Aboriginal Land Rights (Northern Territory) Act 1976

THE KENBI (COX PENINSULA) LAND CLAIM No. 37

Report and recommendation of the former
Aboriginal Land Commissioner, Justice Gray,
to the Minister for
Aboriginal and Torres Strait Islander Affairs
and to the
Administrator of the Northern Territory

December 2000

SUMMARY

(1) The Kenbi (Cox Peninsula) Land Claim No. 37 is a traditional land claim, made pursuant to the *Aboriginal Land Rights (Northern Territory) Act* 1976 ('the Land Rights Act'). It is the most complex land claim in the history of the Land Rights Act. It is therefore appropriate that I provide a summary of this long report, to assist those who wish to understand the report. In case there should be any difference between this summary and the terms of the report, it should be understood that the terms of the report must prevail over this summary.

The Land Rights Act and the functions of the Aboriginal Land Commissioner

(2) The functions of the Aboriginal Land Commissioner are set out in s. 50(1)(a) of the Land Rights Act. On an application being made to the Commissioner by or on behalf of Aboriginal people claiming to have a traditional land claim to an area of land (either unalienated Crown land or alienated Crown land in which all estates and interests not held by the Crown are held by, or on behalf of, Aboriginal people), the Commissioner is to ascertain whether those or any other Aboriginal people are the traditional Aboriginal owners of the land, and report his findings to the Minister for Aboriginal and Torres Strait Islander Affairs and to the Administrator of the Northern Territory. If the Commissioner finds that there are traditional Aboriginal owners of the land claimed, he is usually required to recommend that the land be granted to a land trust for the benefit of all Aboriginal people entitled by Aboriginal tradition to the use or occupation of that area of land, whether or not the traditional entitlement is qualified as to place, time, circumstance, purpose or permission.

(3) To satisfy the definition of 'traditional Aboriginal owners' in the Land Rights Act, a group of Aboriginal people must be a local descent group possessing common spiritual affiliations to a site on the land, being affiliations that place the group under a primary spiritual responsibility for that site and for the land. In various judicial decisions the courts have clarified the meaning of the definition of 'traditional Aboriginal owners' in the Land Rights Act. In particular, the courts have interpreted the meaning of 'local descent group' and 'common spiritual affiliations to a site on the land' in ways that are relevant to this land claim.

(4) The Commissioner is required to have regard to the strength of attachment of the claimants and must also comment on the effect that acceding to the claim in whole or in part would have on a number of matters, including: the number of Aboriginal people with traditional attachments to the land claimed who would be advantaged, and the nature and extent of the advantage; the detriment to persons or communities that might result; and the effect on the existing or proposed patterns of land usage in the region.

(5) If the Commissioner recommends that land be granted to a land trust, the Minister must consider the recommendation. If the Minister considers it appropriate, he must recommend to the Governor-General that a grant of land be made. Once a grant is made the land becomes Aboriginal land under the Land Rights Act. This has a number of consequences in relation to entitlements of access to the land and the manner in which proposals for development and mining must be processed.

History of the claim

(6) The application in the present claim was received on 20 March 1979 by Mr Justice Toohey, the first Aboriginal Land Commissioner under the Land Rights Act. Even before that, in the first report of the Royal Commission which led to the introduction of the Land Rights Act, Mr Justice Woodward referred to the dispossession of the Larrakia people and their desire to acquire title to land in and around Darwin for community living purposes. A claim was made to the Interim Land Commissioner in 1975 for part of the Cox Peninsula. When the Land Rights Act came into operation, the part of the Cox Peninsula now known as the Belyuen community became Aboriginal land.

(7) The long history of the land claim is largely the result of litigation associated with it. Before it was lodged, the Northern Territory Government promulgated regulations which had the effect of rendering the Cox Peninsula unclaimable, by classifying it as land in a town. The High Court of Australia held that the first Commissioner, Mr Justice Toohey, was obliged to decide whether these regulations were invalid. The fourth Commissioner, Justice Olney, held that the regulations were invalid, because they were made for the purpose of preventing a claim to the Cox Peninsula under the Land Rights Act, not for the purpose of town planning. That decision was upheld by the Federal Court of Australia and the High Court refused special leave to appeal. In the meantime, there were legal proceedings involving the second Commissioner, Mr Justice Kearney, the High Court and the Federal Court, on the question whether the Northern Territory Government was obliged to disclose certain documents in its possession, relating to the validity of the regulations. The third Commissioner, Mr Justice Maurice, was also disqualified from hearing the claim by the Federal Court on the ground of reasonable apprehension of bias, as a result of some remarks he made during the hearing of another land claim.

(8) In 1989 and 1990, Justice Olney conducted a lengthy inquiry into the land claim. His Honour produced a report, in which he concluded that there were no traditional Aboriginal owners of the land claimed. That finding was set aside by the Federal Court and the matter came to me, the fifth Commissioner.

(9) The claim has undergone changes over the years as to the manner in which it has been put. Even during my inquiry, between 1995 and 1999, a group of people who were not claimants at the outset asked me to treat them as claimants, and some people who were part of one claimant group asked that they be treated as a separate claimant group. These changes required the preparation and dissemination of material and the hearing of evidence not contemplated when the inquiry began. By the end of my inquiry, four groups of claimants were attempting to establish that their members are traditional Aboriginal owners of the land claimed. For convenience, these groups are called the **Tommy Lyons** group, the **Larrakia** group, the **Belyuen** group and the **Danggalaba** group.

The land claimed

(10) The land claimed comprises all land available for claim on the Cox Peninsula and the islands and reefs to the west of the Cox Peninsula. It is unalienated Crown land and is therefore available for claim. The claim extends to the low-water mark and to straight-line boundaries across inlets and estuaries.

Local descent groups

(11) The **Tommy Lyons** group consists of six people who are patrilineal descendants of Tommy Lyons and his three classificatory brothers, or are first-generation matrifiliates of such patrilineal descendants and are recognised as members of the group. The four men from whom they are descended are acknowledged to have had a close connection with the land claimed. The **Tommy Lyons** group is a local descent group. There are people who are of the second or subsequent generation of matrifiliates who may have potential claims to be recognised as members of this group.

(12) The **Larrakia** group consists of 1 293 people and is based on a single principle of descent, namely descent from a recognised ancestor of the Larrakia language group. The group is bound together by its linguistic affiliation. Although I have doubts as to whether it is properly described as 'local', I am bound by authority to hold that the **Larrakia** group is a local descent group.

(13) The **Belyuen** group consists of 301 people who trace their ancestry to eighteen sets of ancestors from six language groups. The group is a local group, based heavily on the residential community at Belyuen. It is not a descent group. It has been constructed by a process that is the reverse of the normal process for recognition of a descent group. Its membership has been established by reference to a criterion that has nothing to do with descent, namely a spiritual connection with the sacred site known as *Belyuen*, which lies within existing Aboriginal land on the Cox Peninsula. The descent links of the persons who satisfy that criterion have then been traced, as they might be with respect to the members of any group constructed by reference to non-descent criteria. A group constructed in this way is not a local descent group.

(14) The **Danggalaba** group consists of an indeterminate number of people said to be descended from a member of the Danggalaba clan. Those who contend for the existence of this group sought to be represented separately from other members of the **Larrakia** group and to make a claim to the exclusion of all other groups. They contended, but did not establish, that an error had been made in the genealogies of the **Larrakia** group and that a man shown on those genealogies as the son of a key ancestor had been the husband of that ancestor, and the adoptive father of her children. The **Danggalaba** group is not a group. Not all of the putative members of the **Danggalaba** group accept the principle of descent on which the group is said to be based. Some do not accept that they are members of such a group. The **Danggalaba** group is not a local descent group.

Common spiritual affiliations to sites

(15) The **Larrakia** group claims that the whole of the land claimed lies within traditional Larrakia country. This claim is contested by the **Belyuen** group. There is historical evidence of people of the Larrakia language group and people of the six language groups who make up the **Belyuen** group (collectively called the Wagaitj) inhabiting the Cox Peninsula together. It is not inaccurate to regard the land claimed as Larrakia country, but it is perhaps the case that it was shared with the language groups that make up the Wagaitj.

(16) Before European contact, it is likely that there were small groups, or clans, having ties with parts of the land claimed. With the possible exception of the Danggalaba (crocodile) clan, those clans are now extinct. Each of the claimant groups claims to have succeeded to the territory of these former clans.

(17) It is well known that Aboriginal societies traditionally impart knowledge to their members progressively. It is clear that the **Belyuen** group functions in this manner. Its members hold knowledge relating to dreamings and their relationship to sites on the land claimed. The degrees of knowledge held depend upon initiation, age and experience. There is a considerable amount of ceremonial activity, often involving people who do not live at Belyuen, as well as those who do. Some senior people are identified as leaders. Those who have been born with entitlements to knowledge are considered not to have lost those entitlements, even if they have moved away to live; such spiritual affiliations as those persons have acquired by birth as members of the group will remain.

(18) So far as most of its members are concerned, the **Larrakia** group does not have the characteristics of Aboriginal society that have been described. The events which have occurred since the establishment of the first European settlement at Darwin in 1869 have had drastic effects on the society which once existed among members of the Larrakia language group. To a very great extent, knowledge of dreamings and sites has been lost to Larrakia people. Young people are not routinely initiated into adulthood. Ceremonial activity has ceased. There has not been a consistent spiritual tradition, handed down from generation to generation, among those who are said to constitute the group.

(19) In the case of a group that functions in the traditional way I have described, it is artificial to say that there is a minimum level of knowledge required before a person will be regarded as having spiritual affiliations to sites. In the case of a group without a consistent spiritual tradition, there must at least be knowledge of the affiliation before it can be said to exist. Further, the affiliation must be meaningful to the person, before it can be described as being held by that person. Whether the knowledge is acquired before, or in the course of, a land claim does not matter.

(20) At its heart, the case put on behalf of the **Larrakia** group is that the possession of any Larrakia ancestry entitles a person by birth to all of the spiritual affiliations available in respect of all of the dreamings so far as they relate to all of the sites on or near the land claimed. I am unable to accept this argument.

(21) The spiritual geography of the land claimed is largely uncontroversial among the various claimant groups. There are four major travelling dreamings, each associated with several sites on the land claimed. They are the *Kenbi* (didgeridoo), *Ngarrmang* (bailer shell), *Danggalaba* (crocodile) and *Wilar* (cheeky yam) dreamings. There are many other localised dreamings associated with particular sites, as well as other sites having spiritual significance, e.g. burial sites. The south-eastern area of the Cox Peninsula is devoid of named sites.

(22) The members of the **Tommy Lyons** group clearly possess spiritual affiliations to sites on the land. The group's core members, Raelene, Jason and Zoe Singh are residents of Belyuen and full participants in the life of the Belyuen community. They engage in ceremonial activity which sustains the land claimed and, in turn, the land

sustains them, physically and spiritually. They hold these spiritual affiliations in a joint way, so that it is easy to find that the spiritual affiliations are common. The other members of the **Tommy Lyons** group have entitlements to share the spiritual affiliations which are held by Raelene, Jason and Zoe Singh.

(23) The spiritual affiliations possessed by the members of the **Tommy Lyons** group are held in common with the members of the **Belyuen** group. The **Belyuen** group recognise the same dreamings with respect to the same sites. They maintain the ceremonial activity and hold the law with respect to the land claimed. At the time of the inquiry before Justice Olney, the tenor of the evidence given by Belyuen residents was that they held the law for the land claimed in the capacity of custodians or keepers for its true owners, the people of the Larrakia language group. In the early stages of my inquiry, however, when counsel for the **Belyuen** group began to indicate the desire of that group to be treated as claimants, Belyuen people began to assert that they held the law for the land claimed in their own right and for their own benefit. The **Larrakia** group dispute the capacity in which the **Belyuen** group now claim to hold the law for the land claimed. This does not stand in the way of the fact that members of the **Belyuen** group have spiritual affiliations and that they hold them in common.

(24) With respect to the **Larrakia** group, the position is much more difficult. There can be no doubt that some members of the **Larrakia** group have spiritual affiliations to sites on the land claimed. Others have affiliations to the land itself, rather than to specific sites. In my view, the absence of a detailed common tradition of spiritual affiliations with sites, handed down from generation to generation to members of the **Larrakia** group, has resulted in the development of different spiritual responses on the part of different people. In the absence of such a tradition, it is difficult to make findings as to the nature of the spiritual affiliations, if any, of the many **Larrakia** group claimants who did not give any evidence. The lack of the regular practice of ceremonial activity related to dreamings and sites, and of the staged acquisition of knowledge in association with that ceremonial activity, has resulted in different members of the **Larrakia** group having spiritual affiliations that differ essentially in many ways. As such, to attempt to speak of spiritual affiliations which are 'common' to the members of the **Larrakia** group would be unreal.

(25) The members of the **Danggalaba** group are in a similar position. Its leading spokesperson, Kevin (Tibby) Quall gave evidence to the effect that the knowledge of sites and dreamings that formed the basis of the claim by all other claimants was not the appropriate knowledge for the land claimed. Other members of the **Danggalaba** group who gave evidence did not align themselves with this view. Most of the claimants who were called to give evidence on behalf of the **Danggalaba** group had already given evidence on behalf of the **Larrakia** group. They did not adopt Tibby Quall's evidence. Nor did they retract, expressly or by implication, such evidence as they had given previously about their spiritual affiliations. In the circumstances, I am unable to find that the members of the **Danggalaba** group have common spiritual affiliations to sites on the land claimed.

Primary spiritual responsibility

(26) The spiritual affiliations of the **Tommy Lyons** group give rise to a primary spiritual responsibility on the part of that group for the sites on the land claimed, and

for the land claimed itself, with the exception of the south-eastern part of the Cox Peninsula. That responsibility is primary as against the other three claimant groups.

Rights to forage

(27) All claimants have traditional rights to forage over the land claimed, probably including the south-eastern part of the Cox Peninsula. The exercise of those rights requires knowledge of dangerous sites and of the correct behaviour in approaching them.

Traditional Aboriginal owners

(28) The only claimants who fall within the definition of 'traditional Aboriginal owners' in the Land Rights Act, with respect to the land claimed, are the members of the **Tommy Lyons** group. I am unable to find that there are any traditional Aboriginal owners with respect to the south-eastern area of the Cox Peninsula. I have defined an area of land in the south-eastern part of the Cox Peninsula in respect of which I am unable to find that there are traditional Aboriginal owners.

Strength of traditional attachment

(29) Although the members of only one group satisfy the definition of 'traditional Aboriginal owners', the Act requires me to assess the strength of attachment of the claimants as a whole. Obviously, there are differences among the claimants. The Belyuen community is the centre of ceremonial activity relating to the land claimed. Initiation ceremonies for young men and women, and higher men's and women's ceremonies take place. These ceremonies, or some of them, relate to the land claimed. Belyuen residents make significant use of the land claimed for hunting, have established outstations and care for sites. Three members of the **Tommy Lyons** group are very much part of the Belyuen community and participate fully in its ceremonial activities and its use and care of the land claimed. One other member was part of the ceremonial life before he was disabled by a stroke. The other adult member of the **Tommy Lyons** group lives an urban lifestyle, but has an awareness of her inherited entitlements. The traditional attachment of members of the **Larrakia** group is of a different quality. Some of the members of that group express their traditional attachments in various art forms and regard themselves as exercising traditional rights when using the land claimed for hunting. Members of the **Larrakia** and **Belyuen** groups have collaborated in the protection of sacred sites. Overall, the strength of traditional attachment amply justifies the recommendation I make with respect to the land claimed.

Numbers advantaged and the nature and extent of the advantage

(30) All 1 600 claimants would be advantaged by the grant of the land claimed to a land trust. Up to 600 other people with traditional attachments to the land claimed would also be advantaged. The advantage would consist of an entitlement to be consulted in relation to any proposed use of the land, Aboriginal control of the land, the preservation of foraging rights, and the recognition at the highest level of Australian Government of the legitimacy of the connection between Aboriginal people and the land.

Detriment to persons or communities

(31) The Northern Territory is a 'person', but not a 'community' for the purposes of this aspect of the Land Rights Act. The diminution of the stock of Crown land available to the Northern Territory is not detriment, because it is inherent in the system established by the Land Rights Act. The Northern Territory would suffer detriment as a person because it would be unable to pursue the planning of the City of Darwin for an expanded population on the basis that the Cox Peninsula would be a suitable place for urban development.

(32) The Northern Territory and the Commonwealth, and their authorities, presently use and occupy parts of the land. The Land Rights Act preserves their right to continue to do so if the land claimed is granted to a land trust. In most cases, rent will be payable for continued use and occupation. The relevant government or authority will suffer detriment to the extent of any such rent. This regime applies to: the use by the Department of Transport and Works of the Northern Territory of watering points and gravel pits for road maintenance; the operation of the radio frequency monitoring installation by the Australian Communications Authority; the use of the Charles Point lighthouse by the Australian Maritime Safety Authority; the operation of two weather stations by the Bureau of Meteorology; the operation of the Charles Point atmospheric chemistry research facility by the Northern Territory University; the maintenance of the Radio Australia transmission station; and the operation of the electricity substation. The defence practice area, around Quail Island is in a somewhat different situation, in that it is probably no longer used or occupied, but the presence of unexploded ordnance has the potential to cause danger. Telstra Corporation Limited has telecommunications facilities within the land claimed. To the extent to which its infrastructure is not within the road reserves of roads over which the public has a right of way, Telstra would suffer detriment, as would the users of its services, if it were no longer able to use the facilities.

(33) The family of Max Baumber has lived for many years on Dum-In-Mirrie Island. Their only entitlement to use the island has arisen from occupation licences, permitting occupation of a defined area for specified purposes. The Baumber family's use of the island has expanded beyond that area and, in some respects, has been in breach of regulations or conditions attaching to the licences. Because the family's only entitlement is to the end of the period of the current licence, and because a grant of more secure tenure might be seen to reward, and therefore to encourage, illegal occupation of Crown land, the only detriment the Baumber family is likely to suffer if the island becomes Aboriginal land under the Land Rights Act is the loss of a doubtful opportunity to have the Northern Territory consider an application for more secure tenure.

(34) The existing rights of the holder of a mining tenement and of the holders of various mineral leases will continue, so that the holders will not suffer any detriment. Those who use the land claimed for the purposes of recreational fishing, boating and diving will suffer detriment in that they will need to obtain permits to have access to Aboriginal land to carry out their activities on the land. Permits will not be needed to fish or navigate in the inter-tidal zone, except to anchor, or to place nets or other articles on the sea bed in that zone. Similarly, commercial fishing will require a permit to be lawful if it involves placing any thing on the sea bed in the intertidal zone, if that should become Aboriginal land.

(35) The owners of adjacent land will not suffer detriment if the land claimed becomes Aboriginal land. In particular, their rights of access to their land, across Aboriginal land, are preserved by the Land Rights Act. Pearl farming in the waters below the low-water mark will not be affected, but the use of onshore facilities would require permits.

(36) There are various places on the land claimed where squatters have established dwellings, and other improvements, without entitlement to do so. Where those dwellings or other improvements are fixtures, the ownership of them has already passed to the Crown, the current owner of the land. Squatters will not suffer detriment if the land claimed becomes Aboriginal land under the Land Rights Act because they have no present entitlements.

(37) The use of the airstrip on Dum-In-Mirrie Island will be possible only with a permit, if the island becomes Aboriginal land. People currently using the airstrip will suffer detriment by having to obtain permits.

Effect on existing or proposed patterns of land usage in the region

(38) The relevant region, as defined by the Northern Territory Government, is bounded by Adelaide River and the Finniss River, and includes the catchments of all streams between those two rivers.

(39) If the land claimed becomes Aboriginal land, the effect on existing patterns of land usage in the region will be minimal.

(40) The Northern Territory Government has engaged in a planning exercise on the assumption that Darwin might expand to a city of 1 000 000 people. It is easy to be sceptical about whether this will ever occur, but the adoption of 1 000 000 as a planning horizon is a reasonable step for planners to take.

(41) There are various constraints on the growth of Darwin, arising from the decision, made in the 1960s, that the centre of Darwin should remain on the small peninsula on which it was originally built. The constraints arise from the location of Darwin Harbour, the presence of various low-lying areas prone to flooding, the need to preserve catchments for water supply, the location of the airport and the prevalence of biting insects in some areas.

(42) In 1990-1991, the Northern Territory Government carried out a hurried planning exercise. Four planning options were selected and the conclusion was reached that the urbanisation of the Cox Peninsula was the only viable option. The planning documents were declared to be planning objectives of the Northern Territory in their entirety. This was not a valid exercise of the power to declare planning objectives, so the plans have no legal effect. The documents are nevertheless put forward by the Northern Territory Government as a statement of the proposed land use in the region. As a planning exercise, they are flawed in a number of respects. They were prepared in haste for use in the earlier inquiry relating to this land claim. They are overtly critical of the Land Rights Act and the claimants. They approach the four ‘options’ in different ways, with respect to the identification of problems and of solutions for them, and in relation to transport issues. I do not accept the legitimacy of setting up four options. No attempt has been made to investigate the optimum use of all available

land. Provision is made for maintaining the current percentage of population living in 'rural residential' areas. Minimal consideration has been given to Aboriginal aspirations for land. It is hard to avoid the conclusion that the aim of the planning process was to defeat this land claim.

(43) In making a recommendation in relation to this land claim, I exclude a significant area of the land claimed in the south-eastern part of the Cox Peninsula. The availability of the excluded land would alleviate to some extent the planning problems with respect to the possible expansion of Darwin.

(44) To the extent to which the land claimed becomes Aboriginal land under the Land Rights Act, it will become unavailable for urban development, except to the extent to which those with traditional Aboriginal entitlements might consent to such development by means of leasehold interests from the land trust. The effects of this unavailability could only be determined after the carrying out of a proper planning exercise, with the benefit of knowledge as to what land is to be available to the Northern Territory Government to control the future expansion of Darwin.

Other matters

(45) There are no Aboriginal people who by choice are living at a place on the traditional country of the tribe or linguistic group to which they belong but do not have a right or entitlement to live at that place. Nor are there Aboriginal people not living at a place on the traditional country of the tribe or linguistic group to which they belong but who desire to live at such a place.

(46) There are on the land claimed eleven roads and tracks which are roads over which the public has a right of way. These will be excluded from any grant of the land claimed to a land trust. In the case of the Charles Point road and the Wagait Beach road, the standard minimum road reserve of 100 metres would be appropriate. The Northern Territory Government seeks to widen the existing road reserve of 100 metres in respect of the Cox Peninsula road to 150 metres. Whether this would be appropriate depends on the likely future use of the road. The determination of the appropriate width of road reserves for other roads and tracks, especially those not maintained by the Northern Territory, should be left to negotiation.

Recommendation

(47) It would be misleading to characterise my recommendation as being in respect of large tracts of land for the benefit of only six people. Under the Land Rights Act, a land trust holds land for a class of people much broader than those who fit within the definition of 'traditional Aboriginal owners'. That class includes all of the claimants, a total of 1 600 people, as well as others who would be advantaged.
(48) My recommendation is that the whole of the land claimed, with the exception of the south-eastern part of the Cox Peninsula be granted to a land trust, for the benefit of all Aboriginal people entitled by Aboriginal tradition to the use or occupation of that area of land, whether or not the traditional entitlement is qualified as to place, time, circumstance, purpose or permission.

CONTENTS

1 THE LAND RIGHTS ACT AND THE FUNCTIONS OF THE ABORIGINAL LAND COMMISSIONER

1.1 Sources of the law The Kenbi (Cox Peninsula) Land Claim No. 37 is a traditional land claim, made pursuant to the *Aboriginal Land Rights (Northern Territory) Act* 1976 ('the Land Rights Act'). It has been the most complex traditional land claim in the history of the Land Rights Act. This report is likely to be read by many people who have had no previous involvement in the process of dealing with traditional land claims. It is therefore appropriate that I set out in summary form the principal provisions of the Land Rights Act relating to such claims, the manner in which they are determined and the consequences of a successful claim. Where the courts have interpreted those provisions, it is also appropriate that I should make reference to their judgments, so far as they expound the law to be applied in relation to this land claim.

1.2 Principal functions of the Aboriginal Land Commissioner The inquiry into the claim was conducted, and this report is furnished, pursuant to s. 50(1)(a) of the Land Rights Act, which sets out the principal functions of the Aboriginal Land Commissioner. It is convenient to set out the whole of that provision:

> 50(1) The functions of a Commissioner are:
>
> (a) on an application being made to the Commissioner by or on behalf of Aboriginals claiming to have a traditional land claim to an area of land, being unalienated Crown land or alienated Crown land in which all estates and interests not held by the Crown are held by, or on behalf of, Aboriginals:
>
> (i) to ascertain whether those Aboriginals or any other Aboriginals are the traditional Aboriginal owners of the land; and
>
> (ii) to report his findings to the Minister and to the Administrator of the Northern Territory, and, where he finds that there are Aboriginals who are the traditional Aboriginal owners of the land, to make recommendations to the Minister for the granting of the land or any part of the land in accordance with sections 11 and 12.

1.3 The Commissioner Section 3(1) of the Land Rights Act contains definitions of a number of terms used in s. 50(1)(a). 'Commissioner' means an Aboriginal Land Commissioner holding office under Part V. Section 50 is in Part V of the Land Rights Act. So are ss 52 and 53, which relate to the appointment and term of office of a Commissioner. A Commissioner must be a judge of the Federal Court of Australia or of the Supreme Court of the Northern Territory. A Commissioner is appointed by the Governor-General for a specified term, not exceeding three years. I commenced my inquiry into this land claim during my second term of office as Aboriginal Land Commissioner, which began on 25 October 1994 and expired on 24 October 1997. Section 52(4) provides:

> Where the period of office of a Commissioner has expired, the Commissioner shall, unless the Governor-General otherwise directs, be deemed to continue to hold the office of Commissioner for the purpose only of completing the performance of a function under this Act commenced but not completed before the period of office expired.

Having commenced the performance of my function under s. 50(1)(a) before the period of my office expired, I have completed it pursuant to the power contained in s. 52(4).

1.4 Definitions

1.4.1 The word 'Aboriginal' is defined in s. 3(1) of the Land Rights Act as meaning a person who is a member of the Aboriginal race of Australia. The phrase 'traditional land claim' is defined, in relation to land, as meaning a claim by or on behalf of the traditional Aboriginal owners of the land arising out of their traditional ownership. 'Crown Land' means:

> Land in the Northern Territory that has not been alienated from the Crown by a grant of an estate in fee simple in the land, or land that has been so alienated but has been resumed by, or has reverted to or been acquired by, the Crown, but does not include:
>
> (a) land set apart for, or dedicated to, a public purpose under an Act; or
>
> (b) land the subject of a deed of grant held in escrow by a Land Council.

Section 3A(1) makes it clear that the application of the Land Rights Act extends to Crown land that is vested in the Northern Territory. Section 3(1) defines 'unalienated Crown land' to mean Crown land in which no person (other than the Crown) has an estate or interest, but does not include land in a town. 'Alienated Crown land' is defined to mean Crown land in which a person (other than the Crown) has an estate or interest, but does not include land in a town. The word 'town' is given the same meaning as in the law of the Northern Territory relating to the planning and development of towns and the use of land in or near towns, and includes any area that, by virtue of regulations in force under that law, is to be treated as a town. In chapter 2, this report sets out a brief history of the attempts by the Northern Territory Government to bring into effect regulations which would have rendered a substantial area of the land claimed unavailable for claim by making it part of the town of Darwin.

1.4.2 Two further definitions are crucially important to an understanding of s. 50(1)(a) of the Land Rights Act. They are:

> **"traditional Aboriginal owners"**, in relation to land, means a local descent group of Aboriginals who:
>
> (a) have common spiritual affiliations to a site on the land, being affiliations that place the group under a primary spiritual responsibility for that site and for the land; and
>
> (b) are entitled by Aboriginal tradition to forage as of right over that land.

and

> **"Aboriginal tradition"** means the body of traditions, observances, customs and beliefs of Aboriginals or of a community or group of Aboriginals, and includes those traditions, observances, customs and beliefs as applied in relation to particular persons, sites, areas of land, things or relationships.

1.4.3 The definition of 'traditional Aboriginal owners' has been further clarified by judicial decisions. In both *Re Toohey; Ex parte Stanton* (1982) 44 ALR 94 and *R v.*

Kearney; Ex parte Jurlama (1984) 158 CLR 426, the High Court of Australia held that the requirement of common spiritual affiliations to a site on the land was a reference to a site on land for which the relevant group had primary spiritual responsibility. The court held that it was unnecessary for the site to be on the land the subject of a claim. The Commissioner can have regard to sites which are not on the land the subject of a claim although, 'cogent evidence would no doubt be required in the form of dreaming tracks or other material to link the land, the subject of the claim, to those sites and so establish a primary spiritual responsibility for it.' (Justice Wilson in *Stanton* at p. 97.) In *Northern Land Council v. Olney* (1992) 34 FCR 470, the Full Court of the Federal Court of Australia examined a number of elements of the definition of 'traditional Aboriginal owners' in the context of the present land claim. At pp. 484-5, the court quoted the views of Mr Justice Toohey as Aboriginal Land Commissioner, in his report concerning the Finniss River Land Claim, as to the meaning of the phrase 'local descent group':

> In essence my view was and is that a local descent group is a collection of people related by some principle of descent, possessing ties to land who may be recruited…on a principle of descent deemed relevant by the claimants.

1.4.4 The court drew attention to the fact that subsequent Commissioners had expressed similar views. The court then said:

> …the views expressed by the Commissioners in their later reports coincide with the ordinary meaning of the expression 'local descent group' and correctly state the law, subject to two matters which call for comment. The first is, as was indeed recognised in a number of reports, although the underlying principle of recruitment to a group must be some form of descent, that need not be seen in a biological sense, and persons not claiming biological affiliation may be adopted into and become part of the group. Thus the principle of descent should be interpreted not solely in a biological sense. Secondly, the words 'deemed to be relevant by the claimants' may be misinterpreted by some. What has to be found is the existence of a group, recruited by descent, possessing ties to the land and otherwise satisfying the criteria set out in the definition of 'traditional Aboriginal owners'. The particular principle of descent in operation will depend upon the circumstances of the particular case. It may be that, in a particular area, the Aboriginal people of that area have adopted the principle of matrilineal descent; in another area, there may have been adopted some other principle of descent. The point is that the principle of descent will be one that is recognised as applying in respect of the particular group. Further, there is no reason why the particular principle of descent traditionally operating may not change over time. That is what Toohey J meant when his Honour used the words: '…a principle of descent deemed relevant by the claimants.'
>
> It should not be thought that the words are to be taken to suggest that the governing descent principle in operation in a particular group could be changed by them at whim so as to fit the circumstances of a land claim.
>
> In determining whether on the facts there exists such a group it would be no disqualification that the claimants are members of a linguistic group, provided membership of that group is recruited on a principle of descent and the group otherwise qualified as having the necessary spiritual affiliation to the land and was under the necessary primary responsibility for the site and the land.

1.4.5 At pp. 485-7, the court discussed the question whether a 'local descent group' could consist of one member alone, and concluded that it could not. At pp. 487-8, the court dealt with the element of 'common spiritual affiliations' in the definition of 'traditional Aboriginal owners'. The court said:

There is little doubt that the way the Commissioner will proceed with the task before him must vary depending upon the way the evidence is presented. The task of the Commissioner is first to ascertain the relevant group to be investigated and then to determine whether the members of that group have the requisite common spiritual affiliation such that the group is as a result under a primary spiritual responsibility for the site and the land. A group necessarily comprises persons. Clearly it is not necessary to call each member of the group to give evidence to establish that they have the appropriate spiritual affiliation. It will be sufficient if the evidence establishes, on the balance of probabilities, that the Aboriginals who comprise the group have that affiliation.

It may be noted that the definition of 'traditional Aboriginal owners' speaks of:

'…a local descent group of Aboriginals who —

(a) *have* common spiritual affiliations…and
(b) *are* entitled…to forage.'

The use of the plural in each case suggests that the common spiritual affiliations have to be possessed by the individuals who comprise the group, rather than, if there be a difference, by the group as a group. Similarly it is the Aboriginal members of the group who *are* entitled to forage, not the group. Thus if a group of persons having an appropriate genealogy is found to exist, but some members of the group, whether because of age or otherwise, eg infants, lack the requisite spiritual affiliation, those persons will be excluded from the group. If only the group itself were looked at, then the fact that the group as a whole was recognised as having the appropriate spiritual affiliation would not disqualify individual members of that group lacking the necessary spiritual affiliation from belonging to the group.

This accords too with the policy of the Act in requiring, after grants of land have been made, the consent of traditional Aboriginal owners to various decisions of the Land Councils in respect of the traditional land. It would be indeed strange if persons themselves lacking the necessary spiritual affiliation, or even knowledge of it, could participate in the decision-making process. Rather, the Act contemplates that each member of the local descent group must share in common with each other member the common spiritual affiliations to a site on the land of which the definition speaks.

Provided, however, that this is recognised, the manner of proof to be adopted will depend upon the way the claim is presented.

1.5 The inquiry process

1.5.1 The provision in s. 50(1)(a) of the Land Rights Act requiring the Commissioner to 'ascertain' whether the applicants, or other Aboriginal people, are the traditional Aboriginal owners of the land suggests the need for the Commissioner to conduct an inquiry. Although the Commissioner is a judge, the inquiry is not an exercise of judicial power. It is administrative in character. The proceedings are inquisitorial, not adversarial. See *Re Maurice, Aboriginal Land Commissioner; Ex parte Attorney-General for the Northern Territory* (1987) 17 FCR 422, at p. 424. The claimants are usually represented by lawyers, and assisted by anthropologists, employed or retained by the relevant land council. The Attorney-General for the Northern Territory usually appears, represented by lawyers, on behalf of the Northern Territory Government. Other parties appear in the course of the inquiry, usually in relation to the matters on which the Commissioner is required to comment, particularly to ask the Commissioner to comment on detriment they allege they will suffer if the land claim is acceded to.

1.5.2 Under s. 51 of the Land Rights Act, a Commissioner may do all things necessary or convenient to be done for or in connection with the performance of the Commissioner's functions. Section 54 empowers the Commissioner to require the

production of documents or the giving of evidence, if the Commissioner believes that a person is capable of giving information relating to a matter being inquired into by the Commissioner. Section 54AA gives a specific power to a Commissioner to give directions prohibiting or limiting the publication of, or access to, information given, or a book, document or other record produced, to the Commissioner under the Land Rights Act. There is also a specific power to give directions requiring that specified persons or classes of persons are not to be in the vicinity of a place where information is to be given or a book, document or other record is to be produced. A person who knowingly contravenes or fails to comply with a direction given under s. 54AA is guilty of an offence.

1.6 Matters for comment

1.6.1 Two further subsections of s. 50 of the Land Rights Act are of great importance. The first is subs. (3):

> (3) In making a report in connexion with a traditional land claim a Commissioner shall have regard to the strength or otherwise of the traditional attachment by the claimants to the land claimed, and shall comment on each of the following matters:
>
> (a) the number of Aboriginals with traditional attachments to the land claimed who would be advantaged, and the nature and extent of the advantage that would accrue to those Aboriginals, if the claim were acceded to either in whole or in part;
>
> (b) the detriment to persons or communities including other Aboriginal groups that might result if the claim were acceded to either in whole or in part;
>
> (c) the effect which acceding to the claim either in whole or in part would have on the existing or proposed patterns of land usage in the region; and
>
> (d) where the claim relates to alienated Crown land — the cost of acquiring the interests of persons (other than the Crown) in the land concerned.

In *Attorney-General (Northern Territory) v. Minister for Aboriginal Affairs* (1989) 23 FCR 442, at p. 444, the Full Court of the Federal Court of Australia held that the Northern Territory Government is a 'person' within the meaning of s. 50(3)(b).

1.6.2 It should be noted that the obligation of the Commissioner is to have regard to the strength or otherwise of the traditional attachment by the claimants to the land claimed, not merely by those of the claimants who may be found to fall within the definition of 'traditional Aboriginal owners'. It is also established that the Commissioner's assessment of the strength or otherwise of traditional attachment is not to be taken into account by the Commissioner in determining whether claimants are traditional Aboriginal owners. Strength of traditional attachment only comes into consideration after there is a finding that there are persons who fall within the definition of 'traditional Aboriginal owners' with respect to land the subject of a claim. It is a matter to be considered by the Commissioner in determining whether to make a recommendation to the Minister in accordance with s. 50(1)(a)(ii). See *Jungarrayi v. Olney* (1992) 34 FCR 496, at pp. 501-3.

1.6.3 It is also important to note that matters on which the Commissioner is required by s. 50(3) to comment are not to be taken into account by the Commissioner in deciding whether or not to make a recommendation of the kind contemplated by s. 50(1)(a)(ii). They are matters relevant to the consideration by the Minister for Aboriginal and Torres Strait Islander Affairs in determining whether to accept a recommendation from the Commissioner, and to exercise the powers given to the Minister by ss. 11 and 12 of the Land Rights Act. See *R v. Toohey; Ex parte Meneling Station Pty Ltd* (1982) 158 CLR 327, at pp. 332-4 (Chief Justice Gibbs), 345 (Justice Murphy), 345-9 (Justice Wilson) and 360-3 (Justice Brennan).

1.7 Secure occupancy Section 50(4) is the other important subsection of s. 50:

> (4) In carrying out his functions a Commissioner shall have regard to the following principles:
>
> (a) Aboriginals who by choice are living at a place on the traditional country of the tribe or linguistic group to which they belong but do not have a right or entitlement to live at that place ought, where practicable, to be able to acquire secure occupancy of that place;
>
> (b) Aboriginals who are not living at a place on the traditional country of the tribe or linguistic group to which they belong but desire to live at such a place ought, where practicable, to be able to acquire secure occupancy of such a place.

1.8 The process of granting land

1.8.1 Section 11(1) of the Land Rights Act provides:

> Where:
>
> (a) a Commissioner has, before the commencement of the *Aboriginal Land Rights Legislation Amendment Act 1982*, recommended, or, after the commencement of that Act, recommends, to the Minister in a report made to him under paragraph 50(1)(a) that an area of Crown land should be granted to a Land Trust for the benefit of Aboriginals entitled by Aboriginal tradition to the use or occupation of that area of land, whether or not the traditional entitlement is qualified as to place, time, circumstance, purpose or permission; and
>
> (b) the Minister is satisfied:
>
> (i) that the land, or a part of the land, should be granted to a single Land Trust to be held for the benefit of Aboriginals who are the relevant Aboriginals in relation to that land or that part of that land; or
>
> (ii) that different parts of the land should be granted to different Land Trusts so that each Land Trust holds the land granted to it for the benefit of Aboriginals who are the relevant Aboriginals in relation to that last-mentioned land;
>
> the Minister shall:
>
> (c) establish:
>
> (i) in a case where he is satisfied that the land, or a part of the land, should be granted to a single Land Trust — a single Land Trust under section 4 to hold that land, or that part of that land, for the benefit of

Aboriginals who are the relevant Aboriginals in relation to the land, or the part of the land, proposed to be held by that Land Trust; or

(ii) in a case where he is satisfied that different parts of the land should be granted to different Land Trusts — 2 or more Land Trusts under section 4 respectively to hold those different parts of that land for the benefit of Aboriginals who are the relevant Aboriginals in relation to the parts of the land respectively proposed to be held by each of those Land Trusts;

(d) where land in respect of which a Land Trust has been or is proposed to be established in accordance with paragraph (c) is, or includes, alienated Crown land, ensure that the estates and interests in that land of persons (other than the Crown) are acquired by the Crown by surrender or otherwise; and

(e) after any acquisition referred to in paragraph (d) has been effected in relation to land and a Land Trust has been established in accordance with paragraph (c) in respect of that land, recommend to the Governor-General that a grant of an estate in fee simple in that land be made to that Land Trust.

1.8.2 In considering whether to make a recommendation to the Governor-General, in accordance with para. (e), the Minister must consider the comments of the Commissioner on the matters referred to in s. 50(3). The Minister must also consider any submissions made to him correcting, updating or elucidating the Commissioner's comments on those matters. See *Minister for Aboriginal Affairs v. Peko-Wallsend Ltd* (1986) 162 CLR 24.

1.8.3 If the Minister makes a recommendation to the Governor-General that a grant of an estate in fee simple in land be made to a land trust, s. 12(1)(a) empowers the Governor-General to execute a deed of grant of an estate in the land in accordance with the recommendation and deliver it to the grantee. By s. 12(3) a deed of grant must identify any land on which there is a road over which the public has a right of way and be expressed to exclude such land from the grant. A practice has therefore grown up by which the Aboriginal Land Commissioner identifies in a report roads over which the public has a right of way, in order to facilitate the performance of this duty by the Governor-General. When a deed of grant of land to a land trust is executed, the land described in it becomes 'Aboriginal land', as defined in s. 3(1) of the Land Rights Act.

1.9 The consequences of a grant of land

1.9.1 A number of consequences flow from land becoming Aboriginal land under the Land Rights Act. Section 67 provides that Aboriginal land shall not be resumed, compulsorily acquired or forfeited under any law of the Northern Territory. Under s. 68, a road cannot be constructed over Aboriginal land unless the relevant land council consents in writing. The land council must be satisfied that the traditional Aboriginal owners of the land consent to the construction of the road and that any Aboriginal community or group that may be affected has been consulted and has had adequate opportunity to express its view. Section 70 provides as follows:

(1) Except in the performance of functions under this Act or otherwise in accordance with this Act or a law of the Northern Territory, a person shall not enter or remain on Aboriginal land.
Penalty: $1,000.

(2) Where a person, other than a Land Trust, has an estate or interest in Aboriginal land:

(a) a person is entitled to enter and remain on the land for any purpose that is necessary for the use or enjoyment of that estate or interest by the owner of the estate or interest; and

(b) a law of the Northern Territory shall not authorize an entry or remaining on the land of a person if his presence on the land would interfere with the use or enjoyment of that estate or interest by the owner of the estate or interest.

(3) In proceedings for an offence against subsection (1), it is a defence if the person charged proves that his entry or remaining on the land was due to necessity.

(4) Where:

(a) a person has an estate or interest in land, being land that the person is entitled, under subsection (2), to enter and remain upon or being land in the vicinity of Aboriginal land; and

(b) there is no practicable way of gaining access to the land in which the person has that estate or interest otherwise than by crossing Aboriginal land (not being land that is, or forms part of, land described in Schedule 1);

a person is entitled, for the purpose of gaining that access so as to enable the use or enjoyment of that estate or interest by the owner of that estate or interest, to enter that Aboriginal land and to cross it by a route:

(c) that is agreed upon between the owner of that estate or interest and the Land Council in the area of which that Aboriginal land is situated; or

(d) if that owner and that Land Council have failed to agree — that is determined by an Arbitrator appointed by the Minister.

(5) The Minister shall not appoint a person to be an Arbitrator for the purposes of paragraph (4)(d) unless the Minister is satisfied that the person is in a position to deal impartially with the matter to be arbitrated.

(6) In making a determination under paragraph (4)(d), the matters that the Arbitrator shall take into account include:

(a) the location of any sacred site; and
(b) the location of any residential area.

(7) It is the intention of the Parliament that a route that is agreed upon under subsection (4), or determined under that subsection by an Arbitrator, is not to be taken to be, and, subject to section 68, shall not become, a road over which the public has a right of way.

1.9.2 In accordance with s. 70(1), the right to enter Aboriginal land is controlled by the *Aboriginal Land Act* (NT). The right to enter and remain on Aboriginal land is subject to a permit from the relevant land council or the traditional Aboriginal owners. To enter or remain on the land without a permit is an offence, subject to a defence that the entry was due to necessity or beyond the control of the person concerned, in circumstances in which it was impractical to apply for a permit and the person concerned removed himself or herself from the Aboriginal land as soon as practicable.

1.9.3 Section 71 of the Land Rights Act provides as follows:

> (1) Subject to this section, an Aboriginal or a group of Aboriginals is entitled to enter upon Aboriginal land and use or occupy that land to the extent that that entry, occupation or use is in accordance with Aboriginal tradition governing the rights of that Aboriginal or group of Aboriginals with respect to that land, whether or not those rights are qualified as to place, time, circumstances, purpose, permission or any other factor.
>
> (2) Subsection (1) does not authorize an entry, use or occupation that would interfere with the use or enjoyment of an estate or interest in the land held by a person not being a Land Trust or an Aboriginal Council or other incorporated association of Aboriginals.

1.9.4 Section 74 provides that the Land Rights 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 the Land Rights Act.

1.9.5 Section 75 provides that a miner's right does not apply in relation to Aboriginal land, unless immediately before the land became Aboriginal land, the land was being occupied or used by virtue of the miner's right. Section 3(1) defines 'miner's right' as meaning a miner's right or other authority issued under a law of the Northern Territory relating to mining for minerals, being a right or authority that empowers the holder to take possession of, mine or occupy land, or take any other action in relation to land, for any purpose in connection with mining. Part IV of the Land Rights Act contains detailed provisions with respect to the granting of exploration licences for mining in respect of Aboriginal land.

1.9.6 Also of relevance once land becomes Aboriginal land are ss. 14 and 15 of the Act, which provide as follows:

> 14 (1) Where, on the vesting in a Land Trust of an estate in fee simple in land, the land is being occupied or used by the Crown or, with the licence or permission of the Crown, by an Authority, the Crown or the Authority is entitled to continue that occupation or use for such period as the land is required by the Crown or the Authority.
>
> (2) During the period for which, by virtue of subsection (1), the Crown or an Authority is entitled to the occupation or use of land, any buildings and improvements on that land shall be deemed to be the property of the Crown or the Authority.
>
> (3) Nothing in this section prevents the granting by a Land Trust of a lease of land referred to in subsection (1) to the Commonwealth, the Northern Territory or an Authority and, if such a lease is granted, the land ceases to be land to which this section applies.
>
> (4) This section does not apply in relation to an occupation or use of land that is authorized by the *Atomic Energy Act 1953* or any other Act authorizing mining for minerals and this section does not prejudice the operation of the *Atomic Energy Act 1953* or that other Act, as the case may be.
>
> 15 (1) Where an occupation or use of Aboriginal land to which section 14 applies is for a purpose that is not a community purpose, the Crown shall pay to the Land Council for the area in which the land is situated amounts in the nature of rent for that

> occupation or use at such rate as is fixed by the Minister having regard to the economic value of the land.
>
> (2) For the purposes of subsection (1):
>
> (a) an occupation or use of land by the Crown for forestry purposes shall be deemed to be an occupation or use for a purpose that is not a community purpose; and
>
> (b) the economic value of land shall not include the value of any royalties that are, or may be, payable in connexion with forestry operations on the land.

1.9.7 Section 3(1) defines the word 'Authority' as meaning an authority established by or under a law of the Commonwealth or a law of the Northern Territory. The phrase 'community purpose' is defined as 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 limited to an Aboriginal community or group, but was not intended to cover a group of persons as loosely defined and geographically scattered as 'pastoralists'.

1.10 Land Councils This brief description of the scheme of the Act would not be complete without reference to land councils. Land councils have been established by the Minister pursuant to s. 21(1) of the Land Rights Act, in respect of specific areas of the Northern Territory. The land claimed is within the area of the Northern Land Council. By s. 22, a land council is a body corporate. Among the functions of a land council, set out in s. 23(1), is the function in para. (f):

> to assist Aboriginals claiming to have a traditional land claim to an area of land within the area of the Land Council in pursuing the claim, in particular, by arranging for legal assistance for them at the expense of the Land Council.

1.11 The arrangement of the report This report is intended to complete the performance of the functions of the Aboriginal Land Commissioner, pursuant to s. 50(1)(a) and (3) of the Land Rights Act, in respect of the Kenbi (Cox Peninsula) Land Claim No. 37. Chapter 2 deals with the history of the claim, including the making of the application, attempts made to claim the relevant land on behalf of Aboriginal people prior to the making of that application, attempts made by the Northern Territory Government to prevent the making of a claim, and the conduct of inquiries in relation to the claim. In chapter 3, I identify the areas of land claimed and make findings as to whether the land claimed is capable of being claimed. In chapter 4, I identify the claimants, make findings as to the groups to which the claimants claim to belong and determine whether those groups are local descent groups for the purposes of the definition of 'traditional Aboriginal owners'. In chapter 5, I deal with the question of common spiritual affiliations by members of those groups to sites on or related to the land claimed. Chapter 6 contains my findings as to primary spiritual responsibility and chapter 7 contains my findings as to rights to forage. In chapter 8, I set out my conclusions as to which of the claimants fall within the definition of 'traditional Aboriginal owners'. Chapter 9 analyses the strength of attachment of the claimants. In the next three chapters, I deal with the matters on which I am required by s. 50(3) to comment. Chapter 10 covers the number of Aboriginal persons with traditional attachments to the land claimed who would be advantaged, and the nature and extent of the advantage that would accrue to those Aboriginal people if the claim were acceded to in whole or in part. Chapter 11 contains my comments as to the detriment to persons or communities that might result if the claim were acceded to either in whole or in part. In chapter 12 I comment on the effect which acceding to the claim in whole or in part would have on the existing or proposed patterns of land usage in the region. Chapter 13 deals with some other matters, including the desire of some claimants to live on the land claimed, roads over which the public has a right of way and the question whether there should be more than one land trust. In chapter 14, I make a recommendation in accordance with s. 50(1)(a)(ii) of the Land Rights Act, for the granting of part of the land claimed to a land trust. The report also has a number of appendices, which are detailed in chapter 2.

2 HISTORY OF THE CLAIM

2.1 The application The application in this land claim was received by Mr Justice Toohey, who was then the Aboriginal Land Commissioner, on 20 March 1979. It was made by the Northern Land Council, on behalf of a number of named Aboriginal persons. The claim is therefore more than twenty years old at the time of writing of this report. In this chapter, I attempt to record the major events which have contributed to the very long delay in dealing with the claim. Such a history would be incomplete, however, without some reference to events which preceded the making of the application.

2.2 Mr Justice Woodward's inquiry The Land Rights Act was the result of a Royal Commission conducted by Mr Justice Woodward. In his first report, Mr Justice Woodward referred to the dispossession of the Larrakia people in the Darwin area and their expressed desire to acquire title to land in and around Darwin for community living purposes. In his second report, in April 1974, Mr Justice Woodward referred to an area on the Cox Peninsula known as Delissaville. His Honour described the Delissaville area as an appropriate area for Aboriginal ownership, but did not make precise recommendations as to the amount of land which should be covered by such a proclamation.

2.3 The Interim Land Commissioner Whilst legislation to implement the recommendations of the Royal Commission was being prepared, the Australian Government authorised the appointment of an Interim Land Commissioner for the Northern Territory, to ascertain the needs of Aboriginal people for land outside existing Aboriginal reserves. Mr Justice Ward of the Supreme Court of the Northern Territory was appointed Interim Land Commissioner in April 1975. By letter dated 19 May 1975, the North Australian Aboriginal Legal Aid Service sought advice from the Interim Land Commissioner as to the appropriate method of commencing an application. The writer of the letter claimed to act for the 'Wagait Tribe' represented by Mrs Margaret Rivers. According to the letter, that tribe claimed as its traditional land all that land from the western side of Darwin Harbour to the Wagait Aboriginal Reserve and as far south as the northern side of the Daly River. Further information about the proposed claim was subsequently provided to the Interim Land Commissioner. This information included a map, indicating that the claim did not include the coastal area of the Cox Peninsula, north of a line running approximately south-east from Gilruth Point to the mouth of Woods Inlet. Nor did it include the south-eastern portion of the current claim area between West Arm and Middle Arm of the Darwin Harbour. The Interim Land Commissioner does not appear to have conducted any inquiry into that claim.

2.4 Belyuen Aboriginal land Almost all of the provisions of the Land Rights Act came into operation on 26 January 1977. On that date, an area of 4 091 hectares, designated as Delissaville, became Aboriginal land. That land is now known as Belyuen and is occupied by an Aboriginal community. It is one of three parcels of land held by the Delissaville/Wagait/Larrakia Aboriginal Land Trust. The other two are the Wagait Reserve and the Larrakeyah Reserve.

2.5 The Dum-In-Mirrie Island Land Claim No. 18 Mr Justice Toohey was the first Aboriginal Land Commissioner under the Land Rights Act. On 29 June 1978, the Northern Land Council lodged with him an application in a traditional land claim for the land known as Dum-In-Mirrie Island. That claim was designated as Land Claim No. 18. The claimants were identified as Bobby Secretary, Tommy Lyons, Olga Singh and Prince of Wales. That claim was due to be heard by Mr Justice Toohey on 19 February 1979. Late in January 1979, solicitors for the Northern Land Council sought an adjournment of the inquiry and a consolidation of the claim with a foreshadowed claim to the Cox Peninsula. At a hearing on 7 February 1979, Mr Justice Toohey adjourned the inquiry. The present claim includes a claim to Dum-In-Mirrie Island. On 26 June 1979, Mr Justice Toohey granted leave to the claimants to withdraw claim no. 18.

2.6 Northern Territory planning regulations

2.6.1 Prior to lodging the present claim, and prior to Northern Territory self-government, the Northern Land Council had written to the Lands Branch of the Department of the Northern Territory, foreshadowing the application and asking that no step be taken to alienate any of the land over which the claim was to be made. On 22 December 1978, the Administrator of the Northern Territory made regulations under the *Town Planning Act* (NT). These regulations, no. 53 of 1978 ('the 1978 regulations'), were notified in the *Northern Territory Government Gazette* on 29 December 1978. The effect of the 1978 regulations was that four separate areas of land, said to be adjacent to the towns of Darwin, Alice Springs, Tennant Creek and Katherine, were prescribed under the *Town Planning Act* (NT) to be subject to its provisions as if the relevant area were part of the relevant town. The description of the area so prescribed and said to be adjacent to the town of Darwin covered an area of 4 350 square kilometres. It included the area of the Cox Peninsula which is now the subject of this land claim.

2.6.2 The consequence of the 1978 regulations, if they were valid, was that, at the time when this land claim was lodged with Mr Justice Toohey, a significant part of the land claimed was not available for claim, because it fell within the definition of 'town' in the Land Rights Act and therefore outside the definition of 'alienated Crown land' and the definition of 'unalienated Crown land' in s. 3(1) of the Land Rights Act.

2.6.3 On 3 August 1979, the *Town Planning Act* (NT) was repealed, and the *Planning Act* 1979 (NT) came into operation. On the same date, the Planning Regulations, made pursuant to the *Planning Act* 1979 (NT), came into operation. These regulations specified several areas of land, which were to be treated as towns for the purposes of s. 4 of the Act. One of those areas was substantially the same as the area of the Cox Peninsula the subject of the 1978 regulations.

2.7 Preliminary inquiry into the land claim On 26 June 1979, Mr Justice Toohey commenced an inquiry into this land claim. The initial hearing was for the purpose of resolving the question whether any of the land claimed could not be claimed because it was land in a town. Counsel for the claimants challenged the validity of the 1978 regulations on the basis that their promulgation was not a proper exercise of the regulation-making power under the *Town Planning Act* (NT) and that the power to make regulations had been exercised, in that instance, for an ulterior purpose, namely

to defeat the impending traditional land claim. After the commencement of the *Planning Act 1979* (NT) and the Planning Regulations, Mr Justice Toohey transferred his attention to those provisions, although they had come into operation after the application had been made in this land claim. His Honour assumed that the status of the land should be dealt with under the new regulations. He took the view that the motives of the Administrator of the Northern Territory in making the regulations could not be called into question. In his view, the validity of the regulations depended upon whether the land covered by them could properly be said to be adjacent to the town of Darwin. On 20 December 1979, Mr Justice Toohey gave a reasoned decision in which he reached the conclusion that the Planning Regulations had not been shown to have been an invalid exercise of the regulation-making power. The land covered by the regulations was therefore land in a town and not available for claim.

2.8 The first High Court decision The Northern Land Council applied to the High Court of Australia for orders for certiorari and mandamus in respect of this decision. The High Court gave judgment on 24 December 1981. See *R v. Toohey; Ex parte Northern Land Council* (1981) 151 CLR 170. The court held that the claimants were entitled to challenge the validity of the regulations before the Aboriginal Land Commissioner on the ground that they were made for an ulterior purpose, namely to defeat the traditional land claim of the claimants. The Commissioner was obliged to decide on the validity of the regulations to determine whether the application was made in respect of land which could be claimed under the Land Rights Act. If the regulations were invalid, the Commissioner was obliged to exercise his function under s. 50 of the Land Rights Act in respect of the land covered by the regulations. The court ordered that a writ of mandamus issue to Mr Justice Toohey as Aboriginal Land Commissioner, directing him to deal with the claim according to law.

2.9 The bombing range, the forest reserve and the occupation licences In the meantime, in a reasoned decision given on 27 June 1980, Mr Justice Toohey had dealt with questions raised as to whether a traditional land claim could be made in respect of several of the islands included in the land claimed, on the ground that they had been set aside for a public purpose. An area including Bare Sand Island and Quail Island had been declared to be a bombing area under regulations made in 1957, pursuant to the *Airforce Act* 1923 or the *Defence Act* 1903. The Commonwealth of Australia had acquired Quail Island on 28 June 1979, pursuant to s. 70 of the *Northern Territory (Self Government) Act* 1978. Indian Island had been reserved as a forest reserve under South Australian legislation applicable in 1889. Parts of Dum-In-Mirrie Island were subject to two occupation licences. In each case, Mr Justice Toohey found that the islands were unalienated Crown land. These issues have not been agitated seriously by any party since.

2.10 Discovery of documents by the Northern Territory

2.10.1 Once it had become clear that the Commissioner could entertain a challenge to the validity of regulations made by the Northern Territory on a broader basis than Mr Justice Toohey had accepted, the Northern Land Council sought to mount such a challenge. It sought an order from the Commissioner that the Northern Territory Government and the Administrator of the Northern Territory make and deliver to the Northern Land Council a list, verified by affidavit, of the documents which were or had been in its or his possession, custody or power relating to and incidental to the making and bringing into force of the Planning Regulations. The Northern Territory

Government contended that such an order was beyond the powers of the Aboriginal Land Commissioner. On 2 April 1982, Mr Justice Toohey gave a reasoned decision, holding that he had power to make such an order under s. 51 of the Land Rights Act (see para. 1.5.2). He made the order sought.

2.10.2 The Northern Territory Government produced a list of documents, verified by affidavit, as directed by the Commissioner. It took objection to the production of some documents on the ground that they were subject to legal professional privilege. The Northern Land Council therefore applied to the Commissioner for an order for production of the documents for which legal professional privilege had been claimed, so that those documents could be inspected. By this time, Mr Justice Toohey had ceased to hold the office of Aboriginal Land Commissioner and Mr Justice Kearney had replaced him. He made an order that the documents for which legal professional privilege had been claimed should be produced and that the Northern Land Council should be permitted to inspect those documents and to make copies of them.

2.11 The second High Court decision The Attorney-General for the Northern Territory applied to the Federal Court of Australia, seeking writs of prohibition and certiorari against the Commissioner in respect of this order. The Attorney-General for the Northern Territory also made a subsequent application to review the Commissioner's decision to make the order, pursuant to the *Administrative Decisions (Judicial Review) Act* 1977. On 14 September 1984, the court gave judgment, dismissing all of the applications. See *R v. Kearney; Ex parte Attorney-General (NT)* (1984) 3 FCR 534. The Attorney-General for the Northern Territory appealed to the High Court from the decision of the Federal Court. On 25 September 1985, the High Court of Australia dismissed the appeal. See *Attorney-General for the Northern Territory v. Kearney* (1985) 158 CLR 500.

2.12 The challenge to the validity of the 1978 regulations

2.12.1 On 23 March 1984, the High Court of Australia held that, once an application had been made under the Land Rights Act with respect to a piece of land that was available for claim, the Aboriginal Land Commissioner had jurisdiction to deal with the claim to that land, notwithstanding any legislative or other attempts to change the status of that land. See *R v. Kearney; Ex parte Northern Land Council* (1984) 158 CLR 365. The effect of this decision was to make it clear that, when the status of the land claimed in this claim came to be considered, attention should be directed to the validity of the 1978 regulations, rather than to the validity of the Planning Regulations made in 1979.

2.12.2 Mr Justice Kearney's term as Aboriginal Land Commissioner expired. He was replaced by Mr Justice Maurice, who gave directions for the filing of a statement of the claimants' claim as to the invalidity of the 1978 regulations. The statement was filed on 9 October 1986. It alleged that the 1978 regulations were not made bona fide and for the purposes of the *Planning Act* (NT) but for the ulterior purpose of defeating a claim pursuant to the Land Rights Act. His Honour gave directions for the resumption of the hearing of the claim on 30 March 1987, for the purpose of determining as a preliminary issue the validity of the 1978 regulations.

2.13 The disqualification of the Commissioner In the meantime, in the course of hearing another traditional land claim under the Land Rights Act, Mr Justice Maurice

made certain statements which were capable of being construed as critical of ministers in the Northern Territory Government. In consequence, the Attorney-General for the Northern Territory sought to persuade his Honour to disqualify himself from continuing to hear that other claim and this land claim. His Honour refused to disqualify himself. The Attorney-General for the Northern Territory then applied to the Federal Court of Australia for a writ of prohibition, to prevent his Honour from continuing to hear both claims. The application was unsuccessful with respect to the other claim but, in relation to this land claim, the Full Court ordered that a writ of prohibition issue to his Honour, prohibiting him from proceeding. See *Re Maurice, Aboriginal Land Commissioner; Ex parte Attorney-General for the Northern Territory* (1987) 17 FCR 422.

2.14 The 1978 regulations invalid The next holder of the office of Aboriginal Land Commissioner was Justice Olney. In October and November 1988, his Honour conducted an inquiry in which the issue was the validity of the 1978 regulations. On 8 December 1988, his Honour published a reasoned decision, concluding that the regulations were not a valid exercise of the regulation-making power contained in the *Planning Act* (NT). The Attorney-General for the Northern Territory applied to the Federal Court of Australia to review that decision, pursuant to the *Administrative Decisions (Judicial Review) Act* 1977. On 28 June 1989, the court dismissed that application. See *Attorney-General for the Northern Territory of Australia v. The Honourable Howard William Olney, Aboriginal Land Commissioner* (Full Court, Federal Court of Australia, 28 June 1989, unreported). The Attorney-General for the Northern Territory applied to the High Court of Australia for special leave to appeal against the judgment of the Federal Court of Australia. Special leave to appeal was refused on 15 September 1989.

2.15 Justice Olney's inquiry Between 16 June and 10 November 1989, Justice Olney conducted directions hearings on six occasions, to ensure that preparations were made for an inquiry into the substance of this land claim. On 13 November 1989, his Honour commenced an inquiry. That inquiry occupied thirty sitting days, the last of which was 8 December 1990, on which his Honour heard submissions from counsel, supplementary to written submissions which had already been delivered. The dates on which Justice Olney sat are recorded in appendix 1 to this report.

2.16 Justice Olney's report On 21 February 1991, Justice Olney forwarded to the Minister for Aboriginal Affairs and the Administrator of the Northern Territory what was described as an interim report on this land claim, dealing with the question whether there were traditional Aboriginal owners, within the meaning of the Land Rights Act, in respect of the land claimed or any part of it. His Honour found that there were no traditional Aboriginal owners. There was therefore no occasion for the making of any recommendation pursuant to s. 50(1)(a) of the Land Rights Act or for performing any of the functions referred to in s. 50(3). His Honour's report is designated as report no. 40 in the series of reports of Aboriginal Land Commissioners concerning traditional land claims. It contains a more detailed account of the history of the events preceding it than I have given in this report.

2.17 Other relevant land claims It is appropriate that I should also refer to two other relevant traditional land claims made under the Land Rights Act. The first is the Kenbi (Cox Peninsula - Section 12) Land Claim No. 127, the application in which was received in the office of the Aboriginal Land Commissioner on 9 March 1990. That

claim relates to a relatively small area of land vested in the Commonwealth of Australia, in the vicinity of the Charles Point Lighthouse. At a directions hearing on 3 July 1995, a request was made that I should deal with that claim together with this land claim. The Planning Regulations, made under the *Planning Act* 1979 (NT) (see para. 2.6.3), which came into operation on 3 August 1979, if valid, would operate to include the relevant land in a town and therefore to render it unavailable for claim. It is not clear whether a challenge to the validity of those regulations will be made. In those circumstances, at a directions hearing on 22 September 1995, I adjourned the hearing of claim no. 127 to a date to be fixed. The Kenbi (Cox Peninsula) (Repeat) Land Claim No. 131 is the subject of an application received in the office of the Aboriginal Land Commissioner on 25 February 1991. On 27 March and 15 April 1991, Justice Olney held brief directions hearings in relation to that claim. So far as I am aware, no further action has been taken with respect to it.

2.18 The changing basis of the claim

2.18.1 In 1979, soon after the application in this claim was lodged, anthropologists engaged by the Northern Land Council produced a substantial report designed to assist with the claim. The authors were Dr Michael Walsh, Dr Maria Brandl and Ms Adrienne Haritos. The report has become known as the 1979 claim book or, simply, as 'Kenbi 79'. It advanced the proposition that seven people fell within the definition of traditional Aboriginal owners in the Land Rights Act with respect to the land claimed: Bobby Secretary, Topsy Secretary, Gabriel Secretary, Prince of Wales, Olga Singh, Rachel (or Paula) Thompson and Kathleen (or Dolphin) Minyinma. These persons were considered to have as their principal dreaming, or *durlg*, the *danggalaba*, or crocodile. Kenbi 79 also made reference to affiliates of the Danggalaba clan, i.e. those whose mothers were members of the clan. Listed as affiliates of the Danggalaba clan were Lindy Roman (Danks), Kathleen Secretary, Raelene Singh, Jason Singh, Zoe Singh and Peter Mandang. Reference was made to Josephine Rankin as a possible affiliate who had elected not to be involved in the claim. Thus, the maximum number of people asserted to be traditional Aboriginal owners in Kenbi 79 was thirteen.

