

Aboriginal Land Rights (Northern Territory) Act 1976  
Warlmanpa  
(Muckaty Pastoral Lease)  
Land Claim No, 135  
Report No. 51  
Report and recommendation of the  
Aboriginal Land Commissioner, Justice Gray,  
to the Minister for  
Aboriginal and Torres Strait Islander Affairs  
and to the  
Administrator of the Northern Territory  
Australian Government Publishing Service  
Canberra

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18th March 1997

Senator The Hon. John Herron,  
Minister for Aboriginal and Torres Strait  
Islander Affairs,  
Parliament House,  
Canberra .  
ACT.2600.

Dear Minister,

Re: Warlmanpa (Muckaty Pastoral Lease)

Land Claim No. 135

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

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

Yours sincerely,

PETER R.A. DRAY  
Aboriginal Land Commissioner



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## 1 HISTORY OF THE CLAIM

1.1 Lodgment The Warlmanpa (Muckaty Pastoral Lease) Land Claim No. 135 is a traditional land claim, made pursuant to s. 50 of the Aboriginal Land Rights (Northern Territory) Act 1976 ("the Land Rights Act"). The application was received in the office of the Aboriginal Land Commissioner on 20 December 1991. It was lodged by the Northern Land Council, on behalf of a number of persons claiming to be traditional Aboriginal owners of land known as Muckaty Station and that part of the North South Stock Route within the boundaries of Muckaty Station.

1.2 Listing for hearing The claim was listed for hearing on 20 July 1993, as part of my 1993 land claim program.

1.3 Advertisement Public notice of the claim hearing was given by the publication of advertisements in the Weekend Australian on 5 June 1993, the NT News on 5 June 1993, the Tennant and District Times on 11 June 1993, the Centralian Advocate on 8 June 1993, the Katherine Times on 9 June 1993 and Land Rights News in the July 1993 edition. Notices of the hearing were also sent to all persons whose names appear on the mailing list maintained in the office of the Aboriginal Land Commissioner and to the proprietors, lessees or managers of the surrounding properties referred to in para. 2.1.

1.4 Parties Notices of intention to be heard or written submissions were received from Telstra Corporation Limited (28 June 1993), Northern Territory Cattlemen's Association Inc. (28 June 1993), NT Gas Pty Ltd (29 June 1993), the Attorney-General for the Northern Territory (28 June 1993), Stanbroke Pastoral Company Pty Ltd (13 July 1993), Consolidated Pastoral Company Pty Ltd (14 July 1993) and Australian National Railways Commission (3 August 1993). Stanbroke Pastoral Company Pty Ltd is the lessee of Helen Springs Station. Consolidated Pastoral Company Pty Ltd is the lessee of Powell Creek Station. Subsequently, solicitors on behalf of the Australia and New Zealand Banking Group Limited, the Commonwealth Bank of Australia, the National Australia Bank Limited and Westpac Banking Corporation provided written evidence and submissions.

### 1.5 The inquiry

The inquiry began on Muckaty Station on 24 July 1993. Its late start was due to negotiations between the Attorney-General for the Northern Territory and the representatives of the claimants, with a view to settling the claim other than by a hearing and report. I heard evidence on seven days from 24 to 30 July, at or near thirty-one sites, which are listed in appendix 1. The hearing involved camping on two successive nights, at separate places. The inquiry resumed at Tennant Creek on 4 November 1993, when I heard further evidence. The evidence was completed on 18 November 1993. On that day, I sat in Melbourne at the request of the parties.

1.5.2 I received written submissions from those who wished to make them and written submissions in reply from those who wished to make them. The submissions were complete by 11 May 1994. In some cases, the written submissions included matters of evidence. In other cases, documents were tendered to me during the submission period and I accepted them as evidence.

1.6 The appendices Appendix 1 to this report contains a list of the sites at or near which evidence was taken. Appendix 2 contains a list of representatives of the parties and the name of my consulting anthropologist. Appendix 3 contains a list of witnesses who gave evidence in the course of the inquiry. Appendix 4 contains a list of exhibits tendered to me in the course of

the inquiry. Appendix 5 contains a map of the claim area, showing the approximate locations of the sites referred to in appendix I and a number of other sites referred to in this report. The sites are designated by numbers. I have used the numbers allocated to the sites on the site map, which became exhibit NLCS, and in the site register, which became exhibit NLC6, in the inquiry.

## 2 THE LAND CLAIMED

2.1 Northern Territory Portion 1629 The land claimed all falls within the boundaries of Northern Territory Portion 1629, which is an irregularly shaped area of land. It is bounded on the west and south by Northern Territory Portion 2845, which is held by the Karlantijpa North Aboriginal Land Trust, pursuant to a deed of grant dated 29 May 1986 under s. 12 of the Land Rights Act. To the east, the subject land is bounded by Northern Territory Portion 1311, known as Banka Banka Station, which is the subject of Perpetual Pastoral Lease No. 938, the registered holder of which is Brunchilly Station Pty Ltd. To the north-east, Northern Territory Portion 1629 is bounded by Northern Territory Portion 1512, known as Helen Springs Station, which is the subject of Perpetual Pastoral Lease No. 1001, the registered holder of which is Stanbroke Pastoral Company Pty Ltd. The northern boundary of the subject land abuts Northern Territory Portion 2094, known as Powell Creek Station, which is the subject of Perpetual Pastoral Lease No. 948, originally granted to Consolidated Press Holdings Ltd. The boundaries of the land claimed and the adjacent boundaries of the other lands to which I have referred are shown on the map in appendix 5.

2.2 Northern Territory Portion 2100 and the North South Stock Route Lying entirely within the boundaries of Northern Territory Portion 1629 is Northern Territory Portion 2100, an area of approximately twenty-six square kilometres, the boundaries of which are shown on the map in appendix 5. Also within the boundaries of Northern Territory Portion 1629 are portions of the North South Stock Route, the boundaries of which are shown on the map in appendix 5.

2.3 Excision: Northern Territory Portion 1423 A small area excised from Northern Territory Portion 1629 is Northern Territory Portion 1423, on the eastern side of the Stuart Highway, close to the junction of that highway with the road leading to the homestead on Muckaty Station. Northern Territory Portion 1423 has an area of 3720 square metres. An estate in fee simple in Northern Territory Portion 1423 was granted to Australian and Overseas Telecommunications Corporation Ltd, which is now Telstra Corporation Limited. The plan in the register book (volume 234 folio 001) shows a hatched area as an access easement between the Stuart Highway and Northern Territory Portion 1423. This hatched area is 106.73 metres along one of its long boundaries and 97.31 metres along the other. It is approximately 20 metres in width.

2.4 The energy supply easement Within the claim area is also an energy supply easement, created under s. 36D of the Crown Lands Act (NT), now repealed and replaced by s. 63 of the Crown Lands Act 1992 (NT). The easement does not exceed thirty metres in width and crosses the subject land from its southern boundary to its boundary with Helen Springs Station. Its location is shown on the map in appendix 5.

2.5 Pastoral Lease No. 856 Northern Territory Portions 1629 and 2100 are the subject of Pastoral Lease No. 856, which was granted by the Minister for Lands and Housing, in the name of the Northern Territory of Australia, pursuant to the Crown Lands Act (NT), to Allan James Hagan and Miriam Anne Hagan, for a term commencing on 20 September 1982 and ending on 30 June 2025. The pastoral lease was entered in the register book as volume 193 folio 50. On 5 July 1988, the discharges of several outstanding mortgages were registered and a transfer of the pastoral lease was registered to Hapford Pty Limited and Kerfield Pty Limited as tenants in common in equal shares. On 23 May 1991, a transfer was registered to Northern Land Council, which continued to be the registered proprietor of the pastoral lease at the date of lodgment of the application in this claim.

2.6 The Northern Land Council The Northern Land Council is established pursuant to s. 21 of the Land Rights Act. By virtue of a. 22, it is a body corporate with perpetual succession, which may acquire, hold and dispose of real and personal property. By s. 29, the members of a land council are required to be Aboriginal persons living in the area of the land council or elected by Aboriginal persons living in the area of the land council. By s. 23(1)(f), the functions of a land council include assisting Aboriginal people claiming to have a traditional land claim, to an area of land within the area of the land council, in pursuing the claim.

2.7 The purchase of Pastoral Lease No. 856 The contract of sale under which Pastoral Lease No. 856 was purchased by the Northern Land Council described the purchaser as "the Northern Land Council on behalf of Muckaty Aboriginal Corporation". The funds were supplied by the Aboriginals Benefit Trust Account. The letter of approval for the expenditure of those funds referred to an application on behalf of Muckaty Aboriginal Corporation and authorised negotiations by the director of the Northern Land Council or his representative, on the basis that the property be transferred to the proposed Muckaty Aboriginal Corporation at the earliest opportunity. By letter dated 6 May 1991, the Secretary of the Department of Lands and Housing, as delegate of the Minister, consented to the transfer of Pastoral Lease No. 856 from Hapford Pty Limited and Kerfield Pty Limited to the Northern Land Council on behalf of Muckaty Aboriginal Corporation.

2.8 Muckaty Aboriginal Corporation Muckaty Aboriginal Corporation was incorporated on 6 December 1991, pursuant to the Aboriginal Councils and Associations Act 1976. By r. 8 of its rules, only Aboriginal people who are entitled by Aboriginal tradition to use or occupy the land enclosed by the boundary of Pastoral Lease No. 856, whether or not the traditional entitlement is qualified as to place, time, circumstances, purpose or permission, are eligible to be members of the corporation.

2.9 Pastoral Lease No. 856 held on behalf of Aboriginal people As the membership of the Northern Land Council and the membership of Muckaty Aboriginal Corporation are restricted to Aboriginal persons, and the Northern Land Council holds its interest in Pastoral Lease No. 856 on behalf of Muckaty Aboriginal Corporation, the Northern Land Council holds its estate or interest in the pastoral lease "on behalf of" Aboriginal people, for the purposes of s. 50(1)(a) of the Land Rights Act. If Muckaty Aboriginal Corporation holds an estate or interest in the pastoral lease, then it also holds that estate or interest "on behalf of" Aboriginal people. See *R v. Toohey; Ex parte Attorney-General for the Northern Territory of Australia* (1980) 145 CLR 374, at pp. 386-8.

2.10 Status of the North South Stock Route The precise status of the portions of the North South Stock Route within the subject land is uncertain. The claimants allege that those portions of the stock route are subject to Pastoral Lease No. 856. If that be the case, then what I have said in para. 2.9 is applicable to those portions. If not, then those portions fall within the definition of "unalienated Crown land" in s. 3(1) of the Land Rights Act, and therefore within the meaning of that expression in s. 50(1)(a) of the Land Rights Act.

2.11 Status of Northern Territory Portion 1423 and its access easement Northern Territory Portion 1423 is not Crown land; the grant of a fee simple interest removes land from the class of land defined as "Crown land" in s. 3(1) of the Land Rights Act. Australian and Overseas Telecommunications Corporation Ltd, to which a freehold interest in that portion was granted, is a company incorporated under the corporations law of the Australian Capital Territory. See s. 3 of the Australian and Overseas Telecommunications Corporation Act 1991. By s. 26 of that Act, that corporation is to be taken for the purposes of the laws of the

Commonwealth, of a State or of a Territory, not to have been incorporated or established for a public purpose or for a purpose of the Commonwealth, not to be a public authority or an instrumentality of the Crown and not to be entitled to any immunity or privilege of the Commonwealth, except insofar as express provision may be made. This provision seems to make clear an intention that Australian and Overseas Telecommunications Corporation Ltd was not to be regarded as the Crown or an emanation of the Crown. I am unaware of any specific provision which would require me to regard it as the Crown for the purposes of the Land Rights Act. It follows that, at the date when the application in this claim was received, the land in Northern Territory Portion 1423 was not Crown land. On 13 April 1993, Australian and Overseas Telecommunications Corporation Ltd changed its name to Telstra Corporation Limited. That corporation also appears to hold an estate or interest in the access easement between the Stuart Highway and Northern Territory Portion 1423. That being the case, the land the subject of the access easement, to which I have referred in para. 2.3, is alienated Crown land in which an estate or interest is held by a corporation which is not an Aboriginal person and does not hold that estate or interest on behalf of Aboriginal persons.

#### 2.12 Status of the energy supply easement

2.12.1 The status of the energy supply easement, referred to in para. 2.4, is less easy to determine. The easement is an easement in gross, which exists for the purpose of a pipeline, conveying natural gas from gas fields in Central Australia to Darwin and places en route. In June 1985, the Northern Territory, by its Power and Water Authority, entered into a contract with a company called NT Gas Pty Ltd, whereby the latter would construct and maintain the pipeline.

2.12.2 By an agreement in writing, dated 30 October 1985, Allan James Hagan and Miriam Anne Hagan (who were then the registered proprietors of Pastoral Lease No. 856, and who are described in the agreement as "the Grantor") granted to NT Gas Pty Ltd (described as "the Company") certain rights. The agreement recites that the Grantor:

"at the request of the Northern Territory of Australia ('the Territory') . . . is agreeable to permitting the construction, operation and maintenance of a pipeline, pipelines, apparatus, works and for matters ancillary in accordance with the provisions of the Energy Pipelines Act 1981 ('the Act') on the land".

The exact nature of the rights granted is the subject of controversy between the parties to the claim, so it is necessary to set out in full the major operative clauses of the agreement:

"(1) The Grantor agrees to grant under Section 36D of the Crown Lands Act an energy supply easement (called 'the pipeline easement') for the purposes specified in Schedule 4 over a piece or parcel of land identified in accordance with the provisions of this Agreement (which piece or parcel of land is called 'the pipeline easement').

(2) (1) The Grantor grants to the Territory together with agents servants engineers contractors and other persons authorised by the Territory a right of access to the land for the purposes of carrying out such survey work tests and investigations as may be required in the opinion of the Territory or the Company so as to determine the location and boundaries of the pipeline easement and the Territory or the Company shall be at liberty to place upon the land such markers as may be necessary in the opinion of the Territory or the

Company to locate or identify the land that is to be subject to the pipeline easement.

(2) For the purposes of Sub-clause (1) the Company together with agents, servants, engineers, contractors and other persons authorised by the Company shall be deemed to be, for the purpose only of access, an agent of the Territory.

(3) Upon identification of the land to be subject to the pipeline easement and notwithstanding that the Memorandum of Grant of Easement may not have been executed by the Grantor or even if executed may not have been registered in accordance with provisions of the Real Property Act the Grantor agrees that:

(a) The Company may commence and proceed with the construction operation and maintenance of the pipeline and associated works in accordance with the proposed terms, being the terms set out in Schedule 4, of the pipeline easement; and

(b) the Company shall have the right to enter upon such parts of the Grantor's land immediately adjacent to the land to be subject to the pipeline easement as may reasonably be required to facilitate the construction operation and maintenance of the pipeline and associated works and to place on such land equipment not of a permanent nature."

2.12.3 So far as is relevant, s. 36D of the Crown Lands Act (NT) then provided: "An easement in gross may be granted to the Territory, the council of a municipality constituted under the Local Government Act or any prescribed statutory public authority by -

(b) the lessee of a Crown lease, over land comprised in that Crown lease."

The Crown Lands Act was repealed and re-enacted as the Crown Lands Act 1992 (NT); the former s. 36D is now s. 63. Section 108 of the Crown Lands Act 1992 (NT) in general preserves the effect of all titles, licences, rights, privileges, obligations and liabilities arising under the repealed Act, and the effect of all legislative and administrative instruments made under the repealed Act, as if they arose or were made under the Crown Lands Act 1992 (NT) or the Pastoral Land Act 1992 (NT).

2.12.4 On 13 December 1985, the Northern Territory of Australia granted to NT Gas Pty Ltd a licence, pursuant to s. 15 of the Energy Pipelines Act (NT). The licence authorised NT Gas Pty Ltd:

"for the period from 13 December 1985 to 12 December 2006 both inclusive to construct, operate and maintain a pipeline for the conveyance of Licensed products as defined in the Schedule between the Palm Valley gas field and Channel Island, along the route and within the licence area more particularly described in the Schedule ..."

The expression "Licence area" was defined in the schedule to the licence as meaning a corridor 1000 metres wide and extending 500 metres to each side of a line described in an appendix to the agreement.

2.12.5 NT Gas Pty Ltd proceeded to construct the pipeline, including that section across the land the subject of this claim. It obtained finance from a consortium of

banks. In December 1986, a series of documents was executed which constituted a sale and lease-back of the pipe. The result is that the pipe is owned by ANZ Leasing (NT) Pty Ltd, as nominee and agent of Australia and New Zealand Banking Group Limited, Commonwealth Bank of Australia, National Australia Bank Limited and Westpac Banking Corporation. The terms of the lease make it clear that any risk of loss is borne by the lessee, NT Gas Pty Ltd. In some events, the lessor has resort to the Northern Territory to ensure payment of the amounts required by the lease. Construction of the pipeline was completed in January 1987.

2.12.6 On 14 February 1987, Allan James Hagan and Miriam Anne Hagan executed a memorandum of grant of easement. This instrument provided that they:

"under Section 36D of the Crown Lands Act and IN CONSIDERATION of the sum of TWO HUNDRED DOLLARS (\$200.00) DO HEREBY GRANT to the Northern Territory of Australia . . . an Energy Supply Easement within the meaning of Section 36EA of and Schedule 2 to the Crown Lands Act affecting that part of the land being N.T. Portion 1629 that is shown described as Energy Supply Easement on the plan numbered S86/356 annexed hereto (hereinafter called 'the Easement Land') and without in any way whatsoever limiting the generality of the foregoing full and free right for the Northern Territory of Australia and its assigns their servants and agents and all persons authorised by it or them to act on its or their behalf at all times and from time to time:

- (a) to lay, construct, repair, maintain, renew, use, operate and remove pipeline, pipelines, apparatus or works within the meaning of the Energy Pipelines Act for the conveyance of any substance whether in a gaseous, liquid or solid state and for purposes incidental thereto under the Energy Pipelines Act through in and along the easement land, and
- (b) to cause or permit to flow or be conveyed through and along the said pipelines any such substance, and
- (c) with or without vehicles, plant and equipment to enter and be in and upon the easement land for the purpose of exercising any rights granted to it or them hereunder, and
- (d) to perform or carry out any act incidental to any of the aforesaid purposes."

The consideration of \$200 referred to in the instrument was paid to the Hagans by NT Gas Pty Ltd, by cheque dated 29 January 1987.

2.12.7 Section 36EA of the Crown Lands Act (NT) then provided:

"(1) Without limiting the power that he may have under any other law in force in the Territory, but subject to section 36G, the proprietor of an easement or easement in gross of a type described in a certificate of title or Crown lease registered under the Real Property Act by a description in Schedule 2 shall have the use and benefit of the easement or easement in gross for the purposes specified in relation to that use.

(2) A pipe, duct, wire, pole or other thing attached to or constructed on land to which an easement or easement in gross referred to in subsection (1) relates for or in relation to a relevant purpose described in Schedule 2 shall be deemed not to be a fixture to the land for the purpose of giving the proprietor of the land a proprietary interest in it."

The provision is now found in s. 65 of the Crown Lands Act 1992 (NT).



2.12.8 Schedule 2 to the Crown Lands Act (NT) as in force at the relevant time (now schedule 1 to the Crown Lands Act 1992 (NT)) contained the following provisions in relation to an energy supply easement:

"description

Energy supply easement.

Purpose

Supplying or conveying to, through or across the land gas, liquid fuels or water or other liquids in such a form as to be capable of conveying energy.

Power

To break the surface of, dig, open up and use the land for the purpose of laying down, fixing, taking up, repairing, relaying or examining pipes for the purposes of the easement and of using and maintaining those pipes, and to enter the land at any time (if necessary with vehicles and equipment) for the purposes of the easement or exercising these powers."

2.12.9 The land described in the memorandum of grant of easement referred to in para. 2.12.6 as the easement land is that which is shown on the map in appendix 5 to this report as the energy supply easement. On 10 July 1987, the energy supply easement was registered pursuant to the Real Property Act (NT).

2.12.10 By instrument dated 18 May 1988, the Northern Territory of Australia granted to NT Gas Pty Ltd certain rights. Again, there is a dispute in relation to the present claim as to the nature of those rights, so it is necessary to set out the provisions of the instrument. The recital clauses read as follows:

"WHEREAS:

A. N.T Gas is the holder of Pipeline Licence Number 4 under the Energy Pipelines Act 1981 in relation to the Amadeus Basin to Darwin natural gas pipeline.

B. The Territory is the grantee of certain easements in gross being Energy Supply Easements within the meaning of Section 36EA of and Schedule 2 to the Crown Lands Act granted for the purposes of and in connection with the Amadeus Basin to Darwin natural gas pipeline.

