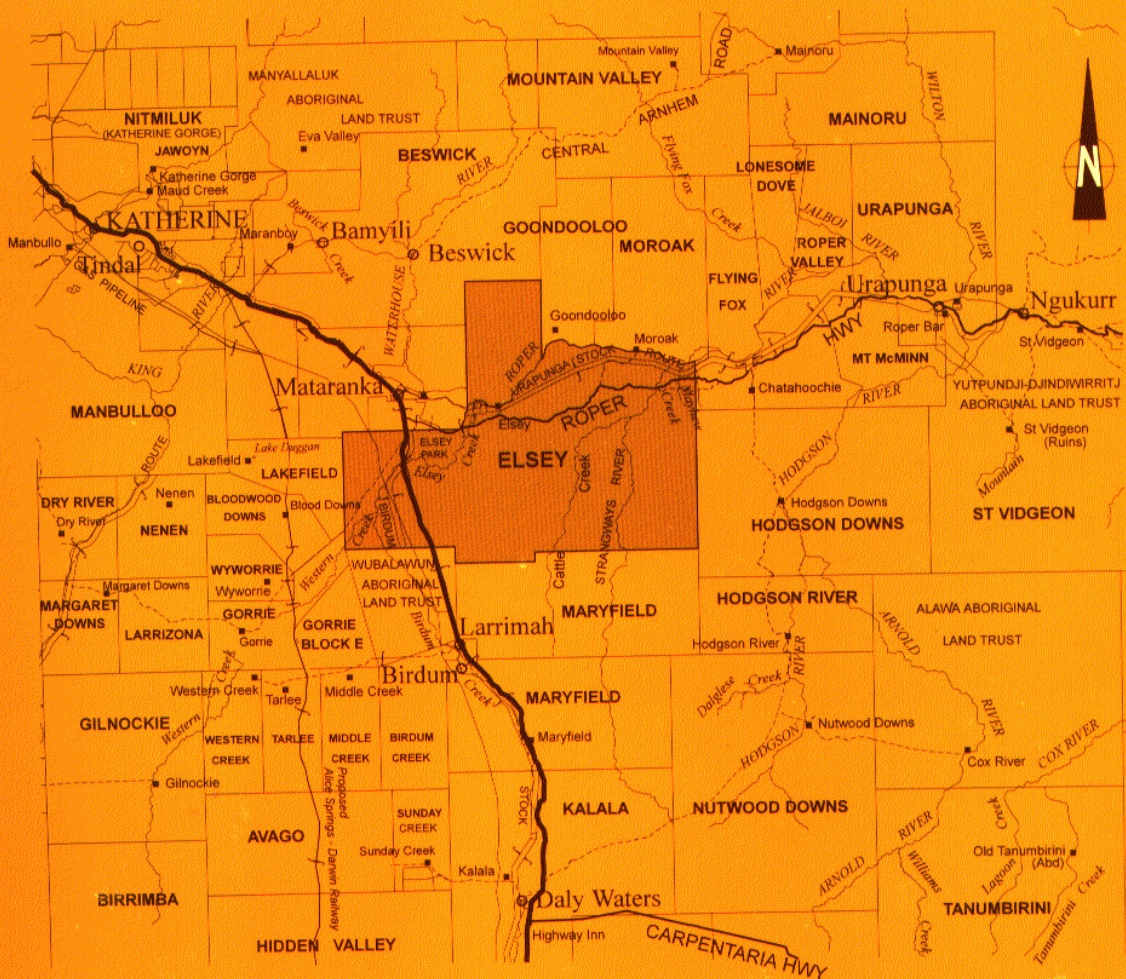




Aboriginal Land Rights (Northern Territory) Act 1976

Eley Land Claim No. 132

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



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Aboriginal and Torres Strait Islander Commission

Canberra

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DARWIN N.T. 0801

28 November 1997

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

Dear Minister,

Re: Elsey Land Claim No. 132

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

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

Yours sincerely,

A handwritten signature in cursive script that reads 'Peter R. A. Gray'.

PETER R. A. GRAY

A person deemed to continue to hold the office of Aboriginal Land Commissioner, pursuant to section 52(4) of the *Aboriginal Land Rights (Northern Territory) Act 1976*.



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G.P.O. Box 2289
DARWIN N.T. 0801

28 November 1997

His Honour Dr Neil Conn A.O.,
Administrator of the Northern Territory,
Office of the Administrator,
The Esplanade,
Darwin. NT. 0800.

Your Honour,

Re: Elsey Land Claim No. 132

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

As required by the Act, I have sent a copy of this report to the Minister for Aboriginal and Torres Strait Islander Affairs.

Yours sincerely,

A handwritten signature in cursive script that reads "Peter R. A. Gray".

PETER R. A. GRAY

A person deemed to continue to hold the office of Aboriginal Land Commissioner, pursuant to section 52(4) of the *Aboriginal Land Rights (Northern Territory) Act 1976*.

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1 HISTORY OF THE CLAIM

1.1 Lodgment The Elsey Land Claim No. 132 is a traditional land claim, made pursuant to s. 50 of the *Aboriginal Land Rights (Northern Territory) Act 1976* ("the Land Rights Act"). The application was received in the office of the Aboriginal Land Commissioner on 17 July 1991. It was lodged by the Northern Land Council, on behalf of a number of persons claiming to be traditional Aboriginal owners of Northern Territory Portion 645, and of those parts of the Birdum Stock Route and the Urapunga Stock Route lying within the boundaries of Northern Territory Portion 645.

1.2 Listing for hearing The claim was listed for hearing on 27 September 1993, as part of my 1993 land claim program.

1.3 Advertisement Public notice of the claim hearing was given by the publication of advertisements in the *Weekend Australian* on 14 August 1993, the *NT News* on 14 August 1993, the *Tennant and District Times* on 20 August 1993, the *Centralian Advocate* on 17 August 1993, the *Katherine Times* on 18 August 1993 and *Land Rights News* in the October 1993 edition. Notices of the hearing were also sent to all persons whose names appear on the mailing list maintained in the office of the Aboriginal Land Commissioner and to the proprietors, lessees or managers of the surrounding properties referred to in para. 2.1, or such of them as then existed.

1.4 Parties Notices of intention to be heard or written submissions were received from the persons and organisations whose names appear in appendix 1, on the dates shown in that appendix.

1.5 The inquiry

1.5.1 The inquiry began at *Jilgmirn.gan* (site 37) (Jilkminggan community), which lies within the boundaries of Elsey Station, on 27 September 1993. I heard evidence on ten days from 27 September to 6 October, at or near 34 sites, which are listed in appendix 2. The inquiry resumed at Mataranka on 1 February 1994 and continued on 2 and 3 February, when I completed the hearing of evidence.

1.5.2 On the morning of 1 October 1993, counsel for the Attorney-General for the Northern Territory made the following statement:

"If your Honour pleases, it is 9.15 a.m. on Friday, 1 October, and we are on the Roper Highway at the turn-off to Jilkminggan, and I have asked your Honour to hear me briefly open and close my client's case on traditional ownership. It has been the case since the inception of the Act that the Territory government has been involved in every land claim. Certainly when the land claimed has been unalienated Crown land their interest is obvious; it is land which is held by the Crown in the right of the Territory for the benefit of all Territorians, and the role which the government takes in testing those claims hopefully adds to the public confidence in the administration of the Act.

There has in recent years been a proliferation of claims relating to pastoral leases and the government has come to the view that pastoral leases should perhaps be viewed in a somewhat different light to unalienated Crown land, because, in the situation of a pastoral lease, the Aboriginal people own the lease, and certainly under the new Pastoral Land Act have rights which are very close to ownership in any event. In those circumstances the Territory does not see itself as having the same role as it may have in relation to unalienated Crown land. There is no objection in principle to pastoral leases becoming Aboriginal land, subject to them remaining as operating cattle stations and subject to the usual types of land usage problems which arise from time to time in these claims, such as public roads and conservation aspects ... [s]tock diseases and the like ... Now, there certainly was unfortunately a history of pastoral leases which became Aboriginal land failing, but certainly with the Northern Land Council in recent times there seems to be a real desire to get these cattle stations continuing to operate as such. As I understand it, the claimants here on Elsey are very keen to continue the pastoral operations and that coincides with the government's interest as well. The pastoral industry is an important industry for the Territory. It adds a considerable amount both directly and indirectly to the Territory's gross national product and, accordingly, they do have an interest in ensuring that these properties, as far as possible, remain as viable cattle properties.

The other aspects in which the Territory have some concern in this claim are the usual road aspects, which no doubt your Honour will hear about in due course, and the other primary concern is one of the Conservation Commission. There is a concern to protect and conserve some unique and beautiful areas of wilderness that are located on the pastoral lease. Now, again, there is no reason why that interest should not coincide with the interest of the claimants who, I have got no doubt, are also interested in the protection and the conservation of their land, and it may well be that at the end of the day when your Honour comes to hear that aspect of the case which deals with land usage and detriment, that there really will be no detriment as such, that both the government and the claimants may have reached some agreement or accord as to what is the best way of protecting and conserving some of the really very unique places on this pastoral lease, such as the Red Lily Lagoon and other places which your Honour ... will see, no doubt, over the course of the next few days.

So, putting all that to one side, and having heard a day or two's evidence from these claimants, the Territory does not wish to further test the claim to traditional ownership. It does not wish to cross-examine the anthropologist. It does not wish to make submissions one way or the other on the question of traditional ownership. It is a matter where the Territory government will leave the function wholly to your Honour's discretion, and we know that we will be leaving it in good hands. And, as a final note, Mr Rowe will continue to appear for the Territory for the remainder of the hearing of traditional evidence, not to test traditional evidence, but simply to be present in case some issue arises in relation to the Territory's wider interests for roads, conservation and the like."

1.5.3 I received written submissions from those who wished to make them and written submissions in reply from those who wished to make them. The submissions were complete by 13 April 1995. In some cases, the written submissions included matters of evidence. In other cases, documents were tendered to me during the submission period and I accepted them as evidence. Despite the statement of his counsel, which I have quoted in para. 1.5.2, the written submissions on behalf of the Attorney-General for the Northern Territory included submissions to the effect that I had no power to deal with the claim in relation to the bulk of the land claimed, which are dealt with in para. 2.13, and submissions inviting me to refrain from making a recommendation, in accordance with s. 50(1)(a) of the Land Rights Act, for the granting of any part of the land to a land trust, which are dealt with in para. 7.3.

1.6 Previous history

1.6.1 Parts of the land the subject of this land claim were included in the land the subject of the Mataranka Area Land Claim No. 69. They were the area of the Urapunga Stock Route west of Jilkminggan to the nearest western boundary of Elsey Station, the area of the Urapunga Stock Route east of Jilkminggan to the eastern boundary of Elsey Station and the area of the Birdum Stock Route lying within the boundaries of Elsey Station.

1.6.2 Claim no. 69 was heard by the Aboriginal Land Commissioner (Mr Justice Maurice) from 1 December 1986 to 21 November 1988. The length of the hearing was largely the result of interruptions to it by legal proceedings, in which the issue of the availability for claim under the Land Rights Act of some areas of land the subject of the claim was litigated in the Federal Court of Australia. On 14 December 1988, his Honour delivered his report (Aboriginal Land Commissioner's report no. 29). He found that there were traditional Aboriginal owners of all of the areas of land remaining subject to the claim, including the three areas referred to in para. 1.6.1 above, and recommended that all of those areas be granted to a land trust (paras 9.2.1 and 9.2.2 of the report). In chapter 16 of the report, his Honour found that Banibi Pty Ltd, the holder of the pastoral lease of Elsey Station, would suffer substantial detriment if it were denied access to the adjacent parts of the Urapunga Stock Route.

1.6.3 By a deed dated 23 June 1989, between Banibi Pty Ltd, the Northern Land Council (purportedly on behalf of the claimants in the Mataranka Area Land Claim No. 69), Jilkminggan Community Incorporated and the Northern Territory of Australia, it was agreed that claim no. 69 would be withdrawn, so far as it related to the three areas of land described in para. 1.6.1 above. In return, Banibi Pty Ltd agreed to surrender certain designated parts of the land the subject of the pastoral lease of Elsey Station to the Northern Territory, which agreed to make grants of freehold estates in those parts to Jilkminggan Community Incorporated.

1.6.4 In accordance with the deed of 23 June 1989, a document dated 7 November 1989, entitled "Notice of Withdrawal of Claim", was forwarded to the Aboriginal Land Commissioner. It was signed on behalf of a person described as "Solicitor for the Claimants" and stated that:

"The Northern Land Council on behalf of Aboriginals claiming to have a traditional land claim to unalienated Crown land in the Mataranka region of the Northern Territory hereby applies for a withdrawal to parts of their claim."

Under the heading "Description of the Land Claimed", the document then contained descriptions of various areas of land, including those areas referred to in para. 1.6.1 above. A copy of this document was forwarded to the Minister for Aboriginal Affairs by each of the Northern Land Council and the Aboriginal Land Commissioner.

1.6.5 By letter dated 25 May 1990, addressed to the Minister for Aboriginal Affairs, the Northern Land Council expressed the concerns of some claimants about the agreement the subject of the deed of 23 June 1989, contended that the minister had power to recommend the grant of the land concerned to a land trust and purported to withdraw the document dated 7 November 1989.

1.6.6 The validity and effect of the document dated 7 November 1989 were the subject of litigation in the Federal Court of Australia. In *Roberts v. Minister for Aboriginal Affairs* (1991) 29 FCR 38, the court held that the document amounted to a withdrawal of claim no. 69 in respect of those areas of land described in it, that the withdrawal was effective to prevent the Minister for Aboriginal Affairs taking any steps to act on the recommendation of Mr Justice Maurice in respect of those areas and that the claim could be reinstated only by means of a new application, not by withdrawal of the withdrawal.

1.6.7 Between the delivery of that judgment and the lodging of the application in land claim no. 132, Aboriginal interests acquired control of Banibi Pty Ltd, and therefore of the pastoral lease of Elsey Station, in the circumstances described in para. 2.1 below. It appears that no further step was taken to carry out the agreement the subject of the deed of 23 June 1989.

1.7 The appendices Appendix 1 to this report contains a list of the parties who gave notice of their intention to be heard, or provided written submissions, and the dates on which those notices or submissions were received. Appendix 2 contains a list of the sites at or near which evidence was taken. Appendix 3 contains a list of representatives of the parties and the name of my consulting anthropologist. Appendix 4 contains a list of witnesses who gave evidence in the course of the inquiry. Appendix 5 contains a list of exhibits tendered to me in the course of the inquiry. Appendix 6 contains a map of the claim area, showing the approximate locations of the sites referred to in appendix 2 and a number of other sites and features referred to in this report. The sites are designated by numbers. I have used the numbers allocated to the sites on the site maps, which became exhibit NLC9, and in the site register, which became exhibit NLC8, in the inquiry.

2 THE LAND CLAIMED

2.1 Northern Territory Portion 645

2.1.1 The land claimed all falls within the boundaries of Northern Territory Portion 645, which is an irregularly shaped area of land. It is bounded by a number of other properties. Beginning from the northernmost boundary of Northern Territory Portion 645, and moving clockwise, they are:

- (a) Northern Territory Portion 1636, which is Aboriginal land, held by the Beswick Aboriginal Land Trust, pursuant to a deed of grant made under the Land Rights Act on 30 May 1980;
- (b) Northern Territory Portion 1287, which is the subject of Pastoral Lease No. 752 and is known as Goondooloo Station;
- (c) Northern Territory Portion 1288, which is the subject of Pastoral Lease No. 751 and is known as Moroak Station;
- (d) Northern Territory Portion 916, which is alleged to be unalienated Crown land; it was the subject of land claim no. 69 (referred to in para. 1.6), was withdrawn from that claim and is now the subject of the Mataranka Area (NT Portion 916) Land Claim No. 129;
- (e) Northern Territory Portion 712, which is the subject of Pastoral Lease No. 632 and is known as Roper Valley Station;
- (f) Northern Territory Portion 671, which is known as Hodgson Downs Station and is Aboriginal land under the Land Rights Act, having been added to the lands described in schedule 1 to the Land Rights Act by Act No. 37 of 1995, which came into operation on 12 April 1995; it is held by the Alawa 1 Aboriginal Land Trust;
- (g) Northern Territory Portion 699, which is the subject of Pastoral Lease No. 665 and is known as Maryfield Station;
- (h) Northern Territory Portion 2016, which is Aboriginal land, held by the Wubalawun Aboriginal Land Trust, pursuant to a deed of grant made under the Land Rights Act on 27 March 1992;
- (i) Northern Territory Portion 2732, which is the subject of Pastoral Lease No. 944 and is part of Bloodwood Downs Station;
- (j) Northern Territory Portion 2731, which is the subject of Pastoral Lease No. 943 and is known as Lakefield Station;
- (k) Northern Territory Portion 2255, which is the subject of Crown Lease Perpetual No. 197 to the Northern Territory Land Corporation;

- (l) Northern Territory Portion 4343, which was excised from Northern Territory Portion 2255 after the commencement of the hearing of the claim, and on 3 March 1994 became the subject of a Crown Lease Term held by B. M. and L. S. MacFarlane;
- (m) Northern Territory Portion 3069, which is the subject of Crown Lease Perpetual No. 600 to the Conservation Land Corporation and is known as Elsey National Park; and
- (n) Northern Territory Portion 3960, which is the subject of Crown Lease Term No. 1045, originally granted to the Northern Territory Land Corporation and subsequently transferred to Cave Creek Station Pty Ltd.

It should be noted that the boundary between the subject land and Northern Territory Portions 1287 and 1288 is the Roper River. Otherwise, the boundaries are artificial lines. The boundaries of the land claimed and the adjacent boundaries of the other lands to which I have referred are shown on the map in appendix 6.

2.1.2 Northern Territory Portion 645 is the subject of Pastoral Lease No. 593, originally granted to The Elsey Station Ltd on 9 November 1960, for a term of fifty years, commencing on 1 July 1960. On 15 May 1985, Banibi Pty Ltd became the registered proprietor of the pastoral lease. Banibi Pty Ltd is a company incorporated in New South Wales. There are two issued shares in the company, one held by Jessie Roberts, an Aboriginal person who is one of the claimants, the other by Michael John Dodson, an Aboriginal person who was, at the time of his acquisition of the share, the Director of the Northern Land Council. Each of Jessie Roberts and Michael John Dodson executed a declaration of trust dated 1 July 1991 in respect of her or his share, pursuant to which each holds that share as trustee for Mangarrayi Aboriginal Corporation. Mangarrayi Aboriginal Corporation is an Aboriginal association, incorporated pursuant to the *Aboriginal Councils and Associations Act* 1976. Rule 8.1 of its rules provides that "Traditional Aboriginal Owners of any land in the Region, are eligible to be members of the Association". Rule 2.1 defines "Region" as "the land within Pastoral Lease No. 593 known as Elsey Station, Northern Territory" and provides that "Traditional Aboriginal Owners" has the same meaning as in the Land Rights Act.

2.1.3 Counsel for the Attorney-General for the Northern Territory submitted that, in these circumstances, Banibi Pty Ltd does not hold its estate or interest in the pastoral lease "on behalf of" Aboriginal people, within the meaning of s. 50(1)(a) of the Land Rights Act, and that therefore Northern Territory Portion 645 is not within those classes of land available for claim. The submission sought to distinguish between the holding of the shares in Banibi Pty Ltd on trust for an Aboriginal corporation, and through it for the benefit of its members, and the holding by Banibi Pty Ltd of its estate or interest in the pastoral lease, which is not the subject of any declaration of trust. It was submitted that the ownership arrangement was different from that which was the subject of *R v. Toohey; Ex parte Attorney-General for the Northern Territory* (1980) 145 CLR 374, in which the High Court of Australia interpreted the phrase "on behalf of" in s. 50(1)(a) very generously. In that case, the Aboriginal Land Fund, a

statutory corporation established under the *Aboriginal Land Fund Act 1974*, held a pastoral lease. Its statutory functions were given to it for the purpose of enabling indigenous people, including both Aboriginal people and Torres Strait Islanders, to occupy land. A majority of the High Court held that the corporation held its estate or interest "on behalf of" Aboriginal people. Banibi Pty Ltd lacks the specific statutory functions of the Aboriginal Land Fund; it is an ordinary corporation which, in theory, could decide to deal with its estate or interest in Pastoral Lease No. 593 otherwise than for the benefit of Aboriginal people. It is, however, firmly under the control of Aboriginal people. As I have said, the two shareholders are Aboriginal people who hold their shares as trustees for a corporation the members of which must be Aboriginal people. The majority of the directors are Aboriginal persons, representing the leading families of claimants, and are residents of the Jilkminggan community. The other director is an employee of the Northern Land Council. The purchase of the shares in Banibi Pty Ltd was undertaken with money advanced from the Aboriginals Benefit Trust Account (a body established under the Land Rights Act), for the purpose of making the land available to Aboriginal people. In these circumstances, it would be unrealistic to say that Banibi Pty Ltd did not hold its estate or interest "on behalf of" Aboriginal people.

2.1.4 Pastoral Lease No. 593 is subject to a mortgage to Jilkminggan Community Incorporated, an association incorporated on 16 July 1975, pursuant to the *Associations Incorporation Act* (NT), as Djembere Community Incorporated, which changed its name to its present name on 15 August 1984. By rule 7 of the constitution of the association, the membership of the association is restricted to "Aboriginals who are for the time being accepted by the Council as members". There is no difficulty in reaching the conclusion that Jilkminggan Community Incorporated holds its estate or interest as mortgagee "on behalf of" Aboriginal people.

2.1.5 Save for the access easement, to which I refer in para. 2.9.2, there are no other estates or interests in Northern Territory Portion 645.

2.2 Areas excluded from Northern Territory Portion 645 Northern Territory Portion 645 is the subject of Pastoral Lease No. 593. In that lease, the land is described as:

" ... all that piece or parcel of land in the Darwin and Gulf District containing an area of two thousand and sixty four square miles or thereabouts and being Northern Territory Portion No. 645 which said land is delineated in the plan hereon ..."

In the body of the lease, "four" has been deleted in "sixty four" by being struck through with several lines and "two" has been entered above it. There is a similar alteration in a notation on the plan; the figures "2064" have been deleted by being struck through with several lines and the figures "2062" have been inserted above them. The notation on the plan then reads:

"2062 Sq. M. ex Stock Routes, Cemetery, Old Homestead, Railway, O.T. Line and Stuart Highway"

The intention appears to be to exclude from Northern Territory Portion 645 the areas of land referred to in the notation. It is necessary to deal with each of these areas.

2.3 The stock routes

2.3.1 The stock routes referred to in the notation set out in para. 2.2 are the Urapunga Stock Route and the Birdum Stock Route. By notice published in the *Commonwealth of Australia Gazette* on 17 August 1933, pursuant to s. 113 of the *Crown Lands Ordinance* 1931, the Minister of State for the Interior declared a number of areas to be routes for the passage of travelling stock and "recognized routes" for the purposes of s. 20 of the *Stock Diseases Ordinance* 1927-1930. Each such route was to be one mile wide, i.e. half a mile on either side of lines described in the schedule to the notice, except where station fences limited the width on one side or the other. The schedule included the two stock routes to which I have referred.

2.3.2 The Urapunga Stock Route follows a generally east-west direction, entering the subject land from Northern Territory Portion 3069, across the Elsey Creek, and leaving it at its boundary with Northern Territory Portion 712. In the vicinity of the present homestead, the stock route passes close to the Roper River; the significance of this is dealt with in para. 6.14. The relevant portion of the Urapunga Stock Route is shown on the map in appendix 6.

2.3.3 That part of the Birdum Stock Route that crosses the subject land is also shown on the map in appendix 6. It follows a generally north-south route, in a straight line, through the western end of Northern Territory Portion 645.

2.3.4 Being excluded from the area the subject of Pastoral Lease No. 593, by delineation on the plan on that lease, each of the stock route areas is within the definition of "unalienated Crown land" in s. 3(1) of the Land Rights Act. By s. 50(2D), the Aboriginal Land Commissioner is required not to perform, or continue to perform, a function under s. 50(1)(a) of the Land Rights Act in respect of land reserved, dedicated or otherwise set aside as a stock route. By s. 50(2E), however, the relevant provision of s. 50(2D) does not apply in relation to a stock route that is, along each of its two longer boundaries, contiguous to land to which an application relates. Subsection (2E) applies to the area of the Urapunga Stock Route and to the area of the Birdum Stock Route within Northern Territory Portion 645.

2.3.5 It should be noted that an area proclaimed as a stock route is not thereby an area over which there is a road over which the public has a right of way. This was decided by the Full Court of the Federal Court of Australia in *Re Maurice's Application; Ex parte Attorney-General for the Northern Territory* (1987) 18 FCR 163 and *Banibi Pty Ltd v. Aboriginal Land Commissioner* (1987) 76 ALR 655. The latter decision related specifically to that area of the Birdum Stock Route which was included in the land the subject of claim no. 69 (see para. 1.6) and is included in the present claim.

2.4 Northern Territory Portion 270: the cemetery The notation on the plan which is part of Pastoral Lease No. 593, quoted in para. 2.2, made reference to "Cemetery". There is an area of approximately 4.14 hectares excised from Northern Territory Portion 645 and known as Northern Territory Portion 270. By notice published in the *Commonwealth of Australia Gazette* on 22 March 1967, Northern Territory Portion 270 was reserved for a cemetery,

pursuant to the *Crown Lands Ordinance* (NT). The present claim does not include Northern Territory Portion 270.

2.5 Old homestead and O.T. line

2.5.1 Apart from the notation on the plan which is part of Pastoral Lease No. 593, quoted in para. 2.2, there appears to be nothing to indicate precisely what is excluded from the land the subject of that pastoral lease in respect of the "Old Homestead". There have been two old homesteads within the boundaries of Northern Territory Portion 645. The earlier one, in use at the time when Aeneas Gunn was manager of Elsey Station and Jeannie Gunn was living there, gaining the experience which she was to document in *We of the Never-Never* and *The Little Black Princess*, was situated in the west of the subject land, near Warloch Ponds. It was abandoned after Aeneas Gunn's death, in favour of a site towards the east of the claim area, which was in turn abandoned in favour of the present site, near the Roper River. The present homestead stands not on the land the subject of Pastoral Lease No. 593, but on the Urapunga Stock Route. Each of the two old homestead sites and the present homestead site are shown on the map in appendix 6.

2.5.2 I take the reference to the "O.T. Line" to mean the overland telegraph line, which was established many years ago to link Darwin with places in the south of Australia. Nothing in Pastoral Lease No. 593, or elsewhere, discloses any dimensions or other description or depiction of any specific area of land related to the overland telegraph line. It is possible that the line was close to the old alignment of the Stuart Highway (see para. 2.7).

2.5.3 To the extent to which any land is excluded from Northern Territory Portion 645 solely by the references in the notation on the plan to "Old Homestead" and "O.T. Line", it would be unalienated Crown land. It is not included in the claim, which is framed by reference to the land included in Northern Territory Portion 645. I have been unable to determine the extent of the exclusions.

2.6 Northern Territory Portion 3672: the former railway

2.6.1 The reference to "Railway" in the notation quoted in para. 2.2 is a reference to the disused North Australia Railway between Darwin and Birdum. It has nothing to do with the proposed railway linking Darwin and Alice Springs, the intended route for which lies entirely outside the claim area, to the west of it. The former railway passed through the western part of the claimed land, on an approximate north-south alignment, much of which was close to the Stuart Highway. In his written submissions, counsel for the claimants sought to include the old rail corridor in the land claimed, on the basis that there is no definition of any land excluded.

2.6.2 In 1916, when the line of the North Australia Railway was surveyed, drawings were prepared, showing a corridor 600 links wide. In 1989, these drawings were used in the preparation of survey plans of the boundaries of an area which became Northern Territory Portion 3672. In other words, the boundaries of Northern Territory Portion 3672 are identical with the boundaries of the corridor of the former railway. They enclose a strip of land 120.7 metres wide, the equivalent of 600 links. Northern

Territory Portion 3672 is the subject of Crown Lease Perpetual No. 902, held by the Northern Territory Land Corporation. The lease was executed on 24 May 1989 and came into operation on 26 May 1989, well before the present claim was lodged. It has been registered in the Register Book, pursuant to the *Real Property Act* (NT), as volume 201 folio 71. By s. 69 of that Act, the registered proprietor has absolute and indefeasible title, subject to the exceptions referred to in the section, none of which is applicable. The exclusion by the notation on the plan in Pastoral Lease No. 593, coupled with the definition of Northern Territory Portion 3672, is enough to exclude that area from the land claimed in the present claim. The alignment of Northern Territory Portion 3672 is shown on the map in appendix 6.

2.7 The Stuart Highway The exclusion of "Stuart Highway" effected by the notation on the plan in Pastoral Lease No. 593, quoted in para. 2.2, appears to relate to an earlier alignment of the highway, rather than its existing one. Again, counsel for the claimants contended that the absence of sufficient definition of the land excluded was sufficient to preserve the highway as land available for claim. I disagree, on the basis that the claim is limited to the land included in Northern Territory Portion 645. I am unable to determine how much land is excluded, but the question is academic; a grant of land to a land trust must exclude land over which the public has a right of way (see s. 12(3) of the Land Rights Act). In para. 7.2.2, I determine that both the former Stuart Highway and the present Stuart Highway answer that description, and deal with the issue of the appropriate width of a road reservation to be excluded from a grant of the land claimed to a land trust.

2.8 Northern Territory Portion 1508: the Jilkminggan community Lying entirely within the boundaries of Northern Territory Portion 645 is Northern Territory Portion 1508, an area of approximately 587.3 hectares, the boundaries of which are shown on the map in appendix 6. This was the subject of a grant in fee simple to Djembere Community Incorporated on 24 November 1983. The land had been excised from Northern Territory Portion 645, as a result of a partial surrender of Pastoral Lease No. 593, and from the Urapunga Stock Route. On 15 August 1984, Djembere Community Incorporated changed its name to Jilkminggan Community Incorporated. Northern Territory Portion 1508 is not claimed.

2.9 Northern Territory Portion 1434: Telstra repeater station and access easement

2.9.1 In the south-west of the claim area, west of the Stuart Highway, is an area of approximately 8 460 square metres, excised from Northern Territory Portion 645, which is Northern Territory Portion 1434. It was the subject of a grant of an estate in fee simple to the Commonwealth of Australia on 22 May 1984. In the Register Book, there is recorded a transfer to Australian Telecommunications Commission on 31 October 1986. By s. 11 of the *Australian and Overseas Telecommunications Corporation Act* 1991, which came into operation on 1 February 1992, all property and rights of Australian Telecommunications Commission (which had by then had its name changed by statute to Australian Telecommunications Corporation) became vested in Australian and Overseas Telecommunications Corporation Ltd, which changed its name to Telstra Corporation Ltd on 13 April 1993. Northern Territory Portion 1434 is used for a microwave repeater station, as part of the national telecommunications system. No claim is made to this area.

2.9.2 The plan on the certificate of title also shows an "access easement", approximately twenty metres wide, 433.56 metres long on one side and 431.27 metres long on the other, from the eastern boundary of Northern Territory Portion 1434 to a point approximately fifty metres west of the centre line of the Stuart Highway. This strip of land is claimed, on the ground that the holder of the estate or interest in the easement is the Commonwealth of Australia, and therefore the Crown. For the reasons given in para. 2.10, I reject this argument. Telstra Corporation Ltd has an estate or interest in the access easement which it does not hold on behalf of Aboriginal people, and the area is therefore not available for claim.

2.10 Northern Territory Portion 3713

2.10.1 Northern Territory Portion 3713 is an area of land covering approximately 2.25 hectares, used by Telstra Corporation Ltd for a digital radio concentrator as part of the national telecommunications system. It is situated on the northern side of the Roper Highway, in the central area of the land claimed. It is shown on the map in appendix 6. Within the area is a steel mast approximately seventy metres high erected on a concrete block, a solar-panel array and an equipment cabinet erected on a concrete block, housing batteries and radio equipment.

2.10.2 By a document dated 20 October 1989, entitled "Authorisation", to which its common seal is affixed, Banibi Pty Ltd agreed to surrender its interest in what became Northern Territory Portion 3713 to Australian Telecommunications Corporation, together with free and unrestricted right of access over Northern Territory Portion 645, in consideration of a payment of \$500. The document contemplated construction of an access road and contained a grant of a permissive occupancy for the purpose of construction works, "pending finalisation of the transfer arrangements". By a further document of the same date, to which the common seal of Banibi Pty Ltd was also affixed, it agreed to grant to Australian Telecommunications Corporation and its agents, servants, workmen and contractors, without consideration, a free and unrestricted right of way and access at all times over Elsey Station for the purposes of providing and maintaining telecommunications equipment located within the leasehold boundaries. The document is entitled "Deed of Licence for Access by Telecom over Crown Land under Lease" and further provides:

"It is understood that a defined access is not practical due to variations in topographical and climatic conditions prevailing from time to time over the terrain and that Telecom Australia will endeavour at all times to use the shortest practical route available and to minimise disturbance to the land and our operations thereon."

