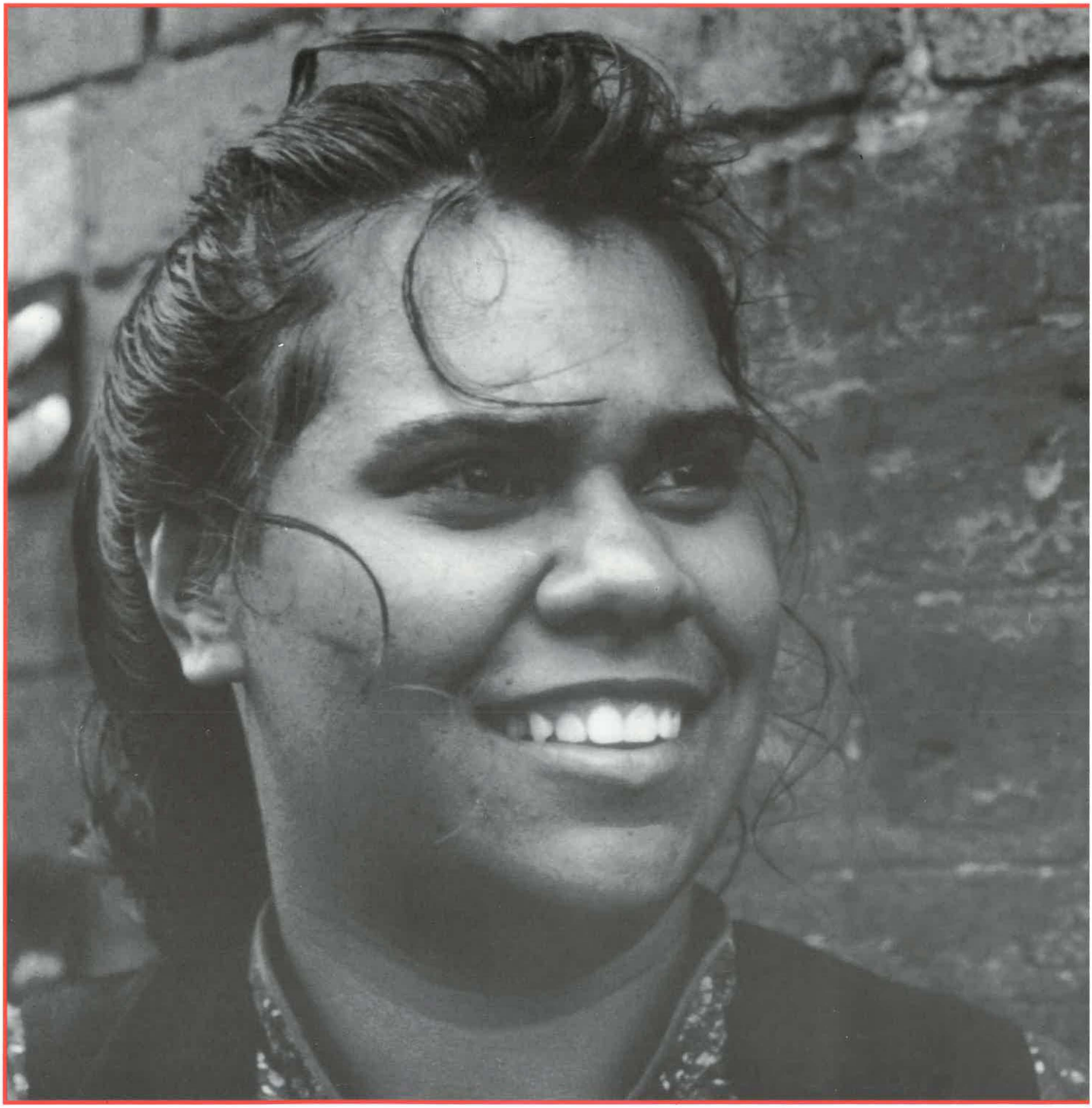
Minority Rights Group International

REPORT

Aboriginal Australians



BY KEITH D. SUTER and KAYE STEARMAN

AN MRG INTERNATIONAL REPORT • ABORIGINAL AUSTRALIANS

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This report has been commissioned and is published by MRG as a contribution to public understanding of the issue which forms its subject. The text and the views of the individual authors do not necessarily represent, in every detail and in all its aspects, the collective view of MRG.

THE AUTHORS

DR KEITH D. SUTER is a theologian writer, broadcaster and campaigner who has been associated with many peace and human rights organizations in Australia and elsewhere. He is the author of *Protecting Human Rights* and other works concerning the international protection of human rights. He also served as Foundation Director of the Trinity Peace Research Institute based in Perth, Western Australia.

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MINORITY RIGHTS GROUP

Minority Rights Group works to secure rights and justice for ethnic, linguistic and religious minorities. It is dedicated to the cause of cooperation and understanding between communities.

Founded in the 1960s, MRG is a small international non-governmental organization that informs and warns governments, the international community, non-governmental organizations and the wider public about the situation of minorities around the world. This work is based on the publication of well-researched reports, books and papers; direct advocacy on behalf of minority rights in international fora; the development of a global network of like-minded organizations and minority communities to collaborate on these issues; and **the challenging of prejudice and promotion of public understanding** through information and education projects.

MRG believes that the best hope for a peaceful world lies in **identifying and monitoring conflict** between communities, **advocating preventive measures** to avoid the escalation of conflict and **encouraging positive action** to build trust between majority and minority communities.

MRG has consultative status with the United Nations Economic and Social Council and has a worldwide network of partners. Its international headquarters are in London. Legally it is registered both as a charity and as a limited company under the United Kingdom Law with an International Governing Council.

THE PROCESS

As part of its methodology, MRG conducts regional research, identifies issues and commissions reports based on its findings. Each author is carefully chosen and all scripts are read by no less than eight independent experts who are knowledgeable about the subject matter. These experts are drawn from the minorities about whom the reports are written, and from journalists, academics, researchers and other human rights agencies. Authors are asked to incorporate comments made by these parties. In this way, MRG aims to publish accurate, authoritative, well-balanced reports.

Arts student at Sydney University
CHRISTINE OSBORNE PICTURES

Aboriginal Australians

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BY KEITH D. SUTER and KAYE STEARMAN

MRG

THE UNITED NATIONS
UNIVERSAL DECLARATION OF HUMAN RIGHTS

Whereas recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world.

Whereas disregard and contempt for human rights have resulted in barbarous acts which have outraged the conscience of mankind, and the advent of a world in which human beings shall enjoy freedom of speech and belief and freedom from any fear and want has been proclaimed as the highest aspiration of the common people,

Whereas it is essential, if a man is not to be compelled to have recourse, as a last resort, to rebellion against tyranny and oppression, that human rights should be protected by the rule of law,

Whereas it is essential to promote the development of friendly relations between nations,

Whereas the peoples of the United Nations have in the Charter reaffirmed their faith in fundamental human rights, in the dignity and worth of the human person and in the equal rights of men and women and have determined to promote social progress and better standards of life in larger freedom,

Whereas Member States have pledged themselves to achieve, in co-operation with the United Nations, the promotion of universal respect for and observance of human rights and fundamental freedoms,

Whereas a common understanding of these rights and freedoms is of the greatest importance for the full realization of this pledge,

Now, Therefore,

THE GENERAL ASSEMBLY

proclaims

THIS UNIVERSAL DECLARATION OF HUMAN RIGHTS as a common standard of achievement for all peoples and all nations, to the end that every individual and every organ of society, keeping this Declaration constantly in mind, shall strive by teaching and education to promote respect for these rights and freedoms and by progressive measures, national and international, to secure their universal and effective recognition and observance, both among the peoples of Member States themselves and among the peoples of territories under their jurisdiction.

Article 1. All human beings are born free and equal in dignity and rights. They are endowed with reason and conscience and should act towards one another in a spirit of brotherhood.

Article 2. Everyone is entitled to all the rights and freedoms set forth in this Declaration, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.

Furthermore, no distinction shall be made on the basis of the political, jurisdictional or international status of the country or territory to which a person belongs, whether it be independent, trust, non-self-governing or under any other limitation of sovereignty.

Article 3. Everyone has the right to life, liberty and security of person.

Article 4. No one shall be held in slavery or servitude; slavery and the slave trade shall be prohibited in all their forms.

Article 5. No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment.

Article 6. Everyone has the right to recognition everywhere as a person before the law.

Article 7. All are equal before the law and are entitled without any discrimination to equal protection of the law. All are entitled to equal protection against any discrimination in violation of this Declaration and against any incitement to such discrimination.

Article 8. Everyone has the right to an effective remedy by the competent national tribunals for acts violating the fundamental rights granted him by the constitution or by law.

Article 9. No one shall be subjected to arbitrary arrest, detention or exile.

Article 10. Everyone is entitled in full equality to a fair and public hearing by an independent and impartial tribunal, in the determination of his rights and obligations and of any criminal charge against him.

Article 11. (1) Everyone charged with a penal offence has the right to be presumed innocent until proved guilty according to law in a public trial at which he has had all the guarantees necessary for his defence.

(2) No one shall be held guilty of any penal offence on account of any act or omission which did not constitute a penal offence, under national or international law, at the time when it was committed. Nor shall a heavier penalty be imposed than the one that was applicable at the time the penal offence was committed.

Article 12. No one shall be subjected to arbitrary interference with his privacy, family, home or correspondence, nor to attacks upon his honour and reputation. Everyone has the right to the protection of the law against such interference or attacks.

Article 13. (1) Everyone has the right to freedom of movement and residence within the borders of each state.

(2) Everyone has the right to leave any country, including his own, and to return to his country.

Article 14. (1) Everyone has the right to seek and to enjoy in other countries asylum from persecution.

(2) This right may not be invoked in the case of prosecutions genuinely arising from non-political crimes or from acts contrary to the purposes and principles of the United Nations.

Article 15. (1) Everyone has the right to a nationality.

(2) No one shall be arbitrarily deprived of his nationality nor denied the right to change his nationality.

Article 16. (1) Men and women of full age, without any limitation due to race, nationality or religion, have the right to marry and to found a family. They are entitled to equal rights as to marriage, during marriage and at its dissolution.

(2) Marriage shall be entered into only with the free and full consent of the intending spouses.

(3) The family is the natural and fundamental group unit of society and is entitled to protection by society and the State.

Article 17. (1) Everyone has the right to own property alone as well as in association with others.

(2) No one shall be arbitrarily deprived of his property.

Article 18. Everyone has the right to freedom of thought, conscience and religion; this right includes freedom to change his religion or belief, and freedom, either alone or in community with others and in public or private, to manifest his religion or belief in teaching, practice, worship and observance.

Article 19. Everyone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers.

Article 20. (1) Everyone has the right to freedom of peaceful assembly and association.

(2) No one may be compelled to belong to an association.

Article 21. (1) Everyone has the right to take part in the government of his country, directly or through freely chosen representatives.

(2) Everyone has the right of equal access to public service in his country.

(3) The will of the people shall be the basis of the authority of government; this will shall be expressed in periodic and genuine elections which shall be by universal and equal suffrage and shall be held by secret vote or by equivalent free voting procedures.

Article 22. Everyone, as a member of society, has the right to social security and is entitled to realization, through national effort and international co-operation and in accordance with the organization and resources of each State, of the economic, social and cultural rights indispensable for his dignity and the free development of his personality.

Article 23. (1) Everyone has the right to work, to free choice of employment, to just and favourable conditions of work and to protection against unemployment.

(2) Everyone, without any discrimination, has the right to equal pay for equal work.

(3) Everyone who works has the right to just and favourable remuneration ensuring for himself and his family an existence worthy of human dignity, and supplemented, if necessary, by other means of social protection.

(4) Everyone has the right to form and to join trade unions for the protection of his interest.

Article 24. Everyone has the right to rest and leisure, including reasonable limitation of working hours and periodic holidays with pay.

Article 25. (1) Everyone has the right to a standard of living adequate for the health and well-being of himself and of his family, including food, clothing, housing and medical care and necessary social services, and the right to security in the event of unemployment, sickness, disability, widowhood, old age or other lack of livelihood in circumstances beyond his control.

(2) Motherhood and childhood are entitled to special care and assistance. All children, whether born in or out of wedlock, shall enjoy the same social protection.

Article 26. (1) Everyone has the right to education. Education shall be free, at least in the elementary and fundamental stages. Elementary education shall be compulsory. Technical and professional education shall be made generally available and higher education shall be equally accessible to all on the basis of merit.

(2) Education shall be directed to the full development of the human personality and to the strengthening of respect for human rights and fundamental freedoms. It shall promote understanding, tolerance and friendship among all nations, racial or religious groups, and shall further the activities of the United Nations for the maintenance of peace.

(3) Parents have a prior right to choose the kind of education that shall be given to their children.

Article 27. (1) Everyone has the right freely to participate in the cultural life of the community, to enjoy the arts and to share in scientific advancement and its benefits.

(2) Everyone has the right to the protection of the moral and material interests resulting from any scientific, literary or artistic production of which he is the author.

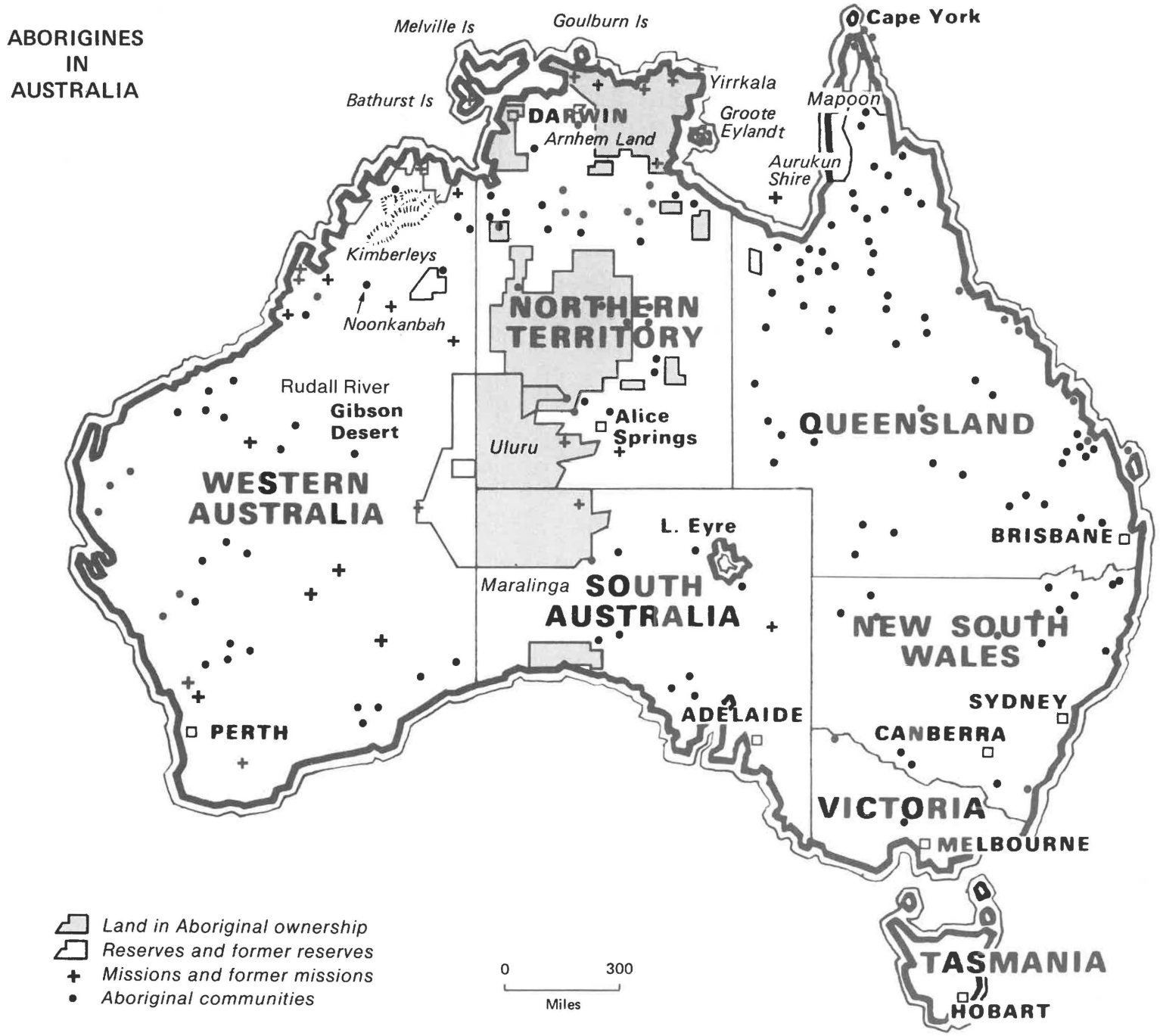
Article 28. Everyone is entitled to a social and international order in which the rights and freedoms set forth in this Declaration can be fully realized.

Article 29. (1) Everyone has duties to the community in which alone the free and full development of his personality is possible.

(2) In the exercise of his rights and freedoms, everyone shall be subject only to such limitations as are determined by law solely for the purpose of securing due recognition and respect for the rights and freedoms of others and of meeting the just requirements of morality, public order and the general welfare in a democratic society.

(3) These rights and freedoms may in no case be exercised contrary to the purposes and principles of the United Nations.

Article 30. Nothing in this Declaration may be interpreted as implying for any State, group or person any right to engage in any activity or to perform any act aimed at the destruction of any of the rights and freedoms set forth herein.


ABORIGINES IN AUSTRALIA
Melville Is
Goulburn Is
Cape York
Bathurst Is
DARWIN
Yirrkala
Mapoon
Groote Eylandt
Arnhem Land
Aurukun Shire
Kimberleys
Noonkanbah
NORTHERN TERRITORY
Rudall River
Gibson Desert
Alice Springs
Uluru
QUEENSLAND
WESTERN AUSTRALIA
L. Eyre
BRISBANE
Maralinga
SOUTH AUSTRALIA
NEW SOUTH WALES
SYDNEY
ADELAIDE
CANBERRA
PERTH
VICTORIA
MELBOURNE
TASMANIA
HOBART
Land in Aboriginal ownership
Reserves and former reserves
Missions and former missions
Aboriginal communities
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Miles

Introduction

Who are the Aboriginal Australians? The question is not as straightforward as it appears. For many years the indigenous inhabitants of Australia were considered a dying race and there are still belated attempts by conservatives to acknowledge only 'real' Aborigines as distinct from those of partly Aboriginal ethnic descent. There is no one Aboriginal 'type'; indeed many Aborigines have light skin and do not always appear very distinctive in Australia's multi-cultural immigrant society. The official definition of 'Aboriginal' establishes three criteria – to be of Aboriginal descent; to identify as an Aborigine; and to be accepted by others in the Aboriginal community as an Aborigine.