C. Further easements in gross will be granted to the Territory from time to time.

D. The Territory has agreed to grant to NT Gas and NT Gas has agreed to accept the full and free right to use the easements in gross granted or to be granted to the Territory for the purposes of the Amadeus Basin to Darwin natural gas pipeline, subject to the terms of this Deed."

The operative provisions of the instrument read as follows:

"1. In this Deed unless otherwise specified:

(a) 'Amadeus Basin to Darwin natural gas pipeline' means the pipeline constructed and to be operated by NT Gas under the Licence granted pursuant to the Energy Pipelines Act 1981 for the purposes of conveying natural gas from the Amadeus Basin to Darwin and includes apparatus, works, and facilities ancillary to the pipeline.

(b) 'Servient land' means that land affected or to be affected by easements in gross granted to the Territory for the purposes of or in connection with the Amadeus Basin to Darwin natural gas pipeline.

2. NT Gas shall be entitled to the same extent as the Territory in relation to the Amadeus Basin to Darwin natural gas pipeline to the full and free right for it and its assigns, its and their servants and agents and all persons authorised by it or them to act on its or their behalf at all times and from time to time:

(a) to lay, construct, repair, maintain, renew, use, operate and remove pipeline, pipelines, apparatus or works within the meaning of the Energy Pipelines Act for the conveyance of any substance permitted by the aforesaid Pipeline Licence Number 4 and for purposes incidental thereto under the Energy Pipelines Act through in and along the servient land, and

(b) to cause or permit to flow or be conveyed through and along the said pipelines any such substance, and

(c) with or without vehicles, plant and equipment to enter and be in and upon the servient land for the purpose of exercising any rights granted to it or them hereunder, and

(d) to perform or carry out any act incidental to any of the aforesaid purposes.

3. NT Gas shall be responsible for all damage caused by NT Gas its servants agents engineers contractors and other persons authorised by it to the servient land including any property whether of a real or personal nature situated thereon occurring by reason of the operation or maintenance of the Amadeus Basin to Darwin natural gas pipeline.

4. NT Gas shall keep the Territory indemnified against all actions claims costs and damages (whether in respect of damage to real or personal property or personal injury) that may be lawfully brought made or claimed against the Territory by any person in relation to or in connection with the easements in gross granted or to be granted to the Territory (for the purposes of or in connection with the Amadeus Basin to Darwin natural gas pipeline) or any matter or thing done or purported to have been done pursuant to it.

5. The Territory shall at all times ensure the continuance of tenure conferred by the aforesaid easements in gross and shall take all action necessary to ensure such continuance notwithstanding changes of ownership of or title to the servient land for the purposes of or in connection with the Amadeus Basin to Darwin natural gas pipeline for the term of Pipeline Licence Number 4 or any extension or replacement thereof."

2.12.11 So far as the Northern Territory of Australia is concerned, the source of power for entering into an agreement of this nature appears to have been s. 36EB of the Crown Lands Act (NT) (now s. 66 of the Crown Lands Act 1992 (NT)), which provided:

"A person to or for whom an easement in gross is granted or reserved under this Division may allow any other person (himself or by his agents, servants or workmen) to enter on and do anything on the land to which the easement relates that the person to or for whom it was granted or reserved can do as

the proprietor of the easement, and the proprietor of the land shall not hinder or obstruct a person entering on or doing anything on the land in pursuance of the authority of the proprietor of the easement."

2.12.12 Thus, by the time the Northern Land Council became the transferee of Pastoral Lease No. 856, there existed over the land an energy supply easement, which was an easement in gross, created by the former lessees in favour of the Northern Territory of Australia. There is no doubt that such an easement bound the Northern Land Council; s. 36F of the Crown Lands Act (NT) (now s. 67 of the Crown Lands Act 1992 (NT)) provided that the duties imposed by an easement in gross pass to the transferee of the lease of the land which is the servient tenement. Within the land the subject of the easement was a pipeline, owned by ANZ Leasing (NT) Pty Ltd and leased to NT Gas Pty Ltd.

2.12.13 Counsel for the claimants argued that an easement in gross is not an estate or interest in land, for the purposes of a. 50 of the Land Rights Act. They called in aid the judgments of Mason J and Wilson J in *R v. Toohey; Ex parte Meneling Station Pty Ltd* (1982) 158 CLR 327, at pp. 342-3 and 351 respectively. The effect of those passages is that the phrase "estate or interest" in the definition of "unalienated Crown land" in s. 3(1), and the phrase "estates and interests" in s. 50, of the Land Rights Act are to be construed so as to cover only proprietary interests of the kinds traditionally recognised by the law as legal and equitable estates and interests. It was argued in consequence that, because an easement of the kind known to the common law was an estate or interest which required both a dominant and a servient tenement, an easement in gross, which has no dominant tenement, was not an estate or interest for the purposes of the Land Rights Act. The argument gains support from *Commissioner of Main Roads v. North Shore Gas Co. Ltd* (1967) 120 CLR 118, especially at p. 133 in the judgment of Windeyer J, *Gas & Fuel Corporation of Victoria v. Barba* [1976] VR 755, at p. 763, and *Harada v. Registrar of Titles* [1981] VR 743. That which is properly called an easement, for the purposes of the common law, would not include an easement in gross. I am prepared to accept, however, that the energy supply easement is an estate or interest for the purposes of the Land Rights Act. It is open to a legislature to create estates or interests which do not have all of the characteristics of those which are recognised traditionally. In *North Shore Gas*, Windeyer J recognised that a form of easement could be created by statute without the need for a dominant tenement. Nothing in the judgments in *Meneling* suggests that a novel form of right created by legislation cannot be an estate or interest for the purposes of the Land Rights Act. Indeed, the High Court of Australia examined in detail the nature of a grazing licence before determining that it did not constitute an estate or interest; the grazing licence was not rejected simply on the ground of novelty. There is no reason why an easement lacking only a dominant tenement should not be regarded as an estate or interest.

2.12.14 If the energy supply easement were the only estate or interest created as a result of the transactions to which I have referred, it would have no effect on the claim. The easement in gross itself was granted to the Northern Territory of Australia. It is therefore held by the Crown, and does not affect the status of the land claimed as alienated Crown land in which all estates and interests not held by the Crown are held by or on behalf of Aboriginal people. It was contended on behalf of NT Gas Pty Ltd, the Attorney-General for the Northern Territory and the four banks referred to in para. 2. 12.5 that other estates or interests of various kinds had been created, which were held

neither by the Crown nor by or on behalf of Aboriginal people. I turn now to this question.

2.12.15 In the first place, it was contended that the Hagans had created an easement or an "equitable interest" in favour of NT Gas Pty Ltd, by the agreement of 30 October 1985. Plainly, this could not be so. That agreement created no common law easement itself. It could not do so, because it referred to no dominant tenement, which is an essential characteristic of a common law easement (see the authorities referred to in para. 2.12.13). An equitable easement could not be something of a kind inferior to a common law easement; it would only arise from an inchoate attempt to create a common law easement. By s. 36D of the Crown Lands Act (NT), an easement in gross could only be created in favour of the Northern Territory of Australia, a municipal council or a prescribed statutory public authority. NT Gas Pty Ltd fell within neither of the last two categories. The law would not recognise as an estate or interest in land an attempt to create an easement in gross in its favour. Neither would equity. In any event, the obligation which the Hagans undertook to NT Gas Pty Ltd by the agreement was to grant an energy supply easement under s. 36D of the Crown Lands Act (NT). This is plain enough from clause (1) of the agreement, which I have set out in para. 2.12.2. It is emphasised by clause 7, which I have not quoted, in which the Hagans undertook certain obligations "pending the formal granting or vesting of the pipeline easement in the Territory". No estate or interest in the land, other than an easement in gross, is contemplated. The rights of access and to perform works, which NT Gas Pty Ltd acquired under clauses (2) and (3), clearly amount to no more than a licence. Indeed, those arising under clause (2) appear to be derivative from rights of access given to the Northern Territory. It is clearly established that a licence to enter land and perform activities on it is a personal right and does not amount to an estate or interest in land. This, in substance, was the conclusion of the High Court of Australia in *Meneling*.

2.12.16 One argument raised was that NT Gas Pty Ltd was the assignee of the estate or interest of the Northern Territory in the energy supply easement. The assignment was said to have occurred by the instrument dated 18 May 1988, the text of which is set out in para. 2.12.10. This argument must fail for a number of reasons. The language of the instrument is not that of assignment. It recites an agreement to grant and accept "the full and free right to use the easements in gross". The text confirms this; the subject of the grant by the Northern Territory is the rights which are incidents of the energy supply easement, not the easement itself. The source of power for the Northern Territory to enter into the agreement, s. 36EB of the Crown Lands Act (NT), which is set out in para. 2.12.11, did not contemplate the assignment of the easement in gross itself. It authorised the Northern Territory to grant to others the incidents of the easement in gross, not the easement in gross itself. If assignment of the easement in gross were permitted, the restriction imposed by s. 36D of the Crown Lands Act (NT) on the classes of proprietors of easements in gross would be rendered irrelevant.

2.12.17 Next, it was argued that NT Gas Pty Ltd had acquired an equitable interest by way of resulting trust, arising from its payment of the \$200 consideration for the grant of the energy supply easement to the Northern Territory. Where one person pays for the purchase of an interest in land, but the interest is conveyed or granted to another person, the law presumes that the latter holds the interest on trust for the former. It must be emphasised that there is only a presumption of a resulting trust. The presumption may be rebutted by the existence of circumstances showing an intention that the provider of the purchase money is not to benefit by way of a trust. The fact that the

purchase was intended as a gift would be an obvious rebutting circumstance. In the case of the energy supply easement, the circumstances rebut the presumption emphatically. The relevant transactions were carried out in furtherance of the statutory scheme, constituted by the Energy Pipelines Act (NT) and the Crown Lands Act (NT), whereby the Northern Territory Government could license private enterprises to deliver or distribute energy, or the resources to generate it. As part of the execution of the scheme, NT Gas Pty Ltd carried out the task of negotiating with landowners and leaseholders for the creation of energy supply easements. Without the statutory scheme, NT Gas Pty Ltd would have been unable to acquire easements, because it could not have related them to any dominant tenement. The clear intention of the statutory scheme is that the Northern Territory is to hold the beneficial interest in the energy supply easement, licensing its use under a. 36EB of the Crown Lands Act (NT). Because NT Gas Pty Ltd is the profit-maker, as licensee, builder and operator of the pipeline, it was sensible that it should pay the costs involved in procuring the energy supply easements. It must be remembered that s. 36D of the Crown Lands Act (NT) permitted the creation of easements in gross only in favour of the Northern Territory itself, municipal councils and prescribed statutory public authorities. The statute did not contemplate that those in whose favour such easements could not be created would become beneficial owners of them by resulting trust, arising from the provision of purchase money.

2.12.18 A further contention was that NT Gas Pty Ltd was granted an estate or interest in the land the subject of the claim as a result of the rights given to it by the licence granted under s. 15 of the Energy Pipelines Act (NT), referred to in para. 2.12.4, or the instrument dated 18 May 1988, set out in para. 2.12.10, or both. In para. 2.12.16, I have rejected the argument that the latter instrument amounted to an assignment of the easement in gross. The argument that either the licence or the instrument gave to NT Gas Pty Ltd rights which amounted to an estate or interest in land must be rejected similarly. The language of each document is not the language of the creation of estates or interests in land, but the language of the grant of personal rights, or licences. The documents are formal, legal documents. The familiar language of the grant of estates or interests could have been used, if this were intended. Undoubtedly, a reason why this was not done is that any attempt by the Northern Territory to grant estates or interests in land, inconsistent with the pastoral lease held by the Hagans, would have lacked the necessary statutory authority. That authority is not to be found in the provisions to which I have referred, dealing with the creation and use of the energy supply easement. The Crown Lands Act (NT) contained no provision authorising the carving of lesser interests out of an easement in gross. The only relevant provision was s. 36EB, which did not empower the Northern Territory either to assign the easement in gross or to grant lesser interests out of it. Section 22 of the Energy Pipelines Act (NT) made it clear that a licence granted under s. 15 gave rise to no proprietary interest in any land, nor to any licence to enter land; s. 22 is the source of a power to grant leases, easements and licences over Crown land to the holder of a licence under s. 15, to enable the holder of that licence to enter land for the purpose of constructing and maintaining the pipeline for which the a. 15 licence is held. That power would have been entirely unnecessary if the licence under s. 15 itself amounted to an interest in land.

2.12.19 For its right to go onto the land claimed and carry out any activities there, NT Gas Pty Ltd had to rely on its agreement with the Hagans until 18 May 1988 and then upon its agreement with the Northern Territory with respect to the use of the

energy supply easement. In each case, the rights it acquired were personal, not estates or interests in the land.

2.12.20 In their written submissions, the banks referred to in para. 2.12.5 attempted to argue that ANZ Leasing (NT) Pty Ltd had acquired an interest in the land by having acquired ownership of the pipe. The argument was based on the proposition that the pipe, being buried in the soil, had become a fixture. On the application of ordinary principles, there must be some doubt whether this is so. A chattel becomes a fixture, and part of the real estate, if annexed to land to a sufficient degree and with the object of the better enjoyment of the land. See *Holland v. Hodgson* (1872) 7 LRCP 328, at pp. 334-5, and *Reid v. Smith* (1905) 3 CLR 656, at pp. 663 (per Griffith CJ), 678 and 680 (per O'Connor J). There can be no doubt about the degree of annexation of the pipe; it is buried seventy-five centimetres beneath the surface. The evidence of Glenn Bott, the Administrative Manager of NT Gas Pty Ltd, as to the purpose of burying the pipe, was to the effect that it was to safeguard the pipe itself. The pipe is not constructed so as to benefit the land, but simply because it must exist to enable natural gas to be conveyed across the land.

2.12.21 Even if the pipe were a fixture, however, the acceptance of the banks' submission would turn the whole law relating to fixtures on its head. If a chattel becomes a fixture, the consequence is that the owner of the chattel loses ownership and the owner of the land to which it is annexed acquires ownership. There are many cases, of which *Brand v. Chris Building Co. Pty Ltd* [1957] VR 625 is an example. There is no case of which I am aware which holds that the owner of a chattel which becomes a fixture acquires an estate or interest in the land to which the chattel is annexed. This rule explains the various provisions which are designed to ensure that, even if a pipe within an energy supply easement would otherwise become a fixture, it does not do so for the purpose of giving the owner of the land any interest in the pipe. These provisions are found in clause (8) of the agreement dated 30 October 1985, referred to in para. 2.12.2, s. 36EA(2) of the Crown Lands Act (NT), quoted in para. 2.12.7, and s. 59 of the Energy Pipelines Act (NT).

2.12.22 Further, the submission is inconsistent with the decision of the High Court of Australia in *Commissioner of Main Roads v. North Shore Gas Co. Ltd* (1967) 120 CLR 118, in which the court held that the rights of the owner of gas mains and service pipes embedded in the soil were neither land nor an interest in land, for the purposes of a statutory scheme providing for compensation for people deprived of land, or of interests in land, as a result of the acquisition of the land for the building of a freeway. The court held that ownership under statutory authority of a buried pipe did not give rise to ownership of land, despite the fact that the pipe occupied space to which the owner of the land would otherwise have been entitled.

2.12.23 The Attorney-General for the Northern Territory made an attempt to argue that some equitable interest existed on the application of the principles of estoppel, acquiescence and unconscionable conduct. The attempt fails. Apart from its other deficiencies, the argument cannot be sustained for lack of evidence that NT Gas Pty Ltd was ever led by the Hagans, or by the Northern Territory Government, to believe that it would acquire any entitlement which it did not acquire.

2.12.24 In the result, I am of the view that, apart from Pastoral Lease No. 856, the only possible estate or interest in the land the subject of the energy supply easement, referred to in para. 2.4, is that easement in gross itself, and that it is held by the Crown.

In chapter 6, I deal with the consequences of this conclusion for NT Gas Pty Ltd, ANZ Leasing (NT) Pty Ltd and the banks referred to in para. 2.12.5.

2.12.25 My conclusion makes it unnecessary to deal with the argument, put on behalf of the claimants, that the easement in gross is a "mining interest", within the meaning of s. 3(1) of the Land Rights Act, and, by virtue of s. 3(2)(a), is therefore to be disregarded as not being an estate or interest. It also precludes any question of estates or interests in the land arising from any rights of access across other parts of the land to that part of it which is subject to the energy supply easement. There are tracks which have been used to gain such access, but they are not the subject of any instruments or agreements which would give rise to easements of way and would, in any event, lack a dominant tenement. There could be no question of an easement of necessity for access to the land the subject of the energy supply easement, because access is available from adjoining land on both the north and the south, along the track which runs along the energy supply easement itself.

2.13 Land available for claim I therefore find that:

- (a) Northern Territory Portion 1629, including the energy supply easement referred to in para. 2.4, but excluding the easement providing access to Northern Territory Portion 1423 referred to in para. 2.3, is alienated Crown land in which all estates and interests not held by the Crown are held by, or on behalf of, Aboriginal people, and is available for claim;
- (b) Northern Territory Portion 2100 is alienated Crown land in which all estates and interests not held by the Crown are held by, or on behalf of, Aboriginal people, and is available for claim;
- (c) the parts of the North South Stock Route which lie within the boundaries of Northern Territory Portion 1629 are available for claim, either because they are unalienated Crown land, or because they are alienated Crown land in which all estates and interests not held by the Crown are held by, or on behalf of, Aboriginal people; and
- (d) Northern Territory Portion 1423 is neither unalienated Crown land, nor alienated Crown land in which all estates and interests not held by the Crown are held by, or on behalf of, Aboriginal people, and is not available for claim.

2.14 Physical features of the land claimed The land is semi-arid. Its eastern area lies in the Ashburton Range and is stony plateau country, falling away quite sharply to the east in places, but more gently to the west. It is drained to the west and then towards the north by the Tomkinson Creek, a significant but ephemeral waterway with two main branches, in which are to be found significant waterholes. The central area tends to be flat, with some claypans. The western area is composed of stony ridges. The vegetation is low scrub, except along the waterways, where substantial trees are to be found. At the time of that part of the hearing which was conducted on the land, cattle had been removed from the land for several seasons, and rain had fallen a few weeks earlier. There was water in the waterholes, which attracted considerable bird life, and much of the vegetation was flowering. I gained an impression of considerable beauty.

### 3 LOCAL DESCENT GROUPS

3.1 Relevant language groups Although the title given to this land claim uses the word "Warlmanpa", which is the name of a language group, the claim is not put on the basis that the relevant local descent group is a language group. Indeed, among the claimants are people who belong to the Mudbura, Warumungu, Warlpiri and Jingili language groups as well as to the Warlmanpa language group. The spread of the claimants among language groups may be the result of concentrations of Aboriginal people in communities in and around Tennant Creek, Elliott and Ali Curung.

#### 3.2 Composition of groups advanced as traditional Aboriginal owners

3.2.1 The groups advanced as traditional Aboriginal owners in the present claim are composed of kirta and kurtungurlu for a particular dreaming or set of dreamings, for a particular area of country associated with that dreaming or those dreamings.

3.2.2 The social organisation of the claimants is based on a form of the moiety system, under which the people, land, dreamings and other creatures and phenomena each belong to one moiety or the other. In turn, for the claimants, each moiety is divided into four subsections. A person's membership of a particular subsection will depend upon the subsection to which his or her father belongs; the subsection identity alternates with the generations, so that a person's subsection will be the same as that of his or her paternal grandfather. The subsection which provides an appropriate marriage partner is a preordained subsection in the opposite moiety, so that a child will always belong to a subsection and a moiety different from that of his or her mother and that of his or her mother's father.

3.2.3 The groups advanced as the relevant local descent groups for the purposes of the claim are described as composed of subsection patricouples. Ideally, each is composed of two pairs of subsections, each pair consisting of related parent and child subsections. One subsection patricouple in each group constitutes kirta and the other constitutes kurtungurlu. The words kirta and kurtungurlu are taken from the Warlpiri language; other relevant languages may use terms which are slightly, or even markedly, different from these, to convey the same or similar concepts. The concepts are explained in para. 3.2.4, and the significance of the roles of kirta and kurtungurlu in relation to the claim is dealt with in para. 4.12.2.

3.2.4 Each person's subsection identity will ordinarily give that person entitlement as kirta to the country of his or her father's father and entitlement as kurtungurlu to the country of his or her mother's father. Thus, in any selection of four groups covering all of the eight subsections, each subsection identity will appear twice, once as kirta for one group and once as kurtungurlu for another. The group for which a person is kirta, and its country, will be attached to one moiety and the group for which that person is kurtungurlu, and its country, will be attached to the other moiety.