Neither document is executed by or on behalf of Australian Telecommunications Corporation.

2.10.3 By letter dated 9 May 1990, a delegate of the Minister for Lands and Housing announced that he had "approved the grant of Estates in Fee Simple to the Australian Telecommunications Corporation over the areas" referred to in the letter, which included Northern Territory Portion 3713. The letter indicated that partial surrender documents would be forwarded to lessees for their endorsement. It appears that

Banibi Pty Ltd did not execute any surrender of Pastoral Lease No. 593 in respect of Northern Territory Portion 3713. No grant of an estate in fee simple was made.

2.10.4 Counsel for the claimants conceded that the arrangements made between Banibi Pty Ltd and Australian Telecommunications Corporation gave rise to an equitable estate or interest in land and that such an estate or interest falls within the meaning of the expression "all estates and interests" in s. 50(1)(a) of the Land Rights Act. Nevertheless, it was submitted that Northern Territory Portion 3713 was available for claim because, at the date when the claim was lodged, the estate or interest was held by the Crown.

2.10.5 In *Bolwell v. Australian Telecommunications Commission* (1982) 61 FLR 154, especially at pp. 157-8, Smithers J held that Australian Telecommunications Commission was "... the Crown or an agency or emanation thereof and that it is the intention of Parliament that it be entitled to the immunity of the Crown ..." By s. 11 of the *Australian and Overseas Telecommunications Act* 1991, which came into operation on 1 February 1992, all property and rights of Australian Telecommunications Corporation (as it was by then known) were vested in Australian and Overseas Telecommunications Corporation Limited ("AOTC"). Section 26 of that Act made it clear that this corporation, which is a company incorporated under the *Corporations Law* of the Australian Capital Territory, was intended not to be the Crown or an instrumentality or emanation of the Crown. AOTC later changed its name to Telstra Corporation Ltd.

2.10.6 The question is whether this transfer of property from the Crown to a corporation, after the date of the making of the application in the present claim, could change the status of the land claimed, by creating an estate or interest in it in favour of an entity which is not the Crown, and thereby remove it from the reach of the claimants. At first sight, the affirmative of this proposition is startling. The High Court of Australia, in *R v. Kearney; Ex parte Northern Land Council* (1983) 158 CLR 365, held that the scheme of the Land Rights Act was such that the lodging of an application in a traditional land claim was the date at which the status of the land claimed was to be determined. No action to change the status of the land thereafter could take away the jurisdiction of the Aboriginal Land Commissioner to deal with the claim. What was involved in that case was a regulation, made under an ordinance operating in the Northern Territory, which purported to make the land the subject of a claim land in a town, and thereby beyond the reach of the Land Rights Act. In *Attorney-General for the Northern Territory v. Hand* (1989) 25 FCR 345, the Full Court of the Federal Court made it clear that the making of an application for a traditional land claim, pursuant to the Land Rights Act, was sufficient to prevent the Northern Territory Government from creating any interest in the land concerned after that date. In the meantime, the Land Rights Act had been amended by the addition of s. 67A, which provides that any grant of an estate or interest in land purportedly effected after the making of an application and before the claim is finally disposed of shall be of no effect.

2.10.7 It is plain that the Northern Territory Parliament, or any of its ministers or officers, could not grant any valid interest in the land the subject of the present claim after the date when the application was lodged. The same can be said in respect of any

minister or officer of the Commonwealth. It is equally plain, however, that the Commonwealth Parliament could legislate to amend the Land Rights Act and to create interests in land which was the subject of claims and (subject to the provision of just terms for acquisition of property, in accordance with s. 51(xxxi) of the Constitution) to remove the right to claim land which had already been claimed. This power has not been exercised expressly, but there is a question whether this result has been accomplished by s. 11 of the *Australian and Overseas Telecommunications Corporation Act* 1991. There can be no doubt that there is an inconsistency between the Land Rights Act, particularly s. 67A(2), and the later provision in s. 11 of the *Australian and Overseas Telecommunications Corporation Act* 1991, in their application to Northern Territory Portion 3713. Both cannot apply.

2.10.8 Counsel for the claimants submitted that the situation is one in which the provisions of a later, general statute should be held not to prevail over those of an earlier, particular statute. The fundamental question is whether there is inconsistency, so that the earlier enactment must be taken to have been repealed impliedly, to the extent of the inconsistency, by the later. The principle that a later general statute will be held not to derogate from an earlier particular enactment only provides assistance in resolving this question. An examination of the two sections makes it difficult to characterise either as general or particular. Section 67A is particular in that it applies only to traditional land claims in the Northern Territory. It is general in that it applies to all such land claims. Section 11 is particular in that it applies only to the property and rights of Australian Telecommunications Corporation. It is general in that it applies to all such rights, of whatever nature, in all parts of Australia. The application of the principle is not as easy as it was, for example, in *Sarris v. Penfolds Wines Pty Ltd* [1962] NSW 801, in which a statutory provision permitting a landlord to terminate a lease of premises being used for illegal gambling was held not to have been repealed impliedly by a later Act codifying the grounds on which a landlord could serve notice to quit on a tenant.

2.10.9 An examination of s. 11 in the context of the *Australian and Overseas Telecommunications Corporation Act* 1991 as a whole assists in resolving the question of inconsistency. Section 26 provided:

"AOTC is taken for the purposes of the laws of the Commonwealth, of a State or of a Territory:

- (a) not to have been incorporated or established for a public purpose or for a purpose of the Commonwealth; and
- (b) not to be a public authority or an instrumentality or agency of the Crown; and
- (c) not to be entitled to any immunity or privilege of the Commonwealth;

except so far as express provision is made by this Act or any other law of the Commonwealth, or by a law of a State or of a Territory, as the case may be."

Section 29 provided:

"Subject to section 26, the laws of the Commonwealth apply to AOTC according to their tenor, and so far as they are capable of applying, except to the extent that AOTC is exempted from the application of a particular law or class of laws by express provision of this Act or of any other law of the Commonwealth."

The next three sections contained specific provisions that the *Lands Acquisition Act* 1989, the *Public Works Committee Act* 1969 and specified sections of the *Corporations Law* of the Australian Capital Territory did not apply to AOTC. Sections 33 and 34 excluded from application certain classes of State and Territory laws. Section 38 provided for the manner in which AOTC could become registered as the proprietor of interests in land under State and Territory systems of registration of title. Finally, s. 41 provided for AOTC to pay reasonable compensation:

"Where, but for this section, the operation of this Act would result in the acquisition of property from a person otherwise than on just terms ..."

2.10.10 The combination of these provisions appears to me to make it clear that Parliament intended to override s. 67A of the Land Rights Act. It is true that s. 29 of the *Australian and Overseas Telecommunications Corporation Act* 1991 provided for the continued application of Commonwealth laws to AOTC and that no provision exempted specifically s. 67A of the Land Rights Act. Section 29, however, was made expressly subject to s. 26. It was s. 26, which removed AOTC from the sphere of the Crown, in conjunction with s. 11, which effected a transfer of all property from Australian Telecommunications Corporation to AOTC, which created estates or interests in land which were not those of the Crown. To hold that s. 29 preserved some of those estates and interests as estates and interests of the Crown would be to read s. 26 as subject to s. 29, the opposite of what the Act requires. Further, s. 41 gives a right to compensation where these provisions result in acquisition other than on just terms, a right which might well be available to the claimants, who have lost their right to claim Northern Territory Portion 3713 under the Land Rights Act, in consequence of the operation of the Act.

2.10.11 I am therefore of the view that, after the date when the present claim was lodged, Northern Territory Portion 3713 became subject to an estate or interest owned by AOTC, which did not hold it "on behalf of" Aboriginal people. Because s. 67A of the Land Rights Act is impliedly repealed by the later provisions in ss. 11 and 26 of the *Australian and Overseas Telecommunications Corporation Act* 1991, to the extent of the inconsistency between them, Northern Territory Portion 3713 can no longer be claimed.

2.10.12 I have considered whether the two documents executed by Banibi Pty Ltd on 20 October 1989, referred to in para. 2.10.2, taken together, or either of them, created an easement over Northern Territory Portion 645 in favour of Australian Telecommunications Corporation. If that were the case, the reasoning which I have applied to Northern Territory Portion 3713 would be applicable to so much of

Northern Territory Portion 645 as was affected by the easement. I am of the view that no such easement was created. The vagueness of the language used to specify the right given, in particular the choice not to specify a route or a range of possible routes, the use of the word "Licence" in the title of the second document, and the failure of either document to make any provision for execution by the grantee, all make it clear that what was created was a mere licence. The right is to be distinguished from the right to use all of a garden, held to be an easement in *Re Ellenborough Park* [1956] Ch 131. What was intended was clearly a right of access to Northern Territory Portion 3713; there would be absurdity in holding that Banibi Pty Ltd was granting unrestricted rights to move over any part of the land over which it held a pastoral lease. The question of access to Northern Territory Portion 3713 is dealt with in para. 6.10.

2.11 The energy supply easement

2.11.1 Within the claim area is also an energy supply easement, created under s. 36D of the *Crown Lands Act* (NT), now repealed and replaced by s. 63 of the *Crown Lands Act* 1992 (NT). The easement does not exceed thirty metres in width and crosses the western end of the subject land from its southern boundary with Northern Territory Portion 2016 to its boundary with Northern Territory Portion 2255. It is approximately 36.8 kilometres long. Its location is shown on the map in appendix 6.

2.11.2 The determination of the status of the energy supply easement is a matter of some complexity. I dealt with it in my report relating to the Warlmanpa (Muckaty Pastoral Lease) Land Claim No. 135 but, since the details in the present claim differ in some respects, I deal with it again. To some extent, what appears in this report in relation to that issue involves repetition of what I said in the previous report. Most of the parties affected are the same as those affected by my findings in the earlier report, and the submissions are the same for the most part. I deal with the issues completely in this report for convenience. I note that my report in relation to claim no. 135 was forwarded to the Minister for Aboriginal and Torres Strait Islander Affairs and to the Administrator of the Northern Territory on 18 March 1997. It was distributed to other parties, including NT Gas Pty Ltd, the banks referred to in para. 2.11.7 and the Attorney-General for the Northern Territory, within a few days thereafter. To the best of my knowledge, there has been no legal proceeding commenced for the purpose of challenging the correctness of my conclusions on the issues relating to the energy supply easement.

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

2.11.4 By an agreement in writing, dated 6 June 1986, Banibi Pty Ltd (described in the agreement as "the Grantor") granted to NT Gas Pty Ltd (described as "the Company") certain rights. The agreement recites that the Grantor:

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

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

- "(1) The Grantor agrees to grant under Section 36D of the Crown Lands Act an energy supply easement (called 'the pipeline easement') for the purposes specified in Schedule 4 over a piece or parcel of land identified in accordance with the provisions of this Agreement (which piece or parcel of land is called 'the pipeline easement').
- (2) (1) The Grantor grants to the Territory together with agents servants engineers contractors and other persons authorised by the Territory a right of access to the land for the purposes of carrying out such survey work tests and investigations as may be required in the opinion of the Territory or the Company so as to determine the location and boundaries of the pipeline easement and the Territory or the Company shall be at liberty to place upon the land such markers as may be necessary in the opinion of the Territory or the Company to locate or identify the land that is to be subject to the pipeline easement.
- (2) For the purposes of Sub-clause (1) the Company together with agents, servants, engineers, contractors and other persons authorised by the Company shall be deemed to be, for the purpose only of access, an agent of the Territory.
- (3) Upon identification of the land to be subject to the pipeline easement and notwithstanding that the Memorandum of Grant of Easement may not have been executed by the Grantor or even if executed may not have been registered in accordance with provisions of the Real Property Act the Grantor agrees that:
- (a) The Company may commence and proceed with the construction operation and maintenance of the pipeline and associated works in accordance with the proposed terms, being the terms set out in Schedule 4, of the pipeline easement; and
- (b) the Company shall have the right to enter upon such parts of the Grantor's land immediately adjacent to the land to be subject to the pipeline easement as may reasonably be required to facilitate the construction operation and maintenance of the pipeline and associated works and to place on such land equipment not of a permanent nature."

2.11.5 So far as is relevant, s. 36D of the *Crown Lands Act* (NT) then provided:

"An easement in gross may be granted to the Territory, the council of a municipality constituted under the *Local Government Act* or any prescribed statutory public authority by -

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

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

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

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

The expression "Licence area" was defined in the schedule to the licence as meaning a corridor 1 000 metres wide and extending 500 metres to each side of a line described in an appendix to the agreement.

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

2.11.8 On 19 August 1988, Banibi Pty Ltd executed a memorandum of grant of easement. This instrument provided that Banibi Pty Ltd:

"under Section 36D of the Crown Lands Act and IN CONSIDERATION of the sum of FOUR HUNDRED DOLLARS (\$400.00) DO HEREBY GRANT to the Northern Territory of Australia . . . an Energy Supply Easement within

the meaning of Section 36EA of and Schedule 2 to the Crown Lands Act affecting that part of the land that is shown described as Energy Supply Easement on the plan annexed hereto and more particularly shown on the Plans numbered S86/212A, S86/212B and S86/336 deposited at the Lands Titles Office (hereinafter called 'the Easement Land') and without in any way whatsoever limiting the generality of the foregoing full and free right for the Northern Territory of Australia and its assigns their servants and agents and all persons authorised by it or them to act on its or their behalf at all times and from time to time:

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

The consideration of \$400 referred to in the instrument was paid to Banibi Pty Ltd by NT Gas Pty Ltd, by cheque dated 18 November 1988.

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

- "(1) Without limiting the power that he may have under any other law in force in the Territory, but subject to section 36G, the proprietor of an easement or easement in gross of a type described in a certificate of title or Crown lease registered under the *Real Property Act* by a description in Schedule 2 shall have the use and benefit of the easement or easement in gross for the purposes specified in relation to that use.
- (2) A pipe, duct, wire, pole or other thing attached to or constructed on land to which an easement or easement in gross referred to in subsection (1) relates for or in relation to a relevant purpose described in Schedule 2 shall be deemed not to be a fixture to the land for the purpose of giving the proprietor of the land a proprietary interest in it."

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

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

"Description

Energy supply easement.

Purpose

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

Power

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

2.11.11 The land described in the memorandum of grant of easement referred to in para. 2.11.8 as the easement land is that which is shown on the map in appendix 6 to this report as the energy supply easement. On 16 November 1988, the energy supply easement was registered pursuant to the *Real Property Act* (NT).

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

"WHEREAS:

- A. N.T. Gas is the holder of Pipeline Licence Number 4 under the Energy Pipelines Act 1981 in relation to the Amadeus Basin to Darwin natural gas pipeline.
- B. The Territory is the grantee of certain easements in gross being Energy Supply Easements within the meaning of Section 36EA of and Schedule 2 to the Crown Lands Act granted for the purposes of and in connection with the Amadeus Basin to Darwin natural gas pipeline.
- C. Further easements in gross will be granted to the Territory from time to time.
- D. The Territory has agreed to grant to NT Gas and NT Gas has agreed to accept the full and free right to use the easements in gross granted or to be granted to the Territory for the purposes of the Amadeus Basin to Darwin natural gas pipeline, subject to the terms of this Deed."

The operative provisions of the instrument read as follows:

- "1. In this Deed unless otherwise specified:
- (a) 'Amadeus Basin to Darwin natural gas pipeline' means the pipeline constructed and to be operated by NT Gas under the Licence granted pursuant to the Energy Pipelines Act 1981 for the purposes of conveying natural gas from the Amadeus Basin to Darwin and includes apparatus, works, and facilities ancillary to the pipeline.
 - (b) 'Servient land' means that land affected or to be affected by easements in gross granted to the Territory for the purposes of or in connection with the Amadeus Basin to Darwin natural gas pipeline.
2. NT Gas shall be entitled to the same extent as the Territory in relation to the Amadeus Basin to Darwin natural gas pipeline to the full and free right for it and its assigns, its and their servants and agents and all persons authorised by it or them to act on its or their behalf at all times and from time to time:
- (a) to lay, construct, repair, maintain, renew, use, operate and remove pipeline, pipelines, apparatus or works within the meaning of the Energy Pipelines Act for the conveyance of any substance permitted by the aforesaid Pipeline Licence Number 4 and for purposes incidental thereto under the Energy Pipelines Act through in and along the servient land, and
 - (b) to cause or permit to flow or be conveyed through and along the said pipelines any such substance, and
 - (c) with or without vehicles, plant and equipment to enter and be in and upon the servient land for the purpose of exercising any rights granted to it or them hereunder, and
 - (d) to perform or carry out any act incidental to any of the aforesaid purposes.
3. NT Gas shall be responsible for all damage caused by NT Gas its servants agents engineers contractors and other persons authorised by it to the servient land including any property whether of a real or personal nature situated thereon occurring by reason of the operation or maintenance of the Amadeus Basin to Darwin natural gas pipeline.
4. NT Gas shall keep the Territory indemnified against all actions claims costs and damages (whether in respect of damage to real or personal property or personal injury) that may be lawfully brought made or claimed against the Territory by any person in relation to or in

connection with the easements in gross granted or to be granted to the Territory (for the purposes of or in connection with the Amadeus Basin to Darwin natural gas pipeline) or any matter or thing done or purported to have been done pursuant to it.

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

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

"A person to or for whom an easement in gross is granted or reserved under this Division may allow any other person (himself or by his agents, servants or workmen) to enter on and do anything on the land to which the easement relates that the person to or for whom it was granted or reserved can do as the proprietor of the easement, and the proprietor of the land shall not hinder or obstruct a person entering on or doing anything on the land in pursuance of the authority of the proprietor of the easement."

2.11.14 Counsel for the claimants adopted the argument, put by counsel for the claimants in claim no. 135, that an easement in gross is not an estate or interest in land, for the purposes of s. 50 of the Land Rights Act. The argument called in aid the judgments of Mason J and Wilson J in *R v. Toohey; Ex parte Meneling Station Pty Ltd* (1982) 158 CLR 327, at pp. 342-3 and 351 respectively. The effect of those passages is that the phrase "estate or interest" in the definition of "unalienated Crown land" in s. 3(1), and the phrase "estates and interests" in s. 50, of the Land Rights Act are to be construed so as to cover only proprietary interests of the kinds traditionally recognised by the law as legal and equitable estates and interests. It was argued in consequence that, because an easement of the kind known to the common law was an estate or interest which required both a dominant and a servient tenement, an easement in gross, which has no dominant tenement, was not an estate or interest for the purposes of the Land Rights Act. The argument gains support from *Commissioner of Main Roads v. North Shore Gas Co. Ltd* (1967) 120 CLR 118, especially at p. 133 in the judgment of Windeyer J; *Gas & Fuel Corporation of Victoria v. Barba* [1976] VR 755, at p. 763; and *Harada v. Registrar of Titles* [1981] VR 743. That which is properly called an easement, for the purposes of the common law, would not include an easement in gross. I am prepared to accept, however, that the energy supply easement is an estate or interest for the purposes of the Land Rights Act. It is open to a legislature to create estates or interests which do not have all of the characteristics of those which are recognised traditionally. In *North Shore Gas*, Windeyer J recognised that a form of easement could be created by statute without the need for a dominant tenement. Nothing in the judgments in *Meneling* suggests

that a novel form of right created by legislation cannot be an estate or interest for the purposes of the Land Rights Act. Indeed, the High Court of Australia examined in detail the nature of a grazing licence before determining that it did not constitute an estate or interest; the grazing licence was not rejected simply on the ground of novelty. There is no reason why an easement lacking only a dominant tenement should not be regarded as an estate or interest.

2.11.15 If the energy supply easement were the only estate or interest created as a result of the transactions to which I have referred, it would have no effect on the claim. The easement in gross itself was granted to the Northern Territory of Australia. It is therefore held by the Crown, and does not affect the status of the land claimed as alienated Crown land in which all estates and interests not held by the Crown are held by or on behalf of Aboriginal people. It was contended on behalf of NT Gas Pty Ltd, the Attorney-General for the Northern Territory and the four banks referred to in para. 2.11.7 that other estates or interests of various kinds had been created, which were held neither by the Crown nor by or on behalf of Aboriginal people. I turn now to this question.

2.11.16 In the first place, it was contended that Banibi Pty Ltd had created an easement or an "equitable interest" in favour of NT Gas Pty Ltd, by the agreement of 6 June 1986. Plainly, this could not be so. That agreement created no common law easement itself. It could not do so, because it referred to no dominant tenement, which is an essential characteristic of a common law easement (see the authorities referred to in para. 2.11.14). An equitable easement could not be something of a kind inferior to a common law easement; it would only arise from an inchoate attempt to create a common law easement. By s. 36D of the *Crown Lands Act* (NT), an easement in gross could only be created in favour of the Northern Territory of Australia, a municipal council or a prescribed statutory public authority. NT Gas Pty Ltd fell within neither of the last two categories. The law would not recognise as an estate or interest in land an attempt to create an easement in gross in its favour. Neither would equity. In any event, the obligation which Banibi Pty Ltd undertook to NT Gas Pty Ltd by the agreement was to grant an energy supply easement under s. 36D of the *Crown Lands Act* (NT). This is plain enough from clause (1) of the agreement, which I have set out in para. 2.11.4. It is emphasised by clause (7), which I have not quoted, in which Banibi Pty Ltd undertook certain obligations "pending the formal granting or vesting of the pipeline easement" in the Northern Territory. No estate or interest in the land other than an easement in gross is contemplated. The rights of access and to perform works, which NT Gas Pty Ltd acquired under clauses (2) and (3), clearly amount to no more than a licence. Indeed, those arising under clause (2) appear to be derivative from rights of access given to the Northern Territory. It is clearly established that a licence to enter land and perform activities on it is a personal right and does not amount to an estate or interest in land. This, in substance, was the conclusion of the High Court of Australia in *Meneling*.

2.11.17 One argument raised was that NT Gas Pty Ltd was the assignee of the estate or interest of the Northern Territory in the energy supply easement. The assignment was said to have occurred by the instrument dated 18 May 1988, the text of which is set out in para. 2.11.12. This argument must fail for a number of reasons. The language of the instrument is not that of assignment. It recites an agreement to grant

and accept "the full and free right to use the easements in gross". The text confirms this; the subject of the grant by the Northern Territory is the rights which are incidents of the energy supply easement, not the easement itself. The source of power for the Northern Territory to enter into the agreement, s. 36EB of the *Crown Lands Act* (NT), which is set out in para. 2.11.13, did not contemplate the assignment of the easement in gross itself. It authorised the Northern Territory to grant to others the incidents of the easement in gross, not the easement in gross itself. If assignment of the easement in gross were permitted, the restriction imposed by s. 36D of the *Crown Lands Act* (NT) on the classes of proprietors of easements in gross would be rendered irrelevant.

2.11.18 Next, it was argued that NT Gas Pty Ltd had acquired an equitable interest by way of resulting trust, arising from its payment of the \$400 consideration for the grant of the energy supply easement to the Northern Territory. Where one person pays for the purchase of an interest in land, but the interest is conveyed or granted to another person, the law presumes that the latter holds the interest on trust for the former. It must be emphasised that there is only a presumption of a resulting trust. The presumption may be rebutted by the existence of circumstances showing an intention that the provider of the purchase money is not to benefit by way of a trust. The fact that the purchase was intended as a gift would be an obvious rebutting circumstance. In the case of the energy supply easement, the circumstances rebut the presumption emphatically. The relevant transactions were carried out in furtherance of the statutory scheme, constituted by the *Energy Pipelines Act* (NT) and the *Crown Lands Act* (NT), whereby the Northern Territory Government could license private enterprises to deliver or distribute energy, or the resources to generate it. As part of the execution of the scheme, NT Gas Pty Ltd carried out the task of negotiating with landowners and leaseholders for the creation of energy supply easements. Without the statutory scheme, NT Gas Pty Ltd would have been unable to acquire easements because it could not have related them to any dominant tenement. The clear intention of the statutory scheme is that the Northern Territory is to hold the beneficial interest in the energy supply easement, licensing its use under s. 36EB of the *Crown Lands Act* (NT). Because NT Gas Pty Ltd is the profit-maker, as licensee, builder and operator of the pipeline, it was sensible that it should pay the costs involved in procuring the energy supply easements. It must be remembered that s. 36D of the *Crown Lands Act* (NT) permitted the creation of easements in gross only in favour of the Northern Territory itself, municipal councils and prescribed statutory public authorities. The statute did not contemplate that those in whose favour such easements could not be created would become beneficial owners of them by resulting trust, arising from the provision of purchase money.

2.11.19 A further contention was that NT Gas Pty Ltd was granted an estate or interest in the land the subject of the claim as a result of the rights given to it by the licence granted under s. 15 of the *Energy Pipelines Act* (NT), referred to in para. 2.11.6, or the instrument dated 18 May 1988, set out in para. 2.11.12, or both. In para. 2.11.17, I have rejected the argument that the latter instrument amounted to an assignment of the easement in gross. The argument that either the licence or the instrument gave to NT Gas Pty Ltd rights which amounted to an estate or interest in land must be rejected similarly. The language of each document is not the language of

the creation of estates or interests in land, but the language of the grant of personal rights, or licences. The documents are formal, legal documents. The familiar language of the grant of estates or interests could have been used, if this were intended. Undoubtedly, a reason why this was not done is that any attempt by the Northern Territory to grant estates or interests in land, inconsistent with the pastoral lease held by Banibi Pty Ltd, would have lacked the necessary statutory authority. That authority is not to be found in the provisions to which I have referred, dealing with the creation and use of the energy supply easement. The *Crown Lands Act* (NT) contained no provision authorising the carving of lesser interests out of an easement in gross. The only relevant provision was s. 36EB, which did not empower the Northern Territory either to assign the easement in gross or to grant lesser interests out of it. Section 22 of the *Energy Pipelines Act* (NT) made it clear that a licence granted under s. 15 gave rise to no proprietary interest in any land, nor to any licence to enter land; s. 22 is the source of a power to grant leases, easements and licences over Crown land to the holder of a licence under s. 15, to enable the holder of that licence to enter land for the purpose of constructing and maintaining the pipeline for which the s. 15 licence is held. That power would have been entirely unnecessary if the licence under s. 15 itself amounted to an interest in land.

2.11.20 For its right to go onto the land claimed and carry out any activities there, NT Gas Pty Ltd had to rely on its agreement with Banibi Pty Ltd until 18 May 1988 and then upon its agreement with the Northern Territory with respect to the use of the energy supply easement. In each case, the rights it acquired were personal, not estates or interests in the land.

2.11.21 In their written submissions, the banks referred to in para. 2.11.7 attempted to argue that ANZ Leasing (NT) Pty Ltd had acquired an interest in the land by having acquired ownership of the pipe. The argument was based on the proposition that the pipe, being buried in the soil, had become a fixture. On the application of ordinary principles, there must be some doubt whether this is so. A chattel becomes a fixture, and part of the real estate, if annexed to land to a sufficient degree and with the object of the better enjoyment of the land. See *Holland v. Hodgson* (1872) 7 LRCP 328, at pp. 334-5 and *Reid v. Smith* (1905) 3 CLR 656, at pp. 663 (per Griffith CJ), 678 and 680 (per O'Connor J). There can be no doubt about the degree of annexation of the pipe; it is buried seventy-five centimetres beneath the surface. In claim no. 135, Glenn Bott, the Administrative Manager of NT Gas Pty Ltd, gave evidence to the effect that the purpose of burying the pipe was to safeguard the pipe itself. The pipe is not constructed so as to benefit the land, but simply because it must exist to enable natural gas to be conveyed across the land.

2.11.22 Even if the pipe were a fixture, however, the acceptance of the banks' submission would turn the whole law relating to fixtures on its head. If a chattel becomes a fixture, the consequence is that the owner of the chattel loses ownership and the owner of the land to which it is annexed acquires ownership. There are many cases, of which *Brand v. Chris Building Co. Pty Ltd* [1957] VR 625 is an example. There is no case of which I am aware which holds that the owner of a chattel which becomes a fixture acquires an estate or interest in the land to which the chattel is annexed. This rule explains the various provisions which are designed to ensure that, even if a pipe within an energy supply easement would otherwise become a fixture, it

does not do so for the purpose of giving the owner of the land any interest in the pipe. These provisions are found in clause (8) of the agreement dated 6 June 1986, referred to in para. 2.11.4, s. 36EA(2) of the *Crown Lands Act* (NT), quoted in para. 2.11.9, and s. 59 of the *Energy Pipelines Act* (NT).

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

2.11.24 The Attorney-General for the Northern Territory made an attempt to argue that some equitable interest existed on the application of the principles of estoppel, acquiescence and unconscionable conduct. The attempt fails. Apart from its other deficiencies, the argument cannot be sustained for lack of evidence that NT Gas Pty Ltd was ever led by Banibi Pty Ltd, or by the Northern Territory Government, to believe that it would acquire any entitlement which it did not acquire. The submission of the Attorney-General for the Northern Territory that Banibi Pty Ltd is estopped from giving its consent to the making of the land claim is dealt with in para. 2.13.

2.11.25 In the result, I am of the view that, apart from Pastoral Lease No. 593, the only possible estate or interest in the land the subject of the energy supply easement is that easement in gross itself, and that it is held by the Crown. In chapter 6, I deal with the consequences of this conclusion for NT Gas Pty Ltd, ANZ Leasing (NT) Pty Ltd and the banks referred to in para. 2.11.7.

2.11.26 My conclusion makes it unnecessary to deal with the argument, adopted by counsel for the claimants, that the easement in gross is a "mining interest", within the meaning of s. 3(1) of the Land Rights Act, and, by virtue of s. 3(2)(a), is therefore to be disregarded as not being an estate or interest. It also precludes any question of estates or interests in the land arising from any rights of access across other parts of the land to that part of it which is subject to the energy supply easement. There could be no question of an easement of necessity for access to the land the subject of the energy supply easement, because access is available from adjoining land on both the north and the south, along the track which runs along the energy supply easement itself, as well as from the Gorrie Station access road, referred to in para. 7.2.2.

2.12 Land available for claim

2.12.1 I therefore find that:

- (a) Northern Territory Portion 645, including the energy supply easement referred to in para. 2.11, but excluding the undefined areas of the old homestead and the old telegraph line referred to in para. 2.5, the undefined area of the old alignment of the Stuart Highway referred to

- in para. 2.7, the area covered by the easement providing access to Northern Territory Portion 1434 referred to in para. 2.9, and Northern Territory Portion 3713 referred to in para. 2.10, is alienated Crown land in which all estates and interests not held by the Crown are held by, or on behalf of, Aboriginal people, and is available for claim;
- (b) the parts of the Urapunga Stock Route and the Birdum Stock Route which lie within the boundaries of Northern Territory Portion 645 referred to in para. 2.3 are unalienated Crown land and are available for claim;
 - (c) Northern Territory Portion 3672 referred to in para. 2.6, the area covered by the easement providing access to Northern Territory Portion 1434 referred to in para. 2.9, and Northern Territory Portion 3713 referred to in para. 2.10 are neither unalienated Crown land, nor alienated Crown land in which all estates and interests not held by the Crown are held by, or on behalf of, Aboriginal people, and are not available for claim; and
 - (d) Northern Territory Portion 270 referred to in para. 2.4, the undefined areas of the old homestead and the old telegraph line referred to in para. 2.5, the undefined area of the old alignment of the Stuart Highway referred to in para. 2.7, Northern Territory Portion 1508 referred to in para. 2.8, and Northern Territory Portion 1434 referred to in para. 2.9 are not the subject of the claim as it is expressed in the application.

2.12.2 I note that, in written submissions made on behalf of the Northern Territory Land Corporation, it is said that, on 29 November 1994, the Northern Territory Surveyor-General made an amendment to Survey Plans S89/165G and S89/165H, pursuant to s. 49 of the *Licensed Surveyors Act* (NT), and that the amendment:

"altered the position of the northern and southern boundaries of Pastoral Lease No 593 on the Survey Plans so that they coincide with the northern and southern boundaries of Elsey Station."

The submission is supported by evidence in the form of a written statement of David James Jeffery, made on 23 December 1994. Mr Jeffery said he "detected an error" in the survey plans. I am not sure of the significance of this evidence. There is no indication of the alterations which were made to the survey plans, other than that they purportedly altered the position of the boundaries. It is necessary to point out, however, that s. 67A(2) of the Land Rights Act has the effect of preventing the grant of any estate or interest in any part of the land the subject of the claim after the lodgment of the application. No amendment of any survey plan could have been effective to accomplish the creation of any estate or interest in any part of the land claimed in November 1994.