The widely differing estimates of the number of Aboriginal Australians reflects considerable uncertainty about the figures partly because they are based on self-identification, partly because of physical difficulties in collecting figures from remote communities and partly because of the lack of appropriate training of census enumerators. However it is probably true that the figures have been more accurate in recent years. Some of the disparities in the figures are seen from the table below:

	1981	1986
NSW and ACT	36,190	60,231
Victoria	6,057	12,611
Queensland	44,698	61,269
South Australia	9,825	14,295
Western Australia	31,551	37,788
Tasmania	2,688	6,712
Northern Territory	29,088	34,739
Australia	159,897	227,645

Thus the proportion of Aborigines as a total of the Australian population has risen from 1.10% to 1.44%[1]

Ostensibly the number of Aborigines has jumped from nearly 160,000 to over 227,000 in only 5 years – a leap of 42.4%. Although the Aboriginal birthrate is twice that for non-Aborigines this alone would not account for the increase. The main reason is that many more people of Aboriginal descent are proud to declare themselves Aborigines. Of the above figure probably 10% are Torres Straits Islanders, Melanesian peoples ethnically similar to the coastal peoples of southern Papua and who, by a quirk of history, were part of Queensland and later Australia. This report does not deal with them. However the figures may still be on the conservative side particularly in Queensland where repression of the Aboriginal population is still most severe. The Aboriginal population may therefore be close to 300,000 or above.[2]

Often a distinction is drawn between full-blood tribal Aborigines and those of partly white extraction, who live on the fringes of country towns or in cities. There are, in fact, sometimes considerable differences in outlook and experience between various groups, especially between young, urban activists and more conservative, tribal elders. However this should not obscure the fact that *all* Aborigines, regardless of their background, regard themselves as *one* people, with a common culture and heritage, a special relationship to the land, and a common struggle to survive as a distinct and equal section of the community.

Most Aborigines still live in the rural areas. In the Northern Territory, for example, black people form 22% of the total population (1986 figures) and 62% of the rural population (1976 figures): in the Kimberleys of northern Western Australia they form 75% of the population. In these areas, plus parts of Queensland and South Australia, Aborigines still live in tribal groups on reserves, speak their own languages, keep many of their older traditions, their art, and nomadic or semi-nomadic lifestyles. Most have been concentrated on missions and in government-administered settlements as their land has been encroached upon and rendered unable to sustain traditional lifestyles as hunter-gatherers. Some remained on the land with which their ancestors had been identified but which has been taken up on leasehold by white pastoralists, and Aboriginal labour has been frequently used in the cattle industry. There has been considerable variation in the treatment various groups have received – ranging from benevolent paternalism coupled with a relative freedom to follow traditional lifestyles to gross exploitation and oppression. It is only in the last decade that these people have gained some measure of control over their land in the Northern Territory and South Australia. About 5000 Aborigines live on 'outstation' communities in remote rural areas.

About one half of rural Aborigines live in and around the fringes of country towns, often in camps of varying degrees of poverty and squalor. Many 'fringe dwellers' have largely lost contact with the traditional religion and culture of their ancestors, although fragments of that heritage linger in a strong sense of identity with the land and the maintenance of close family relationships. Sometimes these fragments are still expressed in broken remnants of traditional languages and in half-remembered stories. Most fringe dwellers are unemployed or employed as itinerant labour at low rates, are excluded from the life of the white townspeople and suffer vicious discrimination especially in regard to the law. Many are now leaving the rural area, with their high unemployment, and going to the few large cities.

About 15% of the Aboriginal population lives in Sydney or Melbourne, usually in the poorest areas, tending to cling together in the face of white ostracism. It is these blacks who have provided much of the political drive of the Aboriginal movement, and who have initiated such organizations as the Aboriginal Legal and Medical Services.

PART I – Historical Background

Pre-colonial Aboriginal society

Much of our knowledge of pre-colonial Aboriginal societies comes from the peoples of the north and western desert areas, where late European penetration left traditional structures intact well into the 20th century. But these models may well be inappropriate to the rest of the continent. New historical and archeological research is now stripping away many previous assumptions about Aboriginal culture – that it was largely homogenous, unchanging, adapted to but not adapting to its environment. A new – and much more varied – picture is now emerging.

Aboriginal people arrived in Australia from Asia at least 40,000, and possibly as long as 125,000 years ago. By 30,000 BC the whole continent was settled. While some areas were more hospitable, all attracted some Aboriginal attention. Not all peoples were hunters and gatherers and evidence exists of a more complex material culture developing as the climate became drier and colder. At some sites in present-day Victoria, for example, there are remains of large artificial drainage systems which are major feats of engineering. Nor were Aborigines passively accepting of their environment – they used fire to control and tame the landscape for their food needs. Around 2000 years ago the Aboriginal population began to increase. While colonial historians estimated that the pre-colonial Aboriginal population stood at less than 300,000 (a figure that was accepted for many years) this is now acknowledged as far too low, and it may have been up to one and a half million.[3] There were at least 500 different languages (now largely lost) grouped into 31 related language families. One language family, Pama-Nyungan, covered about 80% of the continent, while the others were concentrated in the remaining 20% (the north-west and the island of Tasmania). Older men were the tribal elders, who retained the tribal lore and laws. These were passed onto young men, who were responsible for hunting and fishing. Women had their own spiritual life and rituals in addition to a key role looking after tribal elders and children, cooking and gathering edible flora.

The central point of all Aboriginal life was the Dreamtime. In the Dreamtime, the continent had been formed and peopled by various beings, who sometimes had human form but always had super-human powers. These beings were the Aboriginal ancestors who controlled the land. Their ground of being (as a western theologian might say) was intimately related to their land. From this common well of spiritual power all Aboriginal tribes drew their individual interpretations of what should be done to live on earth. They were at one with animals, natural forces – particularly winds – the local environment and time. Aborigines led, in many respects, a spiritual life. They believed that the spirit of life existed for all time. The spirit took on human form for some years as a human being and

then left the body, to be later incorporated into another woman and so later emerge as a baby, and so on. Bodies had to be destroyed (cremation) to prevent spirits from trying to get back into them.[4]

Daily living was largely dictated by environmental factors. In the north, with regular monsoons, Aborigines migrated between the plains (during the dry season) and high ground (during the wet season). In the southern coastal areas, with fewer extremes in rainfall, life cycles took on different forms, such as knowing when to catch fish which came closer to shore in some seasons. Fishing was also conducted in the inland rivers and one technique was to build stone walls across rivers so that as the water level went down the fish were trapped in the pens. A variation of this method was a 'v'-shaped stone fish-trap into which fish swam along on the current but when they reached the apex of the 'v' they could not swim out. Fish were also speared by Aborigines on the beach or river bank. Aborigines caught ducks by swimming under water and grabbing them from below. Whales were also consumed by Aborigines living along the coast, who killed, beached (and therefore stranded) whales.

Aboriginal life was not, however, one long battle for food and drink. They had time for other events. Time was devoted to feasts and corroborees. There was also time for arts and crafts, and rock art, both painting and engraving, was produced. Aborigines were also creative in various *artefacts*. Items which have been located in the last two centuries include small stone flake tools, hatchet bones, clubs made from wood and bone, fish shells, carved figures in wood, bone and stone and, of course, boomerangs. We shall never know the full story of pre-1788 Aboriginal society but our slowly increasing knowledge has ended forever their image as a primitive and unsophisticated people.

From Dreamtime to nightmare

The white invasion of Australia started on 26 January 1788, when some British landed at what is now Sydney. The 40 millenia were about to end. The Dreamtime was soon to become a nightmare, from which few Aborigines would emerge unscathed.

The Dutch sailed around the north coast in the early seventeenth century, and an English buccaneer, William Dampier, landed on the northwest coast in 1688. But it was not until 1770 that the east coast of The Great South Land was seen by white men for the first time.

The reasons for establishing the New South Wales colony remain unclear. The standard explanation was that Britain, having lost its 13 American colonies, wanted an alternative place to dump its convicts, but there may have also been strategic and commercial reasons. Whatever the reasons concern for the Aborigines was not one of them. The 1788 contingent was unlike anything the Aborigines had ever experienced. Along the northern coast Aborigines enjoyed close trading relations with the Macassarmen from Indonesia. But the 1788 contingent had little interest in trade. Whereas James Cook in 1770 had paid only a short visit, the First Fleet stayed on. Sickness and disease advanced before the path of spreading white penetration. Whole Aboriginal tribes died from European diseases such as smallpox. A smallpox epidemic in 1789 alone killed almost half of the 1500 Aborigines living between Botany Bay and Broken Bay. Colds and measles were new and fatal ailments.

Over 1,000 white people had occupied Aboriginal land overnight and were killing the fish and animals upon which they lived. The white people were armed with deadly weapons. Some rode horses, which Aborigines had never seen previously. But it must not be thought (as often claimed) that Aborigines passively allowed themselves to be destroyed. They killed hunters and escaped convicts in the bush. They took fish from the colonists' nets, stole or burnt the crops and in some instances practised open warfare against them. But they were no match for the settlers, who had a ruthless determination to survive. After all, the whites also had their backs to the wall: the next major fleet, the Second Fleet, did not arrive until June 1790 and even then it brought very little food. Food remained scarce for several years until the settlers became more adept at farming. The settlers largely regarded the local Aborigines as yet another hindrance to their work, which was already very difficult. Thus the pattern was set for future Aboriginal European relations.

Captain Arthur Philip, the first Governor of New South Wales, had had, while still in England, an idealistic approach to the Aborigines. He believed that he could get along with them. George III gave instructions that 'all our subjects' should 'live in amity and kindness' with the Aborigines, and no one should 'wantonly destroy them or give them any unnecessary interruption in the exercise of their several occupations'. But like so many later white initiatives, these good words lost their meaning. The settlers had no choice but to harm the Aborigines since they were taking away the basis of Aboriginal life: land and food. In a colony where women were scarce, Aboriginal women soon became rape victims. Meanwhile, no use could be found for Aboriginal men. Some became domestic staff or helped the police. But most were redundant.[5]

At the root of this violence was a yawning cultural chasm which was too large to bridge. First, the whites assumed that because the Aborigines did not physically occupy territory, they did not really own it. Second, the white settlers could not understand the Aboriginal reliance on hunting, as opposed to raising animals. But they had nothing to herd (not even the whites have managed to herd kangaroos). Meanwhile, they had no reason to herd animals because hunting them was satisfactory. Much the same could be said about the lack of extensive land cultivation. Third, the whites assumed that the Aborigines had no religion, when they were in fact a highly religious people.

During the 19th and early 20th centuries most tribes of coastal and eastern Australia were destroyed. Historian Henry Reynolds estimated that over 20,000 Aborigines and 2000 Europeans died violently in frontier conflict.[6] Those Aborigines who survived with their traditional lands and lifestyle relatively intact lived in Australia's desolate interior. Here the land was too barren for cultivation. But in recent years, they have found themselves again on land which the whites want. Particular mention should be made of Van Diemen's Land, later known as Tasmania, where the white invasion and occupation was complete. Almost the whole Aboriginal population was systematically annihilated (though about 6,000 people of partly Aboriginal origin still remain). In late 1830 a 'Black line' was drawn across the island by the military with the intention of hunting and capturing Aborigines.

One of the last Tasmanian Aborigines to perish was Truganini, the daughter of a local chief. She witnessed her mother being stabbed to death by whites, her sister kidnapped and her uncle shot. Aged 15, she and her husband-to-be were taken on a boat ride with two white men. He was thrown overboard and – not being able to swim – clutched at the gunwhale. But the whites chopped off his hands and, after forcing her to watch him drown, raped Truganini. She later lived on Flinders Island, where the remnants of the Tasmanian Aborigines were to be found. After her death her body, instead of being cremated according to Aboriginal custom and as she wanted, had one further indignity to undergo. Her skeleton was put on public display in the Hobart Museum. It was locked away in 1947. But it was not until 1976 that it was finally cremated and the ashes cast into the sea.

The slaughter of Aborigines continued on the mainland well into the 20th century. During the 1920s a number of killings took place but often attracted little publicity. Slaughter of tribal Aborigines in retaliation for cattle spearing in the Kimberleys in 1926 produced an official enquiry; famine in central Australia resulted in an investigation which took so long to be finalized that the famine was largely over by the time it was produced. When the government helped endow the chair of anthropology at the University of Sydney (later to be filled with great distinction by A.P. Elkin), it did so to help research into the administration of New Guinea, rather than its own Aborigines. In sport, some Aborigines were doing well and the apathetic whites, reading about Aborigine successes on the sports pages, assumed that all was going well for Aborigines. But – it was thought – Aborigines were a dying race, and little could be done for them.

The years of neglect

The Aboriginal population declined from an estimated million in 1788 to about 30,000 in the 1930s, while the part-Aboriginal population increased to about 40,000. But during the early 20th century the population decline had levelled off. The land saved the

Aborigines. Despite white immigration to the cities few made for the 'outback' – Australia's frontier – and it was difficult and expensive to attract and hold white labour.

The huge cattle stations had to have Aborigines do the work they could not get whites to do. In return for their labour – at near-slave rates – Aborigines were permitted to maintain Aboriginal traditions, ceremonies and off-season visits to sacred places. A second cause of survival was the growing support for the creation of large areas for Aborigines in remote areas, such as central Australia and Arnhem Land. In administrative terms, this was the thin end of the wedge. According to the pedantic bureaucratic mind, a task had been established – Aboriginal reserves – and so Aborigines found themselves on the governmental agenda. Once there, they became subject to the usual string of official enquiries.

Third, some Aborigines, especially those in urban areas, acquired a certain political visibility. They still did not figure in census surveys, had no legal personality and no political rights. But they existed. Australia, during the 1920s, had just emerged victorious from the World War and was playing a growing role in international affairs. It was bad for Australia's image to be seen with dying natives in its shanty towns on the edge of its urban centres. Although there was not a dramatic change in attitudes towards Aborigines during this period, it was evident that the old policy of neglecting them in the expectation of their rapid demise was no longer an appropriate policy. They had to be provided with some welfare services.

Aborigines were also aided by some white persons and organizations who cared about Aborigines. Professor A.P. Elkin, of the University of Sydney, for example, became a well-known publicist on their behalf and, by using the prestige of his University position, was able to make their cause respectable for other liberal persons. The Theosophical Society enabled Pearl Gibbs to broadcast from a commercial radio station in Sydney in 1941 – the first time an Aboriginal woman had been able to broadcast. A fourth development came with World War II. The Army alone employed well over a thousand Aborigines across northern Australia. They were paid cash wages, and shared full canteen service and equal accommodation. This did much to undermine official prejudices and opened the way to small cash wages on the cattle stations and government settlements after the war.

Finally, but not least, Aborigines were fighting back. Urban Aborigines joined together to form non-governmental organizations such as the Aborigines' Progressive Association. These organizations campaigned against various local forms of oppression, such as the ineffective and paternalistic State Aboriginal Welfare Boards, they took up individual grievances, and provided various forms of welfare assistance.

Australian government policy was, during this period, hampered by three main factors. One was the only slowly dawning realization that Aborigines were not a dying race. They did not figure in the census or most other forms of official statistics, such as the number of unemployed. Second, the government was unclear as to which overall strategy it should adopt. Given that Aborigines were no longer dying, how should they be accommodated in the new nation which was growing so rapidly? White opinion, not least in ruling circles themselves, would be opposed to full citizenship rights and responsibilities. The government settled eventually for 'assimilation'. Given that the Aboriginal population was no longer declining, the end result – the removal of all Aborigines – was to be achieved by westernizing them until they reached the point of losing their Aboriginal identity.

Finally, Aboriginal affairs at this time still remained a State responsiblity. The Commonwealth government had responsibility for the Northern Territory and Australian Capital Territory (which it governed directly) and facilitated the interchange of views of State ministers responsible for Aboriginal affairs. The possibility of Commonwealth control over all State Aboriginal affairs was discussed at a 1936 conference of Commonwealth and State Premiers but was regarded as impracticable. The Commonwealth did, however, co-ordinate the introduction of the State assimilation policies. It convened a conference on Aboriginal affairs in 1937, at which it was agreed that the policy aim at least for 'the natives of Aboriginal origin but not of the full blood' was their 'absorption' into white society. Varying degrees of segregation were contemplated for the 'uncivilized' and 'semi-civilized' Aborigines in north and central Australia. A New South Wales government report in 1940 recommended administrative changes with the aim of 'gradual assimilation of Aboriginals into the economic life and social life of the community'. The word 'assimilation' was thus widely adopted and, in 1951, became the main strategy of Commonwealth and State governments.

From the early 1960s, the 'assimilation policy' came under increasing criticism in Australia because it did not recognise the strength and resilience of Aboriginal culture, which seemed likely to make the aim of assimilation unattainable. It ignored the natural right of Aborigines to make their own choice about their manner of life. Critics of official government policy argued that a policy of 'integration', based on recognition of the value of Aboriginal culture and their right to retain their languages and customs and to maintain their own distinctive communities, was more practicable, more acceptable to Aborigines and more readily justified. In the 1960s the restrictive legislation and the administrative systems established in the period of 'protection' began to be dismantled. Discriminatory provisions, which excluded Aborigines from the benefits and rights enjoyed by other citizens, such as the right to vote, or which subjected them to special controls, were outlawed. Commonwealth laws restricting Aboriginal access to social security benefits were amended in 1960 and the electoral laws in 1962. The system of special legislation in the Northern Territory was repealed in 1964. It was not until the 1967 Referendum that legal equality in the Federal sphere was granted to Aborigines.

Black resurgence

The past 20 years have seen a remarkable political and cultural upsurge by Aboriginal Australians, unprecedented in the two centuries of white rule. Aborigines have taken the initiative in demanding political and economic changes which would allow them to live both as equal citizens and as a distinct people with their own ethnic identity. The past 200 years have not been ones of passive surrender – beneath the violence, the degradation and squalor which has been imposed upon them, Aborigines have never completely lost the tradition of the Dreaming or their communal lifestyle. The history of Aboriginal Australia is only beginning to be written, and the heroes and heroines of the black resistance of the past have yet to be rehabilitated. Aborigines know that the past cannot be resurrected but they are now demanding as justice an acknowledgement and understanding of themselves and their culture by white Australia, compensation for their past sufferings and positive changes now to allow them to determine their own future.

The key word in the black struggle is 'self-determination'. As Aboriginal culture and lifestyle is communal and not individual so this communal sense has become the basis of black activism. This means access to land, to economic independence, to assertion of Aboriginal culture and the cultivation of an Aboriginal identity. There has also been a struggle to achieve equality with other Australians in material necessities. Compared to white Australians, Aborigines have worse housing, health, living conditions, less chance of obtaining education, or a clean water supply, are more likely to be unemployed or arrested and jailed. There has been a continual fight to right this imbalance, through the medical and legal services, through the courts and through political action. There is no contradiction between the fight for 'equality' and 'self-determination' – they are mutually interdependent.

The strike in 1966 by Aboriginal stockmen of the Gurindji tribe at Wave Hill Station in the Northern Territory epitomises the general black resurgence of the period. Wave Hill was part of the giant Vestey empire and the confrontation between this huge multi-national and their grossly exploited black labourers was classic in its dimensions. It was a shock to the affluent white Australian working-class with its minimum award wages and strong trade union organizations to learn of highly skilled stockmen being paid a few dollars a week, with a few sacks of flour, sugar and tea, and living conditions which were worse than those enjoyed by the station's dogs. Trade unions and church groups lent support but Vesteys would not act to improve conditions. The Gurindjis were camping at a place sacred to their tribe, called Daguragu (known also as Wattie Creek). As the strike hardened Aboriginal demands changed so that the call was no longer for increased wages and improved conditions but for land rights and self-determination.[7]

This was the beginning of the land rights movement. Initially the Gurindjis asked for a lease to the Daguragu area; then for capital to set up their own co-operatively-run cattle station. Unfortunately once a small lease of 1,250 sq. miles had been granted by the Whitlam government in 1975, the Gurindji dropped from public attention. The Aboriginal township which had been built by the Department of Aboriginal Affairs along white suburban lines remained deserted, the endemic poverty and disease of the tribes-people continued and the minimal amounts of capital and equipment needed for the cattle station were not forthcoming. The Gurindji's are still living at Daguragu – the promise of their struggle only partly fulfilled. Attempts have been made by the Northern Territory Legislature to break the Daguragu lease but to date this has not succeeded.

