CHAPTER I

A DOCUMENT AND ITS BACKGROUND

On 28 November 1978, Dr H. C. Coombs, formerly Director of Post-War Reconstruction, then Governor of the Commonwealth Bank of Australia and later the Reserve Bank, and from 1967 to 1976 Chairman of the Council for Aboriginal Affairs, circulated a document to a group of friends in Canberra. Its first paragraph read:

> The present political and economic climate seems unfavourable to attempts to press for specific programmes, reforms and benefits for Aborigines. There may therefore be value in turning our own and public attention to more general issues and principles. There is evidence (in the attitude, for instance, of Churches) that in Southern and Eastern Australia there is increasing acknowledgement of the injustices and deprivation which white occupation has imposed on Aborigines and of their right to be compensated for them.

The group who received the letter were people who knew the background of frustrated effort which lay behind his words.

For the most part, they had shared, studied or reported on the efforts and problems of the Council for Aboriginal Affairs.

The Council and its Office were appointed, after the referendum of 1967, to advise the Commonwealth Government how best to carry out the directives of that referendum, which by an overwhelming majority of around 90 per cent authorized it to legislate on behalf of Australian Aborigines, where previously Aboriginal destinies had been decided by the varying whims of state governments. The nine years of the Council's operation, summed up in Dr Coombs' book *Kulinma: Listening to Aboriginal Australians* (Canberra, Australian National University Press, 1977), and the story of the following years when the few gains then made were whittled gradually away and Aborigines' hopes fell once more, gave rise to the letter of 1978.

Not all the people to whom it was sent were later to become members of the Aboriginal Treaty Committee (ATC) which began under Coombs' chairmanship in the following year, while some who did not receive it were to become so. But it was the foundation document of a new voluntary enterprise which in the four and a half years of its existence did much to supplement and inform the work of Aborigines themselves towards justice.

Even before the British occupation of Australia in 1788, the question of its effects on Aborigines had intermittently troubled the consciences of Europeans though apparently without effect on the British Government's proposals.[1] The story of the overrunning of the continent, without any attempt at compensation, agreement or even bargaining by the landtakers, was hushed by most early historians. Not until after World War II when a new scholarly interest was reinforced by the work of anthropologists such as A. P.

1 A. Atkinson, 'The Ethics of Conquest'. *Aboriginal History* 6, pp.82–6, 1982.

Elkin and W. E. H. Stanner (the latter himself later a member of the Council for Aboriginal Affairs), and the question of colonized peoples attained a new influence with the Charter of the United Nations and the UN Declaration of Human Rights, did a movement begin to support a new Aboriginal push for land rights and human rights.

The literature, both in anthropology and sociology, and more recently in history, is now immense (though almost all confined to the past few decades). Australian newspapers have mentioned Aboriginal resistance, statements to officialdom and petitions for land rights at least since the 1840s; but especially from the mid-1960s the land rights issue has been given more column-centimetres than ever before.

The most publicized recent event was certainly the setting-up of the first Aboriginal Embassy in a few small tents outside Parliament House, Canberra, in February 1972, and its dismantling twice over in the following July, with accompanying violence by police. That had made world news. But the events which led up to, and followed, the setting-up of the Embassy are not so well known; and to understand the reasons behind Dr Coombs' letter of six and a half years later, a summary narrative will be needed. In the 1950s and 1960s Aborigines suddenly made their presence and survival known to an apathetic Australian public. Slowly recovering from the shocks of invasion, dispossession, slaughter, disease and relegation to the status of a landless and despised minority in their own land, unable even to vote until a Native Welfare Conference of 1961 accepted the policy of 'assimilation' rather than the previous 'protection', their voices now gathered strength.[2]

A national organization set up in 1957, with participation from many societies, trade union representatives and

2 For an account of administrative policies, see C. D. Rowley's three books listed in the Select Bibliography, especially the account of the 1961 Conference of Commonwealth and State Ministers in *Outcasts in White Australia*, pp. 389 ff.

unions, had been the first sign of the national politicization of the Aboriginal cause. At first under the title of the Federal Council for the Advancement of Aborigines, later renamed to include Torres Strait Islanders (FCAATSI), it operated on flimsy finances of donations and voluntary help. As a pressure group, it co-ordinated member groups in support for a 'Yes' vote in the 1967 referendum, which changed two clauses of the Australian Constitution to enable the Commonwealth Government to make laws for Aborigines and to include them in the national census. Commonwealth initiatives beginning in 1931 for federal responsibility in policy-making had been resisted by the states. The 1961 Conference of State and Commonwealth Ministers with responsibility in areas of Aboriginal affairs established 'assimilation' as a national policy for all Aborigines; in 1965, however, this was modified to allow some minimal recognition of Aboriginal culture and identity. It was this situation which the Commonwealth at last inherited from the states in a landslide vote in 1967.

The Commonwealth had little experience in or knowledge of its Aboriginal minority outside the Northern Territory (and little knowledge even there). The then Prime Minister, Harold Holt, appointed the Council for Aboriginal Affairs as an advisory body only weeks before his death by drowning in 1967. The Council's job thereafter was made most difficult by the lack of interest of the new Prime Minister, John Gorton, and by entrenched opposition from state and territorial bureaucracies.