2.18.2 In April 1989, in preparation for the inquiry into the claim, a further anthropologists' report was prepared on behalf of the Northern Land Council. The principal author was Dr Michael Walsh. He was assisted by Frank McKeown and Elizabeth (Beth) Povinelli. This report was entitled 'Ten Years On' and styled as a supplement to Kenbi 79. The report recorded that the Danggalaba clan had been depleted by the deaths of Bobby Secretary and Paula Thompson. In a foreword to the report, the authors said that Olga Singh had also died after the report was prepared. The Danggalaba clan therefore consisted of only four patrilineal descendants. Ten Years On advanced as an alternative model of the appropriate claimant group the Larrakia language group. At the time, in excess of 700 people had been identified as members of the Larrakia language group through matrifiliation, patrifiliation or both.

2.18.3 On 21 June 1989, Dr Michael Walsh produced a report entitled 'Supplement to Ten Years On'. This report proposed a claimant group consisting of four patrilineal descendants of members of the Danggalaba clan and seven other persons. The four patrilineal descendants were Topsy Secretary, Gabriel Secretary, Prince of Wales and Kathleen Minyinma (Presley). The seven others were Raelene Singh, Jason Singh, Zoe Singh, Josephine Rankin, Billy Risk, Lorna Lee Talbot and Barbara Tapsell.

2.18.4 On 10 November 1989, a few days before Justice Olney began his inquiry into the claim, the Northern Land Council gave notice that the supplement to Ten Years On should be ignored and that the claim would be presented in accordance with the report called Ten Years On. In other words, the model to be advanced was that all members of the Larrakia language group were traditional Aboriginal owners of the land claimed. The supplement to Ten Years On was tendered in evidence before Justice Olney by counsel for the Attorney-General for the Northern Territory, who relied on it to demonstrate the inconsistency of approaches taken in the preparation of the claim and the consequent weakness of the claim of the Larrakia language group.

2.18.5 On 29 November 1989, when Justice Olney's inquiry was well advanced, counsel for the claimants raised the possibility that people living on the area of Aboriginal land within the boundaries of the claim area, formerly known as Delissaville and then (as now) known as Belyuen, might fall within the definition of traditional Aboriginal owners in respect of the claim area. His Honour raised the question whether Belyuen residents might even be traditional Aboriginal owners to the exclusion of members of the Larrakia language group. On 1 December 1989, counsel for the claimants formally advanced three new groups as claimants. The first group consisted of members of the Wadjigiyn and Kiyuk language groups resident at Belyuen. The second consisted of members of the Amiyenggal and Menthayenggal language groups resident at Belyuen. The third group was a select group of members of the Marriamu and Marritjaben language groups. The inquiry thereafter proceeded on the footing that these persons were to be considered as claimants in addition to, or alternatively to, the members of the Larrakia language group. In his interim report, Justice Olney found that the members of the three new groups had not been advanced seriously as traditional Aboriginal owners and that they did not fall within the definition of that term in the Land Rights Act in respect of the land claimed.

2.18.6 On 19 March 1990, and again on 23 May 1990, counsel assisting the Commissioner announced that Kevin (Tibby) Quall had indicated that he was not satisfied with the way in which the claim was being put by the Northern Land Council and was seeking his own legal advice. At that time, Mr Quall did not succeed in obtaining further legal advice. On 12 June 1990, counsel assisting the Commissioner examined Mr Quall as to the basis on which he thought the claim should be put. His claim was that the descendants of members of the Danggalaba clan, which he considered to be a broader group than that put forward in the supplement to Ten Years On, should be found to be the traditional Aboriginal owners of the land claimed.

2.19 Justice Olney's finding set aside The Northern Land Council and Kevin (Tibby) Quall applied to the Federal Court of Australia for judicial review of the decisions contained in Justice Olney's interim report. On 27 February 1992, the court gave judgment, in which it held that Justice Olney had erred in law in certain respects in coming to the finding that there were no traditional Aboriginal owners. The court set aside that finding and ordered that the claim be referred back to an Aboriginal Land Commissioner to be heard and decided in accordance with law. See *Northern Land Council v. Olney* (1992) 34 FCR 470.

2.20 The second inquiry By the time the Federal Court of Australia set aside Justice Olney's finding, his Honour had ceased to be an Aboriginal Land Commissioner and I had been appointed. On 11 June 1992, Justice Olney heard submissions on the question whether it was open to him to continue to hear this land claim, pursuant to s.

52(4) of the Land Rights Act (see para. 1.3). On 11 June 1992, his Honour gave a reasoned decision, in which he held that he had completed the performance of his function in relation to this land claim before the court had set aside his finding. Because his term of office had expired in the meantime, he could not continue to hear this land claim. It was not until 16 October 1995, in my second term as Commissioner, that I began a further inquiry into the claim. I did so on the express basis that the transcript of the evidence before Justice Olney, and all of the exhibits tendered to him, would be evidence before me, and that the parties were to be free to adduce any further evidence they desired. The inquiry proceeded, occupying fifty-seven sitting days until 4 June 1999, when I completed the hearing of the oral submissions of counsel for various parties. The reasons for the extraordinary length of the inquiry are canvassed in some detail below. The sitting days are recorded in appendix 1.

2.21 Further changes to the basis of the claim

2.21.1 When the inquiry resumed before me on 16 October 1995, two groups of claimants were represented separately by counsel. The smaller group consisted of Topsy Secretary, Prince of Wales, Raelene Singh, Jason Singh, Zoe Singh, two children of Zoe Singh, Kathleen Minyinma and her son. For convenience in identifying it, this group was named the **Tommy Lyons** group. The other group was the Larrakia language group, described for convenience as the **Larrakia** group. In excess of 1 200 people were by then identified as belonging to that group. Also separately represented were the residents of the Belyuen community. At a directions hearing on 3 July 1995, counsel for the Belyuen residents informed me that his clients were not claiming to be traditional Aboriginal owners of the land claimed but were persons who would be advantaged by a grant of the land claimed to a land trust.

2.21.2 On the fifth day of my inquiry, counsel for the Belyuen residents announced that he had received instructions that the Belyuen residents wished me to consider them as claimants. It was necessary for these new claimants to prepare and distribute material complying with the practice directions of the Aboriginal Land Commissioner, so that all other parties and I had the opportunity of knowing how their claim was to be put. The preparation of the material took some months. Because of the physical difficulties of conducting hearings on the claim area during the wet season, and because of other commitments that I and various others had, the bulk of the evidence on behalf of the Belyuen residents as claimants was not given until late September and early October 1996. That claim was advanced on the basis that the Belyuen residents constituted a single group of traditional Aboriginal owners of the land claimed, known as the **Belyuen** group.

2.21.3 During the first part of my inquiry, when the **Larrakia** group and the **Tommy Lyons** group were presenting their evidence, Kevin (Tibby) Quall continued to dissociate himself from the presentation of the case by those who had been engaged to present it on behalf of the two groups. On 16 October 1995, counsel for the **Larrakia** group informed me that Mr Quall had withdrawn any instructions they might have had to appear for him, as part of the **Larrakia** group. I therefore invited Mr Quall to present to me any evidence he wished to bring forward, and to address me, on 2 November 1995. He gave evidence and made oral submissions on that occasion.

2.21.4 On 2 October 1996, while I was hearing the case put on behalf of the **Belyuen** group, David Dalrymple, solicitor, appeared before me on behalf of Kevin (Tibby)

Quall and other members of the **Larrakia** group, who wished to be represented separately from the other members of the **Larrakia** group. They sought funding from the Northern Land Council to enable this separate representation to occur, including the preparation of the necessary material. In due course, such funding was granted and the material was prepared. The claim of Mr Quall and others was that they were the surviving members of the Danggalaba clan and were the traditional Aboriginal owners of the land claimed. Their case was presented to me in June 1997. For convenience, this group was identified as the **Danggalaba** group.

2.22 The completion of my inquiry In July 1998, I heard expert evidence relevant to the claims of all groups. In September 1998, I heard evidence relating to the matters on which I am required to comment and also on the subject of roads over which the public has a right of way. There was then a period during which written submissions were made, including written submissions in response to those of other parties. In late May and early June 1999, I heard oral submissions. My consulting anthropologist, Dr John Avery, had produced a report. He was cross-examined on that report as part of the 1999 session.

2.23 Advertisement of the claim Before the inquiry was commenced by Justice Olney, and at various stages after that, sessions of the inquiry were advertised by means of the publication of notices in newspapers. The advertisements gave particulars of the land claim and invited those who wished to be heard to give notice of intention to be heard. The dates on which, and the newspapers in which, those advertisements were published are listed in appendix 2.

2.24 Parties A number of people gave notices of their intention to be heard. In many cases, the notices contained the matters that their authors desired to place before the inquiry. I treated those notices as written submissions. In other cases, the parties who gave notices participated in the inquiry. Some merely registered their interest and asked to be informed of the outcome. A complete list of those who participated in the inquiry, provided written submissions, or registered their interest, is found in appendix 3. Many of the parties who appeared were represented by lawyers. There were changes of representation as the inquiry progressed. The names of lawyers who represented parties at different stages of the inquiry, and the name of the consulting anthropologist to the Aboriginal Land Commissioner, are set out in appendix 4.

2.25 Evidence In the course of the inquiry, both before Justice Olney and before me, 305 witnesses gave evidence. Their names appear in alphabetical order in appendix 5. Evidence was taken at or near 47 sites on and near the claim area. A list of those sites, in the order in which they are numbered in the site register, exhibit LG 2, and on the map in appendix 8, appears in appendix 6. A total of 251 exhibits were tendered. Appendix 7 contains a list of the exhibits.

2.26 Restricted evidence Parts of the oral evidence, and some of the exhibits tendered, are subject to restrictions, by direction of Justice Olney or me. In most cases, this is because the evidence involves matters that, by Aboriginal law, are secret to men. In one session, on 31 October 1995, I heard evidence from some women of the **Larrakia** group of matters claimed to be secret to women. I was the only man present at that session. There were objections to this procedure. Subsequently, counsel for the **Tommy Lyons** group and the **Belyuen** group sought to overturn the restrictions, on the basis of evidence from senior women of the **Belyuen** group that no

secret matters had been discussed in the session. I refrained from determining this issue, lest I be seen to pre-judge the issue of who were the traditional Aboriginal owners of the land claimed. The evidence given in the session at which only women (other than myself) were present remains restricted.

3 THE LAND CLAIMED

3.1 General description This land claim is made in respect of all the land available for claim on the Cox Peninsula and the islands and reefs to the west of the Cox Peninsula. The land claimed is defined in the application by reference to the boundaries of areas of the Cox Peninsula, and specific reference to each of the islands and reefs. In 1984, the Survey and Mapping Division of the Department of Lands of the Northern Territory of Australia produced a map, designated as CP4623A, which was tendered in the inquiry, and which was treated by all parties as representing as accurately as reasonably practicable the land claimed. Much of the detailed description which I give below is taken from that map.

3.2 Sea boundaries Because the land claimed consists of land on a peninsula, islands and reefs, many of its boundaries are described by reference to the sea. Two features of the description of those boundaries must be noted. The first is that, in every case, the boundary is defined as the low-water mark. Ordinarily, this would be construed as the mean low-water mark. The second is that straight-line boundaries are adopted in respect of all streams and estuaries. In the case of a stream or estuary, an area below the low-water mark, but inland of a straight line joining the seaward extremity of each of the opposite banks, is included in the land claimed. This accords with the traditional common law and international law method of determining the boundaries of land when those boundaries are defined by reference to the sea and there are areas of the sea regarded as being *inter fauces terrae* (within the jaws of the land). See *Direct United States Cable Company v. Anglo-American Telegraph Company* (1877) 2 App. Cas. 394, at pp. 415-20; *New South Wales v. The Commonwealth (The Seas and Submerged Lands Act* case*)* (1975) 135 CLR 337, especially at p. 476 in the judgment of Justice Mason; and *A Raptis & Son v. South Australia* (1977) 138 CLR 346, especially at pp. 376-8 in the judgment of Justice Stephen.

3.3 Land boundaries So far as the Cox Peninsula is concerned, the land claimed includes all areas of unalienated Crown land within the Hundred of Bray and the Hundred of Parsons, in the County of Palmerston. The southern boundary of the land claimed is the boundary between the Hundred of Hughes and the Hundred of Parsons. The eastern boundary is the boundary between the Hundred of Ayers and the Hundred of Parsons. From the point at which that boundary meets the low-water mark in Darwin Harbour, it follows that low-water mark, and straight lines across the streams and estuaries, around the peninsula to Bynoe Harbour, to the point where the boundary line between the Hundred of Milne and the Hundred of Hughes meets the boundary line between the Hundred of Hughes and the Hundred of Parsons. The boundary does not follow the low-water mark (with straight lines across streams and estuaries) in all respects. Land on the seaward side of alienated areas, which are not available for claim, is generally excluded.

3.4 Areas excluded The areas of the Cox Peninsula excluded from the land claimed are as follows. Note that all references to numbered Sections are to Sections of the Hundred of Bray in the County of Palmerston.

- Section 25, which is the subject of a freehold estate and is Aboriginal land under the Land Rights Act, vested in the Delissaville/Wagait/Larrakia Aboriginal Land Trust.

- Section 3, which is freehold land, and all the land lying between its northern boundary and the adjacent low-water mark of Woods Inlet.

- Section 4, which is freehold land, and all the land lying between its boundary, a line running due north from the northernmost point of its northern boundary, a line running due north from the westernmost point of its western boundary and the adjacent low-water mark of Woods Inlet.

- All land between a line running due north from the south-western corner of Section 11, a line running due east from that point, and the adjacent low-water mark of Woods Inlet and Darwin Harbour, including Section 10, Section 11 (both of which are freehold land and have been subdivided), Section 22, Section 37 and other land.

- Section 9, which is freehold land, and all land lying between its boundary, a line running east from the southernmost point of its southern boundary, a line running east from the easternmost point of its eastern boundary and the adjacent low-water mark of Darwin Harbour.

- Section 40, a reserve which straddles the low-water mark of Darwin Harbour.

- Sections 42, 43, 44 and 45 and all land within and to the east and north of them to the adjacent low-water mark of Darwin Harbour and the Timor Sea, including sections 24, 26 (which has been subdivided), 27, 30, 31, 35 and 39.

- Section 7, which is freehold land and all land to its east and north to the adjacent low-water mark of the Timor Sea.

- Section 6, which is freehold land, now subdivided.

- Section 8, which is freehold land, now subdivided, and all land to the east of a line running north from the north-westernmost point of its northern boundary and north of its northern boundary to the adjacent low-water mark of the Timor Sea.

- Section 12, which is freehold land vested in the Commonwealth of Australia and is the subject of a separate claim (see para. 2.17), and all land lying to the north of it to the adjacent low-water mark of the Timor Sea.

3.5 Islands included The land claimed includes the following islands in Port Patterson and Bynoe Harbour:

- Dum-In-Mirrie Island
- Beer Eetar Island
- An unnamed island between Beer Eetar Island and Grose Island
- Grose Island
- Bare Sand Island
- Djajalbit Island
- Quail Island
- Indian Island
- Turtle Island

- Knife Island
- Crocodile Island

3.6 Reefs included The land claimed also includes the following reefs:

- Roche Reef
- Simms Reef
- Moira Reef
- Middle Reef
- Kelleway Reef

3.7 Northern Territory Portions 2532, 2533, 2540 and 2541 not included The application also defined the land claimed as including an area within the Hundred of Milne now designated as Northern Territory Portions 2532, 2533, 2540 and 2541. It is not clear whether these four portions were available for claim at the date of the application, or whether some estate or interest not held by or on behalf of Aboriginal people existed in respect of them. In any event, no specific evidence has been given in relation to them and they have not been treated as part of the land claimed. For the purposes of this report, I do not treat them as part of the land claimed.

3.8 Land claimed within the Northern Territory The land claimed is all within the Northern Territory. The area of the Northern Territory was first defined in letters patent of 6 July 1863, when the Northern Territory was annexed to the colony of South Australia. The definition specifically included bays, gulfs and islands and, as the High Court of Australia held in *A Raptis & Son v. South Australia* (1977) 138 CLR 346, impliedly included 'inland waters', being inlets, creeks and rivers. It seems to have been recognised that the Northern Territory, like the States, extends to the mean low-water mark. See *New South Wales v. The Commonwealth (The Seas and Submerged Lands Act* case) (1975) 135 CLR 337, the definition of 'coastal waters of the Territory' in s. 3(1) of the *Coastal Waters (Northern Territory Title) Act* 1980, the definition of the same term in the *Coastal Waters (Northern Territory Powers) Act* 1980 and the description of 'the adjacent area in respect of the Northern Territory' in Schedule 2 of the *Petroleum (Submerged Lands) Act* 1967.

3.9 Commonwealth land Most of the land claimed is vested in the Crown in right of the Northern Territory. By notice published in the *Commonwealth of Australia Gazette* no. G50, dated 19 December 1978, the Minister for Administrative Services declared that the Commonwealth of Australia had acquired from the Northern Territory various areas of land, pursuant to s. 70(2) of the *Northern Territory (Self-Government) Act* 1978. In each case, the acquisition was of a fee simple interest. Among the areas of land so acquired were Sections 26, 27, 31, 32, 33, 34 and 35 of the Hundred of Bray. Sections 32, 33 and 34 are within the land claimed. These Sections fall within the definition of 'Crown land' in s. 3(1) of the Land Rights Act. It is the Crown in right of the Commonwealth that holds the only estate or interest in them.

3.10 Section 17

3.10.1 Section 17 of the Hundred of Bray is wholly within the land claimed, near Two Fella Creek. At the time when the application in this land claim was made, Section 17 was the subject of a special purpose lease, dated 4 March 1963, from the Northern

Territory to Edmund John Murray, for a term of twenty years from 12 February 1962. This lease appears to have been an estate or interest in land for the purposes of the Land Rights Act. There is no evidence that the lease was held by, or on behalf of, any Aboriginal person. Section 17 was not therefore available to be claimed and, for the purposes of this report, is not part of what I describe as the land claimed.

3.10.2 On 19 February 1982, after the application was made, Section 17 was the subject of a grant of a freehold estate to Ronald Leo Barker. That freehold estate has since been transferred twice. The current registered proprietor of it is a company called Harney Beach Pty Limited. There is perhaps a question as to the validity of the grant of the freehold estate, and consequently as to whether Harney Beach Pty Limited now holds a valid freehold estate. In its terms, the application in this land claim covered Section 17, as well as the land surrounding it. Section 17 fell within the general description of the land claimed, and was not the subject of a specific exclusion. At the time when the grant of a freehold estate was made, s. 67A of the Land Rights Act had not been enacted. It is that section which now expressly prohibits the grant of an estate or interest in land the subject of a claim under the Land Rights Act, while the claim is current. That section had retrospective operation only as far back as 28 May 1986. See *Attorney-General for the Northern Territory v. Hand* (1989) 25 FCR 345, at pp. 369-70 in the judgment of Justice Lockhart and p. 402 in the judgment of Justice von Doussa. In that case, however, the Full Court of the Federal Court of Australia held that the Land Rights Act prohibited by implication, or as a result of inconsistency between the Land Rights Act and legislation of the Northern Territory authorising the granting of estates and interests in Crown land, the grant of an estate or interest in land that was subject to a claim, even before s. 67A was enacted. See pp. 359, 361 and 368-9 in the judgment of Justice Lockhart and p. 402 in the judgment of Justice von Doussa. There is no clear authority as to whether this implied prohibition extended to all land the subject of a claim, or only to so much of that land as could validly be claimed. If it were the case that the making of an application under s. 50(1)(a) of the Land Rights Act rendered the Crown incapable of alienating all the land described as claimed in the application, then the grant of an estate in fee simple in Section 17 in 1982 was invalid. On the other hand, if the Crown became incapable of alienating only so much of the land described in an application as could be claimed (i.e. only so much as was unalienated Crown land, or alienated Crown land in which all estates and interests not held by the Crown were held by or on behalf of Aboriginal people), then Harney Beach Pty Limited has a valid freehold estate in Section 17. I am unable to resolve this question. It was not the subject of argument before me. As the role of the Aboriginal Land Commissioner is not that of a court, I am unable to give a binding decision on it. For the purposes of this report, its only relevance is to the question whether a right of access would exist to Section 17, if the land claimed were to become Aboriginal land under the Land Rights Act (see para. 11.15.6).

3.11 Unalienated Crown land The land claimed is unalienated Crown land. To the extent that there are occupation licences, mining leases, exploration licences and similar rights in respect of areas of the land claimed, those rights do not constitute estates or interests in land, for the purposes of the definition of 'unalienated Crown land' in s. 3(1) of the Land Rights Act. See s. 3(2) and the definition of 'mining interest' in s. 3(1). The test for determining whether a particular right is an 'estate or interest' for the purpose of the definition of unalienated Crown land is to be found in *R v. Toohey; Ex parte Meneling Station Pty Ltd* (1982) 158 CLR 327, in which the High Court of Australia held that a grazing licence is not an 'estate or interest' for this

purpose. Rights of various kinds are discussed in chapter 12 in the context of comments on detriment that might be suffered if the land claimed becomes Aboriginal land under the Land Rights Act.

3.12 Land claimed available for claim The whole of the land claimed is available to be claimed under the Land Rights Act. The land claimed and the areas excluded from the claim are shown on the map in appendix 8.

3.13 Physical features of the land claimed The coastlines of the land claimed include attractive beaches, significant areas of cliffs and rocks, adjacent reefs and substantial areas of mangroves. Inland, there are several low-lying areas containing swamps. The highest point is known as Kings Table and is approximately fifty metres above sea level. The climate is monsoonal and the vegetation mostly tropical savanna woodland.

4 LOCAL DESCENT GROUPS

4.1 Four claimant groups As I have said in para. 2.21, before the end of the inquiry, there were four groups of claimants each claiming that their members satisfied the definition of 'traditional Aboriginal owners' in the Land Rights Act. For convenience, the four groups have been called the **Tommy Lyons** group, the **Larrakia** group, the **Belyuen** group and the **Danggalaba** group. In this chapter, I identify the members of those groups and determine whether each group is a 'local descent group', within the meaning of that element of the definition.

4.2 The Tommy Lyons group The smallest of the groups styled itself as the **Tommy Lyons** group. The late Tommy Lyons was a man whose language was Larrakia. He lived much of his life at what is now the Belyuen community. He became the acknowledged ceremonial leader in relation to ceremonies belonging to the land claimed.

4.3 Descent criteria of the Tommy Lyons group

4.3.1 Two descent criteria are relied upon for membership of this group. The first is patrilineal descent from a man acknowledged to have had a close connection with the land claimed. The second criterion is affiliation to that patriline. The second criterion has an element of negotiability. A first generation matrifiliate may be accepted as a member of the group. Factors such as the choice of the person concerned, residence on the land claimed, the expressed views of senior patrilineal members, or extensive involvement in ritual and other activities relating to caring for the land claimed may be relevant. There is nothing unusual in the recognition of first generation matrifiliates as members of patrilineal groups in the Northern Territory, particularly in areas in which there are no, or no strong, moiety systems in operation. The land claimed is in an area that does not appear to have a strong moiety system. There is uncertainty as to whether second and subsequent generation affiliates will be accepted as members of the group. In para. 13.4.3, I discuss this as one of the possible developments in the future of the group. Acceptance of second and subsequent generation affiliates will depend on the views of existing members of the group, and perhaps of knowledgeable outsiders. Thus, it can be said that affiliates have the potential to be members of the group which they may seek to activate, but which will ultimately be effective only if their assertions of entitlement are accepted.

4.3.2 The members of the **Tommy Lyons** group identify four deceased men as their relevant ancestors. They are Tommy Lyons, Crab Billy Belyuen, King George (also known as George King) and Frank Secretary. They are regarded as having been brothers, and are acknowledged to have had close connections with, and major ceremonial and other responsibilities for, the land claimed.

4.4 The genealogies of members of the Tommy Lyons group

4.4.1 Tommy Lyons married the late Maudie Bennett, a Larrakia woman. They had one daughter, the late Olga Singh, who was married to Johnny Singh. Central members of the group are the three children of Johnny and Olga Singh: Raelene, Jason and Zoe Singh. Those three are first generation matrifiliates of the patriline of which Tommy Lyons was a member. There is abundant evidence that, while he was the

senior ceremony man for the land claimed, Tommy Lyons expressed the wish that his grandchildren through Olga should follow him in respect of country. There is also abundant evidence that they have elected to do so, rather than to follow their father, a Kiyuk man, whose father's country is some distance from the land claimed. Zoe Singh has two children, Chantelle and Leikeisha. There is abundant evidence that the members of the Singh family wish to accept these second generation matrifiliates as members of the group.

4.4.2 Crab Billy Belyuen had a son called Billy Minyinma, whose mother's language was Limilngan. Billy married Kitty Presley. Their daughter is Kathleen Minyinma, sometimes known as Kathleen Presley or Dolphin Minyinma. She therefore has the unchallengable status of being in the patriline and so is a member of the group. Her son, Desmond Minyinma, is a first generation matrifiliate. There is considerable evidence that he is accepted as a member of the group by the members of the Singh family.

4.4.3 King George was the father of Prince of Wales, who also has the unchallengable status of being a patrilineal descendant of one of the acknowledged ancestors. He is therefore a member of the group. King George died when Prince of Wales was young and he was 'grown up' by Tommy Lyons. He is therefore in a position to derive his membership of the group either from his natural father or from Tommy Lyons as his adoptive father. If it were necessary to inquire whether his membership of the group arose from his status as an adopted child of Tommy Lyons, there would be a necessity to ask whether he is accepted as a member of the group by its other members. There can be no doubt of that acceptance. There is evidence that Tommy Lyons educated Prince of Wales in ritual in relation to the land claimed and that Prince of Wales played a leading role in ceremonies. Indeed, it was while dancing in a ceremony some years ago that he suffered a stroke. His physical capacity is limited to the extent that he can only walk unaided on uneven ground for short distances. Although he appears to understand what others say, he has difficulty communicating by speech. He attended the hearing for significant periods but gave very little evidence. According to genealogies filed on behalf of the **Larrakia** group, Prince of Wales had a daughter, Eunice, who is now deceased, but who had two children, Natalie and Brenda Coyne. They are first generation matrifiliates, but there is no other evidence about them. They cannot therefore be regarded as having become accepted as members of the group by other members of the group. In cross-examination of Dr Deborah Bird Rose, the anthropologist who gave evidence on behalf of the **Tommy Lyons** group, counsel for the **Danggalaba** group suggested that Prince of Wales also had two sons. There is no evidence to support this suggestion.

4.4.4 The last of the four acknowledged ancestors was Frank Secretary. According to the genealogies tendered on behalf of the **Larrakia** group, he had five children, all of whom are now deceased. The last to die was Topsy Secretary, who gave evidence in 1990 and 1995 but died prior to the end of the inquiry. She had one daughter, now also deceased, who is survived by five daughters and thirteen grandchildren, all of whom are identified in para. 4.10.3 as members of the **Larrakia** group. There is no evidence that these third and fourth generation matrifiliates have activated any entitlement to membership of the **Tommy Lyons** group, or have been accepted as members of the group.

4.5 Possible affiliates of the Tommy Lyons group

4.5.1 It is clear that the **Tommy Lyons** group contains only two persons who satisfy the criterion of patrilineal descent, and only four first generation matrifiliates. A significant number of people are, or claim to be, second and subsequent generation matrifiliates of Tommy Lyons, Crab Billy Belyuen, King George and Frank Secretary. In para. 4.4.1, I have referred to Chantelle and Lekeisha, daughters of Zoe Singh. It is possible that they are already recognised as members of the group, although I do not list them as such, because of my doubt whether the principles of descent on which the group is based yet extend to second generation matrifiliates. In para. 4.4.4, I have referred to the descendants of the late Topsy Secretary, who are third and fourth generation matrifiliates.

4.5.2 As well as his marriage to Maudie Bennett, Tommy Lyons married a woman called Margaret Moy, whose language was Gunwinygu. They had one daughter, Rachel (also known as Paula) Thompson. Margaret Moy seems to have remarried and to have settled in Darwin. There is evidence that Rachel/Paula Thompson declined to be involved in this land claim in the early stages of its preparation. She is now deceased, but is survived by five children and seven grandchildren. There is little or no evidence about them, although Raelene Singh did acknowledge Rachel/Paula Thompson's children as her sisters and brothers. As far as the evidence goes, they lack specific authorisation of their membership of the group by Tommy Lyons, an authorisation which Raelene, Jason and Zoe Singh have. The children of Rachel/Paula Thompson are in the same position as Raelene, Jason and Zoe as regards descent. They must be regarded as people who have rights to be members of the group. If those rights were ever activated, the ultimate entitlement to membership of the group would depend upon acceptance by the existing members.

4.5.3 Tommy Lyons, Crab Billy Belyuen, King George and Frank Secretary are described in the evidence as 'brothers'. Evidence of their respective lineages is sketchy and inconsistent. Dr Walsh's genealogy shows them as being of the same generation but not having common parents or grandparents. Crab Billy Belyuen is simply shown as having a Larrakia father, perhaps a classificatory brother of Djindjabat, who is shown as the father of Tommy Lyons. Similarly, King Miranda, the father of King George, is shown as a classificatory brother of Madjalimba, the father of Frank Secretary. Djindjabat's father is shown as Djalamin, who is shown as a classificatory brother of King Tommy, the father of King Miranda. Dr Rose's research has produced different results. Her genealogy shows King Miranda as the father of both King George and Frank Secretary (i.e. King George and Frank Secretary as natural brothers). It shows a man called Imabulg as the father of Tommy Lyons. Imabulg's father is shown as Djalanim, a classificatory brother of King Tommy, the father of King Miranda. Crab Billy Belyuen's natural father is not shown. The evidence justifies no more than a finding that the four acknowledged ancestors were classificatory brothers. That is to say, they saw themselves as brothers, even if they did not have the biological relationship of brothers. This acknowledgement of classificatory relationships has carried forward to the next generation, so that Raelene and Jason Singh gave evidence that they call Kathleen Minyinma 'sister' and Prince of Wales 'uncle' (i.e. mother's brother).

4.5.4 Dr Walsh's genealogy shows Djindjabat as having had a brother called Dick, a Larrakia man and the adoptive father of Josephine Rankin, now deceased. She in turn married Nipper Rankin, a Kiyuk man. They had four children, of whom two remain

alive, Yvonne (sometimes called Evonne) Rankin and Michael Rankin. Yvonne has two children, Charlene and Kathleen. Assuming that Michael and Yvonne can trace their lineage to Dick, as the adoptive father of their mother, they would be regarded as first generation matrifiliates, who could seek to be accepted as members of the **Tommy Lyons** group. The evidence was that Michael Rankin had elected to follow his father in respect of country.

4.5.5 There is one other family claiming to be descended from a sister of Tommy Lyons. The evidence in relation to this alleged relationship makes it particularly difficult to reach a conclusion. A genealogy of the Danggalaba clan, compiled for the purposes of Kenbi 79, shows Tommy Lyons as the son of Djindjabat and shows a woman, named as Ida Ruby, as a daughter of Djindjabat with the same mother as Tommy Lyons. Ida Ruby is shown as the mother of Lindy Roman, also known as Lindy Danks, whose father was Louis Roman, a Swiss pearl diver. The children of Lindy Roman/Danks are listed in detail in para. 4.10.13 as members of the **Larrakia** group. Among them are Annabelle Benton, Audrey Tilmouth, Susan Roman and Billy Danks, siblings who all gave evidence that their grandmother, the mother of Lindy Roman/Danks, bore the name Amy and the Aboriginal name Yirra and was a sister in the biological sense of Tommy Lyons. Annabelle Benton said she knew her grandmother, who died when Annabelle was fourteen years old and that her grandmother had claimed that Tommy Lyons was her brother. Annabelle Benton also supplied the name Bandoo as a name belonging to Amy Yirra. Audrey Tilmouth also knew her grandmother and was told by her grandmother that she had a brother called Tommy Lyons. Audrey was ten years old when her grandmother died. She also gave her great-grandfather's name as Djindjabat.

4.5.6 The genealogy for this family, produced by Dr Michael Walsh in 1995 as part of the evidence on behalf of the **Larrakia** group, shows Djindjabat as having three children, Amy Yirra (the mother of Robert and Lindy Roman), Tommy Lyons (the father of Olga Singh and Rachael/Paula Thompson) and Annie Garaga (who is shown as having had no children). Dr Walsh relied, among other sources, on a note taken by Dr Maria Brandl, one of the original researchers for Kenbi 79, to the effect that Olga Singh called a woman named Yirra her father's sister. The note did not make it clear whether this relationship was viewed as a biological or a classifactory relationship. Dr Walsh also interviewed both Lindy Roman/Danks and Rachel/Paula Thompson, seeking general genealogical information. At the time when he did so, he did not foresee controversy as to the existence of a sister for Tommy Lyons and did not direct his inquiries specifically to the issue. He did receive information that Yirra had married Louis Roman and received no information that she had had another husband. His explanation for the use of the name 'Ida' in the genealogy in Kenbi 79 was that there are linguistic reasons why the name 'Yirra' might be rendered as 'Idda'.

4.5.7 In her report compiled in 1995, Professor Elizabeth Povinelli, the anthropologist who gave evidence on behalf of the **Belyuen** group, included a genealogy showing that Tommy Lyons had a sister called Amy Garaga. Professor Povinelli's informants were Maudie Bennett (who was married to Tommy Lyons and was the mother of Olga Singh) and Agnes Lippo (a senior member of the **Belyuen** group).

4.5.8 Also in 1995, Dr Rose prepared a genealogy of the **Tommy Lyons** group. She did not include a sister for Tommy Lyons in her genealogy, which was based on information obtained from Johnny Singh, Raelene Singh and the late Topsy Secretary.

4.5.9 On the first day of my inquiry in 1995, Topsy Secretary was called to give evidence. She was asked about a sister for Tommy Lyons. She said she only knew of one sister of her father, Frank Secretary, and Tommy Lyons, and that the sister concerned was married to a man called Jack Marlpiri, known as Jack Mulberry. The way in which Topsy Secretary put this evidence suggests that she was speaking in terms of a classificatory sister, because her father and Tommy Lyons were classificatory brothers. She was asked specifically whether Tommy Lyons had a sister called Amy. This resulted in her denial of knowledge of such a person, and a consequent confrontation with some other claimants. Topsy said, 'I don't know nothing about the aunties, so forget about them…'cause I never seen them.' This evidence is somewhat cryptic. The reference to 'aunties' may be significant, because a sister (biological or classificatory) of Tommy Lyons would have been called 'auntie' by Topsy Secretary, on the basis that Tommy Lyons was her classificatory father and a father's sister is an auntie. Topsy later said that she called Lindy Roman/Danks 'sister', a term consistent with a relationship of first cousins. Audrey Tilmouth was permitted to ask questions of Topsy Secretary. Topsy admitted knowing Audrey's grandmother but denied knowing her brother. She said, 'I didn't know about aunty; it's not my aunty. I been call her mum, native way.' Audrey said, 'Amy', and then Topsy said, 'no grandmother.' This last reference is entirely unclear. The possible relevance of Topsy Secretary calling Audrey Tilmouth's grandmother 'mother' is dealt with below. When asked about the name 'Yirra Bandoo', Topsy said that she came from Channel Island. She would not concede that Yirra Bandoo was Tommy Lyons's sister. The evidence of Topsy Secretary must be viewed in the context of the strong view she was expressing that she had left the Cox Peninsula side of what she regarded as her country to Olga Singh's children.

4.5.10 Joan Kenyon gave evidence that she knew Annabelle Benton's grandmother, and that her name was Amy. Joan did not know the name 'Yirra'. She knew that the grandmother was a Larrakia woman. Johnny Singh gave evidence that he did not know whether Tommy Lyons had a sister. He said he had not heard of 'Yirra'. He was married to Tommy Lyons's daughter and might have been expected to know of any sister. His evidence was couched in terms of lack of knowledge, rather than definite denial of the existence of a sister. He hinted about the possibility of a sister who had lived before his time at Belyuen.

4.5.11 The late Betty Moreen Bilawuk gave evidence on the subject on three occasions. On the first occasion, she said that she knew Lindy Roman/Danks's mother, that she didn't know a white man name but knew an Aboriginal name. She gave the name 'Yirra' and said that the woman was a sister for Tommy Lyons. She confirmed that the relationship was that of 'full' sister and that Yirra was younger than Tommy Lyons. When asked about Yirra's mother or father, she said she did not know them, 'but I know old Tommy Lyons and his sister Yirra'. On the second occasion, Betty spoke of a man called Jimmy Bandake, saying that he was married to a woman called Yirra who was a Wadjigiyn woman. She said that the children of Jimmy and Yirra are all dead. Esther Barradjap supplied the names of Jimmy Havelock and Mabelam, or Margaret, as the names of two of the children. On the third occasion, Betty spoke of Jimmy Bandake as having three or four children, of whom Jimmy Havelock was one. She said the mother of these children was called Yirra. She did not know of any brother or sister for Yirra and could not remember any non-Aboriginal name for her. The inconsistency in Betty Moreen Bilawuk's evidence

caused Professor Povinelli to doubt the validity of the information that she had been given by Maudie Bennett and Agnes Lippo as to a sister for Tommy Lyons. It also caused Dr Walsh to speculate whether there might have been two women called Amy Yirra. Dr Rose gave evidence that Raelene and Jason Singh were both unaware of any sister of their father.

4.5.12 Nelson Blake, who lives at Oenpelli and is not a claimant, gave evidence on behalf of the **Danggalaba** group. The transcript of his evidence is somewhat confusing. He made a definite statement that Tommy Lyons had a sister named Yirra. He asserted his own relationship to a woman, but it is not clear whether he was asserting that relationship to Yirra or to her daughter, Lindy Roman/Danks. When asked whether Yirra and Tommy Lyons had the same mother and same father, he said that they had the same father, but then said that he did not know about the real father. He appeared to be uncertain on this issue.

4.5.13 If it were the case that Topsy Secretary regarded Amy Yirra as her classificatory mother, that would be a significant piece of evidence in reaching a conclusion about this controversy. In the Aboriginal tradition in which the relevant people lived, sisters (biological and classificatory) of a person's biological mother were also regarded as that person's classificatory mothers. It is clear that Tommy Lyons was a classificatory father of Topsy Secretary; Tommy Lyons and Topsy's father, Frank Secretary, were classificatory brothers. If Amy Yirra were a classificatory sister of Topsy's mother, she would be unlikely to have been a sister of Tommy Lyons. Marriage between a woman and her classificatory brother was not accepted as proper. It would have been unlikely that Frank Secretary would have married his classificatory sister. In this context, it is interesting to note that the Danggalaba clan genealogy in Kenbi 79 shows a woman called Ababa as the biological sister of Topsy Secretary's mother. This would make Ababa a classificatory mother of Topsy Secretary. The same genealogy shows that Ababa had a promised marriage relationship with Tommy Lyons, a promise apparently never fulfilled. Tommy Lyons was a classificatory father of Topsy Secretary. A marriage between classificatory brother and sister would have been unlikely. If Topsy Secretary called Amy Yirra 'mother' (i.e. mother's sister), it is therefore unlikely that Amy Yirra was Tommy Lyons's sister. Topsy Secretary's use of the word 'grandmother' is mysterious. At the time, she was being asked questions by Audrey Tilmouth about Audrey's grandmother. Audrey had just used the name Amy, to which Topsy Secretary responded 'no grandmother'. It is possible that Topsy was correcting her earlier statement that she had called Amy Yirra mother. If this be true, it does not assist in establishing that Amy Yirra was Tommy Lyons's sister. A woman whom Topsy Secretary called 'grandmother' would be unlikely to be of the same generation as a man whom she called 'father'.

4.5.14 The evidence as to the relationship, if any, between Tommy Lyons and Amy Yirra is in a state of confusion. I have no difficulty accepting that the mother of Lindy Roman/Danks was a woman called Amy Yirra. I am unable to make a finding on the question whether she was a sister of Tommy Lyons. Any finding would be mere guesswork. In a sense, however, any finding is unnecessary. If Amy Yirra and Tommy Lyons had the same father, the children of Lindy Roman/Danks are second generation matrifiliates of that man's patriline. As I have said in para. 4.3.1, the **Tommy Lyons** group is constructed on descent criteria that currently leave it uncertain as to whether affiliates beyond the first generation will be accepted as its members. In para. 13.4, I discuss possible ways in which this small group might

augment its numbers in the future. One possibility is that second, and perhaps subsequent, generation matrifiliates will come to be accepted as having entitlement to membership of the group. The likelihood of this occurring in relation to Zoe Singh's children is high. This does not mean, however, that all others who claim to be second and subsequent generation matrifiliates of one of the four classificatory brothers from whom the members of the group are descended will have an automatic entitlement to claim membership of the group. It may be that membership for those persons will be negotiable and will depend upon factors such as proximity to the land claimed and participation in ceremonial and other activities concerned with that land. For descendants of Amy Yirra to gain membership of the group in this way, those who were already members of the group would have to accept that Amy Yirra's descendants had an entitlement by descent. Acceptance of the fact of descent may not be synonymous with scientific proof of descent. Even if it were to be established scientifically that the descendants of Amy Yirra and the descendants of Tommy Lyons are the biological descendants of the same ancestor (Djindjabat), such proof would make no difference unless the fact of descent were accepted by members of the group. On the other hand, if the fact of descent were accepted by members of the group, the disproof of any biological connection would make no difference. For these reasons, it is unnecessary for me to attempt a conclusive finding on inconclusive evidence. At present, the descendants of Lindy Roman/Danks are not members of the **Tommy Lyons** group.

4.5.15 In para. 4.22, I deal with the suggestion that the descendants of Didja Batcho are descended from a deceased sister of King George. Again, if that were proved to be the case, there is no evidence that any of the descendants of Didja Batcho has been accepted by other members of the **Tommy Lyons** group as members of that group.

4.6 Tommy Lyons group a group As presently constituted, the **Tommy Lyons** group justifies being regarded as a group, for the purposes of the definition of 'traditional Aboriginal owners'. As I have said, Prince of Wales lacks the physical capacity to interact to a significant degree with the other members of the group. Raelene, Jason and Zoe Singh nevertheless see him as a member of the group. They regard him as an uncle, in Aboriginal kinship terms. Similarly, they regard Kathleen Minyinma as a sister. She lives in Darwin. She has spent time staying with the Singh family at Belyuen and has been introduced to sites and dreamings to a significant extent, in recognition of her entitlement to knowledge of the country. The suggestion was put in cross-examination of Dr Rose that Kathleen Minyinma had to be regarded as not being an interactive member of the group. Dr Rose explained that Kathleen herself has a health problem and cares for an ailing mother and a sickly child. She is also afraid of involvement with the group in the context of the controversies generated by this land claim. It is clear that the lack of continuous involvement of Prince of Wales and Kathleen Minyinma has not negated the fact that they are regarded as members of the **Tommy Lyons** group. Kathleen's son, although young, is similarly accepted. Zoe Singh's two daughters, being second generation matrifiliates, are perhaps not yet clearly members of the group. It may be that in due course the accepted descent criteria will be broadened, at least so as to include them.

4.7 Tommy Lyons group a local descent group The members of the **Tommy Lyons** group acquire their membership by descent from the four classificatory brothers referred to in para. 4.3.2, according to the descent criteria accepted by members of the group. They constitute a group, in the sense that they are bound together by a

common land-owning principle. As is apparent from the subsequent chapters of this report, they are localised to the land claimed. They therefore constitute a 'local descent group' for the purposes of the definition of 'traditional Aboriginal owners' in s. 3(1) of the Land Rights Act.

4.8 List of members of the Tommy Lyons group The following is a list of the members of the **Tommy Lyons** group. Desmond Minyinma's name appears indented below Kathleen Minyinma's name, indicating that he is her son.

Prince of Wales
Kathleen Minyinma
    Desmond Minyinma
Raelene Singh
Jason Singh
Zoe Singh

4.9 Descent criterion of the Larrakia group The **Larrakia** group is constructed by means of a single descent criterion, descent from a recognised Larrakia ancestor. Descent through either parent, any grandparent, or even any great-grandparent, is regarded as sufficient, even if there be no other Larrakia ancestry of a particular claimant. The result is a very large number of persons who are said to be members of the group. The genealogies, ultimately compiled by Dr Michael Walsh, based on his own researches and the researches of others, are arranged so as to show the descent of each of the claimants in the **Larrakia** group from a relevant Larrakia ancestor. They are therefore arranged in families. There are some fifty families shown in the genealogies. In the case of many, no member of the family gave evidence and no evidence was given about them. Confirmation of the accuracy of the genealogies by oral evidence was attempted sporadically and haphazardly. What follows is therefore taken from the genealogies, with the assistance of written information in the particulars of the claimants of the **Larrakia** group and such assistance as can be derived from the transcript.

4.10 The genealogies of members of the Larrakia group

4.10.1 In para. 4.4.3, I made reference to Prince of Wales as the son of King George, a Larrakia man. The mother of Prince of Wales was Daisy Karatak, whose father was Netpan and whose mother was Mary Galku. Prince of Wales had one daughter named Eunice, who is now deceased. She is survived by her two daughters, Natalie and Brenda Coyne.

4.10.2 The next family consists of the descendants of a man called Captain Bishop Luyman, whose father was Willy Diyal and whose mother was a Larrakia woman. Captain Bishop had a daughter, Jeanie Bishop, now deceased, and a son, Joseph Bishop. Joseph has three children, Tanya, Titus and Dominic Bishop. Jeanie is survived by her four children, Neville Morton, Linda Campbell, Victor Campbell and Samantha Campbell. Linda has three children, Mark, Sedella and Shane Campbell. Victor has two sons, Shaun and Noel Campbell. Samantha has five children, Fiona, Anne, Charlton, Neville and Monique Campbell.

4.10.3 In para. 4.4.4, I referred to the late Topsy Secretary, who was alive during most of the inquiry and gave evidence. She was one of five children of Frank

Secretary, a Larrakia man and one of the four classificatory brothers from whom members of the **Tommy Lyons** group are descended. Topsy Secretary was the only one of Frank Secretary's five children to have descendants. Topsy's daughter, Kathleen Secretary, is deceased. Five of her six children survive her. Her son, Chris Shields, is deceased. The surviving children are Lynette Shields, Helen Secretary, Anna Secretary, Jacqueline Treeves and Kathleen Tina Secretary. Lynette has three children, David, Martina and Setiona Shields. Chris Shields is survived by three daughters, Helen, Nicole and Gabriella Shields. Helen Secretary has six children, Michele, Raylene, Lynette, Leeanne, Anthony and Christopher Secretary. Jacqueline Treeves has a son, Lawrence Secretary.

4.10.4 In paras 4.4.1 and 4.5.1, I have referred to Tommy Lyons, a Larrakia man, and to his descendants. Tommy Lyons was a Larrakia man. He had one daughter, the late Olga Singh, from his marriage to Maudie Bennett. Olga's children are Raelene, Jason and Zoe Singh. Zoe has two daughters, Chantelle and Leikeisha Singh. By his marriage to Margaret Moy, Tommy Lyons had a daughter called Rachel (also known as Paula) Thompson. She is also deceased but is survived by her five children, Eddie, Stephanie, Una, Sharon and Andrew Thompson. Eddie has four children, Shane, Owen, Mark and Tama Thompson. Stephanie has two children, Vicorina and Jethro Thompson. Una has one daughter, Andrea Thompson.

4.10.5 The next family consists of the descendants of a woman called Eva Humbadj, the daughter of a Larrakia man called Fat Jack. Eva married a man of the Menthayenggal language group, Nym-Berri. They had two children, Cyril Frith and June Frith. Both are now deceased, although Cyril was alive when I began my inquiry. He gave some evidence before Justice Olney and some before me. June Frith is survived by her daughter, Margaret Waters, and her sons, Christopher Frith, David Frith and Rossie Fejo. Margaret has three children, Ronald, Roy and Sarah Waters. Eva Humbadj also had a marriage to a non-Aboriginal man called Ted Lowe. They had a son, Bobby Lowe, now deceased. Bobby is survived by six children, Christine, Teddy, Robert, Judith, Elizabeth and Peter Lowe. Christine has two children, Terry and Raelene Booth. Terry has a son, Rhys Booth. Raelene has a son, Liam Booth. Teddy has two children, Dean and Natalie Lowe. Judith has three children, Andrew, Anthony and Melissa Lowe. Elizabeth has three children, Libby, Joe and Heidi Lowe.

4.10.6 The McLennan family is a large one. Its Larrakia ancestor is a woman called Minnie Lily, who married John McLennan, a non-Aboriginal man. They had two children, William McLennan and Cygnet Ada McLennan, both now deceased. William married Ethel May Cooper, a woman of the Iwaidja language group. They had four children, Reginald McLennan, William McLennan, Frances May and Ada Bailey. The last two are now deceased. Reginald McLennan has eight children, Roslyn Young, Elizabeth Franz, Margaret Farrow, Dedja Laughton, Joel McLennan, Sarah McLennan, Leona McLennan and Denny McLennan. Roslyn Young has three children, Theresa, Dennis and Darryl Young. Theresa has two children, Dwayne and Simona Berto. Elizabeth Franz has two children, David and Jeremy Franz. Margaret Farrow has four children, Bradley, Elspeth, Jodie and Mark Farrow. Dedja Laughton has three children, George, Priscilla and Sharon Laughton. Joel McLennan has three children, Joel, Candis and Alisha McLennan. Sarah McLennan has four children, Derrissa, Stephanie, Katrina and Stephen Rawson. Leona McLennan has one son, Edwin Davey. Denny McLennan has three children, Raymond, Beatrice and Denny McLennan.

4.10.7 William McLennan, son of William McLennan, has a daughter, Annabelle McLennan. Annabelle has four children, Stacey, Damien, Kisher and Ricky-Lee. Frances May is survived by eight children, Frederick May, Patrick May, Margaret Siebert, James May, Lorraine Allison, Pamela Clarke, Lesley May and Charles May. Frederick May has a son, also called Frederick May, who, in turn, has a son called Kane May. Patrick May has a son, also called Patrick May, and a daughter called Katrice May. Margaret Siebert has four children, Lisa, Michelle, Daniel and Angie Siebert. Lisa has a son, Damien Siebert. Michelle has a son, Anthony Siebert. James May has four children, Alan, James, Kelly and William May. Lorraine Allison has two children, Matthew and Kevin Allison. Pamela Clarke has four children, Andrew, Xavier, Raphael and Frances Clarke. Charles May has three children, George, Charles and Aesha May.

4.10.8 The fourth child of William McLennan and Ethol May Cooper, Ada Bailey, is survived by four children, Therese McLennan, William Bailey, Suzann Bailey and Brian Bailey. Therese has five children, Julienne Brown, Jenelle Bailey, Vincent Bailey, Joshua Rumble and Gemma Rumble. Suzann has two children, Travis and Cecilia Borsi.

4.10.9 The late William McLennan also married a woman called Agnes O'Neil. They had six children, of whom five are still living, Deborah Bayless, John McLennan, Joseph (also known as George) McLennan, Llewellyn McLennan and Valerie Parkes. Deborah has six children, Julie and Dean Bayless and four others whose names were not the subject of evidence. John McLennan has seven children, Victory, John, Wayne, Jennifer, Sharon, William and Veronica McLennan. Victory has one son, Nathan Hoult. Joseph (George) McLennan has two children, Fabian and Jeanneen McLennan. Llewellyn McLennan has two children, Shaun and Lindy McLennan. Valerie Parkes has two children, Michelle and Ronald Parkes.

4.10.10 The late Cygnet Ada McLennan first married a man called Jack Farrar. They had three children, of whom two survive, Nancy Farrar and Violet. Nancy has three children, John, Cecil and Nancy Damaso. John Damaso has two children, John and Basil Damaso. Basil has two children, Jamie and Daniel Damaso. Cecil Damaso has three children, Narelle, Cerise and Trezna Damaso. Nancy Damaso has three children, Natalie Copley, Troy D'Ambrosio and Alissa Richards. Natalie Copley has two children, Lauren and Jarrod Copley. Cygnet Ada McLennan's other daughter, Violet, whose surname was not the subject of any evidence, has two children, Faye Kingston and William Ross. Faye has four children, Christine Caruana, Alan Kingston, Aileen Parker and Kevin Kingston. Christine has two children, Jennifer Dupuy and Lisa Caruana. Jennifer has a son, Reece Dupuy. Alan has three children, Jody-Lee, Scott and Peter Kingston. Aileen has three children, Keira-Lee Parker, Jonathon Parker and Jayme-Lee St George. Kevin has two children, Timarah and Haydon Kingston. William Ross has four children, Brett, Paul, Shannon and Aaron Ross.

4.10.11 Cygnet Ada McLennan's second marriage was to Franklin Johns. They had eight children, Hannah Talbot, Lorna Motlop, Franklin Johns, Victor Johns, Sylvanous Johns, William Johns, Harold Johns and Llewellyn Johns. Victor and Sylvanous are deceased. Hannah has two children, Leeona Turner and Peter Talbot. Leeona has two children, Yolonda and Evan Turner. Peter has three children, Bradley, Braedon and Joshua Talbot. Lorna Motlop has six children, Edward, Mark, Maurice, Paul,

Bronwyn and Desley Motlop. Edward has four children, Shannon, Daniel, Lauren and Steven Motlop. Mark has two children, Aaron and Jarrod Motlop. Maurice has three children, Thomas, Marlon and Lucy Motlop. Paul has two children, Savannah and Brenton Motlop. Franklin Johns, son of Cygnet Ada McLennan, has six children, Frank Johns, Beryl Brown, Trevor Johns, Karen Johns, Sandra Johns and Bradley Johns. Frank has two daughters, Helen and Belinda Johns. The late Victor Johns is survived by five children, Vicki May, Steven Johns, Caroline Johns, Kerrie Enkelmann and Kym Cain. Steven has a son, of whose name there is no evidence, and a daughter, Hannah Johns. Caroline has four children, Nyssa, Teagan, Karla and Lena-Rae Bennett. Kerrie has two children, Shannon and James Enkelmann. Sylvanous Johns is survived by a son of the same name and another son, Timothy Johns. Sylvanous, son of Sylvanous, has a daughter, Wyomie Johns and a son whose name is not the subject of any evidence. Timothy Johns has two children, Tessica and Joshua Johns. William Johns has three children, Donna Johns, Cygnet Ryan and Parry Johns. Cygnet Ryan has two children, Chantelle and Stephanie Ryan. Harold Johns has a child called Sonale Johns. Llewellyn Johns has two sons, Richard and Eric Johns.

4.10.12 In paras 4.5.4-4.5.13, I have dealt with the controversial issue as to whether Tommy Lyons had a sister, variously designated as Amy, Yirra, Bandoo, Ida or Ruby. The claim of members of the Roman family is that Amy Yirra or Bandoo was the daughter of Djindjabat, a Larrakia man, and an unnamed Larrakia woman. Amy married Louis Roman, a Swiss pearl diver. They had three children, one of whom was taken by a crocodile when young. The two surviving children were Robert Roman and Lindy Roman/Danks, both now deceased. Robert Roman is survived by his two children, Julie and Richard Roman. Julie has four children, Mark McNamara, Debbie Warren, Susan Warren and Kevin Warren. Mark McNamara has a son, Paul McNamara. Richard Roman has five children, Robert Roman, Brenda Smith, Tracy Roman, Donna Abbott and Jamie Roman. Robert Roman has four children, Alexis, Richard, Attlee and Tennielle. Brenda Smith has two children, Michael and Daniel Smith. Donna Abbott has four children, Cassandra, Gregory, Justin and Bradley Abbott.

4.10.13 Lindy Roman/Danks is survived by six children, Roger Roman, Annabelle Benton, Audrey Tilmouth, Rachel Roman, Susan Roman and Billy Danks. Roger Roman has four children, Robert Roman, Kathy Abbott, Tony Ally and David McGregor. Robert Roman has two children, Robert and Rhiannon Roman. Kathy Abbott has two children, Louis and Caitlin Buzzacott. Tony Ally has a daughter, Stacy Ally. Annabelle Benton has three children, Linda Hill, Michael Williams and Cameron Benton. Linda Hill has three children, Rhianon Hill, Curt Hill and Cindy George. Cindy is adopted. Audrey Tilmouth has three children, Jeanette, Darrel and Troy Tilmouth. Jeanette has two children, Robert and Danielle Le Rossignal. Darrel Tilmouth has two sons, Stephen and Jordan Tilmouth. Rachel Roman has four children, Carol, Kelvin, Peter and Curtis Costello. Carol has a son, Baden Quill. Peter also has a son, Justin Costello. Susan Roman has two children, Karen and Steven McLean. Steven has a daughter, Roxanne McLean. Billy Danks has two daughters, Angela and Amy Danks.

4.10.14 The descendants of Billy Shepherd are a significant family in the **Larrakia** group. Billy Shepherd had children by two women, one named Ruby, who is said to have been Larrakia, and the other named Ababa. The descendants of Ababa are dealt with in paras 4.10.15 and 4.10.16. Billy Shepherd and Ruby had two children, but only

their son, Robert Shepherd, has descendants now living. Robert Shepherd had five children, Nellie Shepherd, Alice Briston, Robert Shepherd, Patsy Shepherd and Pauline Shepherd. Nellie Shepherd is deceased, but is survived by her three children, Leonard, Josephine and Gail Roe. Leonard has two children, Leonard and Roxine Roe. Josephine has three children, Stacey, Zoe and Aleesha Roe. Gail also has three children, Melanie, Rosemary and Michael Roe. I deal with Alice Briston and her children, grandchildren and great-grandchildren separately in para. 4.10.17. Robert Shepherd, son of Robert Shepherd is also deceased. He in turn had a son called Robert Shepherd, who is also deceased, and a daughter called Shirley Shepherd. The third generation Robert Shepherd is survived by his two sons, Daniel and Anthony Shepherd. Shirley Shepherd has five children, John, Joy, Jennifer, Betty and Lloyd Shepherd. Joy has a daughter called Ashley Shepherd. Patsy Shepherd has three children, William (Billy), Ann and Keith Risk. Billy Risk has three children, William (Billy), Luke and Kate Risk. Ann Risk has six children, Patrick Lawson, Rachel Lawson, Keith Sailor, Jesse Sailor, Aaron Sailor and Adrian Sailor. Keith Risk has five children, Robert, Warwick, Jessie, Dylan and Jackson Risk. Pauline Shepherd is deceased and is survived by her two children, Alan and Robert Shepherd. Alan has three children, Bianca, Alan and Tani Shepherd.

4.10.15 Molly Shepherd is the daughter of Billy Shepherd and Ababa, who was also known as Harriet, Ruby or Ariyat. She was a Larrakia woman. Molly has five children, Carol Collins, Irene Musk, Pauline Baban, Donald Baban and Ronald Baban. Carol Collins has two sons, John and Noel Collins. John Collins has two sons, John and Kevin Collins. Noel Collins has a daughter, Natisha Collins. Irene Musk has three daughters, Rani, Shahlena and Charo Musk. Pauline Baban has a daughter, Tara Wilson.

4.10.16 Ababa also had a daughter, Ruby Reid, whose father was Jack Reid. Ruby Reid is now deceased. She is survived by her son, Trevor Reid. Trevor Reid has an adopted son, Neil Reid, and nine other children, Ruby, Leslie, Trevor, Peter, Kenny, Andrew, Gregory, Kevin and Matthew Reid. Neil Reid has three children, Cherie, David and Cody Reid. Ruby Reid has two daughters, Kirsten Reid and Zoe Gibbs. Peter Reid has two children, Samara and Peter Reid. Kenny Reid has three children, Jo Jo, Jasmyn Reid and Ashton Redwin.

4.10.17 As I have said in para. 4.10.14, Alice Briston is a daughter of Robert Shepherd. Alice has ten children, Cecilia (Cissy) Briston, Josie Newman, Caroline Briston, Noeline Briston, Sebastian (Sabo) Briston, Patrick Briston, William Briston, Naomi Briston, Leslie Briston and Steven Briston. Cissy Briston has two children, Tania and Wayne Briston. Tania has three children, Dennis, Jaylene and Rachel Hill. Josie Newman has two children, Natalie and Larry Newman. Caroline Briston has two children, Michael and Millie de Busch. Millie has one son, Joshua Hardy. Noeline Briston has two children, Sonia and Charlie Briston. Sonia has a son, Timothy Elridge. Patrick Briston has four children, Tammara, Raquel, Keren and Patrick Briston. William Briston has two children, Alicia and William Briston. Naomi Briston has a son, Jordan Briston. Leslie Briston has three children, Anastasia, Desiree and Dillon Briston. Steven Briston has four children, Imogen, Liam, Shona and Keelee Briston.

4.10.18 The descendants of a Larrakia woman called Blanchie constitute a significant part of the **Larrakia** group. Blanchie had a number of children, by three different men. Most of those children do not have descendants. Blanchie's relationship with a

Malay man named Batcho produced a daughter by the name of Didja Batcho, who had eight children, Victor Williams, Lindy Batcho, Bert Batcho, Keith Batcho, Yula Batcho (also known as Yula Williams), Lucy Batcho, Mary Batcho and Rona Ally. Of these children, Victor Williams, Lindy Batcho, Bert Batcho and Keith Batcho are deceased. All of the eight except Keith Batcho have descendants, as detailed in the following paragraphs.

4.10.19 Victor Williams, whose father was a non-Aboriginal man called Louis Williams, had eight children, of whom six are living. They are Maureen Ogden, Judith Williams, Keith Williams, Gail Williams, Sharon Williams and Lorraine Williams. Maureen Ogden has four children, Geoffrey, Roxanne, Leeanne and Rhoda Ogden. Roxanne has a son, Nathan Ogden. Rhoda also has a son, Wade Ogden. Judith Williams has two children, Victor and Delsey Ah Wang. Victor has a son, Kelvin Ah Wang. Keith Williams has five children, Natasha, Braydon, Sekur, Seth and Kailah Williams. Sharon Williams has three children, Cameron, Fabian and Hayden Jude. Lorraine Williams has a daughter, Karina Williams.

4.10.20 Lindy Batcho is survived by five children, Ronald, Kevin (also known as Tibby), Phillip, Diane (also known as Didi) and Denise Quall. Ronald has six children, Raymond, Michael, Sarah, Lindy, Simon and Jenna Quall. Kevin (Tibby) has three children, William, Sherana and Rebecca Quall. Phillip has two children, Natalie and Keith Quall. Diane (Didi) has five children, Kevin, Phillip, Natasha, Raymond and Kristy Quall. Denise has five children, Charmaine Quall, Alex Quall, Colby Rainger, Henry Rainger and Tesna Quall.

4.10.21 Bert Batcho is survived by his daughter, Eulalie Batcho. She has two children, Jason and Sophie Rogers. Jason has two sons and Sophie one son, but the evidence does not reveal the names of any of them.

4.10.22 Yula Batcho (also known as Yula Williams) is a surviving daughter of Didja Batcho and a Tiwi man called Curly Purantatameri. Yula has nine children, Lilian Williams, Victor Williams, Rosemary Williams, Phylliss Williams, Edward Williams, Tanya Panuel, Kathy Williams, John Williams and Greg Williams. Lilian Williams has four children, Damien, Mary, Yula and Rona Williams. Damien has a son, also called Damien Williams. Mary has a son called Brendon. Victor Williams has two children, Norman and Elaine Williams. Phylliss Williams has two daughters, Genaya and Tamika Williams. Tanya Panuel has two daughters, Justine and Samara Williams. Kathy Williams has three sons, Buckley, James and Nelson Williams. John Williams has a son, Remo Williams.

4.10.23 Lucy Batcho (also known as Lucy May), another daughter of Didja Batcho and Curly Purantatameri, is married to Alfie May. They have eight children, Barbara Tapsell, Maureen Wanganeen, Jeffrey May, Alfred (also known as Alfie) May, Leonard (also known as Lennie) May, Daniel May, Russell May and Jonathan May. Barbara Tapsell has a daughter, Miranda Tapsell. Maureen Wanganeen has two children, Denay and Caleb Wanganeen. Jeffrey May has three children, Byron, Simon and Lily May. Daniel May has two children, Joseph and Kadeen May.

4.10.24 Mary Batcho (also known as Mary Raymond) is the daughter of Didja Batcho and a non-Aboriginal man, Ernie Tapper. Mary has eight children, Jeanette Raymond, John Raymond, Lawrence Raymond, Dorrianne Raymond, Michael Raymond, Phillip

Raymond, Christine Lewis and Leon Raymond. Jeanette has two children, Jenon and Thomas Raymond. John has three children, Jasmine, Daly and Sharea Raymond. Lawrence has two children, Wayne and Danielle Raymond. Dorrianne has a son, Stephen Dawson. Michael has two children, Kendall and Jacob Raymond. Phillip has a son, Aaron Raymond. Christine has a son, Kieran Lewis.

4.10.25 The last of the descendants of Didja Batcho is Rona Ally, whose father was Jaffa Ah Matt. Rona has a son, Tony Ally and a grand-daughter, Stacy Ally, to whom I have already referred in para. 4.10.13, where they are mentioned as descendants of Roger Roman. Rona's other children are Peter, Rose, Yolande and Yasmin Ally. Peter has a daughter, Jaala Ally. Rose has five children, Dale, Paul, Darrell, Jaffar and Rosina Ally. Yolande has two children, Jade and Trevor Ally. Yasmin has two sons, Anthony and Kyle Ally.

4.10.26 The late Rupert Mills was the son of a Larrakia woman named Kowija or Kadjowi and a man called James Mills. Rupert is survived by his daughter, Barbara Raymond, and his son, David Mills. Barbara has six children, Desmond (Couchie), Victor, Patricia, Daniel, Joseph and Kathleen Raymond. Desmond has three children, Marrissa Balch, Nicole Copley and Reuben Bruin. Victor has two sons, Michael and Peter Raymond. Patricia has two children, Natasha and Gilbert Raymond. Daniel has four children, Dominica, Jenon, Dennis and Rhianon Raymond. Joseph has four children, Jason, Christopher, Bianca and Denise Raymond. Kathleen has two sons, Damien and Geoffrey Hewitt.

4.10.27 David Mills, son of the late Rupert Mills, has eight children, June Mills, Allyson Mills, Barbara Mills, David Mills, Weslan Mills, Robert (Robbie) Mills, Violet Mills and Desmond Mills. June has six children, Kay Villaflor, Rudi Villaflor, Michael Villaflor, Rico Adjrun, Arbei Adjrun and Sam Adjrun. Allyson has three children, Ian, Michael and Katie Redpath. Barbara has three children, Karly, Nicole and Zoe Bancroft. David Mills, son of David Mills, has two sons, Marley and Damien Mills. Weslan Mills has two children, Keith and Beverly Mills. Robert Mills has three children, Billie Moncklin, Laniyuk Mills and Louie Mills. Violet has three children, Rikki, Charlie and Adrian Mills-McAdam. Desmond has a son, Braedon Donellan.

