

Aboriginal Land Rights(Northern Territory) Act 1976

Land Claim by Alyawarra and Kaititja

Report by the Aboriginal Land Commissioner ,

to the Minister for Aboriginal Affairs

Commonwealth of Australia 1979
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Office of the
ABORIGINAL LAND COMMISSIONER
Supreme Court
Darwin.
Telephone 81 9326.

30 November 1978

The Hon. Mr. R.I. Viner M.P.
Minister for Aboriginal Affairs
Parliament House
Canberra, A.C.T.

Dear Minister,

LAND CLAIM BY ALYAWARRA AND KAITITJA

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

The portfolio of Minister for the Northern Territory no longer exists. In accordance with our recent discussion I have sent a copy of this report to the Minister for Home Affairs as the minister responsible for the Northern Territory.

Yours truly,

John Toohey
Aboriginal Land Commissioner



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CONTENTS

| | Page |
|--|------|
| History of the Application | 1 |
| Interests Involved . | 1 |
| Nature of the Proceedings | 2 |
| The Alyawarra and Kaititja | 2 |
| Warrabri | 4 |
| Traditional Pattern of Land Ownership | 5 |
| Clans and Sections | 5 |
| Clan Areas | 6 |
| Level I and Level II Countries | 7 |
| Local Descent Group, Common Spiritual Affiliations and Primary Spiritual Responsibility | 7 |
| The Clans of the Claimants | 8 |
| The Claimants | 8 |
| Evidence of Traditional Ownership | 9 |
| Ingwalilanima | 10 |
| Indaringinya | 10 |
| Uturupa | 12 |
| Surrounding Clans | 12 |
| Right to Forage | 15 |
| Entitlement to Use or Occupation | 15 |
| Formal Findings | 16 |
| Factors Bearing upon Recommendations | 21 |
| Strength of Traditional Attachment to Land | 22 |
| Desire to Live on Traditional Country | 24 |
| Excisions and Subleases | 27 |
| Recommendations | 28 |
| Form of Recommendation | 28 |
| Matters for Comment-Number of Aboriginals Advantaged | 30 |
| Matters for Comment-Nature and Extent of Advantage | 30 |
| Matters for Comment-Detriment | 30 |
| Matters for Comment-Patterns of Land Usage | 32 |
| Summary of Findings, Recommendations and Comments | 32 |

| | Page |
|---|------|
| Legal Representatives | 33 |
| List of Witnesses | 34 |
| List of Exhibits | 35 |
| | |
| MAPS | |
| Map accompanying the application | 37 |
| Exhibit 11 | 38 |
| Exhibit 12 | 39 |
| Exhibit 10 | 40 |
| PHOTOGRAPHS | |
| | |
| Old swamp site, Arkutarkut, for proposed outstation | 13 |
| Indangala waterhole | 13 |
| Women traditional owners | 14 |
| Principal landowner indicating site to the Aboriginal Land Commissioner | 14 |
| Indangala: a man drawing water for women | 25 |
| Indaringinya country | 25 |
| A section of the group of women who gave evidence | 26 |
| Group of men giving evidence | 26 |

LAND CLAIM BY ALYAWARRA AND KAITITJA

History of the application

1. On 19 August 1977 the Central Land Council lodged an application under the Aboriginal Land Rights (Northern Territory) Act 1976 on behalf of a number of Aboriginals claiming to have a traditional land claim to an area of unalienated Crown land east of the Stuart Highway and roughly half-way between Alice Springs and Tennant Creek.
2. The land consists of 1540 square kilometres, a pocket completely surrounded by pastoral leases. To its north lies Murray Downs, to its west Neutral Junction, to its south Mount Skinner and Utopia and to its east Ammaroo.
3. On 5 July 1978, following completion of the hearing of the Warlpiri land claim, I issued directions for service of notice of the application on various individuals, organisations and government departments and at the same time indicated the steps that I would take to advertise the application. Affidavits filed on behalf of the claimants (Exhibits 1 and 2) and a statement by my associate (Exhibit 49) show that those directions were complied with.
4. A preliminary hearing took place at Alice Springs on 14 August when I fixed Monday, 25 September, as the date on which the taking of evidence would begin. I did this anticipating that the report on the Warlpiri land claim would then have been presented to Parliament and in response to a request by the Central Land Council that time be given to read the report and consider its implications before proceeding with the hearing. The report was not tabled until 26 September and the matter was further adjourned until 2 October.
5. Evidence was taken and addresses made at the following places and on the following dates:

| | |
|---------------|--------------------|
| Alice Springs | 2-6 October 1978 |
| Warrabri | 9-11 October 1978 |
| Claim Area | 11-12 October 1978 |
| Alice Springs | 20-21 October 1978 |

Interests involved

6. The range of interests likely to be affected by this application was markedly less than in the Borroloola land claim and the claim by the Warlpiri and

Kartangaruru-Kurintji. Counsel appeared on behalf of the Commonwealth of Australia with what was virtually a watching brief for the Department of Aboriginal Affairs, available to provide information when needed. The Northern Territory Government also appeared by counsel and supplied useful information in written form and through the testimony of witnesses. Its active interest was confined pretty well to the question of road access to the claim area should there be a grant of land under the Act. The Northern Territory Cattle Producers Council represented the pastoralists whose land adjoined the claim area. I shall make particular reference to their interests later in this report. Mr G. Hiley was counsel assisting.

Nature of the proceedings

7. In the two previous reports I discussed at length the nature of the proceedings under the Act and of the Commissioner's functions. See the Borroloola Report paras 15-24 and the Warlpiri Report paras 9-12. During the present hearing no submission was made that I should depart from the principles expressed there. I am still of the view that those matters which the Act requires the Commissioner 'to have regard to' go to the making of a recommendation, while matters the subject of 'comment' are for the Minister to take into account in deciding whether or not to accede to a recommendation made by the Commissioner. Counsel assisting did point to some problems this approach may give rise to; I return to this matter in para. 135.

The Alyawarra and Kaititja

8. The claim lodged was described as 'The Alyawarra Claim'. The claim book (Exhibit 5) referred to it as 'A Claim to Areas of Traditional Land by the Alyawarra and Kaititja', a more accurate title as, of the three clans concerned, two are Alyawarra and one Kaititja. The evidence tended to focus on the former rather than on the latter.

9. The traditional country of the Alyawarra lies east of the Stuart Highway. It runs from the southern part of the Davenport Ranges in the north to Dulcie Range in the south and from Spring Range in the west to the Ooratippra and Lucy Creeks in the east. The biggest concentrations of Alyawarra are now at Lake Nash, Macdonald Downs and Warrabri. Around the claim area groups live on Murray Downs, Utopia and Ammaroo.

10. To the north is the country of the Wakaya and Wambaya, to the west that of the Warramunga, Kaititja and Anmatjirra. to the south that of the Pitjima and eastern Aranda, and to the east that of the Pulanja.

11. The term Alyawarra' refers to a linguistic rather than a land-holding group and today there are people speaking Alyawarra but living outside that traditional country. In part this may be explained by migration but it is due also to a spread of the language into less populated areas.

12. In the second report of the Aboriginal Land Rights Commission (April 1974), Woodward J identified, among the major language groups, 796 persons speaking Alyawarra and 380 speaking Kaititja (para. 243). The number of claimants is much less.

13. In the course of his report Woodward J commented:

244. It seems from the above list that one claim for tribal land which should have a high priority would be that of the Alyawarra people. Their traditional land included all or parts of what are now the pastoral leases of Macdonald Downs, Derry Downs, Bunday River, Delmore Downs, Utopia, Ammaroo, Elkedra and Murray Downs. At the time of the survey in 1973 the Alyawarra people were living on cattle stations in the following larger groups:

| | |
|-----------------------------|-----|
| Macdonald Downs/Derry Downs | 191 |
| Lake Nash | 178 |
| Kurundi | 37 |
| Murray Downs | 33 |
| Elkedra | 32 |
| Epenarra | 30 |
| Utopia | 27 |
| Ammaroo | 27 |

245. The claims that have been made on their behalf by counsel for the Central Land Council include the purchase of Ammaroo or Murray Downs. They also ask for a community area on Utopia.

14. In 1976 Utopia pastoral lease No. 637 was acquired by the Aboriginal Land Fund Commission. For reasons that are not material to this report but appear in the evidence of Mr V. Wasilewsky (transcript pp. 323-4) and in Exhibit 26 paras 4.5-4.7, there remains a very small portion of unalienated Crown land adjoining the south-western corner of Utopia.

15. Excisions of small areas for Aboriginal communal living are taking place on Murray Downs pastoral lease No. 790, Ammaroo pastoral lease No. 791 and Neutral Junction pastoral lease No. 775. Later in this report I discuss the implication of these excisions for claims under the Act.

16. Most Kaititja now live at Neutral Junction, Stirling and Warrabri. For many, Alyawarra is now their first language.

17. The contact of the Alyawarra and Kaititja with white institutions has been less than that of most Aboriginal tribes. Some encountered Stuart in the 1860s and Ross in the 1870s. The first permanent white settlement in the area was the establishment of Barrow Creek telegraph station in 1872. Europeans were killed and others wounded in an attack by Kaititja, resulting in a punitive expedition and the killing of a number of Aboriginals.

18. In the 1870s the land around Barrow Creek and Central Mount Stuart was taken up for pastoral purposes. As more land was occupied further conflict took place and attempts at settlement stopped until the early part of this century. The discovery of wolfram at Hatches Creek to the north-east of the claim area attracted people and provided work for Alyawarra, Warramunga, Kaititja and groups more distant such as the Warlpiri, Anmatjirra and Aranda. This was one of the factors contributing to the spread of the Alyawarra language already mentioned.

19. In the 1920s more land was taken up until the claim area was surrounded by pastoral leases stretching for 100 miles or more in every direction. Certain stations became focal points for the Aboriginals of the area, hence the population distribution mentioned in paras 9 and 16 of this report.