In 1968 a group of Aboriginal clans from the Gove Peninsula in the Northern Territory brought an action against Nabalco, a mining company, alleging misappropriation of their land. When this claim was finally rejected in 1971 it convinced both blacks and their white supporters that without changes in the law there would be no way in which blacks could obtain land rights in white Australia.

Young urban Aborigines in particular were inspired by the civil rights movement in the US. In the 1960s a 'Freedom Ride' around western New South Wales and Queensland by a bus-load of young white and black activists, challenging the unwritten racist code of the country towns gained a great deal of publicity (mostly unfavourable). The late 1960s and early 1970s was a time of political ferment in Australia with growing opposition to the Vietnam War and conscription. Many people saw Aboriginal Rights as part of the same movement.

Black activists became more militant and saw themselves as part of a 'black liberation movement'. They took pride in their ethnic identity, and chose to regard themselves as 'Blacks' and 'Kooris' (NSW) 'Murris' (Qld) and 'Noongars' (Western and South Australia) and rejected the colonialist term 'aboriginal'. (In this report the terms 'Aborigine' and 'Black' are used interchangeably). They adopted their own flag, a red and black band (for the earth and the people) coupled with a yellow circle (the sun). Links were built between different groups. There were sometimes differences of opinion (a fact which was exploited by white politicians and administrators) but all blacks adopted the flag as a symbol of their struggle and saw the granting of land rights as their basic demand.

The demonstrations of 1971 against the Springbok Tour (in which Aborigines played a prominent role) helped white Australians to see their own racism in the world context and consequently in 1972 the black struggle intensified. This was the year of the 'Aboriginal Embassy', when, to demonstrate Aboriginal isolation within their own country, a tent, bearing the flag, and surrounded by placards demanding justice and land rights, was set up outside Parliament House in Canberra. It received large numbers of well-wishers, including labor parliamentarians, trade unionists and churchmen, and when it was twice dismantled and its occupants beaten by police, large numbers converged on Canberra to re-establish it. In 1979 a new Aboriginal Embassy, representing the National Aboriginal Liberation Front was again in Canberra, this time squatting at Capital Hill.

After the Labor government came to power in 1972 with a fund of goodwill and sympathy towards Aborigines, the main attention shifted to the Federal sphere and attempts to legislate land rights (see Land Rights Section). Grass roots activism was not dead however. From 1974 attention shifted to the gross discrimination practised on the Queensland reserves. The Land Councils, representing rural Aborigines, co-ordinated local activities. An embryo black power movement, willing to use violence, developed in Brisbane.

The dismissal of the Whitlam government in November 1975 ended the more favourable governmental response to Aboriginal affairs. This made black activism more necessary than ever. While it is true that there is no one Aboriginal organization which can co-ordinate activities, this in turn has allowed for grass roots activity to predominate and Aborigines have learnt to organize quickly around specific issues.

For Aborigines political struggle and cultural resurgence have been inseparable elements in their rediscovery of their strength as a people. When the Kimberley Land Council was formed in 1978 it was preceded by a gathering of over 1,000 Aborigines at Noonkanbah Station and four days of joyous dancing ceremonies. Many Aborigines have shown an interest in reviving traditional culture, even in areas where the language and much traditional lore has all but vanished. For example, the Aboriginal community on the south coast of NSW, centred on the Wallaga Lake Reserve, in 1980 successfully petitioned the NSW government to prohibit further logging on their sacred Mumbulla Mountain and hope to revive at least some of the tribal ceremonies involving the mountain.[8] Nor is Aboriginal culture a mere revival of the past, but flexible and creative. Aboriginal people have developed their own magazines and newsletters to express black aspirations; poets Kath Walker and Kevin Gilbert are popular with both black and white Australians; and the Aboriginal and Islander Dance Theatre, formed in 1972, has a repertoire of styles, ranging from coroborees to classical ballet to disco. New developments are Aboriginal broadcasting and television. The Central Australian Aboriginal Media Association based in Alice Springs won a TV franchise in open competition with white organizations and began to broadcast in Aboriginal languages in 1987.

The years since 1975 have been ones of 'survival politics' for Aborigines. The organizations built through the early seventies, on a wave of popular sympathy, and at least partly funded from public funds, have been hampered in their activities by government cutbacks in spending, while white Australians have been more concerned with the problems of inflation and unemployment than the conditions of their black fellow citizens. It has also been the practice of the media to focus on particular issues, which briefly hit the headlines and then quickly recede from view. This has tended to give Aboriginal political activity a chaotic and impermanent appearance; as soon as one campaign is concluded another emergency issue arises. This is misleading as the issues and campaigns last for years; with dedicated individuals slogging away with little money or publicity.

There have however been some constant themes. Firstly there has been a continual need to reassert Aboriginal autonomy after years of dependence upon white institutions. This has meant building up Aboriginal institutions such as Land Councils, an Aboriginal resource base and independent community projects. In practice cutbacks in government expenditure and bureaucratic constraints have limited such initiatives. The most enduring campaigns have been built around land rights struggles, notably in Queensland (Aurukun and Mornington Island), the Northern Territory and Western Australia (Noonkanbah). The late 1980s have seen the highlighting of two issues in particular. One is the issue of Aboriginal deaths while in police custody, the most visible and shocking reminder of disparities between white and black Australians in the field of law and justice and the second is of the need for constitutional reform which acknowledges the prior ownership of the Australian continent by the Aboriginal people. Throughout these campaigns there has been a new factor – not merely to reach the people of Australia but to exert international pressure on the government, whether through the press, the UN or by other countries.

Aboriginal Organization

The foremost Aboriginal organization was the Federal Council for the Advancement of Aboriginals and Torres Strait Islanders (FCAATSI) formed in 1959. It was a federation of Aborigines and white sympathizers and had the role of an umbrella organization for black people. The success of the 1967 Referendum was partially due to FCAATSI and it launched a nationwide Land Rights campaign in 1968. It played a brave advance role in its expression of black aspirations, but tended to become less important in the 1970s with the development of regionally based organizations. In 1978 it reformed itself as a wholly black organization taking the new title of 'The National Aboriginal and Islander Liberation Movement' (NAILM).

The Labor government of 1972-5 established the National Aboriginal Consultative Committee (later called the National Aboriginal Conference). This Committee was supposed to advise the government and the Department of Aboriginal Affairs on all matters pertaining to Aborigines and the allocation of the DAA budget. The NAC was not however entrusted with real power as its abolition by the Hawke government in 1985 demonstrated. (The NAC is discussed in more detail in Part II).

Organizing widely scattered groups of Aborigines has presented its own problems. The distances involved can be vast. The nearest town may be hundreds of miles away. In Northern Australia the wet season can cut communities off from each other for months at a time. Four wheel drive vehicles or a light airplane are needed for transport, radio is the only immediate method of communication. All the geographical obstacles are compounded by white hostility. Cattle stations, missions and reserve administrations have often prevented 'their' aborigines from organizing by using physical intimidation, or the threat of it, harrassment, splitting of families, attempts to ban 'outside troublemakers', including medical teams (Queensland, 1977) and to stop Aborigines exercising their constitutional rights. The notorious Queensland Aboriginal and Islanders Act of 1971 prevented Aborigines from living and visiting in the reserves of their choice, allowed them no privacy of communication with the outside world or control of their own income, forced them into work not of their own choice, at lower than minimum wages and other indignities. (A new Act which replaced this legislation was passed in 1982).

Faced with such obstacles, the emergence of the Land Councils over the past years has been all the more remarkable. There are now around 20 Land Councils, including three in the Northern Territory and three in South Australia which receive government funding and recognition, while those in Queensland are unfunded and unrecognized. They announced their Federation in November 1981. The Councils are democratic and flexible in operation. The Pitjantjatjara Council in the north-west of South Australia, the south-west of the Northern Territory and the adjoining areas of Western Australia, covers three States' administrations with varying policies on land rights, and is pressing governments for one locally based Lands Trust with executive powers. (This could be the basis of a future Aboriginal State or Territory).

An example of the positive role played by the land councils is the Kimberley Land Council formed in 1978. The KLC is a group of eight elected individuals representing over 15,000 people in 93 communities. In the early 1980s it relied for finance solely on contributions from well-wishers, mainly trade unions and church groups. The flashpoint of Noonkanbah in 1980 showed the solid basis of support for the KLC as the people prepared to face armed intervention by the government. Their then Chairman Darryl Kickett said, 'What we're asking for is the freedom to do things for ourselves, and to do that we need our own land and our own money'. Since that time changes in government have helped to increase the powers of the KLC. In 1986 it had a budget of $100 million over five years for buying land and providing infrastructure and an additional $4 m for community programmes in housing, alcohol and substance abuse, and to set up Aboriginal enterprises. It has two offices, runs community, arts and sports programmes and acts as a co-ordinator for the many outstation groups.[9]

In urban areas organizing has been generally easier. The pioneering work of the Aboriginal Legal Service and the Aboriginal Medical Service in NSW has led to many other similar organizations. One particularly impressive example is the Aboriginal and Islander Health Centre in Townsville in Northern Queensland. Here the Health Centre has been given the function of general community welfare centre and covered inside and out with brilliantly coloured murals from local black artists, depicting local Aboriginal life and personalities. But like some Land Councils, the urban organizations lack independent finance – which can be cut by governments at any time. Many organizations still continue to be run on a purely voluntary basis.

A common feature of almost all Aboriginal organizations – whether government or voluntary – has been their need for funding from government sources. This is presently not only a necessity given the dispersion of Aboriginal peoples and their poverty but, Aborigines would argue, their birthright as a result of their prior ownership of the whole of Australia and their consequent dispossession. Thus some of the fiercest criticism of the government has come from organizations funded by it. A perennial argument has revolved around the amount of control governments should exercise over organizations. Most Aborigines maintain that strict control leads to a proliferation of bureaucracy, domination of Aboriginal concerns by white outsiders, diversion of resources from action into report-writing and other unproductive areas, resulting in less responsiveness and responsibility, less initiative and enthusiasm and ultimately less effectiveness. They point out also that the criteria used by government agencies does not suit the Aboriginal way of doing or managing – where community discussion and consensus matter more than precise indicators. Critics however argue that by loosening control over funding organizations are prone to irresponsible decision making and spending and to be dominated by 'extremists'.

The only large organizations that have broken free of this contradiction are those which have an independent economic base. These are the Land Councils in the Northern Territory, principally the Northern Land Council and the Central Land Council. The CLC covers 15% of the NT, is based in Alice Springs with an office in Tennant Creek, operates on an annual budget of $4 m, and employs lawyers, researchers, anthropologists and advisors. It is administered by a Director, currently Pat Dodson, on behalf of the traditional owners. Its income derives from the land itself, some of which is leased to non-traditional and non-Aboriginal peoples, and ventures run by the NLC. Any surplus – in 1987 $350,000 – is distributed to various communities. Pat Dodson says:

'We are in a very powerful position . . . We push numerous issues – more facilities for health and welfare. We can succeed because we are responsive to our people. We argue about the use of our land; we push claims to our sites to be protected; we can handle any legal opposition . . . even in the High Court of Australia, which is where we often end up to resolve various disputes. We don't set out to fight but we don't step away from the issues. The Northern Territory government can't really accept that an Aboriginal organization can be professional, commercial negotiators which is what we are.'[10]

Aborigines and Politics

Aborigines have played only a small part in conventional party politics at either a Federal or State level in part because of their small percentage of the population. It is only during the past two decades that political parties have seen fit even to include an Aboriginal policy within their party platform. Few Aborigines have seen political action through these parties as likely to benefit them or their people, although most vote overwhelmingly for the Labor Party, given the opportunity. During the 1970s two States, Queensland and Western Australia made both formal and *de facto* attempts to disenfranchise some of their Aboriginal population.

Possibilities exist for conventional political action which have not yet been utilized. There are three seats in the Federal Parliament's House of Representatives which could depend on an organized Aboriginal vote, including that of the Northern Territory where 23.7% of the electorate are Aboriginal voters. The same is true for several State parliamentary seats. A single senator, Neville Bonner, has been of Aboriginal origin and his position in the Aboriginal community has been an ambiguous one.

There are signs of increasing party political activity among Aborigines. In the Northern Territory, the Labor Party has established close relations with Aborigines and prefers to choose Aboriginal candidates for electorates where there is a majority of Aborigines in the resident population. The Labor Party in the Northern Territory is becoming increasingly identified as the 'black' party, despite the fact that in the past trade unions often saw Aborigines as a threat to their employment privileges. Yet despite their strong presence and economic base Aboriginal people here are still a minority, and if this State were to acquire full statehood, their voting power would count for little. In the Western Australia State elections in 1980 it was the black vote which replaced two conservative parliamentarians with two Labor Party candidates, including Aboriginal Ernie Bridges, later the Minister for Aboriginal Affairs in the State Labor government. Aboriginal teams have stood for election in the Upper Houses of Parliament, where their chances of election are higher, but as yet none have been elected on an Aboriginal platform.

But few Aboriginals see party politics as a means of advancement. They see it as a system which has blocked them out, denying them independence and power. Says Paul Coe of the Aboriginal Legal Service, 'There's a lot of black activism but no power. You can have all the Aboriginal speakers under the sun, but if you speak from a position of no bargaining power . . . We can shout but we don't wield a stick. Only international pressure can bring about effective change'.[11] Coe has been active in taking the Aboriginal case to the UN, thereby causing considerable embarrassment to the Australian government. He is also aware of the power of the media and its presentation of the Aboriginal cause. Others have

been more radical. Michael Mansell from the Tasmanian Aboriginal Centre travelled to Libya in 1987 and announced that he hoped to get large-scale funding from several Arab nations to finance an independent Aboriginal movement. Although in fact there is no evidence that such funding was forthcoming Mansell's activities created a furore and he was denounced by both outsiders and some Aborigines. They did not necessarily disagree with Mansell's basic premise but felt that his emphasis on foreign support and possibly violent action was unrealistic and alienated sympathetic white support. Most activists see that support as crucial, for with less than 2% of the population and few economic resources Aborigines cannot win their struggle alone. Many would agree with Gary Foley, former Chairperson of the Aboriginal Arts Board, who resigned after disagreements with the government; 'Australians should be thankful that Aboriginal people have not chosen other actions up until now, that Aboriginal people have been prepared to mount active, but passive, resistence against the overwhelming of our society'.[12] During the Bicentennial protests the point was made over and over that Aborigines were not against ordinary Australians but against government policies that controlled and excluded them.

One possible solution to end the political dilemma and to give Aboriginal Australians a permanent place in the Australian polity is for a treaty to be signed between representatives of the various Aboriginal nations and the Australian State. Unlike the USA, Canada and New Zealand, no treaties were signed between Aboriginal tribes and the British colonial governments nor was provision made in the 1901 Commonwealth Constitution. In practice the other colonial treaties were ignored or dishonoured; nevertheless they have provided a legal and constitutional basis for recognition which is lacking in the Australian context. Research into such diverse areas as Aboriginal forms of ownership, British and international law, colonial settlement and the treaties between other indigenous peoples and colonizers have laid the groundwork for a new relationship. Now it is a question of political realities.

There has been much discussion on the form a Treaty might take. During the 1970s a group of concerned white Australians put forward the idea of a *Makarrata*, a treaty which would acknowledge prior Aboriginal occupation of the land, enshrine land rights in the Constitution, call for compulsory teaching of Aboriginal culture in Australian classrooms, reserve seats in Parliament, and fix a quota of Aborigines in the public service. Some of these ideas have been revived in *Treaty 88*, a new organization of black and white Australians. But the demands are now stronger – for land rights, sovereignty, self-determination and compensation for dispossession. In September 1987 Prime Minister Robert (Bob) Hawke appeared to agree to some of these demands when he made a statement while opening an Aboriginal radio station at Alice Springs; 'I would want to see an understanding in the Australian community that we have an obligation to the Aborigines in Australia – that in 200 years of European settlement there have been many grave injustices done. There should be a compact of understanding as we go into 1988 of just what 200 years of European settlement represents. It is coming on top of 40,000 years of Aboriginal history'.[13]

In June 1988 Hawke announced that he hoped a Treaty would be signed by mid-1990. He was speaking at a large gathering of 10,000 Aborigines from the Northern Territory who presented their first formal demands, in the form of a petition painted on bark, for a Treaty. While this represents a significant step towards a Treaty there are doubts as to how and when it can be implemented. The opposition Liberal Party immediately denounced the proposed Treaty as a form of 'apartheid'. Some Aborigines also doubt whether such a complex document as this can be negotiated in such a short time and Constitutional reform – in Australia itself a long and tedious process subject to referenda – may prove difficult.

The international perspective

The past decade has seen a widening of the Aboriginal struggle into the international arena. Aboriginal organizations have realized the interest and concern in many countries about their plight, and the possibilities of using governmental, non-governmental and other organizations to publicize their struggles. This has been paralleled by the increased interest taken by the international media in Australia, especially in the Bicentennial year of 1988. Aboriginal protests and the continuing revelations before a Royal Commission of the unexplained deaths of over 100 young black men while in police custody were, however briefly, world news. Aborigines have also gained publicity through the Australian cinema, both through commercial releases such as 'Walkabout', 'The Chant of Jimmy Blacksmith', 'Backroads' (starring black activist Gary Foley), 'Manganinne', and films about (and often by) Aborigines, such as 'My Survival as an Aboriginal' (about Elsie Coffey), 'The Uranium Belongs to the Rainbow Serpent', 'On Sacred Ground' (Noonkanbah in 1980), 'Lousy Little Sixpence', 'The Fringe Dwellers' (Robert Bropho), and 'Journey of the Spirit' (Rickie Shields).

International fora have been a valuable means of expressing the Aboriginal viewpoint, especially on the land rights issue. In August 1980 an Aboriginal delegation from the NAC travelled to Geneva to testify before the UN Sub-Commission for the Prevention of Discrimination and Protection of Minorities, on the West Australian government's actions against the Aboriginal community at Noonkanbah. Since then there have been regular delegations to the Geneva sessions by such groups as the National Aboriginal and Islander Legal Services (NAAILS), the Federation of Land Councils, and the Committee for Black Rights. They have played an important role in the UN Working Group on Indigenous Populations, formed in 1982, especially in the drafting of an International Declaration of Principles for Indigenous Rights. Representatives from the Australian government have also made statements to the Working Group which some observers feel have been significantly more positive than those made in the arena of domestic politics.[14]

In addition to the UN there have been opportunities to work with international non-government bodies such as the World Council of Churches which after a delegation visit in 1981 strongly criticized government policies. There have been attempts to lobby Commonwealth nations, not very successfully, to boycott the British Commonwealth games in 1982 and the Bicentennial celebrations. On a more informal level there have been several speaking tours of Europe by various Aboriginal activists to gain international support. Such tours have often concentrated on the destructive efforts of mining companies on Aboriginal land and have been timed to coincide with the Annual General Meetings of companies such as Rio Tinto Zinc and British Petroleum. Aborigines have participated in the conferences of the World Council for Indigenous Peoples and they have worked with a wide variety of non-governmental organizations concerned with the rights of indigenous peoples.