2.13 Consents of those holding estates or interests

2.13.1 Section 50(2C) of the Land Rights Act requires that, where an estate or interest in land the subject of a claim is held by, or on behalf of, Aboriginal people, the Aboriginal Land Commissioner not perform, or continue to perform, a function in relation to that land unless the Aboriginal people who hold that estate or interest have, or the body which holds it on their behalf has, consented in writing to the making of the application. Banibi Pty Ltd, the holder of the estate or interest constituted by Pastoral Lease No. 593 in Northern Territory Portion 645, consented in writing to the making of the application by a document dated 1 July 1991, to which the common seal of Banibi Pty Ltd is affixed. Jilkminggan Community Incorporated, the holder of the estate or interest constituted by the mortgage referred to in para. 2.1.4, consented in writing to the making of the application by a document, also dated 1 July 1991, to which the common seal of Jilkminggan Community Incorporated is affixed. Both documents were lodged with the application.

2.13.2 Counsel for the Attorney-General for the Northern Territory submitted that Banibi Pty Ltd was estopped from consenting to the land claim by reason of the agreement between it and NT Gas Pty Ltd referred to in para. 2.11.4 and the grant of the energy supply easement referred to in para. 2.11.8. There are several reasons why this submission cannot be accepted. When exercising my powers as Aboriginal Land Commissioner, I am not exercising judicial power and not functioning as a court. Estoppel is a form of defence to (and on occasions foundation for) a claim made in a court of law, which must be pleaded; if the plea is made good, the court will decline to afford to a party a right otherwise available to that party. I do not have that kind of jurisdiction. I have a statutory duty to deal with an application if I have the written consent of a body holding an estate or interest on behalf of Aboriginal people. As a matter of fact, I have such a consent (see para. 2.13.1). I cannot treat it as a nullity, even if it be the case that the consent was given in breach of some obligation on the part of that body not to give it.

2.13.3 In any event, I doubt that NT Gas Pty Ltd could succeed in raising an estoppel if the issue were litigated. It is even more unlikely that the Northern Territory Government could do so. This is because Banibi Pty Ltd afforded to NT Gas Pty Ltd all of the rights which it promised, pursuant to the agreement dated 6 June 1986 referred to in para. 2.11.4. It granted the energy supply easement to the Northern Territory (see para. 2.11.8). In the meantime, NT Gas Pty Ltd was able to exercise its rights to enter the land and to construct and maintain the pipeline. Once the agreement of 18 May 1988 between NT Gas Pty Ltd and the Northern Territory, referred to in para. 2.11.12, came into existence, NT Gas Pty Ltd depended on that for its right of entry. As its terms make clear, the agreement of 6 June 1986 was intended as an interim measure, to provide rights of access until the energy supply easement was created and the Northern Territory delegated its rights under that easement to NT Gas Pty Ltd. The fact that the law, in the form of the Land Rights Act, has intervened to curtail those rights, because the relevant estate or interest is held by the Crown, cannot be relied upon to suggest that Banibi Pty Ltd has acted unconscionably.

2.14 Physical features of the land claimed The land is situated in the upper Roper River Valley. The Roper River is a permanent stream which is fed by limestone aquifers. In turn, the river feeds a number of lagoons and swamps within the claim area. Its major tributaries within the claim area are Elsey Creek, Cave Creek, Cattle Creek, the Chambers River and the Strangways River. Near Elsey Creek is a small, but important, ephemeral waterway, known as Salt Creek. The Roper River flows east, towards the Gulf of Carpentaria. In the north-west, the claim area is hilly, with limestone areas. In the south, it is flatter. Vegetation varies from lush tropical, where there is permanent water, to tropical savanna away from the Roper River and the permanent lagoons and swamps. The climate is monsoonal, so that much of the area is inaccessible during the wet season.

3 LOCAL DESCENT GROUPS

3.1 Relevant language groups The subject land lies partly within country recognised as that of the Mangarrayi language group and partly within country recognised as that of the Yangman language group. The interface between the two countries is in the vicinity of Salt Creek. Although a language group can constitute a local descent group for the purposes of the definition of "traditional Aboriginal owners" in the Land Rights Act, the groups advanced as local descent groups in the present claim are not the language groups, but smaller groups. Indeed, some of those groups include people from both of the language groups.

3.2 Composition of groups advanced as traditional Aboriginal owners The groups advanced as traditional Aboriginal owners are composed of *mingirringgi*, *junggayi* and *darlnyin*, who are recognised as having responsibility for particular groups of sites associated with particular dreamings, and for the land around those sites. To understand the way in which the groups are constructed, it is necessary to know something of the kinship system which prevails among the claimants.

3.3 The claimants' kinship system

3.3.1 That kinship system is based on a form of the moiety system, which involves the division of people, land, dreamings and other creatures and phenomena into separate moieties and within those moieties. Each moiety is divided into four subsections. Each person is a member of a particular subsection. For each subsection, there is an appropriate subsection of the opposite moiety to which a marriage partner should belong, giving rise to a notion of an ideal, or "straight", marriage. Children of such a marriage will acquire membership of a particular subsection in the same moiety as that of their father. Subsection identities are passed back and forth in the patriline from generation to generation, so that a man's father and son will be of the same subsection, which will be different from that of the man himself. Thus, two subsections form what is called a father-child patricouple or semimoiety.

3.3.2 The eight subsections, by their names in the Mangarrayi language, are Burrala, Gamarra, Jamijin and Gangila, which make up one moiety, and Ngarrijbalan, Bangariyn, Balyarriyn and Burlayn, which make up the other moiety. The ideal marriages are Burrala-Ngarrijbalan, Gamarra-Balyarriyn, Jamijin-Bangariyn and Gangila-Burlayn. Children of a Burrala man will be Gamarra and children of a Gamarra man will be Burrala. One patricouple or semimoiety is, therefore, known as Gamarra-Burrala. The other semimoieties are constructed in a similar way. They are Gangila-Jamijin, Bangariyn-Ngarrijbalan and Balyarriyn-Burlayn.

3.3.3 This kinship system is of universal application among the claimants, so that the mere possession of a particular subsection identity will not result in membership of a particular land-holding group. To be *mingirringgi*, *junggayi* or *darlnyin* with respect to particular sites and land, it is necessary generally to be able to trace one's lineage from a particular male ancestor who stood in the role of *mingirringgi* with respect to those sites and that land. Descendants of that ancestor in the patriline will be *mingirringgi* for that land-holding group. Those who stand in the role of *junggayi* will trace their lineage either through their mothers to a member of the patriline, or through

their fathers' mothers, to a member of the patriline. Those who are *darlnyin* for the particular land-holding group will trace their lineage through their mothers' mothers to a member of the patriline. Thus, it is said that *mingirringgi* take country from their fathers and fathers' fathers; *junggayi* take country from their mothers and mothers' fathers, or from their fathers' mothers and fathers' mothers' fathers; and *darlnyin* take country from their mothers' mothers' fathers (sometimes stated as mothers' mothers' brothers, who ought in any event to have the same semimoiety as their fathers).

3.3.4 Based on ideal marriages, the following table shows the semimoieties to which *mingirringgi*, *junggayi* and *darlnyin* respectively will belong. The first column shows the semimoiety to which an area of country is considered to belong. The other three columns show the semimoiety identities of *mingirringgi*, *junggayi* and *darlnyin* respectively.

Country affiliation	<i>Mingirringgi</i>	<i>Junggayi</i>	<i>Darlnyin</i>
Gamarra-Burrala	Gamarra-Burrala	Balyarriyn-Burlayn Bangariyn-Ngarrijbalan	Gangila-Jamijin
Gangila-Jamijin	Gangila-Jamijin	Bangariyn-Ngarrijbalan Balyarriyn-Burlayn	Gamarra-Burrala
Balyarriyn-Burlayn	Balyarriyn-Burlayn	Gangila-Jamijin Gamarra-Burrala	Bangariyn-Ngarrijbalan
Bangariyn-Ngarrijbalan	Bangariyn-Ngarrijbalan	Gamarra-Burrala Gangila-Jamijin	Balyarriyn-Burlayn

It will be seen that each of the semimoieties appears four times in the table in relation to people. Any particular person may stand in a relationship to different areas of country in four different ways. A person will be *mingirringgi* in respect of country of which his or her father and father's father are or were *mingirringgi*; *junggayi* in respect of country for which his or her mother and mother's father are or were *mingirringgi*; *junggayi* in respect of country for which his or her father is or was *junggayi* and father's mother's father is or was *mingirringgi*; and *darlnyin* in respect of country for which his or her mother is or was *junggayi* and mother's mother's father is or was *mingirringgi*.

3.3.5 The complexity of the system is increased by the recruitment into land-holding groups of persons from outside the normal descent lines. The simplest case of such recruitment is adoption, which often occurs when a child is "grown up" by a parent who is not the child's natural parent and is treated as having acquired the subsection identity which would have been appropriate for a natural child of the adoptive parent. There are more complex methods of recruitment, which often occur when a land-holding group is perceived to be short of numbers or of senior and respected members of one or more of the categories making up the group. In such cases, persons of the

appropriate semimoiety will become regarded as having the appropriate responsibilities for the particular sites and land of the land-holding group. The process may take some time. It usually involves the recruitment of someone whose existing ceremonial responsibilities match those of the required *mingirringgi*, *junggayi* or *darlnyin*, as the case may be. The nature of these roles is explained in paras 4.16.3 and 4.16.4. The recruitment of a person in this manner usually results in members of the person's family being regarded as having the appropriate roles within the land-holding group to which the person has been recruited. There have been instances in relation to some of the groups in the present claim of recruitment of persons who originated in distant places, but who came to work in the area of the subject land and who were accepted into the land-holding system by the ancestors of the claimants.

3.3.6 Another method by which a land-holding group may be formed is by succession. If a land-holding group becomes extinct, its responsibilities for the particular sites and land may simply be assumed by another group whose members have the semimoiety identities appropriate for the roles of *mingirringgi*, *junggayi* and *darlnyin* with respect to those sites and that land. The relatively long (for the Northern Territory) European history of Elsey Station has led to past disruption of the Aboriginal spiritual landscape to the extent that succession has been a factor in the construction of the present land-holding groups.

3.3.7 There is always the possibility of marriages between people who are not of the ideal subsections for marriage. There is also the possibility of marriages with people from outside the claimants' kinship system altogether, including non-Aboriginal people. Non-ideal marriages have the potential to disrupt such a system. The possibility of disruption is minimised by a general rule that the father's subsection prevails, so that the child will inherit membership of the father's semimoiety. In the case where the father does not have a subsection identity, the child will usually be allocated the subsection identity which the child would have inherited if the mother had taken a husband of the appropriate subsection. These rules may not be followed in cases of adoption (see para. 3.3.5).

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

3.5 Descent criteria In determining who are members of each of the land-holding groups, I have regarded the primary criterion as descent, by which *mingirringgi* acquire their membership of the group from their fathers and fathers' fathers, *junggayi* acquire their membership from their mothers and mothers' fathers, or from their fathers and fathers' mothers' fathers, and *darlnyin* acquire their membership from their mothers and mothers' mothers' fathers. Where the evidence justifies it, I have accepted as members of land-holding groups those who have become so by adoption and those who, or whose ancestors, have been recruited in the manner referred to in para. 3.3.5. In the attribution of particular sites and a particular area of land to a particular group, succession in the manner described in para. 3.3.6 has also been relevant.

3.6 Eleven groups The claim was put on the basis that there are eleven site complexes, with surrounding areas of land, wholly or partly within the claim area, and that a land-holding group is affiliated to each such site complex and area of land. In some cases, the land-holding group for one site complex and area of land is almost identical in composition to that for another site complex and area. The site complexes and areas of land were identified for the purposes of the Mataranka Area Land Claim No. 69. Each of the areas the subject of that claim was given a number. The same numbers were used in the material presented as part of this claim. As not all of the areas the subject of the former claim are the subject of this claim, the numbers are misleading and I have elected not to use them. Rather than increase the confusion by allocating a new set of numbers, I have preferred to refer to the areas of land, and consequently to the land-holding group said to be affiliated to them, by the name of a major site to which the members of the group are affiliated. Whilst the groups may not be known by these names in common parlance, it is obvious that they would not be known by numbers either.

3.7 Difficulties in determining composition of groups

3.7.1 It has not been easy to make definitive findings as to the membership of the land-holding groups. The material presented in support of the claim includes group lists and claimant genealogies. There is not, as is sometimes the case, a separate genealogy for each group. Rather, the genealogies are on a family basis and each group consists of several families. There was also in evidence a detailed list of the personal particulars of most of the claimants. There are instances of inconsistencies between the information contained in the group lists, the genealogies, the personal particulars and the evidence given. In some cases, the group lists have contained names in particular roles which I understand to be inconsistent with the criteria to which I have referred in para. 3.5. For instance, persons were listed as *darlnyin* whose fathers (but not mothers) were listed as *junggayi*. My understanding is that *darlnyin* take exclusively through their mothers. I have endeavoured to resolve the inconsistencies as best I can. At the end of the day, it is often necessary to accept assertions by or about people as to their entitlement to membership of particular groups. Where such assertions have been made clearly, and are consistent with the evidence as to the criteria referred to in para. 3.5, I have accepted them. The lists of members of land-holding groups which follow in this chapter are constructed on this basis.

3.7.2 There is also a tendency in the evidence for senior people to be named as *junggayi* or *darlnyin* for a particular group, even though not shown on the group list as filling that role for that group. This is the result of the fact that the terms have more than one meaning; they have ceremonial and social connotations as well as land tenure connotations. There are instances, therefore, of the naming of senior individuals of the appropriate semimoieties, in response to questions as to who are *junggayi* or *darlnyin* for particular places, when those persons fulfil those roles in a wider context but not necessarily in relation to the particular site and dreaming. It is not always easy to interpret such evidence, but I have endeavoured to distinguish between cases in which a person is *junggayi* or *darlnyin* in the restricted, land tenure, sense, and cases in which a person has one or other of those roles in another sense.

3.8 The Guyanggan group

3.8.1 The **Guyanggan** group is said to be affiliated to sites and land in the vicinity of the present Elsey Station homestead. It consists of several important families and senior individuals. The central families are the Daylight and Roberts families, who are descendants of a common male ancestor named Gelwanggin; the Lirrawi family; and the family of Mary Nurniyn. There are also descendants of a man who was called Bongoyi. The appropriate semimoietiy for *mingirringgi* for the **Guyanggan** group is Gamarra-Burralla.

3.8.2 Daylight Ngayunggu, Bobby Ngayunggu and Brian Manyita are brothers, whose late father, Elsey Dick, was a son of Gelwanggin. They are *mingirringgi*, together with their children. Daylight's children are Michael, Noel, Ian, Kerry, Patrick James, Hilda (whose "bush" name is Gamajarr), Pamela and Edward Daylight. Also among the *mingirringgi* is Jonathan Daylight, who appears in the genealogy under Bobby. The evidence is that Bobby is not Jonathan's natural father and that Jonathan has been "grown up" by Daylight, so I have included him as a child of Daylight. Bobby's children are Evelyn and Craig Ngayunggu. Brian's children are Tanya, Terrence and Loretta Manyita. The children of male children are also *mingirringgi*. Noel Daylight has Razak, Justin, Larissa and Jeremiah Daylight. Ian Daylight has Ozzie, Tina, Hilda (whose bush name is Yirrinini) and Ian Junior Daylight. Kerry has two children, a natural son named Ryanold Daylight and an adopted son named Owen Daylight, who is recognised as his child. Edward Daylight has three children, who appear to be adopted, but are recognised as his. They are Bruce Daylight, Samuel Daylight and Shirley Daylight (also known as Shirley Roy). Bruce Daylight has three children, Natasha, Desmond and Braden Daylight. Samuel Daylight has a son, Lucas Daylight.

3.8.3 Children of female children of Daylight are *junggayi*. Hilda Daylight Gamajarr has Deleneon and Felicia Watson. Pamela Daylight has Adrian, Lindsay, Tanya, Lee and Neil Doctor. Edward's daughter, Shirley Daylight (also known as Shirley Roy), has Rhonda Wanta, Selda Wilfrid and Lewis Roy.

3.8.4 Slim Roberts, Clive Roberts, Marjorie Hall, Marianne Roberts, Paula Roberts (also known as Paula Hall), Valmay Roberts (also known as Valmay Daniels), Douglas Leslie Roberts and Joshua Roberts are all children of the late Clancy Roberts, who was a son of Gelwanggin. They are all *mingirringgi*, along with the children of the males. Clive has Daniel, Warren and Maretta Roberts. Douglas has Tiffany Rae Paula Roberts and Joshua has Edwina Roberts. Children of females in that family are *junggayi*. Marjorie Hall has Lindsay, Rodney, Bernadette, Dianne and Selma Hall. Marianne Roberts has Joelene, Janita and Lorraine Beatrice Russell (who are also known by the surname Gaykamangu). Paula Roberts has Martina Hall, Matthias Rogers, Maceuan Rogers and Martika Rogers. Valmay Roberts has Gene Clancy Daniels and Anthea Glynnis Daniels.

3.8.5 Jessie Roberts, Sheila Conway and Betty Lardy are daughters of Gelwanggin. They are *mingirringgi*. Their children are *junggayi*. Jessie has Faye Roberts, Roger Roberts, Deirdre Newman (also known as Deirdre Roberts), Gary Roberts, Elaine James (also known as Elaine Roberts) and Jocelyn James. Sheila Conway has Edna

Farrar, Michael Miller, Christine Conway, Phyllis Conway and Robert Conway. Betty Lardy was taken away to Croker Island as a child. After seventeen years' absence, she returned to live at Jilkminggan. She has four children, Cheryl, Helena, Anna Marie and Josephine Lardy. Children of female *junggayi* are *darlnyin*. Faye Roberts has Robert Smiler, Stanley Smiler, Jessie Smiler and Karen Groves. Deirdre Newman has Stephanie John (also known as Stephanie Daniels), Steven John and Julie John. Elaine James has Josiah Albert, Harry Albert Junior and Zachariah Albert. Jocelyn James has Joanne James, Nicole James, Anthea Margaret Joe and Antoinette Joe. Edna Farrar has Rosalyn, Susan and Trudy Farrar. Christine Conway has Derrick Conway, Cecily Conway, Janet Ellis and Peter Ellis Junior. Phyllis Conway has Serita Conway (also known as Serita Moore), Anton Conway (also known as Anton Moore), Matthew Conway and Simone Baker.

3.8.6 Talbot Hood is the son of the late Olga Gamajarr, a daughter of Gelwanggin and sister of Elsey Dick. He is *junggayi* through his mother's father.

3.8.7 The next family which is included with this group is composed of the descendants of the late Paddy Shadforth, who had three children, only one of whom survives. Paddy's deceased daughter Erica Lake is survived by three children, Barbara, Bruce and Ricky Lake, who are *junggayi* through their mother's father. Barbara's children, Cecilia, Jeffrey, Georgina and Nevron Andrews, are *darlnyin*. The surviving son of Paddy Shadforth is Jackeroo Lirrawi. He and his children are *mingirringgi*. They are Kevin Lirrawi, Colleen Lirrawi, Josephine Lirrawi, Frances Lirrawi, Theresa McDonald, Janet Lirrawi, Ross Lirrawi, Sandra Hodgson and Estelle Hodgson. The last two are adopted children, recognised as members of the group. Three of Jackeroo's daughters have children, who are *junggayi* through their mothers' father. Colleen has Dinulla and Alan Morgan. Josephine has Trisha and Gregory Marsland. Theresa has Shirley, Andrew, Anne Marie, Fabian, Lisa and Leonie McDonald.

3.8.8 The third child of Paddy Shadforth was the late Bidy Farrell. Her children are *junggayi* for this group. They are Shirley, Ray, Johnny, Rosina, Susan, Carol, Dennis, Jackie, Ambrose, Maria and Hilda Farrell. Children of those female *junggayi* are *darlnyin*. Shirley has Desmond Farrell (who is adopted and recognised as her child), Virginia Farrell, Jimmy Farrell and Con Farrell Junior. Rosina has Gary Albert, Sebastian Avalon, Melissa Albert, Yvonne Albert, Terrence Albert and Harold Albert Junior. Susan has Lisa, Alison, Andrea, Aaron and Alister Andrews. Carol has Andrew, Adam and Abraham Andrews. Maria has Simone and Marissa Watson. Hilda has Nathan and Keisha Burns.

3.8.9 Lulu Jilimbirrnga is included in the list of those claiming to be *junggayi* for this group. Lulu is the daughter of a deceased man named Gudirr. She is of the Balyarriyn subsection, for whom the appropriate subsection for father's mother is Gamarra, a proper subsection for *mingirringgi* for this group. I have included her as *junggayi* through her father's mother.

3.8.10 Mary Nurniyn is a member of the Yangman language group and the daughter of the late Jungle Dick, who in turn was the son (perhaps adopted) of a man called Goggle-Eye, to whom there are references in the works of Jeannie Gunn. Mary is

mingirringgi for the **Guyanggan** group. Her daughters are *junggayi*. They are Joy Birtjara, Margaret James, Christine James and Sandra James. The first three have children, who are *darlnyin*. Joy has Terrence Willy Senior and Betty Willy. Margaret has Elizabeth Fredericks, Robyn Fredericks, Terrence Fredericks, Priscilla James and William Driver. Christine has Troy Friday, Betty Friday and Josephine John. A deceased sister of Mary is survived by four children, who are *junggayi*. They are Teddy, Rosemary, Mandy and Josephine Bulga. The children of those female *junggayi* are *darlnyin*. Rosemary has Zarak Yirmul, Zoe Yirmul and Razak Bulga. Mandy has Reenie Barraway, and Josephine has Mervyn Martin.

3.8.11 The remaining *mingirringgi* for this group are descendants of a man called Bongoyi. Amy Dirngayg is his surviving daughter. Rita Raymond and Caroline Willy are daughters of the late Fred Jigjig, a son of Bongoyi. The children of Rita and Caroline are *junggayi*. Rita has Megan, Tanya, Michael, Marcus, Maggie and Max Raymond. Caroline has Terrence Willy Junior, Clinton Willy and Tony Willy.

3.8.12 There are three groups of siblings who are *junggayi* for this group through their fathers' mothers. All are of the Ngarrjbalan subsection; their ideal fathers' mothers would have been Burrala, which is an appropriate subsection for *mingirringgi* for this group. First is Joseph Garadji, Beryl Gordon (also known as Beryl Munul or Beryl Garadji), James Garadji, Rachel Thompson, Ivan Garadji and Alexandra Garadji. They are the children of a deceased man called Garadji, whose mother was Wandjimari. The second set is Sybil, Stewart and Ricky Ranch, children of the late Frank Ranch, whose mother was called Morlminga. The third set is Sebina and Loretta Willy, whose father was the late David Willy, the son of Queenie Warlirli, a daughter of a deceased sister of Lulu Jilimbirnga.

3.8.13 Included in the group list as *darlnyin* for this group were the sisters Pancy Gibbs, Annabelle Daylight and Maria Gibbs. Their inclusion does not appear to be in accordance with the principle that *darlnyin* take through their mothers' mothers' fathers. According to the genealogies, their mother is Sadie Gibbs, who is not shown as a *junggayi* for this group. They are of the Balyarriyn subsection, whose ideal mothers' mothers' father is of the Ngarrjbalan subsection, which is not part of the semimoietiy to which *mingirringgi* for this group belong. My understanding of the descent principle applied with respect to *darlnyin* is that it is applied strictly, so I have not included these three as members of the group.

3.8.14 At one point, Daylight Ngayunggu named Joey McDonald as *junggayi* and Splinter Harris and his nephews as *darlnyin* for this group. They are of the appropriate semimoieties for these roles, but the context suggests that they fill them in the broader sense of the roles, referred to in para. 3.7.2, so I have not included them.

3.8.15 The following is a list of the members of the **Guyanggan** group. *Mingirringgi*, *junggayi* and *darlnyin* are listed in separate columns. In the *mingirringgi* column, the names of children whose fathers are alive are shown indented below the names of their fathers. In the *junggayi* and *darlnyin* columns, where possible, the names of children are shown on the lines immediately below the names of their mothers.

*Mingirringgi**Junggayi**Darlnyin*

Daylight Ngayunggu

Michael Daylight

Noel Daylight

Razak Daylight

Justin Daylight

Larissa Daylight

Jeremiah Daylight

Ian Daylight

Ozzie Daylight

Tina Daylight

Hilda Daylight Yirrinini

Ian Daylight Jr

Kerry Daylight

Ryanold Daylight

Owen Daylight

Patrick James Daylight

Hilda Daylight Gamajarr

Deleneon Watson

Felicia Watson

Pamela Daylight

Adrian Doctor

Lindsay Doctor

Tanya Doctor

Lee Doctor

Neil Doctor

Edward Daylight

Bruce Daylight

Natasha Daylight

Desmond Daylight

Braden Daylight

Samuel Daylight

Lucas Daylight

Shirley Daylight (Roy)

Rhonda Wanta

Selda Wilfrid

Lewis Roy

Jonathan Daylight

Bobby Ngayunggu

Evelyn Ngayunggu

Craig Ngayunggu

Brian Manyita

Tanya Manyita

Terrence Manyita

Loretta Manyita

Slim Roberts

Clive Roberts

Daniel Roberts

Warren Roberts

Maretta Roberts

Marjorie Hall

Lindsay Hall

Rodney Hall

Bernadette Hall

Dianne Hall

Selma Hall

Marianne Roberts

Joelene Russell (Gaykamangu)
 Janita Russell (Gaykamangu)
 Lorraine Beatrice Russell (Gaykamangu)

Paula Roberts (Hall)

Martina Hall
 Matthias Rogers
 Maceuan Rogers
 Martika Rogers

Valmay Roberts (Daniels)

Gene Clancy Daniels
 Anthea Glynnis Daniels

Douglas Leslie Roberts

Tiffany Rae Paula Roberts

Joshua Roberts

Edwina Roberts

Jessie Roberts

Faye Roberts

Robert Smiler
 Stanley Smiler
 Jessie Smiler
 Karen Groves

Roger Roberts

Deirdre Newman (Roberts)

Stephanie John
 (Daniels)
 Steven John
 Julie John

Gary Roberts

Elaine James (Roberts)

Josiah Albert
 Harry Albert Jr
 Zachariah Albert

Jocelyn James

Joanne James
 Nicole James
 Anthea Margaret Joe
 Antoinette Joe

Sheila Conway

Edna Farrar

Rosalyn Farrar
 Susan Farrar
 Trudy Farrar

Michael Miller

Christine Conway

Derrick Conway
 Cecily Conway
 Janet Ellis
 Peter Ellis Jr

Phyllis Conway

Serita Conway (Moore)
 Anton Conway (Moore)
 Matthew Conway
 Simone Baker

Robert Conway

Betty Lardy

Cheryl Lardy
 Helena Lardy
 Anna Maria Lardy
 Josephine Lardy

Talbot Hood

Barbara Lake

Cecilia Andrews
 Jeffrey Andrews
 Georgina Andrews
 Nevron Andrews

Bruce Lake

Ricky Lake

Jackeroo Lirrawi

Kevin Lirrawi

Colleen Lirrawi

Dinulla Morgan

Alan Morgan

Josephine Lirrawi

Trisha Marsland

Gregory Marsland

Frances Lirrawi

Theresa McDonald

Shirley McDonald

Andrew McDonald

Anne Marie McDonald

Fabian McDonald

Lisa McDonald

Leonie McDonald

Janet Lirrawi

Ross Lirrawi

Sandra Hodgson

Estelle Hodgson

Shirley Farrell

Desmond Farrell

Virginia Farrell

Jimmy Farrell

Con Farrell Jr

Ray Farrell

Johnny Farrell

Rosina Farrell

Gary Albert

Sebastian Avalon

Melissa Albert

Yvonne Albert

Terrence Albert

Harold Albert Jr

Susan Farrell

Lisa Andrews

Alison Andrews

Andrea Andrews

Aaron Andrews

Alister Andrews

Carol Farrell

		Andrew Andrews Adam Andrews Abraham Andrews
	Dennis Farrell Jackie Farrell Ambrose Farrell Maria Farrell	
		Simone Watson Marissa Watson
	Hilda Farrell	Nathan Burns Keisha Burns
	Lulu Jilimbirrnga	
Mary Nurniyn	Joy Birtjara	Terrence Willy Sr Betty Willy
	Margaret James	Elizabeth Fredericks Robyn Fredericks Terrence Fredericks Priscilla James William Driver
	Christine James	Troy Friday Betty Friday Josephine John
	Sandra James	
	Teddy Bulga Rosemary Bulga	Zarak Yirmul Zoe Yirmul Razak Bulga
	Mandy Bulga	Reenie Barraway
	Josephine Bulga	Mervyn Martin
Amy Dirngayg Rita Raymond	Megan Raymond Tanya Raymond Michael Raymond Marcus Raymond Maggie Raymond Max Raymond	
Caroline Willy	Terrence Willy Jr Clinton Willy Tony Willy Joseph Garadji Beryl Gordon (Munul) (Garadji) James Garadji Rachel Thompson Ivan Garadji Alexandra Garadji	

Sybil Ranch
 Stewart Ranch
 Ricky Ranch

Sebina Willy
 Loretta Willy

3.9 The Dirlirlin group

3.9.1 *Mingirringgi* for the **Dirlirlin** group are of the Gangila-Jamijin semimoiety. The senior *mingirringgi* is Splinter Harris, son of the late Jack Wuluynjawun and grandson of a man known as Gardener George. Splinter's son, Kenneth Harris, is *mingirringgi*. The late Elsey Willy was also a son of Splinter's father. He is survived by Hannah Moore, Betty Willy and Terrence Willy Senior, who are *mingirringgi*. Sebina and Loretta Willy, also known as Sebina and Loretta Moore, are daughters of Hannah and are *junggayi*. Sebina's daughter, Bianca Hazel Collin, is *darlnyin*. Sylvester Weekend and Antoinette Willy, children of Betty Willy, are *junggayi*. Terrence Willy Junior, Clinton Willy and Tony Willy are children of Terrence Willy Senior and are *mingirringgi*. Another son of Splinter's father, also deceased, was Archie Moore. He is survived by Richard, Samuel, Bessie and Nicole Moore, who are *mingirringgi*.

3.9.2 June Gardinen and Judy Carew are half-sisters of Splinter Harris, but through their common mother. June and Judy's father was Nyilb, from whom they take their *mingirringgi* status. They are of the Gangila subsection. Their children are *junggayi*. June has David, Barbara, William and Shirley John. Judy has Josephine, Trevor, Steven, Sylvia and David Carew. In the case of this family, children of the male *junggayi* are *junggayi*, through their fathers' mothers. David John has Anita John, Jeff Fred John and Cheyenne John. William John has Josephine John and a daughter whose name was not revealed by the evidence. Trevor Carew has Randall and Sharon Carew, and Steven Carew has Alfonso Carew. Children of the daughters of June and Judy are *darlnyin*. Barbara John has Sandra, Shaun and Sally Anne Dick. Shirley John has Clifford, Samantha and Winnie Duncan. Josephine Carew has Casey and Jessica Smiler. Sylvia Carew has Marissa Ponto, Germaine Ponto and Zachariah Sandy.

3.9.3 There are several persons who take their status as *junggayi* for this group from their deceased mothers and the father of those mothers, who was the father of Splinter Harris. Joey McDonald, Wendy Daylight, Audrey Waller and Barbara Anderson are all surviving children of Eva Morgan. Shirley Thomas, Tania Gaston, Kathy Baker, Wilton McDonald, Pamela Hood and Charles Morgan are all surviving children of Rita Morgan. The children of those female *junggayi* are *darlnyin*. Wendy Daylight has Shirley Daylight (also known as Shirley Roy), Bruce Daylight and Samuel Daylight. Audrey Waller has Ronald Lirrawi (also known as Ronald Waller), Stephanie Waller, Sophia Waller, Jonathan Waller and Kenny Waller Junior. Barbara Anderson has Joanne, Joyce and Regina Anderson. Shirley Thomas has Tanya McInnes, Eric Thomas and Joshua Thomas. Tania Gaston has Robert, Steven, Michael, Wayne and James Gaston. Kathy Baker has Wendy, Patricia, Timothy, Shaun, Shane and Patrina Baker. Pamela Hood has Evelyn Jimberri.

3.9.4 In the list of claimants advanced as *junggayi* for this group are the same set of Garadji siblings and the same set of Ranch siblings as are listed in the group list for the **Guyanggan** group. Although the three female members of the Garadji set have children, none is listed as *darlnyin*. I infer from this that the persons listed in both sets take their *junggayi* status from their fathers' mothers, rather than from their mothers' fathers. If this is the case, I do not understand how they can have the same status for both groups. All are of the Ngarriybalan subsection for whom the ideal father's mother would be Burrala, a subsection consistent with their *junggayi* status for the **Guyanggan** group, but not for this group. There is no specific evidence of their entitlement to be treated as *junggayi* for both groups, so I have omitted them from this group.

3.9.5 I have also not included Lulu Jilimbirnga, who was not included in the group list. On two occasions in her evidence, Lulu said that she was *junggayi* for sites to which members of this group are affiliated, namely *Balburran* (site 31) and *Munggug* (site 150). On one occasion, she named the Roberts and Daylight families as *darlnyin*. Whilst the semimoieties would be appropriate, I have taken these claims to relate to the roles in their wider senses, to which I have referred in para. 3.7.2.

