

FRED FOGARTY - The forgotten hero of the land rights struggle.

***By Dr Bill Day
Darwin
2011***



Above: Fred Fogarty in 1979 at his home hidden by the mangroves on the Kulaluk lease at the end of Fitzer Drive. Fred built the house in 1975, entirely from material salvaged from the nearby Ludmilla dump. The house was demolished by the leaseholders soon after Fred's sudden death on 31st March, 1985. (Photo by Adrienne McConvell [nee Haritos])

Kululuk Fred is so angry about big canal plan



Kululuk spokesman

● **FRED FOGARTY . . . won't take Redco development plan lying down.**

FRED FOGARTY is angry about plans to use part of Kululuk for a canal housing estate.

Mr Fogarty who was a leader in the fight to win Aboriginal control over the area, says there has been no agreement to sell the land to the developers, Redco.

"The land isn't for sale," he said.

"We didn't fight 10 years to get it just so we could sell it.

"The people Redco have been talking to haven't got anything to do with it — they live up the other end.

"This is our area and nobody's talked to us about it."

When announcing its plans for the \$30 million East Haven development, Redco said it had consulted representatives of the Gwalwa Daraniki Association, which holds the Kululuk lease.

But Mr Fogarty said that under its constitution, the association should have discussed the proposal with Kululuk residents.

"We didn't know anything about it until we read it in *The Star*," he said.

The area sought by Redco was a valuable source of food and recreation for about 40 residents and more people from Bagot.

"We got this land on a needs basis, and we thought we were going to be able to live our own lives in peace now," he said.

"But this has really stunned the people — they're not going to take it lying down."

The Star, Saturday, March 28, 1981 · 3

Fred Fogarty: the forgotten hero of the land rights struggle.

by
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Darwin, the capital of the Northern Territory of Australia, is a city of high rise apartments, busy commuter traffic, military installations and beachside resorts set on an expansive harbor fringed by pastel cliffs and mangrove forests. Within this city obsessed with expansion lies an incongruous 301 hectare lease of undeveloped bushland where the native jungle fowl roam undisturbed and Indigenous picnickers roast shellfish on the coals of their open fires, as their ancestors have done for tens of thousands of years. Meanwhile, few commuters who drive daily along the busy Dick Ward Drive intersecting the lease are aware how it came to be that in 1979 a Northern Territory Government seemingly hostile to Aboriginal land rights returned the land known as Kulaluk to the traditional owners, the Larrakia people. Nor would most of the land users know that on 31st March 1985, deep in this urban forest, the naked body of an Aboriginal man was found on a muddy track. His name was Fred Fogarty.

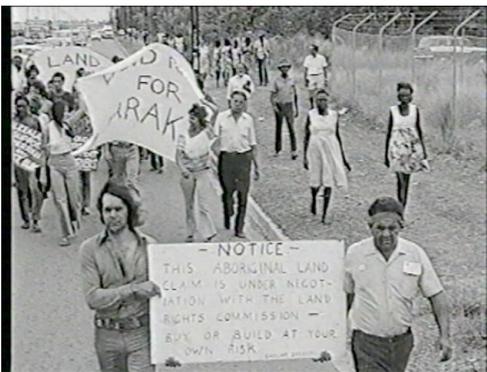
Fred Fogarty was born in the small Aboriginal community of Purga in Queensland on 14th April, 1931. With a naturally hefty build, he became a talented boxer, further strengthening his muscular frame as an agricultural worker and builder's laborer. Unlike his relatives in the Fogarty family who had largely assimilated to avoid the restrictions of the notoriously racial 'Act' that controlled Aboriginal lives in Queensland, Fred actively sought to confirm his identity as an Aboriginal person. At the age of forty, perhaps seeking a new purpose in life, Fred travelled to the northern capital of Darwin at a time when the city was beginning the rapid expansion that has continued into the twenty-first century.

In 1971 new militancy was growing amongst Indigenous people in Darwin as their camps were pushed aside by the rapid spread of suburban housing estates to accommodate people from the southern states. Giving voice to the rising demands for land rights, an Aboriginal rights newsletter titled *Bunji* was being distributed in hotels and in the urban bushland camps where small groups of Aborigines lived under sheets of rusty corrugated iron. After reading the February, 1972, issue of the newsletter Fred attended a meeting at the Larrakia camp behind the Drive-in cinema in the northern suburbs. As though he had at last found his vocation, from that moment Fred added his intellect and strength to the coalition of town campers known as the Gwalwa Daraniki Movement (see Day 1994; Buchanan 1974).