Warrabri

20. Many Alyawarra and Kaititja live at Warrabri, an area of 440 square kilometres north of the claim area and just east of the Stuart Highway. By proclamation in the Commonwealth of Australia Gazette No. 19 of 1960 that land was declared a reserve 'for the use and benefit of wards as defined under section six of the Welfare Ordinance 1953-1959 . .' It is in Kaititja country. As a reserve it was originally occupied by Kaititja, eastern Warlpiri and Warramunga. Over the years the Alyawarra have added to the numbers and other tribal groups are there as well.

21. Mr J. J. Stead, a student at the Australian National University in anthropology and prehistory and community adviser at Warrabri from December 1975 to the end of 1976, gave evidence. In a written statement (Exhibit 17) he put the Aboriginal population at Warrabri when he was there as between 500 and 600, made up as follows:

| | |
|----------------------|-----|
| Warlpiri | 35% |
| Warramunga/Walmanbah | 20% |
| Kaititja | 15% |
| Alyawarra | 30% |

22. He described how groups camped in particular areas, Alyawarra and Kaititja to the east and Warlpiri and Warramunga to the west. This reflected both the Aboriginal practice of camping towards traditional country and social distances between the groups. The Warlpiri dominated the workforce and community organisations at Warrabri. The Alyawarra tended to stand off and were dissatisfied with their employment situation. 'I think they have retained a distinct Alyawarra Kaititja way of doing things, and that is the easiest way of explaining it' (Mr Stead, transcript p. 233).

23. In Mr Stead's opinion, based upon inquiries made by him, the Alyawarra were low in the economic scale at Warrabri. The settlement had little to offer them, economically or socially. These considerations caused them to look elsewhere for land on which to live.

24. Mr Stead's evidence was generally supported by that of Ms D. R. Bell, an anthropologist called by counsel assisting. Ms Bell was at Warrabri in 1977 when her estimate of the Aboriginal population was 675-700, divided pretty much in the percentages suggested by Mr Stead (Exhibit 45 p. 11). In her time the position of the Alyawarra had improved somewhat.

This did not in any way mean that the Alyawarra were incorporated into the mainstream of Warrabri in terms of the cash economy or white values as have been the Warlpiri (Exhibit 45 p. 12).

Ms Bell has explored the differences between the tribal groups at Warrabri in a paper called: 'Tell me where you camp and I'll tell you your business' (Exhibit 46).

Traditional pattern of land ownership

25. The evidence, particularly that of Mr R. Hagen, an anthropologist employed by the Central Land Council, established that within the claim area the land-owning unit is the patrilineal clan or patrician. This was defined by Mr Hagen as 'a local descent group composed of people who trace descent in the male line from a common ancestor' (Exhibit 5 p. 2).

26. He pointed out that the actual physical relationship between all the members of a clan may not be known because in time some connections have become obscured and that in other cases, where succession or adoption has operated, those connections 'may not possess any reality in terms of contemporary western genetics' (Exhibit 5 p. 2).

27. Mr Hagen mentioned that Alyawarra clans tend to identify themselves by the addition of the suffix 'rinya' to the name of a principal site in their country. So men from Ingwalilanima call themselves Ingwalilanimarinya. This had been noted by C. L. Yallop during the years 1966-67 that he spent at Lake Nash. See Yallop: *The Aljawara and their Territory* (Exhibit 15 p. 193). Aboriginal witnesses at Warrabri identified themselves in that way as appears from the evidence of Left Hand Sam Kngwarriya (transcript p. 449), Old Sandy Kngwarriya and Tommy Thompson Kngwarriya (transcript pp. 484, 496, 501), Michael No. 1, Greenie Pitjarra and Kubitji Kngwarriya (transcript p. 509).

28. Evidence was given by Mr Hagen and Ms Bell about conception affiliation, the notion that a person conceived in a country not his own gains some rights in that country. Conception affiliation does bring with it some rights to tjurunga (sacred objects) and to sacred sites and rituals closely linked to the spiritual ancestors. But it does not confer membership of the local descent group in the country of conception. A person so conceived does not lose membership of his own clan. Ms Bell explained it by saying: 'As conception affiliation confers only individual rights this does not alter the structure of the patrician' (Exhibit 45 p. 6).

29. As a result those whose only association with the claim area was through conception affiliation were not included among the claimants (Mr Hagen, transcript p. 83). Having regard to the requirement of 'local descent group' in the definition of 'traditional Aboriginal owners' in the Act, that approach was in my view correct. Evidence regarding conception affiliation may be found in the transcript pp. 70, 83-5, 584, Exhibit 5 p. 6 and Exhibit 45 p. 6.

Clans and sections

30. The Alyawarra have a four section system as distinct from the eight subsections found with the Warlpiri. See Warlpiri Report, paras 57-60.

31. Membership of sections depends upon indirect or alternating patrilineal descent, patrilineal in that it is traced in the male line, indirect or alternating in that a man does not belong to his father's section but belongs to the other section within the same patrimoiety. It follows that all members of a patrician belong to one of two pairs of sections. Nevertheless the basis of clan membership is common patrilineal descent, not membership of a common pair of sections.

32. The Kaititja use an eight subsection system, but otherwise the pattern of their land ownership is much the same as that of the Alyawarra.
33. In Exhibit 5 at p. 3 Mr Hagen set out the relationship between the section terms of the Alyawarra and the subsections of the Warlpiri, Aranda and Kaititja:
Correspondence between Alyawarra section terms and Warlpiri, Aranda and Kaititja subsections

| | | |
|------------|------------|------------------|
| Warlpiri | Alyawarra. | Aranda/ Kaititja |
| Japaljarri | Pitjarra | Pultara |
| Japangardi | | Pungerta |
| Jungarrayi | Kngwarriya | Kngwarriya |
| Japanangka | | Panangka |
| Jakamarra | Kamarra | Kamarra |
| Jampijinpa | | Mpitjana |
| Jupurrula | Purla | Purrula |
| Jangala | | Ngala |

34. Quoting again from Mr Hagen:
One patrimoiety is comprised of people belonging to the Pitjarra and Kngwarriya sections; the other of people belonging to Kamarra and Purla sections. Because of the principle of indirect patrilineal descent, if a man is Pitjarra his children and his father will be Kngwarriya. If a man is Kamarra his children and his father are Purla. Approximately half of the Alyawarra clans are members of each of the pairs of subsections (Exhibit 5 p.4).
35. In the presentation of the claim Alyawarra section names have been used, even for the Kaititja claimants. This was done 'for the reasons of simplicity' (Mr Hagen, transcript p. 72). Strictly it is not accurate but so long as the correspondence shown in para. 33 is kept in mind no harm is done.

Clan areas

36. The Warlpiri Report described how the desert environment in which those people traditionally lived had produced a pattern of land ownership in which there was a 'heartland' carrying permanent water from which dreaming tracks ran, sometimes for short distances, sometimes for long. I contrasted this with the fairly well-defined areas or estates of Arnhem Land (Warlpiri Report paras 24-26).
37. The clan areas of the Alyawarra and Kaititja are different again.
Alyawarra territory is divided into a series of discrete, named units, called ngurdalungwa or atcherunga, or in English, 'countries' or 'blocks' (O'Connell: Report of Investigations of Alyawarra Land Claims, Exhibit 14 p. 4).
Formal boundaries are lacking. The limits of a clan's country usually are marked by sites, handover points on tracks or physical features. An instance of this occurred during a journey through the claim area when at a place shown as Atupagata on Exhibit 11 the men stopped and by scratching a large cross on the ground pointed out where Indaringinya stopped and Ingwalilanima began.

38. Dreaming tracks were described by witnesses as important. But they did not seem to be the determinants of clan areas as they were with the Warlpiri. It was the outer limits of country that marked off one clan's territory from another's. Dr O'Connell commented: 'Countries are best defined as clusters of points in space, rather than as enclosed, bounded spaces' (Exhibit 14 p. 5).

Level I and Level II countries

39. In the report just mentioned, Dr O'Connell wrote of the notion of a patrician divided into two or more parts, with the complete patrician estate described as Level II country and its component parts as Level I countries.

Level II countries are also named after the most important local site, even though the same name is almost always applied to a Level I country as well. In discussions of country, Alyawarra speakers do not normally make explicit distinctions between Level I and II entities, so that a knowledge of local totemic geography as well as an understanding of the context in which the reference is made, is often necessary to avoid confusion (Exhibit 14 p. 5).

40. This distinction, referred to in the claim book (Exhibit 5 p. 7), caused me some concern because of the definition in the Act of 'traditional Aboriginal owners' as meaning a local descent group with common spiritual affiliations to a site on land, placing the group under a primary spiritual responsibility for that site and for that land. It led me to ask Ms Bell how the notion of primary responsibility would be applied in the Level I-Level II distinction. She answered: I think I would probably make it at, not the highest level but at the next level, the level of the actual name patrilineages, but always recognising that any ceremony that is going to be put on is possibly going to be put on with the co-operation of the lineages within the patrician (transcript p. 581).

41. In a statement submitted after the evidence had concluded and before final addresses, Ms Bell commented:

After reflection upon the Aboriginal evidence, the trip through the claim area and a further reading of the Act I am convinced that the primary spiritual responsibility resides with the patrician, i.e. the level two country (Exhibit 51 p. 1).

42. This was the view I had formed, but in any event I doubt that the distinction is of much relevance to this claim. In terms of the Act my task is to identify, in relation to the land claimed, local descent groups who together possess primary spiritual responsibility for the land and its sites. By together I do not mean in common, but in totality. The claim was presented as a joint one by the claimants, each clan claiming traditional ownership of a particular area.

Local descent group, common spiritual affiliations and primary spiritual responsibility

43. These three expressions are integral to the existence of 'traditional Aboriginal owners' and so to a 'traditional land claim'. At the hearing there was general acceptance of the descriptions given to all expressions by Professor W. E. H. Stanner during the Warlpiri claim and accepted in my report (paras 66-67).

