VII - Environmental and Land Use Controls

10.1 Application of National Parks and Wildlife Act (1972-1974)

That portion of the National Parks and Wildlife Act relating to research and investigation into the conservation of wildlife and the establishment of the Wildlife Conservation Fund should be amended; firstly to enable the Minister to collaborate with Aboriginal groups in research and investigation of wildlife conservation and the protection of land forms; and secondly specifically to provide for

funds for such research from the Wildlife Conservation Fund. A further amendment should be made to that Act placing a requirement upon the Director to co-operate with and assist the Pitjantjatjara Peoples in its environmental protection should the Director be requested so to do by that body.

10.2 Taking protected species by Pitjantjatjaras

Regulation 62 of the Regulations under the National Parks and Wildlife Act giving protection to Aborigines in the taking of prohibited species for food was repealed on the 30th January 1975, but replaced by a similar provision in the Hunting Regulations, 1977. That regulation uses the term "family" in referring to the taking of prohibited species. In the context of traditional Pitjantjatjara culture the use of the term "family" is inappropriate as each person has rights and obligations to other people, within the culture, as to the sharing of food.

It is not within our terms of reference to consider how such a regulation should be worded in relation to Aboriginal people generally. However, for the purposes of our report, the National Parks and Wildlife Act should be amended so that provision be made enabling Pitjantjatjaras to keep and take any species on the Lands in accordance with and for the purposes of Aboriginal tradition.

We are satisfied that such a provision would provide proper protection for the Pitjantjatjara of the species naturally occurring on their lands. There are powers under the National Parks and Wildlife Act to grant exemptions in respect of certain species and we would envisage that the Pitjantjatjara Peoples will be in a position to secure exemption should they consider it necessary or desirable.

10.3 Controlled Areas

Provision should be made in the proposed legislation for declarations by the Governor of controlled areas upon the recommendation of the Pitjantjatjara Peoples. Such provisions would enable the Pitjantjatjara Peoples, by resolution of a general meeting, to recommend to the Governor that in such areas prescribed activities and land uses be prohibited. The Governor on receipt of such recommendation, would, by proclamation, declare the area to be a controlled area and prescribe the activities and land uses which are prohibited within it.

The effect of the regulation would make it an offence for any person, including a Pitjantjatjara, to carry on any such prescribed activity. Where appropriate those provisions of Division 3 Part 2 of the National Parks and Wildlife Act relating to the powers of wardens should apply to any controlled areas of land established under the legislation. Pitjantjatjaras should be appointed wardens for such purposes.

10.4 Revocation of Controlled Areas

There should be provision that the Governor may by regulation, upon receipt of a further recommendation from the Pitjantjatjara Peoples, revoke the declaration of the controlled area and in such event that revocation will take effect.

10.5 Pastoral Lands

Upon the Pitjantjatjara Peoples leasing to any Pitjantjatjara individual, group or organisation any area of the Lands for pastoral purposes, or in the event of the Pitjantjatjara Peoples itself deciding to establish a pastoral operation on any area of the Lands, such area should, by regulation, be declared Pastoral Lands.

The effect of the regulation would be to bring the Pastoral Lands under the jurisdiction of the Pastoral Board. The regulation would prescribe conditions for the use and management of the land, as recommended by the Pitjantjatjara Peoples, and would confer upon the Board the same powers of land use control as it has in relation to Pastoral Lease Lands.

Our recommendations are such that pastoral areas will come not under compulsory controls until the conferring by the Pitjantjatjara Peoples of any lease for pastoral purposes. We have drawn a distinction between this and the more voluntary restrictions which apply under recommendations 10.1 (pp. 131-134) and 10.3 (pp. 105-106) inclusive, because of the existence of pastoral ventures on the Lands and the fragile nature of the environment in the region. Moreover, it would be both unfair and inappropriate not to have controls, which exist in respect of all other pastoral properties in the region, by virtue only of differences in land tenure.

10.6 Powers of enforcement

The powers of enforcement under the Pastoral Act derive from covenants and conditions contained in Pastoral Leases conferred under that Act. Thus the breach of any covenant or condition,

for example in relation to overstocking or poor management practices, entails penalties under the lease or forfeiture of the lease.