An especially tragic facet of the Aboriginal experience was revealed to the world in 1985 by Yami Lestor and other members of the Pitjantjatjura people. From 1953 to 1965 the British government with the cooperation of the Australian authorities carried out a series of 'major' atomic tests on Aboriginal land in the deserts at Maralinga and Emu Fields and 'minor tests' which involved the dispersal of plutonium and other toxic materials over a wide area. Over 1000 Aboriginal people remained in the test area. Yami Lestor witnessed the 'black mist' during a test in 1953 and later went blind, although until that time his eyesight had been excellent. Other Aborigines complained of diarrhoea, sore eyes, blindness, miscarriages and many are reported to have died, although there is no way of knowing their numbers. The sicknesses were compounded by official neglect, insensitivity and incompetence. As a result of the testing many Aborigines were relocated to reserves by government officials, where they experienced disease, alcoholism and cultural loss. Yami Lestor and the Pitjantjatjura Land Council began their campaign to reveal the truth in 1980 which resulted in a Royal Commission in 1985. The hearings of the Commission gained worldwide attention. In the meantime the land at Maralinga still remains – and may always remain – unfit for human habitation.[15]

PART II –

Government policies towards Aborigines since 1967

On 26 May 1967, Australians voted in a referendum to amend Section 51 (xxvi) of the Constitution to give the Commonwealth the power to legislate for Aborigines. The actual provision came in the context of a list of items under which the Parliament has the right to make laws for the peace, order and good government of the Commonwealth. The new provision reads 'The people of any race for whom it is deemed necessary to make special laws'. For the first time, every electorate in every State returned a 'yes' majority. In effect this referendum gave the Commonwealth the right to legislate for its Aboriginal citizens. It did not however abrogate the right of individual States to legislate and implement their own laws although Commonwealth law could override State laws. It began an era in which Federal government intervention on behalf of Aboriginal Australians was seen as necessary and vital.

There have been three major strands in the debate over government policy towards Aboriginal affairs in the last two decades. Firstly how responsibilities should be allocated between the Federal and State levels; secondly the manner and intensity with which governments should intervene and the balance between government intervention and autonomous Aboriginal organizations; and finally the effectiveness of government intervention in redressing the massive inequalities suffered by Aborigines. The most prominent platform for public discussion has been the issue of land rights, but has been increasingly manifested in the areas of law and justice, health and housing.

Despite the wide-ranging powers given to the Commonwealth in 1967 the then Federal government, a conservative Liberal Country Party (LCP) coalition, decided to pursue a course of cooperation with the States and, in effect, this policy has been continued by succeeding administrations. The Australian Labor Party (ALP), in power from 1972-75 and from 1983 is more centralist in orientation and has maintained that it would actively intervene to override any dissenting State government. On occasion it has done so. For example in 1987 it enacted two Acts at the request of the Labor government of Victoria after legislation had been rejected by the conservative majority in the State upper house. Yet there has been no attempt to legislate against an unfriendly State government such as Queensland where Aborigines face far greater problems. Its attempt to legislate for a uniform national land rights policy was abandoned in 1986 in the face of opposition from the States and a public relations campaign by mining and other commercial interests. In March 1986 the then Minister for Aboriginal Affairs Clyde Holding stated 'the government made clear its preference for land rights to be implemented by State action broadly consistent with the Commonwealth's principles rather than by overriding legislation . . . Responsibility for Aboriginal advancement does not, as some would believe, lie solely with the Commonwealth as a result of the 1967 Referendum. It is a shared responsibility . . .' [16]

The division of responsibilities between the Commonwealth and the States has created much confusion and many inequalities between different groups of Aborigines, although it might also be argued that some progressive State legislation has been enacted in advance of the Commonwealth. During the period of conservative government 1975-83 in particular some Federal programmes were hived off to State governments with less political determination and finance to implement them.

The manner in which the Commonwealth should structure its political intervention in Aboriginal affairs has also undergone change. In 1967 the LCP government created a three-person Council of Aboriginal Affairs to advise the Prime Minister and an Office of Aboriginal Affairs to deal with the details of co-ordination with the States. Later a Minister for Aboriginal Affairs was appointed. The 1972 Labor government created the Department of Aboriginal Affairs with a minister Gordon Bryant who had a long involvement with Aboriginal concerns. The DAA quickly became enmeshed in difficulties, partly due to its own, often controversial, actions and partly because it was seen by critics as a symbol of the ineptness of ALP government. Expectations were high but given the size and the scope of the problems and the limited expertise in dealing with them it is hard to know how controversy could have been avoided.

The DAA was a new Department and had to battle to gain control over many aspects of Aboriginal affairs which remained with other departments. Its personnel and budget expanded rapidly – from 40 to 1300 public servants and from $20m to $120m in only three years. There were internal splits – especially between 'welfarists' and 'gamblers'. Attempts to recruit Aboriginal public servants were made but given the small numbers of educated Aborigines plus the fact that many wished to continue working in small, grassroots organizations, this inevitably fell far short of its target. Only one senior figure in the Department was an Aborigine, Charles Perkins, who was, and remains, a controversial and outspoken figure. There were allegations of wastage of funds and inadequate financial control, especially of outside white advisors using money earmarked for Aboriginal development for their own benefit. In 1973 the 'turtle farming scandal' resulted in the sacking of Gordon Bryant and a new Minister who cut back spending considerably. Yet the underlying problems remained.

In 1975 for several months ALP legislation and finance was vetoed by the Senate (where the LCP had gained a majority). One of the bills affected was the Lands Rights Bill (Northern Territory) which was the first Federal attempt to grant Aboriginal communities control over land. On 11 November 1975 the Labor government was dismissed and after an election in December an LCP government was returned, to remain in power for the next eight years. The new government retained the DAA but reduced its expenditure, initially by half. The importance of the DAA was downgraded and a number of undistinguished ministers spent a short time there. Yet DAA policy showed great continuity – largely conservative with little sympathy for grassroots activism. The Fraser government did, however, pass the Labor land rights legislation in 1976, although with modifications.

In 1983 a Labor government, led by Robert Hawke, was returned to power, with the support of both the trade unions and sections of the business community. Its watchword has been 'consensus' rather than conflict. It has a stated commitment to extension of Federal power and funding on Aboriginal concerns. Yet, after five years in office, most Aborigines feel that there has been little real change.

Aboriginal consultation

The 1972 Labor government also attempted to involve more Aborigines in consultation with the government, although not in policy making. In 1973 it created the National Aboriginal Consultative Committee later called the National Aboriginal Conference. Gordon Bryant, the then Minister, saw it as playing an active role in preparing budgets and formulating policies to introduce Aboriginal thinking into the main decision making process. The NAC had 41 members on a full-time basis, paid by the government, each person representing about 2800 Aboriginal voters.

It was always attended by controversy. Its terms of reference were vague and its powers were advisory, not mandatory. Some Aborigines boycotted it from the beginning seeing it merely as a government rubber stamp. After the dismissal of Gordon Bryant its powers were further curtailed. The 1975 budget crisis stopped NAC activity. After the election of the LCP government the NAC boycotted the government. Although it was not abolished its influence was greatly reduced especially after the government established a new body with greater executive powers, the Aboriginal Development Commission. Ironically it was a Labor government which abolished the NAC, ostensibly after a government enquiry into its effectiveness. Many Aboriginal activists felt that the NAC was deliberately sabotaged at a time when mining and pastoral interests had mounted an anti-land rights advertising campaign and when public sympathy seemed to be shifting from the Aboriginal cause. In 1985 funds were stopped and the NAC offices closed. Although some Aborigines felt that the NAC had not competently fulfilled its role as an expression of Aboriginal aspirations, there was great bitterness at the closure. The saga of the NAC poignantly underscores the Aboriginal dilemma – for a central Aboriginal body to be effective in functioning and to be accepted as representative it has to receive Federal recognition and funding – yet these are the same factors which can cripple it. 'A national body has to be real and powerful; its views have to be accepted or good reasons for objection have to be given', says former NAC chairman Rob Riley.[17] To date the NAC is the only

Aboriginal body which could claim to be representing all Aboriginal Australians (the Federation of Land Councils covers most but not all rural areas) and most politically conscious Aborigines concede the need for a successor national body – an independent body which can negotiate with the government from a position of strength. One proposal is that which has been put forward by Federal Minister for Aboriginal Affairs, Gerry Hand, to form an umbrella group of Aboriginal organizations to work with the new Aboriginal and Torres Strait Islander Commission. A new group formed in 1987 is the National Coalition of Aboriginal Organizations.

The Aboriginal Development Commission began operations in July 1980, taking over the functions of the Aboriginal Lands Commission, the Aboriginal Land Fund Commission and the enterprise vote of the DAA. It is an all-Aboriginal statutory body which also advised the DAA Minister on economic and social development. In 1980 it had 90 staff, most of whom were Aboriginal and a budget of $11 m which by 1986/7 had increased to $83 m. It was able to acquire land for Aboriginal communities and groups, lend money to Aborigines for housing and personal finance and business enterprises. However, the ADC has had important limitations. It is directly dependent for funding on the government and has therefore no continuity of finance. The ADC is appointed by the Ministers and members are not elected by or accountable to Aborigines. A great deal of the success of the ADC depended upon its relations with State governments, yet it has much less power for such a confrontation than the Commonwealth government itself. Certainly when the ADC has tried to buy freehold land for Aboriginal communities in Queensland and Western Australia there has been political and bureaucratic opposition. Given the immense needs of communities for land (and its ever increasing cost) it is doubtful whether the ADC could ever play more than a supplementary role in building Aboriginal independence.

Aboriginal groups have given a cautious welcome to a restructuring of the Federal Aboriginal decision making structure put forward by DAA Minister Gerry Hand in 1987. All Federal programmes, including the DAA and the ADC will be included under one streamlined structure, the Aboriginal and Torres Strait Islander Commission. The Commission will be an All-Aboriginal body responsible to the Minister. It will have a full-time Chairperson and 11 part-time Commissioners, six of whom will be elected by zone councils, one of whom will represent the Torres Strait Island community and the remaining four will be appointed. The whole structure will be accountable to 28 regional councils. The Commission is intended to begin functioning on 1 July 1988. It will take a number of years to evaluate its effects but to date it is the most radical attempt to bring Aboriginal people into the structure of government.

Social welfare programmes

When the Federal government took responsibility for Aboriginal affairs in 1967 it did not abrogate the role of State governments which continue to exercise powers over Aborigines. The numbers of Federal and State departments which have been involved in finance and administration have produced a bureaucratic maze, which employs large numbers of mainly white civil servants, but which has done little to change the inequalities under which Aborigines live. The most important welfare programmes have come from the Department of Aboriginal Affairs in Canberra. In 1986/7 Federal government expenditure for Aboriginal programmes came to $560m (about £250m) compared to $166m (£100m) in 1981.[18] From July 1988 it is intended that all funding on Aboriginal concerns will be channelled through the new Aboriginal and Torres Strait Islander Commission.

How successful has government intervention been? By all indicies Aborigines are massively disadvantaged compared to other Australians and the gap is still huge. Says Joan Wingfield, a Kototha woman, 'How can whites expect us to learn to live like them in only 21 years; after all could a white person learn to live in our complex lifestyle in the same time?'[19] External factors have also intervened. During the 1980s Australia has experienced recession unparalleled since the 1930s. There have been areas of quiet unspectacular achievements in housing and education, perhaps not easily visible, or where the effects will take a generation or more to assess. But most criticisms focus on the way in which funds are used. The majority goes directly on salaries and infrastructure but the most important component is given in grants to a range of Aboriginal groups – health, legal, welfare, education, arts, media, self-help and many others. In 1987 Federal funding went to 1900 of these groups,[20] generally on an annual basis and related to the achievement of specific targets. Activists argue that the uncertainty of continuing funding, excessive bureaucracy, inappropriate and unrealistic targets have made organizations less effective and slowed the rate of change. Radicals such as Michael Mansell see a more sinister element: 'They give us money to keep us quiet . . . we are the only liberation group in the world that is funded by the enemy'.[21] Given the lack of economic resources of most Aboriginal communities there will continue to be a need for government funding but for real progress there has to be a genuine – and creative – balance between accountability and autonomy.

Housing

In general Aboriginal housing conditions are very poor. In the cities blacks inhabit the most dilapidated and crowded inner city areas. In many country towns they live in humpies on the edges of the town without basic sanitation or other facilities. Many are homeless, camping out at night. When attempts have been made to house black families within the towns whites have often put up opposition, refusing to sell land or housing to black people or their housing organizations.

On the cattle stations and missions in the North and West conditions can be even worse. At Gordon Downs station, once owned by the Vestey company '. . . one hundred yards from the homestead – a beautiful green oasis . . . fifty blacks are camped near an ugly dustbowl. The housing included rusty car bodies . . .' At one mission station in Western Australia . . . 'The black camp 200 yards from the hospital, is a sprawling mass of tin huts, ramshackle shelters erected out of odd sheets of corrugated iron and petrol drums and a few flimsy canvas shelters strung over insecure frames . . .'[22]

Some attempts to alleviate the housing conditions of black families have resulted in significant changes in recent years. The Whitlam government began the process by providing financial support for Aboriginal co-operative housing societies which were then able to negotiate contracts directly with private consultants and architects. This sometimes led to gross waste, incompetence, lack of consultation and abuse of trust of the local community.

The basic cause of these failures was the refusal to recognize that housing occupies a different place in traditional Aboriginal society. European style housing implies a sedentary lifestyle, which is not true of many rural Aborigines. Many Aborigines want housing which is externally comparable with white housing, but which incorporates Aboriginal ideals into its internal arrangements. These generally imply more flexibility and less privacy than white Australians would care for. The most successful housing schemes have been those which have involved full Aboriginal consultation and participation, been relatively cheap, using local materials, and local black labour, and been easy for the owners to repair or extend if necessary.

Some of the most successful schemes have been carried out by the Land Councils in the Northern Territory. The Land Councils have employed designers, architects, and building contractors to work with communities on housing which is suitable for their needs. Anthropologists have spent much time in consultation as to the most suitable sites and layout. For example, people of different tribes and clans prefer to live separately – this not only reflects traditional social cohesion but significantly reduces fighting and alcohol-related crime. In urban areas such as Redfern in inner city Sydney, Aboriginal housing projects have led to significant improvements. This should not disguise the fact that the general standard of Aboriginal housing still remains well below that of non-Aborigines.

Education

While the policy ideal of the government has supposedly shifted from 'assimilation' to 'self-management' and 'integration' this shift has not been reflected in educational policy. 'Assimilation' has

failed not only because there was no genuine effort by governments to provide equal opportunities and facilities to Aboriginal students, but because this education in no way answered the needs of the Aboriginal community themselves. White education has tended to alienate the Aboriginal child from his or her family and community, to cause questioning and frequently rejection of its traditional values, without providing him or her with an acceptance in white society.

Black community leaders acknowledge the vital importance of education in black advancement. Today, and even more in the near future, Aborigines will have to negotiate with governments and multi-national mining companies, decisions which will determine their future. The intricacies of obtaining social service payments or applying for government grants require a facility to negotiate through the white bureaucratic system. In both city and bush black unemployment is high and Aborigines face extra disadvantages. What blacks do not want is a system which is totally ethnocentric, and which elevates white history and ideals over those of black Australians[23] and which adds further to their alienation. In this they are aided by the large segment of the non Anglo-Irish population which also wants a multi-ethnic curriculum. In addition the tribal communities of Northern Australia want an approach to education which allows for a combination of traditional skills with more conventional education.

The Whitlam era gave some impetus to the movement to black education. Two important decisions were made; firstly that wherever appropriate education should begin in the indigenous language of the children, and that, if possible, children should be taught by teachers from their own communities. Since there were not enough trained black teachers a scheme was launched whereby trained 'visiting teachers' (usually white) spent several days each month visiting remote outstations and assisting and training black resident teaching aides. Education departments in all States and the Northern Territory now have senior administrators with special responsibility for Aboriginal students, and special training programmes for Aboriginal teachers and teaching aides, but the supply falls far short of the demand.

In terms of conventional education the Aboriginal community has fared badly. In the mid-1980s only 4% of Aborigines were educated beyond 3rd form secondary school (about 15 years of age).[24] However changes have taken place, the most encouraging being the establishment of the Aboriginal Secondary Grants and Aboriginal Study Grants Schemes. In 1986 there were over 24,000 Aboriginal students at secondary schools, compared to 3,600 in 1967, and there were 15,800 Aboriginal Study Grant Holders.[25] After more than one hundred years of university education in Australia, at the beginning of the 1970s there were only two Aboriginal graduates; today there are over 100. (Many of these early graduates were sponsored by a scheme, Abscol, run by the Australian Union of Students.) Many black graduates are specializing in law as a practical measure to help their people, but it will be many years before there will be adequate numbers of Aboriginal doctors, teachers and other professional groups, thus furthering Aboriginal reliance on sympathetic white professionals. A new development has been the establishment of independent community-based educational institutions. One of these is Tranby Aboriginal Co-operative College in Sydney and its subsidiary Blackbooks which produces resources on and by Aboriginal people. It both supplements conventional education and promotes Aboriginal culture.

Employment

Aboriginal unemployment is high, although exact comparisons are not always easy to obtain. Unemployment in Australia has risen dramatically in the 1980s and is today over 8%. Those affected are predominantly young, unskilled, ununionized and live in rural or inner city areas. Aborigines fit many of these characteristics. According to figures from the Commonwealth Employment Service in 1971 there were 3000 Aboriginals reporting as unemployed which rose to 16,000 in 1981 and over 29,000 in September 1985.[26] Aboriginal unemployment is approximately 9 times that for other Australians. In order to deal with this problem there have been special employment schemes aimed at the Aboriginal community, including the Community Development Employment Project Scheme, whereby remote Aboriginal communities pool unemployment benefits plus extra government funds to provide continuing part-time employment for their members. In 1986/7 there were 61 projects with over 11,000 participants.[27] But this scheme does not assist urban Aborigines. As of 1985 there were 1400 Aborigines in the Commonwealth Public Service compared to 600 in 1979/80, an increase from 0.4% to 0.8% of the total. Most are employed in a few departments, such as the DAA and Social Security, and at a low level. What is needed are more Aborigines employed in a full range of public and private companies. In 1981 for example Qantas, the national airline, had two Aboriginal employees out of a total staff of 13,000 and Australia Post 63 out of 31,500.[28]

Health

Numerous enquiries into the state of Aboriginal health have all confirmed the fact that Aborigines suffer worse health than other Australians, that most Aboriginal sickness and disease is socially based and preventable, and that health problems are dealt with ineffectively by present government policies. For example a 1980 NSW government enquiry revealed that in comparison with the total population Aborigines have a disproportionate number of deaths from pneumonia, gastroenteritis, other diarrhoeal diseases, cirrhosis of the liver, pancreatitis, cot death and motor vehicle accidents. At all stages of life mortality rates were far higher than for the non-Aboriginal population. Infant mortality rates were more than four times higher for Aborigines (52 per 1000 compared to 12.2 per 1000); one in four Aboriginal deaths occurred before age 30 compared to one in 14 in the general population; life expectancy for an NSW Aborigine at birth is approximately 52 years – 20 years less than that of a non-Aborigine.[29] And this in a State where Aborigines supposedly have better than normal access to hospitals and medical services and where discrimination is less blatent than in other areas.