3.9.6 The following is a list of the members of the **Dirlirlin** group, arranged in a similar fashion to the list in para. 3.8.15.

<i>Mingirringgi</i>	<i>Junggayi</i>	<i>Darlnyin</i>
Splinter Harris Kenneth Harris		
Hannah Moore	Sebina Moore (Willy) Loretta Moore (Willy)	Bianca Hazel Collin
Betty Willy	Sylvester Weekend Antoinette Willy	
Terrence Willy Sr Terrence Willy Jr Clinton Willy Tony Willy		
Richard Moore Samuel Moore Bessie Moore Nicole Moore		
June Gardinen	David John Anita John Jeff Fred John Cheyenne John Barbara John	Sandra Dick Shaun Dick Sally Anne Dick

	William John	
	Josephine John	
	Unnamed daughter of William John	
	Shirley John	Clifford Duncan
		Samantha Duncan
		Winnie Duncan
Judy Carew	Josephine Carew	Casey Smiler
		Jessica Smiler
	Trevor Carew	
	Randall Carew	
	Sharon Carew	
	Steven Carew	
	Alfonso Carew	
	Sylvia Carew	Marissa Ponto
		Germaine Ponto
		Zachariah Sandy
	David Carew	
	Joey McDonald	
	Wendy Daylight	Shirley Daylight
		(Roy)
		Bruce Daylight
		Samuel Daylight
	Audrey Waller	Ronald Lirrawi
		(Waller)
		Stephanie Waller
		Sophia Waller
		Jonathan Waller
		Kenny Waller Jr
	Barbara Anderson	Joanne Anderson
		Joyce Anderson
		Regina Anderson
	Shirley Thomas	Tanya McInnes
		Eric Thomas
		Joshua Thomas
	Tania Gaston	Robert Gaston
		Steven Gaston
		Michael Gaston
		Wayne Gaston
		James Gaston
	Kathy Baker	Wendy Baker
		Patricia Baker
		Timothy Baker
		Shaun Baker
		Shane Baker
		Patrina Baker

Wilton McDonald
 Pamela Hood

Evelyn Jimberri

Charles Morgan

3.10 The Maynjurn.gan group

3.10.1 The ideal semimoiety for *mingirringgi* of the **Maynjurn.gan** group is Balyarriyn-Burlayn. Joey McDonald, who is shown in the genealogies as the son of a man called Galburdie Nym, and whose stepfather was Alex McDonald, is recognised as the senior *mingirringgi*. Joey has an adopted son, Alec McDonald, and says that this adopted son will follow him, so I have named Alec McDonald as *mingirringgi*. Wilton McDonald's natural father was Alex McDonald. He is also regarded as *mingirringgi*.

3.10.2 The remaining *mingirringgi* for this group are descendants of the late Ginger Birrmaj, the late Nyil and the late Gudirr. Pancy Gibbs, Annabelle Daylight and Maria Gibbs are all children of the late Johnson Gibbs, a son of Ginger Birrmaj. Each of them has children, who are *junggayi*. Pancy has Clifford and Martika George. Annabelle has Ryanold and Owen Daylight. Maria has Ethan, Antonella and Anton Martin.

3.10.3 Surviving children of Ginger Birrmaj are Faye Roberts, Roger Roberts, Deirdre Newman (also known as Deirdre Roberts), Gary Roberts, Elaine Roberts (also known as Elaine James), Jocelyn Roberts (also known as Jocelyn James), Edna Farrar and Michael Miller. They are all *mingirringgi*. Children of the males are also *mingirringgi*. Gary Roberts has Kerry-Anne, Roberta, Raylene and Regina Roberts. Michael Miller has Maxie, Jodie, Donovan, Natalie and Antonella Miller. Children of the female *mingirringgi* are *junggayi*. Faye Roberts has Robert, Stanley and Jessie Smiler and Karen Groves. Deirdre Newman has Stephanie John (also known as Stephanie Daniels), Steven John and Julie John. Elaine Roberts has Josiah Albert, Harry Albert Junior and Zachariah Albert. Jocelyn Roberts has Joanne James, Nicole James, Anthea Margaret Joe and Antoinette Joe. These four children were not included in the group list for this group but the omission may have been due to an error in one of the genealogies, directing attention to a different genealogy for Jocelyn from that on which she, her siblings and their children appear. In accordance with the usual principle of descent relating to *junggayi* through one's mother and mother's father, referred to in para. 3.3.3, I have included them as *junggayi*. Edna Farrar has Rosalyn, Susan and Trudy Farrar. Children of female *junggayi* in this family are *darlnyin*. Jessie Smiler has Nicholas and Warwick Roberts. Stephanie John (also known as Stephanie Daniels) has Danielle and Belinda Daniels. Rosalyn Farrar has Virginia Kruger, Lachlan Farrar and Dionne Farrar.

3.10.4 Doreen, Susan and Nita Morton are all daughters of the late Happy Morton, who was the son of Nyil. They are all of the Balyarriyn subsection and are *mingirringgi* for this group. Two of them have children, who are *junggayi* for this group. Doreen's children are Daphne Smiler, Larry Ryan, David Ryan and Simeon Ryan. Nita Morton's children are Katrina Roy, Kalvin Roy and a son whose name was not revealed by the evidence.

3.10.5 Lulu Jilimbirnga is the surviving daughter of Gudirr, whose origins lay elsewhere, but who was accepted into the local kinship and land tenure systems (see para. 3.3.5). Lulu is *mingirringgi* from him. Daylight Ngayunggu is the son of Lulu Jilimbirnga and is *junggayi* through his mother's father, Gudirr. Jackeroo Lirrawi is the son of the late Long Fanny, a sister of Lulu and daughter of Gudirr. Jackeroo is also *junggayi*. The children of Jackeroo's two deceased sisters are *darlnyin*, through their mothers' mother's father, Gudirr. Jackeroo's full sister was the late Erica Lake, who was the daughter of the late Long Fanny and the late Paddy Shadforth, referred to in para. 3.8.7. Erica is survived by Barbara, Bruce and Ricky Lake. Jackeroo's half-sister was the late Bidy Farrell, who was the daughter of Lulu and Paddy Shadforth. She is survived by Shirley, Ray, Johnny, Rosina, Susan, Carol, Dennis, Jackie, Ambrose, Maria and Hilda Farrell.

3.10.6 Lulu Jilimbirnga's late brother, Hickey Hood, is survived by his two sons, Talbot and Joseph Hood. They are *mingirringgi*, taking from Hickey and Gudirr. The late Sandy Hood was the eldest son of Hickey Hood. He is survived by five natural children, Pamela, Phillip, Gregory, Carol and Andrew Hood, and by two adopted sons, Matthew and Dominic Hood, who are recognised as members of the group. All are *mingirringgi*. Phillip Hood has three children, who are also *mingirringgi*. They are Sheena, Darien and Janelle Hood. Pamela Hood's daughter, Evelyn Jimberri, is *junggayi*, as are Carol's two children, Randall and Naomi Jackson. Talbot Hood has six children, who are also *mingirringgi*, through Talbot and Hickey. They are Angela, Melba, Josephine, Deirdre, Vita and Charmaine Hood. Three of them have children, who are *junggayi*. Angela has Steve Russell Owen Brown, Glenys Brown and Harold Brown. Melba has Ian Avalon, Sharalee Avalon, Kim Avalon, Whitney Hood and Matt Hood. Josephine has Damien William Fuller.

3.10.7 Another family of *junggayi* through their mothers' father are the descendants of a man called Bardjabarran. June Bunajun is a daughter of Bardjabarran's deceased daughter Jambarbarl, who was known as Bunny. June's daughter, Ellen George, is *darlnyin*. Jennifer Doctor is the daughter of a deceased woman called Jane, whose mother was Bunny. She is *darlnyin*. Paul, Brendan, Anthony and Mary Allen are the children of the late Katie Gabud, another daughter of Bunny. They are also *darlnyin*.

3.10.8 The children of the late Clancy Roberts are *junggayi* for this group, through their father's mother, Maudie Manbulloo. They are Slim Roberts, Clive Roberts, Marjorie Hall, Marianne Roberts, Paula Roberts (also known as Paula Hall), Valmay Roberts (also known as Valmay Daniels), Douglas Leslie Roberts and Joshua Roberts. I note that Marianne Roberts and Joshua Roberts were not listed in the group list as *junggayi* for this group. The fact that both are children of Clancy suggests to me that they should appear in the list also and I have included them on this basis.

3.10.9 Listed as *darlnyin* for this group are Joseph Garadji, Beryl Gordon (also known as Beryl Munul or Beryl Garadji), James Garadji, Rachel Thompson, Ivan Garadji and Alexandra Garadji. They are all siblings. The genealogies provide no information as to the identity of their mother's mother's father. Joey McDonald gave evidence of their entitlement to be *darlnyin* for this group. Also listed are Sybil, Stewart and Ricky Ranch. Although their mother's mother is Phylis Wijnjorrotj, a member of the

Jawoyn language group, their entitlement to be *darlnyin* for the **Maynjurn.gan** group was verified by Joey McDonald. Included in the group list for this group as *darlnyin* are Sebina and Loretta Willy. I am at a loss to understand their inclusion, as their mother is Hannah Moore, who is not listed as *junggayi*. In the genealogies, Hannah Moore's mother is shown as Dinah. There is no specific evidence about Dinah, so I have omitted Sebina and Loretta from this group.

3.10.10 The following is a list of the members of the **Maynjurn.gan** group, organised in a similar fashion to the list in para. 3.8.15.

<i>Mingirringgi</i>	<i>Junggayi</i>	<i>Darlnyin</i>
Joey McDonald Alec McDonald Wilton McDonald		
Pancy Gibbs	Clifford George Martika George	
Annabelle Daylight	Ryanold Daylight Owen Daylight	
Maria Gibbs	Ethan Martin Antonella Martin Anton Martin	
Faye Roberts	Robert Smiler Stanley Smiler Jessie Smiler	Nicholas Roberts Warwick Roberts
	Karen Groves	
Roger Roberts Deirdre Newman (Roberts)	Stephanie John (Daniels)	Danielle Daniels Belinda Daniels
	Steven John Julie John	
Gary Roberts Kerry-Anne Roberts Roberta Roberts Raylene Roberts Regina Roberts Elaine Roberts (James)	Josiah Albert Harry Albert Jr Zachariah Albert	
Jocelyn Roberts (James)	Joanne James Nicole James Anthea Margaret Joe Antoinette Joe	
Edna Farrar	Rosalyn Farrar	

Virginia Kruger
Lachlan Farrar
Dionne Farrar

Susan Farrar
Trudy Farrar

Michael Miller
Maxie Miller
Jodie Miller
Donovan Miller
Natalie Miller
Antonella Miller

Doreen Morton

Daphne Smiler
Larry Ryan
David Ryan
Simeon Ryan

Susan Morton
Nita Morton

Katrina Roy
Kalvin Roy
son of Nita Morton

Lulu Jilimbirnga

Daylight Ngayunggu

Jackeroo Lirrawi

Barbara Lake
Bruce Lake
Ricky Lake

Shirley Farrell
Ray Farrell
Johnny Farrell
Rosina Farrell
Susan Farrell
Carol Farrell
Dennis Farrell
Jackie Farrell
Ambrose Farrell
Maria Farrell
Hilda Farrell

Pamela Hood

Evelyn Jimberri

Phillip Hood
Sheena Hood
Darien Hood
Janelle Hood
Gregory Hood
Carol Hood

Randall Jackson
Naomi Jackson

Andrew Hood
Matthew Hood
Dominic Hood

Talbot Hood

Angela Hood

Steve Russell Owen Brown

Glenys Brown

Harold Brown

Melba Hood

Ian Avalon

Sharalee Avalon

Kim Avalon

Whitney Hood

Matt Hood

Josephine Hood

Damien William Fuller

Deirdre Hood

Vita Hood

Charmaine Hood

Joseph Hood

June Bunajun

Ellen George

Jennifer Doctor

Paul Allen

Brendan Allen

Anthony Allen

Mary Allen

Slim Roberts

Clive Roberts

Marjorie Hall

Marianne Roberts

Paula Roberts (Hall)

Valmay Roberts (Daniels)

Douglas Leslie Roberts

Joshua Roberts

Joseph Garadji

Beryl Gordon (Munul)

(Garadji)

James Garadji

Rachel Thompson

Ivan Garadji

Alexandra Garadji

Sybil Ranch

Stewart Ranch

Ricky Ranch

3.11 The Barlyurra group

3.11.1 *Mingirringgi* for the **Barlyurra** group come from the Bangariyn-Ngarriybalan semimoietiy. The senior *mingirringgi* are the children of the late Garadji, who was the son of a man called Gamburrinyin. They are Joseph Garadji, Beryl Gordon (also known as Beryl Munul or Beryl Garadji), James Garadji, Rachel Thompson, Ivan Garadji and Alexandra Garadji. The children of those male siblings are also

mingirringgi. Joseph has Tracey Anne, Ian, Leonna, Kerry-Anne and Jerry Joe Garadji. James has Mark Stewart Garadji. Ivan has Shayleigh Garadji. Children of the female siblings are *junggayi*. Beryl has Evelyn Lansen, Rosanne Gordon, Stewart Gordon and Steven Rankin. Evidence was given by Joseph Garadji that Jeremiah Harrison is a child of Beryl Gordon. The relevant genealogy shows him as the child of a former wife of Beryl's husband. Without evidence that he has been accepted into the group as *junggayi*, I have not included him. Rachel Thompson has Fabian, Richard Noel, Joseph and Hannah Thompson. Alexandra Garadji has Richard Whitlam. The children of Evelyn Lansen and Rosanne Gordon are *darlnyin*. Evelyn has Melissa, Chaunelle, Justin and Leah Lansen. Rosanne has Reginald Gordon, Debbie Watson and Juan Watson. The group list for this group included as *darlnyin* the children of Stewart Gordon and Steven Rankin. I have excluded them, on the basis of my understanding that the category of *darlnyin* is confined strictly to children of female *junggayi*, being *junggayi* who take through their mothers' fathers. They may be *junggayi*, on the basis that their father's mother's father was Garadji, who was *mingirringgi*, but they were not advanced as *junggayi* and I have not included them.

3.11.2 The descendants of a man called Wajirriga are also members of this group. Sybil, Stewart and Ricky Ranch are grandchildren of Wajirriga, through their father, the late Frank Ranch, and are *mingirringgi*. Dorothy Rankin is a daughter of Wajirriga and is *mingirringgi*. Her children, Bronwyn, Gloria, Matthew and Elisa Rankin, are *junggayi*. Children of Bronwyn, Gloria and Elisa are *darlnyin*. Kenneth Harris, who is the son of Bronwyn Rankin and Splinter Harris, was not shown in the group list as *darlnyin* but I am not aware of any reason why he should be excluded when his cousins are included. I have therefore included him as *darlnyin*, along with Gloria's son, Joseph Hood, and Elisa's children, Lucas and Eddie Rankin.

3.11.3 The remaining *mingirringgi* for this group are children of the late David Willy, whose father was a man known as Larrikin. Lorna Yiwirnbi (also known as Lorna Lirrawi) is a daughter of David Willy. Her children, Kevin Lirrawi, Colleen Lirrawi, Josephine Lirrawi, Frances Lirrawi, Theresa McDonald, Janet Lirrawi, Ross Lirrawi, Sandra Hodgson and Estelle Hodgson, are *junggayi*. The last two are adopted children and are accepted as members of the group. Children of Lorna's daughters are *darlnyin*. Colleen has Dinulla and Alan Morgan. Josephine has Trisha and Gregory Marsland. Theresa has Shirley, Andrew, Anne Marie, Fabian, Lisa and Leonie McDonald. Sebina and Loretta Willy are also daughters of the late David Willy and are *mingirringgi*.

3.11.4 A woman by the name of Noreen Althouse was shown in the group list as *mingirringgi* for this group. The relevant genealogy does not disclose the basis on which she is said to have this status. There are two references to her in the evidence, neither of which gives any information about her. I have therefore not included her.

3.11.5 *Junggayi* through their mother's father include Jessie Roberts, Sheila Conway and Betty Lardy, whose mother was Maudie Manbulloo and whose mother's father was Waywaygulduy. The children of Jessie, Sheila and Betty are not included in the group list as *darlnyin*; their absence is not explained by the evidence, but I have not included them. Mary Nurniyn is *junggayi* through her late mother, Topsy Ngadugan, and Topsy's father, Jamgurrga. Mary's children are *darlnyin*. They are Joy Birtjara,

Margaret James, Christine James and Sandra James. Also *darlnyin* are the children of the late Rosie Norman, whose mother was Topsy Ngadugan. They are Teddy, Rosemary, Mandy and Josephine Bulga.

3.11.6 Splinter Harris is apparently *junggayi* through his mother, Malindirri. Splinter is of the Gangila subsection. Assuming correct marriages, his mother's father would have been of the Ngarrjbalan subsection and capable of being *mingirringgi* for this group. June Gardinen and Judy Carew are daughters of the same mother as Splinter and are Gangila; they are included on the same basis.

3.11.7 Hannah Moore, Betty Willy and Terrence Willy Senior are children of Elsey Willy, whose mother was Malindirri. Richard, Samuel, Bessie and Nicole Moore are all children of Archie Moore, a deceased son of Malindirri. They are all included as *junggayi* through their fathers' mother.

3.11.8 Also members of this group as *junggayi* are Daylight Ngayunggu and Jackeroo Lirrawi, through their fathers' mothers.

3.11.9 The following is a list of the members of the **Barlyurra** group, organised in a similar fashion to the list in para. 3.8.15.

<i>Mingirringgi</i>	<i>Junggayi</i>	<i>Darlnyin</i>
Joseph Garadji		
Tracey Anne Garadji		
Ian Garadji		
Leonna Garadji		
Kerry-Anne Garadji		
Jerry Joe Garadji		
Beryl Gordon (Munul) (Garadji)	Evelyn Lansen	Melissa Lansen
		Chaunelle Lansen
		Justin Lansen
		Leah Lansen
	Rosanne Gordon	Reginald Gordon
		Debbie Watson
		Juan Watson
	Stewart Gordon	
	Steven Rankin	
James Garadji		
Mark Stewart Garadji		
Rachel Thompson	Fabian Thompson	
	Richard Noel Thompson	

	Joseph Thompson Hannah Thompson	
Ivan Garadji Shayleigh Garadji Alexandra Garadji		
	Richard Whitlam	
Sybil Ranch Stewart Ranch Ricky Ranch		
Dorothy Rankin	Bronwyn Rankin	Kenneth Harris
	Gloria Rankin	Joseph Hood
	Matthew Rankin Elisa Rankin	Lucas Rankin Eddie Rankin
Lorna Yiwirubi (Lirrawi)	Kevin Lirrawi Colleen Lirrawi	Dinulla Morgan Alan Morgan
	Josephine Lirrawi	Trisha Marsland Gregory Marsland
	Frances Lirrawi Theresa McDonald	Shirley McDonald Andrew McDonald Anne Marie McDonald Fabian McDonald Lisa McDonald Leonie McDonald
	Janet Lirrawi Ross Lirrawi Sandra Hodgson Estelle Hodgson	
Sebina Willy Loretta Willy	Jessie Roberts Sheila Conway Betty Lardy	
	Mary Nurniyn	Joy Birtjara Margaret James Christine James Sandra James
		Teddy Bulga Rosemary Bulga

Mandy Bulga
Josephine Bulga

Splinter Harris
June Gardinen
Judy Carew

Hannah Moore
Betty Willy
Terrence Willy Sr

Richard Moore
Samuel Moore
Bessie Moore
Nicole Moore

Daylight Ngayunggu

Jackeroo Lirrawi

3.12 The Nganawirdbird group

3.12.1 The composition of the **Nganawirdbird** group is exactly the same as for the **Guyanggan** group, with the exception that all of the descendants of the late Bidy Farrell (referred to in para. 3.8.8) have been omitted from the group list. This is odd, as Bidy's deceased sister's descendants and living brother and his descendants are included. The omission is not explained by any evidence, but I have omitted the Farrells from the list.

3.12.2 Although there is substantial identity of membership between the **Guyanggan** group and the **Nganawirdbird** group, I detect from the evidence a difference in emphasis as to which members of the group are regarded as the senior *mingirringgi*. In the former group, the senior person seems to be Daylight Ngayunggu, whereas in the **Nganawirdbird** group, Jessie Roberts and Sheila Conway seem to fill that role. My listing of the members of this group in the same order as I have listed them in the **Guyanggan** group is not to be taken as any form of comment on this issue of seniority; it is for convenience only.

3.12.3 There are references in the evidence to Splinter Harris as *darlnyin* for this group, but I have not included him in the list. Although he is of the appropriate semimoiety, he was not included in the group list and the references to him appear in context to describe him as *darlnyin* in the broader sense, to which I have referred in para. 3.7.2.

3.12.4 The following is a list of the members of the **Nganawirdbird** group, organised in a similar fashion to the list in para. 3.8.15.

*Mingirringgi**Junggayi**Darlnyin*

Daylight Ngayunggu

Michael Daylight

Noel Daylight

Razak Daylight

Justin Daylight

Larissa Daylight

Jeremiah Daylight

Ian Daylight

Ozzie Daylight

Tina Daylight

Hilda Daylight Yirrinini

Ian Daylight Jr

Kerry Daylight

Ryanold Daylight

Owen Daylight

Patrick James Daylight

Hilda Daylight Gamajarr

Deleneon Watson

Felicia Watson

Pamela Daylight

Adrian Doctor

Lindsay Doctor

Tanya Doctor

Lee Doctor

Neil Doctor

Edward Daylight

Bruce Daylight

Natasha Daylight

Desmond Daylight

Braden Daylight

Samuel Daylight

Lucas Daylight

Shirley Daylight (Roy)

Rhonda Wanta

Selda Wilfrid

Lewis Roy

Jonathan Daylight

Bobby Ngayunggu

Evelyn Ngayunggu

Craig Ngayunggu

Brian Manyita

Tanya Manyita

Terrence Manyita

Loretta Manyita

Slim Roberts

Clive Roberts

Daniel Roberts

Warren Roberts

Maretta Roberts

Marjorie Hall

Lindsay Hall

Rodney Hall

Bernadette Hall

	Dianne Hall	
	Selma Hall	
Marianne Roberts		
	Joelene Russell (Gaykamangu)	
	Janita Russell (Gaykamangu)	
	Lorraine Beatrice Russell (Gaykamangu)	
Paula Roberts (Hall)		
	Martina Hall	
	Matthias Rogers	
	Maceuan Rogers	
	Martika Rogers	
Valmay Roberts (Daniels)		
	Gene Clancy Daniels	
	Anthea Glynnis Daniels	
Douglas Leslie Roberts		
	Tiffany Rae Paula Roberts	
Joshua Roberts		
	Edwina Roberts	
Jessie Roberts		
	Faye Roberts	
		Robert Smiler
		Stanley Smiler
		Jessie Smiler
		Karen Groves
	Roger Roberts	
	Deirdre Newman (Roberts)	
		Stephanie John
		(Daniels)
		Steven John
		Julie John
	Gary Roberts	
	Elaine James (Roberts)	
		Josiah Albert
		Harry Albert Jr
		Zachariah Albert
	Jocelyn James	
		Joanne James
		Nicole James
		Anthea Margaret Joe
		Antoinette Joe
Sheila Conway		
	Edna Farrar	
		Rosalyn Farrar
		Susan Farrar
		Trudy Farrar
	Michael Miller	
	Christine Conway	
		Derrick Conway
		Cecily Conway
		Janet Ellis
		Peter Ellis Jr
	Phyllis Conway	
		Serita Conway (Moore)
		Anton Conway (Moore)

		Matthew Conway Simone Baker
Betty Lardy	Robert Conway	
	Cheryl Lardy Helena Lardy Anna Maria Lardy Josephine Lardy	
	Talbot Hood	
	Barbara Lake	Cecilia Andrews Jeffrey Andrews Georgina Andrews Nevron Andrews
	Bruce Lake Ricky Lake	
Jackeroo Lirrawi Kevin Lirrawi Colleen Lirrawi		
	Dinulla Morgan Alan Morgan	
Josephine Lirrawi	Trisha Marsland Gregory Marsland	
Frances Lirrawi Theresa McDonald		
	Shirley McDonald Andrew McDonald Anne Marie McDonald Fabian McDonald Lisa McDonald Leonie McDonald	
Janet Lirrawi Ross Lirrawi Sandra Hodgson Estelle Hodgson		
Mary Nurniyn	Lulu Jilimbirrnga	
	Joy Birtjara	Terrence Willy Sr Betty Willy
	Margaret James	Elizabeth Fredericks Robyn Fredericks Terrence Fredericks Priscilla James William Driver
	Christine James	Troy Friday Betty Friday Josephine John
	Sandra James	
	Teddy Bulga Rosemary Bulga	Zarak Yirmul

		Zoe Yirmul Razak Bulga
	Mandy Bulga	
		Reenie Barraway
	Josephine Bulga	
		Mervyn Martin
Amy Dirngayg Rita Raymond		
	Megan Raymond Tanya Raymond Michael Raymond Marcus Raymond Maggie Raymond Max Raymond	
Caroline Willy		
	Terrence Willy Jr Clinton Willy Tony Willy	
	Joseph Garadji Beryl Gordon (Munul) (Garadji) James Garadji Rachel Thompson Ivan Garadji Alexandra Garadji	
	Sybil Ranch Stewart Ranch Ricky Ranch	
	Sebina Willy Loretta Willy	

3.13 The Gunduburun group

3.13.1 The **Gunduburun** group is another for which *mingirringgi* are from the Gangila-Jamijin semimoiety. It consists of the same people as the **Dirlirlin** group, except that the *darlnyin* for the **Gunduburun** group are strengthened by the addition of senior members of the Roberts and Daylight families and Jackeroo Lirrawi, who are of the Gamarra-Burralla semimoiety, the appropriate one for *darlnyin* in Gangila-Jamijin country. I have also added to the group list Lulu Jilimbirnga as *junggayi*. She is of the appropriate semimoiety for the role of *junggayi* through her mother's father. Her own evidence is that she is *junggayi* for this group. It would be odd if her son, Daylight Ngayunggu, and the son of her deceased sister, Jackeroo Lirrawi, were to be named as *darlnyin* but Lulu were to be omitted.

3.13.2 The following is a list of the members of the **Gunduburun** group, arranged in a similar fashion to the list in para. 3.8.15.

*Mingirringgi**Junggayi**Darlnyin*

Splinter Harris
Kenneth Harris

Hannah Moore

Sebina Moore (Willy)
Bianca Hazel Collin
Loretta Moore (Willy)

Betty Willy

Sylvester Weekend
Antoinette Willy

Terrence Willy Sr
Terrence Willy Jr
Clinton Willy
Tony Willy

Richard Moore
Samuel Moore
Bessie Moore
Nicole Moore

June Gardinen

David John
Anita John
Jeff Fred John
Cheyenne John
Barbara John

Sandra Dick
Shaun Dick
Sally Anne Dick

William John
Josephine John
Unnamed daughter of William John
Shirley John

Clifford Duncan
Samantha Duncan
Winnie Duncan

Judy Carew

Josephine Carew

Casey Smiler
Jessica Smiler

Trevor Carew
Randall Carew
Sharon Carew
Steven Carew
Alfonso Carew
Sylvia Carew

Marissa Ponto
Germaine Ponto
Zachariah Sandy

David Carew

Joey McDonald
Wendy Daylight

Shirley Daylight
(Roy)

	Bruce Daylight Samuel Daylight
Audrey Waller	Ronald Lirrawi (Waller) Stephanie Waller Sophia Waller Jonathan Waller Kenny Waller Jr
Barbara Anderson	Joanne Anderson Joyce Anderson Regina Anderson
Shirley Thomas	Tanya McInnes Eric Thomas Joshua Thomas
Tania Gaston	Robert Gaston Steven Gaston Michael Gaston Wayne Gaston James Gaston
Kathy Baker	Wendy Baker Patricia Baker Timothy Baker Shaun Baker Shane Baker Patrina Baker
Wilton McDonald Pamela Hood	Evelyn Jimberri
Charles Morgan	Marjorie Hall Marianne Roberts Paula Roberts (Hall) Valmay Roberts (Daniels) Douglas Leslie Roberts
	Joshua Roberts
	Jessie Roberts Sheila Conway Betty Lardy
Lulu Jilimbirrnga	Daylight Ngayunggu
	Jackeroo Lirrawi

3.14 The Mirmiridji group

3.14.1 The **Mirmiridji** group has *mingirringgi* from the Balyarriyn-Burlayn semimoiety. The group is largely composed of the descendants of Gudirr, to whom reference is made in para. 3.10, where they are detailed as members of the **Maynjurn.gan** group. The senior *mingirringgi* is Lulu Jilimbirnga. Her son, Daylight Ngayunggu, is *junggayi*. For the **Mirmiridji** group, Daylight's brother, Bobby Ngayunggu (whose mother was not Lulu), is also included as *junggayi*. So is Jackeroo Lirrawi, the son of Lulu's deceased sister and the late Paddy Shadforth. The children of the late Biddy Farrell are included as *darlnyin*, because Lulu was her mother. The children of the late Erica Lake are also included as *darlnyin*, although they were not included in the group list; Erica was a full sister of Jackeroo, and Erica's mother, Long Fanny, was Lulu's sister. Lulu gave specific evidence of Bruce Lake's entitlement to be counted among the *darlnyin* for this group. The remaining *mingirringgi* are descendants of the late Hickey Hood, who was also a son of Gudirr. They are already detailed in para. 3.10.6 and I do not need to repeat their descent qualifications. The children of female *mingirringgi* are *junggayi*.

3.14.2 There are three additional *junggayi* for this group. Slim Roberts and Clive Roberts are brothers from the Gamarra-Burralla semimoiety. I assume that they are *junggayi* for this group through their mother's father. Their mother was Margaret, but the genealogies do not disclose the identity of her father. Assuming preferred marriages, their mother's father would have been a Burlayn man, of the correct semimoiety to be *mingirringgi* for this group. The remaining *junggayi* is Splinter Harris, who is apparently included as *junggayi* for this group through his father's mother. He is of the Gangila subsection and his ideal father's mother would have been Burlayn.

3.14.3 The following is a list of the members of the **Mirmiridji** group, organised in a similar fashion to the list in para. 3.8.15.

<i>Mingirringgi</i>	<i>Junggayi</i>	<i>Darlnyin</i>
Lulu Jilimbirnga	Daylight Ngayunggu Bobby Ngayunggu	
	Jackeroo Lirrawi	
		Barbara Lake Bruce Lake Ricky Lake
		Shirley Farrell Ray Farrell Johnny Farrell Rosina Farrell Susan Farrell Carol Farrell Dennis Farrell Jackie Farrell Ambrose Farrell

Pamela Hood	
Phillip Hood	Evelyn Jimberri
Sheena Hood	
Darien Hood	
Janelle Hood	
Gregory Hood	
Carol Hood	Randall Jackson Naomi Jackson
Andrew Hood	
Matthew Hood	
Dominic Hood	
Talbot Hood	
Angela Hood	Steve Russell Owen Brown Glenys Brown Harold Brown
Melba Hood	Ian Avalon Sharalee Avalon Kim Avalon Whitney Hood Matt Hood
Josephine Hood	Damien William Fuller
Deirdre Hood	
Vita Hood	
Charmaine Hood	
Joseph Hood	Slim Roberts Clive Roberts Splinter Harris

3.15 The Lurdurdminyi group

3.15.1 The **Lurdurdminyi** group is another group for which *mingirringgi* belong to the Gamarra-Burralla semimoiety. The senior *mingirringgi* is Amy Dirngayg. She and the other descendants of the late Bongoyi are members of this group on the same principles of descent as they are members of the **Guyanggan** group (see para. 3.8.11). Similarly, with the exception of Daylight Ngayunggu, his brothers, and their families, the descendants of Gelwanggin, who are dealt with in paras 3.8.2 to 3.8.6 in relation to the **Guyanggan** group, are members of the **Lurdurdminyi** group. Jackeroo Lirrawi and his descendants, whose ancestry is described in para. 3.8.7 in relation to the **Guyanggan** group, are also members of the **Lurdurdminyi** group. The members of the Lake family and the Farrell family, children of Jackeroo's two deceased sisters, described in paras. 3.8.7 and 3.8.8, were not included in the group list for this group, but, on Sheila Conway's evidence that they are *junggayi*, I have included them.