The Board also has powers of entry and inspection of lands. The Lands, being held on freehold tenure, would have no such enforcement procedures in the event of a declaration and recommendation.

Thus the regulation would prescribe conditions and penalties for breach. Such conditions could not, of course, include forfeiture of the Lands and so monetary penalties, being the only alternative, would need to be included in the regulation. Powers should be conferred to this end in the legislation.

11. Part VIII - Disputes

11.1 Right of Appeal

Any Pitjantjatjara individual, group or organisation aggrieved by any decision or resolution of the Pitjantjatjara Peoples should have a right to appeal to a Judge of the Local and District Criminal Court for a review of that decision or resolution.

11.2 Procedures on Appeal

Rules should be made for establishing procedures for hearing and determining the appeals and should be subject to the following principles:

- (a) That the hearing be as expeditious and informal as possible;
- (b) That the hearing be conducted on the Lands;
- (c) That the Court be not bound by the rules of evidence and may inform itself on any matter in such manner as it thinks fit;
- (d) That, in determining the appeal, the Court shall have regard to all relevant matters and in particular to those matters to be considered by the Pitjantjatjara Peoples under recommendation 6.2.3 (page 83).
- (e) That the Court may confirm, quash or vary the decision or resolution or may refer the matter back to the Pitjantjatjara Peoples with directions as to the matters which the Pitjantjatjara Peoples should have considered in the first instance.

11.3 Disputes inter se

In the event of a dispute between any two or more Pitjantjatjara individuals, groups or organisations any party to the dispute may apply to the Court for a determination of the dispute. The same principles of hearing and determination contained in 11.2 should apply.

11.4 Savings provision as to traditional customs

There should be a provision in the legislation that nothing in the provisions contained in recommendations 11.2 and 11.3 should be interpreted as limiting or detracting from any rite, practice or custom observed by Aboriginal tradition for the resolution of disputes.

12. PART IX MISCELLANEOUS

12.1 Term of Reference no.3 - Amendment to Aboriginal Lands Trust Act (1966-1975)

Subsection (6) of section 16 of the Aboriginal Lands Trust Act 1966-75 is the only section in the Act which specifically refers to the North West Reserve. It prohibits the Aboriginal Lands Trust from selling, leasing, alienating or encumbering any portion of the Reserve without authorisation by both Houses of Parliament. As the lands constituting the Reserve have never been vested in the Trust the provisions of the sub-section have not been used.

Therefore either the subsection could be deleted or a general provision be included in the proposed legislation excluding the North West

Reserve from the provisions of the Aboriginal Lands Trust Act 1966-75.

12.2 Possession and Consumption of Liquor

The Governor should have power to make regulations prescribing the possession and consumption of liquor on the Lands. Such regulations should:

- a. apply to all people, whether Pitjantjatjara or not;
- b. prescribe the conditions upon which liquor may be brought on to, and consumed upon, the Lands and including the issue by the Pitjantjatjara Peoples, of permits;
- c. provide for penalties;
- d. provide for temporary confiscation pending a hearing of a charge in respect of an alleged breach, and permanent confiscation upon proof of a breach;
- e. be made only upon receipt of recommendations from the Pitjantjatjara Peoples.

RECOMMENDATIONS

B. GENERAL

We recommend the adoption of the following measures proposed to implement the conclusions of the Working Party:

13.1 With regard to the scope of the new land holding entity

- (i) The Pitjantjatjara Peoples should be regarded as the proper body in which to vest all lands construed as Pitjantjatjara Lands within the meaning of the definitions on page 94.
- (ii) The notion of contiguity of all central desert lands should be an additional and reinforcing criterion for determining the propriety of vesting lands in the Pitjantjatjara Peoples.

13.2 With regard to the North West Reserve

- (i) The lands as defined on page 120 should be transferred to the Pitjantjatjara Peoples;

- (ii) the owners of improvements on the land should be advised of the intention to transfer the lands.

13.3 With regard to Mimili

- (i) the land defined on page 121 should be transferred to the Pitjantjatjara peoples;
- (ii) in view of the recent history of Mimili, the Department of Aboriginal Affairs and the Aboriginal Lands Trust should be advised of the transfer;
- (iii) the owners of any improvements should be advised.