The Council's three members were Dr Coombs, Mr Barrie Dexter (previously Ambassador to Laos), and Professor W. E. H. Stanner, an anthropologist who had worked with Northern Territory Aborigines since 1932 and had studied and urged reforms in the administration of the indigenous peoples of Africa and the Pacific. They had early begun to be convinced that the assimilation policy was not what Aborigines desired and not what they deserved. This

made for inevitable conflict, not just with the states and the Northern Territory administrative officials, but with the Commonwealth departments which administered matters relating to Aborigines, and the ministers who accepted their advice.

The new science of anthropology, which provided the initial impulse towards modification of the former administrative rigidity, gained a footing in Australian universities in 1926, with a Department of Anthropology established in the University of Sydney. Professor A. P. Elkin, who headed the Department from 1933, published in 1938 his highly influential book *The Australian Aborigines* which went through four Australian editions and seven reprints in the next thirty-five years. In the preface to its revised fifth edition, he wrote:

> When an old native . . . asked me in 1927 why I wanted to know so much about his tribe's customs and beliefs, I answered: 'In order to understand native life and thought, and to pass my understanding on to Government men, missionaries and employers in the hope that they would appreciate your people and their ways.[3]

The influence of this book, and the long campaign by Elkin and others for a new and positive policy to replace 'protection', had much to do with the gradual change in the attitudes of some European Australians to the indigenous minority. After World War II, pressure came from member nations of the United Nations Organization. The Declaration of Human Rights and subsequent conventions to which Australia was a signatory were cited in questioning Australian administration of Papua and New Guinea. These former colonies were administered by the same Commonwealth departments responsible for the policy and administration of the Northern Territory. The differing

3 *The Australian Aborigines: How to Understand Them.* Sydney, Angus & Robertson, 1974, p.v.

situation of these indigenous peoples, who owned their land and whose independence was the stated aim of the Australian administration, put further pressure on Australia and was noted also by Aborigines. The Commonwealth's concern with improving the Aborigines' situation was in large part a result of these and other factors. The famous 'Freedom Rides' led by Aboriginal student Charles Perkins (the first Aboriginal to study at the University of Sydney) in 1965 had highlighted the miserable situation of Aborigines, concentrating on the towns of western New South Wales. The high publicity gained by the Freedom Rides put great pressure on the governments both of the states and of the Commonwealth itself.

The definition of 'assimilation', rigidly enunciated first in 1961 to demand that Aborigines seek 'the same' lifestyle as other Australians, was modified in 1965, when all State and Commonwealth Ministers agreed to recognize the persistence of Aboriginal culture and identity; their policy, it was announced,

> seeks that all persons of Aboriginal descent will choose to attain a similar manner and standard of living to that of other Australians and live as members of a single Australian community.

This apparently laudable aim not only set hurdles which few Aborigines could possibly leap (landless, dependent on government aid and on welfare measures which could change from year to year as successive governments decided on budgetary allocations, miserably fed as large families struggled to live on tiny incomes, seldom employed and generally despised as they were), but virtually put the blame for their situation on themselves. They were left in the care of officials determined to eradicate as far as possible the Aboriginality through which, in fact, they had survived. This provided them with the strength of an ancient kinship system, the support of its traditions of sharing, and the

remaining knowledge of their spiritual culture and bond to the land. Where the land had been irrevocably — it seemed — lost to them and they had been uprooted, many Aboriginal groups and communities had little left to live for except the consciousness of kinship.

Their tie to the land might have seemed already broken. That this was not so was proved in their resistance to the 'assimilation' policies. They did not, as governments had intended, choose to forget their Aboriginal identity. And those who still lived in contact with their land and its traditional spiritual influences would now, as the farthest distances of Australia were increasingly invaded by prospectors, roadmakers, miners, and uncomprehending tourists, prove their resistance was far from ended.

The conflict brought on by this continuing and strengthening Aboriginal resistance and the demand for 'land rights' necessarily involved the Council for Aboriginal Affairs from its beginning.

In 1966 the Gurindji people employed on Wave Hill, a vast Northern Territory pastoral station owned by Vestey's, an absentee English company, had walked off in protest against wages and conditions which no trade union would for a moment have tolerated for its members. (Until 1966 Aborigines were excluded from pastoral awards and unions showed little interest in their conditions.) They set up camp on a creek close to their major ceremonial areas. Sympathizers publicized their case, and before long the walk-off strike turned into a *cause célèbre*, the Gurindji now demanding not just improved wages and conditions but land rights over their campsite and ceremonial areas, and the opportunity to set up their own pastoral and mining enterprises. The early manifestation of the land rights campaign had been a factor in the big 'Yes' vote in 1967, and the conflict was still going on when the Council was appointed.

Since the Northern Territory was within the

Commonwealth Government's control, the first advice the Council was called on to give related to the Gurindji claims. The influence of the pastoral industry on the Liberal–Country Party Government was still very high (though already the influence of mining companies was beginning to rival it). The Council's advice was based on an increasing conviction that 'Aborigines who demanded land rights were fundamentally asking that Europeans restore to them land that was rightly theirs according to Aboriginal law and tradition'.[4] It recommended the government to set up procedures to examine land claims by Aboriginal groups where these were based on traditional associations with the land. The Cabinet, influenced by its supporters, who were naturally apprehensive over any acknowledgement of Aboriginal rights to land or compensation for dispossession, rejected the advice and took other measures — in the end unsuccessful — to solve the situation. But already the advisory body was seen as being in conflict with the government it had been set up to advise.