3.2.5 A final complication of the picture is that subsection identity terms differ from language to language, although the underlying system is the same or similar over a wide area. This is one explanation of the way in which people from different language groups may be members of the one land-holding group. Marriage with someone of the appropriate subsection in a different language group is regarded as proper. The following table sets out the subsection identities which make up different groups. The identities are shown in four of the languages relevant to the claim. It should be noted that those names which commence with the initial "J" are applicable to males, and those which commence with the initial "N" are applicable to females.



	WARLMANPA	MUDBURA	WARUMUNGU	WARLPIRI
A kirta	Japaja	Jalyirri	Jappaljari	Japaljarri
	Napaja	Nalyirri	Nappaljarri	Napaljarri
	Jungurra	Jimija	Jungarrayi	Jungarrayi
	Namurlpa	Namija	Namikili	Nungarrayi
A kurtungurlu	Jampijinpa	Jampijina, Jampiyin	Jampin	Jampijinpa
	Nampijinpa	Nampijina, Nampiyin	Nampin	Nampijinpa
B kirta	Jupula	Jurlama	Juppurla	Jupurrula
	Napula	Nawurla	Narurla	Napurmla
	Japanangka	Janama	Jappanangka	Japanangka
	Napanangka	Nanaku	Nappanangka	Napanangka
B kurtungurlu	Japangarti	Jangari	Jappangarti	Japangarti
	Napangarti	Nangari	Nappangarti	Napangarti
	Jakama	Japarta	Jakkamarra	Jakamarra
	Nakama	Nimarra	Nakkamarra	Nakamarra
C kirta	Jangala	Jangala	Jangala	Jangala
	Nangala	Nangala	Nangala	Nangala
	Jampijinpa	Jampijina, Jampiyin	Jampin	Jampijinpa
	Nampijinpa	Nampijina	Nampin	Nampijinpa
C kurtungurlu	Jangala	Jangala	Jangala	Jangala
	Nangala	Nangala	Nangala	Nangala
	Japaja	Jalyirri	Jappaljari	Japaljarri
	Napaja	Nalyirri	Nappaljarri	Napaljarri
D kirta	Japanangka	Janama	Jappanangka	Japanangka
	Napanangka	Nanaku	Nappanangka	Napanangka
	Jupula	Jurlama	Juppurla	Jupurrula
	Napula	Nawurla	Narurla	Napurmla
D kurtungurlu	Jakama	Japarta	Jakkamarra	Jakamarra
	Nakama	Nimarra	Nakkamarra	Nakamarra
	Japangarti	Jangari	Jappangarti	Japangarti
	Napangarti	Nangari	Nappangarti	Napangarti
	Jungurra	Jimija	Jungarrayi	Jungarrayi
	Namurlpa	Namija	Namikili	Nungarrayi

3.3 The meaning of "local descent group" In determining what constitutes a "local descent group" within the meaning of the definition of "traditional Aboriginal owners" in s. 3(1) of the Land Rights Act, I have followed what was said by the Full Court of the Federal Court of Australia in *Northern Land Council v. Olney* (1992) 34 FCR 470, at pp. 478-85. It is unnecessary for me to repeat any part of that judgment in this report.

3.4 Descent criteria It follows from what I have said that the primary descent criterion accepted by the claimants for the ascertainment of the membership of each group is a combination of patrilineal descent and matrilineal descent. A person acquires membership of a group as kirta by inheriting his or her subsection identity and dreaming from his or her father and paternal grandfather. Membership of a group as kurtungurlu is acquired by inheritance of a subsection identity from a person's mother and maternal grandfather. Marriages which are not "straight", i.e. which take place between persons who are of inappropriate subsections for marriage, create complications and may result in some members of a group having non-ideal subsection identities or dual identities, only one of which is ideal. In some cases, particularly those of one non-Aboriginal parent, there may be attribution of the subsection identity which would have been appropriate if the Aboriginal parent had married "straight", or inheritance of the appropriate subsection identity through an adoptive Aboriginal parent. Recruitment to a group, particularly in the case of kurtungurlu, is also a possibility. Thus each group is composed primarily of kirta, whose inheritance is from their fathers and paternal grandfathers, and kurtungurlu, whose inheritance is from their mothers and maternal grandfathers, but there may be additional people of non-standard subsection identities and people whose subsection identities are imputed rather than inherited biologically. These are the descent criteria which the claimants recognise.

3.5 Seven groups There are seven groups claiming affiliations to dreamings which are related to sites on the land claimed. For convenience, I deal first with the group claiming affiliations to sites in the easternmost area of the land and move westwards. The name given to each group is the name of the principal dreaming through which the members of the group claim to hold their affiliations to sites on and near the land claimed.

### 3.6 The Milwayi group

3.6.1 The Milwayi group is based on the J(N)apaljarri-J(N)ungarrayi subsection patricouple as kirta and the J(N)ampijinpa-Ju(Na)purrula subsection patricouple as kurtungurlu, using the more widely known Warlpiri words. In the genealogies which were tendered, a number of families were named as belonging to this group. There was evidence from the claimants that some were not properly included, namely the descendants of the late Big Willy Japaljarri and the members of the Williams family. In the case of those shown as Marion Nungarrayi, Bobby Jungarrayi, Joan Nungarrayi, Janet Nungarrayi, Maryanne Thompson and Brenda Nungarrayi, the only evidence was from G. Brown (whose given name I have not written because he has died since the hearing) that they "come into this part for the snake dreaming". No evidence was heard from any of them or their children. Apart from the genealogies and the evidence of G. Brown, there is nothing to say whether those persons should be included as kirta or otherwise. I have not regarded the evidence as strong enough to include them. In part, this is because the genealogies do not show the names of ancestors further back than one generation before the older living claimants. This makes it impossible for me to determine, on the basis of descent, the propriety of including those persons. It would be wrong to include them simply on the basis of their subsection classifications, because

those classifications are shared by many people and it is obvious that not all of those people are to be included.

3.6.2 There also appears in the genealogies (but not in the list of claimants tendered) a reference to Mona Kidd, her two sisters and one surviving brother. Although Mona Kidd was recorded as present during the taking of evidence at Jiinngi (site 17), on 30 July 1993, she did not give evidence and no evidence was given about her or her siblings. I have therefore not included her as a member of the group.

3.6.3 I have included Bunny Bennett Napurrula, her sister Annie Phillips Napurrula, and her half-sister, Alice Jackson Napurrula, as a result of Bunny's claim in evidence that they are kurtungurlu for Milwayi country. According to the genealogies, they are entitled by descent as children of the late Mary Jackson Napaljarri, each of their fathers being of the Jakamarra subsection.

3.6.4 A sizeable part of the Milwayi group, both in numbers and commitment, consists of the descendants of the late Chicken Jack Japaljarri and Kitty Brown. The children of the deceased oldest daughter of that couple are Jimmy Jones, Mavis Ricky, Mark Jones and Leon Jones. They are kurtungurlu. Mark Brown Jungarrayi survives as the oldest kirta in this line, with his children, Lance, Damien, Sylvania, Fabian, Vivienne and Kirsten Brown, all of whom are J(N)apaljarri, who are also kirta. At the time of the hearing, Mark's younger brother, G. Brown, was alive. He was a most influential member of the group and active in Aboriginal affairs in the region. He is survived by a number of children and grandchildren. His children are Miranda, Samantha, Jasmine, Ronald, Pam, Beryl (also known as Pearl), Carmen, Glen, Mervyn and Patrick. All are of the J(N)apaljarri subsection, save that Ronald, Pam, Beryl and Carmen have dual subsection identities, having also the J(N)apangarti subsection. All are kirta. Pam has three children, Jasmine Nangala, Jeremias and Jerome. Carmen has one daughter, Bernadine Napurrula. All are kurtungurlu. Mark Brown has two sisters, Wendy and Edna Brown, both Nungarrayi and both kirta for this group. Wendy has three children, Magdalene, Josephine and Ina Brown, all of whom are Nampijinpa and kurtungurlu.

3.6.5 The next branch of the group is descended from the late Sambo Brown Japaljarri. He is survived by Sammy Sambo Jungarrayi, Jean Sambo Nungarrayi, Dulcie Sambo Nungarrayi, Michael Sambo Jungarrayi and Robert Sambo Jungarrayi. Sammy has three children, Henry, Sally and Benjamin Sambo, all of whom are J(N)apaljarri. Michael has two children, Rekasha Napaljarri and an unnamed son, who is a Japaljarri. Sammy's son Henry has four children, Lisa, Dennis, Lorraine and Desmond Morrison, all of whom are J(N)ungarrayi. All those mentioned are kirta. I have also included Joan, Dianne, Danny, Leon and Stanley Stokes, and Miriam Charley and Debbie Holt, on the basis of evidence from Johnny Stokes. Johnny is the natural father of the first five and the adoptive father of the last two; he gave evidence that all were kurtungurlu for the Milwayi group, taking this role from Johnny's deceased wife and her father, the late Sambo Brown. They are all J(N)ampijinpa.

3.6.6 Peter Toprail Japaljarri is a brother of the late Sambo Brown and is kirta, along with his daughter, Gladys Toprail Brown Nungarrayi, and his son, Albert Toprail Brown Jungarrayi. Gladys has a daughter, Janine Nampijinpa, and a son, Dominic Jampijinpa, both of whom are kurtungurlu.

3.6.7 Angus Riley Jupurrula and Lady Benson Napurrula are surviving children of a deceased sister of Peter Toprail and Sambo Brown and are therefore kurtungurlu. Harry

Brewster Jungarrayi is the surviving son of a deceased brother of Peter Toprail and Sambo Brown. He is kirta. Another deceased sister is survived by a daughter, Eve Brewster Nampijinpa, who is kurtungurlu.

3.6.8 Another prominent, senior member of the group is Harry Bennett Japaljarri (Kanjwala). He acquired his identity by adoption, having had a European father, but being brought up by his mother's Aboriginal husband, the late Talbert Jungarrayi, before he was taken away by welfare authorities and sent to school. He is accepted by other claimants as a member of the group, as are his natural children, Bernadine (Bunny) Nungarrayi, Marshall Harry Bennett Jungarrayi, Joyce Bennett Nungarrayi and Marlene Bennett Nungarrayi. Along with Harry, they are all kirta. Marshall has three children, Derek, Russell and Wade Harley, who are all Japaljarri and kirta as well. Bernadine has four children, Gina Marie, Rowan John, Justin Troy and Mary-Anne Leigh Bennett, all of whom are J(N)ampijinpa and kurtungurlu. Likewise, the children of Joyce--Cynthia Lyn, Lavine Lee and Kiana Helenka--and Marlene's son, Darrell Dempsey Bennett, are kurtungurlu. Harry Bennett also "grew up" three children in Mount Isa, Queensland. I have not included them, because he was equivocal in his evidence about whether they came in for Milwayi country.

3.6.9 The remaining family making up the Milwayi group is the family of which Maxie Martin Japaljarri and Jimmy Newcastle Japaljarri are the senior kirta. Brunette Willy Alien, Bobby Cooper and Bobby Alien, all Jampijinpa, are surviving sons of a deceased sister of the father of Maxie and Jimmy, who is also deceased. They are therefore kurtungurlu. Frank Anderson Jupurrula is the surviving son of a deceased sister of Maxie and is therefore kurtungurlu. Jimmy has nine children, who are kirta like him; their names are Nita, Bronwyn, Anthony, Merlin, Darren, Noel, Julianna, Jodie and Selina. They are all J(N)ungarrayi; some have additional subsection identities, presumably from their mothers. Nita has two children, Cameron and Glennen. Bronwyn has three children, Nicholas, Gerald Andrew and Naomi. Jodie has Jordan and Ben. All are J(N)ampijinpa and kurtungurlu. Anthony has four children, Jermaine, Taron, Nicholas and a daughter whose name was not the subject of evidence. They are kirta.

3.6.10 The following is a list of the members of the Milwayi group. It is divided into kirta and kurtungurlu. The names of children are shown indented immediately below the names of their parents.

#### Kirta

#### Kurtungurlu

Bunny Bennett Napurrula  
Annie Phillips Napurrula  
Alice Jackson Napurrula  
Jimmy Jones  
Mavis Picky  
Mark Jones  
Leon Jones

Mark Brown Jungarrayi  
Lance Brown Japaljarri  
Damien Brown Japaljarri  
Sylvania Brown Japaljarri  
Fabian Brown Japaljarri

Kirta

Kurtungurlu

Vivienne Brown Napaljarri

Kirsten Brown Napaljarri

Miranda Napaljarri

Samantha Napaljarri

Jasmine Napaljarri

Ronald Brown Japangarti/Japaljarri

Pam Brown Napangarti/Napaljarri

Jasmine Nangala

Jeremias

Jerome

Beryl/Pearl Brown Napangarti/Napaljarri

Carmen Brown Napangarti/Napaljarri

Bernadine Napurmla

Glen Brown Japaljarri

Mervyn Brown Japaljarri

Patrick Brown Japaljarri

Wendy Brown Nungarrayi

Magdalene Brown Nampijinpa

Josephine Brown Nampijinpa

Ina Brown Nampijinpa

Edna Brown Nungarrayi

Joan Stokes Nampijinpa

Dianne Stokes Nampijinpa

Danny Stokes Jampijinpa

Leon Stokes Jampijinpa

Stanley Stokes Jampijinpa

Miriam Charley Nampijinpa

Debbie Holt Nampijinpa

Sammy Sambo Jungarrayi

Henry Sambo Japaljarri

Lisa Morrison Nungarrayi

Dennis Morrison Jungarrayi

Lorraine Morrison Nungarrayi

Desmond Morrison Jungarrayi

Sally Sambo Napaljarri

Benjamin Sambo Japaljarri

Jean Sambo Nungarrayi

Dulcie Sambo Nungarrayi

Michael Sambo Jungarrayi

Rekasha Napaljarri

Kirta

Kurtungurlu

Unnamed Japaljarri

Robert Sambo Jungarrayi

Peter Toprail Japaljarri

Gladys Toprail Brown Nungarrayi

Janine Nampijinpa

Dominic Jampijinpa

Albert Toprail Brown Jungarrayi

Angus Riley Jupurrula

Lady Benson Napurmla

Harry Brewster Jungarrayi

Eve Brewster Nampijinpa

Harry Bennett Japaljarri (Kanjiwala)

Bernadine (Bunny) Nungarrayi

Gina Marie Bennett Nampijinpa

Rowan John Bennett Jampijinpa

Justin Troy Bennett Jampijinpa

Mary-Anne Leigh Bennett Nampijinpa

Marshall Harry Bennett Jungarrayi

Derek Japaljarri

Russell Japaljarri

Wade Harley Japaljarri

Joyce Bennett Nungarrayi

Cynthia Lyn

Lavine Lee

Kiana Helenka

Marlene Bennett Nungarrayi

Darrell Dempsey Bennett

Brunette Willy Alien Jampijinpa

Bobby Cooper Jampijinpa

Bobby Alien Jampijinpa

Maxie Martin Japaljarri

Frank Anderson Jupurrula

Jimmy Newcastle Japaljarri

Nita Nungarrayi

Cameron Jampijinpa

Glennen Jampijinpa

Bronwyn Newcastle Nungarrayi

Nicholas Jampijinpa

Gerald Andrew Jampijinpa

Naomi Nampijinpa

Kirta  
Anthony Newcastle Jungarrayi/Japanangka  
    Jermaine Japangarti/Japaljarri  
    Taron Japangarti/Japaljarri  
    Nicholas Japangarti/Japaljarri  
    Unnamed daughter  
Merlin Newcastle Jungarrayi/Japanangka  
Darren Newcastle Jungarrayi/Japanangka  
Noel Newcastle Jungarrayi/Japanangka  
Julianna Newcastle Nungarrayi/Nakamarra  
Jodie Newcastle Nungarrayi  
    Jordan Jampijinpa/Jakamarra  
    Ben  
Selina Newcastle Nungarrayi/Napanangka

### 3.7 The Ngapa group

3.7.1 The Ngapa group has three branches, each focused on a different part of the Ngapa dreaming track, but having overlapping responsibilities in relation to the part of that track on the land claimed.

3.7.2 The Lauder family branch is theoretically based on the J(N)akamarra-Ju(Na)purrula subsection patricouple, but the deceased father of the senior members of the group had two subsections (Jampijinpa and Jakamarra), as a result of a non preferred marriage by his parents. The group consists of five surviving siblings and their descendants. The oldest is Harry Lauder Jupurrula, who is kirta, along with his children, Elizabeth, Daphne, Maisey, Irene, Adrian, Mervyn and Faylene. Other kirta are Adrian's three children, Jackie, Sondel and a son whose name is not disclosed by the evidence, and three children of Mervyn, of whose names I am unaware. Kurtungurlu for this branch consist of Elizabeth's children, Lionel, Michael, Sharon, Kurt, Amanda and Wallena, Daphne's children, Josie, Samantha, Sean, Wayne and Dean, Maisey's children, Anna and Melissa, and Faylene's children, Christopher and Jamella.

3.7.3 The second of the siblings in the Lauder family branch is Jeffrey Lauder Jupurrula. He has two adopted children, Cerise and Bradley, who are accepted as kirta for Ngapa sites on the land claimed. Harry and Jeffrey have three sisters, Hazel Bill Napurrula, Alice Lauder Napurrula and Amy Lauder Napurrula. All of those siblings are kirta. Each of the sisters has children, who are kurtungurlu. Hazel's children are Angeline Bill Napangarti and Lawrence Bill Japangarti. Alice's children are Jason Japangarti, Regina Napangarti and Jeanette Napangarti. Amy's children are Sonia, Geraldine and Nadine, each of whom is of the Napangarti subsection.

3.7.4 I have not included in the Lauder family branch of this group Phillip Holden, who gave evidence and was described as the son of Jeffrey Lauder's father's sister and as kurtungurlu. The genealogy for the Ngapa group does not show any siblings for the father of Harry Lauder, Jeffrey Lauder, Hazel Bill, Alice Lauder and Amy Lauder. It is not clear whether the sister referred to was a sister in a classificatory or biological sense. The view of Dr Sutton, the senior anthropologist who gave evidence on behalf of

the claimants, was that Phillip Holden should be regarded as a kurtungurlu in the broader sense, to which I refer in para. 4.3.3. I have accepted this view.

3.7.5 The Foster family branch of the Ngapa group consists of the descendants of a number of J(N)ampijinpa siblings or classificatory siblings. Mary O'Keefe Nangala is a surviving daughter of one of those siblings and is kirta. Her daughters, Louise Napaljarri and Marissa Napaljarri, are kurtungurlu. Maureen Nampijinpa is a daughter of a deceased brother of Mary and is also kirta. There are five children of a deceased daughter of another of the Jampijinpa siblings. They are Pat Burke Japaljarri, Doris Nicholson, Pearly Phillips Napaljarri, Suzanne Burke and Kayleen Burke.

3.7.6 The senior member of the Foster family branch is Dick Foster Jangala. He has eight natural children of the J(N)ampijinpa subsection and two adopted children, all of whom share kirta status for this group with him. They are Ina Brown, Earl Foster, Ricky Foster, Elaine Foster, Damian, Dwayne, Peter Todd, Peter Pumpkin Foster, Loretta and Patricia.

3.7.7 May Foster Napanangka and Topsy Walker Napanangka are daughters of Nampijinpa siblings in the upper generation of this branch and are kurtungurlu. Nora Parker Nangala is a daughter of a Jampijinpa and is therefore kirta. Her children, Mavis Napaljarri, Agnes Parker, Jeffrey and Ronnie, are kurtungurlu. Nora Parker's sister, Biddy Nangala, is also kirta and her daughter, Agnes Phillips, is kurtungurlu.

3.7.8 In the list of claimants were various persons said to belong to this family branch of the Ngapa group. Their names also appear on the genealogies, but there is no other evidence about their involvement. They are Yaninjakari Jampijinpa and his son, Jerry Jangala, and Jimmy Jangala and Robin Jangala. I have not been able to find them to be members of the local descent group. I have also excluded Michael Foster Jangala and his four children, on the basis of the evidence of Dick Foster that Michael is his half-brother, having the same mother but a different father. Michael therefore inherits different country from his own father.

3.7.9 The third branch of the Ngapa group is the Anderson family branch. This consists of the descendants of a deceased Jupurrula. The senior one is Roy Anderson Jakamarra. Along with his children, Bruce Jupurrula, Carmen Napurrula, Freddy Jupurrula and Heather Napurrula, and his grandson (Bruce's son), Lee Jakamarra, he is kirta. So are Roy's brother, Hector Anderson Jakamarra, and his children, Cyril Jupurrula and Shirley Napurrula. Cyril has three children, Cheryl Nakamarra, Rachel Nakamarra and Arnold Jakamarra, who are also kirta. Shirley has one daughter, Desley Napangarti, who is kurtungurlu.