3.15.2 Although other members of the Daylight family are not included, Bruce Daylight, Samuel Daylight and Shirley Daylight (also known as Shirley Roy) are *mingirringgi* for this group. I assume that they become so from their natural father, Jabiru George. They are also *mingirringgi* for the **Guyanggan** group. They have been "grown up" by Edward and Wendy Daylight. They are of the Burralla subsection, presumably both from their natural father and from Edward. Bruce Daylight's three children have been included as *mingirringgi*. They are Natasha, Desmond and Braden Daylight. Samuel Daylight's son, Lucas Daylight, is also included. Shirley Daylight's three children are included as *junggayi*. They are Rhonda Wanta, Selda Wilfrid and Lewis Roy.

3.15.3 The descendants of Lennie Mangaboryi have been included in this group, through him. Jennifer Doctor is the daughter of a deceased woman called Jane, a daughter of Lennie. Paul, Brendan, Anthony and Mary Allen are children of the late Katie Gabud, also a daughter of Lennie. They are *junggayi*, through their mothers' father. Ellen George is also *junggayi*, on the same basis; she is the daughter of June Bunajun, a surviving daughter of Lennie. June was not included in the group list, but I have included her as *mingirringgi*. Jennifer Doctor's children and Ellen George's children are included as *darlnyin*. Jennifer's children are Mandy and Jeffrey Doctor. Ellen's children are Alfie George, Georgina George, Desmond George, Warren Smiler, Luke Doctor and Kimberley George.

3.15.4 *Junggayi* through their fathers' mothers for this group are the children of the late Garadji, as well as Sybil Ranch and her two brothers, and Sebina and Loretta Willy. The descent lines of these people have been dealt with in para. 3.8.12, in relation to the **Guyanggan** group, to which they succeed on the same basis as they succeed for this group.

3.15.5 The group list for the **Lurdurdminyi** group lists as *darlnyin* Splinter Harris; his son, Kenneth Harris; his sisters, June Gardinen and Judy Carew; and his nephews and niece, Richard Moore, Samuel Moore and Bessie Moore. Also listed are Hannah Moore, Betty Willy and Terrence Willy Senior. All are of the Gangila-Jamijin semimoiety, which is the appropriate semimoiety for *darlnyin* in a group whose *mingirringgi* are from the Gamarra-Burralla semimoiety. The genealogies do not enable the ascertainment of the identity of the mother's mother's father of any of these persons, but I have included them. Nicole Moore is not included with Richard, Samuel and Bessie as her mother was not the same as theirs.

3.15.6 The following is a list of the members of the **Lurdurdminyi** group, organised in a similar fashion to the list in para. 3.8.15.

*Mingirringgi**Junggayi**Darlnyin*

Amy Dirngayg

Rita Raymond

Megan Raymond
 Tanya Raymond
 Michael Raymond
 Marcus Raymond
 Maggie Raymond
 Max Raymond

Caroline Willy

Terrence Willy Jr
 Clinton Willy
 Tony Willy

Slim Roberts

Clive Roberts

Daniel Roberts

Warren Roberts

Maretta Roberts

Marjorie Hall

Lindsay Hall
 Rodney Hall
 Bernadette Hall
 Dianne Hall
 Selma Hall

Marianne Roberts

Joelene Russell (Gaykamangu)
 Janita Russell (Gaykamangu)
 Lorraine Beatrice Russell (Gaykamangu)

Paula Roberts (Hall)

Martina Hall
 Matthias Rogers
 Maceuan Rogers
 Martika Rogers

Valmay Roberts (Daniels)

Gene Clancy Daniels
 Anthea Glynnis Daniels

Douglas Leslie Roberts

Tiffany Rae Paula Roberts

Joshua Roberts

Edwina Roberts

Jessie Roberts

Faye Roberts

Robert Smiler
 Stanley Smiler
 Jessie Smiler
 Karen Groves

Roger Roberts

Deirdre Newman (Roberts)

Stephanie John
 (Daniels)
 Steven John
 Julie John

	Gary Roberts	
	Elaine James (Roberts)	Josiah Albert
		Harry Albert Jr
		Zachariah Albert
	Jocelyn James	Joanne James
		Nicole James
		Anthea Margaret Joe
		Antoinette Joe
Sheila Conway	Edna Farrar	Rosalyn Farrar
		Susan Farrar
		Trudy Farrar
	Michael Miller	
	Christine Conway	Derrick Conway
		Cecily Conway
		Janet Ellis
		Peter Ellis Jr
	Phyllis Conway	Serita Conway (Moore)
		Anton Conway (Moore)
		Matthew Conway
		Simone Baker
	Robert Conway	
Betty Lardy	Cheryl Lardy	
	Helena Lardy	
	Anna Maria Lardy	
	Josephine Lardy	
	Barbara Lake	Cecilia Andrews
		Jeffrey Andrews
		Georgina Andrews
		Nevron Andrews
	Bruce Lake	
	Ricky Lake	
Jackeroo Lirrawi		
	Kevin Lirrawi	
	Colleen Lirrawi	
	Dinulla Morgan	
	Alan Morgan	
Josephine Lirrawi	Trisha Marsland	
	Gregory Marsland	
Frances Lirrawi		
Theresa McDonald	Shirley McDonald	
	Andrew McDonald	
	Anne Marie McDonald	
	Fabian McDonald	

	Lisa McDonald Leonie McDonald	
Janet Lirrawi Ross Lirrawi Sandra Hodgson Estelle Hodgson		
	Shirley Farrell	Desmond Farrell Virginia Farrell Jimmy Farrell Con Farrell Jr
	Ray Farrell Johnny Farrell Rosina Farrell	Gary Albert Sebastian Avalon Melissa Albert Yvonne Albert Terrence Albert Harold Albert Jr
	Susan Farrell	Lisa Andrews Alison Andrews Andrea Andrews Aaron Andrews Alister Andrews
	Carol Farrell	Andrew Andrews Adam Andrews Abraham Andrews
	Dennis Farrell Jackie Farrell Ambrose Farrell Maria Farrell	
	Hilda Farrell	Simone Watson Marissa Watson
		Nathan Burns Keisha Burns
Bruce Daylight Natasha Daylight Desmond Daylight Braden Daylight Samuel Daylight Lucas Daylight Shirley Daylight (Roy)	Rhonda Wanta Selda Wilfrid Lewis Roy	
	Jennifer Doctor	Mandy Doctor Jeffrey Doctor
	Paul Allen Brendan Allen	

Anthony Allen
Mary Allen

June Bunajun

Ellen George

Alfie George
Georgina George
Desmond George
Warren Smiler
Luke Doctor
Kimberley George

Joseph Garadji
Beryl Gordon (Munul) (Garadji)
James Garadji
Rachel Thompson
Ivan Garadji
Alexandra Garadji

Sybil Ranch
Stewart Ranch
Ricky Ranch

Loretta Willy
Sebina Willy

Splinter Harris
Kenneth Harris
June Gardinen
Judy Carew

Richard Moore
Samuel Moore
Bessie Moore

Hannah Moore
Betty Willy
Terrence Willy Sr

3.16 The Beyward group

3.16.1 The evidence relating to the persons who make up the **Beyward** group is most confusing. In the Mataranka Area Land Claim No. 69, the group advanced as the traditional Aboriginal owners for *Beyward* (site 149) and associated sites was a group whose *mingirringgi* were of the Balyarriyn-Burlayn semimoiety. This claim was continued in the anthropologist's report for the present claim. In the course of preparation for the hearing of the present claim, and in the course of the evidence, there was revision of the claim, resulting from the acquisition of information that a particular dreaming thought to have been associated with *Beyward* (site 149) did not travel as far as that site. The consequence is that the claim to that area is now put on the basis that the appropriate group is a group whose *mingirringgi* are of the Bangariyn-Ngarrijbalan semimoiety.

3.16.2 This position having been reached, the group list advanced in evidence for the particular group causes further confusion. Joseph Garadji and his siblings are listed as

the senior *mingirringgi*. The children of those female siblings (Beryl Gordon, also known as Beryl Munul or Beryl Garadji, Rachel Thompson and Alexandra Garadji) are listed as *junggayi*, with the exception of Stewart Gordon, a son of Beryl Gordon, who is not listed at all. His children, along with those of his brother, Steven Rankin, are listed as *darlnyin*, along with the children of his two sisters, Evelyn Lansen and Rosanne Gordon. Even more strangely, none of the children of Joseph Garadji or his male siblings are listed as *mingirringgi*. In the end, I have reached the conclusion that the only sense that can be made out of this situation is to list the Garadji family in the same way as I have for the **Barlyurra** group, in the absence of evidence justifying the exclusion of those who do not appear in the group list and the inclusion of the children of male *junggayi* as *darlnyin*. It should be noted that I have also omitted Jeremiah Harrison, for the reasons which are set out in para. 3.11.1, in relation to the **Barlyurra** group.

3.16.3 Included in the group list as *mingirringgi* for the **Beyward** group are Sybil, Stewart and Ricky Ranch. I have included them; they are of the Ngarrijbalan subsection, and therefore of the appropriate semimoiety for *mingirringgi* for this group. Their descent is dealt with in para. 3.11.2, in relation to the **Barlyurra** group.

3.16.4 Barbara, Bruce and Ricky Lake are also *mingirringgi* for the **Beyward** group. Their father's name was Bob Lake. Barbara's children, Cecilia, Jeffrey, Georgina and Nevron Andrews, are *junggayi*. Bruce has children, Bruce Lake Junior and Braden Lake, who are not included in the group list. I have included them as *mingirringgi*, on the same basis as that on which I have added in the children of the Garadji men.

3.16.5 The children of the late Clancy Roberts are *junggayi* for this group, through their father's mother, Maudie Manbulloo. They are Slim Roberts, Clive Roberts, Marjorie Hall, Marianne Roberts, Paula Roberts (also known as Paula Hall), Valmay Roberts (also known as Valmay Daniels), Douglas Leslie Roberts and Joshua Roberts.

3.16.6 Lulu Jilimbirnga and Talbot Hood are advanced as *darlnyin*. They are of the Balyariyn-Burlayn semimoiety, whose mothers' mothers' fathers would have been of the Bangariyn-Ngarrijbalan semimoiety, the appropriate semimoiety for *mingirringgi* for this group. I have therefore included Lulu and Talbot.

3.16.7 The following is a list of the members of the **Beyward** group, organised in a similar fashion to the list in para. 3.8.15.

Mingirringgi

Junggayi

Darlnyin

Joseph Garadji

Tracey Anne Garadji

Ian Garadji

Leonna Garadji

Kerry-Anne Garadji

Jerry Joe Garadji

Beryl Gordon (Munul) (Garadji)

Evelyn Lansen

Melissa Lansen

Chaunelle Lansen

	Justin Lansen Leah Lansen
Rosanne Gordon	Reginald Gordon Debbie Watson Juan Watson
	Stewart Gordon Steven Rankin
James Garadji Mark Stewart Garadji Rachel Thompson	Fabian Thompson Richard Noel Thompson Joseph Thompson Hannah Thompson
Ivan Garadji Shayleigh Garadji Alexandra Garadji	Richard Whitlam
Sybil Ranch Stewart Ranch Ricky Ranch	
Barbara Lake	Cecilia Andrews Jeffrey Andrews Georgina Andrews Nevron Andrews
Bruce Lake Bruce Lake Jr Braden Lake Ricky Lake	Slim Roberts Clive Roberts Marjorie Hall Marianne Roberts Paula Roberts (Hall) Valmay Roberts (Daniels) Douglas Leslie Roberts Joshua Roberts
	Lulu Jilimbirnga Talbot Hood

3.17 The Bobobinnga group

3.17.1 *Mingirringgi* for the **Bobobinnga** group are of the Gamarra-Burralla semimoietiy. The group consists of three families. The first is the descendants of a deceased man called Yibelgun. The senior *mingirringgi* are David and James Daniels, whose father, the late Jimmy Daniels, was a son of Yibelgun. The two children of James, Danielle and Belinda Daniels, are also *mingirringgi*. Dorothy Rankin is a daughter of a deceased woman called Ngirrwirlij, whose father was Yibelgun. Dorothy is therefore *junggayi* through her mother's father. Her children are *darlnyin*. They are Bronwyn, Gloria, Matthew and Elisa Rankin. Sybil, Stewart and Ricky

Ranch are children of the late Frank Ranch, whose mother was Morlminga, a daughter of Yibelgun. Sybil, Stewart and Ricky are therefore *junggayi* for this group, through their father's mother.

3.17.2 The second family consists of the descendants of the late Jungle Dick. Mary Nurniyn is the surviving *mingirringgi*. Her daughters are *junggayi* through Mary and her father. Three of those daughters have children, who are *darlnyin*. One son and three daughters of Mary's deceased sister, Rosie Norman are also *junggayi*, through their mother's father. The children of the three daughters are *darlnyin*. I have dealt with the descent of this family in para. 3.8.10, in relation to the **Guyanggan** group.

3.17.3 The third family making up this group is Daylight Ngayunggu, Bobby Ngayunggu and Brian Manyita and their descendants. I have dealt with the descent of this family in paras 3.8.2 and 3.8.3, in relation to the **Guyanggan** group.

3.17.4 The following is a list of the members of the **Bobobinna** group, arranged in a similar fashion to the list in para. 3.8.15.

<i>Mingirringgi</i>	<i>Junggayi</i>	<i>Darlnyin</i>
David Daniels James Daniels Danielle Daniels Belinda Daniels	Dorothy Rankin	Bronwyn Rankin Gloria Rankin Matthew Rankin Elisa Rankin
	Sybil Ranch Stewart Ranch Ricky Ranch	
Mary Nurniyn	Joy Birtjara	Terrence Willy Sr Betty Willy
	Margaret James	Elizabeth Fredericks Robyn Fredericks Terrence Fredericks Priscilla James William Driver
	Christine James	Troy Friday Betty Friday Josephine John
	Sandra James	
	Teddy Bulga Rosemary Bulga	Zarak Yirmul Zoe Yirmul

		Razak Bulga
	Mandy Bulga	Reenie Barraway
	Josephine Bulga	Mervyn Martin
Daylight Ngayunggu		
Michael Daylight		
Noel Daylight		
Razak Daylight		
Justin Daylight		
Larissa Daylight		
Jeremiah Daylight		
Ian Daylight		
Ozzie Daylight		
Tina Daylight		
Hilda Daylight Yirrinini		
Ian Daylight Jr		
Kerry Daylight		
Ryanold Daylight		
Owen Daylight		
Patrick James Daylight		
Hilda Daylight Gamajarr		
	Deleneon Watson	
	Felicia Watson	
Pamela Daylight		
	Adrian Doctor	
	Lindsay Doctor	
	Tanya Doctor	
	Lee Doctor	
	Neil Doctor	
Edward Daylight		
Bruce Daylight		
Natasha Daylight		
Desmond Daylight		
Braden Daylight		
Samuel Daylight		
Lucas Daylight		
Shirley Daylight (Roy)		
	Rhonda Wanta	
	Selda Wilfrid	
	Lewis Roy	
Jonathan Daylight		
Bobby Ngayunggu		
Evelyn Ngayunggu		
Craig Ngayunggu		
Brian Manyita		
Tanya Manyita		
Terrence Manyita		
Loretta Manyita		

3.18 The Ngurrin group

3.18.1 The **Ngurrin** group has its *mingirringgi* from the Balyarriyn-Burlayn semimoietiy. Lulu Jilimbirnga is the senior *mingirringgi*. Her son, Daylight Ngayunggu, is *junggayi*, through Lulu and her father. Jackeroo Lirrawi is *junggayi*, through his mother's father; his mother was Long Fanny, Lulu's sister. The members

of the Farrell family, children of the late Bidy Farrell, who was Lulu's daughter, are *darlnyin*. So are the children of the late Erica Lake, who was a daughter of Long Fanny. It is unnecessary for me to repeat the names of the members of those families here; they are set out in para. 3.10.5 and in the list of the members of the **Maynjurn.gan** group in para. 3.10.10. Daylight's brother, Bobby Ngayunggu is also *junggayi*, through his mother's father.

3.18.2 The members of the Hood family are also *mingirringgi*. I have dealt with their descent in para. 3.10.6, in relation to the **Maynjurn.gan** group. The group list in evidence for the **Ngurrin** group did not include two of the children of Angela Hood, Glenys Brown and Harold Brown. No explanation was given for their omission, so I have included them as *junggayi*, through their mother and her father, Talbot Hood. The group list also omitted Dominic and Matthew Hood, who were "grown up" by Sandy Hood, the deceased father of some of the *mingirringgi*. Again, in the absence of any explanation for this omission, I have included them as *mingirringgi*. They have been included in the **Maynjurn.gan** group.

3.18.3 Wendy Daylight, Audrey Waller and Barbara Anderson are daughters of the late Felix Morgan and are *mingirringgi*. Their children are *junggayi*, through their mothers' father. Wendy has Bruce and Samuel Daylight. Audrey has Ronald Lirrawi (also known as Ronald Waller), Stephanie Waller, Sophia Waller, Jonathan Waller and Kenny Waller Junior. Barbara has Joanne, Joyce and Regina Anderson.

3.18.4 The name of Charles Morgan appeared on the group list as *mingirringgi* for this group. The only relevant evidence about him is that he is the son of Timmy Morgan, who was shown on the relevant genealogy as deceased, but was the subject of evidence that he is still alive. Charles has two children, Dinulla and Alan Morgan. I am unable to understand why, if Charles is to be included as *mingirringgi*, neither his father, from whom he would have to take that status, nor his children, to whom he would pass it, have been included. I have therefore omitted him.

3.18.5 Also shown on the group list for this group, as *darlnyin*, were Robert Smiler, Stanley Smiler, Jessie Smiler and Karen Groves. Their mother is Faye Roberts, the oldest daughter of Jessie Roberts. Jessie is not shown as *mingirringgi*, Faye and her siblings are not shown as *junggayi*, and none of the children of Faye's siblings appears as *darlnyin*. Robert, Stanley, Jessie and Karen are all of the Jamijin subsection, whose mother's mother's father would be Burrala, which is not one of the subsections making up the appropriate semimoiety for *mingirringgi* for this group. There is no evidence justifying the inclusion of these four in this group, so I have excluded them.

3.18.6 The following is a list of the members of the **Ngurrin** group, organised in a similar fashion to the list in para. 3.8.15.

Lulu Jilimbirnga

Daylight Ngayunggu
Bobby Ngayunggu

Jackeroo Lirrawi

Barbara Lake
Bruce Lake
Ricky LakeShirley Farrell
Ray Farrell
Johnny Farrell
Rosina Farrell
Susan Farrell
Carol Farrell
Dennis Farrell
Jackie Farrell
Ambrose Farrell
Maria Farrell
Hilda Farrell

Pamela Hood

Evelyn Jimberri

Phillip Hood

Sheena Hood

Darren Hood

Janelle Hood

Gregory Hood

Carol Hood

Randall Jackson
Naomi Jackson

Andrew Hood

Matthew Hood

Dominic Hood

Talbot Hood

Angela Hood

Steve Russell Owen Brown
Glenys Brown
Harold Brown

Melba Hood

Ian Avalon
Sharalee Avalon
Kim Avalon
Whitney Hood
Matt Hood

Josephine Hood

Damien William Fuller

Deirdre Hood

Vita Hood

Charmaine Hood

Joseph Hood

Wendy Daylight

Bruce Daylight
Samuel Daylight

Audrey Waller

Ronald Lirrawi (Waller)
Stephanie Waller
Sophia Waller
Jonathan Waller
Kenny Waller Jr

Barbara Anderson

Joanne Anderson
Joyce Anderson
Regina Anderson

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

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

4.1 Groups connected with areas of the land claimed Each of the groups described in chapter 3 is connected with part of the land claimed. The areas on which the separate groups focus are not necessarily completely separate. Parts of the claim area are rich in sites of significance, while sites are sparse or non-existent in other parts. The area along the Roper River is particularly rich, no doubt because it has always offered abundant resources for survival in all seasons. There are also sites to be found along other watercourses, particularly at permanent waterholes. In some places, different groups share sites or have adjacent sites, with a consequent overlap between the areas claimed by those groups. There is also a tendency for land between sites to be the subject of overlapping claims, or for it to be unclear into the estate of which group it falls.

4.2 The nature of the connection

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

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

4.2.3 It follows that the acquisition of both membership of a land-holding group and rights to a particular dreaming in respect of particular sites and land is a matter of descent. The descent criteria are those to which I have referred in para. 3.5.

4.3 The test for common spiritual affiliations

4.3.1 The proper approach to the determination of that element of the definition of "traditional Aboriginal owners" in s. 3(1) of the Land Rights Act which requires common spiritual affiliations to a site or sites on the land was laid down by the Full Court of the Federal Court of Australia in *Northern Land Council v. Olney* (1992) 34 FCR 470, at pp. 487-8. It is unnecessary for me to set out that passage in full. The court drew attention to the need to ascertain the existence of spiritual affiliations on the part of individual members of a group and then to inquire whether those

affiliations are common to the members of the group or some of them. Reference was made to the exclusion of members of a group who lack the requisite spiritual affiliation because of age or otherwise. This does not appear to have been intended to add age as an element of the statutory definition of "traditional Aboriginal owners". Above all, the court recognised, at p. 487, that the task of the Aboriginal Land Commissioner "must vary depending upon the way the evidence is presented".

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

4.3.3 Knowledge in Northern Territory Aboriginal cultures is recognised widely as a commodity which is imparted progressively to people who possess the requisite affiliations and have attained sufficient maturity and responsibility to be trusted with a particular level of knowledge. There are cases in which senior people, widely acknowledged as capable of safeguarding and not misusing knowledge, are the repositories of enormous amounts of knowledge relevant to whole regions. Such persons perform useful functions, particularly in safeguarding the knowledge for the benefit of those who are entitled to it. They can be trusted not to use the knowledge for their own purposes by claiming to have it in the capacity of those with particular affiliations. In the present claim, Jessie Roberts demonstrated broad knowledge of the dreamings for groups of which she does not claim to be a member. Joey McDonald also demonstrated a detailed knowledge of dreamings and ritual, extending from the claim area in a southerly direction to the area around Larrimah, including those for which he does not have specific rights.

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

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

4.4 Guyanggan country The **Guyanggan** group is connected with a number of sites along the Roper River through the dreaming known as *Wanggij*, loosely translated as child or piccaninny. The dreaming travelled from *Gandirrgiyan* (site 76) (Wagon Wheel Lagoon) and *Birliynbirliyn* (site 74) up the river. It visited *Guwarlmbarlg* (site 59), *Marlgorra Yirr? Wa-warag* (site 58), *Wangganggij garlg garlg wa-buni* (site 42) (where there is a limestone formation resembling a dam, said to have been made by, and to bear the marks of the hands of, the dreaming children), *Guyanggan* (site 40),

Na-Gurnjan (site 39) and *Jembere* (site 38). Several of these sites have trees which are regarded as sacred. The dreaming completed its travels at *Jilgmirn.gan* (site 37), near the Jilkminggan community. This dreaming track intersects that of the *Garawi*, or plains kangaroo, held by the **Nganawirdbird** group, *mingirringgi* for which are of the same semimoiety as *mingirringgi* for the **Guyanggan** group. It also intersects the track of the *Gurrawgurrawg*, or storm bird, dreaming of the **Maynjurn.gan** group.

4.5 Dirlirlin country The **Dirlirlin** group takes its name from a major site associated with a bird dreaming. Splinter Harris described it as a little white bird with a black eye. It was referred to as a chicken-hawk, but is apparently not the same dreaming as that associated with the **Gunduburun** group. The dreaming is associated with two sites on Elsey Creek, *Dirlirlin ngawurr ngawurr wa-yinyi* (site 30) (where it made a well) and *Balburran* (site 31). At each of those sites is a limestone formation. The group is also associated with the *Nagarran* dreaming, which is rendered in English as "devil devil". That dreaming is found at *Gulun* (site 158), upstream on Elsey Creek from the two *Dirlirlin* sites, at a place known as Longreach Point, and also at *Munggug* (site 150), a spring in the valley of the Strangways River. The name of *Gulun* (site 158) is a reference to the making of a well at that place by the dreaming.

4.6 Maynjurn.gan country The principal dreaming of the **Maynjurn.gan** group is the *Gurrawgurrawg*, or storm bird. *Jawumbungan* (site 49) is the northernmost site associated with this dreaming. At the site, which is on the left bank of the Roper River, is a large forked tree which symbolises the meeting of the *Gurrawgurrawg* with the *Wargwargmin* (crow) dreaming and their agreement to travel in different directions away from that point. Joey McDonald described the tree as representing the "granny together" relationship of the two dreamings. Also on the river and associated with the *Gurrawgurrawg* dreaming is *Maynjurn.gan* (site 46) (known as the Two Mile), where there are also sacred trees associated with the dreaming. Other sites in the vicinity visited by the *Gurrawgurrawg* are *Wagurragmayn* (site 47), *Na-Mimarn Ja-ni* (site 44) and *Yarrayg Gal?ma Wa-niyn* (site 43). The dreaming then travelled away from the river to the south, visiting One Tree Yard (site 138) and Greenhart's Yard (site 139) before travelling to the south of the claim area. The **Maynjurn.gan** group retain responsibility for the dreaming until it is well off the claim area. Close to *Maynjurn.gan* (site 46) is another site, not shown on the site map, which is associated with the *Jamorlmorl* dreaming, which is a lizard. The members of the **Maynjurn.gan** group also have affiliations to that site through that dreaming.

4.7 Barlyurra country The *Barlyurra* is a site complex rather than a specific site. It straddles the Roper River in the region of Red Lily Lagoon and upstream. It includes the sites *Warrwarrag* (site 198), *Garawi Yirrij Wa-gardjag* (site 50), *Ngalarrg* (site 188), *Na-Yumbunggan* (site 187) and *Lunjan* (site 182). The members of the **Barlyurra** group are affiliated with these sites through the *Wijwij*, or possum, dreaming. Amy Dirngayg told a story of the possum making a hair belt. There is also a snake dreaming, the detail of which is secret to men and therefore the subject of restricted evidence. *Na-Yumbunggan* (site 187) is a ceremony ground for men's ceremony, although Jessie Roberts said that the presence of tourists using the river has caused the cessation of ceremonies on that site. The area is Bangariyn-Ngarrijbalan country, which meets with Gamarra-Burralla country somewhere to the west of *Guwarlmbarg* (site 59).

4.8 Nganawirdbird country

4.8.1 The principal dreaming of the **Nganawirdbird** group is *Garawi*, or plains kangaroo. This is a major dreaming of the claim area. Its track enters the claim area from the direction of Mataranka. The first site visited by the dreaming on the claim area is *Gorowan* (site 25), on Salt Creek. The dreaming then visited *Na-Burl* (site 28) (Elsey Falls), *Murrwale* (site 29) and *Barlmarrag* (site 32), all on the Roper River. Between *Murrwale* (site 29) and *Barlmarrag* (site 32) is a waterhole, into which the *Garawi* jumped and in which it submerged. It travelled underground to the north and re-emerged at *Nganawirdbird* (site 33).

4.8.2 *Nganawirdbird* (site 33) is a place of great significance. It consists of a large sinkhole and limestone cave at the top of a hill. Inside, various limestone features have been painted; they represent the internal organs of the plains kangaroo. The site is on the register of the national estate, pursuant to the *Australian Heritage Commission Act 1975*.

4.8.3 The cave is a place which should only be visited by initiated males. When it was visited during the hearing, the women stayed outside. Jackeroo Lirrawi gave evidence that he had not been allowed to enter the cave when he visited it as a child. It is said to be a dangerous place. The story was recounted of Aeneas Gunn's death from a fever which was said to have been the result of his exploration of the cave.

4.8.4 From *Nganawirdbird* (site 33), the *Garawi* crawled to *Gurlurndurnyi* (site 34), where it lay down and made a lagoon in the bed of Cave Creek. It then moved on to *Ngabardangiyn* (site 35), a little way down Cave Creek, where it interacted with the *Ngorlomorro*, or left-hand kangaroo, dreaming. The *Ngorlomorro* made a stone knife or spearhead at that site. There is a song for the *Ngorlomorro*, part of which was sung by Jessie Roberts at the site.

4.8.5 From there, the *Garawi* travelled to the Roper River, which it crossed at *Garawi Yirrij Wa-gardjag* (site 50), which is within the *Barlyurra* site complex. At that place, the *Garawi* interacted with the *Wijwij*, or possum, dreaming and with a cockatoo dreaming. The *Garawi* then proceeded to *Na-ni-nawung-gan* (site 53) at Little Red Lily Lagoon.

4.8.6 From there, the *Garawi* travelled in a generally eastward direction, visiting *Ngarmirn.gan* (site 56) (on Little Red Lily Lagoon), *Gurndarlawung.gan* (site 57) (near Little Red Lily Lagoon, where there used to be a tree representing the kangaroo standing up and looking back; there is another tree representing the kangaroo nearby), *Barlarlbab* (site 60), *Gilagilagi* (site 146) (Daken Harts Lagoon), *Ganyjirraman* (site 152) and *Warlangarrayi* (site 151), before leaving the claim area onto Hodgson Downs Station. In the course of parts of its journey, it was chased by two dingoes, called *Barlarlbab* (the name of site 60) and *Ganyjirraman* (the name of site 152), and accompanied by a wallaby, which took a short cut at one point and rejoined the kangaroo at *Gilagilagi* (site 146). There is a song concerning the two dingoes which is sung in ceremonies for the initiation of young men.

4.9 Gunduburun country

4.9.1 The evidence established connections between the members of the **Gunduburun** group and two areas of country within the claim area. The first is an area that extends from the northern boundary of the claim area in the Chambers River Valley south-east to the Roper River. The members of the group are connected with sites in this area through a dreaming known as *Garrmarnin*, or chicken-hawk. This dreaming was the bringer of stone spearheads. It is celebrated in ceremonies to do with male initiation. At the site called *Garrmarnin* (site 159), the chicken-hawk fell on its back. The chicken-hawk can still be seen lying there on its back. On the Roper River at *Garrgarrga* (site 65), the chicken-hawk heard a big noise. It saw a ceremony taking place at nearby *Wurluguguwan* (site 62), around which there had been burning with a firestick. The other site visited by the chicken-hawk dreaming is *Jirrgijaji* (site 67), on the Roper River, where it made camp.

4.9.2 The other area of country associated with this group is in the region where the Roper River meets the eastern boundary of the claim area. It includes the site *Gunduburun* (site 95), in the vicinity of Mole Hill. There is a ceremony ground used for secret men's ceremony at that site. Nearby, covering a significant area, is *Yumbuyan* (site 97). This is associated with a complex dreaming story of a crane, which was seeking to catch a fish in a small billabong. In the course of the story, the billabong became larger.

4.9.3 The precise connection between the two areas of country was not made clear by evidence. The area lying between them appears to be associated with other groups.

4.10 Mirmiridji country The **Mirmiridji** group has affiliations to sites on the claim area through two different dreamings. One is *Gurrwandan*, rendered in English as two quiet (i.e. non-venomous) snakes. This dreaming travelled from *Warraja* (site 93), where the Strangways River and the Roper Highway intersect, up the Strangways River almost as far as *Beyward* (site 149), and then returned to *Warraja* (site 93). The other dreaming is *Jab*, or whirlwind. This visited *Garwarran* (site 84), *Miwarlan* (site 83) and *Mirmiridji* (site 81), forming the rocky features of Mount Sir James. There is secret men's business associated with those dreamings and with *Mirmiridji* (site 81). The *Jab* then travelled to *Ngurrin* (site 137), where it is associated with the **Ngurrin** group.

4.11 Lurdurdminyi country The **Lurdurdminyi** group takes its name from site 89, the principal site of the rain dreaming. At the site is permanent water, known as Crescent Lagoon. There is also a sacred tree associated with the rain dreaming and another plant which, if touched, can cause sickness and death. In the claim material, the rain dreaming is called *Garnan*, but Jessie Roberts in her evidence gave it what she described as "the old name", *Jawayway*. As well as *Lurdurdminyi* (site 89), the dreaming is associated with *Merremeng* (site 90), *Marnmong* (site 88), *Gurrayan* (site 73), which is on Goondooloo Station just outside the eastern boundary of the claim area, and *Guwarlmbarlg* (site 59). The members of the group are affiliated to all of these sites by way of the rain dreaming.

4.12 Beyward country

4.12.1 There is a substantial area of land in the south-east of the claim area associated with the Bangariyn-Ngarrijbalan semimoiety and, in particular, with the **Beyward** group. It includes *Beyward* (site 149) (at which there is a lagoon); *Guywarran* (site 145) and *Garlayarr* (site 148) (both on Cattle Creek); and *Jalburrgiji* (site 157) (on the Strangways River near Mais Bluff). The area extends eastwards into Hodgson Downs Station. The degree to which it extends to the west is unclear, but the principal dreaming of the group has a connection with *Guyurriyan* (site 135) and *Gulun* (site 158), both on Elsey Creek.