With the next major case for land rights in the Northern Territory, on the Gove Peninsula, this problem took a further and momentous step forward. The Yirrkala Aboriginal Reserve contained large bauxite deposits. The Commonwealth Government had allowed and encouraged prospecting within the reserve, and had issued a mining lease over the deposit to the mining consortium Nabalco Pty Ltd. With the help of their Methodist missionaries, the Aborigines who lived on the reserve, and who had traditional rights over its land, brought a case against the mining lease, joining Nabalco and the Commonwealth as defendants. The government, which was in any case determined to clear the way for the mining enterprise, agreed to pay the costs of the Aborigines' case.

Much of the evidence was given by two anthropologists,

4 Coombs, *Kulinma*, p. 162.

Professor W. E. H. Stanner and Professor R. M. Berndt. They supported the Aborigines' contention that they did indeed have a 'conception of a right of ownership under title, a corollary right of possession and connected rights of occupation and use'.[5] Because the nature of their relationship to the land made it inconceivable that they could alienate land, the judgment by Mr Justice Blackburn, relying on the common-law interpretation of the concept of proprietorship, went against the Aborigines' specific claims. But the judge also conceded that they had a system of law, and of title, even if not of the kind recognized by British and later Australian legal systems, and that there had been no cession of title on their part; and he urged governmental action to recognize Aboriginal rights in land.

The judgment against the Aborigines, which was not issued until April 1971, much reinforced the uneasiness of many people over the situation of Aborigines *vis-à-vis* the dominant society. The common law, said Mr Justice Blackburn, had never required the British Government to recognize any rights which may have existed under the Aboriginal law in Australia. There was no doubt, he concluded, that Australia came under the legal category of a 'settled or occupied colony' — as against a conquered or ceded territory. This judgment implied that there had been no opposition on the part of Aborigines to the process of peaceful settlement.

The judgment, which confirmed the Commonwealth's power to issue mining leases on Aborigines' reserves, did not go without criticism, then or later, even on strictly legal grounds. And there were some European Australians, let alone Aborigines, who did not believe that the 'settlement' as it was remembered had in fact been peaceful. Tales were still told of battles, sometimes even pitched battles, along the frontiers of European advance. Especially in

5 ibid., pp. 166–7.

Queensland and northern Australia, such events, and massacres on both sides, were much less than a century in the past. But historians had ignored them for the most part and few European Australians now traced their Australian generations back more than fifty years into the violent past.

But the judgment roused more questions for many. It was increasingly pointed out that Australian Aborigines appeared to be the only indigenous people in any former British colony who had not been asked to negotiate treaties over the cession of land, and apparently had no recognized right to compensation for the loss of land they had occupied since time immemorial. The Blackburn judgment seemed a hollow vindication for the Commonwealth Government, and for the mining venture which had aroused the growing environmental lobby to condemn its likely effects. The Nabalco consortium also proposed a very big woodchipping operation on the Peninsula — and in the south, woodchipping now had many strong critics.

This involvement of environmentalists in the issue helped to rouse sympathy for the Yirrkala people, especially when the judge's summary of evidence given by and for them was published. There were some scathing press articles, the public reaction was much more critical than the government had expected and trade unions threatened to boycott the Gove developments. The stage was ready for some dramatic action as FCAATSI met in Townsville for its fourteenth annual conference.

Its Queensland branch was also ready to make strong protests against new state legislation. The two 1971 Acts for Aborigines and Torres Strait Islanders, while they made some small concessions to the fact that Australia had signed the Declaration of Human Rights and subsequent UN conventions, and that the Commonwealth was putting some pressure on the state to amend its 'protection' policy, remained the worst in Australia.

Reserve-dwelling Aborigines would still, under the new

legislation, have no legal status to hold title to the reserves and no right to purchase reserve land (even if they had been in a financial position to do so). Under the Queensland Land Acts, very little freehold land existed for purchase, and what there was, was in high demand. Leasehold land was, in practice if not in theory, beyond their capacity to obtain and the Queensland Government was set strongly against Aboriginal land rights. On the reserves themselves, Aborigines were subject to degrading regulations administered by white officials, and the policy of 'assimilation', against which Aborigines all around Australia were now protesting, was an iron bond separating Queensland Aborigines from any chance of recognition as a people and respect for their culture and languages.

For the first time, this annual conference of FCAATSI, previously held in southern capital cities, was attended by nearly twice as many Aborigines as others, and they took the chair in all meetings, calling for the total abolition of the Queensland Acts. Another annual conference, that of Commonwealth and State Ministers concerned with Aboriginal affairs, was being held also in North Queensland on 23 April. They were astounded to have a deputation of five Aborigines walk in unannounced and certainly uninvited, to demand that all government conferences on Aboriginal affairs be open to all interested Aboriginal and Islander representatives, that the Acts be abolished, and that the Commonwealth take up its responsibility gained in the 1967 referendum and administer Queensland Aborigines and Islander affairs directly.