In August 1973 it was announced in *Bunji* that Fred had been elected president of the incorporated Gwalwa Daraniki Association, which was then benefiting from the policies of the new federal Labor government under Prime Minister Gough Whitlam. The actions of this determined group of fringe dwellers culminated in the firebombing of a surveyor's truck in 1973 and Fred's eventual incarceration in Darwin's notorious Fannie Bay prison. But not for long. On Christmas Eve in 1974, the raging winds of Cyclone Tracy swept over the town, reducing buildings to ruins and setting Fred free from his prison cell.

To strengthen Aboriginal claims to Kulaluk and other camping areas, in the following months after his release, Fred used his building skills to construct huts on vacant Crown land at One Mile Dam in Stuart Park, Knuckeyes Lagoon in Berrimah and Kulaluk in Coconut Grove. By 1975 these campsites had all but been promised to the Aboriginal residents by the Interim Aboriginal Land Commissioner appointed by a sympathetic Labor government. After the advent of the Whitlam government in Canberra in December 1972, the land rights struggle had gained momentum until the Aboriginal Land Rights Commissioner Mr. Justice Woodward visited Kulaluk to hear the Larrakia grievances on 2nd June, 1973, followed by a visit from Gordon Bryant, the federal Minister for Aboriginal Affairs.

By 1973 the Kulaluk land claim was being threatened by an encroaching subdivision. In defence of their land, after the meeting with Woodward the Kulaluk residents nailed a sign to a tree on the subdivision stating: 'Aboriginal land claim - Under negotiation with the Land Rights Commission. Buy or build at your own risk.' A month later Fred was attending a national conference of land rights activists at Darwin's Bagot Aboriginal Reserve when builders ripped down the hand painted sign on the Ostermann Street subdivision and warned the Aborigines at the Kulaluk camp against attempting to replace it.



Left: Fred Fogarty on the right leads delegates from the Bagot Conference in a march to Ostermann Street to nail back the sign warning developers of the Kulaluk land claim (ABC TV). Right: Fred (red head band and white T shirt) chairs the meeting between Judge Woodward (with tie) and Aboriginal campers at Kulaluk on 2nd June 1973.

The next day, after Fred took the damaged sign to a national conference on land rights being held at the Bagot Community in Darwin, the delegates resolved to support the besieged campers by marching to Ostermann Street and re-erecting the sign. After blocking the traffic on busy Bagot Road, with Fred in the lead the delegates walked in a chanting procession two kilometers to Coconut Grove, where they replaced the sign as the media recorded the event (see *NT News*, June 15, 1973). However, on July 5th surveyors began pegging out extensions to Ostermann Street on the land claimed by the Larrakia at Kulaluk. The Aborigines living at the Kulaluk camp then pulled out the pegs and police were called. Work was halted until the surveyors returned as expected on July 6th. This time the Kulaluk people were better prepared and marched out to confront the survey team in single file, led by Mary Kunyi carrying the Aboriginal flag.¹ At the rear, Fred was wearing overalls and a World War II tin helmet with the words “Look Out” painted across its crown. A bag of pre-prepared Molotov petrol bombs was slung over his shoulder. After throwing the petrol bombs into the surveyor’s truck, Fred defended himself from two burly policemen by swinging dog chains in each arm. The newspaper photographer who was on the scene as the result of an earlier telephone call photographed Fred’s arrest. Next day the incident gained national publicity for the Kulaluk campaign.² After a series of court appearances and a jury trial in the Darwin Supreme Court, Fred was sentenced to 12 months in prison.

A timeline in the July 1973 issue of *Bunji* listed the events before and after the firebombing of the surveyor’s truck. The timeline dated back to 1971 and included the confrontation on 10th June when subdividers pulled down the sign erected by the residents of Kulaluk and the June 14th protest by conference delegates. The subsequent events included:

5th July – ‘The Battle of Allamanda Gardens Estate’. All the Kulaluk people stopped surveyors who were marking a road down to the beach. The police could do nothing. At Kulaluk the people worried, ‘Will they come back tomorrow?’

6th July – The surveyors came back again. The Gwalwa Daraniki defended their land as their ancestors had done. A truck caught fire. David Daniels, Bob Secretary and Fred Fogarty were arrested.

¹ Years later, as a pensioner in the Daly River Mission, Mary became better known as a famous artist.

² The Aboriginal author Kevin Gilbert refers to the firebombing in the chapter ‘Pub Talk’ in his book, *Living Black* (Gilbert 1977:221). A man named ‘Kenny’ is quoted uncritically: ‘Fred Fogarty went about it the wrong way. Should’ve used the media. Voice your opinion to the public. Get a petition.’ In fact, Fred had actively been involved in the printing and distribution of the Aboriginal newsletter *Bunji* in Darwin. The 1000-signature Larrakia petition to the Queen can be viewed on the National Australian Archives web site.

8th July – Fred Fogarty, Vice President of the Gwalwa Daraniki, flew to Surfers Paradise.