13.4 With regard to Ernabella

- (i) taking note of the submission of the General Secretary of the Uniting Church in Australia Commission for World Mission which in principle supports the transfer of the Ernabella leases to a Pitjantjatjara land holding entity, the Commission should be approached to relinquish the Ernabella leases defined on page 122 for transfer to the Pitjantjatjara Peoples.

- (ii) all owners of improvements on the land should be advised of the intention to transfer the land.

13.5 With regard to Indulkana

A submission should be prepared to be sent to the South Australian Aboriginal Lands Trust advising that the Pitjantjatjara Peoples would be in a position to have transferred to it the title to the land. In accordance with guidelines approved for the Pitjantjatjara Peoples, this would be an appropriate course to adopt as the Working Party is fully satisfied that it would reflect the wishes of the Indulkana people.

13.6 With regard to Kenmore Park

A submission should be prepared for the Secretary, Department of Aboriginal Affairs, advising that the Pitjantjatjara Peoples would be in a position to have transferred to it the Kenmore Park leases should the Department be prepared to do so.

13.7 With regard to Fregon

The Community should be advised of the approaches being made to the Uniting Church and the impending transfer of the North West Reserve to the Pitjantjatjara Peoples, and owners of improvements should be advised.

13.8 With regard to Conservation Park

We feel that an investigation of the anthropology of the area is needed. Pending such investigation the land should be left open to a claim under the proposed legislation.

13.9 With regard to the Unallotted Crown Land

(i) Notwithstanding previous offers to the South Australian Aboriginal Lands Trust, a submission should be prepared to the Trust advising that transfer of the lands to the Trust would not now conform with approved guidelines, and that the offer to the Trust should be revoked.

(ii) An investigation of the anthropology of the area is needed. Pending such investigation the land should be left open to a claim under the proposed legislation.

13.10 With regard to the Defence Reserve

No action is appropriate at this stage.

13.11 With regard to Yalata

No action is appropriate.

13.12 Aboriginal and Historic Relics Preservation Act 1965

This Act should not apply to the Lands.

We are satisfied that the Pitjantjatjara, by having control of access to the Lands, and by virtue of the penalty provisions enforcing that control, have ample powers for the protection of their Lands from those who may seek to destroy any of their sites or objects.

There will need to be minor amendments to that Act.

13.13 Land Tax

The Lands should be exempt from Land Tax.

13.14 Government Improvements

Many buildings and structures (for example, schools, community and health facilities, workshops etc.) have been installed by the Government from time to time.

At present, these are the property of the Crown. The conferring of freehold title will give, in some instances, proprietary rights in such improvements to the Pitjantjatjara Peoples.

The question of provision of services by the communities or through centralised bodies run by the Pitjantjatjara themselves for all communities, such as in health and education, leaves open the matter of control and management of the facilities from which the services have operated in the past.

At present a Pitjantjatjara Health Service is being established and eventually all such services may be under Pitjantjatjara control. Some services, such as workshops, are already fully operated by Pitjantjatjaras.

Each facility will have to be examined carefully by the Government and by the Pitjantjatjara Peoples to determine which is to be operated by Pitjantjatjaras and which by the Government.

13.15 Officer to assist implementation of recommendations

The Minister should appoint or co-opt an officer of the Public Service for a period of 6 months to establish procedures and liaison for the transfer of the lands scheduled to the proposed land holding entity.

SCHEDULE OF LANDS

A brief description of each area making the total of 163,000 km² (62,700 square miles) under consideration is now given together with advice of recommendations on possible impediments affecting the transfer of particular lots to the Pitjantjatjara Peoples.

As stated on page 94, this schedule is given in two parts:

Part 1 - Nucleus Lands - that is, lands which form the basis of entitlement, under recommendation 6.1.2. on page 85 of the report, to membership of the Pitjantjatjara Peoples.

Part 2 - Non-Nucleus Lands - that is, lands which, although comprising lands to which the Pitjantjatjara have social, economic and spiritual affiliations and responsibilities, do not form the basis of membership of the Pitjantjatjara Peoples. We use the term "Non-Nucleus" simply to indicate their somewhat peripheral geographical nature in relation to the more central "Nucleus" lands.