3.7.10 Agnes Nakamarra is a sister of Roy and Hector. She is kirta. Her children, Dulcie Nungarrayi, Michael Jungarrayi and Robert Jungarrayi, are kurtungurlu. Two half-brothers of those three siblings are Beasley Anderson Jakamarra and Barry Anderson, who are kirta. Beasley Anderson's seven children, Anne, Ricky, Stuart, Richard, Aaron, Samuel and Joshua, are all of the Ju(Na)purrula subsection and are kirta.

3.7.11 Membership of the Ngapa group was claimed separately for two brothers, Engineer Jack Japaljarri and Long Paddy Japaljarri. Both are old and neither was able to attend and give evidence. Engineer Jack is a very well known senior man with an encyclopaedic ritual knowledge for large areas of Central Australia. He is highly respected and has played a major role in the preservation of the law and in teaching it to many people. So far as the present claim is concerned, there is a deal of evidence in



which Engineer Jack is described as kurtungurlu, but the sense of that evidence is that he has that role for ceremonies which are related to the Ngapa dreaming generally. It was not said that he was to be regarded as kurtungurlu specifically for that part of the Ngapa dreaming track which lies within the claim area. I have therefore not included Engineer Jack or Long Paddy in the list of members of the Ngapa group.

3.7.12 The following is a list of the members of the Ngapa group, organised in a way similar to the list in para. 3.6.10.

Kirta Kurtungurlu

Harry Lauder Jupurrula

Elizabeth

Lionel

Michael

Sharon

Kurt

Amanda

Wallena

Daphne

Josie

Samantha

Scan

Wayne

Dean

Maisey

Anna

Melissa

Irene

Adrian

Jackie

Sondel

Unnamed son

Mervyn

Three unnamed children

Faylene

Christopher

Jamella

Jeffrey Lauder Jupurrula

Cerise

Bradley

Hazel Bill Napurmla

Angeline Bill Napangarti

Lawrence Bill Japangarti

Alice Lauder Napurmla

Kirta	Kurtungurlu Jason Japangarti Regina Napangarti Jeanette Napangarti
Amy Lauder Napurmla	Sonia Napangarti Geraldine Napangarti Nadine Napangarti
Mary O'Keefe Nangala	Louise Napaljarri Marissa Napaljarri
Maureen Nampijinpa	Pat Burke Japaljarri Doris Nicholson Pearly Phillips Napaljarri Suzanne Burke Kayleen Burke
Dick Foster Jangala Ina Brown Nampijinpa Earl Foster Jampijinpa Ricky Foster Jampijinpa Elaine Foster Nampijinpa Damian Jampijinpa Dwayne Jampijinpa Peter Todd Peter Pumpkin Foster Loretta Nampijinpa Patricia Nampijinpa	May Foster Napanangka Topsy Walker Napanangka
Nora Parker Nangala	Mavis Napaljarri Agnes Parker Jeffrey Ronnie
Biddy Nangala	Agnes Phillips
Roy Anderson Jakamarra Bruce Jupurrula Lee Jakamarra Carmen Napurrula	

## Kirta

Freddy Jupurrula  
Heather Napurrula

Hector Anderson Jakamarra

Cyril Jupurrula  
Cheryl Nakamarra  
Rachel Nakamarra  
Arnold Jakamarra  
Shirley Napurrula

Agnes Nakamarra

Beasley Anderson Jakamarra

Anne Napurmla  
Ricky Jupurrula  
Stuart Jupurrula  
Richard Jupurrula  
Aaron Jupurrula  
Samuel Jupurrula  
Joshua Jupurrula

Barry Anderson

## Kurtungurlu

Desley Napangarti

Dulcie Nungarrayi  
Michael Jungarrayi  
Robert Jungarrayi

### 3.8 The Ngarrka group

3.8.1 The third group is the Ngarrka group. Again, this group has three branches. All are of the J(N)akamarra and Ju(Na)purrula subsection patricouple for kirta, the kurtungurlu being J(N)apangarti and J(N)ungarrayi, except for some members of Angus Riley's branch, who have the J(N)ampijinpa and J(N)angala subsection patricouple as kirta and the J(N)apaljarri and J(N)apanangka subsection patricouple as kurtungurlu. This anomaly may be due to a non-conforming marriage in a previous generation.

3.8.2 The first branch is the descendants of the late D. Graham Jupurrula. There are three natural children, Daisy Nakamarra, William Graham Jakamarra and Bessie Nakamarra. There is also an adopted son, Johnny Manfong Jakamarra, whose membership of the group is acknowledged. They are all kirta. Daisy has seven children of the J(N)ungarrayi subsection, who are kurtungurlu. They are Peter, Derek, Frank, Patrick and Henry Weston, and Olive and Anna. Johnny Manfong's children, who are kirta, are Belinda Napurrula, Timothy Manfong Jupurrula and Angela Manfong Napurrula. Belinda's children are Carl Japangarti/Jupurrula and Thornton Japangarti/Jupurrula. Angela's children are Jason Japangarti/Jupurrula and Glen Japangarti/Jupurrula. The four of them are kurtungurlu. William Graham has no children. Bessie has one daughter, Selina Grant Nungarrayi/Napanangka, who is kurtungurlu.

3.8.3 The branch of the Ngarrka group associated with Angus Riley and Lady Benson consists of the descendants of two deceased men. The first is survived by three children who are kirta, Molly Nangala (known as Jinpirriya), Margaret Nangala and Vilene Nangala. Molly's four children, Sally Merz Nalyirri, Paul Henderson Jalyini, Peter Henderson Jalyirri and Elizabeth Henderson Nalyirri, are kurtungurlu. So are Vilene's two children, Henry Japaljarri and Kenny Japaljarri. Also entitled by descent to be included among the kirta of this family are Rachel and Peter Pumpkin, children of a deceased male sibling of Molly, Margaret and Vilene. I have not included Peter Pumpkin in the list of kirta for this group, because of evidence from Angus Riley that he is regarded as being a son of Dick Foster, who has adopted him. Peter Pumpkin is included in the list of kirta for the Ngapa group on that basis. Angus Riley's deceased older sister is survived by Annie Senior, Noreen, Kevin Grant, Josephine and Doreen, who are kurtungurlu. Angus, who is also known as Kartu, is a Jupurrula. He and his son, Warren Jakamarra, are kirta. His sister, Lady Benson Napurrula, is kirta and her daughter, Beverly Benson, is kurtungurlu.

3.8.4 The remaining branch of the family is associated with Bindi Martin. His oldest brother is deceased and is survived by five children, Dianne, Belinda, Betty, Pam and Leanne, who are kirta. The next oldest brother is Mick Martin Jakamarra. He and his daughters, Christine Martin Napurrula and Ashlita Martin Napurrula, are kirta. Christine has a Japangarti son, whose name is not disclosed by the evidence, and who is kurtungurlu. Bindi Martin's sister Susan Nelson Nakamarra is married to Peter Toprail Japaljarri. Their daughter, Gladys Toprail Brown Nungarrayi, and their son, Albert Toprail Brown Jungarrayi, are kurtungurlu. Susan is, of course, kirta, as is Bindi, who has no children. The youngest sister is Louie Martin Nakamarra, who also has no children.

3.8.5 I have included in this group Rosie Napangarti as kurtungurlu and Robert Jakamarra, Ronald Jakamarra, Gregory Jakamarra and Christine Nakamarra as kirta. They are shown in the genealogy as children of deceased siblings of Mick Martin's father and as members of this group and listed in the list of claimants as members of this group. Their entitlement to be there is confirmed by the evidence of Angus Riley.

3.8.6 The following is a list of the members of the Ngarrka group, organised in a similar way to the list in para. 3.6. 10.

Kirta	Kurtungurlu
Daisy Nakamarra	Peter Weston Jungarrayi Derek Weston Jungarrayi Frank Weston Jungarrayi Patrick Weston Jungarrayi Henry Weston Jungarrayi Olive Nungarrayi Anna Nungarrayi
Johnny Manfong Jakamarra Belinda Napurrula	Carl Japangarti/Jupurrula Thornton Japangarti/Jupurrula

Kirta	Kurtungurlu
Timothy Manfong Jupurrula	
Angela Manfong Napurmla	Jason Japangarti/Jupurrula
	Glen Japangarti/Jupurrula
William Graham Jakamarra	
Bessie Nakamarra	
	Selina Grant Nungarrayi/Napanangka
Molly Nangala (Jinpirriya)	Sally Merz Nalyirri
	Paul Henderson Jalyirri
	Peter Henderson Jalyirri
	Elizabeth Henderson Nalyirri
Rachel	
Margaret Nangala	
Vilene Nangala	Henry Japaljarri
	Kenny Japaljarri
	Annie Senior
	Noreen
	Kevin Grant
	Josephine
	Doreen
Angus Riley (Kartu) Jupurrula	
Warren Jakamarra	
Lady Benson Napurmla	Beverly Benson
Dianne	
Belinda	
Betty	
Pam	
Leanne	
Mick Martin Jakamarra	
Christine Martin Napurmla	Unnamed Japangarti
Ashlita Martin Napurrula	
Susan Nelson Nakamarra	Gladys Toprail Brown Nungarrayi
	Albert Toprail Brown Jungarrayi
Bindi Martin Jakamarra	
Louie Martin Nakamarra	

Kirta

Kurtungurlu  
Rosie Napangarti

Robert Jakamarra  
Ronald Jakamarra  
Gregory Jakamarra  
Christine Nakamarra

### 3.9 The Wirntiku group

3.9.1 Kirta for the Wirntiku group are notionally from the J(N)apanangka-J(N)apangarti subsection patricouple, but non-ideal marriages have led to some persons recognised as kirta for this group having other subsections also. There are two main branches of the group, one consisting of the Rennie and Grant families, and the other of May Foster, Christine Morton, Topsy Walker and the children of May and Topsy.

3.9.2 The Rennie and Grant families are descendants of two deceased brothers. Alfie Rennie Japanangka is the senior kirta of this family. His children, Selina, Penelope and Steven, are also kirta. Selina's children, Kirsten, Neil and a daughter whose name was not disclosed by the evidence, are kurtungurlu. Steven has two Napanangka daughters, whose names were not disclosed by the evidence. They are also kirta. William, Rodney, Isobel and Ruth Phillips are all of the J(N)apangarti subsection patricouple and are kirta. They are the children of a deceased brother of Alfie. In turn, Isobel has five J(N)angala children, who are kurtungurlu; they are Gary, Gwendolyn, Gloria, Gilbert and Glen. Ruth has Lincoln, Lynette and Rowan, who are also kurtungurlu. Marie Rennie and Mary Rankin Napanangka are sisters of Alfie and are kirta. Marie Rennie's children, Maria Nakamarra, Jerome, Boas and Carrick, are kurtungurlu, as is Rebecca, the daughter of Mary Rankin. Nellie Nelson is an adopted sister of Alfie, Marie and Mary and is accepted as a member of the group as kirta.

3.9.3 The senior kirta in the Grant family is Billy Grant Senior, who is of the Japanangka subsection. Two surviving children of a deceased older sister of Billy, Kay Nakamarra and Pepy Simpson Jakamarra, are kurtunauru. Billy Grant Senior has a large number of children and grandchildren. His children, who, like him, are kirta, are Helen, Marjorie Dennis, Billy Grant Junior, Heather Grant, Barbara, Lindsay (Ian) Grant, Albert (Dudley) Grant, David Grant, Julie, Lesley (a son), Christine, Annie Senior, Noreen, Kevin Grant, Josephine, Doreen, Annie Junior and Russel Grant. Included as kirta are the children of Billy Grant Senior's sons. Billy Grant Junior has Selina, Gavin, Rowena and Zania Albertina, who all have the surname Grant and the two subsections J(N)ungarrayi and J(N)apanangka. Lindsay has a daughter, Simone Grant Nungarrayi, and a son whose name is not disclosed by the evidence. Albert has Lazarus Grant Jungarrayi and Lyn Hogan Nungarrayi. David has Juwayne Jungarrayi/Japanangka. Lesley has Michelle, Bradley, Roscilla, Lutinzia and Liam. All have the J(N)apanangka subsection, with the last two having the J(N)ungarrayi subsection added. Kevin has Jeremiah Grant Japanangka and Kerrili Grant Napanangka.

3.9.4 Children of Billy Grant Senior's daughters are included as kurtungurlu. Helen has Betty Kelly Napurrula, Leanne Kelly Napurrula, David Walker Jangala/Jupurrula and Darren Grant Jupurrula. Julie has Tiny (Sue) Grant Nangala, Terence Jangala, Timothy Jangala and Alanna Nangala. Christine has Douglas Foster Jangala/Jupurrula and Marrazita Foster Nangala/Napurrula. Annie Senior has Pauline Jones Nangala, July

Jones Nangala and Cedric Jones Jangala. Noreen has Alvin, Trisilla, Devina, Noel and Carmelisa. All have the surname Jones and the J(N)angala subsection. Josephine has Johnnex, Lex, Jody, Danielle and Vinny Foster, all of whom have the J(N)angala subsection. Doreen has Lucasta Rockland Nangala and Lucas Grant Jangala, and Annie Junior has Kenrick Jangala.

3.9.5 The list of claimants and the genealogies show Billy Grant Senior's daughter Barbara as having three adopted children, Janelle Scrutton Nungarrayi, Patrick Scrutton Jungarrayi and Jessica Budby Napangarti. The only evidence about these children came from Topsy Walker and suggests that their adoption has not led to their recognition as members of the group at this time. I have therefore not included them as members.

3.9.6 The remaining branch of this group also consists of the descendants of two deceased Japangarti brothers. May Foster Napanangka and Christine Morton are surviving daughters of one of those brothers. They are kirta. May's children, Roslyn, Lisa, Peter and Donna, who are of the J(N)akamarra subsection, are kurtungurlu. The surviving daughter of the other brother is Topsy Walker Napanangka, who is kirta. Her children, Elizabeth, Richard, Matthew, Ronald, Andrew and Paula, who are of the J(N)akamarra subsection, are also kurtungurlu. The genealogy for this group refers to four people, Billy (Posy) Foster Jakamarra, Toby Foster Jakamarra, Simon Foster Jakamarra and Tony Foster Jakamarra, who are shown as children of a deceased sister of May Foster. No other evidence was given about them, so I have not included them.

3.9.7 The following is a list of members of the Wirntiku group, organised in a similar fashion to the list in para. 3.6.10.

Kirta	Kurtungurlu
Alfie Rennie Japanangka	
Selina	
	Kirsten
	Neil
	Unnamed daughter
Penelope	
Steven	
Unnamed daughter Napanangka	
Unnamed daughter Napanangka	
William Phillips Japangarti	
Rodney Phillips Japangarti	
Isobel Phillips Napangarti	
	Gary Jangala
	Gwendolyn Nangala
	Gloria Nangala
	Gilbert Jangala
	Glen Jangala
Ruth Phillips Napangarti	
	Lincoln
	Lynette
	Rowan

Kirta

Kurtungurlu

Marie Rennie

Maria Nakamarra  
Jerome  
Boas  
Carrick

Mary Rankin Napanangka

Rebecca

Nellie Nelson

Kay Nakamarra  
Pepy Simpson Jakamarra

Billy Grant Snr Japanangka

Helen

Betty Kelly Napurrula  
Leanne Kelly Napurrula  
David Walker Jangala/Jupurrula  
Darren Grant Jupurrula

Marjorie Dennis

Billy Grant Jnr

Selina Grant Nungarrayi/Napanangka  
Gavin Grant Jungarrayi/Japanangka  
Rowena Grant Nungarrayi/Napanangka  
Zania Albertina Grant Nungarrayi/Napanangka

Heather Grant

Barbara

Lindsay (Ian) Grant

Simone Grant Nungarrayi  
Unnamed son

Albert (Dudley) Grant

Lazarus Grant Jungarrayi  
Lyn Hogan Nungarrayi

David Grant

Juwayne Jungarrayi/Japanangka

Julie

Tiny (Sue) Grant Nangala  
Terence Jangala  
Timothy Jangala  
Alanna Nangala

Lesley Grant

Michelle Napanangka  
Bradley Japanangka



Kirta	Kurtungurlu
Roscilla Napanangka	
Lutinzia Napanangka/Nungarrayi	
Liam Japanangka/Jungarrayi	
Christine	Douglas Foster Jangala/Jupurrula
	Marrazita Foster Nangala/Napurmla
Annie Senior	
	Pauline Jones Nangala
	July Jones Nangala
	Cedric Jones Jangala
Noreen	
	Alvin Jones Jangala
	Trisilla Jones Nangala
	Devina Jones Nangala
	Noel Jones Jangala
	Carmelisa Jones Nangala
Kevin Grant	
Jeremiah Grant Japanangka	
Kerrili Grant Napanangka	
Josephine	Johnnex Foster Jangala
	Lex Foster Jangala
	Jody Foster Nangala
	Danielle Nangala
	Vinny Foster Nangala
Doreen	
	Lucasta Rockland Nangala
	Lucas Grant Jangala
Annie Junior	
	Kenrick Jangala
Russel Grant	
May Foster Napanangka	Roslyn Nakamarra
	Lisa Nakamarra
	Peter Jakamarra
	Donna Nakamarra
Christine Morton	
Topsy Walker Napanangka	Elizabeth Nakamarra
	Richard Jakamarra

Kirta

Kurtungurlu

Matthew Jakamarra  
Ronald Jakamarra  
Andrew Jakamarra  
Paula Nakamarra

### 3.10 The Kurrakurraja group

3.10.1 The Kurrakurraja group is numerically small, but its two senior kirta are senior, highly respected men in the claim area. Its members are all descendants of one deceased Japangarti man. The only kurtungurlu are grandchildren of that deceased man by a deceased daughter. They are Lucy Nakamarra, whose bush name is Piminginyngali, and David Newcastle Jakamarra, whose bush name is Yanunkarri. The two surviving sons of the deceased Japangarti are Johnny Nelson Japanangka, whose bush name is Walamanta, and Aubrey Japanangka, who is known as Toby One. In turn, each has children, who are kirta with their fathers. Johnny's children are Selwyn Nelson Japangarti, Paula Nelson Napangarti, Earl Nelson Japangarti and Kenneth Lane Japangarti. Aubrey's children are Julie Jackson Napangarti, Karen Jackson Napangarti, Barbara Jackson Napangarti, Darrell Japangarti and Ronnie Japangarti.

3.10.2 The following is a list of the members of the Kurrakurraja group, organised in a similar fashion to the list in para. 3.6.10.

Kirta

Kurtungurlu

Lucy (Piminginyngali) Nakamarra  
David Newcastle (Yanunkarri) Jakamarra

Johnny Nelson (Walamanta) Japanangka

Selwyn Nelson Japangarti  
Paula Nelson Napangarti  
Earl Nelson Japangarti  
Kenneth Lane Japangarti

Aubrey (Toby One) Japanangka

Julie Jackson Napangarti  
Karen Jackson Napangarti  
Barbara Jackson Napangarti  
Darrell Japangarti  
Ronnie Japangarti

### 3.11 The Walanypirri group

The Walanypirri group's senior kirta, P Henderson Jimija, died during the hearing. He is survived by four children, Sally Merz, Paul Henderson, Peter Henderson and Elizabeth Henderson, who are kirta. They are of the J(N)alyirri subsection (using the Mudbura terms). Paul Henderson's daughters, Madeline and Davina, are also kirta. Scott Campbell Jupurrula and Valerie Campbell Napurmla are children of Sally and are kurtungurlu. Elizabeth's children, Judith, Jolene, Herbert and Emestine, are also kurtungurlu. Dick Kingston Jampijinpa is a son of a deceased sister of the late

P. Henderson and is therefore kurtungurlu. His son, Kimbi Kingston, has been accorded kurtungurlu status through his father. So far as I am aware, he is the only second-generation kurtungurlu recognised by the claimants in this claim. There is no doubt as to his status as kurtungurlu, particularly on the evidence of P. Henderson, so I have named him accordingly.

3.11.2 The following is a list of the members of the Walanypirri group, organised in a similar fashion to the list in para. 3.6.10.