4.10.28 The Larrakia woman called Blanchie and a man of the Wulna language group, known as Piniti or Finity or Benadi had a daughter, Topsy Garamanak Drysdale. Topsy has a number of descendants who are members of the **Larrakia** group. She and a man called Frank, said to be a Larrakia man, had a daughter called May. May and Nipper Rankin had a son called Richard Rankin, who has a daughter, Sheila Rankin. Only these last two remain living.

4.10.29 Topsy Garamanak and a Chinese man called Frank Moo had a daughter, Nancy Moo, now deceased. Nancy married a man called Albert Browne. She is survived by twelve children, Robert, John, Edward, William, Patricia, Dorothy, Rodney, Peter, Phillip, Joseph, Albert and Christine Browne. Robert has six children, David Jackson, Donna Jackson, Robert Jenkins, Amy Browne, Robert Browne and Bryan Browne. John has four children, Vanessa, Natalie, Emily and Sarah Browne. William has three children, Emily, Leanne, and Kelly Browne. Patricia has a daughter, Amanda Browne. Dorothy also has a daughter, Theresa Browne. Rodney has a son, Nigel Browne. Peter has six children, Peter, Sheldon, Jay, Hayden, Lisa and Jared Browne. Phillip has four children, Jackson, Carmel, Maximilian and Crystal Browne.

Joseph has a daughter, Jade Browne. Albert has five children, Kirsten Reid, Albert Coonan, Saven Browne, James Browne and Nelson Browne.

4.10.30 Topsy Garamanak and a Chinese man called William Lee had a daughter, Lorna Lee, who became Lorna Talbot when she married Emmanuel Talbot, a Wadjigiyn man. Lorna has nine children, Phillip, Edward, Daphne, Trevor, James, Robert, Daniel, Pamela and Jennifer Talbot. Daphne has four children, Phillip Talbot, Brian Allia, Irene Allia and Leeanne Allia. Trevor has three children, Yvette, Nicole and Alana Talbot. James has six children, James, Justin, Dale, Dallas, Riana and Lorna Talbot. Daniel has two daughters, Rebecca and Carly Talbot. Pamela has four children, Peter, Daphne, Kyle and Robert Talbot. Jennifer has three children, Natasha Grant, Matthew Grant and Manuel Talbot.

4.10.31 Another daughter of Blanchie and Piniti was Hilda Gunmunga. She is deceased and is survived by her daughter, Joan Kenyon.

4.10.32 The Fejo family also constitutes a significant part of the **Larrakia** group. Their lineage is not made clear by the genealogies. It is said to go back to a Larrakia man known as King Charles and a Larrakia woman known as Bessie. King Charles is shown on the genealogies as having been an adoptive parent of Blanchie. Blanchie in turn may have adopted the three (now deceased) members of the Fejo family, Juma, Roger and Samuel (Smiler) Fejo. Their natural mother was said to be a Larrakia woman and their father a Filipino pearl diver. Juma Fejo had seven children, four of whom are still alive and each of whom is the senior member of a subgroup of the Fejo family.

4.10.33 Joan Fejo is a surviving daughter of the late Juma Fejo. She has six children, Kathleen Smith, Mary Ayers, Alfred Kurnoth, Maurice Kurnoth, Phyllis Kurnoth and Malcolm Kurnoth. Kathleen Smith has two children, Joanne and David Smith. Mary Ayers has four children, Michael Smith, Ashley Smith, Jason Cockshell and Graham Quintrell. Michael Smith has a son, Shaun Martin. Alfred Kurnoth has four children, Stacy, Wayne, Selina and Rani Kurnoth. Maurice Kurnoth has four children, Cory, Russell, Travis and Poncie Kurnoth. Phyllis Kurnoth has three children, Andrea, Duane and Pam Mitchell.

4.10.34 Jim Fejo is a son of the late Juma Fejo. Jim has seven children, Rosemary Parfitt, Christine King, Rodney Fejo, Aleeta Dawes, Eric Fejo, Mirella Fejo and Richard Fejo. Rosemary Parfitt has three children, James, David and Daniel Parfitt. Christine King has three children, Jessica, Kathleen and Jad King. Rodney Fejo has three children, Rodney, Erin and Lauren Fejo. Aleeta Dawes has three children, Nathan, Sarah and Juma Dawes. Eric Fejo has four children, Cody, Hamish, Ryan and Kia Fejo.

4.10.35 Edward Fejo was a son of the late Juma Fejo. Edward is deceased, but is survived by ten children, Edwina, Jocelyn, Kathleen, Jimma, Lorelle, Edward, Joanne, Margaret, Dorothea and Phillip Fejo. Edwina has three children, Leanne, Juma and Linda Fejo. Juma has two daughters, Jamie-Lee and Kristen Fejo. Jocelyn has four children, William, Raylene, Stacey and Kerry Fejo. Kathleen has six children, Selina, Joseph, Stewart, Jimma, Klaus and Russell Fejo. Jimma has five children, Kathleen, Ronald, Chantelle, Adrienne and Clint Fejo. Lorelle has four children, Edward, John, Lisha and Dorothea Fejo. Joanne has three children, Tara, Samuel and Phillip Bush.

Margaret has six children, Glen, Jocelyn, Nicola, Ross, Louise and Justine Fejo. Dorothea, daughter of Edward Fejo, has three children, Adam, Kayla and Zara Fejo. Phillip has three children, Danielle, Phillip and Curtis Fejo.

4.10.36 William Fejo was a son of the late Juma Fejo. William is now deceased. His adopted son, Rossie Fejo has been mentioned in para. 4.10.5 as the biological son of the late June Frith. William is survived by nine other children, William, Morris, Judy, Keith, Steven, Veronica, Francis, Natasha and Miriam Fejo. William has three children, Aran, Jardine and Keelan Fejo. Morris has two daughters, Tammy and Kara Fejo. Judy has four children, Sara, John, Sonny and Magnus Fejo. Keith has two daughters, Nicky and Judith Fejo. Steven has a son, Andrew Fejo. Veronica has three children, Wayne and Melanie Fejo and a daughter whose name is not revealed by the evidence.

4.10.37 Walter (Wally) Fejo is a son of the late Juma Fejo. Wally has three children, Daniel, Andrew and Lynette Fejo. Daniel has a son, Barry Fejo. Andrew has two daughters, Shennell and Kitty Fejo. Lynette has three children, Kevin, Kiley and Gabrielle King.

4.10.38 Samuel (Sam) Fejo, a deceased son of the late Juma Fejo, appears to have no descendants. The remaining child of the late Juma Fejo is Francis (Basho) Fejo. He has five children, Arthur, Gary, Louise, Max and Clara Fejo. Max has a son, Samuel Fejo.

4.10.39 Juma Fejo's brother Roger Fejo is deceased and appears to have had no children. The third brother, Samuel Fejo, known as Smiler Fejo, is also deceased. He adopted three children, Peter, Sally and Johnny Fejo. Peter is deceased. The genealogy tendered in evidence on behalf of the **Larrakia** group suggests that he is survived by three sons, but there is no evidence as to their names. I include them in the list of members of the group, as unnamed sons of Peter Fejo. Johnny Fejo is also deceased. He is survived by two children, Gregory Doekmoel and Sammy Berredemi. Smiler Fejo was married to a woman called Yama or Maudie Robinson, daughter of Madjalaba, a Larrakia man. She had four children from a man called Paddy Cahill: Nancy Cahill, Doreen, Clancy Cahill and Eileen Bell. Doreen is deceased, but is survived by two children, Helen and David Barwin. Clancy has a daughter, Betsy Cahill. Eileen has three children, Paddy, Jacqueline and Rocky Bell.

4.10.40 Maudie Robinson and a non-Aboriginal man called Harvey had a daughter, Betty Harvey, now deceased. According to the genealogy tendered in evidence on behalf of the **Larrakia** group, she had a number of children, not all of whom are claimants. The genealogy does not indicate why some are and some are not claimants. The names included below are the names only of those designated as claimants. Betty Harvey's claimant children are Karen Wauchope, Rhonda Wauchope, Dennis McCarthy, Mark Wauchope, Eric Conroy, Thomas Conroy, Elizabeth Conroy, Richard Conroy, John Conroy and Ian Conroy. Karen Wauchope has four children, Francesca, Anna, Caroline and John Wauchope. Rhonda Wauchope has a son, Darren Wauchope, and a daughter whose name is not revealed by the evidence. Thomas Conroy has a son, also called Thomas Conroy. Elizabeth Conroy has three children, James, Hayley and John Conroy. Richard Conroy has two sons, Luke and Daniel Conroy. John Conroy has a daughter, Lisa Conroy.

4.10.41 Perhaps the largest family in the **Larrakia** group is the Cubillo family. The members of this family are descended from Annie Duwun, a Larrakia woman, who married a Scotsman named George McKeddie. Their daughter, Lily Magdalina married Antonio Cubillo, a Filipino man. They had ten children, only one of whom is now living.

4.10.42 Christina Cubillo, now deceased, was a daughter of Lily Magdalina. Christina married Oliver Odegaard. Their five children are Leo Odegaard, Florence Devine, Joe Odegaard, Keith Slape and Elsa Heron. Leo Odegaard has six children, Christina, Evonne, Lynette, Donna, David and Gladys Odegaard. Christina has a son, Michael Lawlor. Evonne has four children, Yvette Richards, Charmaine Richards, Chantelle Amos, and Carmen Amos. Lynette has a daughter, Jodie Teague. Donna has two children, Donna and Stuart Robb. Florence Devine has eight children, Irene Devine, Richard Barnes, Colleen Saunders, Bernie Devine, Chris Devine, Judy Kay, John Devine and Anthony Devine. Irene Devine has four children, Doris Chambers, Ted Chambers, Colleen Chambers and Marcus Brown. Doris Chambers has five children, Julie, Sally, Allyse, Merryl and Sarah Chambers. Ted Chambers has two children, Matthew and Jodi Chambers. Richard Barnes has two children, Sharon and Kenneth Barnes. Sharon has a daughter, Rebecca McAlear. Colleen Saunders has six children, Jennifer Dott, Christine Saunders, Dean Saunders, Michelle Saunders, Brian Saunders and Brett Saunders. Jennifer Dott has four children, James, Rockwell, Khe-Anne and Steelle Dott. Christine Saunders has a son, Darren Kenny. Bernie Devine has five children, Janelle, Wayne, Brenton, Diahnne and Liam Devine. Chris Devine has two daughters, Kylie and Jodie Devine. Jodie has a son whose name was not revealed by the evidence. Judy Kay has three children, Lisa, Ricky and Emma Kay. John Devine has a daughter, Stacey Devine. Anthony Devine has a daughter, Kia Devine. Joe Odegaard has three sons, John, Paul and Peter Odegaard. John has a son, Tynan Odegaard. Paul has two children, Jason and Crystal Odegaard. Peter has two sons, Tyson and Ryan Odegaard. Keith Slape has six children, Dianne Davis, Bert Slape, Kathleen Slape, Jennifer Slape, Terry Slape and Kerri Slape. Dianne Davis has two children, Paula and Donna Davis. Bert Slape has two daughters, one whose name is not revealed by the evidence and one named Dianne Slape. Kathleen Slape has a daughter, Christina Renoldi. Elsa Heron has nine children, Lesley Mitchell, Marie Warde, Patricia Hodge, William Mitchell, Ross Heron, Beverley Huddleston, Joanne Heron, Geraldine Heron and Karen Heron. Lesley Mitchell has four children, Tania, Samantha, William and Tracey Mitchell. Tania has three children, Elsie, Sascha and Zachary Herd. William Mitchell has a son, Dylan Mitchell. Marie Ward has three children, Rebecca, Denise, and Michael Ward. Patricia Hodge has two sons, Wayne and Darren Hodge. Ross Heron has two sons, Aaron and Brendan Heron. Beverley Huddleston has three daughters, Shaan, Joanna and Nicole Huddleston. Joanne Heron has two sons, Gregory and Taylor Heron. Geraldine Heron has a daughter, Marnie Hopkin.

4.10.43 According to the genealogies tendered on behalf of the **Larrakia** group, Alberta (known as Bertha) Cubillo, the second child of Lily Magdalina, had no natural children. She appears in the genealogy as having adopted a daughter of her brother Philip Cubillo, named Bernadette Cubillo, who is shown as still living.

4.10.44 The third child of Lily Magdalina was Ponciano (known as Poncie) Cubillo. He is survived by six children, Pedro, Raymunda, Shirley, Maureen, Dianne and Timothy Cubillo. The available evidence lacks detail as to the children of these six.

Pedro is said to have one child, but the evidence does not reveal the name or the sex of the child. Raymunda has a son, Eugene Levette. Maureen is said to have three or four children. Dianne is said to have two or three children. Timothy has a daughter, Charisma Cubillo. Juan Cubillo, a son of Lily Magdalina, had children by two women who were sisters. His children by Jean Lee Flynn are Eugene Flynn and Dorothy Fox. Eugene has four children, Bea, Jacqueline, Angela and Eugene Flynn. Dorothy has three children, Barbara, Robert and Terry Fox. Juan's other wife was Louisa Lee. They had nine children, of whom three are now deceased. The oldest child of Juan and Louisa was Odon Cubillo, now deceased. His older daughter, Louisa is now deceased also. She is survived by four children, John, Joanne, Linda and Odon Edgar. John Edgar has a daughter, Louisa Abala. Linda Edgar has two sons, Richard and Coby Edgar. Odon Cubillo's other daughter, Jennifer Stokes, has four children, Jaylene Cooper, Anne-Marie Cooper, Matthew Stokes and Amy Stokes. Juan and Louisa's second child, Noeline Wright, is deceased and left no children. Their third child, Mary Lee, has ten children, Suzanne O'Neill, Gary Lee, Roque Lee, Anthony Lee, Danella Lee, Christopher Lee, Ian Lee, Jason Lee, Tina Lee and Nadine Lee. Suzanne O'Neill has three children, Dean, Ryan and Emma O'Neill. Dean has a son, Danny O'Neill. Roque Lee has a son, Shannon Lee. Anthony Lee has two children, Natasha and Trent Lee. Danella Lee has four children, Mei-Kim, Shaun, Rhianon and Tanya Lee. Christopher Lee has three children, Joshua Campton, Jenna May and Morgan. Tina Lee has two children, Mitchell and Tiana Baum. Nadine Lee has two children, Cyan and Mikela Lee. Francis Cubillo is a son of Juan and Louisa. He has four children, Odon, Michael, Madeleine and Joseph Cubillo. Madeleine has two sons, Ryan and Sean Cubillo. Joseph has a daughter, Samantha Cubillo. John Lawrence (Lawrie) Cubillo is also a son of Juan and Louisa. He has six children, Shirley Abdat, Terri Cubillo, Matthew Cubillo, Russell Cubillo, Pilar Cubillo and Luke Cubillo. Shirley Abdat has two children, Jason and Lativia Abdat. Matthew has two sons, Matthew and Nason Cubillo. Russell has two children, Mark and Pilar Cubillo. Stephen Cubillo is another son of Juan and Louisa. He has two children, Brenda and Roque Cubillo. Brenda has a daughter, Shani Williams. Roque Cubillo has two daughters, Kaleisha and Jenna Cubillo. Michael Cubillo is another son of Juan and Louisa. He has six children, Brian (also known as Kevin), Robert, Natalie, Karen, Jason and Andrew Cubillo. Karen has a daughter Kataisha Cubillo. The late Charles Cubillo was a son of Juan and Louisa. He is survived by a daughter, Lisa Cubillo. The last child of Juan and Louisa is Cathy Wilson. She has four children, Cherisse, Darren, Sheyne and Dani Wilson. Cherisse has two children, Caitlan and Mitchell.

4.10.45 Lorenzo (Lawrence) Cubillo was a son of Antonio Cubillo and Lily Magdalina. He had one son, Joseph Aloysius Cubillo. Joseph is deceased and is survived by his six children, Antonio, Phillip, Alberto, Fabian, Lolita and Darren Cubillo. Antonio has a daughter, Patricia Cubillo. Phillip has five children, Joe, Russell, Kalisa and Laura Cubillo and a daughter whose name was not revealed by the evidence. Alberto has a daughter, Demi Cubillo. Darren has two children, Lolita and Darren Cubillo.

4.10.46 Martina Hazelbane was a daughter of Antonio Cubillo and Lily Magdalina. Martina is survived by three children, two of whom have children and one of whom has grandchildren and a great-grandchild. The evidence of Dr Walsh, the principal anthropologist who gave evidence on behalf of the **Larrakia** group, was that the members of this family did not wish themselves to be advanced as claimants. I

therefore do not provide details of the descendants of Martina and they are not included in the list of members of the **Larrakia** group in para. 4.12.

4.10.47 Eduardo Cubillo was a son of Antonio Cubillo and Lily Magdalina. He had seven children, John Cubillo, Barbara Jarman, Benny Cubillo, Gregory Cubillo, Victor Cubillo, Cherry Cubillo and Penny Cubillo. John Cubillo has two children, Juan and Michelle Cubillo. Michelle has a daughter, Devan Flood. Barbara Jarman is deceased. She is survived by her two children, Russell Jarman and Francesca Bremner. Russell has a daughter, Yasmin Jarman. Francesca has a daughter, Renee Bremner. Benny Cubillo has five children, Ben, Veronica, Bernadette, Marguerite and Pacita Cubillo. Ben has five children, Sasha, Sophie, Susan, Benjamin and Candice Cubillo. Sasha has a son, Thomas Cubillo. Veronica has two daughters, Nicole and Natalie Butler. Marguerite has four children, Lisa, Christopher, Inez and Chrissie Cubillo. Pacita has a daughter whose name is not revealed by the evidence. Gregory Cubillo has seven children, Lola, Poncie, Edward, Gayle, Mildred, Rosetta and Ricardo Cubillo. Lola has five children, Fernisa, Tanya, Damien, Zachary and Tobias Miller. Poncie has a son, Juan Cubillo. Edward has five children, Angelina, Teniele, Jacinta, Jerome and Joel Cubillo. Gayle has two daughters, Jessica and Robin Cubillo. Mildred has three sons, Shannon, Ray and Matthew Cubillo. Rosetta has a daughter, Rhianna Smith. Ricardo has four children, Rikeezla, Ricardo, Whitlam and Greg Cubillo. Victor Cubillo has a daughter, Carmen Cubillo. Cherry Cubillo has two sons, Eddie Cubillo and Dean Dempsey. Eddie has two children, Joshua and Shanelle Cubillo. Penny Cubillo has five children, Sandra Hartley, Raymond Hartley, Daniel Hill, Adon Hill and Stephanie Hill.

4.10.48 Delphin Cubillo was a son of Antonio Cubillo and Lily Magdalina. He is survived by his two children, Murray and Inez Cubillo. Murray has eight children, Maria, Inez, Francesca, Petra, Nicola, Monique, Guy and Kim Cubillo. Maria has five children, Kira, Tani, Narah, Levi and a son whose name is not revealed by the evidence. Inez, daughter of Murray Cubillo, has four children, Rakiah, Taituhia, Temika and Teina Cubillo. Francesca has two children, Jada and James Cubillo. Petra has two children, Kimberley and Heather Cubillo. Nicola has a daughter, Caeli. Inez Cubillo, sister of Murray Cubillo, has two sons, Gary Lang and Murray Bradbury.

4.10.49 The last son of Antonio Cubillo and Lily Magdalina was Phillip Cubillo. He is survived by three daughters, Alberta (Betty), Lillian and Maxine Cubillo. Lillian had nine children, Cathy Peckham, Gregory Peckham, Kahutaua Cubillo, Ronald Watkins, Phillip Watkins, Rodney Watkins, Janelle Watkins, Kerri Watkins and Andrea Watkins. Cathy Peckham has two sons, Kallum and Zachary Peckham. Gregory Peckham is deceased. He is survived by his two sons, Jay and Cory Peckham. Ronald Watkins has three daughters, Alya, Eli and Darby Watkins. Phillip Watkins has two sons, Nathan and Husan Watkins. Rodney Watkins has a son, Thomas Watkins. Janelle Watkins has three children, Joshua, Jackeline and Jazz Kaihe. Kerri Watkins has a daughter, Alana Watkins. Maxine Cubillo has seven children, Wayne Barbour, Christine Barban, Carol Berto, Tanya Barbour, Natasha Craiggie, Kelly Craiggie and Peter Craiggie. Christine Barban has a son, Elijah Barban. Carol Berto has three children, Wynita, Daniel and Aaron Berto. Tanya Barbour has two daughters, Kylie and Megan Barbour.

4.10.50 The one surviving child of Antonio Cubillo and Lily Magdalina is Anna Collins. She has one daughter, Patsy Hayes. Patsy has two children, Simone and

Mark Hayes. Simone has a daughter, Ashley Cavenagh. Mark has a son, Mitchell Hayes.

4.10.51 The remaining members of the group are few. In para. 4.4.2, I have referred to the descent of Kathleen Minyinma and her son Desmond Minyinma from Crab Billy Belyuen, a Larrakia man. Peter Mandeyn is said to have had a Larrakia grandmother, the mother of his father, Jimmy Nalaga Galatimanau, said to have been known as Jimmy Larrakia. In para. 4.5.4, I referred to the late Josephine Rankin as a person of Larrakia descent, and to her children, Yvonne and Michael Rankin. Yvonne has two daughters, Charlene and Kathleen Rankin. Josephine Rankin also had a daughter called Gwen Rankin, who is deceased but is survived by her two children, Wayne and Karen Rankin.

4.11 Larrakia group a local descent group The **Larrakia** group is plainly a descent group, for the purposes of the definition of 'traditional Aboriginal owners' in s. 3(1) of the Land Rights Act. In para. 4.9, I have referred to the single principle of descent on which the group is constructed, namely descent from a recognised Larrakia ancestor. Although it consists of a large number of people, so that interaction does not occur between all of its members, the **Larrakia** group appears to satisfy the requirement that it be a 'group' for the purposes of the definition. The tie which binds its members together is the Larrakia identity, a linguistic affiliation which is preserved, despite the fact that there appear to be no fluent speakers of the Larrakia language. As I have said in para. 1.4.4, the Federal Court of Australia in *Northern Land Council v. Olney* (1992) 34 FCR 470, at p. 485, expressed the view that 'it would be no disqualification that the claimants are members of a linguistic group'. There is no difficulty about the concept that the essential binding factor giving rise to a group can be a linguistic tie. Nor is there any difficulty about a language group being a descent group, provided that membership of the group is determined according to a principle or principles of descent. It does seem to me that there is difficulty in describing such a group as a 'local' descent group. The evidence contained a number of assertions as to the extent of Larrakia land. The consensus seemed to be that land associated with the Larrakia language group stretched from the mouth of the Adelaide River to the mouth of the Finniss River and inland as far as the Manton Dam. I find it difficult to characterise a group that is said to be attached to such a broad area of land as 'local'. Nevertheless, the court in *Northern Land Council v. Olney* was discussing the definition of 'traditional Aboriginal owners' in the Land Rights Act and, in particular, the 'local descent group' element of it. I must assume that the court would not have regarded a linguistic group as fulfilling the requirements of that definition unless it was of the view that a language group is sufficiently localised by reference to the territory with which it is associated. I am therefore constrained to hold that the **Larrakia** group is a local descent group, within the meaning of the definition of 'traditional Aboriginal owners' in the Land Rights Act.

4.12 List of members of the Larrakia group The following is a list of the members of the **Larrakia** group. The name of a member of the group who has a living parent who is also a member of the group is shown indented immediately below the name of that parent, except where both parents are living and are members of the group, in which case the member's name is shown only once.

Prince of Wales
Natalie Coyne

Brenda Coyne

Joseph Bishop
- Tanya Bishop
- Titus Bishop
- Dominic Bishop

Neville Morton
Linda Campbell
- Mark Campbell
- Sedella Campbell
- Shane Campbell

Victor Campbell
- Shaun Campbell
- Noel Campbell

Samantha Campbell
- Fiona Campbell
- Anne Campbell
- Charlton Campbell
- Neville Campbell
- Monique Campbell

Lynette Shields
- David Shields
- Martina Shields
- Setiona Shields

Helen Shields
Nicole Shields
Gabriella Shields
Helen Secretary
- Michele Secretary
- Raylene Secretary
- Lynette Secretary
- Leeanne Secretary
- Anthony Secretary
- Christopher Secretary

Anna Secretary
Jacqueline Treeves
- Lawrence Secretary

Kathleen Tina Secretary

Raelene Singh
Jason Singh
Zoe Singh
- Chantelle Singh
- Leikeisha Singh

Eddie Thompson
- Shane Thompson
- Owen Thompson
- Mark Thompson
- Tama Thompson

Stephanie Thompson

Vicorina Thompson
Jethro Thompson
Una Thompson
Andrea Thompson
Sharon Thompson
Andrew Thompson

Margaret Waters
Ronald Waters
Roy Waters
Sarah Waters
Christopher Frith
David Frith
Rossie Fejo

Christine Lowe
Terry Booth
Rhys Booth
Raelene Booth
Liam Booth
Teddy Lowe
Dean Lowe
Natalie Lowe
Robert Lowe
Judith Lowe
Andrew Lowe
Anthony Lowe
Melissa Lowe
Elizabeth Lowe
Libby Lowe
Joe Lowe
Heidi Lowe
Peter Lowe

Reginald McLennan
Roslyn Young
Theresa Young
Dwayne Berto
Simona Berto
Dennis Young
Darryl Young
Elizabeth Franz
David Franz
Jeremy Franz
Margaret Farrow
Bradley Farrow
Elspeth Farrow
Jodie Farrow
Mark Farrow
Dedja Laughton
George Laughton

- Priscilla Laughton
- Sharon Laughton
- Joel McLennan
  - Joel McLennan
  - Candis McLennan
  - Alisha McLennan
- Sarah McLennan
  - Derrissa Rawson
  - Stephanie Rawson
  - Katrina Rawson
  - Stephen Rawson
- Leona McLennan
  - Edwin Davey
- Denny McLennan
  - Raymond McLennan
  - Beatrice McLennan
  - Denny McLennan

William McLennan
- Annabelle McLennan
  - Stacey
  - Damien
  - Kisher
  - Ricky-Lee

Frederick May
- Frederick May
  - Kane May

Patrick May
- Patrick May
- Katrice May

Margaret Siebert
- Lisa Siebert
  - Damien Siebert
- Michelle Siebert
  - Anthony Siebert
- Daniel Siebert
- Angie Siebert

James May
- Alan May
- James May
- Kelly May
- William May

Lorraine Allison
- Matthew Allison
- Kevin Allison

Pamela Clarke
- Andrew Clarke
- Xavier Clarke
- Raphael Clarke
- Frances Clarke

Lesley May

Charles May

- George May
- Charles May
- Aesha May

Therese McLennan
- Julienne Brown
- Jenelle Bailey
- Vincent Bailey
- Joshua Rumble
- Gemma Rumble

William Bailey

Suzann Bailey
- Travis Borsi
- Cecilia Borsi

Brian Bailey

Deborah Bayless
- Julie Bayless
- Dean Bayless
- Unnamed child
- Unnamed child
- Unnamed child
- Unnamed child

John McLennan
- Victory McLennan
  - Nathan Hoult
- John McLennan
- Wayne McLennan
- Jennifer McLennan
- Sharon McLennan
- William McLennan
- Veronica McLennan

Joseph McLennan
- Fabian McLennan
- Jeanneen McLennan

Llewellyn McLennan
- Shaun McLennan
- Lindy McLennan

Valerie Parkes
- Michelle Parkes
- Ronald Parkes

Nancy Farrar
- John Damaso
  - John Damaso
  - Basil Damaso
    - Jamie Damaso
    - Daniel Damaso
- Cecil Damaso
  - Narelle Damaso
  - Cerise Damaso
  - Trezna Damaso
- Nancy Damaso
  - Natalie Copley

- Lauren Copley
- Jarrod Copley
- Troy D’Ambrosio
- Alissa Richards

Violet
- Faye Kingston
  - Christine Caruana
    - Jennifer Dupuy
      - Reece Dupuy
    - Lisa Caruana
  - Alan Kingston
    - Jody-Lee Kingston
    - Scott Kingston
    - Peter Kingston
  - Aileen Parker
    - Keira-Lee Parker
    - Jonathon Parker
    - Jayme-Lee St George
  - Kevin Kingston
    - Timarah Kingston
    - Haydon Kingston
- William Ross
  - Brett Ross
  - Paul Ross
  - Shannon Ross
  - Aaron Ross

Hannah Talbot
- Leeona Turner
  - Yolonda Turner
  - Evan Turner
- Peter Talbot
  - Bradley Talbot
  - Braedon Talbot
  - Joshua Talbot

Lorna Motlop
- Edward Motlop
  - Shannon Motlop
  - Daniel Motlop
  - Lauren Motlop
  - Steven Motlop
- Mark Motlop
  - Aaron Motlop
  - Jarrod Motlop
- Maurice Motlop
  - Thomas Motlop
  - Marlon Motlop
  - Lucy Motlop
- Paul Motlop
  - Savannah Motlop
  - Brenton Motlop
- Bronwyn Motlop

- Desley Motlop
- Franklin Johns
  - Frank Johns
    - Helen Johns
    - Belinda Johns
  - Beryl Brown
  - Trevor Johns
  - Karen Johns
  - Sandra Johns
  - Bradley Johns
- Vicki May
- Steven Johns
  - Unnamed son
  - Hannah Johns
- Caroline Johns
  - Nyssa Bennett
  - Teagan Bennett
  - Karla Bennett
  - Lena-Rae Bennett
- Kerrie Enkelmann
  - Shannon Enkelmann
  - James Enkelmann
- Kym Cain
- Sylvanous Johns
  - Wyomie Johns
  - Unnamed son
- Timothy Johns
  - Tessica Johns
  - Joshua Johns
- William Johns
  - Donna Johns
  - Cygnet Ryan
    - Chantelle Ryan
    - Stephanie Ryan
  - Parry Johns
- Harold Johns
  - Sonale Johns
- Llewellyn Johns
  - Richard Johns
  - Eric Johns

- Julie Roman
  - Mark McNamara
    - Paul McNamara
  - Debbie Warren
  - Susan Warren
  - Kevin Warren
- Richard Roman
  - Robert Roman
    - Alexis
    - Richard

- Attlee
- Tennielle
- Brenda Smith
- Michael Smith
- Daniel Smith
- Tracy Roman
- Donna Abbott
- Cassandra Abbott
- Gregory Abbott
- Justin Abbott
- Bradley Abbott
- Jamie Roman

Roger Roman
- Robert Roman
- Robert Roman
- Rhiannon Roman
- Kathy Abbott
- Louis Buzzacott
- Caitlin Buzzacott
- Tony Ally
- Stacy Ally
- David McGregor

Annabelle Benton
- Linda Hill
- Rhianon Hill
- Curt Hill
- Cindy George
- Michael Williams
- Cameron Benton

Audrey Tilmouth
- Jeanette Tilmouth
- Robert Le Rossignal
- Danielle Le Rossignal
- Darrel Tilmouth
- Stephen Tilmouth
- Jordan Tilmouth
- Troy Tilmouth

Rachel Roman
- Carol Costello
- Baden Quill
- Kelvin Costello
- Peter Costello
- Justin Costello
- Curtis Costello

Susan Roman
- Karen McLean
- Steven McLean
- Roxanne McLean

Billy Danks
- Angela Danks
- Amy Danks

- Leonard Roe
  - Leonard Roe
  - Roxine Roe
- Josephine Roe
  - Stacey Roe
  - Zoe Roe
  - Aleesha Roe
- Gail Roe
  - Melanie Roe
  - Rosemary Roe
  - Michael Roe
- Daniel Shepherd
- Anthony Shepherd
- Shirley Shepherd
  - John Shepherd
  - Joy Shepherd
    - Ashley Shepherd
  - Jennifer Shepherd
  - Betty Shepherd
  - Lloyd Shepherd
- Patsy Shepherd
  - William (Billy) Risk
    - William (Billy) Risk
    - Luke Risk
    - Kate Risk
  - Ann Risk
    - Patrick Lawson
    - Rachel Lawson
    - Keith Sailor
    - Jesse Sailor
    - Aaron Sailor
    - Adrian Sailor
  - Keith Risk
    - Robert Risk
    - Warwick Risk
    - Jessie Risk
    - Dylan Risk
    - Jackson Risk
- Alan Shepherd
  - Bianca Shepherd
  - Alan Shepherd
  - Tani Shepherd
- Robert Shepherd

- Molly Shepherd
  - Carol Collins
    - John Collins
      - John Collins
      - Kevin Collins
    - Noel Collins

Natisha Collins
Irene Musk
Rani Musk
Shahlena Musk
Charo Musk
Pauline Baban
Tara Wilson
Donald Baban
Ronald Baban

Trevor Reid
Neil Reid
Cherie Reid
David Reid
Cody Reid
Ruby Reid
Kirsten Reid
Zoe Gibbs
Leslie Reid
Trevor Reid
Peter Reid
Samara Reid
Peter Reid
Kenny Reid
Jo Jo
Jasmyn Reid
Ashton Redwin
Andrew Reid
Gregory Reid
Kevin Reid
Matthew Reid

Cecilia (Cissy) Briston
Tania Briston
Dennis Hill
Jaylene Hill
Rachel Hill
Wayne Briston
Josie Newman
Natalie Newman
Larry Newman
Caroline Briston
Michael de Busch
Millie de Busch
Joshua Hardy
Noeline Briston
Sonia Briston
Timothy Elridge
Charlie Briston
Sebastian (Sabo) Briston
Patrick Briston

Tammara Briston
Raquel Briston
Keren Briston
Patrick Briston
William Briston
Alicia Briston
William Briston
Naomi Briston
Jordan Briston
Leslie Briston
Anastasia Briston
Desiree Briston
Dillon Briston
Steven Briston
Imogen Briston
Liam Briston
Shona Briston
Keelee Briston

Maureen Ogden
Geoffrey Ogden
Roxanne Ogden
Nathan Ogden
Leeanne Ogden
Rhoda Ogden
Wade Ogden
Judith Williams
Victor AhWang
Kelvin AhWang
Delsey AhWang
Keith Williams
Natasha Williams
Braydon Williams
Sekur Williams
Seth Williams
Kailah Williams
Gail Williams
Sharon Williams
Cameron Jude
Fabian Jude
Hayden Jude
Lorraine Williams
Karina Williams

Ronald Quall
Raymond Quall
Michael Quall
Sarah Quall
Lindy Quall
Simon Quall
Jenna Quall

Kevin (Tibby) Quall
- William Quall
- Sherana Quall
- Rebecca Quall

Phillip Quall
- Natalie Quall
- Keith Quall

Diane (Didi) Quall
- Kevin Quall
- Phillip Quall
- Natasha Quall
- Raymond Quall
- Kristy Quall

Denise Quall
- Charmaine Quall
- Alex Quall
- Colby Rainger
- Henry Rainger
- Tesna Quall

Eulalie Batcho
- Jason Rogers
  - Unnamed son
  - Unnamed son
- Sophie Rogers
  - Unnamed son

Yula Batcho (Williams)
- Lilian Williams
  - Damien Williams
    - Damien Williams
  - Mary Williams
    - Brendon
  - Yula Williams
  - Rona Williams
- Victor Williams
  - Norman Williams
  - Elaine Williams
- Rosemary Williams
- Phyllis Williams
  - Genaya Williams
  - Tamika Williams
- Edward Williams
- Tanya Panuel
  - Justine Williams
  - Samara Williams
- Kathy Williams
  - Buckley Williams
  - James Williams
  - Nelson Williams
- John Williams

- Remo Williams
- Greg Williams

Lucy Batcho (May)
- Barbara Tapsell
  - Miranda Tapsell
- Maureen Wanganeen
  - Denay Wanganeen
  - Caleb Wanganeen
- Jeffrey May
  - Byron May
  - Simon May
  - Lily May
- Alfred (Alfie) May
- Leonard (Lennie) May
- Daniel May
  - Joseph May
  - Kadeen May
- Russell May
- Jonathan May

Mary Batcho (Raymond)
- Jeanette Raymond
  - Jenon Raymond
  - Thomas Raymond
- John Raymond
  - Jasmine Raymond
  - Daly Raymond
  - Sharea Raymond
- Lawrence Raymond
  - Wayne Raymond
  - Danielle Raymond
- Dorrianne Raymond
  - Stephen Dawson
- Michael Raymond
  - Kendall Raymond
  - Jacob Raymond
- Phillip Raymond
  - Aaron Raymond
- Christine Lewis
  - Kieran Lewis
- Leon Raymond

Rona Ally
- Peter Ally
  - Jaala Ally
- Rose Ally
  - Dale Ally
  - Paul Ally
  - Darrell Ally
  - Jaffar Ally

Rosina Ally
Yolande Ally
Jade Ally
Trevor Ally
Yasmin Ally
Anthony Ally
Kyle Ally

Barbara Raymond
Desmond (Couchie) Raymond
Marrissa Balch
Nicole Copley
Reuben Bruin
Victor Raymond
Michael Raymond
Peter Raymond
Patricia Raymond
Natasha Raymond
Gilbert Raymond
Daniel Raymond
Dominica Raymond
Jenon Raymond
Dennis Raymond
Rhianon Raymond
Joseph Raymond
Jason Raymond
Christopher Raymond
Bianca Raymond
Denise Raymond
Kathleen Raymond
Damien Hewitt
Geoffrey Hewitt
David Mills
June Mills
Kay Villaflor
Rudi Villaflor
Michael Villaflor
Rico Adjrun
Arbei Adjrun
Sam Adjrun
Allyson Mills
Ian Redpath
Michael Redpath
Katie Redpath
Barbara Mills
Karly Bancroft
Nicole Bancroft
Zoe Bancroft
David Mills
Marley Mills
Damien Mills

Weslan Mills
Keith Mills
Beverly Mills
Robert (Robbie) Mills
Billie Moncklin
Laniyuk Mills
Louie Mills
Violet Mills
Rikki Mills-McAdam
Charlie Mills-McAdam
Adrian Mills-McAdam
Desmond Mills
Braedon Donellan

Richard Rankin
Sheila Rankin

Robert Browne
David Jackson
Donna Jackson
Robert Jenkins
Amy Browne
Robert Browne
Bryan Browne
John Browne
Vanessa Browne
Natalie Browne
Emily Browne
Sarah Browne
Edward Browne
William Browne
Emily Browne
Leanne Browne
Kelly Browne
Patricia Browne
Amanda Browne
Dorothy Browne
Theresa Browne
Rodney Browne
Nigel Browne
Peter Browne
Peter Browne
Sheldon Browne
Jay Browne
Hayden Browne
Lisa Browne
Jared Browne
Phillip Browne
Jackson Browne
Carmel Browne
Maximilian Browne

Crystal Browne
Joseph Browne
Jade Browne
Albert Browne
Kirsten Reid
Albert Coonan
Saven Browne
James Browne
Nelson Browne
Christine Browne

Lorna Talbot
Phillip Talbot
Edward Talbot
Daphne Talbot
Phillip Talbot
Brian Allia
Irene Allia
Leeanne Allia
Trevor Talbot
Yvette Talbot
Nicole Talbot
Alana Talbot
James Talbot
James Talbot
Justin Talbot
Dale Talbot
Dallas Talbot
Riana Talbot
Lorna Talbot
Robert Talbot
Daniel Talbot
Rebecca Talbot
Carly Talbot
Pamela Talbot
Peter Talbot
Daphne Talbot
Kyle Talbot
Robert Talbot
Jennifer Talbot
Natasha Grant
Matthew Grant
Manuel Talbot

Joan Kenyon

Joan Fejo
Kathleen Smith
Joanne Smith
David Smith
Mary Ayers

- Michael Smith
  - Shaun Martin
- Ashley Smith
- Jason Cockshell
- Graham Quintrell

Alfred Kurnoth
- Stacy Kurnoth
- Wayne Kurnoth
- Selina Kurnoth
- Rani Kurnoth

Maurice Kurnoth
- Cory Kurnoth
- Russell Kurnoth
- Travis Kurnoth
- Poncie Kurnoth

Phyllis Kurnoth
- Andrea Mitchell
- Duane Mitchell
- Pam Mitchell

Malcolm Kurnoth

Jim Fejo

Rosemary Parfitt
- James Parfitt
- David Parfitt
- Daniel Parfitt

Christine King
- Jessica King
- Kathleen King
- Jad King

Rodney Fejo
- Rodney Fejo
- Erin Fejo
- Lauren Fejo

Aleeta Dawes
- Nathan Dawes
- Sarah Dawes
- Juma Dawes

Eric Fejo
- Cody Fejo
- Hamish Fejo
- Ryan Fejo
- Kia Fejo

Mirella Fejo

Richard Fejo

Edwina Fejo

Leanne Fejo

Juma Fejo
- Jamie-Lee Fejo
- Kristen Fejo

Linda Fejo
Jocelyn Fejo
William Fejo
Raylene Fejo
Stacey Fejo
Kerry Fejo
Kathleen Fejo
Selina Fejo
Joseph Fejo
Stewart Fejo
Jimma Fejo
Klaus Fejo
Russell Fejo
Jimma Fejo
Kathleen Fejo
Ronald Fejo
Chantelle Fejo
Adrienne Fejo
Clint Fejo
Lorelle Fejo
Edward Fejo
John Fejo
Lisha Fejo
Dorothea Fejo
Edward Fejo
Joanne Fejo
Tara Bush
Samuel Bush
Phillip Bush
Margaret Fejo
Glen Fejo
Jocelyn Fejo
Nicola Fejo
Ross Fejo
Louise Fejo
Justine Fejo
Dorothea Fejo
Adam Fejo
Kayla Fejo
Zara Fejo
Phillip Fejo
Danielle Fejo
Phillip Fejo
Curtis Fejo

William Fejo
Aran Fejo
Jardine Fejo
Keelan Fejo
Morris Fejo
Tammy Fejo

Kara Fejo
Judy Fejo
Sara Fejo
John Fejo
Sonny Fejo
Magnus Fejo
Keith Fejo
Nicky Fejo
Judith Fejo
Steven Fejo
Andrew Fejo
Veronica Fejo
Wayne Fejo
Melanie Fejo
Unnamed daughter
Francis Fejo
Natasha Fejo
Miriam Fejo

Walter (Wally) Fejo
Daniel Fejo
Barry Fejo
Andrew Fejo
Shennell Fejo
Kitty Fejo
Lynette Fejo
Kevin King
Kiley King
Gabrielle King

Francis (Basho) Fejo
Arthur Fejo
Gary Fejo
Louise Fejo
Max Fejo
Samuel Fejo
Clara Fejo

Unnamed son of Peter Fejo (deceased)
Unnamed son of Peter Fejo (deceased)
Unnamed son of Peter Fejo (deceased)
Sally Fejo
Gregory Doekmoel
Sammy Berredemi
Nancy Cahill
Helen Barwin
David Barwin
Clancy Cahill
Betsy Cahill
Eileen Bell
Paddy Bell

- Jacqueline Bell
- Rocky Bell

Karen Wauchope
- Francesca Wauchope
- Anna Wauchope
- Caroline Wauchope
- John Wauchope

Rhonda Wauchope
- Darren Wauchope
- Unnamed daughter

Dennis McCarthy

Mark Wauchope

Eric Conroy

Thomas Conroy
- Thomas Conroy

Elizabeth Conroy
- James Conroy
- Hayley Conroy
- John Conroy

Richard Conroy
- Luke Conroy
- Daniel Conroy

John Conroy
- Lisa Conroy

Ian Conroy

Leo Odegaard
- Christina Odegaard
  - Michael Lawlor
- Evonne Odegaard
  - Yvette Richards
  - Charmaine Richards
  - Chantelle Amos
  - Carmen Amos
- Lynette Odegaard
  - Jodie Teague
- Donna Odegaard
  - Donna Robb
  - Stuart Robb
- David Odegaard
- Gladys Odegaard

Florence Devine
- Irene Devine
  - Doris Chambers
    - Julie Chambers
    - Sally Chambers
    - Allyse Chambers
    - Merryl Chambers
    - Sarah Chambers
  - Ted Chambers

- Matthew Chambers
- Jodi Chambers
- Colleen Chambers
- Marcus Brown
- Richard Barnes
- Sharon Barnes
- Rebecca McAlear
- Kenneth Barnes
- Colleen Saunders
- Jennifer Dott
- James Dott
- Rockwell Dott
- Khe-Anne Dott
- Steelle Dott
- Christine Saunders
- Darren Kenny
- Dean Saunders
- Michelle Saunders
- Brian Saunders
- Brett Saunders
- Bernie Devine
- Janelle Devine
- Wayne Devine
- Brenton Devine
- Diahnne Devine
- Liam Devine
- Chris Devine
- Kylie Devine
- Jodie Devine
- Unnamed son
- Judy Kay
- Lisa Kay
- Ricky Kay
- Emma Kay
- John Devine
- Stacey Devine
- Anthony Devine
- Kia Devine

Joe Odegaard

- John Odegaard
- Tynan Odegaard
- Paul Odegaard
- Jason Odegaard
- Crystal Odegaard
- Peter Odegaard
- Tyson Odegaard
- Ryan Odegaard

Keith Slape

- Dianne Davis
- Paula Davis
- Donna Davis

- Bert Slape
  - Unnamed daughter
  - Dianne Slape
- Kathleen Slape
  - Christina Renoldi
- Jennifer Slape
- Terry Slape
- Kerri Slape

Elsa Heron
- Lesley Mitchell
  - Tania Mitchell
    - Elsie Herd
    - Sascha Herd
    - Zachary Herd
  - Samantha Mitchell
  - William Mitchell
    - Dylan Mitchell
  - Tracey Mitchell
- Marie Warde
  - Rebecca Warde
  - Denise Warde
  - Michael Warde
- Patricia Hodge
  - Wayne Hodge
  - Darren Hodge
- William Mitchell
- Ross Heron
  - Aaron Heron
  - Brendan Heron
- Beverley Huddleston
  - Shaan Huddleston
  - Joanna Huddleston
  - Nicole Huddleston
- Joanne Heron
  - Gregory Heron
  - Taylor Heron
- Geraldine Heron
  - Marnie Hopkin
- Karen Heron

Bernadette Cubillo

Pedro Cubillo
- Unnamed child

Raymunda Cubillo
- Eugene Levette

Shirley Cubillo

Maureen Cubillo
- Three or four unnamed children

Dianne Cubillo
- Two or three unnamed children

Timothy Cubillo
- Charisma Cubillo

Eugene Flynn
- Bea Flynn
- Jacqueline Flynn
- Angela Flynn
- Eugene Flynn

Dorothy Fox
- Barbara Fox
- Robert Fox
- Terry Fox

John Edgar
- Louisa Abala

Joanne Edgar

Linda Edgar
- Richard Edgar
- Coby Edgar

Odon Edgar

Jennifer Stokes
- Jaylene Cooper
- Anne-Marie Cooper
- Matthew Stokes
- Amy Stokes

Mary Lee
- Suzanne O'Neill
  - Dean O'Neill
    - Danny O'Neill
  - Ryan O'Neill
  - Emma O'Neill
- Gary Lee
- Roque Lee
  - Shannon Lee
- Anthony Lee
  - Natasha Lee
  - Trent Lee
- Danella Lee
  - Mei-Kim Lee
  - Shaun Lee
  - Rhianon Lee
  - Tanya Lee
- Christopher Lee
  - Joshua Campton
  - Jenna May
  - Morgan
- Ian Lee
- Jason Lee
- Tina Lee
  - Mitchell Baum
  - Tiana Baum
- Nadine Lee

Cyan Lee
Mikela Lee
Francis Cubillo
Odon Cubillo
Michael Cubillo
Madeleine Cubillo
Ryan Cubillo
Sean Cubillo
Joseph Cubillo
Samantha Cubillo
John Lawrence (Lawrie) Cubillo
Shirley Abdat
Jason Abdat
Lativia Abdat
Terri Cubillo
Matthew Cubillo
Matthew Cubillo
Nason Cubillo
Russell Cubillo
Mark Cubillo
Pilar Cubillo
Pilar Cubillo
Luke Cubillo
Stephen Cubillo
Brenda Cubillo
Shani Williams
Roque Cubillo
Kaleisha Cubillo
Jenna Cubillo
Michael Cubillo
Brian (Kevin) Cubillo
Robert Cubillo
Natalie Cubillo
Karen Cubillo
Kataisha Cubillo
Jason Cubillo
Andrew Cubillo
Lisa Cubillo
Cathy Wilson
Cherisse Wilson
Caitlan
Mitchell
Darren Wilson
Sheyne Wilson
Dani Wilson

Antonio Cubillo
Patricia Cubillo
Phillip Cubillo
Joe Cubillo
Russell Cubillo

Kalisa Cubillo
Laura Cubillo
Unnamed daughter
Alberto Cubillo
Demi Cubillo
Fabian Cubillo
Lolita Cubillo
Darren Cubillo
Lolita Cubillo
Darren Cubillo

John Cubillo
Juan Cubillo
Michelle Cubillo
Devan Flood
Russell Jarman
Yasmin Jarman
Francesca Bremner
Renee Bremner
Benny Cubillo
Ben Cubillo
Sasha Cubillo
Thomas Cubillo
Sophie Cubillo
Susan Cubillo
Benjamin Cubillo
Candice Cubillo
Veronica Cubillo
Nicole Butler
Natalie Butler
Bernadette Cubillo
Marguerite Cubillo
Lisa Cubillo
Christopher Cubillo
Inez Cubillo
Chrissie Cubillo
Pacita Cubillo
Unnamed daughter
Gregory Cubillo
Lola Cubillo
Fernisa Miller
Tanya Miller
Damien Miller
Zachary Miller
Tobias Miller
Poncie Cubillo
Juan Cubillo
Edward Cubillo
Angelina Cubillo
Teniele Cubillo
Jacinta Cubillo

Jerome Cubillo
Joel Cubillo
Gayle Cubillo
Jessica Cubillo
Robin Cubillo
Mildred Cubillo
Shannon Cubillo
Ray Cubillo
Matthew Cubillo
Rosetta Cubillo
Rhianna Smith
Ricardo Cubillo
Rikeezla Cubillo
Ricardo Cubillo
Whitlam Cubillo
Greg Cubillo
Victor Cubillo
Carmen Cubillo
Cherry Cubillo
Eddie Cubillo
Joshua Cubillo
Shanelle Cubillo
Dean Dempsey
Penny Cubillo
Sandra Hartley
Raymond Hartley
Daniel Hill
Adon Hill
Stephanie Hill

Murray Cubillo
Maria Cubillo
Kira
Tani
Narah
Levi
Unnamed son
Inez Cubillo
Rakiah Cubillo
Taituhia Cubillo
Temika Cubillo
Teina Cubillo
Francesca Cubillo
Jada Cubillo
James Cubillo
Petra Cubillo
Kimberley Cubillo
Heather Cubillo
Nicola Cubillo
Caeli Cubillo
Monique Cubillo

Guy Cubillo
Kim Cubillo
Inez Cubillo
Gary Lang
Murray Bradbury

Alberta (Betty) Cubillo
Lillian Cubillo
Cathy Peckham
Kallum Peckham
Zachary Peckham
Kahutaua Cubillo
Ronald Watkins
Alya Watkins
Eli Watkins
Darby Watkins
Phillip Watkins
Nathan Watkins
Husan Watkins
Rodney Watkins
Thomas Watkins
Janelle Watkins
Joshua Kaihe
Jackeline Kaihe
Jazz Kaihe
Kerri Watkins
Alana Watkins
Andrea Watkins
Jay Peckham
Cory Peckham
Maxine Cubillo
Wayne Barbour
Christine Barban
Elijah Barban
Carol Berto
Wynita Berto
Daniel Berto
Aaron Berto
Tanya Barbour
Kylie Barbour
Megan Barbour
Natasha Craiggie
Kelly Craiggie
Peter Craiggie

Anna Collins
Patsy Hayes
Simone Hayes
Ashley Cavenagh
Mark Hayes
Mitchell Hayes

Kathleen Minyinma
Desmond Minyinma

Peter Mandeyn

Yvonne Rankin
Charlene Rankin
Kathleen Rankin
Michael Rankin
Wayne Rankin
Karen Rankin

4.13 The Belyuen group The **Belyuen** group was first advanced as a single local descent group in material produced in 1996, after I had commenced my inquiry into the land claim. Its members are affiliated to six language groups, Wadjigiyn, Kiyuk, Menthayenggal (Mentha), Amiyenggal (Ami), Marriamu and Marritjaben. Members of these language groups have been designated as Wagaitj, or Wagait, meaning coastal people. During the inquiry conducted before Justice Olney, residents of Belyuen were advanced as claimants by way of three separate local descent groups, one consisting of Wadjigiyn and Kiyuk people, one of Menthayenggal and Amiyenggal people, and the third of Marriamu and Marritjaben people. These groupings corresponded to historic marriage relationships. As a result of long-term residence at Belyuen, and as a result of a conscious desire to unite the group, strategic marriages have taken place outside the traditional language group pairs but within the six Wagaitj language groups. The result has been a socially cohesive group of people, most of whom live at Belyuen. It is said that this group has become a local descent group, for the purposes of the definition of 'traditional Aboriginal owners' in s. 3(1) of the Land Rights Act.

4.14 Descent criteria of the Belyuen group Professor Povinelli, who prepared the anthropologist's report tendered on behalf of the group, articulated the principles on which the group is based as follows. The first principle is descent from one or more of eighteen individual ancestors or sibling groups of ancestors. The eighteen were described as 'apical' ancestors. A person within this class of descendants and considered to have been 'born from the waterhole' at *Belyuen* (site 95) has an automatic right to membership of the group. The concept of being born from the waterhole relates to the belief that *Belyuen* (site 95) is a site inhabited by the spirits of babies and that a woman who bathes in the waterhole will become pregnant (see para. 5.4.6). All members of the **Belyuen** group who were conceived while their parents were living at the Belyuen community are considered to have been born out of the waterhole. There is a further principle of construction of the group. Those descendants of the eighteen 'apical' ancestors or ancestral sibling groups not born out of the waterhole may nevertheless be regarded as members of the group if they have assumed spiritual responsibility for the country associated with *Belyuen* (site 95), i.e. for the claim area. With one exception, all of the people who have become members of the group by assuming this spiritual responsibility have had children whom they believe to have been born out of the waterhole. Members of the group who gave evidence, and who were not themselves born out of the waterhole, tended to refer to the fact that their children were born out of the waterhole as a significant factor in their entitlements. It is convenient to trace the descent of the members of the **Belyuen** group before dealing further with the status of the group.

4.15 The genealogies of members of the Belyuen group

4.15.1 Charles Nera was a man of the Wadjigiyn language group, who married a woman called Elsie Mainawanbe, a Wadjigiyn woman. They had three children, Rita Anyurr, Tom Lippo and Tommy Barradjap. Rita Anyurr married Mosec Manpurr. Their descendants are dealt with in para. 4.15.17. The marriage of Tom Lippo and Agnes Muda Alanga, an Ami woman, produced a son, Derek Lippo. He is now deceased, but is survived by his son, also called Derek Lippo, and his daughter, Lorna Lippo. Tom Lippo's marriage to Audrey Badjawalang, also an Ami woman, produced seven children, Michael, Susan, Maria, Angela, Seri, Ruth and Robert Lippo. Michael gave evidence in the hearing in 1995, but has since died. He is survived by three children, Leanne, Timothy and Edwina Lippo. Susan married Douglas Rankin. Their descendants are named in para. 4.15.17. Maria has a son, Gregory Lippo. Angela married Bobby Bigfoot Mardi; their descendants are dealt with in para. 4.15.14. Ruth has four children, Merryl, Dean, Isaac and Agatha Lippo. Tommy Barradjap had several marriages and a number of children, of whom nine are still alive, Kenny, Timothy, Judith, Brian, Marlene, Norma, Jennifer, Joseph and Julianne Barradjap. Kenny has a daughter, Esther Barradjap. Judith has three sons, Tommy, Rick and Timothy Henda. Marlene has a son, Wayne Henda. Jennifer was married to Nicholas Djarug; their descendants are named in para. 4.15.10. Julianne has two sons, Quentin and Wesley Shields. Charles Nera is said to have been a brother of Maudie Murrangaingaidj, Elsie Kadjirr and Jimmy Bandake. Jimmy Bandake's two children are both deceased and appear to have left no descendants. The descendants of Maudie are dealt with in other paragraphs as descendants of their fathers. Similarly the descendants of Elsie Kadjirr appear to have had an adoptive relationship with people who are named in para. 4.15.18.

4.15.2 The next family group is the descendants of three brothers and a sister. The three brothers were Billy Merrikit, Billy Ahwarwi and Billy Yeleyega Marrin and the sister was Malawunen. Billy Merrikit appears to have had no children. Billy Ahwarwi had a daughter, Kitty Djakarri, who married Bob Dingari, an Ami man, and their only son, John Kingarina, died at a young age. The children of Malawunen are dealt with in para. 4.15.14 as children of their father, Kigirrim. Billy Yeleyega Marrin had one daughter, Winnie Woodie, who is still alive. The children from her marriage to Silas Yarrowin are dealt with in para. 4.15.8 as part of their father's genealogy. In addition, Winnie Woodie has two children from David Mills, a non-claimant, namely Loretta and Joalene Mills.

4.15.3 Jack Marraban and George Munggulu were brothers. Both are now deceased. George Munggulu appears to have had no children. Jack Marraban married Alice Banggurr, a Wadjigiyn woman. They had two sons, Roy Madpuk and John Bianamu. Roy appears to have had no children. John married Gracie Binbin and they had eight children, of whom seven are still living. They are Barbara, Diane, Michelle, Trevor, Frank, Mary-Jane and Andrew Bianamu. Barbara's children are referred to in para. 4.15.16 as children of their father, Herman Morgan. Diane's children are referred to in para. 4.15.14 as children of their father, Norman Moreen. Michelle has a daughter, Ann-Marie Bianamu. Trevor has two sons, Gavin and Rick Bianamu.

4.15.4 The next subgroup consists of the descendants of the Wadjigiyn siblings Mary Kudang, Djalmoidj, Ngarrayn, Djulaitji, Lambudju and Akuk Madbuk. Mary Kudang

had five daughters, Maggie Rivers, Kitty Moffat, Rose Cubillo, May Todd and Alice Banggurr. Maggie Rivers is deceased. Kitty Moffat and Rose Cubillo are alive. May Todd is deceased. She was married to Willie Singh. Their children are referred to in para. 4.15.18, where the Singh family genealogy is described. Alice Banggurr's descendants have already been referred to in para. 4.15.3 as the descendants of her husband, Jack Marraban. The descendants of Djalmoidj are referred to in para. 4.15.5 as descendants of her husband, Balang. Ngarrayn had a daughter, Kitty Yirra Djalmoidj, who married Harry Morgan. Their descendants are referred to in para. 4.15.16 as the descendants of Harry. Djulaitji's descendants appear to be all now deceased. Lambudju married Kitty Meming, an Ami woman. Their son, the late Bobby Lane, married Kay Yarrowin, also an Ami woman. Their children are Daniel, Lorraine, Sharon, Robin, Daryl and Dennis Lane. Daniel has three children, Leslie, Sonia and Lisa Lane. Lorraine's children are referred to in para. 4.15.14 as children of their father, John Bigfoot Mardi. Robin's children have been referred to already in para. 4.15.3 as children of Trevor Bianamu.

4.15.5 Nym Mun.gi was married to Alice Ilamu and Annie Mumbil, both Wadjigiyn women and daughters of Djalmoidj and her husband, Balang (see para. 4.15.4). The marriage to Alice produced a daughter, Esther Barradjap, and a son, who died childless. Esther's descendants have been referred to in para. 4.15.1 as the descendants of her husband, Tommy Barradjap. Nym's marriage to Annie produced four children, of whom two are still living. The first, a son, died childless. The second is Audrey Lippo, whose descendants have been referred to in para. 4.15.1 as the descendants of her husband, Tom Lippo. The third child of Nym and Annie was Agnes Lippo, also married to Tom Lippo. Her descendants are referred to in para. 4.15.1 as well. The fourth child of Nym and Annie is Topsy Philips (Warrawu), who has five children, Nharletta, Warren, Leonie, Arthur and Joshua.

4.15.6 The descendants of a man called Waraka are confined to one family. Waraka was married to Kinggilk. Their son, the late Jimmy Bama, was married to Annie Wudanbaiya. They had one son, who is John Bama. He and his wife, Julieanne Walla, have three children, Anna, Jacob and Jeremy Bama.

4.15.7 The descendants of Ngurrmandu Menbilk and an Ami woman, Karriyil, constitute a significant part of the **Belyuen** group. They had four children, all now deceased, named Lame Roy Pulagidjidj, Maggie Kumboi, Roy Nganggit and Alice Barak. Roy and Alice appear to have had no children. The descendants of Maggie are dealt with in para. 4.15.8 as descendants of her husband, Mambeiyu Mikiden. Lame Roy had three children by Anne Wudanbaiya, a Wadjigiyn woman. They were Roy Yarrowin, Alice Djarug and Roy Bilbil. Roy Yarrowin married Ruby Alanga, an Ami woman. They had ten children, of whom six are now living, Tasman, Roger, Sandra, Daphne, Janet and Linda Yarrowin. Roger has a son, Bradley Yarrowin. Sandra has two daughters, Angelina Lewis and Cecilia Lewis (Holtze). Cecilia is married to John Bigfoot Mardi and their children are referred to in para. 4.15.14. Daphne's children are referred to in para. 4.15.10 as children of their father. Linda has a son, Claudie Yarrowin. In addition, Roy Yarrowin's deceased daughter Marcia was married to Tony Singh. Their child is referred to in para. 4.15.18. Alice Djarug was married to the late Henry Djarug. Their children are referred to in para. 4.15.10. The late Roy Bilbil was married to Marjorie Bilbil, a senior Marritjaben woman. Their children are Kathleen, Valerie, Ian, Anthony and Veronica Bilbil. Kathleen is married to Michael Rankin. Their descendants are referred to in para. 4.15.17.

4.15.8 Micky Marang Narbu and Mambeiyu Mikiden were brothers. The latter was married to Maggie Kumboi, an Ami woman. They had two sons, Mickey Smiler and Eric Martin. Eric Martin is alive. Mickey Smiler is deceased. His first marriage to Maggie Kunmul, a Marritjaben woman, produced five children, Denny, Marilyn, Graham, Linda and Kathy Smiler. Mickey's second marriage, to Ruby Alanga, an Ami woman, produced two children, Silas and Kay Yarrowin, both of whom were adopted by the late Roy Yarrowin when Ruby married him. Silas is deceased but is survived by two children of his marriage to Winnie Woodie, an Ami woman, Matthew and Stanley Yarrowin. Kay Yarrowin was married to the late Bobby Lane. Their descendants have been referred to in para. 4.15.4.

4.15.9 Karapurr was married to an Ami woman named Koinmurrerri. They had six children, all now deceased. The only one to leave descendants was George Ahmat Dingari, who married Maudie Bamaiyak Daboy, a Mentha woman. They had two sons, both now deceased. The only son of their eldest son is also deceased. George and Maudie also had a daughter, Ruby Alanga, now known as Ruby Yarrowin. The descendants from her marriage to the late Mickey Smiler have been referred to in para. 4.15.8. The descendants from Ruby's marriage to the late Roy Yarrowin have been referred to in para. 4.15.7.

4.15.10 The late Maribang was married to an Ami woman called Ngurwi. They had five children, Maudie Bamaiyak Daboy, Henry Djarug, Ubang Cooper, Jimmy Kevin and Jackie Gordon, all now deceased. Maudie's descendants have been referred to in para. 4.15.9 as descendants of her husband, George Ahmat Dingari. Henry Djarug married Alice Djarug, an Ami woman. Seven of their children are still living, Henry, Nicholas, Peter, Patrick, Kevin, Patsy-Anne and Cynthia Djarug. Henry has two children, Samantha and Sandy Djarug. Nicholas has four sons from his marriage to Jennifer Barradjap, a Wadjigiyn woman, Nicholas, Clinton, Luke and Kenny Djarug. Kevin has two surviving children from his marriage to Daphne Yarrowin, an Ami woman, Melissa and Arthur Djarug. Patsy-Anne's daughter is referred to in para. 4.15.15 as the daughter of her former husband, Leslie Smiler. Cynthia's descendants are referred to in para. 4.15.18 as descendants of her former husband, Harry Singh. Ubang Cooper married Nowandaidj, a Mentha woman. Their daughter, Noreen Timber was married to the late Fred Timber. Their descendants are shown in para. 4.15.12. Jimmy Kevin was married to the late Josephine Rankin, a Larrakia woman. Their daughter is Gwen Rankin. Jackie Gordon is survived by three sons, John, Robert and Thomas Gordon. John has four children, David, Elizabeth, Roseanne and Lynette Gordon. Lynette Gordon's descendants from her marriage to David Moreen, a Kiyuk man, are shown in para. 4.15.17. Robert has one surviving son, Simon Gordon.

4.15.11 A man called Emengarre and a woman called Nungguduk were the parents of four children, Jimmy Marrakai, Nowandaidj, Jimmy Muluk and Mitjakeli, all now deceased. Nowandaidj married Ubang Cooper. Their daughter is named in para. 4.15.10 and their further descendants in para. 4.15.12 as the descendants of Fred Timber. Jimmy Muluk's daughter is Betty Muluk, who is married to Ray Burrburr. Their descendants are referred to in para. 4.15.14. Betty Muluk's mother is Jessie Muluk, a Mentha woman, who also had children from Mitjakeli. They were Jeanie Karrawani, Alice Kadak and Mabel Muluk, all now deceased. Jeanie was married to Alan Nilco. Their daughter is referred to in para. 4.15.12. Mabel Muluk was married to Tommy Barradjap. Their descendants are referred to in para. 4.15.1.