9th July – Brother Fred talked to Gordon Bryant, Senator Murphy and Kep Enderby.

10th July – Bob Secretary was convicted of ‘disorderly behaviour’ at Ostermann Street, Coconut Grove (Kulaluk) on July 6th [1973].

‘Those men shouldn’t have been there’, he told the magistrate.

‘You know you can’t take the law into your own hands,’ the magistrate growled. Bob was wearing his red headband.

On this same day, Fred was talking to the Prime Minister, Mr Whitlam, ‘If you have been 104 years without your land, a few more years won’t hurt,’ the Prime Minister told Fred.

‘By that time there will be nothing left,’ said Fred Fogarty.

13th July – Fred spoke at a big meeting at the Sydney University. He collected seventy-five dollars for the land rights struggle. We have many friends in the south, he reported to the Gwalwa Daraniki. Our Black brother from Africa [Zimbabwe], Edison Zvobgo, paid Fred’s fares.

19th July – David Daniels was convicted and discharged on a drunk charge of July 6th. He had pleaded not guilty.

The newsletter added that ‘Fred Fogarty has finished another house, for the Wet. We do not want to see Fred prosecuted for defending his land. He has been told to go to court again in September. The subdividers should be prosecuted, not our people. But so many of our people have died for land rights that we can never give up.’

The story of Fred’s trial was recorded in the newsletter *Bunji*. Announcing Fred Fogarty’s court appearance on December 3rd, *Bunji* (November 1973) commented, ‘Since Captain Cook hundreds of our people have stood in court for defending their land. (Thousands were shot in the bush). The court case was described as ‘part of the long and wonderful history of the struggle of the Aboriginal people’. In the same edition, *Bunji* featured an article headed ‘Fred at the Embassy’. The story continued: ‘For the last ten days Fred has been helping at the Aboriginal Embassy in Canberra, *Bunji* asked him to write something about it. This is Fred’s story:’

I get there night time, plenty cold grass, like ice. I stay in tent on lawn, wish I had possum fur coat like old times. Big mobs of people come talk about land rights. Lot of whitefellas in big cement building over the road. Not much that mob. Too much noise. Drunk plenty. Fight plenty. No good that mob. Even white boss Whitlam say “It’s what they get in their guts that rooted them.”

Perhaps whiter boss from New Zealand better. He send bloke over to tent tell us, “Come to New Zealand , talk to Maori.” We say Australia bugger all for people like we. We see, some time.

Bunji concluded:

Fred told us that the southern people are very interested in his case and they are going to help us in every way (*Bunji*, November 1973).

Fred’s first appearance in the Supreme Court was reported in *Bunji* in the December 1973 edition under the heading, ‘Let the Courts be filled’. The leading article continued:

The day before Fred Fogarty went to court, the Gwalwa Daraniki put up big posters all over Darwin. Even on the courthouse doors. Fred is charged with assault occasioning actual bodily harm and malicious damage to a truck with persons unknown. This was on July 6th after the Kulaluk people chased off the surveyors.

First the court picked a jury. It was not an Aboriginal jury. Frank Galbally QC, speaking for Fred, wanted Mr McHenry for a witness. Mr McHenry is the Director of ‘Aboriginal Affairs’. He also wanted Gordon Bryant. These men had spoken to Fred a few days before the firebombs.

Mr McHenry was on holidays ‘for a long time’, so the court was put off until late February.

Let the courts be filled with black brothers like Fred Fogarty and Kevin Gilbert! Their court cases will become part of our wonderful history, like Tuckiar, Nemarluk and Namatjira.

In February 1974, Fred appeared in the Supreme Court wearing his red head band. Under the heading, ‘Withdraw All Charges’, the newsletter *Bunji* reported:

Thirty black brothers and sisters sat outside the court house waiting for the trial of Fred Fogarty on February 18th. Inside the court Fred was wearing his red head band. Many times he told us – ‘I am happy to go to jail for my people.’

The trial of Fred Fogarty was all over in three minutes. It was adjourned indefinitely (for ever?). The government was afraid to take the people of Kulaluk to court. All our friends in Australia must now cry out, 'Withdraw all charges against Fred Fogarty now!'

Under the heading, 'Fred Fogarty, Aboriginal Ambassador', *Bunji* (March-April 1974) published a letter from Fred who was once more camped at the Aboriginal Embassy on the lawns outside federal parliament. Fred wrote:

I just had three days off and boy do I feel good. I did have a few visitors but as it turned out they were well wishers, not silly pricks wanting to know why we are here like the couple of blokes who wanted to know why we didn't send submarines to sink Captain Cook.