44. Professor Stanner spoke of the local descent group as:
a small association of persons of both sexes and any ages each of whom is kin to every other person in the group through the paternal and grand-paternal line from a common ancestor or founder. It is characteristically localised or territorially based in that it is publicly identified with (1) a natural species or phenomenon (its 'totem') and (2) a tract or tracts of land. or with one or more places, distinguishable from any and every other such tract(s) and place(s).
45. He spoke too of common spiritual affiliation as referring:
to the belief that every member of a patriline is in some sense animated by the 'patri-spirit' of his clan, to which he is affiliated.
46. Again, dealing with primary spiritual responsibility, Professor Stanner said:
The meaning of the Act would come closer to Aboriginal life and thought if the words could be read to mean 'responsible for duties towards whatever is believed to be spiritual at that site and in the land of which it is a feature'.
47. These expressions were considered in detail in the Warlpiri Report but as there was no dissent in the present hearing from the views expressed there, it is unnecessary to say more, except to comment that in this claim the locality aspect of the local descent groups was particularly evident, springing from the nature of the clan areas and the capacity of witnesses to identify them readily.
The clans of the claimants
48. The claim presented was that within the unalienated Crown land lay the country of three patrilineal groups, Ingwalilanima, Indaringinya and Uturupa. The first two are Alyawarra and the third is Kaititja.
49. The areas can be seen easily enough on Exhibit I 1. Uturupa is to the west, Indaringinya to the north and Ingwalilanima to the south-east.
50. Dr O'Connell's report, based on an investigation carried out in 1976, identified the Crown land as including:
sites and areas traditionally owned by at least three Alyawarra clans: Ndaringinya, Ngwalilanima, and Alogwara (Exhibit 14 p. 18).
The differences in spelling will be noted; I shall use that appearing in the claim book. There is of course a discrepancy between O'Connell's conclusions and the claim, the latter referring to Uturupa (Kaititja) and not to Alogwara (Alyawarra).
The evidence enabled me to make a finding- in regard to this discrepancy as will appear later.
51. I shall deal with each of these clan areas in turn but shall first say something about the claimants.

The claimants

52. Following a pattern that has become familiar already, the original claim book contained a list of claimants which by the end of the hearing had changed considerably, through additions and corrections. I do not think one can be too critical of this for the job of enumerating those said to be the traditional owners and establishing their relationship to each other is not an easy one.

53. Indeed there is a view, and it is one expressed by the Ranger Inquiry, 'that it is not strictly necessary under the Act to identify particular traditional owners' (Ranger Uranium Environmental Inquiry Second Report, p. 262). However, for reasons that appear in the Borrooloola Report (paras 25-27), I am of the opinion that s. 50 of the Act requires the Commissioner to identify, at least within the limits of practicable investigation, who the traditional owners are.

54. Even if this view be wrong, a recommendation for a grant of land that does not identify traditional owners but merely acknowledges their existence is not likely to win general acceptance.

55. The claimants now number 2.36, made up as follows:

| | |
|--------------------|------------------|
| Ingwalilanimarinya | 421 (Exhibit 55) |
| Indaringinyarinya | 130 (Exhibit 54) |
| Uturuparinya | 64 (Exhibit 56) |

56. The Ingwalilanima claimants live at Macdonald Downs and Utopia, the Indaringinya claimants at Murray Downs, Warrabri, Ammaroo, Utopia, Alice Springs, Neutral Junction and Barrow Creek, and the Uturupa claimants at Stirling, Epenarra, Warrabri, Barrow Creek, Neutral Junction and Ngurantitji.

Evidence of traditional ownership

57. The evidence of traditional ownership came essentially from Aboriginal witnesses who gave evidence at Warrabri. They did so in a form developed during the Warlpiri hearing, some speaking on their own but most in small groups. Women gave evidence in quite a large group. The time spent in the claim area I regard as an important part of the evidence, notwithstanding its informality. It involved travelling to a number of the sites that had been mentioned by witnesses. At those sites sacred objects were revealed and they and the country were talked about and sung about. In addition there was the evidence of Mr Hagen and Ms Bell and of other witnesses to whom I shall refer in the course of this report.

58. Anthropologists played an important part in this hearing, as they did in those already completed. In the course of the Warlpiri hearing it was said by those called on behalf of the claimants:

We would emphasise however that we are not the authorities on the matters of land ownership, only the recorders on behalf of the traditional owners (Warlpiri hearing Exhibit 165 p. 4).

That may underplay the role of anthropologists, for their opinions have been valuable in regard to the language of the Act itself. As the principles to be applied under the Act become settled the position of the anthropologist as recorder only will, perhaps, become more accentuated.

59. As the claim was presented by the three clans claiming between them traditional ownership of the whole of the unalienated Crown land I shall approach the evidence in that way.

Ingwalilanima

60. Exhibit II gives an accurate picture of the location of this clan area and of sites within it. As mentioned earlier (para. 37), Atupagata divides, at one point, Ingwalilanima from Indaringinya. In terms of O'Connell's classification, there are two first level countries, Ingwalilanima and Ingowyinyirra, with the former giving its name to the second level country.

61. Evidence from Left Hand Sam Kngwarriya and Long George Pitjarra, supported by Freddy Kamphoo Purla and Johnny Skinner (both kurtungurla) and by Left Hand Jack Purla, an Indaringinya man related by marriage, made it clear that primary spiritual responsibility in terms of the Act lay with two sections, the Kngwarriya and Pitjarra, and in respect of both first level countries. It was most aptly put by Billy Morton Pitjarra of Macdonald Downs, who said: 'Two mobs, one country' (Exhibit 57).

62. The main sites identified within the claim area were Ingwalilanima, Ildurung, Ingowyinyirra, Arangka, Apperkala and Atupagata. between Indaringinya and Ingwalilanima, in the middle . . . both sides are in charge of the place, yes, control it.' Transcript p. 462). The visit to the claim area included Ingwalilanima and there was no mistaking the importance of that place to the people present. It was clear too that Left Hand Sam Kngwarriya was looked to as a principal owner.

63. I am satisfied from the evidence that this country extends east and south of Ingwalilanima, at least to the boundary of the unalienated Crown land.

64. The primary dreaming spoken of was yiramba (honey ant), but loatjia (goanna), apunga (kurrajong), kulara (rock wallaby) and angara (emu), were mentioned as well.

65. Identity and relationship were in the main established in accordance with Exhibit 55 (list of traditional owners) and Exhibit 57 (genealogies). There was some disagreement about the children of William Lion Pitjarra and Billy Morton Pitjarra. The differences appear in the Genealogies and in the notes accompanying them. The matter was discussed during the final addresses (transcript pp. 671-6). I think all who were mentioned by witnesses should be included in a finding of traditional owners. If a Land Trust is created, the Land Council can resolve any differences in accordance with its obligations under s.24 of the Act.

66. Of those in Exhibit 55 there was only one about whom there was just no evidence at all, direct or hearsay. That was Jerry Williams, on p. 3. I must exclude him as it is not even known whether such a person exists.

Indaringinya

67. There are three first level countries, Indaringinya, Indangala and Alinya. Indaringinya is the name given to the second level clan territory.

68. This country extends north of the vacant Crown land and well into Murray Downs. Indangala and Alinya are both within that pastoral lease, as appeared during the journey through the claim area.

69. Again the evidence sufficiently established that the primary spiritual responsibility lay with the whole patrician, not with any one part of it. That emerged clearly enough from the evidence of Left Hand Jack Purla, Dargy Purla, Albert (Albie/Alfie) Bailey Kamarra, Casey Kamarra, Frankie Kamarra, Jacky Holmes Kamarra, Riley Kamarra and Rattler Kamarra, who gave evidence together at Warrabri.

70. And there is further support for this conclusion in the observations of Ms Bell:

The level two which O'Connell termed the highest level of integration was discussed by the Aboriginal witnesses who used encompassing hand signs and sand drawings to illustrate their common spiritual affiliation to the countries at the level two. This was most clear in the evidence of Rattler and Riley Kamarra, Left Hand Jack and Dargy Purla for Indaringinya. They spoke of the themselves as Indaringinyarinya and as we visited the sites were clearly co-operating in the maintenance activities I observed and the instruction offered to the women and younger men as to the significance of the site. A striking example was the division of labour at the water hole at Indangala where Left Hand Jack proud]), explained to the members of the Alinya, Indangala and Indaringinya patriline the importance of the site. Left Hand is a senior member of the Indaringinya level one. but is senior enough for the whole patrician to instruct senior members of Indangala such as Rattler and Riley. It also appeared to me that Alfie Kamarra was being groomed for a position of responsibility, for all three level one countries. The way in which the women sang the country also supported the level two as the level at which the primary spiritual responsibility resides. All their songs were said to be Indaringinya but they ranged over that country at the level two (Exhibit 51 p. 2).

71. The principal sites spoken of were Indaringinya itself, Elkitapunja, Akungata, Indowera, Arkutarkut and Alkarrakwa. Indangala and Alinya, as already mentioned, are outside the claim area. These sites were described by witnesses at Warrabri as well as by Mr Hagen and their existence and importance was put beyond doubt by the visit to the claim area. Indaringinya itself is a soakage but is part of a complex of sites close together, some witnesses not differentiating, between, say, Indaringinya and Elkitapunja and others making that distinction. Arkutarkut, to the north, is a soakage on the edge of a large clay pan. It was dry when we were there, but had water a couple of months earlier and was seen as the most likely place for an outstation.

72. Atupagata has already been referred to as a handover point between Indaringinya and Ingwalilanima. Alkarrakwa was named as such a point between Indaringinya and Uturupa.

73. Identity and relationship were largely established in accordance with Exhibit 54 (list of traditional owners) and Exhibit 57 Genealogies). There were some names in Exhibit 54 for which no evidence at all was forthcoming and I must exclude them. They are Akingata. Mputalpa and Alurra, all said to be Purla.

Uturupa

74. This country lies in the west of the claim area, extending as far as Tara (Atara) on Neutral Junction. There appears to be no division into lower level countries.

75. As mentioned in para. 50, in 1976 O'Connell identified this area as belonging to the Alogwara clan although he had not in fact visited it. I am quite satisfied from the evidence given at Warrabri and by Mr Hagen that Alogwara in fact lies south-west of the Crown land and that the western portion of the claim area is Uturupa. I am also satisfied from the same evidence that the division between those two clans lies around Spring Range on Mount Skinner pastoral lease.