4.15.12 Charlie Wierk, Ngadpuluk, Kitty Kilili and Charlie Alligator Warrambun were siblings, who appeared to have an adoptive sibling relationship with Lundun Tuptup. Their descendants are significant in the **Belyuen** group. Charlie Wierk was married to Mary Kamalawain, a Mentha woman. Their daughter was Betty Bilawuk Moreen, who gave considerable evidence in relation to the claim but unfortunately died prior to its conclusion. Her descendants are referred to in para. 4.15.17 as the descendants of her husband, the late Ginger Moreen. Ngadpuluk married a Marritjaben man called Dumu. They had two daughters, Nellie Matpa and Minnie Banagaiya. Nellie Matpa was married to the late Roy Burrburr, an Ami man. Their descendants are referred to in para. 4.15.14. Minnie is deceased. She was married to Roy Bigfoot Mardi. Their descendants are also referred to in para. 4.15.14. Kitty Kilili was married to the late Harry Ferguson, a Marritjaben man. Their descendants are referred to in para. 4.15.13 and para. 4.15.17. Charlie Alligator Warrambun's marriage to Elsie Namurr produced three children, Maggie Kunmul, Alan Narma and David Nilco, all now deceased. Alan is survived by his daughter Irene Narma. David's marriage to Noreen Timber produced four children, of whom three are still alive, Graham, Leslie and Maryanne Nilco. David was also married to Maggie Woodie and had five children, Barry, Alexander, Robyn, Jonathon and Alan Nilco. Robyn has a daughter, Alison Nilco. Jonathon and Alan are both deceased. Alan is survived by a son, Joshua Nilco. Lundun Tuptup had four children from his marriage to Flora Elerri, a Mentha woman. All are now deceased. The eldest, Toby Ngulirr Kamudak was the father of George Gumbuduk, deceased, who married Winnie Woodie and had a son, Richard Gumbuduk. Malwiya, a daughter of Lundun Tuptup, married Tjilbilirr. Their daughter, Rosie Edmunds married Roy Edmunds. Their descendants are referred to in para. 4.15.14. The marriage of Lundun Tuptup and Banmi, a Mentha woman, produced a son, Fred Timber. He married twice. His marriage to Maggie Timber, a Marritjaben woman, produced a daughter, Ann Kunggul, also known as Ann Timber. She married Henry Moreen. They have five children, Lynn, Glenn, Frederick, Anthony and Damien Moreen. Lynn has a son, Dillon Moreen. Glenn has a son, Brentley Moreen. Frederick has a son, Raymond Moreen. Fred Timber's marriage to Noreen Timber, a Mentha woman, produced five children, of whom three are still alive, Theresa, David and Gary Timber. Theresa married Johnny Singh, a Kiyuk man. Their descendants are referred to in para. 4.15.18.

4.15.13 A man called Warrambu was also married to two different women. One was Margaret Kumbari Djagat; the name of the other does not appear in the genealogies. The marriage between Warrambu and Margaret produced four children, all now deceased. One was Maggie Timber, whose descendants are referred to in para. 4.15.12 as the descendants of her husband, Fred Timber. Another child of Warrambu and Margaret was Harry Ferguson, now deceased. He married Kitty Kilili, a Marriamu woman, referred to in para. 4.15.12. Their three children are Marjorie Bilbil, Stephen Ferguson and Colin Ferguson. Marjorie Bilbil's descendants have been referred to in para. 4.15.7 as descendants of her husband, Roy Bilbil. Colin Ferguson has three sons, Tobias, Tony and Jeffrey Ferguson. Warrambu's second marriage produced a son, Leslie Ngundul. He was the father of Gracie Binbin. Her descendants have been referred to in para. 4.15.3 as the descendants of her husband, the late John Bianamu.

4.15.14 A large number of members of the **Belyuen** group are said to be descended from a man named Kigirrim and a woman named Parrmaidj. The exact relationship between these two people is not entirely clear from the genealogy, because of a dotted

line, joining them and linking them to Roy Edmunds. If the line were solid, it would appear that Kigirrim and Parrmaidj were married and that Roy Edmunds was their son. The significance of the dotted line is not clear. In any event, Kigirrim is recorded as having married an Ami woman called Malawunen. They had two sons who are significant names in the Belyuen community, Roy Burrburr and Roy Bigfoot Mardi. Both are now deceased. Roy Burrburr married Nellie Matpa and they had eight children. The oldest, Billy Bilbil, is deceased. He is survived by six children of his marriage to Maureen Muluk, a Mentha woman. The children are Wendy Burrburr, Johnny Grose, Nathan Burrburr, Billy Burrburr, Mark Burrburr and Samantha Burrburr. Nathan has a son, Wayne Burrburr. The surviving children of Roy Burrburr and Nellie Matpa are Ray, Lenny, Lynette, Catherine, Deborah, Ling and Marianne Burrburr. Ray has four children, Ricky, Lester, Belinda and Jessica Burrburr. Lynette Burrburr's daughter, from her marriage to Leslie Smiler, is referred to in para. 4.15.15, as the daughter of Leslie. Roy Bigfoot Mardi married Minnie Banagaiya, a Marriamu woman. They are survived by eight of their nine children, Raymond Bigfoot Mardi, Bobby Bigfoot Mardi, John Bigfoot Mardi, Rosie Gordon, Elizabeth Mardi, Shirley Bigfoot, Margaret Bigfoot and Catherine Bigfoot Mardi. Raymond Bigfoot Mardi has two sons from a marriage to Maureen Moses, a Kiyuk woman, David Bigfoot Mardi and Roderick Bigfoot Mardi. Raymond has a son from his marriage to Christine Wilson, a Wadjigiyn woman, William Bigfoot Mardi. He also has five children from his marriage to Trudy Walla, a Wadjigiyn woman, Damien Bigfoot Mardi, Joyce Bigfoot Mardi, Terence Bigfoot Mardi, Demetrios Bigfoot Mardi and Evelyn Bigfoot Mardi. Bobby Bigfoot Mardi has five children from his marriage to Angela Lippo, a Wadjigiyn woman, Regina, Gastian, Theresita, Simeon and Antonio Bigfoot. John Bigfoot Mardi has four children from his marriage to Cecilia Lewis (Holtze), an Ami woman, Natasha, Katrina, Kelvin and Marcia Bigfoot. John also has two children from his marriage to Lorraine Lane, a Wadjigiyn woman, Paulie and Danielle Bigfoot. He also has two children from his marriage to Sophia Moreen, a Kiyuk woman, Jeremy and Naomi Bigfoot. Rosie Gordon's descendants are referred to in para. 4.15.10 as descendants of her husband, John Gordon. Some of Elizabeth Mardi's children are referred to in para. 4.15.17 as descendants of their father, Terry Moreen. The remainder are referred to in para. 4.15.18 as children of their father, Jimmy Singh. Shirley Bigfoot's descendants are referred to in para. 4.15.18 as descendants of Johnny Singh. Margaret Bigfoot's descendants are referred to in para. 4.15.17 as descendants of Simon Moreen. Catherine Bigfoot Mardi and John Moreen have an adopted son, whose name appears in para. 4.15.17 as the adopted son of John. Patricia Bigfoot, deceased, was a daughter of Roy Bigfoot Mardi. She is survived by two children, a daughter named Deborah and a son named Jarrad. Roy Edmunds was married to Rosie Edmunds, a Marriamu woman. Their four children are Janie, Josephine, Rex and Magdeline Edmunds. Janie has a son from her marriage to Henry Moreen, Norman Moreen. Norman has three children from his marriage to Wendy Patrick, Norman, Nicole and Henry Moreen. Norman also has a daughter, Bronwyn Moreen, from his marriage to Diane Bianamu, a Wadjigiyn woman. Janie also has children from Brian Singh, who are referred to in para. 4.15.18. Magdeline has children from William Singh and Brian Singh, all of whom are referred to in para. 4.15.18.

4.15.15 Members of the Smiler family are descended from a man called Meltjatj and a woman called Nanatarr, through their son, Paddy John Mandop Marrga and his wife, Maggie Kunmul, a Marritjaben woman. Paddy is deceased and is survived by two of his sons, Leslie and Paul Smiler. Leslie has a daughter by Patsy-Anne Djarug, Jassinda. He also has a daughter by a woman called Marie, Christine Smiler. He has a

third daughter by Lynette Bigfoot, an Ami woman, Theresa Smiler. Christine Smiler's descendants are dealt with in para. 4.15.4 as descendants of Daniel Lane.

4.15.16 In the genealogies tendered on behalf of the **Belyuen** group, a deceased man called Nedpan is shown as a classificatory or adoptive brother of a living man, Harry Morgan. Harry Morgan's late wife was known as Kitty Yirra Djalmoidj. She was of the Wadjigiyn language group. Their seven children are Bruce, Agatha, Lee, Imelda, Marjorie, Nancy and Herman Morgan. The only one to have children is Herman, who is married to Barbara Bianamu, a Wadjigiyn woman. Their children are Philip, Glen and Sabrina Morgan. Nedpan was married to a woman called Mary Nellie Gada Galga. Their children are all now deceased. Two of them are survived by descendants. Jack Walla had four daughters, Julieanne, Trudy, Aileen and Grace Walla. Julieanne is deceased. Her daughter from her former husband Robyn Nilco is named in para. 4.15.12. Her descendants from her former husband John Bama are dealt with in para. 4.15.6. Trudy Walla is married to Raymond Bigfoot Mardi. Their descendants are dealt with in para. 4.15.14. Daisy Ruby Karratak was a daughter of Nedpan and Mary. She married King George. Their son Prince of Wales is not claimed to be a member of the group. He is a member of the **Tommy Lyons** group.

4.15.17 The second last group of ancestors of members of the **Belyuen** group consists of the three brothers, Banidjirr, Willie Woodie and Nym Ngamuwarrak. Banidjirr had children by two women, Ngalgenbena and Bandawarrngalgen. The former was the mother of Nipper Rankin and Mosec Manpurr. The latter was the mother of Ginger Moreen, George Manben and Maggie Mabalang. Nipper Rankin married Josephine Rankin. They are survived by three children, Richard, Evonne and Michael Rankin. Evonne has two daughters, Charlene and Katy Rankin. Michael is married to Kathleen Bilbil, an Ami woman. They have a daughter called Josephine Rankin. Mosec Manpurr had three marriages. Of his first, to Agnes Kunwier, there are two surviving daughters, Joy and Ruth Woodie. Mosec's son by his second marriage, to Rita Anyurr, a Wadjigiyn woman, is Douglas Rankin. Douglas has five children by Susan Lippo, a Mentha woman. They are Sebastian, Rosemary, Georgina, Gwen and Asman Rankin. Mosec's third marriage, to the late Betty Bilawuk, a Marriamu woman, produced two daughters, June and Grace Moreen. Ginger Moreen is survived by nine children, Terry, Simon, Edward, Jeffrey, John, Maureen, Caroline, Sophia and David Moreen. Terry has two children from a marriage to Elizabeth Mardi, Rita and Timothy Moreen. Simon has two children from his marriage to Margaret Bigfoot, Shawn and Dareen Moreen. John has an adopted son, Dale Moreen. Maureen's descendants are dealt with in para. 4.15.14 as the children of her former husband, Raymond Bigfoot Mardi. Caroline's descendants are dealt with in para. 4.15.1 as descendants of her former husband, Michael Lippo. Sophia's descendants are dealt with in para. 4.15.14 as descendants of her former husband, John Bigfoot Mardi. David was formerly married to Lynette Gordon, a Mentha woman. They have two sons, Francis and Shane Moreen. David has two further sons, Duane and David, from a subsequent marriage. Ginger Moreen's brother, George Manben, died childless. His sister, Maggie Mabalang married Tommy Barradjap. Their descendants are referred to in para. 4.15.1. Maggie Woodie, deceased, was the adopted daughter of Willie Woodie. Her descendants are dealt with in para. 4.15.12 as the descendants of David Nilco, a Marriamu man. David Woodie, who is still alive, was also adopted by Willie Woodie. David has two children, Alfred and Denise Woodie.

4.15.18 Nym Ngamuwarrak had a number of children, natural and adopted. Among them was Micky Drysdale, who married Agnes Kunwirr. They are both deceased but are survived by four children, John Woodie, Margaret Lewis, Elizabeth Woodie and Lamban. The late Maudie Bennett was a daughter of Nym. She married Tommy Lyons. As I have said in para. 4.4.1, their daughter was the late Olga Singh, who married Johnny Singh. Their children are Raelene, Jason and Zoe Singh. They are not claimed to be members of the group but are members of the **Tommy Lyons** group. Nym adopted the late Willie Singh, the natural son of Elsie Kadjirr, a Wadjigiyn woman and a Chinese man called Ah Sing. Willie Singh was married to May Todd, a Wadjigiyn woman. They had nine children. The first was called John Singh and died childless. The second, Lenny Singh, gave evidence during the hearing but died before its completion. He is survived by his two children from a former marriage to Mona Singh, Tony and Samantha Singh. Tony was married to the late Marcia Yarrowin, an Ami woman, and has a daughter, Deborah Singh. Willie and May's third child is Johnny Singh. He has a son, Anthony Singh, by his former wife Anna Miller. Johnny is the father of Raelene, Jason and Zoe Singh, by the late Olga Singh. He also has children named Brendan, Dale and Rosalyn Singh from a former marriage to Shirley Bigfoot, an Ami woman. Johnny Singh has two daughters by Theresa Timber, a Mentha woman, Lillian and Gloria Singh. Lorna Singh, a daughter of Willie and May, has a son, Claude Holtze. Harry Singh, a son of Willie and May, has a daughter, Priscilla Singh, from a marriage to a woman from Port Keats. Harry also has five children from his marriage to Cynthia Djarug, a Mentha woman. They are Brenda, Harold, Isabelle, Jacoline and Nichole Singh. Brian Singh, a son of Willie and May, has two sons from a former marriage to Magdeline Edmunds, an Ami woman, Rex and Joshua Singh. Brian was also married to Margaret Bigfoot, an Ami woman. They have a son, Brett Singh. Brian is presently married to Janie Edmunds, also an Ami woman. They have two daughters, Karen and Sonia Singh. Karen's son is referred to in para. 4.15.7 as the son of her late husband, Roger Yarrowin. Sonia's son is referred to in para. 4.15.14 as the son of her husband, Nathan Burrbur. Willie Singh is a living child of Willie and May. Jimmy Singh is a deceased son of Willie and May. He is survived by three sons from a marriage to a woman called Fiona, whose names are James, Alfred and Lenny Singh. Jimmy is also survived by two children from his marriage to Elizabeth Mardi, an Ami woman, Penelope and Richard Singh. The last child of Willie and May is Joe Singh.

4.15.19 Christine Wilson is the daughter of the late Peggy Wilson, who was the daughter of a man called Charlie Kalmirr Waluk and a Wadjigiyn woman named Alice Banggurr. Christine's descendants from her marriage to the late Derek Lippo, a Wadjigiyn man, are referred to in para. 4.15.1. Her descendants from a former marriage to Raymond Bigfoot Mardi, an Ami man are referred to in para. 4.15.14.

4.16 Belyuen group a local group The **Belyuen** group is plainly a group. It is based heavily on the residential community at Belyuen. Its members therefore have social, economic and political links. It also has a very active ritual life, to which I refer in more detail in paras 9.2.1 and 9.2.2. The degree of interaction between members and the recognition of a common identity were matters that emerged repeatedly and clearly in the evidence given by **Belyuen** group claimants. It is also proper to describe the **Belyuen** group as 'local'. It is localised to the existing area of Aboriginal land within which the Belyuen community is situated, and to the land claimed, by the spiritual affiliations referred to in para. 5.4 and the exercise of rights to forage referred to in

para. 7.3. It is the suggestion that the group is properly characterised as a descent group that gives rise to difficulty.

4.17 Belyuen group not a descent group

4.17.1 As I have said, the **Belyuen** group has only been advanced as a single local descent group in recent times. In material filed on behalf of the members of the Belyuen community in 1995, Professor Povinelli said:

> … the Belyuen family group is not based on descent Dreaming or language affiliations, but rather has arisen from longterm residential, ceremonial and marriage affiliations.

The group has been constructed by a process that is the reverse of the normal process for recognition of a descent group. That is to say, membership of the group has been established by reference to a criterion that has nothing to do with descent. The criterion is the spiritual association of a person with the sacred waterhole at *Belyuen* (site 95) through the person's own spirit, or the spirits of the person's children, having come from the waterhole. Once membership of the group is established according to that criterion, it is possible to trace the descent links of all members of the group. In the case of the **Belyuen** group descent links can be traced to eighteen sets of ancestors. This is the antithesis of the process by reference to which a descent group is ordinarily recognised. In the usual case, a person is considered to have rights that have been handed down from generation to generation and acquired by birth, from parents who similarly acquired those rights by birth. It may be that a person is then to be excluded from a particular group, on the ground that he or she fails to fulfil some additional criterion. The fundamental basis of membership, however, is descent. In the case of the **Belyuen** group, nothing in the way of rights is held by descent. Every right springs from the spiritual association with the sacred waterhole.

4.17.2 There were assertions in the evidence that descent from one of the eighteen sets of 'apical' ancestors was an essential element of membership of the group. These assertions are difficult to accept for a number of reasons. The notion of an apical ancestor, that is, an ancestor at the apex of a family tree, is readily understandable. The notion that a group can have eighteen apices is much more difficult. It is rendered more so when the eighteen sets of ancestors came from six different language groups, possessing ties to separate areas of land, which ties they have passed to their descendants, who are now members of the **Belyuen** group, in the usual way. The relevance of descent as a criterion was tested a number of times in evidence given on behalf of the **Belyuen** group. Gracie Binbin said that Barbara Tapsell would have been part of the **Belyuen** group if she had continued to live at Belyuen. Roger Yarrowin said that if a man came from country elsewhere and married a woman at Belyuen, he would be part of the **Belyuen** group because his children would come from the waterhole. Jeffrey Moreen said that a man called David Mills, who came from Thursday Island near Cape York, is part of the **Belyuen** group. David Mills is married to a member of the group and their children have come from the waterhole. Both Harry Singh and Seri Lippo said that Eddie Shields, who is not descended from any of the eighteen sets of ancestors, may be regarded as part of the **Belyuen** group. At the very least, this evidence illustrates the uncertain nature of any descent criterion and the pre-eminence of the criterion of spiritual connection with the waterhole.

4.17.3 The process of constructing the **Belyuen** group as a descent group could be applied to construct any group of people, existing for any purpose, as a descent group. Everyone must be descended from someone. It may be that tracing the genealogies of a group of people selected according to some non-descent criterion would result in a greater or lesser number of ancestors. The precise result might depend on how far back it was possible to trace and would certainly depend upon the number of members of the group. Whatever the result, it could not make a group selected according to a non-descent criterion into a descent group.

4.18 Belyuen group not a local descent group For these reasons, I am of the view that the **Belyuen** group cannot satisfy the requirement of the definition of 'traditional Aboriginal owners' in s. 3(1) of the Land Rights Act that it be a local descent group.

4.19 List of members of the Belyuen group The following is a list of the members of the **Belyuen** group, arranged in a similar fashion to the list in para. 4.12.

Derek Lippo
Lorna Lippo
Leanne Lippo
Timothy Lippo
Edwina Lippo
Susan Lippo
Maria Lippo
    Gregory Lippo
Angela Lippo
Seri Lippo
Ruth Lippo
    Merryl Lippo
    Dean Lippo
    Isaac Lippo
    Agatha Lippo
Robert Lippo
Kenny Barradjap
    Esther Barradjap
Timothy Barradjap
Judith Barradjap
    Tommy Henda
    Rick Henda
    Timothy Henda
Brian Barradjap
Marlene Barradjap
    Wayne Henda
Norma Barradjap
Jennifer Barradjap
Joseph Barradjap
Julianne Barradjap
    Quentin Shields
    Wesley Shields

Winnie Woodie
    Loretta Mills

Joalene Mills

Barbara Bianamu
Diane Bianamu
Michelle Bianamu
Ann-Marie Bianamu
Trevor Bianamu
Gavin Bianamu
Rick Bianamu
Frank Bianamu
Mary-Jane Bianamu
Andrew Bianamu

Kitty Moffat
Rose Cubillo
Daniel Lane
Leslie Lane
Sonia Lane
Lisa Lane
Lorraine Lane
Sharon Lane
Robin Lane
Daryl Lane
Dennis Lane

Esther Barradjap
Audrey Lippo
Topsy Philips (Warrawu)
Nharletta
Warren
Leonie
Arthur
Joshua

John Bama
Anna Bama
Jacob Bama
Jeremy Bama

Alice Djarug
Tasman Yarrowin
Roger Yarrowin
Bradley Yarrowin
Sandra Yarrowin
Angelina Lewis
Cecilia Lewis (Holtze)
Daphne Yarrowin
Janet Yarrowin
Linda Yarrowin
Claudie Yarrowin
Kathleen Bilbil

Valerie Bilbil
Ian Bilbil
Anthony Bilbil
Veronica Bilbil

Eric Martin
Denny Smiler
Marilyn Smiler
Graham Smiler
Linda Smiler
Kathy Smiler
Kay Yarrowin
Matthew Yarrowin
Stanley Yarrowin

Ruby Yarrowin

Henry Djarug
    Samantha Djarug
    Sandy Djarug
Nicholas Djarug
    Nicholas Djarug
    Clinton Djarug
    Luke Djarug
    Kenny Djarug
Peter Djarug
Patrick Djarug
Kevin Djarug
    Melissa Djarug
    Arthur Djarug
Patsy-Anne Djarug
Cynthia Djarug
Noreen Timber
Gwen Rankin
John Gordon
    David Gordon
    Elizabeth Gordon
    Roseanne Gordon
    Lynette Gordon
Robert Gordon
    Simon Gordon
Thomas Gordon

Betty Muluk

Nellie Matpa
Irene Narma
Graham Nilco
Leslie Nilco
Maryanne Nilco
Barry Nilco

Alexander Nilco
Robyn Nilco
    Alison Nilco
Joshua Nilco
Richard Gumbuduk
Ann Kunggul (Timber)
    Lynn Moreen
        Dillon Moreen
    Glenn Moreen
        Brentley Moreen
    Frederick Moreen
        Raymond Moreen
    Anthony Moreen
    Damien Moreen
Theresa Timber
David Timber
Gary Timber

Marjorie Bilbil
Stephen Ferguson
Colin Ferguson
    Tobias Ferguson
    Tony Ferguson
    Jeffrey Ferguson
Gracie Binbin (Bianamu)

Wendy Burrburr
Johnny Grose
Nathan Burrburr
    Wayne Burrburr
Billy Burrburr
Mark Burrburr
Samantha Burrburr
Ray Burrburr
    Ricky Burrburr
    Lester Burrburr
    Belinda Burrburr
    Jessica Burrburr
Lenny Burrburr
Lynette Burrburr
Catherine Burrburr
Deborah Burrburr
Ling Burrburr
Marianne Burrburr
Raymond Bigfoot Mardi
    David Bigfoot Mardi
    Roderick Bigfoot Mardi
    William Bigfoot Mardi
    Damien Bigfoot Mardi
    Joyce Bigfoot Mardi
    Terence Bigfoot Mardi

Demetrios Bigfoot Mardi
Evelyn Bigfoot Mardi
Bobby Bigfoot Mardi
Regina Bigfoot
Gastian Bigfoot
Theresita Bigfoot
Simeon Bigfoot
Antonio Bigfoot
John Bigfoot Mardi
Natasha Bigfoot
Katrina Bigfoot
Kelvin Bigfoot
Marcia Bigfoot
Paulie Bigfoot
Danielle Bigfoot
Jeremy Bigfoot
Naomi Bigfoot
Rosie Gordon
Elizabeth Mardi
Shirley Bigfoot
Margaret Bigfoot
Catherine Bigfoot Mardi
Deborah (daughter of Patricia Bigfoot, deceased)
Jarrad (son of Patricia Bigfoot, deceased)
Janie Edmunds
Norman Moreen
Norman Moreen
Nicole Moreen
Henry Moreen
Bronwyn Moreen
Josephine Edmunds
Rex Edmunds
Magdeline Edmunds

Leslie Smiler
Jassinda
Christine Smiler
Theresa Smiler
Paul Smiler

Harry Morgan
Bruce Morgan
Agatha Morgan
Lee Morgan
Imelda Morgan
Marjorie Morgan
Nancy Morgan
Herman Morgan
Philip Morgan
Glen Morgan
Sabrina Morgan

Trudy Walla
Aileen Walla
Grace Walla

Richard Rankin
Evonne Rankin
    Charlene Rankin
    Katy Rankin
Michael Rankin
    Josephine Rankin
Joy Woodie
Ruth Woodie
Douglas Rankin
    Sebastian Rankin
    Rosemary Rankin
    Georgina Rankin
    Gwen Rankin
    Asman Rankin
June Moreen
Grace Moreen
Terry Moreen
    Rita Moreen
    Timothy Moreen
Simon Moreen
    Shawn Moreen
    Dareen Moreen
Edward Moreen
Jeffrey Moreen
John Moreen
    Dale Moreen
Maureen Moreen
Caroline Moreen
Sophia Moreen
David Moreen
    Francis Moreen
    Shane Moreen
    Duane Moreen
    David Moreen
David Woodie
    Alfred Woodie
    Denise Woodie
John Woodie
Margaret Lewis
Elizabeth Woodie
Lamban
Tony Singh
    Deborah Singh
Samantha Singh
Johnny Singh
    Anthony Singh
    Brendan Singh

Dale Singh
Rosalyn Singh
Lillian Singh
Gloria Singh
Lorna Singh (Tennant)
Claude Holtze
Harry Singh
Priscilla Singh
Brenda Singh
Harold Singh
Isabelle Singh
Jacoline Singh
Nichole Singh
Brian Singh
Rex Singh
Joshua Singh
Brett Singh
Karen Singh
Sonia Singh
Willie Singh
Joe Singh
James Singh
Alfred Singh
Lenny Singh
Penelope Singh
Richard Singh

Christine Wilson

4.20 The Danggalaba group

4.20.1 As I have said in paras 2.18.6, 2.21.3 and 2.21.4, for much of the time occupied by the inquiry into this land claim, Kevin (Tibby) Quall expressed dissatisfaction with the evidence. Tibby Quall made several requests to the Northern Land Council for funding, so that he could obtain separate representation, for the purpose of putting the claim as he saw it before the Commissioner. In the part of my inquiry that took place in 1995, I appointed a special time for him to give evidence and make submissions. He availed himself of this time. During the 1996 hearings of my inquiry, David Dalrymple, solicitor, appeared and made application that he be permitted to act for Tibby Quall and others who believe that their representation as part of the **Larrakia** group failed to do justice to their claim to be traditional Aboriginal owners of the land claimed. The result was that a group, which came to be called the **Danggalaba** group, was represented separately from 1997 onwards as to all aspects of evidence of traditional matters.

4.20.2 The **Danggalaba** group was put forward as the descendants of the Danggalaba clan, which was said to have been affiliated to country both on the Cox Peninsula and on the eastern side of the Darwin Harbour, and to have expanded its estate to encompass the whole of the land claimed. The word *Danggalaba* is said to mean 'crocodile' and to have designated the principal totem of the clan.

4.21 Descent criterion of the Danggalaba group The principle of descent on which the group is said to have been formed is descent from an ancestor recognised to have been a member of the Danggalaba clan. Thus, the group is said to include the descendants of Tommy Lyons, Crab Billy Belyuen, King George and Frank Secretary, all of whom are dealt with specifically in para. 4.4 as members of the **Tommy Lyons** group. It is said to include the descendants of Amy Yirra, on the assumption that she was the biological sister of Tommy Lyons. These descendants are dealt with in detail in para. 4.10.13 and the issues associated with the possibility of a relationship between Amy Yirra and Tommy Lyons are dealt with in detail in paras 4.5.4-4.5.13. Finally, the group is said to include all of the descendants of Didja Batcho, the daughter of Blanchie, who are referred to in detail in paras 4.10.18-4.10.25.

4.22 Genealogies of members of the Danggalaba group

4.22.1 One of the contentions put forward to support the claim of the **Danggalaba** group to be recognised as a group was that the genealogies tendered in evidence on behalf of the **Larrakia** group contained an error. Those genealogies showed that Blanchie had children from three different men. One was an unnamed man from the Yiwaidja language group, whose people come from Western Arnhem land and Croker Island. This Yiwaidja man was said to have been the father of Sam Gurndulk, Dolly Garinyi and Pat Lawrie, whose Aboriginal name was said to have been Mamilk. A Wulna language group man, named Piniti, Finity or Benadi, was said to have been the father of Blanchie's children Topsy Garamanak Drysdale, Wulna O'Brien, Hilda Gunmunga and Chookie Gulukboy. Blanchie's third husband, Batcho, a Malay man, was said to have been the father of Didja Batcho. The genealogies show a dotted line linking Blanchie with a Larrakia man called King Charles (or Charles King), who was married to a Larrakia woman called Bessie.

4.22.2 The contention on behalf of the **Danggalaba** group is that it was incorrect to show Pat Lawrie Mamilk as the child of Blanchie. He was said to have been Blanchie's husband and the adoptive father of Didja Batcho. The highest significance attributed to this contention was to argue that Pat Lawrie was a classificatory brother of Tommy Lyons, Crab Billy Belyuen, King George and Frank Secretary and, like them, a member of the Danggalaba clan. It would follow that Pat Lawrie's descendants, through his adopted daughter Didja Batcho, were entitled to be regarded as members of the **Danggalaba** group on the principle of descent accepted by the group.

4.22.3 The earliest suggestion that the descendants of Blanchie could claim descent from Pat Lawrie, by reason of his adoption of Didja Batcho, did not come until 1996. Prior to that, Yula Williams and Rona Ally, both daughters of Didja Batcho, had given evidence as to the identity of their grandparents. Both had said that Blanchie was their grandmother and Batcho their grandfather, making no mention of any adoptive grandfather. In 1990, Joan Fejo gave evidence that her father, Juma Fejo and his brothers, Roger and Smiler Fejo, were the sons of Charles King. She said that Charles King was married to Blanchie. After Charles King and Blanchie died, Pat Lawrie looked after Juma, Roger and Smiler Fejo. Joan said that Pat Lawrie was the only grandfather she ever knew. She did not say, however, that Pat Lawrie was married to Blanchie. It is a distinct possibility that Pat Lawrie was a son of Blanchie, sufficiently old to assume a paternal role with respect to the orphaned children of Blanchie's last husband.

4.22.4 Nelson Blake, a man from Western Arnhem land, was called to give evidence in support of the claim of the **Danggalaba** group. His evidence did not support the proposition that Pat Lawrie was the adoptive father of Didja Batcho. He said that he did not know who Didja's mother and father were. Further, Nelson said that Pat Lawrie and his father were both called Mamil and that Pat Lawrie's father was a Yiwaidja man. Nelson did not therefore support the claim that Pat Lawrie was a classificatory brother of the four ancestors of members of the **Tommy Lyons** group.

4.22.5 Tibby Quall gave evidence on 25 October 1995 that he acquired ownership of the land claimed through his mother's mother's father. Tibby's mother was Lindy Batcho, a daughter of Didja Batcho, the daughter of Blanchie. At that stage, Tibby was not claiming his entitlement through Blanchie, but through Didja Batcho's father. Didja Batcho's biological father was a non-Aboriginal man (see para. 4.10.18), so Tibby must have been referring to an adoptive father. Consistently with this evidence, in 1997 Tibby gave evidence that Pat Lawrie was the adoptive father of Didja Batcho. Under cross-examination, he admitted that this proposition was more of an assumption that he had made than a proposition for which he had evidence. Yula Williams, the oldest living member of the family, gave evidence in 1997 that Blanchie married Pat Lawrie after she was married to Batcho and that Pat Lawrie was the father of Sam Gurndulk and Dolly Garinyi. She also said that she had not known her grandmother, Blanchie, but had known another woman named Blanchie. The possibility of two Blanchies, one of whom might have married Charles King, makes the resolution of this issue even more difficult. In the light of her earlier evidence, I did not find the evidence of Yula Williams compelling.

4.22.6 The issue was further complicated by references in the evidence to a man named Gudadji or Kutajik. Nelson Blake said that this man was a brother of Pat Lawrie. It is difficult to establish whether he was saying that they were classificatory brothers or were related biologically, but it may be that they had the same father and different mothers. He said the father was a man called Timbak, a Yiwaidja man. He also said that Pat Lawrie's mother and Gudadji's mother were sisters and were Larrakia women. According to him, Pat Lawrie married a woman from Wave Hill and had a daughter. Yula Williams said that Gudadji was Pat Lawrie's brother. Tibby Quall said that Gudadji and Pat Lawrie were one and the same person and that he was Didja Batcho's father (i.e. adoptive father).

4.22.7 Another variation was that Blanchie was a classificatory sister of King George and was therefore a member of the Danggalaba clan. The proposition that Blanchie was King George's sister came from the evidence of Nelson Blake. This proposition derives some support from Dr Walsh's evidence that the information he had ascertained about Blanchie was that her parents were Bob Drysdale and Mary Gurrennuk and that Mary was the daughter of a man called Madjalimba. In the Danggalaba clan genealogy in Kenbi 79, Madjalimba is shown as the father of Frank Secretary. In the genealogies tendered on behalf of the **Larrakia** group, he is also shown as the father of Frank Secretary and as a classificatory or adoptive brother of King Miranda, the father of King George. Madjalimba is not shown as having had a daughter. If it were true that Madjalimba was the biological father of Frank Secretary, the classificatory brother of King George, then it would have been more likely that Frank Secretary and King George would have regarded Mary Gurrennuk as their sister than that they would have regarded Blanchie as their sister.

4.22.8 The precise position is unclear. All that can be said is that there is a possibility that the descendants of Blanchie, in particular the descendants of Didja Batcho, are descendants of a member of the Danggalaba clan. As I have said in para. 4.5.13, the position with respect to the descendants of Amy Yirra is impossible to determine.

4.23 Danggalaba group not a local descent group

4.23.1 Even if it be assumed that Amy Yirra were established to have been the biological sister of Tommy Lyons, difficulties would still arise in asserting the existence of the **Danggalaba** group as a local descent group. It will be recalled that the Federal Court of Australia has said that a local descent group may consist of persons recruited on a principle of descent accepted by the members of the group (see paras 1.4.3 and 1.4.4). It is plain that not all of the putative members of the **Danggalaba** group, as it was put forward in 1997, accept that all of the descendants of any deceased member of the Danggalaba clan, of whatever sex, constitute a group. Tommy Lyons, Crab Billy Belyuen, King George and Frank Secretary were members of the Danggalaba clan. Their descendants would be members of the **Danggalaba** group on the application of the principles of descent advanced on behalf of the **Danggalaba** group. As I have said in para. 4.3, those descendants see themselves as constituting the group referred to as the **Tommy Lyons** group, recruited on a principle of patrilineal descent with the negotiable addition of first generation matrifiliates. They do not see themselves as members of a broader **Danggalaba** group, constituted by a broader principle of descent. They do not see themselves as members of any group that includes the descendants of Amy Yirra or the descendants of Didja Batcho. Further, not all of the descendants of Didja Batcho subscribed to the principle of descent on which the **Danggalaba** group was said to be based. Some opted to continue to be represented by the lawyers acting for the **Larrakia** group, and thereby asserted their continuing adherence to the principle of descent on which that group is constructed. It cannot therefore be said that there is a principle of descent, accepted by all, or substantially all, of the putative members of the **Danggalaba** group, which is the basis on which members of the group are recruited.

4.23.2 The divisions among those said to constitute the **Danggalaba** group raise another issue, namely whether the **Danggalaba** group is truly a group. It is significant that Raelene, Jason and Zoe Singh do not recognise that the descendants of Didja Batcho, or the descendants of Amy Yirra, are members of the same group as they are. It is significant that not all of the putative members of the **Danggalaba** group elected to be represented by Mr Dalrymple and to assert the claim of that group. These factors make it clear that to speak of a 'group' lacks meaning. The members of the supposed group have no interaction with each other as members of the group. They do not all see themselves as members of the supposed group. Significant elements of them repudiate the existence of the supposed group.

4.23.3 For these reasons, I find that the **Danggalaba** group is not a local descent group, within the meaning of that element of the definition of 'traditional Aboriginal owners' in s. 3(1) of the Land Rights Act. It is unnecessary for me to set out a list of the members of the **Danggalaba** group. I have already referred to them specifically in paras 4.4, 4.5.4-4.5.13 and 4.10.18-4.10.25 and their names appear in the lists in paras 4.8 and 4.12.

4.24 Only the Tommy Lyons group and the Larrakia group are local descent groups Of the four groups advanced as traditional Aboriginal owners of the land claimed, only two are local descent groups within the meaning of that phrase in the definition of 'traditional Aboriginal owners' in s. 3(1) of the Land Rights Act. They are the **Tommy Lyons** group and the **Larrakia** group. Neither the **Belyuen** group nor the **Danggalaba** group is a local descent group.

5 COMMON SPIRITUAL AFFILIATIONS TO SITES

5.1 Language group affiliations

5.1.1 Fundamental to the claim of the **Larrakia** group is that the land claimed is Larrakia country or Larrakia land. That is to say, the whole of the land claimed is viewed as lying within a belt of country extending along the coast, generally described as lying between the mouth of the Adelaide River and the mouth of the Finniss River, which is country to which people whose language is Larrakia are affiliated. Historical records suggest that the position may not be as simple as this. Several official records, accounts of amateur ethnologists and writings of anthropological researchers from the 1880s until the 1950s recorded the presence of 'Wagaitj' or 'Wagait' people on the Cox Peninsula. The term 'Wagaitj' or 'Wagait' means 'coastal people' or 'beach people'. People of the Larrakia language group style themselves 'saltwater people'. 'Wagaitj' is sometimes used as a collective term, meaning all or some of the six language groups that have affiliations to particular areas of land on the coast between the region of the land claimed and the mouth of the Daly River. These six language groups are usually mentioned in three pairs, because of traditional intermarriage between members of the language groups within each pair. The three pairs are Wadjigiyn and Kiyuk, Amiyenggal (often abbreviated to Ami) and Menthayenggal (often abbreviated as Mentha), and Marriamu and Marritjaben.

5.1.2 There is sometimes a tendency to assume that Larrakia people inhabited the land claimed before the establishment of Darwin, but were attracted by white settlement and, over time, mostly left the land claimed. There can be no doubt that Larrakia people always had a presence within the land claimed. It cannot be suggested that there is some illegitimacy in the firmly-held view of Larrakia people that the land claimed belongs to their language group. Historical records and the traditions of the people who live at Belyuen suggest that the identification of the land claimed with the Larrakia language group was not exclusive. Again, the assumption has sometimes been that the vacuum created by the Larrakia people's departure from the land claimed was filled by people from the south and west, taking advantage of the resources that became available, and drawn by agricultural, pastoral and missionary activity, particularly at what was then called Delissaville (now Belyuen). It is clear that, in the nineteenth century, Larrakia and Wagaitj people were together in various places on the Cox Peninsula as far north as the lighthouse at Charles Point.

5.1.3 There is a recognised cultural divide between the Larrakia and the Wagaitj peoples in one respect. Anthropologists have called it the circumcision line. Larrakia people have traditionally initiated their young men without circumcision, whereas circumcision is a vital element in initiation ceremonies conducted by the Wagaitj peoples. There is a tradition, of which public evidence was given to Justice Olney by Lenny Singh (then the senior ceremony man at Belyuen) and his brother Johnny Singh (who has now succeeded Lenny as the senior ceremony man at Belyuen) to the effect that the Larrakia abandoned circumcision of their young men when a young man gave forth saltwater instead of blood when he was cut. Despite this cultural difference, historical records do not suggest any hostility or other difficulty arising among Aboriginal people by reason of the presence of both Larrakia and Wagaitj people in the Cox Peninsula. There is abundant evidence of joint ceremonial activity on the Cox

Peninsula. The role of the senior ceremony man at Belyuen has at times been held by Larrakia men and at other times by Wagaitj men.

5.1.4 The evidence tends to suggest that the Cox Peninsula might have been shared country, between the core territories of the different language groups, and that the presence of people from one side was tolerated, and perhaps even welcomed, by people from the other. This notion is perhaps reinforced by the evidence given before me. There was a tendency on the part of witnesses who are members of the **Belyuen** group to focus on the Cox Peninsula, the islands to the west and the coast to the south, towards the Finniss and Daly Rivers. On the other hand, particularly in the case of witnesses called on behalf of the **Danggalaba** group, the tendency was to focus on the Cox Peninsula, Darwin and links with areas to the east, as far as Western Arnhem Land.

5.1.5 In short, the land claimed may be described appropriately as Larrakia country, but it is not possible to find that it is all exclusively Larrakia country.

5.2 Succession

5.2.1 The case made on behalf of each of the groups of claimants involves an assertion that the members of the relevant group have become traditional Aboriginal owners of the land claimed by succeeding to the entitlements of groups which are now extinct. Each case postulates the existence of small groups of people, styled as 'clans', associated with particular sites and areas of land, in the era before European contact. One of the results of colonial and post-colonial development has been the extinction of all, or almost all, of these clans. The **Larrakia** group asserts that the particular responsibilities of the clans (which are claimed to have been Larrakia clans) have become generalised to all members of the Larrakia language group. The claim made on behalf of the **Belyuen** group is that its members have acquired the knowledge of dreamings relating to sites on the land claimed and the rights and obligations to perform ceremonies for those dreamings and sites and for the land claimed, and that they now hold that knowledge and those rights and obligations in their own right. In effect, the claim is that the **Belyuen** group has filled the vacuum caused by the extinction of the earlier clans. Those who identify as members of the **Danggalaba** group and, perhaps less explicitly, the members of the **Tommy Lyons** group, claim to be the remnants of or successors to the Danggalaba clan. That clan had as its totem the crocodile and as its focal site *Djibung* (site 57). The case put on behalf of those groups is that their members have succeeded to the dreamings, sites, rights and obligations, not only of the Danggalaba clan, but also of the extinct clans throughout the rest of the land claimed.

5.2.2 The overwhelming weight of opinion among the anthropologists who gave evidence on behalf of the claimants is that the pattern of small, land-owning clans was a reality in pre-contact times. My consulting anthropologist, Dr John Avery, suggested that these clans might have been ceremonial clans, with totemic functions, rather than land-owning clans. Dr Michael Walsh, one of the co-authors of Kenbi 79 and the principal anthropologist for the **Larrakia** group, agreed that this was a possibility. Dr Peter Sutton, who also gave evidence on behalf of the **Larrakia** group, said that the pattern of land-owning clans was known to have existed in coastal areas on each side of the land claimed. He concluded that it would have been unlikely that that pattern was broken in the Darwin region. I do not think it is possible to make a definitive

finding on the nature of clan groups in pre-colonial times. In any event, such a finding is unlikely to have a significant effect on the process of applying the statutory definition of 'traditional Aboriginal owners' to the facts as they now exist.

5.2.3 There is certainly evidence of the existence of clans within and near the land claimed, focusing on particular sites and their associated dreamings. The evidence concerning the Danggalaba clan is strong. In Kenbi 79, reference was made to a clan, described as almost extinct, named Iynarrayn. The focal site of this clan was *Bagalg* (site 76), near Two Fella Creek on the north coast of the Cox Peninsula. At the time, a woman called Ababa (also called Ruby, Ariyat, Harriet, or Granny Ababa Shepherd) was described as the sole living representative of that clan. She was old, infirm and unable to communicate very well. She died some time before the inquiry began. In the inquiry, Pauline Baban claimed, on behalf of herself and her family, association with this Iynarrayn clan. Iynarrayn is the dreaming associated with *Bagalg* (site 76). It is an 'itchy' dreaming. Pauline Baban claimed a particular affiliation to it and that she and her family are affected by itches. There is also some evidence that the Fejo family had ancestral links to a clan focusing on the Iyn.garrayn, or sea turtle, dreaming, with sites in the vicinity of Talc Head. According to Dr Walsh, the late Sam Gurndulk had a clan affiliation with a mosquito dreaming at a site called *Bilurrgwa* (not shown on the site map) near the Darwin suburb of Leanyer.

5.2.4 In dealing with the evidence, I have therefore adopted the assumption that there was a pre-existing pattern of clans having, at the least, associations with particular sites on the land claimed through particular dreamings. All traces of most of those clans have been lost.

5.3 Knowledge

5.3.1 Whenever the issue of spiritual affiliations is raised in a traditional land claim, it becomes necessary to consider what, if any, role knowledge plays in such affiliations. In the passage quoted in para. 1.4.5 from the judgment of the Full Court of the Federal Court of Australia in *Northern Land Council v. Olney*, the court referred to the exclusion of some members of a group who lack the requisite spiritual affiliation, because of age or otherwise, e.g. infants. This suggestion was made in the context of a passage in which the court recognised that the way the Commissioner proceeds must vary depending upon the way the evidence is presented. It was also in the context of a passage in which the court recognised that the definition of 'traditional Aboriginal owners' in the Land Rights Act would produce strange results if applied to persons who lacked the necessary spiritual affiliation, or even knowledge of it, so that they could participate in the decision-making process in relation to Aboriginal land.

5.3.2 The reference in *Northern Land Council v. Olney* to the exclusion of members of a group who lack the requisite spiritual affiliation, because of age or otherwise, e.g. infants, cannot have been intended to suggest that some particular level of knowledge is essential for the possession of spiritual affiliations. At least in many parts of the Northern Territory, such a reading of the Act would fail to accord with the realities of Aboriginal society. It is well known, and my own experience as Aboriginal Land Commissioner confirms, that Aboriginal societies traditionally impart knowledge to their members progressively. The notion of the initiation of young persons into adulthood, involving ceremonial activity, permanent physical marking by circumcision or scarring, and the accompanying transmission of knowledge, is familiar. So is the

concept of 'elders' or senior people, fully acquainted with the law and accepted as the arbiters of disputes and the essential decision-makers on a wide range of issues. In many Aboriginal societies, all children are born with, or have attributed to them, spiritual affiliations through dreamings to sites on areas of land. Their active involvement in the manifestations of these affiliations will be postponed until after initiation into adulthood. That participation will then increase progressively with advancing age and demonstration of the capacity to accept responsibility, and will be accompanied by admission to progressively deeper levels of knowledge. In due course, a person who survives to become whitehaired and accepts the responsibilities that are his or her entitlement will become possessed of the deepest levels of knowledge and respected as a senior law person. Their seniority will be recognised particularly in the conduct of ceremonies, for which they will be seen as 'bosses'. In Aboriginal societies in which the law operates this way, the chances of someone escaping the system will not be great. Children will be drawn inexorably into the system of ceremonies, rights and obligations, which affiliate them to land through dreamings and the relationships of those dreamings with sites. Those who are not yet of an age to be given significant knowledge or entrusted with responsibilities will nonetheless be perceived to have entitlements. There will be a recognition of the need to teach them at the appropriate times and to ensure, as far as possible, that they perform their appropriate roles in the society. In theory, it might be possible to renounce altogether any role in the system. In practice, even those who have gone, or been taken, to live far away are perceived to have entitlements which they are capable of activating at any time by returning and learning. Where such circumstances apply, any exclusion of individuals from the entitlements they possess from birth, by reason of infancy or lack of knowledge, would be artificial. Those entitlements are usually linked to membership of groups, but are individual entitlements.

5.3.3 In the present claim, it is clear that the **Belyuen** group functions in the manner of the sort of Aboriginal society which I have described. Its members hold knowledge relating to dreamings and their relationship to sites on the land claimed. The degrees of knowledge held depend upon initiation, age and experience. There is a considerable amount of ceremonial activity, often involving people who do not live at Belyuen, as well as those who do. Some senior people are identified as leaders. Evidence traces the identities of successive ceremonial bosses in recent history. Those who have been born with entitlements to knowledge are considered not to have lost those entitlements, even if they have moved away to live; if they should return, their entitlements would remain intact for them to take up. In determining whether such people have spiritual affiliations to sites on the land claimed, it would be artificial to attempt to exclude those who are too young to have acquired significant knowledge, or those who have not acquired knowledge because of absence, from membership of any relevant group. Such spiritual affiliations as those persons have acquired by birth as members of any relevant group will remain.

5.3.4 So far as most of its members are concerned, the **Larrakia** group does not have the characteristics of Aboriginal society that I have described above. I do not say this of the members of the **Larrakia** group by way of criticism. Nor do I suggest that they are any the less 'Aboriginal' than other claimants by reason of it. The simple fact is, however, that events which have occurred since the establishment of the first European settlement at Darwin in 1869 have had drastic effects on the society which once existed among members of the Larrakia language group. The destruction of the clan system, to which I have referred in para. 5.2, is one example of this. There are many others. It

is impossible to ignore the era when government policy and popular opinion combined to dictate that Aboriginal people should be integrated into the dominant Australian culture. For several generations, it was disadvantageous for people to proclaim that they were Aboriginal. Parents refrained from teaching languages and other aspects of culture to their children, in an attempt to ensure that their teachers and peers would not perceive them as different. To a very great extent, knowledge of dreamings and sites has been lost to Larrakia people. Young people are not routinely initiated into adulthood. Ceremonial activity has ceased. There has not been a consistent, common spiritual tradition, handed down from generation to generation, among those who are said to constitute the group. The size of the group and the range of its cultural backgrounds have resulted in its members pursuing many different professions and occupations in a variety of locations, without sharing spiritual norms and practices.

5.3.5 In this state of affairs, two issues arise with respect to the **Larrakia** group. The first is whether there should be some minimum standard of knowledge which a person must possess before being regarded as having spiritual affiliations to any relevant site. The second is whether knowledge which has been and is being reacquired should be disregarded.

5.3.6 I deal with the first issue first. At its heart, the case put on behalf of the **Larrakia** group is that the possession of any Larrakia ancestry entitles a person by birth to all of the spiritual affiliations available in respect of all the dreamings so far as they relate to all of the sites on and near the land claimed. I find it difficult to accept this assertion in the context of the definition of 'traditional Aboriginal owners' in the Land Rights Act. Its logical extension is that all members of the **Larrakia** group have spiritual affiliations to all sites in all areas of land associated with the Larrakia language group. A number of witnesses have described the extent of Larrakia country. It is usually seen as encompassing the coastline from the mouth of the Adelaide River to the mouth of the Finniss River and as stretching inland as far as Manton Dam.

5.3.7 The notion that Aboriginal law would bestow upon people spiritual affiliations to innumerable sites in such a large tract of land, and impose upon them the attendant responsibilities, is improbable. Apart from anything else, it would seem to involve the proposition that spiritual affiliations can exist in the absence of knowledge of them by any living person. It is likely that there are sites within the broad area of Larrakia country in respect of which all knowledge has disappeared, even knowledge as to the identity of the sites. The definition of 'traditional Aboriginal owners' in the Land Rights Act is cast in terms which do not allow it to be satisfied by persons whose sole connection with an area of land is their membership of a language group associated with that area of land. Dr Peter Sutton, an anthropologist who gave evidence on behalf of the **Larrakia** group, advanced the theory that the group has become a 'new tribe', coalescing around its language group identity in the absence of detailed knowledge of dreamings and sites. This interesting theory may well be an accurate description of what has occurred. It does not assist the **Larrakia** group claimants to bring themselves within the definition of 'traditional Aboriginal owners' with respect to the land claimed.

5.3.8 The logical conclusion from what I have said is that there must be a minimum level of knowledge which a person must hold in order to have spiritual affiliations to a site, in the absence of a social organisation that will draw persons born with specific entitlements into active participation in the rights and obligations attached to those

sites. In short, in the case of people who have grown up for several generations separated from the spiritual relationship which their ancestors had to land, spiritual affiliation to a site is not possible without some knowledge of that relationship. This is not to say that the standard of knowledge must be set at a high level. In his evidence, Dr Sutton suggested that the essential elements for spiritual affiliations are knowledge, adherence and a sense of vitality, borrowing these concepts from the philosopher David Hume. Dr Sutton characterised the third element as 'significance'. My consulting anthropologist, Dr John Avery, characterised this element as 'importance'. As he put it, it is not just a matter of having knowledge, but of being 'seized by the importance of it or the unimportance of it.' No amount of knowledge of a site and a dreaming will, by itself, satisfy the requirement of spiritual affiliation. On the other hand, awareness of a site, and of a dreaming associated with it, and the ability to articulate an entitlement to rights and an acknowledgment of obligations with respect to that site, by reason of association with that dreaming, will satisfy the requirement of knowledge. If the relationship to the site through the relevant dreaming is meaningful in the life of the person concerned, even though that person lacks more detailed knowledge, it is possible to find that that person has a spiritual affiliation to that site. One way of demonstrating the relevance to a person's life of an association with a site might be to express a desire to acquire more knowledge about the dreaming and the site and to undertake active responsibility for them. If accepted as credible, such an assertion will demonstrate the affiliation claimed to be meaningful to the person in his or her life.

5.3.9 As I see it, in the case of members of the **Larrakia** group, spiritual affiliations are more a matter of quality than of quantity of knowledge. It is not enough to establish spiritual affiliations to sites for a person to be able to recite the names of sites and of the dreamings attached to them. In the case of a person who has given evidence, it is necessary to look to the meaning which such a person attaches to the claimed affiliation. Nor is it enough to assert a willingness to learn, without evidence of an appreciation of an entitlement to knowledge and an awareness of obligations accompanying such an entitlement. Expressions of willingness to teach children and grandchildren might amount to evidence of awareness of obligations. In the case of those members of the **Larrakia** group who did not give evidence, there must be something to suggest that they are likely to understand, or to come to understand, the existence of affiliations and to treat them as meaningful in their lives.

5.3.10 I have therefore approached the evidence of members of the **Larrakia** group on the basis that they are obliged to satisfy that element of the definition of 'traditional Aboriginal owners' requiring spiritual affiliations by demonstrating that they have associations with sites which are meaningful in the lives of those people who claim them. It might be argued that this is to impose upon the members of the **Larrakia** group a higher standard of proof that is imposed on other groups. If this is so, the problem lies with the terms of the definition. It appears to me that it must be easier to establish spiritual affiliations among persons who are embedded within a society in which substantial bodies of knowledge are held by senior people, in which knowledge is held by others to an extent commensurate with age and status, and in which such knowledge is reinforced regularly by practices such as the conduct of ceremonies. Such persons do not assert the spiritual affiliations of themselves and their children purely by virtue of their birthright. Birthright is relevant in a context of the continuity of the law as a living system.

5.3.11 The issue of the acquisition of knowledge can be disposed of more easily. To the extent to which knowledge is relevant, I cannot see that its source is of relevance to the definition of 'traditional Aboriginal owners' in the Land Rights Act. The fact that a traditional land claim has been made cannot stop the normal processes of transmission of knowledge in an Aboriginal community. Knowledge acquired whilst such a claim is pending cannot be regarded as suspect. This is so whether the knowledge comes from those whose normal function is to pass it on or from those who have studied it, gathered it, and produced it in an ordered form for the purposes of the claim. Knowledge acquired from anthropologists or from materials prepared for a claim is nonetheless knowledge acquired. The process of separating it from knowledge acquired in other ways would be crushing. The longer the claim process, the greater the problem. The fact that this claim has been in existence for more than twenty years is no ground for suggesting that the knowledge acquired by many people during that period should be disregarded. Implicit in much of the cross-examination directed towards the acquisition of knowledge was the proposition that knowledge had been acquired not for 'legitimate' purposes, but solely for the purposes of satisfying the requirements of the Land Rights Act in relation to the claim. Again, an inquiry into the purpose for which knowledge has been acquired would involve a crushing burden on the Aboriginal Land Commissioner and on the claimants. To the extent to which knowledge is required, I am of the view that the source from which it has been obtained is unimportant. I repeat that the crucial issue is whether knowledge acquired by whatever means has had a meaningful effect in the life of the person holding it.

5.4 Sites and dreamings

5.4.1 The spiritual geography of the land claimed is largely common ground between the various claimant groups and was not challenged by any adverse party. Four major travelling dreamings are associated with the area. There are many other sites each associated with an individual dreaming.

5.4.2 The *Kenbi* dreaming has provided the name for this traditional land claim. It was described in evidence as a didgeridoo, a bamboo or a tunnel. The dreaming is essentially a subterranean passage, linking various sites, particularly those associated with sources of freshwater. Thus, *Belyuen* (site 95, not on the claim area but within the existing area of Aboriginal land inside the boundaries of the claim area), at which there is a waterhole, is linked with *Buwambi* (site 42), *Ngarran.gudjuk* (site 22), *Kabarl* (site 26), *Bitirrnyini* (site 5), *Daminmirri* or *Wulmarr* (site 1) and *Moedranyini* (site 3). These sites are distinguished by the availability of fresh water, usually from springs. *Buwambi* (site 42) is on the west side of the Cox Peninsula and has a freshwater spring. *Ngarran.gudjuk* (site 22) is a beach on the east side of Indian Island, towards its northern extremity. *Kabarl* (site 26) is a long beach on the other side of the island. Between them is a freshwater spring, known as *Ngambarrngayitj* (site 23). When I visited the area on 19 October 1995, I was taken to a spot at which an attempt was made to excavate in sand, down to ground water. The attempt did not succeed. After the hearing had resumed at *Kabarl* (site 26), I was informed that I had not been taken to the real spring, because some of the claimants were reluctant to disclose its precise location in the presence of Max Baumber, who attended much of the hearing. Johnny Singh took some of the **Larrakia** group claimants to the actual site, where excavation to the ground water level was relatively easy. A bottle of water from the spring was brought to me at *Kabarl* (site 26) and I tasted it.

5.4.3 *Bitirrnyini* (site 5) consists of Grose Island, Beer Eetar Island and the unnamed island between them. *Moedranyini* (site 3) is a freshwater spring, in a reef between Dum-In-Mirrie Island and Beer Eetar Island. The spring is exposed only at low tide; when it is covered by the sea, its freshwater mingles with the salt water.

5.4.4 The *Kenbi* dreaming is also connected with *Kalalak* (site 110) and *Nanggalinya* (site 111). The former is within the urban area of Darwin, in or near a community in which a number of Aboriginal people, including some of the **Larrakia** group claimants, live. The latter is a rock, known as Old Man Rock, in the sea further to the north.

5.4.5 Members of the **Belyuen** group have a strong belief that the *Kenbi* dreaming connects the various sources of freshwater, so that the water which comes from the springs to which I have referred is the same water as that which lies in the *Belyuen* (site 95) waterhole. A crucial part of the process of initiation of both boys and girls is bathing in the waterhole at *Belyuen* (site 95). This transmits the sweat of the initiate to freshwater sources throughout the land claimed, particularly those connected with the *Kenbi* dreaming. As a result, the dreamings at various sites will thenceforth know the person whose sweat has been so transmitted. The person will be able to move safely through the land claimed and be identified with it.

5.4.6 *Belyuen* (site 95) has become a site of great significance, partly in consequence of its position on the *Kenbi* dreaming track and partly in consequence of the proximity of the Belyuen community. At certain times, tidal movement in Woods Inlet creates a sound which is held to be the sound of an old man playing the *Kenbi* didgeridoo. More importantly, the waterhole is considered to be inhabited by spirits, sometimes described as mermaids. A young woman who bathes in the waterhole is likely to become pregnant. Her child will be considered to have come from the waterhole itself. The members of the **Belyuen** group have a strong belief that, except for the older ones who were born elsewhere, they and their children have been born from the waterhole at *Belyuen* (site 95). As appears from paras 4.14 and 4.17.1, this association with the waterhole is the major defining characteristic for membership of the **Belyuen** group.

5.4.7 *Belyuen* (site 95) is also an important place for the second major travelling dreaming, referred to as *Ngarrmang* or *Lunggul*, the bailer shell dreaming. This is a dreaming the details of which are secret to women. It has several sites in common with the *Kenbi* dreaming and others as well. Near *Belyuen* (site 95) is *Ngarrmangnyini*, also known as *Lunggul* (site 94) (the suffix '*nyini'* means 'place'). The dreaming travels to *Buwambi* (site 42), *Igibidjit* (site 14), *Duwun* (site 12), *Ngulbiltjik* (site 9), *Nyinangalak* (site 2) and *Wulmarr* (site 1). The dreaming then travels back along its track to *Belyuen* (site 95). *Igibidjit* (site 14) is an island of sand above the high water mark at Middle Reef. It is considered to be a very dangerous place, particularly if its surface is interfered with, or any object is moved on or taken from it. When I visited it on 18 October 1995, an application was made that I should hear evidence about it in the absence of Max Baumber, who opposed the application. I refused the application, so as not to deny natural justice to Mr Baumber. The evidence given about the site in the session that followed was not detailed. *Duwun* (site 12) is on Quail Island. I did not visit it because of the danger from unexploded ordnance, present as a result of the long-term use of the island as a bombing range for the Royal Australian Air Force. *Ngulbiltjik* (site 9) is on Bare Sand Island. I heard evidence there on 18 October 1995, but the session was conducted on the Army landing barge,

which took most of those involved in the hearing to visit sites on various islands. The weather was hot and no significant natural shade was available on the island. *Wulmarr*, also known as *Daminmirri* (site 1) is on Dum-In-Mirrie Island. Sessions of the hearing were conducted on that island on 21 October 1995, when a number of people were transported there by air.

5.4.8 The third major travelling dreaming is the crocodile, known in the Larrakia language as *Danggalaba* and in the Wadjigiyn language as *Kenbi kenbi*. This dreaming is associated with *Djibung* (site 57), at which there is a swamp, which is the home of the crocodile. The crocodile travels down the creek to Tapa Bay, past *Bagadjat* (site 54), *Milik* (site 52) and *Bakamanadjing* (site 48), with all of which it is associated. According to Jason Singh, it travels along the west coast of the Cox Peninsula as far as Rankin Point before returning to its home. The crocodile is a very old one, with oysters growing on its head. It is considered to be dangerous. There is some evidence that it has one front leg shorter than the other. Some witnesses claim to have seen it.

5.4.9 The fourth travelling dreaming associated with the land claim is found in Bynoe Harbour. It is known as *Wilar* in the Wadjigiyn language and G*ulida* in the Larrakia language. In the English language, it is described as a cheeky yam. In Aboriginal English, the word 'cheeky' is synonymous with 'dangerous', 'toxic', or even 'deadly'. Cheeky yams cannot be eaten without treatment, usually involving soaking or rinsing slices of them in water, to remove the toxins. They are recognisable by the fact that the tuber tends to have many small roots protruding from it, giving it a hairy appearance. In Bynoe Harbour, there is a tidal phenomenon which creates a raft of floating debris, which moves in and out on the tides and is visible as a dark mass with protrusions, making it resemble a cheeky yam. The dreaming is associated with a men's ceremony of a 'high', or very secret, kind. The *Wilar* is considered to be very dangerous to those travelling by boat to the islands west of the Cox Peninsula. It is considered to be capable of creating waves which will overturn a boat and cause the occupants to drown. Those who are aware of it, and see it approaching, will wait until it has passed before attempting a crossing. Women who are menstruating and girls who have not reached puberty should not travel on the waters where the *Wilar* is to be found. For others, addressing the dreaming appropriately, so as to reassure it that the travellers are people entitled to be in its vicinity, can reduce its danger. There is some controversy between members of the **Larrakia** group and members of the **Belyuen** group as to whether the *Wilar* must be addressed in the Larrakia language, or whether it is capable of understanding one or more of the languages spoken by members of the **Belyuen** group. The *Wilar* dreaming has associations with *Imabulk* (site 31, Pioneer Beach), *Djirringili* (site 27, Knife Island), *Guligi* (site 30) and *Kidjerikidjeri* (site 35, Rankin Point).

5.4.10 Possibly the most significant of the localised dreamings is at *Wariyn* (site 49), on the west coast of the Cox Peninsula. This site is associated with the dreaming of the same name, which is said to be a male supreme creator being. At the site is a large rock, said to represent the dreaming. A smaller rock nearby represents the wife of the dreaming. Much of the detail related to this dreaming is secret to men, and the site is primarily a site for men. Women may approach to within view of it but may not come to the rocks themselves. Girls and women should be painted with white ochre on their first visit to the site. Damage to the site will result in sickness and death. According to the evidence of Johnny Singh, surveyors from the navy visited the site with a boat and

damaged the rock by drilling, for the purpose of blasting it. They disappeared into a cave and were swallowed up and drowned. It is necessary to speak to the dreaming in order to approach the site, to reassure it that visitors are accompanied by the right people. Again, there is controversy as to whether Larrakia or Wadjigiyn is the appropriate language in which to speak. When passing the site by boat, Larrakia people regard it as proper to make an offering to *Wariyn* by throwing a small amount of food or tobacco into the sea close to the site.

5.4.11 A short distance south of *Wariyn* (site 49) is a bay called *Bakamanadjing* (site 48), at which the opening session of my hearing was held. Visible from that point is a rock, known as *Wutut* or *Wutwut* (site 47). The dreaming associated with this site is a frog of the same name. There is some evidence that the rock moves from time to time over short distances. The nearby site of *Binbinya* (site 46) is also associated with the frog dreaming.

5.4.12 A short distance north of *Wariyn* (site 49) along the coast is *Mangenda* (site 50). The dreaming of the same name associated with this site is a lone person, rendered in English as an orphan. A short distance further north is *Gurraitjgurraitj* (site 51). The dreaming of the same name is a bird. The evidence is confused as to the precise nature of the bird. Some witnesses described it as a kookaburra. Raelene Singh described it as a long-tailed cuckoo and accepted the suggestion of her counsel that it had been identified as a channel-billed cuckoo, which is sometimes known as a storm bird. There is a large banyan tree at the site but there is danger associated with going too close to it.

5.4.13 In the Tapa Bay area, associated with *Bagadjat* (site 54) and *Gurraitjgurraitj* (site 51) is a dreaming called *Pederra*. This is described as a dangerous hairy man, liable to pursue people who have hunted successfully and are carrying meat. The being can be deterred by fire. The northern tip of the Cox Peninsula is Charles Point. There is a lighthouse constructed nearby. The site at Charles Point itself is known as *Debilipu* (site 66). The site of the lighthouse is known as *Ladaitj* (site 67). Three dreamings are associated with these two sites. It is not entirely clear whether each dreaming is associated with only one site, as there was a tendency for witnesses to speak of the two sites as if they were one, and there is evidence linking each of the dreamings with both sites. The first dreaming is *Wak*, or crow. Raelene Singh told the story of a female and male crow fighting at *Debilipu* (site 66). The female was pregnant. She left and the male remained. The male was worried about the female and the child. The male may still be seen at the sites in three features. The first is a rock or reef under the surface of the water, which gives the appearance of a black patch in the water. The second is a freshwater spring in the inter-tidal zone, accessible at low tide, and representing the eye of the male crow and his tears. The third is white clay on the beach, representing the semen of the crow. The white clay is used for paint for ceremonies. There is a song and a dance relating to the *Wak* dreaming, both used in ceremony. The second dreaming is *Libabul*, or groper. The groper made a cave and is present at the site, represented by a rock visible in the water. The third dreaming is *Muyin*, or dingo, which was described by Johnny Singh as dangerous, particularly to those who have been hunting and are carrying meat.