The Nazis annoy me most and there are a lot of Nazis around – men and women and children. Now I only see people who need to be told the plight of the Abo and that is just what I am doing. The tourists buy anything. They even tried to buy my postcode book if I would stamp it...

Fred returned from the Aboriginal Embassy in Canberra, keen to continue his message about land rights. *Bunji* (June-July 1974) reported that he 'wanted to talk with anyone interested and hand out booklets and papers about the Tribes. The Darwin City Council agreed we would have an information table every Saturday in Raintree Park.' However, Fred still had to fight accusations about his identity. A bureaucrat in Canberra had written to the Aboriginal Legal Aid Service in Darwin questioning whether Fred was eligible to receive legal aid if he was not an Aboriginal person (*Bunji* June-July 1974).

The October, 1974, edition of *Bunji* published an extract from one of Fred's letters from Fannie Bay Gaol. By October he had been in jail for two months and was due for release in March the next year. Fred wrote in his usual ironical style:

Being in jail is proving to be a great experience. I predict that in the distant future Aborigines will be treated equal to criminals. That will be a day to look forward to. From that position, with a bit of coaching we will than elevate to the slums – but not in my time...

The pictures over the weekend were beauties again – ‘Where Eagles Dare’. It started slow then the action really warmed up. Clint Eastwood for America and Richard Burton for England wiped out the whole German race. Dead whites everywhere. Burton suffered a corn on his trigger finger and Eastwood a scratch on his hand.

I was going to ask about a course in education here in the hope that I may become as clever as the whiteman but the prisoners here tell me that it takes months to get anything like that. So I borrowed a book, Guinness Book of World Records. It told me a bit about the Atom Bomb which is out of style. Then about the hydrogen, also out of fashion. The in thing now is the N Bomb. According to this educational book, if anyone lets this little beauty go the only way to live is deep inside the ground for five years (I wonder if this book can be right as it is a 1970 edition).

Oh well, cheerio,

Fred.

By December, 1974, Fred was making himself useful around the prison. His letter to *Bunji* gave an ominous warning of the approaching cyclone season (*Bunji*, November-December 1974):

Once again I wish to thank my friends who have sent more mail in the past month than in the previous ones.

White blokes can’t wear jail at all; whatever that is taught to them when they are young sure plays havoc on them when they come here. On the other hand Aborigines don’t give a hoot as we are doing the only thing left for us to do – surviving.

The cyclone is still blowing and the fence is still standing. Must be the rain swells the timber up and the nails tighten. It is different when I am painting on a clear day – I attempt to tighten a nail and six jump out.

Jail doesn’t look like this chicken coop. This bird wire and rusty tin set up should have been bulldozed years ago and a great big monstrosity with all the elements of feat in it erected.

Yours,

Fred Fogarty.

After Cyclone Tracy destroyed the prison on Christmas Day, 1974, many prisoners were released, and Fred set up camp on the Ludmilla section of the Kulaluk land claim where the ruins of Darwin were being dumped as landfill. On an island of high ground hidden by mangroves, Fred and his wife, Violet Adams, built a sturdy house to stand as an example of Fred's belief in Indigenous self-determination and self-reliance. I doubt if Fred ever registered for unemployment benefits, preferring to support himself in a regular job at a steel works in the industrial suburb of Winnellie.

Four years later, in 1979, the land that Fred had defended from land speculators was returned to the traditional owners of Darwin. Following this victory for land rights, Fred's house became a place of pilgrimage for black and white followers of his ideals until the year he died. One notable visitor was the author Xavier Herbert. The journalist and correspondent for *The Times*, Stewart Harris, also wrote of fondly of his experience staying with Fred and Violet (Harris 1991:26-27). By 2011, in Darwin Fred's only memorial is the unique urban wilderness that he saved for his people that is once again under threat.³

The material to build the house was all salvaged from the Ludmilla dump, where Minmarama Village was later built. Fred had a wide selection of as-new fixtures, after damaged homes were scaped into trucks after Cyclone Tracy and dumped into the Ludmilla swamps. On high tides Fred floated building materials across to the high ground where he built his home. By tapping into a forgotten water main, he laid piping at his own expense to carry scheme water hundreds of metres to showers, flushing toilets and taps that were made available to thirsty fishing and hunting parties. Residents from Bagot Community and many other visitors hold memories of pleasant hours spent yarning in the breeze blowing across the shady verandah in scenes similar to those captured by Adrienne Haritos during a visit with Cheryl Buchanan in 1979.⁴

After his release from prison, Fred's identity was questioned by representatives of at least two Aboriginal organisations. In May, 1975, the newsletter *Bunji* reported:

Fred was chosen by the Kulaluk people to go to the meeting of the Northern Land Council at Port Keats on 25th and 26th of March.

³ See Day 2010.