76. The evidence of Old Sandy Kngwarriya, Tommy Thompson Kngwarriya and Tracker Mick Pitjarra established that Uturupa belongs to two sections, Kngwarriya and Pitjarra, and that the 'Uturuparinya mob boss for the whole area there' (transcript p. 484). They own the stories and the ceremonies for that country and have the primary spiritual responsibility for sites and land of which the Act speaks.

77. Uturupa is mainly sandhill country; indeed the name means big sandhill (transcript p. 483). The journey through the claim area went east from Indangala so that no Uturupa sites were visited. However, there was evidence of their existence, Uturupa itself being mentioned along with Aknurangunta, Atwian-balanu, Ungaura, Illurawarra, Alkarrakwa, Wakunja and Alatunka. Most are on Neutral Junction but Uturupa, Illurawarra and Alkarrakwa were shown to be within the claim area. Old Sandy Kngwarriya did say twice that Illurawarra and Alkarrakwa were 'same place' (transcript pp. 487, 507). The word 'place' lacks precision and more than once during these hearings has been a source of confusion. The evidence led in regard to the clan areas satisfied me that each name represented a site in terms of the Act.

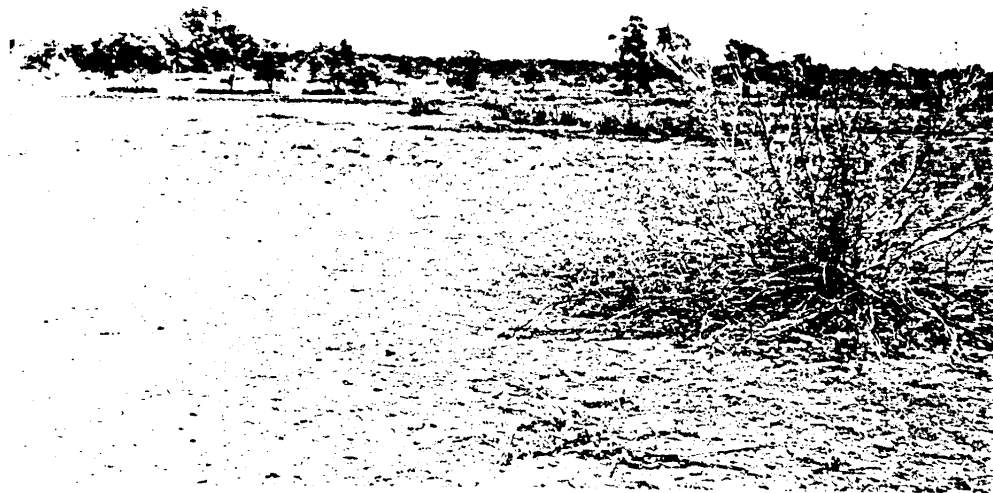
78. Identity and relationship were established in accordance with Exhibit 56 (list of traditional owners) and Exhibit 57 (genealogies). There was some evidence of all those mentioned even though in some cases it was not direct.

Surrounding clans

79. A glance at Exhibit 11 will show the existence of other clan territories surrounding the claim area. To the north-east lies Akaninga, to the east Atnyirindata, Ahranga (Arranga) and Atnungerapa, to the south Allagara-Annangara and Alparra and to the west Alogwara. The first four mentioned are Alyawarra clans, the others Anmatjirra.

80. Because of their closeness to the claim area I need to be sure that none of their country intrudes on to it. I am sure, largely as a result of evidence given by members of these clans at Warrabri.

81. Three men, Michael No. 1, Greenie Pitjarra and Kubitji Kngwarriya, accompanied by Long Paddy Pitjarra, identified themselves as from the 'Annangara mob' (transcript p. 509). They described their country as on Mount Skinner, and



Old swamp site, Arkutarkut, for proposed outstation
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Indangala waterhole
(Copyright D. Bell, ANU 1978)

Old swamp site, Arkutarkut, for proposed outstation
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Indangala waterhole
(Copyright D. Bell, ANU 1978)



Women traditional owners
(Copyright D. Bell, ANU 1978)



Principal landowner indicating site to the Aboriginal Land Commissioner
(Copyright D. Bell, ANU 1978)

Women traditional owners
(Copyright D. Bell, ANU 1978)

Principal landowner indicating site to the Aboriginal Land Commissioner
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Uturupa as beginning near Spring Range and extending north. They also placed Alogwara west of Spring Range. Using the ordinance map (Exhibit 10), Michael No. 1 pointed out the country of these clans with knowledge and precision.

82. Motorcar Jimmy and Johnny Skinner described themselves as from Alparra, which they put 'inside Utopia boundary' (transcript p. 522).

83. Albert Morton Pitjarra and Peter Peterson Pitjarra, whose country is Ahranga (Arranga), said it is 'right in the Ammaroo country' (transcript p. 523).

84. A group of men gave evidence, Quart Pot Kamarra and Bazzo Kamarra from Atnungerapa, and Barney Barnes Kamarra and Barney Lewis Kamarra, both from Atnyirindata. The men put the country of those two clans on Ammaroo.

85. Adam Price spoke of his country as Alogwara, which he said was on Stirling.

86. In summary then, I am satisfied that the three claimant clans are the only ones with country in the claim area and that the whole of that area belongs to them.

Right to forage

87. A component of the definition of traditional Aboriginal ownership in the Act is that the local descent group is 'entitled by Aboriginal tradition to forage as of right over that land'. It is a right to forage over the land of the descent group. That may not be the same as the land claimed; it is not in the present case for the land claimed belongs to several descent groups. Section 11 speaks of a recommendation that an area of land be granted 'for the benefit of Aboriginals entitled by Aboriginal tradition to the use or occupation of that area of land, whether or not the traditional entitlement is qualified as to place, time, circumstance, purpose or permission'. The two requirements serve different purposes, as I sought to explain in the Warlpiri Report, para. 240.

88. There is no doubt that the members of each of the three local descent groups may forage as of right over the land for which the group is responsible. Mr Hagen said that there may be qualifications in the immediate vicinity of particular sacred sites but I do not think that detracts from the general proposition.

Entitlement to use or occupation

89. As already mentioned, entitlement to forage goes to a finding of traditional ownership. A right to the use or occupation of land other than that of the local descent group is relevant to the form of any recommendation made. However the distinction was often blurred during the evidence and it may be as well to look at the broader picture now.

90. Mr Hagen's view was that 'people do not confine foraging to their own clan territory .' (transcript p. 86). He pointed out that because clans are exogamous, either husband or wife is living outside clan territory and necessarily gathering food beyond it. In his opinion, members of one of the three claimant clans may seek food on the land of the other two.

91. This opinion was supported by the evidence of Dr R. M. Moyle, an ethnomusicologist, who had been living on Ammaroo for a year or so. During that time he visited the claim area on, I think, four occasions. His conclusion was that 'the Alyawarra practice is for individual estates not to be regarded as exclusive hunting and foraging areas. In other words, the group from one estate may venture within another estate on at least a temporary basis for reasons of sustenance' (transcript pp. 267-8).

92. When the women were giving evidence at Warrabri they made it clear that people belonging to any of the three clans may hunt and collect food anywhere on the claim area.

Formal findings

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

- A. The land described in the application is unalienated Crown land.
- B. There are Aboriginals who together are the traditional owners of the whole of the land claimed, being the persons whose names appear below together with a reference to the clan area of which they are the traditional owners.
- C. The traditional owners named in this paragraph are entitled by Aboriginal tradition to the use or occupation of the whole of the land claimed although that traditional entitlement may be qualified as to place, time, circumstance, purpose or permission.

INGWALILANIMA

Section PITJARRA

William Lion
Billy Morton
Billy Morton
Nungalkara/Angeline
Rulara/Molly
Topsy
Henry
Freddy
Connie
Kenny
Long George
Nora
Jack
Paddy
Dorry
Dean
Barry
Paul

INGWALILANIMA

Section KNGWARRIYA

Coti Glove

Hatches Creek Tom

Left Hand Sam

Gillian

Marlene

David

Jimmy

Lily

Joey

Michelle

David

Benny

Audrey

Lucky

Dora

Janice

Hazel

Ruby

Janet

Daniel

Sammy

Leslie

Dorothy

INDARINGINYA

Section PURLA

Left Hand Jack

Dargy

Activity Jack

Polly

Jenny

Walter

Murray

Charlie

Dorrie

Betty

Tony Coombs

Queenie Coombs

Kumanjayi Coombs

Nancy

Steven

Mary

Judy/Jean

Tommy

Anita

Marlene

Josie

INDARINGINYA

Section PURLA

Casey/Keithie

Gary

Michelle

Vicki

Ricki

Nolan

Thomas

Simon

Ricky

Rhonda

Richard

Stephanie

Cheryl

Stella

Sabrina

Silas

Reggie

Linda

Mary Beck

Lena

Hilda Spratt.