PART 1 - NUCLEUS LANDS

1.1 Lands Capable of immediate and unimpeded transfer

<u>1.1.1 North West Reserve</u>			
Block No.	Area in Ha.	Area in Km ²	Area in sq. miles
1031	5,672,078	56,721	21,900
1032	1,096,861	10,969	4,325
1019	49,700	997	385
1018	25,900	259	100
953	25,900	259	100
950	77,700	777	300
964	25,900	259	100
915	25,900	259	100
948	103,600	1,036	400
1217	178,709	1,787	690
TOTAL	7,332,248	73,323	28,400
<p><u>Status:</u> Reserve for Aborigines</p> <p>The North West Reserve was gazetted in its present form on 27th June 1974 and is administered under the provisions of the <u>Community Welfare Act 1972-1976</u>. There appear to be no impediments affecting the recommendation 12.2 on page 112 of this report.</p>			

1.1.2 Mimili

Past-oral Block No.	Past-oral Lease No.	Area in Ha	Area in Km ²	Area in sq. miles.
(1060)	NA	133,643	1,336	516
(1033)	NA	25,899	259	100
(1058)	NA	133,384	1,334	515
(1074)	NA	317,273	3,173	1,225
TOTAL		610,199	6,102	2,356

Status: Unallotted Crown Land

Although Mimili, formerly Everard Park, was transferred to the Commonwealth of Australia from Everard Park Ltd., in August 1972, the leases were surrendered in the course of a subsequent transfer from the Commonwealth of Australia to the South Australian Aboriginal Lands Trust. The transfer was held in abeyance at the request of the Mimili people and the area described above is now unallotted Crown Land. Transfer of Mimili in accordance with the recommendations 12.3 page 113 of this report would not appear to be subject to substantial impediment although it would be necessary to negotiate this matter in consultation with the Australian Department of Aboriginal Affairs and the South Australian Aboriginal Lands Trust.

1.2 Lands in which transfer will be deferred
pending changes in existing status

<u>1.2.1 Ernabella</u>				
Past-oral Block No.	Past-oral Lease No.	Area in Ha.	Area in Km ²	Area in sq. miles.
900	2152	33,928	339	131
863	2441	25,899	259	100
907	2152	46,361	464	179
1165	2392	89,355	894	345
908	NA	22,015	220	85
TOTAL		217,558	2,176	840
<p><u>Status:</u> Leasehold</p> <p>As from 22nd June 1977, the leases have been held by the South Australian Synod Property Trust of the Uniting Church in Australia. The General Secretary of the Uniting Church in Australia Commission for World Mission which administers the Trust, advises in his letter of 22nd August 1977 that the Church would surrender the Ernabella leases to freehold title held by a Pitjantjatjara trust. In the circumstances, there appears to be no impediment to implementing the recommendation 12.4, page 113 of this report.</p>				

FREGON (Community Incorporated as Aparawatatja)

Fregon is an outstation of Ernabella though situated on block 915 in the North West Reserve. It exercises an interest over the North West Reserve blocks 1032, 1217, 948, 915, 964, 950, 953, and the Ernabella blocks 1165 and 907. As Fregon has no independent status, questions relating to transfer of land are tied to provisions covering Ernabella and the North West Reserve.

1.2.2 Indulkana

Section	Area in Ha.	Area in Km ²	Area in Sq. miles
Section 462 of Block 1077 North out of Hundreds	3,642	36	14

Status: Freehold, South Australian Lands Trust

Any transfer to the Pitjantjatjara Peoples would be subject to consultation with the South Australian Aboriginal Lands Trust.

1.2.3 Kenmore Park

Past-oral Block No.	Past-oral Lease No.	Area in Ha.	Area in Km ²	Area in sq. miles
1202		467,234	4,672	1,804
1034	2195	216,848	2,618	1,011
TOTAL		684,082	7,290	2,815

Status: Leasehold

The Kenmore Park Leases are held by the Aboriginal Land Fund Commission which although independent of D.A.A. still reports to the Minister of Aboriginal Affairs and is ultimately subject to his policies. The Working Party has been informed that there is no policy impediment to a transfer to the Pitjantjatjara peoples. However, any such transfer of Kenmore Park would be subject to close consultation with the Aboriginal Land Fund Commission and the Department of Aboriginal Affairs.

