

CHAPTER IINTRODUCTION

One of the most controversial political issues in Australia today, is the granting of land rights to Aborigines. At best, Aborigines seeking land rights are viewed as victims of colonial dispossession; a minority group deserving access to land as a matter of social justice, out of respect for and consideration of their unique association with the land. At worst, Aborigines seeking land rights are viewed as opportunists, stirred into political action by non-Aboriginal activists who headed bush seeking a political bandwagon after the Vietnam war became a non-issue. The hallmark of these 'Aboriginal opportunists', by common opinion, is their inconsistent stand in relation to land rights, that is, their propensity for claiming any area under development or any area which is available as a 'sacred site'. The less overtly tradition-orientated the Aboriginal group, the more vulnerable they are to such insidious judgements.

This attitudinal framework became the basic starting point for my research into Aboriginal land rights. Through an analysis of current legislation and policy relating to land rights it is apparent that this interpretation is not restricted to the level of popular opinion. In a diluted form, a similar attitudinal framework of 'tradition-orientated' (the deserving) versus 'non-traditional' (the not so deserving) is enshrined in

legislation and policy. Those Aboriginals who have had the greatest land rights success in terms of special legislation, providing administrative and legal systems which accommodate land rights and which provide unprecedented opportunities for access to the land and unprecedented control over the land, are those Aboriginals who are overtly tradition-orientated. More specifically, they are Aboriginals who fit the eclectic and narrow view non-Aboriginal Australians have of "what constitutes a customary Aboriginal association with the land. In the past two years this has changed, theoretically at least, with the moves in New South Wales and Victoria to introduce administrative and legal systems akin to that in the Northern Territory but which will provide all Aboriginals with opportunities to gain access to land. The success of such moves are yet to be tested. It remains, in the South Australian case at least, that land rights success for 'non-traditional' Aboriginals seems to be less a matter of their relationship to the land than their ability to astutely work their way through the piecemeal and continually changing legislative and political options available.

The testing ground for this hypothesis is the Aboriginal community of Port Augusta. Port Augusta is a large town in the north of South Australia which operates as a regional service centre for an extensive hinterland. It has attracted a large number of Aboriginals from different areas within the State and Interstate. Port Augusta's Aboriginal community consists of those who live within the

town and appear 'acculturated' to a European way of life, as well as a fluctuating population which maintains its distance from mainstream Port Augusta society by living on the outskirts of town at Davenport Reserve. The two populations which are the focus of research, the Adnjamathanha and Kokatha people, both have land rights groups operating in Port Augusta and draw the majority of their support from the 'acculturated' townspeople. Both groups direct their efforts to acquiring or controlling land which is often hundreds of kilometres from the town. In essence, they do not fit the tradition-orientated axioms apparent in specialised land rights legislation and which place great emphasis on the occupation of the land as evidence of a continuing association. Preliminary work in Port Augusta revealed that these groups suffer considerably from the assumptions held by members of the wider society towards land rights and that the reality of their land rights successes, minimal as they are, is related less to the issue of their relationship to the land than their political interaction with those agencies of law and policy which control the scarce resource of land.

Thus, the focus of this thesis is upon the political dimension of land rights, the interface between Aboriginal land rights ambitions and action and the agents of legislation, policy and development. Through a micro-scale analysis of this interface zone it becomes apparent that the expectations and norms of mainstream society greatly influence land rights action. The shaping of land rights action by external factors influences both the ideological/

policy level of Aboriginal land rights moves and the level of operation and action. Indeed, the penetration and influence of external norms and expectations at the level of Aboriginal action seriously diminishes the power of such moves.

An actor-orientated perspective is used to analyse operation and action within land rights in Port Augusta. This perspective highlights the role of patronage and brokerage at the local level of land rights. It reveals that there is a complex commitment to Government agencies by the Aboriginal groups participating in land rights. This commitment is the basis of an important contradiction in local land rights action. It is a commitment which is crucial to the success of land rights moves because it assists the land rights groups in winning the favour of those agencies controlling the resources which might ultimately lead to their acquisition of rights in relation to land. But, it thwarts and reshapes land rights ambitions and action by introducing considerations external to land rights as an issue of Aboriginal association with the land. The contradiction maintains, exacerbates and even creates factionalism and tension within the Aboriginal groups seeking land rights. Furthermore, land rights is revealed as a highly competitive process, not only at the level of Aboriginals versus the dominant society, but at an internal level as various factions compete for the attentions of Government agencies and other resource people to assist them in their struggle to gain some control over land.

Thus, in this study land rights is taken out of its popular conception as an issue of the Aboriginal association with the land and portrayed as a phenomenon of local political competition between Aboriginals and mainstream Australian society and, internally, between factions which have developed and consolidated during the contact era. The inconsistencies and opportunism which are seen to characterise the 'ingenuine' land rights moves of 'non-traditional' Aboriginals are exposed as products of the contradictory nature of the local land rights sphere. It is less a reflection on their land relationship than on the nature of the political and administrative context within which they are forced to secure a land rights success.

In summary, the main considerations of this thesis are:

- a) That current legislation and policy are tied to a conceptual model based on stereotypes of 'traditional' and 'non-traditional' Aboriginals;
- b) That 'non-traditional' Aboriginals, such as the people of Port Augusta, are deprived of specialised consideration in relation to land rights because of their lack of an overtly traditional life-style;
- c) That the scarcity of the resource of land creates an environment prone to conflict and competition;
- d) That Aboriginals within highly institutionalised environments, such as Port Augusta, become inextricably tied to external institutions and even have members of their own groups co-opted into the ranks of the Government;
- e) That this process has facilitated the penetration and

direct or indirect control of land rights politics
by external agents;

- f) That external penetration has reshaped land rights and introduced new factions, exacerbated old factions and assisted in transforming land rights into an issue of internal competition;
- g) That the apparently willy-nilly strategies of Aboriginals seeking land rights are a product of their efforts to exercise choice within a context of external penetration and control.

CHAPTER II

METHODOLOGY

2.1 THE RESEARCH PERSPECTIVE

2.1.1 Previous Approaches to Land Rights

Most researchers dealing with the Australian Aboriginals have, to differing degrees, focused on the land rights issue as a logical part of their overview of Aboriginal society. More recently, the implementation of land rights legislation and the increase in political action by Aboriginal groups seeking land rights have attracted research attention and swelled the body of literature dealing specifically with land rights. Approaches to the land rights issue have been varied but essentially can be divided into four categories on the basis of content or the type of approach. The categories I have isolated are: the justification approaches, documentation approaches, critical analysis of legislation, and description and analysis of political action. By briefly overviewing the approach taken within each category the analysis of land rights embodied within this thesis is placed into a wider perspective.

2.1.2 The Justification Approach

The 1960's and 1970's witnessed the public 'surfacing' of land rights sentiments among Aboriginals, liberal thinkers and academics (cf. Berndt, 1971; Biskup, 1973; Coombs, 1972; Harris, 1972; Nettheim, 1974; Rowley, 1970, 1971a, 1978; Stevens, 1972). As a spin-off from the more general civil

rights moves of the late sixties a large number of researchers began to present arguments in favour of the legal recognition of Aboriginal rights in relation to land. This body of literature peaked during the early seventies as the issue further entered the public arena and eventually emerged as an election issue in the 1972 Federal elections.

Essentially this body of literature advocates the introduction of land rights on the basis of social justice. Land rights, from the most naive of these perspectives, is seen as a panacea to the ills of Aboriginal society which have resulted from dispossession, discrimination and the general exclusion of the Aboriginal population from the economic and social benefits of mainstream Australian society.

The Gove case (cf. Hookey, 1972) resulted in a chain of events which dramatically altered the nature of literature calling for Aboriginal land rights. After the Gove case land rights was no longer simply an issue of social justice. It became an issue of customary law and the validity of customary Aboriginal views of the land under European law. The Woodward Commission (1973 and 1974) and the Pitjantjatjara Working Party (1978) provided the basic details of this new approach to land rights and the interface between Aboriginal law and European law. These enquiries recognised the validity of customary Aboriginal associations with the land. They defined this association by relying on anthropological studies into local organisation and Aboriginal explanations of their association with the land. To a limited extent, the Woodward Commission also extended the arguments for, and prescribed possible solutions

to, Aboriginal land rights on the basis of social justice and more general cultural associations betweenAboriginals and the land.

2.1.3 The Documentation Approach

The rapid installation of legislation dealing with land rights, particularly since the Woodward Commission, has resulted in two new literature sources. Firstly there are those authors who have traced the major political and legislative events of the recent land rights struggle and documented the issues, the events and the major legislation. These works offer welcome chronological and locational documentations (cf. Barwick, et al., 1980; Gale and Brookman 1975; Peterson, 1981). In particular, the Peterson and Barwick publications are designed to have some practical application for Aboriginal groups sifting their way through the complex and changing legal and political sphere of land rights.

The second major documentation source is a direct by-product of the administrative procedure established under the Aboriginal Land Rights (N.T.) Act, 1976. It consists of the various transcripts and claim books associated with the hearing of land claims by the Aboriginal Land Commissioner. This body of literature essentially elaborates on the details of the tradition-orientated Aboriginal association with the land and is reinforced by the vast body of existing anthropological works on local organisation. In relation to the land rights issue at a more general level, this body of information gives a significant documentation

of the Government's expectations in relation to land rights on the basis of customary law.

2.1.4 The Critical Analysis of Legislation

The numerous difficulties which have arisen from the application of the Northern Territory Land Rights Act and other land rights legislation, have resulted in a growing body of literature offering critical analysis of current legislation. In the forefront of this new body of literature are the efforts of writers such as Gumbert (1981), Howard (1982b), Maddock (1981, 1982) and Tatz (1982). They have tackled many of the legal and conceptual problems associated with land rights legislation and in particular, the Northern Territory Act. Other authors have dealt with the operational and conceptual difficulties of other legislation providing Aboriginal land rights, such as Rowley's comments on the Aboriginal Land Fund Commission (1981), McNamara's various comments on the South Australian Aboriginal Lands Trust (1971a, 1971b, 1972), and Dix's analysis of heritage legislation (1978). Essentially this literature deals with the difficulties associated with existing land rights legislation and, as such, focuses on non-Aboriginal responses to land rights demands rather than viewing land rights as an Aboriginal political phenomenon.

2.1.5 Description and Analysis of Aboriginal Political Action

This body of literature deals with that facet of land rights which involves political action on the part of the Aboriginals seeking rights in relation to land. A number

of political moves by Aboriginals for land rights have been the focus of academic attention. The Gove land rights case has been analysed from this perspective by Berndt (1964) and Rowley (1971b). The Aboriginal Tent Embassy has been documented well by Harris (1972), and Gale and Brookman (1975) placed it into a broader context of Aboriginal political action and race relations. Similarly, the strike of the Gurindji Aboriginals at Wave Hill pastoral lease has been documented and analysed as a significant stage in Aboriginal political action for land rights (cf. Berndt, 1971; Doolan, 1977; Gale and Brookman, 1975; Middleton, 1977; Rowley, 1971b).

The type of political action evidenced at Wave Hill, which involved the Gurindji people returning to their traditional lands, was only one incident in a more general process of homelands or outstation movements. The outstation movement is perhaps the best documented aspect of Aboriginal political action in relation to land rights. The process of Aboriginal groups returning to traditional lands and foregoing, partially at least, the benefits (and burdens) of European-type settlements has worked to ratify the introduction of land rights legislation. Such moves, deliberately or inadvertently, indicated through action the continuing attachment between Aboriginals and the land. The outstation movement has been described by authors such as Bell (1978), Coombs (1974, 1982) and Wallace (1977). Essentially these pieces are descriptive, at best relating the outstation process to broader issues of dispossession and land rights.

There is a notable gap in this stream of land rights literature which deals with Aboriginal political action. Little attention has been given to the processes at work in both the intra- and inter-ethnic political field of land rights. Tatz (1979; 17) noted a similar gap in his book on race relations in Australia and stated that there was a lamentable absence of research into 'the origins, aims, personnel, tactics and effectiveness of Aboriginal pressure groups'. If there is an absence of such analysis at the general political level (and Howard 1977, 1981, 1982a is the notable exception) then the sensitive land rights issue is barely touched. A worthy exception in relation to land rights is Vachon's article on the development of the Pitjantjatjara political collective and its battle for land rights recognition (1982). However, his perspective is relatively general and broadly documents the event in terms of the Pitjantjatjara versus the Government, rather than tackling the micro-scale ins and outs of the emergence of this political unit. As with other material dealing with Aboriginal political action in relation to land rights his emphasis is upon a group which is tradition-orientated. This focus is part of the general emphasis on tradition-orientated groups within the literature on land rights. It is also a result of a trend within research into the politics of land rights to place the Aboriginal association with the land as the overriding ingredient in Aboriginal political action. This view is not incorrect. However, it is simplistic and has led to those groups which are not tradition-orientated, that is, displaying the accepted forms

of association with and interest in the land, being relegated to the sidelines of research. At best, those groups which are not tradition-orientated and involve themselves in land rights action are seen as the new front of self-determination or a manifestation of the new pan-identity (cf. Berndt, 1977b; Kolig, 1977; Tugby, 1973). At worst, they are seen as 'stirrers' or radical activists.

2.1.6. 'Aboriginal Land Rights in Port Augusta' in Perspective

In terms of the aforementioned approaches to the land rights issue, this study best fits the category which focuses upon Aboriginal political action. However, the approach taken in this thesis varies significantly from the existing research in this field and indeed, land rights research in general. Most of the research into land rights approaches the issue from a 'we (the Aboriginals)/ they (the Government, miners etc.) dichotomy' focusing on either what the Government has done (legislation, policy) and how this fits the Aboriginal reality or what the Aboriginals have done (political action) in fighting the common 'enemy'. Such studies are generally set within a context of 'the land rights cause' and those aspects of the cause which are given the greatest attention are those which are seen as precedent-setting, either in terms of Aboriginal action or Government response. Largely ignored are those Aboriginal groups which have not broken new ground in the land rights struggle, that is those groups seeking land rights essentially within the limits of options

established by policy and legislation, or those groups who are not seen to have a tradition-orientated association with the land, or those groups who cannot boast a land rights success. The Port Augusta Aboriginals are such a group. In dealing with the Port Augusta group an attempt is made to break from the 'we/they dichotomy' (Howard, 1982a, 1982b). The essential focus of research is the interface between internal Aboriginal politics and the external dimension of land rights, that is the legislation, the policy and the agents which administer these concessions to the call for land rights. Thus land rights is not conceptualised simply as an issue of the Aboriginal association with land, it is viewed as a political process; an issue of decision-making about the allocation of resources (land or money) and assertions of power in relation to this (Howard, 1978b; 5).