5.4.14 The dreaming at *Winganyini* (site 69) is the *Wingan*, or red apple, a native fruit. Raelene Singh gave evidence that it is dangerous to eat the fruit from the tree

growing at the site, because it is the dreaming. *Winganyini* (site 69) is near One Fella Creek.

5.4.15 *Daramanggamaning* (site 73) is a site at which secret men's ceremonies were held. It is linked by a dreaming track with sites to the east, as far as Wulna country and Western Arnhem Land. The track passes through the claim area and continues to the south and south-west, but it is not completely clear with what, if any, other sites on the land claimed it is connected. The dreaming for this track is secret to men. No detailed evidence was given about it. In a report for the Aboriginal Sacred Sites Protection Authority (as the Aboriginal Areas Protection Authority was then called), dated May 1981, Dr Walsh gave the name *Nanggilmak* to this dreaming. He described it as a dangerous being, associated with *Nanggalinya* (site 111), *Gundal* (site 109), *Nguranyini* (site 77), *Daliribarrk* (site 75), *Mindimindi* (site 70), *Belurriya* (site 68), *Debilipu* (site 66), *Waramanawagaidj* (site 65), *Idjibalaidj* (site 62), *Bangiyili* (site 61), *Milik* (site 52), *Gamarrnggamarrng* (site 44), *Buwambi* (site 42), *Igibidjit* (site 14) and *Duwun* (site 12). His description extended the dreaming track to the east of *Nanggalinya* (site 111), towards Arnhem Land, and to the south and south-west from *Duwun* (site 12), through a series of coastal sites to the Perron Islands. In his report entitled Ten Years On, prepared in 1989, Dr Walsh gave the spelling *Ngayin.gilmak* for this dreaming, and described it as a whale, or a hairy sea monster. Near *Daramanggamaning* (site 73) is *Ngan.giyn* (site 72), a place used by women during the men's secret ceremonies.

5.4.16 *Bagalg* (site 76), near Two Fella Creek, is associated with the *Iynarrayn*, or itchy, dreaming. The preponderance of the evidence is that the dreaming is in the vicinity of the site, although not right at it. Johnny Singh accepted that there is an itchy dreaming, but said that it is associated with *Daramanggamaning* (site 73), not *Bagalg* (site 76). Near *Bagalg* (site 76), on the beach, is *Nguranyini* (site 77), another site associated with a ceremony secret to men. At that site, there is a ritual, involving placing handfuls of sand on top of a particular rock, which is performed each time the site is visited. There appears to be no specific dreaming associated with *Imaluk* (site 82), where the beach has become known as Golden Sands. There is a freshwater spring and some of the older claimants recall living at the site. Marjorie Bilbil gave evidence that the late Tommy Barradjap dreamed a song about *Imaluk* (site 82), which is still sung in ceremonies conducted by members of the **Belyuen** group.

5.4.17 At *Ngalwatnyini* (site 83), there is a manta ray dreaming, represented by a triangular reef, close to the beach and visible in the water. Damage to the rock, or even approaching too close to it, is considered dangerous and likely to result in sickness among the people responsible for the dreaming. The beach at the site is adjacent to a housing subdivision known as Waugite. Despite the proximity of the houses, the site continues to be of major importance, particularly in the initiation of young men from the Belyuen community. Initiates are brought to bathe in the salt water at *Ngalwatnyini* (site 83), so that their sweat will be spread throughout the area and all the salt water dreamings will know them, in much the same way as their sweat is spread through the fresh water from *Belyuen* (site 95). *Ngalwatnyini* (site 83) is a registered sacred site.

5.4.18 Also registered under the Northern Territory legislation relating to the protection of sacred sites is *Kunggul* (site 85). The dreaming for this site is a bird, known as a pheasant coucal, or jungle pheasant. The site is an important place for

ceremonies relating to matters secret to women. As part of the initiation of girls into womanhood, they are made to bathe in the salt water at *Kunggul* (site 85), which spreads their sweat to the salt water dreamings, in the same way as male initiates' sweat is spread from *Ngalwatnyini* (site 83) and the sweat of initiates of both sexes is spread to the freshwater dreamings from *Belyuen* (site 95).

5.4.19 *Wanggigi* (site 87) is now the site of the Mandorah Hotel. It is a former burial ground, at which deceased people from the Larrakia language group and from the various language groups which make up the Belyuen community were buried. Excavations for the construction of a swimming pool at the hotel revealed human remains. The late Tommy Barradjap gave evidence before Justice Olney that there was a song associated with *Wanggigi* (site 87).

5.4.20 In the course of the hearing, I witnessed a performance by members of the Belyuen community of a song and dance relating to a buffalo. The performance took place at *Belyuen* (site 95). The song was dreamed by (i.e. given by spirits to) Jimmy Muluk, now deceased. It is being passed on to succeeding generations in the **Belyuen** group. The buffalo song relates to sites at Talc Head and to *Madpil* (site 91) and *Midjili* (site 92), on the other side of Woods Inlet. *Midjili* (site 92) is also famous for its coloured clays, particularly a yellow clay used for ceremony and used in some way to help men to attract women.

5.4.21 There is a cluster of sites on and around Talc Head, on the eastern side of Woods Inlet. *Garabugulbugul* (site 96), on the Woods Inlet side, is associated with the buffalo dance and song referred to in para. 5.4.20. It is also associated with a crab dance and song, used in the performance of ceremonies by members of the **Belyuen** group. The site is also associated with a dangerous creature, described as having a large nose with snot hanging from it. At times, an eerie light is visible at night on the cliff near *Garabugulbugul* (site 96). There are two important dreamings associated with the other Talc Head sites. One is the dugong and the other the sea turtle. Each is represented in visible form by a rock reef, visible at low tide. The dugong is called *Memarrandjamul-nyini* (site 99) and the sea turtle is called *Iyn.garrayn-nyini* (site 100). *Buruga* (site 97), at Talc Head itself, is associated with the dugong dreaming. *Madjalaba* (site 98), a little to the south of Talc Head, is associated with both dreamings. Lorraine Williams related a story, which she said she obtained from the late Topsy Secretary, about how the dugong came into existence. A young girl was told by her old people that she was not to eat the seeds of a certain plant. She disobeyed. The spikes in the seeds made her itchy and irritated her throat, causing her to roll about on the ground. The condition became worse until she rolled into the sea. The whiskers on the dugong are said to represent the spikes of the seeds.

5.4.22 *Benindjila* (site 102), at Mica Beach on the east side of the Cox Peninsula, is associated with the buffalo song, referred to in para. 5.4.20. According to Professor Marett, a musicologist who gave evidence on behalf of the **Belyuen** group, there is a verse of the song about the buffalo dancing on the beach at *Benindjila* (site 102). *Imburr* (site 104) is associated with the crab song, referred to in para. 5.4.21. That song was also dreamed by Jimmy Muluk, at *Imburr* (site 104), where he lived.

5.4.23 *Beyelu* (site 107) is a flat-topped hill between Middle Arm and West Arm of the Darwin Harbour. It is said to be a dangerous place, because of its power to poison. Raelene Singh described this power as a sore dreaming or a poison dreaming.

She said that anyone climbing the hill would have sores on his or her body wherever poked by sticks. Her father, Johnny Singh, described a poisoned waterhole on the hill. According to him, anyone climbing the hill and poked by a stick or hit by a stone would get a swollen foot and the poison would travel through his or her body. Near *Beyelu* (site 107) is the site of a former ceremony camp, still used when the late Tommy Lyons was alive.

5.4.24 In Bynoe Harbour, at Pioneer Beach, is *Libabulnyini* (site 29). This site is a registered sacred site and is associated with a groper dreaming. The groper is represented by a rock a short distance from the beach. The rock is considered to be dangerous; anyone approaching it is liable to be pulled under the water and drowned. There are aspects of the dreaming at this site that are secret to men. *Imabulk* (site 31), or *Imabulknyini*, appear to be alternative names for *Libabulnyini* (site 29). At the western end of Pioneer Beach is *Bidjabarri* (site 32), which is associated with a dreaming of the same name, a small snake known as a minute snake, because its powerful venom takes only that long to kill a person. A short distance from the shore, to the west of *Bidjabarri* (site 32) is Crocodile Island, known as *Ngarrik* (site 28). Associated with this site is a white cockatoo dreaming. Towards the opposite side of Bynoe Harbour is Knife Island, known as *Djirringili* (site 27), a registered sacred site. As well as its association with the *Wilar* dreaming (see para. 5.4.9), this site is a focal point for secret men's knowledge concerning the initiation of young men. It is a dangerous place; visiting it will cause sickness among those who hold the Aboriginal law relating to it. Similarly, eating anything gathered from the island would result in sickness.

5.4.25 At Rankin Point is *Kidjerikidjeri* (site 35). The *Kidjerkidjeri* dreaming is a 'willy wagtail' bird. The site is also associated with the same secret men's knowledge as *Djirringili* (site 27). *Murrmurrnyini* (site 36) is associated with a bream dreaming. Just north of Turnball Bay is *Dawening* (site 40), another site associated with a dangerous being.

5.4.26 The Cox Peninsula sites I have described so far are on or near the coast. It is no surprise to find a high density of sites within reach of the abundant resources of the salt water and its vicinity. Inland sites on the Cox Peninsula are fewer, because the area is relatively inhospitable during the dry season. Inland sites therefore tend to be on or near creeks or swamps which provide sources of water for much, if not all, of the year. Most of the inland Cox Peninsula sites shown on the site map are places used for hunting. The two major exceptions are *Djibung* (site 57) and *Djarrkuba* (site 55). I have mentioned the former in connection with the *Kenbi kenbi* dreaming, one of the major travelling dreamings (see para. 5.4.8). It is also associated with the *Berlu*, or grey hair, dreaming. The belief associated with the site is that bathing in the swamp or the creek there will cause the hair of the bather to turn grey. The dreaming associated with *Djarrkuba* (site 55) is *Muyin*, or dingo. The dingo made a waterhole at the site. Young girls should not go there. As I have said in para. 5.4.11, *Binbinya* (site 46) is associated with *Wutut* (site 47) and the frog dreaming. *Binbinya* (site 46) is also a burial place and *Manggalang* (site 93) is another burial place close to *Belyuen* (site 95).

5.4.27 Indian Island, the largest of the islands which form part of the land claimed, has a number of sites. I have already referred to *Ngarran.gudjuk* (site 22) and *Kabarl* (site 26) as being associated with the *Kenbi* dreaming (see para. 5.4.2). The name *Kabarl*

seems to be used at times as a name for Indian Island as a whole. A point on the east side of Indian Island, towards its northern end, is *Garngarnnyini* (site 20), which is associated with the sea-eagle dreaming. Towards the southern end of the island are *Larrgatnyini* (site 17), associated with a plover dreaming, and *Bulpul* (site 16), associated with a wild passionfruit dreaming. There is a former burial site at the north end of the island, in the vicinity of *Ngalakberayn* (site 21) and *Ngambarrngayitj* (site 23).

5.4.28 As for sites on the other islands and the reefs, I have already made reference to *Ngulbiltjik* (site 9), on Bare Sand Island, *Duwun* (site 12), on Quail Island, and *Wulmarr* (site 1), on Dum-In-Mirrie Island, in connection with both the *Kenbi* and *Ngarrmang* dreamings. I have referred to *Igibidjit* (site 14), a sand island on Middle Reef, in connection with the *Ngarrmang* dreaming. I have also referred to *Bitirrnyini* (site 5), consisting of Grose Island, Beer Eetar Island and an unnamed island between them, and *Moedranyini* (site 3), between Dum-In-Mirrie Island and Beer Eetar Island, in connection with the *Kenbi* dreaming. *Duwun* (site 12) is also associated with a blanket lizard dreaming called *Kangalang*. *Moedranyini* (site 3) is also associated with two other dreamings, the star (*Moedra*) and the octopus (*Bundirrik*). At the site is a deep hole in the reef, which appears as a vivid blue. This hole is said to have been made by the star dreaming when it fell to earth.

5.4.29 There are several other sites associated with dreamings on the islands and reefs. *Tjungaranggayi* (site 15), on Turtle Island, has a turtle dreaming. *Tjimbi* (site 8), on Simms Reef, has a trumpet shell dreaming. *Windirr* (site 4), on Roche Reef, has an oyster dreaming. *Bridjibin* (site 13), north-west of Quail Island, has a clamshell dreaming. It is considered to be a very dangerous place, capable of creating a curling wave (resembling the top half of a bivalve's shell) that can swamp a boat.

5.4.30 There are numerous other sites within the land claimed as to which no evidence of dreamings, or other spiritual significance, was advanced. Many were described as places for hunting or camping. I have therefore not detailed them in this examination of the spiritual geography of the land claimed.

5.4.31 There are few sites outside the land claimed which are said to relate to it. I have mentioned *Nanggalinya* (site 111) and *Kalalak* (site 110) as being associated with the *Kenbi* dreaming track (see para. 5.4.4). The only other site which needs to be mentioned on the Darwin side of Darwin Harbour is *Gundal* (site 109), at the point near Cullen Bay, within the area occupied by the Commonwealth of Australia as the Larrakeyah Barracks. Information relating to this site is secret to men; even its name is regarded by some as secret and should not be spoken in public. Reference was also made to *Mibuk* (site 112) and *Djirrburr* (site 113). The former is on or near the mainland, to the south of Dum-In-Mirrie Island. The latter is said to be at the mouth of the Finniss River.

5.5 Absence of sites in the south-east of the land claimed

5.5.1 An examination of the map in appendix 8, on which appear all of the sites which I have named in this chapter, together with some other sites to which specific reference has been made, shows a complete absence of sites in the south-eastern area of the land claimed. In para. 3.3, I have described the boundaries of the land claimed on the Cox Peninsula. In the south-eastern corner of the land claimed, those boundaries are fixed

by reference to the boundaries of hundreds, areas designated for the purposes of identifying land titles. On the site map tendered in evidence before me, exhibit LG1, the name Bulldog Pass appears on the southern boundary, close to the eastern boundary, of the land claimed. The only witness who made reference to Bulldog Pass was Johnny Singh, who asserted that Tommy Lyons's country had extended at least that far. Other witnesses describing Tommy Lyons's country, or the country with which members of the **Belyuen** group saw themselves as associated, did so by reference to site names, rather than non-Aboriginal boundaries. It should also be noted that Johnny Singh was able to describe the extent of Tommy Lyons's country down the coast to the south by reference to two named sites, *Mibuk* (site 112) and *Djirrburr* (site 113). Although he asserted that Tommy Lyons's country included Bulldog Pass, his inability to provide any Aboriginal name for such a large area in the south-east of the land claimed must cast doubt on the validity of that assertion.

5.5.2 The southern boundary of the land claimed is seven kilometres or more from the southernmost named site on the east side of the Cox Peninsula, *Beyelu* (site 107), known as Kings Table. Lying south of *Belyuen* (site 95), near the junction of the road that links Mandorah with Darwin and the road to Rankin Point, is *Gundjerra* (site 34). The site is a swamp, used for hunting and for gathering a type of root vegetable. According to the evidence, there is no site bearing an Aboriginal name between *Gundjerra* (site 34) and the eastern boundary of the land claimed and between *Beyelu* (site 107) and the southern boundary of the land claimed. This is a substantial area. It includes most of that part of the boundary of the land claimed formed by Middle Arm of the Darwin Harbour. West Arm intrudes into this area. So does Bynoe Harbour. Within this area, approximately five kilometres south of *Beyelu* (site 107), is a swamp at which people living at the Belyuen community hunt sometimes. No Aboriginal name for that swamp could be given. There is no other evidence of use of the south-eastern part of the land claimed. If a rectangle were to be drawn, encompassing the area I have described as lacking Aboriginal sites, it would measure some nine kilometres by seven kilometres. Of course, one corner of it would be cut off because of the shape of the Middle Arm part of the boundary.

5.5.3 It would not be possible to find a rectangular area of land anything like nine kilometres by seven kilometres anywhere else within the land claimed that was entirely lacking in Aboriginal sites. Indeed, any comparable area taking in part of the coastline would be likely to have dozens of sites. Even if a comparable area were to include only inland sites, despite the lower density of such sites, there would still be a significant number within the area.

5.5.4 Dr Michael Walsh, the principal anthropologist who gave evidence on behalf of the **Larrakia** group, attempted to provide an explanation of the lack of sites in the south-eastern part of the land claimed. According to Dr Walsh, considerable mining activity in that area in the past may have been to blame. He also gave evidence, not by way of explanation for the absence of site names in the south-eastern area of the land claimed, that Kings Table has a name in each of three languages, namely *Beyelu* (site 107) in Wadjigiyn, *Nguliyn* in Larrakia and *Malatpitj* in Kungarakayn. This evidence suggests the possibility that, at one time, there might have been people who were not Larrakia or Wagaitj but who claimed entitlements in the south-eastern part of the land claimed. There is no other evidence to support this supposition, but it would be consistent with the current lack of knowledge of the names of any sites south of Kings Table. Whatever the cause, it is clear from the evidence that not one of the claimants

has been able to assert any spiritual affiliation to any site in the south-eastern part of the land claimed. This fact has a significant bearing on the area of the land claimed with respect to which a finding can be made that there are traditional Aboriginal owners. I discuss this issue further in paras 8.2 and 8.3.

5.6 Controversial evidence about sites and dreamings As I have said, the spiritual geography described above is common ground among all claimants. There were some items of evidence as to spiritual matters associated with the land claimed which were controversial. Mirella Fejo gave evidence of a frog dreaming apparently different from *Wutut* (site 47). This was a small brown frog, said to hop all over Larrakia country. A number of members of the **Belyuen** group denied the existence of such a dreaming. Allyson Mills gave evidence that her father's dreaming was a black water-snake, associated with Dinah Beach, on the Darwin side of the harbour. She described the snake as also coming to Mica Beach, south of Talc Head on the land claimed. Evidence to the same effect was given by Robbie Mills. There was no other evidence to support this assertion. When asked about it, June Mills did not support it. Susan Roman gave evidence of a red kangaroo dreaming associated with Channel Island in Darwin Harbour and with an island she called Yirra Island, also in Darwin Harbour and just outside the land claimed. Her initial evidence about the subject might have been taken to suggest that the red kangaroo was associated with *Wutut* (site 47), but her later evidence clarified that this was not so. Apart from one mention by Billy Risk at *Beyelu* (site 107), there is no other evidence about this red kangaroo dreaming. Billy Risk also asserted at one point the existence of a sound tunnel between the Cox Peninsula and the opposite side of Darwin Harbour, through which Larrakia people on both sides of the harbour communicated to each other in former times. There was no other evidence supporting this assertion. Maureen Ogden, Gail Williams and Lorraine Williams all gave evidence that the sea-eagle dreaming, associated with *Garngarnnyini* (site 20) also came to *Nungiyil* (site 105), on the east side of the Cox Peninsula. No other witness supported an association between *Nungiyil* (site 105) and this dreaming. Gary Lee gave evidence of a secret men's dreaming linking *Wariyn* (site 49) and *Kidjerikidjeri* (site 35). As I have said in para. 5.4.10 and para. 5.4.25, there is evidence of dreamings secret to men, but no other evidence of such a link between these two sites.

5.7 Relations between the Larrakia group and the Belyuen group

5.7.1 In the course of preparation of this land claim, the bulk of the information about sites and dreamings came from informants who were resident at Belyuen. It is not surprising, therefore, to discover that the spiritual geography of the land claimed is heavily oriented towards *Belyuen* (site 95). Most of the names used for sites and dreamings are words in the Wadjigiyn language. This is not to say that the traditions which now attach to the land claimed are wholly imported. Names in the Larrakia language for some sites and dreamings are still known and some witnesses from the **Larrakia** group insisted that they be used in evidence. The underlying pattern of sites and dreamings has undoubtedly existed for a very long time and was familiar to both Larrakia and Wagaitj people in the past. There may have developed differences of emphasis. Even in the time that elapsed between the inquiry before Justice Olney and the inquiry before me, changes in emphasis are perhaps detectable. Tribute is still paid to *Wariyn* (site 49) as the supreme creator being, but the importance of the site and the dreaming may have diminished. In contrast, *Belyuen* (site 95) appears to be gaining in importance, because of its central role in the distribution of fresh water via the *Kenbi*

dreaming track, its role in initiation ceremonies and its position as the origin of the *Ngarrmang* dreaming (see paras 5.4.2, 5.4.5 and 5.4.7).

5.7.2 Tommy Lyons appears to have been the last senior ceremony man who was of the Larrakia language group. Since then, that responsibility has passed to a series of mostly Belyuen-resident men. Similarly, in recent times, the senior responsibility for women's ceremonies has been held by a series of Belyuen-resident non-Larrakia women. Those who are resident at Belyuen say that they hold the law for the land claimed. That is, they accept the responsibility to acquire and pass on knowledge of sites and dreamings and to conduct rituals which are a vital part of maintaining the spiritual strength of the country, ensuring its continued productivity and making it safe for those who use it. At the time of the inquiry before Justice Olney, the tenor of the evidence given by Belyuen residents was that they held the law for the land claimed in the capacity of custodians or keepers for its true owners, the people of the Larrakia language group. At the time when my inquiry began, this was still the position. In the early stages of my inquiry, however, when counsel for the **Belyuen** group began to indicate the desire of that group to be treated as claimants, Belyuen people began to assert that they held the law for the land claimed in their own right and for their own benefit.

5.7.3 The situation in which knowledge of sites and dreamings has not been held to a significant extent by Larrakia people is the product of history. The establishment of Darwin had a profound effect on local Aboriginal people. Many found it necessary to become incorporated into non-Aboriginal society. For a considerable period, when government policies and social attitudes dictated the integration of Aboriginal people into non-Aboriginal society, there were many incentives to refrain from passing on knowledge of languages and spiritual attachments. Parents were more likely to encourage their children to live and behave like non-Aboriginal people, rather than to emphasise cultural difference and endure social disapproval. The deprivation of traditional knowledge among Larrakia people was exacerbated by the fact that many children, including a significant number of claimants, were taken from their parents and raised in institutions. After the bombing of Darwin during World War II, large numbers of people were removed from Darwin. Some of the older claimants, and their families, were taken to other places in the Northern Territory, and to South Australia and New South Wales. The scattering of people was a further hindrance to the passing on of traditional knowledge.

5.7.4 To a significant extent, there has been an attempt to revive traditional knowledge among Larrakia people. Attitudes to proclaiming Aboriginal heritage have changed. Some members of the **Larrakia** group have sought avidly to regain the knowledge which has not been passed down to them through their families. The land claim has proved a benefit in that regard. Claim materials have been circulated widely. Attendance at preparatory sessions and sessions of the hearings has been informative for many people. Some **Larrakia** group claimants, particularly some women, have made attempts to participate in aspects of the ceremonial life centred on the Belyuen community.

5.7.5 Communication between the holders of the knowledge at Belyuen and those among the **Larrakia** group who wish to receive it has not been significant. To that extent, the land claim has been counter-productive. There is now a fear among members of the **Belyuen** group that their use of the land claimed, and even their

continued residence on the existing Aboriginal land on which the Belyuen community is situated, would become precarious if it were to be found that the **Larrakia** group are the traditional Aboriginal owners. It is no part of my function to examine the circumstances in which this fear has arisen, or to determine whether it is validly held. There was a controversy over whether some remarks attributed to some members of the **Larrakia** group in an official document had in fact been made by them, and a late attempt to reopen the evidence, which I refused to do. It may also be that some members of the **Larrakia** group have come to distrust the holders of knowledge in the **Belyuen** group, and to believe that they have no intention of communicating that knowledge. There was evidence of a cooling of relations between members of the **Larrakia** group and members of the **Belyuen** group. **Belyuen** group witnesses spoke of the apparent unwillingness of **Larrakia** group members to become involved in ceremonial life. **Larrakia** group members spoke of the absence of any invitation from the **Belyuen** group for them to do so. **Belyuen** group members said that **Larrakia** group members should come and ask for the information they needed. **Larrakia** group members said that the holders of the knowledge had a duty to communicate it to Larrakia people. The rift between the two groups was probably widened by the claim process, and in particular by the decision on the part of the **Belyuen** group to claim to be traditional Aboriginal owners under the Land Rights Act. It led, in some cases, to **Larrakia** and **Danggalaba** witnesses suggesting that they would recreate Larrakia ceremonies for the land claimed, with the assistance of people from Western Arnhem Land or the Tiwi Islands. It is clear that such a project, if undertaken, would be highly controversial among Aboriginal people in the region.

5.7.6 My function under the Land Rights Act is to decide which, if any, people fall within the statutory definition of 'traditional Aboriginal owners' with respect to the land claimed. The history of the relations between the two major groups set out above is intended to form part of the context in which my findings appear. It is not intended to constitute a judgment as to the rights and wrongs of grievances or disputes. It is not part of my function to attempt to resolve differences between Aboriginal people. For me to attempt any such resolution might result in the exacerbation of disputes, in which my efforts might be seen as those of an interferer. It is essential that this report be seen as doing no more than I am obliged to do under the Land Rights Act.

5.8 Spiritual affiliations of members of the Tommy Lyons group

5.8.1 Raelene, Jason and Zoe Singh are residents of Belyuen and full participants in the life of the Belyuen community. Raelene and Jason gave substantial evidence. There can be no doubt that these three siblings have spiritual affiliations to sites on the land claimed, through the dreamings to which I have referred, which are central to their lives. They have no country to which they can turn elsewhere. As they see it, they engage in ceremonial activity which sustains the land claimed and, in turn, the land claimed sustains them, physically and spiritually. They hold those spiritual affiliations in a joint way, so that it is easy to find that the spiritual affiliations are common.

5.8.2 The other members of the **Tommy Lyons** group are in a position which is less easy to determine. Prince of Wales suffers from a disability which makes it difficult for him to communicate. Kathleen Minyinma has a much less direct association with the land claimed than do Raelene, Jason and Zoe Singh. As I have said in paras 4.4.2 and 4.4.3, both Prince of Wales and Kathleen Minyinma have undoubted entitlements to share spiritual affiliations with Raelene, Jason and Zoe Singh, by virtue of their

membership of the **Tommy Lyons** group through patrilineal descent. Kathleen's son, Desmond, has a similar entitlement, by virtue of his status as a first generation matrifiliate, accepted as a member of the group by Raelene, Jason and Zoe Singh. Prior to suffering a stroke, Prince of Wales was deeply involved in the spiritual life of the Belyuen community. The stroke he suffered has affected his powers of communication, but there is every reason to suppose that his powers of comprehension are unaffected. It is safe to say that he shares the spiritual affiliations to sites on the land claimed, through the dreamings to which I have referred, with Raelene, Jason and Zoe Singh. Kathleen Minyinma has been introduced to the land claimed. She has been welcomed to it by her classificatory sisters, Raelene and Zoe, and her classificatory brother, Jason. She has activated her entitlements as a member of the **Tommy Lyons** group. I am satisfied from her evidence that she accepts the significance of her position as a member of the group and desires, so far as her circumstances permit, to play her true part. The spiritual affiliations to sites on the land claimed that she professes are of significance to her. Desmond is very young. His entitlement as a member of the group is to learn of and participate in the spiritual life relating to the land claimed. It is an entitlement which he will be able to invoke at any time in his life. It is an entitlement to share the spiritual affiliations which are shared by the other members of the group.

5.8.3 In the circumstances, I find that the members of the **Tommy Lyons** group have common spiritual affiliations to sites on the land, through the dreamings to which I have referred.

5.9 Spiritual affiliations of members of the Belyuen group The spiritual affiliations possessed by the members of the **Tommy Lyons** group are held in common with the members of the **Belyuen** group. The members of the **Belyuen** group recognise the same dreamings with respect to the same sites. They maintain the ceremonial activity and hold the law with respect to the land claimed. In paras 9.2.1 and 9.2.2, I describe these ceremonies in as much detail as is possible. The members of the **Belyuen** group now assert that they do these things in their own right, and not as mere custodians. The fact that members of the **Larrakia** group dispute the capacity in which members of the **Belyuen** group hold the law does not stand in the way of the fact that members of the **Belyuen** group have spiritual affiliations and that they hold them in common. The evidence given by members of the **Belyuen** group in the 1996 sessions of the inquiry was overwhelmingly to this effect.

5.10 Spiritual affiliations of members of the Larrakia group

5.10.1 With respect to the **Larrakia** group, the position is much more difficult. Evidence in land rights claims has typically been given by senior representatives of groups of claimants, recognised as having the capacity to speak on behalf of their groups. Typically, however, land rights claims have involved relatively small groups, able to provide evidence of the involvement of their members in a continuous tradition related to the land concerned. As I have said in para. 5.2 on the question of succession, the claim of the **Larrakia** group is not such a claim. The present **Larrakia** group claimants have not all acquired the traditions held and observed by Tommy Lyons, Crab Billy Belyuen, King George and Frank Secretary, who are acknowledged to have been the senior males holding and observing traditions relevant to sites on the land claimed during their lives. Nor have the present **Larrakia** group claimants established an entitlement for all of them to inherit all of those traditions.

5.10.2 The **Larrakia** group consists of 1 299 members. Only 154 of them were called to give evidence. Of course, it would be unrealistic to call every member of such a large group in an inquiry of this nature. Even in the absence of evidence by a person, evidence about his or her spiritual affiliations can suffice. Again, this is often the case in land claims where there is proved to be consistent tradition, to which members of a group are likely to subscribe. In the absence of such a tradition, evidence of actual spiritual affiliations of people becomes vital if a claim is to succeed. There are family groups shown on the genealogies, referred to in chapter 4, the members of whom are listed in that chapter, from or about whom little or nothing was heard in the evidence. Given the circumstances of the **Larrakia** group, the claim that its members have common spiritual affiliations to sites on the land claimed was not assisted by gaps in the evidence.

5.10.3 At the heart of the claim made on behalf of members of the **Larrakia** group is the proposition that the land claimed is Larrakia land and that, as a consequence, the group's members have succeeded to the spiritual affiliations of all of the clans formerly affiliated to it. I have already referred to this issue in the context of the question of succession in para. 5.2. It seems to me that the assertion that the land claimed is Larrakia land, and that therefore all members of the **Larrakia** group have common spiritual affiliations to sites on it, is insufficient to satisfy the definition of 'traditional Aboriginal owners' in the Land Rights Act. If the framers of the Land Rights Act had intended that people could satisfy that definition merely by virtue of membership of a language group within whose territory the land concerned lay, both the provisions of the legislation and the processes of inquiring into and reporting on land rights claims would have been much simpler than experience shows them to be. I am bound by authority to accept that a language group may be a local descent group, for the purposes of that definition (see para. 4.11). It is a further step to say that all members of a language group must, by virtue of their membership of that language group, have acquired common spiritual affiliations to a site or sites. This further step is not warranted by authority, nor by the terms of the Land Rights Act. As the Federal Court of Australia has said (see para. 1.4.5), I must examine the individual spiritual affiliations of members of that group and then determine whether they can properly be said to be common.

5.10.4 Once this process is undertaken, the state of the evidence makes it clear why an attempt was made to rely on mere membership of the language group as the source of common spiritual affiliations. Some members of the **Larrakia** group, called to give evidence as part of the inquiry, were not asked any questions designed to give them a chance to assert any spiritual affiliation to any site. So far as the inquiry conducted by Justice Olney is concerned, the lack of opportunity for witnesses to assert their spiritual affiliations to sites might have been the result of an inadequate understanding of the requirements of the Act. At that stage, neither Justice Olney nor any counsel involved had the benefit of the Federal Court's construction of the definition of 'traditional Aboriginal owners', which came about in the court's review of Justice Olney's report in relation to this land claim. No such explanation is possible in respect of the evidence led in 1995. In the case of witnesses not asked any questions which would have enabled them to provide information about their spiritual affiliations, it cannot be assumed that any evidence which the witness might have given in response to such questions would have been helpful to the claim of the **Larrakia** group.

5.10.5 There can be no doubt that some members of the **Larrakia** group have spiritual affiliations to sites on the land claimed. For instance, Billy Risk clearly has a deep-seated conviction as to his relationship to the land claimed through sites and dreamings, which is a major influence in his life. So does Barbara Tapsell, who lived and worked at Belyuen for some time. She gave evidence that her spiritual beliefs, which were based originally on Christianity, underwent considerable change. An attempt by Barbara and her husband to acquire some of the land claimed by applying for a lease, at the time she was working at Belyuen, may have reflected a view of the land as real estate, but I do not think such a view is any longer typical of Barbara's beliefs. Some of the children of the late Victor Williams live lives that are affected significantly by the way in which they see themselves as connected to the land claimed by their affiliations to sites through dreamings. There are others who not only profess spiritual affiliations to sites on the land claimed but possess them in a meaningful way.

5.10.6 Many Larrakia witnesses gave evidence of spiritual affiliations to the land itself, rather than to specific sites. For reasons that are apparent from what I have already said, I cannot accept that spiritual affiliations expressed in general terms covering the whole of the land claimed, or a substantial part of it, satisfy the element of the definition of 'traditional Aboriginal owners' that requires common spiritual affiliations to a site on the land.

5.10.7 A number of witnesses from the **Larrakia** group were asked to explain why particular sites were important to them. This was an opportunity for them to express something of their spiritual affiliations. A variety of answers resulted. Some witnesses made no statement of personal affiliation, other than to say that the site was a Larrakia site and that they were affiliated to it as Larrakia people. There were many for whom this was plainly the limit of the significance of the sites and dreamings. Some spoke in terms of their emotional responses to visiting a site or learning about it. The experience of a special feeling in relation to a site was sometimes asserted. Some witnesses responded by stating a need to protect and preserve the site, particularly from development, or from damage by non-Aboriginal people. Some gave answers in terms of the presence of ancestral spirits in the land, providing links between living persons and the land, protecting and aiding those who sought to use the resources of the land and, in some cases, appearing to people. The response of some Larrakia witnesses was that the importance of a site lay in the story associated with it and the need to learn that story and to pass it on to their children and grandchildren, so that the culture of Larrakia people should be kept alive.

5.10.8 It can be accepted that each of these responses was a response in terms of spiritual affiliations. Some are generic to the land, rather than site-specific, but the fact that the evidence was given at a particular site assists in enabling them to be viewed as affiliations in respect of that site. The obvious question is whether they can be viewed as different expressions of spiritual affiliations that are in essence the same, or whether they are evidence of different people having spiritual affiliations that are essentially different. In my view, the latter is the case. The absence of a detailed common tradition of spiritual affiliations with sites, handed down from generation to generation to members of the **Larrakia** group, has resulted in the development of different spiritual responses on the part of different people. The lack of the regular practice of ceremonial activity related to dreamings and sites, and of the staged acquisition of knowledge in association with that ceremonial activity, has resulted in different

members of the **Larrakia** group having spiritual affiliations that differ essentially in many ways.

5.10.9 This is not to say that the picture is easy. It is not the case that each Larrakia witness responded to a question as to the importance to him or her of a particular site with a single response fitting into only one of the categories I have described. Even in relation to a single site, some witnesses responded in more than one way. When the evidence across a number of sites is viewed, almost every possible combination of responses can be found from particular **Larrakia** group claimants. The evidence of some encompassed the entire range. The evidence of others was limited to one. Between those extremes there is a variety of combinations of responses.

5.10.10 As the evidence stands, to attempt to speak of spiritual affiliations which are 'common' to the members of the **Larrakia** group would be unreal. In the absence of the inheritance of a detailed spiritual system, with processes whereby knowledge is passed from generation to generation, it is impossible to make a finding as to the nature of the spiritual affiliations, if any, of the many **Larrakia** group claimants who did not give any evidence. It is not possible to find that those who did give evidence, but did not profess spiritual affiliations, nevertheless have them on the basis that those people are bound up inextricably with some system of belief. Even among those who profess spiritual affiliations, there are differences in the essential nature of those affiliations from one person to another.

5.10.11 In the written material tendered on behalf of the **Larrakia** group early in my inquiry, there were suggestions made that, even if it were not possible to find that the members of the **Larrakia** group all had common spiritual affiliations to sites covering all or most of the land claimed, it would be put that various family groups had affiliations to specific sites in specific parts of the land claimed. In other words, it was contemplated that within the **Larrakia** group there would be a series of local descent groups, each with members having common spiritual affiliations to specific sites and specific parts of the land claimed. Counsel for the **Larrakia** group returned to this theme in written submissions. I pointed out that the evidence had not been put on this basis at all, even as an alternative to the claim put on behalf of the **Larrakia** group as a whole. There was some evidence of use by members of particular families of certain areas for the purposes of camping, hunting and foraging. The evidence did not support the view that the land claimed had become divided between subgroups of the **Larrakia** group, with members of those subgroups having common spiritual affiliations to sites within the subdivided areas. If he had attempted to put submissions to this effect, counsel for the **Larrakia** group might well have found himself in a position of conflict of interest, because of the possibility of competing claims amongst some of his clients. Counsel for the **Larrakia** group properly withdrew the submission. I have not undertaken a detailed exercise to see whether it could have been sustained in any respect. My impression of the evidence is that it would be impossible to find a family group, all of the members of which held common spiritual affiliations to a single site. I have mentioned the family of the late Victor Williams as an example of one family some of whose members plainly hold spiritual affiliations to the land claimed. Even within that family, it is difficult to find spiritual affiliations among all of the members which would justify them being labelled as common. Gail Williams, a member of that family, very frankly confessed in her evidence that she had difficulty reconciling her Christian beliefs with spiritual affiliations to sites through dreamings, and that she had not resolved this conflict to her own satisfaction. None of her sisters whose spiritual

affiliations to sites on the land claimed could be described as deep gave evidence of having the same difficulty.

5.10.12 For the foregoing reasons, I am unable to find that the members of the **Larrakia** group have common spiritual affiliations to sites on the land claimed.

5.11 Spiritual affiliations of members of the Danggalaba group The members of the **Danggalaba** group are in a similar position. The group suffered from the difficulty that not all of its putative members were prepared to support its separate claim. Its leading spokesperson, Kevin (Tibby) Quall, gave evidence to the effect that the knowledge of sites and dreamings that formed the basis of the claim by all other claimants was not the appropriate knowledge for the land claimed. His evidence was that that knowledge was imported by Wagaitj people, whose descendants make up the **Belyuen** group, and differed from knowledge which had been held by members of the Danggalaba clan, from which it was claimed the members of the **Danggalaba** group were descended. Other members of the **Danggalaba** group who gave evidence did not align themselves with Tibby Quall's view. Most of the claimants who were called to give evidence on behalf of the **Danggalaba** group had already given evidence on behalf of the **Larrakia** group. They did not adopt Tibby Quall's evidence. Nor did they retract, expressly or by implication, such evidence as they had given previously about their spiritual affiliations. In the circumstances, I am unable to find that the members of the **Danggalaba** group have common spiritual affiliations to sites on the land claimed.

5.12 Common spiritual affiliations In summary, therefore, the members of the **Tommy Lyons** group have common spiritual affiliations to a number of sites on the land claimed. The members of the **Belyuen** group also have common spiritual affiliations to the same sites through the same dreamings. The members of the **Larrakia** group do not have common spiritual affiliations to sites on or associated with the land claimed. The members of the **Danggalaba** group do not have common spiritual affiliations to sites on or associated with the land claimed. No claimants have spiritual affiliations to any site in the south-eastern part of the land claimed, the area described in para. 5.5.2.

6 PRIMARY SPIRITUAL RESPONSIBILITY

6.1 The options In para. 5.2.1, I refer to the fact that the claim of each of the groups in this land claim depends upon establishing that, by Aboriginal tradition, its members have succeeded to the territory of a number of extinct smaller groups. The options in this regard are that the descendants of one smaller group (either the **Tommy Lyons** group or the **Danggalaba** group) have expanded the territory of the original group to include the whole of the land claimed; that the rights and responsibilities of a number of smaller groups have devolved to the wider level of the language group (the **Larrakia** group); or that those rights and responsibilities have shifted to a new group (the **Belyuen** group), the ancestors of which came from elsewhere.

6.2 The link between common spiritual affiliations and primary spiritual responsibility For the purposes of the analysis required by the Land Rights Act, it is necessary to establish a link between common spiritual affiliations and primary spiritual responsibility. The definition of 'traditional Aboriginal owners' requires that the common spiritual affiliations of a local descent group be 'affiliations that place the group under a primary spiritual responsibility for that site and for the land'. As I have found that the members of the **Larrakia** group and the members of the **Danggalaba** group do not have common spiritual affiliations, it is unnecessary for me to consider whether those groups are placed under a primary spiritual responsibility. For the reasons which appear in para. 6.3, it will be apparent that I am of the view that any spiritual responsibility held by the **Larrakia** group and the **Danggalaba** group is, in any event, not described aptly as being primary.

6.3 The evidence as to primary spiritual responsibility

6.3.1 In her evidence on 16 October 1995, Topsy Secretary made it clear that she considered that Raelene, Jason and Zoe Singh had primary responsibility for the land claimed. She said, in effect, that she had left the land claimed to Raelene, Jason and Zoe Singh, and had kept land on the Darwin side of the Darwin harbour for herself. At the time, Topsy was the senior member of the **Tommy Lyons** group. She occupied a position of considerable seniority, and therefore of considerable authority, in relation to the **Larrakia** group and the **Danggalaba** group. The controversy created by her evidence on that occasion (see para. 4.5.8) stemmed from the fact that her pronouncements were regarded as authoritative, but did not support the claims of members of the **Larrakia** group as to their descent from a member of the Danggalaba clan. Had Topsy Secretary still been alive, there would have been an issue as to whether her evidence that she had left the land claimed to members of the Singh family was to be taken as an abdication of responsibility and therefore disqualified her from being regarded as a traditional Aboriginal owner of the land claimed. Her death before the inquiry was completed makes it unnecessary to deal with any such issue.

6.3.2 The practical exercise of spiritual responsibility for the sites on the land claimed, and for much of the land claimed itself, is centred on the Belyuen community. Members of the **Belyuen** group join with Raelene, Jason and Zoe Singh in the exercise of this responsibility. Prior to the onset of his disabling condition, Prince of Wales was part of the exercise of spiritual responsibility with respect to the land claimed. Spiritual responsibility is exercised by the conduct of ceremonies, the consistent visiting of sites during hunting trips, and the maintenance of appropriate ritual associated with visiting

sites and with hunting on the land claimed. In these activities, Raelene, Jason and Zoe Singh take their part as members of the community living at Belyuen.

6.3.3 In the case put on behalf of the **Belyuen** group, much was made of this joint participation. The proposition which the **Belyuen** group sought to establish was that the joint exercise of spiritual responsibility stemmed from the joint possession of such responsibility and that the responsibility possessed was of a primary nature. In this respect, however, the case on behalf of the **Belyuen** group fell victim to the evidence of its own members. Responses to questions such as, 'who has to look after this country?' frequently elicited references to Raelene, Jason and Zoe Singh, followed by references to the **Belyuen** group. The usual pattern was that specific reference would be made to Raelene, Jason and Zoe Singh, in most cases prior to any reference to the **Belyuen** group. Some witnesses also mentioned specifically other members of the **Tommy Lyons** group, including Topsy Secretary, who was then living. Sometimes specific references to Prince of Wales, Topsy Secretary and Kathleen Minyinma were prompted in cross-examination by counsel for the **Tommy Lyons** group. It is the remarkably consistent trend of witnesses on behalf of the **Belyuen** group to mention Raelene, Jason and Zoe Singh, and to mention them first, that leads me to the conclusion that precedence is accorded to them.

6.3.4 There was other, more specific, evidence from members of the **Belyuen** group consistent with this proposition. Alice Djarug gave evidence that **Belyuen** group members 'come after' Raelene, Jason and Zoe and that Raelene, Jason and Zoe were capable of deciding who is an owner of the land claimed. Marjorie Bilbil, a senior woman of the **Belyuen** group and a prominent law woman, said that she would put herself behind Raelene, Jason and Zoe. Gracie Binbin said that Raelene, Jason and Zoe are the main people. Ann Timber saw Raelene, Jason and Zoe as the traditional owners of the land claimed and as in front of the **Belyuen** group. Simon Moreen said that when men's ceremony for the land claimed is performed, Jason Singh is 'in charge' of that ceremony. At *Kabarl* (site 26) on 7 October 1996, the hearing was delayed for some time because the next witness, Colin Ferguson, had gone hunting for turtle eggs. In the course of his evidence, counsel for the **Belyuen** group asked Mr Ferguson whether he had sought permission from anyone to hunt in the area. He replied that he had sought the permission of Raelene Singh to do so. Colin Ferguson was born at *Kabarl* (site 26) and bears its name as his Aboriginal name. He is a leading singer in the performance of ceremonies among the Belyuen people. He is male and significantly older than Raelene Singh. These facts make it significant that he saw himself as obliged to ask her permission to go hunting in the vicinity of the site. The significance of the evidence was not decreased greatly by counsel for the **Belyuen** group drawing from Colin Ferguson evidence that he had not sought permission from Raelene Singh on previous occasions. The circumstances of any previous hunting visits he may have made to the site were not explored. These items of evidence are supported by evidence that Raelene Singh is recognised as having the right to burn the land claimed, including the right to decide when, where and to what extent, burning should take place. The right to burn country is a very significant aspect of primacy in relation to responsibility for land.

6.3.5 The tendency of members of the **Belyuen** group to defer to Raelene, Jason and Zoe Singh and other members of the **Tommy Lyons** group is explicable on the basis of history. It involves a recognition that the land claimed was regarded as the country of Tommy Lyons and his classificatory brothers. It involves a recognition that Tommy

Lyons, as a surviving member of the almost extinct Danggalaba clan, had succeeded in expanding the territory for which he held rights and responsibilities to include the territories of other extinct groups. It is associated with the ceremonial pre-eminence that Tommy Lyons achieved. It arises from the carrying into effect of the expressed wish of Tommy Lyons that his grandchildren by his daughter Olga Singh should take their rights and responsibilities with respect to country from him. This wish was conveyed to the children by Maudie Bennett, who was a wife of Tommy Lyons and the mother of Olga Singh. Maudie gave evidence about it before Justice Olney in 1990. She has since died. The wish of Tommy Lyons was confirmed by the bestowal on Jason Singh of the name Imabulk, a name borne by Tommy Lyons, and the same as *Imabulk* (site 31). According to Jason, he was given this name by his grandfather, Tommy Lyons, his grandmother, Maudie Bennett and his mother, Olga Singh. If the views of Tommy Lyons had not been conveyed and respected, Raelene, Jason and Zoe would probably have identified themselves as members of the **Belyuen** group, inheriting rights and responsibilities from their father, Johnny Singh.

6.3.6 It is true that there were some Belyuen witnesses who asserted the primacy of the **Belyuen** group. Some also named other members of the **Larrakia** group, or referred to families of Larrakia people, usually after they had named members of the **Tommy Lyons** group. The overwhelming tenor of the evidence, however, is to accord primacy to members of the **Tommy Lyons** group, particularly Raelene, Jason and Zoe Singh. In my view, this is the result of a recognition by members of the **Belyuen** group that the inheritance of Tommy Lyons and his classificatory brothers, Crab Billy Belyuen, King George and Frank Secretary, gives rise to a primary entitlement and a primary responsibility. The definition of 'traditional Aboriginal owners' in the Land Rights Act requires that effect be given to this primacy by recognising that the **Tommy Lyons** group is under a primary spiritual responsibility for the sites I have described in para. 5.4 and the land associated with them. Once again, I exclude from that notion the south-eastern area of the land claimed, described in para. 5.5, which is devoid of named sites.

6.3.7 If members of the **Tommy Lyons** group are recognised as having primacy of entitlement and responsibility as against members of the **Belyuen** group by virtue of their descent, it follows that they must have such primacy as against members of the **Larrakia** group and the **Danggalaba** group. They are the only ones who, as the evidence stands, have inherited rights from Tommy Lyons and his three classificatory brothers. There is no problem in using the assessment of senior members of the **Belyuen** group against the **Larrakia** group and the **Danggalaba** group. A consistent feature of the claim evidence is the recognition (by all but Tibby Quall on one occasion, to which I refer in para. 5.11) that members of the **Belyuen** group hold the law for the land claimed. It is this law that accords primary spiritual responsibility to the members of the **Tommy Lyons** group, in respect of so much of the land claimed as is related to sites to which members of the **Tommy Lyons** group have common spiritual affiliations.

6.4 Tommy Lyons group has primary spiritual responsibility I therefore find that the **Tommy Lyons** group has primary spiritual responsibility for the sites referred to in para. 5.4, and for the land claimed with the exception of the south-eastern area, referred to in para. 5.5.

7 RIGHTS TO FORAGE

7.1 Nature of the evidence A very large amount of the evidence in the inquiry, both before Justice Olney and before me, concerned the use made by various claimants of the land claimed and the surrounding sea for the gathering of food and other resources. At times it appeared that this evidence was assuming a greater significance in the cases of the various claimant groups than was evidence going to other aspects of the definition of 'traditional Aboriginal owners'. Evidence of actual use of the land claimed for hunting and gathering is of some relevance to the question whether claimants have an entitlement by Aboriginal tradition to forage as of right over the land claimed. It may be inferred from a history of hunting and gathering that it has been done in the exercise of a traditional right. Of greater importance is the assertion of a right, particularly if coupled with evidence of recognition of the existence of that right by members of other groups, in a claim such as this in which there are rival groups.

7.2 Rights to forage more extensive than spiritual affiliations and responsibility In my experience of Aboriginal land claims, it is common for traditional rights to forage to be more extensive than spiritual affiliations and primary spiritual responsibility. That is to say, people who have satisfied the other elements of the definition of 'traditional Aboriginal owners' with respect to a particular area of land often have rights to forage over a broader area of land. The corollary of this is that, in relation to any particular area of land, people who lack the other elements of the definition may nonetheless have rights to forage.

7.3 All claimants have rights to forage In the present claim, the evidence satisfies me that all of the claimants have entitlements by Aboriginal tradition to forage as of right over the land claimed, probably including the south-eastern portion of it. The members of the **Tommy Lyons** group have inherited those entitlements from the four classificatory brothers from whom they have inherited their spiritual affiliations and their primary spiritual responsibility. The members of the **Belyuen** group have acquired those entitlements by virtue of residence at Belyuen and their acquisition and exercise of spiritual responsibility for the land claimed, other than the south-eastern portion of it. Their rights to forage arguably extend to the south-eastern part of the land claimed. There is evidence of use by members of the **Belyuen** group of a swamp in the south-eastern area for hunting, with nothing to suggest that this use is anything other than as of right. The members of the **Larrakia** group (including the members of the **Danggalaba** group) have entitlements to forage over the land claimed because of its status as Larrakia land (see para. 5.1).

7.4 Rights to forage require some knowledge This is not to say that the rights of all claimants to forage over the land claimed are unlimited. The evidence establishes that the relevant Aboriginal law requires the appropriate exercise of foraging rights by anyone possessing them. There are some sites that give rise to danger if visited at all, or without appropriate behaviour on approach. Infringement of these requirements is considered to give rise to danger of illness or death, not merely to those who infringe, but to those who have responsibility for those sites. The exercise of rights to forage therefore does require knowledge or, at least, the presence of knowledgeable people. A right to forage is a right to conduct hunting activities in a lawful and proper manner on the land claimed, without the consent of any other person.

8 TRADITIONAL ABORIGINAL OWNERS

8.1 Findings on elements of the definition In chapter 4, I have concluded that two of the four claimant groups, the **Tommy Lyons** group and the **Larrakia** group, are local descent groups, for the purposes of the definition of 'traditional Aboriginal owners' of the land claimed. The **Belyuen** group and the **Danggalaba** group are not local descent groups. In chapter 5, I have found that the members of the **Tommy Lyons** group have common spiritual affiliations to sites on the land claimed. I have also found that the members of the **Belyuen** group have common spiritual affiliations to sites on the land claimed. I have found that the members of the **Larrakia** group and the members of the **Danggalaba** group do not have common spiritual affiliations to sites on, or associated with, the land claimed. In chapter 6, I have found that the common spiritual affiliations of the **Tommy Lyons** group place that group under a primary spiritual responsibility for sites on the land claimed and for that land, with the exception of the south-eastern area of the land claimed, described in para. 5.5. In case it be necessary to do so, I have concluded that the spiritual responsibility of the **Tommy Lyons** group is primary when compared with that of each of the other claimant groups. In chapter 7, I have concluded that all of the claimants are entitled by Aboriginal tradition to forage as of right over the land claimed.

8.2 Only members of one group satisfy the definition and only as to part of the land claimed It follows that the members of only one of the four claimant groups satisfy all elements of the definition of 'traditional Aboriginal owners' with respect to the land claimed, and even they have failed to do so with respect to the south-eastern area of the land claimed. Despite the very extensive evidence in support of this land claim, I am unable to find that there are any persons answering the definition of 'traditional Aboriginal owners' with respect to the south-eastern area of the land claimed.

8.3 Exclusion of south-eastern area of the land claimed Any recommendation I am to make pursuant to s. 50(1)(a) of the Land Rights Act must therefore exclude the south-eastern area of the land claimed. The definition of the excluded area is not easy. The evidence does not provide the means of distinguishing readily between land in respect of which the evidence establishes that there are traditional Aboriginal owners and land in respect of which the evidence does not establish that there are traditional Aboriginal owners. Given the nature of Aboriginal attachments to country, it is not surprising that the evidence does not disclose precise boundaries. Any attempt to define the excluded area is, therefore, arbitrary. In the circumstances, I propose that any recommendation in respect of the land claimed exclude so much of it as lies east of the parallel of east longitude 130 degrees 42 minutes and 27.1 seconds and south of the parallel of south latitude 12 degrees 34 minutes and 38.5 seconds. These coordinates are based on the current Geocentric Datum of Australia (known as GDA94). It should be noted that the use of the same coordinates in conjunction with a map based on the earlier Australian Geodetic Datum (known as AGD66) would result in the plotting of all points on the parallels to which I have referred at points approximately 200 metres north-east of their true positions. My intention is to include within the area of land in respect of which any recommendation is to be made all of the named sites shown on the map in appendix 8. The boundaries I have described lie to the south of *Beyelu* (site 107) and to the east of *Gundjerra* (site 34).

8.4 Finding of traditional Aboriginal owners of part of the land claimed The traditional Aboriginal owners of the land claimed, excluding the south-eastern area of it, are:

Prince of Wales
Raelene Singh
Jason Singh
Zoe Singh
Kathleen Minyinma
Desmond Minyinma

9 STRENGTH OF TRADITIONAL ATTACHMENT

9.1 Assessment of strength of attachment of claimants as a whole As I have said in para. 1.6.2, s. 50(3) of the Land Rights Act requires me to have regard to the strength or otherwise of the traditional attachment by the claimants to the land claimed. Although I have found that only six people from among the claimants fall within the definition of 'traditional Aboriginal owners', it is still necessary for me to attempt an assessment of the strength or otherwise of traditional attachment of the claimants as a whole, for the purpose of assisting the Minister to decide whether to accept a recommendation that part of the land claimed become Aboriginal land under the Land Rights Act. The assessment of strength of traditional attachment is difficult enough in most claims. In any group of people, there will be individuals with stronger traditional attachments than others. In the present claim, there are also differences between the various groups.

9.2 The Belyuen group

9.2.1 The Belyuen community is the centre of ceremonial activity relating to the land claimed. Young men and women continue to be initiated at regular ceremonies, involving bathing in the salt water, at *Nguranyini* (site 77) for young men and *Kunggul* (site 85) for young women, and in the fresh water of the waterhole at *Belyuen* (site 95). They are thereby introduced to the land and begin to acquire knowledge of the sites and dreamings. Higher men's and women's ceremonies also take place as the occasion requires, often involving people who live down the coast to the south and west, as far away as Port Keats. *Wangga* are performed in some ceremonies. Much ceremonial activity is secret, usually to either men or women, which means that it cannot be revealed generally. The maintenance of secrecy is itself evidence of traditional attachment.

9.2.2 There was an issue as to whether ceremonies performed by members of the **Belyuen** group are ceremonies related to the land claimed. The ceremonies do involve celebration of dreamings and sites on the traditional countries of the six language groups that make up the **Belyuen** group. I am satisfied on the evidence that they also involve celebration of dreamings and sites on the land claimed. Professor Allan Marett, an expert ethno-musicologist who gave evidence on behalf of the **Belyuen** group, distinguished between totemic dreaming songs and *wangga*. The former are believed to come from the dreamings themselves, and to have existed since the era in which the world was created. They are the unchanging inheritance of the groups entitled to them. They are an essential part of ceremonies, in which they accompany dances. They do not involve the playing of didgeridoos. The evidence is that much of what happens in ceremonies is regarded as secret, known only to those who participate in those ceremonies. It does suggest that totemic dreaming songs are performed in ceremonies by members of the **Belyuen** group and that they relate to sites and dreamings on the land claimed. A *wangga* is usually given by a spirit to a particular person during sleep ('dreamed'). The *wangga* will be regarded as owned by that person during his or her life. That person can pass it to a chosen singer of the next generation, so that it continues to be performed. A *wangga* is normally sung by its owner, perhaps with one back-up singer, accompanied by a didgeridoo and sometimes by a second singer. It also accompanies a dance. *Wangga* are sung in initiation ceremonies, and ceremonies to release the spirits of deceased persons ('rag burning

ceremonies'), by members of the **Belyuen** group. I have already referred to the nature of initiation ceremonies in paras 5.4.5, 5.4.17 and 5.4.18. They are closely related to the land claimed, their aim being to introduce the sweat of the initiated person to the dreamings in the land claimed. I am also satisfied that rag burning ceremonies, in which the spirit of a deceased person is sent to its rightful home, are an aspect of the exercise of responsibility for the land claimed. Professor Marett knows of five *wangga* relating specifically to sites on the land claimed, four of which are in current use by members of the **Belyuen** group. Professor Povinelli referred to two others in that category.

9.2.3 Belyuen residents make significant use of the land claimed for hunting, more particularly where non-Aboriginal people have not intruded on that use by establishing shacks or permanent camps. In para 13.1.2, I refer to the sites at which outstations have been established, for use by people from Belyuen, predominantly in the dry season. There have been habitual outstations in the recent past, now abandoned because of the use of those places by non-Aboriginal people.

9.2.4 Belyuen residents make frequent visits to sites of significance to ensure that they are not damaged. Appropriate behaviour is observed on approaching sites. It is common for a senior person to call out to the relevant dreaming on approaching a site, so as to reassure the dreaming that he or she is the appropriate person to be visiting and to inform it that others are also coming. Such rituals are considered to be very important at dangerous places, in order to ensure the safety of those visiting them.

9.2.5 Older members of the **Belyuen** group still regard themselves as having inherited entitlements to various areas in the countries of the language groups of their fathers, outside the land claimed. Many of them still visit those areas on occasions, for ceremonial and spiritual reasons. Through long residence within the land claimed, they have also acquired considerable attachments to it. Nothing in the Land Rights Act suggests that those attachments should be disregarded, or even discounted, because of continued adherence to inherited entitlements with respect to other country. There are signs, in any event, that such adherence is tending to weaken among younger members of the **Belyuen** group. Their attachments to the land claimed as their own country are strengthening progressively. In some cases, they even deny entitlements to other country.

9.2.6 In general, the **Belyuen** group lead a very traditional lifestyle with respect to the land claimed. As a group, they have a very strong traditional attachment to the land claimed.

9.3 The Tommy Lyons group Raelene, Jason and Zoe Singh are very much part of the Belyuen community. They participate fully in its ceremonial activities and in its use of and care for the land claimed. They do not lay claim to any other country, taking only the land claimed from their maternal grandfather, Tommy Lyons. Before he suffered his disabling stroke, Prince of Wales was also very much part of the ceremonial life and the use of the land claimed. Although he is no longer able to participate in ceremony, or to travel unaided about the land claimed, it is safe to assume that his strength of traditional attachment to the land claimed is undiminished. Kathleen Minyinma has not yet developed as high a level of strength of traditional attachment. She lives an urban lifestyle, not directly related to the land claimed. She

does have an awareness of the entitlements she inherits from her paternal grandfather in respect of the land claimed.

9.4 The Larrakia group

9.4.1 In so far as generalisation is possible, it can be said that the **Larrakia** group (for this purpose including those who sought to be represented separately as the **Danggalaba** group) differs significantly from the **Belyuen** group and the **Tommy Lyons** group. In the main, the members of the **Larrakia** group have lived an urban lifestyle, more closely in touch with non-Aboriginal culture than the members of the **Belyuen** group. They have attended ordinary schools. Some have tertiary qualifications. Gary Lee is pursuing doctoral studies in anthropology, as well as being a playwright and curator of exhibitions. Many members of the **Larrakia** group are employed in the public and private sectors. Some have their own businesses.

9.4.2 Members of the **Larrakia** group display a range of talents. June Mills and three of her sisters constitute the well-known vocal group, the Mills Sisters. Other members of the Mills family are also musicians. June is an artist, producing screen print designs for clothing and other items. She is also a writer. Among the group are many other artists, including Richard Barnes, Couchie Raymond, Peter Browne and several members of the Lee family. Gary Lang dances with the famous Bangarra troupe.

9.4.3 This is not to say that members of the **Larrakia** group lack traditional attachment to the land claimed. The generations currently living have emerged from an era in which the Aboriginal identities of Aboriginal people living in non-Aboriginal societies have been suppressed. They now see their Larrakia heritage as something of which they can be proud and which they can proclaim. Their attachment to the notion of Larrakia country is powerful. Because the land claimed contains areas of vacant Crown land, when most of what is regarded as Larrakia country has become developed or controlled by non-Aboriginal interests, and because the land claimed is close to Darwin, it has become a particular focus for this attachment. Many **Larrakia** group witnesses see this land claim as a last opportunity to secure a significant area of what they regard as their country, or as a last stand against the encroachment of non-Aboriginal interests.

9.4.4 There are also particular elements of traditional attachment evident. Roque Lee, who lives on the Cox Peninsula, gathers natural materials from the land claimed and uses them in his art. He sees this as a way of connecting his art to the land claimed. June Mills produces screen print designs based on dreamings and other creatures of Larrakia country. One of her plays is entitled the Larrakia Lounge Claim. It satirises what the author regards as the absurd lengths to which Larrakia people are required to go in the land claim process to establish what she says everybody knows, that the land claimed is Larrakia country. Gary Lee has written a play based on the inquiry conducted by Justice Olney into this land claim in 1989 and 1990. Couchie Raymond has created a painting about this land claim. Peter Browne has painted a work entitled 'Larrakia Tribe Dreaming'. Many **Larrakia** group witnesses see themselves as pursuing traditional rights when they camp on the land claimed, hunt and gather on it and use adjacent waters for fishing.

9.5 Joint expressions of traditional attachment Some expressions of traditional attachments have involved members of more than one group. Members of the

Larrakia group and members of the **Belyuen** group have collaborated in the provision of information for the registration of sacred sites on the land claimed. In the 1970s, there was a united campaign to bring about a cessation of the use of Quail Island (*Duwun*, site 12) and its surrounding area as a bombing range.

9.6 Assessment of strength of traditional attachment It is therefore clear that there are traditional attachments amongst all groups of claimants. As is the case with the spiritual affiliations of members of the respective groups, there are differences in the nature of traditional attachment from one group to another. This makes an overall assessment of the traditional attachment of the claimants generally more difficult than usual. It can be said with confidence, however, that the degree of traditional attachment of the claimants as a whole amply justifies the recommendation which I make in chapter 14.

10 NUMBERS ADVANTAGED AND THE NATURE AND EXTENT OF THE ADVANTAGE

10.1 Numbers advantaged There are six members of the **Tommy Lyons** group who fall within the definition of 'traditional Aboriginal owners' in s. 3(1) of the Land Rights Act. The **Larrakia** group (including for this purpose the **Danggalaba** group) consists of 1 293 people. The **Belyuen** group consists of 301 people. All of them are persons with traditional attachments to the land claimed. All of them fall within the class of persons for whom a land trust would hold the land claimed, namely Aboriginal people entitled by Aboriginal tradition to the use or occupation of that area of land, whether or not the traditional entitlement is qualified as to place, time, circumstance, purpose or permission. There are, therefore, 1 600 people who would be advantaged without question if the land claimed, or part of it, were to become Aboriginal land under the Land Rights Act. There may be more people advantaged. People who belong to six language groups make up the **Belyuen** group (see para. 4.13). There are other members of those language groups who live to the south of the land claimed, as far away as Port Keats. Some of them participate in ceremonial activity at Belyuen, with respect to the land claimed. Similarly, there are people who live in Western Arnhem Land who have ties to a dreaming track which is said to cross the land claimed (see para. 5.4.15). There are Aboriginal people who are married to claimants but are not members of any of the claimant groups. All of these people would be advantaged if the land claimed were acceded to in whole or in part. The total number advantaged is difficult to estimate from the evidence, but might be as high as 2 200.

10.2 Nature and extent of the advantage

10.2.1 The nature and extent of advantage would, of course, vary from person to person. It would be very substantial in relation to members of all claimant groups. Those with traditional entitlements of any kind would have an entitlement to be consulted in relation to any proposed use of the land. In the event of conflicting views, it would be necessary for the Northern Land Council to resolve any conflict as best it could. The result may be that the views of some persons do not prevail. They will nevertheless be taken into account. To the extent to which the land claimed became Aboriginal land under the Land Rights Act, it would be under Aboriginal control. Responsibility for management of it would lie with Aboriginal people. Without their consent, no use of the land could take place legitimately. The preservation of foraging rights could be ensured. The protection of sacred places would be enhanced. So far as people with ceremonial ties are concerned, there would be the satisfaction of knowing that other Aboriginal people were in control of the destiny of land to which they have traditional attachments.