In the north and west of Australia two white introduced diseases which have long been eliminated from the white population have afflicted Aboriginal communities. Trachoma, a severe eye inflammation, can lead to full or partial blindness. Although the disease can be treated medically or surgically, the real problem is locating its victims and preventing its spread. It particularly affects young people. The National Trachoma and Eye Health Programme has done a great deal to identify the seriousness of the situation, provide remedial treatment and make recommendations.[30] Even so, in 1984 the Noahampa Health Council in central Australia found that nearly half of children under 14 years had follocular trachoma.[31] Leprosy appeared to have the world's highest attack rate in the Kimberly region with 107 per 100,000.[32] An especially worrying trend is the rising incidence of alcoholism, drug and substance abuse, especially petrol sniffing which not only has health implications but employment, law and justice ones also. While the Aboriginal infant mortality rate is slowly falling – one figure is 31 per 1000 compared to 10 per 1000 for whites – the death rate for young Aboriginal men is rising.

The causes of ill-health among Aborigines are political rather than medical – systematic neglect, vicious discrimination, overcrowded and insanitary housing conditions, poor diet, a forced change from a relatively healthy outdoor lifestyle to one incorporating the worst aspects of white Australian life, leading to a loss of purpose and dignity in life. The Commonwealth commissioned the Programme Effectiveness Review to report on progress in this field. Its 1980 report found that $80 million of Commonwealth funds allocated to Aboriginal health programmes in the States in the previous five years had been of little use and recommended the direct involvement of the Commonwealth Department of Health, and more funds directed through Aboriginal bodies.[33]

Certainly the involvement of the Aboriginal Medical Services has led to the greatest improvements in health. There are now 54 such services, many in remote areas. As a marginalized, often inarticulate people, Aborigines often feel alienated by white medical services and prefer to be treated by fellow Aborigines in a more informal setting. The longest established service is the Sydney AMS which opened in the inner city area of Redfern in July 1971. The driving force behind the centre were two blacks, Gordon Briscoe and Shirley Smith ('Mum Shirl'). From initially operating a few hours of voluntary service a week, it became so popular within a few months that it now runs a full-time service. It has a

ABORIGINAL AUSTRALIANS

On 19 October 1993 the Australian Labor Prime Minister, Paul Keating, promised indigenous Australians a 'new deal'. This historic agreement recognized, for the first time, that Aborigines and Torres Strait Islanders are the original possessors of the land. It also aimed to promote reconciliation between indigenous and other Australians. The agreement was the culmination of years of active campaigning by Aborigines and their supporters. There were many milestones along this path: the 1967 referendum which gave the Commonwealth Parliament specific powers to pass laws for Aboriginal people; the 1975 Racial Discrimination Act (RDA); the 1976 federal Aboriginal Land Rights Act; the gradual abolition of discriminatory state laws; Aboriginal protests during the 1988 bicentennial of European settlement – but, ironically, it was a judgment by the High Court of Australia which will probably prove to have had the greatest impact of all.

The Mabo Decision

The Mabo judgment was delivered on 3 June 1992. The court case to which it related had begun a decade earlier when Eddie Mabo, and four other elders from Mer (Murray) Island in the Torres Strait, asked the court to decide who owned the island – the islanders or the Queensland government. The case was the first opportunity since the High Court's establishment in 1901 for it to confront the central question of the existence and nature of native title in Australia.

Although the concept of native title had been recognized in other settler states, such as the USA, Canada and New Zealand, it had no recognition in Australian law. Rather, it had always been maintained that at the time of European discovery and settlement, Australia was in law *terra nullius* – 'land belonging to no one' – thus allowing the new British settler regime and its successor administrations to claim the land as their own. Whatever its legal status, *terra nullius* had always been a fiction, since there were well-attested accounts of the existence of indigenous populations with their own territories.

The problem was to find recognition of this prior occupation in British-Australian common law. Aboriginal culture is primarily traditional, oral and transitory; Aboriginal communities did not leave written records or permanent structures to define their lands and rights. From 1788 onwards the tribes were subject to genocidal attacks by white settlers, dispossessed of their lands, driven into missions and reserves, and exploited as cheap labour or neglected as a dying race. Many tribes, clans and languages, especially those of the eastern coast, were wiped out.

CHRISTINE OSBORNE PICTURES

Arts student at Sydney University

Remarkably, others survived, some because of geographical isolation and others because they were marginalized outcasts on the fringes of the towns.

The Mabo case involved extensive evidence from Eddie Mabo and other islanders on their customs and traditions and the meaning of the land to them as individuals and as a community. The plaintiffs drew on history, anthropology, administration and land, and constitutional and international law to support the case which the Mer Islanders knew intuitively – that the island and its gifts belonged to them alone.

The High Court supported that view. Judge Brennan stated, 'Native title to particular land ... and the persons entitled thereto are ascertained according to the laws and customs of the indigenous people who, by those laws and customs, have a connection with the land.' In essence, the court stated that the common law of Australia recognized 'native title' where this title had not been 'extinguished' by valid acts of the various successor states in Australia. This last expression refers to other recognized titles, such as private property and pastoral leases, where native title may have been extinguished.

The Mabo judgment means that indigenous peoples who can prove a connection with particular areas of crown land can assert their native title over that land. Although large areas of Australia are unalienated crown land, these are mainly remote areas in north and central Australia, some of which (in the Northern Territory and South Australia) have

been already proclaimed Aboriginal land under federal and state acts of parliament. The judgment opens the way for many more communities, particularly in Queensland and Western Australia, to claim land under native title.

For the majority of Aborigines in southern and eastern Australia who live in towns and cities, where other forms of title are prevalent, the Mabo judgment has a more ambiguous significance. Although the judgment recognizes that occupation of land does not have to be continuous and that customs and laws may change over time, if title has already passed to a third party there is little chance of reclaiming it, even when there is strong historical evidence showing that the land was unlawfully dispossessed. Although a majority of the High Court decided that there was no legal requirement to pay compensation for loss of lands, the practical and moral questions around compensation remained unanswered.

The Mabo judgment also left open the means by which indigenous Australians could claim native title over lands. The court process is lengthy and costly. Another possibility was for the government to set up a special tribunal (such as the Waitangi tribunal or the Northern Territory Land Rights Commissioners) to determine cases, but this is also a lengthy process. A much-discussed option is for a treaty between the Australian government and Aborigines – this would have the advantage of considering all aspects of relations and not just land claims but it would take years of negotiation to establish and might still leave many aspects unresolved. A fourth option would be to explicitly include a section on Aboriginal rights in the Australian constitution. This would not necessarily exclude other options but has a practical drawback; in Australia, constitutional change is subject to referendum and is almost always unsuccessful. It was clear therefore that Mabo had a significance beyond the resolution of land claims and needed a political resolution.

Implications of Mabo

The Mabo judgment produced intense interest and discussion within Australia. The strongest state opposition came from Queensland and Western Australia where mining and pastoral interests are prominent. The Northern Territory legislature requested the Commonwealth government to act immediately to pass laws to validate existing land titles in the territory, thus extinguishing remaining native title. However, such legislation could be permitted only on terms and conditions (such as consultation, negotiation etc.) which would apply to all Australians. Ignoring this would breach the RDA of 1975 as well as international conventions ratified by the Australian government. There were calls to amend the RDA in order to secure existing titles.

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Yirana College, Alice Springs

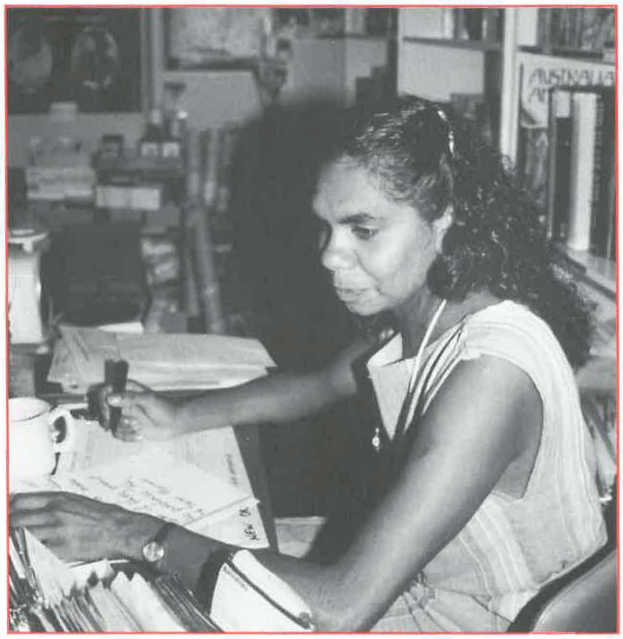
Industry and, in particular, the representatives of the mining and pastoral sector, claimed that without secure title, future investment would not be forthcoming. An advertisement by the Australian Mining Industry Council in mid-1993 began, 'Is this really one Australia for all Australians?' and went on to say that the Commonwealth Government's Mabo proposals would 'lock up the economic future of Australia'. It called for all existing land titles to be confirmed, that Aborigines should have no right of veto over mining or exploration, and that Aboriginal land should be treated on the same basis as any other land. Despite these scaremongering tactics, most Australians remained unconvinced and surveys have shown that the majority do not feel unduly threatened by Mabo and its consequences.

While Aborigines and Torres Strait Islanders in general welcomed the court's findings, there were conflicting views as to its implications. A radical Aboriginal lawyer, Michael Mansell, said that the court 'propounded white domination and superiority over Aborigines by recognizing such a meagre form of rights over land'.[1] Others saw it as a go-ahead for new land claims over areas which had formerly been outside the claims process and as a precursor to more radical forms of self-government, although the judgment says nothing about self-government, sovereignty or independence. In June 1993, as the Wiradjuri people of New South Wales lodged a High Court claim for land once occupied by them, and which amounted to one quarter of the state, Aboriginal lawyer Paul Coe stated: 'We're seeking more than native title. We're seeking sovereignty.'[2]

A year after the judgment, the revolutionary implications for Australian Aboriginal communities were still reverberating. On 3 June 1993 the Commonwealth government released a white paper on its response to the question but it raised as many issues as it tried to discuss. It was criticized by Aborigines for concentrating on land management issues, rather than on rights and justice for indigenous peoples. In early August, representatives from grassroots Aboriginal organizations, meeting at Eva Valley in the Northern Territory, rejected this approach and urged 'total security for sacred sites and heritage areas'. It urged a slower, more consultative, approach and expressed fears that prospective Mabo legislation might, in some areas, prove weaker than existing land rights legislation. It called for 'native title' to be replaced by 'Aboriginal and Torres Strait Islander title'.

In the succeeding weeks, as the announced deadline for federal legislation came closer, the Mabo debate reached fever pitch. Delegations representing different interest groups lobbied in Canberra. On the one hand were the mining, pastoralist and commercial groups, on the other were Aboriginal organizations and their supporters. There were divisions in the ruling federal Labor government right up to cabinet level and state governments were also divided as to what legislation might be acceptable.

After a near-breakdown of negotiations and a last-minute



CHRISTINE OSBORNE PICTURES

'Black Bookshop', Sydney

compromise, the Commonwealth Government announced an agreement on 19 October 1993, to be given substance in new legislation. Lois O'Donoghue, the Chairperson of the Aboriginal and Torres Strait Islander Commission said: 'We have been willing to compromise in the interests of a truly national settlement ... we have secured a remarkable settlement and an historic agreement'.

The main points of the agreement were given substance in the Native Title Bill introduced by Prime Minister Keating into the House of Representatives on 16 November. It contained the following provisions among its 238 clauses:

- Recognition and protection of native title with the force of common law.
- Aboriginal land claims could be heard through either a National Native Title Tribunal and/or the federal court or through a recognized state/territory body.
- Validation of all previous grants of freehold or leasehold interests, which would otherwise be invalid because of the existence at the time of native title over the land. The cut-off date for validation would be 31 December 1993. Mining leases do not extinguish native title.
- Aborigines who already own or who purchase pastoral land will be able to obtain a form of native title over it, when a tribunal decides that native title would have existed had a pastoral lease not extinguished it.[3]
- Native title holders will have a 'right to negotiate', although not veto, over licenses for mineral exploration and exploitation. If agreement is not reached, the government (federal or state/territory) has the power to decide.
- Compensation is to be provided for past or future acts extinguishing or impairing native title and a land acquisition fund is to be established to benefit the majority of indigenous Australians who have been dispossessed too thoroughly to be able to assert native title.

The Native Title Bill was vigorously opposed by the Liberal and National Party opposition. It was finally passed in the Senate after six days of debate in which the smaller parties agreed to support the government and it was ratified by the House of Representatives on 22 December 1993 to become law on 1 January 1994. In November, the conservative government of Western Australia had passed its own legislation extinguishing native title. This is likely to face a constitutional challenge.

Reconciliation

Indigenous needs go beyond land rights. The need for a wider political settlement between Aboriginal and non-Aboriginal Australians had predated Mabo but the judgment gave it a new urgency. The Labor government's commitment to transform Australia into a republic has added impetus to the debate.

The Council for Aboriginal Reconciliation was established, by unanimous support of the Commonwealth Parliament, in September 1991. It consists of 25 members, including 12 Aborigines and two Torres Strait Islanders, and has as its aim 'a united Australia which respects this land of ours; values the Aboriginal and Torres Strait Islander heritage and provides justice and equality for all.' It is seeking the views of indigenous communities in order to promote reconciliation at federal, state and local levels.

Another urgent issue is the relationship between Aborigines and the Australian justice system. The Royal Commission on Black Deaths in Custody released its five-volume national report in mid-1991 covering investigations into the deaths of over 100 Aborigines (mainly young men) over a 10-year period. While the Commission made many recommendations to improve practices of policing and detention, Aborigines have been deeply disappointed by the lack of effective action.

Routine police violence against Aborigines continues – in one survey 88 per cent of young Aboriginal people interviewed reported being hit, punched or slapped by police.[4] Aborigines are more likely to be taken into police custody than non-Aborigines – in 1988 in Western Australia the rate was 43 times greater.[5] Aboriginal feminists are seeking new ways to deal with violence against women, inside and outside the Aboriginal community.

In all areas of life Aborigines remain disadvantaged. In the health field, 24 Aboriginal babies in 1,000 died in Western Australia in 1986, compared to 10 per 1,000 non-Aboriginal babies,[6] while Aboriginal men are more likely to die of respiratory diseases, in traffic accidents or in street violence than non-Aboriginal men. Sexually transmitted diseases, including HIV/AIDS pose a new health threat to traditional communities.[7] Most Aborigines continue to live in poverty, unemployment rates are high and, without access to viable land, there is little hope for sustainable development.

Nevertheless there have been, and continue to be, positive changes. Probably the area of greatest improvement has been in education. In 1992 there were over 42,000 Aboriginal and Torres Strait Islander students receiving Abstudy (Aboriginal scholarships) in primary and secondary schools. Over 30 further and higher education institutes offer courses for, or of special relevance to, Aborigines while the numbers of Aboriginal graduates have increased dramatically. Furthermore, there are efforts to bring an

REX FEATURES

Yothu Yindi

Aboriginal perspective into all Australian education. Another high-profile area has been in Aboriginal arts, ranging from the famous 'dot paintings' of traditional communities in central Australia to musical theatre by urban youth to 'tribal rock' by the rock band Yothu Yindi.

Endnotes

1. *Aboriginal Law Bulletin (ALB)*, August 1992
2. *The Guardian*, 5 June 1993
3. This provision could have its greatest potential impact in Western Australia as Aboriginal communities use compensation to buy pastoral properties
4. *ALB*, April 1991, p. 6
5. *Ibid.*, p. 14
6. *Koori Mail*, 11 August 1993, p. 5
7. *Ibid.*, p. 3.

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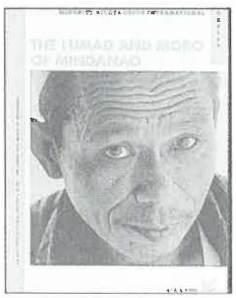

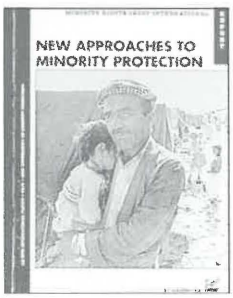

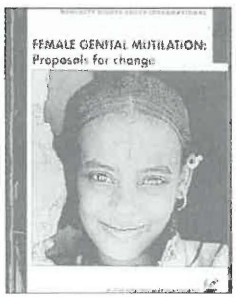

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black governing body, and black administrative and clerical staff although there are still insufficient black medical staff.[34] The service has cut malnutrition among Aboriginal children in the inner city areas by 90% in three years due to an intensive medical campaign involving a nutrition programme and Vitamin C therapy and also treats drug and alcohol addicts.[35] A new approach to the problems of alcoholism, drug taking and petrol sniffing has been shown by groups in the Northern Territory and Western Australia by taking a community oriented approach. This approach looks to change the community instead of the abuser, by ways which range from alcohol rehabilitation centres, alcoholics anonymous groups, community training teams and liaison between Aboriginal communities, shire councils and police to destroy liquor brought into areas against the wishes of the community[36]

Law and justice

There can be no doubt that for the vast majority of Aborigines Australian law and its agencies act as instruments of coercion rather than protection. An Aboriginal man or woman is more likely than a white to have his or her home searched without a warrant, to be charged with a minor offence, to be refused bail, to receive a jail sentence rather than a fine, and a longer sentence if jailed. A few figures from the many available must suffice to illustrate the situation. In 1986 14.5% of the prisoner population were Aborigines and Torres Strait Islanders. In Western Australia and the Northern Territory the figures were 32% and 66% respectively.[37] And this pattern starts early in life; in NSW for example 60% of Aboriginal prisoners are under 25 years of age.[38]

There are many accounts of Aboriginal fear of the police and jail, and of police abuse and neglect. In most towns and cities the police are blatantly racist in operation. The evidence that the Northern Territory Legal Service gathered of police shootings, brutality, cell beatings and false arrests convinced the then Whitlam government that a Royal Commission should be set up to investigate the Alice Springs Police Force. (The succeeding conservative administration cancelled the Commission.) In remote areas many whites still take the law into their own hands. In Kunnunurra, in the Kimberleys, two Aborigines caught in the stockroom of a local motel were chained to a car towbar overnight, had their heads shaved in Mowhawk cuts and were taken to the local police station in chains.[39]

After arrest many blacks found it impossible to comprehend the intricacies of the white legal system, lacked defence lawyers, and in most cases, convinced of the hopelessness of their situation, pleaded guilty. The Aboriginal Legal Services were established to provide a basic range of legal services. At present there are eleven independent Aboriginal Legal Services operating through 38 offices, funded by the Federal government. The results have often been dramatic. The NSW Legal Service, headed by Paul Coe, had its first full time lawyer, Peter Tobin, a white activist, based in Brewarina in western NSW. The town had one of the State's worst records for convicting blacks, especially for street offences such as drunkenness, offensive language and vagrancy. Peter Tobin persuaded Aborigines to plead 'not guilty', had every case defended, and within a year had increased the rate of acquittals and dismissals (for first offenders), and reduced the sentencing of convicted persons to prison, to the State average.[40] However in remote areas some Aborigines still go to court undefended or without the use of an interpreter. The Aboriginal Legal Services have been severely affected by cutbacks in Federal funding and are increasingly relying on volunteer workers.