⁴ See cover photograph. The foundations of the verandah can still be seen at the desolate site of Fred's house.

‘You are not an Aborigine,’ said Mr Wilders in the office, ‘You cannot go to the meeting to speak for Kulaluk.’

Remember that Aboriginal Affairs tried to stop Fred’s Legal Aid [because he was not an Aborigine]. ‘I do not know what they will try next,’ said Fred. ‘I am an Aborigine.’

The accusations infuriated Fred, who returned to Queensland to acquire a copy of his birth certificate and interview relatives. As a result *Bunji*, May 1975, included a letter from a relative of Fred Fogarty’s in Queensland:

I knew Fred’s mother and father. I went to school with his mother. Her maiden name was Alice Ruse. We grew up together. They lived next door in Purga Mission Settlement. Fred Fogarty’s father, he lived in the Boy’s Home at Purga Mission. We all went to school together. I have a photo to show that we went to school at Purga. Our teacher was a lady from Ipswich named Miss Wooley. So Mr Wilders and the secret police can check on what I am saying. Fred, like myself, is an Aborigine.

Les Davidson,
8825 Boonatt Road,
Churchill, Queensland.



Above: Fred Fogarty (right) scatters tobacco, tea, sugar and beads across a map of Emery Point at the Bagot Meeting in 1975. Bernie Kilgariff is on the left. Vern O’Brien and Peter Unia in the background (Photo by Oliver Strewe).

There are many stories about Fred. One involves a plan to build the new NT Parliament House on Emery Point after Cyclone Tracy devastated Darwin. The only problem was a well-advanced Aboriginal land claim to a sacred site on the point, known to the Larrakia people as Goondal. In an attempt to resolve this conflict of interest, the Speaker of the House, Bernie Kilgariff, organised a meeting of stakeholders under a mango tree at the Bagot Community. On the day of the meeting Fred waded along the track through the mangroves to Bagot carrying a mysterious suitcase. When Fred arrived, Bernie was addressing an attentive crowd of concerned Aboriginal people, including the residents from the Kulaluk camp. A large map of Emery Point was spread on a table with a model of the proposed building being moved tentatively across the map. ‘Will it be alright if we build Parliament House here?’ Bernie asked the respectful audience. Interrupting the polite silence, Fred suddenly flung packets of tea, sugar, flour and tobacco across the table with a dramatic flourish. ‘You took our land for tea and sugar, now take them back and we will keep our land!’ shouted Fred. The spell was broken. In the chaos that followed, Bernie packed up his map and nothing more was ever said about the plan to build Parliament House on Emery Point.

A chapter in the book *True Stories of the Top End* (Ken White 2005) is titled ‘Fred Fogarty and his land claim’ (pp. 84-90). However, there are a number of inaccuracies in White’s report. For example, Fogarty was not the only Aboriginal person charged after the firebombing incident. Also, White describes Fogarty as ‘a person of limited intellect [who] was being used to foment [land] claims by well-known Darwin white activists’ (p. 86). On the contrary, Fred was highly intelligent and well read. I remember after I lent Fred a thick book on the Maori wars, he returned to my house early the next day to eagerly discuss the history of the Maori land rights struggle. He had read the book overnight by lamplight. Similarly, there were many well-thumbed biographies, reports and histories on Fred’s bookshelves. We had many debates of the worth of Senator Neville Bonner, the works of Mao Tse Tung and world affairs in general.

Stewart Harris, who befriended Fred at the second Aboriginal Embassy in Canberra in 1974, described Fred as ‘opinionated and stubborn’ (Harris 1991:1) and ‘a decisive independent character’ (Harris 1991:13). On the day when the Woodward Report on Aboriginal land rights was released, Harris took a copy of the report to Fred at the Aboriginal Embassy, where he was awaiting his trial in the Northern Territory Supreme Court. Harris says that his diary continues:

It was dark and I had a torch. I found the place in the report about Kulaluk ... and I read the passage out to him ... because I didn't know if Fred could read well enough for himself. It was then that I realized he could, because the torch he was holding carefully followed the words as I read them ... Fred distrusted the idea of leasehold ... It was possible to feel the enormous personal effect of the Woodward Report on this man and, through him, on the tiny motley group of Larrakia people in Darwin.

Harris continues: 'At that time I respected Fred's verbal communication skills. Much later, having received a 12 month prison sentence on 24 August, Fred wrote us several letters from Fannie Bay gaol.'