10.2.2 The advantage accruing to the claimants as a result of the land claimed becoming Aboriginal land would not be limited to those to which I have referred. There is considerable symbolism involved in the granting of land rights. The Land Rights Act itself results from a recognition of the dispossession of Aboriginal people and from a desire to provide a remedy for this dispossession. A grant of land to a land trust involves a recognition at the highest level of Australian Government of the legitimacy of the connection between Aboriginal people and the land in question. It involves the placing of confidence in those people with respect to the management of land. The consequences of such a step in relation to the identity and self-esteem of

Aboriginal people have the potential to be very great. In the present land claim, they are heightened by the proximity of the land claimed to the City of Darwin, which has resulted in a greater non-Aboriginal intrusion into the lives of many of the claimants than is the case in many land claims. The grant of any part of the land claimed to a land trust would have significant positive psychological effects in relation to very many of the claimants.

11 DETRIMENT TO PERSONS OR COMMUNITIES

11.1 The Northern Territory

11.1.1 The Attorney-General for the Northern Territory submitted that I should make a comment to the effect that acceding to the claim in whole would lead to 'extreme' detriment, and acceding to it in part would lead to 'severe' detriment to the Northern Territory. Such detriment is said to result because the land claimed would be unavailable, to the extent to which it was granted to a land trust, for the planned expansion of Darwin to a city of one million people. The comment was sought both with respect to detriment to the Northern Territory as a 'person' and with respect to the 'whole community of the Northern Territory'. According to the opening 'endorsement', signed by the then Chief Minister of the Northern Territory, the written submission on these issues, tendered by the Attorney-General for the Northern Territory, was endorsed 'on behalf of the whole community of the Northern Territory.'

11.1.2 It has been established that diminution of the stock of available Crown land in the Northern Territory is not to be regarded as detriment for the purposes of s. 50(3)(b) of the Land Rights Act. Any grant of land to a land trust diminishes the stock of land vested in the Northern Territory Government. To the extent that this constitutes a detriment, it is one inherent in the system established by the Land Rights Act. See *Attorney-General (Northern Territory) v. Minister for Aboriginal Affairs* (1989) 23 FCR 442, at p. 444. The judgment of the Full Court of the Federal Court of Australia in that case was affirmed on appeal by the High Court of Australia, but the appeal was limited to the issue of 'community', dealt with below. See *Attorney-General for the Northern Territory v. Hand* (1991) 172 CLR 185, at p. 190.

11.1.3 It is therefore necessary for the Attorney-General for the Northern Territory to rely on something more than the mere unavailability of the land claimed, to justify a comment that detriment would be suffered. The material relied on is that dealing with planning issues, which I discuss in chapter 12. It is unnecessary for me to set out my findings in relation to that material again.

11.1.4 The Northern Territory Government is a 'person' for the purposes of s. 50(3)(b) of the Land Rights Act. See *Attorney-General (Northern Territory) v. Minister for Aboriginal Affairs* (1989) 23 FCR 442, at p. 444. It is therefore open to me to make a comment in relation to detriment that the Northern Territory Government might suffer if the land claim were acceded to in whole or in part. In that case, the Full Court of the Federal Court of Australia also held that pastoralists raising cattle in areas of the Northern Territory do not constitute a 'particular community or group', for the purposes of s. 15(1) of the Land Rights Act and the definition of 'community purpose' in s. 3(1) of that Act. At p. 447, the Court said:

> But the word 'community' generally connotes physical proximity.

On appeal, the High Court of Australia reached the same conclusion. See *Attorney-General for the Northern Territory v. Hand* (1991) 172 CLR 185. At p. 191, the Court said:

> The latter term ['community'] suggests persons who are gathered in a particular locality; it carries with it a sense of place.

There is no reason to suppose that the word 'communities', used in a different section of the same Act, is intended to have a different meaning. The word 'community' in s. 50(3)(b) should therefore be construed to refer to an aggregation of identifiable people living in proximity to each other. The whole of the Northern Territory cannot be described in those terms. I conclude, therefore, that it is not open to me to make a comment on detriment that might be suffered by the 'whole community of the Northern Territory.'

11.1.5 Even if this were not so, I should not regard it as proper to make a comment that the 'whole community of the Northern Territory' might suffer detriment if the claim were acceded to in whole or in part. The claim that a submission relating to detriment was made on behalf of the whole community of the Northern Territory is hyperbole. If there were such a thing as a single community of the Northern Territory, it would include the claimants in the present land claim, who would suffer very serious disadvantage if all of the land claimed were to be used to contain suburbs for an expanding city. It would include people who live in the Northern Territory in many places remote from Darwin, whose lives would not change significantly if Darwin's future expanded population were to live on the Cox Peninsula or in some other area or areas. It would no doubt include many people who would regard themselves as advantaged if the Cox Peninsula were to be protected from encroaching suburbs, for social, cultural or environmental reasons.

11.1.6 My comment, therefore, is that, if the land claim were acceded to, detriment might result to the Northern Territory Government, in that it would be unable to pursue the planning of the City of Darwin for an expanded population on the basis that the Cox Peninsula would be a suitable place for urban development. The detriment will be alleviated to a considerable extent if, as I recommend, the land claim is to be acceded to in part. The recommendation in para. 14.3 excludes the south-eastern area of the land claimed, which I assume would be available for urban development once the claim is resolved. The extent of any detriment can only be determined after the carrying out of a proper planning exercise, with the benefit of knowledge as to what land is to be available to the Northern Territory Government to control the future expansion of Darwin.

11.2 Watering points and gravel pits

11.2.1 The Department of Transport and Works of the Northern Territory uses watering points and gravel pits for the maintenance of those roads which it maintains (see paras 13.2.3 and 13.2.4). There are four watering points used in the maintenance of the Cox Peninsula road, two for the maintenance of the Charles Point road and four for the maintenance of the Rankin Point track. There are twenty gravel pits used for the maintenance of the Cox Peninsula road, thirteen for the maintenance of the Charles Point road and five for the maintenance of the track to Rankin Point. In respect of the other tracks, there are no watering points or gravel pits used. Each of the watering points and gravel pits to which I have referred is shown on the map in appendix 8.

11.2.2 The watering points and gravel pits, so far as they do not lie within the road reserves of the roads concerned, are used by the Crown, within the meaning of s. 14 of

the Land Rights Act. If the land claimed were to be conveyed to a land trust, s. 14 would entitle the Crown to continue to use those areas for as long as required by the Crown. The use is for the maintenance of roads open to the public generally, so is probably not for a community purpose within the meaning of s. 15 and the definition of 'community purpose' in s. 3(1) of the Land Rights Act. See para. 1.9.7. Section 15(1) of the Land Rights Act would therefore oblige the Crown to pay rent for the area used. Such rent would constitute detriment to the Northern Territory Government.

11.3 Australian Communications Authority

11.3.1 The Australian Communications Authority ('ACA') operates and maintains a radio frequency monitoring installation on Section 32 of the Hundred of Bray, shown on the map in appendix 8. The monitoring installation consists of three facilities: a High Frequency (HF) radio frequency monitoring and direction finding facility; a Very High Frequency (VHF) and Ultra High Frequency (UHF) monitoring facility; and a High Frequency (HF) communications/monitoring facility.

11.3.2 The main purpose of the HF monitoring and direction finding facility is to identify and resolve problems of interference to Australian HF radio communications systems, many of which provide essential safety services, e.g. those operated by Air Services Australia, the Australian Maritime Safety Authority and the Royal Flying Doctor Service. The interference emanates from both within and outside Australia. The facility is part of a national network of monitoring installations operated by the ACA, the others being located in Brisbane and Perth. The facility is also used to assist the ACA to fulfil Australia's international obligations, under its commitment to the International Telecommunications Union, to conduct monitoring and to contribute to international spectrum management. The primary purpose of the VHF and UHF monitoring facility is to monitor VHF and UHF radio transmissions generally within the Darwin area. It enables the ACA to assess and plan the use of the radio frequency spectrum, ensure that broadcasters comply with the terms of their licence agreements, detect and monitor any offences committed against the *Radiocommunications Act* 1992, gather evidence for the prosecution of such offences, and assist in the location of the source of emergency distress transmissions from both land and sea. The HF communications/monitoring facility is used in conjunction with the HF monitoring and direction finding facility to resolve national and international interference complaints. Other improvements on Section 32, which support the three facilities, include fencing around the monitoring installation, buildings, fuel and water tanks, towers and bores.

11.3.3 The ACA intends to continue its operations at the monitoring installation, but does not have any current plans for expansion. The monitoring installation is strategically placed to monitor any interference from Australia's north. It is ideally located because of its remoteness from sources of background radio signals and physical obstructions such as fences and buildings. Its proximity to Darwin allows ready access and enables monitoring of Darwin radio activity. The site satisfies minimum specifications of the International Telecommunications Union and the Standards Association of Australia.

11.3.4 The ACA falls within the definition of 'Authority' in s. 3(1) of the Land Rights Act. It is established by s. 14 of the *Australian Communications Authority Act* 1997. It is therefore an 'Authority', occupying and using part of the land claimed, for the purposes of s. 14(1) of the Land Rights Act. There was some debate, however, as to

the extent to which Section 32 'is being occupied or used by' the ACA, for the purposes of s. 14(1). Counsel for the Commonwealth claimed that the ACA occupies the whole of Section 32, which is approximately sixteen square kilometres in area. He conceded, however, that the occupied area could be reduced:

> to approximately three square kilometres with no long term reduction in operational effectiveness. Alternatively, by accepting a gradual loss of effectiveness over the longer term, due to increasing man-made electrical noise, the area occupied could be reduced to the absolute minimum of two parcels of approximately 4 hectares and 0.3 hectares, linked by an approximately 500 x 10 metre corridor. This option would need to rely heavily on legal covenants, or other restrictions on surrounding land use, to slow the increase in the level of man-made electrical interference. Access to water and electricity would also need to be guaranteed.

The calculations of the size of the parcels required are based on the areas currently occupied by the various facilities, while the corridor contains underground power and telephone cables and the path of a spread spectrum signal link.

11.3.5 Land can be 'used', or even 'occupied' without any physical use of it. For instance, land can be kept vacant adjacent to a building or other facility for the purpose of contributing to the function of that building or facility. See *Newcastle City Council v. Royal Newcastle Hospital* [1959] AC 248. Because of the need to prevent electromagnetic interference with ACA's equipment, it is possible that the whole of Section 32 is being 'used' by ACA. The concession that a smaller area would be sufficient tends against this view. I cannot make a binding decision as to the extent of the area actually occupied or used by the ACA. The ACA undoubtedly occupies or uses at least part of Section 32. Under s. 14(1) of the Land Rights Act, the ACA would remain entitled to continue this occupation or use, in the event of the grant of the land claimed to a land trust. Under s. 14(2), any buildings and improvements on the land would be deemed to remain the property of the ACA during the period of its continued occupation. The ACA would suffer detriment to the extent that it would be required to pay amounts in the nature of rent to the Northern Land Council, under s. 15(1) of the Land Rights Act. It is clear from the purposes for which the monitoring installation is used that the occupation or use of land by the ACA would not amount to a 'community purpose', as defined by s. 3(1) of the Land Rights Act. See para. 1.9.7.

11.3.6 Counsel for the Commonwealth submitted that the ACA might suffer detriment if it were only entitled to occupy part of Section 32. There is a risk that any occupiers of surrounding land, including other parts of Section 32, would erect structures or operate equipment which created electromagnetic interference. Changes to boundaries would involve new fencing and consequent recalibration of the direction finding equipment. Upgraded security fencing may be required along the boundaries of the area which continued to be occupied by the ACA. The risk of damage from fire may be increased if the ACA is unable to exercise fire prevention measures over the whole of Section 32. Any expense of new fencing and recalibration would amount to detriment suffered by the ACA. The realisation of the other risks would depend on the uses to which surrounding areas were to be put, and the nature of any arrangement the ACA was able to make with the land trust. I have no reason to suppose that a satisfactory arrangement could not be reached.

11.3.7 Access to the monitoring installation is from Darwin either by ferry to the Mandorah jetty and then by short road trip along the Charles Point Road and the Cox

Peninsula Road, or entirely by road from Darwin, along the Cox Peninsula Road. The Cox Peninsula Road runs through Section 32. Both Charles Point Road and Cox Peninsula Roads are roads over which the public has a right of way (see para. 13.2**)**. A bitumen access road runs from the Cox Peninsula Road to the main compound of the monitoring installation. If the ACA occupies the whole of Section 32, it will continue to have access directly from a road over which the public has a right of way. If it is found that the ACA does not occupy or use the whole of Section 32, a permit might be required, to enable the ACA and its employees and contractors to obtain access to that part of Section 32 which the ACA would have a continuing right to use and occupy. The ACA would suffer detriment if it could not obtain a permit to gain access. I have no reason to believe that the question of access would cause difficulty.

11.3.8 Any detriment to the ACA is likely to be substantially less if the land claim is acceded to than if it is not. Urban development on the northern part of the Cox Peninsula in the near future would be totally incompatible with the continued existence of the ACA facilities, because of the electromagnetic interference from surrounding buildings and activities.

11.4 Australian Maritime Safety Authority – Charles Point Lighthouse

11.4.1 The Australian Maritime Safety Authority ('AMSA') operates and maintains the Charles Point lighthouse station on Section 41 of the Hundred of Bray, a parcel of land 9 490 square metres in area. The lighthouse station was established in 1893. Its purpose is to assist vessels approaching and departing the Port of Darwin from and to the west and the north-east along certain 'recommended tracks' indicated on marine charts. It is a major lighthouse for navigation in the area. Other improvements on Section 41 include a demountable building, housing a joint Northern Territory University/CSIRO atmospheric chemistry facility and a Bureau of Meteorology portable low level automatic weather station. These facilities are discussed at paras 11.5.3 and 11.6.

11.4.2 There is a continuing need for the operation of the lighthouse. It has been solar powered since February 1994. It is therefore only visited by AMSA officers on an annual basis to carry out routine maintenance. Major repainting takes place for a three week period about every five years.

11.4.3 Section 41 is currently occupied and used by AMSA for the purposes of the lighthouse. AMSA falls within the definition of 'Authority' in s. 3(1) of the Land Rights Act. It is a body corporate established under s. 5 of the *Australian Maritime Safety Authority Act* 1990. Accordingly, should the land be vested in a land trust, s. 14(1) of the Land Rights Act will entitle AMSA to continue its occupation and use of Section 41 to operate and maintain the lighthouse, for such period as the land is required. The buildings and improvements on Section 41 will remain the property of AMSA, pursuant to s. 14(2) of the Land Rights Act. For its continued occupation or use, s. 15(1) of the Land Rights Act would oblige the Crown in right of the Commonwealth to pay to the Northern Land Council amounts in the nature of rent. Payments would be required under s. 15(1) because the lighthouse is used to ensure the safety of all commercial vessels passing through the 'recommended tracks' referred to in para. 11.4.1. It could therefore not be said that the use of the lighthouse is for a 'community purpose', as defined by s. 3(1) of the Land Rights Act. See para. 1.9.7.

The Commonwealth would suffer detriment to the extent of the rent fixed for the use of the lighthouse.

11.4.4 Access to the lighthouse for maintenance and painting is normally by road from Darwin. Occasionally a helicopter is used, although this is more expensive. If the land were vested in a land trust, AMSA officers could still obtain access to the lighthouse by helicopter or by sea, as this would not involve crossing Aboriginal land. The issue of access over land, through Section 34 of the Hundred of Bray, is more complicated. The right to use or occupy land under s. 14 of the Land Rights Act does not carry with it an express right of access to the land used or occupied. Such an express right is given to the holders of estates or interests in Aboriginal land or land in the vicinity of Aboriginal land, by s. 70(4) of the Land Rights Act (see para. 1.9.1).

11.4.5 There are three possible statutory provisions which would assist those engaged by AMSA to carry out maintenance and painting of the lighthouse. Under s. 8 of the *Lighthouses Act* 1911, AMSA can authorise an officer to inspect the lighthouse and, for that purpose to enter upon any property of a private or public nature, or for any purpose in connection with the maintenance of the lighthouse, to transport or cause to be transported any goods through any property of a private or public nature. Under s. 6 of the *Aboriginal Land Act* (NT), the relevant Northern Territory minister can grant a permit to a person employed under or by virtue of an Act (defined by s. 3 to include a Commonwealth Act) who has a need, in the performance of his or her duties, to enter upon and remain on Aboriginal land. The third option would be for those needing to cross Aboriginal land to obtain permits from the Northern Land Council under s. 5 of the *Aboriginal Land Act* (NT). AMSA would suffer detriment to the extent that it would need to obtain authorisations or permits. I have no reason to believe that there would be great difficulty in obtaining such authorisations or permits.

11.5 Bureau of Meteorology

11.5.1 The Bureau of Meteorology ('the Bureau') operates two automatic weather stations within the claim area, one on Dum-In-Mirrie Island and the other near the Charles Point lighthouse.

11.5.2 The station on Dum-In-Mirrie Island is situated adjacent to the aircraft landing strip mentioned in para. 11.10.6. That site has been used for an automatic weather station since 1994 and was constructed with the consent of Max Baumber, who currently resides on a part of the island (see para. 11.10). The facility consists of three integrated structures: a mast ten metres high, a small louvre-screened box, and a rain gauge. To withstand cyclonic winds, these structures are fixed to concrete slabs embedded in the ground. Telstra provides the communications infrastructure for the transmission of data to the Bureau. The Dum-In-Mirrie Island station is strategically placed to form part of a network of weather stations across Northern Australia. It provides early warning of severe storms and cyclones around the Darwin area and data on which national and local forecasts can be made for the use of a variety of interest groups, including recreational sailors and fishermen, commercial shipping, commercial fishermen and users of Darwin Airport and the landing strip on Dum-In-Mirrie Island. It also provides data used in numerical prediction models produced in the USA and the UK. The weather station was switched off in October 1997, due to equipment failure. Certain parts had become obsolete. The evidence was that these parts were to be replaced in September 1998. I have no more recent evidence.

11.5.3 The second automatic weather station is at Section 41 of the Hundred of Bray, the same parcel of land on which the Charles Point lighthouse is located. The site is used by the Bureau with the consent of the Australian Maritime Safety Authority, which is responsible for the operation of the lighthouse. The Charles Point weather station is located on the seaward side of the lighthouse, approximately fifty metres from the demountable building used for the joint NTU/CSIRO research facility, discussed in para. 11.6. The Charles Point station is not part of the network of which the Dum-In-Mirrie Island station forms part. Rather, it provides data for use by the NTU/CSIRO research facility. The data produced is transmitted back to the Bureau's Darwin office by low power data radio. This data is then used for forecasting in the Northern Territory region only and is stored for research purposes. The Charles Point station takes up an area of twelve metres by twelve metres, with various features including a tower, solar panels, a battery box, electronics, housing and sensors. It is a portable automatic weather station, unlike the Dum-In-Mirrie Island station.

11.5.4 It is not disputed that the Bureau, which is established by the *Meteorology Act* 1955, constitutes part of the Crown in the right of the Commonwealth, or that the Bureau occupies or uses land on Dum-In-Mirrie Island and within Section 41. The precise amount of land being occupied or used by the Bureau on Dum-In-Mirrie Island is unclear. The Commonwealth submitted that it occupies an area of approximately 200 metres by 200 metres for that purpose. What amount of that land is actually used for the purposes of the automatic weather station was not made clear in the evidence. If the land is transferred to a land trust, whatever portion of land is being occupied or used by the Bureau, within the meaning of s. 14(1) of the Land Rights Act, will remain available to the Bureau for as long as it requires. In addition, under s. 14(2) of the Land Rights Act, any buildings and improvements on the land occupied or used for the weather stations will be deemed to remain the property of the Crown. For its continued occupation or use, s. 15(1) of the Land Rights Act would oblige the Crown in right of the Commonwealth to pay to the Northern Land Council amounts in the nature of rent. Payments would be required under s. 15(1) because the automatic weather stations are used to generate data used to benefit a wide range of people, in the form of forecasts and models. While data from the Charles Point station is only used for forecasts within the Northern Territory, such a purpose is still too wide to fall within the definition of 'community purpose' in s. 3(1) of the Land Rights Act. See para. 1.9.7. The Crown in right of the Commonwealth would suffer detriment to the extent of the rent fixed for the use of the land for the stations.

11.5.5 There was no evidence as to the present means of access to either station. The Dum-In-Mirrie Island station is visited for routine maintenance about four times a year, although more frequent visits are required if it breaks down. The Charles Point station is visited every two months for routine maintenance or more frequently to rectify faults. The question of access to Section 41 is dealt with in paras 11.4.4 and 11.4.5. The Bureau could not rely on s. 8 of the *Lighthouses Act* 1911 (Cth), so permits would be needed under the *Aboriginal Land Act* (NT). Similarly, permits would be needed for access to the station on Dum-In-Mirrie Island. The Commonwealth would suffer detriment to the extent that it would need to obtain permits. There is no evidence to suggest that obtaining permits would be difficult.

11.6 Charles Point Atmospheric Chemistry Research Facility

11.6.1 The Northern Territory University ('NTU') and the Commonwealth Scientific and Industrial Research Organisation ('CSIRO') operate the Charles Point Atmospheric Chemistry Research Facility ('the research facility') near the Charles Point lighthouse. The research facility is on an area of land approximately ten metres by twenty-five metres, to the west of the lighthouse, on Section 41 of the Hundred of Bray. The research facility was established in 1992 and comprises valuable equipment housed in a demountable building. Its purpose is to assist in the study of the chemistry and other features of the tropical atmosphere. Air samples and data are taken as part of Australia's contribution to the international monitoring of greenhouse gases and other gases and particles associated with atmospheric ozone and acid deposition. The research facility is an important tool for the research work of the CSIRO Division of Atmospheric Research. The NTU and the CSIRO plan to continue observation from the research facility well into the future.

11.6.2 As part of the facility, the Commonwealth Bureau of Meteorology has established a portable low level automatic weather station between the lighthouse and the cliff on the seaward side of Section 41. This weather station is essential to provide the climate information necessary for the interpretation of the atmospheric chemistry data. The weather station is referred to in greater detail in para. 11.5.3.

11.6.3 The research facility was installed pursuant to a 'Licence Agreement' between AMSA and the NTU, dated 8 March 1994. Under the licence agreement, the NTU is entitled to: enter and use the lighthouse site to install and maintain the research facility; erect and maintain a security fence surrounding the facility; and use and maintain the power supply required for the research facility at the expense of the NTU. The agreement was for a term at AMSA's discretion and commenced on 4 May 1994. No payment is required under the agreement.

11.6.4 There is no dispute that the NTU and the CSIRO 'occupy and use' Section 41 and that each is an 'Authority' for the purposes of s. 14(1) of the Land Rights Act. The NTU is established by s. 4(1) of the *Northern Territory University Act* (NT) and the CSIRO is established by s. 8(1) of the *Science and Industry Research Act* 1949. Accordingly, should the land be vested in a land trust, s. 14(1) of the Land Rights Act will entitle the NTU and the CSIRO to continue their occupation or use of Section 41 to operate and maintain the research facility, for such period as the land is required. The relevant buildings and improvements on Section 41 will remain the property of the NTU and CSIRO, pursuant to s. 14(2) of the Land Rights Act. For their continued occupation or use, s. 15(1) of the Land Rights Act would oblige the Crown to pay to the Northern Land Council amounts in the nature of rent. The atmospheric data gathered by the research facility is not used to benefit primarily the members of a particular community or group. The use of the research facility is therefore not for a 'community purpose', as defined by s. 3(1) of the Land Rights Act. See para. 1.9.7. It would be necessary to resolve whether the rent is to be paid by the Commonwealth or the Northern Territory (because the NTU is an authority of the Northern Territory), and whether additional rent is payable, above that required to be paid by AMSA (see para. 11.5.4). The Crown in right of the Commonwealth, or the Northern Territory as the case may be would suffer detriment to the extent of any rent fixed for the use of the research facility.

11.6.5 The operation of the research facility does not require human presence, but the NTU and the CSIRO require twenty-four hour access to it. At present, access is by

road through Section 34 of the Hundred of Bray. If the claim is acceded to, Section 34 would become Aboriginal land. The question of access to the lighthouse is dealt with in paras 11.4.4 and 11.4.5. With the exception that s. 8 of the *Lighthouses Act* 1911 does not apply to those entering Section 41 on behalf of the NTU or CSIRO, what is said there is applicable. The NTU and CSIRO will suffer detriment to the extent that they would need to obtain permits under the *Aboriginal Land Act* (NT) to gain access to the research facility by crossing Aboriginal land. There is no evidence to suggest that obtaining permits will be difficult.

11.7 Defence practice area

11.7.1 Since 1910, with the exception of a short period following Northern Territory self-government, all land and water within a radius of 5 500 metres from the centre of Quail Island has been under Commonwealth control. This area includes Quail Island, Bare Sand Island and the northern tip of Grose Island ('the defence practice area'), all within the land claimed. Pursuant to various declarations dating from 1957, this area of land and water has been reserved for various defence practice purposes, including for use as a bombing area, and for air-to-surface weapons firing. The most recent of these declarations was by notice published in the *Commonwealth of Australia Gazette* no. GN16, dated 19 August 1987. The defence practice area is administered by the Department of Defence.

11.7.2 The defence practice area was used for aerial bombing, rocketry and gunnery between World War II and December 1979. There are no records that identify the types or numbers of weapons dropped on the area before 1963, or what proportion of those weapons exploded on impact. Records kept between 1963 and 1979 indicate that in that period, fifty-seven high explosive aircraft bombs that were dropped remain, unexploded, on the defence practice area. This Unexploded Explosive Ordnance ('UXO') poses a risk to anyone entering the area and can remain in a dangerous condition indefinitely. UXO may explode with the slightest disturbance, caused by movement, vibration or temperature extremes. The Department of Defence has no current operational use for the defence practice area. A visual search of the defence practice area for UXO is undertaken annually.

11.7.3 Flight Lieutenant Salvatore John Sidoti gave evidence, on behalf of the Commonwealth, as to the process, and likely success, of a hazard reduction operation to clear Quail Island of all UXO. Such an operation would be extremely difficult for a number of reasons. UXO are likely to be found at significant depth. Other metal debris from exploded bombs and other weapons firing is likely to be present. The topography is such that holes dug in sandy soil to recover bombs would fill quickly with water. UXO located in the shallow water surrounding the islands may surface in the future because of tidal and weather movements. The area is unsuitable for an extended stay by a clearance party. In any event, any such operation is unlikely to remove all UXO and the area is likely to remain hazardous to some extent. If a full hazard reduction operation were conducted, Quail Island and its neighbouring land and waters could be made safe for people to visit, but not to reside, provided that regular checks were conducted to ensure that no further UXO washed up on the beaches or rose out of the ground.

11.7.4 Section 14(1) of the Land Rights Act preserves the right of the Crown to continue its occupation or use of land vested in a land trust where the land is being

occupied or used by the Crown at the time of vesting. The Department of Defence is part of the Crown in right of the Commonwealth. It is doubtful whether the Commonwealth currently 'occupies or uses' the defence practice area for the purposes of s. 14(1), given that it has not used it for any purpose for some time and does not have any current operational requirement for the land. *Newcastle City Council v. Royal Newcastle Hospital* [1959] AC 248, at p. 255, can be distinguished. In that case, an area of vacant land was held to be occupied because it was adjacent to a hospital and was kept vacant to enhance the use of the hospital. The defence practice area was never an adjunct to any other area. The cessation of its use for defence purposes suggests that it is not occupied or used at all at the present time. The continued existence of a reservation, for purposes that are no longer pursued, is not enough to amount to use or occupation. If so, there is no right of use or occupation for s. 14(1) to preserve. In the unlikely event that the Commonwealth wished to use the area in the future, it would have to deal with the land trust, through the Northern Land Council, like anyone else wishing to use the land or, by legislation and on just terms, override the Land Rights Act. In the absence of a present desire to use the land, there cannot be a finding that detriment might result to the Commonwealth if the land claim were acceded to with respect to the defence practice area. If the Commonwealth does still use or occupy the defence practice area, s. 14(1) would preserve its right to do so, subject to the payment of rent pursuant to s. 15 of the Land Rights Act. Its detriment would be limited to the amount of rent it would have to pay.

11.7.5 The Commonwealth submitted that it would suffer detriment, in that it may have to undertake and pay for the costs of a full hazard reduction operation. Because of the presence of UXO, the Commonwealth may incur liability to any person who enters the defence practice area and suffers injury from the UXO. That potential liability might continue, and might even be more likely to become an actual liability, if the Commonwealth were to lose any right to control entry to the defence practice area, because it became Aboriginal land. Current Commonwealth policy is that a hazard reduction operation should be considered in the context of a disposal of Commonwealth land affected by UXO. If such consideration resulted in the conclusion that a hazard reduction operation would need to be carried out, the Commonwealth would suffer detriment to the extent of the cost of that operation. If it were the case that the Commonwealth would never carry out such an operation without the defence practice area being granted to a land trust, such detriment would be the result of acceding to the land claim.

11.7.6 The Commonwealth also submitted that it would suffer detriment if the land trust to which the defence practice area was transferred did not indemnify the Commonwealth against all liability for damage or injury that may be caused by UXO being present on Quail Island. A land trust could not provide such an indemnity. Its only asset would be the Aboriginal land it held, which cannot be alienated, except in accordance with s. 19 of the Land Rights Act. If the Commonwealth's loss of control over entry to the defence practice area resulted in the Commonwealth being found liable when it would not otherwise have been liable, it would suffer detriment to that extent. If some arrangement could be devised that would amount to reasonable steps to prevent people entering the defence practice area, the likelihood of such detriment would be reduced accordingly.

11.8 Radio Australia transmission station

11.8.1 The Commonwealth Department of Finance and Administration ('DOFA') is responsible for the management and maintenance of a radio transmission station on the Cox Peninsula, within the land claimed. This transmission station was one of four located around Australia used to broadcast programs on behalf of Radio Australia, a division of the Australian Broadcasting Corporation, to international audiences. The transmission station was established by the Commonwealth in 1969, destroyed by Cyclone Tracy in December 1974, rebuilt with improvements and recommissioned in 1984. The Commonwealth ceased broadcasting from the transmission station on 30 June 1997 and since then, the transmission station has been 'mothballed'. On 1 July 1998, administrative responsibility for the management and maintenance of the site was transferred from the National Transmission Agency, a division of the Commonwealth Department of Communications and the Arts, to DOFA. Despite being 'mothballed', the transmission station and its surrounds continue to be maintained, under contract, by British Aerospace Australia on a daily basis. Five people are employed full-time at the transmission station, being four technicians and one person who carries out ground maintenance.

11.8.2 The transmission station is located near Charles Point on Section 34 of the Hundred of Bray. Improvements on the transmission station site include several antennae, various buildings, roads, bores, water supply systems, fences and overhead and underground cables. The antennae farm is arranged along a 700 metre arc and at its highest point is approximately 100 metres high.

11.8.3 The operation of the transmission equipment requires an area of vacant, flat, and preferably cleared, land in front of each antenna, to enable radiation beams to form correctly at every operating frequency of the antenna. This area, known as the First Fresnel Zone, extends approximately 1.9 kilometres in front of the antennae farm and is up to three kilometres wide. Continuous clearing of vegetation from such a large area of land is expensive. While the transmission station was used for broadcasting, a reduced area, 1.1 kilometres long and 1.85 kilometres wide, was kept cleared as a compromise. While resulting in reduced signal quality, this compromise seemed to be acceptable to those operating the transmission station.

11.8.4 While operating, the transmission station emitted radiation dangerous to human health. The extent of the area from which people must be excluded while transmission is in progress is still unclear. There is a relatively new interim Australian and New Zealand standard on maximum levels of radiation to which those working in electromagnetic fields may be exposed in an eight hour day, and to which the general public may be exposed over a twenty-four hour period. Radiation readings taken from within the First Fresnel Zone in the past are no longer considered a reliable foundation for the estimation of a safe distance. To prevent access by the public to hazardous areas within the transmission station site, in 1995 the Commonwealth proposed the erection of a two metre high, cyclone wire security fence enclosing the transmission station. The proposal was to build this fence 400 metres from the antennae.

11.8.5 Electricity is supplied to the transmission station site from a power substation on Section 33 of the Hundred of Bray, also within the land claimed. Section 33 is Commonwealth land (see para. 3.9). The power substation receives electricity from Darwin by a submarine cable. The power substation is maintained by the Northern Territory Power and Water Supply Authority as part of its distribution network, and supplies power to other users on the Cox Peninsula.

11.8.6 Other infrastructure that supports the transmission station includes a power receiver station, a submarine cable terminus, the Mandorah jetty and wharf head, buildings for storage of related vehicles and equipment, water bores, the Charles Point Road, power lines and electricity cables. With the exception of the Charles Point Road and some power lines, this infrastructure is not within the land claimed.

11.8.7 The future use of the transmission station is uncertain. There was no evidence that the Commonwealth intends to resume transmission from the transmission station in the near future. There was, however, evidence that the Commonwealth has had several expressions of interest to purchase or lease the transmission station for use as a transmission facility. The site is well suited to a high frequency transmission station to launch short wave radio transmissions to South East Asia and other areas to the north of Australia, because of its flat terrain, proximity to target audiences and to existing support infrastructure, and its remoteness from large local populations and buildings. If the transmission station were to be recommissioned, it is possible that additional antennae may be installed to increase the area reached by the transmitters. This would increase the size of the First Fresnel Zone and may also increase the distance considered safe from radiation.

11.8.8 It is not contested that DOFA is part of the Crown in right of the Commonwealth. Although the transmission station is not being used for transmission, it is probable that at least part of Section 34 is still being occupied, and possibly used, by the Commonwealth, within the meaning of s. 14(1) of the Land Rights Act. The presence of structures and the continued maintenance of those structures and the surrounding grounds is sufficient to amount to occupation or use. There may be an issue as to the extent of the land within Section 34 that is so occupied or used. It might be argued that, while the transmission station is not being used for the purpose of transmitting signals, the Commonwealth is not occupying or using the First Fresnel Zone, or the whole of any area that would be considered safe from radiation if the transmitter were operating. The land within Section 33 continues to be occupied or used by the Commonwealth, or by the Northern Territory through its Power and Water Supply Authority, as the power substation still supplies electricity to the transmission station for maintenance purposes and to other users on the Cox Peninsula.

11.8.9 The Commonwealth would be entitled to continue to occupy or use, for as long as it required, those parts of the land within Section 34 which it occupies or uses if that land becomes vested in a land trust. If the Commonwealth occupies or uses all of Section 34, it would suffer no detriment beyond the need to pay rent, discussed in para. 11.8.10. If the Commonwealth only occupies or uses part of Section 34, it would need to enter into an arrangement with the land trust in relation to additional land required for resuming transmission at a later date. It would suffer detriment in that respect. To the extent to which the Crown would be entitled to continue to occupy or use the land within Sections 33 and 34, pursuant to s. 14(1) of the Land Rights Act, s. 14(2) provides that any buildings and improvements on land would be deemed to be the property of the Crown.

11.8.10 In respect of Section 34, the Commonwealth would have to pay rent pursuant to s. 15(1). The occupation or use of the land could not be said to be for a 'community purpose', as defined by s. 3(1) of the Land Rights Act; namely a purpose that is calculated to benefit primarily the members of a particular community or group.

See para. 1.9.7. The transmission station is being maintained for possible reuse to broadcast to a wide potential audience outside Australia. The Commonwealth will suffer detriment to the extent of the rent fixed for the use of the transmission station. The question of rent in respect of Section 33 is a little more difficult. As well as servicing the transmission station, the power substation supplies power to other users on the Cox Peninsula. This raises the question whether the occupation or use of Section 33 is for a 'community purpose', as defined in s. 3(1). The other users of power from the substation may well constitute a 'particular community or group'. The question, then, would be whether the Commonwealth's, or the Northern Territory's, occupation or use of Section 33 is 'calculated to benefit primarily' those users. If so, rent would not be payable. The Commonwealth or the Northern Territory would not suffer any detriment, in relation to Section 33, if the land within it were vested in a land trust. There was insufficient evidence to enable me to determine whether the primary purpose of the substation was to supply the transmission station or the other users of electricity on the Cox Peninsula. The fact that there was a grant of an estate or interest to the Commonwealth suggests that the original primary purpose might have been supply of power to the transmission station. There may have been a change in primary purpose, brought about by the cessation of transmission.

11.8.11 Access to Sections 33 and 34 is via the Charles Point Road, a road over which the public has a right of way (see para. 13.2). There is therefore no issue of detriment in relation to access.

11.8.12 There were two other forms of detriment which the Commonwealth alleged it may suffer should the land within Section 34 be vested in a land trust, even if it retains the right to occupy or use that land for the transmission station. The first was that the Commonwealth would no longer be entitled to sell or lease the transmission station to a third party. It is clear that the Commonwealth would lose any right to sell or lease the land on which the transmission station is built, if that land were to become Aboriginal land under the Land Rights Act. Whenever Crown land is vested in a land trust pursuant to the Land Rights Act, the Crown loses the right to sell or lease that land. This is an intended consequence of the Land Rights Act, and does not amount to detriment for the purposes of s. 50(3)(b). See *Attorney-General (Northern Territory) v. Minister for Aboriginal Affairs* (1989) 23 FCR 442, at p. 444. There might be a question whether the Crown would be entitled to permit someone else to make use of improvements on land deemed by s. 14(2) of the Land Rights Act to be the property of the Crown. If it could do so without contravention of any provision of the Land Rights Act, then there would be no detriment.

11.8.13 The second form of additional detriment the Commonwealth alleged it would suffer was the need to upgrade security precautions and fencing to restrict public access to the transmission station. There was no evidence as to the nature of the upgraded security precautions. There was evidence that the Commonwealth proposed to erect a 'hazard boundary fence' to keep the public at a safe distance from the radiation emitted by the transmission station. It is not clear why such a proposal should exist only if the land is to be granted to a land trust, and therefore not clear that carrying it out would amount to detriment as a result of the land claim being acceded to.

11.8.14 It should be noted that any further use of the transmission station for transmitting radio signals would be incompatible with the suggestion of the Northern

Territory Government that urban development should occur in the northern part of the Cox Peninsula (see chapter 12).

11.9 Telstra Corporation Limited

11.9.1 Telstra Corporation Limited ('Telstra') has a number of telecommunications facilities within and near the claim area. These facilities form part of the national telecommunications network operated by Telstra.

11.9.2 Optical fibre cabling, connecting Darwin to Manbulloo, runs through a substantial part of the claim area. The cables run underwater across Darwin Harbour to Mandorah. They are then laid underground at a minimum depth of one metre and marked by marker posts, usually placed every 200 metres along the cable route. These posts are generally placed three metres from the cable alignment when the cable is installed in a road reserve. The cables follow the Charles Point Road and the Cox Peninsula Road to the Fog Bay Road, before turning south and heading towards Manbulloo. They appear to be confined to the road reserves of the Charles Point Road and the Cox Peninsula Road. As these are roads over which the public has a right of way (see para. 13.2), which will be excluded from any grant of the land claimed to a land trust, Telstra will suffer no detriment in respect of the cables if the claim is acceded to.

11.9.3 Laser light signals, which are transmitted through the optical fibre cables, require amplification from regenerator stations at intervals of between fifty and seventy kilometres. One such regenerator station, used for the Darwin to Manbulloo optical fibre cable system, is within the claim area. It is situated at Stevens Creek, approximately thirty-two kilometres south of Mandorah, and is offset fifty metres from the Cox Peninsula Road centre line. The land on which it is built is described as 'Portion of Vacant Crown Land, Hundred of Parsons, Northern Territory'. The regenerator station building consists of pre-cast concrete culverts placed on a concrete slab. Its walls and roof are clad with colour-bond steel sheeting, and it is completed with fascia. Adjacent to the regenerator building, solar array frames carry solar panels for the provision of essential power. The site measures forty-five metres by forty metres in total and is fenced on four sides for security. On 14 May 1993, the Northern Land Council advised that 'traditional owners as a group' had consented to the installation of the regenerator station and had agreed to a twenty-five year lease under standard terms and conditions, if the land claim succeeds. Such an agreement can be made pursuant to s. 11A of the Land Rights Act. It will bind the Northern Land Council to direct a land trust of the land claimed to grant a lease in accordance with the agreement.

11.9.4 On the evidence, it appears that the regenerator station might be outside the area the subject of my recommendation in para. 14.3. Even if it were within the area that I recommend be granted to a land trust, and the road reserve allocated to the Cox Peninsula Road were 150 metres (see para. 13.2.6), it would be excluded from the land granted to the land trust. If so, Telstra would not suffer any detriment with respect to the regenerator station from the acceptance of my recommendation. If I am wrong, and the regenerator station lies within the land that is granted to a land trust, the only detriment likely to be suffered by Telstra in respect of the regenerator station is the rent it will have to pay under a lease granted in accordance with the existing

agreement. If necessary, access to the lease area across Aboriginal land would be preserved by s. 70(4) of the Land Rights Act.

11.9.5 Underground copper cabling enables Telstra to provide telecommunications services to Wagait Beach, Mandorah and the Australian Communications Authority facility discussed at para. 11.3. Although a substantial portion of this cabling runs within the claim area, most of it is within road reserves. The exception is the cabling which runs from the Cox Peninsula Road to follow the access road to the Australian Communications Authority installation on Section 32 (see para. 11.3.7). With respect to cables within road reserves of public roads excluded from a grant to a land trust, Telstra will suffer no detriment. As for those cables laid outside road reserves, Telstra would suffer detriment if the land within which they are laid were conveyed to a land trust. Telstra would need to reach an arrangement with the relevant land trust for its continued use of the cables. The detriment would probably be limited to any payment required under such arrangement. If no arrangement could be made as to the continued use of the optical fibre and copper cabling laid outside road reserves, Telstra would lose its entitlement to operate those facilities. By s. 26 of the *Telstra 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 or agency of the Crown, and not to be entitled to any immunity or privilege of the Commonwealth, except so far as express provision is made by that Act or any other law of the Commonwealth, a State or of a Territory. So far as I am aware, there is no express provision which would require Telstra 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. Telstra would not have the benefit of the Crown's entitlement under s. 14 of the Land Rights Act to continue an existing use or occupation of land vested in a land trust. Telstra would therefore suffer detriment to the extent that its network suffered from its inability to use the relevant parts of its cables. This detriment would flow to users of the telecommunications system, to the extent that that system depends on continued use of those parts of the cables.

11.9.6 A customer terminal facility is located on Dum-In-Mirrie Island, adjacent to the building in which the Baumber family resides. The Baumber family's residence on the island is discussed in para. 11.10. The facility comprises a guyed mast, 250 mm in diameter and eighteen metres high, with associated antennae. This facility provides access to the telephone network and was provided pursuant to a telephone service order from Mr Baumber. No licence or lease exists in respect of it. If Mr Baumber is able to come to an arrangement for continued use of land on Dum-In-Mirrie Island by himself and his family, such an arrangement would no doubt include the continued existence and use of the customer terminal facility. In that event, Telstra would not appear to suffer any detriment. If the Baumber family were to leave the island, there would not appear to be any continuing need for the facility. It is unclear whether, in that event, Telstra would suffer detriment, because the evidence does not establish the identity of the owner of the mast. If the mast is a fixture, it is part of the land and presently owned by the Crown. If not, it appears to be owned either by Mr Baumber or Telstra. Only if Telstra owns the mast would it suffer detriment, to the extent of the cost of recovering it, or writing it off as an asset if the recovery cost is too high to justify.

11.9.7 Telstra transmits radio communications from a tower at Blake Street, Darwin to the transmission station on Section 34 of the Hundred of Bray, mentioned in para. 11.8. When the transmission station was operating, this service provided it with communications services such as telephone, facsimile and computer services. Radio signals are transmitted in the form of raylines and therefore rely on an unobstructed line of sight between the towers at each end. On their travels from Darwin to the transmission station, the raylines passed over land within the claim area. Telstra and any future operator of the transmission station would suffer detriment, if the land over which the raylines pass was vested in a land trust, to the extent that unobstructed transmission from Darwin could not be negotiated with the Northern Land Council. The construction of any building that would obstruct the raylines in the foreseeable future is unlikely if the land claimed becomes Aboriginal land.

11.9.8 Those aspects of Telstra's infrastructure discussed in Telstra's submissions, but not situated within the land claimed, will not be affected by the vesting of that land in a land trust, other than to the degree they rely on infrastructure within the claim area. I am not required to make any comment, pursuant to s. 50(3)(b) of the Land Rights Act, regarding infrastructure which is wholly separate from the land claimed.

11.10 The Baumber family – Dum-In-Mirrie Island

11.10.1 Bernard Maxwell ('Max') Baumber, his wife Marie and their sons Maxwell and David have resided on Dum-In-Mirrie Island, within the land claimed, for over thirty years. The relevant land is described in Mr Baumber's most recent occupation licence as 'Crown lands situate at NT Portion 3865 Dum-In-Mirrie Island comprising an area of 2 hectares 5 400 [square metres]'.

11.10.2 Mr Baumber's evidence is that he and his wife have resided on Dum-In-Mirrie Island since 11 June 1965. Available records show that, at some stage prior to 1969, a licence to occupy certain land on the island was granted to M. Flynn, a business partner of Mr Baumber. The first licence to Mr Baumber in his own name was Occupation Licence No. 790, granted on 9 June 1969 under the Crown Lands Ordinance then in force. It entitled Mr Baumber to occupy the relevant land 'for recreation purposes' from 1 March 1969 to 28 February 1970, subject to the provisions of the Crown Lands Ordinance and regulations made under it. This licence was renewed annually until its expiry on 28 February 1974. Subsequently, Mr Baumber has been granted occupation licences as follows:

- Occupation Licence No. 937, granted on 9 May 1974 under the Crown Lands Ordinance, 'for Industrial (fishing base) purposes', for the period 1 June 1974 to 31 May 1975.
- Occupation Licence No. 1060, granted on 16 May 1979 under the Crown Lands Ordinance, 'for Industrial (Fishing Base) purposes', for the period 1 June 1979 to 31 May 1980.
- Occupation Licence No. 2086, granted on 21 October 1986 under the *Crown Lands Act* (NT), 'for Tourism Fishing Base purposes', for the period 1 November 1986 to 31 October 1987.
- Occupation Licence No. 3041, granted on 18 February 1992 under the *Crown Lands Act* (NT), 'for the purpose of a tourism fishing base', for the period 1 March 1992 to 28 February 1993.

- Occupation Licence No. 3244, granted on 10 April 1997 under the *Crown Lands Act* (NT), 'for the purpose of a tourism fishing base', for the period 1 March 1997 to 28 February 1998.

The evidence was that the maximum term of an occupation licence, under the *Crown Lands Act* (NT) was five years, and that each of Mr Baumber's licences was renewed annually, four times, before a new one was granted. There appear to have been gaps between the expiry of some licences and the grant of others. From the outset, Mr Baumber has paid an annual fee of $5 for the relevant occupation licence or renewal.

11.10.3 Occupation Licences Nos 790, 937 and 1060 were granted subject to the Crown Lands Ordinance and regulations made under it. The Crown Lands Regulations then in force provided that: the land included in an occupation licence be used only for the purposes for which it was granted; an occupation licence could be cancelled by the Administrator of the Northern Territory on three months' notice; the Administrator could grant permission to the holder of an occupation licence to erect improvements which, in the opinion of the Administrator, were necessary for carrying out the purposes of the licence; the Administrator could, in his discretion, grant permission to remove permitted improvements prior to the expiration of an occupation licence; if permission to remove permitted improvements was not given, the Administrator was required to pay compensation for them; and, where the Administrator did not grant permission to the licensee to remove improvements which had been erected without the permission of the Administrator, the Administrator had a discretion whether to pay compensation for those improvements.

11.10.4 Mr Baumber's occupation licences did not contain any special conditions until Occupation Licence No. 2086 was granted in 1986. Occupation Licences No. 2086, 3041 and 3244 were all granted pursuant to the *Crown Lands Act* (NT) and were stated to be subject to that Act, regulations made under it and certain special conditions attached to each licence. Each of the three licences contained special conditions in the following terms:

- the licensee acknowledges that he is aware that the grant of an Occupation Licence does not confer any right to a lease, and that at any time notice to vacate the land within three months may be served.
- the licence shall not entitle the licensee to use the land for residential purposes.
- the licensee is not entitled to erect improvements without the prior approval of the Minister.

11.10.5 The expressed purpose of Occupation Licence No. 2086 was 'Tourism Fishing Base and associated facilities' and the licence included a special condition that 'the land may not be used for any other purpose'. The purpose stated in the other two licences was 'Tourism Fishing Base'. In addition to the approval of the minister, Occupation Licence No. 2086 required the approval of the Northern Territory Planning Authority in respect of improvements to be erected on the licence area. Occupation Licences No. 2086 and No. 3244 contained special conditions precluding the 'removal of any improvements from the licence area' without 'the prior approval of the Minister'.

11.10.6 After their arrival on the island in 1965, Mr Baumber and his wife lived for the first few months under a tarpaulin, but then built a four-roomed home of corrugated iron. They have lived continuously in that house since it was built. They have carried out significant developments. Early developments included a well and water pumps for

water supply. An airstrip, considered suitable for use by Hercules C130 aircraft in dry conditions, has been constructed and used for landing since 1968. Mr Baumber produced a letter from Skywest Aviation noting the importance of the airstrip for training and medical evacuation purposes. Since 1968 Mr Baumber has held a licence, issued by the Commonwealth Government, to erect and operate a fixed transmitting and receiving radio station. This station has been used to transmit to the Bureau of Meteorology meteorological information generated by an automatic weather station on the island, which was installed by the Bureau (see para. 11.5.2). The radio is also used to receive and transmit messages such as distress calls. In about 1983, the Baumber family constructed an accommodation block for approximately twenty people to conduct what Mr Baumber described as a 'low scale tourist operation…being a fishing base camp for use by recreational fishermen and other visitors'. This is supplemented by substantial landscaping, a toilet, laundry, ablution block, generator shed, storeroom, workshop and machinery shed. There is an artificial hole in a reef, used for swimming when the tide is low. Mr Baumber described the tourism trade as 'somewhat erratic, confined mainly to weekends and governed by weather conditions'. He stated that income from this business 'is minimal'. While in evidence Mr Baumber stated that it was impossible to put a dollar value on the efforts expended on the developments, in a letter applying for direct sale of the land, he estimated the value of the developments at around $180,000.

11.10.7 Mr Baumber has held a commercial fishing licence, which entitled him to fish around the island. His sons have also held various licences for commercial fishing, fishing tours, an aquarium display and fish breeding. More recently, the Baumber family has used part of the land for small-scale aquaculture projects, including the breeding of barramundi and mudcrabs for sale. The aquaculture projects have involved excavation and the establishment of ponds outside the licence area. As well as providing weather reports and accepting distress signals using the radio equipment, Mr Baumber and his family have performed valuable community service for organisations such as the Australian Customs Service, Transport Australia, the Northern Territory Police Service, the Royal Australian Navy, Norforce, the Royal Australian Air Force, Coastwatch and health services. Mr Baumber seeks that consideration be given to the community service performed by his family on the island.

11.10.8 Since the mid-1970s, Mr Baumber has been negotiating with the Commonwealth and then the Northern Territory Government for more secure tenure on Dum-In-Mirrie Island. His requests for more secure tenure have been rejected consistently. They included two attempts to obtain a lease of land on the island before this land claim began. Mr Baumber has also attempted to obtain the agreement of the claimants to grant him a long-term lease, should the claim be successful. These negotiations have not resulted in agreement between the parties.

11.10.9 Mr Baumber submitted that he and his family would suffer detriment if, as a result of the claim being acceded to, they lose 'the opportunity to obtain a more secure form of title from the Northern Territory Government' and 'of having [Mr Baumber's] current application [for more secure tenure] before the Department considered'. The Baumber family will only suffer detriment, however, if they lose something to which they are entitled. If, as a result of the land claim being acceded to, they lose nothing to which they are entitled, then it cannot be said that any detriment would 'result'. Mr Baumber's current entitlements are restricted to his entitlements under his most recent occupation licence, namely, to occupy the relevant land for a twelve month period, for

the purpose of a tourism fishing base, subject to the provisions of the *Crown Lands Act* (NT), regulations made under it and the special conditions. There are two aspects to these entitlements.

11.10.10 The first concerns how long he is entitled to occupy the land. Mr Baumber's legal entitlement to occupy the land extends no further than for the period of each licence, namely one year. An occupation licence is, of its very nature, an insecure form of tenure. This is amply demonstrated by the special conditions of each of the licences under the *Crown Lands Act* (NT) that the occupation licence does not confer a right to a lease and that at any time the licensee may be given three months notice to vacate the land. Every year the Northern Territory must decide whether Mr Baumber should be granted a renewal or a new licence and for what purposes that licence should be granted. Consequently, if the land claimed were vested in a land trust and Mr Baumber was not granted a new licence at the expiry of the one he held at the time of vesting, he would lose nothing to which he has a legal entitlement.

11.10.11 The second aspect concerns what Mr Baumber may do while occupying the land. His licence states clearly the purposes for which he may occupy the land, and the special conditions with which he must comply during his occupation. His activities on the island are also regulated by legislation. From his initial arrival on Dum-In-Mirrie Island, Mr Baumber has exceeded those purposes. He has been in constant breach of those conditions and relevant legislation. His initial residence on the island was apparently without any legal right. He has consistently engaged in activities which go beyond the purposes permitted by his licences. He and his family have resided on the island for over thirty years, at a nominal rental, in apparent breach of the regulations applicable to the early licences and in clear breach of the special conditions of the later ones. He has erected improvements without formal approval, in disregard of the prohibition in the regulations applicable to the early licences and the special conditions in the recent licences. He has ignored the physical boundaries of the area he is entitled to occupy, by conducting several activities beyond those boundaries.

11.10.12 If the land were vested in a land trust, Mr Baumber would suffer no detriment if that land trust granted him an occupation licence in the same terms as his current licence, and did not allow him to continue engaging in any purposes not permitted under his current licence, or to continue any activities in breach of the special conditions or legislation. Mr Baumber would lose nothing if he were not permitted to do that which he is not entitled to do. It is irrelevant that the Northern Territory Government has apparently turned a blind eye to his unlawful behaviour. The fact that he has been able to enjoy his unlawful residence, activities and improvements does not equate to an entitlement to enjoy them.

11.10.13 Mr Baumber concedes that ownership in those improvements which are fixtures has already passed to the owner of the land, the Crown in right of the Northern Territory. He has therefore already suffered any detriment that he could suffer in respect of those fixtures. He has lost ownership of them, except to the extent that he might be permitted to remove them. The Baumber family would suffer no detriment, in relation to fixtures, should the claim be acceded to.

11.10.14 Mr Baumber will not suffer detriment, as he has submitted, if he loses the opportunity to obtain more secure tenure from the Northern Territory. It is a special condition of his licence that it does not confer a right to a lease. To justify his

submission that he would suffer detriment if he lost the opportunity to have his current application for more secure tenure considered by the Northern Territory, Mr Baumber claimed that, if it were not for the land claim, he had a 'realistic' expectation that the Northern Territory would be likely to consider his application favourably. In doing so, he relied on the evidence of William Francis Flaherty, the Assistant Secretary (Land Administration) of the Northern Territory Department of Lands, Planning and Environment. Mr Flaherty stated that, but for the land claim, there would be no sound policy reason why an application by Mr Baumber for more secure tenure would not be favourably considered. I should be surprised if this represented the opinion of the Northern Territory Government after mature consideration of the issues. The fact that Mr Baumber has resided on the land and developed it in breach of the law and the conditions of his licences constitutes a good policy reason to refuse to grant Mr Baumber more secure tenure. The effect of granting Mr Baumber more secure tenure would be to reward him for his unlawful conduct. It would encourage similar behaviour in others. In the event the land claim were not acceded to, it cannot be said that Mr Baumber would have good prospects of obtaining more secure tenure on Dum-In-Mirrie Island.

11.10.15 The only detriment that Mr Baumber might suffer is the loss of the opportunity to have the Northern Territory consider his application for more secure tenure. The fact that there is a good policy reason for not granting more secure tenure to Mr Baumber diminishes the degree of detriment he would suffer. If the claim were acceded to and the land were vested in a land trust, his application would be considered by the Northern Land Council. Pursuant to s. 19(4A) of the Land Rights Act and at the written direction of the Northern Land Council, the land trust could grant a licence to Mr Baumber to occupy the land, provided it had the written consent of the Minister for Aboriginal and Torres Strait Islander Affairs. Section 19(5) sets out various criteria that must be met before the Northern Land Council could direct the land trust to grant Mr Baumber a licence. These include consulting 'any Aboriginal community or group that may be affected by the proposed grant'. There is evidence of a high degree of tension between Mr Baumber and some of the claimants, which might reduce his chances of persuading the Northern Land Council to decide in favour of a licence. It is not possible to determine whether a land trust would grant Mr Baumber a licence to occupy the land.

11.10.16 If the land the subject of Mr Baumber's occupation licence were to be the subject of a deed of grant under the Land Rights Act, his right of occupation would be converted to an entitlement to compensation from the Commonwealth under s. 12AD of the Land Rights Act. This entitlement would not extend to improvements not authorised under the Crown Lands Ordinance or the *Crown Lands Act* (NT).

11.10.17 Several persons who made written submissions said that they were users of the facilities established by the Baumber family and would suffer detriment if those facilities were to cease to exist. If the facilities were to become unavailable, because the land became Aboriginal land under the Land Rights Act, they would be unavailable to those who use them. Those persons might suffer detriment to that extent, if comparable facilities are not available elsewhere.

11.11 Mining tenement HLDN8 – Rankin Point

11.11.1 The estates of the late Burge Dawson Brown and Ida Muriel Brown are administered by Ross Anictomatis, apparently as if they were one estate ('the Brown estate'). Mr Anictomatis describes himself as the executor of the Brown estate. One of the assets of the Brown estate is a mining tenement over part of the land claimed. The tenement, HLDN8 - Business and Mining Tenement No. BA 20B, was granted on 20 September 1978 pursuant to the Mining Ordinance then in force. It is one acre in size and adjoins MLN300. It is shown on the map in appendix 8. An annual rental of $8.00 is payable to the Northern Territory Government in respect of HLDN8.

11.11.2 Improvements on HLDN8 include a house, an office, caravans and a generator shed. Members of the extended family of Burge and Ida Brown, including Mr Anictomatis, use the land covered by HLDN8 for recreational purposes, and have done so for a long time. Ostojic Transport Pty Ltd uses the land covered by HLDN8 to treat and wash samples extracted from its neighbouring mining leases, which were initially held by Burge and Ida Brown (see para. 11.12). Ostojic Transport's employees also use the house on HLDN8 for accommodation when working on the mining leases, and for any office and administrative work connected with the mining leases. There is also an unwritten agreement under which employees of Bynoe Harbour Pearl Co. Pty Ltd use the house on HLDN8 for cooking, eating, bathroom facilities and water supply, in return for maintaining the house and the tenement generally (see para. 11.16.1).

11.11.3 The certificate of registration of HLDN8 states that the interest held by Burge and Ida Brown was 'subject to the land applied for being Crown land, subject to survey, and subject to the provisions of the *Mining Ordinance* 1939-78 and the regulations thereunder'. Solicitors representing Mr Anictomatis indicated that neither he nor the Department of Mines and Energy could locate any further documents which stated the exact terms of the grant.

11.11.4 Section 191(19) of the *Mining Act* 1980 (NT) preserved HLDN8 when it repealed the Mining Ordinance. That section entitled Burge and Ida Brown, as the holders of HLDN8, to continue to occupy the land covered by it, subject to the same terms and conditions as applied when it was granted. Section 23(1)(f) of the then Mining Ordinance enabled the holder of a miner's right to use land for the purpose of residence or business, 'being a purpose connected with mining'. Section 23(2) provided that the holder of a miner's right could only use land for residence or business purposes with the approval in writing by a mining warden. Given that Mr Anictomatis and other members of the extended family of Burge and Ida Brown who use HLDN8 do not appear to have engaged in mining, there may be doubt as to their entitlement to use the land as they do. If there is no present entitlement to use the land, they will not suffer detriment as a result of the land claim being acceded to.

11.11.5 If HLDN8 is a current mining interest, or a current right granted under a law of the Northern Territory relating to the mining or development of extractive mineral deposits, by s. 66(a) or (ba) of the Land Rights Act, for the purposes of Part VII of the Land Rights Act, it constitutes an estate or interest in the land claimed (it does not constitute an estate or interest for other purposes of the Land Rights Act, particularly those relating to the availability of the land claimed for claim). In that event, the entitlement to continue to occupy and use the land will continue under s. 70(2) of the Land Rights Act. Access to HLDN8 would also be guaranteed under s. 70(4). In

those circumstances, the members of the Brown family would not suffer any detriment if the land claim were acceded to.

11.12 Mineral leases

11.12.1 Ostojic Transport Pty Ltd holds thirteen mineral leases, which are located on the land claimed, near Rankin Point. Those leases are MLN286, MLN287, MLN288, MLN289, MLN291, MLN292, MLN294, MLN295, MLN300, MLN301, MLN302, MLN303 and MLN304, and are shown on the map in Appendix 8. Search certificates from the Northern Territory Register of Mineral Leases state that the minerals the subject of each lease are 'sand Gravel'. Ostojic Transport Pty Ltd has identified deposits of sand, gravel and kaolin for extraction, but exploitation of them is not viable at present because of the distance to market, lack of water supply and the state of access roads. All of the mineral leases were initially granted to Burge Dawson Brown and Ida Muriel Brown. Ostojic Transport Pty Ltd acquired them at a mortgagee's auction. Transfers of ownership were registered on 31 January 1991.

11.12.2 Five of the mineral leases were first granted on 16 May 1981, pursuant to the *Mining Act* 1980 (NT), and are due to expire on 31 December 2001. The other eight leases were first granted on 13 May 1974, pursuant to the earlier Mining Ordinance, and expired on 31 December 1994. Section 191(5) of the *Mining Act* 1980 (NT) deems mineral leases granted under earlier legislation to have been granted under the *Mining Act* 1980 (NT) . Ostojic Transport Pty Ltd applied for the renewal of these leases on 23 September 1994. Since applications for their renewal have been made, the expired leases are deemed to continue in force pursuant to s. 68(5) of the *Mining Act* 1980 (NT), until a renewal is granted or refused. All thirteen mineral leases held by Ostojic Transport Pty Ltd are therefore in force.

11.12.3 Ostojic Transport Pty Ltd would not suffer any detriment in respect of these leases, should the land claim be acceded to, as the leases are protected by a combination of s. 66(a) and 70(2), and the definition of 'mining interest' in s. 3(1), of the Land Rights Act. The right to renew the leases under s. 68 of the *Mining Act* 1980 (NT) is preserved under s. 3(4) of the Land Rights Act.

11.12.4 Burge and Ida Brown, the initial holders of the leases, are both deceased, but their executor, Ross Anictomatis, still holds one mining tenement near those now held by Ostojic Transport Pty Ltd (see para. 11.11). That tenement is known as HLDN8. Ostojic Transport Pty Ltd uses HLDN8 to wash and treat materials and samples extracted from its mining leases. The company's employees use the house and facilities on HLDN8 for accommodation while working on the mining leases. The company also uses the telephone and other facilities on HLDN8 for office and administrative purposes when necessary. The status of HLDN8 is discussed in para. 11.11. If that land were to be vested in a land trust, Ostojic Transport Pty Ltd would have no entitlement under the Land Rights Act to continue using HLDN8 as it currently does. It would need to negotiate future use of it with the Northern Land Council. If Ostojic Transport Pty Ltd is entitled to use HLDN8 as it has done, it would suffer detriment to that extent.

11.12.5 Angelo Maddalozzo is the holder of mineral lease MLN290, close to the leases held by Ostojic Transport Pty Ltd. What I have said in relation to other mineral leases also applies to MLN290. Solicitors for Mr Maddalozzo submitted that he might

suffer detriment in two ways if the land claim were acceded to. One was the possibility of restrictions or prohibitions on additional land being made available if required for the development of MLN290. The other was possible restrictions or prohibitions on access to necessary water supplies. Additional land for mining purposes could only be obtained if Mr Maddalozzo made a successful application for a mining interest under the *Mining Act* 1980 (NT). If the land claimed were to become Aboriginal land under the Land Rights Act, it would be necessary to enter into an agreement with the Northern Land Council in accordance with s. 46 of the Land Rights Act and to obtain the consent of the Minister for Aboriginal and Torres Strait Islander Affairs, pursuant to s. 45 of the Land Rights Act. There is no evidence of any proposal to develop MLN290 on land outside what is presently covered by the mining lease, and therefore no evidence of likely detriment. Similarly, there is no evidence as to what is comprehended by 'necessary water supplies'. If there were ever a need to obtain access to water supplies outside MLN290, and the surrounding land had become Aboriginal land, Mr Maddolozzo would need to make a suitable arrangement with the Northern Land Council for such access.

11.12.6 Access to the mining leases would be preserved by s. 70(4) of the Land Rights Act.

11.13 Recreational fishing, boating and diving

11.13.1 The following people gave evidence as to recreational fishing and boating in the area of the land claimed: Janice Susan Young, Assistant Secretary/Treasurer of the Amateur Fishermen's Association (Northern Territory); Terry John Sincock, a member, and former Treasurer, of the Darwin Trailer Boat Club; and Alex Julius, a fishing commentator as well as a member and past office-bearer of the Amateur Fishermen's Association (Northern Territory). A written statement was tendered from Robert Barry Stach, Commodore of the Darwin Sailing Club Inc. A letter dated 11 September 1995 from Darryl Grey, President of the Under Thirty Yacht Association, was tendered by counsel assisting the Aboriginal Land Commissioner. Peter Wilson Boswell and A. J. Boswell made a written submission in 1989, on behalf of a business called Dive North. Tim Proctor also made a written submission in 1989 in relation to his business, Territory Diving Services.

11.13.2 Figures contained in 'Fishcount: A Survey of Recreational Fishing in the NT', prepared by the Northern Territory Government in August 1998, were tendered as evidence of the extent of recreational fishing in waters within and near the land claimed. For the purposes of that survey, the coasts of the land claimed fall within two regions. The eastern coast of the Cox Peninsula is part of the 'Darwin Harbour' area, while the western coast of the Cox Peninsula and the islands are classified as within the 'West Coast' area, a large area to the south-west of Darwin. The dividing line is at Point Charles. Given that the coasts of the land claimed form only part of the 'Darwin Harbour' area and only a very small part of the 'West Coast' area, the figures provided in the survey are not particularly helpful in establishing the extent of relevant recreational fishing. The 'Darwin Harbour' area accounts for forty-five per cent of total hours spent on recreational fishing in the Northern Territory, but the whole 'West Coast' area for only five per cent. Some of the information in the extract from the survey tendered in evidence suggests that the survey takes no account of indigenous fishing, presumably on the ground that this is not considered to be recreational.