None of these demands were met.

But the Gove situation, the continuing demands of the Gurindji for rights over their chosen portion of land at Wattie Creek, the high level of publicity for their refusal to concede to government measures to provide some land other than this for 'ceremonial and recreational' purposes but not for actual ownership, and the demands of many

people — including some newspapers and commentators — for a change in the law to allow Aborigines to claim land were having some effect on the Prime Minister, William McMahon. The persuasion of the Council for Aboriginal Affairs also had its influence. Accordingly McMahon commissioned the Council to draw up a draft submission to Cabinet.

This included a recommendation to consider 'policies designed to give Aborigines legislative protection for the use and benefit of reserve lands', and to establish an Aboriginal Land Fund to acquire land outside the reserves. The submission pointed out that Aborigines could be provided with title to land either by establishing a new form of land tenure or by granting land under an existing form of tenure, and made sundry other recommendations for the consideration of the proposed special ministerial committee which was to discuss the paper.[6]

The Department of the Interior, then responsible for Northern Territory Administration and for Aboriginal affairs, took blocking action against any change in the *status quo*. Its influence, backed by pastoral and mining interests agitated by the possible implications of the land rights movement, prevailed.

In a further move to placate public opinion, the Prime Minister also set up during 1971 a new department (quickly given the name of 'ragbag') to take responsibility for environment, Aborigines and the arts. The first two issues were rapidly growing in influence in the public mind, as, both in Australia and overseas, environmental problems became more obvious and issues of human rights for ethnic minorities and indigenous peoples became more bitter. The arts, too, had vocal advocates and grievances of their own.

But his choice of Peter Howson, a Country Party member of the coalition government, as Minister for the new

6 Coombs, *Kulinma*, p. 168 ff.

department, was most unfortunate. (Dr Coombs' account of the relations between the Council for Aboriginal Affairs and its new Minister, given in his book *Kulinma: Listening to Aboriginal Australians*, is enough to demonstrate the fact; advocates for both his other responsibilities had cause to know it too.) By the end of 1971 the new department was entirely under the influence of the Department of the Interior and other conservative forces, so far as Aborigines and Islanders were concerned.

But encouraged by the fight of the Gurindji and the publicity their cause was rousing, Aborigines were themselves taking a series of new initiatives, with deputations to Parliament and continued protests from FCAATSI and its constituent associations. By the end of 1971, Mr Howson's indifference to Aboriginal claims was well known; his department itself was seen as hostile both to Aboriginal and environmental issues.

The ministerial committee which had been set up to discuss the proposals of the Council for Aboriginal Affairs opposed the reforms. This government would not recognize Aboriginal claims to land outside the reserves, and within them only leasehold would be obtainable. There would be no Aboriginal Land Fund, though there would be some budgetary appropriation for buying properties outside the reserves. Mining within the reserves would not be subject to the interests of Aborigines living there. Resident Aborigines could have some preference in applications to prospect, but this would depend on their capacity to carry out an exploration programme with professional help.

All these decisions went against the advice of the Council for Aboriginal Affairs. The members, who had already talked of resignation in 1971, prevailed at last on McMahon to make some amendments. These went a very little way towards conciliating Aboriginal demands.

When on 26 January 1972 McMahon issued his Australia Day statement on government policy for Aborigines, there

was no admission that they had any right either to land or to compensation for its loss. They might obtain fifty-year leases over land around their clan territories, but only through procedures administered by the same officials and departments which had blocked the Council's more liberal advice; and no mineral or forest rights would be included in such leases.

Aborigines now took a step which brought them into world limelight. Young people travelled from Sydney to Canberra and occupied the lawns in front of Parliament House. The small group of tents which sprang up flew the newly designed Aboriginal flag, and they began to call their camp 'the Aboriginal Embassy'. The name was not just a rueful joke. It emphasized that Aborigines could not identify themselves with a Commonwealth government which had failed them, and that the refusal to grant them recognition as a people, rights to land, and rights to compensation for its loss had forced them to declare themselves a separate people.

As more and more people joined the Embassy, their discussions focused on a list of demands to be presented to the Commonwealth Government. They also discussed the fact that Aborigines had never given up their claims to land through any treaty, agreement or purchase.

At the same time, in March 1972, Aborigines in the Northern Territory made the first move in the direction of the demand for treaties. The Larrakia tribe, whose land originally covered most of the area now occupied by the town of Darwin, sent a petition to the Prime Minister. In part it read:

> When the first settlers came to the Northern Territory, the tribes fought them with wooden and stone weapons.
> Hundreds of our people were shot.
> The Gwalwa Daraniki is a group of proud blacks who will keep fighting for the land (as our grandparents did) until:

- The government appoints a Commission to go around to every tribe and work out a treaty to suit each tribe.
- Each tribe will have legal assistance, and help from anyone else they wish.
- All members of the tribe shall come together to vote and decide if the finished treaty is fair.
- If the treaty is rejected, then that tribe will go on fighting for their land rights.
- If the treaty is accepted, then all the tribe will sign it and make it good for all time.
- The treaties will also be signed by the Prime Minister, his Cabinet, and the Governor-General.