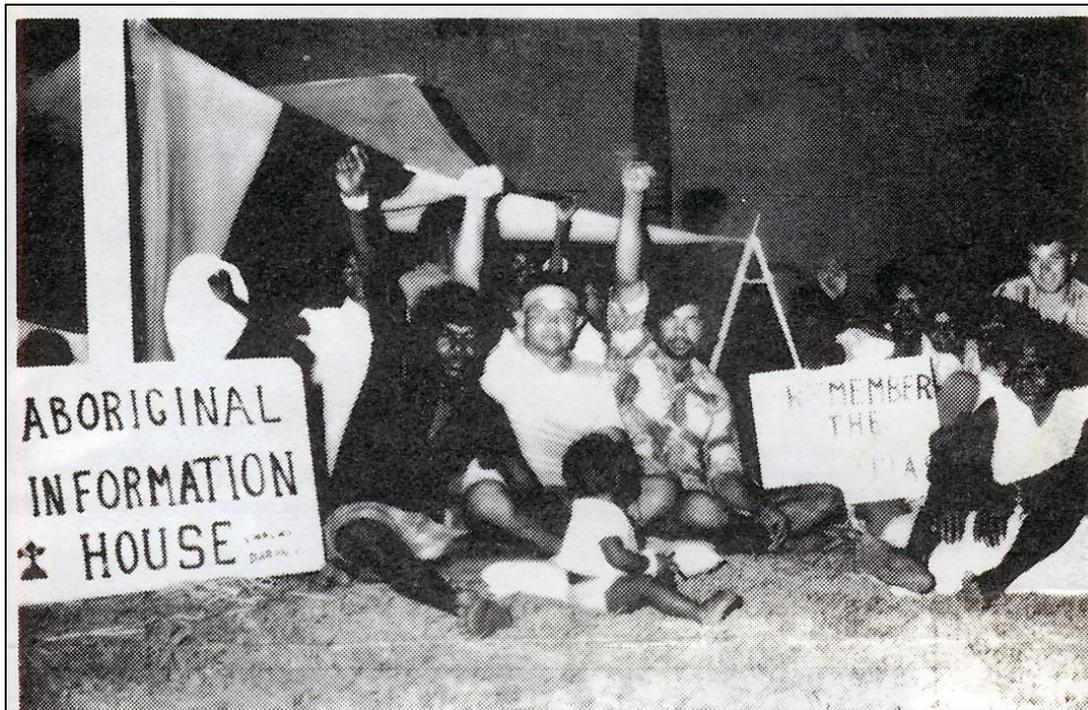
As *Bunji* had reported, while Fred was awaiting his trial, he had flown to Canberra and assisted at the Aboriginal Embassy, where his sign-writing skills were used to advocate the Larrakia cause. Each time that Fred appeared in the court, protestors from the Darwin camps set up camp on the lawns outside, with banners defending Fred. One overnight camp pictured on page one of the *NT News* was described as 'Aboriginal Information House' with Fred Fogarty and Bobby McLeod sitting with clenched fist salutes.

When Fred returned from Canberra he brought back a stack of screen printed black and white posters with his profile and the slogan 'Land Rights on Trial - Defend Fred Fogarty.' One night he and I plastered these posters all over Darwin including, at his persistence, on the glass doors of the court house.

Despite his errors, from his previous position as a journalist for fourteen years on the *NT News*, Ken White adds some insights into Fred's trial, including the observation that Chief Justice William Forster refused to allow his court to become a 'national showcase' for Aboriginal land claims. According to White, the flamboyant Barrister, Frank Galbally, who defended Fred Fogarty was offended by Judge Forster's interference. In his book, Ken White describes Galbally's reaction to Judge Forster's remarks in chambers (p.86):

[Galbally] left the judge's chambers 'seething.' The judge's comments were 'outrageous,' he fumed. It wouldn't happen anywhere else in Australia that a trial judge would so blatantly pre-judge the issue and direct Defence accordingly.

Galbally was a flamboyant character who represented about 300 people on murder charges, most of whom were acquitted. In the 1980s he represented the notorious Painters and Dockers Union in the Costigan Royal Commission. One of his best-known clients was Billy ‘The Texan’ Longley who sometimes acted as a bodyguard for the lawyer. Others describe Galbally as ‘a money-making, publicity-seeking, social-climbing political opportunist always with an eye on the main chance’ (Rule 2005). Not surprisingly, Fred was in awe of the reputation which preceded his legal defender.



Above: At the commencement of the firebombing trial, Fred (centre) joined supporters, Billy One (left) and Bobby McLeod (right), raising a clenched fist at an ‘Aboriginal Information House’ on the lawns outside the court. Fred’s partner, Violet Adams is on the right. The sign writing is by Fred. (Photo by NT News)

Under Galbally’s influence and after Judge Forster’s reprimand, rather than a land rights test case the trial became an issue of mistaken identity and Fred was portrayed as a simple man who had been used by others. Ken White’s rather inaccurate article is a direct result of this unfortunate tactic. As White writes: ‘[Galbally] required Fogarty to support the line of his cross examination of the Crown witnesses by denying that he was the person responsible and that they were mistaken as to identity.’