11.13.3 Ms Young and Mr Julius gave evidence that Bynoe Harbour is very popular for recreational fishing and that there are several fishing competitions held in the area every year. The popularity of Bynoe Harbour stems from its proximity to Darwin and the developments around Dundee Beach, the quality of fishing available and its safe nature. Residential developments at Dundee Beach and Dundee Downs, south of the land claimed, have been marketed with emphasis on the ready access to fishing in Bynoe Harbour. Fishing sometimes involves overnight camping on places such as Bare Sand Island, Dum-In-Mirrie Island, Indian Island and the west coast of the Cox Peninsula. For some, including Geoff Cowie, who made a written submission, it involves the use of the airstrip on Dum-In-Mirrie Island and the facilities established there by the Baumber family (see para. 11.10). Those undertaking day expeditions often land within the claim area for lunch. Various forms of fishing and crabbing are undertaken, often within tidal waters. Crab pots and baited hooks touch the seabed within tidal waters. Boats often anchor within tidal waters.

11.13.4 Mr Sincock also gave evidence that the Bynoe Harbour area is very popular among the two thousand active members of the Darwin Trailer Boat Club and other powerboat owners. The club organises six or seven picnics a year at Bare Sand Island or Indian Island, attended by an average of twenty boats, carrying between forty and sixty people.

11.13.5 Mr Stach's evidence was that approximately forty of the one hundred yachts in the fleet of the Darwin Sailing Club Inc use the Bynoe Harbour area regularly and that the whole fleet regularly uses the eastern side of the Cox Peninsula. Recreational sailing in these areas often includes anchoring and going ashore for lunch. In addition to general competition sailing held in the area, the club holds an annual race to Turnbull Bay. This is one of the feature races on the club calendar. Areas near the land claimed are preferred for sailing to other areas around Darwin because of the safe refuge available and the generally predictable nature of the winds.

11.13.6 Mr Grey's letter indicates that his club has approximately one hundred members. It organises races in association with the Darwin Sailing Club Inc on most weekends between April and November. It also organises social functions. The Mandorah buoy (which I assume lies outside the land claimed) features as a mark in a number of races, Woods Inlet is a popular anchorage for overnight cruises and Mica Beach is used for beach parties. The members of this club participate in the annual Turnbull Bay race.

11.13.7 The submissions from the Boswells and Mr Proctor show that scuba diving on reefs and wrecks is another activity carried out in the region of the land claimed. Land within the land claimed is sometimes used as a base for those engaged in diving.

11.13.8 In para. 6.4.5 of my report on the Warnarrwarnarr-Barranyi (Borroloola No. 2) Land Claim No. 30 (report no. 49 in the series of reports of Aboriginal Land Commissioners), I agreed with Justice Toohey's view, expressed in his report on the Borroloola Land Claim No. 1, that there is a common law public right to fish in tidal waters. This view is supported by *Halsbury's Laws of England* (4th ed.) vol. 18, paras 609-614 and the decision of the High Court of Australia in *Harper v. Minister for Sea Fisheries* (1989) 168 CLR 314, especially at pp. 329-30. There is also a common law right to navigate in navigable tidal waters. See *Halsbury's Laws of England* (4th ed.) vol. 49 paras 891-903 and *Peltier v Darwent* (1870) 9 NSW SCR 133, at p. 150.

11.13.9 Both Justice Toohey and I expressed the view that the right to fish in tidal waters did not extend to the placing of nets on the sea bed between the high- and low-water marks. I also took the view that the right to fish did not extend to anchoring crab pots to the sea bed, or affixing nets to trees or other points on the shore. In *Arnhemland Aboriginal Land Trust v. Director of Fisheries (Northern Territory)* [2000] FCA 165, Justice Mansfield, relying on *Attorney-General for British Columbia v. Attorney-General for Canada* [1914] AC 153 at p. 171 and *Attorney-General v. Emerson* [1891] AC 649 at p. 656, held at para. [90] that:

> the temporary affixing of nets to the solum underlying the intertidal waters is an activity which falls within the reasonable exercise of the public right to fish, as that activity does not involve the assertion of an estate or interest in the solum.

At para. [91], Justice Mansfield noted the argument that such activities could be inconsistent with the right of ownership of the land to the low-water mark resulting from a grant of land in the inter-tidal zone to a land trust. He did not decide that question. His Honour also observed that the right to anchor, which is ancillary to the right of navigation, raised similar issues. An appeal from his Honour's judgment has been heard by the Full Court of the Federal Court of Australia, which has reserved its judgment.

11.13.10 In my view, if the common law right to fish does extend as far as to permit the placing of nets or other articles on the seabed, it is abrogated to this extent by the Land Rights Act in the case of land vested in a land trust. The placing of anything on the seabed in the intertidal zone vested in a land trust amounts to entering or remaining on Aboriginal land, within the meaning of s. 70(1) of the Land Rights Act (see para. 1.9.6), and can only be done in the performance of functions under the Land Rights Act or otherwise in accordance with the Land Rights Act. Accordingly, those engaging in recreational fishing would suffer detriment to the extent that they would have to obtain permits from the Northern Land Council, pursuant to the *Aboriginal Land Act* (NT), to enter on, or place things on or into, the seabed in the inter-tidal zone or the shore. Similarly, recreational sailors or boat users would require permits if they wished to do more than simply sail in tidal waters and, in particular, if they wished to anchor in the inter-tidal zone. To that extent, they too would suffer detriment if the claim were acceded to. Assuming that the common law right to navigate in tidal waters includes a right to dive in them, those wishing to dive in the tidal waters of the land claimed would also require permits if they were to touch the seabed, or place anything on it, in the inter-tidal zone. By s. 70(3) of the Land Rights Act, there is a defence to a charge of an offence of entering or remaining on Aboriginal land if the person charged proves that the entry or remaining on the land was due to necessity. This defence would be available to a recreational sailor, or to someone engaged in recreational fishing from a boat, who was compelled to land in an emergency.

11.13.11 I do not believe that the detriment suffered by recreational fishermen, boaters, sailors or divers, in respect of the need to obtain permits, would be particularly great. There is no reason to believe that the claimants would act unreasonably in relation to the granting of permits, or that establishing and then following a process to obtain permits would be particularly difficult for the fishermen or sailors concerned. There was some evidence that the Amateur Fishermen's Association (Northern Territory) had been able to negotiate cooperative arrangements

with Aboriginal landholders for access to recreational fishing around other parts of the Northern Territory coastline. Many of the recreational activities referred to, while subject to weather conditions on the day, are planned well in advance. Simply obtaining a permit would not, in my opinion, be an onerous addition to the organisational requirements of such activities. There would be some detriment arising from the inability of people to engage in spontaneous activities involving use of Aboriginal land, including land in the inter-tidal zone.

11.14 Commercial fishing interests

11.14.1 I received in evidence written statements of Phillip Frederick Cutting, Vice Chairman of the NT Commercial Fishermens Association Inc, John Frederick Munro, Vice Chairman of the NT Crab Fishermens Association Inc and Paul Meddings, Chairman of the NT Coastal Net Fishermens Association. Both Mr Munro and Mr Meddings are members of the NT Coastal Line Fishermens Association, and Mr Munro is also a member of the NT Coastal Net Fishermens Association. The evidence related to the types of commercial fishing licences held in the Northern Territory, the nature of commercial fishing undertaken in and around the land claimed, and the potential impact on holders of these licences of acceding to the claim.

11.14.2 The Northern Territory Government, through the Fisheries Division of the Department of Primary Industry and Fisheries, has granted a variety of commercial fishing licences entitling the licence holders to fish for commercial purposes within and near the land claimed. The licences differ widely as to the types of fish they permit to be caught, and as to their geographical boundaries. There are barramundi, coastal net, coastal line and mud crab licences, whose geographical boundaries included all or part of the land claimed and adjacent waters. The barramundi and coastal net licences entitle their holders to fish from the high-water mark to three nautical miles seaward of the low-water mark. The coastal line licences are limited from the high-water mark to fifteen nautical miles from the low-water mark. The mud crab licences are limited to tidal waters.

11.14.3 It is impossible to determine the precise number of commercial fishing licences used within and near the land claimed. There are two holders of barramundi licences who are said to use Bynoe Harbour for the majority of their barramundi fishing. Mr Munro usually uses his mud crab licence in Bynoe Harbour and has spent up to nine months in a year working in that area. He knows of about six mud crab licensees who also use the Bynoe Harbour area, especially during the first part of a year. Mr Munro derives the majority of the income he gains from his coastal net fishing operation from the inter-tidal zone within the land claimed. The waters of Bynoe Harbour and Port Patterson account for approximately one third of the commercially viable fishing area within the Darwin region of the coastal net fishery. Mr Meddings spends just under a third of his total fishing time in those waters. Other coastal net licensees spend the majority of their time there. The coastal net operation provides bait for Mr Meddings's coastal line operation, in the form of non-commercial fish caught in the nets. On occasions, Mr Meddings uses the inter-tidal zone for coastal line fishing.

11.14.4 A commercial fishing operation requires considerable investment. A full ten unit barramundi licence is valued at no less than $170 000, with equipment and other costs amounting to another $230 000. A mud crab licence was estimated to be worth

around $250 000, with a total investment of around $300 000. Coastal net licences are currently not transferable and no specific figure was given as to the cost of a coastal line licence, but the total investment for each was estimated to be at least in the tens of thousands of dollars if not over $100 000. Many licence holders employ others, as well as working themselves in their commercial fishing operations.

11.14.5 Within the land claimed, the waters in the inter-tidal zone, the seabed, the shore and some land are used extensively by commercial fishermen. Uses include fixing nets or crab pots to, or allowing nets, pots or lines to rest on, the seabed in the inter-tidal zone; anchoring boats in the inter-tidal zone; standing, walking or driving on the seabed in the inter-tidal zone, the shore or land; camping; and storing the catch on the shore.

11.14.6 In para. 11.13, I have discussed the effect that acceding to the land claim would have on the activities of those who fish for recreation. The position of commercial fishing interests would be identical. The common law rights to navigate and to fish in waters of the inter-tidal zone would continue. Commercial fishermen would require permits from the Northern Land Council to enter on, or place things on or into, the seabed in tidal waters, the shore or land, for the purposes of fishing. To that extent, commercial fishermen would suffer detriment.

11.15 Adjacent land

11.15.1 The Northern Territory Land Corporation ('NTLC'), established by the *Northern Territory Land Corporation Act* 1986 (NT), holds a Crown Lease in Perpetuity over each of four areas of land on the Cox Peninsula. The areas are Sections 45, 56, 22 and 78 of the Hundred of Bray. Sections 45 and 56 are located at Mandorah and Sections 22 and 78 at Mica Beach. The areas are shown on the map in appendix 8. They are not subject to the claim.

11.15.2 Donald Frederick Darben, the Chairman of the NTLC, stated that none of the areas is used commercially. The NTLC envisages the future proposed use of Section 45 for commercial or residential purposes and open space. A part of Section 45 is being sold to the Cox Peninsula Community Government Council for recreational purposes. The NTLC envisages Section 56 as possibly being developed for commercial use. Proposals have been received from owners of land adjacent to Sections 22 and 78 to purchase the land for mixed zone residential tourist development, but the NTLC has declined to deal with the proposals because of their tentative nature. Sections 22 and 78 are designated by the Cox Peninsula Land Use Structure Plan 1990 (see para. 12.7.1) for open space.

11.15.3 In a written submission, the NTLC said:

> If any grant is made the future commercial or residential subdivision potential of the leases may be lost or reduced because continued residential development of the Cox Peninsula may no longer be possible.

11.15.4 The function of the NTLC is set out in s. 15 of the *Northern Territory Land Corporation Act* 1986 (NT) as follows:

> (1) The function of the Corporation is to acquire (by agreement or otherwise), hold and dispose of real property (including an estate or interest in real property) in accordance with this Act and it may acquire and hold such property notwithstanding any other law in force in the Territory which would restrict or otherwise limit the capacity of the Corporation to acquire and hold it.
>
> (2) The Corporation has power to do all things necessary or convenient to be done for or in connection with or incidental to the carrying out of its function.
>
> (3) Moneys payable by the Corporation for or incidental to the acquisition of an estate or interest in real property may be advanced by the Territory on such terms and conditions as the Treasurer thinks fit.
>
> (4) Moneys payable to the Corporation in respect of an estate or interest in real property held or disposed of by the Corporation shall be paid to the Territory, whose receipt shall be a sufficient discharge therefor, and moneys payable by the Corporation in respect of an estate or interest in real property held by the Corporation may be paid by the Territory.
>
> (5) Notwithstanding anything contained in the Stamp Duty Act, no stamp duty shall be payable on an instrument by which any property or interest is granted, assured to or vested in the Corporation.
>
> (6) The Corporation may enter into such arrangements as it thinks fit with the Territory or any other person in relation to the care, control and management of land or an interest in land held by the Corporation.
>
> (7) Subject to subsection (6), the Minister has the care, control and management of all land and interests in land held by the Corporation.

It is plain from the legislation that the NTLC is not a developer of land and has no power to decide on the future use of land held by it. It is not a profit-making entity. It holds title to land as a mere shell corporation. Moneys received by it from the sale of any interest in land held by it must be paid to the Northern Territory Government. The NTLC cannot itself suffer detriment by reason of any diminution in value of land held by it, or any failure of that land to increase in value as it otherwise would have. Any question of detriment arising from the unavailability of the land claimed for development is a matter affecting the Northern Territory Government and is dealt with in para. 11.1.

11.15.5 Access to each of Sections 45, 56, 22 and 78 will continue to be available, either from roads over which the public has a right of way (see para. 13.2) or, if necessary, by a route across Aboriginal land agreed or determined pursuant to s. 70(4) of the Land Rights Act.

11.15.6 It is apparent from the description of the land claimed in chapter 3, especially paras 3.3 and 3.4, that there are on the Cox Peninsula many other areas of land in which people other than the Crown have estates or interests. Those areas are not subject to the claim. Some of the owners of those estates or interests expressed concern about continued access. They included Rosemary F. James, J. Dyer, Mallam Investments Pty Ltd, Harney Beach Pty Limited (which claims to be the proprietor of a freehold estate in Section 17 of the Hundred of Bray – see para. 3.10) and Mandorah Pty Ltd (the proprietor of the Mandorah Hotel). In most cases, access to the relevant land is from roads over which the public has a right of way (see para. 13.2). Such roads will be excluded from any grant of the land claimed to a land trust, pursuant to s. 11(3) and s. 12(3) of the Land Rights Act. In any case in which access is not available

from a road over which the public has a right of way, the right of access created by s. 70(4) of the Land Rights Act would be available. This involves agreement between the owner of the estate or interest and the Northern Land Council on a defined route or, failing agreement, determination of the defined route by an arbitrator appointed by the Minister for Aboriginal and Torres Strait Islander Affairs. In para. 3.10.2, I have drawn attention to the uncertainty as to whether the freehold estate in Section 17, of which Harney Beach Pty Limited claims to be the proprietor, is a valid freehold estate. If it is not, and Harney Beach Pty Limited has never acquired any valid estate or interest in Section 17, then s. 70(4) of the Land Rights Act will not operate to confer a right of access.

11.15.7 Some of the owners of adjacent land also expressed concern that the rate of increase in value of their land might be affected adversely by a grant of the surrounding land to a land trust. In that event, urban development of the kind proposed by the Northern Territory Government (see chapter 12) would not occur. The present owners of land on the Cox Peninsula would not have the benefits of water supply and other services that would come with urbanisation and, as they suggest, would increase the value of the land.

11.15.8 The precise effect of a grant of the land claimed to a land trust on the value of adjacent land is difficult to predict. On the one hand, urbanisation and the provision of services can have the effect of pushing up the value of land. On the other hand, the relative scarcity of non-Aboriginal land on the Cox Peninsula, coupled with the relative lack of development of its surrounding land and its proximity to the City of Darwin, might also increase the value of the land. It is impossible to predict that the owners of land adjacent to the land claimed will suffer detriment if the land claimed becomes Aboriginal land under the Land Rights Act.

11.15.9 There is a proposal to subdivide and develop some areas of land, not part of the land claimed, near Mica Beach. Colin John Fitzgerald owns two areas of land, designated as Lots A and B of Section 11 of the Hundred of Bray. His father, Edward John Fitzgerald, owns Lot C of Section 11. His aunt, Joan Massasso, owns an area designated as Section 80. They have applied to rezone these adjoining areas as 'specific Use', to facilitate the development of a mixed use community comprising low density residential neighbourhoods, a village centre, a beach resort, an international hotel and a golf course. They have been told that it will be necessary for them to provide public road access to the proposed development. There is an existing track leading to the Mica Beach area. The track passes through the Aboriginal land on which the Belyuen community is situated, as well as the land claimed. In para. 13.2, I reach the conclusion that this track is a road over which the public has a right of way.

11.15.10 Colin Fitzgerald has attempted to negotiate with the Northern Land Council for permission to realign the track, so that it can be upgraded to provide public road access to the proposed development. He contemplates that, if the proposed realigned track were to become a road over which the public has a right of way, the existing track could be closed to the public by the Northern Territory Government in a formal way. Negotiations have not been concluded. If the land claimed were to become Aboriginal land, the existing track would be excluded from it, pursuant to s. 11(3) and s. 12(3) of the Land Rights Act. This would not assist Mr Fitzgerald's proposal to realign the road and, in effect, to create a new road over which the public has a right of way. Once the land became vested in a land trust, it would appear that a new public

road could only be created by the surrender by the land trust of its estate or interest in part of the land. A tripartite agreement between Mr Fitzgerald and his co-developers, the Northern Territory Government, and the Northern Land Council after consulting with the claimants, would seem to be the only way to avoid the consequence of trying to realign the road after the land claimed has been conveyed to a land trust. Under such an agreement, the closure of the existing track and the creation of a new road over which the public has a right of way would be possible.

11.15.11 If a grant of the land claimed to a land trust were to prevent the establishment of adequate public road access to the proposed development, and if for that reason the proposed development could not proceed, Messrs Fitzgerald and Ms Massasso would suffer detriment to that extent. It should be noted that, under the Darwin Regional Land Use Structure Plan 1990 and the Cox Peninsula Land Use Structure Plan 1990 (see para. 12.7.1) the land proposed for development is designated as public open space. If those plans are to be given any significance (as to which see para. 12.8), it may be that the proposed development will fail for reasons other than the lack of adequate public road access.

11.15.12 There are also owners of land to the south of Bynoe Harbour who have expressed concern that the value of their land might not increase as much if the land claimed were to become Aboriginal land as it would if the claim were not to be acceded to. Corporate Developments Pty Ltd, a company based in South Australia, owns an area of land on the south side of the inner reaches of Bynoe Harbour and another, larger, area fronting Port Patterson to the south of Turtle Island. The company holds these areas under term Crown leases and has applied to convert the leases to freehold, with a view to subdividing and developing. The company proposes residential and commercial developments with town centres and hotels. It also proposes tourist and coastal developments including marinas, marine service centres, boat ramps and aquaculture projects. Its concern is that the attractions of the area include fishing, sailing, boating, diving and exploring islands and shoals. I have dealt with these recreational issues in para. 11.13. To the extent to which they would require permits, the activities will be less easy to carry out spontaneously. They will involve more planning and the need to apply for permits. What effect, if any, this would have on the value of the areas of land Corporate Developments Pty Ltd seeks to develop might depend more upon whether there are available alternatives for potential purchasers who seek proximity to recreational activities of the kinds envisaged. It is possible, for instance, that if the land claim were not acceded to, and the Cox Peninsula were opened up for development, demand for developed land south of Bynoe Harbour might be reduced.

11.15.13 Corporate Developments Pty Ltd made specific reference to Turtle Island. Access on foot is possible at low tide from land owned by that company. If Turtle Island were to become Aboriginal land under the Land Rights Act, permits would be required for those who wished to have access to Turtle Island.

11.15.14 R. McClelland of Katherine claims to have purchased land on Bynoe Harbour. There is no specific information as to the location of the land. Mr or Ms McClelland says that he or she intends to start a prawn farm and 'tourist fishing' on the land. It does not appear that the development of aquaculture projects outside the land claimed would be affected if the claim were acceded to. So far as the conduct of tourist fishing operations is concerned, I refer to what I have said in para. 11.13 and

para. 11.14. Permits would be required if fishermen were to place items on land in the inter-tidal zone, or otherwise to enter or remain on Aboriginal land. To that extent, the operator of a tourist fishing operation might suffer detriment.

11.16 Pearl farming

11.16.1 Bynoe Harbour Pearl Co. Pty Ltd has pearl leases in Bynoe Harbour below the low-water mark, adjacent to Rankin Point. It has invested several million dollars in the venture. It also has accommodation on the foreshore of Rankin Point, housing six people working in the pearling operation, together with a workshop and storage facilities. The manager, Adam Miocevich, was kind enough to allow me to use a large shed at Rankin Point for part of the hearing when the hearing would otherwise have been interrupted by rain on 23 October 1995.

11.16.2 Toomebridge Pty Ltd, a company based in Broome, Western Australia, also communicated in writing. According to Kim A. S. Male, the Managing Director, that company has 'had an interest in the Cox Peninsula/Bynoe Harbour area since 1988 for the cultivation of pearls with leases on shore and water' and has 'a very definite commercial interest in the ongoing future of this area'. I am not aware of the precise location of any pearling operation of Toomebridge Pty Ltd.

11.16.3 Pearling leases below the low-water mark are outside the land claimed and will not be affected directly if the land claimed becomes Aboriginal land under the Land Rights Act. The operator of a pearling lease, however, would be unable to continue to use onshore facilities, such as those used by Bynoe Harbour Pearl Co. Pty Ltd, without entering into some arrangement with the Northern Land Council. Such an arrangement could be made under s. 11A of the Land Rights Act before a grant of the land claimed to a land trust. The need to enter into such an arrangement, and any rent required to be paid, would be detriment suffered by the owner of the relevant pearling lease. If no such arrangement could be made, and the pearling operation had to cease as a consequence, the company concerned would suffer detriment.

11.17 Squatters

11.17.1 There are various places on the land claimed at which people have established dwellings and other improvements without entitlement to do so.

11.17.2 Perhaps the most significant of these is an area known as the Vietnam Veterans Rural Retreat, established by an incorporated association called Vet Comm. Inc. Vet Comm. Inc. claims to occupy 2 600 hectares of the land claimed, lying between the road to Rankin Point and the road to Masson Point. Its intention is to operate a retreat for Vietnam veterans and other former Australian Armed Services personnel, especially those suffering from post traumatic stress disorder. The project began in 1990 and operates in conjunction with the Vietnam Veterans Association of Australia and the Darwin North Branch of the Returned Services League. It has been declared a Vietnam Veterans Counselling Service Outreach Station.

11.17.3 I did not visit the retreat and the evidence is unclear as to the developments that have occurred. The aim is to provide air-conditioned single and twin room demountable accommodation for fourteen single persons, bungalow style casual or overflow accommodation for eight in another two buildings, a retreat manager's two bedroom residence, an amenities building (including a kitchen, dining room, television lounge, wet canteen and dry canteen), a workshop complex and other ancillary buildings. Lawns, tropical trees and palms have been planted. A dam has been

constructed, holding 3.5 million litres of fresh water. There are vegetable gardens, orchards, stock feed paddocks, a bore, a diesel electricity generator and a workshop. The retreat provides veterans with recreational and hobby facilities and intends to expand to include occupational therapy and vocational training. Since its inception, the retreat has had forty-three veterans living at it on a permanent or semi-permanent basis for varying periods. The retreat has been established by the labour of members and friends of Vet Comm. Inc. Funds have come from the members and from fundraising ventures. The retreat is designated as a Public Benevolent Institution by the Australian Taxation Office and is sponsored by the Department of Veterans Affairs.

11.17.4 There are two concentrations of shacks built on Crown land within the land claimed, without any semblance of entitlement on the part of those who have built them. There are twenty-five shacks at Pioneer Beach and thirteen at Tower Beach, near Masson Point. I received a written submission from Tony Barker, who described himself as Chairman of a committee of users of Pioneer Beach. According to that submission, over the past forty years twenty-five fishermen's shacks have been erected. Some are used permanently and others for weekends and holidays. Attached to the submission is a list of approximately 150 people who are described as regular users of Pioneer Beach. In relation to Tower Beach, I received eleven written submissions as follows:

- F. Haynes and C. Haynes;
- Rhonda Wise, Barry Wise and John Flower;
- Allan Jones and Rhonda Jones;
- G. Pennington, M. J. Williams and R. Summers;
- R. J. Toms;
- Michael Lo and Roberta Lo;
- Gunther Lackner and Frederick Wilson;
- L. I. Clark and B. Clark;
- Dale Marshall Scharf;
- John Day and Heather Day; and
- Graeme Laing, Annette Laing, Sean Lawler, Mary Lawler, Arnold Seden, Bethany Seden, Gary Giles and Karen Sands.

11.17.5 There is also a written submission from D. L. Westlund and L. H. Stehn referring to a group of people currently using a small portion of the land claimed. There is no indication as to the location of this small area. Neville Lavers and Noel Fairless wrote concerning two dwellings built in 1986 adjacent to the Charlotte River. The submission claims that these are within the land claimed, but I have no other evidence as to where they are.

11.17.6 All those who have constructed buildings on the land claimed, without any entitlement to do so, sought to be allowed to continue to have access to and to use those buildings. Many of them emphasised the long-term association of themselves and their families with particular parts of the claimed area. Some claimed to perform activities of social utility, such as assisting police in relation to possible smuggling. Vet Comm. Inc. claimed to be engaged in valuable service to the community.

11.17.7 No-one who has constructed a building on the land claimed claims to have acquired any estate or interest in the land claimed. To do so would have been impossible. However long such a building has been in existence, no estate or interest

can have been acquired against the Crown by adverse possession. No estate or interest can have been acquired since the application in this land claim was made. See s. 67A of the Land Rights Act and *Attorney-General for the Northern Territory v. Hand* (1989) 25 FCR 345. None of these people will suffer detriment if the land claimed is vested in a land trust. To the extent to which buildings are fixtures, they have already become part of the land and have thereby become the property of the Crown, and have ceased to be the property of those who constructed them. To the extent to which buildings and improvements are not fixtures, there is no entitlement to have them on the land at the present time, so none will be lost by the land becoming Aboriginal land. It would be a bad principle to adopt to reward squatters for their unlawful activity by granting them interests in the land on which they have squatted. The failure of the Northern Territory Government to remove squatters from the land claimed cannot be relied on to improve the position of those squatters. If they are to continue to use the buildings they have constructed in the future, and to have access to them, they will have to enter into some arrangement with the Northern Land Council that would entitle them to continue to do so. Such an arrangement would not amount to detriment because there is no current entitlement.

11.18 Aviation

11.18.1 In para. 11.10.6, I have referred to the airstrip on Dum-In-Mirrie Island. As well as being used by people visiting and using the facilities established on the island by the Baumber family (see para. 11.10.6), the airstrip is used by others. In 1989, written submissions were received from W. O. Hodge, President of the Darwin Aero Club Inc., and five other members of the club. One of those members, Geoff Cowie, is also a member of the Darwin Parachute Club. Mr Hodge's submission indicates that the airstrip on Dum-In-Mirrie Island is used for recreational, social, training, competitions and emergency purposes. Mr Cowie wrote a further submission in 1995. According to Mr Cowie, the island is regarded as the most beautiful parachute drop zone in Australia and is used by visiting parachutists.

11.18.2 The use of the Dum-In-Mirrie Island airstrip by aviators and parachutists, and the landing of parachutists on other parts of Dum-In-Mirrie Island, would require permits under the *Aboriginal Land Act* (NT), if the land claimed were to become Aboriginal land under the Land Rights Act. In the case of competitions, advance planning is necessary and the requirement to apply for a permit adds little. I have no reason to believe that there would be difficulty in obtaining permits. Spontaneous activity would be limited unless permits could be obtained at short notice. To that extent, those who use Dum-In-Mirrie Island for aviation and parachuting would suffer detriment.

12 EFFECT ON EXISTING OR PROPOSED PATTERNS OF LAND USAGE IN THE REGION

12.1 The competing submissions The Attorney-General for the Northern Territory sought a comment to the effect that acceding to this land claim in whole or in part would have a drastic impact on proposed patterns of land use in the region, by rendering the Cox Peninsula unavailable for the planned expansion of urban areas associated with Darwin. The Northern Territory Government represents that it has engaged in a proper planning exercise, resulting in a proposal to cover most of the Cox Peninsula with urban areas, designed to accommodate more than 500 000 people. Counsel for the claimants (who, for this purpose, were united) suggested that the planning exercise, leading to the proposal to urbanise the Cox Peninsula, was a sham, designed simply to defeat the land claim.

12.2 The history In approaching this issue, it is necessary to remember that the Northern Territory Government previously attempted to promulgate regulations which would have had the effect of including the whole of the Cox Peninsula, and other areas outside the land claimed, within the City of Darwin. These regulations were found to have been invalid, because they were made with the ulterior purpose of precluding this land claim. A more detailed account of the history of these regulations is given in paras 2.6-2.14. Another set of regulations, promulgated after the application was made in this land claim, was ineffective to change the status of the land claimed.

12.3 The region For the purposes of the requirement to comment under s. 50(3)(c) of the Land Rights Act, some definition of the relevant region is necessary. As the starting point for its planning exercise, the Northern Territory Government has chosen the area between the Adelaide River and the Finniss River, together with the catchment areas of all of the streams within that area. The region thus defined is predominantly flat and low-lying. The vast bulk of it is less than fifty metres above sea level and only a few small features rise more than one hundred metres above sea level. The coastline is indented by Adam Bay and the estuary of the Adelaide River, Shoal Bay, Darwin Harbour, Port Patterson and Bynoe Harbour and Fog Bay, into which the Finniss River flows. Darwin Harbour, Bynoe Harbour and, to a lesser extent, Shoal Bay have very irregular coastlines, which dissect the land surrounding them. In coastal and estuarine areas and along the major rivers, mangroves are the dominant vegetation type. There are low-lying areas of marsh, swamp and lagoon. Otherwise, tropical savanna woodland prevails, with small pockets of rainforest vegetation where permanent water is found. The region is dominated by the City of Darwin, with its suburbs and associated rural residential areas. In the east, the Lambells Lagoon bore field and the Howard East bore field lie beneath areas of good soil, which are used for horticulture, irrigated with ground water. Aside from the Belyuen area, there are two significant areas of Aboriginal land within or adjacent to the region: the area known as the Larrakeyah Reserve at Acacia Gap, and the area known as the Wagait Reserve. In the south of the region, some of the land is subject to pastoral leases. In various places, the Commonwealth of Australia has areas of land used for defence and other purposes, including the communication areas referred to in paras 11.3 and 11.8. On the north-eastern part of the Cox Peninsula, accessible by ferry between the Mandorah jetty and the Cullen Bay wharf, as well as by road through the Cox Peninsula, are small residential subdivisions. The land claimed is the major area of unalienated Crown land in the region. It seems that this has led the Northern Territory Government to regard

itself as being in competition with the claimants for control of the land claimed. Apart from some illegal squatters' houses, referred to in para. 11.17, and other activities on small areas of the land claimed, referred to in chapter 11, the major use of the land claimed appears to be for hunting and gathering, mostly by the claimants.

12.4 Effect on existing patterns of land usage Acceding to the land claimed in whole or in part is unlikely to have a significant effect on existing patterns of land usage in the region. Most of the issues relevant to future use are dealt with in more detail in chapter 11 as issues related to detriment. The removal of squatters' houses is quite likely, but they should not be there in any event. The use by Aboriginal people, particularly the claimants, of the land claimed for camping, hunting and fishing, will continue. To the extent to which non-Aboriginal people make use of the land claimed for camping, hunting and fishing, this will have to be done in accordance with permits under the *Aboriginal Land Act* (NT) (see para. 11.13). It is possible that persons unable to fish in the vicinity of Aboriginal land, because they lacked the necessary permits, would choose to fish elsewhere in the region. This might have some effect on fisheries in other areas of the region, but the level of effect is unpredictable.

12.5 The possible expansion of Darwin

12.5.1 The foundation for the submissions made on behalf of the Attorney-General for the Northern Territory with respect to the effect on proposed patterns of land use in the region is that proper planning practices dictate that planners should be prepared for Darwin to become a city with a population of 1 000 000. It is not contended that this expansion will necessarily happen, nor that it will happen at any particular time. Rather, planners need to be aware of estimates arising from the projection of population growth rates in the long-term. If Darwin is to reach the 1 000 000 mark, it needs to do so in an orderly fashion, making optimal use of whatever land and resources may be available.

12.5.2 The notion that 1 000 000 people is a proper planning horizon requires discussion. In a study carried out for the Committee on Darwin, the Allen Consulting Group Pty Ltd designed three scenarios. On its 'base case' scenario, involving a continuation of present policies, with no particular policy support, population was projected to grow at 2 per cent per year, resulting in a population of 140 000 in the year 2025. The 'regional gateway' scenario, involving effective supportive policies and an optimistic view of current development, was said to lead to population growth at 4 per cent per year, resulting in a population of 260 000 in the year 2025. The 'rapid development zone' scenario, involving fundamental changes to national policy, was said to lead to population growth of 6 per cent per year, resulting in a population of 450 000 in the year 2025. The Allen Consulting Group Pty Ltd was sceptical whether the kind of policy revolution required to make its third scenario a reality would be likely to be acceptable to Australians generally. The Committee on Darwin, which reported to the Commonwealth Government and the Northern Territory Government in 1995, found that, on the basis of growth projections of 1.5 per cent per year, Darwin's population would reach about 135 000 by 2030. The committee would not rule out growth rates of 2.5 to 3.5 per cent per year in favourable conditions. It concluded that the future size of Darwin will depend primarily on its ability to move away from its traditional reliance on government-induced growth towards growth stimulated by the private sector.

12.5.3 The Australian Bureau of Statistics has published population projections from 1997 to 2051. Two alternative assumptions have been made about future births, one assumption about future deaths, two alternative assumptions about future levels of migration from other countries to Australia and three alternative assumptions about migration within Australia. The bureau has made calculations by reference to eighteen combinations of these assumptions. Three of those combinations are covered in detail in the publication, which was tendered in evidence. On the combination of assumptions giving rise to the highest net growth rate, Darwin would have 235 500 people in 2051. Professor Richard Blandy and Professor Dean Forbes produced a study for the Northern Territory Government which extended these growth assumptions to show Darwin's population exceeding 1 000 000 by the year 2100. Among the conclusions of the study were:

> in particular, Darwin has a substantial prospect in the provision of sophisticated urban education, health, information technology, and other services to southeast Asian countries, as a significant southeast Asian entrepot port and logistics centre, as the home of Australia's defence frontline, as a mining, oil and gas support base and processing centre (especially for oil and gas from the Timor Gap), as an agricultural and aquacultural centre for high value-added products, and as a high-margin tourism centre;
>
> the probability of the Darwin region attaining a population exceeding 1 million people within 100 years or so (say, by the year 2100) is very high, provided that international and interstate immigration makes a modestly-positive contribution;

Professor Blandy gave oral evidence before me. His enthusiastic advocacy of the use of the Cox Peninsula to establish a 'beautiful harbour city' did not enhance the credibility of what was put forward as an academic study.

12.5.4 Dr Martin Bell and Dr John Taylor, in a joint report, criticised the methodology of Professor Blandy and Professor Forbes. They questioned the reliability of an attempt to forecast population change over a period of more than 100 years, especially from a relatively low population, such as that found in the Northern Territory. They argued that a population of 1 000 000 for Darwin should be described as possible, rather than probable. They suggested that the use of crude birth and death rates by Professor Blandy and Professor Forbes, without reference to the age structure of the population, might result in an overstatement of the future population. Dr Bell and Dr Taylor criticised the treatment of the Northern Territory in isolation from the rest of Australia and doubted the plausibility of a number of assumptions relied on by Professor Blandy and Professor Forbes.

12.5.5 It is easy to be sceptical about the prospects of Darwin reaching a population of 1 000 000. Comparisons with cities such as Perth, Adelaide and Brisbane are not necessarily valid, because of the productiveness of their hinterland areas, the nature of the industries which caused them to grow and the history of population growth in Australia. It must be recognised that the climate of Darwin is unattractive to very many people, that the industries which are likely to be attracted to Darwin are likely to be capital intensive, rather than labour intensive, and that developments in communications are likely to continue to reduce the need for those who manage economic activities to reside where those activities are carried out. Nonetheless, the basic premise of the case put on behalf of the Attorney-General for the Northern

Territory cannot be denied. It is only necessary to accept that there is a possibility that, at some time in the future, Darwin will expand to have a population of 1 000 000 people for this premise to be established. As long as it is not assumed that the figure is a target, and no time-frame is adopted for it to be reached, the adoption of a population horizon of 1 000 000 people is a reasonable step for planners to take.

12.6 Physical constraints on the future growth of Darwin

12.6.1 There are significant constraints on the ability of Darwin to grow as a city. The original 'centre' of what is now the city was established on a small peninsula which extends south into Darwin Harbour. In the 1960s, a somewhat arbitrary planning decision was made that this peninsula would remain the administrative centre of Darwin. That decision has been locked into place by the subsequent construction of the new Parliament House, the new building to house the Supreme Court of the Northern Territory and new office accommodation for the Northern Territory Government. At the time when the original decision was made to continue to regard the small peninsula as the 'centre' of Darwin, it was contemplated that it would be the commercial centre as well. That decision has been undermined effectively, first by the establishment of a major shopping complex at Casuarina and second by the extension of urban development to Palmerston. To a large extent, commercial activity has moved from the old centre of Darwin to these two centres. Significant government services, such as Royal Darwin Hospital and the Northern Territory University, have been established well away from the centre of Darwin. Non-Northern Territory Government administration has also had some tendency to move from the old centre. During my terms as Aboriginal Land Commissioner, the Aboriginal and Torres Strait Islander Commission has moved its office to Casuarina. So has the Northern Land Council.

12.6.2 The Northern Territory Government planners remain committed to the notion that the centre of Darwin is to remain where it is. The obvious problem is that the area occupied by the centre of Darwin is bounded on three sides by the waters of Darwin Harbour. The transport of a large commuter workforce to that area by land would impose enormous strain on any land transport system. The use of water-borne transport, bridges or tunnels over the harbour is seen as a possible answer.

12.6.3 A further limitation is that the climate of the region is monsoonal. The wet season typically brings very high rainfall, which causes flooding of low-lying areas. Areas subject to seasonal inundation are unsuitable for urban development. In addition, Darwin lies in an area prone to tropical cyclones. Storm surge caused by a cyclone causes high tide levels much greater than normal, with consequent flooding of areas adjacent to the coast and to estuaries and streams. These areas are also unsuitable for urban development.

12.6.4 A major constraint on the expansion of any city is the need for water supply. At present, 80 per cent of Darwin's reticulated water comes from the Darwin River Dam and 20 per cent from bore fields tapping ground water in the region of Lambells Lagoon and Howard East. The mix of slightly alkaline ground water with slightly acidic surface water is said to provide optimal quality potable water. Existing sources would be nowhere near enough to supply a city of 1 000 000 people. Plans have therefore been made for the eventual construction of three more large water storages, designated as the Marrakai Dam, the Warrai Dam and the Mount Bennet Dam. The

first two are designed to trap the waters of the Adelaide River and the third is proposed to dam the Finniss River. The provision of potable water requires that the catchments for each of these proposed dams be closed, or at least that activity within them be regulated so that water purification will not be too difficult and costly.

12.6.5 The development of Darwin has been affected already by the location of its airport, which includes an airforce base. Not only does the airport, with its associated noise buffer zone, tie up a substantial area of land not far from the centre of Darwin, it also has other effects. It has forced the development of urban areas further from the centre and has constricted land transport corridors.

12.6.6 Biting insects are a major problem in the region, not only because of their effect on lifestyle amenity, but because they can constitute a major public health risk. Mangroves in the inter-tidal zone are the principal source of biting midges, sometimes known as sandflies. They tend to be invisible and their bites result in great discomfort, but they are not considered to be disease carriers. Mosquitos breed in the upper tidal zone, brackish marshes and flood plains, with some breeding in inland marshes and lagoons. There are more than seventy species of mosquitos in parts of the region, some twenty of which are known to cause pest or disease problems. Mosquito-borne virus diseases, such as Ross River virus and Barmah Forest virus are relatively well known. The potential for Murray Valley encephalitis, malaria, dengue fever and Japanese encephalitis also exists. It is generally thought desirable to provide for a buffer zone of 1.6 kilometres between breeding areas and concentrations of urban dwellings. Biting insects are already a major problem in some areas of Darwin, particularly the suburb of Leanyer. To the east of Leanyer is a low-lying area, formerly used for army artillery practice. Numerous shell craters hold water for long periods after rain or floods. Shallow water is favoured for mosquito breeding. Work carried out by Peter Ian Whelan and the staff of the Medical Entomology Branch of the Northern Territory Health Services Department, which has a laboratory at the Royal Darwin Hospital, involving nocturnal trapping of insects at various designated sites and measuring the numbers trapped, suggests that the northern part of Cox Peninsula is less prone to biting insects than other areas around Darwin. So far as mosquitos are concerned, this may be in part the result of the fact that the Cox Peninsula is largely unoccupied. Urban development usually brings with it increased opportunities for mosquito breeding, particularly in places where storm water and sewage are carried or dumped, and places in which shallow water can linger after rain, such as disused motor car tyres. Mr Whelan and his staff carried out their work after the development of the planning documents referred to in para. 12.7.1.

12.7 The 1990-1991 planning exercise

12.7.1 In 1990 and early 1991, the Northern Territory Government engaged in a hurried exercise in planning for the possible expansion of the City of Darwin to a metropolis of 1 000 000 people. The exercise resulted in the production of a series of documents. The Darwin Regional Land Use Structure Plan 1990 relates to the whole of the Darwin region. It identifies a series of sub-regions within the region. It describes what are referred to as ‘land use options’. They are four in number and relate to different parts of the region. Option one is entitled ‘Litchfield/Gunn Point Peninsula’, option two ‘Litchfield/Coomalie’, option three ‘Finniss’ and option four ‘Cox Peninsula’. Each of these options has its own separate land use structure plan. Altogether, there are eight relevant documents. As well as the Darwin Regional Land

Use Structure Plan 1990, there are the Litchfield Land Use Structure Plan 1990, the Gunn Point Peninsula Land Use Structure Plan 1990, the Murrumujuk Land Use Concept Plan 1990, the Finniss Land Use Structure Plan 1990, the Cox Peninsula Land Use Structure Plan 1990, the Mandorah Land Use Concept Plan 1990 and the Litchfield District Centres Land Use Concept Plan 1992. The Attorney-General for the Northern Territory sought to establish that these documents have the force of law, and constitute the proposed pattern of land usage in the region.

12.7.2 At the time when this exercise was carried out, s. 66A(1) of the *Planning Act* 1979 (NT) provided as follows:

> The Minister may, from time to time, publish, in such manner as he thinks fit, what, in his opinion, are the planning and development objectives of the Territory.

Section 66A(2) obliged the Minister to provide a copy of published objectives to the consent authority and to the Appeals Committee. Section 93(c) and s. 110(g) of the *Planning Act* 1979 (NT) required that the contents of published objectives be taken into account when subdivision or development was being considered by a consent authority. Sections 145-7 constrained the Appeals Committee by reference to such published objectives.

12.7.3 In each of the eight documents, the then Minister for Lands and Housing, in a foreword, purported to declare that the contents of the document, 'are in my opinion planning and development objectives of the Territory' and to publish them pursuant to s. 66A(1) of the *Planning Act* 1979 (NT). Under the heading 'objectives', the Darwin Regional Land Use Structure Plan 1990 contains the following text:

> The primary purpose in publishing this plan is the identification, endorsement and dissemination of Northern Territory Government planning and development objectives for the Darwin Region. More specifically, this plan has been produced to establish a broad land use structure for the future development of the Darwin Region that identifies suitable land sufficient for all land uses anticipated for a regional population of at least 1 million.
>
> By publishing the land use structure plan as endorsed Government policy, the rationale for the anticipated land uses is recorded with text, diagrams and plans. With this regional policy overview, the basis is established for more detailed land use plans over selected parts of the region, and public and private sector developers are provided with some guidance. The plan anticipates that the long term land uses of the region will be wide ranging, both urban and non-urban.
>
> There are many planning and development objectives implied or referred to directly in the document. The specific objectives that stimulated the preparation of the plan include:
>
> - evaluation of regional land capability to ensure future development is balanced with environmental values and constraints;
>
> - identification of long term land and water resources in the region, with a land use structure which will ensure appropriate use and protection of these resources;
>
> - maintenance or improvement of existing regional lifestyles and patterns, assuming that current urban densities and rural living environments will be essentially similar in future growth areas;
>
> - ensuring planning priority for uses dependent upon a coastal location, given the limited site options that exist in the region for these uses; and

- capitilizing on the diverse recreation and conservation resources of the region.

The Cox Peninsula Land Use Structure Plan, the Finniss Land Use Structure Plan 1990 and the Litchfield Land Use Structure Plan 1990 contain similar passages, including references to 'objectives implied or referred to directly' and to 'specific objectives'.

12.7.4 In each case, the rest of the document is not phrased in terms of objectives. The documents contain glossy photos, graphs, maps and tables. Each contains considerable text. There are descriptions of topography, geology and features, land resources and capability, water resources, flooding, drainage and storm surge, climate, environment, economic base, population, land tenure, land use, transport and services. There are predictions as to growth prospects. There are estimates of land use requirements for various kinds of uses, including residential, commercial and industrial, primary and extractive industrial, community facility and conservation and recreation uses. There is historical analysis and aspiration. There are assertions, including assertions as to the effect of the Land Rights Act. There are statements of the base assumptions adopted in selecting residential land use areas. Each document contains a 'disclaimer', in the following terms:

> Any representation, statement, opinion or advice expressed or implied in these documents is made in good faith but on the basis that the Territory, the Department of Lands and Housing and their agents and employees are not liable for any person's damage or loss which has occurred consequent upon that person taking (or not taking) an action in respect of any representation, statement, or advice as referred to above.

12.7.5 The documents therefore contain considerable quantities of material which could not conceivably be regarded as 'objectives', i.e. as ends towards which efforts are directed, or something which is aimed at. There are parts of the documents on which opinions could reasonably differ as to whether they are to be regarded as objectives. There are some, which I have quoted, described as specific objectives. There are the cryptic references to 'objectives implied or referred to directly'.

12.7.6 The three land use concept plans do not contain references to implied objectives. With the exception of the Murrumujuk Land Use Concept Plan 1990, each has within it express objectives, as well as a considerable amount of other material. Each has a disclaimer in the same terms as that quoted above.

12.8 The legal effect of the 1990-1991 planning exercise

12.8.1 The scheme of the *Planning Act* 1979 (NT), to which I have referred in para. 12.7.2, required that those whose task was to make decisions about specific proposals for subdivision or development conform with, or at least take into account, objectives published by the minister. In order to perform that function, the decision-makers had to know what the objectives were. They could not be expected to search through a mass of material, endeavouring to ascertain what the objectives were. Still less could they be expected to take account of objectives which were not expressed in, but said to be 'implied' in, a document. When it referred to objectives, the statutory scheme in force in 1990 contemplated something like the Central Darwin Land Use Objectives, declared pursuant to s. 8(1) of the *Planning Act* 1993 (NT) by the then Minister for Lands, Planning and Environment, which were also tendered in evidence. It is true that

the scheme in force in 1990 required the minister to declare what, is in his opinion, were the objectives. Such a provision gave weight to the views of a particular minister, but did not give that minister free rein. The power of the minister to declare what, in his opinion, were planning and development objectives was clearly limited to matters reasonably capable of constituting such objectives. See *R v. Connell; Ex Parte Hetton Bellbird Collieries Ltd* (1944) 69 CLR 407, especially at p. 432 in the judgment of Latham C.J. In my view, none of the eight documents to which I have referred in para. 12.7.1, in its entirety, was reasonably capable of constituting planning and development objectives of the Northern Territory. Much of the material in the documents, which I have described in para. 12.7.4, particularly the descriptive material and the historical analysis, was not capable of constituting objectives. There might be arguments as to whether a reasonable person could take the view that some of the contents of the documents could be objectives. I have in mind predictions as to growth prospects, estimates of land use requirements, and aspirations. The mix of material makes it impossible to say that a reasonable minister could have formed the opinion that the whole of each of those documents constituted planning and development objectives of the Territory. I am therefore of the view that the planning documents referred to in para. 12.7.1 were not validly declared to be planning and development objectives pursuant to s. 66A of the *Planning Act* 1979 (NT).

12.8.2 The *Planning Act* 1979 (NT) was repealed and replaced by the *Planning Act* 1993 (NT). Section 8 of that Act made provision for the minister to declare, by instrument in writing, a land use objective for an area, or an amendment to such an objective. The section made provision for a process of public consultation before such an objective was declared. Section 133 deemed a planning and development objective published under s. 66A of the former Act to be a land use objective under s. 8; such a deemed land use objective had a different effect from a land use objective declared under s. 8 in one respect, which is not presently material. The *Planning Act* 1993 (NT) has now been repealed and replaced by the *Planning Act* 1999 (NT). By s. 155 of the 1999 Act, a land use objective in force under the 1993 Act immediately before the commencement date of the 1999 Act is taken to be a land use objective made under the 1999 Act. The saving provisions in both the 1993 Act and the 1999 Act could not be construed to give force and effect to anything that did not have force and effect under s. 66A of the earlier legislation. Because of the invalidity of their initial declaration as planning and development objectives (see para. 12.8.1), the documents referred to in para. 12.7.1 have not become valid land use objectives of the Northern Territory.

12.8.3 The consequence of this conclusion is that it may be necessary to regard the 1990-1991 planning exercise as being without legal force and effect. It is interesting to note that I do not seem to be the only person who so regards it. Counsel for the Attorney-General for the Northern Territory made a public offer to settle this land claim at the outset of my inquiry in 1995. The offer was accompanied by a map, designating areas title to which was proposed to be given to the claimants in some form or another. That map was wholly inconsistent with the proposed uses attributed to those parts of the land claimed by the map which is part of the Cox Peninsula Land Use and Structure Plan 1990. Further, there was evidence that a proposed subdivision and development of existing freehold land near Talc Head, on the Cox Peninsula, was being considered. The developer, Colin John Fitzgerald, appeared in my inquiry to complain that his entire proposal was likely to lapse for want of sufficient road access through the land claimed. It was not suggested that the proposed subdivision and

development was endangered by the fact that the plan which is part of the Cox Peninsula Land Use Structure Plan 1990 shows the relevant land as zoned for public open space.

12.8.4 Although I consider that I am not bound to regard the outcome of the 1990-1991 planning exercise as having legal effect, I cannot disregard it. It was put to me by counsel for the Attorney-General for the Northern Territory on the basis that it constitutes a proposal by the Northern Territory Government with respect to land use in the region of the land claimed. I deal with it on that basis in the exercise of my obligation to comment on the effect of acceding to the land claim in whole or in part on such a proposed use.

12.9 The inadequacy of the 1990-1991 planning exercise

12.9.1 In the foreword to the Darwin Regional Land Use Structure Plan 1990, the then Minister for Lands and Housing expressly recognised that the 1990-1991 planning exercise had been limited. He said:

> More than five years have passed since the publication of the Darwin Regional Structure Plan 1984. As noted by the then Minister for Lands, the Hon. Marshall Perron, M.L.A., the 1984 plan was not a 'Master Plan'. Periodic review, updating and refinement was anticipated.
>
> The new land use structure plan will similarly, in due course, require modification and refinement. However, it does represent the land use proposals that the Northern Territory Government has adopted as the basis for further development in the region.
>
> Although the plan is of necessity very broad in its concepts, it does provide an overview for more detailed planning work and the necessary framework for a metropolitan centre of the future. In some cases more detailed land use plans expanding on these proposals are already completed or are in production.
>
> This document has been compiled with greater expedition than would perhaps have been preferred, but the view was taken that it might provide assistance for consideration of the implications of any grant of the pending Kenbi Land Claim which relates, of course, to the Cox Peninsula.
>
> A structure plan does not attempt to promote specific developments at particular dates. The actual implementation of proposals depends on many complex factors which are dealt with further on in the planning process. It is at these later and more detailed stages that the process provides (by statute) opportunity for formal public input. Submissions from the public in response to this document are not formally provided for in legislation but are just as valued as if they were.

12.9.2 Some haste might have been justified in 1990 and 1991 by the desire to place planning considerations before Justice Olney in relation to this land claim. It is surprising, however, in view of the recognition of the limitations of the 1990-1991 planning exercise, that the opportunity has not been taken to carry out a proper planning exercise since. This is especially the case as the *Planning Act* 1993 (NT), and more recently the *Planning Act* 1999 (NT), have created a new regime with respect to planning in the Northern Territory, which would require public consultation in the preparation of planning documents.

12.9.3 With respect to the Land Rights Act, the Darwin Regional Land Use Structure Plan 1990 said:

> With the major part of the Darwin Region's suitable future urban land subject to the Kenbi (Cox Peninsula) Land Claim, the urgency for long-term land use planning in the region is more sharply focused. The Commonwealth's Land Rights Act has established a process where these matters must be decided *now* in the context of implications of relative permanency.
>
> Aboriginal land cannot realistically permit urban development as it cannot be resumed, compulsorily acquired or forfeited by Northern Territory laws. Furthermore the procedures under the Land Rights Act for granting long term leases are too cumbersome to be suitable for the development of a town.

There is no particular reason to suppose that Aboriginal land under the Land Rights Act could never be used for the purpose of urban development. If the land claimed were to become Aboriginal land, and if in a century or so Darwin were to become a city of 1 000 000 people, it might be the case that those with traditional entitlements to the Aboriginal land came to see it as advantageous to themselves to make some of the land available, by means of leases, for housing. This would be a decision of theirs, and not something forced on them by an unsympathetic government. Some lack of sympathy is evident in the following passage from the Darwin Regional Land Use Structure Plan 1990:

> The Northern Territory Government adopted a long-term planning strategy in 1979 that included the objective of development around Darwin Harbour to Cox Peninsula. This objective, confirmed in the Darwin Regional Structure Plan 1984, has attracted no opposition except from the Northern Land Council on behalf of claimants in the unresolved Kenbi Land Claim. If granted, the effect of the claim would be to transform this large publicly owned land asset into private (Aboriginal Freehold) land, the availability of which for urban use would be doubtful at best, as the unique title established by Commonwealth law denies even the Territory Government any powers of acquisition.

It is hardly surprising that the claimants in this land claim would object to proposals designed to deprive them of the fruits of their claim.

12.9.4 The conclusion of the 1990-1991 planning exercise is that, of the four land use options described, the Cox Peninsula option is the only suitable one. Each of the other three options is rejected in its entirety for a variety of reasons. The advantages of the Cox Peninsula option are emphasised. Disadvantages of the Cox Peninsula option are either not explored, or are the subject of proposals for modification, so that their effect is minimised. The same approach is not taken with respect to the other options. For instance, the Cox Peninsula Land Use Structure Plan 1990 proposes that six estuarine areas should be dammed, cleared of mangroves and converted to freshwater recreation lakes. Environmental objections are met with the assertion that these proposals are not seen to contravene the Northern Territory Government's aim to retain 80 per cent of the 'productive capacity' of mangrove areas in Darwin Harbour. There is no indication as to how the percentage effect on the 'productive capacity' of mangrove areas has been calculated. There is no evidence of any study designed to ascertain the likely effect of the destruction proposed. The expense of creating six artificial lakes is justified on the ground that it will diminish breeding areas for biting insects. Engineering solutions to the disadvantages of other options are not proposed, or are dismissed on various grounds, including expense, technical difficulty and likelihood of failure.

12.9.5 Only in the case of the Cox Peninsula option is there recognition that:

> It should also be remembered that, with employment and retail centres distributed throughout the region, travel to Darwin's CBD would be an occasional event for most residents in a metropolis of 1 million people.

In the arguments used to reject the other options, the difficulties of transporting people to the existing 'centre' of Darwin are given great weight. The proximity of the Cox Peninsula to Central Darwin is emphasised. The difficulty that the Cox Peninsula is separated from Central Darwin by a considerable tract of water is proposed to be overcome by means of road and rail bridges crossing Middle Arm and from Middle Point to Central Darwin, by the use (as at present) of ferries from Mandorah to Cullen Bay, and by a 'possible future public transport tunnel' under Darwin Harbour from Mandorah. The expense of bridges and tunnels would be enormous. This is particularly so in the case of a bridge from Middle Point to Darwin, which would have to take account of large vessels using the port facility constructed in East Arm since the 1990-1991 planning exercise was undertaken.

12.9.6 I do not accept the legitimacy of setting up four separate options. A close examination of the documents suggests that three of the options have been set up so that they can be rejected, in favour of the only 'viable' option, using the Cox Peninsula. Factors applicable only to parts of an option have been used as reasons justifying the rejection of the option in its entirety. For example, the need to protect ground water sources in the Howard East and Lambells Lagoon areas is used as a reason for the unsuitability of the two options that overlap those areas. Even if urban densities need to be kept to a minimum to protect these sources, this does not justify the proposition that the whole of the land considered in the Litchfield/Gunn Point Peninsula and Litchfield/Coomalie options must be considered as unavailable. There are still areas of land in each of those options that would support higher density urban development without detriment to ground water supplies. Similarly, the Finniss option has been rejected, at least in part, on the ground of its distance from central Darwin. There are parts of the option that lie closer to central Darwin, if travel is by land, than do parts of the Cox Peninsula option, which is not rejected on the ground of distance. No attempt has been made to see what use might be made of parts of each of the four options in conjunction. A proper planning exercise would involve the identification of all areas of land which might be regarded as suitable for urban development and a realistic attempt to establish how they might be utilised in the context of an expanding Darwin. It is possible for instance, that smaller urban areas in various places would have transport advantages, with people converging on Central Darwin from different directions, and by different means, rather than concentrating the bulk of high density urban dwelling on the Cox Peninsula, with a requirement to shift large numbers of people across Darwin Harbour.

12.9.7 The evidence also discloses that the four options were not treated in the same way when they were studied from the point of view of transport. As part of the planning exercise, a 'preliminary highway transport model' was prepared and evaluated for each of the four options. Both motor vehicle and public transport options were examined only for development on the Cox Peninsula. 'Corresponding transport implications' for the other three options were then inferred from the results of the Cox

Peninsula study. The options were then compared from a transport point of view. This process suggests that the focus was on the Cox Peninsula.

12.9.8 Another aspect of the 1990-1991 planning exercise causes me some disquiet. It is asserted that between 10 and 15 per cent of the population of the region now prefers to live in what is described as 'rural residential fashion'. This style of living involves subdivisions of land into allotments of up to eight hectares, usually with a single dwelling on each. It is said to be advantageous to people who wish to keep horses or to engage in horticulture. It is asserted that, if Darwin grows to a population of 1 000 000, the same percentage of 'rural residential' residents should be maintained. The result is that the map which is part of the Darwin Regional Land Use Structure Plan 1990 shows an enormous belt of land in a semicircle from Fog Bay to Adam Bay and extending to the south as far as the town of Adelaide River, designated as 'Rural Residential'. I accept that it is desirable to maintain some of this land as rural residential, to preserve the purity of ground water supplies in the Howard East bore field and the Lambells Lagoon bore field. The question of population densities in an expanding city is a difficult one, treated with too much simplicity in the 1990-1991 planning exercise. The Darwin Regional Land Use Structure Plan, for instance, contains an outright rejection of 'high density (Hong Kong style) urban development over extensive areas.' The kind of population density found in Hong Kong is extreme. There is a spectrum between it and the single dwelling on eight hectares style of rural residential density contemplated. To some extent, this is recognised, in that it is accepted that there will be some increases in living density in the immediate environs of Central Darwin. A commitment to rural residential density of the kind proposed, however, has economic implications. It is not necessarily an efficient use of available land resources to leave it to the occupants of significant parts of it to decide whether they will produce anything from it. When it is proposed to prefer the interests of those who are predicted to prefer a rural residential lifestyle as against the interests of a significant number of Aboriginal people who (at least presently) desire to leave a significant tract of land in its vacant state, considerations of social balance and human rights become more acute. The 1990-1991 planning exercise did not address these in any significant way. It relegated Aboriginal interests to community living areas and the preservation of known sacred sites in areas of public open space. It paid no heed to hunting and gathering, nor to the possibility of spiritual and emotional ties to land, as distinct from sites.

12.9.9 Minimal consideration has been given in the planning process to Aboriginal aspirations for land. In a submission on behalf of the Northern Territory Government, this feature of the 1990-1991 planning exercise was described in the following way:

> [T]he consideration of particular Aboriginal interests, including:
>
> - flexibility in design concepts to integrate the Belyuen Aboriginal land in future development, should the owners wish to do so;
>
> - recognition of existing sites of significance to Aboriginal people in open space areas and nature reserves where specific sites, outside the urban context, can be subject to separate title and exclusive use if desired; and
>
> - recognition of the need for large land areas to remain as extensive nature parks, especially in foreshore locations where land can be part of a coastal park extending over near sea and adjacent islands (eg as now proposed in the Beagle Gulf Marine Park);

It is obvious that the planners gave no weight at all to the interests of Aboriginal people in having under their control a significant area or significant areas of land.

12.9.10 David Grenfell Whitney, a leading town planner, gave evidence on behalf of the claimants. He was critical of the 1990-1991 planning exercise in a number of respects, including its lack of attention to Aboriginal interests, its concentration on the physical attractions of the Cox Peninsula, its treatment of population density issues, its lack of consultation, its treatment of environmental issues and the absence of cost-benefit analysis. He said:

> It appears that the Government is committed to a particular land use option which on any objective assessment is potentially flawed and which is being vigorously followed without any comparison with other realistic options.

In my view, this is valid criticism.

12.9.11 The Committee on Darwin, reporting to the Commonwealth Government and the Northern Territory Government in 1995, was generally critical of town planning processes in Darwin. It made the following recommendation:

Recommendation 51

> The Committee recommends that the Northern Territory Government commission an independent expert to review, in consultation with community and business groups, its town-planning process and to recommend ways in which the process can be improved to ensure that a town plan consistent with the concept of Darwin as an internationally competitive commercial city is developed.

> The town plan should be fully integrated into the general developmental processes for the city while at the same time adopting principles of ecologically sustainable development. It should also be sufficiently forward looking and flexible to accommodate demographic and social changes.
>
> Town planning should be a collaborative process that takes account of the views of all relevant community groups in Darwin, and it should incorporate a formal appeal mechanism for people who consider themselves adversely affected by planning decisions.

If this recommendation were to be carried out in the light of the outcome of this land claim, there would be overall benefit.

12.9.12 My conclusion from a detailed examination of the results of the 1990-1991 planning exercise is that, as a planning exercise it is unsatisfactory. In 1978 and 1979, the Northern Territory Government failed to prevent this land claim by promulgating regulations that, had they been operative, would have placed much of the land claimed out of reach of the Land Rights Act (see paras 2.6, 2.8 and 2.14). The 1990-1991 planning exercise seems to have had more to do with defeating this land claim than with attempting to plan for the possible future expansion of Darwin. Indeed, it is hard to avoid the conclusion the aim was to defeat this land claim. The Land Rights Act and the claimants are the subject of express criticism. The four options have been set up so that three could be described as unacceptable, and the Cox Peninsula option could be left as the only viable one. The options are examined in very different ways, using different criteria, so as to ensure that only one can succeed. Aboriginal interests are given little or no weight, whereas much emphasis is placed on the desirability of

providing vast areas for people who might wish to live in low-density, rural-residential environments. A proper approach to planning for a considerably expanded Darwin would involve determining the optimal use of all available land and a recognition of the interests of a broad range of people.

12.10 The availability of some of the land claimed To a considerable extent, the recommendation which I make in para. 14.3, if accepted, would alleviate the planning problems with respect to the possible expansion of Darwin. I propose the exclusion from any grant of the land claimed to a land trust of the south-eastern part of that land, which is quite considerable in area. There is no reason why, if the choice is to be made to concentrate in the Cox Peninsula area a significant part of the population of a future Darwin, use could not be made of that land, together with the eastern part of the Finniss option. The area involved appears to be quite capable of accommodating a similar number of people to that proposed for the Cox Peninsula in 1990. It might be necessary to plan for a different location for embarkation for ferry services, and for a different route for any proposed tunnel, if significant numbers of those people are to be moved to central Darwin each day. These tasks should not be beyond the imagination and skill of competent planners.

12.11 Comment It is obvious from what I have said that the form of any comment I should make in relation to proposed patterns of land use in the region is limited. To the extent to which the land claimed becomes Aboriginal land under the Land Rights Act, it will become unavailable for urban development, except to the extent to which those with traditional Aboriginal entitlements might consent to such development by means of leasehold interests from the land trust. If the recommendation in para. 14.3 is to be accepted, and the south-eastern part of the land claimed is to be excluded from a grant of the land claimed to a land trust, the excluded land will presumably be available to fulfil, in part, any planning proposal to cater for a considerably expanded population in the Darwin region. Beyond that, the effects of acceding in part to the land claimed could only be determined after the carrying out of a proper planning exercise, with the benefit of knowledge as to what land is to be available to the Northern Territory Government to control the future expansion of Darwin.

13 OTHER MATTERS

13.1 Desire to live on the land claimed

13.1.1 The evidence does not disclose the existence of any Aboriginal people who by choice are living at a place on the traditional country of the tribe or linguistic group to which they belong but do not have a right or entitlement to live at that place, within the meaning of s. 50(4)(a) of the Land Rights Act.