We invite all people of Aboriginal descent to join the tribe of their ancestors.

These are the demands of the Gwalwa Daraniki, and we shall not stop until the treaties are signed.

The petition is signed by five men of the Larrakia tribe.[7]

Little was heard of this petition in the troubled days of 1972 which followed, and it was not until June that Mr McMahon replied. It was not appropriate, he said, to negotiate with British subjects as though they were foreign powers; and the reason that treaties had never been negotiated with Aborigines was partly that of the difficulty of identifying the people and groups with whom negotiations could be conducted.[8]

Mr Bill Day, commenting for the Larrakia group, said, 'I would have thought it would have been a way to solve the land rights question for all time. Now it is back to the battling-grounds for the tribes, and more confrontation'. He also remarked that if Mr McMahon believed the Aborigines had been British subjects for almost 200 years, it was a fact that they had only been Australian citizens since 1964. (Voting rights and citizenship were discussed on an

7 *Northern Territory News*, 30 March 1972; reproduced in Cheryl Buchanan, *We have Bugger All*. Race Relations Department, Australian Union of Students, 1974.

8 *Northern Territory News*, 9 June 1972.

intergovernmental level at the meeting of the Australian Council of Native Welfare in September 1951; under the assimilation policy stated at the 1961 Conference of Commonwealth and State Ministers concerned, a Select Committee on Aboriginal Voting Rights was established. It recommended among other things that all Aborigines and Torres Strait Islanders of voting age 'permanently residing within the limits of the Commonwealth' should have the right to vote at Commonwealth elections, and that those in New South Wales and Victoria, who already had this right, should be subject to the provisions for compulsory voting as for other citizens, but that enrolment should not be compulsory elsewhere. 'Wardship' of Aborigines in the Northern Territory, with its rigid control, was altered to allow for rights of citizenship in August 1964.[9] It was to the latter innovation that Mr Bill Day was referring.) For that matter, Aborigines were not counted in the Australian census until after the 1967 referendum.

Mr Day said he would send the Prime Minister's letter to the Aboriginal Tent Embassy. But in July the tents had been removed by force from the lawns of Parliament House.

The next move by the Larrakia people was to circulate a petition among Aborigines for presentation to Princess Margaret on her visit in October.

> The British settlers took our land. No treaties were signed with the tribes.
> Today we are refugees. Refugees in the country of our ancestors.
> We live in refugee camps without land, without employment, without justice.
> The British Crown signed treaties with the Maoris in New Zealand and the Indians in North America.
> We appeal to the Queen to help us, the original people of Australia.
> We need land rights and political representation now.

9 See C. D. Rowley, *The Remote Aborigines*. Ringwood, Penguin, 1972, ch. 18.

On 20 October 1972 the *Northern Territory News* reported that the petition had been torn when the Aborigines who carried it were unable to break through the police barrier outside Government House in Darwin, but had been sent to the Queen nevertheless, with an accompanying apology for its condition. It was returned to the Governor-General, then Sir Paul Hasluck, and meanwhile the McMahon Government was defeated in the elections of November 1972. The petition was reported to have been sent from the Governor-General to the Commonwealth Government.[10]

No more was heard, for the moment, of the Larrakia's call, as the Whitlam Government embarked on its task of bettering conditions for Aborigines. But once again, a first move had come, not from the Australian public nor its government, but from Aborigines themselves.

There was strong support for the Tent Embassy. The extent to which Aborigines lacked land, housing, health, education, employment and economic opportunity had been glaringly detailed in recent reports and press publicity. As winter drew on, photographs and TV clips showed the increasingly tattered tents still bravely facing Canberra's winter. Tourists, foreign visitors, and the embassies of other countries were being shown Australia's worst face. The coalition government was increasingly embarrassed by the Embassy's presence. An ordinance was hastily gazetted to prohibit camping on public lands in the ACT (which incidentally removed a public right from all Australians). On 20 July police removed the tents by force. Press and television cameras showed the Australian public scenes which made many ashamed of their government's petty tactics.

Aborigines arrived in Canberra from as far away as Queensland to help re-erect the tents. The new ordinance was found legally unacceptable, and was hastily redrafted.

10 *Northern Territory News*, 21 December 1972.

This time the tents were torn down with even more violent scenes and a number of injuries and arrests (though in fact none of these were made under the new ordinance). There was international comment.

Meanwhile, all around Australia, the movement for Aboriginal rights — especially land rights — was gaining increasing publicity. Yirrkala, Roper River, Bathurst Island, Goulburn Island, Croker Island, the Larrakia people and the Gurindji claims, were all demanding and getting notice, as were the longstanding protests about dispossession from many reserves in New South Wales, Victoria and other states, and the entire situation of Aborigines and Torres Strait Islanders in Queensland. There were protest marches in Sydney, Wollongong, Newcastle, Melbourne, Adelaide and Brisbane, with trade unionists as well as a variety of other sympathizers marching alongside the biggest demonstrations by Aborigines ever seen in Australia.