Freddy Kamphoo

Polly

Lucy Dobbs

Dolly Kelly

Linda Dobbs

Billy Timms

Jerry Timms

Polly

Lindsay Timms

Janet/Janice

Jocelyn

Malcom

Julia/Gillian

Neil

Marcie/Nancy

Daniel

Stanley

Dempsey

Dalorie/Valerie

KAMARRA

Old Topsy

Nyooda

Riley

Cadney George

Rattler

Typpeny

INDARINGINYA

Section KAMARRA

Jimmy Peake

Hilda

Hector

Brucie

Noelie

Albert Bailey (Alfie)

Donald

Casey/Keith

Frankie

Elsie

Anita

Edie

John

Davey

Dan

Tony

Quentin

Jacky Holmes

Stanley Holmes

Aida Holmes

Sandra Holmes

David Holmes

Clarry

Lorraine

Marjorie

Jennifer

Nancy Martin

Morton

Priscilla

Patrick

Milly

Frank

Sonny

Tommy

Rosie/Ruth

Mick

Barry

Danny Lad

Sandra Lad

Agnes Lad

Godwin

Gregory

Long Henry

Nora

Kathleen

Maggie

Lily

INDARINGINYA

Section KAMARRA

Dorothy
Fred
Murray
Lenny
Biddy (Betty) Morton
Annie Morton
Janey
Jacky
Trevor
Jacky
Micky
Mary
Kathleen

UTURUPA

Section PITJARRA

Evelyn
Louie Sharp
Steven
Tracker Mick
Jacob
Ben
Ross
Gordon
Ray
Lenny
Shirley
Joanie
Beryl
Jennifer
May Brown
Maxie
Marilyn
Melissa
Godfrey Brown
Bonita
Jason
Thomas
Carol
Leslie
Kevin
Thelma
Gladys

UTURUPA

Section KNGWARRIYA

Maxie
Janie
Betty
Amy
Sally
Bonny
Paddy Tracker
Angela
Theresa
Bernadette
Simon
Sam
Mark
Sandra
Harry
Elsie
Geoffrey
Richard
Julie
Laurie
Fay
Old Sandy
Topsy
Mary
Lena
Ruby
Albert Brown
Bundie
Tommy Thompson
Jackie
Mary Thompson
Dodger
Lucky
Topsy
Pamela
Darren
Tommy

Factors bearing upon recommendations

94. In the Warlpiri Report (paras 203-205) I discussed the significance of the obligation imposed by sub-s. (3) of s. 50 of the Act to 'have regard to the strength or otherwise of the traditional attachment by the claimants to the land claimed', and to the obligation to have regard to the principles spelt out in sub-s. (4) regarding living or the desire to live on traditional country. During this hearing no one dissented from the views expressed in that report and the claimants, through their counsel, expressly assented to them. I propose therefore to apply them in the present case.

Strength of traditional attachment to land

95. It is the strength of the attachment by the claimants that the Act treats as relevant, not attachment by their predecessors. And it is traditional attachment, which must be taken to mean an attachment rooted in tradition, not springing from something personal to a claimant nor deriving from the economic advantages thought to be obtained from a grant of land. Let me make it clear; these matters are not irrelevant, but they have no place in this part of the report.

96. In my view, assessing the strength of traditional attachment does not require a head count of claimants. That would be impracticable in most cases. Clearly the attachment of some will be greater than that of others, but what I think the Act looks to is a general conclusion, drawn from all the material placed before the Commissioner during a hearing.

97. The assessment becomes more complicated when, as is the case here, a claim involves more than one clan, more than one tribal group. If it should appear that land claimed is truly capable of division into separate areas and that a joint claim is essentially one of convenience, evidence on the part of one clan or tribal group of strong traditional attachment to and of a desire to live on some of the land may not make good the lack of such evidence on the part of another. It will depend I think on the nature of the land claimed, its size and capacity to be treated as separate areas, and upon any connection there may be between the clans or tribal groups concerned. For instance, the Kaititja, whose country is the western part of the claim area, have long been associated with the Alyawarra and speak their language. The connection is a close one as illustrated by the situation at Warrabri described in paras 20-24 of this report.

98. My conclusion is that there is a strong attachment by the claimants to the land claimed. As I said in the Warlpiri Report:

. . . there are some objective criteria by which to measure but in the end the assessment must reflect a large element of the subjective, an attempt to understand the feelings and attitudes of people, an attempt to see things as they see them (para. 206).

For this reason, while the evidence of European witnesses is helpful, it is to the claimants primarily that I must look.

99. Although the Act speaks of the claimants' attachment, it is helpful to get some general picture of the feelings of those Alyawarra and Kaititja who live around the claim area. Dr Moyle explained the relationship between the songs of the Alyawarra and the ownership of land. It is unnecessary for the purposes of this report to trace that connection; it is enough to mention his conclusion: As far as the Alyawarra are concerned the songs and ceremonies . . . are thus considered sufficient evidence of traditional clan ownership (transcript p. 259/260).

100. -During his twelve months at Ammaroo he witnessed considerable ceremonial activity, some relating to initiations, some concerned with totems, and others with awulya or women's ceremonies. Men and women from Murray Downs were often present. His conclusion was that:

we have for not just the Alyawarra people at Ammaroo but among the Alyawarra people generally an extremely high retention of ceremonial life . . . a correspondingly dynamic bond between the people and their land (transcript p. 264).

101. Dr Moyle made several visits to the claim area during 1978, the first of which had as its primary purpose the return of ceremonial objects held at Murray Downs. On that occasion he was accompanied by a number of men from Murray Downs including some of the claimants.

102. The Alyawarra and Kaititja have been absent from the claim area, at least in terms of permanent occupation, since the late 1940s. Dr Moyle thought this had led to a lessening of the number of songs sung about it and to some deterioration of ceremonial life. But I did not understand this statement to be a contradiction of his earlier conclusion. And, in the case of the Alyawarra, who are in a minority at Warrabri, which is not their traditional country, this absence seems in some ways to have heightened their attachment.

103. Mr Hagen made three visits to the claim area, one in each of the years 1976, 1977 and 1978. He was accompanied by traditional owners from one or more of the claimant clans. 'The display of emotion when people returned to country..... was very impressive indeed' (transcript p. 121).

104. During the hearing at Warrabri witnesses showed enthusiasm for their country and a desire to live on it. I shall deal later with the question of living on the land; I mention it here only as evidence of attachment. The transcript records the names of forty-eight Aboriginal witnesses but the number who came together in groups and joined in what was being said was considerably greater.

105. Much is said at times about the male dominance of Aboriginal society. It is not my intention to enter into that debate except to say that it can overlook the very vital role of women in ceremonial life. From what I saw, they had their own ceremonies and secrets as had the men, each complementing the other. The strong attachment by Aboriginal women to their land was shown during the hearing of the Warlpiri claim. It was shown too during this hearing, through the evidence of the many women who spoke in a group, in the dancing performed at Warrabri and in their singing and general attitude during the visit to the claim area.

106. That visit was perhaps the most vivid demonstration of attachment. Some thirty Aboriginals went. A list appears as Exhibit 47. We travelled through Murray Downs to Alinya, south to Indangala, east to Arkutarkut, south to Indaringinya and surrounding sites, south again to Ingwalilanima, ending up at Shady Bore on Ammaroo. The obvious enthusiasm of those people for their country and the disclosure of important places and sacred objects was compelling.

107. Counsel assisting pointed out that Uturupa people seemed to show more enthusiasm for places on Neutral Junction than on the claim area. That is probably true, but again points up the artificiality of drawing a line through traditional country in terms of the boundary of a pastoral lease. I think the Kaititja would see the western part of the claim area as simply the fringe of their own land.

108. There is one other matter I wish to mention before leaving this part of the report. Witnessing ceremonies, visiting sites and seeing sacred objects undoubtedly played an important role in identifying traditional country and in assessing the strength of traditional attachment. f-4o doubt it will do so in some future claims. The privilege of being present on such occasions cannot carry

with it any commitment on the part of the Commissioner to the outcome of a hearing. I hope those advising and acting for claimants will make that clear to them.

Desire to live on traditional country

109. A preliminary question arises. When s. 50 (4) of the Act speaks of Aboriginals either living or not living at a place on the traditional country of the tribe or linguistic group to which they belong, is that to be measured by the place at which the claimants are living at the time of the hearing or is it in truth directed at the claim area itself? The question is an important one here because some of the claimants live at places on the traditional country of the Alyawarra or Kaititja but desire to live on the claim area.

110. Counsel assisting submitted that para. (b) of s. 50 (4) is not applicable if claimants are living on traditional country even though it is not the land under claim. In the Borroloola Report para. 109 1 said:

In the case of a claim to unalienated land the words 'at a place on the traditional country' must I think look to the land claimed and not to some wider area, otherwise the application of these principles would have no practical results.

I adhere to that view; it follows that a desire to live on the claim area falls within the principle spelt out in para. (b) of s. 50 (4) even though claimants may be living elsewhere on the traditional country of their tribe or linguistic group.

111. The Act speaks of 'desire' to live at a place. It would be unreal and not demanded by the language of the Act to insist that it be unconditional and accompanied by an intention to put it into immediate effect if there is a grant of land. It would tend to drive evidence, in relation to s. 50 (4), along artificial lines.

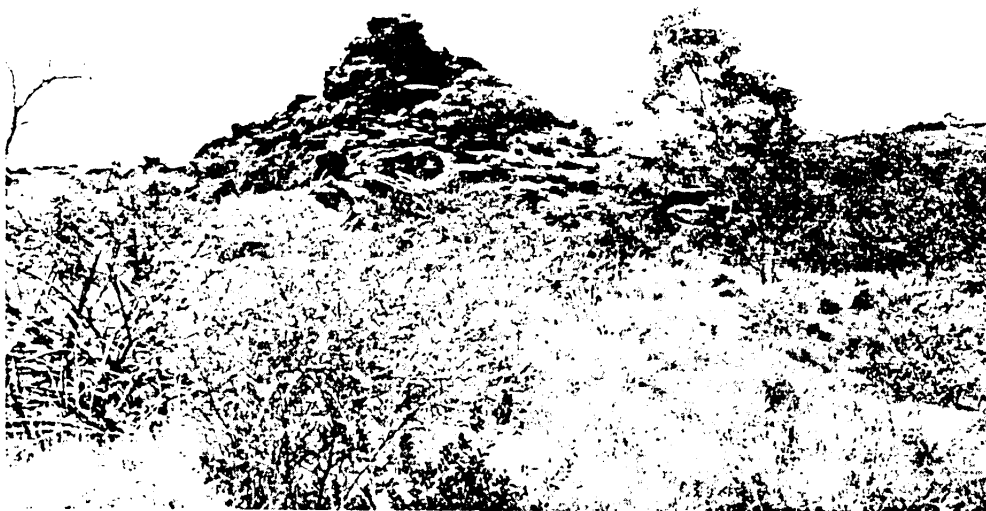
112. There is no easy access to the claim area. There is no permanent surface water, at least of any size. There is neither housing nor facilities for schooling or medical services, simply because no one is living there. The desire expressed by claimants to live on the land was conditioned by the provision of proper access. There is nothing in that inconsistent with the Act.