Although this research ultimately works away from the concept of a 'we/they' situation by focusing on the local level of land rights politics, there are significant axioms and norms apparent in these two facets or dimensions of the land rights sphere which shape the nature of the interface situation. For this reason the external and internal dimensions are discussed separately to begin with. In defining the external dimensions of land rights, relevant legislation and policy are analysed. Through this analysis the conceptual, legal and political axioms of the external sphere are established. In essence, it defines the most relevant aspect of the hegemonic system within which land rights efforts operate. The analysis reveals that this

facet of the external dimension is characterised by an adulation of 'tradition-orientated' Aboriginals to the detriment of those seen to diverge from this acceptable stereotype. As will be shown, the local manifestation of this external system, that is the agencies and their employees which put policy and legislation into action, has an immense impact on the land rights situation. In addition, the local manifestation of the more general features of the dominant system, such as European monopolisation of the land resource, also shapes the land rights process. In this situation of the monopolisation of land by the dominant external sector, land must be viewed as a scarce resource, often under multiple, non-Aboriginal usage and with its controllers reluctant to forego their interests for the sake of minority groups such as the Aboriginals.

From the Aboriginal ('we') perspective of action in land rights significant norms are also apparent. These norms of Aboriginal political activity are shaped less by internal, solely Aboriginal, considerations than by norms developed in both the historical and contemporary contact situation (which I analyse in detail). In this sense, the 'we/they dichotomy' becomes less workable as an appropriate structure of analysis. That is, the structure of the 'we' dimension cannot be divorced from the local manifestations of the external dimension. The focus is, necessarily, the interface between the two. In focusing on this aspect of the land rights process the tensions and oppositions which characterise land rights, but which are all too quickly

set into a simplistic Aboriginals versus non-Aboriginals mentality, must be viewed as part of a far more diverse and fragmented situation. The situation parallels Howard's concept of 'heterogeneous classification' and demands that a finer-grained approach be taken in analysis so that the 'differential goals' of individuals and groups may be highlighted (Howard, 1982b; 83).

In understanding this heterogeneous scene the 'actors' in land rights are most important. When assuming the actor-orientated perspective I drew heavily upon the approach taken by Howard (1977, 1981, 1982a) in relation to contemporary Aboriginal politics. The approach adopted in relation to land rights in Port Augusta focuses upon 'the complex web of interaction, of alliance and competition' (Howard, 1982b;83). Thus the operative factors in this research are not simply the external axioms and the Aboriginals but intra- and inter-ethnic networks of friends, relatives, interest groups and factions (cf. Bailey, 1969; Barth, 1967; Boissevain, 1969, 1974; Mitchell, 1969). The actors are, at one level, the formal land rights groups and the organisations implementing policy and legislation and, at another level, the individual participants of these political units and the agents (employees) of the organisations. As in Howard's Nyoengah work the use of the actor-orientated perspective has highlighted the role of patronage and brokerage in the land rights sphere. Quoting Boissevain,(1969; 148,379), Howard defines patronage and brokerage as "'the use of resources by a person - the patron -

to assist or protect some other person - his client - who does not control such resources". A broker on the other hand, "places people in touch with each other either directly or indirectly for profit" (Howard, 1981; 162). The patronage/brokerage perspective produces a far 'less harmonious' view not only of the land rights scene in its totality but the Aboriginal dimension of land rights politics (Howard, 1982b; 83). In the Port Augusta setting, where land is a scarce resource, Government intervention is common and the opportunity for control of the land is rare, this 'less harmonious' view fits well the realities of the land rights process. Thus, the general perspective is not one of land rights simply as a battle between the Aboriginal minority group and the dominant non-Aboriginal group, but a process with internal factionalism, tension and competition. Furthermore, the patron/broker perspective enables the role of external agents in creating, maintaining and exacerbating these features of land rights politics to be properly assessed.

2.2 THE STUDY AREA

2.2.1 The Regional Approach Explained

Although the focus of research is the Aboriginal land rights process as it operates in Port Augusta there are two features of this topic which demand that a more general regional approach be taken. Firstly, the township of Port Augusta developed and continues to function as a regional service centre with its livelihood inextricably linked to the industries operating in its hinterland to the north,

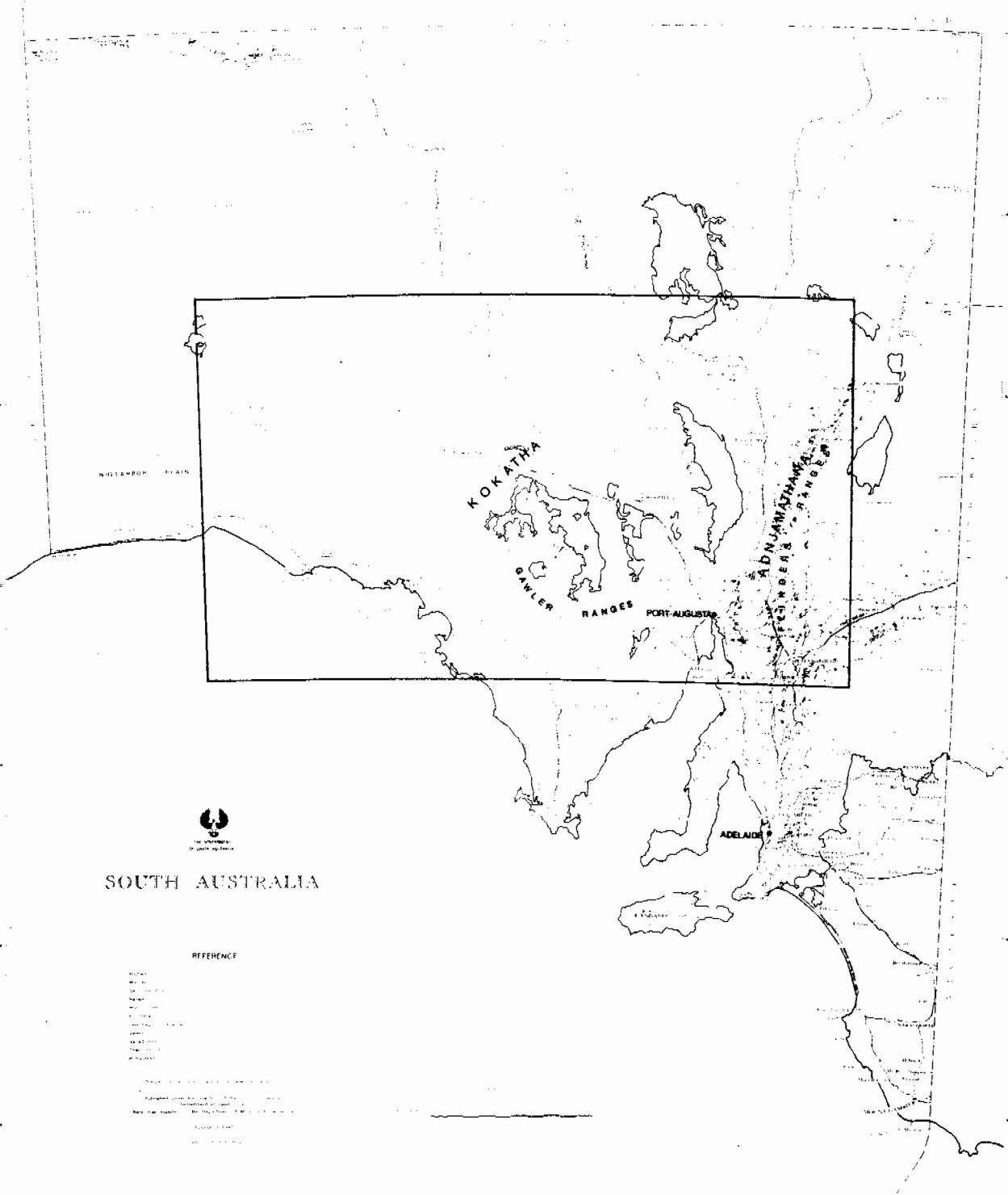
west and east. Secondly, Port Augusta's Aboriginal population traces its origins to a variety of areas often hundreds of kilometres from the town. Most of the Aboriginal residents in Port Augusta continue to identify and maintain associations with these distant areas of origin. Both these attributes of the Port Augusta township necessitate a broader regional approach to the study area.

As my research deals specifically with the land rights activities of the Adnjamathanha and Kokatha groups in Port Augusta the extent of my regional analysis has been confined to those areas of the Port Augusta hinterland which are of particular interest to these two Aboriginal groups. Map 2:1 presents the general region under consideration in this thesis and marks out the distinct areas of concern to the Adnjamathanha and Kokatha. The map reveals that the Adnjamathanha group identify with the area north of Port Augusta while the Kokatha are concerned with the area to the north-west of the town. It is to these regions that their land rights efforts are directed.

2.2.2 Selection of the Study Area

The decision to work with the Aboriginal community of Port Augusta arose essentially out of my previous experience in the area. In 1980 I worked with the Adnjamathanha group while researching my Honours Thesis. In early 1981 I returned to the area as an Environmental Impact Statement (EIS)

MAP 2:1 The Study Area showing Port Augusta and the Areas of Interest to the Adnjamathanha and Kokatha Groups.



NULLARBOR PLAIN

KOKATHA

GAWLER

RANGES

PORT AUGUSTA

ADNHAM RANGES

ADELAIDE



SOUTH AUSTRALIA

REFERENCE

- 1. Major roads
- 2. Minor roads
- 3. Railway lines
- 4. Air routes
- 5. Towns
- 6. Water courses
- 7. Contour lines
- 8. Spot heights
- 9. Boundaries
- 10. Other features

Scale 1:50,000
 Vertical datum: Mean Sea Level
 Horizontal datum: GDA 1984
 North-south coordinate system: UTM
 Easting: 500,000
 Northing: 6,000,000

consultant for a development company and worked with both the Kokatha and Adnjamathanha groups. During these two periods I became familiar with the Port Augusta people and the structure and operation of Aboriginal affairs in the town. In particular, the association by way of the EIS exposed me to the difficulties the Port Augusta people faced in relation to land rights. My experience in Port Augusta has shaped the direction and major considerations of this thesis.

The Port Augusta scene is characterised by a number of features which isolate it as an appropriate focus for an analysis of land rights action. Firstly, the Aboriginal community of Port Augusta is made up of a variety of groups which have moved into the town at differing times since its establishment. The Aboriginal people of Port Augusta identify themselves by a variety of tribal names. They trace their origins to, and identify with, discrete areas some distance from the town. The separation of these groups from their 'tribal country' sets them apart from the clan/useage axiom which, as will be shown, is basic to specialised land rights legislation.

Secondly, as a large rural town community the majority of Aboriginals in Port Augusta display a European life-style. They live in European houses, are employed by and participate in the mainstream economy, the children attend the local schools and the community is serviced by the many Government agencies in the town. Thus, the community fits readily into the stereotype of 'non-traditional' Aboriginals. Furthermore,

this Aboriginal community is deeply entrenched in the various agencies in the town dealing with Aboriginal affairs. The town environment is conducive to Government penetration and control of Aboriginal affairs and the 'acculturated' Aboriginal population participate in the Government agencies in the town.

The existence of two active land rights groups in Port Augusta further endorsed the suitability of this community as a focus for a study of land rights. The presence of the Adnjamathanha and Kokatha¹ land rights groups offered a manageable focus for the research by establishing a formal sphere of land rights actions which could be assessed in detail. The operations, aims and ambitions of the Adnjamathanha and Kokatha land rights groups form the main focus of attention within my Port Augusta study. Attention is also given to those people who choose not to participate in this formal land rights action. Some doubt was felt about dealing with two groups. There were potential logistical problems of coinciding meetings or an unmanageable number of informants to be interviewed. Similarly, I was concerned that my presence should not cause undue tension within the community and I was aware that a dual commitment may exacerbate any inter-group tension. In the field these initial concerns did not cause problems as both groups held meetings at different times and were used to sharing the services of such people as the Legal Rights lawyer. Valuable comparative data were collected by way of my working

1 There are numerous ways in which 'Kokatha' has been spelt (see Tindale, 1974). In this thesis I have adopted the spelling currently used by the Kokatha people.

with both the Adnjamathanha and Kokatha groups.

Both land rights groups direct their efforts towards the discrete areas outside of Port Augusta with which they associate their sense of identity and origin. The areas of concern to the land rights groups are under widespread and multiple use by non-Aboriginal interest groups such as pastoralists, miners, tourists and the Government. The desirability of the land over which the land rights groups are attempting to assert their right of control places the Adnjamathanha and Kokatha into a general conflict situation over use of the land. The existence of these broader 'we/they' conflict situations provided important climaxes of action in which both internal and external ideology and reality meet in a dynamic process (Colson, 1974; 82).

Rather than these characteristic features of Port Augusta separating the community from the majority of Australian Aboriginal situations, it may be seen as similar to the situation within which most Aboriginal groups deprived of special land rights attention operate. This Port Augusta study is such that the processes operating in relation to land rights may well be found in other rural town situations in Australia.

2.3 NEGOTIATING THE CONDITIONS OF RESEARCH

During National Aborigines Week of 1981 a special field trip was made to Port Augusta to discuss with the Kokatha and Adnjamathanha the possibilities of my researching the land rights issue. Discussions of my research proposal were held with the Kokatha People' Committee, the

Adnjamathanha Land Rights Committee and the Community Affairs Panel, a coordinating organisation for the Aboriginal community of Port Augusta.

The proposal to research Aboriginal land rights was met with considerable enthusiasm by the Adnjamathanha Land Rights Committee. Their efforts and opinions have largely been ignored by other researchers working with the Adnjamathanha as well as by the Government and the group was very keen to have their land rights struggle documented. Furthermore, the group knew me personally, or knew of me, by way of my previous involvement with the Adnjamathanha, and my research proposal was endorsed by one of the Adnjamathanha Heritage Rangers. These factors assisted in ensuring Adnjamathanha cooperation. At a meeting held to discuss my involvement the Adnjamathanha Land Rights Committee agreed to let me have access to their files and to observe their land rights meetings. This agreement was reached on the condition that I act as secretary for the group during my field period and take minutes of all meetings and that the Adnjamathanha people were provided with a copy of the research document produced.