Kirta	Kurtungurlu
Sally Merz Nalyirri	
	Scott Campbell Jupurrula
	Valerie Campbell Napurrula
Paul Henderson Jalyirri	
Madeline Henderson Namija	
Davina	
Peter Henderson Jalyirri	
Elizabeth Henderson Nalyirri	
	Judith
	Jolene
	Herbert
	Emestine
	Dick Kingston Jampijinpa
	Kimbi Kingston

### 3.12 The Yapayapa group

3.12.1 Kirta for the Yapayapa group are the J(N)angala-J(N)ampijinpa subsection patricouple. There are two family groups. One consists of the three stepchildren of a deceased Jampijinpa man; they were children of his wife by non-Aboriginal fathers or, in Hughie Jackson's case, a father whose father was non-Aboriginal. Their descendants are also included in the group. The other branch is the family of Johnny Stokes and his cousin Dolly Julypungali Nangala.

3.12.2 The oldest of the three stepchildren is Billy Hayes Jangala, whose bush name is Lilakimaji. He has two daughters, Paula Nampijinpa and Jenny. Like their father, they are kirta for the group. Paula's children, Michelle, Ursula, Bevan, Andrew and Darrell, are kurtungurlu, as is Jenny's daughter, Emma. Lorna Fejo Nangala is Billy's stepsister. She is accepted as kirta, although she lives in Darwin. Her children, Rodney, Rosemary, Christine, Elita, Eric, Morella and Ritchie, are also accepted as kurtungurlu. Lorna also has a bush name, Minpirmgali. Hughie Jackson Jangala, whose bush name is Minpirrikarri, is kirta, as are his children, Terry, Judy Jackson Nampijinpa, Hazel Nampijinpa, Pauline Nampijinpa, Peter Jackson, Gregory Jampijinpa, Priscilla Nampijinpa and Jennifer Nampijinpa. Terry's daughter, Roseanne, is kirta, as are Peter's four children, Kurt, Teresita, Dale and Liamaiah, and Gregory's two children, Randall and Naomi. Kurtungurlu include Hughie's great-grandchildren, by his granddaughter Roseanne, who are Ricardo, Desiree and Andrea, as well as children of Hughie's daughters. Judy has Jeremy, Karl, Karen, Kerry-Anne, Rebecca, Adrian,

Kenneth and Donna. Hazel has Joshua, Gordon, Jonathan, Gwendoline, Edward and Madeline. Pauline has Emma and Laura. Jennifer has Pamela, Jacob and Lucas.

3.12.3 Dolly Julypungali Nangala is kirta for this group. She is a daughter of a deceased brother of the deceased father of Johnny Stokes. The genealogy and the list of claimants show Dolly as having two children, but neither she nor anyone else gave any evidence about them and I have not included them. Johnny Stokes Jangala, whose bush name is Tungkulyanu, is the father of seven children, who are kirta along with him. They are Joan Stokes, Dianne Stokes, Danny Stokes, Leon Stokes, Stanley Stokes, Miriam Charley and Debbie Holt. The last two are adopted. All are of the J(N)ampijinpa subsection.

3.12.4 Children of Johnny's sons are kirta. They are the sons of Danny, who are Adrian and Francis Lovegrove, and the children of Leon, who are Ray Stokes and Lynette Phillips. All are J(N)angala. The children of Johnny's daughters are kurtungurlu. Joan has Leah, Rebecca and Rachel Stokes. Dianne has Juanita, Troy, Sebastian, Anne-Marie and Bevan Briscoe. All are of the J(N)apanangka subsection.

3.12.5 The following is a list of the members of the Yapayapa group, arranged in the same way as the list in para. 3.6.10.

Kirta Kurtungurlu

Billy Hayes (Lilakimaji) Jangala

Paula Nampijinpa

Michelle

Ursula

Bevan

Andrew

Darrell

Jenny

Emma

Lorna Fejo (Minpirmgali) Nangala

Rodney

Rosemary

Christine

Elita

Morella

Ritchie

Hughie Jackson (Minpirrikarri) Jangala

Terry

Roseanne

Ricardo

Desiree

Andrea

Judy Jackson Nampijinpa

Jeremy

Kirta

Kurtungurlu

Karl  
Karen  
Kerry-Anne  
Rebecca  
Adrian  
Kenneth  
Donna

Hazel Nampijinpa

Joshua  
Gordon  
Jonathan  
Gwendoline  
Edward  
Madeline

Pauline Nampijinpa

Emma  
Laura

Peter Jackson

Kurt  
Teresita  
Dale  
Liamaiah

Gregory Jampijinpa

Randall  
Naomi

Priscilla Nampijinpa

Jennifer Nampijinpa

Pamela  
Jacob  
Lucas

Dolly (Julpungali) Nangala

Johnny Stokes (Tungkulyanu) Jangala

Joan Stokes Nampijinpa

Leah Stokes Napanangka  
Rebecca Stokes Napanangka  
Rachel Stokes

Dianne Stokes Nampijinpa

Juanita Briscoe Napanangka  
Troy Briscoe Japanangka  
Sebastian Briscoe Japanangka

Kirta

Kurtungurlu

Anne-Marie Briscoe Napanangka  
Bevan Briscoe Japanangka

Danny Stokes Jampijinpa  
Adrian Lovegrove Jangala  
Francis Lovegrove Jangala  
Leon Stokes Jampijinpa  
Ray Stokes Jangala  
Lynette Phillips Nangala  
Stanley Stokes Jampijinpa  
Miriam Charley Nampijinpa  
Debbie Holt Nampijinpa

3.13 Local descent groups Each of the groups to which I have referred in this chapter answers the description of a local descent group for the purposes of the definition of "traditional Aboriginal owners" in s. 3(1) of the Land Rights Act. Each group is local, in the sense that it is associated with a particular area of land. The connection between each group and an area of land, so far as it affects this claim, is dealt with in chapter 4. Each group is made up of Aboriginal people who satisfy the criteria of descent accepted by the claimants for the purposes of their system of land tenure.

#### 4 COMMON SPIRITUAL AFFILIATIONS, PRIMARY SPIRITUAL RESPONSIBILITY AND RIGHTS TO FORAGE

4.1 Groups connected with areas of the land claimed Each of the groups described in chapter 3 is connected with part of the land claimed. The areas on which the separate groups focus are not necessarily completely separate. As is the case with Aboriginal land tenure systems in semi-arid areas, there tends to be a focus on sites of significance, which are often sites associated with the practicalities of survival in a dry environment. Sharply defined boundaries between the estates of different groups are unusual in such circumstances. There is a tendency for different groups to share some sites, with a consequent overlap between the areas claimed by those groups. There is also a tendency for land between sites to be the subject of overlapping claims, or for it to be unclear into the estate of which group it falls.

##### 4.2 The nature of the connection

4.2.1 The connection between a group and a particular site of significance is provided by entities which are glossed as "dreamings" in the English language. These are creatures which participated in the formation of the landscape, the naming of its features and the imparting to humans of the things which make up the law for a particular group, namely language, culture, song and ceremony. Dreamings may once have adopted human form but now appear as animals or other phenomena. Their continued presence and influence is acknowledged and the connection between dreamings, people and country is maintained through ceremony and song.

4.2.2 The major dreamings involved in the present claim are travelling dreamings, some of which travel over quite long distances. Different parts of the tracks followed by dreamings belong to different groups of people. A group will have responsibility for a defined part of a dreaming track. The sites along that part of the track and the country surrounding them will belong to that group. It is common for people to say that they take a dreaming from another (often named) group at a particular site and carry it through their country to hand it on to another group at another named site. The handover points, in a sense, will mark the boundary of the estate of a particular group.

4.2.3 It follows that the acquisition of both membership of a land-holding group and rights to a particular dreaming in respect of particular sites and land is a matter of descent. The descent criteria are those to which I have referred in para. 3.4.

##### 4.3 The test for common spiritual affiliations

4.3.1 The proper approach to the determination of that element of the definition of "traditional Aboriginal owners" in s. 3(1) of the Land Rights Act which requires common spiritual affiliations to a site or sites on the land was laid down by the Full Court of the Federal Court of Australia in *Northern Land Council v. Olney* (1992) 34 FCR 470, at pp. 487-8. It is unnecessary for me to set out that passage in full. The court drew attention to the need to ascertain the existence of spiritual affiliations on the part of individual members of a group and then to inquire whether those affiliations are common to the members of the group or some of them. Reference was made to the exclusion of members of a group who lack the requisite spiritual affiliation because of age or otherwise. This does not appear to have been intended to add age as an element of the statutory definition of "traditional Aboriginal owners". Above all, the court recognised, at p. 487, that the task of the Aboriginal Land Commissioner "must vary depending upon the way the evidence is presented".

4.3.2 The present claim was presented on the basis that the acquisition of spiritual affiliations is a matter of descent. If a person acquires them by birth or adoption, those spiritual affiliations will give rise to rights which may be invoked at any time during the life of that person. The existence of the affiliations is not dependent upon any particular age or any particular level of knowledge.

4.3.3 Knowledge in Northern Territory Aboriginal cultures is recognised widely as a commodity which is imparted progressively to people who possess the requisite affiliations and have attained sufficient maturity and responsibility to be trusted with a particular level of knowledge. There are cases in which senior people, widely acknowledged as capable of safeguarding and not misusing knowledge, are the repositories of enormous amounts of knowledge relevant to whole regions. Such persons perform useful functions, particularly in safeguarding the knowledge for the benefit of those who are entitled to it. They can be trusted not to use the knowledge for their own purposes by claiming to have it in the capacity of those with particular affiliations. I have already referred, in para. 3.7.11, to the description of Engineer Jack Japaljarri and his brother, Long Paddy Japaljarri, as kurtungurlu. That term is applied to them in the sense of their ceremonial functions and the acknowledgment of them as regional holders of knowledge related to dreamings. There is a similar reference to Phillip Holden's status in para. 3.7.4. To them should be added Tommy Driver and Charlie Charles Jakamarra in the present claim. Neither of them is a claimant or entitled by descent to be a claimant. Each was described as kurtungurlu in respect of the ceremonies in which the claimants participate and through which they celebrate and assert their rights to particular areas of country. There are also claimants who fill the role of kurtungurlu in this broader sense, in respect of groups and country to which they have no entitlement by descent. Peter Toprail and Angus Riley are two examples.

4.3.4 It might be possible for persons born or adopted into a descent group, and thereby acquiring spiritual affiliations, to reject or abandon them. In the absence of rejection or abandonment, the overwhelming likelihood is that the members of the local descent groups to which I have referred in chapter 3 will be drawn into the ritual life of the claimants generally in relation to the country of the particular group.

4.3.5 For these reasons, I have reached my findings as to the spiritual affiliations of the members of the various groups without regard to their ages or to any level of knowledge which they might or might not possess. I have based my findings on the proposition that they, as members of the groups, have acquired their affiliations by birth or by the other descent criteria to which I have referred. Unless they show an inclination not to pursue the rights which those affiliations give them, they will in due course acquire such knowledge as they have the capacity to acquire.

#### 4.4 Milwayi country

4.4.1 The Milwayi dreaming is two quiet (i.e. non-venomous) snakes. The dreaming track runs from north to south, through the eastern part of the claim area. The two snakes travelled in human form, visiting various specific sites and performing activities there. For part of their journey, they took turns in carrying each other on their shoulders because they were suffering from cracked feet.

4.4.2 The group described in para. 3.6 takes over the Milwayi dreaming track at Nyanya (site 71) on Helen Springs Station, where there are rock engravings said to have been made by the dreaming. The dreaming visited Malungkunginti (site 70), Kanarlparanyi (site 85, also called Kanarlpuranja) and Kurrutirti (site 88), where there



are also rock engravings attributed to the dreaming. At Jimantaparanyi (site 108), the dreaming climbed a rock outcrop to look for the route to the south. They were then carrying each other on their shoulders. These sites are on Helen Springs Station, as is Jurlalypa (site 91). The first sites inside the claim area associated with the Milwayi dreaming are Ngijiwa (site 73), Riirri (site 83), where the snakes left yellow ochre, which is used for body painting in ceremonies, and Kartirlingkarni (site 84). At Nurrkuyiji (site 100), the dreaming dug for water with a yam stick and left the waterhole which is present there. At Waliwalingunu (site 79), the dreaming remains present in the form of a tree, which is used as the basis for a body painting representing the dreaming. The Milwayi also visited Manuwangu (site 92), where they left a rockhole, Walyka (site 76), Jakarrara (site 98) and Karntawauralki (site 74) in the south-east of the claim area. Knowledge of Walyka is restricted to men. It is another site involving rock engravings made by the dreaming. At a nearby waterhole, the dreaming remains present in the form of a tree. At Jakarrara, the Milwayi also made a billabong. There is now a dam there. Within the claim area, the Milwayi went as far west as the rockhole near Kululungku (site 47) and then proceeded off the claim area, to Panyara (site 97) and sites further to the south.

4.4.3 As I have said in para. 4.4.2, there is a body painting representing the Milwayi dreaming. There is also a song. They are still used in ceremonies which are of a higher form than initiation ceremonies. Women are able to see the body painting and hear the song but are not entitled to know the full story associated with it, which is restricted to men. In turn, women have a Milwayi song of their own, which is performed during ceremony, and there are ceremonies which are secret to women.

4.4.4 Evidence relevant to the eastward extension of the country of the Milwayi group was given by Archie Alien, who is not a claimant, but has country associated with a plains goanna dreaming, which he described as starting further to the east than the eastern boundary of the claim area.

#### 4.5 Ngapa country

4.5.1 It is not surprising that rain assumes great importance in a semi-arid environment. The principal dreaming of the Ngapa group is the Ngapa, or rain, dreaming. In this case, the dreaming travels from its originating site at Kuntalymiri, well off the claim area to the south, to Purnarrapan (site 48), at Renner Springs. In doing so, it crosses the claimed land in a broad swath. It extends as far west as Minji (site 28), just south of the southern border of the claim area, Julypungali (site 19), which it shares with other dreamings, notably Japurla-japurla (see para. 4.10.2), and Puyarrinyku (site 43). Its eastern sites within the claim area are intermingled and sometimes shared with Milwayi. Its southernmost site on the claim area, Murlurparta (site 46), is shared with Ngarrka and Japurla-japurla. Taarru (site 40) represents an approximate boundary, or is close to the boundary, between the estates of the Ngapa, Ngarrka, Yapayapa and Wirntiku groups.

4.5.2 The story of the Ngapa dreaming features a man named Purrpulangi, who was pursued by the rain. In some versions of the story, Purrpulangi had stolen white ochre, some of which he left at Kululungku (site 47), where it remains as a resource. It was used by Jeffrey Lauder's grandfather for rainmaking ceremonies. White ochre from Kululungku is said to bring violent storms. Punpulangi dodged about, trying to evade rain, which came in the form of lightning to try and strike him. Marlarl-paranyi (site 36) is named after lightning. Eventually, rain chased the man to Purnarrapan (site 48).

Sites on the claim area visited by or associated with the Ngapa dreaming which T have not already mentioned specifically include Marntamarnta (site 38) (which is shared with Japurla-japurla), Jumungkari (site 37), Namarani (site 34), Wirrkirnti (site 65), Tumanjaparta (site 86), Liralvi-mantangi (site 67) (where the dreaming left two large trees which are the basis for the design of a body painting), Wakajala (site 54), Tupurtupalki (site 53), Kulurtupurtupu (site 82), Yalykunjangi (site 57), Kartji (site 87, east of the Stuart Highway, probably the easternmost site of the Ngapa dreaming and a source of white ochre for making "quiet" rain), Kurumparra (site 78), and Wulypu (site 42).

4.5.3 There is a body painting, which is used in relation to the ceremonies for the initiation of young men. There is a song associated with the Ngapa dreaming, which cannot be sung in the presence of women. The dreaming is celebrated in a dance, as might be expected of such an important dreaming. The painting is still worn, and the song and dance are still performed. There is also a Ngapa ceremony for men and women together, which is known as Wungkurru or Pulapawiri.

4.5.4 The three family branches of the Ngapa group share responsibility for the portion of the Ngapa dreaming track on the claimed land, even though the responsibilities of those families are not coextensive in respect of portions of the dreaming track which do not lie on the land claimed.

#### 4.6 Ngarrka country

4.6.1 The principal dreaming of the Ngarrka group is a dreaming of the same name. The story involves an initiated man who travelled from the south-east. He and his brother were pursued by a group of men because his brother had stolen a type of sugar which occurs on the surface of leaves of a particular type of tree. The brother was caught and killed at a place to the south of the claim area. The other man was then pursued to the claim area, where he also was killed, at Lungkarta (site 50). A site on the claim area associated with this dreaming is Murlurparta (site 46), which is also associated with the Ngapa and Japurla-japurla dreamings. There is a rockhole at each of those sites, so they are important water sources. Before drinking from the rockhole at Murlurparta, Angus Riley announced that he was going to "drink my countrymen". In each case, the rockhole was created and named by the dreaming. There is also an unnamed site (109), at which there is a tree put there by the dreaming. The tree must be preserved. If it is cut, it has the power to make people sick.

4.6.2 Angus Riley gave evidence that there is a design for a body painting representing the Ngarrka dreaming, although he said that neither he nor William Graham had seen it. It was not the design painted on Angus when he was made a young man, but he asserted his entitlement to wear it.

#### 4.7 Wirntiku country

4.7.1 The Wirntiku group takes its name from the stone curlew dreaming. The dreaming track comes from the west and turns north through Kumurnu, where the Grant family have established an outstation, just south of the boundary of the claim area. The Wirntiku travelled with the Ngapa dreaming to Purnarrapan (site 48). There are therefore several sites shared by the two dreamings. The Wirntiku dreaming track comes through Marntamarnta (site 38) and passes between Namarani (site 34) and Marlalparanyi (site 36). The most important site on the claim area is Wirrkirnti (site 65), which is shared with the Ngapa group. There are also sites further to the west, which

are shared with the Kurrakurraja and Walanypirri groups (see paras 4.8.1, 4.8.2 and 4.7.2). The stone curlew is associated with stone implements, for which there are old quarries near two of the major sites associated with the dreaming. There was no evidence before me of any painting, song or dance associated with the Wirntiku dreaming. None of the senior men who are members of the Wirntiku group gave evidence. This was explained in part by the fact that the senior man of the group, Billy Grant Snr, was too ill to attend and many of the other men of the group have regular employment in and around Tennant Creek.

#### 4.8 Kurrakurraja country

4.8.1 The major dreaming associated with the Kurrakurraja group is the dreaming which gives its name to the group. The dreaming is known as a storm bird, thought to be a channel-billed cuckoo. It is a bird which migrates south at the start of the wet season and is thus associated with the coming of rain. The Kurrakurraja dreaming has a long track which passes through the western part of the claim area, in a generally north-south direction. Sites on the claim area associated with the dreaming are Mirirripinpa (site 15), at which there is a waterhole left by the dreaming, Jalyirrinai (site 21), Nangkawala (site 29) and two unidentified plains, designated as plain A (site 32) and plain B (site 26), which lie between Nangkawala and Latapa (site 33). Each of the Kurrakurraja sites is also associated with the Walanypirri, or pelican, dreaming. Nangkawala and the two unidentified plains are also associated with the Wirntiku, or stone curlew, dreaming.

4.8.2 Just off the claim area on Helen Springs Station are Laakula (site 23), Minini-manjimanji (site 25) and Jangkarti (site 31). These three sites are also associated with both the Wirntiku and Walanypirri dreamings. Minini-manjimanji is also associated with a localised dreaming known as Wijipartu, or mouse women.

4.8.3 The claim of the Kurrakurraja group to any country on the claim area is controversial. It was asserted by Aubrey (Toby One) and his brother, Johnny Nelson, at Mirirripinpa (site 15) on 29 July 1993. Immediately after their evidence on that day was concluded, Hughie Jackson challenged them on the basis that their country lay to the north on Newcastle Waters Station, and not on the claim area. On the following morning, after a camp at Jiinngi (site 17), in the presence of Hughie Jackson, a group of senior men from the region expressed their support for the view that Aubrey (Toby One) and Johnny Nelson were bosses for Mirirripinpa and took it from their father. The men who spoke were Tommy Driver, the late G. Brown, Charlie Charles, Angus Riley and the late P Henderson. Evidence to a similar effect had previously been given by Jeffrey Lauder when Mirirripinpa had been pointed out from a distance.

4.8.4 Both in the claim book, and in oral evidence late in the hearing, the anthropologist Dr Peter Sutton and the linguist Dr David Nash gave evidence on this issue. It appears that the claim area lies between two major systems in mythological terms. The focus of people living at or near Elliott (including Hughie Jackson) is to the north-west and the north-east from Elliott. The focus of people who live in and around Tennant Creek is north towards Elliott. The Tennant Creek people accept the claim of Aubrey (Toby One) and Johnny Nelson that their responsibility for the dreaming track of the Kurrakurraja comes as far south as the claim area. This is apparently the view accepted and put by Engineer Jack and other senior people in the region. The fact that

Aubrey (Toby One) was prepared to assert his claim, and to maintain it, in the face of opposition from Hughie Jackson, who is a powerful figure, is significant.