113. As mentioned already, there has been no permanent occupation of the claim area since the late 1940s. Why it ceased then did not emerge with much clarity. The conflicts between blacks and whites were earlier. It seems to have been a combination of factors, job opportunities on the wolfram mines, the attraction of station properties and lack of water.

114. People have been back to the area from time to time, but not in large numbers nor for long. Some told of living there as children. A group of Indaringinya men said they would like to go back to live, Left Hand Jack Purla nominating Arkutarkut, "'here the water is' (transcript p. 399). Men from Ingwalilanima and Ingowinyirra spoke of going back to live at Ingwalilanima. Uturupa men said they would like to go back to live at Alkarrakwa. 'We'd need a bore and sonic pump jack and things, on that bore. Most probably need a truck, like Toyota, because we need for that big sand; we can't use single drive, we want a four-wheel drive . . . We need road' (transcript p. 497).



Indangala: man drawing water for women
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Indaringinya country
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Indangala: man drawing water for women
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Indaringinya country
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Page 25



A section of the group of women who gave evidence
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Group of men giving evidence
(Copyright Dr Helen Tom, 1978)

A section of the group of women who gave evidence
(Copyright Dr Helen Tom, 1978)

Group of men giving evidence
(Copyright Dr Helen Tom, 197N)

115. When the women were giving evidence, the Indaringinya mentioned Arkutarkut as the place at which they would like to live. When the Ingwalilanima women were asked, the answer was: 'They all want to stay in one place . . . because they speak the one language' (transcript p. 540).

116. The Uturupa women mentioned Artara (Tara), which is on Neutral Junction.

117. Ms Jennifer Green, who is employed at Utopia by the Department of Aboriginal Education, and Dr Helen Tom, who conducts the Angarapa Health Program there, both gave evidence. I shall refer to it in more detail when considering the nature and extent of the advantage that would accrue if the claim was acceded to. For the present it is enough to say that they spoke of the viability of the outstation movement on Utopia.

118. The Warlpiri Report paras 230-235 discusses the concept of outstations or homeland places and its relevance to the Act. It is true, as counsel assisting pointed out, that a lot of talk about outstations, and in particular the more concrete proposals, is of recent origin. Yet that is not surprising. The movement itself is a fairly recent one in the Centre. No doubt it has been assisted by the current Federal Government policy in regard to it (see Draft Policy Statement-Outstations, Exhibit 35), and I think it has been strengthened by the existence of the Aboriginal Land Rights (Northern Territory) Act 1976 with the opportunity to gain title to land.

119. My conclusion is that there is a desire by many of the traditional owners to return to the claim area, permanently in some cases, intermittently in others.

Excisions and subleases

120. Mention has been made of the excisions taking place on the pastoral leases surrounding the claim area, on Murray Downs, Ammaroo and Neutral Junction. The state which each has reached was described by Mr V. E. Wasilewsky, Chairman of the Northern Territory Land Board.

121. The procedure presently used is a voluntary surrender by a lessee of a small area, chosen in discussions between the Department of Aboriginal Affairs (in consultation with the Aboriginal community) and the lessee. The intention is to grant to an incorporated association a special purposes lease pursuant to s. 5B of the Special Purposes Leases Ordinance 1953. The proposed covenants and conditions appear in Exhibit 33.

122. The amendment to the Crown Lands Ordinance 1931 to permit a sub-lease to an incorporated body of part of a pastoral lease 'for Aboriginal community living purposes' was assented to on 9 November 1978.

123. As a general statement, it seems to me that excisions have little bearing on a claim under the Act. In particular they are not and are not intended to be, a substitute for such a claim. They do not require the identification of traditional country and often will have no connection with it. They result in a different form of title.

124. In a particular case an excision may influence the desire of claimants to live on land claimed under the Act. Again it may be suggested that the advantage accruing from a grant of land under the Act may be lessened by the existence of a special purposes lease or sublease upon which people may live with limited security of title. In the present case I do not think that any of the excisions proposed will lessen the desire of the claimants to live on & claim area, or lessen the advantage otherwise accruing from a grant. How far sub-leases will replace special purposes leases was something not canvassed during the hearing.

Recommendations

125. Because of the findings I have made as to traditional Aboriginal ownership, strength of traditional attachment by the claimants to the land claimed and desire to live on that country, I recommend that the land claimed, more particularly described in the application, be granted to a Land Trust for the benefit of the traditional Aboriginal owners who are or include those listed in para. 93 of this report.

126. Having regard to the size and nature of the land and the expressed wish of the claimants, there should be one Land Trust only.

Form of recommendation

127. I have recommended a grant to a Land Trust for the benefit of the traditional owners, without limiting it to those so found. The recommendation in the Borroloola and Warlpiri Reports was in the narrower form. I shall explain the change.

128. In the Warlpiri Report, para. 240, I expressed the view that the language of s. II (I) (a) of the Act is designed to enable one trust to be created for different clans so long as all are entitled to the use or occupation of the land in question. That is the case here. However, counsel assisting put to me that it is the intention of the Act that the beneficiaries of a Land Trust be not restricted to the traditional owners of the land, but will include other people entitled by Aboriginal tradition to the use or occupation of the land. He instanced the wives of traditional owners. That view was said to flow from the nature of the recommendation in s. II (1) (a) which is in terms:

that an area of Crown land should be granted to a Land Trust for the benefit of Aboriginals entitled by Aboriginal tradition to the use or occupation of that area of land . . .

It goes on to provide that if the Minister is satisfied 'that the land should be so granted' he shall establish a Land Trust 'to hold that land for the benefit of such Aboriginals'.

129. Mr Hiley then drew my attention to sonic remarks made by the Minister in the course of the second reading of the Aboriginal Land Rights (Northern Territory) Bill when he said that the land described in the First Schedule to the Act:

. . . will be vested in Aboriginal land trusts composed entirely of Aborigines living in the area concerned who will hold title on behalf of the traditional owners and those other Aborigines entitled by Aboriginal tradition to use and occupy those lands (Hansard No. 12, 1976, p. 3082).

Although the Minister was there speaking of the First Schedule land, counsel suggested that the comments could be applied equally to land the subject of a recommendation by the Commissioner.

130. I should point out that when presenting the Warlpiri Report to Parliament, the Minister said:

The Commissioner has therefore recommended that the land claimed should be granted to Aboriginal land trusts for the benefit of those he found to be the traditional Aboriginal owners of the land. I have accepted the Commissioner's recommendations (Hansard, 26 September 1978, p. 1361).

131. The Ranger Inquiry expressed the view:

that the scheme established by ss. 4, 11 and 50 of the Act requires that findings and recommendations be made in relation to identified finite areas of land, of which there are traditional Aboriginal owners, and which Aboriginal persons are entitled by Aboriginal tradition to use or occupy (Ranger Uranium Environmental Inquiry Second Report, p. 277).

132. The findings of the Ranger Inquiry were in the form that there were traditional Aboriginal owners of certain clan areas (naming those owners and those areas), that the groups of Aboriginals, the names of whose clan groups were set out, were entitled by Aboriginal tradition to the use or occupation of that land and that the Aboriginals & the members of those groups were or included those identified as traditional owners. It continued with a recommendation:

that the unalienated Crown land . . . be granted to a Land Trust for the benefit of the groups of Aboriginals who are entitled by Aboriginal tradition to the use or occupation of that land, being the clan groups mentioned . . . above (Report pp. 282-3).

The reference to 'groups' was later deleted from ss. 4 and 11.

133. The difficulty results in part from the relationship between ss. 11 and 50. The former seems to presuppose that the Commissioner has made a recommendation in the form that land be granted for the benefit of Aboriginals entitled to the use or occupation of land. By s. 50, one of the Commissioner's functions is to make recommendations for the granting of land in accordance with s. 11 although that recommendation must stem from a finding that there are traditional Aboriginal owners.

134. The answer, I think, is that s. II has the narrower meaning given to it in the Warlpiri Report, but that any recommendation should be for a grant to a Land Trust for the benefit of the traditional owners without confining them to those so found. Hence the form of the recommendation in para. 125. The Act will determine the way in which a recommendation is implemented.

135. Counsel assisting raised another matter, the extent to which the Minister may accept a recommendation in part as distinct from accepting or rejecting it in its entirety. It has an important bearing on the significance of the matters upon which s. 50 (3) of the Act requires the Commissioner to comment. However, I shall say no more about it here as it is dealt with in the Commissioner's Annual Report for the year ended 30 June 1978, paras 16-20.

Matters for comment-number of Aboriginals advantaged

136. Section 50 (3) of the Act obliges the Commissioner to comment on:

- (a) the number of Aboriginals with traditional attachments to the land claimed who would be advantaged, and the nature and extent of the advantage that would accrue to those Aboriginals, if a claim were acceded to either in whole or in part.

In no hearing under the Act, including the Ranger Inquiry, has it yet proved possible to identify with any precision the number of persons coming within this paragraph. It is unlikely ever to be possible since the paragraph looks beyond the claimants themselves. Not only that, it looks to those with traditional attachments to the land. An inquiry to find them would probably outlast the time needed to determine the traditional owners.

137. A starting point is the number found to be traditional owners, in this case 232. Mention has already been made of the population figures in the Second Report of the Aboriginal Land Rights Commission, Alyawarra 796 and Kaititja 380. From what was said by witnesses from surrounding clans, it may be taken that some people from both tribal groups, other than the claimants, wish to live on the land or visit it from time to time. Thus those who stand to benefit probably amount to between 250 and 1000, with the number receiving substantial and continuing advantages at the lower end of that range.

Matters for comment-Nature and extent of advantage

138. The nature and extent of the advantage that would accrue:

looks at something reasonably specific rather than the mere recognition of traditional ownership which after all is a necessary step in any recommendation made under the Act (Warlpiri Report para. 246).

At the same time, the lack of any traditional land to which the Alyawarra hold title means that there is a special sense in which recognition of some traditional ownership is important.