1.3 Lands which have been the subject of expressions of interest, of greater or lesser intensity but which are not at present the subject of recommendations :-

Nil.

PART 2 - NON-NUCLEUS LANDS

2.1 Lands capable of immediate and unimpeded transfer

Nil.

2.2 Lands in which transfer will be deferred pending changes in existing status

2.2.1 Unallotted Crown Land previously part of Maralinga Prohibited Area revoked on 14th September 1972

Section	Area in Ha.	Area in Km ²	Area in sq. miles
U.C.L.	434,100	45,341	17,506

Status: Unallotted Crown Land

There are no apparent impediments to transferring this area to the Pitjantjatjara Peoples.

However, as the South Australian Aboriginal Lands Trust has expressed its willingness to accept title (DCW 50/7/21 of 1st October, 1973) of the area, consultation with the Trust would be necessary if the recommendation of page 115 is to be implemented.

2.2.2 Unnamed Conservation Park			
Section	Area in Ha	Area in Km ²	Area in sq. miles
S.50 North out of Hundreds	2,132,600	21,326	8,234
<p><u>Status:</u> Unnamed Conservation Park</p> <p>The Conservation Park was gazetted on 7th May 1970 as a National Park under the provision of the <u>National Parks Act 1966</u> but constituted a Conservation Park in accordance with the provisions of the <u>National Parks and Wildlife Act 1972</u>. There would be substantial impediment, in the form of agreement of both houses of Parliament, to any transfer proposed as a consequence of recommendation 13.8 on p. 115.</p>			

2.3 Lands which have been the subject of expressions of interest, of greater or lesser intensity, but which are not at present the subject of recommendations.

2.3.1 Defence Reserve (Maralinga)

Section	Area in Ha.	Area in Km ²	Area in sq. miles
S. 400 out of Hundreds	310,799	3,108	1,200

Status: Freehold (Volume 2563, folio 43, Commonwealth Australia.

The Maralinga Prohibited Area was gazetted on 7th March 1957 as Reserve for Defence Purposes of the Commonwealth of Australia and this gazettal was followed by a land grant of 12th December giving Section 400 freehold status. As S.400 contains radioactive waste material it is not, for the time being, the subject of any recommendations.

2.3.2 Pastoral properties to the east
of the North West Reserve

As noted on p. 50 the Indulkana Community has expressed a strong interest in pastoral land east of the North West Reserve. As no recommendation is made, this land is not now scheduled.

The acquisition of any such additional land would be the subject of action under the claims provisions of the Pitjantjatjara Land Rights Act.

CONCLUSION

Our recommendations pivot on the notion of vesting the North West lands in a single land holding entity - the Pitjantjatjara Peoples - to be created by new legislation.

To this end, we have tried as far as possible to avoid the imposition of exotic mechanisms and measures on the Pitjantjatjara, but have created a framework which will enable them to deal with land related issues in their own way. We made an extensive effort to consult all communities involved and fundamentally we look upon our recommendations as reflecting a consensus on the range of issues raised and discussed.

At the same time, we have endeavoured to balance out the need on one hand for full recognition of land title and the sole right to land use by the original owners, against, on the other, new responsibilities and realities required and experienced in a modern state.

ACKNOWLEDGMENTS

Although individual submissions have been acknowledged in the text, it was the unnamed contributors to discussions who mainly enabled us to evolve our recommendations.

As well as the numerous members of the public and officers of Government Departments who made their time available, we wish especially to thank the many community members and their advisers who involved themselves in discussions in the North West, Yalata and Alice Springs, often at considerable inconvenience to themselves, and often it seemed to help us clarify small points previously laboured.

Finally we thank Alex Black, Drafting Assistant, Department of Lands for drawing the maps; and Rosemary Farrow, Department for Community Welfare, for her unremitting cheerfulness in doing the typing.