In this writer’s opinion the tactic outlined by Ken White and used by Galbally was a shame, as by late 1973 Fred had support from around the world for his struggle to defend Aboriginal land rights. The

archives hold many of these telegrams of support sent to the Department of Aboriginal Affairs in Darwin.

Obviously, as evident by his involvement in the series of protests in Darwin prior to the trial, his carefully painted signs and his statements recorded in the newsletter *Bunji*, Fred had always intended to make his case a precedent for land rights. In the August, 1973, edition of *Bunji*, Fred Fogarty made this clear. Fred wrote to the newsletter:

The date set for the trial is September 7th. This one won't be the big trial, only the one to see if the police have a case. There is a chance the police (or the government) are trying to hush this one up. I suspect the charges are being made as light as possible to prevent the trial going to the High Court. We want to make our land rights fight known in the High Court.



Above: Jackson Lee from Kulaluk holds a poster at a protest outside the Darwin Supreme Court before Fred's appearance on 19 February, 1974 (Photo by *NT News*). The previous night Fred Fogarty had pasted these posters around Darwin, including on the glass entrance doors to the Supreme Court.

In a revealing paragraph, Ken White writes as though an eye-witness to a nighttime meeting between Galbally and Fred Fogarty:

Galbally then looked Fogarty in the eye and said; ‘Fred, you know that there were other part Aboriginal persons there, don’t you?’ Before a bewildered Fogarty could reply, Galbally said, ‘Fred, you know them – you know who they are. There was Jimmy [Bill] Ryan, Bill O’Day [Day], Jackie Smith [Phillips].’ At this point Galbally bent forward and, staring Fogarty in the eyes, added: ‘Fred, you can say any name you like because no one is going to contradict you. Do you understand?’ Fogarty, looking glassy-eyed, nodded, albeit reluctantly. It then occurred to the two lawyers that perhaps their client saw himself as a hero for Aboriginal lands rights, so much so that it was doubtful that he wanted to accede to Galbally’s briefing; that perhaps he wanted to be found guilty. There was another problem: Fogarty was too inarticulate to allow him to make an unsworn statement from the dock.⁵

Despite the great faith that Fred had in Galbally’s abilities, the accused Aboriginal man was too honorable to lay the blame on his mates. Anyone who knew Fred Fogarty would testify that he was a determined, articulate man of strong opinions. In any case, the firebombing incident had been described more typically in Fred’s own words in a booklet by Cheryl Buchanan that was published before the trial by the Australian Union of Students (Buchanan 1974). However, Fred apparently agreed to pander to the prejudices of the court and to act as a simple ‘blackfella’ who was not even present at the scene of the firebombing. Fred’s superbly convincing character-acting in the dock was made easier by Galbally’s decision to offer no formal evidence from the Defence, thus denying Fred the opportunity to make his stand for land rights.

Finally, Ken White repeats a snide remark made by the Crown Prosecutor, Bill Raby, before the sentencing, claiming that Fogarty was of Maori descent and not an Aboriginal at all. The slur was repeated in the media, and Fred’s Defence failed to refute it. As stated above, Fred later returned to his birthplace at Cherbourg in Queensland to gather evidence that disproved this damaging accusation. Unfortunately, Galbally had allowed the slur to pass without objecting. In summary, the case had been that Fred was a non Aboriginal man who had not been present during the protest and had no interest or

⁵ White’s last comment is ludicrous to all those who knew Fred Fogarty.

involvement in land rights, nor the intelligence to have planned the protest himself – a defence completely contrary to Fred’s previous statements and which in the end failed to convince the jury.

Not surprisingly Fred was found guilty since there was evidence that he had purchased petrol from a nearby service station that morning and left a handwritten note with the attendant to call the *NT News*. Despite the verdict, Galbally was no doubt happy that he had succeeded in defusing a politically embarrassing trial. I suspect that the famous barrister had been asked to go to Darwin by his mate Prime Minister Gough Whitlam for this very purpose.