Aborigines now knew that public support was with them and that the Commonwealth Government (already unpopular on a number of counts, including the Vietnam War) was in a trap of its own making. The Council for Aboriginal Affairs had mediated in Canberra, arranging a meeting between Aboriginal representatives and another ministerial committee which this time proved at least conciliatory[11]; but by the end of 1972 the concessions Aborigines wanted had not been made, and this was an election year.

The Labor Party, this time with trade union sympathy, had noted the public reaction to the situation of Aborigines, and adopted a new approach to the question at its 1971 Federal Conference. It had even asked for advice from the Council for Aboriginal Affairs on the issue. The Leader of the Opposition, Gough Whitlam, had talked to the

11 Coombs, *Kulinma*, p. 18.

Aboriginal Embassy's young men, and found the mounting sympathy for Aborigines an advantage in the party's campaign. It was one of the many factors which swept the Labor Party into government in December, after more than twenty years in opposition.

It is probably fair to say that the McMahon Government, especially his ministers, had been thoroughly surprised by the strength of support for Aboriginal issues in the media and elsewhere. Though that support and the publicity gained for the demolition of the Tent Embassy were probably not a major factor in the election result, the McMahon Government was clearly shown to be as ready to crush the hopes and just demands of a helpless minority as to conscript young men in an unpopular war.

The Labor Government had many promises to Aborigines to carry out. During its first two years, it greatly increased the Budget vote for the Office of Aboriginal Affairs and elevated it to departmental status; funded various Aboriginal legal services, the first of which had been established independently in New South Wales by volunteer lawyers; called together well-known Aborigines to initiate a National Aboriginal Consultative Committee and organized elections for a continuing body; gave financial support to Aboriginal medical services; and took many other initiatives. Among these, the most important move towards land rights was the establishment of a Commission of Inquiry headed by Mr Justice A. E. Woodward (who had served as barrister for the Yirrkala Aborigines in the 1971 case). Its task was to investigate and plan what Prime Minister Whitlam called in a historic phrase of commitment, 'the restoration of rights to land'.

The Woodward inquiry, which produced its final report in 1975, represented 'perhaps the most patient and effective exercise in communication with Aborigines in Australian history'.[12] The main recommendations were framed to be

12 *Ibid.*, p. 181.

applicable, with necessary adjustments, not only to the Northern Territory under Commonwealth administration, but to the situation in the states. It advised that Aborigines should hold title to Aboriginal reserves and certain other land in the Northern Territory by the operation of incorporated land trusts acting on behalf of the traditional landowners or by land councils; that Aboriginal owners of land sought for mining should be able to exercise a power of veto over the operation except where the government considered mining should proceed in the national interest (a clause which was to prove exploitable in the interests of mining); that the claims of Aborigines to areas of Crown land or pastoral leasehold to which they had traditional associations should be adjudged by an Aboriginal Land Commission. The Northern and Central Land Councils in the Northern Territory, which the Commission had set up to advise on various matters, especially claims and land, were later to be established as statutory bodies representing Aborigines in such claims and negotiations. The report recommended that they were to advise on many questions, including land purchases made under the new Aboriginal Land Fund, first recommended by the Council for Aboriginal Affairs and now by the Woodward Commission.

All three major parties (the coalition having been chastened by the results of the election) accepted these recommendations. They therefore implicitly recognized the report's memorable words, that this 'restoration of land' was the one thing which could make possible 'the preservation of a spiritual link with his own land which gives each Aborigine his sense of identity and lies at the heart of his spiritual beliefs'.

Confined as the Woodward inquiry was by its terms of reference, which in effect applied only to land with which traditional links were still retained by Aborigines, this emphasis on spiritual beliefs as the basis of rights to land

was to have some unfortunate effects on the future of those Aborigines (in Queensland almost all) whose links had long been severed and who could prove no spiritual identity with their lost land.

The legislation introduced by the Labor Government to give effect to the Woodward recommendations was not contested at the time by the coalition parties. But it was not yet passed when the Whitlam Government was brought down. It could apply only to the Northern Territory and the ACT. The state governments were slow, reluctant or adamantly hostile to applying similar legislation in their own areas. (With the exception of a partial application in the Pitjantjatjara areas of South Australia, little had been done by the end of the decade to implement the Woodward Report outside the Northern Territory.)

The fate of the Labor Bill for a while seemed likely to be complete rejection by the new government headed by Malcolm Fraser. But it was passed in December 1976, in altered form, as the *Aboriginal Land Rights (Northern Territory) Act* 1976.

It contained that significant phrase of Woodward's — that Aborigines should be able to veto mining on their land unless the government decided it was 'in the national interest' to proceed. Woodward had not defined this 'interest', and it was to become sadly significant for the lives of Northern Territory Aborigines.

Under this Act, they became entitled to own previously reserved land, and able to claim and hold vacant Crown land elsewhere, on a freehold basis, where they could demonstrate a connection of 'traditional ownership'. This was another phrase which was to cause trouble. For there are many ways in which Aborigines traditionally held rights in land. The Act also allowed interested parties to challenge claims which might be to the 'detriment' of non-Aborigines; and the Land Commissioner's finding was subject to Ministerial approval. There were other features of the Act

which were to prove serious disabilities from the point of view of Aborigines.