The role of alcoholism among the Aboriginal community should be mentioned. There is no doubt that this is a problem in the health and law field, but it is also a symptom of the disintegration of traditional culture and white insensitivity and brutality. 'There is no basis in the belief that Aborigines in the majority of cases are alcoholics. It also should be noted that there are over 600,000 white alcoholics in Australia . . . Aboriginal people . . . drink not as alcoholics but as abuses of social drinking practices and mostly in customary groups' . . .[41] Drunkenness on the part of blacks has been generally used as an excuse for arrest and conviction. Blacks themselves are aware of the problems caused by excessive drinking and have tried to control it. Some communities have established and managed canteens with limits on the kind and quantity of liquor sold, others issue special permits to drinkers, and others run self-help programmes. Some communities feel that the only way to control alcoholism is to ban liquor in whole or in part from Aboriginal communities but this is not always possible or enforcable. Others have started their own alcohol prevention self-help projects.

In addition many communities would like to see Aboriginal Law, as embodied in the decisions of the elders of the tribe, given at least equal status with Federal and State law within tribal groups. This would enable the communities to preserve traditional cultural mores and taboos, and to administer justice in a meaningful context. In 1986 the the Australian Law Reform Commission produced a two volume report 'The Recognition of Aboriginal Customary Laws' which proposed that Australian law should recognize some aspects of customary law and a more democratic and flexible administration of law in Aboriginal communities. Some of its recommendations were implicit in a court judgment in November 1987 when an illiterate Aboriginal artist who was convicted by a white jury of theft of Aboriginal art was cleared by the judge. The defence lawyer had argued that the artefacts were made by Aborigines before 1788 and therefore English property law did not apply to them.[42]

Most States have some legislation prohibiting discrimination mainly on the grounds of colour, race or sex. The exceptions are Queensland and Tasmania whose governments have given no indication of introducing such legislation. At the Commonwealth level the Labor government's Racial Discrimination Act of 1975 gave effect within Australia to the UN International Convention on the Elimination of all Forms of Racial Discrimination. It is currently implemented by the Human Rights and Equal Opportunity Commission (HREOC) set up in 1986. 30% to 40% of the complaints of alleged discrimination come from Aborigines and mainly concern the refusal of basic services and accommodation.[43]

The whole crisis of Aboriginal incarceration has been highlighted by the recent accounts of black deaths in police custody. There have been over 100 such deaths since 1980. Most were young men, living on reserves and in isolated country towns and arrested on minor charges, mainly concerned with alcohol, or without charges, who have died in mysterious circumstances. Frequently their deaths have been described as suicides, although it appears that either police brutality, inaction or neglect were involved. For example, six young men died in Queensland 'watchhouses' (small jails on reserves used only for pre-trial Aboriginal prisoners) between November 1986 and April 1987, all supposedly after hanging themselves. Queensland reserves have a homicide rate 10 times the national average. After a concerted campaign by a new Aboriginal organization, the Committee to Defend Black Rights, the government finally announced a Royal Commission in August 1987 to report and make recommendations by 30 June 1988. However, many felt that the enquiry was too limited in its scope since it was only concerned with specific deaths in custody and not the broader social issues of the relations between Aborigines and the police. 'Aborigines feel that there have been too many cover-ups. The deaths have been too easily and conveniently written off as suicides, or deaths by misadventure or natural causes', says Vanessa Forrest from the Committee to Defend Black Rights.[44]

The hearings, known as the Muirhead Royal Commission into Aboriginal Deaths in Custody, began in November 1987, but progress has been slow due to the increasing number of cases and the need to establish the circumstances surrounding each death. In April 1988 it was announced that there would be a radical restructuring of the Commission with three new Commissioners and the reporting date extended to December 1989.

PART III – Land Rights

Land rights and mining

The importance of the land to Aborigines has been emphasised in this report. The main struggle of the Aboriginal people has concentrated on gaining permanent rights to land which should ideally be inalienable freehold rights vested in perpetuity in a responsible Aboriginal body, preferably a Lands Council, with day to day administration by an elected Aboriginal Community Council. Land rights involve changing property laws, effected and administered by the Federal government and seven State governments. Progress has been uneven, as some governments have enacted Land Rights legislation and others have not.[45]

Aborigines have based their claims to land on four main premises. Firstly, they have claimed land that is traditional land, where there have been Aboriginal tribespeople in continuous occupation and where a traditional lifestyle has been maintained. In many ways this is the easiest claim to make and such claims have been successful in the Northern Territory and South Australia. But Aborigines living on traditional land are mainly to be found in the north and the central deserts and few Aborigines in southern Australia would be included. Therefore many Aboriginal people have claimed land on the basis of colonial associations – i.e. they were pushed on to reserves by white authorities, but now they wish to own and manage those reserves on their own behalf. This requires detailed historical investigation to sustain these claims – a task for the growing band of Aboriginal historians. Thirdly, land is claimed on the basis of need, without any necessary specific associations with Aboriginal groups. This involves channelling detailed applications through a bureaucratic maze. Since few Aboriginal communities are able to buy freehold land on their own behalf, the main agency has been the Australian Land Fund Commission (and later the Aboriginal Development Commission), which is able to buy properties for Aboriginal people. Its efforts have been seriously blocked in both Western Australia and Queensland. Finally in cases where land cannot be returned Aborigines have asked for compensation for stolen land and for past sufferings. They feel that such compensation is a small price to pay for the whole Australian continent taken from them after 40,000 years continuous occupation. As yet this claim has not been successful.

Aborigines have also asked for their sacred sites to be protected by government legislation. Sacred sites are areas of special religious significance, connected with the 'Dreaming' and often associated with a particular animal or spirit. (They are the Aboriginal equivalent of cathedrals or temples). If they are disturbed in any way the tribe will suffer illness and death.[46] Most governments have some legislation protecting sacred sites, but some sites are highly secret and known only to the tribespeople.

Land rights mean economic and social autonomy for Aborigines. The 'outstation movement' is an expression of this autonomy. This movement involves Aboriginal communities on reserves moving away from government and mission stations to live in small tribal bands – 15 to 100 people strong – in a traditional or neo-traditional lifestyle. In many areas wild game is no longer sufficiently abundant to support the community, and so some agriculture or herding is practised. To be viable an outstation requires a regular water supply (which in desert areas means a bore and a windmill), a four wheel drive vehicle, airstrip for a light plane and radio communication and possibly a small store. There are now hundreds of outstations which have been officially recognized (mainly in the NT and WA) and dozens of others that have not (especially in Queensland). Despite the problems posed by isolation and lack of technically trained personnel the outstations benefit Aborigines by increasing their self-confidence, improving their health, reducing alcoholism and strengthening their traditional culture and way of life.[47]

Undoubtedly, the greatest threat to Aboriginal autonomy are the mining companies in alliance with conservative governments. Since World War II Australia has been increasingly recognized as a mineral rich nation, with most of the discoveries in the north and west, generally on or near Aboriginal land. On all privately owned lands minerals remain the property of the Crown and it is the government of the day which has the power to grant leases to mining companies, although the owner receives some royalties. These conditions apply to land occupied by Aborigines, and, in practice, the manner in which reserves and missions are administered and the political weakness and isolation of Aboriginal communities have made it easier for mining companies to move in.[48] Aborigines are adamant that complete control over mining should be an integral part of any land rights legislation, although to date this has not been achieved.

Cattle-ranching did not threaten the Aborigines to the same extent as mining. The station owners certainly exploited their workers but they left the land virtually unscathed and permitted Aborigines access to their traditional lands. The miners, on the other hand, will use devastating strip-mining techniques to uncover uranium, bauxite, lead, zinc and copper ores. In all, it is planned that hundreds of square kilometres of top soil will be removed, taking with it the trees, rocks, streams, meeting places, hunting grounds, sacred sites and their interlinking paths. The culture of the affected peoples simply cannot survive this onslaught. It is easy to understand why many Aborigines have repeatedly stated that they would greatly prefer to do without the wealth of mining royalties in order to retain their ancestral lands undisturbed and so protect their culture. There are some instances where Aborigines have worked with mining companies, and mining companies have respected Aboriginal wishes as regards the land and sacred sites, but these are rare.[49] In some cases Aborigines have been forced to accept mining that they did not want (see sections on NT, WA, Queensland). In effect the Aborigines can either agree to the mining and negotiate royalties or refuse to sanction the mine, which leaves them without a say in the royalty payment when the government allows mining to begin.

Two Australian institutions have played a significant role in the Aboriginal land rights struggle. The Christian churches have published material on the struggle and have lobbied politicians and human rights organizations. The Uniting Church sided with the Aborigines at Aurukun and Mornington Island in their struggle with the Queensland government. The Australian Council of Churches and the World Council of Churches have funded some Land Councils. All major churches united to support Aborigines at Noonkanbah. During his 1986 visit to Australia Pope John Paul II said at Alice Springs, 'for thousands of years you have lived in this land and fashioned a culture that endures to this day . . . which shows the lasting genius and dignity of your race, [it] must not be allowed to disappear . . .'[50] Unfortunately not all churchpeople are so sympathetic and there have been many instances where the churches still act as paternalistic guardians. The 20,000 strong United Aboriginal and Islander Christian Congress, led by the Reverend Charles Harris, has taken a radical stand inside and outside the church. The Australian Council of Trade Unions and other union organizations have played a role in restricting mining operations, notably at Noonkanbah.

The Commonwealth Government

Owing to the Commonwealth government's direct control over the Northern Territory (a relationship which has changed recently owing to the Territory's internal self-government over most matters), the Labor government (1972-75) used the NT as the prime site for protecting Aboriginal land rights. The government established an enquiry, headed by Mr Justice Woodward, to investigate ways of recognizing and establishing Aboriginal land rights under existing law. The Woodward Report, issued in 1974, recommended that Aboriginal reserves be returned to Aboriginal ownership, that vacant Crown land could be claimed by Aboriginal communities, (the claim to be decided by a Land Commissioner) and that Aborigines could buy land from white owners if these owners wished to sell. Aboriginal interests would be represented by democratically elected Land Councils with access to independent legal advice. Most of the Report's recommendations were incorporated in the Aboriginal Land Rights (NT) Bill on 5 November 1975. However this Bill was never passed since the Labor government was removed from office on 11 November. The new Liberal-Country Party government, which had opposed the Labor Bill, introduced its own, much diluted, bill which reflected the political interests of pastoralists and mining companies. The amended Bill was passed through Parliament on 16 December 1976 and proclaimed on 26 January 1977 – Australia Day.

It was not until the return of another Labor government, this time under Prime Minister Robert Hawke, in 1983 that the Commonwealth undertook a new initiative in land rights. It was ALP policy to implement a national land rights policy which would grant secure tenure to Aboriginal groups occupying traditional land; allow groups to exercise a veto over mining; protect sacred sites; pay royalty equivalents; and negotiate compensation for the dispossession of land. These points became generally referred to as the 'five principles'. However it was felt that progress towards uniform legislation would be relatively slow; there was a need for consultation with Aborigines and others who might be affected as well as the State governments. Therefore it was decided to enact a temporary measure which aimed to protect sacred sites on an Australian-wide basis. The 1984 Aboriginal and Torres Strait Islander Heritage Act was intended to last for two years until more comprehensive legislation was enacted; it has since been extended and stands as the only national legislation on land rights which applies throughout Australia. However it is essentially a protective rather than an extensive mechanism, and, despite its provisions, sacred sites are sometimes still destroyed.

Fear of the effect of land rights legislation, and perhaps also greater government control, led to fierce opposition from the mining and pastoral sectors. Led by the largest mining companies the subsequent campaign against the national legislation played on the fears and ignorance of most white Australians. Aborigines were portrayed as an especially privileged section of the population who could claim rights to which other Australians were not entitled, or conversely, as too gullible and inexperienced to manage land which might be given to them. There was much talk of 'white stirrers', outside troublemakers who could manipulate naive Aborigines. Australia's financial future was shown as threatened by Aboriginal intransigence over mining. At a time when white unemployment was at one of its highest points such arguments convinced many. In addition the government's watchword of 'consensus' meant not angering the business community too deeply. The combined effect of such pressures meant that from 1984 the Federal government made a retreat from its previous commitments. It also became clear that State governments, even Labor party ones, were not likely to lightly hand over powers which they possessed. An election in Western Australia and the defeat of separate legislation in the State which would have conferred a limited measure of land rights only increased these pressures.

In 1985 the government announced that it had decided not to press ahead on the original basis of the 'five principles' but to recast these in a new form of a 'preferred national land rights model', which, it was claimed, still retained a relationship to the 'five principles'. Many doubted this; for example the decision as to whether mining would proceed was left to the government and not to the Aboriginal community nor were royalties for minerals to be paid to the community. Most Aboriginal organizations rejected the new model as did many of the States. By March 1986 the Federal government appeared to have rejected almost entirely the concept of the national policy on land rights. The Minister stated that the situation between and within the States was so different that no one model could apply and that to go ahead with an attempt to legislate would have been prolonged and expensive. He did not completely dismiss the idea of national legislation but felt that it should only be used as a resource if negotiations with the States completely broke down. But the Federal government has paid a high price for the abandonment of the 'five principles'; Aboriginal disillusionment with the role of the Commonwealth reached new and bitter heights for progress in the States remains limited and piecemeal. The backdown on land rights has been paralleled by a retraction of an ALP decision not to exploit new uranium resources.

Australia's smaller States and the Australian Capital Territory have some lands rights legislation but since the Aboriginal population and the areas involved are small they will not be discussed in detail. The Australian Capital Territory consists of the national capital, Canberra, and a small enclave on the south coast, Jarvis Bay. Some Aborigines live in Canberra and work as civil servants, and there is an Aboriginal fishing community at Wreak Bay. There is no legislation specifically applying to Aborigines, and no land rights as such, but the community at Wreak Bay has negotiated for a lease and preferred fishing rights. In Victoria legislation passed in 1987 gives inalienable freehold title to two communities and a number of others have been given small grants of land. In Tasmania Aborigines have been active in drawing up land claims. In 1978 an Aboriginal Lands Trust was established and unalienated portions of Cape Barren and other Bass Straits islands transferred to the Trust. The only action so far taken by the Tasmanian government seems to be to recognize the existence of its citizens of Aboriginal descent but no action has been taken on their behalf.

Northern Territory

By November 1985, titles had been handed over to land totalling 458,000 sq.kms. with a further 26,000 on leasehold.[51] The titles are held by Aboriginal Lands Trusts and are administered by three Aboriginal Land Councils; the Northern Land Council, the Central Land Council and the Tiwi Land Council. It is the responsibility of these Councils to consult with the traditional owners of the land and to act in accordance with their wishes. Over one third of the Territory's land has gone into Trust by this method. The Act also provides for an Aboriginal Land Commissioner to investigate claims to traditional land lying outside reserves and claims are still pending on areas which are vacant Crown land. Claims have been made, or are expected to be lodged, over another 10% of the Territory's area, all of which is vacant Crown land. The lodging of a claim does not mean that it will be automatically granted. The Aboriginal Land Commissioner (a judge of the NT Supreme Court) has to have regard for other interests when hearing a claim, such as fishermen, pastoralists and tourists. (Crown land available for claim does not include land in a town, station properties or land owned and leased to other people.) Since claims can only be heard from traditional owners, Aborigines from other areas are not able to make claims to areas to which they have no traditional ownership.

The 1976 Act has already been amended and there are continuous attempts by the NT government to reduce its impact. In 1979 the NT Legislature expanded the boundaries of Darwin from 142 sq. kms. to 4,350 sq. kms. to make invalid the claims of Larrakia and Wagait peoples. The boundaries of the few large towns in the NT are being similarly enlarged. Despite this in September 1979 the Larrakia community gained title to their land at Kulalak (near Darwin), after eight years of protest through their association, Gwalwa Daraniki.[52] Land claims take many years, sometimes for entirely legitimate reasons, but at times because of expensive and protracted litigation by parties opposed to the claims, and which is placing severe strains upon the legal and financial resources of the Land Councils. The Warumungu and Kembi claims have been pending since 1978 and 1979 respectively. There have been allegations that prominent conservative politicians have attempted to impede the hearings of these claims and that they have interferred with the normal workings of land claims procedures.[53] The NT government is currently pressing ahead for full statehood and to replace Federal land rights legislation with its own laws. At the present time Federal legislation has precedence, a position that the Land Councils wish to maintain. The Central Land Council has stated that if the NT government does acquire normal state powers it will be to the detriment of present and future claims by Aborigines.[54] But despite these attempts to continually whittle away the spirit of the Act there is no doubt that Aboriginal communities in the NT have benefitted socially and economically by the legislation. They now have a permanent stake in the land, and have gained immensely in self-confidence as a people.

However from the Aboriginal viewpoint the legislation also has serious limitations. The earliest reserve proclaimed in the NT was in the Tennant Creek area in the latter part of the 19th century. After the First World War a number of reserves were proclaimed near various Christian missions, including Groote Eylandt, Oenpelli, Daly River and other places. In 1931 the Arnhem Land reserve was proclaimed and this covers most of the north-eastern corner of the Territory. Aborigines were encouraged to leave their land and come to the missions for health, education and other reasons until by the end of the 1960s most of the Aborigines of Arnhem land were living permanently at the settlements and missions, and only occasionally visiting their traditional country. But by leaving their traditional territory some groups have lost the right to claim the land under the new legislation.

Nor do Aborigines have complete control over whether or not mining should take place. Aboriginal communities have a limited veto over new mining, which can be over-ruled by both Houses of

Parliament if they agree that it is in the 'national interest'. But any mining company granted a lease before the 4 June 1976 can go ahead without Aboriginal permission, and many companies rushed to stake claims before this cut-off date. Aborigines will receive some royalties from minerals but they have consistently said – to little avail – that they would prefer to lose the royalties, rather than suffer the high social costs of mining which they have seen blight other Aboriginal areas.

During the 1960s it was realized that the Arnhem Land Aboriginal Reserve had considerable potential for mineral development. Manganese has been found at Groote Eylandt and is being exploited by BHP through its subsiduary GEMCO, bauxite was found at Gove, and uranium in the Alligator Rivers region. At Gove in Eastern Arnhem Land, the coming of Nabalco in 1969 has had a disastrous effect on what was then considered to be the most culturally intact Aboriginal society in Australia. Their land has been covered with mining scars, and destroyed by red mud pollution. Bauxite mining has killed the crabs in the mangrove swamps and affected off-coast fishing. The Nabalco lease will not expire until 2053.[55]

The biggest mineral issue currently facing Aborigines is the exploitation of the uranium reserves in the Alligator Rivers Region. Most attention has been focussed on the Ranger mine which was the subject of one of the world's most detailed inquiries into uranium mining, the Fox Commission.[56] Traditional Aboriginal land owners made it plain at the time that they opposed mining and the Ranger inquiry has acknowledged that opposition. It recommended that mining should go ahead but that only one uranium mine at a time should be allowed to operate (this recommendation has been ignored). A clause in the Land Rights Bill specifically authorized the go-ahead of the Ranger mine without Aboriginal consent. The Northern Land Council was forced to negotiate with Ranger where they attempted to gain free-market royalties. When the NLC hired internationally expert lawyers to negotiate with Ranger to return a large part of 'excess profits' to the community, the government intervened and the NLC were forced to accept the government-fixed royalties. In a last effort to save their land the NLC offered to turn Arnhem Land into a National Park, under Aboriginal custodianship. This area has become Kakadu National Park. But this will not stop the mining going ahead in selected areas. The NLC signed the Ranger agreement for the Jabiru area in November 1978 and the Narbalek agreement for Jabiluka in November 1981. Despite the attempt at a process of consultation with Aboriginal traditional owners, most Aborigines felt confused and pressured by the speed of the proceedings.