4.8.5 In this case, the existence of a body painting, which Aubrey (Toby One) and Johnny Nelson are entitled to wear in ceremonies, and a song, relating to the Kurrakurraja dreaming, which they are entitled to sing, is not necessarily a significant factor. There is no doubt that both men have links to sites further to the north through the Kurrakurraja dreaming. Those links would entitle them to wear the design and to sing the song.

4.8.6 I am prepared to find, in accordance with the weight of opinion, that Aubrey (Toby One) and Johnny Nelson and their children are kirta for the Kurrakurraja sites to which I have referred, on and near the claim area.

#### 4.9 Walanypirri country

4.9.1 The Walanypirri, or pelican, dreaming, after which the Walanypirri group is named, is also a travelling dreaming. It comes from the north and enters the north-western part of the claim area and then travels to the east. It shares Mirirripinpa (site 15), Jalyirringi (site 21), Nangkawala (site 29) and the two unnamed plains (sites 32 and 26) between Nangkawala and Latapa (site 33) with the Kurrakurraja dreaming. Nangkawala and the two unnamed plains are also shared with the Wirntiku dreaming. Jiinngi (site 17) is a site visited by the Walanypirri dreaming. The dreaming also shares Laakula (site 23), Minini-manjimanji (site 25) and Jangkarti (site 31), all just off the claim area, with the Kurrakurraja dreaming.

4.9.2 There is a ceremony, a body design and a song associated with the Walanypirri dreaming. The ceremony and song are still performed and the body design is still used.

#### 4.10 Yapayapa country

4.10.1 The Yapayapa group takes its name from the Warlmanpa word for a dreaming which is known as Japurla-japurla in the Warlpiri language. The dreaming is a group of children, although the precise translation may vary as between the two languages. The word yapa means "child" in Warlmanpa. The word japurla means "uninitiated boy" in Warlpiri. The dreaming is a travelling one and in other areas is apparently regarded as related to male children only.

4.10.2 The Japurla-japurla dreaming comes from the north-west and enters the claim area at Murrunjuru (site 4). It is closely associated with a group of sites in the south-west of the area, including Yapakurlangu (site 5), Tungkulyanu (site 9), Minyjala (site 10), Ngalayimari (site 11) and the important Julypungali (site 19). The last-mentioned site is a large claypan, at which those involved in the hearing camped for one night during the hearing. The group of sites to which I have referred, other than Julypungali, lies in the stony, hillier country in the south-west of the claim area.

4.10.3 The Japurla-japurla dreaming travelled through the centre of the claim area to Latapa (site 33), Mungkumungku (site 39), Namarani (site 34), at which one of the boys was swallowed by a lizard, Jumungkari (site 37), Murunju-mantangi (site 66) and Karakara (site 51), where the dreaming left a spring and a waterhole before leaving the claim area towards the south. The site Murlurrparta (site 46), on the southern boundary of the claim area, is shared by the Ngapa group, the Ngarrka group and the Yapayapa group.

4.10.4 There is a dance and a body design, but not a song, for the Japurla-japurla dreaming. They are secret to men. Hughie Jackson wore the design when he was initiated and both it and the dance are still used and performed.

4.11 Common spiritual affiliations It follows from what I have said that the members of each of the seven groups have common spiritual affiliations to sites on the land claimed, as well as to sites on nearby land which are associated with the land claimed. The spiritual affiliations of the members of each group are held in common with the other members of that group. They are so held as a result of the acquisition of rights and responsibilities in respect of those sites, through the dreamings relating to those sites, by the principles of descent referred to in chapter 3.

#### 4.12 Primary spiritual responsibility

4.12.1 The affiliations to which I have referred in para. 4.11 give rise to spiritual responsibility on the part of the members of each group for the sites concerned and for the land that surrounds them. In order to satisfy the definition of "traditional Aboriginal owners" in the Land Rights Act, this spiritual responsibility must be "primary". In the case of each group, the spiritual affiliations to the sites to which I have referred give rise to a spiritual responsibility which is primary, in the sense that it is ahead of that of any other people who hold that dreaming. In other words, the evidence identifies the members of the claimant groups as those who have primary spiritual responsibility for those portions of the dreaming tracks of the relevant dreamings which enter or pass through the land claimed. Spiritual responsibility for sites and land is exercised to a high degree by the performance of ceremony. As I have found in relation to all but one of the groups, ceremonial activity in respect of the relevant parts of the dreaming tracks continues. Except in the case of the Wirntiku group, as to which there is no evidence, body designs are worn and, in some cases, songs and dances are performed by members of the groups in respect of those particular portions of the dreaming tracks. I am confident that, as they acquire age and status, other members of the groups will take their rightful places in the performance of those ceremonies. Likewise, members of each group are regarded as having authority to speak for certain sites and the areas around them, which authority comes ahead of those who might have attachments to other portions of the same dreaming track.

4.12.2 Each group consists of both kirta and kurtungurlu. A question therefore arises whether one or other of these subgroups has responsibility which is primary as against the other. The roles of kirta and kurtungurlu are different in ceremony and in other forms of caring for land. In ceremony, kirta dance and sing. Kurtungurlu apply body designs to kirta, safeguard ceremonial objects and exercise a policing role, to ensure that the ceremony is conducted properly. In caring for sites, kirta must seek the permission of kurtungurlu to perform acts (such as burning the country) and kurtungurlu must exercise a supervisory role, to ensure that the country is cared for properly. Thus, in each case, the roles of kirta and kurtungurlu are complementary. Without one or the other, there would be no ceremony and there would be no proper exercise of custodial obligations in respect of sites and land. I am therefore of the view that neither kirta nor kurtungurlu can be regarded as having responsibility which is primary as against the other. Together, kirta and kurtungurlu exercise primary spiritual responsibility.

4.12.3 Another issue as to the primacy of responsibility arises because of the overlapping of dreaming tracks. This has resulted in a considerable number of shared

sites and areas of land, to be found elsewhere in this chapter. Occurrences of this kind are common in semi-arid country in Central Australia. Different groups with different dreamings will often share sites because spiritual focus often coincides with the existence of the necessities of life, especially water. In the case of shared sites and land, no single group seeks to assert its pre-eminence over another. When witnesses were asked about who should speak for particular sites which are shared by more than one group, they would invariably respond by naming the senior people from each of the groups involved. As a result, it is possible to say that the members of each of the groups related to a shared site exercise primary spiritual responsibility for that site, with none attempting to exclude any other.

4.13 Rights to forage The members of each group have rights to forage over those portions of the land to which their affiliations extend, and possibly even wider portions. Again, in semi-arid areas, it is common for rights to hunt under traditional Aboriginal law to be in respect of broader areas than those to which spiritual affiliations extend. The need for survival presumably required that people be entitled to hunt where food resources were to be found, if seasons were bad elsewhere. Whatever the explanation, it is clear that the members of each of the groups in the present claim have the necessary rights to forage over portions of the land claimed and that, between them, the groups cover the entirety of the land claimed with such rights.

4.14 Traditional Aboriginal owners The following is a list of all of those who, according to the evidence, fall within the definition of "traditional Aboriginal owners" of any part of the land claimed. Because of the absence of surnames for so many people, it has been impossible for me to follow my usual practice of listing the traditional Aboriginal owners in alphabetical order. Instead, I have attempted to render easier the identification of the persons listed by indenting the names of children below those of their parents. Where parents have died, I endeavour to indicate the lineage of persons who are not identified sufficiently by their names. It will be appreciated that some people fall into more than one group, for instance by being kirta for one and kurtungurlu for another. I have endeavoured to list them only once in this composite list, usually with their children, if they have any.

Bunny Bennett Napurrula

Annie Phillips Napurmla

Alice Jackson Napurrula

Jimmy Jones

Mavis Picky

Mark Jones

Leon Jones

Mark Brown Jungarrayi

Lance Brown Japaljarri

Damien Brown Japaljarri

Sylvania Brown Japaljarri

Fabian Brown Japaljarri

Vivienne Brown Napaljarri

Kirsten Brown Napaljarri

Miranda Napaljarri >  
Samantha Napaljarri > (daughters of the late G. Brown)  
Jasmine Napaljarri >  
Ronald Brown Japangarti/Japaljarri  
Pam Brown Napangarti/Napaljarri  
    Jasmine Nangala  
    Jeremias  
    Jerome  
Beryl/Pearl Brown Napangarti/Napaljarri  
Carmen Brown Napangarti/Napaljarri  
    Bernadine Napurmla  
Glen Brown Japaljarri  
Mervyn Brown Japaljarri  
Patrick Brown Japaljarri  
Wendy Brown Nungarrayi  
    Magdalene Brown Nampijinpa  
    Josephine Brown Nampijinpa  
    Ina Brown Nampijinpa  
Edna Brown Nungarrayi  
Sammy Sambo Jungarrayi  
    Henry Sambo Japaljarri  
        Lisa Morrison Nungarrayi  
        Dennis Morrison Jungarrayi  
        Lorraine Morrison Nungarrayi  
        Desmond Morrison Jungarrayi  
    Sally Sambo Napaljarri  
    Benjamin Sambo Japaljarri  
Jean Sambo Nungarrayi  
Dulcie Sambo Nungarrayi  
Michael Sambo Jungarrayi  
    Rekasha Napaljarri  
    Unnamed Japaljarri  
Robert Sambo Jungarrayi  
Peter Toprail Japaljarri  
    Gladys Toprail Brown Nungarrayi  
        Janine Nampijinpa  
        Dominic Jampijinpa  
    Albert Toprail Brown Jungarrayi  
Harry Brewster Jungarrayi  
Eve Brewster Nampijinpa  
Harry Bennett Japaljarri (Kanjiwala)  
    Bemadine (Bunny) Nungarrayi

Gina Marie Bennett Nampijinpa  
Rowan John Bennett Jampijinpa  
Justin Troy Bennett Jampijinpa  
Mary-Anne Leigh Bennett Nampijinpa  
Marshall Harry Bennett Jungarrayi  
Derek Japaljarri  
Russell Japaljarri  
Wade Harley Japaljarri  
Joyce Bennett Nungarrayi  
Cynthia Lyn  
Lavine Lee  
Kiana Helenka  
Marlene Bennett Nungarrayi  
Darrell Dempsey Bennett  
Brunette Willy Alien Jampijinpa  
Bobby Cooper Jampijinpa  
Bobby Alien Jampijinpa  
Maxie Martin Japaljarri  
Frank Anderson Jupurrula  
Jimmy Newcastle Japaljarri  
Nita Nungarrayi  
Cameron Jampijinpa  
Glennen Jampijinpa  
Bronwyn Newcastle Nungarrayi  
Nicholas Jampijinpa  
Gerald Andrew Jampijinpa  
Naomi Nampijinpa  
Anthony Newcastle Jungarrayi/Japanangka  
Jermaine Japangarti/Japaljarri  
Taron Japangarti/Japaljarri  
Nicholas Japangarti/Japaljarri  
Unnamed daughter  
Merlin Newcastle Jungarrayi/Japanangka  
Darren Newcastle Jungarrayi/Japanangka  
Noel Newcastle Jungarrayi/Japanangka  
Julianna Newcastle Nungarrayi/Nakamarra  
Jodie Newcastle  
Jordan Jampijinpa/Jakamarra  
Ben  
Selina Newcastle Nungarrayi/Napanangka  
Harry Lauder Jupurrula  
Elizabeth



Lionel  
Michael  
Sharon  
Kurt  
Amanda  
Wallena  
Daphne  
Josie  
Samantha  
Sean  
Wayne  
Dean  
Maisey  
Anna  
Melissa  
Irene  
Adrian  
Jackie  
Sondel  
Unnamed son  
Mervyn  
Three unnamed children  
Faylene  
Christopher  
Jamella  
Jeffrey Lauder Jupurrula  
Cerise  
Bradley  
Hazel Bill Napurrula  
Angeline Bill Napangarti  
Lawrence Bill Japangarti  
Alice Lauder Napurrula  
Jason Japangarti  
Regina Napangarti  
Jeanette Napangarti  
Amy Lauder Napurrula  
Sonia Napangarti  
Geraldine Napangarti  
Nadine Napangarti  
Mary O'Keefe Nangala  
Louise Napaljarri  
Marissa Napaljarri

Maureen Nampijinpa (daughter of deceased brother of Mary O'Keefe Nangala)  
Pat Burke Japaljarri  
Doris Nicholson  
Pearly Phillips Napaljarri  
Suzanne Burke  
Kayleen Burke  
Dick Foster  
    Earl Foster Jampijinpa  
    Ricky Foster Jampijinpa  
    Elaine Foster Nampijinpa  
    Damian Jampijinpa  
    Dwayne Jampijinpa  
    Peter Todd  
    Peter Pumpkin Foster  
    Loretta Nampijinpa  
    Patricia Nampijinpa  
Nora Parker Nangala  
    Mavis Napaljarri  
    Agnes Parker  
    Jeffrey  
    Ronnie  
Biddy Nangala (sister of Nora Parker Nangala)  
    Agnes Phillips  
Roy Anderson Jakamarra  
    Bruce Jupurrula  
        Lee Jakamarra  
    Carmen Napurrula  
    Freddy Jupurrula  
    Heather Napurrula  
Hector Anderson Jakamarra  
    Cyril Jupurrula  
        Cheryl Nakamarra  
        Rachel Nakamarra  
    Arnold Jakamarra  
    Shirley Napurrula  
        Desley Napangarti  
Agnes Nakamarra (sister of Roy and Hector Anderson Jakamarra)  
Beasley Anderson Jakamarra  
    Anne Napurmla  
    Picky Jupurrula  
    Stuart Jupurrula  
    Richard Jupurrula

Aaron Jupurrula  
Samuel Jupurrula  
Joshua Jupurrula  
Barry Anderson  
Daisy Nakamarra (daughter of the late D. Graham Jupurrula)  
Peter Weston Jungarrayi  
Derek Weston Jungarrayi  
Frank Weston Jungarrayi  
Patrick Weston Jungarrayi  
Henry Weston Jungarrayi  
Olive Nungarrayi  
Anna Nungarrayi  
Johnny Manfong Jakamarra  
Belinda Napurrula  
    Carl Japangarti/Jupurrula  
    Thornton Japangarti/Jupurrula  
Timothy Manfong Jupurrula  
Angela Manfong Napurmla  
    Jason Japangarti/Jupurrula  
    Glen Japangarti/Jupurrula  
William Graham Jakamarra  
Bessie Nakamarra (daughter of the late D. Graham Jupurrula)  
Molly Nangala (Jinpirriya)  
Rachel (daughter of a deceased brother of Molly Nangala)  
Margaret Nangala (sister of Molly Nangala)  
Vilene Nangala (sister of Molly Nangala)  
    Henry Japaljarri  
    Kenny Japaljarri  
Angus Riley (Kartu) Jupurrula  
    Warren Jakamarra  
Lady Benson Napurrula  
    Beverly Benson  
Dianne >  
Belinda >  
Betty > (children of a deceased brother of Mick Martin Jakamarra)  
Pam >  
Leanne >  
Mick Martin Jakamarra  
    Christine Martin Napurrula  
    Unnamed Japangarti  
    Ashlita Martin Napurmla  
Susan Nelson Nakamarra

Bindi Martin Jakamarra  
Louie Martin Nakamarra  
Rosie Napangarti (daughter of a deceased sister of Mick Martin Jakamarra's father)  
Robert Jakamarra >  
Ronald Jakamarra > (children of a deceased brother of  
Gregory Jakamarra > Mick Martin Jakamarra's father)  
Christine Nakamarra >  
Alfie Rennie Japanangka  
    Selina  
    Kirsten  
    Neil  
    Unnamed daughter  
    Penelope  
    Steven  
    Two unnamed Napanangka daughters  
William Phillips Japangarti  
Rodney Phillips Japangarti  
Isobel Phillips Napangarti  
    Gary Jangala  
    Gwendolyn Nangala  
    Gloria Nangala  
    Gilbert Jangala  
    Glen Jangala  
Ruth Phillips Napangarti  
    Lincoln  
    Lynette  
    Rowan  
Marie Rennie  
    Maria Nakamarra  
    Jerome  
    Boas  
    Carrick  
Mary Rankin Napanangka  
    Rebecca  
Nellie Nelson  
Kay Nakamarra >  
Pepy Simpson Jakamarra > (children of a deceased sister of Billy Grant Snr)  
Billy Grant Snr Japanangka  
    Helen  
    Betty Kelly Napurrula  
    Leanne Kelly Napurrula  
    David Walker Jangala/Jupurrula

Darren Grant Jupurrula  
Marjorie Dennis  
Billy Grant Jnr  
    Selina Grant Nungarrayi/Napanangka  
    Gavin Grant Jungarrayi/Japanangka  
    Rowena Grant Nungarrayi/Napanangka  
    Zania Albertina Grant Nungarrayi/Napanangka  
Heather Grant  
Barbara  
Lindsay (Ian) Grant  
    Simone Grant Nungarrayi  
    Unnamed son  
Albert (Dudley) Grant  
    Lazarus Grant Jungarrayi  
    Lyn Hogan Nungarrayi  
David Grant  
    Juwayne Jungarrayi/Japanangka  
Julie  
    Tiny (Sue) Grant Nangala  
    Terence Jangala  
    Timothy Jangala  
    Alanna Nangala  
Lesley Grant  
    Michelle Napanangka  
    Bradley Japanangka  
    Rosquilla Napanangka  
    Lutinzia Napanangka/Nungarrayi  
    Liam Japanangka/Jungarrayi  
Christine  
    Douglas Foster Jangala/Jupurrula  
    Marrazita Foster Nangala/Napurmla  
Annie Senior  
    Pauline Jones Nangala  
    July Jones Nangala  
    Cedric Jones Jangala  
Noreen  
    Alvin Jones Jangala  
    Trisilla Jones Nangala  
    Devina Jones Nangala  
Noel Jones Jangala  
    Carmelisa Jones Nangala  
Kevin Grant

Jeremiah Grant Japanangka  
Kerrili Grant Napanangka  
Josephine  
Johnnex Foster Jangala  
Lex Foster Jangala  
Jody Foster Nangala  
Danielle Nangala  
Vinny Foster Nangala  
Doreen  
Lucasta Rockland Nangala  
Lucas Grant Jangala  
Annie Junior  
Kenrick Jangala  
Russel Grant  
May Foster Napanangka  
Roslyn Nakamarra  
Lisa Nakamarra  
Peter Jakamarra  
Donna Nakamarra  
Christine Morton  
Topsy Walker Napanangka  
Elizabeth Nakamarra  
Richard Jakamarra  
Matthew Jakamarra  
Ronald Jakamarra  
Andrew Jakamarra  
Paula Nakamarra  
Lucy (Piminginyngali) Nakamarra  
David Newcastle (Yanunkarri) Jakamarra  
Johnny Nelson (Walamanta) Japanangka  
Selwyn Nelson Japangarti  
Paula Nelson Napangarti  
Earl Nelson Japangarti  
Kenneth Lane Japangarti  
Aubrey (Toby One) Japanangka  
Julie Jackson Napangarti  
Karen Jackson Napangarti  
Barbara Jackson Napangarti  
Darrell Japangarti  
Ronnie Japangarti  
Sally Merz Nalyirri  
Scott Campbell Jupurrula

Valerie Campbell Napurrula  
Paul Henderson Jalyirri  
Madeline Henderson Namija  
Davina  
Peter Henderson Jalyirri  
Elizabeth Henderson Nalyirri  
Judith  
Jolene  
Herbert  
Emestine  
Dick Kingston Jampijinpa  
Kimbi Kingston  
Billy Hayes (Lilakimaji) Jangala  
Paula Nampijinpa  
Michelle  
Ursula  
Bevan  
Andrew  
Darrell  
Jenny  
Emma  
Lorna Fejo (Minpirngali) Nangala  
Rodney  
Rosemary  
Christine  
Elita  
Eric  
Morella  
Ritchie  
Hughie Jackson (Minpirrikarri) Jangala  
Terry  
Roseanne  
Ricardo  
Desiree  
Andrea  
Judy Jackson Nampijinpa  
Jeremy  
Karl  
Karen  
Kerry-Anne  
Rebecca  
Adrian

Kenneth  
Donna  
Hazel Nampijinpa  
Joshua  
Gordon  
Jonathan  
Gwendoline  
Edward  
Madeline  
Pauline Nampijinpa  
Emma  
Laura  
Peter Jackson  
Kurt  
Teresita  
Dale  
Liamaiiah  
Gregory Jampijinpa  
Randall  
Naomi  
Priscilla Nampijinpa  
Jennifer Nampijinpa  
Pamela  
Jacob  
Lucas  
Dolly (Julypungali) Nangala  
Johnny Stokes (Tungkulyanu) Jangala  
Joan Stokes Nampijinpa  
Leah Stokes Napanangka  
Rebecca Stokes Napanangka  
Rachel Stokes  
Dianne Stokes Nampijinpa  
Juanita Briscoe Napanangka  
Troy Briscoe Japanangka  
Sebastian Briscoe Japanangka  
Anne-Marie Briscoe Napanangka  
Bevan Briscoe Japanangka  
Danny Stokes Jampijinpa  
Adrian Lovegrove Jangala  
Francis Lovegrove Jangala  
Leon Stokes Jampijinpa  
Ray Stokes Jangala



Lynette Phillips Nangala  
Stanley Stokes Jampijinpa  
Miriam Charley Nampijinpa  
Debbie Holt Nampijinpa

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## 5 STRENGTH OF ATTACHMENT

5.1 Assessing strength of traditional attachment The Land Rights Act requires that the Aboriginal Land Commissioner make an assessment of the strength of traditional attachment of the people who claim to be traditional Aboriginal owners of land the subject of a claim. Such an assessment, of a group as a whole, is difficult; inevitably, the traditional attachment of some claimants will be stronger than that of others. The Land Rights Act apparently requires that the assessment be made in a vacuum. There is no requirement that the commissioner attempt to compare the strength of attachment of particular claimants with that of claimants in another land claim or other land claims. The only measure to be applied appears to be whether there is sufficient strength of traditional attachment to justify a recommendation that the land the subject of the claim, or part or parts of it, be conveyed to a land trust or land trusts.