4.12.2 An eagle dreaming, of the Bangariyn-Ngarrijbalan semimoiety, stole flying foxes, of the Gangila-Jamijin semimoiety, from *Gulun* (site 158) and cooked them in a stone oven at *Guyurriyan* (site 135). There is a mound at the latter site, which represents the stone oven. Because of the theft of the flying foxes, *Nagarran* (devil devil) sent a rain dreaming, of the Gamarra-Burralla semimoiety, to pursue the eagle. The rain caused lightning, which chased the eagle. The eagle put the flying foxes in a bag and flew to *Jalburrgiji* (site 157), by way of *Garlayarr* (site 148). The lightning struck the rock at Mais Bluff and made it red. It is clear from this story that *Guyurriyan* (site 135) has connections with several groups.

4.12.3 There is a local dreaming at *Guywarran* (site 145) which is called *Gargunyja*. Splinter Harris translated it as a bird. The site register renders it as a nankeen night heron (also known as a rufous night heron). There is also a dreaming, secret to men, about which I heard evidence in restricted session, which connects *Beyward* (site 149) with *Jalburrgiji* (site 157).

4.13 Bobobinna country The area of country in the western part of the claim area has particular associations with the Yangman language group and is regarded as country of the Gamarra-Burralla semimoiety. It is the country of the **Bobobinna** group, which has affiliations to a complex of sites along Elsey Creek, in the vicinity of Warloch Ponds and downstream from there. The focal site is *Bobobinna* (site 124), which is associated with a sugarbag dreaming. At the site is a white rock formation which, according to Daylight Ngayunggu, is linked with a dreaming called *Junguj*, which he described as "tiger snake". *Garlyag* (site 118) and *Nayn.jagan* (site 120) are both associated with a devil devil called *Jambarlawa*. There is a localised dreaming at *Buriyn.gan* (site 119); it is a file snake dreaming. *Mabirling* (site 134) takes its name from a dreaming which Daylight Ngayunggu described as a little rock kangaroo with a red eye and which the site register describes as a hare-wallaby. Other sites within the complex are *Bardbaru* (site 122) and *Na-Gunyjan* (site 136). The members of the **Bobobinna** group have affiliations to the various sites through the dreamings to which I have referred.

4.14 Ngurrin country

4.14.1 The members of the **Ngurrin** group have affiliations to sites on the claim area through two main dreamings. The first is the *Jab*, or whirlwind, which travelled from *Miwarlan* (site 83) and *Mirmiridji* (site 81) (see para. 4.10). The dreaming visited *Ngurrin* (site 137) on its way to a complex of three sites on or near Elsey Creek. They are *Ngadibarn.gan* (site 125), at which the dreaming created a swamp, *Jarraji* (site

126) and *Warlarlaji* (site 127). At the last-mentioned of these sites, there is a tradition that Lulu Jilimbirnga's father, Gudirr, left a footprint in the ground. From these sites, the *Jab* travelled to a place near the town of Mataranka.

4.14.2 The other major dreaming of the **Ngurrin** group is *Warrba*, or catfish. This dreaming is associated with *Dunggurlan* (site 140) and *Marlwan* (site 141), both of which are near a bore known as Drum Bore or No. 1 Bore, and with *Ganybunyi* (site 142), where a small creek intersects the Roper Highway.

4.15 Common spiritual affiliations It follows from what I have said that the members of each of the groups to which I have referred have common spiritual affiliations to sites on the land claimed, as well as in some cases to sites on nearby land which are associated with the land claimed. The spiritual affiliations of the members of each group are held in common with the other members of that group. They are so held as a result of the acquisition of rights and responsibilities in respect of those sites, through the dreamings relating to those sites, by the principles of descent referred to in para. 3.5.

4.16 Primary spiritual responsibility

4.16.1 The affiliations to which I have referred in para. 4.15 give rise to spiritual responsibility on the part of the members of each group for the sites concerned and for the land that surrounds them. In order to satisfy the definition of "traditional Aboriginal owners" in s. 3(1) of the Land Rights Act, this spiritual responsibility must be "primary". In the case of each group, the spiritual affiliations to the sites to which I have referred give rise to a spiritual responsibility which is primary, in the sense that it is ahead of that of any other people who hold the same dreaming. In respect of dreamings which travel from or to areas outside the land claimed, the evidence identifies the members of the relevant claimant groups as those who have primary spiritual responsibility for those portions of the dreaming tracks which enter or pass through the land claimed.

4.16.2 Spiritual responsibility for sites and land involves ceremonial activity related to those sites and that land. There is abundant evidence of the performance of ceremonies related to sites on the land claimed and the dreamings which are connected with those sites. At some sites on the land claimed, there are places at which ceremonies are still performed. Much of the evidence relating to ceremonial activity is restricted because it concerns ceremonies which are secret to men. In the course of evidence, songs celebrating dreamings in respect of particular sites were sung. Jessie Roberts was a particularly valuable singer in the course of the hearing: at *Ngabardangiyn* (site 35), she sang part of a song relating to the left-hand kangaroo (*Ngorlomorro*); at *Nganawirdbird* (site 33) and at *Gorowan* (site 25), she sang parts of a song relating to the plains kangaroo (*Garawi*); and at *Bobobinna* (site 124), she sang part of a song relating to the *Jambarlawa* devil devil. As is common in Aboriginal land tenure systems in the Northern Territory, senior members of the groups take leading roles in the performance of ceremonies. The evidence suggests that, as they acquire age and status, younger members of the groups will take their rightful places in those performances. Again, as is common, senior members of the groups are recognised as those having the authority to speak about sites, dreamings and land. In time, junior members will acquire that authority.

4.16.3 As I have said in chapter 3, each group consists of *mingirringgi*, *junggayi* and *darlnyin*. A question therefore arises whether one or more of these subgroups has or have responsibility which is primary as against the other or others. *Mingirringgi* and *junggayi* fulfil roles in relation to ceremonies and land management which are consistent with those usually found in societies which are organised according to moiety systems. A person will usually have responsibilities as *mingirringgi* in respect of country belonging to one moiety, that to which that person's father and father's father belong or belonged. The same person will usually have responsibility as *junggayi* in respect of country belonging to the opposite moiety, that from which his or her mother and mother's father, and father's mother and father's mother's father, came. The complementary nature of the roles of *mingirringgi* and *junggayi* in both ceremony and land management can thus be understood easily. They are sometimes described in English as the roles of owner and manager. Sometimes the role of *junggayi* is referred to as that of a policeman. These descriptions do not capture the full significance of the roles. The evidence discloses that *mingirringgi* have obligations to care for country. They may require the permission of *junggayi* to carry out acts of land management. In turn, *junggayi* exercise a supervisory role, to ensure that the necessary acts are carried out. If damage occurs to a significant feature of the country concerned, *mingirringgi* have obligations to pay *junggayi*, even if the damage did not result from the deliberate act or neglect of *mingirringgi*. Nowadays, payment is exacted in cash or in the provision of tobacco or items of food. Ceremonies celebrating dreamings and sites and land can only be undertaken if *mingirringgi* and *junggayi* are both present and fulfilling their respective roles. Thus, in every sense, *mingirringgi* and *junggayi* exercise complementary roles in relation to the exercise of spiritual responsibility for, and the management of, land.

4.16.4 The concept of *darlnyin* is unusual in my experience. *Darlnyin* take their status from their mothers' mothers' fathers. In other words, they will be of the same moiety (but a different semimoiety within that moiety) as those from whom they take their status. The evidence discloses that they function as a sort of extra *junggayi*, with supervisory and permissive roles which are exercised as backup for, and in consultation with, *junggayi*; Joey McDonald said, "We can't go without a *darlnyin*", in the context of evidence about land management. They have ceremonial roles which complement those of *mingirringgi* and *junggayi*. They share in payments which *mingirringgi* are required to make in the event of damage. On the evidence, there is no difficulty in recognising that *mingirringgi*, *junggayi* and *darlnyin* together exercise primary spiritual responsibility in respect of the sites of the various groups and the land surrounding them.

4.16.5 Another issue as to the primacy of responsibility arises because of the lack of bounded estates within the claim area. There is a heavy concentration of sites along the Roper River, where permanent water is available. Other sites tend to be associated with permanent waterholes in the ephemeral waterways. There is no neat pattern of dreaming tracks associated with the sites. Rather, dreaming tracks intertwine. In para. 4.9, I refer to the two separate areas of land to which the members of the **Gunduburun** group are affiliated and to the country of other groups in between them. The *Barlyurra* site complex contains sites of more than one group. There are some cases of groups sharing responsibility for sites. *Guyurriyan* (site 135) and *Gulun* (site

158), the complex story relating to both of which is recounted in para. 4.12.2, are good examples (see the reference to *Gulun* in para. 4.5). *Guwarlmbarlg* (site 59) is referred to in para. 4.4 in relation to the child dreaming and in para. 4.11 in relation to the rain dreaming. This means that there are areas of land over which more than one group will claim to exercise responsibility. In such cases, the evidence does not suggest any element of competition between those groups. Rather, it is recognised that the members of more than one group are able to exercise joint or shared primary spiritual responsibility for the shared areas.

4.17 Rights to forage The right to forage over the areas of land associated with the sites of the various groups was asserted on many occasions in the evidence. It was often supported by evidence, both oral and tangible, of the availability of bush tucker and other requirements. Thus, the seeds of the lotus lily were gathered and eaten during the hearing at Little Red Lily Lagoon and freshwater mussels were gathered, cooked and eaten at *Beyward* (site 149). Lily roots were gathered in several places. As is often the case, the class of those entitled to hunt and gather in particular areas was broader than the members of the group with particular responsibility for that area. It was clear, however, that *mingirringgi*, *junggayi* and *darlnyin* with responsibility for particular areas of land have the right to forage over that land. There are instances of restrictions on that right in the immediate vicinity of sites. At *Gilagilagi* (site 146), there was evidence that no-one is permitted to hunt or gather at the site itself, although all members of the **Nganawirdbird** group were able to hunt and gather as of right in the surrounding country. These restrictions were not such as to deny the existence of a general right in members of each of the groups to forage over the areas of the land claimed for which those groups have responsibility.

4.18 Traditional Aboriginal owners The following is a list of all those who, according to the evidence, fall within the definition of "traditional Aboriginal owners" of any part of the land claimed. Most, if not all, belong to more than one group. I have listed each person only once and have listed them in alphabetical order. Where the name of a child has not been given in evidence, I have listed that child under the name of his or her parent.

Gary Albert
 Harold Albert Jr
 Harry Albert Jr
 Josiah Albert
 Melissa Albert
 Terrence Albert
 Yvonne Albert
 Zachariah Albert
 Anthony Allen
 Brendan Allen
 Mary Allen
 Paul Allen
 Barbara Anderson
 Joanne Anderson
 Joyce Anderson
 Regina Anderson
 Aaron Andrews
 Abraham Andrews

Adam Andrews
Alison Andrews
Alister Andrews
Andrea Andrews
Andrew Andrews
Cecilia Andrews
Georgina Andrews
Jeffrey Andrews
Lisa Andrews
Nevron Andrews
Ian Avalon
Kim Avalon
Sebastian Avalon
Sharalee Avalon
Kathy Baker
Patricia Baker
Patrina Baker
Shane Baker
Shaun Baker
Simone Baker
Timothy Baker
Wendy Baker
Reenie Barraway
Joy Birtjara
Glenys Brown
Harold Brown
Steve Russell Owen Brown
Josephine Bulga
Mandy Bulga
Razak Bulga
Rosemary Bulga
Teddy Bulga
June Bunajun
Keisha Burns
Nathan Burns
Alfonso Carew
David Carew
Josephine Carew
Judy Carew
Randall Carew
Sharon Carew
Steven Carew
Sylvia Carew
Trevor Carew
Bianca Hazel Collin
Anton Conway (Moore)
Cecily Conway
Christine Conway
Derrick Conway

Matthew Conway
Phyllis Conway
Robert Conway
Serita Conway (Moore)
Sheila Conway
Anthea Glynnis Daniels
Belinda Daniels
Danielle Daniels
David Daniels
Gene Clancy Daniels
James Daniels
Annabelle Daylight
Braden Daylight
Bruce Daylight
Desmond Daylight
Edward Daylight
Hilda Daylight Gamajarr
Hilda Daylight Yirrinini
Ian Daylight
Ian Daylight Jr
Jeremiah Daylight
Jonathan Daylight
Justin Daylight
Kerry Daylight
Larissa Daylight
Lucas Daylight
Michael Daylight
Natasha Daylight
Noel Daylight
Owen Daylight
Ozzie Daylight
Pamela Daylight
Patrick James Daylight
Razak Daylight
Ryanold Daylight
Samuel Daylight
Shirley Daylight (Roy)
Tina Daylight
Wendy Daylight
Sally Anne Dick
Sandra Dick
Shaun Dick
Amy Dirngayg
Adrian Doctor
Jeffrey Doctor
Jennifer Doctor
Lee Doctor
Lindsay Doctor
Luke Doctor

Mandy Doctor
Neil Doctor
Tanya Doctor
William Driver
Clifford Duncan
Samantha Duncan
Winnie Duncan
Janet Ellis
Peter Ellis Jr
Dionne Farrar
Edna Farrar
Lachlan Farrar
Rosalyn Farrar
Susan Farrar
Trudy Farrar
Ambrose Farrell
Carol Farrell
Con Farrell Jr
Dennis Farrell
Desmond Farrell
Hilda Farrell
Jackie Farrell
Jimmy Farrell
Johnny Farrell
Maria Farrell
Ray Farrell
Rosina Farrell
Shirley Farrell
Susan Farrell
Virginia Farrell
Elizabeth Fredericks
Robyn Fredericks
Terrence Fredericks
Betty Friday
Troy Friday
Damien William Fuller
Alexandra Garadji
Ian Garadji
Ivan Garadji
James Garadji
Jerry Joe Garadji
Joseph Garadji
Kerry-Anne Garadji
Leonna Garadji
Mark Stewart Garadji
Shayleigh Garadji
Tracey Anne Garadji
June Gardinen
James Gaston

Michael Gaston
Robert Gaston
Steven Gaston
Tania Gaston
Wayne Gaston
Alfie George
Clifford George
Desmond George
Ellen George
Georgina George
Kimberley George
Martika George
Maria Gibbs
Pancy Gibbs
Beryl Gordon (Munul) (Garadji)
Reginald Gordon
Rosanne Gordon
Stewart Gordon
Karen Groves
Bernadette Hall
Dianne Hall
Lindsay Hall
Marjorie Hall
Martina Hall
Rodney Hall
Selma Hall
Kenneth Harris
Splinter Harris
Estelle Hodgson
Sandra Hodgson
Angela Hood
Andrew Hood
Carol Hood
Charmaine Hood
Darien Hood
Deirdre Hood
Dominic Hood
Gregory Hood
Janelle Hood
Joseph Hood
Josephine Hood
Matt Hood
Matthew Hood
Melba Hood
Pamela Hood
Phillip Hood
Sheena Hood
Talbot Hood
Vita Hood

Whitney Hood
Naomi Jackson
Randall Jackson
Christine James
Elaine James (Roberts)
Joanne James
Jocelyn James
Margaret James
Nicole James
Priscilla James
Sandra James
Lulu Jilimbirrnga
Evelyn Jimberri
Anthea Margaret Joe
Antoinette Joe
Anita John
Barbara John
Cheyenne John
David John
Jeff Fred John
Josephine John
Julie John
Shirley John
Stephanie John (Daniels)
Steven John
William John
unnamed daughter of William John
Virginia Kruger
Barbara Lake
Braden Lake
Bruce Lake
Bruce Lake Jr
Ricky Lake
Chaunelle Larsen
Evelyn Larsen
Justin Larsen
Leah Larsen
Melissa Larsen
Anna Maria Lardy
Betty Lardy
Cheryl Lardy
Helena Lardy
Josephine Lardy
Colleen Lirrawi
Frances Lirrawi
Jackeroo Lirrawi
Janet Lirrawi
Josephine Lirrawi
Kevin Lirrawi

Ronald Lirrawi (Waller)
Ross Lirrawi
Brian Manyita
Loretta Manyita
Tanya Manyita
Terrence Manyita
Gregory Marsland
Trisha Marsland
Anton Martin
Antonella Martin
Ethan Martin
Mervyn Martin
Alec McDonald
Andrew McDonald
Anne Marie McDonald
Fabian McDonald
Joey McDonald
Leonie McDonald
Lisa McDonald
Shirley McDonald
Theresa McDonald
Wilton McDonald
Tanya McInnes
Antonella Miller
Donovan Miller
Jodie Miller
Maxie Miller
Michael Miller
Natalie Miller
Bessie Moore
Hannah Moore
Loretta Moore (Willy)
Nicole Moore
Richard Moore
Samuel Moore
Sebina Moore (Willy)
Alan Morgan
Charles Morgan
Dinulla Morgan
Doreen Morton
Nita Morton
son of Nita Morton
Susan Morton
Deirdre Newman (Roberts)
Bobby Ngayunggu
Craig Ngayunggu
Daylight Ngayunggu
Evelyn Ngayunggu
Mary Nurniyn

Germaine Ponto
Marissa Ponto
Ricky Ranch
Stewart Ranch
Sybil Ranch
Bronwyn Rankin
Dorothy Rankin
Eddie Rankin
Elisa Rankin
Gloria Rankin
Lucas Rankin
Matthew Rankin
Steven Rankin
Maggie Raymond
Marcus Raymond
Max Raymond
Megan Raymond
Michael Raymond
Rita Raymond
Tanya Raymond
Clive Roberts
Daniel Roberts
Douglas Leslie Roberts
Edwina Roberts
Faye Roberts
Gary Roberts
Jessie Roberts
Jocelyn Roberts (James)
Joshua Roberts
Kerry-Anne Roberts
Maretta Roberts
Marianne Roberts
Nicholas Roberts
Paula Roberts (Hall)
Raylene Roberts
Regina Roberts
Roberta Roberts
Roger Roberts
Slim Roberts
Tiffany Rae Paula Roberts
Valmay Roberts (Daniels)
Warren Roberts
Warwick Roberts
Maceuan Rogers
Martika Rogers
Matthias Rogers
Kalvin Roy
Katrina Roy
Lewis Roy

Janita Russell (Gaykamangu)
Joelene Russell (Gaykamangu)
Lorraine Beatrice Russell (Gaykamangu)
David Ryan
Larry Ryan
Simeon Ryan
Zachariah Sandy
Casey Smiler
Daphne Smiler
Jessica Smiler
Jessie Smiler
Robert Smiler
Stanley Smiler
Warren Smiler
Eric Thomas
Joshua Thomas
Shirley Thomas
Fabian Thompson
Hannah Thompson
Joseph Thompson
Rachel Thompson
Richard Noel Thompson
Audrey Waller
Jonathan Waller
Kenny Waller Jr
Sophia Waller
Stephanie Waller
Rhonda Wanta
Debbie Watson
Deleneon Watson
Felicia Watson
Juan Watson
Marissa Watson
Simone Watson
Sylvester Weekend
Richard Whitlam
Selda Wilfrid
Antoinette Willy
Betty Willy
Caroline Willy
Clinton Willy
Loretta Willy
Sebina Willy
Terrence Willy Sr
Terrence Willy Jr
Tony Willy
Zarak Yirmul
Zoe Yirmul
Lorna Yiwirabi (Lirrawi)

5 STRENGTH OF ATTACHMENT

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

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

5.3 Historical association

5.3.1 The claimants and their forebears have maintained a continuous presence within the claim area throughout its pastoral history. Each of the three Elsey Station homesteads (see para. 2.5.1) had its nearby camp for Aboriginal employees and their families. In the course of the hearing, I visited the site of the camp near the present homestead. Although living conditions in that camp had obviously been very hard, and work requirements very arduous, the visit occasioned some nostalgia on the part of the older claimants.

5.3.2 A number of claimants worked on Elsey Station while it was controlled by non-Aboriginal pastoralists. Amy Dirngayg and Lulu Jilimbirrnga both did housework at the homestead. Daylight Ngayunggu, Jackeroo Lirrawi, Splinter Harris, Roger Roberts and Joey McDonald were all involved in cattle work on the claim area and on nearby stations. Jessie Roberts and Sheila Conway also worked, both on Elsey and other stations in the area.

5.3.3 In 1974, the manager of the station attempted to drive the Aboriginal people who were then living in the camp near the present homestead off the station permanently. This attempt was resisted. Claimants and their forebears returned to the land and camped at what is now the site of the Jilkminggan community. Later, they retrieved sheets of iron from the shelters in which they had lived at the camp near the homestead and began rebuilding at Jilkminggan. Their insistence on living within the claim area and their determination not to be moved led to the excision from the pastoral lease of what is now the freehold area of the Jilkminggan community. There is now a well-established settlement within that area, which includes well-appointed houses, a store, a school, a pump for water supply, a bank of solar panels for power generation, a backup diesel generator, fences and gardens. The school is a substantial building, with a concrete slab and cement-brick walls. Designs representing some of

the dreamings connected to sites on the claim area have been worked into the brickwork of the school building. Inside, the floors are carpeted and the rooms are airconditioned. No doubt the credit for the amenity of the Jilkminggan community area must go to many people, but the contribution of Jessie Roberts should be mentioned.

5.4 Where the claimants live Over 130 of the persons I have found to be traditional Aboriginal owners live at Jilkminggan. They include substantial numbers of the Roberts and Daylight families. Betty Lardy returned to live there, seventeen years after being taken away to Croker Island as a child. Members of the **Gunduburun** group have established a separate community living area at Mole Hill, on the land claimed. Others of the traditional Aboriginal owners live not far from the claim area on other stations, or at places such as Mataranka, Ngukurr, Katherine and Barunga.

5.5 Spiritual life The modern amenity at Jilkminggan contrasts with the traditional Aboriginal lifestyle which the claimants tend to lead. There are numerous speakers of the Mangarrayi language among them. As I have indicated in para. 3.3, there is a staunch adherence to the traditional kinship system. The spiritual life of the claimants is active and real. For them, the dreamings are not matters of history but have relevance in daily lives. Inappropriate behaviour at or near some sites is believed to cause sickness and death. An example is *Nganawirdbird* (site 33), to which I have referred in paras 4.8.2 and 4.8.3. Recent damage to a tree at the Two Mile was the cause of evidence of concern. *Na-Liwu-Jaji* (site 72) is a mosquito increase site, at which inappropriate behaviour can cause plagues of mosquitoes. Such prohibitions on inappropriate behaviour are observed by the claimants. There are sites to which *mingirringgi* will not go without being accompanied by *junggayi* and *darlinyin*. At *Buriyn.gan* (site 119), Jessie Roberts gave evidence that *mingirringgi* needed to be accompanied by *junggayi* and *darlinyin* in order to walk around safe from the *Jambarlawa* (see para. 4.13). Prohibitions on eating the animal form of a dreaming of the same semimoiety as the person concerned are observed. For instance, at *Gurlurndurnyi* (site 34), Splinter Harris gave evidence that he could not eat a goanna because it was of the Gangila-Jamijin semimoiety, the same semimoiety to which Splinter belongs. In paras 4.16.3 and 4.16.4, I have referred to local Aboriginal law concerning the payment by *mingirringgi* to *junggayi* in the event of damage to the land or its features and the sharing of that payment with *darlinyin*. Joey McDonald gave evidence that payment has been exacted from him as *mingirringgi* from time to time.

5.6 Ceremonial activity Claimants participate regularly in regional ceremonies, in which they celebrate their dreamings in relation to sites on the claim area, by the use of body designs and songs. Sacred objects for use in ceremonial activity used to be stored in crevices in limestone quite near the road which leads from the Roper Highway to the present Elsey Station homestead. The storage places have now been destroyed by limestone-quarrying operations (see para. 6.12.6). The loss of those places and of some sacred objects has been the cause of considerable distress amongst claimants. In chapter 4, I have referred to places in the claim area which are used for ceremonies. The currency of songs celebrating the dreamings was demonstrated by Jessie Roberts, who sang portions of songs relating to the *Garawi* dreaming at *Nganawirdbird* (site 33) and *Gorowan* (site 25), the *Ngorlomorro* dreaming at *Ngabardangiyn* (site 35) and the *Jambarlawa* dreaming at *Bobobinna* (site 124).

5.7 Site protection On a number of occasions, concern was expressed to protect the traditional connection between the claimants and sites on the land. In particular, there was evidence that claimants were worried about the impact of tourists in sensitive areas. Examples are the expressions of concern by Sheila Conway at *Nganawirdbird* (site 33) and *Na-Burl* (site 28) (Elsey Falls) and by Jessie Roberts at Little Red Lily Lagoon. Jessie also referred to a ceremony ground at *Na-Yumbunggan* (site 187), which she said is no longer used because it can be seen by tourists using the Roper River. Steps have already been taken to protect some places. *Nganawirdbird* (site 33) is on the Register of the National Estate, pursuant to the *Australian Heritage Commission Act 1975*. An area along and near the Roper River from the Two Mile to near *Garawi Yirrij Wa-gardjag* (site 50) has been registered for protection under the *Northern Territory Aboriginal Sacred Sites Act 1989* (NT). I am satisfied that a major element of the desire to have the claimed land placed under the control of a land trust is the wish to gain control over access to the land, for the purpose of protecting sensitive sites.

5.8 Traditional use of resources The traditional use of the resources of the land was the subject of oral evidence, and was also demonstrated during the hearing. The land claimed is used by the claimants for hunting, fishing and gathering food and other resources, such as bush medicines and white clay for ceremonial purposes. During the hearing, freshwater mussels were gathered and cooked at *Beyward* (site 149), lily roots were found at several places and lily seeds were gathered and eaten at *Gurndarlawung.gan* (site 57), at Little Red Lily Lagoon.

5.9 Passing on knowledge It is clear that there is a desire to pass on knowledge to younger generations. Daylight Ngayunggu gave evidence to this effect. There is restricted evidence that it is being done in relation to young men. Children are taught the Mangarrayi language in the school at Jilkminggan; they demonstrated their knowledge of the language by singing in it during the hearing. There is every indication that a way of life which is strongly traditional will continue to be the norm among those claimants who live within the claim area and nearby.

5.10 Attendance at the hearing Attachment to the land concerned was indicated by a large attendance at the hearing. Although this can be explained in part by the number of claimants who live at Jilkminggan, the enthusiasm of the claimants generally for the pressing of their claim was apparent. The major part of the hearing took place over ten continuous days. What had been scheduled as a rest day in the middle of the hearing was in fact used for a demonstration and evidence by Douglas Collins of the boat cruise which he conducts for tourists on the Roper River and Red Lily Lagoon (see para. 6.14). A number of claimants attended on this day as well. In late September and early October, the weather was hot. Much of the hearing involved long vehicle trips, sometimes on very rough tracks. The days were long. Despite this, claimants, including the elderly, maintained their commitment to the success of the hearing.

5.11 Strength of attachment high As this summary of the evidence indicates, the strength of traditional attachment of the claimants must be regarded as very high.

6 MATTERS FOR COMMENT

6.1 Numbers advantaged

6.1.1 The total number of persons whom I have found to fall within the definition of "traditional Aboriginal owners" in the Land Rights Act is 410. There are four classes of persons who can be said to have traditional attachments to the land claimed but who do not fall within that definition. They are:

- (a) those who are married to traditional Aboriginal owners;
- (b) children of male *junggayi* and of *darlnyin* who are not traditional Aboriginal owners through other parents;
- (c) persons with responsibility for parts of relevant dreaming tracks falling outside the claim area, who will usually be members of the same semimoieties as the traditional Aboriginal owners who have responsibility for the portions of those dreaming tracks within the claim area; and
- (d) non-claimant members of the Mangarrayi and Yangman language groups.

Persons belonging to each of these classes would be advantaged if the claim were acceded to in whole or in part. In his written submissions, counsel for the claimants sought a similar finding in relation to a fifth group, namely those whose parents or other close relatives are known to have died on the claim area. There is no evidence to suggest that there are such people or, if there are, that they have traditional attachments to the land claimed. I have therefore been unable to make a finding in relation to that class.

6.1.2 The numbers in the first two classes, spouses and children who are not traditional Aboriginal owners, are not large, because of the close nature of the community to which the traditional Aboriginal owners belong and their tendency to marry in accordance with the dictates of the kinship system. Members of the other two classes have ties of kinship, language, ceremonial obligation and attachment, and dreaming affiliation which link them with the traditional Aboriginal owners. Some people will belong to more than one class. Jimmy Conway is a very good example. He is married to Sheila Conway, a prominent member of several of the groups and of the Jilkminggan community. Jimmy himself is also a prominent member of that community and plays an important role in regional ceremonies. On several occasions, he was named as *junggayi*, in the broad sense to which I have referred in para. 3.7.2, in respect of several groups. Such overlapping makes assessment of numbers advantaged difficult. The estimate provided on behalf of the claimants is that the total number of Aboriginal people with traditional attachments to the land claimed who would be advantaged if the claim were acceded to in whole or in part could be as high as 800, including the traditional Aboriginal owners. This estimate is probably reasonably accurate.

6.2 Nature and extent of the advantage

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

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

6.2.3 The greater control over the management of the land would assist in giving security of occupation to those who have established a community at Mole Hill, if it is the wish of those with traditional attachments that the community should continue.

6.2.4 There would also be considerable intangible advantage if the land became Aboriginal land under the Land Rights Act. A grant of land to a land trust is recognition of the traditional rights of people whose forebears were dispossessed. It is a recognition at the highest level of Australian society. The Attorney-General for the Northern Territory submitted that the status of the claimants as people with traditional entitlements to the land had already been recognised by the purchase of the shares in Banibi Pty Ltd on their behalf. By choosing not to make submissions contesting the entitlement of the claimants in the present claim, the Northern Territory Government has acknowledged their entitlement. Valuable though these gestures may be, they do not amount to the equivalent of the recognition which Aboriginal entitlements receive by way of a grant of land to a land trust. Such a grant carries with it an affirmation of the value of traditional rights and of places of cultural significance. It enables the traditional Aboriginal owners of the land and others with traditional attachments to it to use the land as a focus for the further development of their community spirit and the maintenance and increase of their self-esteem. The importance of such an acknowledgment and such a focus for modern Aboriginal communities should not be underestimated.

6.3 Detriment: the gas pipeline

6.3.1 In para. 2.11.25, I have reached the conclusion that neither NT Gas Pty Ltd, nor ANZ Leasing (NT) Pty Ltd and its consortium of banks which own the gas pipeline, has an estate or interest in the land the subject of the claim. This raises the possibility that, if the claim were to be successful and the land claimed were to become Aboriginal land under the Land Rights Act, NT Gas Pty Ltd, ANZ Leasing (NT) Pty Ltd or the banks could not assert any right to continue to operate and maintain the pipeline. The likelihood is that the combination of legislation of the Northern Territory, to which I have referred in para. 2.11, would not be "capable of operating concurrently" with the Land Rights Act, within the meaning of s. 74 of the Land Rights Act. The Northern Territory legislation would be overridden by the Land Rights Act if the land trust, acting on the directions of the Northern Land Council, after consultation in accordance with s. 23(1)(c) of the Land Rights Act, resolved not to permit the continued use of the pipeline across the subject land. The result of such a determination would be detriment to NT Gas Pty Ltd, ANZ Leasing (NT) Pty Ltd and the consortium of banks, consumers of the gas conveyed by the pipeline and consumers of electricity generated by the gas conveyed by the pipeline. In the first instance, NT Gas Pty Ltd is liable to the banks in respect of any loss; in some circumstances, the Northern Territory Government may have to make good loss suffered. The loss suffered by consumers will usually be borne by those consumers themselves.

6.3.2 The extent of this detriment would depend upon the outcome of negotiations for a lease of the pipeline easement or some other form of authorisation by the land trust of the continued use and maintenance of the pipeline. If no such agreement were to be reached, the estimated cost of the re-routing of the pipeline around the subject land is \$13.5 million. In addition, there would be disruption to the use of the pipeline involved in such re-routing, although any right which the land trust had to prevent the continuance of a trespass involved in the use of the pipeline would be subject to the allowance of a reasonable period (often described in the authorities as a "packing-up period") for the making of other arrangements. NT Gas Pty Ltd would also be liable for continued rental payments in respect of the unused portion of the pipeline; over the remaining period of the lease, these could amount to \$18.5 million.

6.3.3 The far more likely prospect is that agreement for a lease of the pipeline easement would be reached and the detriment suffered would be limited to the amount of any rent and any other amount or amounts payable under the lease. Such agreements have been reached between NT Gas Pty Ltd and a number of Aboriginal land trusts, including the Wubalawun Aboriginal Land Trust, which holds land immediately to the south of the land claimed, through which the gas pipeline easement runs. Negotiations in respect of such a lease, and the completion of an agreement for such a lease, could take place between NT Gas Pty Ltd and the Northern Land Council prior to any grant of the land to a land trust, pursuant to s. 11A of the Land Rights Act. Counsel for NT Gas Pty Ltd expressed great concern as to the likely outcome of negotiations, in the event of a recommendation that the land be conveyed to a land trust; he argued that his client would be at a considerable disadvantage, in that it would have to pay whatever was demanded as the price of continuing to use the pipeline. It is no part of my function to comment on the way in which negotiations should be

conducted or the matters which should be discussed. The claimants made it clear in their submissions that they do not propose to require the re-positioning of the pipeline and that they are amenable to entering into an agreement for a lease of the pipeline easement, to enable the continued use and maintenance of the pipeline. In my view, that is the most likely outcome and any detriment suffered will be limited to amounts payable under the lease which results.