The arrangement to work with the Kokatha group eventuated with less ease and was more rigidly controlled. In keeping with their general suspicion and rejection of outside interference it took some time before they agreed to my involvement. Logically, my previous association with a mining company, via an EIS survey, created problems. The final working arrangement that resulted between the Kokatha and myself carried with it a number of restrictions

and obligations. The main restriction was to demand that I did not seek or record any secret and sacred information, even though I had explained that this was of little interest to me in relation to my research perspective. Secondly, I was asked to disassociate myself formally from the mining groups with which the Kokatha were in conflict. This was done by telephone in the presence of their Legal Rights lawyer and was followed by written confirmation read again by the lawyer. Thirdly, I was asked to produce genealogies of the Kokatha families and these, along with a copy of any other historical or ethnographic material gathered, were to be returned to the Kokatha People's Committee. Finally, my operations in the field were under the supervision, firstly, of one of the members of the Kokatha People's Committee and later, when the group engaged the services of a non-Aboriginal adviser, under his supervision. As with the Adnjamathanha, I also functioned as a secretary at times for the Kokatha, and assisted in fund raising activities and provided transport when necessary.

The Community Affairs Panel was used as the contact point between myself and most other Government departments in the town. The panel assisted by notifying all departments dealing with Aboriginal affairs in Port Augusta of my impending research.

2.4 THE COLLECTION OF DATA

2.4.1 The Historical Sources

Considerable time was given to researching a range of

historical sources for the purpose of reconstructing the contact situation for both groups. The reconstructions are comprised of archival material matched against oral histories collected in the field. Both sources have their shortcomings but used in conjunction produce a valuable picture of the contact situation.

a) The archival sources

The primary archival sources were the Protector of Aborigines correspondence, the local newspaper, the Mountford-Sheard Collection, the fieldnotes of Daisy Bates, Eyre's Journals and the reports from Basedow's medical expeditions. The correspondence files of the Protector of Aborigines were covered for the years 1850-1930. This source offered valuable information for both the Adnjamathanha and Kokatha groups. It consists essentially of reports sent by Sub-Protectors (usually policemen) stationed throughout the State and, later, reports from the missions. Of relevance to my research were reports sent from Port Augusta, Tarcoola, Blinman, Beltana, Nepabunna and Koonibba. These reports contain valuable historical material relating to Aboriginal settlement patterns, population densities and forced and voluntary movement. However, these reports have serious shortcomings which had to be taken into account when using the information extracted. Firstly, most of the Sub-Protectors and missionaries had little interest in the ethnographic details of the Aboriginal people with whom they dealt. As a result, few reports make mention of identifiable tribal names which might be associated with the

contemporary groups. Thus, I had to associate the various reports to a tribal group by cross-referencing the place names mentioned therein with places mentioned in oral information collected from informants. For example, in the Kokatha case most informants recalling the movement of their people in early contact times mentioned places to the north-west of Port Augusta such as the East-West Railway, the Gawler Ranges, Tarcoola and Andamooka. Any reports mentioning places within this loosely defined area were assumed to be referring to the Kokatha. In some cases this could be verified if the report mentioned a family name still in use among the people today.

Another difficulty with this source is that the information relating to the Aboriginal population is from a European perspective and is coloured by the values of those who made the reports. This has resulted in misinterpretations such as the Aboriginals being viewed as 'cannibals', 'pagans', 'sorcerers' and 'savages'. Moreover, the authors of these reports had a vested interest (the maintenance of their position as Sub-Protector or missionary) in presenting the information in such a way that their own role was seen as being indispensable. In addition, the nature of the role of the Sub-Protectors, the maintenance of peace between the 'troublesome natives' and the European settlers, meant that most of the contact between the Sub-Protectors and the Aboriginal population was in situations of conflict. The picture of a burdensome, even criminal, Aboriginal population is a distortion resulting from the circumstances of their association with the Sub-

Protectors. Despite these difficulties, the value judgments which are so apparent in these reports give a clear indication of the attitudes of the European settlers to the Aboriginal population. The local newspaper, The Port Augusta Dispatch, also offered information, somewhat sensationalised, relating to the attitudes of the European settlers to the Aborigines.

The other archival sources were valuable both in terms of ethnographic and historical information but again limitations similar to that described above had to be considered in applying the data.

b) The oral sources

The information provided by the archival sources has been matched with oral histories collected in the field. Oral histories were collected from elderly members of both the Adnjamathanha and Kokatha groups. As with the European-biased archival material the oral histories also have shortcomings. The most common difficulties are problems arising from loss of memory or confusion of recollections by aged informants. Usually I attempted to repeat interviews more than once and cover the same stories if possible. In this way the consistency of the stories told was verified and often new detail added. Also for important events I tried to collect as many versions as possible so that an holistic picture, incorporating various individual interpretations, could be constructed. A further difficulty related to oral histories in the fusing of events, a type of chronological shorthand, in which incidents many

years apart are presented as one event. Information that is second-hand to the informant, that is, has been heard from someone else, is particularly vulnerable to this process. At all times care was taken to verify the chronological ordering of events either with dates or by setting them into the context of broader events such as the East-West Railway, the arrival of a missionary or the two World Wars.

The information collected via oral histories has been used in conjunction with the archival material in the reconstruction of Adnjamathanha and Kokatha contact with the European settlers. In this sense, the historical reconstructions consist of a fusing of European and Aboriginal 'facts'.

2.4.2 The Field Data

Four separate trips were made into the study area, excluding time spent in the area in September 1980 and January-February 1981 which was for the purpose of other research. The first trip was, as stated, during National Aborigines Week (NADOC) of 1981 (June) and was used to gain permission for my research project and to negotiate the terms of my association with the Aboriginal groups. This preliminary trip was deliberately timed to coincide with NADOC week as I felt the heightened activity during this period would enable me to pin-point some of the more active Aboriginal personalities in Port Augusta.

The second field trip into the area was for a five month period from early August to late December, 1981. During this period the main portion of my data was collected.

Not all of this period was spent in Port Augusta: three trips were made to Nepabunna, two trips to Andamooka, one trip to Coober Pedy, one trip to Indulkana, one trip to Port Lincoln and numerous trips to Quorn and Hawker in the Flinders Ranges. These trips were either to conduct interviews or to attend land rights meetings. In February of 1982 a return trip was made to Port Augusta to attend an important land rights meeting. And in September of 1982 I travelled to Ceduna and Koonibba and interviewed Aboriginal people who identify as Kokatha.

The collection of data in a town situation within which the Aboriginal community is well integrated is quite different from working in a closed community situation. The main difficulty is not seeing everything that goes on or hearing about events such as meetings. (Hearing about meetings was made more difficult by my decision to live in a caravan rather than showing a bias and accepting accommodation with members of either the Adnjamathanha or Kokatha groups). To overcome this problem a daily routine was established which involved visiting the Aboriginal Legal Rights Movement and other Government offices where Adnjamathanha and Kokatha people worked and contacting regular participants in the land rights groups. This procedure ensured I was aware of the latest events and pending meetings.

In the field I used two basic data-collection procedures: observations of land rights meetings and informal interviews. At the land rights meetings lengthy

notes were taken of all proceedings: who attended, who did not attend, who sat with whom, who said what and who did not speak. In the case of the Adnjamathanha group I was able to supplement such data with information from their file, including letters from and to the Government and the minutes of previous meetings. The Kokatha group gave me only a listing of attendance at earlier meetings and a policy statement written in June, 1981. From the data collected in the observation of meetings attendance listings were constructed which included frequency of participation, tribal identification, kin affiliation, organisation associations and place of residence (Appendix I).

The observations of land rights meetings were supplemented by repeated informal interviews. A variety of informants were interviewed but essentially all regular participants in the land rights groups were interviewed as well as people actively opposing the land rights groups, that is, non-participants. In total forty-nine individuals were interviewed at least once at length. From the Adnjamathanha group fifteen participants were interviewed at length and seven non-participants. From the Kokatha group twenty participants and seven non-participants were interviewed.

Although different information was usually required from participants and non-participants a general format for the interviews was designed (Appendix II). This format was only a general outline and was loosely applied. Usually it took repeated interviews to cover all the points. The data from these interviews were then combined with

observation data and a personal profile drafted (Appendix III). The profiles also include information offered by others about the subject of the profile. Local gossip was an important source of this secondary information and gives a good indication of how others see the interview subject. The personal profiles enabled a picture to be built of each of the actors in the land rights scene: how they saw themselves, how others saw them, and how they behaved.

The interviews also provided crucial genealogical data. In the case of the Kokatha little genealogical work had been done previously and much time was spent collecting genealogical data. In the collection of this information a number of women were particularly helpful and numerous group sessions were spent discussing and recording genealogical material. The Adnjamathanha group have already had extensive genealogies produced by one of their women who is a Heritage Ranger and I relied heavily upon her work rather than spending time constructing my own genealogies. The genealogical work assisted in understanding the local scene and was used to analyse land rights participation by kin affiliation. Extensive genealogies were drafted but only relevant fragments appear in the text.

Another important function of the informal interviews was to provide information on the informant's concept of country, that is their perception of tribal territory. Each informant was asked to either draw or describe the spatial extent of his or her tribal territory. Usually

informants chose to describe the area rather than draw it and the maps presented in the text were drafted by myself from this descriptive data. The maps produced, along with the information gathered in relation to them, are important indications of the ingredients of the tribal identity concept and its spatial manifestation.

Two other forms of interviews were undertaken in the field: interviews with local non-Aboriginals such as pastoralists and interviews with the heads of local agencies dealing with Aboriginal affairs. Three interviews were held with local pastoralists to collect their impressions of the contact period. The interviews held with the heads of local agencies were designed to provide information on the role of the agencies in the town, their policies, programmes, associations with other agencies, Aboriginal employees and the participants in their advisory committee, if one existed (Appendix IV). These interviews provided the data which were used in constructing an organisational hierarchy of Port Augusta. The information related to the advisory committees provided an insight into politically active Aboriginals in the town. The interview with the Commonwealth Employment Service varied somewhat from other interviews in that data were collected on the employed Aboriginals in the town; their names, employer and type of job. These figures were used in producing an up-to-date employment analysis of Port Augusta's Aboriginal population as well as gaining an idea of the links between the Government and the Aboriginal population via employment in Government agencies. Throughout this thesis numerous Government agencies are discussed and,

for the sake of brevity, most are referred to by their abbreviated title. To assist the reader a key to abbreviations appears in Appendix V.

2.5 THE PRESENTATION OF RESULTS

This thesis is structured so that the reader moves from the macro-scale dimension of land rights through to the micro-scale. Chapter III deals with the broadest dimension of land rights, that of policy and law. In it the axioms of the external dimension of land rights are established by way of an indepth analysis of the legislation and policy related to land rights. Chapter IV takes the reader closer to the ultimate focus of research by introducing the features of the local scene. The first part of this chapter deals essentially with European developments in the region in and around Port Augusta both from an historical and contemporary perspective. The second part of the chapter introduces the contemporary Port Augusta scene and, specifically, the Aboriginal population of the town. In the final section of this chapter the Adnjamathanha and Kokatha groups, the subjects of the land rights analysis, are introduced in their contemporary Port Augusta context.

The thesis thereafter deals almost exclusively with the Adnjamathanha and Kokatha groups. The two groups are treated separately throughout the thesis except when events draw them together and it is necessary to discuss their association. This division is not insensitive to the reality of land rights in Port Augusta, for the two groups do generally operate as discrete political units. In Chapter

V the contact history of the Adnjamathanha and Kokatha groups respectively are analysed in detail with the purpose of elucidating the major processes of change and the political norms which developed therein. In Chapter VI the land rights movement in Port Augusta is introduced from an historical perspective.

The two chapters to follow (Chapters VII and VIII) take the reader into the microscale world of contemporary land rights politics for, firstly, the Adnjamathanha and, secondly, the Kokatha. A common structure is followed in both these chapters to enable easy comparisons between the two. Firstly, the ideological level of land rights action is presented, that is the projected image or formal face of the land rights groups: their aims, focus of attention and policies. Secondly, the reality of land rights action is presented, that is the informal level of participation (Cohen, 1969; 197). Participation is analysed from three perspectives; kin affiliation, organisation affiliation and gender. Finally, the factors of the ideology and reality of land rights are set into the sphere of land rights action in which they are matched against the expectations and norms of the dominant European society and revealed in a dynamic and changing context. The final chapter to deal with the micro-scale dimension of land rights (Chapter IX) looks at the impact of the National Aboriginal Conference elections on the course of land rights activity during the field period.

In reading the chapters which take a micro-scale perspective the operative phase is 'small facts speak to large issues' (Geertz, 1973; 23). The conclusion to this

thesis takes these 'small facts' and addresses them to 'large issues' of land rights and Aboriginal political action.

CHAPTER IIITHE CURRENT LAND RIGHTS MODEL: AXIOMS
AND ACTION

3.1 INTRODUCTION

The land rights model which is established in this chapter deals essentially with the Non-Aboriginal dimension of land rights, that is, the conceptual and legal axioms established by agents external to Aboriginal society. The discussion is confined to the philosophies and policies of the Government toward Aboriginal land claims. The unique Aboriginal land relationship is considered only in so far as it is accommodated by Government policy and legislation for, in real terms, it is this which defines the potential success of Aboriginal land claims, not the full nature of the Aboriginal relationship to the land. Through an analysis of the current land rights model it becomes clear that land rights is an issue of Aboriginal access to, and Government allocation of, the scarce and maldistributed resource of land. Further, Aboriginal access to land exists within the limitations of a problematic framework of legislation and policy which is itself characterised by inequalities, contradictions and inadequacies. Thus, in the land rights sphere two resources may be isolated: one is land, the other is the legislation which exists to facilitate Aboriginal access to the land. In the Australian scene there is a large number of Aboriginals who are denied access to both adequate land rights legislation and, consequently, land.