5.2 Abundance of evidence The present claim does not involve any consideration of a narrow balance on the issue of strength of traditional attachment. To the contrary, there is abundant evidence of a powerful and continuing traditional connection between the claimants and the land claimed.

### 5.3 Historical association

5.3.1 Older claimants typically recall walking around the claim area with their families when they were children. Claimants who gave evidence to this effect include Peter Toprail, Harry Bennett, Jimmy Newcastle, Angus Riley, Lady Benson, Topsy Walker, Dick Foster, Harry and Jeffrey Lauder and Billy Hayes. Hughie Jackson's parents carried him around the claim area in a coolamon when he was a baby.

5.3.2 Muckaty Station is in a region which has had a considerable history of involvement in the pastoral industry. Employment in the pastoral industry was common for the older generation of claimants. Peter Toprail, Jimmy Newcastle, Bunny Bennett, Angus Riley, Brunette Willy Alien, Aubrey (Toby One), Jeffrey Lauder, Harry Lauder, Topsy Walker, Dick Foster and Dolly (Jullypungali) all recall periods of employment on Muckaty Station, and Billy Hayes may have worked there briefly. Almost all of the older claimants have worked on cattle stations in the region.

5.3.3 Employment in the cattle industry was undoubtedly a factor contributing to the maintenance of Aboriginal culture and attachment to land. Mustering cattle provided opportunities for visiting sites of significance and learning about them. Angus Riley, whose knowledge of the spiritual significance of the land claimed is enormous, recalled seeking that knowledge from the late D. Graham while he (Angus) was working on Muckaty Station.

5.4 Where the claimants live Most of the claimants continue to live in the region. Topsy Walker and Dick Foster live in Tennant Creek. Billy Hayes and Hughie Jackson live at Elliott. Two of Hughie Jackson's children live at Tennant Creek. Jeffrey Lauder lives at Ali Curung, as does Edna Brown. Other claimants have established outstations on land which is already Aboriginal land under the Land Rights Act. Thus, Peter Toprail, Angus Riley and Aubrey (Toby One) live at Kalumpurlpa, south of the claim area. Harry Bennett lives at Blue Bush, not far from Kalumpurlpa. The family of the late G. Brown established an outstation at Kunuyungku, further to the south. The late P. Henderson's family live at Jangirulu, near the northern boundary of the claim area, as does Lady Benson. The Grant family live at Kumurnu, near the southern boundary of the claim area. There is a general desire among the claimants to conduct a pastoral enterprise on the land claimed, which will involve some of them living on it.

5.5 Ceremonial activity I have referred in some detail in chapter 4 to the continuance of ceremonies in which songs and body designs of the dreamings for the various groups continue to be used. These ceremonies are conducted regularly and many of the claimants participate actively in them. The initiation of young men continues. Some claimant women sang at Nurrkuyiji (site 100), Riirri (site 83), where they also danced, and Julypungali (site 19). Male claimants sang part of the Milwayi dreaming song cycle at Nyanya (site 71). The late G. Brown explained that ceremony sustains country, making "it look fresh and everything alive". Women have a ceremony called Yawalyu. One evening during the hearing, at a place near the Muckaty homestead, a group of women, which included some claimants from the Milwayi group, performed excerpts from a Yawalyu ceremony for the benefit of those engaged in the hearing. Men have a ceremony called Kujika, which is for the initiation of young men. Brunette Willy Alien recalled being made a young man at Karakara (site 51) and Johnny Nelson gave evidence that he was made a young man on Muckaty Station.

#### 5.6 Spiritual life

5.6.1 There is no doubt that the dreamings continue to be a reality for the claimants. Peter Toprail gave evidence that the Milwayi dreaming has left its essence at various sites and it is that which empowers him. At Nurrkuyiji (site 100), Riirri (site 83) and Julypungali (site 19) women and children swept the ground with leaves. It was explained that this is a necessary step when visiting a site for the first time (as with children) or after not having visited for some time. If the step is not taken, people might become ill. A similar function is often performed by calling out when approaching a site. Male claimants did this when approaching Nyanya (site 71).

5.6.2 There is a strong desire evident to protect sites of significance from damage. Nyanya (site 71) is a registered sacred site, pursuant to the Northern Territory Aboriginal Sacred Sites Act 1989 (NT). Evidence was given of a determination to preserve Kurrutirti (site 88) when it was apparently threatened by road construction. One of the reasons for visiting the country is to check on the sites. Dick Foster comes from Tennant Creek to perform this task and to hunt, and has done so for years.

5.6.3 Secrecy is still observed in respect of a number of sites and a good deal of information. Both men and women have information about sites which is kept from the opposite sex. Evidence restricted to men (to the content of which I have consequently not referred in this report) was given at Nyanya (site 71), Kurrutirti (site 88) and Walyka (site 76). Riirri (site 83) is a site of special significance for women. An attempt to take evidence there, with only non-Aboriginal men present and Aboriginal men requested to remain at a distance, was largely unsuccessful; the women who were to give the evidence were obviously reluctant to reveal anything of substance about the site, even in those circumstances.

5.6.4 There is a determination to pass on spiritual knowledge about the country to coming generations. The late G. Brown stated his ambition to follow the dreaming as his grandfathers followed it and to teach it to his children and grandchildren. Jeffrey Lauder expressed the view that young people in the Ngapa group should learn about country and would take it over.

5.7 Visits to the land claimed Even claimants who live some distance away from the land claimed visit it as often as they can. Harry Lauder lives in Burketown in Queensland, but comes every year to visit and participate in ceremony. He expressed a desire to live on the claimed land. As I have said (para. 5.6.2), Dick Foster comes from Tennant Creek to hunt and check on sites and has done so for years. Jeffrey Lauder comes from Ali Curung to hunt.

Others visit at every opportunity, usually only prevented from doing so by lack of available transport.

5.8 Association through names Very many of the claimants bear names ("bush names") associated with sites on the land claimed or with dreamings for those sites. The bush names of some of the claimants appear in the lists in chapter 3 and the list in para. 4.14.

5.9 Strength of attachment high As this summary of the evidence indicates, the strength of traditional attachment of the claimants must be regarded as high. It is manifested by a strong desire to secure the land claimed because of its traditional significance to the claimants.

## 6 MATTERS FOR COMMENT

6.1 Numbers advantaged The total number of persons whom I have found to fall within the definition of "traditional Aboriginal owners" in the Land Rights Act is 441. To the extent to which their spouses and children who do not fall within the definition can be said to have traditional attachments to the land claimed through their marital and parental ties, there are approximately ninety more persons who would be advantaged if the claim were acceded to in whole or in part. In addition, there are persons who have ties of kinship, language, ceremonial obligation and attachment, and dreaming affiliation, who may be described as people with traditional attachments to the land claimed and who will also be advantaged. Many such persons hold the dreamings to which I have referred in chapter 4 for other parts of their dreaming tracks and join with the traditional Aboriginal owners of the claimed land in the conduct of ceremonies related to those dreamings. The total number of Aboriginal people with traditional attachments to the land claimed who would be advantaged if the claim were acceded to in whole or in part could be as high as 1000.

### 6.2 Nature and extent of the advantage

6.2.1 The most obvious advantage to those with traditional attachments to the land claimed would be the benefit of the land being held under inalienable freehold title. Once the land is conveyed to a land trust, in accordance with ss. 11 and 12 of the Land Rights Act, s. 19 operates to prevent the land trust from dealing with or disposing of the land. Section 67 prevents the resumption, compulsory acquisition or forfeiture of the land under any law of the Northern Territory. Such a title is more secure than that which is presently available in respect of the land claimed under the laws of the Northern Territory. Thus, a grant of the land claimed to a land trust would have the effect of preserving the land for those with traditional attachments to it and their descendants. The conduct of a pastoral enterprise on the land could not lead to a loss of title, even if it were unsuccessful as a result of bad seasons, loss of markets or even inadequate management.

6.2.2 Those with traditional attachments to the land claimed would also be advantaged by having greater control of its management if it became Aboriginal land under the Land Rights Act. The protection of sites and areas of spiritual and cultural significance would be easier because of the ability of the Northern Land Council, in consultation with those with traditional attachments, to control access to the land under the Aboriginal Land Act (NT). Part IV of the Land Rights Act will give to the traditional Aboriginal owners and others with traditional attachments to the land control of the activities of any persons who might seek to acquire mining interests in the land.

6.2.3 There will also be considerable intangible advantage if the land becomes Aboriginal land under the Land Rights Act. A grant of land to a land trust is recognition of the traditional rights of people whose forebears were dispossessed. It is a recognition at the highest level of Australian society. The Attorney-General for the Northern Territory submitted that the status of the claimants as people with traditional entitlements to the land had already been recognised. Some (but not all) have been found to be traditional Aboriginal owners of other land in other claims. By choosing not to make submissions contesting the entitlement of the claimants in the present claim, the Northern Territory Government has acknowledged their entitlement. Valuable though these findings and gestures may be, they do not amount to the equivalent of the recognition which Aboriginal entitlements receive by way of a grant of land to a land trust. Such a grant carries with it an affirmation of the value of traditional rights and of

places of cultural significance. It enables the traditional Aboriginal owners of the land and others with traditional attachments to it to use the land as a focus for the further development of their community spirit and the maintenance and increase of their self-esteem. The importance of such an acknowledgment and such a focus for modern Aboriginal communities should not be underestimated.

### 6.3 Detriment: the gas pipeline

6.3.1 In para. 2.12, I have reached the conclusion that neither NT Gas Pty Ltd, nor ANZ Leasing (NT) Pty Ltd and its consortium of banks which own the gas pipeline, has an estate or interest in the land the subject of the claim. This raises the possibility that, if the claim were to be successful and the land claimed were to become Aboriginal land under the Land Rights Act, NT Gas Pty Ltd, ANZ Leasing (NT) Pty Ltd or the banks could not assert any right to continue to operate and maintain the pipeline. The likelihood is that the combination of legislation of the Northern Territory, to which I have referred in para. 2.12, would not be "capable of operating concurrently" with the Land Rights Act, within the meaning of s. 74 of the Land Rights Act. The Northern Territory legislation would be overridden by the Land Rights Act if the land trust, acting on the directions of the Northern Land Council, after consultation in accordance with s. 23(1)(c) of the Land Rights Act, resolved not to permit the continued use of the pipeline across the subject land. The result of such a determination would be detriment to NT Gas Pty Ltd, ANZ Leasing (NT) Pty Ltd and the consortium of banks, consumers of the gas conveyed by the pipeline and consumers of electricity generated by the gas conveyed by the pipeline. In the first instance, NT Gas Pty Ltd is liable to the banks in respect of any loss; in some circumstances, the Northern Territory Government may have to make good loss suffered. The loss suffered by consumers will usually be borne by those consumers themselves.

6.3.2 The extent of this detriment would depend upon the outcome of negotiations for a lease of the pipeline easement or some other form of authorisation by the land trust of the continued use and maintenance of the pipeline. If no such agreement were to be reached, the estimated cost of the re-routing of the pipeline around the subject land is between \$8 million and \$10 million. In addition, there would be disruption to the use of the pipeline involved in such re-routing, although any right which the land trust had to prevent the continuance of a trespass involved in the use of the pipeline would be subject to the allowance of a reasonable period (often described in the authorities as a "packing-up period") for the making of other arrangements. NT Gas Pty Ltd would also be liable for continued rental payments in respect of the unused portion of the pipeline; over the remaining period of the lease, these could amount to \$5 million.

6.3.3 The far more likely prospect is that agreement for a lease of the pipeline easement would be reached and the detriment suffered would be limited to the amount of any rent and any other amount or amounts payable under the lease. Such agreements have been reached between NT Gas Pty Ltd and the Wubalawun Aboriginal Land Trust, in relation to land further north, and the Ahakeye Aboriginal Land Trust, in relation to land further south, through which the pipeline also runs. NT Gas Pty Ltd expressed its willingness to pay rent at the same rate used to calculate the rents specified in those agreements. Negotiations in respect of such a lease, and the completion of an agreement for such a lease, could take place between NT Gas Pty Ltd and the Northern Land Council prior to any grant of the land to a land trust, pursuant to s. 11A of the Land

Rights Act. There was some suggestion that a sticking point in such negotiations might be the possibility of a demand by the Northern Land Council for a capital payment, in addition to rental payments. NT Gas Pty Ltd considers that a requirement to make a capital payment would be unjust, in the light of the fact that it has already purchased the pipeline easement from the Hagans. The claimants drew attention to capital payments in the other agreements to which I have referred. It is no part of my function to comment on the way in which negotiations should be conducted or the matters which should be discussed. The claimants made it clear in their submissions that they do not propose to require the re-positioning of the pipeline and that they are amenable to entering into an agreement for a lease of the pipeline easement, to enable the continued use and maintenance of the pipeline. In my view, that is the most likely outcome and any detriment suffered will be limited to amounts payable under the lease which results.

6.4 Detriment: access to the gas pipeline In para. 2.12.25, I expressed the view that NT Gas Pty Ltd has no estate or interest in the land claimed which would provide it with a right of access across other portions of the land to the energy supply easement. If the land claimed becomes Aboriginal land under the Land Rights Act, NT Gas Pty Ltd will lose the benefit of any licence it may now have to use the access tracks across the land claimed. These tracks are used to assist employees of NT Gas Pty Ltd in maintaining the pipe, including monitoring its cathodic protection. Those employees will require permits under the Aboriginal Land Act (NT) in order to continue using the access tracks. If permits were denied, and access could not be achieved conveniently by other means, NT Gas Pty Ltd would suffer detriment accordingly. In turn, detriment might be suffered by those who depend on the continued functioning of the pipeline, if there should be any interference with that functioning by reason of lack of proper maintenance.

6.5 Detriment: land not available as security for loans The traditional Aboriginal owners of the land claimed and others with traditional attachments to it would suffer detriment in one respect if the claim were to be acceded to. The pastoral enterprise which the claimants desire to conduct on the land will no doubt require working capital. It would not be possible to raise such capital by borrowing on the security of the land itself, because of its inalienable title, resulting from ss. 19 and 67 of the Land Rights Act. This detriment would be offset in a number of significant ways. Money for working capital may be available from the Aboriginals Benefit Trust Account, established pursuant to Part VI of the Land Rights Act. There is a considerable cooperative effort between agencies of the Commonwealth of Australia, agencies of the Northern Territory, the Northern Land Council and the Central Land Council to ensure that Aboriginal pastoral enterprises in the Northern Territory operate successfully. It is unlikely that the pastoral enterprise on the land claimed would fail for want of working capital. In any event, I regard this detriment as being outweighed by the advantages to which I have referred in para. 6.2.

6.6 Detriment: the pastoral industry The proposal to conduct a pastoral enterprise on the land claimed is related to other issues of detriment raised in various submissions. The Northern Territory Cattlemen's Association Inc. forwarded a written submission, stating a general opposition to claims under the Land Rights Act being made in respect of land subject to pastoral leases. The submission suggested that the making of such claims was in some way inconsistent with the purpose for which pastoral properties were purchased for Aboriginal people. I am not sure to whose intention the submission makes reference. It is abundantly clear from the terms of the definition of "alienated Crown land" in s. 3(1) of the Land Rights Act, and from the terms of s. 50(1)(a), that a claim over a pastoral property, in respect of

which the pastoral lease is held by or on behalf of Aboriginal people, is possible within the terms of the Land Rights Act. A number of such claims have been made and have succeeded; pastoral enterprises continue to be conducted in a number of places throughout the Northern Territory on Aboriginal land under the Land Rights Act. There is no inconsistency between the holding of inalienable freehold title in land by a land trust and the use of that land for the conduct of a pastoral enterprise. Such a form of title has the advantage of permanence, to which I have referred in para. 6.2.1, and the disadvantage of its unavailability as security for loans, to which I have referred in para. 6.5. Otherwise, the form of title under which land is held is a neutral factor. I am unable to accept the assertion of the Northern Territory Cattlemen's Association Inc. that the long-term interests of the cattle industry, or Aboriginal commercial interests, are affected adversely by conversion from a pastoral lease into Aboriginal land under the Land Rights Act. Indeed, as the submission on behalf of the claimants points out, the previous owner of the pastoral lease over the land claimed had proposed to convert the land from a cattle station to an international golf resort, a purpose which was not only at odds with the nature of the terrain and the climate but also inconsistent with the historical and regional pattern of cattle grazing. The reconversion of the land claimed to pastoral land, after some years of destocking, accords with the general desire of the Northern Territory Cattlemen's Association Inc. to promote the pastoral industry in the Northern Territory. I am unable to see that that industry would suffer any detriment if the land claim were acceded to.

6.7 Detriment: fencing The holders of the pastoral leases of two neighbouring properties, Powell Creek and Helen Springs, raised the issue of fencing. By letter dated 6 July 1993, Consolidated Pastoral Company Pty Ltd, the lessee of the pastoral lease of Powell Creek Station, stated that the boundary between the land claimed and Powell Creek Station is fenced and maintained on a "give and take basis". Such a fence is not necessarily built on the surveyed boundary between the two properties, but diverges from that boundary where particular features of the terrain make it more convenient that it should do so. Thus, some of the Powell Creek cattle are able to graze on the land claimed in some places and cattle run on the land claimed will be able to graze on Powell Creek Station in others. The letter suggested that Consolidated Pastoral Company Pty Ltd would suffer detriment in needing to align the fence along the surveyed boundary if the claim should be acceded to. By letter dated 2 November 1993, a solicitor on behalf of Consolidated Pastoral Company Pty Ltd stated that an inspection of the alignment of the boundary fence had been conducted and that company no longer sought to tender any evidence in relation to the claim. Stanbroke Pastoral Company Pty Ltd, the lessee of Helen Springs Station, raised the issue of the maintenance of fences. This is an issue which affects both of these neighbouring owners, as the requirement to contribute to a common boundary fence under the Fences Act (NT) might be unenforceable against a land trust, which has no assets of its own, no rights to alienate the trust land to recoup any expenses and no right of recourse to the land council except for "administrative expenses, charges or obligations incurred or undertaken" by the land trust, pursuant to s. 26 of the Land Rights Act. Assuming that a pastoral enterprise is conducted and continues to be conducted on the land claimed, the practical need to ensure that cattle do not wander onto neighbouring properties will probably be sufficient incentive for whoever conducts the pastoral enterprise to maintain fences on a cooperative basis with neighbouring landholders. Only if existing fences fell into disrepair and neighbouring landholders were required to bear the entire cost of repairing them, would detriment to such neighbouring landholders result.



