

LAND RIGHTS

THE POSITION IN WESTERN AUSTRALIA



Western Australian Government policy is aimed at helping Aborigines to become part of the whole community. It treats Aborigines as it does non-Aborigines. At present the government is opposed to the idea of special **Land Rights** for Aborigines because, it says, this would be to favour one ethnic group at the expense of others. Such discrimination, it says, is not acceptable today. It does not recognise that the Aboriginal case is different because they owned the land before white people came to Australia.

Mr Grayden, the Minister for Cultural Affairs, has said the State Government does not object to Aborigines holding freehold land on the same basis as other Australians. At present there are 17 freehold Aboriginal properties in Western Australia. They range from 16 to 0.3 hectares and are nearly all in or near towns. The Government argues that Aborigines are better protected by reserves as freehold land can be resumed at any time by the Crown for such things as mining.

'Normal freehold' does not include rights to minerals beneath the ground. In the **Northern Territory** where Aborigines have been given land rights, the minerals in the ground still belong to the Crown.

The Western Australian Government has no **Department of Aboriginal Affairs**. Aboriginal matters are dealt with by the **Department for Community Welfare** through its **Aboriginal Affairs Planning Authority (A.A.P.A.)**. The **Commonwealth Department of Aboriginal Affairs** has a **Regional Director** in Western Australia who is also head of the A.A.P.A. His staff are Commonwealth officers but he is responsible to both the **State Minister for Community Welfare** and to the **Commonwealth Minister for Aboriginal Affairs**.

THE ABORIGINAL LANDS TRUST

The **Aboriginal Lands Trust** is a committee under the A.A.P.A. It is made up of 9 Aboriginal members appointed by the **Minister for Community Welfare**. Its task is to advise the A.A.P.A. and the Minister. The A.A.P.A. delegates to it the power to control land used by Aborigines, and may withdraw this power at any time.

In 1981 the **Aboriginal Lands Trust** held title to 21,000,000 hectares of land (a little more than 8% of the total area of the State). This land includes missions, Aboriginal pastoral leases, smaller areas of land and blocks of land in towns, reserves and some ritual and burial areas. It does not include land controlled by the **Western Australian Museum** under the **Aboriginal Heritage Act** (see below). The **Aboriginal Lands Trust** holds these lands in **trust** for Aboriginal use. No lands legally belong to the Aboriginal groups who live on them. When the **Aboriginal Land Fund Commission** (A.L.F.C.)* bought lease-hold cattle stations for Aboriginal groups who wished to form pastoral companies, the Western Australian Government refused to transfer the leases directly to them. Instead the leasehold contracts are held by the **Aboriginal Lands Trust**.

RESERVES: These are lands which the Western Australian Government has set aside for the benefit and use of Aborigines. In 1980 there were 111 reserves held by the Aboriginal Lands Trust. Some are in remote areas of the State, others within or on the fringes of towns. They vary in size from 0.1 hectares to 80199.9 k²**. Until the early 1950's big reserves were often managed by missions. Since then many missions and Government settlements have become Aboriginal communities.

Today, reserves which are not run by missions are run by managers appointed by the **Minister for Community Welfare** or his department. Members of Parliament, police, community welfare officers and some other persons whose work is concerned with Aboriginal affairs, may freely enter these reserves. Other persons need a permit. Permit applications go through the **Aboriginal Lands Trust** for approval by the Minister, but the **Aboriginal Community Council** concerned must first give its approval.

Reserves near towns are often called **Town Reserves**. Only a few of these are left. The Government hopes that in time the people living on them will want to move into towns. The land may then revert to the Crown or continue to be held by the **Aboriginal Lands Trust**. They have said that such land should be used in some way by Aborigines.



* The work of the A.L.F.C. is now done by the **Aboriginal Development Commission**.

** Central Reserve, with a population of about 700.

ABORIGINAL PASTORAL LEASES: In 1980 there were 10 Aboriginal pastoral holdings in Western Australia. The Aboriginal Lands Trust held 6 and the Aboriginal Development Commission held another 4. Aboriginal groups apply for pastoral leases to the **Aboriginal Development Commission** which is financed by the Commonwealth Government. The Commission can buy land for Aboriginal groups provided the State Government approves. The **Minister for Community Welfare** used to be the person to give approval to buy land but it is now Government policy for the **Minister for Lands** to decide.