This chapter is designed to fulfil two functions. Firstly, it analyses and evaluates the legislation which is a manifestation of Government attitudes towards land rights and which creates the structure through which Aboriginal land claims must work. This analysis reveals the Government's accommodation of land rights to be narrow, rigid and eclectic. Consequently, the Government's perspective denies a large proportion of Australia's Aboriginal population access to both adequate legislation and to land.

Secondly, through the description and analysis of legislation and policy, this chapter establishes the broadest level of parameters within which Aboriginal land rights in Port Augusta operates. The Port Augusta Aboriginal community clearly falls into that segment of Australia's Aboriginal population which is currently denied adequate recognition of their right or desire to control land.

3.2 THE PREDOMINANT MODEL

Aboriginal attempts to regain control over land since European contact initially occurred on a small scale, at a local level, and with limited success. During the sixties, the attitude of the Government and, to a degree, the broader Australian society towards Aboriginals altered from that of assimilationist to one stressing Aboriginal self-determination. Aboriginal franchise and new opportunities to participate in the direction of Government policy aided the emergence of a new style of Aboriginal political voice. Aboriginal attempts to regain control of their land became

more public, larger scale and were directed towards the Government rather than local pastoralists or missionaries. A component of the Government's general commitment to self-determination was the accommodation of at least some of the demands of the increasingly vociferous land rights lobby.

Generally, Government concessions to Aboriginal demands for land rights have been set within a compensatory logic, as an ameliorating measure for a dispossessed people . Internal pressure from liberal groups within Australian society and international opinion have supported Aboriginal land claims on the grounds of social justice.

The manifestation of these sentiments has taken essentially two courses: firstly, a recognition of Aboriginal customary law and particularly the unique relationship to the land, and secondly, the acknowledgement that dispossession has left many Aboriginal people economically disadvantaged. The growing attention to customary law in the legal field has resulted in legislation accommodating Aboriginal notions of land association in the Northern Territory and South Australia. Legislation dealing with economic deprivation resulting from limited access to the resource of land has been implemented more widely throughout Australia.

3.2.1 The Northern Territory Case

The Northern Territory is of particular interest in relation to the development and application of specialised land rights legislation that takes into account the customary land associations of Aboriginals. The customary

law branch of land rights recognition had its first legal test in the Gove claim of 1969, a case now regarded as a pivotal point in the land rights battle. The Gove case involved the Yirrkala people taking the Nabalco company and the Commonwealth Government to court over the proposed mining of land on the Gove Peninsula which the Yirrkala people felt they owned under their own tribal law (Berndt, 1964; Hookey, 1972). The Gove case was significant in its attempt to establish the legal credibility of customary Aboriginal rights and interests in land. Necessarily, evidence was taken from those seen to be expert on this matter, the Aboriginal plaintiffs themselves and anthropologists familiar with local Aboriginal organisation. Evidence given by anthropologists was afforded considerable weight in the Gove case, and marked the beginning of a legal convention of validating Aboriginal rights to land on the basis of what is seen by anthropologists to be the Aboriginal equivalent to English law notions of land ownership. In the Gove case anthropological evidence directed towards describing Aboriginal land 'ownership' included data on 'land utilization...[and] maps of clan and dialect unit territories' (Berndt, 1981;11). Although the Gove case was unsuccessful it was the forerunner of what has become known as the Woodward Commission and the subsequent Aboriginal Land Rights (N.T.) Act, 1976. The concepts and conventions established by this case, particularly the useage/clan formula of land association, have continued to shape legal and political notions about Aboriginal land interests (Maddock, 1981, 1982).

The customary law emphasis and the accompanying reliance upon anthropological evidence so apparent in the Gove case, was seen as equally significant in subsequent moves to recognise land rights. The instatement of a Federal Labor Government in 1972, with its commitment to Aboriginal self-determination and the recognition of Aboriginal land interests, placed the land rights lobby into a far more receptive political sphere than in 1969. The Labor Government came to power with a commitment to recognising '...the traditional rights of clans and other tribal groups' (quoted in Gumbert, 1981; 117, from the 1973 Labor Party Campaign, Gough Whitlam). The immediate manifestation of this commitment was the institution of a Commission of Inquiry, under Justice Woodward, into Aboriginal Land Rights (commonly called the Woodward Commission). The Woodward Commission had a twofold directive: to inquire into appropriate measures to recognise traditional rights and interests of Aboriginals in land, and to satisfy alternative aspirations in relation to land, essentially economic and more general cultural and social land aspirations (Letters Patent, 1973, quoted in Aboriginal Land Rights Commission, First Report, 1973;1). Accordingly, the two reports emanating from the Woodward Commission gave consideration to the economic and broadly cultural land needs of Aboriginal communities but, more particularly, to the means of accommodating traditional land interests in European law.

As with the Gove case, the Woodward Inquiry relied heavily upon anthropological evidence in defining Aboriginal concepts of land ownership. The recommended approach to

recognising Aboriginal interest in land was to establish legislation and an administrative framework which would accommodate the land interests of 'traditional Aboriginal owners' (Aboriginal Land Rights Commission, Second Report, 1974). In the second Woodward report the term 'traditional Aboriginal owner' was defined as:

...a local descent group of Aborigines who have common spiritual affiliation to a site or sites within that area of land, which affiliations place the group under a primary spiritual responsibility for that site or sites and for that land, and who are entitled by Aboriginal tradition to forage as of right over that land. (Aboriginal Land Rights Commission, Second Report, 1974; 162).

In this respect the Woodward Commission followed the procedures established in the Gove case and endorsed a similar usage/clan definition of Aboriginal interest in land. The Woodward definition, with minor alterations, was embodied in law through the resulting Aboriginal Land Rights (N.T.) Act, 1976 (hereafter, the N.T. Act).

The aim of the N.T. Act, subtitled 'An Act for the Granting of Traditional Aboriginal Lands' is, logically, to meet the needs of those Aborigines seen to be still participating in a tradition-orientated society. Accordingly, the Act contains a definition of 'Aboriginal tradition':

...the body of traditions, observances, customs and beliefs of an Aboriginal or of a community or group of Aborigines, and includes those traditions, observances, customs and beliefs as applied in relation to particular persons, sites, areas of land, things or relationships. (Aboriginal Land Rights (N.T.) Act 1976, S.3(1)).

Under the Act a land claim is heard by the Aboriginal Lands Commissioner (Ss.49,50). If the claim is successful, i.e. it

out that the so-called 'definitions' within the legislation are far from definitive and in fact present a gamut of new and ambiguous concepts unprecedented in law and rarely used in anthropology (Maddock, 1982; 70,87). For example, to be a successful claimant under the N.T. Act an Aboriginal(s) must be part of a 'local descent group' which has 'common spiritual affiliations to a site', with these affiliations placing the relevant Aboriginals under a 'primary spiritual responsibility for that site and the land' and conferring the right to exploit this land for economic survival (Aboriginal Land Rights (N.T.) Act; 1976; S3(1): see also Maddock, 1982; 70).

The criticisms which are being levelled at the N.T. Act are directed towards problematic principles which reflect the anthropological controversy over Aboriginal local organisation, the source of the N.T. Act's definitive terms. Gumbert (1981; 111) has aptly noted that what was an 'academic headache' is now also a 'legal headache'. The local organisation debate within anthropology is essentially divided into two schools. There are those who have extended and elaborated the early Radcliffe-Brown (1930-31) interpretation, such as Elkin (1932, 1933), Stanner (1965), Birdsell (1970) and in his early writings R. Berndt (1959). Alternatively, there are those who have challenged seriously the Radcliffe-Brown view, particularly Meggitt (1962), Hiatt (1962, 1966, 1968) and to a degree Berndt (1976, 1982) in his latter writings.

The Radcliffe-Brown model has two basic components. The first component is the clan unit which is a totemic group

ties to a spatial unit defined by the location of totemic sites. The second component is the horde group, which he defines as a patrilineal land-owning and land-using group which has its spatial unit ecologically defined. In essence it is the male totemic group plus their womenfolk. The Radcliffe-Brown interpretation in fact varied in its definition of what constituted each social unit (cf. Verdon and Jorion, 1981), but it did offer the basic constructs upon which later elaborations were based and it certainly isolated the horde as being the basic social unit of Aboriginal society. Perhaps the most significant features of Radcliffe-Brown's original model were the correlation between totemic ownership, occupation and useage, and the supposed stability of these social and religious means of organising the land.

Later analysts of the same feature of Aboriginal society built upon the Radcliffe-Brown model. The basic development was in distinguishing between the land-owning units and the land-using units. Berndt suggested that there were in fact two social units: firstly the 'local descent group' which is the religious, 'land-sustaining' and 'land-renewing' unit tied to totemic sites and secondly, the 'horde' which is an economic, 'land-occupying, land-utilizing or land-exploiting unit' tied to a variable, ecologically dictated area (Berndt, 1976; 135). Stanner (1965) suggested that if Radcliffe-Brown's concepts were interpreted spatially then they paralleled those suggested by Berndt. His contribution amounted to suggesting that the local clan group territory was an 'estate' and the larger variable horde area the 'range'.

The strongest challenge to the Radcliffe-Brown model which links useage with ownership, is the alternative view put forward by Hiatt and Meggitt. They build on Berndt's distinction between the land-owning and the land-using group. They too suggest that the clan is the land-owning unit but, more importantly, they diverge from Radcliffe-Brown's model in their interpretation of the horde. They suggest that horde membership is not confined to partrilineal descent and that these land-using units therefore may and do consist of people from a variety of descent groups. This residential notion, which they entitle 'community' offers a flexible social and spatial unit of occupation, use and ownership. It suggests firstly, that ownership and use of country need not necessarily coincide but, also, that there is a degree of variable collectivity about Aboriginal association with the land.

More recently Verdon and Jorion have presented an even more fluid notion of Aboriginal land association. By adopting what they call an 'operational approach' they suggest that ownership is a case of 'privileged access' to resources (Verdon and Jorion, 1981; 95). From this definition they argue that:

All who exploit land 'own' it, in the sense that they enjoy a privileged access to it, but some own it more than others. Those who own it the most with respect to the criterion of occupancy are those who are, at the same time, those ontologically closest to the ancestor whose sites are located on that land, and who can therefore claim to have occupied that land since its creation. (Verdon and Jorion, 1981; 100).

It is clear, therefore, that the Northern Territory legislation with its emphasis on the unilineal descent group, ownership and useage, has based its definition of the Aboriginal land relationship not on a point of fact, but a point of interpretation. Those defining the axioms of the Act have chosen to follow the most rigid of these interpretations, the ownership equals use notions established by the Radcliffe-Brown model. If the legislation embodied the more flexible Hiatt/Meggitt view or the collective Verdon/Jorion view of Aboriginal land association then it would be operating from different conceptual axioms. As a result, it would be offering access to land to a whole new set of Aboriginal people who, by their own community's judgement, have rights in land but who, by the law's current judgement, have these rights denied. Thus, while the trend in ethnographic material on local organisation is towards stressing fluidity, versatility and multiplicity, the legislation has presented a definition founded on an eclectic interpretation of Aboriginal local organisation featured by narrowness, stability and rigidity. Gumbert(1981;111) aptly points out that the emphasis on the concept of ownership, a term which 'travels badly', is an attempt to define Aboriginal land interests with a non-plural notion which fits more readily into our established legal concepts.

The inapplicability of the N.T. Act's definitive terms to the Aboriginal reality has become increasingly apparent in the evidence recently presented in the land claim hearings. For example, Maddock (1981) points out the importance of the evidence and decisions reached in relation to claims

made by the Warlpiri people for Willowra Station and the Anmatjirra and Alyawara peoples' claim for Utopia Station. Both claims resulted in the recognition of managerial rights acquired through matrilineal links to the patriline, thereby substantially broadening the type of land association acceptable under the Act's traditional owner concept (Maddock, 1981). Other claims have demanded consideration of rights accrued by way of conception, birth, death and other individually held rights.

Similarly, the Finnis River claim revealed that Aboriginal land interests are not simplistic or devoid of internal debate, but can be controversial internal issues (Aboriginal Land Commissioner, 1981). A claim for the recognition of traditional ownership of the Finnis River land was made by three groups, the closely connected Kungarakary and Warai, considered to have a joint claim, and the distinct Maranunggu group. The claim was heard by Justice Toohey. According to Toohey, the first two groups were claiming the land in question to the exclusion of the latter group, and vice versa, each asserting that they were the traditional owners of the land (Aboriginal Land Commissioner, 1981; 8). In his attempts to clarify the claim Toohey relied heavily upon anthropological accounts of traditional ownership. He was particularly concerned with information reflecting on the transfer or sharing of ownership from original groups to groups recently inhabiting an area, and with information addressing the question of Aboriginality in relation to mixed Aboriginal/non-Aboriginal descent.

These two issues were isolated by Toohey as problematic because of their variance from the established legal conception of Aboriginal interest in the land. Firstly, mixed Aboriginal/non-Aboriginal descent was seen as having the potential to disturb the accepted descent patterns which provided Aboriginals with rights over certain tracts of land. The evidence taken by Toohey on this issue resulted in him concluding that a 'mixed-blood' community can, and often does, maintain significant associations with the land despite variation in the accepted pattern of descent. Secondly, Toohey found it necessary to try to clarify the reason for the internal debate and competition for the land by the discrete Aboriginal groups claiming the land. The evidence that was accepted by Toohey as clarifying this aspect of the claim came from P. Sutton, a consultant anthropologist. Sutton's evidence suggested that internal debate was a natural concomitant of the Aboriginal relationship to the land and operated as a procedure by which Aboriginal groups could accommodate joint interests in land and the transfer of land from one group to another (Aboriginal Land Commissioner, 1981; 22).

The points of concern to Toohey in the Finnis River claim reflect the problematic relationship between the axioms of the N.T. Act and the reality of the Aboriginal situation and Aboriginal concepts of right in relation to land. The internal debate and competition among the claimants illustrates the inability of the Act's definitive terms to accommodate overlapping interests in one piece of land. It is a

reflection of the conceptual framework of the N.T. Act that Toohey wished to justify the internal competition in terms of 'traditional norms' and not in terms of the current context of land association. In fact, the debate and competition between the claimants was as much a result of the legislative procedure as it was a 'normal' facet of their association with the land. Outside of the legislative definitives of exclusive right and the limited availability of claimable land, the coinciding interests of these three claimant groups may have successfully coexisted without issues of exclusive right emerging. Thus, it was the demands of the Act's definitive terms and the scarcity of the land resource which elicited notions of exclusive right for which the discrete groups then competed. If the N.T. Act had been based upon a more flexible model of local organisation and was operating in an environment in which land was more abundant then the internal competition may not have arisen.