## 6.8 Detriment: inapplicability of Northern Territory legislation

6.8.1 The Fences Act (NT) is not the only example of legislation of the Northern Territory in respect of which questions might arise as to its continued operation should the land claimed become Aboriginal land under the Land Rights Act. Section 74 of the Land Rights Act provides:

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

The Attorney-General for the Northern Territory alleges that detriment to persons or communities might result if the claim were acceded to, because of the inapplicability of some laws of the Northern Territory to the land claimed, once it became held by a land trust. Examples of legislation given included the Stock Diseases Act (NT), the Stock Routes and Travelling Stock Act (NT), the Noxious Weeds Act (NT), the Soil Conservation and Land Utilisation Act (NT) and the Bushfires Act (NT). As an example, the Brucellosis and Tuberculosis Eradication Campaign has been implemented in the Northern Territory, largely through the Stock Diseases Act (NT). The ability to control outbreaks of stock diseases is obviously an important aspect of such a campaign. Similar considerations of possible detriment trouble Stanbroke Pastoral Company Pty Ltd, which expressed concern about stock diseases and fire control.

6.8.2 It is impossible for me to specify in advance which aspects of any legislation of the Northern Territory may or may not be capable of operating concurrently with the Land Rights Act. Specific circumstances would need to be considered in each instance. Separate consideration would have to be given to each relevant provision of each Act in relation to such a specific situation. Detriment of the kind contemplated by s. 50(3)(b) of the Land Rights Act would only occur if whoever is charged with the management of the pastoral enterprise on the land claimed should refuse to cooperate with the authorities of the Northern Territory in relation to some specific issue involving a provision of a law of the Northern Territory, and it were to be found that that provision was not capable of operating concurrently with the Land Rights Act. It cannot be said that such an occurrence is very likely. I note that there has already been cooperation between the Northern Land Council and the Conservation Commission of the Northern Territory, which has ensured that the grazing of cattle on the land claimed had not resumed, at the time of the hearing, so that regeneration of degraded areas could take place. The same cooperation resulted in a program for the rehabilitation of some areas by the planting of Mitchell grass seed. The submission on behalf of the Attorney-General for the Northern Territory suggested that I should make any recommendation for a grant of land conditional on the acceptance of the operation of Northern Territory land management legislation. Any attempt to impose such a condition would be beyond my power. In any event, such a condition would be unenforceable; the Land Rights Act provides no machinery for the revocation of a grant of land to a land trust. Future generations of people entitled to the benefits of the land under the Land Rights Act would not be bound by any such condition.

## 6.9 The railway corridor

6.9.1 The route for a possible railway line, linking Alice Springs and Darwin, has been selected. It is described in the submissions of the Attorney-General for the Northern Territory as the railway corridor. The railway corridor crosses the land claimed from south to north. Two tracks, which meet within the land claimed and then

diverge, have been bulldozed and one of them has been graded. Both tracks are shown on the map in appendix 5. The submission on behalf of the Attorney-General for the Northern Territory sought a recommendation that a strip of land 400 metres wide, corresponding with the line of the railway corridor, be excised from any grant of land to a land trust.

6.9.2 By letter dated 16 July 1993, Australian National Railways Commission gave notice that it wished to participate in the inquiry. On 15 September 1993, the Australian Government Solicitor, acting on behalf of Australian National Railways Commission, gave notice that Australian National Railways Commission no longer wished to be heard and did not intend to adduce any evidence.

6.9.3 At the time of the hearing, some \$15 million had been spent on developing the proposed railway. All but 300 kilometres of the railway corridor had been surveyed and a considerable amount of investigation had been undertaken to ensure that it did not interfere with places of significance to Aboriginal people. An environmental impact statement had been prepared and some preliminary design work had been completed. Funds had been committed to finish the survey of the proposed route.

6.9.4 In support of the proposal for an excision, the Attorney-General for the Northern Territory argued that, without it, the railway could only be built after the use of compulsory acquisition powers by the Commonwealth. It is suggested that the compulsory acquisition of Aboriginal land would involve political difficulty and that the existence of Aboriginal title to the rail corridor would deter potential investors. Accordingly, the Attorney-General for the Northern Territory suggests that detriment will result to the people of the Northern Territory, and of Australia, if the railway corridor is not excised from any grant of the land claimed to a land trust.

6.9.5 The proposal to build the railway link from Alice Springs to Darwin has existed for very many years. The investment involved will be massive. So far, neither the Northern Territory Government nor any Commonwealth Government has been willing to provide the funds for construction of the railway. Nor have private investors been persuaded as to the likelihood of a sufficient return on the capital required. The construction of the railway depends entirely upon the availability of funding. It is by no means certain that the railway will ever be built.

6.9.6 Although the Northern Territory Government has acquired parts of it, the railway corridor presently crosses land owned by many different owners, including some Aboriginal land trusts. If the railway is ever to be built, it is difficult to see that this could not be done without the exercise of the compulsory acquisition powers of the Commonwealth in any event. The submission on behalf of the Attorney-General for the Northern Territory recognised the need for Commonwealth involvement in the railway project. The fact that the railway corridor crosses Aboriginal land would not appear to be a major deterrent to the building of the railway. If funding should become available, and the railway should ever be built, acquisition of land on just terms would be required at many places along its route.

6.9.7 Until those events occur, there appears to be no point in leaving a 400-metre strip, which would divide the land claimed. The submission of the Attorney-General for the Northern Territory appeared to assume that excision of the rail corridor would result in the strip of land excised reverting to ownership by the Crown. That is not the case. The strip would continue to be subject to Pastoral Lease No. 856, so that all the covenants in the lease would continue in force with respect to that strip of land, whilst

ceasing to apply to the balance of the land which, on this assumption, would become Aboriginal land under the Land Rights Act. Powers of compulsory acquisition would need to be exercised so that the railway corridor could be made available for the construction of the railway line. The only difference would be that the powers of acquisition could be those of the Northern Territory, rather than those of the Commonwealth. The recent decision of the High Court of Australia in *Wik Peoples v. State of Queensland* (1996) 141 ALR 129 has also made it clear that native title on land which has been the subject of pastoral leases has not necessarily been extinguished. There must be a possibility that the strip of land designated as the railway corridor is subject to native title. If this were so, the permission of the native title holders, or the acquisition of the land by the Commonwealth, on just terms, would appear to be necessary for the construction of the railway.

6.9.8 In these circumstances, I am not prepared to recommend the excision of the railway corridor from any grant of the land claimed to a land trust. In my view, no significant detriment will occur if that portion of the railway corridor which crosses the land claimed becomes Aboriginal land under the Land Rights Act.

#### 5.10 Telstra fibre-optic regenerator station

6.10.1 Under licence from the Northern Land Council, Telstra Corporation Limited has installed and operates a fibre-optic regenerator station on a site occupying 900 square metres of the land claimed. The site is on the east of the Stuart Highway, adjacent to the junction of the highway and the road leading to the Muckaty homestead. The boundaries of the site are fenced. The western boundary is 100 metres east of the centre line of the highway. There is optical fibre cable laid underground, 47.5 metres east of the centre line of the highway, except where it is diverted into the regenerator station. Within the site, Telstra Corporation Limited has constructed a concrete building on a concrete slab and erected solar panels to supply power for the regeneration of the signals which pass along the fibre-optic cable. There is also an access track eight metres wide, from the Stuart Highway to the regenerator station site. The location of the site is shown on the map in appendix 5. It should be noted that the underground fibre-optic cable and the access track to the regenerator station will be within the road reserve which I propose should exist for the Stuart Highway (see para. 7.2).

6.10.2 The Northern Land Council and Telstra Corporation Limited have been negotiating with respect to a possible lease of the regenerator station site. If a lease is granted, Telstra Corporation Limited will have whatever rights are given to it by the terms and conditions of the lease. It will be required to pay whatever rent is fixed pursuant to the terms of the lease, and may suffer detriment to the extent to which such rent exceeds any rent currently paid for the site. If no agreement is reached on the terms of a lease, Telstra Corporation Limited would lose its entitlement to maintain and operate the regenerator station and to gain access to it, on the land claimed being conveyed to a land trust. Section 14 of the Land Rights Act, which preserves the entitlement of the Crown or an authority of the Crown to continue an existing use or occupation, would not be applicable. By s. 26 of the Australian and Overseas Telecommunications Corporation Act 1991, it is made clear that Telstra Corporation Limited is taken, for the purposes of the laws of the Commonwealth, of a State or of a Territory, not to have been incorporated or established for a public purpose or for a purpose of the Commonwealth, not to be a public authority or an instrumentality of the Crown and not to be entitled to any immunity or privilege of the Commonwealth,

except insofar as express provision may be made. So far as I am aware, there is no express provision which would require Telstra Corporation Limited to be treated as an "authority" within the definition of that term in s. 3(1) of the Land Rights Act, for the purposes of s. 14 of the Land Rights Act. In that event, Telstra Corporation Limited would suffer detriment, which would flow to users of the fibre-optic telecommunications system, to the extent that that system depends upon continued use of the regenerator station.

6.11 Gravel pits and bore used for road maintenance There are two gravel pits and a bore on the land claimed, which are used by the Department of Transport and Works of the Northern Territory for the purpose of road maintenance. The use of those gravel pits and that bore would be preserved by a. 14 of the Land Rights Act in the event that the land claimed was transferred to a land trust. Section 15 would oblige the Crown in right of the Northern Territory to pay to the Northern Land Council for that use amounts in the nature of rent, fixed by the Minister for Aboriginal and Torres Strait Islander Affairs, having regard to the economic value of the land. Section 15 would apply because the gravel pits and the bore concerned are used in the maintenance of the Stuart Highway, so it could not be said that their use is for a community purpose, as defined by a. 3(1) of the Land Rights Act, namely a purpose that is calculated to benefit primarily the members of a particular community or group. In *Attorney-General for the Northern Territory v. Hand* (1991) 172 CLR 185, the High Court of Australia held that this definition was not capable of referring to persons engaged in the cattle industry generally. Since the Stuart Highway is a road over which the public has a right of way, and is likely to be used by tourists from afar and long-distance transport operators as well as local residents, the maintenance of that highway is unlikely to amount to a purpose calculated to benefit primarily the members of a particular community or group. The Crown in right of the Northern Territory will suffer detriment to the extent of the rent fixed for the use of the two gravel pits and the bore. The location of each of the gravel pits and the bore is shown on the map in appendix 5.

6.12 Effect on existing or proposed patterns of land use The existing and proposed pattern of land usage in the region of the land claimed is primarily for the pastoral industry. At the time of the hearing of the claim, the land claimed had been destocked for several seasons. Much of the infrastructure of a cattle station remained intact, including a homestead, sheds fences, gates, dams, tanks and bores. The claimants proposed that the operation of the land claimed as a cattle station should resume. As I have said in para. 6.5, there is a substantial program conducted jointly by the Commonwealth, the Northern Territory, the Northern Land Council and the Central Land Council to ensure the proper management and, if possible, the financial success of Aboriginal cattle stations in the Northern Territory. The claimants will benefit from this plan. Assuming that proper management techniques are adopted and continued, acceding to the claim either in whole or in part will have no significant effect on the existing or proposed patterns of land usage in the region, except that the land claimed will recommence use as a cattle station.

6.13 No cost of acquiring interests Although the claim relates to alienated Crown land, there will be no cost of acquiring the interests of any persons in the land concerned. The Northern Land Council, which holds the pastoral lease, holds it for the purpose of ensuring that the land claimed is converted into Aboriginal land under the Land Rights Act.

## 7 OTHER MATTERS

### 7.1 Acquisition of secure occupancy

Because the land claimed is the subject of a pastoral lease, no issue arises of Aboriginal people living on the land claimed without a right or entitlement to do so. There are, however, among the claimants people who are not living on the traditional country of the tribe or linguistic group to which they belong but who desire to live at such a place. Harry Lauder, who lives in Queensland, expressed a desire to live on the land claimed and do stock work there. The conduct of the pastoral enterprise on the land claimed will involve a number of people living on the land claimed. Most of them are likely to be those with traditional Aboriginal interests in the land. A grant of the land claimed to a land trust would provide greater security of occupancy for such people, and for those who desire to conduct a pastoral enterprise, than does the continued entitlement under the pastoral lease. I have already made comments in para. 6.2.1 on the greater extent of the security of occupancy involved.

7.1.2 The submission on behalf of the Attorney-General for the Northern Territory sought to minimise the issue of security of occupancy. It did so on the assumption that the land claimed is currently the subject of a perpetual pastoral lease, the benefit of which is much closer to the benefit of freehold title held by a land trust under the Land Rights Act than a lease for a term would be. The assumption is incorrect. The Pastoral Land Act 1992 (NT), which operated to convert pastoral leases from leases for terms into perpetual leases, came into operation on 26 June 1992. By that time, the application in respect of this land claim had already been made. Section 67A(2) of the Land Rights Act made of no effect any grant of an estate or interest in the land claimed purportedly effected after the making of the application and before the claim is disposed of finally. The Pastoral Land Act 1992 (NT) was therefore ineffective to grant a perpetual pastoral lease over the land claimed. Pastoral Lease No. 856 remains a lease for the term referred to in para. 2.5.

7.2 Road over which the public has a right of way: Stuart Highway The only road on the land claimed over which the public has a right of way is the Stuart Highway. The location of the Stuart Highway is shown on the map in appendix 5. A road reservation 200 metres wide, being 100 metres on each side of the existing centre line of the road, appears to be appropriate for the drainage, maintenance and other appropriate requirements of a highway of this importance.

### 7.3 Single land trust

7.3.1 I have considered whether the existence of seven local descent groups, the members of which constitute the traditional Aboriginal owners of parts of the land claimed, would necessitate the establishment of more than one land trust for that land. I have also considered whether, even if more than one land trust were unnecessary, it would nevertheless be desirable. An examination of the lists of the members of the local descent groups in chapter 3 shows that there is a degree of overlap. Some of the claimants are members of one group as kirta and of another as kurtungurlu.

7.3.2 There are other links between the groups. In chapter 4, I have referred to a number of sites which are regarded as shared by dreamings through which different groups are affiliated to them, and to shared areas of land. Kinship links are strong, with members of one group identifying with members of the others on a kinship basis. Inter-group participation in ceremonial activity is considerable, with members of different

groups being entitled to wear as kirta, or to paint their kirta with, designs representing their own dreamings.

7.3.3 As I have said in para. 4.8.4, the major social division which exists within the claimants is that between those whose residential focus is on Tennant Creek and those whose residential focus is on Elliott. This division does not correspond to any division as between any of the seven groups. Nor does it provide any other basis on which the land claimed could be divided between separate land trusts.

7.3.4 For these reasons, I am of the view that the establishment of a single land trust is the most desirable course. I do not have any reason to believe that the members of the seven different groups will have serious difficulty in participating in the management of the land on a cooperative basis. This is something that should be encouraged.

## 8 RECOMMENDATION

8.1 Recommendation Consequent upon the findings set out in this report, and having regard to the other matters to which I have referred, I recommend that the whole of the land falling within the boundaries of Northern Territory Portion 1629, including Northern Territory Portion 2100 and the part of the North South Stock Route falling within those boundaries, but excluding Northern Territory Portion 1423 and the access easement thereto, referred to in para. 2.3, and excluding the Stuart Highway, referred to in para. 7.2, be granted to a single land trust for the benefit of Aboriginal people entitled by Aboriginal tradition to the use or occupation of that land, whether or not the traditional entitlement is qualified as to place, time, circumstance, purpose or permission.

## APPENDIX I

### LIST OF SITES AT OR NEAR WHICH EVIDENCE WAS TAKEN

Nyanya (71)  
Kurrutirti (88)  
Jimantaparanyi (108)  
Ngijiwa (73)  
Nurrkuyiji(100)  
Riirri (83)  
Kartirlingkami (84)  
Waliwalingunu (79)  
Jakarrara (98)  
Walyka (76)  
Manuwangu (92)  
Marnramarnta (38)  
Taarru (40)  
Jumunakari (37)  
Namarani (34)  
Kululungku (47)  
Marlarl-paranyi (36)  
Liralyi-mantangi (67)  
Wirrkirnti (65)  
Tupurtupalki (53)  
Kartji (87)  
Karakara (51)  
Unnamed tree (109)  
Murlurrparta (46)  
Latapa (33)  
Yapakurlangu (5)  
Julypungali (19)  
Mirirripinpa (15)  
Jiinngi(17)  
Minini-manjinanji (25)  
Nangkawala (29)



## APPENDIX 2

### LIST OF APPEARANCES

Counsel for the claimants:	Ross Howie (except on 4 November 1993) John Tippett (on 4 November 1993)
Solicitor for the claimants:	Catherine Kerr; Legal Advisor, Northern Land Council
Counsel for the Attorney-General for the Northern Territory:	Vance Hughston (except on 25 July 1993) Paul Walsh (on 25 July 1993)
Solicitor for the Attorney-General for the Northern Territory:	Solicitor for the Northern Territory
Counsel for NT Gas Pty Ltd:	John Stewart
Solicitors for NT Gas Pty Ltd:	Ward Keller
Solicitors for Australia and New Zealand Banking Group Ltd, Commonwealth Bank of Australia, National Australia Bank Ltd and Westpac Banking Corporation:	Blake Dawson Waldron

### CONSULTANT ANTHROPOLOGIST TO THE ABORIGINAL LAND COMMISSIONER

Dr John Avery

APPENDIX 3  
LIST OF WITNESSES

Peter Toprail  
G. Brown  
Mark Brown  
Jimmy Newcastle  
Charlie Charles  
Angus Riley  
Tommy Driver  
Edna Brown  
Bunny Bennett  
Annie Phillips  
Lady Benson  
Irene Driver  
Archie Alien  
Jeffrey Lauder  
Johnny Stokes  
Harry Bennett  
Harry Lauder  
Topsy Walker  
Dick Foster  
Hughie Jackson  
Billy Hayes  
Roy Anderson  
Beasley Anderson  
Phillip Holden  
Marie Rennie  
Brunette Willy Alien  
Dolly (Julypungali)  
Aubrey (Toby One)  
Johnny Nelson  
P Henderson  
Kimbi Kingston  
Paul Henderson  
Glenn Gordon Bott  
Peter David Hagan

## APPENDIX 4

### LIST OF EXHIBITS

Note: Exhibits marked "R" are subject to restrictions on access and use, by direction of the Aboriginal Land Commissioner.

Exhibits NLC1-NLC18 were tendered by counsel for the claimants.

Exhibits GASI-GAS6 were tendered by counsel for NT Gas Pty Ltd.

Exhibits NTI-NT8 were tendered by counsel for the Attorney-General for the Northern Territory.

Exhibit no.	Description of exhibit
NLC 1	Submission on the status of land claimed and adjacent land
NLC2	Anthropologists' report by Dr P Sutton, Dr D. Nash and Ms P Morel
NLC3	R Claimant genealogies
NLC4	R Personal particulars of claimants
NLCS	R Site map
NLC6	R Site register and amendments
NLC7	R List of group members
NLC8	Statement of Danny Collins dated 18 June 1993
NLC9	Letter dated 11 August 1993 from NT Gas Pty Ltd to Northern Land Council
NLC 10	Proof of evidence of Petronella Morel dated October 1993
NLC 11	List of corrections of transcript
NLC 12	Curriculum vitae of Dr Nash
NLC 13	Summary of travels on Muckaty Pastoral Lease by Dr Nash, and attached map
NLC 14	R Reports of travel by Dr Nash on Muckaty Pastoral Lease, 14-18 October 1980
NLC 15	Reports of travel by Dr Nash on Muckaty Pastoral Lease, August 1984 and September 1984
NLC 16	Book of photographs with two caption lists
NLC 17	Videotape and transcript
NLC 18	Handwritten facsimile from AUSLIG to Central Land Council dated 24 August 1992
GAS 1	Submission on detriment (excluding paragraph 3.4)
GAS2	Document entitled "Further Submissions on Detriment", submitted by NT Gas Pty Ltd (excluding second sentence in second last paragraph)
GAS3	Pipeline Licence No. 4, dated 13 December 1985

- GAS4 Deed between NT Gas Pty Ltd, Mungkarta Pastoral Co. Pty Ltd and Central Land Council dated 10 June 1986 (clause 2.3)
- GAS5 Memorandum of lease between Ahakeye Aboriginal Land Trust and NT Gas Pty Ltd dated 3 February 1993
- GAS6 Agreement dated 30 October 1985 between Allan James Hagan, Miriam Anne Hagan and NT Gas Pty Ltd
- NT1 Statement of Peter David Hagan dated 2 November 1993, and attachments
- NT2 Statement of Michael Robert Ford dated 1 November 1993
- NT3 Statement of Alexander Russell Grant dated 2 November 1993
- NT4 Statement of Brian Leslie Radunz dated 1 November 1993
- NT5 Statement of John Tarca dated 1 November 1993
- NT6 Statement of Edward Arthur Easton dated 2 November 1993, and attachments
- NT7 Statement of evidence and submissions on behalf of Telstra Corporation Limited
- NT8 Communiqué from the Council of Australian Governments, Hobart, dated 25 February 1994

# APPENDIX 5 - Map of claim area