139. A grant of land will, I think, give impetus to the establishment of one or more communities on the claim area. It will help any move of Alyawarra and Kaititja away from Warrabri. Most of the land is unsuitable for any commercial activity. Only the north-eastern section and perhaps the south-eastern corner are suitable for cattle. Communities are not likely to be large.

140. Ms Green thought that it would be possible, given the staff to operate a mobile system, to extend education facilities to the area. Dr Tom supported the movement away from large communities, in terms of general health and psychological well-being. People would be better off with greater access to bush foods and less reliance upon the usual staples, tea, sugar and white flour. 'The Angarapa Health Program is structured to support and train people where they live' (Exhibit 41 p. 5).

141. The Warlpiri Report paras 230-235 speaks of the significance of the movement to outstations or homeland places. What is said there applies here.

Matters for comment--detriment

142. Section 50 (3) of the Act requires a consideration of:

- (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.

143. There was no evidence of any detriment to Aboriginals or Europeans. The two Alyawarra clans and the one Kaititja clan have joined in the application and people from the three clans have expressed their willingness to share this country through a Land Trust. Witnesses from surrounding clans expressed their pleasure at a grant being made.

144. Little interest has been shown by Europeans in the claim area. Before the turn of the century Neutral Junction pastoral lease included this land. Later it became the subject of grazing licences but since 1955 it has been free from any lease or licence.

145. In April 1965 Mr and Mrs Chalmers, then the lessees of Utopia, applied for a grazing licence over the land. No licence issued but permission was given to agist stock. That agistment arrangement lapsed some time ago (Exhibit 26 para. 5.2).

146. In February 1976 Mr D. B. Clarke inquired about the availability of some of the land for the establishment of an agricultural community. A month later Mr Clarke was interviewed by an officer of the Lands Branch and asked to provide more information about his proposal, but nothing more was heard from him (Exhibit 26 para. 5.2). Mr Clarke was given notice of the hearing but did not appear.

147. There are no recognised roads, stock routes or watering points through or to the land and it is not subject to any mining leases or exploration licences or any applications under the Mining Ordinance 1939 (Exhibit 26 paras 7.1, 8.1).

148. Mr D. Colson, one of the proprietors of Neutral Junction, expressed concern if a road were to be put through his property to give access to the claim area.

So basically our feelings are-and I'm fairly strong about it-is that by putting access roads through either way, you are going to create a lot more traffic coming into our bore run roads and interfering with the operation of the pastoral industry in a manner that-in fact, when you have got people travelling around bores and that. they stir the cattle up and they become a lot harder to handle when you are mustering . . . plus the road will have to go right through the homestead which means that we will be living in a city then, listening to traffic going through all the time (transcript p. 476).

149. Counsel for the claimants submitted that if the construction of a road caused such problems it was not a detriment arising from a Grant of land under the Act, but something that might follow a grant. Counsel assisting agreed with the broad proposition, based however on a slightly different approach, that the movement of people would be the result of the establishment of outstations rather than the grant of land itself. I agree with the broad proposition.

150. The Northern Territory Cattle Producers Council raised for consideration the question of fencing and also recovery of straying cattle. In my view these matters do not and cannot come under the head of detriment; they are for the legislature to control.

Matters for comment-Patterns of land usage

151. Finally s. 50 (3) requires the Commissioner to comment on:

- (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.

The answer is that there would be no effect. The Northern Territory Government expressly disavowed any likely effect on patterns of land usage. There was no evidence to suggest any.

152. The need for access to the claim area. should there be a grant of land, was mentioned earlier. The policy of the Northern Territory Government in regard to access to Aboriginal land is set out in some notes by Mr T. C. Lovegrove (Exhibit 25). Essentially it is that access:

will be to a nominated point of community concentration within the Aboriginal land. Any further internal roads would be the responsibility of the community (Exhibit 25 p. I).

153. Mr R. J. Searles, a civil engineer with the Department of Transport and Works, said that governmental policy is to provide one access road, the route determined by a number of considerations including cost. Mr Hagen suggested various paths such a road might take (transcript pp. 138-42), but these matters only arise once a grant is made.

Summary of findings, recommendations and comments

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

- A. The land claimed is unalienated Crown land.
- B. There are traditional Aboriginal owners of all that land and their names appear in this report as part of the formal findings.
- C. Traditional attachment by the claimants to the land claimed is strong.
- D. There is among the traditional Aboriginal owners a desire to live at one or more places on the land.
- E. The land should be granted to a Land Trust for the benefit of the traditional Aboriginal owners of the land.
- F. It is not possible to state with any precision the number of Aboriginals with traditional attachments to the land claimed who would be advantaged if tile claim were acceded to, but it is probably between 250 and 1000.
- G. The advantages lie in the recognition of traditional ownership for members of a tribal group having no land of its own, and the impetus given to the establishment of outstations with tile benefits that is likely to bring.
- H. No detriment is likely to result to persons or communities, including other Aboriginal groups, if the claim is acceded to.
- I. Acceding to the claim will not have any effect on existing or proposed patterns of land usage in the region.

Darwin

30 November 1978

Page 32

LEGAL REPRESENTATIVES

Mr G. Hiley, counsel assisting the Commissioner

Mr T. Morris, for the claimants

Mr I. McNeilly, for the Commonwealth of Australia

Mr J. Bottoms, for the Northern Territory Government

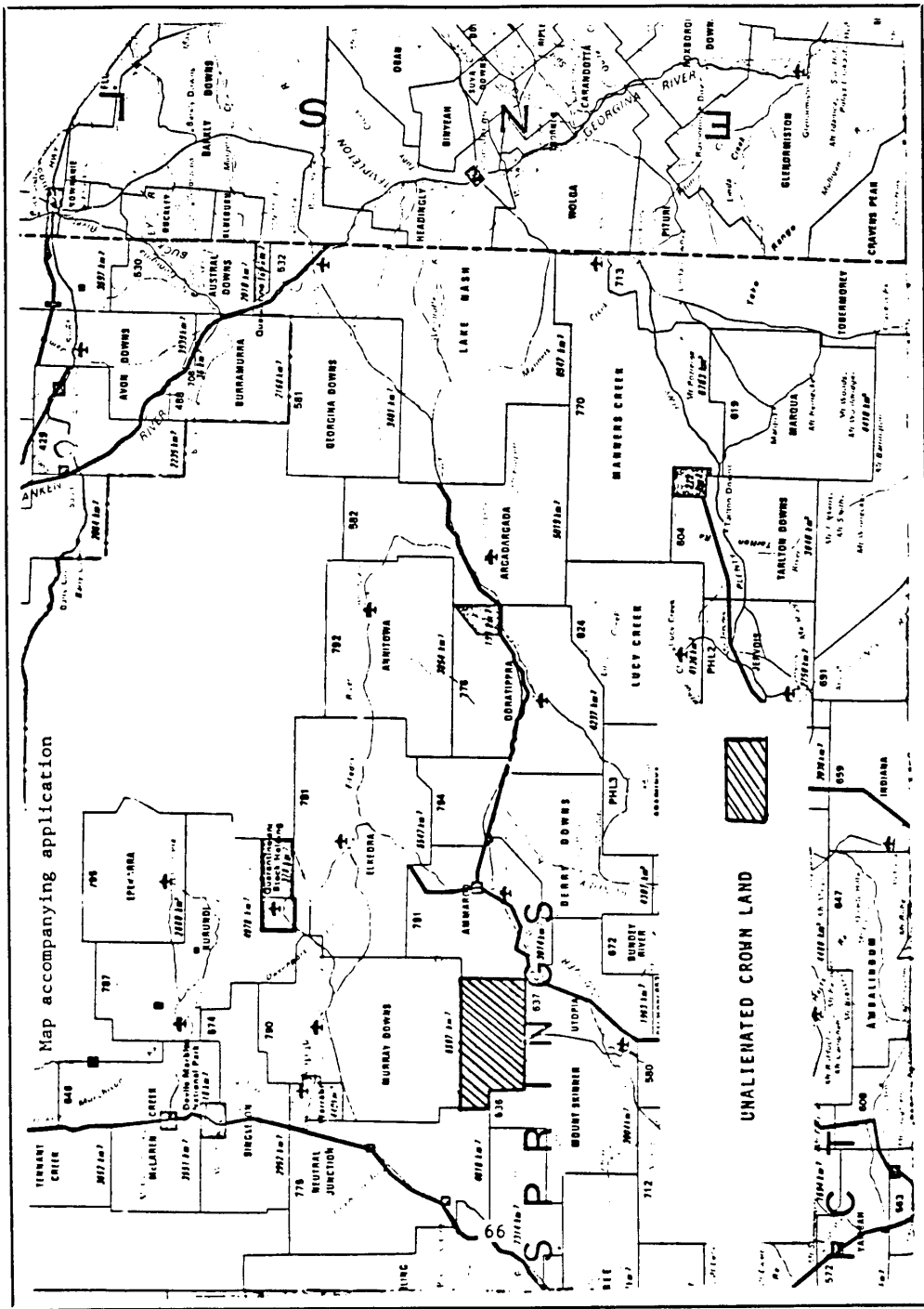
LIST OF WITNESSES

Diane Robin Bell Old Sandy Kngwarriya
Biddy David Long
Dale Colson Michael No. 1
Queenie Coombs Richard Michael Moyle
Tony Coombs Betty Morton
Lucy Dobbs Johnny Skinner Ngala
Jennifer Green Motor Car Jimmy Ngala
Roderick Hagen Albert Morton Pitjarra
Sandra Holmes Angelina Pitjarra
Sarah Holmes Dolly Pitjarra
Kevin James John Greenie Pitjarra
Albie Kamarra Long George Pitjarra
Barney Barnes Kamarra Long Paddy Pitjarra
Bazzo Kamarra Peter Peterson Pitjarra
Casey Kamarra Topsy Pitjarra
Frankie Kamarra Tracker Mick Pitjarra
Fred Kamphoo Kamarra Adam Price
Jacky Holmes Kamarra Alec Pultara
Jenny Kamarra Billy Pumper
Kathleen Kamarra Polly Pumper
Long Henry Kamarra Dargie Purla,
Maggie Kamarra, Left Hand Jack Purla
Mahoney Lewis Kamarra Polly Purla
Mary Peak Kamarra Meredith Lesley Rowell
Quart Pot Kamarra Russell John Searles
Rattler Kamarra William Frederick Simpson
Riley Kamarra Hilda Spratt
Sam Kamarra Jeffrey John Stead
Kubitji Kngwarriya Billy Timms
Left Hand Sam Kngwarriya Helen Tom
Lena Kngwarriya Victor Edmund Wasilewsky
Molly Kngwarriya Neil Donald Westbury