The issues that emerged in the Finnis claim are issues that face many contemporary Aboriginal communities that are exposed to external judgements of their Aboriginality, have limited land resources available to them, and are forced to prove exclusive rights to land. It is a case of external pressures inducing internal decisions about land which may conflict with the internally acceptable structures of Aboriginal association with the land.

In the Northern Territory case, recent political changes have resulted in increased Government resilience to Aboriginal land claims. The new power vested in the Northern Territory administration by the Northern Territory

(Self Government) Act of 1978 has facilitated the launching of a programme to reduce the amount of land available for claim and erode the powers currently conferred on Aboriginal groups owning land (Appendix VI). Moves such as that currently proposed by the Northern Territory Government, work towards making claimable land an increasingly scarce resource and, as such, counter-balance any extensions of the Act's possible beneficiaries via relaxation of its definitive criteria. These moves will in all likelihood exacerbate the types of conflict that were apparent in the Finnis River dispute when one piece of claimable land was of interest to three different groups.

The continued application of the N.T. Act has resulted in a limited relaxation and broadening of its definitive axioms in practice. However it remains, by virtue of these definitions, with the potential to be an élitist legislative piece conveniently narrowing the number of Aboriginal people able to have land claims satisfied. Even in its most relaxed application the N.T. Act, by virtue of its emphasis on 'traditional', excludes a large number of Aboriginal groups from its benefits. It maintains an emphasis on a certain interpretation of pre-contact patterns of local organisation and excludes more general notions of right emanating from a sense of origin or long association.

The following extract from an article entitled 'The Trap' which documents the Larrakia claim for land near Darwin illustrates this point and the sentiments felt by Aboriginal

groups excluded from consideration under the Act.

The words 'traditional ownership' and 'spiritual ties' to land are being repeated more and more as if they were the main reason for land rights. It sounds alright, but it is a trap. The enemies of land rights want us to make claims as though nothing had changed in one hundred years. In this way, more and more blacks will be cut off from their land.... Our traditions, the old ways, began to change from the first time we met the invaders.... The Larrakia tribe has had to make many changes to survive. For example they never make a distinction between those who are initiated and those who are not. It is not necessary to speak the language to be Larrakia. 3/4 of the 120 who identify as Larrakia are 'part-Aboriginal'. So the Larrakia never fell into the trap of talking as if nothing had changed. They did not make land claims to a white judges [sic] rules....the talk of white anthropologists ...is of no interest to the Larrakia. They know who is part of their tribe. They know which is their land, by right. (Bunji, 1978).

The Larrakia comment points to the problem which has arisen from the legislation focusing on a narrow notion of what constitutes traditional Aboriginal land interest. The legislation has worked to cement in law a partial notion of Aboriginal land interest and, further, to establish a distinction between 'traditional' Aboriginals, who are seen to deserve access to land, and the not so 'traditional' Aboriginals who are seen as less eligible for consideration under specialised land rights legislation.

The Woodward Commission and the resulting N.T. Act are significant to the land rights model not only in terms of their conceptual underpinnings but also in terms of the administrative framework they have recommended and applied. As part of the first Inquiry into Aboriginal Land Rights,

Justice Woodward encouraged the establishment of two Aboriginal Land Councils and recommended that the DAA proceed with organising a system of incorporation for Aboriginal communities and groups (Aboriginal Land Rights Commission, First Report, 1973; 41-45). These recommendations were directed towards establishing the necessary administrative and legal framework for the handing over of land. The Central Lands Council and the Northern Lands Council which resulted from Woodward's recommendations consisted of representatives from a number of different community groups. Both Councils made lengthy submissions to the Woodward Commission for its Second Report.

In Woodward's Second Report he discusses at length the formation of these Councils. Significantly, he notes that the idea of large, collective, regional-based Councils is foreign to Aboriginal social organisation (Aboriginal Land Rights Commission, Second Report, S.336; 66). Logically, there was concern that this form of administrative unit would result in unrealistic representation of Aboriginal interests in land. In an attempt to suggest that the Councils were adequate in representing the Aboriginal view, Woodward quoted part of the Northern Lands Council's submission. Their submission stated, in part:

...the Northern Lands Council demonstrated its corporate identity as the representative of Aboriginal land interests, and as the guardian of these land interests. The importance of this sense of identity should not be underestimated, and the role proposed for the Northern Land Council in the scheme for vesting title flows from its corporate willingness to guard the Aboriginal land interests. (Aboriginal Land Rights Commission, Second Report, S.337; 66).

The recommendations of Woodward and the NLC's comment reveal that at least some participants in the move to establish the N.T. Act were eager to introduce corporate bodies into the administrative framework of the Act. The N.T. Act, as stated, has incorporated the concept of regional Lands Council as administrative units. Howie, in his practical account of the N.T. Act, lists the responsibilities of the Land Councils as including:

- the preparation. [sic] lodging, and presentation of land claims
- the representing of traditional owners in negotiations with bodies such as mining companies. This is an advocacy role rather than a mediating one;
- the identifying of traditional owners (S.24) and consulting with them as well as with other Aboriginal communities and groups (ss.19,23,48).
- mediating between Aboriginal groups concerning use of Aboriginal land;
- administration of Aboriginal land. This includes the granting of permits for entry on to Aboriginal land...use of Aboriginal land...mining, sacred sites, roads, cattle, fencing, incorporations of Aboriginal groups, brands, bushfire control, soil conservation, feral animals, stock disease, distribution of royalties. (Howie, 1981; 36: see also Maddock, 1982; 65).

The function of the Lands Councils as outlined by Howie suggests, as is the case, that these bodies ^{usually} rely upon the services of a wide range of non-Aboriginal professionals.

The council structure which forms the basis of the Lands Council concept and which has gained increased application among Aboriginal groups since the introduction of the Aboriginal self-determination policy, has undergone considerable evaluation by researchers. For example, Tatz (1977; 397) argues that the council system is alien to the

internal decision-making processes of Aboriginal society and cannot, therefore, adequately operate to represent Aboriginal interests. Dreyfus (1980; 14) suggests, in specific reference to the Land Councils, that they have functions which allude to the paternalism and protectionism characteristic of the DAA and the welfare agencies.

Tonkinson (1978) takes a different stand and suggests that views similar to those held by Tatz and Dreyfus underestimate the adaptability of Aboriginals. Furthermore, he argues that the council system offers a buffer between Aboriginals and the outside world, releasing those who are not interested in 'whitefella' business to look after their own internal affairs. Rowley (1971b) also endorses the council system by suggesting its format, and particularly the incorporation of Aboriginal groups, confers a necessary legal status which permits purposeful action in the intra-ethnic field.

Certainly the council system can take some criticism in that it purports to offer Aboriginal self-determination and autonomy but in reality ties Aboriginal groups more directly to the influences of outside agents offering funding and professional skills. (Although Tonkinson also suggests the Councils are becoming more discerning in relation to their advisers and better equipped to deal with the obligations of direct contact with funding agents). In the case of the Land Councils, which work from the same concept of collectivity and corporate strength, this criticism gains considerable weight. Maddock (1982; 72) points out that the N.T. Act has led to the development of 'a hierarchy of corporations in which the lower-level corporations hold

title and the higher level corporations...enjoy powers of decision '. Within this system there is a large number of Aboriginal people who are not 'traditional owners' (as defined by the Act) whose agreement to a decision about a proposed dealing in the land is not necessary (Maddock, 1982; 69). Thus, the Land Councils are offering autonomy and self-determination for some Aboriginals only, that is, those who are given realistic powers of decision-making under the Act. There exists a basic contradiction between the notion of a collective, corporate Land Council and the expectations of the legislation in defining the Aboriginal relationship to the land. As Maddock suggests, this contradiction is creating internal irregularities in relation to decisions about the land.

The concept that Woodward recommended of a land council or, more generally, a collective political/administrative unit was not limited to his analysis of the Northern Territory case. In discussing land rights more generally he suggested that Aboriginals in other areas should be encouraged to develop their own regional councils, to be provided with independent legal and administrative help, which would work towards establishing the land needs of the communities they represent and the appropriate means of meeting these needs (Aboriginal Land Rights Commission, Second Report, 1974; Ss.745,746; 135). In so doing, Woodward was advocating a much broader application of the basic principles embodied in the N.T. Act.

3.2.2 The South Australian Case

The conceptual and administrative trends embodied in the N.T. Act were applied in South Australia with the introduction of the Pitjantjatjara Land Rights Act in 1981. The basic concepts of the Pitjantjatjara Act and the Pitjantjatjara struggle for recognition share two important characteristics with the N.T. Act. Firstly, the move to gain land rights attention and the vesting of title followed the collective, corporate group structure apparent in the N.T. Act. Secondly, the Pitjantjatjara legislation was aimed at providing tradition-orientated Aboriginals with special rights in relation to land.

Vachon (1982) is the only author to have documented the Pitjantjatjara land rights struggle from the perspective of Aboriginal action. His documentation emphasises the importance of the collective Pitjantjatjara body both at the pre-legislative phase of Aboriginal politicking and at the post-legislative phase of administration. The collective unit which is the cornerstone of the Pitjantjatjara Act is the Pitjantjatjara Council. The Council was formed in 1976. As the date suggests, its formation was linked to the passing of the Northern Territory land rights legislation. Inspired by the success of their Northern Territory counterparts, and dissatisfied with the options available to them in South Australia, the Western Desert people of north-west South Australia formed the Pitjantjatjara Council. The purpose of the Council was to provide a 'unified brotherhood of Western Desert people' which would ultimately, if their land rights efforts were

successful, act as a distinct land holding entity (Vachon, 1982; 483).

The Pitjantjatjara collective included all Western Desert people living in the Central Desert area, i.e. those people of the Pitjantjatjara, Yankuntjatjara, and Ngaanyatjara groups. In a submission to the South Australian Government for specialised land rights recognition, the Council stated that their membership was based 'on the fundamental oneness of the people, "walytja" or "family"' (Vachon 1982; 482). By drawing on this concept of 'oneness' and 'brotherhood', Vachon explains, the Pitjantjatjara were able to form a single political unit which expressed their common interest in the land and their common ambitions in relation to land (Vachon, 1982; 482). He further suggests that the scale of the encroachment of outside interests on to land seen as culturally significant by the Pitjantjatjara made the Aboriginals of this area feel it was 'socially necessary to respond...not as individuals, but as collectives' (Vachon, 1982; 485).

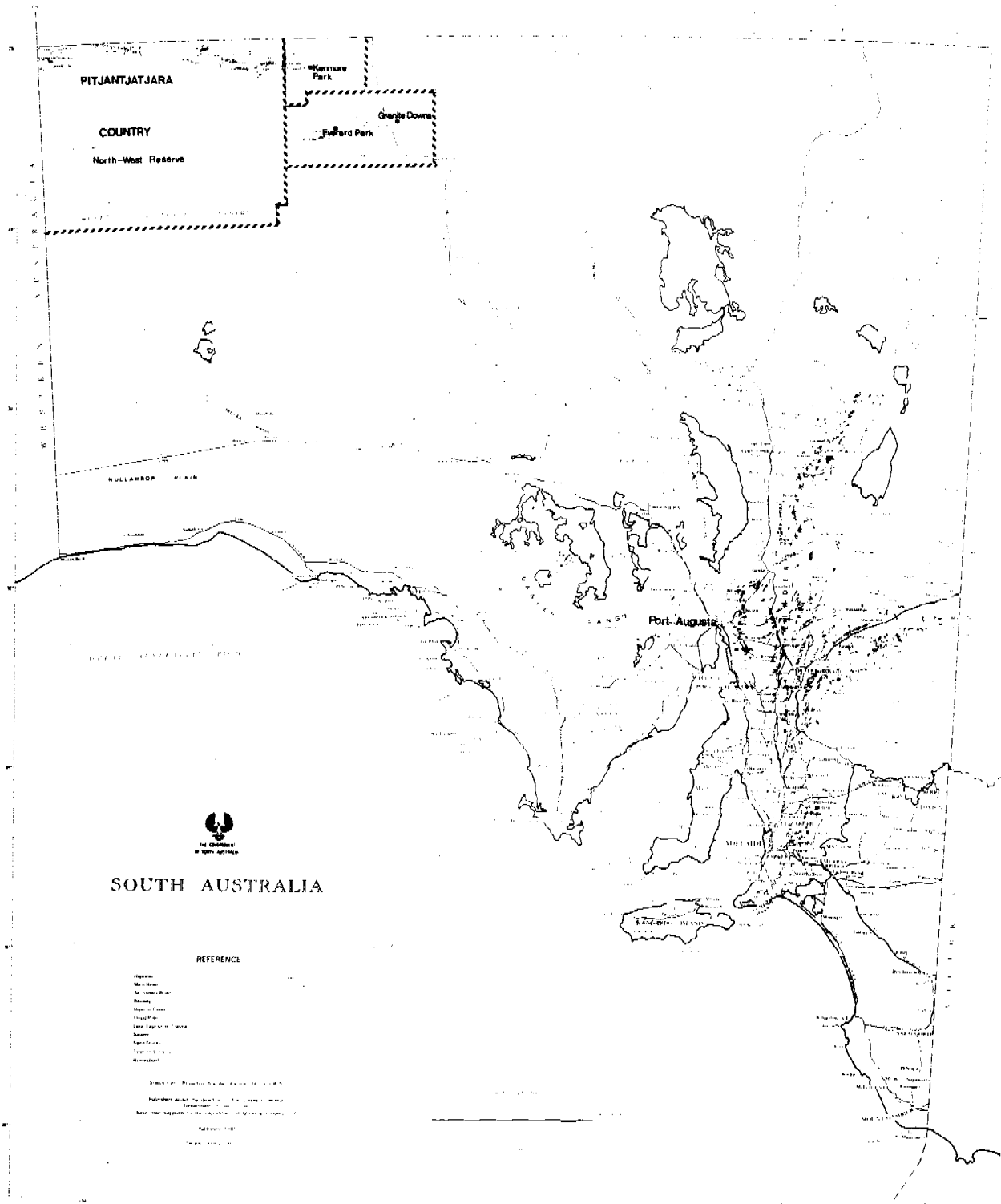
The initial land rights efforts of the Pitjantjatjara collective were recognised by the South Australian Government's establishment of a Pitjantjatjara Land Rights Working Party headed by Justice Cox. The Cox Report suggested that the Pitjantjatjara collective should be recognised and operate as an autonomous lands trust. (Pitjantjatjara Land Rights Working Party of South Australia, 1978). After considerable negotiation between the Pitjantjatjara and the Government and a number of amendments to the drafted Bill, the Pitjantjatjara Land Rights Act was passed in 1981. The Pitjantjatjara Act provided for inalienable

title to the North-West Reserve, Kenmore Park pastoral lease, Ernabella pastoral lease, Granite Downs pastoral lease and a tract of Vacant Crown Land south of Ernabella (Map 3:1). It vested title to this land in the corporate body entitled Anangu Pitjantjatjaraku, the Pitjantjatjara People (The Pitjantjatjara Land Rights Act, 1981; S5). This collective body administers the land through the Pitjantjatjara Council and has the right to deny access to the land to external groups and to oversee activities undertaken by external bodies therein.