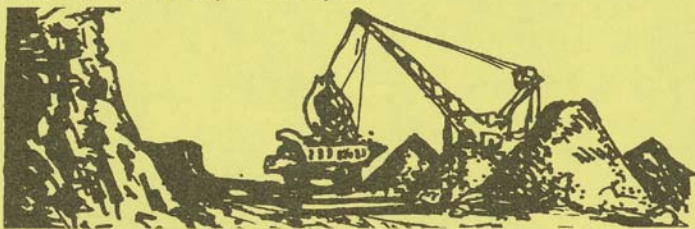
The Noonkanbah pastoral lease was bought in this way for the Yungngora community. The title is held by the **Aboriginal Lands Trust** and the Yungngora company manages the property for the community. No pastoral leases for Aboriginal communities have been approved since 1977. After the troubles at Noonkanbah, Premier Court said no more pastoral leases would be transferred until the situation was cleared up.

MINING ON ABORIGINAL LAND

Under the Mining Act Aboriginal reserves may be mined. The **Governor**, on advice, can give anyone who holds a miner's right permission to mine on a reserve. Or he can declare a reserve 'open for mining', that is, it is declared to be Crown land.

Until 1980 permits to enter Aboriginal lands for mining or prospecting were given by the A.A.P.A. on advice from the **Aboriginal Lands Trust** which consulted with the Aborigines living on that land. When miners make a claim to mine on a reserve they are supposed to have pegged out the proposed site. But when the A.A.P.A. did not give permission for a mining company to enter a reserve 'armchair' pegging on a map was allowed.

In 1980 the Act was amended so that now anyone with a miner's right can enter reserve land without having to apply to the A.A.P.A. for a permit. When minerals are found the **Minister for Mines** can give permission to mine. He consults with the **Minister for Community Welfare** but he does not have to take his advice or discuss the matter with the Aboriginal people who live on the land where the mining is to take place. It is Government policy that mining takes precedence over all other land usages including the homes and country of Aborigines.



The **Kimberley Land Council** and other groups including non-Aborigines have demanded that this Act be amended so that the agreement of the Aboriginal people living on the land must first be obtained by the **Aboriginal Lands Trust**; and to ensure that the A.A.P.A. regulations, which were in force before the amendment, continue to operate. These regulations said holders of miners' rights must obtain permits to enter reserves and Aboriginal pastoral lease-hold land.

The **Petroleum Bill 1967** says any land can be declared Crown land and that when a permit to explore has been given, permission from the A.A.P.A. to enter Aboriginal land is not needed.

BUT The Governor can declare that any land should be **only** for Aboriginal use and benefit if they can show they and their families actually live in the area. The **Aboriginal Lands Trust** tried to get the Governor to use this power in the case of Noonkanbah. He referred the matter to **State Parliament** which decided that Noonkanbah should remain a pastoral lease.

MONEY FROM MINING: Mining companies pay money to the **State Treasury** for mining. When gazetted Aboriginal reserve land is mined some of this money is given to the **Aboriginal Lands Trust** to be used for the benefit of Aboriginal communities. But if mining is on Aboriginal leasehold land the **Aboriginal Lands Trust** receives nothing: it is treated in the same way as leasehold land held by non-Aborigines. The **Government of Western Australia** is opposed to the idea of mining royalty payments being made to Aboriginal groups. How much money the **Aboriginal Lands Trust** has to give out depends on the Government. It is not a fixed percentage of mining revenue and it is not an automatic allowance. The amount can be changed. The **Aboriginal Lands Trust** would like to negotiate directly with mining companies for a percentage of overall profit.

THE ABORIGINAL HERITAGE ACT

The **Aboriginal Heritage Act 1972** makes the **Trustees of the Museum of Western Australia** responsible for the protection of places important for Aboriginal culture and history, and sacred and ceremonial sites whether or not they have meaning for modern Aborigines. Its aim is to record all sites and if necessary protect them from destruction by mining and other developments.* The Act allows Aborigines to continue to use sacred sites and objects and does not make them give information which is sacred and secret. A permit is needed to enter a site area. The Trustees may make an Aboriginal group responsible for the care of a site which is traditionally theirs. There are also Honorary Aboriginal wardens.

MINING ON HERITAGE LAND: Where a mining company wants to mine on or near an important site it must first inform the **Museum Trustees**. An archaeological and anthropological survey of the area is carried out and then the Trustees advise the Minister whether the site should be protected. A mining company may appeal against the Trustees' decision and they must then give good reasons why mining cannot be allowed.

The **Heritage Act** is not considered strong enough because recommendations made by the **Aboriginal Cultural Material Advisory Committee** may be changed by the **Museum Trustees** and/or accepted or rejected by the Minister. In 1979 a **Western Australian Supreme Court Judge** ruled that the **Minister for Cultural Affairs** can direct the **Museum Trustees** (who are responsible to him) to withdraw or reverse a recommendation that a particular area be protected. Such a case occurred during the **Noonkanbah** crisis where **Amax Ore Corporation** wanted to sink a well and did.