6.4 Detriment: access to the gas pipeline In para. 2.11.26, I expressed the view that NT Gas Pty Ltd has no estate or interest in the land claimed which would provide it with a right of access across other portions of the land to the energy supply easement. If the land claimed became Aboriginal land under the Land Rights Act, NT Gas Pty Ltd would lose the benefit of any licence it may now have to use any access track across the land claimed. There is one such track, which is used to assist employees of NT Gas Pty Ltd in maintaining the pipe, including monitoring its cathodic protection. Access is also available by way of the Gorrie Station access road (a road over which the public has a right of way - see para. 7.2.2). Biannual inspections are undertaken. There is also a scraper station located within the boundaries of the land claimed, which provides access to the pipe for the insertion of a "pig" to clean the inside of the pipe. Employees performing inspection and maintenance and wishing to use the access track would require permits under the *Aboriginal Land Act* (NT) in order to continue using the access track. If permits were denied, and access could not be achieved conveniently by other means, such as the Gorrie Station access road, NT Gas Pty Ltd would suffer detriment accordingly. In turn, detriment might be suffered by those who depend on the continued functioning of the pipeline if there should be any interference with that functioning by reason of lack of proper maintenance.

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

6.6 Detriment: loss of value of the pastoral lease The submissions on behalf of the Attorney-General for the Northern Territory drew attention to the fact that, if the claim were acceded to, the pastoral lease covering the land claimed would lose its value altogether. It was submitted that this would result in detriment to Banibi Pty Ltd and to the claimants. The submission is correct, in a technical sense. It must be remembered, however, that the interest in Banibi Pty Ltd, which holds the pastoral lease, has been purchased with money provided by the Aboriginals Benefit Trust Account, not for the purpose of being held as a saleable asset, but for the purpose of providing secure access to and occupation of the land for the claimants. There is no suggestion that the purchase is by way of investment, or that there is or will be

any intention to sell the asset. In these circumstances, to replace the asset by a more secure form of title does not give rise to significant detriment.

6.7 Detriment: the pastoral industry

6.7.1 In para. 6.16, I deal with the proposal of the claimants to conduct a pastoral enterprise on the land claimed. At the time of the hearing, this enterprise was in operation, with approximately 6 000 cattle grazing on the land claimed. Edward Arthur Easton, Senior Project Officer, Pastoral Branch, of the Department of Lands, Housing and Local Government of the Northern Territory, estimated the total safe carrying capacity of the claim area as 18 694 cattle. Neville Norman Trout, who was managing the cattle enterprise on the land claimed, saw the property as capable of supporting 8 000 breeding cattle and 2 000 to 5 000 cattle purchased for fattening and sale. If the proposal of the Conservation Commission of the Northern Territory to preserve the Elsey Creek and Red Lily Lagoon areas (see para. 6.9) were to be accepted, Mr Easton's estimate of the carrying capacity would be reduced by approximately 2 450. In any event, Mr Easton considers that the Red Lily Lagoon area, which is subject to annual flooding and contains permanent swamps and braided channels as well as the principal bed of the Roper River, is unsuitable for the grazing of livestock in accordance with modern management practices. It follows that the estimate of the safe carrying capacity should be reduced accordingly. It appears that the Elsey Creek area is not presently used for grazing in any event.

6.7.2 The concern expressed by Mr Easton is the detriment which it is suggested would follow from the abandonment of the proposal to conduct a pastoral enterprise on the land claimed. On the basis of a herd of 3 500 to 4 000 cattle (which was his estimate at the time of the hearing), Mr Easton estimates an annual loss to the gross domestic product of the Northern Territory of \$210 000 if the project were to be abandoned. If the figure for the total estimated safe carrying capacity of 18 694 is used, the annual loss to the Northern Territory's gross domestic product arising from the non-use of the claim area for grazing would be \$1 402 200.

6.7.3 Whilst it may be that the estimated safe carrying capacity is not achieved, or is not always achieved, it does appear most likely that the claim area will continue to be used for the grazing of cattle for beef production, thereby negating or reducing the suggested detriment.

6.8 Detriment: inapplicability of Northern Territory legislation

6.8.1 Section 74 of the Land Rights Act provides:

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

The Attorney-General for the Northern Territory alleges that detriment to persons or communities might result if the claim were acceded to, because of the inapplicability of some laws of the Northern Territory to the land claimed, once it became held by a land trust. Examples of legislation given included the *Stock Diseases Act* (NT), the

Stock Routes and Travelling Stock Act (NT), the *Fences Act* (NT), the *Noxious Weeds Act* (NT), the *Soil Conservation and Land Utilisation Act* (NT), the *Bushfires Act* (NT) and the *Fisheries Act* (NT). As an example, the Brucellosis and Tuberculosis Eradication Campaign has been implemented in the Northern Territory, largely through the *Stock Diseases Act* (NT). The ability to control outbreaks of stock diseases is obviously an important aspect of such a campaign.

6.8.2 It is impossible for me to specify in advance which aspects of any legislation of the Northern Territory may or may not be capable of operating concurrently with the Land Rights Act. Specific circumstances would need to be considered in each instance. Separate consideration would have to be given to each relevant provision of each Act in relation to such a specific situation. Detriment of the kind contemplated by s. 50(3)(b) of the Land Rights Act would occur only if whoever is charged with the management of the pastoral enterprise on the land claimed should refuse to cooperate with the authorities of the Northern Territory in relation to some specific issue involving a provision of a law of the Northern Territory, and it were to be found that that provision was not capable of operating concurrently with the Land Rights Act. It cannot be said that such an occurrence is very likely. I note that there has already been assistance given by the Northern Territory Government in the management of the pastoral enterprise on the land claimed. There are fifteen photo-monitoring points established within the claim area, as part of the rangeland monitoring program conducted by the Pastoral Land Board pursuant to the *Pastoral Land Act* 1992 (NT). It is unlikely that the traditional Aboriginal owners, who desire to conduct a successful cattle enterprise on the land, will refuse to cooperate with the authorities of the Northern Territory, which are also interested in the success of such an enterprise.

6.8.3 The submission on behalf of the Attorney-General for the Northern Territory suggested that I should make any recommendation for a grant of land conditional on the acceptance of the operation of Northern Territory land management legislation. Any attempt to impose such a condition would be beyond my power. In any event, such a condition would be unenforceable; the Land Rights Act provides no machinery for the revocation of a grant of land to a land trust. Future generations of people entitled to the benefits of the land under the Land Rights Act would not be bound by any such condition.

6.9 Detriment: conservation

6.9.1 In evidence tendered by the Attorney-General for the Northern Territory, the Conservation Commission of the Northern Territory expressed interest in the land claimed. The commission has provided assistance in the operation of Elsey Station in the past, including advice about irrigated cropping, cattle numbers in paddocks along the Roper River, soil types, the siting of access roads and dealing with problems of noxious weeds. In 1991, a basic property management plan was produced by the commission, consisting of maps with overlays showing land systems and infrastructure developments. Informal, practical advice has been given about locating fencelines and planning paddocks. The involvement of the commission has occurred both before and after the claimants acquired control of Banibi Pty Ltd.

6.9.2 Areas of the land claimed have high conservation values. The Conservation Commission identifies fourteen vegetation communities of biological significance, the presence of significant native fauna, interesting tufa formations and crystallised salt deposits, limestone outcrops containing fossils and the presence of a major fault line marking the interface between sandstone country to the north and limestone country to the south. Conservation problems identified include susceptibility to damage by fire if burning occurs too often or at inappropriate times of the year, noxious weed infestation (particularly the presence of para grass, a variety introduced for pasture, which threatens to choke the access channel to Red Lily Lagoon), feral animals (particularly pigs in the wetlands areas and donkeys elsewhere) and uncontrolled visitor access.

6.9.3 The commission has particular interest in two areas. One lies between Elsey Creek and the boundary of the land claimed with Northern Territory Portion 3069 (Elsey National Park) and extends a short way north of the Roper River. The other lies immediately to the north of the Urapunga Stock Route, extending from the vicinity of the Two Mile Yard to the eastern boundary of the claim area. This second area extends north of the Roper River both within and to the east of the claim area. It includes Red Lily Lagoon and a large area of the flood plain of the Roper River. In his evidence, to which I have referred in para. 6.7, Mr Easton detailed a specific plan to fence this second area, using existing fencing, natural barriers and some proposed new fences. The commission has notionally allocated \$250 000 for fencing. The purpose of such proposed fencing would be to prevent cattle and feral animals from gaining access to the area.

6.9.4 The Conservation Commission wishes to be involved in the management of these two areas. Its preferred option is that a land trust lease the two areas to the Northern Territory Government for management by the Conservation Commission as a national park. It suggests that this course would provide a number of benefits for those for whom the land trust holds the land. It would enable the areas to be managed for tourism and conservation in a manner compatible with the desire of those who wish to maintain their traditional access to and use of the land. Visitor access could be managed to avoid intrusion into areas of importance in a traditional sense. Opportunities would exist for economic benefits by the provision of services to visitors and the Conservation Commission; a particular instance given was that, if the second area were to be fenced, the commission would seek to engage local Aboriginal people to construct the fences and would provide them with the necessary training. In addition, there would be opportunities for economic benefits from cultural tourism, with traditional Aboriginal owners of the land controlling the information which was presented to tourists and the manner of its presentation. The skills, resources and legislative authority of the commission would be available to assist in the management of those areas of the land. The commission would provide greater priority to the elimination of feral animals in areas which constitute a national park than would be the case if those areas were used for pastoral purposes.

6.9.5 In all of this evidence, no real issue of detriment arises. If the land claim were acceded to, no doubt negotiations would take place between the Conservation Commission and those able to speak on behalf of traditional Aboriginal owners and others with traditional attachments with respect to the management of the areas of

interest to the commission. It would be a matter for the Aboriginal people concerned to evaluate the benefits to them of any proposal by the commission. It might be said that vesting the land claimed in a land trust would remove from the commission any opportunity to use powers of compulsory acquisition in order to achieve its objectives. There has been no proposal in the past to use such powers to acquire the areas of interest, so it does not appear that detriment flowing from the inability to use such powers would be significant.

6.10 Detriment: Telstra Corporation Ltd

6.10.1 In para. 2.9, I expressed the view that the access easement to Northern Territory Portion 1434, owned by Telstra Corporation Ltd, is not available for claim, because the access easement is an estate or interest held by Telstra Corporation Ltd, which is not the Crown and which does not hold the estate or interest on behalf of Aboriginal people. If that conclusion is incorrect, in the event that the claim were acceded to, access to Northern Territory Portion 1434 would be preserved by s. 70(4) of the Land Rights Act, given that Northern Territory Portion 1434 would be an island within Aboriginal land.

6.10.2 In para. 2.10, I expressed the view that Northern Territory Portion 3713 is not available for claim, because Telstra Corporation Ltd holds an estate or interest in it which it does not hold on behalf of Aboriginal people. If that conclusion is incorrect, Telstra Corporation Ltd would suffer detriment in the event that the claim were acceded to. There is a digital radio concentrator on Northern Territory Portion 3713, which is part of the national system of telecommunications. The detriment would be inability to continue to use the repeater station without entering into a lease, or some similar arrangement, with the land trust. Any rental or other money paid for use and occupation of the land would constitute detriment in those circumstances.

6.10.3 In para. 2.10, I also expressed the view that Telstra Corporation Ltd has no estate or interest in the land claimed in consequence of the agreement to allow it and its servants and agents to have access to Northern Territory Portion 3713 across the land claimed. In any event, if Telstra Corporation Ltd has or acquires an estate or interest in Northern Territory Portion 3713, s. 70(4) of the Land Rights Act would ensure that it has a right of access to that land if the land claimed becomes Aboriginal land. It would suffer no detriment in this regard.

6.11 Detriment: mining

6.11.1 The Attorney-General for the Northern Territory provided information from the Department of Mines and Energy of the Northern Territory in relation to mining on the land claimed. There has been considerable exploration for lime and cement-grade limestone. In para. 6.12, I deal with the interests of Northern Cement Ltd, which mines lime and limestone on the land claimed. In addition to those interests, the area is considered highly prospective for lime and cement-grade limestone. There has also been exploration for diamonds in the region, and the claim area is considered to have significant potential for them. The discovery of a natural bitumen occurrence at Wagon Wheel Lagoon led to exploration for petroleum. Eight petroleum exploration wells have been drilled in the region within the last few years, two of them within the

claim area. Traces of oil and gas have been recovered, but no potentially economic accumulation of petroleum has been discovered. Again, the area is considered to have significant potential for petroleum.

6.11.2 As at the time of the hearing, there were several mining exploration licences and exploration licence applications affecting the land claimed. EL 7713 was granted to Dennis John Campbell on 10 July 1992 and is due to expire on 9 July 1998. It covers an area straddling Elsey Creek, east of the Stuart Highway. EL 7610 was granted to Geoffrey Robert Orridge on 31 January 1992 and was due to expire on 30 January 1997. I am unaware whether it has been renewed pursuant to s. 29A of the *Mining Act (NT)*. The area covered by this exploration licence is primarily on Hodgson Downs Station, to the east of the claim area, but extends a short distance across the eastern boundary of the claim area. Two exploration licence applications, designated ELA 8274 and ELA 8275, were made by Ashton Mining Ltd on 30 June 1993. The areas covered are in the east of the claim area, south of the Roper Highway. Stockdale Prospecting Ltd applied on 22 August 1988 for an exploration licence to an area on Northern Territory Portion 1636. The evidence is not entirely clear, but the area concerned might intrude slightly into the claim area along its western boundary with Northern Territory Portion 1636. The area is designated ELA 6282.

6.11.3 An existing exploration licence is not affected by the making of the claim and would not be affected by the vesting of the land in a land trust; it is protected by a combination of ss. 66 and 70(2), and the definition of "mining interest" in s. 3(1), of the Land Rights Act. Section 67A of the Land Rights Act does not prevent the granting of a mining exploration licence pending the determination of a claim (see *Attorney-General for the Northern Territory v. Kearney* (1990) 25 FCR 408, at pp. 412-3). The maker of an exploration licence application would suffer detriment if the application had not been dealt with prior to the land concerned becoming Aboriginal land. Section 40 of the Land Rights Act would prevent the granting of an exploration licence unless the land council and the applicant had entered into an agreement of a kind contemplated by Part IV of the Land Rights Act. The holder of an exploration licence granted before the land became Aboriginal land might also suffer detriment in that the renewal of the licence, which would otherwise be possible under s. 29A of the *Mining Act (NT)*, would not be available without an agreement under Part IV of the Land Rights Act. In addition, the holder of an existing exploration licence might suffer detriment in that, by virtue of s. 45 of the Land Rights Act, a mining interest cannot be granted in respect of Aboriginal land without an agreement with the relevant land council. All of these possible instances of detriment are theoretical; none of the holders of the existing exploration licences or exploration licence applications gave evidence of actual detriment that might result if the claim were acceded to in whole or in part.

6.12 Detriment: Northern Cement Ltd

6.12.1 Northern Cement Ltd is the holder of mineral claims nos MCN 674, MCN 685, MCN 2548, MCN 2549, MCN 2550, MCN 2551, MCN 2552 and MCN 2574, all located on the land claimed. The locations of those mineral claims are shown on the map in appendix 6. During the hearing, there was controversy over the location of MCN 674, because a map provided by the Department of Mines and Energy showed

the claim as further east than where it was actually pegged. It has since been confirmed that the location shown on that map was incorrect and the pegged area is correct. MCN 674 is four hectares in area.

6.12.2 The validity of the mineral claims is not affected by the making of the claim and would not be affected if the land claimed became Aboriginal land under the Land Rights Act. The right to renew the mineral claims, which exists under s. 90 of the *Mining Act* (NT), is also preserved by s. 3(4) of the Land Rights Act.

6.12.3 MCN 674, which is located near the Two Mile Yard, is close to a site of major significance to the claimants. The site is a registered sacred site, registered pursuant to the *Northern Territory Aboriginal Sacred Sites Act* 1989 (NT). The mineral claim is within the boundaries of that registered site. By letter to the Aboriginal Areas Protection Authority, dated 15 October 1992, Northern Cement Ltd did not object to the registration of that site, despite acknowledging that this involved loss of its limestone reserves.

6.12.4 The remaining mineral claims are grouped together, south of the Elsey Station homestead. At the time of the hearing, operations had been confined to two of the mineral claims. On MCN 685, they consisted of a quarry, "scalps" heaps and an office. On MCN 2549 was an agricultural lime pit and a dump.

6.12.5 Northern Cement Ltd operates a processing plant for lime on freehold land abutting the Roper Highway near its junction with the Stuart Highway. The company requires continued supplies of quarried lime to keep its processing plant in operation. Provided that it is able to renew its mineral claims, it has many years of potential supplies. MCN 685, on which the current mining operations are situated, is twenty hectares in area. MCN 2548 is seven hectares; MCN 2549 is eighteen hectares; MCN 2550, MCN 2551 and MCN 2552 are each twenty hectares; and MCN 2574 is eight hectares.

6.12.6 An earlier holder of the same mineral claims caused great distress to senior claimants when it destroyed the remains of people buried in the area and a storage place for sacred objects. Quarrying has taken place where men's ceremonies used to be conducted. Northern Cement Ltd has done much to repair relations with the Jilkminggan community. It consults with senior claimants resident at that community in relation to significant changes to mining direction and methods. It has agreed to avoid using MCN 674 if possible.

6.12.7 The primary concern of Northern Cement Ltd is that it continue to gain access to its mineral claims. The road leading to the homestead from the Roper Highway passes through MCN 2549, MCN 685 and MCN 2548. It is a road over which the public has a right of way (see para. 7.2.5). Employees and contractors of Northern Cement Ltd are therefore entitled to use it in their capacity as members of the public. Access will not be a problem. The company has taken action to ensure that its employees do not attempt to gain access to other areas of the land claimed without permission from senior members of the Jilkminggan community. Access to MCN 674, if it is ever to be mined, would be preserved by s. 70(4) of the Land Rights Act; for the purposes of sections including s. 70, s. 66 defines "estate or interest" as

including a mining interest, which in turn is defined in s. 3(1) in terms that would include a mineral claim.

6.12.8 Northern Cement Ltd is also concerned to ensure that it has access to water supplies for use in the amenities portion of its office building and for dust suppression in the quarry site and on the road. At present, the company pumps from the Roper River through a pipe, under an arrangement with station management and the Jilkminggan community which is satisfactory to all. I have no reason to believe that such an arrangement will not continue.

6.12.9 I am therefore of the view that Northern Cement Ltd will not suffer detriment if the claim is acceded to.

6.13 Detriment: public access, tourism, boating and recreational fishing

6.13.1 The Mataranka Community Government Council, and a number of people who gave evidence, expressed concern about lack of access to the land claimed in the event that the claim were acceded to. This issue is bound up with the question of roads on the claim area over which the public has a right of way, with which I deal in para. 7.2.

6.13.2 The Mataranka Community Government Council identifies as the most popular recreational areas on the land claimed the following areas:

- (a) Elsey Falls, a beauty spot very attractive for swimming and fishing;
- (b) Duck Creek Crossing, for camping, swimming and boating, including access by boat to Elsey Falls;
- (c) the Two Mile Yard, for camping, boating and waterskiing;
- (d) Wagon Wheel Lagoon, for fishing;
- (e) waterholes on the Moroak Station access road, for fishing, camping and boating;
- (f) Crescent Lagoon, for fishing, boating and camping;
- (g) McCrackens Lagoon, for fishing, boating and camping; and
- (h) an area known as the "57 Mile", five kilometres off the Roper Highway, near Mole Hill, described as very popular with locals and tourists.

These areas are shown on the map in appendix 6.

6.13.3 There was evidence from the Fisheries Division of the Department of Primary Industry and Fisheries of recognition by the Northern Territory Government of the value of recreational fishing as a source of enjoyment to residents of the Northern

Territory and of its importance for tourism and, consequently, to local businesses. The department has produced a Northern Territory Recreational Fishing Development Program. As part of the program, arrangements have been made with pastoral lessees for access to waterways. A map has been produced, for distribution to tourists, providing information on available fishing spots and conditions of access. The map does not show any place on the land claimed as an accessible spot, but the department appears to want to add such spots. The results of a survey, tendered to demonstrate usage of various fishing locations, showed the Roper River as being less used than any other area surveyed in the Northern Territory, with the possible exception of the Victoria River. The evidence of David Field, Executive Assistant of the Fisheries Division, identified Goose Lagoon, McCrackens Lagoon and the 57 Mile as the most popular spots for recreational fishing on the claim area.

6.13.4 All of the places of concern to the Mataranka Community Government Council and the Fisheries Division involve perennial water. Section 79 of the *Pastoral Land Act* 1992 (NT) presently gives to any person, without the specific permission of a pastoral lessee, a right to be on perennial natural water, or on land within fifty metres of such water, including a right to camp for up to two weeks. By s. 9 of the *Water Act* 1992 (NT) (and previously by s. 3 of the *Control of Waters Act* (NT)), property in and the rights to the use, flow and control of water flowing or contained in a waterway are vested in the Northern Territory. The present claim is limited to the alienated Crown land contained within Northern Territory Portion 645 and the unalienated Crown land contained within the relevant portions of the two stock routes which cross that land. It does not purport to be a claim in respect of water. The right of members of the public to be on water would continue to exist with respect to all perennial natural waters within the claim area if the claim were acceded to. The right of access to land within fifty metres of such water would disappear and would be replaced by a prohibition of entry on the land without a permit under the *Aboriginal Land Act* (NT), subject to the exceptions referred to in s. 70 of the Land Rights Act. Only where access to water is available directly from a road over which the public has a right of way would the members of the public be able to use effectively their right to be on waters. Public detriment would result.

6.13.5 To some extent, this possible detriment is not as great as might be expected, because it does not appear that members of the public are presently able to gain access to most of the perennial waters within the claim area. Section 79 of the *Pastoral Land Act* 1992 (NT) permits a pastoral lessee, within twelve months after the commencement of the Act, to nominate a reasonably practicable route across land the subject of the pastoral lease from a public road to perennial water, and confines members of the public, without the specific permission of the pastoral lessee, to access to that water by that route. Banibi Pty Ltd has purported to act in reliance on this provision by nominating the Moroak Station access road as a reasonably practicable route to the Roper River. I have some doubt whether this is a proper reliance on s. 79, as the Moroak Station access road is itself a public road (see para. 7.2.2), and the legislation requires that the reasonably practicable route be across the land the subject of the pastoral lease, from a public road to the water. This issue was not argued, and I do not have to decide it. The consequence of a pastoral lessee failing to nominate a reasonably practicable route to water under s. 79 is that the Pastoral Land Board acquires the power to nominate such a route. So far as the evidence before me goes,

neither Banibi Pty Ltd nor the Pastoral Land Board has nominated any reasonably practicable route to any of the lagoons which the evidence identifies as popular spots for tourists and residents of Mataranka and Katherine to visit. The consequence must be that, at present, members of the public have no right to cross the land the subject of the pastoral lease to visit those places without the permission of Banibi Pty Ltd. This conclusion accords with the recollections of a number of witnesses that the availability of access to those places had diminished in recent years.

6.13.6 With the exception of land within fifty metres of perennial natural water, the situation would be unchanged from the present if the land claim were acceded to. Members of the public would be able to exercise their right to be on the water only if they were able to gain access to it from roads over which the public has a right of way, or with permission. The method of obtaining permission would change if the land were vested in a land trust, as it would be necessary to apply to the Northern Land Council for a permit, instead of seeking oral permission from a servant or agent of Banibi Pty Ltd.

6.14 Detriment: Brolga Tours

6.14.1 The question of access is of particular importance to the business conducted under the name Brolga Tours by Colmeed Pty Ltd. Douglas Alfred Collins is the manager of that business. Since 1983, Mr Collins has been conducting commercial cruises from the Two Mile Yard area to Red Lily Lagoon and back. He provides a commentary which contains a good deal of interesting historical material and an account of the flora and fauna of the area. A number of those engaged in the hearing took part in one such cruise on Sunday, 3 October 1993, in the course of the hearing, before Mr Collins gave evidence. The business is based in Mataranka and draws some of its customers from people who visit the area as independent tourists and the balance from linking with package tours. In 1993, up to 22 October, according to figures supplied by Mr Collins, approximately 400 independent tourists and approximately 700 package tourists undertook the cruise. There is a purpose-built boat afloat in the Roper River, moored near the Two Mile Yard, said to be worth \$90 000. The business also owns vehicles, said to be worth \$25 000, and other equipment.

6.14.2 Whether Mr Collins and his customers presently have a right of access to the mooring point was a question of some controversy. Typically, tour parties are brought by road, by way of the Stuart Highway, the Roper Highway, the Elsey Station homestead access road and a track leading to the Two Mile Yard, and thence to the river bank. Originally, the tours were conducted with the permission, if not the agreement, of the holder of the pastoral lease. When Banibi Pty Ltd acquired the pastoral lease and explored the possibility of setting up a "dude ranch", it proposed that Mr Collins limit his operations to its clients. Mr Collins was unwilling to do this. He has since been asserting a right to access to the river bank. At present, he asserts that the Elsey Station homestead access road is a public road, and the track between it and the Two Mile Yard is along the Urapunga Stock Route, which he claims is bounded by the water's edge at that point. Alternatively, he claims that the track is part of the old Elsey-Roper Valley Road (see paras 7.2.7 and 7.2.8), which he claims is a road over which the public has a right of way.

6.14.3 The fact that the track is on a stock route may not be of great help to Mr Collins. An area of land does not become a road over which the public has a right of way merely by virtue of being declared a stock route (see the cases referred to in para. 2.3.5). The pastoral lessee may not have authority to prevent passage over the stock route by Mr Collins and his tour participants, but it does not follow that they pass and re-pass along the track as of right. Nor is it clear that Mr Collins is correct in his contention that the stock route takes him to the edge of the water, or even to within fifty metres of the edge of the water, so as to enable him and his customers to take advantage of the public rights given by s. 79 of the *Pastoral Land Act 1992* (NT). The presence on the land of equipment of the business, including the means of boarding the boat, a table and a barbecue plate, and possibly the mooring of the boat on the bank itself, would exceed the rights available to members of the public under that section in any event. In paras 7.2.7 and 7.2.8, I deal with the question whether the old Elsey-Roper Valley Road is a road over which the public has a right of way. The route of that road is uncertain. It is by no means clear that the track used by Mr Collins follows the course of that road. I am not able to make a positive finding that Mr Collins and his tour parties have any present right, other than by permission of Banibi Pty Ltd, to gain access to the Roper River at the point at which the boat is moored. In a technical sense, Colmeed Pty Ltd would not suffer detriment by being required to obtain a permit for such access.

6.14.4 It is perhaps more significant that Mr Collins presently gains access without serious challenge; if the land claimed became Aboriginal land under the Land Rights Act, he would require a permit to operate the business which he now operates. As I have said in para. 6.13.4, he would lose the benefit of the public right to be on land within fifty metres of perennial water. Even if the track to the Two Mile Yard is a road over which the public has a right of way, it does not take the tour parties to the water's edge. Colmeed Pty Ltd would suffer detriment if it is unable to obtain a permit, or if it is subjected to conditions in order to obtain a permit. The conduct of the river tours is not the sole business of the company, which also conducts a charter service, chiefly providing transport between Aboriginal communities and towns such as Mataranka and Katherine. The service is used by communities as far afield as Ngukurr, further down the Roper River than the claim area. That aspect of the business would not sustain the company, which, although not greatly profitable, appears to provide a living for Mr Collins. If Colmeed Pty Ltd had to cease the tour business, it would very likely cease business altogether and would be faced with the difficult problem of realising the boat, which is purpose-built and situated in a remote place.

6.14.5 Assessing the prospects of Mr Collins's continuing to conduct his tours if the land becomes Aboriginal land is not easy. On the one hand, he professes to have good relations with members of the Jilkminggan community; on the other, he is quick to assert what he believes to be his rights if there is any suggestion that he needs permission to continue. There is evidence that members of the Jilkminggan community have expressed interest about being involved in a joint venture. Mr Collins would like to see this occur, because it would provide an added element of Aboriginal culture for his tourists, but the business needs to attract more tourists than at present for it to be able to support more people working in it. All that can be said is that there is a prospect that Colmeed Pty Ltd could avoid suffering any detriment by

obtaining a permit to enable it to obtain secure access to the Roper River to continue to conduct its tours.

6.15 Detriment: gravel pits and bores used for road maintenance

6.15.1 There are gravel pits and bores on the land claimed which are used by the Department of Transport and Works of the Northern Territory for the purpose of road maintenance. One bore and four gravel pits are near the Stuart Highway. Two bores and ten gravel pits are near the Roper Highway. The Jilkminggan access road has a bore near the Roper River and a gravel pit not far from its junction with the Roper Highway. There are two bores associated with the Moroak Station access road, both being near the Roper River. There is also a bore near the Elsey-Roper Valley Road, to the west of Mount Sir James, and the department draws water directly from Crescent Lagoon for use in road maintenance operations. The location of each of the gravel pits and bores is shown on the map in appendix 6.

6.15.2 The use of those gravel pits and bores, and the use of the land involved in drawing water from Crescent Lagoon, would be preserved by s. 14 of the Land Rights Act in the event that the land claimed was transferred to a land trust. Section 15 would oblige the Crown in right of the Northern Territory to pay to the Northern Land Council for that use amounts in the nature of rent, fixed by the Minister for Aboriginal and Torres Strait Islander Affairs, having regard to the economic value of the land. Section 15 would apply because the gravel pits and the bores concerned are used in the maintenance of the Stuart Highway and the Roper Highway, so it could not be said that their use is 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. In *Attorney-General for the Northern Territory v. Hand* (1991) 172 CLR 185, the High Court of Australia held that this definition was not capable of referring to persons engaged in the cattle industry generally. Since the Stuart Highway and the Roper Highway are roads over which the public has a right of way, and are likely to be used by tourists from afar and long-distance transport operators as well as local residents, the maintenance of those highways is unlikely to amount to a purpose calculated to benefit primarily the members of a *particular* community or group. The Crown in right of the Northern Territory would suffer detriment to the extent of the rent fixed for the use of the gravel pits and the bores.

6.16 Effect on existing or proposed patterns of land use

6.16.1 The existing and proposed pattern of land usage in the region of the land claimed is primarily for the pastoral industry. The land claimed is being used for this purpose. Banibi Pty Ltd operates a pastoral enterprise, as it has done for some years. At the time of the hearing, it employed Neville Norman Trout and Annette Trout as its managers. The board of directors consists of members of the Jilkminggan community and representatives of the Northern Land Council. Claimants are employed where possible in the conduct of the enterprise. Marjorie Hall is the bookkeeper for the company. There is a training program, which is intended to result in the repair and servicing of all mechanical equipment being carried out on the land claimed by mechanics who are local Aboriginal people. As is usually the case in the pastoral

industry, much of the employment is seasonal, but its availability is of clear benefit to the Jilkminggan community.

6.16.2 The traditional Aboriginal owners of the land claimed have indicated an overwhelming desire to continue to operate the pastoral enterprise. There is a substantial program conducted jointly by the Commonwealth, the Northern Territory, the Northern Land Council and the Central Land Council to ensure the proper management and, if possible, the financial success of Aboriginal cattle stations in the Northern Territory. The claimants will benefit from this plan. Assuming that proper management techniques are adopted and continued, acceding to the claim either in whole or in part would have no significant effect on the existing or proposed patterns of land usage in the region in this respect.

6.16.3 The use of the land for hunting and foraging by Aboriginal people is also a significant existing use. So is the use for the performance of ceremonies of significance to Aboriginal people. The granting of the land claimed to a land trust would be expected to enhance these uses.

6.16.4 It would be wrong to deal with patterns of land usage in the region without dealing with the issue of conservation. The Elsey National Park (Northern Territory Portion 3069) adjoins the land claimed. In para. 6.9.4, I have referred to the proposals of the Conservation Commission of the Northern Territory to create a national park in two areas of the land claimed. As I have said, acceding to the claim will have little effect in relation to those proposals, because their outcome will depend in any event upon negotiation between the Conservation Commission and the traditional Aboriginal owners and others with traditional attachments to the land claimed.

6.16.5 It does not appear that the stock routes which are part of the claim area continue to be used for the purpose for which they were gazetted. Stock are commonly moved by road transport nowadays, so that stock routes generally have fallen into disuse. The transformation into Aboriginal land of the portions of the Urapunga Stock Route and the Birdum Stock Route which are claimed would therefore have no effect on patterns of land usage in the region.