The second major feature of the Pitjantjatjara legislation is that it has provided specialised legislation for a particular Aboriginal group. Vachon (1982; 483) notes the importance of the overt tradition-orientation of the Pitjantjatjara in impressing upon the Working Party the need for land. In this sense, the Pitjantjatjara Act endorses similar judgements about the validity of Aboriginal interest in land to those in the N.T. Act.

The Pitjantjatjara have always been subject to special consideration within South Australia policy by virtue of their traditionality. European contact with this remote group did not occur until relatively recently, and then, mainly in a controlled manner. The inhospitable character of their country discouraged the encroachment of European settlers and facilitated the establishment of a large reserve area. The Pitjantjatjara were unquestionably seen as 'the last remaining tribal natives of South Australia' (Aborigines Protection Board, Annual Report, 1945). Mission efforts in the area were especially sensitive to this and operated to 'retain as long as possible the tribal life of

MAP 3:1 Land held under the Pitjantjatjara Land Rights Act, 1981.



PITJANTJATJARA
COUNTRY
North-West Reserve

Kermore Park
George Downs
Eulard Park

WESTERN AUSTRALIA

MULLARBOD PLAIN

SOUTH AUSTRALIA



SOUTH AUSTRALIA

REFERENCE

- Hydrology
- Map of South Australia
- Map of South Australia
- Map of South Australia
- Map of South Australia
- Map of South Australia
- Map of South Australia
- Map of South Australia
- Map of South Australia
- Map of South Australia

Scale 1:100,000
 Published by the Government of South Australia
 Adelaide, South Australia
 1988

these people' (Aborigines Protection Board, Annual Report, 1947). Bilingual teaching was practised, tribal ceremonies and customs encouraged and Aboriginal councils to aid administration formed as early as 1947. In addition, considerable anthropological attention has been given to the North-West Aborigines, securing their wide acceptance as a tradition-orientated group. Even with the introduction of the South Australian Aboriginal Lands Trust in 1966, the Pitjantjatjara were given special consideration. Under the Lands Trust Act the Pitjantjatjara were offered additional safeguards, not offered to other groups, against the alienation of land they vested in the Trust (South Australian Aboriginal Lands Trust Act, 1966; S16,6).

The South Australian move to legislate specifically for one community was unprecedented. It is without question that the South Australian Government's consideration of the Pitjantjatjara for specialised legislation, conferring upon them inalienable title and unique control over the land allocated, arose from their acceptance among the wider community as a tradition-orientated group with singular land interests needing protection and preservation. The Pitjantjatjara Land Rights Act is an endorsement of the same broad ideology motivating the development of the customary law based N.T. Act. It cemented, in both the legal and the political spheres, the belief that specialised land rights legislation belonged only to those Aboriginal communities judged as sufficiently traditional to have maintained a unique association with the land and operating through pre-contact modes of local organisation. However, it did vary significantly from the N.T. legislation in its holistic approach.

Unlike the Northern Territory Aboriginals, the Pitjantjatjara are not forced into administrative procedures which demand they justify their land association by narrow, inaccurate interpretations. The handing over of a large tract of land to the Pitjantjatjara collective has allowed this issue to remain internally mediated. Despite this important distinction, it remains that those Aboriginals perceived by the Government to have the greatest right to specialised legal attention are those who are tradition-orientated. This customary law emphasis has emerged as a significant dimension of land rights and is quickly gaining status as an adequate model for land rights legislation.

The impact of this customary law trend becomes apparent when analysing the developments of the South Australian Aboriginal Lands Trust (hereafter, SAALT or Lands Trust). The Lands Trust was formed in 1966 with the declaration of the South Australian Aboriginal Lands Trust Act. This was the earliest legislative move to recognise Aboriginal land needs in Australia and resulted in the formation of the Trust, a land acquisition and land holding body. The Land Trust operated to reinstate Aboriginal control over available land for Aboriginal groups, and the all-Aboriginal Trust administration was designed to ensure these aims. The Land Trust Act was heralded nationally as a major advance in the recognition of Aboriginal land rights. From 1973 onwards the Mining Act and the Petroleum Act no longer conferred any right of entry, prospecting, exploration or mining in respect of land vested in the Trust (South Australian Aboriginal Lands Trust Act, S.16). This provision was

viewed as especially progressive as it recognised the need to protect Aboriginal land from unwanted mining, prospecting or exploration. The Lands Trust operated from broad terms of reference aiming to acquire land for reasons of traditional significance through to economic development. It was not modelled solely on the tradition-orientated axioms apparent in the Northern Territory and Pitjantjatjara legislation.

In principle the Trust had the potential to alter dramatically access to land for the South Australian Aboriginal population. In practice, however, it did little more than vest title of already accessible Aboriginal reserve land in the Trust (Table 3:1). Furthermore, early annual reports from the Trust reveal that it was coloured by its own southern-based biases. In its first year of operation all nine properties transferred to the Trust were in areas south of Port Augusta. It was not until 1969 that land in the northern part of the State was vested in the Trust.

The Trust, as noted, initially operated from a broadly defined land acquisition ideology, however, in later years, it altered its direction to accommodate the emergent tradition-based concepts apparent in the Northern Territory and Pitjantjatjara precedents. When, in 1977, the South Australian Government established the Pitjantjatjara Working Party to investigate special land legislation for the Pitjantjatjara, the SAALT began to alter its emphasis. The annual reports of 1977 onwards stress, to a far greater degree than previously, the Trust's concern with, and suitability to, recognising traditional land interests. Its

TABLE 3:1 LAND VESTED IN THE SOUTH AUSTRALIAN ABORIGINAL LANDS TRUST.

Date	Name	Area (ha)
7.9.67	Bonney	655
7.9.67	Rabbit Island	55
7.9.67	Boundary Bluff	39
7.9.67	Dodd Landing Point	33
7.9.67	Poonindie	126
7.9.67	Wellington West	53
21.3.68	Ngarrinyerra	1350
26.9.68	Baroota	44
29.9.68	Moonta	7
26.1.70	Mallee Park	8
18.11.71	Swan Reach	62
29.6.72	Point Pearce	5777
7.12.72	Murat Bay	174
13.12.73	Gerard	1942
26.4.74	Point McLeay	1099
15.8.74	Coober Pedy	214.2
15.5.75	Yalata	456149.6
14.8.75	Colebrook Home*	6.5
28.8.75	Koonibba	890
4.9.75	Wardang Island	1800
30.10.75	Indulkana	3630
19.8.76	Ceduna*	21.2
19.8.76	Ceduna	0.4
7.10.76	Brinkley	18.7
7.10.76	Fowlers Bay*	0.1
28.10.76	Davenport	18.2
24.3.77	Maree	15.5
31.3.77	Mannum*	0.1
31.3.77	Campbell Point	104
31.3.77	Streaky Bay*	10.5
31.3.77	Needles Island	24
31.3.77	Snake Island*	32
31.3.77	Goat Island*	8
31.3.77	Oodnadatta*	267.1
31.3.77	Berri	9
15.12.77	Murat Bay	78.4
15.12.77	Nepabunna	9050
15.12.77	Kingston S.E.	128
15.12.77	Bordertown	0.6
30.6.78	Port Augusta	22.1
18.1.79	Ceduna	0.5
18.1.79	Gerard (Bartsch Farm)	1589
1.3.79	Parachilna	8.1
		485582.8

* Land available for lease.

Source: South Australian Aboriginal Lands Trust, Annual Report, 1980.

(See also Peterson, 1981; 125).

1977 Report stated that '...the constant policy of the Trust since its inception has been to provide each community with inalienable title to and undisturbed occupation of the land to which it has the traditional authority to use and control without interference' (SAALT, Annual Report, 1977; 6). The Report also stressed that the Trust '... possesses a deep sensibility not only to the deep significance of land to Aboriginals, but also, the traditional relationship and strong emotional ties of Aboriginal people towards the land with which they and their forebears have been closely associated and have occupied since time immemorial' (SAALT, Annual Report, 1977; 6). In spite of the Trust's record of special consideration of the Pitjantjatjara and their eagerness to hold land on behalf of this community, the safeguards and control offered by land being vested in the Trust were not seen as satisfactory by the Pitjantjatjara.

The shift in emphasis of Trust policy was an obvious response to the establishment of the Pitjantjatjara Working Party and the threat it presented to the role of the Trust in Aboriginal land rights in South Australia. The exclusion of the Trust from the Working Party did much to exacerbate these feelings of insecurity. The same 1977 Trust Report made these sentiments quite clear:

Apart from difficulties caused by vesting title in one tribal group the Trust was also concerned that the creation of another separate Lands Trust for one particular Aboriginal group would create a precedent leading to demands for creation of further separate Lands Trusts by other Aboriginal groups which may resent the favoured treatment granted to one group without considering the others. (SAALT, Annual Report, 1977; 8).

In a more recent event the SAALT has stood firm against the Yalata community in its moves to claim the Maralinga lands through specialised legislation. The Yalata people are seeking title to the Maralinga lands from which they were forcibly removed when the Woomera Restricted Area was established for weapons research in the 1950's. The Maralinga issue is of great significance to the Trust's image as an appropriate body to deal with tradition-orientated land claims. Negotiations between the Trust and the Yalata community have resulted in moves to have a 'traditional owner' definition placed into the Lands Trust Act. The draft amendment follows closely the precedent set by the Northern Territory and Pitjantjatjara legislation and confer upon the 'traditional owners' unlimited right of access to the land and control over other bodies seeking access. The shifting emphasis of the Trust and the consequent elaboration of 'traditional owner' concepts in relation to a specific community within the legislation illustrate the increasing credence given to the customary law lobby within land rights and its logical emphasis on tradition-orientated communities.²

The South Australian scene reveals that the implications of the N.T. Act have not been limited to its jurisdiction. The legal and political headway made by the N.T. Act have transformed it into a precedent-setting example of land

2 More recently the Yalata community has been successful in becoming the subject of specialised legislation in relation to the Maralinga lands. The new legislation is outside of the auspices of the Trust and is broadly modelled on the Pitjantjatjara example. The recent conversion to specialised legislation is again an endorsement of the conceptual, political and legal emphasis given to those Aboriginal groups seen to be tradition-orientated.

rights legislation. The Act has created a locus classicus by which contemporary land rights issues are judged. Logically, legislative moves based on the N.T. Act contain many of the covert assumptions about Aboriginality and Aboriginal land interest held therein.

3.2.3 The First Dimension of the Land Rights Model

The N.T. Act, the Pitjantjatjara Act and the developments in the SAALT reveal a trend towards adulation of the 'traditional Aboriginal' as the only Aboriginals deserving of special land rights attention and the special control over land conferred by such legislation. In the South Australian case, those groups which have remained in their original areas (such as the Pitjantjatjara), or have experienced notable forced movement (such as the Yalata people), and which can discuss land in relation to myth in an Aboriginal language and appear traditional, are those given first consideration for specialised legislation.

This bias, with its accompanying relegation of 'non-traditional Aboriginals' to the sidelines, is not a recent phenomenon. The foundations of this prejudice are deeply entrenched in our thinking about the Australian Aboriginal population. Early Aboriginal policy, directed by the taxonomic anthropological work of the time, was characterised by the language of 'fullblooded', 'halfcaste' and 'quarter-caste'. This terminology maintained its place within Australian policy until as late as 1969 initially under protectionist and then assimilationist philosophies. Accompanying the taxonomic based terminology was an implicit judgement of Aboriginal culture (cf. Tatz, 1982; 9,10).

Fullblood Aboriginals, assessed essentially on the basis of skin colour, were perceived as the 'real' Aboriginals, culturally pious and adhering inalterably to precontact norms despite contact with European culture. Paler Aboriginals were seen as cultureless or, at most, guardians of a fragmented and dilapidated cultural ideal and were viewed as candidates for assimilation. Although the taxonomic-based judgement of Aboriginal groups has faded out of the literature and, along with it, the protectionist and assimilationist policy, the basic dichotomy remains. Previously judgements of Aboriginal cultural standards were based largely on colour and assumptions about cultural behaviour, now they are based solely on the apparent adherence of Aboriginal groups to the precontact cultural ideal.

The role of anthropology in developing this attitudinal framework is significant. Tatz points out that 'reconstructionist anthropology', with its emphasis on precontact conditions, permeated the research emanating from the Australian Institute of Aboriginal Studies until the mid-1970's. He adds that this has worked to create a 'loinclothed...idealized type.' which is viewed as being the real Aboriginal (Tatz, 1982; 10). This 'insidious ideology' of tribal and detribalised Aboriginals (Langton, 1981; 16) has now been enshrined in the N.T. Act and, as the South Australian case shows, has become an acceptable formula for land rights recognition outside of the Northern Territory.

The basic flaw of the traditional/non-traditional distinction rests in the inaccurate definition of 'tradition'.

Within Australian anthropology there has been a pre-disposition towards using 'tradition' in a Weberian sense, as a stable ideal, continuous with the past and largely unchanging. The assumed inflexibility of the traditional package has meant those groups deviating from its customary features are assumed to be less traditional, less Aboriginal and in terms of current legislation, less deserving of special legislative moves to recognise their land interests.