LIST OF EXHIBITS

1. Affidavit of Raelee Ann Cook, sworn 14 August 1978.
2. Affidavit of Raelee Ann Cook, sworn 21 September 1978.
3. Original claim book.
4. Revised claim book.
5. Present claim book, 2 October 1978.
6. List of standard spellings of Alyawarra words.
7. Set of genealogies of three clans, Ingwalilanima, Indaringinya and Uturupa.
8. Genealogy of Annangara clan.
9. Pastoral map of Northern Territory, I : 2 000 000.
10. Map of Barrow Creek, I : 250 000.
11. Transparency showing sites in claim area-'Map A'.
12. Transparency showing tracks in claim area-'Map W'.
13. Transparency showing sites and tracks-'Map AB'.
14. James F. O'Connell: Report on Investigations of Alyawara Land Claims.
15. C. L. Yallop: The Aljawara and their Territory.
16. M. Rowell: Additional Notes.
17. J. J. Stead: Supplementary Notes with Attachments.
18. Statement by R. M. Moyle.
19. Photographs taken by Dr Moyle (i)-(xii).
(RESTRICTED-Nos (iv) (v) (vi) (vii) (viii) (ix) (x))
20. J. J. Stead: report dated 11 March 1976.
21. M. Haeusler: letter dated 1 December 1976.
22. K. J. John: report to Chief Pastoral Officer, Darwin.
23. Map of Barrow Creek-Sheet 17, 1 : 500 000.
24. Map showing claim area and areas excised from surrounding pastoral leases,
1 : 500 000.
25. T. C. Lovegrove: Notes for discussion dated 20 September 1978.
26. Statement by Northern Territory Government to the Aboriginal Land
Commissioner regarding Alyawarra land claim.
27. Extract from Commonwealth of Australia Gazette No. 19, 10 March 1960.
28. Photocopy of Murray Downs pastoral lease No. 790.
29. Photocopy of Ammaroo pastoral lease No. 791.
30. Photocopy of Utopia pastoral lease No. 637.
31. Photocopy of Mount Skinner pastoral lease No. 636.
32. Photocopy of Neutral Junction pastoral lease No. 775.
33. V. E. Wasilewsky: Special purposes leases for Aboriginal Communal Living.

34. Photographs 1-10, taken by G. D. Giles of Department of Aboriginal Affairs in 1974 (RESTRICTED).
- 34A. G. D. Giles: Report dated 26 June 1973 (RESTRICTED).
35. Commonwealth Government's Draft Policy Statement on Outstations.
36. Population records of Alyawarra and Kaititja people at Warrabri.
37. List of shareholders of Angarapa Cattle Co.
38. Letter from Wilson, Bishop, Bowes and Craig to W. E. L. de Vos, dated 7 November 1977.
39. Statement by J. Green.
40. 27 photographs taken by J. Green.
41. H. Tom: Report to Alyawarra Hearing.
42. Report on the Angarapa Health Program.
43. N. Peterson: 'The Traditional Pattern of Subsistence to 1975'.
44. Annual report 1976-77 of Aboriginal Land Fund Commission.
45. D. R. Bell: The Alyawarra and Kaititja Land Claim.
46. D. R. Bell: 'Tell me where you camp and I'll tell you your business'.
47. D. R. Bell-list of people who visited claim area.
- 48A. Tape of visit to claim area (RESTRICTED).
- 48B. Tape of songs sung by women at Shady Bore (RESTRICTED).
49. Statement by M. A. Nicholson.
50. Correction of errors in transcript.
51. D. R. Bell: statement dated 16 October 1978.
52. R. Hagen: notes on primary spiritual responsibility.
53. R. Hagen: notes on claimants' clan countries.
54. List of traditional owners-Indaringinya.
55. List of traditional owners-Ingwalilanima.
56. List of traditional owners-Uturupa.
57. Amended genealogies.



Map accompanying application

AIYAWARA / KAITIJA LAND CLAIM

Map A

Showing principal sites in the vicinity of the claim and the names of the territories

Scale 1:250,000

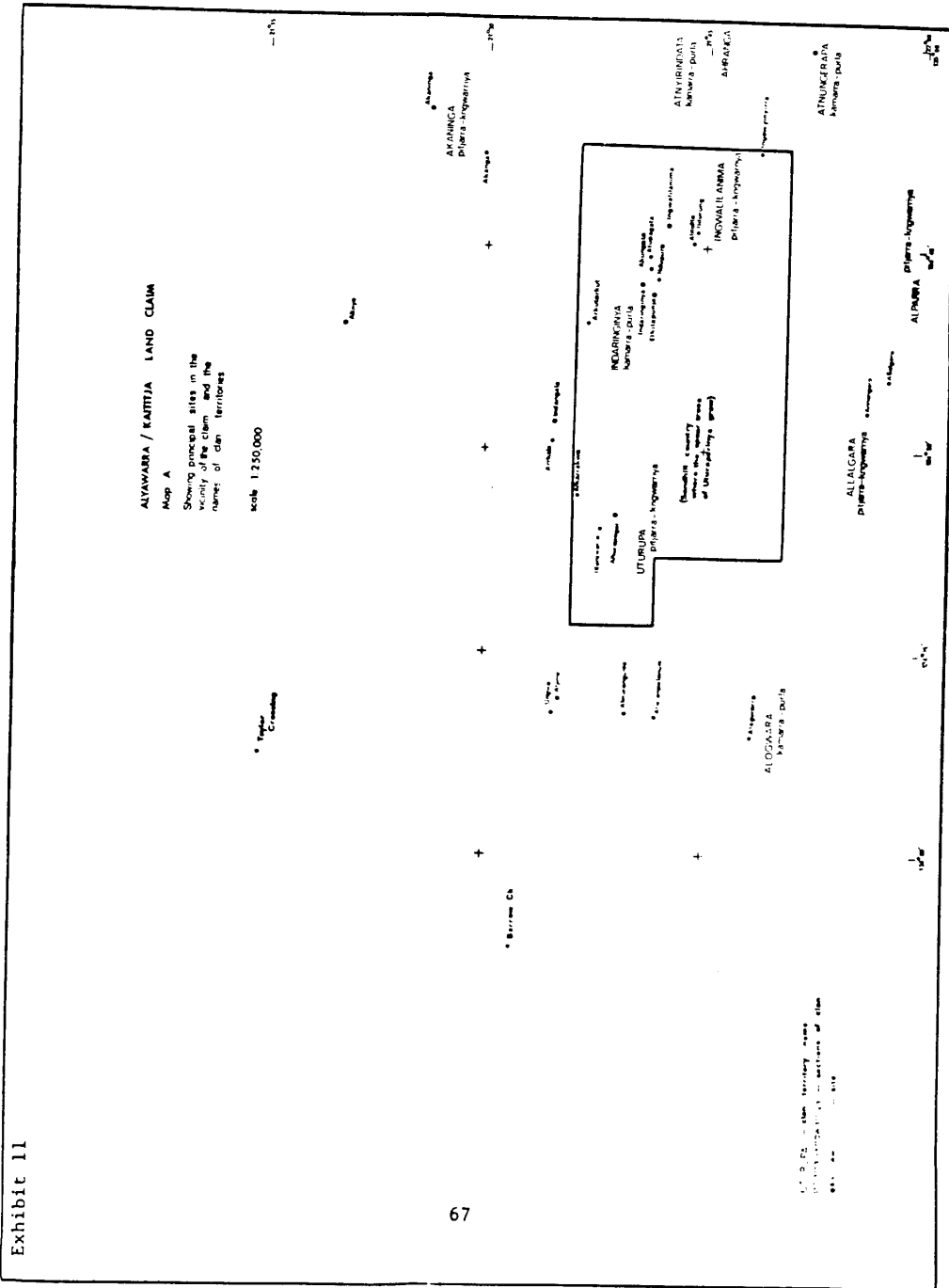
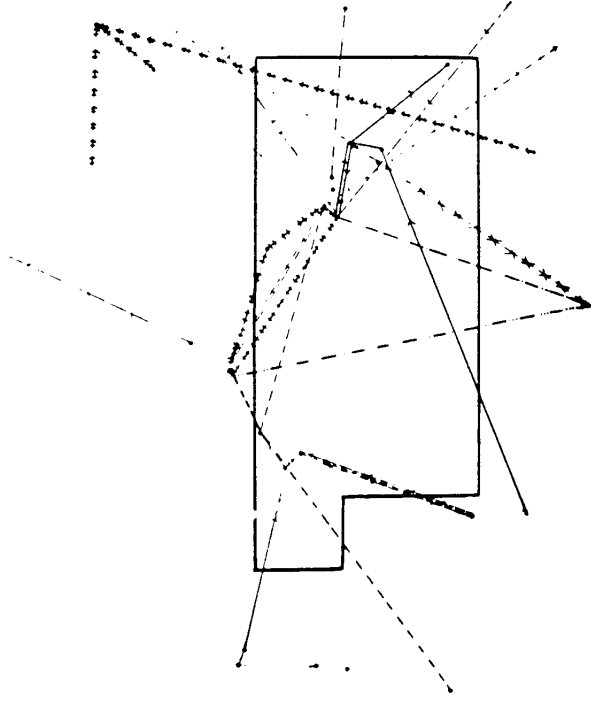


Exhibit 12

ATWARRA / FAHIIA LAND CLAIM
Map B

Scale 1:250,000

Shows the boundaries of the claim area



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