The media saw the Act on the whole as a considerable plus for the new government — though there was strong criticism from others who were involved in Aboriginal affairs on a non-administrative basis. But the Northern Territory was, and is, predominantly a pastoral redoubt, and the occupiers have run through much of the land's original fertility. The mining industry was the Territory's great hope for prosperity for the future, and neither pastoralists nor miners looked upon the new legislation with anything but distrust. Despite recent immigration from the south, Aborigines still formed a much larger percentage of the population in the Territory than they did anywhere except in Queensland's far north.

While most pastoral stations found Aboriginal labour essential, they rarely met the standard of wages and housing conditions supposedly required by the Commonwealth administration. This fact had been highlighted in the case of the Gurindji walk-off strike, which had sufficiently embarrassed the absentee land company to make Lord Vestey accede to new approaches made by the Council for Aboriginal Affairs, in 1972, and the Commonwealth Government. The Gurindji finally obtained the lease of 3237 square kilometres of their country, in a well-publicized ceremony, when Prime Minister Whitlam handed them their deeds, saying 'these lands belong to the Gurindji people and ... we restore them to you and your children forever'.[13]

But on other stations in the Northern Territory there was no such restitution, nor were most pastoral lessees willing even that the Aborigines who lived and worked on their stations should be allowed to excise small portions of these enormous areas as living places. The Aboriginal Land

13 Coombs, *Kulinma*, p. 182.

Rights (NT) Act 1976 did little or nothing for such Aborigines, and it would not be long before this fact aroused much more attention, as Aborigines continued to struggle for their rights.

For the most part, Aboriginal stockmen and workers on the stations, and their dependants (also an essential labour force for seasonal tasks), tolerated substandard conditions so that they could remain on, and care for, their traditional lands. Everywhere living partly on wild food, they had retained much of their ancient bond with the land. But after a 1966 Commonwealth Conciliation and Arbitration Commission decision recommended equal pay for northern pastoral workers, to be implemented over three years, Aboriginal workers and dependants were displaced from many stations. The pastoralists could afford new equipment and management methods which would soon be cheaper than to employ Aborigines at the new rates.

Many leaseholders refused to allow Aborigines access to their former homes. The opposition of cattlemen and pastoral companies — many of the latter absentee landlords as on the Gurindji's Wattie Creek — is detailed stingingly by Stanner and by Rowley.[14] But the long delay in implementing the principle of equal pay, which should have been done considerably earlier under Australia's ratification of the UN International Covenant on Economic, Social and Cultural Rights, testified as did so much else to the Commonwealth Government's degree of acquiescence to the demands of pastoralists. Their opposition to the passage of the Aboriginal Land Rights (NT) Act was a major influence in the alterations to Labor's original Bill.

But it was the veto clause on mining which most worried

14 'Industrial justice in the Never-Never'. Presidential address, Canberra Sociological Society, 24 March 1966, printed in W. E. H. Stanner, *White Man Got No Dreaming: Essays 1938–1973*. Canberra, ANU Press, 1979, p. 249 ff.
Rowley, *The Remote Aborigines*, Ch. 14. See also Ch. 11, 12 and 13.

the mining industry and the Northern Territory Legislative Council, which had long agitated for full powers as a state government.

Bauxite (the source of aluminium) and uranium were the main minerals found in abundance in the Northern Territory; both had major export potential, and there was strong mining interest in their exploitation. Uranium, after large discoveries, was seen by the Fraser Government and by Territorians as holding the key to future prosperity. The most controversial area of discovery in what had become known as the Uranium Province in the Alligator Rivers catchment, centred around Mount Brockman and the South Alligator area. This was also an area of outstanding natural splendour and held important breeding areas for wildlife, especially waterfowl, and many plant species of high scientific and botanical interest. There had already been such strong pressure for its reservation as a national park that, in 1969, the then Minister for the Interior had approved in principle the reservation of 1000 square miles under that classification. But only a few months later, authority was granted to the Noranda mining company to prospect in the area.

By January 1970 no less than eight groups already held authority to prospect either wholly or partly within the designated area for the national park, and the Ranger and Nabarlek prospects were nearby. The now strong conservation lobby was opposed to mining on the grounds that it would despoil a highly important area. Most conservationists anyhow opposed a mining operation which was virtually certain to cause much environmental damage and whose product was extremely controversial in its effects wherever it might be used. Many concerned Australians also feared that such large exports of uranium would increase the likelihood of nuclear war through its plutonium by-product.

Meanwhile, the activities of the miners were causing

problems to Aboriginal communities, even before mining started. Roads were driven through the area, including that of the proposed park; tourists followed; there was no supervision of tourism, and litter and interference with sacred areas and rock paintings caused local Aborigines great concern.

The day after Prime Minister McMahon's 1972 Australia Day broadcast, which had virtually given the go-ahead for mining on Aboriginal reserves, the Commonwealth Government announced that there would be a 'co-ordinated development' of the uranium region, which would include 'looking at' the possible establishment of the national park. But in a reported comment, the Minister for the Interior, Ralph Hunt, indicated that if the Northern Territory Legislative Council (which was then in favour of the park declaration) introduced a Bill to declare the Kakadu National Park, it would be vetoed in Canberra.

The environmental lobby was therefore strongly on the side of the Aboriginal land rights protest, and its strength did much to influence the result of the 1972 election in Labor's favour.