6.17 No cost of acquiring interests Although the claim relates to alienated Crown land, there would be no cost of acquiring the interests of any persons in the land concerned. Banibi Pty Ltd, which holds the pastoral lease, is controlled by the claimants and holds the pastoral lease for the purpose of ensuring that the land claimed is converted into Aboriginal land under the Land Rights Act. Jilkminggan Community Incorporated, which holds the mortgage, holds it for a similar purpose. Neither is likely to seek compensation for the loss of value of its interest if the land becomes Aboriginal land.

7 OTHER MATTERS

7.1 Acquisition of secure occupancy The question of the acquisition of secure occupancy is not of prime importance in the determination of the claim. In part, this is because of the existence of the Jilkminggan community on freehold land within the boundaries of the claim area. In part, it is because of the control by the claimants of the pastoral lessee. Nonetheless, the principle is important in two respects. First, there is the desire to conduct a pastoral enterprise on the land claimed, to which I have referred in para. 6.16. In the future, this is likely to involve some of those who are working in the pastoral enterprise in living on the land claimed, as distinct from living in the Jilkminggan community. The occupancy of such persons will be more secure if the land claimed becomes Aboriginal land under the Land Rights Act than if it remains subject to the pastoral lease. I have dealt with the issue of greater security in para. 6.2.1. The second area of application of the principle is in relation to the informal settlement established near Mole Hill by some members of the **Gunduburun** group, referred to in para. 5.4. At present, the persons living in that community do so by way of permissive occupancy at best. If the land were to become Aboriginal land, those persons would, as traditional Aboriginal owners, have a greater entitlement to live on the land.

7.2 Roads over which the public has a right of way

7.2.1 The land claimed is traversed by a number of roads. The status of some of them as roads over which the public has a right of way is controversial. In resolving the controversies, I have applied two principles. The first is that people using a road to cross the land claimed, or part of it, to an area which is not part of the land claimed, generally do so as members of the public: a road used as a thoroughfare is generally a public road. The second is that once a road has been a road over which the public has a right of way, unless it is the subject of formal closure according to law, it retains its status.

7.2.2 The roads which are conceded to be those over which the public has a right of way are as follows:

- (a) the Stuart Highway, which traverses the western part of the land claimed in a roughly north-south direction;
- (b) the Roper Highway, which leaves the Stuart Highway south of Mataranka and crosses the land claimed in a broadly east-west direction;
- (c) the Gorrie Station access road, which heads south-west from the Stuart Highway to the western boundary of the land claimed;
- (d) the Moroak Station access road, which runs north from the Roper Highway, curving to the east round Mount Sir James and then to the north-east across the Roper River to Moroak Station; and
- (e) that portion of the old Stuart Highway from its northern intersection with the present Stuart Highway to the Elsey Cemetery.

A road reserve of 200 metres (100 metres each side of the existing centre line) would provide sufficient room for services, drainage and detours during future maintenance in respect of the Stuart Highway. For the Roper Highway, a reserve of 150 metres for similar purposes is sought by the Northern Territory Government and is appropriate. For the other three roads referred to in this paragraph, a reserve of 100 metres is adequate.

7.2.3 The controversial roads are as follows:

- (a) the Elsey Station homestead access road, which runs in a northerly direction from the Roper Highway to the homestead, which is adjacent to the Roper River;
- (b) the Goondooloo Station access road, which runs from the Roper Highway north-west to Little Red Lily Lagoon then north-east past Rendezvous Hill, to where it swings north and north-west and again north, across the Roper River to Goondooloo Station;
- (c) the Jilkminggan access road, which runs north from the Roper Highway to the Jilkminggan community;
- (d) that portion of the old Stuart Highway from its southern intersection with the present Stuart Highway to the Elsey Cemetery;
- (e) the Elsey-Roper Valley Road, as to the location of which, see paras 7.2.7 and 7.2.8; and
- (f) the Crescent Lagoon Road, which runs from the Roper Highway to Crescent Lagoon, near the Strangways River.

7.2.4 Of these, the Goondooloo Station access road and the Jilkminggan access road are both clearly roads over which the public has a right of way. Each is used as of right by persons wishing to cross the subject land to other land. The Goondooloo Station access road is not maintained at the public expense and is also used by a number of fishermen and tourists, seeking access to various lagoons on the land claimed. It is a dry-weather-only road to Goondooloo Station and, as such, only an alternative method of access to the more usual road from the north. Nonetheless, those who cross the land claimed to Goondooloo Station on this road do so as of right as members of the public. Similarly, those who travel from the Roper Highway to the Jilkminggan community area do so as members of the public. It was submitted on behalf of the Mataranka Community Government Council that the Jilkminggan access road was a public road as far as Duck Creek Crossing. This argument cannot be supported; the road as a public road postdates the establishment of the Jilkminggan community and its status as a road over which the public has a right of way arises from its use by the inhabitants of that community, and those having business with them, as a thoroughfare. My finding as to the status of the road relates only to that part of it that lies between the Roper Highway and the Jilkminggan community.

7.2.5 The case of the Elsey Station homestead access road is somewhat similar. It is used by the employees and contractors of Northern Cement Ltd to access the limestone quarry to which I have referred in para. 6.12. It is also used by those having business with the Elsey Station homestead. The road is maintained by the Department of Transport and Works of the Northern Territory, as well as by Northern Cement Ltd and Banibi Pty Ltd. Although the quarry is not separate from the land claimed, the road is used as a thoroughfare by those who use it to travel to and from the quarry. I am satisfied that it is a road over which the public has a right of way.

7.2.6 The road from the Stuart Highway to the Elsey Cemetery from the south was once the Stuart Highway. When the present carriageway of the Stuart Highway was constructed further to the west, the Department of Transport and Works took steps to close this southern portion of the old road. After advertisement of an intention to close the road, the department received numerous objections and did not continue with the closure. It has broken up part of the surface of the road, in an effort to discourage people from using it, but it has not formally closed the road. In consequence, the road remains one over which the public has a right of way. The bridge which links the southern portion of the old Stuart Highway with the northern portion, referred to in para. 7.2.2(e), is not maintained and is unsafe for use by vehicles. It has barriers to prevent access by vehicles. During dry weather, however, it is possible for four-wheel-drive vehicles to cross the bed of the Elsey Creek immediately beside the bridge without departing from whatever road reserve was dedicated to the Stuart Highway, so that it is possible to travel along the old Stuart Highway to the Elsey Cemetery from either the north or the south.

7.2.7 The most difficult decision is as to the Elsey-Roper Valley Road. This road was used by those travelling from Mataranka down the Roper Valley, prior to the construction of the Roper Highway. It entered the land claimed from the west. The terms in which the Urapunga Stock Route was gazetted refer to it as following:

"the Roper Valley road for a distance of about 15 miles to the old Queensland crossing over Elsey Creek; thence easterly along the said road for about 14 miles to Little Red Lily Lagoon".

The road has been closed formally at Northern Territory Portion 1508, within which the Jilkminggan community stands, through which it formerly passed. Otherwise, it remains open and is used by those wishing to gain access for fishing and tourism purposes. There was a dispute as to whether this road was ever one over which the public had a right of way. It is clear that there was a public road from Mataranka down the Roper Valley. The difficulty is the discernment of its exact route. A number of old maps were tendered on behalf of the Attorney-General for the Northern Territory, showing various different alignments of a road leading down the Roper Valley, as follows:

- (a) On a pastoral map dated 1930, the road was shown passing south of Mount Ross and well south of Mount Sir James, leading into Hodgson Downs Station, then turning north-north-east to Roper Valley Station.
- (b) Public Plan 3/800, said to have been in use from 1930 to 1951, shows the road diverging from the Urapunga Stock Route to pass south of Mount Ross.

- (c) On the 1944 Army Survey map, the road curves away from the Roper River south of Little Red Lily Lagoon, then turns north-east, passing to the north of Mount Ross and, according to a notation on the margin, proceeding to Roper Valley Station.
- (d) The adjoining 1944 Army Survey sheet shows a "Roper Valley Road and Stock Route", on an alignment similar to the present route of the road in the eastern part of the claim area.
- (e) The alignment shown on Public Plan 3/800, said to have been in use from 1951 to 1960, shows an alignment similar to that on the earlier public plan, namely south of Mount Ross.
- (f) The 1964 Australian Survey Corps map showing the eastern end of the claim area shows a "road unimproved earth" following the approximate route of the present road in that part of the claim area; to the west of Mount Sir James, the line is marked "Stock Route" and between Crescent Lagoon and Mole Hill, it is marked "Approximate Position".
- (g) The 1965 Australian Survey Corps map of the western part of the claim area shows an unformed earth road, following the Urapunga Stock Route and passing to the north of Mount Ross.

7.2.8 It would appear from this evidence that the road has varied in its route in different eras of its history. At or near *Gorowan* (site 25), Sheila Conway referred to the "old Roper Road", which had been used to go to Mataranka. At *Lurdurdminy* (site 89) (Crescent Lagoon), counsel for the claimants referred to the "old road" on which those engaged in the hearing had just travelled from *Gunduburun* (site 95). Jessie Roberts said, "That been Roper River Road". At about *Garawi Yirrij Wagardjag* (site 50), Jessie Roberts described the "old road, that buggy road" on the other side of the Strangways River. These comments suggest recognition by the claimants of the existence of a road. In the course of the hearing, the convoy of vehicles carrying those engaged in it travelled along part of what is said to have been this old road. It is possibly the roughest road on which I have ever travelled. It crosses a black-soil plain which is obviously flooded during wet seasons and would therefore be impassable at those times. It is likely that the road has changed its course from time to time, both on a seasonal basis and over longer terms, as its users have sought to find a better route in the conditions then prevailing. The ascertainment of the correct route of a public road is therefore likely to be problematic. I am bound to make a finding that there is a road over which the public has a right of way, known as the Elsey-Roper Valley Road, but I am not able to make a finding as to precisely where it is. It is not maintained and there is no likelihood that it will be maintained in the future. If it is to be excluded from the land vested in a land trust, only the narrowest of road reserves (perhaps twenty metres) could be justified.

7.2.9 The evidence relating to the Crescent Lagoon Road suggests that it is not a road over which the public has a right of way. It has been used by employees of the Department of Transport and Works to draw water from the lagoon for road maintenance purposes. This use is not indicative of a road over which the public has a

right of way. There is evidence that it has also been used occasionally by those seeking fishing and camping in the region of Crescent Lagoon, but no clear evidence that it has been so used as of right by members of the public. It is not maintained and there is evidence that it is difficult to use. It leads nowhere other than a point on the land claimed. The evidence is at least equivocal about whether casual users of the road have sought permission. There was a tendency on the part of some witnesses to suggest that they advised the manager at the homestead of their intention to use this and other roads on the land claimed merely as a matter of courtesy, but cross-examination of those witnesses tended to suggest that they did not see themselves as having a right to use those roads without permission. On balance, I find that the Crescent Lagoon Road is not a road over which the public has a right of way.

7.2.10 A road reserve of 100 metres would be appropriate for the Elsey Station homestead access road and the Jilkminggan access road. Since the Goondooloo Station access road and the southern portion of the Old Stuart Highway are not maintained, and there is no evidence of the likelihood of them being maintained in the future, a fifty-metre reserve would be appropriate, to accommodate necessary detours by vehicles using the roads when conditions require.

7.3 Land trust or pastoral lease? The Attorney-General for the Northern Territory submitted that I should not make a recommendation of the kind contemplated by s. 50(1)(a)(ii) of the Land Rights Act in relation to the land claimed, because the claimants already have sufficient security of title in the form of the pastoral lease held by Banibi Pty Ltd. If this submission is made on the assumption that the pastoral lease is a perpetual pastoral lease, by virtue of the *Pastoral Land Act* 1992 (NT), it is necessary to point out that the assumption is incorrect. The *Pastoral Land Act* 1992 (NT) came into operation after the lodging of this land claim; by virtue of s. 67A of the Land Rights Act, no legislation of the Northern Territory could then operate to create any interest in the land claimed. The pastoral lease held by Banibi Pty Ltd remains a lease for a term expiring on 30 June 2010 (see para. 2.1.2). It is clear that an inalienable estate in fee simple, held by a land trust, offers much greater security of tenure. In paras 6.2, 6.5 and 6.6, I have dealt with the advantages and disadvantages, from the point of view of the claimants, of the continuation of the pastoral lease and the granting of the land claimed to a land trust. I am of the view that the latter offers a form of title superior to, and therefore security of tenure greater than, the former.

7.4 Single land trust

7.4.1 I have considered whether more than one land trust should be established to hold portions of the land. It will be recalled that the traditional Aboriginal owners belong partly to the Mangarrayi language group and partly to the Yangman language group. It is also apparent from chapter 4 that the various groups whose members are listed in chapter 3 have focuses on different parts of the land claimed. It is also the case that the groups referred to in chapter 3 do not affiliate as groups with either of the languages concerned; some of the groups consist of persons from both language groups. It is equally apparent from chapter 4 that no clear line can be drawn anywhere separating the estates of particular groups. Indeed, there is a tendency for dreaming tracks to intersect and interact, for sites to be shared between groups and for estates to overlap. There is considerable overlap in the membership of the groups, with a number of claimants belonging to several.

7.4.2 The largest single body of claimants resides at Jilkminggan. It cannot be claimed that they do so without internal tension, but such tension does not correspond to any division between land-holding groups or languages. Indeed, the obligations of indigenous law, as they bear upon the responsibilities of the members of the different groups, compel people who are sometimes in disagreement with each other about other matters to cooperate in the management of the land. Mechanisms for resolving differences exist within the indigenous system and should be allowed to operate. The obligations of the Northern Land Council to consult with traditional Aboriginal owners and others with traditional interests in the land should ensure that decisions are taken after proper opportunities have been given to all relevant people to have input into those decisions.

7.4.3 For these reasons, I am of the view that a single land trust should be established, to hold the whole of the claim area.

7.5 Effect on the national estate

7.5.1 In considering whether to make a recommendation of the kind 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). Parts of the land the subject of this land claim are on the Register of the National Estate under that Act. In para. 5.7, I have referred to the fact that *Nganawirdbird* (site 33) is on the register. The area known as Strangways Crater - a circular area with a radius of ten kilometres, which is of considerable geological interest - has also been registered. This area is shown on the map in appendix 6.

7.5.2 Under s. 30 of the *Australian Heritage Commission Act 1975*, an authority of the Commonwealth is prohibited from taking any action that adversely affects, as part of the national estate, a place that is in 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. By s. 30(4), the making of a recommendation is deemed to affect a place adversely if the adoption of the recommendation would affect the place adversely.

7.5.3 There can be no doubt that the Aboriginal Land Commissioner is an authority of the Commonwealth for this purpose. The view I have formed, however, consistently with my conclusion in my earlier reports, is that the adoption of a recommendation of the kind contemplated by s. 50(1)(a)(ii) of the Land Rights Act would not affect adversely the land claimed, as part of the national estate. It also appears unlikely that even the acceptance of a recommendation and the granting of the land claimed to a land trust would produce any effect, either adverse or significant, on the land claimed as part of the national estate.

8 RECOMMENDATION

8.1 Recommendation Consequent upon the findings set out in this report, and having regard to the other matters to which I have referred, I recommend that the whole of the land comprising Northern Territory Portion 645, so much of the Urapunga Stock Route and of the Birdum Stock Route which lie within the boundaries of Northern Territory Portion 645, excluding the areas referred to in para. 2.5 as the "Old Homestead" and the "O.T. Line", and excluding the Stuart Highway, the Roper Highway, the Gorrie Station access road, the Moroak Station access road, the Old Stuart Highway, the Elsey Station homestead access road, the Goondooloo Station access road, the Jilkminggan access road and the old Elsey-Roper Valley Road (if its correct alignment can be ascertained), all referred to in para. 7.2, be granted to a single land trust for the benefit of Aboriginal people entitled by Aboriginal tradition to the use or occupation of that land, whether or not the traditional entitlement is qualified as to place, time, circumstance, purpose or permission.

APPENDIX 1**PARTIES FILING NOTICES OF INTENTION TO BE HEARD
OR WRITTEN SUBMISSIONS**

Name of party	Date received
Brolga Tours	18 August 1993
Travel North	1 September 1993
Katherine Region Tourist Association Incorporated	5 September 1993
Telstra Corporation Ltd	6 September 1993
NT Gas Pty Ltd	6 September 1993
Mataranka Community Government Council	6 September 1993
Northern Cement Ltd	6 September 1993
Attorney-General for the Northern Territory	8 September 1993
Northern Territory Land Corporation	1 October 1993
Australia and New Zealand Banking Group Limited, Commonwealth Bank of Australia, National Australia Bank Limited and Westpac Banking Corporation	28 February 1994

APPENDIX 2**LIST OF SITES AT OR NEAR WHICH EVIDENCE WAS TAKEN**
(in order of sites visited)

Jilgmirn.gan (37)
Ngabardangiyn (35)
Gurlurndurnyi (34)
Nganawirdbird (33)
Maynjurn.gan (46)
Jawumbungan (49)
Lunjan (182)
Na-Yumbungan (187)
Garmarnin (159)
Jirrgijaji (67)
Guwarlmarlg (59)
Dirlirlin ngawurr ngawurr wa-yinyi (30)
Balburran (31)
Warangayn.gu (24)
Na-Burl (28)
Gilagilagi (146)
Gaynjirraman (77)
Beyward (149)
Munggug (150)
Gunduburun (95)
Yumbuyan (97)
Lurdurdminyi (89)
Miwarlan (83)
Mirmiridji (81)
Guyurriyan (135)
Ngadibarn.gan (125)
Bobobingga (124)
Buriyn.gan (119)
Gurndarlawung.gan (57)
Ngarmirn.gan (56)
Garawi Yirrij Wa-gardjag (50)
Wa-gurragmayn (47)
Wangganggij garlg garlg wa-buni (42)
Guyanggan (40)

APPENDIX 3**LIST OF APPEARANCES**

Counsel for the claimants:	Robert Blowes
Solicitor for the claimants:	Brett Midena, Senior Legal Advisor, Northern Land Council
Counsel for the Attorney- General for the Northern Territory:	Vance Hughston and Christopher Rowe
Solicitor for the Attorney- General for the Northern Territory:	Solicitor for the Northern Territory
Counsel for NT Gas Pty Ltd:	John Stewart
Solicitors for NT Gas Pty Ltd:	Ward Keller
Counsel assisting the Aboriginal Land Commissioner:	Tony Neal
Counsel for Northern Cement Ltd:	Danny Masters
Solicitors for Northern Cement Ltd:	Cridlands
Counsel for the Mataranka Community Government Council:	Danny Masters
Solicitors for the Mataranka Community Government Council:	Cridlands
Solicitors for Telstra Corporation Ltd:	Australian Government Solicitor
Solicitors for the Northern Territory Land Corporation:	Philip & Mitaros
Solicitors for Australia and New Zealand Banking Group Limited, Commonwealth Bank of Australia, National Australia Bank Limited and Westpac Banking Corporation:	Blake Dawson Waldron

**CONSULTANT ANTHROPOLOGIST TO THE
ABORIGINAL LAND COMMISSIONER**

Dr John Avery

APPENDIX 4**LIST OF WITNESSES****(in the order in which they gave their first evidence)**

Mary Nurniyn
Lulu Jilimbirrnga
Talbot Hood
Jessie Roberts
Jackeroo Lirrawi
Daylight Ngayunggu
Hilda Daylight Gamajarr
Eileen Daylight
Joey McDonald
Hannah Moore
Sylvia Carew
Barbara John
Bessie Moore
Shirley Daylight (Roy)
Roger Roberts
Splinter Harris
Edward Daylight
Sheila Conway
Jimmy Conway
Slim Roberts
Marjorie Hall
Gary Daylight
Amy Dirngayg
Phylis Wiynjorrotj
Billy Fulton
Dicky Darwin
Kevin Lirrawi
James Garadji
Judy Burdibin
Huey Watson
Prof. John Bern
Shirley Thomas
Neville Norman Trout
Douglas Alfred Collins
William Hall
Noel Daylight
Kerry Daylight
Michael Daylight
Pamela Daylight
Emily (surname unknown)
Lorna Yiwirambi (Lirrawi)
Betty Lardy
Joseph Garadji

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Jennifer Doctor

Ellen George

Sadie Gibbs

Ambrose Farrell

Harriet Daniels

Dr Francesca Cordelia Merlan

Peter Leslie Watters

Mark Joseph Joraslafsky

Warren Roy Minnett

Shona Maree Whitfield

Lindsay Bryceson

Brian Frank Burke

Richard Buckley

Bryan Peter Walsh

Cheryl Margaret Birch

Michael Raymond Steer Garland

Charles Thomas Kerwin

Glenn Gordon Bott

APPENDIX 5**LIST OF EXHIBITS**

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

Exhibits NLC1-NLC17 were tendered by counsel for the claimants.

Exhibits ALC1-ALC19 were tendered by counsel for the Aboriginal Land Commissioner.

Exhibits NCL1-NCL9 were tendered by counsel for Northern Cement Ltd.

Exhibits NTG1-NTG9 were tendered by counsel for NT Gas Pty Ltd.

Exhibits NT1-NT31 were tendered by counsel for the Attorney-General for the Northern Territory.

Exhibits MCC1-MCC2 were tendered by counsel for the Mataranka Community Government Council.

Exhibit no.		Description of exhibit
NLC1		Yellow folder entitled "Developments following the Mataranka Area Land Claim"
NLC2		Green covered folder entitled "The Land Claim Applications, Title Documents, Gazette Notices, Trust Deeds and Public Plans"
NLC3	R	Anthropologist's report by Dr F Merlan dated July 1993
NLC4	R	Report of Dr Merlan relating to the Mataranka Land Claim dated 1986
NLC5	R	Claimant genealogies
NLC6	R	Personal particulars of claimants dated September 1993
NLC7		List of claimants dated September 1993
NLC8	R	Site register dated September 1993
NLC9	R	Site maps nos 1 and 1A
NLC10	R	Confidential men's report prepared by Professor John Bern and dated 15 May 1986

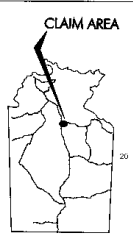
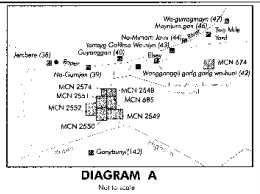
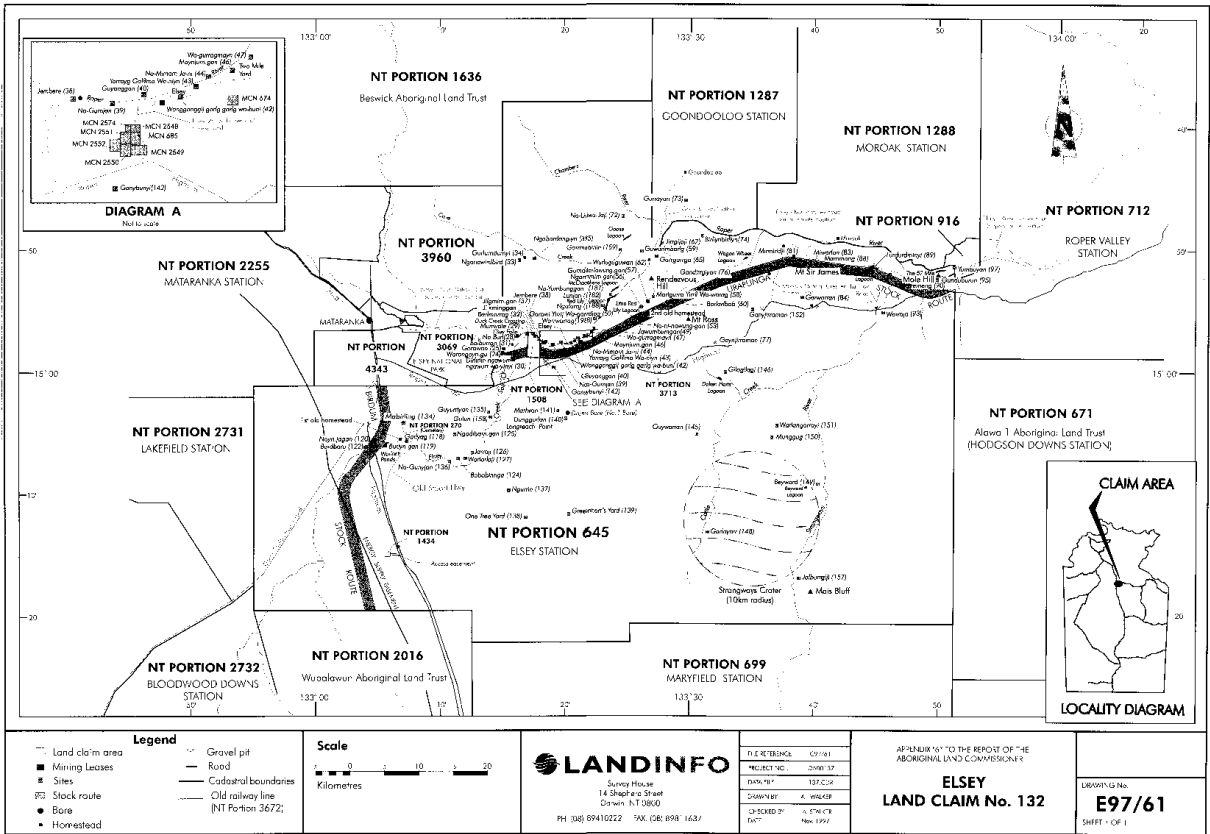
121	
NLC11	Curriculum vitae of Professor John Bern
NLC12	Letter dated 28 September 1993 from the Northern Land Council to the Northern Territory Land Corporation
NLC13	Letter dated 1 October 1993 from Philip & Mitaros to the Northern Land Council
NLC14	Letter dated 5 September 1986 from Brolga Tours to the Senior Research Officer to Justice Maurice, Aboriginal Land Commissioner
NLC15	Letter dated 7 January 1993 from Department of Lands and Housing to Banibi Pty Ltd
NLC16	Statement of Ross Coburn dated 28 January 1994
NLC17	Letter dated 2 February 1994 from Philip & Mitaros to the Northern Land Council
ALC1	Map prepared by Mr Collins and accompanying description of route taken by tour
ALC2	Letter dated 22 October 1993 from Mr Collins to Mr Bird
ALC3	Page numbered 11 and entitled "The Explorers"
ALC4	Map entitled "Early exploration of the Northern Territory"
ALC5	Centre pages of souvenir brochure entitled "Borroloola Centenary Year 1985"
ALC6	A page bearing the headings "Recent Settlement" and "Grazing"
ALC7	Document headed "Crown Lands, Division 5 - Pastoral Leases, 37 Terms and Conditions of Pastoral Leases"
ALC8	Two photographs showing signs on or near gates
ALC9	Telex dated 6 June 1986 to Mr Collins from the Honourable N. M. Dondas, Minister for Lands
ALC10	Letter dated 24 October 1985 from John Coleman, Regional Director, Department of Lands, to Brolga Tours
ALC11	Page numbered 19 entitled "Resident Magistrate McMinn"
ALC12	Page numbered 13 entitled "The Overlanders"

- ALC13 Photocopy map of portion of Elsey Station with handwritten notation
- ALC14 Document entitled "Notes of a droving trip with cattle from Queensland to Northern Territory during the years 1880-1881 to stock hitherto unoccupied country"
- ALC15 Letter dated 5 September 1993 from Sharyn Innes, General Manager, Katherine Region Tourist Association Incorporated, to Mr Bird
- ALC16 Topographic map Mataranka 5568 1:100 000 as marked by Mr Garland
- ALC17 Statement of evidence and submissions on behalf of Telstra Corporation Ltd
- ALC18 Letter dated 1 September 1993 from Werner Sarny of Travel North to Mr Bird
- ALC19 Letter dated 21 January 1994 from Philip & Mitaros to Mr Bird
- NCL1 Certificate of incorporation of Northern Cement Ltd
- NCL2 Bundle of search certificates of mineral claims
- NCL3 Certificate of Title Volume 175 Folio 44 relating to Northern Territory Portion 3337
- NCL4 Letter dated 7 October 1992 from Aboriginal Areas Protection Authority to Northern Cement Ltd, attached map and reply from Northern Cement Ltd dated 15 October 1992
- NCL5 Hand-drawn map of seven mineral claim areas
- NCL6 Typewritten rendition of diary entry made by Mr Joraslafsky of meeting of 18 June 1992
- NCL7 Draft notice to all employees and contractors signed by Mr Joraslafsky
- NCL8 Map showing mining claims of Northern Cement Ltd
- NCL9 Letter dated 31 January 1994 from Cridlands to the Northern Land Council, and attachments
- NTG1 Outline of evidence of NT Gas Pty Ltd
- NTG2 Submission on detriment by NT Gas Pty Ltd

NTG3	Memorandum of grant of easement by Banibi Pty Ltd dated 19 August 1988
NTG4	Agreement for pipeline easement and rights of access between Banibi Pty Ltd and NT Gas Pty Ltd
NTG5	Cheque drawn by NT Gas Pty Ltd in favour of Banibi Pty Ltd dated 18 November 1988
NTG6	Statement of account of NT Gas Pty Ltd with ANZ Banking Group Ltd, Darwin, dated 28 November 1988
NTG7	Pipeline licence no. 4 dated 13 December 1985
NTG8	Deed dated 18 May 1988 between Northern Territory of Australia and NT Gas Pty Ltd
NTG9	Letter dated 18 November 1988 from Williams Brothers - CMPS Engineers to Ridgeway Clements, Solicitors
NT1	Three topographical 1:100 000 survey maps, Moroak 5668, Mataranka 5568 and Gorrie 5567, as marked by Mr Bryceson
NT2	Sketch map of claim area showing roads claimed to be public roads
NT3	Statement of Lindsay Bryceson dated 25 January 1994 and annexures A and B
NT4	Copy of Elsey Pastoral Lease
NT5	Two gazette notices, dated 16 November 1928 and 17 August 1933, relating to the Urapunga stock route
NT6	Pastoral map of North and Central Australia dated 1930 and a blown-up portion of that map
NT7	Extract of Public Plan 3/800 dated 1930
NT8	Certified copy extract from a topographical map - Katherine 4 miles to 1 inch, 1944 edition
NT9	Certified copy extract from a topographical map - Urapunga 4 miles to 1 inch, 1944 edition
NT10	Public Plan 3/800 dated 1951-1960
NT11	Topographical map dated 1964, entitled Urapunga 1:250 000

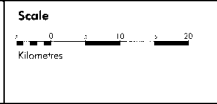
- NT12 Topographical map dated 1965, entitled Katherine 1:250 000
- NT13 Advertisement of proposed road closure dated 16 August 1989, *Northern Territory Government Gazette* G32 of 16 August 1989; *Northern Territory Government Gazette* G2 of 17 January 1990; advertisement from *NT News* dated 8 January 1990; and survey plan S88/343A
- NT14 Letter dated 3 August 1993 from Kitty Kahn, Department of Mines and Energy, and attachments
- NT15 Statement of Catharina Louisa Kahn dated 25 January 1994
- NT16 Statement of Kirk Whelan dated 25 January 1994
- NT17 Statement of Brian Leslie Radunz dated 25 January 1994
- NT18 Statement of David Frederick Field dated 25 January 1994, and attachments
- NT19 Statement of Brian Burke dated 25 January 1994
- NT20 Photocopy map of Elsey land claim with markings made by Mr Burke
- NT21 Statement of Brian Pascall dated 25 January 1994
- NT22 Statement of Timothy Capes dated 19 January 1994
- NT23 Statement of Maryanne Martin dated January 1994
- NT24 Statement of Richard Buckley dated 31 January 1994
- NT25 Video entitled "An introduction to the conservation values of Elsey Station"
- NT26 Statement of Bryan Peter Walsh dated 1 February 1994
- NT27 Statement of Cheryl Birch dated 1 February 1994
- NT28 Statement of Douglas Alfred Collins dated 27 January 1994
- NT29 Sign bearing the inscription "To Roper Bar"
- NT30 Statement of Edward Arthur Easton dated 25 January 1994, and attachments

- NT31 Communique dated 25 February 1994 from the Council of
 Australian Governments, Hobart
- MCC1 Copies of Mataranka and Moroak maps marked by Mr Minnett
- MCC2 Undated letter from Deanne Sisarich of Clearwater Canoes and
 Camping



Legend

- Land claim area
- Mining Leases
- Sites
- 953 Stock route
- Bore
- Homestead
- - - Gravel pit
- Road
- Cadastral boundaries
- Old railway line (NT Portion 3672)



LANDINFO

Survey House
14 Staggard Street
Darwin NT 08100

PH (08) 89410222 FAX (08) 898 1637

FILE REFERENCE	CY/181
PROJECT NO.	2498/13
PLAN NO.	137/2/1
DRAWN BY	A. WICKER
CHECKED BY	A. WICKER
DATE	Nov. 1997

APPENDIX 10 TO THE REPORT OF THE
ABORIGINAL LAND COMMISSIONER

**ELSEY
LAND CLAIM No. 132**

DRAWING No.	E97/61
SHEET	OF 1