The very scale of the mining at Jabiru and Jabiluka has created its own problems. Royalty payments to Aboriginal communities came suddenly and appear large by previous standards. Many whites have accused Aboriginal communities of financial mismanagement and wasting payments on alcohol and consumer goods with little relation to real Aboriginal needs. For example Jabiluka mine over 25 years was expected to yield uranium worth 18 billion Australian dollars. The initial payment to Aborigines from Jabiluka before it started operating amounted to $9m although part of this money was a loan to be paid back by enterprises started by Aborigines with the capital. Indications are that royalties have not been misused. Of the Jabiluka money 30% goes to the clans of the area, 30% into a trust fund for the Aboriginal communities of the NT as a whole and 40% to the three land councils. A number of enterprises both traditional and non-traditional have been started with these royalties – including stores, an Aboriginal pub which strictly limits alcohol consumption, outstations – and the infrastructure of the Land Councils themselves.[57]

But there is no doubt that uranium mining poses great ecological dangers to the whole area, including dumping of radio-active waste, pollution of the soil and rivers and damage to health. There are now fears that seepage from the Jabiluka mine into Coopers Creek and the low level of water covering radio-active tailings at Jabiru will enter the Alligators Rivers Complex and destroy forever the East Alligator River plain.[58] And ironically, tourism, even when it is controlled by Aborigines, imposes its own demands upon the ecology of the area.

Some of the dangers of tourism can be seen in the case of Uluru, called by white people Ayers Rock, a huge monolith standing in the Central Australian Desert. It is a major 'Dreaming' site and its crevices and caves contain ancient art sacred both to the Pitjantjatjura and Yankuntjatpara people. Uluru was taken from the Aboriginal reserve to become part of a national park in 1958 and Aborigines were actively discouraged from staying there. Although the Aborigines gained title to the surrounding land, Uluru itself was not handed back until October 1985, when the Governor General presented the title deeds to the traditional owners. But it was a condition that Uluru be leased back to the Australian National Parks organization. While this might appear a good compromise between Aboriginal and competing claims the sheer numbers of tourists pose both an ecological and cultural danger. The NT government plans a tourist complex within 20 kilometres which will house up to 6000 tourists a night and tourist coaches and other vehicles cause serious erosion on the desert lands.

South Australia

South Australia was the first State to make an attempt to transfer rights in land to Aborigines when an Aboriginal Lands Trust was created in 1966. This Trust was a corporate body limited to people of Aboriginal descent and was able to lease Aboriginal reserves or unoccupied crown land. Thus the Trust and not Aboriginal communities held title. However it was not until 1975 that a substantial number of reserves with major Aboriginal communities on them were handed to the Trust.

Excluded from this arrangement was the vast Pitjantjatjura Reserve in the north-west of the State. An earlier attempt to legislate for land rights failed but after a campaign by supporters it was reintroduced. The new Pitjantjatjura Land Rights Act was negotiated between the State Premier and the Chairman of the Pitjantjatjura Lands Council in October 1980 and passed through Parliament on 5 March 1981. The Act establishes a corporate body known as the 'Anangu Pitjantjatjura' which is granted land in fee simple and inalienable tenure. The Anangu Pitjantjatjura can negotiate directly with approved mining companies as to the terms and conditions (including royalties) under which they can enter Lands Trust area. If no agreement can be reached before the parties concerned, then the government can appoint an arbitrator whose decision can be binding on all parties. The Bill covers many complex points relating to exploration, mining and roads, and to innovative concepts of Aboriginal customary law.

The Pitjantjatjura Bill is important both because it is the first successful negotiation of a land rights settlement, and because of the area involved, 102,000 sq. kms., one tenth of SA (equal in size to Austria or Portugal). Under the Maralinga Tjaruta Land Rights Act of 1984 a further 76,000 sq. kms. was returned to the Pitjantjatjura people. The legislation deliberately excluded substantial sections of the Maralinga and Emu Fields nuclear testing sites which were highly contaminated. Ultimately the Pitjantjatjura want this land also returned, but this seems impossible unless the UK and Australia agree on a means and cost of clearing the land of its toxic substances.

What is intended to be the largest uranium mine in the world, jointly owned by British Petroleum (BP) and Western Mining of Australia, is being developed on the land of the Kokotha people. Many Kokotha had been forced to leave traditional land at Woomera to make way for rocket testing in the 1950s. They have demanded action to protect their land and sacred sites and the Southern Lands Council co-ordinated blockades of roads to the mine during 1983 and 1984. Despite a law which compels companies to locate sites of significance at least 10 sites have already been destroyed.[59] While it may be too late for the Kokotha people at Roxby Downs there is a new promise of protection in the Aboriginal Heritage Bill, which passed through the SA parliament in early 1988. It goes further than previous legislation in that it gives Aborigines the right, on a day to day basis, to name and protect sites, to stop them being excavated, destroyed or sold. Fines of up to $50,000 can be levied on companies who break these rules. The Minister of the Environment can intervene only in cases where the national interest is at stake and this should be only in very rare circumstances. It is too soon as yet to see the effects of the legislation but if it works as envisaged it might set a precedent for the rest of Australia.[60]

New South Wales

From 1967 the main legislation affecting Aborigines had been the Aborigines Welfare Bill of 1967 which had as its basis the policy of

assimilation and made no mention of land rights. An amendment to the Act in 1973 created an Aboriginal Lands Trust to hold title to lands classified as Aboriginal reserves. This Lands Trust could purchase, lease and acquire property, and had rights to mineral exploitation. However its main role was as landlords to its 9,000 tenants, 20% of the State's Aboriginal population.

In 1979 an all-party parliamentary enquiry made far reaching recommendations. Their first report, tabled in the NSW Parliament on 13 August 1980 dealt with Aboriginal land rights and sacred and significant sites in NSW. Among its recommendations was the acknowledgement of the just claim of Aborigines to land, based on prior ownership, tradition, needs and compensation. It recommended the establishment of an Aboriginal Land and Compensation Tribunal and the formation of Aboriginal Community Councils, Aboriginal Regional Lands Councils and the Aboriginal Land and Development Commission which will act as the democratically elected land-holding and funding bodies. The funding for the Development Commission would come from giving 7.5% of the State Land Tax revenue for 14 years and then 3.75% for the final 15th year. Half of this revenue would be invested in a special fund to provide future income. (In 1981-2 the estimated revenue of 7.5% of State Land Tax would amount to $10.9 m.) An Aboriginal Heritage Commission would also be established to record, register, protect and maintain Aboriginal sacred sites. On the issue of mineral rights the Committee recommended that Aborigines should have title to the sub-surface and that provision should be made against exploitation and exploration by other persons. The second and final report published in April 1981 made more than 100 recommendations which break away from the policies of the past. The emphasis was now on self-management, not assimilation.

Yet despite these recommendations and the passing of the Act there has been little real progress. By 1987 only 171 sq. kms. belonged to Aboriginal communities on a freehold basis and 142 sq. kms. on leasehold, falling far short of Aboriginal needs. In addition hundreds of claims were caught in the bureaucratic system. Because most land is in private hands and because in NSW relatively few Aborigines live on traditional land future progress under the Act is likely to be even slower. The promises of cash compensation and symbolic importance have proved disappointing.[61] But even these gains, small as they are, were threatened by the election of a conservative Liberal-National Party coalition in March 1988. Almost immediately it decided to take control of the Aboriginal Land Council Funds, currently worth over $300m, to the Premier's Department. Although the Opposition in the State upper house has said that it will combine to block the legislation, there is little doubt that there will be further attempts to whittle away whatever autonomy remains to the Land Councils.

Western Australia

The Aboriginal population of Western Australia – an area the size of western Europe – is spread throughout the State. Over such a great area there is a wide variation in the influence of the traditional life on their current lifestyles but in the Kimberleys and the Western Desert in particular the controls and practices of the 'Dreaming' still function strongly. Many Aborigines were exploited by the cattle stations or made objects of conversion by the missions, but there was a strong feeling of cultural security, enhanced by physical isolation. The 'mineral boom' is destroying this sense of security. WA contains some of the world's richest mineral bearing lands, and much of this land is populated by traditional Aboriginal communities.

The first attempt to legislate land rights in WA was the Aboriginal Affairs Planning Authority Act of 1972 which allowed the State Minister to vest control of the State's reserves in the WA Lands Trust. Although the Lands Trust holds formal title to the Aboriginal reserves, it has very limited powers, is an advisory body only, and the real authority is vested in the State Minister for Aboriginal Affairs. The Trust is mainly composed of urban Aborigines who are often felt to have little real knowledge of the peoples of the north and centre. Mineral rights are not held by the Lands Trust or the reserves themselves and, due to the wording of the WA Mining Act, exploration rights can be granted to several companies without the consent of the Trust or the local community. Royalties are decided by the State government and allow Aboriginal communities no right to negotiate for market terms. At present the only Aboriginal communities who hold land directly are those whose land has been bought by the Federally funded, Aboriginal Land Fund Commission and later the Aboriginal Development Commission. These include Noonkanbah Pastoral Station, and the Billiluna – Lake Gregory property. However, successive governments have shown little interest or energy in obtaining land in this way and have often blocked attempts to buy land for Aboriginal communities.

In 1983 a Labor government was elected in WA. It promised land rights legislation, along the lines recommended by the Federal government's 'preferred model'. This failed to satisfy many Aborigines but aroused strong opposition also from the Chamber of Mines and the Pastoralists and Graziers' Association which co-ordinated a campaign against the legislation. As an interim measure the WA Heritage Act, which aimed to identify and protect sacred sites was passed. Land rights legislation was presented to the WA upper house, dominated by the LNP, in 1985 and failed to pass into law. Although the Federal government could have intervened to ensure that legislation passed, it did not do so. In early 1986, after it had abandoned the 'preferred model' the Federal Minister Clyde Holding announced that the WA government had agreed to a special arrangement which included the following provisions: the State to provide secure title to Aboriginal reserves by way of long-term leases for a minimum of 49 years; 45 reserves currently administered by the State to be transferred to Aboriginal control as were mission lands; excisions to be made from pastoral leases for Aboriginal communities; special financial help for the Kimberleys and $10m to be given for further Aboriginal land acquisition. In addition discussions would continue with the State government to ensure further rights. Yet in practice little has been achieved – the process of transferring of reserves has been encumbered by legal difficulties and State government intransigence, and the first agreements on pastoral leases only in 1988.[62]

Even more disturbing has been the continuing alliance of the WA government with powerful mining interests, which can cross political party lines. Over half of the States' revenue has come from mining. There have been several confrontations by mining companies, backed by the State government, and Aborigines. The most important confrontation to date has been at Noonkanbah Station in the Kimberleys. This station of 400,000 hectares was purchased for the Yungngora community as a pastoral lease by the ALFC in 1977. Noonkanbah is the traditional country of the Yungngora and an area of great spiritual importance. The Yungngora turned a dilapidated property into a commercially viable enterprise. In the late 1970s several mining companies had been granted permission by the State government to search for minerals at the Station, despite the opposition of the elders. One company the US multi-national AMAX, in a quest for oil decided that it wished to carry out site works and drill an exploration well near an area called Pea Hill. Pea Hill is the site of the 'goanna dreaming' and is of great religious significance to the Yungngora people. During two years of negotiations the elders had consistently refused to give their permission to drill there. Anthropologists from both the University of WA and the WA Museum have supported the Aboriginal claims as to the importance of these sites.

In early April 1980 after the end of the long wet season AMAX representatives moved onto the property and began sinking a bore on sacred tribal land. After strenuous discussions they left, in the process breaking many fences and losing about 100 cattle. In mid April over 200 Aborigines gathered at Noonkanbah for a 'bush meeting', a coroborree and a march, to show their determination to stop AMAX. Representatives from Noonkanbah and the KLC organized widespread opposition to the prospect of further mining, including a tour of the eastern States by Noonkanbah representatives and a trade union ban on operating mining equipment. In early June there was another confrontation between a party of exploration workers and Yungngora people. The WA government then decided not only to press ahead with mining but to further extend the area in which mining could take place and to assume control of an access road. It took upon itself to stealthily organize and then carry out a military-like operation, involving police escorts and around 50 large trucks in a convoy, to shift a drilling rig from Eneabba, just north of Perth, some 2,200 kms. to Noonkanbah, and threatened to use armed intervention. The convoy met great opposition, both along its route and at Noonkanbah itself.

Although the rig reached the site at Pea Hill, the WA Trades and Labor Council implemented a ban on the drilling for oil until it was satisfied that the Yungngora people had their sites mapped and protected. Some drilling eventually went ahead (although not at a sacred site) but no oil was found. The Noonkanbah confrontation helped to consolidate the work of the KLC and to focus the attention of white Australians on the situation of Aboriginal people facing an intransigent government. It also showed clearly the position of the then Commonwealth government, for although it had the power to intervene it refused to insist that the mining interests back down. Noonkanbah signified a new stage in the land rights struggle since it saw a joint meeting of Land Councils which made the historic decisions to ban further mining negotiations until the dispute was settled and to press ahead with the formation of an Australian Federation of Land Councils.

The WA government and Conzinc Riotinto Australia (CRA) are partners in the Aryle Diamond Mine, located near Smoke Creek on Lissadell Station, 80 miles south of Kunumurra. This is currently one of the world's richest diamond mines, in 1986 producing over 28 million carats. Yet previously the area was almost inaccessible to outsiders. Neither the local Aboriginal community, the KLC or anthropologists were informed of the start of the development. The area is rich in sacred sites. The Aborigines regard the place as an 'increase place' which replenishes barramundi stocks, and is of major religious significance to about 400 Aborigines at Turkey Creek, Durham River and Wyndham. Initial negotiations involved the local people represented by the Waringarri Association but the final deal involved only the WA government and CRA. Each agreed to pay out one million Australian dollars annually to Aboriginal concerns, but, in addition to some alleged irregularities in payments, these are administered under several conditions and explicitly exclude acknowledgement of prior Aboriginal ownership. Full-scale mining commenced in 1981 at the Barramundi sacred site and other sacred sites have also been destroyed.

CRA is also the main company involved in the exploration of the Rudall River National Park. This 12,000 sq.km. area covering the Little Sandy, the Great Sandy and the Gibson Deserts is of unique ecological significance and was declared a National Park in 1977. It is the homeland for various nomadic peoples, the Puntukurruparna, Warrum, Manjiltjarra, Mangala, Walmajarri and Karadjarra, some of the last peoples to be affected by European penetration. Two decades ago the last wandering people were forcibly gathered into government-controlled settlements but in the 1980s some of those with traditional ties to the land returned to found outstations at Punmu in 1981 and Pongurr in 1984. Despite the problems of distance, shortage of supplies and the lack of secure tenure these Puntukurruparna communities have survived and grown, benefiting from independence and privacy. They are part of the Western Desert Lands Council. In 1985 CRA discovered uranium and later took out exploration licences for the whole of the southern region of the Park while extensive mining infrastructure has been constructed. CRA appears neither to respect the 1984 Heritage legislation nor the environmental provisions of the National Park legislation. The Puntukurruparna complain of harassment and threats to cut their water supplies. They are supported in their anti-mining stand by the Australian Conservation Foundation and the Western Desert Lands Council.[63]

It is not only the desert people who are fighting for land. In early 1987 the fringe dwellers of the Swan Valley, in the most urbanized area of the State, obtained a High Court victory against the WA Government Electricity Board and the Federal government against the development of a gas pipeline across a sacred site on Bennet Brook.[64] They are now pressing for Rottnest Island to be made a memorial for the more than 500 Aboriginal convicts who died there.

Queensland

Queensland is a vital State in the land rights struggle. It has the largest Aboriginal population, with over 25,000 Aborigines living on reserves, and many more in rural areas on traditional land or the fringes of country towns. For many years it operated the most stringent controls upon its Aboriginal population through its Aboriginal and Islanders Acts, and it still officially follows a policy of 'assimilation'. Unlike every other mainland State it does not possess even a minimal land rights legislation and the government has made clear its intention not to recognize Aboriginal claims. The government is an extremely conservative National Party-Liberal coalition, headed from 1968 to 1987 by Mr Bjelke-Peterson. It has extensive links with pastoralists and mining interests, both Australian and foreign, and it has consistently pursued these interests to the detriment of its Aboriginal population.

The past two decades have seen extensive mineral finds on many Aboriginal reserves, and there has been a whittling away of the small measure of control operated by the mission managements and the local Aboriginal communities. Large tracts of land on reserves have been leased to mining companies, effectively destroying the social and economic basis of the traditional lifestyle of the resident population. When communities have protested, their objections have been swept aside; some communities have been forcibly evicted, and two reserves abolished.

The Acts of Parliament which governed Aboriginal affairs in Queensland were the Lands Act 1962-1978, which allowed land to be put aside for reserves, and the Aborigines and Torres Strait Islanders Act 1971-1979 and the Aborigines and Islanders Amendment Act 1979, which regulated conduct on the reserves. The Acts were administered by a Director of Aboriginal Advancement responsible to the Minister. He appointed all managers of the DAIA controlled reserves and approved Mission appointed managers. The manager in turn could be assisted by Aboriginal Council of five, only two of whom could be elected, and if the manager thought fit, all five could be appointed by himself. The overall purpose of the Acts was to provide a detailed framework in which Aborigines, who were treated as children, needed to live their daily affairs. The Acts restricted residence rights on reserves, allowing no Aborigine an automatic right to live on a reserve, even if it was his or her traditional territory; the manager could expel anyone for 'disturbing the peace'; non-reserve aborigines needed permission to visit the reserves and reserve aborigines needed permission to have outside visitors; there was almost total lack of privacy in communication with the outside world. The Acts openly treated Aborigines as a source of cheap labour allowing Queensland's normal industrial laws to be overruled. DAIA officials controlled Aboriginal spending (although some of the worst abuses were ended in 1974).