One question which has caused argument is the size of the area around a site which is necessary to protect it. The State Government says only clearly defined sites can be protected. Larger areas of general significance cannot be recognised.

Mining may take place near to areas which are important for certain Aboriginal groups even though no recognisable 'site' exists. These areas are also surveyed by archaeologists and anthropologists with Aboriginal advice and recommendations made for their protection if necessary. The **Australian Institute of Aboriginal Studies** has granted funds so that an anthropologist can be attached to the **Kimberley Land Council** for this work. Some surveys have been carried out with mining companies who do not wish to violate Aboriginal sites. Some companies make their own surveys and submit the reports to the **Museum**.

* The **Aboriginal Site Department** of the **Museum** investigates and records all sites. The **Aboriginal Cultural Material Advisory Committee** which has Aboriginal members on it, advises the **Museum Trustees** about sites and they make recommendations to the **Minister for Cultural Affairs**.

THE KIMBERLEY LAND COUNCIL

The first meeting of the **Kimberley Land Council (K.L.C.)** was held at Noonkanbah in May 1979. People from more than 30 different communities took part. Each community had 2 representatives: one 'old law man' and one younger 'read and write' man who understood matters outside the local group.

The **Kimberley Land Council** wants **Land Rights** like those granted in the **Northern Territory** and **South Australia**. It has also asked the Commonwealth Government to put its policy of **self-determination** into effect. Its aims for the Kimberley area are:

- to represent all Aboriginal communities on Land Rights.
- to arrange meetings so that all Aboriginal groups can talk about land matters.
- to help make Aboriginal culture strong.
- to encourage and co-ordinate research on land matters.
- to tell the **Aboriginal Lands Trust** about land matters.
- to work for Land Rights in Western Australia so that Aboriginal communities can have real control over their land.

The K.L.C. says **Land Rights Legislation** should:

- 1) give Aborigines freehold title over the reserves.
- 2) give control of entry onto Aboriginal land to Aboriginal communities.
- 3) make it possible for Aboriginal groups to get small areas on pastoral leases where they wish to set up a base of their own (see 'outstations' below).
- 4) give Aborigines the right to stop mining on Aboriginal land including Aboriginal-owned pastoral leases.
- 5) give Aborigines the power to negotiate terms and conditions for mining on their land if they wish to allow it.

Some mining companies have negotiated directly with the K.L.C. and with local Aboriginal communities. For example, Mobil has built a road and an airstrip and put down a bore for water at Balgo in the Great Sandy Desert. At Beagle Bay, Esso employs members of the local Aboriginal community and has good working relations with the people.

THE OUTSTATION MOVEMENT

Some Aborigines now want to move away from towns and town reserves to set up their own communities or 'outstations'. Where these are extensions of the settlements on Aboriginal reserves as in the Western Desert (Warburton Range area) and the people can show that they are returning to their own land, the Commonwealth Government will help them to do this. Where such land is not on reserves it is much more difficult.

There have been cases where, when Aborigines have tried to lease small areas of poor land, the State Government has joined small holdings together to make them into more expensive properties, and vacant Crown land which is no use for stock raising has been added to white-held pastoral properties after Aborigines have applied for them.

Attempts have been made to obtain small areas of land on pastoral leases for Aboriginal use.

In 1979 the A.L.F.C. tried to arrange with the leaseholders of Gordon Downs Station and the State Government for about 100 Aborigines camping on Gordon Downs to be given back their Traditional Land to operate as a pastoral property. This would have meant joining some unused Crown land with a part of Gordon Downs Station. But the leaseholders and the Government were only willing to release a very small portion of land which would have been too small for a pastoral lease. No further action was taken.

A LAND TRIBUNAL

For several years many Western Australians, both Aboriginal and white have said that there is a need for a **Land Tribunal** to deal with Aboriginal applications for land. This would not necessarily be the same as the Northern Territory Land Rights Commission.

Prepared for the Aboriginal Treaty Committee by Mildred Kirk with advice from Dr C. D. Rowley and Professor R. M. Berndt.

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For a wider understanding of Aboriginal Land Rights:

Aboriginal Treaty Committee, P.O. Box 1242, Canberra City, A.C.T. 2601.
Telephone (062) 470648.

Aboriginal Treaty Committee Papers

AIATSIS Library, MS 1867 Box 22, Items 193-199

“Land Rights the position in Western Australia”, pamphlet prepared for the Aboriginal Treaty Committee by Mildred Kirk.
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