Just as the inadequacies of the N.T. Act were rooted in its eclectic use of anthropological interpretations of local organisation, the general traditional/non-traditional dichotomy ignores the increasing amount of evidence dealing with change in Aboriginal society. Much of this work deals with the maintenance of land relationships in situations of change. Mechanisms are being discovered at work in Aboriginal society which accommodate changes resulting from migration, sedentary living and cohabitation of previously discrete groups. Essentially, these have arisen through elaborations of the local organisation models, resulting in concepts of 'fallow' totemic sites (Berndt, 1976; 142), or conception as a 'device for dynamic expansion' (Kolig, 1978; 71), or dual association (Kolig, 1978; 76) or 'assumed guardianship' (Stanton, 1980; 1) or adjustments to conceptual frameworks (Tonkinson, 1970; 277-290).

Common to these change-accommodating mechanisms is their congruence with the Dreamtime dogma. For example, Kolig suggests that resettlement does not necessarily result in a break in the land relationship. Such events

are 'meaningfully adjusted' via a "contra-mnemonic device' which allows a territorial reshuffle to remain contiguous with the Dreamtime dogma, thus reducing contradictions between past and present (Kolig, 1977; 36). Tonkinson's treatment of adjustments of the dream spirit suggests a similar process. This type of interpretation offers a new view of the Dreamtime, it becomes less static and rigid, and more 'an outline...for action' which sets 'limits within which there exists a range of options' (Sackett, 1978; 42). Eisenstadt (1969) shares this more flexible view of tradition. He sees it as a 'symbol of continuity' rather than a hard and fast dogma. In his view, under conditions of change the sanctioned patterns of behaviour and social organisation become only partial. Instead of operating as a totality, in all situations and at all times, it becomes binding only for some people or some situations. It persists, but is conditionally applied depending on the current circumstances (Eisenstadt, 1969; 454-457).

This vein of research which deals with tradition in a more flexible way has not yet fully infiltrated the attitudes of the broader society towards Aboriginals. It remains that Aboriginal society in contemporary Australia is divided by contemporary opinion into those who fit the 'loined-clothed' stereotype and those who do not.

3.3 LAND RIGHTS ALTERNATIVES

3.3.1 The South Australian Aboriginal Lands Trust

Aboriginals relegated to the 'non-traditional' category by the legislative and conceptual norms have their land

interests serviced by the range of policy and law concerned largely with compensating for the cultural and economic losses induced by European settlement. As discussed previously, the SAALT was the first move towards the recognition of Aboriginal land rights. However, it has done little more than transfer the title of generally small holdings of Aboriginal Reserve land to the Trust and, outside of such land, has only a limited source of purchasable land. Currently its operations have diminished from a land purchasing and land holding body to simply a land holding body with most of its land purchasing capabilities being usurped by Federal land purchasing programmes. As with the N.T. Act and the Pitjantjatjara Act, the Lands Trust legislation places considerable emphasis on the collective, corporate unit. The Trust itself was designed to be a representative body of Aboriginals from various Aboriginal communities (although in reality its membership has had a southern bias). Secondly, land vested in the Trust is usually released to community groups. This is not a criticism of the Trust's procedure. Logically, community title is most appropriate when dealing with old mission or Aboriginal reserve land. However, it does show that the community notions and collective notions are developing as important administrative concepts in land rights recognition.

3.3.2 The Aboriginal Land Fund Commission and the Aboriginal Development Commission

In keeping with its self-determination policies, and the recommendations of the Woodward Commission, the Federal Labor Government established the Aboriginal Land Fund

Commission (hereafter ALFC). Its fundamental purpose was to enable compensation for dispossession through the allocation of land rather than cash. The ALFC was intended to meet the land needs of Aboriginal people outside of the Northern Territory and the jurisdiction of the N.T. Act (ALFC, Annual Report, 1976). The terms of reference of the ALFC were far broader than the N.T. legislation. Its 1974-5 Report summarises its intentions and the type of need for which it catered.

While the strength of traditional ownership of particular areas of land is an important factor, the Commission should have regard to communities (particularly N.S.W. and Victoria) which, while not being able to claim traditional ties, have had long association with particular areas since European settlement. Where traditional ties or long association no longer exist, economic considerations for useage of land should have a greater role in influencing the Commission's decision. This does not mean that economic factors should outweigh social considerations and the Commission is empowered to acquire land for purely social purposes (ALFC, Annual Report, 1974-5; 4).

In the Commission's report of the following year the economic and social benefits of land allocation were again mentioned, particularly in relation to its potential to improve the Aboriginal lot.

...any Aboriginal group must have some secure property in land before it can make economic progress; that without 'home' areas social disintegration, and absence of any stimulus to work in order to change one's circumstances, will continue. Such a 'home area' may or may not include places sacred in tradition. (ALFC, Annual Report, 1975-6; 4).

The value of the ALFC lay in its potential to offer all Aboriginal groups access to land. However, in operation

it was faced with a number of constraints which seriously hampered the fulfilment of both its tradition-directed and economic/social-directed intentions. The main difficulty was that the ALFC operated as a land purchasing body on the open market thus reducing its capability of acquiring traditionally significant land to that of chance rather than intent. Further, if the land purchased was of traditional or general cultural value the ALFC did not offer specialised title to that land. Unless ALFC land was then vested in, for example, the SAALT whereby it could be protected from the Mining and Petroleum Acts, then no special title or control over the land was conferred. Thus while Aboriginal groups may own the land through ALFC funding, they do not necessarily have the desired degree of control over it, especially in relation to mining and exploration. The protection of cultural interests in land still remained in the hands of heritage legislation. In fact, in most states, site registration under heritage legislation confers much stronger protection over Aboriginal land interests than does land purchase.

As a means towards 'economic progress' the ALFC was also characterised by serious deficiencies. The Land Commission was simply a land purchasing body, it was not allocated funds for purchasing stock or equipment. Money for such purposes was available only through the Department of Aboriginal Affairs (DAA) and often the coordination of Commission and DAA purchasing powers proved difficult. So even within the limitations of its ambitions the ALFC faced serious set-backs to efficient functioning.

In 1980 an attempt was made to overcome the administrative difficulties arising from the fragmented land purchase programme. The Aboriginal Development Commission (ADC) was formed, replacing the Aboriginal Land Fund Commission, the Aboriginal Loans Commission and the Aboriginal Enterprise Programme and incorporating their functions into one body. The ADC operates essentially as a funding body, allocating grants or loans to communities that have made submissions requesting financial aid. In relation to land purchases, the procedure requires that a community request funding, either in the form of a grant or a loan, through a submission outlining their economic, social and/or cultural interests in the area. A submission from a community is then assessed and accepted or rejected on the basis of need. As with its predecessor, the ADC operates from a broad frame of reference and has the potential to meet a wide range of land needs. While concern is given to the cultural significance of the land, in practice, as with the ALFC, the ADC's efforts are best directed towards meeting the economic needs of Aboriginal groups, usually via the purchase of a pastoral or agricultural lease. Its financial commitment to a land, stock and equipment package would necessarily induce some concern over financial success and does not readily accommodate non-European modes of useage. This is particularly so when ADC loans are involved, for communities in receipt of such loans are obligated to repay the Commission.

As with the ALFC, the ADC operates on the open market and while the cultural significance of the land is deemed important in its funding programme, its open market

status means it is often more impressionable to the options and vagaries presented by the market than to the cultural needs of its clients. Despite the ADC's reliance upon community direction through submissions made by Aboriginal groups, the acquisition of culturally relevant land becomes more often the result of market default than deliberate planning. An example from my study area illustrates well the difficulties that can arise when land purchasing bodies operate within market pressures like the ALFC did and the ADC continues to do. During the early years of the self-determination policy, but prior to the ALFC, increased funding was allocated to DAA for the purpose of purchasing land for Aboriginal communities. As a part of this programme the DAA offered to purchase for the Nepabunna community the then available Nantawarinna (Irish Well) lease which adjoined their reserve. The purchase was made solely on the availability of the lease and, of course, the funds. While the Nepabunna community was consulted and, no doubt its members were enthusiastic about finally receiving some of their land, Nantiwarinna was of little cultural significance to them and of poor stock potential. The offer was accepted simply because it was the only offer, and it was the only offer because no other land was available at the same time as funding was available.

It is clear that many factors need to be coordinated for bodies such as the DAA, ALFC or ADC to fulfil successfully Aboriginal land needs. Under such conditions it is often the case that these bodies function on 'the

luck of the draw' rather than deliberate efforts to meet the optimal land aspirations of Aboriginal communities.

The ADC is also deficient in fulfilling cultural land interests because of the nature of title they offer. Specialised land rights legislation, such as that of the N.T. Act and the Pitjantjatjara Act, confers upon the relevant Aboriginal owners considerable rights of control over land access and useage. In contrast land purchased through ADC funding has title without special conditions. As stated in reference to the ALFC, protection of cultural interests and control of the land's use in such circumstances can only be gained, in the South Australian example, through vesting title in the SAALT or recording sites with the Heritage Unit.

3.3.3 Heritage Legislation

Heritage legislation is a significant option open to Aborigines without access to specialised land package legislation. Most States have some form of Aboriginal heritage legislation operating on the procedure of a site of cultural value being recorded on a register and thereby being afforded protection, theoretically at least, from destruction or damage. Such heritage programmes are the nearest acknowledgement of a persisting cultural land interest for communities not necessarily functioning in a tradition-orientated manner.

While such legislation is valuable by virtue of its ability to service a broad range of Aboriginal communities and Aboriginal land interests, it is often shackled by definitional and operational faults. The South Australian

legislation is a relevant example. In its original form, as the Aboriginal and Historic Relics Preservation Act 1965, an 'Aboriginal relic' was defined as 'any trace or remains' of Aboriginal handiwork or culture. Basic to this definition was the assumption that Aboriginal 'relics' were a part of the past, of relevance to contemporary Aboriginal culture simply as part of a by-gone era. The 'relic' emphasis of the 1965 Act reflected its archaeological and conservationist origins. As with the Northern Territory legislation little credence was given to fluidity and change in the Aboriginal land interest. The formation of a register of Aboriginal sites has the inherent danger of creating a picture of Aboriginal land interest as unchanging and inalterable (Dix, 1978; 85-86).

To have a site protected under the Relics Act it was necessary for Aboriginal communities to pass over considerable amounts of information about the site to the Relics Unit for recording on their register. This condition of site protection discouraged many Aboriginal groups from using the service or, if they chose to participate, offering only secular or non-secret sites for recording and, consequently, protection. Aboriginal reservations about the Heritage service are increasing. Growing political awareness among Aboriginal communities and increasing threats to their land interests by mining development is highlighting the dangers of passing crucial cultural information into the hands of the Government. Once such information is passed to the Government then the Aboriginal power-base, their cultural autonomy, is lost. Held within an external body, outsiders can have access to the information,

facilitating their emergence as apparent experts on Aboriginal culture and endorsing their claim to the right to arbitrate over Aboriginal land issues. Such tendencies are already apparent in the Northern Territory land claim procedure with its heavy reliance on anthropological information. Today, in the broader Australian scene, as much as in the past, power for Aboriginal people arises out of their control of their knowledge of the land.

This is an interpretation of power which, in some ways, is a product of the conceptual political and legal emphasis on traditionality. The control of cultural information is particularly important in relation to the massive expansion in mining exploration and development. Under both Federal and State Environmental Impact regulations, developments must take into account the archaeological and anthropological significance of the land in question. The development of heritage registers can allow such assessments to be made without consultation with Aboriginal people, further reducing their control over the land.

In response to the increasing dissatisfaction with the 1965 legislation, a new Bill was drafted in 1978. The 1978 Bill broadened the frame of reference of the legislation by ridding it of the 'relic' terminology. The new Bill was aimed at protecting a wider range of 'items' of Aboriginal culture, including natural landscape features. Previously, these items had been recorded but the protection offered to them could always be questioned on the basis of the 1965 definition of Aboriginal 'relic'. Under the

1978 Bill, protection of land interests was offered to 'sites and items of sacred, ceremonial, mythological or historical significance to the Aboriginal people', i.e. descendants of the people who inhabited Australia prior to European colonisation. Thus the criterion for 'items and sites' to be offered protection was far broader than under the 1965 legislation, as was the definition of beneficiaries. Unlike the dangerously particular definitions of the N.T. Act the proposed heritage legislation had definitive axioms broad enough to accommodate diverse cultural interests in land held by both 'traditional' and 'non-traditional' Aboriginals. Further, the Bill acknowledged the contemporary significance of these aspects of land interest.

While the 1978 Bill addressed some of the definitional problems of the 1965 legislation and increased penalties associated with a violation of the Act, it did little to alter the difficulties arising from Aboriginal information being passed into the hands of outside groups. Its only attempt to address this problem was the establishment of a confidential section in the register. However, access to this register was decided at the discretion of the Minister (1979; S7,2). Despite opposition from both the Heritage Unit itself and Aboriginal communities, the 1978 Bill was passed in 1979. Three years later the Act remains unproclaimed and the Heritage Unit still operates from the 1965 legislation. Pressures from the mining lobby have discouraged proclamation and resulted in new amendments to the Act during 1981.

The Amendments appearing in 1981 deal more realistically with complaints related to the site register. It states, in relation to the register, that:

The inclusion of an entry in the register, or absence of an entry from the register, in relation to an object or land shall not, in any legal proceedings, create any presumption or lead to any inference that the object or the land is not an item of the Aboriginal heritage, or an Aboriginal site. (1981; 3(a)).

Some interpretations of the Bill have suggested that this amendment means a site does not necessarily need to be recorded for it to be offered protection under the Act. In fact, it merely states that the register cannot be used as a definitive record of Aboriginal sites and that an Aboriginal site may well exist without registration. It does not make clear whether Aboriginal people have legal recourse if an unrecorded site is violated.

The small progress achieved through the aforementioned amendment is far outweighed by other amendments resulting from the pressure of the mining lobby, including the Department of Mines and Energy. Within the section dealing with protected areas, provisions have now been made to accommodate objections to the declaration of a protected site. Previously only the owner of the land in question had the right to object to a site recording, the new amendments extend the right of objection to any interested party concerned with the consequent limitations on access which would result from a site being recorded. Further, the 1981 amendments to the definitive terms of the Act result in the incorporation of qualitative judgements of Aboriginal sites into the Act.