The controversy over uranium mining resulted in 1975 in the setting up of another commission — the Ranger Uranium Environmental Inquiry headed by Mr Justice Fox. This was to examine the various mining proposals, their likely environmental and other impacts, and to look at the validity of the Aboriginal claim for land in the region, since there was known to be strong Aboriginal opposition to the proposals.

The 'Fox Reports', the first of which was issued in October 1986 and the second in May of the following year, concluded that the dangers to the environment of the mining and milling of uranium were not such as to preclude them — if all necessary controls were exercised. They supported the Aboriginal claims to land, but rejected Aboriginal opposition to mining (in which, of course, the

'veto' clause of the Aboriginal Land Rights (NT) Act 1976 was important.)

The reports were hedged about with many warnings, both on environmental problems and from the point of view of the likelihood that nuclear war would come closer with the release of such great quantities of uranium into the world market. But they did not examine the question of the probable social impact of the mining enterprise, with its proposal to set up a town of 3000 people in the Ranger area, on an Aboriginal population which had until so recently been little touched by Western enterprise, and was still deeply and traditionally related to its land.

The Council for Aboriginal Affairs had given evidence to the Commission, emphasizing the likely social effects on the Aborigines and suggesting a moratorium of twenty years before development of the deposits, to introduce Aborigines to the facts of the mining proposals and allow them to consult and debate on ways of adjusting to it. What the members of the Council had learned of mining enterprises established among Aboriginal communities elsewhere made them fearful of the effects of this vast enterprise. They stressed the necessity for thorough and complete preparation of the communities on the reserves of the Uranium Province, if mining were indeed to be permitted.

Meanwhile, that other important mineral, bauxite, was also causing controversial argument affecting Aboriginal reserves. The Gove operation had of course gone ahead. It was rumoured to be causing much pollution of offshore waters as well as known disruption to the lives of the Yirrkala people who were from 1976 ostensible owners of the surrounding reserve. Mining of another major bauxite deposit, at Weipa in Queensland, had begun after 1957; in 1961 the Queensland Government reduced the original 344,000 hectare Aboriginal reserve to some 160 hectares to enable mining to proceed, and in 1963, removed the

Aborigines of Mapoon, 80 kilometres from Weipa, to permit strip mining.[15] In the event, the Mapoon area was not mined; but the ejection of the Aborigines was not countermanded.

The Queensland State Government of course had no such problem as the Commonwealth Government in reconciling conflicting claims for Aboriginal ownership and mining enterprise: in that state no Aboriginal group has been able to acquire title to reserve land, and the reserves were government-administered areas of Crown land. Prospecting had delineated a very large bauxite deposit at Aurukun and Mitchell River, almost all on reserve land. In 1975 the Queensland Government summarily rushed through a Bill allowing an agreement with a multinational consortium of mining companies, under the name Aurukun Associates, to exploit the deposits. The Aborigines of Aurukun appealed to the Supreme Court of Queensland against the agreement, and the Court upheld their objection.

The Queensland Government appealed in turn to the Privy Council. The Council confirmed that Queensland had power in the matter. The people of Aurukun turned to the Commonwealth for help and protection. Said Prime Minister Fraser: 'The Commonwealth has a constitutional obligation to Aboriginals. We will not fail them'.

What the people of Aurukun, and of the other big nearby reserve at Mornington Island, wanted was inalienable freehold tenure over their reserve lands and the power to control mining. But the new Prime Minister's promise was not fulfilled, though Commonwealth legislation was prepared. The Queensland Government won by simple means. The status of the two reserves was changed to local government shires, whose councils were virtually appointed

15 P. N. Rogers, *The Industrialists and the Aborigines*. Sydney, Angus & Robertson, 1973. pp. 55–6.

and directed by Queensland officials and the Department of Aboriginal and Islander Affairs, as before. Aboriginal communities could not appeal against the mining agreement.

Thus, by 1978, the Commonwealth's commitment to Aborigines was eroded and its good faith suspect. No such commitment, it was now clear, would be likely to stand against the power of overseas mining companies and investors, unless the Commonwealth Government could somehow be bound, by some instrument which would be irrevocable, to honour its responsibility to legislate for and protect Aboriginal rights under the 1967 referendum mandate.

While in northern Australia the traditional communities faced the possibility of even more damaging effects from mining than they had suffered from the pastoral takeover of their land, in the south the states themselves had over a number of years encroached on such reserve land as Aborigines had been relegated to. While the situation of Aborigines varied widely from state to state and within territories, their entitlement to land, compensation for its loss, and to stable and sufficient sources of finance for services they needed was nowhere secure.[16]

While Aboriginal rights and claims remained an electoral football; while Commonwealth and state governments changed every three years or more often (and no succeeding government is bound by the legislation of its predecessor); while Budget allocations for Aboriginal affairs were at the mercy of successive Treasurers, there could be no trust between Aborigines and the dominant society.

16 For a list of reserves which have created headlines through alienation, see D. Barwick, '1939-88 — Aboriginal History: Questions and suggestions for Research and Coverage', in *Bicentennial History Bulletin*, No. 3, May 1981 pp. 29-35; even this list is not complete.