13.1.2 It is common among members of the **Belyuen** group to establish more or less permanent outstations at places on the Cox Peninsula, which are used for residence on a seasonal basis. Such outstations are at *Bitbinbiyirrk* (site 90), *Madpil* (site 91), *Imburr* (site 104), *Buwambi* (site 42), *Binbinya* (site 46), *Bakamanadjing* (site 48), *Milik* (site 52), Two Fella Creek and *Gwiyaluk* (site 56). Many members of the group spend most of their time during the dry season each year at such outstations, only retreating to Belyuen when the wet season makes it difficult or impossible to travel backwards and forwards from the outstations to Belyuen to obtain supplies. In a sense, therefore, these people live on the land claimed. I have reached the conclusion in para. 5.1 that the land claimed might properly be seen as shared by the Larrakia language group and some or all of the six language groups which make up the Wagaitj people. It is therefore possible to view the **Belyuen** group members who live at outstations on the land claimed during the dry season as living by choice at places on the traditional country of their tribe or linguistic group. It is unnecessary to reach a final conclusion on these matters, however, because those persons clearly have a place on that traditional country at which they have a right or entitlement to live, namely the Belyuen community and the existing Aboriginal land surrounding it. I am not required by s. 50(4) of the Land Rights Act to have regard to the acquisition of secure occupancy on the land claimed in relation to the members of the **Belyuen** group.

13.1.3 Some members of the other groups expressed a desire to live on the land. Some named specific places, such as Robert Browne (Indian Island), Keith Risk (near Bynoe Harbour) and Didi Quall (*Debilipu*, site 66). Others, such as Kathleen Minyinma, Alan Risk, Linda Hill and Alice Briston expressed a general desire to live on the land claimed. This evidence raises a difficult issue. Section 50(4)(b) of the Land Rights Act obliges me to have regard to the principle that Aboriginal people who are not living at a place on the traditional country of the tribe or linguistic group to which they belong but desire to live at such a place ought, where practicable, to be able to acquire secure occupancy of such a place. To the extent to which the people who expressed a desire to live on the land claimed live in Darwin, on a literal reading of the provision, it might be said that they are already living at a place on the traditional country of the tribe or linguistic group to which they belong. There is clear evidence that Darwin is Larrakia land. It might be suggested that the principle expressed in the Act contemplates living in a ‘traditional’ or ‘communal’ style and that the fact that people live an urban lifestyle ought not to disqualify them from invoking the principle. It is unlikely that the people to whom I have referred desire to live a ‘traditional’ or ‘communal’ lifestyle on the land claimed. They would undoubtedly seek to establish homes for themselves and their immediate families and to avail themselves of the resources of the land claimed and the surrounding seas. In the result, it seems that the literal construction of the Act is the safer one and that the principle does not apply to these people.

13.1.4 In any event, it is only necessary for the Commissioner to have regard to the principles expressed in s. 51(4) of the Land Rights Act. The absence of a need for secure occupancy, on the part of persons who answer the descriptions in the principles in that subsection, is not fatal to a land claim.

13.2 Roads over which the public has a right of way

13.2.1 By s. 11(3) and s. 12(3) of the Land Rights Act, any road over which the public has a right of way is excluded from the grant of any land to a land trust. It has become the practice of Aboriginal Land Commissioners to express a view as to whether there are such roads and to identify them. The Northern Territory Government classifies roads into national highways, rural arterial roads and local roads, and seeks to achieve road reserves of 200, 150 and 100 metres width respectively. These reserves are considered necessary to accommodate the road surface, shoulders, table and relief drains, detours during upgrading, reconstruction and maintenance work, power and water infrastructures, rest stops and truck parking bays. The reserves also enable some provision to be made for realignment. It has also become the practice of Aboriginal Land Commissioners to make suggestions as to the appropriate width of road reserve in respect of each road over which the public has a right of way.

13.2.2 A road is one over which the public has a right of way if it can be proved or presumed to have been dedicated as a public road. The presumption of dedication arises from open and unobstructed use by the public for a substantial time, so as to lead to the inference that the Crown, as the owner of the relevant land, must have been aware that the public believed that the track had been dedicated and took no step to close it. See *Elizabeth Valley Pty Ltd v. Fordham* (1970) 16 FLR 459, at p. 464. It seems to be important that a road be used as a thoroughfare, i.e. as a means of getting to a destination, rather than being used as a means of access for a specific purpose. Examples of specific purpose access are shooting (*Elizabeth Valley Pty Ltd v. Fordham*, above), dumping rubbish, carting gravel, removing firewood and parking cars for the purposes of drinking or petting (*Matthews v. Earles* [1965] VR 213).

13.2.3 There are eleven roads and tracks within the land claimed which the Attorney-General for the Northern Territory submits should be recognised as having the status of roads over which the public has a right of way. They are:

- the Cox Peninsula Road, which is the route for vehicular access to the area from Darwin, which enters the land claimed in the south and intersects with the Charles Point Road west of Mandorah.

- the Wagait Tower Road, which provides access from the Charles Point Road, approximately 2.1 kilometres west of Mandorah to the Wagait beach subdivision.

- the Charles Point Road, which runs approximately 14.03 kilometres from the Mandorah Jetty to the fenceline of the land on which the Radio Australia transmission station is situated (see para. 11.8).

- the Rankin Point track, which runs from the Cox Peninsula Road approximately 17.5 kilometres to Rankin Point.

- the Pioneer Beach track, which runs approximately four kilometres from the Rankin Point track to Pioneer Beach.

- the Tapa Bay track, which runs approximately sixteen kilometres from the Cox Peninsula Road near Belyuen to *Milik* (site 52).

- the Mica Beach track, which runs approximately thirteen kilometres from the Cox Peninsula Road to freehold land in the vicinity of Mica Beach (see paras 11.15.9-11.15.11.

- the Masson Point track, which runs approximately twenty kilometres from the Rankin Point track to Tower Beach, near Masson Point (see para. 11.17.4).

- the Raft Point track, which runs approximately seven kilometres from the Rankin Point track to Raft Point.

- the Harney's Beach track, which runs approximately 2.8 kilometres from the Charles Point Road to Section 17 of the Hundred of Bray at Harney's Beach.

- the Keswick Point track, which runs about one kilometre from the Raft Point track to Keswick Point.

13.2.4 The claimants raise no issue about the first three of these roads. They are clearly roads over which the public has a right of way. They are maintained by the Northern Territory Department of Transport and Works. The Rankin Point track, at least as to part of its length, and the Pioneer Beach track are also maintained by the Department of Transport and Works. The other tracks are not maintained at the public expense. Some of them are graded on a casual basis by private persons, including members of the Belyuen community. Nevertheless, each is clearly visible as a track. Each leads to a destination, even if that destination be only a beach which users of the track propose to enjoy, or from which they propose to embark in order to engage in other activities such as fishing. In cases such as the Mica Beach track and the Harney's Beach track, the owners, or purported owners, of land not within the land claimed clearly use the tracks as thoroughfares to pass to and from their land. So do their visitors and others. In the case of the tracks to Pioneer Beach and Masson Point, and perhaps also the tracks to Raft Point and Keswick Point, the destinations are settlements as well as beaches. The settlements are illegal squatters' settlements (see para. 11.17) but this does not alter the fact that the people who use them use the tracks as thoroughfares in their capacities as members of the public. Similarly, the track to Rankin Point is used by those who engage in mining and pearl culture, as well as by others. They use it as a thoroughfare as members of the public. Some of the tracks are not passable in the wet season. Some have multiple alignments, particularly in places where it is more convenient to avoid bogs when conditions are wet. In each case, however, there is sufficient definition and evidence of sufficient unobstructed use as a thoroughfare by members of the public in that capacity to give rise to the inference that the Crown, the current owner of the land, is content to have the track concerned used by the public. I am therefore of the view that all eleven roads and tracks are roads over which the public has a right of way.

13.2.5 The extent to which there is a point in maintaining some of the tracks as roads over which the public has a right of way might be a matter for debate. The outcome of

such debate might depend upon a number of issues. If my recommendation as to the grant of part of the land claimed to a land trust is to be accepted, decisions will have to be made about a number of issues, particularly squatters' dwellings (see para. 11.17). If the squatter settlements to which some tracks lead are not to continue, there may be little point in keeping the tracks themselves as roads over which the public has a right of way. In particular, there are some tracks used for beach access. If the beaches concerned become Aboriginal land under the Land Rights Act, so that permits to use them are required, there would seem to be little point in continuing to have public roads leading to them. In the case of tracks which continue to the low-water mark, enabling the launching of boats, there would be some value in continuing to have public roads leading to them. Otherwise, a public road leading to somewhere that cannot be used by members of the public without permits might lead to friction between those with Aboriginal entitlements to use the land and others. A permit to use a particular beach could carry with it a permit to use the track to that beach. These matters should be resolved by negotiation between the Northern Land Council and the Northern Territory Government if my recommendation is to be accepted.

13.2.6 The width of proposed road reserves might also be an issue. There is no problem about road reserves 100 metres wide in respect of the Charles Point road and the Wagait Beach road, to the extent to which it lies on the land claimed. The Northern Territory Government seeks to increase the width of the road reserve for the Cox Peninsula road from 100 metres to 150 metres. It proposes to seal the road, so as to reduce maintenance costs. There is some evidence of increasing use of the road over the years. The ultimate width of the road reserve for the Cox Peninsula road seems to me to depend upon a number of other factors. If the vesting of the bulk of the land claimed in a land trust leads to the demolition of the squatters dwellings (see para. 11.17) and a reduction in the use of beaches for recreational activities (see para. 11.13), use of the Cox Peninsula road might even decline, rather than increase. If that event occurred, there would be little point in increasing the width of the road reserve to 150 metres, when 100 metres seems to be perfectly adequate for the road as it is.

13.2.7 A road reserve 100 metres wide might be justified for those parts of the Rankin Point track and Pioneer Beach track maintained by the Department of Transport and Works of the Northern Territory Government. It seems hard to justify such a wide reserve for tracks which are not maintained. Particularly if the other tracks are unlikely to be maintained in the future, a road reserve considerably less than 100 metres would be appropriate. Although it is the policy of the Northern Territory Government to have road reserves of 100 metres or more, when the rationale for such a reserve is absent, so is the need. In my view, the widths of the road reserves for the Cox Peninsula road and the tracks other than the Charles Point road and the Wagait Beach road should be a matter for negotiation between the Northern Land Council and the Northern Territory Government.

13.3 Effect on the national estate

13.3.1 In considering whether to make the recommendation contemplated by s. 50(1)(a)(ii) of the Land Rights Act, I have had regard to the provisions of s. 30 of the *Australian Heritage Commission Act* 1975, particularly subss (2) and (3). Under those provisions, an authority of the Commonwealth is prohibited from taking any action that adversely affects, as part of the national estate, a place that is on the Register of the National Estate, unless the authority is satisfied that there is no feasible and prudent alternative, consistent with any relevant laws, to the taking of that action and that all measures that can reasonably be taken to minimise the adverse effect will be taken. The provisions also require that, before an authority of the Commonwealth takes any action that might affect to a significant extent, as part of the national estate, such a place, the authority must inform the Australian Heritage Commission of the proposed action and give the commission a reasonable opportunity to consider and comment on it. The making of a recommendation is deemed to be the taking of action and, if the adoption of a recommendation would adversely affect a place, the making of the recommendation is deemed to affect the place adversely.

13.3.2 There are three areas within or near the land claimed that are on the Register of the National Estate. They are the Charles Point Lighthouse, the whole of Indian Island and the Imaluk Spring area (shown on the map in appendix 8). The Imaluk Spring area is a small wetland, fed by a freshwater spring, with consequent wetland vegetation. It is not clear whether any part of the Imaluk Spring area that is on the register is within the land claimed, but development on the land claimed might affect the quantity and quality of water from the spring. At present, water from the spring is used by property owners in the housing developments to the east of it; the water is piped to a point from which people may fill containers. The scheme is operated by the Cox Peninsula Community Government Council.

13.3.3 If my recommendation in para. 14.3 is to be accepted, that part of the land claimed on which the lighthouse stands (Section 41 of the Hundred of Bray) would become Aboriginal land under the Land Rights Act. The Australian Maritime Safety Authority would have the right to continue to occupy and use the land on which the lighthouse is situated for such period as that land is required by the authority. Buildings or improvements on that land, including the lighthouse, will be deemed to be the property of AMSA. These entitlements arise under s. 14 of the Land Rights Act. The issues are discussed in para. 11.4. Further, if my recommendation is to be accepted, the whole of Indian Island and, perhaps, part of the catchment area of the Imaluk Spring, will become Aboriginal land under the Land Rights Act.

13.3.4 There can be no doubt that the Aboriginal Land Commissioner is an authority of the Commonwealth for the purposes of s. 30 of the *Australian Heritage Commission Act* 1975. The view I have formed, however, is that, by making the recommendation contemplated by s. 50(1)(a)(ii) of the Land Rights Act, I would not be taking any action that adversely affects, or might affect to a significant extent, the Charles Point Lighthouse as part of the national estate. Given the continued occupation and use of the lighthouse by the Australian Maritime Safety Authority, even the acceptance of my recommendation and the granting of that part of the land claimed to a land trust would not produce any effect, either adverse or significant, on that part of the land claimed as part of the national estate. Similarly, the acceptance of my

recommendation would not produce any effect, adverse or significant, on Indian Island or Imaluk Spring, as parts of the national estate. The non-acceptance of my recommendation might have a significant adverse effect on Imaluk Spring if it were to lead to the implementation of the proposal of the Northern Territory Government to urbanise the Cox Peninsula.

13.4 The Future

13.4.1 The members of the **Tommy Lyons** group are those of the claimants who can bring themselves within the definition of 'traditional Aboriginal owners' at the present time. Obviously, that situation will change. Members of the group will die in due course. New people may become members of the group. By s. 23(1)(c) of the Land Rights Act, the Northern Land Council has an ongoing function to consult with traditional Aboriginal owners of, and other Aboriginal people interested in, Aboriginal land in the council's area, with respect to any proposal relating to the use of that land. It is therefore necessary for the Northern Land Council to maintain knowledge, in an up-to-date form, as to who are the traditional Aboriginal owners of any Aboriginal land.

13.4.2 It is obvious that the **Tommy Lyons** group is a very small group. There seems to be no possibility of further patrilineal descendants of Tommy Lyons, Crab Billy Belyuen, King George or Frank Secretary. In time, the group will cease to exist if it is not renewed in some way.

13.4.3 There is a range of possible courses by which the **Tommy Lyons** group may become strengthened and ensure its continued existence. A process which is known to have occurred among Aboriginal groups elsewhere in the Northern Territory, whose patrilines have died out, is that a male matrifiliate begins a new patriline. Jason Singh and Kathleen Minyinma's son, Desmond, are the current first generation matrifiliate males of the group. It is possible that one or both of them will have his or their children recognised as members of the group. It is possible that the group will expand its membership by recognising second, and perhaps subsequent, generation matrifiliates. This is likely to occur on a selective basis, by the recognition of those who are known to the existing members of the group and who participate in its activities. Zoe Singh's children, Chantelle and Leikeisha, are obvious choices. The broadening of the group to include second and subsequent generation matrifiliates would open up for negotiation the entitlement to membership of the group of persons of the kinds referred to in para. 4.5.

13.4.4 It is also possible that the group will seek to renew and strengthen itself by coalescing with another group. In this respect, the **Belyuen** group would be the most obvious candidate. It is likely that Raelene, Jason and Zoe Singh will remain the central members of the **Tommy Lyons** group in the foreseeable future. The disability suffered by Prince of Wales, and his advancing age, suggest that he will not be a major force. It remains to be seen to what extent Kathleen Minyinma and Desmond take up active involvement in the affairs of the group. Raelene, Jason and Zoe Singh are already steeped in the way of life of the **Belyuen** group. A coalition between the **Tommy Lyons** group and the **Belyuen** group might ultimately lead to a situation in which a united group comes to be a local descent group and to share primary spiritual responsibility for so much of the land claimed as becomes Aboriginal land, based on

common spiritual affiliations to sites on that land. Such a process might take several generations.

13.4.5 There may be possibilities for the **Tommy Lyons** group to ensure its continued existence which do not occur to me at this time. What happens in the future might be the result of a combination of strategies or developments. It is not possible to predict who will be regarded as traditional Aboriginal owners of the Cox Peninsula and the islands and reefs to the west of it in the future. Even if it were possible, it would be unwise for me to attempt to make any prediction. There is a danger that a prediction made with confidence at this stage could be viewed as a prescription for the future. That would amount to an unwarranted interference in the affairs of the claimants.

13.4.6 What happens over the next few years, or even decades, is likely to involve power struggles. The process of dealing with the land claim has had a considerable effect on a number of claimants. It has involved competition between various groups for the status of traditional Aboriginal owners. Competition has produced some antagonism. The process of consultation by the Northern Land Council with respect to proposals relating to the use of so much of the land claimed as becomes Aboriginal land will be a delicate one. At the centre of it will be Raelene, Jason and Zoe Singh. They will have considerable responsibility whilst still relatively young. They may be subjected to a good deal of pressure. It is perhaps fortunate that they can avail themselves of guidance from their father, Johnny Singh, in relation to decisions that will have to be made. Relations between the **Larrakia** group (including the **Danggalaba** group) and the **Belyuen** group might be difficult for some time, but should improve when there is a realisation on both sides that the members of both groups must be consulted by the Northern Land Council.

13.5 A single land trust I have considered whether more than one land trust should be established to hold parts of the land claimed. There was no suggestion from any party that, even if the members of more than one of the claimant groups should be found to be traditional Aboriginal owners of the land claimed, more than one land trust should be established. There was no submission that the land claimed could be divided in any meaningful way between the different groups. As I have found that the members of the **Tommy Lyons** group are the only claimants who fall within the definition of 'traditional Aboriginal owners', and that they do so with respect to the whole of the land claimed, with the exception of the area excluded from my recommendation in para. 14.3, there is nothing that would justify anything other than a single land trust. I therefore recommend that a single land trust be established to hold the whole of the land the subject of my recommendation in para. 14.3.

14 RECOMMENDATION

14.1 Relevant findings In this report, I have reached the conclusion that six of the claimants, the members of the **Tommy Lyons** group, satisfy the definition of 'traditional Aboriginal owners' in the Land Rights Act, with respect to most of the land claimed, but not with respect to the south-eastern area. I have found that the strength of traditional attachment of the claimants to the land claimed amply justifies the making of a recommendation that the land be conveyed to a land trust.

14.2 Recommendation will benefit many more than the traditional Aboriginal owners To characterise such a recommendation as being in respect of large tracts of land for the benefit of only six people would be misleading. Under the Land Rights Act, a land trust holds land for a class of people much broader than those who fit within the definition of 'traditional Aboriginal owners'. Those on whose behalf a land trust holds are Aboriginal people entitled by Aboriginal tradition to the use or occupation of that area of land, whether or not the traditional entitlement is qualified as to place, time, circumstance, purpose or permission. This class plainly includes all of the claimants, a total of 1600 people. As I have said in para. 10.1, the numbers advantaged by such a grant would be even greater.

14.3 Recommendation Based on the conclusions in this report, I recommend that the whole of the land claimed, (in the case of all sea boundaries to the low-water mark and with the straight-line boundaries described in para. 3.2), with the exception of so much of the land claimed as lies east of the parallel of east longitude 130 degrees 42 minutes and 27.1 seconds and south of the parallel of south latitude 12 degrees 34 minutes and 38.5 seconds, based on the current Geocentric Datum of Australia (known as GDA94), be granted to a land trust, for the benefit of all Aboriginal people entitled by Aboriginal tradition to the use or occupation of that area of land, whether or not the traditional entitlement is qualified as to place, time, circumstance, purpose or permission.

APPENDIX 1

DATES ON WHICH THE INQUIRIES WERE CONDUCTED

Hearings conducted by Justice Olney

16 June 1989 (Directions)
19 June 1989 (Directions)
23 June 1989 (Directions)
29 June 1989 (Directions)
30 August 1989 (Directions)
17 October 1989 (Directions)
10 November 1989 (Directions)
13 November 1989
14 November 1989
15 November 1989
16 November 1989
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16 February 1990
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19 March 1990
20 March 1990
21 March 1990
21 May 1990
22 May 1990
23 May 1990
12 June 1990
13 June 1990
8 December 1990
10 June 1992 (Directions)
11 June 1992 (Directions)

Hearings conducted by Justice Gray

3 July 1995 (Directions)
22 September 1995 (Directions)
16 October 1995
17 October 1995
18 October 1995
19 October 1995
20 October 1995
21 October 1995
23 October 1995
24 October 1995
25 October 1995
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11 September 1998
14 September 1998
15 September 1998

16 September 1998
17 September 1998
18 September 1998
21 September 1998
22 September 1998
31 May 1999
1 June 1999
2 June 1999
3 June 1999
4 June 1999

APPENDIX 2

NEWSPAPER ADVERTISEMENTS OF THE CLAIM AND HEARINGS OF OR ASSOCIATED WITH IT

Name of newspaper	Date of advertisement
Darwin Star	24 May 1979
N.T. News	25 May 1979*
Darwin Star	31 May 1979
N.T. News	1 June 1979*
The Australian	1 June 1979*
Darwin Star	7 June 1979
N.T. News	8 June 1979*
The Australian	9 June 1979*
Darwin Star	14 June 1979
N.T. News	15 June 1979*
Darwin Star	18 October 1979
N.T. News	19 October 1979*
Darwin Star	25 October 1979
N.T. News	26 October 1979*
N.T. News	12 November 1979
Darwin Star	15 November 1979
N.T. News	16 November 1979
N.T. News	19 November 1979
Darwin Star	22 November 1979
N.T. News	23 November 1979
N.T. News	22 February 1980*
N.T. News	26 February 1980*
Darwin Star	28 February 1980
N.T. News	29 February 1980*
N.T. News	4 March 1980
Darwin Star	6 March 1980
N.T. News	7 March 1980
N.T. News	11 March 1980
Darwin Star	13 March 1980
N.T. News	14 March 1980*
Darwin Star	24 April 1980
N.T. News	25 April 1980*
Darwin Star	1 May 1980*
N.T. News	2 May 1980*
Darwin Star	8 May 1980
N.T. News	9 May 1980*
N.T. News	11 February 1983*
N.T. News	8 April 1983*
Darwin Star	15 April 1983
N.T. News	22 April 1983
Darwin Star	29 April 1983
Tennant and District Times	5 May 1989

N.T. News	6 May 1989
N.T. News	10 May 1989
Centralian Advocate	10 May 1989
Katherine Times	10 May 1989
Land Rights News	May Edition 1989
Centralian Advocate	22 September 1989
Tennant and District Times	22 September 1989
N.T. News	23 September 1989
Land Rights News	November Edition 1989*
Land Rights News	January Edition 1990*
Tennant and District Times	5 January 1990*
N.T. News	6 January 1990
Centralian Advocate	10 January 1990
Katherine Times	17 January 1990
Tennant and District Times	19 January 1990
Centralian Advocate	9 May 1995
Katherine Times	10 May 1995
N.T. News	10 May 1995
Tennant and District Times	12 May 1995
Weekend Australian	13-14 May 1995
Litchfield Times	18 May 1995
Land Rights News (Vol. 2 No. 36)	July 1995
N.T. News	15 August 1996
Weekend Australian	17-18 August 1996
Centralian Advocate	20 August 1996
Katherine Times	21 August 1996
Litchfield Times	22 August 1996
Tennant and District Times	23 August 1996
Land Rights News (Vol. 2 No. 40)	September 1996
Litchfield Times	May 1997*
N.T. News	7 May 1997
Katherine Times	7 May 1997
Centralian Advocate	9 May 1997
Tennant and District Times	9 May 1997*
Weekend Australian	10 May 1997

*Publication of an advertisement in this newspaper on this date was requested but it has not been possible to verify.

APPENDIX 3

LIST OF PARTIES

Persons and organisations appearing in the inquiry

Attorney-General for the Northern Territory
Commonwealth of Australia
Telstra Corporation Limited (formerly Australian Telecommunications Commission, then Australian Telecommunications Corporation, then Australian and Overseas Telecommunications Corporation Limited)
Bernard Maxwell Baumber, on behalf of the Baumber family
N.T. Fishing Industry Council
Dundee Beach Pty Ltd
Amateur Fishermen's Association of the N.T.
Darwin Trailer Boat Club
Darwin Sailing Club Inc.
Northern Territory Land Corporation
Ross Anictomatis (as executor of the estates of the late Ida Brown and Burge Brown)
Ostojic Transport Pty Ltd
Aboriginal Areas Protection Authority
Arrow Pearl Co. Pty Ltd
Bynoe Harbour Pearl Co. Pty Ltd
Bynoe Harbour Progress Association
Darwin Aero Club Inc.
Mandorah Pty Ltd
Maddalozzo Holdings Pty Ltd
Colin John Fitzgerald

Persons and organisations providing written submissions or other material

Australian Fishing Industry Council (Northern Territory Branch)
Lyn Butler
Graham Chrisp on behalf of Corporate Developments Pty Ltd and Softwood Plantations Pty Ltd
K. Conway and W. K. Parish on behalf of Harney Beach Pty Ltd
Geoff Cowie
John Day and Heather Day
Dive North (P.W. and A.J. Boswell)
A.M. and S.M. Hamilton
A.F. Haynes and C. Haynes
Allan Jones and Rhonda Jones
Gunther Lackner and Frederick Wilson
Neville Lavers and Noel Fairless
Michael Lo and Roberta Lo
R. McClelland
Peter McQueen, Solicitor, on behalf of John Munro
Sherry Meakin
Tim Proctor
A.W.R. and C.L Rannard
Dale Scharf

Keith Smart
Toomebridge Pty Ltd
Denis Tuck
C.W. Wall
Ward Keller, Solicitors, on behalf Mallam Investments Pty Ltd
B. Waters
Waters, James, McCormack, Solicitors, on behalf of Vet Comm. Inc.
D.L. Westlund and L.H. Stehn
R.A. White
M.J. Williams, B.G. Pennington, R. Summers
F.C. Wilson
Winter and Latimer, Solicitors, on behalf of Terri Co. Pty Ltd
Rhonda Wise, Barry Wise and John Flower
Under Thirty Yacht Association

Persons and organisations indicating interest in the outcome of the claim

A.O.G. Minerals Pty Limited
Tony Barker on behalf of users of Pioneer Beach
Sam Calder
Chamber of Mines
Darwin Marketing Services
J. Dyer
Paul Evans on behalf of Merlin Communications International Limited
C. Gray
Christopher Gray
Alfred H. Hooper
Rosemary James
S.W. Junos
J.W. Grant on behalf of the Wagait Association Inc.
Greenex Pty Ltd
Martin B. Jacob
Daisy Marjar Petherick on behalf of the Werat (Djerit) Group
Sons of Gwalia Ltd on behalf of Greenbushes Ltd
R.J. Toms
Ward Keller, Solicitors, on behalf of the Cox Peninsula Progress Association Inc.
Rhonda Wise, Graeme and Annette Laing, Sean and Mary Lawler, Arnold and Bethany Seden, Gary Giles and Karen Sands
Withnall and Everingham, Solicitors, on behalf of Westby Pty Limited

APPENDIX 4

LIST OF APPEARANCES

Counsel for the claimants before Olney J:	19 June 1989 to 30 August 1989	Jeff Sher QC and David Parsons
	30 August 1989 to 17 October1989	Ian Gray
	10 November 1989 to 8 December 1990	David Parsons and Ian Gray
	10 June 1992 to 11 June 1992	Frank Costigan QC and Anthony Young
Counsel for the claimants in relation to detriment:	7 September 1998 to 22 September 1998	Ross Howie and Robert Blowes
Instructed by:		Northern Land Council
Counsel for the **Tommy Lyons** group:	3 July 1995 to 24 July 1998	Ross Howie
	31 October 1995 (women only session)	Jessica Klingender
	31 May 1999	Dominic Christiano
	31 May 1999 to 4 June 1999	Ross Howie
Instructed by:		Northern Land Council
Counsel for the **Larrakia** group:	3 July 1995,	Amanda Cattermole
	31 October 1995 (women only session)	
	22 September 1995 to 10 October 1996	Michael Maurice QC and Robert Blowes
	11 June 1997 to 14 June 1997	Robert Blowes
	13 July 1998 to	Trevor Riley QC and Robert

	24 July 1998	Blowes
	31 May 1999 to 4 June 1999	Robert Blowes
Instructed by:		Northern Land Council
Counsel for the **Belyuen** group:	3 July 1995 to 2 November 1995	Anthony Young
	30 September 1996 to 24 July 1998	Tom Keely and Anthony Young
	31 May 1999 to 4 June 1999	Tom Keely
Instructed by:		Northern Land Council
Counsel for Tibby Quall:	10 June 1992	Kelvin Strange
	12 June 1990,	Appeared in person
	16 October 1995,	
	2 November 1995	
Counsel for the **Danggalaba** group:	2 October 1996,	David Dalrymple
	11 June 1997 to 24 July 1998,	
	31 May 1999 to 4 June 1999	
Instructed by:		Dalrymple & Associates
Counsel for the Attorney-General for the Northern Territory:	16 June 1989	James Renwick
	19 June 1989 to 17 October 1989	Vance Hughston and James Renwick
	29 June 1989	David Barrett
	10 November 1989 to 21 March 1990	Tom Pauling QC and Vance Hughston

	21 May 1990 to 22 May 1990	Richard Conti QC
	23 May 1990 to 8 December 1990	Tom Pauling QC and Vance Hughston
	10 June 1992 to 11 June 1992	Tom Pauling QC and Geoffrey McCarthy
	3 July 1995	Vance Hughston and Paul Walsh
	31 October 1995 (women only session)	Sheila Begg
	22 September 1995 to 24 July 1998	Tom Pauling QC and Vance Hughston
	7 September 1998 to 22 September 1998	Tom Pauling QC and Paul Walsh
	31 May 1999 to 4 June 1999	Tom Pauling QC and Vance Hughston
Instructed by:		Solicitor for the Northern Territory
Counsel for the Commonwealth:	23 June 1989 to 29 June 1989	Luke Woodward
	10 June 1992 to 11 June 1992	Graham Hiley QC and Stephen Ridgeway
	3 July 1995	Evan Evagorou
	22 September 1995	Jude Lee
(in addition to various other Commonwealth instrumentalities)	7 September 1998 to 15 September 1998	Graham Hiley QC
	16 September 1998	Ashley Heath
Instructed by:		Australian Government Solicitor
Counsel for Telstra Corporation Limited:	22 September 1995	Cherrie Cameron
	7 September 1998 to 15 September 1998	Graeme Hiley QC
	16 September 1998	Ashley Heath

Instructed by:		Australian Government Solicitor
Counsel for Bernard Maxwell Baumber, N.T. Fishing Industry Council, Dundee Beach Pty Ltd, Amateur Fishermen's Association of the N.T., and Darwin Trailer Boat Club:	22 September 1995, 11 June 1997	Ben O'Loughlin
	13 July 1998	Neville Henwood
(in addition to Darwin Sailing Club Inc.)	7 September 1998 to 4 June 1999	
Instructed by:		Cridlands
Counsel for the Northern Territory Land Corporation, Ross Anictomatis and Ostojic Transport Pty Ltd:	7 September 1998 to 22 September 1998	Dirk De Zwart
Instructed by:		Clayton Utz
Other appearances:		
Aboriginal Areas Protection Authority	16 June 1989	Ken Parrish
	17 October 1989	David Ritchie
Arrow Pearl Co. Pty Ltd and Bynoe Harbour Pearl Co. Pty Ltd	19 June 1989	Stephen Arrow
Bernard Maxwell Baumber	19 June 1989 to 23 June 1989, 17 October 1989, 21 May 1990 to 23 May 1990, 16 October 1995 to	Appeared in person

	2 November 1995, 30 September 1996 to 10 October 1996 17 October 1989, 21 May 1990, 10 June 1992,	Neville Henwood (in relation to detriment)
(in addition to the Darwin Trailer Boat Club)	3 July 1995	
Bynoe Harbour Progress Association	3 July 1995	Tony Barker
Bynoe Harbour Pearl Co. Pty Ltd	3 July 1995	Adam Miocevich
Darwin Aero Club Inc. and Darwin Sailing Club Inc.	23 June 1989,	Neville Henwood
(in addition to the Darwin Trailer Boat Club)	17 October 1989	
Mandorah Pty Ltd and Maddalozzo Holdings Pty Ltd	10 June 1992	Luke Mackenzie
Mandorah Pty Ltd	3 July 1995	Kevin Stephens
N.T. Fishing Industry Council	3 July 1995	Iain Smith
Counsel assisting the Aboriginal Land Commissioner (Olney J):	19 June 1989 to 11 June 1992	Terry Coulehan
Counsel assisting the Aboriginal Land Commissioner (Gray J):	3 July 1995 to 4 June 1999	Tony Neal

CONSULTANT ANTHROPOLOGIST TO THE ABORIGINAL LAND COMMISSIONER

Dr John Avery

APPENDIX 5

LIST OF WITNESSES

(In alphabetical order of surnames)

Lorraine Allison
Rona Ally
Ross Anictomatis
Dr John Timothy Avery
Donald Baban
Pauline Baban
Ada Bailey
Graham Stewart Bailey
John Bama
Julie-Ann Bama
Richard Barnes
Esther Barradjap
Jason Barradjap
Judith Barradjap
Julianne Barradjap
Marlene Barradjap
Tommy Barradjap
Bernard Maxwell Baumber
Maudie Bennett
Annabelle (Anna) Benton
Diane Bianamu
Frank Bianamu
Mary-Jane Bianamu
Michelle Bianamu
Trevor Bianamu
Justine Bigfoot
Ricky Bigfoot
Shirley Bigfoot
Betty Bilawuk (Bilawag)
Anthony Bilbil
Ian (Bigtruck) Bilbil
Kathleen Bilbil
Marjorie Bilbil
Gracie Binbin (Bianamu)
John Bianamu
Nelson Blake (Mulurriyn)
Professor Richard John Blandy
Murray Bradbury
Alice Briston
Cecilia (Cissy) Briston
Naomi Briston
Patrick Briston
Patricia Browne
Peter Browne
Robert Browne

Rodney Browne
William Browne
Mark Burrburr
Nathan Burrburr
Pamela Clarke
Sammy Cooper
Carol Costello
Kelvin Costello
Don Cubillo
Inez Cubillo
Inez Cubillo jnr
John Lawrence (Lawrie) Cubillo
Karen Cubillo
Kathleen Cubillo
Michael Cubillo
Pilar Cubillo
Russell Cubillo
Stephen Cubillo
Billy Danks
Darryl Andrew Day
Michael de Busch
Millie de Busch
Anthony Devine
Bernie Devine
Florence Devine
John Devine
Alice Djarug
Henry Djarug
Kevin Djarug
Nicholas Djarug
Patrick Djarug
Patsy-Anne Djarug
Peter Djarug
Josephine Edmunds
Rex Edmunds
Dorothea Fejo
Edward Fejo
Eric Fejo
Frank (Basho) Fejo
Jim Fejo
Jimma Fejo
Joan Fejo
Lorelle Fejo
Mirella Fejo
Richard Fejo
Rosemary Fejo (Parfitt)
Samuel (Sammy) Fejo
Wally Fejo
William (Willie) Fejo
Colin Ferguson
Colin John Fitzgerald

William Francis Flaherty
Dorothy Fox
Cyril Frith
Basil Gordon
David Gordon
John Gordon
Rex Gordon
Rosie Gordon
Simon Gordon
Thomas Gordon
Eden Robert Graham
Richard Gumbuduk
Ruby Gurruk
Andrew Henda
Elaine Henda
Teresa Henda
Tomtom Henda
Linda Hill
Trevor Colin Horman
Sharon Jude
Alexander Julius
John Karadada
Joan Kenyon
Christine King
Jessica King
Dr Graham William Miles Kirby
Betty Lane
Daniel Lane
Daryl Lane
Lorraine Lane
Gary Lang
Christopher Lee
Gary Lee
Herb Lee
Mary Lee
Nadine Lee
Roque (Rocky) Lee
Tony Lee
Agnes Lippo
Angela Lippo
Audrey Lippo
Derek Lippo
Maria Lippo
Michael Lippo
Robert Lippo
Seri Lippo
Susan Lippo
Teddy Lowe
Bobby Bigfoot Mardi
Catherine Bigfoot Mardi
David Bigfoot Mardi

John Bigfoot Mardi
Raymond Bigfoot Mardi
William Bigfoot Mardi
Professor Allan John Marett
Eric Martin
Alfred Paul (Alfie) May
Frances May
Frederick George (Fred) May
Jeffrey May
Jonathan May
Lucy May (Batcho)
Karen McLean
Joel McLennan
John McLennan
Joseph Stephen (George) McLennan
Reginald McLennan
Therese McLennan
Allyson Mills
Barbara Mills
David Mills
David Mills jnr
David Mills (from Thursday Island)
June Mills
Robert (Robbie) Mills
Weslan Mills
Kathleen Minyinma (Presley)
Dorothy Moffatt
Kitty Moffat
Caroline Moreen
David Moreen
Grace Moreen
Henry Moreen
Jeffrey Moreen
John Moreen
Patrick Moreen
Rita Moreen
Shawn Moreen
Simon Moreen
Sophia Moreen
Terry Moreen
Bruce Morgan
Glen Morgan
Marjorie Morgan
Philip Morgan
Betty Muluk
Roderick Murray
Alexander Nennel (Ninnal)
Alexander Nilco
Barry Nilco
Leslie Nilco
Robyn Nilco

Suzanne O’Neill
Donna Odegaard
Evonne Odegaard
Joe Odegaard
Maureen Ogden
Tanya Panuel
James Parfitt
Professor Elizabeth Ann Povinelli
Kitty Presley (Minyinma)
Adrian Michael Prince
Denise Quall
Diane (Didi) Quall
Kevin (Tibby) Quall
Phillip Quall
Douglas Rankin
Evonne Rankin
Josephine Rankin
Michael Rankin
Richard Rankin
Sebastian Rankin
Barbara Raymond
Desmond (Couchie) Raymond
Joseph Anthony (Joe) Raymond
Mary Raymond (Batcho)
Leslie Reid
Ruby Reid
Trevor Reid
Alan Risk
Ann Risk
William (Billy) Risk
William (Billy) Risk jnr
Keith Risk
Maggie Rivers
Rick Rivers
Rachel Roman (Costello)
Roger Roman
Susan Roman (McLean)
Dr Deborah Bird Rose
Clifford Scrubby
John Scrubby
Topsy Secretary
Alan Shepherd
Patsy Shepherd
Shirley Shepherd
Flight Lieutenant Salvatore John Sidoti
Terry John Sincock
Brendan Singh
Brian Singh
Gloria Singh
Harry Singh
Jason Singh

Johnny Singh
Josephine Singh
Lenny Singh
Lorna Singh (Tennant)
Priscilla Singh
Raelene Singh
Rex Singh
Sonia Singh
Zoe Singh
Denny Smiler
Leslie Smiler
Paddy John Smiler
Paul Smiler
Dr Peter John Sutton
Edward (Eddie) Talbot
Lorna Talbot
Barbara Tapsell
Dick Tennant
Lorna Tennant (Fejo)
Audrey Tilmouth
Ann Timber (Kunggul)
Gary Timber
Maggie Timber
Noreen Timber
Theresa Timber (Singh)
Prince of Wales
Dr Michael James Walsh
Maureen Wanganeen
Ernie Wanka
Topsy Philips (Warrawu)
Margaret Waters
Peter Ian Whelan
Lucy White
Gail Williams
Judith Williams
Keith Williams
Lorraine Williams
Natasha Williams
Phyllis Williams
Victor John Williams
Yula Williams (Batcho)
Christine Wilson
John Wilson
David Woodie
John Woodie
Joy Woodie
Judie Woodie
Winnie Woodie
Daphne Yarrowin
Linda Yarrowin
Matthew Yarrowin

Roger Yarrowin
Ruby Yarrowin
Tasman Yarrowin
Janice Susan Young
Roslyn Young

APPENDIX 6

LIST OF SITES AT OR NEAR WHICH EVIDENCE WAS TAKEN

(In the order in which they are numbered in the site register, exhibit LG2, and on the map in appendix 8)

Moedranyini (3)
Ngulbiltjik (9)
Igibidjit (14)
Ngambarrngayitj (23)
Kabarl (26)
Imabulk (31)
Gundjerra (34)
Kidjerikidjeri (35)
Buwambi (42)
Binbinya (46)
Bakamanadjing (48)
Wariyn (49)
Baramunggul/Gurraitjgurraitj (51)
Milik (52)
Bagadjat (54)
Djibung (57)
Debilipu (66)
Ladaitj (67)
Belurriya (68)
Winganyini (site 69)
Mindimindi (70)
Gurrmom (71)
Ngan.giyn (72)
Daramanggamaning (73)
Benngaling (74)
Daliribarrk (75)
Bagalg (76)
Nguranyini (77)
Bemandjeli (78)
Imandu (79)
Beydjing (81)
Imaluk (82)
Ngalwatnyini (83)
Kunggul (85)
Wanggigi (87)
Danubulugiyam (88)
Bendjiguy (89)
Bitbinbiyirrk (90)
Madpil (91)
Midjili (92)
Belyuen (95)
Madjalaba (98)
Imburr (104)
Beyelu (107)

APPENDIX 7

LIST OF EXHIBITS

Note: Exhibits marked 'R' are subject to restrictions on access and use, by direction of the Aboriginal Land Commissioner. Reference to the transcript of proceedings is necessary, to ascertain the nature of the restrictions imposed.

Exhibits NLC1-NLC68 were tendered by counsel for the claimants generally

Exhibits TLG1-TLG6 were tendered by counsel for the Tommy Lyons group

Exhibits LG1-LG34 were tendered by counsel for the Larrakia group

Exhibits BG1-BG20 were tendered by counsel for the Belyuen group

Exhibits DG1-DG13 were tendered by counsel for the Danggalaba group

Exhibits NTG1-NTG54 were tendered by counsel for the Attorney-General for the Northern Territory

Exhibit AGS1 was tendered by counsel for the Commonwealth of Australia, Telstra Corporation Limited and various Commonwealth instrumentalities.

Exhibits BMB1-BMB6 were tendered by counsel for Bernard Maxwell Baumber and his family

Exhibits CC1-CC8 were tendered by counsel for the N.T. Fishing Industry Council, Dundee Beach Pty Ltd, Amateur Fishermen's Association of the N.T., Darwin Trailer Boat Club and Darwin Sailing Club Inc.

Exhibits CU1-CU4 were tendered by counsel for the Northern Territory Land Corporation, Ross Anictomatis and Ostojic Transport Pty Ltd

Exhibits ALC1-ALC37 were tendered by counsel assisting the Aboriginal Land Commissioner

Exhibit no.		Description of exhibit
NLC1		Anthropologists' report entitled 'Kenbi Land Claim', by Dr Maria Brandl, Adrienne Haritos and Dr Michael Walsh ('Kenbi 79')
NLC2		Anthropologists' report entitled 'Ten Years On' by Dr Michael Walsh, Frank McKeown and Beth Povinelli dated April 1989
NLC3	R	Genealogies (1-52) dated April 1989
NLC3.1	R	Genealogy of Cyril Frith
NLC3.2	R	Genealogy of the McLennan family
NLC4	R	Genealogies (53-107)
NLC5	R	Personal particulars of claimants dated April 1989
NLC6		Particulars of Aboriginal persons advantaged dated April 1989

NLC7	R	Site map dated August 1989
NLC8	R	Site register dated August 1989
NLC9		Land status materials dated November 1989
NLC10	R	Anthropologist's report entitled 'Hunting and Gathering in the Kenbi (Islands) Claim Area' by Beth Povinelli dated June 1989
NLC11		Anthropolgist's report entitled 'The Ecological and Economic Use of the Cox Peninsula by Darwin Larrakia and Belyuen Aborigines' by Beth Povinelli dated June 1989
NLC12		Map showing typical paths and products hunted and gathered on the Cox Peninsula
NLC13	R	Submission on Larrakia and Wagaitj women's business in Kenbi (Islands) Claim Area by Beth Povinelli dated June 1989
NLC14		Alphabetical list of claimants dated April 1989
NLC15		Copy of letter to the Chairman of the Northern Land Council dated 23 August 1983
NLC16		Submission from Richard Barnes Koolpinyah
NLC17		Copy letter to Ian Gray, Northern Land Council dated 27 November 1989
NLC18		Statement of Michael Cubillo
NLC19	R	Album of documents and photos of Delphin Antonio Cubillo deceased
NLC20		Document entitled 'Status of Original Kenbi Claimants'
NLC21		Occupation licence 992 dated 16 November 1976
NLC22		Letter from the Department of Lands and Housing of the Northern Territory to Mrs M. Rivers dated 29 November 1988
NLC23		Statement of Judith Williams
NLC24		Statement of Gail Williams
NLC25		Statement of Sharon Jude
NLC26		Copy letter from the Northern Land Council to the Chief Minister of the Northern Territory dated 29 October 1989
NLC26.1	R	Maps attached to exhibit NLC26
NLC27		Anthropologist's report entitled 'The Wagaitj in relation to the Kenbi Land Claim Area' by Dr Michael Walsh dated 12 December 1989
NLC28	R	Genealogies dated January 1990
NLC29	R	Alphabetical list and personal particulars of claimants dated January 1990
NLC30	R	Notes on restricted evidence of male claimants by Dr Michael Walsh dated 19 November 1989
NLC30.1	R	Notes on restricted evidence of male claimants by Martyn Paxton dated 24 November 1989
NLC31	R	Submission on women's evidence by Beth Povinelli dated 7 December 1989
NLC32		Photocopy Welfare record A.P.R. No. 18092, Ruby Yarrowin/Alunga
NLC33		Paper entitled 'Women and Land Rights: Kiuk and Wagaidj Women in the Darwin Area' by Lorna Tennant, A.I.A.S., Canberra, 1983
NLC34		Book entitled 'The Kangaroo and the Porpoise' by Agnes Lippo
NLC35		Folder of documents and photos relating to the family of Victor Williams
NLC35 A	R	Statement concerning Gundal

NLC36	R	Photographs taken by Professor Elkin circa 1950
NLC37	R	(Re-labelled as exhibit NLC 35A)
NLC38		'Book of Remembrance' of the Fejo family
NLC39		Oral histories as told to Adrienne McConvell and Christine Wilson
NLC40		Anthropologist's report entitled 'Remarks on Kenbi' by Dr Michael Walsh dated 17 May 1990
NLC41	R	Report to the Sacred Sites Authority by Beth Povinelli dated 10 September 1989
NLC42	R	Anthropologist's report of Beth Povinelli dated 16 May 1990
NLC43	R	Report of Beth Povinelli dated 29 May 1990
NLC44		Curriculum vitae of Dr Michael Walsh
NLC45		Curriculum vitae of Beth Povinelli
NLC46		Notes on Kenbi Necrology by Dr Michael Walsh dated 11 June 1990
NLC47		Booklet entitled 'Ethnobotanical Notes from Belyuen, Northern Territory', by N. M. Smith and G. M. Wightman
NLC48		Statement of Beth Povinelli dated 12 June 1990
NLC49		Larrakia Genealogies dated June 1990
NLC50		Larrakia Personal Particulars dated June 1990
NLC51		Belyuen Genealogies dated June 1990
NLC52		Belyuen Personal Particulars dated June 1990
NLC53		Copy letter from the Solicitor for the Northern Territory to the Chairman of the Northern Land Council dated 20 June 1990
NLC54		Copy Dum-In-Mirrie Land Claim application dated 29 June 1978
NLC55		Copy Kenbi (Cox Peninsula) Land Claim application dated 20 March 1979
NLC56		Copy Kenbi (Cox Peninsula) (Section 12) Land Claim application dated 8 March 1990
NLC57		Northern Land Council submissions on Defence Practice Areas dated 23 August 1990
NLC58		Northern Land Council submissions on traditional ownership (with index) dated 26 August 1990
NLC59		Northern Land Council reply on behalf of claimants to Northern Territory Government final submission
NLC60		Letter dated 31 August 1998 from John Harrison, Amateur Fishermen's Association of the N.T., to Peter Pender, Northern Land Council
NLC61		Joint Operations Graphic Map of Darwin Region on a scale of 1:250000
NLC62		Aerial photograph dated 24 June 1997 with an overlay showing mosquito trapping installations
NLC63		The Darwin Rural Area Plan 1983, consisting of text and a map
NLC64		Article entitled 'Soft Science' by Professor Blandy, dated December 1985
NLC65		Document entitled 'Comments on the demographic forecasting contained in the report, "The Population Growth Prospects of the Darwin Region" by Richard Blandy and Dean Forbes', by Dr Martin Bell and Dr John Taylor
NLC66		Extracts from 'The Regional Gateway: Scenarios for the

		Potential Development of Financial, Property and Business Services in Darwin' by the Allen Consulting Group Pty Ltd, June 1994
NLC67		Report of David G. Whitney dated 30 April 1998 and curriculum vitae of Mr Whitney
NLC68		Extract from exhibit NTG43, being plan number 3C2 with rectangle drawn on it
TLG1	R	Tommy Lyons Group site register dated August 1995
TLG2		Anthropologist's report of Dr Deborah Bird Rose dated August 1995
TLG3		Article entitled 'Rights, Residence and Process in Australian Territorial Organisation' by Dr Nicolas Peterson
TLG4		Document entitled 'Historical Notes'
TLG5		Book entitled 'It Just Lies There from the Beginning' by Marjorie Bilbil
TLG6		Curriculum vitae of Dr Deborah Bird Rose
LG1	R	Site map
LG2	R	Larrakia group site register dated August 1995
LG3	R	Larrakia group personal particulars dated August 1995
LG4	R	Upper generation genealogical charts dated August 1995
LG5	R	Genealogies dated August 1995
LG6		Anthropologist's report of Dr Peter Sutton dated 23 August 1995 and amendment dated 15 October 1995
LG7		Draft dictionary and grammar of the Larrakia language
LG8	R	Statement of the Delfin Antonio Cubillo family and supplement
LG9		Folder of documents from Linda Hill
LG10		Undated newspaper clipping headlined 'Tribal Grounds Revisited'
LG11		Document entitled 'A Personal History for the Kenbi Land Claim' by Judith Linda Williams dated October 1995
LG12		Personal history of Barbara Tapsell
LG13		Photocopied compilation of photographs under the title of 'Kahlin Compound'
LG14		Statement of Eugene Patrick 'Sonny' Flynn (Cubillo) undated (received at the Northern Land Council on 11 October 1995)
LG15		Draft Larrakia Plant Identikit by Topsy Juwayning Secretary and Lorraine Juwayning Williams
LG16		Document entitled 'Sharon Jude: Supplementary Statement in Support of Kenbi Land Claim' dated 12 October 1995
LG17		Statement of Roslyn Walker and accompanying letter dated 11 October 1995
LG18		Bundle of documents relating to Gary Philip Lee
LG19		Document entitled 'Our Larrakia Story' by Edward Talbot
LG20		Undated statement of Mary Raymond
LG21		Curriculum vitae of Dr Michael Walsh
LG22		Article entitled 'Tainted Evidence: Literacy and Traditional Knowledge in an Aboriginal Land Claim' by Dr Michael Walsh
LG23		Map from the Finniss River Land Claim Report
LG24		Index to members of the Larrakia group identified as

		traditional owners
LG25		Curriculum vitae of Dr Peter Sutton
LG26		Resume of Dr Peter Sutton
LG27		Paper entitled 'Urban Aboriginal Religion, Christianity and Spiritual Connection to Country in the Kenbi Land Claim' by Dr Peter Sutton dated 8 May 1998
LG28		Extracts from 'Native Title and the Descent of Rights' by Dr Peter Sutton
LG29		Extract from the Encyclopaedia of Aboriginal Australia being an item on 'Contemporary Religion' by Dr Deborah Bird Rose
LG30		Table of evidence of the Belyuen group in relation to maintaining interests in the country other than the claim area
LG31		List of Larrakia persons who have passed away since June 1990
LG32		Extracts from Batjamalh Dictionary and Texts by Lysbeth Julie Ford
LG33		List of claimants in attendance at the Kenbi Land Claim hearing in Darwin 13-24 July 1998
LG34		List of claimants attending hearing during week beginning 31 May 1999
BG1		Submission on behalf of the Belyuen community by Dr Beth Povinelli dated 21 September 1995
BG2		Submission of Dr Beth Povinelli dated 23 October 1995
BG3		Document entitled 'Death Rite for Mabalang' being transcript of ABC Radio program, 'Australian Walkabout Show', 1948
BG4		Transcript of proceedings in the Aboriginal Land Rights Commission on 12 September 1973
BG5		Letter from R. Hempel to the Secretary of the Northern Land Council dated 29 July 1975
BG6		Minutes of meeting held at Delissaville on 17 December 1975
BG7		Letter from Margaret Rivers to the Northern Land Council dated October 1976
BG8		Anthropologist's report of Dr Beth Povinelli dated August 1996
BG9		Belyuen group personal particulars of claimants dated August 1996
BG10		Belyuen group list of claimants dated August 1996
BG11	R	Belyuen group site register dated August 1996
BG12	R	Belyuen group genealogies dated August 1996
BG13		Draft report entitled 'Belyuen – Report on the availability of serviced land' dated June 1996
BG14		Curriculum vitae of Professor Elizabeth Anne Povinelli
BG15		Paper entitled 'Nirawat, or the sharing of names in the Wagait tribe, Northern Australia' by A.P. Elkin
BG16		Anthropologist's report by Professor Beth Povinelli dated 1 May 1998
BG17		Curriculum vitae of Professor Allan John Marett
BG18		Report entitled 'The Ethnomusicology of the Belyuen' by Allan Marett, Linda Barwick and Lysbeth Ford dated

	January 1998
BG19	Facsimile transmission from Lysbeth Ford dated 22 July 1998
BG20	Document entitled 'Supplement to the Enthnomusicology of the Belyuen' by Allan Marett and Linda Barwick dated May 1998
DG1	Anthropologist's report by Robert Graham dated April 1997
DG2	Genealogies of the Danggalaba group dated April 1997
DG3	Amended genealogies prepared by Robert Graham dated 12 June 1997
DG4	Personal Particulars of the Danggalaba group dated April 1997
DG5	Copies of documents referred to in exhibit DG 1
DG6	R Document entitled 'The Old Man dreaming: Nungalinyi and Majamarraba' by Mark Harvey
DG7	R Video entitled 'Interview with Big Bill Neidjie and Nelson Blake'
DG8	Document entitled 'A report on sites of significance in the Larrakeyah Barracks – Emery Point area, Darwin' by Dr Michael Walsh dated May 1981
DG9	Report to Aboriginal Areas Protection Authority by Professor Beth Povinelli dated 31 July 1990
DG10	Extracts from registrar's records of the Wadjigan Aboriginal Corporation
DG11	Document entitled 'Songs of the Northern Territory: Companion booklet for the set of five long-playing discs (or cassettes)' by Alice M. Moyle
DG12	Report entitled 'Aboriginal use of natural resources in the Darwin Region – past and present' by Robin Hodgson dated July 1995, revised October 1997
DG13	Extract from A. Capell, 'The Laragia Language', Papers in Australian Linguistics No. 16
NTG1	Anthropologist's report entitled 'Supplement to "Ten Years On"' by Dr Michael Walsh dated 21 June 1989
NTG2	Copy letter from the Secretary, Department of Law to the Northern Land Council dated 10 November1989
NTG3	Copy letter from the North Australian Aboriginal Legal Aid Service to the Secretary, Land Rights Commission dated 19 May 1975
NTG4	Statement of Graham Stewart Bailey dated 12 April 1990
NTG5	Darwin Regional Land Use Structure Plan 1990
NTG6	Cox Peninsula Land Use Structure Plan 1990
NTG7	Gunn Point Peninsula Land Use Structure Plan 1990
NTG8	Litchfield Land Use Structure Plan 1990
NTG9	Finniss Land Use Structure Plan 1990
NTG10	Mandorah Land Use Concept Plan 1990
NTG11	Murrumujuk Land Use Concept Plan 1990
NTG12	Statement of Adrian Michael Prince dated 3 May 1990
NTG13.1	Report by Pak Poy Lange Pty Ltd entitled 'Preliminary Traffic Model Greater Darwin (1 Million Population)' dated November 1989

NTG13.2	Report by Pak Poy Lange Pty Ltd entitled 'Transport System Evaluation of Further Development Strategies for Darwin at the 1 Million Population Level' dated April 1990
NTG14	Northern Territory submission on Darwin regional planning dated 12 April 1990
NTG15	Photocopy extract from Commonwealth of Australia Gazette S289 dated 25 July 1985
NTG16	Photocopy extract from Commonwealth of Australia Gazette GN16 dated 19 August 1987
NTG17	Photocopy extract from Land Rights News No. 12 dated June 1977
NTG18	Photocopy report of Cabrini Pilakui
NTG19	Photocopy of field report by Bill Ivory dated 30 May 1977
NTG20	Copy letter from Maria Brandl to the President, Belyuen Council dated 21 August 1979
NTG21	Photocopy letter from Maria Brandl to Lorna Tennant dated 14 February 1980
NTG22	Photocopy letter from Maria Brandl to the President, Belyuen Council dated 14 February 1980
NTG23	Northern Territory submission on planning and traffic dated 12 July 1990
NTG24	Northern Territory submission on traditional ownership dated 2 November 1990
NTG25	Northern Territory submission on the status of Section 12, Hundred of Bray and the Defence Practice Area dated 8 June 1990
NTG26	Settlement offer and map
NTG27	Copy of application in the Beagle Gulf Area Land Claim No. 191 dated 27 May 1997
NTG28	Copy of application in the Duwun Land Claim 1, 2 and 3 No. 234 dated 4 June 1997
NTG29	Document entitled 'Notes on some aspects of traditional Aboriginal land takeovers marked by conflict' by Dr Peter Sutton dated September 1980
NTG30	Para. 157 from the first Woodward report and para. 290 from the second Woodward report
NTG31	Statement of Darryl Andrew Day dated 7 September 1998 and attachment, and supplementary statement of Darryl Andrew Day dated 14 September 1998 and attachment
NTG32	Statement of Trevor Colin Horman dated 3 September 1998 and attachments
NTG33	Statement of Ernie Wanka dated 12 August 1998 and attachments
NTG34	Statement of Gordon (Gus) Withnall dated 4 September 1998
NTG35	Collection of photographs of roads and tracks
NTG36	Statement of Dr Niranjan Rao Dasari dated 10 September 1998
NTG37	Statement of Dr Graham Kirby dated 10 September 1998 and attachments
NTG38	Statement of David Rolland dated 9 September 1998 and

	attachments
NTG39	Land Suitability Comparison Map dated May 1968
NTG40	Folder of 34 aerial photographs taken in and around Darwin
NTG41	Statement of Peter Ian Whelan dated 14 September 1998 and attachment
NTG42	Bundle of 23 graphs of insect numbers taken from biting insect traps
NTG43	Two volume document entitled 'Northern Territory Government Submission with regard to the Kenbi Land Claim: Potential Detriment and Effects on Land Use in the Darwin Region'
NTG44	Map of portion of Cox Peninsula on a scale of 1:125000
NTG45	Litchfield Area Plan 1992 as at 20 August 1998
NTG46	Litchfield District Centres Land Use Concept Plan 1992
NTG47	Central Darwin Planning Concepts and Development Opportunities, dated October 1996
NTG48	Central Darwin Land Use Objectives, dated October 1996
NTG49	Curriculum vitae of Professor Richard Blandy
NTG50	Report entitled 'The Population Growth Prospects of the Darwin Region' by Richard Blandy and Dean Forbes
NTG51	Australian Bureau of Statistics Population Projections 1997 to 2051
NTG52	Australian Bureau of Statistics, 1996 Census of Population and Housing – Northern Territory
NTG53	The Report of the Committee on Darwin
NTG54	Curriculum vitae of Graham Stewart Bailey dated September 1998
AGS1	Folder of documents tendered on behalf of the Commonwealth of Australia and Telstra Corporation Limited, with additions: letter dated 8 September 1998 from John Kington with 'Map 1' attached, supplementary statement of Michael Bangay dated 7 September 1998, licence agreement dated 8 March 1994 between Australian Maritime Safety Authority and Northern Territory University, and map of Radio Australia Cox Peninsula transmitter site
BMB1	Statement of Bernard Maxwell Baumber dated 21 May 1990
BMB2	Letter from Cridlands to the associate to the Aboriginal Land Commissioner dated 13 November 1990
BMB3	Seventeen photographs of the Baumber family facilities on Dum-In-Mirrie Island
BMB4	Statement of Bernard Max Baumber dated 8 September 1998 and attachments
BMB5	Occupation licence No. 937 dated 9 May 1974
BMB6	Statement of William Francis Flaherty dated 11 September 1998 and attachments
CC1	Extracts from report entitled 'Fishcount: A Survey of Recreational Fishing in the N.T.' by Anne P. M. Coleman dated August 1998
CC2	Statement of Janice Susan Young dated 8 September 1998
CC3	Statement of Terry John Sincock dated 7 September 1998

CC4		Statement of Robert Barry Stach dated 8 September 1998
CC5		Statement of Alex Julius dated 9 September 1998 and attachments
CC6		Statement of Phillip Frederick Cutting dated 7 September 1998
CC7		Statement of John Frederick Munro dated 7 September 1998
CC8		Statement of Paul Meddings dated 9 September 1998
CU1		Statement of Tomo Ostojic dated 3 September 1998 and attachments
CU2		Statement of Donald Frederick Darben dated 31 August 1998 and attachments
CU3		Statement of Ross Anictomatis dated 2 September 1998 and attachments
CU4		Letter from Clayton Utz to the office of the Aboriginal Land Commissioner dated 19 October 1998
ALC1		Photocopy letter re Dum-In-Mirrie Island dated 1 August 1977
ALC2		Statement of Regamen Daisy Majar dated 1 March 1990
ALC3		Genealogy of the Danggalaba Clan
ALC4	R	Site map dated April 1989
ALC5	R	Genealogies dated September 1989
ALC6		Photocopy letter from the associate to Mr Justice Ward to the North Australian Aboriginal Legal Aid Service dated 20 May 1975
ALC7		Bundle of documents produced by Colin John Fitzgerald
ALC8		File of notices of intention to be heard that were before Justice Olney
ALC9		Bundle of documents relating to Vet Comm. Inc.
ALC10		Letter from A. F. Haynes and C. Haynes dated 22 May 1995
ALC11		Letter from Rhonda Wise, Barry Wise and John Flower dated 22 May 1995
ALC12		Letter from Allan Jones and Rhonda Jones dated 24 May 1995
ALC13		Three letters from M. J. Williams, R. Summers and B. G. Pennington dated 25 May 1995, 25 August 1996 and 18 May 1997
ALC14		Letter from R. J. Toms dated 25 May 1995
ALC15		Letter from Michael Lo and Roberta Lo dated 27 May 1995
ALC16		Letter from Gunther Lackner and Fredrick Wilson dated 28 May 1995
ALC17		Letter from L. I. Clark and B. Clark dated 29 May 1995
ALC18		Letter from Dale Scharf dated 29 May 1995
ALC19		Letter from John Day and Heather Day dated 29 May 1995
ALC20		Letters from L. H. Stehn and D. Westlund dated 1 June 1995 and 9 May 1997 with attachment letter dated 16 January 1990
ALC21		Letter from Tony Barker dated 7 June 1995 with attachment
ALC22		Letter from Rosemary F. James dated 16 June 1995, with reply dated 22 June 1995, and letter from the office of the Aboriginal Land Commissioner to the Solicitor for the Northern Territory dated 21 June 1995

ALC23	Letter from Geoffrey Tom Cowie dated 22 June 1995
ALC24	Letters from Kim A. Male, Managing Director, Toomebridge Pty Ltd dated 2 June 1995 and 5 September 1996
ALC25	Letter from Darryl Grey, President, Under Thirty Yacht Association dated 11 September 1995
ALC26	Letter from Adam Miocevich, Managing Director, Bynoe Harbour Pearl Co. Pty Ltd dated 15 September 1995
ALC27	Letter from Graham Chrisp, Director, Corporate Developments Pty Ltd dated 15 September 1995 and attachments
ALC28	Letter from Graham Chrisp, Director, Softwood Plantations Pty Ltd dated 23 August 1996
ALC29	Letter from J. Dyer dated 27 August 1996
ALC30	Letter headed ‘Tower Beach, Fishing “Donga 14”’, signed by Rhonda Wise, dated 10 February 1997
ALC31	Letter from R. McClelland dated 12 May 1997
ALC32	Undated letter from C. Gray received 2 June 1997
ALC33	Undated letter from Neville Lavers and Noel Fairless received 2 June 1997
ALC34	Letter from Ward Keller on behalf of Mandorah Pty Ltd and Angelo Maddalozzo dated 15 September 1995 and attachments
ALC35	Letter from Ward Keller on behalf of Mallam Investments Pty Ltd dated 15 September 1995
ALC36	Curriculum vitae of Dr John Avery
ALC37	Anthropologist’s report of Dr John Avery dated April 1999

ACKNOWLEDGEMENTS

A number of people have made vital contributions to the conduct of my inquiry into this traditional land claim and to the preparation of this report.

My secretary/personal assistant, Carol Davies, administered my chambers during my long absences at various stages of the hearing. She typed most of the report, from tapes of my dictation, with amazing accuracy and promptness. Her painstaking checking of sources and tireless editing made an enormous contribution to a task so beset by detail. She was also responsible for the format and the layout.

The organisation and logistics for the hearings were the task of the Executive Officer to the Aboriginal Land Commissioner, Robert Bird. His untiring efforts ensured that the hearings were conducted efficiently, and in as much comfort as was possible, often in very difficult circumstances. Everything he did was done with his usual cheerfulness.

Counsel who assisted me, Tony Neal, and my consultant anthropologist, Dr John Avery, not only gave me the benefit of their professional expertise. Their good humour also helped lighten the burden of travelling over rough terrain and sitting in the open air, often in extreme heat and humidity.

Graham and Irene Donges of Transcript Australia, ably assisted by Suzanne Balmer, produced a near-perfect transcript of the evidence given on behalf of the claimants. Again, this feat was performed in conditions that were far from ideal.

During my involvement in this land claim, six people have served in turn as my associate: Robin Sproule, Sean Sexton, Susie Brown, Zoe Ellerman, Murray Watt and Stephen Rebikoff. Each has played a significant role in the conduct of the inquiry or the preparation of this report.

My thanks go to all of these people.

PETER R A GRAY
December 2000

WARNING

This report contains the names of Aboriginal people who are deceased. Speaking aloud the name of a deceased Aboriginal person may cause offence and distress to some Aboriginal people.