There is no mention of the Fogarty case in Frank Galbally’s autobiography, although as a staunch Labor supporter until 1975, Galbally states, ‘I had many conversations with Gough Whitlam and like to believe that I may even have been of assistance on one or two occasions’ (Galbally 1989:165). Whitlam had good reason to hose down the Kulaluk incident. Shortly after the firebombing, he had been confronted by Fred Fogarty and other Aboriginal militants at the Labor Party Conference in Surfers Paradise (Buchanan 1974). On that occasion, Fred’s airfare from Darwin and return had been arranged by Sekai Holland at the Alternative Rhodesian Information Centre in Sydney, at the request of Eddison Zvobgo from the African Council of Zimbabwe (*Tribune* July 17-23, 1973).⁶

Without someone of the status of Galbally, Fred would never have been dissuaded from singly defending his belief that the Minister for Aboriginal Affairs, Gordon Bryant, had assured the residents of Kulaluk that the Federal Government would stop the Ostermann Street subdivision while the Kulaluk land claim was being considered. However, in 1975 Stewart Harris heard a different version of events related by Fred. Quoting from his diary notes, Harris (1991) writes:

We talk about Fred’s trial and he tells me that of course he lied about not throwing the bomb. The jury also knew he was lying, but he wanted to give them a chance to deal gently with him, because he realized that it was a criminal trial and not a political one. And he didn’t want to be put away for years. Frank Galbally also knew he was lying, of course, and didn’t see any other way. Bill and others in the south has wanted Fred to be a political hero and tell the truth. ‘Bugger that,’ said Fred – and he knew the criminal law OK having once been on an ‘attempted murder’ charge.

⁶ Zvobgo had recently visited Darwin.

As I have argued, Fred's revised version of events as related to Stewart Harris is contradicted by the series of demonstrations he helped organise for each of his appearances in the Darwin courthouse. The theme each time was Aboriginal land rights, with signboards carefully painted by Fred proclaiming 'Labor Government - The Whole World is Watching – Land Rights on Trial'⁷ As stated, Fred spent his months between Court appearances working at the Aboriginal Embassy in Canberra, where he made no secret of his motivation. Although Fred was certainly no starry-eyed idealist, in my opinion his conversation with Stewart Harris was an attempt to rationalise the influence that he allowed Frank Galbally to have on his trial.

Fred had no fear of going to a prison that he regarded as a 'holiday camp', as his letters from Fannie Bay later attested. One letter from prison claims that a tutor had described Fred as 'illiterate'. In an aside, Fred commented, 'I know I am not [illiterate], because I have a copy of my birth certificate to prove it.' In response to his reputation for violence, Fred compared the institutionalized violence of modern warfare in his satirical letters from Fannie Bay Gaol quoted in this essay.

Fred's oft stated belief in violence as a solution is well illustrated by the true story of the butterfly catcher. On this occasion Fred came upon a man on a bicycle on one of the Kulaluk tracks, carrying a butterfly net. 'What are you doing on our land? Leave our butterflies alone!' Fred yelled angrily. Apparently the terrified butterfly catcher was forced to flee from the land with Fred in pursuit. His abandoned bicycle was wrecked.

Ken White claims Fogarty 'drowned ... not long after Cyclone Tracy.' In fact, Fred lived for another ten years after Tracy at his magnificent home in the mangroves. His sudden death at the age of 53 on March 31st, 1985, remains a mystery. Women from the Bagot Community returning from gathering yams in the monsoon forest found his naked body lying in the mud on the track near his house. In previous years he had thwarted several ill conceived plans by the Kulaluk leaseholders and real estate developers to sell off the Kulaluk land. Suspicions were further aroused by the callous actions of the Kulaluk management in vandalising Fred's house to make it unlivable, even while his body lay in the Darwin morgue, and shortly later totally flattening the remaining structure. Plans to give Fred a funeral

⁷ One of the sign boards used outside the court was salvaged from the ruins of Fred's house in 1985 and has since been stored in a suburban shed. The seven-ply signboard was preserved because Fred had used it as flooring, covered with linoleum. In 2010 the sign was a focal point in a ceremony to commemorate the twenty-fifth anniversary of Fred's death. The ceremony was held in an Ostermann Street park close to the spot where the petrol bombs were thrown on July 6, 1973.

in Darwin deserving of a land rights hero were thwarted when relatives claimed his body to bury him in the cemetery at Dalby, in Queensland. Because Fred was deeply committed to Kulaluk and the Northern Territory and rarely spoke of his Queensland relatives, this final action was also interpreted by many as government-sponsored interference to eliminate a potential problem.

On March 31st, 2010, a commemoration of Fred's achievements was held in a park in Ostermann Street near the site of the confrontation with surveyors. Several residents joined the small group of survivors who had participated in the 1970s land rights movement to lay a wreath against a signboard painted by Fred. However, Fred's monument today is the unique urban bushland of the Kulaluk lease that is once again under threat.



Left: Demolition began on Fred Fogarty's house even before his funeral was arranged. Right: The demolished house. Photos by Bill Day.



Above: The front page story in the *NT News* on August 24th, 1974, repeats the slur that Fred was not an Aborigine and emphasizes that land rights was not an issue in the Fogarty trial, in keeping with Frank Galbally's strategy and the order by Chief Justice Forster that the trial should not become a 'national showcase' for land rights.



Above: Fred and Violet at their house in the mangroves with visitor in about 1977

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