In the 1979 Act 'any traces' of Aboriginal culture and sites of anthropological and archaeological 'interest' were entitled to protection (1979; S5). Now only 'significant traces' of culture and sites of archaeological and anthropological 'significance' can be afforded the protection of the Act (1981; S2). Who judges which sites are 'significant' as opposed to 'of interest' is not stated.³

Further problems result from the administrative framework of the Heritage programme both under the original legislation and the more recent amended legislation. In the South Australian case it is the Minister who decides who has access to the confidential register, how a registered site is to be protected, or if land needs to be excised to ensure protection. The potential danger of such an administrative arrangement has been illustrated by recent events at Noonkanbah, Western Australia. The Noonkanbah people in their fight against the mining company, Amax, had to rely completely upon the protection conferred by the Western Australia Aboriginal Heritage Act. A museum survey of the sites threatened by Amax drilling resulted in a 'no drilling' recommendation, and it was planned to protect the area under the Western Australian Act. In fact, the Minister ignored the advice of the Museum, refused to allow the threatened sites the protection of the W.A.

³ Amendments to the 1981 Bill in 1982 exacerbated these problems. Then, in late 1982, the change in State Government from Liberal to Labor resulted in moves to drop the unproclaimed 1978 Act and its 1981 and 1982 amendments and start work on a new Heritage Bill based on consultation with Aboriginal communities.

Heritage Act, and ordered the Museum Trustees to approve Amax mining in the area (Berndt, 1981; 14). The resulting conflict between Amax and the Noonkanbah people is an important climax in Aboriginal land rights. It is a notable case of a Minister usurping the designated administrative unit when its recommendations conflict with other, usually more powerful, interests. In the South Australian case, Aboriginal membership of the Aboriginal Heritage Committee attempts to ensure Aboriginal interests are met but it remains that such bodies always risk having their decision-making powers overridden by Ministerial discretion, be it in the interests of Aboriginals or not.

In a situation where all decisions associated with the registration and protection of sites rests either with the Minister or some body external to the Aboriginal community, the reality of Aboriginal power to protect their land interests rests more in their capacity to lobby the controlling groups for attention than in the Aboriginal interest in the land. While it is reasonable to believe that such administrative units will hold Aboriginal land interests in priority, the Noonkanbah case clearly shows that these bodies are not autonomous in their decision-making processes and can in fact be superseded by the directives of Ministers. Further, the limited resources held by the administrative and operational bodies of heritage legislation usually result in massive inequalities in the distribution of services. The South Australian scene has a good example of this. Since its inception the

Heritage Unit has given considerable attention to the Adnjamathanha community of the Flinders Ranges. The attention given to this group is grounded less in terms of Aboriginal need than in terms of the European assessment of the Flinders Ranges as an area of particular appeal to the European aesthetic, a prime tourist area in the State, and thus worthy of conservation and preservation moves.

At a more general level of criticism the heritage legislation always contains the inadequacies concomitant with the procedure of recording spatially distinct sites. This procedure is insensitive to the spatial continuity within the Aboriginal landscape view which is characterised by nodes and tracks of cultural significance. At best, heritage programmes can protect sites along a Dreamtime path leaving the interconnecting tracks unprotected and under threat from development. There exists a basic incongruence between the Aboriginal landscape view and the spatially segmented site recording procedure. This incongruence reflects, once again, an eclectic view of Aboriginal land interests based on the assumption that the high points of the Aboriginal landscape are isolated sites connected to the Dreaming and that intermediate ground is of lesser significance.

It is important to note in relation to the South Australian Heritage legislation that the Heritage Unit has made a number of administrative changes, without supporting legislative changes, to try and counter some of the complaints currently levelled at their procedure by their

Aboriginal clients. Perhaps the most significant change has been the introduction of a confidential register to which access is limited and closely monitored by the Unit in consultation with the relevant Aboriginal groups.

3.3.4 Environmental Impact Legislation

A less direct means by which the Aboriginal interest in land can be recognised is through State and Federal Environmental Impact Statement (EIS) legislation. Environmental Impact legislation provides a means by which the potential impact of development proposals on the environment can be assessed. Part of this assessment includes investigating the anthropological and archaeological significance of the land in question. Usually, finds within these spheres of the investigation are supported by being conferred protection under heritage legislation. The EIS procedure offers the only vehicle through which Aboriginal communities may formally pronounce their land interests in relation to proposed developments.

Within South Australia, to use a relevant example, the legislative directive for an EIS is given under the State Planning Act, 1966-78. This Act compels companies with development proposals to produce an EIS prior to development commencing. Reports emanating from the Environmental Impact procedure are expected to describe the proposed development, document the state of the existing environment and possible effects on the environment which may result from development. Within the EIS it is expected that alternative modes of development be presented and assessed

with a view to selecting the least environmentally harmful and to set out procedures which need to be undertaken to protect the environment (Department of Environment and Planning 1981a, Generic Guidelines for EIS). Within both the Generic Guidelines and in the project-specific guidelines the Aboriginal interest in the land is isolated as an environmental variable.

Both the State and Federal legislation are incapable of halting development on the grounds of the EIS findings. The purpose of the EIS is basically to upgrade the influence of environmental factors in the general decision-making procedures accompanying large-scale development. (House of Representatives, Standing Committee on Environment and Conservation, 1979; 14). In this sense the companies conducting the EIS are not compelled to adhere to the findings of the inquiries. For example, only when the Aboriginal interest in the land is able to be recorded and registered under the Aboriginal Heritage legislation is there a legal compulsion for companies involved in development to accommodate the Aboriginal interest. Considering the inadequacies of the site-recording biases of the heritage procedure to cover properly the spatially continuous Aboriginal land interest, the EIS procedure cannot offer the Aboriginal people adequate protection. Thus, while the consultation with Aboriginal groups prior to development which occurs as part of the EIS procedure is an arrangement preferable to non-consultation, the potential of the procedure to alter realistically the course of development to accommodate the

Aboriginal viewpoint is small unless backed by Heritage legislation protection.

Similarly, the timing of the implementation of the EIS procedure is far from sympathetic to actual and potential Aboriginal interest in the land. An EIS must be produced only prior to development, meaning that the exploratory phase is unassessed. In the case of mining the exploratory phase involves considerable drilling and can be as damaging to Aboriginal land as the development phase. If a site of Aboriginal significance is damaged in the exploratory phase there is no recourse, such as a claim for compensation. Under such circumstances consultation becomes merely lip-service to the Aboriginal interests in the land.

It is significant that such Environmental Impact requirements are not part of the normal course of events in establishing a National Park. No doubt it is assumed that the establishment of a park area will adequately protect the Aboriginal land interest, and, in terms of National Park philosophies, this would be expected. However, the increasingly strong bond which is forming between National Park areas and tourism means that even the establishment of a National Park may be presenting new pressures on the land which were previously absent. Of course, it can be argued that the presence of the Park officials discourages tourist interference with Aboriginal sites but this must be weighed against the substantial increases in tourist numbers which usually accompany the opening of a Park area. For example, in the Kakadu area

it is not so much overt interference with art sites, which tends to have decreased since the presence of Park officials in the area, but the covert attrition on sites resulting from the increase in dust or the increase in human handling of sites resulting from hundreds of tourists filing past in a season.

3.3.5 The Second Dimension of the Land Rights Model

The preceding discussion reveals that communities excluded from specialised legislation are forced to accommodate their interest in the land through a variety of options implemented at both the State and Federal level. As with the N.T. Act and Pitjantjatjara Act these alternative in-roads to land rights recognition are based on pre-conceived notions about Aboriginal culture. This body of legislation is designed to service, although not exclusively, what the conceptual framework of the legislation establishes as the 'non-traditional' element of the Aboriginal population. This is not to say that the people serviced by the legislation are 'non-traditional', simply that the assumptions of the legislation suggest they are. The 'non-traditional' stereotype consists of Aboriginals displaying a breakdown in descent patterns related to land, ritual participation, language and other cultural 'paraphernalia' and thus, according to the legislative logic, a breakdown in 'significant' associations with the land. Included in this stereotype are those Aboriginals in the south of Australia, living in towns or cities, spatially

removed from their region of origin. The body of legislation servicing this group of Aborigines reflects an interpretation of Aboriginal interests in land in terms of welfare for an economically depressed and disadvantaged people, recognition of long association, or preservation of cultural heritage, the left-overs of a by-gone era. The general opinion of land claims emerging from groups which are not patently 'traditional' is that they are, at best, based on nostalgia or, at worst, exploiting the current moves to recognise 'genuine' land claims.

The legislative options developed to service land rights claims form the current model of land rights response in Australia. In summarising this model, it is clear that it is based on a judgement of Aboriginal people derived from a 'traditional/non-traditional' dichotomy. The axiomatic principles of this model derive from anthropological interpretations of Aboriginal culture and particularly Aboriginal land interests. However, the use of anthropological material has been eclectic and biased towards the definition of the 'traditional' cultural norms. This results in an inherent irony in the legislative model: while the N.T. Act and similar legislation has taken great pains to define the type of land interests held by the communities serviced, and actually resulted in a too specific definition; less specialised legislation has been introduced and functioned on inadequate investigations into the reality of the Aboriginal land needs they purport to service. Policy and legislative options for these

groups is piecemeal, uncoordinated and based more on what is thought to be the Aboriginal land interest than careful research into the reality of the land relationship of these people. As time progresses the nature of the 'non-traditional' land relationship is becoming the focus of anthropological and legal attention. Studies which emphasise regional affiliation and regional identity concepts are suggesting deficiencies in the basic 'traditional/non-traditional' dichotomy of land rights legislation by presenting new notions of contemporary Aboriginal land association. For example, Kolig suggests:

The clan is no longer the land-owning unit. Aborigines of quite different linguistic and subcultural origin have gathered together on the settlements. The existence of settlements and the boundaries of properties have come to strongly influence the Aborigines' ordering of space. Aborigines residing at a particular settlement and developing emotive ties with it identify themselves, are identified by others, by the settlement's name...And these identities have become relevant to the division of space...men...maintain frequent contact with this particular stretch of land, mapped out by non-Aboriginal ownership... Pastoral boundaries and other non-Aboriginal demarcations came to enforce fairly rapidly and arbitrarily the range over which an Aboriginal community could and would assume religious trusteeship. (Kolig, 1978; 70).

Kolig stresses the development of ties of commonality between previously discrete groups and the development of new broader units of social interaction and, to an extent, land association. Others such as Hiatt (1968), von Sturmer (1973) and Berndt (1977b) also point to new 'symbols of belonging' such as regional origins, linguistic similarity,

shared experience and emotional bonds. These concepts point towards new social units and emphasise different aspects of land association that can persist beyond the regular maintenance of ritual or land occupation.

Barwick's work on Melbourne's Aboriginal community has highlighted the persistence of regional affiliation in the urban environment and stressed the importance of long associations with particular places to Aboriginal identity concepts (1963). Social identification units such as the community, regional group, tribe or 'supra' tribe are gaining status as valid units of contemporary Aboriginal society. Less easily accepted are the new notions of land association which are tied to these units. They are based on a kaleidoscope of notions that do not fit easily into the 'traditional/non-traditional' dichotomy. Heritage preservation, sacred sites, homeland, tribal country, economic need and long association are but a few of the dimensions present in the contemporary Aboriginal land association.

The N.S.W. and Victorian land legislation is attempting to take these new notions of Aboriginal land association such as heritage, long association and homeland into consideration and afford them legal status as justifiable motives for Aboriginal land claims. However, it remains that, as with Aboriginals who fit the 'traditional' bill and are afforded the questionable benefits of specialised legislation, those groups not highlighted by their 'traditionality' have their access to land dictated by a

range of external forces. For example, the availability of claimable land in areas of intense contact is generally low. Those groups most affected by the contact experience are also those groups whose land is perceived as being of greatest economic value to the general Australian society and used to this end. Access to this land is greatly restricted by the reluctance of the mainstream Australian society to relinquish profitability for the benefit of a minority group, be it economic, social or cultural benefit. Claimable land, i.e. vacant Crown Land or leases open for tender, are scarce resources in these high interest areas and Aboriginal groups are pitting their strength against much stronger corporate forces of pastoral companies, tourist interests and particularly miners.

Furthermore, although there is an abundance of legislation aimed at accommodating Aboriginal land interests in these areas, it is piecemeal, alters constantly and is fraught with inadequacies. Unlike 'traditional' groups who have their land interests afforded special attention, the populations defined as 'non-traditional' are faced with a depleted legal resource of legislation offering them satisfactory access to land. Within this sphere, the land relationship or land need becomes subservient to factors such as political identity, political aptitude and access to government agencies. For example, the Adnjamathanha group of my study area has had considerable land rights success. This, however, is less a reflection of their land relationship than their strong

community identity, the attention they have had from anthropologists, the topography of their country, and the development of strong relationships with a number of Government agencies offering land rights services.

As an extension of this interpretation it can be argued that the range of rapidly changing legislation offered to these Aborigines means that land rights achievements are less an issue of the Aboriginal land relationship than an issue of the ability to lobby successfully the agents of this legislation. The establishment of links with various agents of the legislation, the ability to assess which agency would best suit land rights ambitions, and the degree to which the Aboriginal groups fit the agency's expectations of the Aboriginal land relationship, become the determining factors in land rights. Of particular importance to land rights success, even within this 'non-traditional' realm of land rights legislation, is the ability of the Aboriginal groups claiming land right to project an image of themselves which fits the model established by the specialised legislation. Thus, tradition and collective solidarity and action, which are the axiomatic principles of specialised land rights attention, are becoming the prime ingredients in all Aboriginal attempts to secure recognition of their land interests. It is this dimension of land rights, that of Aboriginal politics within the 'non-traditional' sphere, which forms the focus of attention in my Port Augusta research. The Aborigines of Port Augusta are those relegated to the 'intellectual sidelines' of land rights thinking (Collmann,

1979; 3). They are in a region under massive pressures from outside corporate agents, and they are forced to accommodate their land interests within the piecemeal legislation offered to those who are not perceived as 'traditional' by the conceptual and legal underpinnings of Australian society.