A particularly notorious example of a community affected by the Acts is Palm Island, 20 miles north of Townsville, and home of 1600 Aborigines. The reserve was established in 1918 as a camp for mainland Aborigines and an imprisonment centre. Those sent to Palm Island (for 'crimes' such as homelessness, drunkeness etc) were forced to live in single-sex dormitories, to work for food handouts, and were subject to harsh and autocratic discipline. These conditions did not change until the late 1960s, and although there have been some improvements in housing and water supply, conditions are still poor. There is little employment and that poorly paid, and alcoholism, venereal disease and malnutrition are common. In November 1980 an epidemic hospitalized 130 people. Today the people of the island are demanding self management and freehold land tenure.[65]

Mining poses the greatest threat to Aboriginal land. Some of the richest bauxite reserves have been discovered on the west coast of Cape York. This is also the area of the longest continuous reserves in Australia, Mapoon, Weipa and Aurukun. In 1957 the Comalco mining company was granted a lease to mine 5,870 sq. kms. of Weipa reserve, although the Weipa community was not consulted. The Weipa people are passionately attached to their land, and have refused to leave it, although they have seen their fertile bush with its abundant wild game turned into a wasteland by strip mining. Their housing facilities are extremely poor, diet and health are much worse with the demise of their native 'bush tucker', alcoholism is rife; and homicide and suicide rates are among the highest in the world. In 1962 when another mining company sought a lease over the remainder of the Weipa reserve and the Mapoon reserve, the Mapoon people refused to leave. The Department of Native Affairs took control using police and physically evicted the residents, burnt the settlement and forcibly evicted the people 110 kms. northward. Despite this brutality the Mapoon people have never lost their links with the land and have many times tried to return.[66] Other forced evictions have taken place at Port Stewart, Lockhart River and Daintree River.

The case which has had the most dramatic consequences has been the proposed mining at Aurukun reserve. In 1975 when the

government signed an agreement to mine on 1800 sq. kms. of the reserve the Presbyterian Church, later the Uniting Church, fought the Aboriginal case through the courts. The Queensland government then announced that the DAIA would take over management of the Aurukun and Mornington Island Reserves. The Aboriginal communities sought the help of the Federal government, which firstly tried to negotiate between the parties and then introduced Commonwealth legislation for self-management of the two reserves, which in turn, were abolished by the Queensland government and made into Shire Councils, significantly less rights than ordinary local government bodies. When these Aboriginal Shire Councils attempted to assert their rights they were sacked by the Queensland government. The Commonwealth protested but did not intervene. A compromise was later reached and finally in 1979 local authority elections were held.[67]

The Aboriginal communities at Aurukan and Mornington Island have lost a great deal in the confrontation. Their fifty year leases can in no way be considered as equal to the inalienable freehold and true community control over land and mining that they want. These largely traditional communities were thrown into 'survival politics'; although it is clear that all they want is to be left alone – to enjoy the land that is rightfully theirs, without outside interference.[68]

In March 1981 the Queensland government announced that it would abolish the Aboriginal and Islanders Acts, and with them, the reserves. From 1982 a series of Acts and Amendments have been passed, notably the Land Act (Aboriginal and Islander Land Grants) and Amendments and the Community Services (Aborigines) Act. In effect these have transferred the title from government management of the larger reserves to an elected Council of the Aboriginal (or Islander) community. The land is held as a Deed in Trust by that council for the community's benefit and use. On paper this arrangement may appear to offer considerable benefits, combining a form of local government such as is enjoyed by non-Aboriginal communities with some control over land. But there are many inconsistences within the legislation and other Queensland legislation and between the Queensland and Federal governments. And as the experience of Aurukun and Mornington Island shows the advantages are more apparent than real.

The Shire Councils do not give Aboriginal Councils the same rights as other local government institutions. In effect it establishes two parallel administrations, a white appointed one and an Aboriginal one with inferior powers. For example Aborigines are subject to two police forces, two court systems and two jails. The Aboriginal system is staffed by untrained workers who operate with limited but often undefined and arbitrary powers. Thus ironically while the reserves are overpoliced in petty matters they are underpoliced and underprotected in general law and order concerns. Some Councils have tried to exercise their powers under the Community Services Act by replacing old paternalistic by-laws, yet the Queensland Crown Law Office has refused to gazette some of the new laws proposed by Aboriginal Councils. Although the Council is elected there are fears that turning respected elders and traditional owners into government or community-appointed officials undermines their traditional base of support and custodianship, adding to the sense of alienation and despair already found in many of the areas. The Aboriginal Affairs Minister, and in some cases the Queensland cabinet, has the right to make overriding decisions in relation to these lands; they have to approve any leases granted by the Council and they can evict people who don't have leases. The government can excise areas from the control of the Aboriginal trustees including infrastructure such as schools, hospitals and public works. The government has a legislative power in relation to any minerals which might be on the land.[69]

As of mid-1987 23 of 27 reserve communities had accepted the arrangement. Only one community had refused to participate. This was the Murray Islanders, a Torres Strait Islander community, who informed the Queensland government that they would not accept a Deed of Trust until they had a result from their case in the High Court, Mabo vs Queensland and the Commonwealth of Australia (Eddie Mabo is one of the traditional owners in the islands). The Mabo case seeks to prove that the Murray Islanders have traditional rights to their lands which have been handed down from their ancestors and that those rights are recognized in the common law which Australia inherited from England. The outcome of the case will have important consequences for all indigenous peoples in Australia.[70]

In any case the majority of Queensland's Aborigines do not live on Community Council lands or reserves. Many however would like to live on Aboriginal land. A 1979 study by the Foundation of Aboriginal and Islander Research and Action (FAIRA) and the Aboriginal Legal Service showed that the vast majority of reserve residents wanted land on the reserves to be in the hands of communities themselves and wanted community councils to control decisions relating to housing, access to reserves, mining, waterways and forests. Furthermore 70% of Aborigines currently living in towns would live on reserves if they were owned and controlled by Aborigines.[71] Yet there is little unalienated crown land in Queensland and if adequate provision is to be made for all those who want land there must be new policies and initiatives to obtain land on the basis of compensation for dispossession. Despite the resignation of Joh Bjeke-Peterson in 1987 there appears to be no move towards a more generous or flexible approach towards land rights in Queensland.

The premier organization in the land rights struggle has been the North Queensland Land Council, based in Cairns. The NQLC arose out of the all-Aboriginal North Queensland Land Rights Committee which began in the early 1970s and which after a drive for funds in 1976 decided to set up a Land Council, similar to those in the Northern Territory. The first meeting in January 1977 was attended by 64 delegates from reserves and towns in North Queensland. The aims of the NQLC include immediate ownership of tribal land by respective tribal groups, total control over all natural resources, a halt to present mining and prospecting until negotiations have been held with the Aboriginal people concerned, full compensation for the loss of Aboriginal land and self-determination in all aspects of life. The NQLC is a member of the Federation of Land Councils but does not receive recognition from the Queensland government. The official body which represents Aborigines in the community council areas is the Aboriginal Co-ordinating Council (ACC).

Part IV – The Future

At the white man's school, what are our children taught?
Are they told of the battles our people fought,
Are they told of how our people died?
Are they told why our people cried?
Australia's true history is never read,
But the blackman keeps it in his head.
— Poem from *Bunji*, No 4, December 1971

The year 1988 marked 200 years of white settlement in Australia but for Aborigines it signified 200 years of white domination. The government, supported by the private sector, announced a massive 'birthday party'; for the Aborigines it was a 'Year of Mourning' for their invaded land and for the hundreds of thousands of their people who died of war, of poison, of disease. On 26 January 1988 over 30,000 Aborigines and their white supporters, from all around Australia, marched through the streets of Sydney in protest. Led by Aborigines from the traditional communities of Arnhem Land and the Central Desert, they sang and chanted, shouted for land rights and displayed their banners proudly. In 1988 the bitterness of Aborigines at the broken promises of governments runs very deep.

In 2001 Australia will again be celebrating, this time a century of the Commonwealth when the States federated to become one nation. Implicitly the other nation, the Aboriginal nation, was excluded, not to be even recognized as autonomous individuals until 1967. By 2001 hopefully the Australian Constitution will be amended to acknowledge the prior ownership of the whole continent by Aboriginal people and to recognize their unique place in the modern Australian nation. Proceeding the amendment there will have been at last a Treaty signed between the Aboriginal people and the Australian State, acknowledging past injustices and laying the ground for a new and equal relationship.

By 2001 there will be more Aborigines, and certainly a younger generation which will be more educated and articulate, even less willing to accept exclusion and discrimination. But the numbers of technically and professionally qualified Aborigines will still fall short of the community's needs, and thus positive government policies in the areas of health, housing, education, employment and

land rights will be vital to fill the gap. This means firstly, a commitment to increase expenditure in the relevant fields, secondly, to funnel expenditure directly towards projects rather than through a multitude of white-dominated bureaucracies, and thirdly, to allow the decisions as to priorities and finance to be in the hands of representative Aboriginal bodies. Hopefully by 2001 Aboriginal groups will have greater political leverage, in Parliaments, at local level, and through international fora. It is urgent that there should be new initiatives in the field of law and justice where institutional violence is greatest.

The major issue will continue to be land and mineral rights. In the Northern Territory, by that time a full State, there will be continued efforts by pastoralists and miners to amend land rights legislation. But the Land Councils should by 2001 have the wealth, the skills and the experience to fight back on more equal terms. Hopefully also there will be comparable legislation in other States where there are large areas of former reserves and mission land. But mining will always prove to be a threat unless Aboriginal landowners have a right of veto. Aborigines living in cities and country towns – the fringe dwellers – are already in a majority and it is their battles which will come to the forefront.

Aborigines do not have a vindictive attitude to other Australians, they have shown remarkable tolerance. But such tolerance cannot last forever – it must be reciprocated by white Australians with understanding and generosity. It is up to white Australians to decide whether in 2001 they wish to co-exist with a dispossessed and angry people or a proud people living the style of life they choose on their own land and with equal access to all areas of Australian life. Galarrwuy Yunipingu, Chairman of the Northern Land Council, expressed this feeling at Hyde Park, Sydney, on 26 January 1988:

'. . . I've never seen so many faces, both black and white, at any funeral ever, and this is the biggest crowd I've ever seen to mourn the injustice of the past, in the hope that there will be a better future for all of us in this nation . . . The gathering here is expressing one simple message – that Aboriginal people in the last 200 years have survived, and we will survive. And let me say that we have been, and we are here, and we will be here . . . this march and this gathering is to unify all Australians so that whatever we have to fight for Aboriginal people to achieve in the next 200 years, is justice and peace and self-determining powers given to Aboriginal people . . . We hope to establish a future for Australia, and that future is very simple and clear – white Australia together with Aboriginal Australians, and then we are all Australians . . .'

FOOTNOTES

[1] The 1976 and 1981 census figures come from The Australian Department of Census and Statistics and the Department of Aboriginal Affairs, *Aboriginal Statistics 1986*, Australian Government Publishing Service, Canberra, 1987, Chapter 1.

[2] For example see *The First Australians, City Limits*, 12.11.87 where Gary Foley quotes a figure of 500,000 Aboriginal Australians.

[3] See Henry Reynolds, *The Other Side of the Frontier*, Penguin 1982, *Frontier*, Allen and Unwin, 1987 and *The Law of the Land*, Penguin, 1987.

[4] For a good account of Aboriginal beliefs, see: Jennifer Isaacs, *Australian Dreaming, 40,000 Years of Aboriginal History*, Lansdowne Press, Sydney, 1980.

[5] Keith Wiley, *When the Sky Fell Down: The Destruction of the Tribes of the Sydney Region 1788-1850s*, Collins, Sydney, 1979.

[6] Henry Reynolds, 'White Man Came Took Everything', in Burgmann and Lee, *A Most Valuable Acquisition*, A People's History of Australia, McPhee Gribble/Penguin, Melbourne, 1988, p. 8.

[7] Frank Hardy, *The Unlucky Australians*, Nelson, Melbourne, 1968.

[8] Guboo Ted Thomas, Yuin Tribal Elder, Wallaga Lake, *Spiritual Contract on Mumbulla Mountain*, School of Pacific Studies, A.N.U., Canberra, 1980.

[9] Janet Hawley, *Mine wealth is only the first of the changes...*, originally in *The Age* (Melbourne), 18.7.81 reprinted in *Australasian Express*, 25.8.81. *Kimberley Land Council Newsletter*, September 1986.

[10] Michael Cordell and Tony Hewettt, *Black Rage, Sydney Morning Herald*, , 9.1.88.

[11] Ibid.

[12] Ibid.

[13] As quoted in *The First Australians, City Limits*, 12.11.87.

[14] Some of the submissions of both Aboriginal groups and the Australian government are reproduced in Julian Burger, *Aborigines Today – Land and Justice*, Anti-Slavery Society, 1988.

[15] For a full account see Robert Milliken, *No Conceivable Injury*, Penguin Books, 1986.

[16] Statement to Parliament by the Minister for Aboriginal Affairs, Clyde Holding, March 1986.

[17] Cordell and Hewitt, *Black Rage*.

[18] Charles Perkins, *Fifteen Years of Development*, Identity, Vol 4, no 3, 1981. Burger, *Aborigines Today*, p. 66

[19] At a public meeting in London, April 1988.

[20] Burger, *Aborigines Today*, p. 66.

[21] Cordell and Hewitt, *Black Rage*.

[22] Janine Roberts, *From Massacres to Mining the Colonization of Aboriginal Australia*, published by CIMRA and War on Want, London, 1978 p. 65.

[23] One example is the large amount of time Australian schoolchildren spend learning about the white discovery and exploration of Australia, while Aboriginal history and culture is dismissed in a few lessons.

[24] Janine Roberts, *From Massacres to Mining*, p. 66. DAA, *Aboriginal Statistics 1986*, Chapter 5.

[25] Perkins, *Fifteen Years of Development*. DAA, *Aboriginal Statistics 1986*, Chapter 5.

[26] DAA, *Aboriginal Statistics 1986*, Chapter 4.

[27] Ibid.

[28] *Community Relations News*, Commissioner for Community Relations, Canberra, March 1981.

[29] *Eighth Annual Report of the Health Commission of NSW*, NSW Government Publishing Office, Sydney, 80, pp. 23-24.

[30] Royal Australian College of Ophthalmologists, *The National Trachoma and Eye Health Programme*, Sydney, 1980.

[31] Pam Nathan and Dick Leichleitner Japanangka, *Health Business*, Heineman Educational Australia, Melbourne, 1983.

[32] 'Leprosy Rate in North West Australia worse than Bangladesh', *Newsletter*, Aboriginal Medical Service, January 1980.

[33] 'Health Care Crisis', *Aboriginal Treaty News*, no. 2, May 1981, p. 6.

[34] Bobbi Sykes, The Aboriginal Medical Service, *New Doctor* (Sydney), April 1978, p. 17.

[35] 'Doctor Claims Success in Malnutrition War', *Sydney Morning Herald*, 12.3.79

[36] *Kimberley Land Council Newsletter*, September 1986.

[37] Mark Metherell, *Aboriginal prison ratio worsens, The Age*, 15.2.88.

[38] Editorial, *Newsletter*, Aboriginal Medical Service, August 1979.

[39] Hawley, *Mine wealth is only the first of the changes ...*

[40] Anne Summers and David Marr, 'One white man who won the trust of Aborigines' *The National Times*, 6-11 June 1977, p. 24. Peter Tobin died in an air crash in 1977 and a tertiary scholarship scheme, run wholly by aborigines, has been set up in his name, to train Aboriginal doctors and lawyers.

[41] Perkins, *Fifteen Years of Development*, also see Editorial, *Newsletter*, Aboriginal Medical Service, August 1979.

[42] Christopher Zinn, *Aboriginal Theft is not a Crime, Sunday Telegraph*, 13.12.87.

[43] *Natural Peoples News*, published by CIMRA, no. 4, 1980, p. 17. *Aboriginal Law Bulletin*, December 1987.

[44] Lawasia, *Aboriginal Deaths in Custody*, Human Rights Newsletter, April-July 1987.

[45] The most comprehensive account of the legal position of land rights is in Nicolas Peterson's *Aboriginal Land Rights a handbook*, Australian Institute of Aboriginal Studies, Canberra, 1981.

[46] 'Aborigines Win Dispute', *LAM*, 17-23 March 1981, The local council at Tennant Creek in the Northern Territory agreed to return a boulder to a sacred site following claims that its removal was affecting the health of the traditional owners, Warramungu people.

[47] Outstation Movement, *Kimberley Land Council Newsletter*, March 1981, p, 18-19.

[48] There are allegations that one company in particular is targetting 39 Aboriginal reserves as prime prospects for mining. See Janine Roberts, *From Massacres to Mining*, p. 124-128.

[49] Hawley, *Mine wealth is only the first of the changes ...* A summary of the position of mining companies and indigenous peoples can be found in *Natural Peoples News*, no. 5 Spring 1981, *1981: Now for the companies!*, p. 3.

[50] Quoted in Burger, *Aborigines Today*, p. 11.

[51] Burger, p. 18.

[52] *Bunji* (militant Aboriginal newsletter), August 1981 (10th Anniversary issue).

[53] Alastair Walton, *Aboriginal Law Bulletin*, April 1987, p. 5.

[54] Pat Dodson, (Director of the Central Land Council), *Aboriginal Law Bulletin*, February 1987, p. 9.

[55] Thomas Keneally, *Outback*, Hodder and Stoughton, Sydney, 1983, p. 217.

[56] 'Ranger Uranium Environmental Inquiry: First Report 1976: Second Report 1977', Australian Government Publishing Service, Sydney.

[57] Keneally, *op. cit.*, p. 202-8.

[58] Ibid. pp. 217-8.

[59] Julian Burger, *Report from the Frontier*, Zed Books, London, 1987, p. 188.

[60] *The Weekend Australian*, 27.2.88.

[61] For an account of how Aborigines Act works in practice see Burger, *Aborigines Today*, p. 21-2.

[62] Speech by Clyde Holding, March 1986; *Aborigines Today*, pp. 22-5; *Aboriginal Law Bulletin*, June 1987, February 1988.

[63] Alastair Walton and the Western Desert Puntukurruparna Aboriginal People, *Aboriginal Law Bulletin*, June 1987.

[64] *Aboriginal Law Bulletin*, February 1987.

[65] Mark Baker, 'Prisoners on an island in paradise', *The Age*, 31.5.80 and *Aboriginal Treaty News*, No. 2, p. 1.

[66] Janine Roberts, *From Massacres to Mining*, Ch 17, and (as Editor), *Mapoon: books, one, two and three*. International Development Action, Melbourne, 1975-6.

[67] Christopher Anderson, 'Queensland', in Peterson, *Aboriginal Land Rights a handbook*, p. 53-114, has a long detailed account of the conflict and the legal position of the new shires.

[68] See the letter to the Minister for Aboriginal Affairs by Larry Lanley, the Chairman of the Mornington Island Shire Council, reprinted in *Identity*, Vol 4 no. 3, 1981. Larry Lanley died in early 1981.

[69] Laura Beacroft, *Policing in Queensland, Aboriginal Law Bulletin*, April 1987.

[70] *Mabo Case – An interview with Greg McIntyre, Aboriginal Law Bulletin*, February 1987.

[71] Anderson, Queensland, in Peterson, p. 81.

[72] Galarrwuy Yunipingu, Speech as reprinted in the *Sydney Morning Herald*, 27.1.88.

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Kimberley Land Council, PO Box 322, Derby WA, 6728.

National Aboriginal and Islander Health Organization (NAIHO), PO Box 414, Campbelltown, NSW, 2560.

National Aboriginal and Islander Legal Service (NAILS), PO Box 143, Chippendale, NSW, 2008.

National Federation of Land Councils, PO Box 3620, Alice Springs, NT, 5750.

Europe

Aboriginal Land Rights Support Group/Black Australian Information Centre, 52 Acre Lane, London SW2, UK.

Anti-Slavery Society, 180 Brixton Rd, London SW9, UK.

Gesellschaft für Bedrohte Völker, Postfach 159, 3400 Göttingen, Federal Republic of Germany.

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