

## CHAPTER II

# OWNERS AND MINERS

The passage of the *Aboriginal Land Rights (Northern Territory) Act* 1976 was something of a triumph for the cause of Aboriginal land rights, since some had feared that the influence of pastoralism and mining companies would result in its being discarded altogether. However, rights to timber and minerals (which Whitlam had promised) were removed, and many other changes also weakened the original intentions of the Woodward Reports. It seemed more than ever unlikely that Aborigines would be able to attempt to reach the goal articulated in the old 'assimilation policy'—an equal standard of living with other Australians.

But much else was ominous for the Labor Government's initiatives in the Aboriginal field. The coalition's new Minister for Aboriginal Affairs, R. I. Viner, used fair words. But during 1976 inquiries had already been instituted into the Department of Aboriginal Affairs itself, into the National Aboriginal Consultative Committee (or, as it had called itself, Congress) and into Aboriginal Hostels

Ltd. New Aboriginal legal and medical services (additional to the state services, which had so far failed to serve the needs of Aborigines) could not continue without adequate funding. But with the Fraser Government continually trumpeting the extravagances of the Whitlam regime, it already seemed unlikely that the promises of the 1972-75 period would be fulfilled.

And indeed, in the coalition Budget of 1976, funding for all Aboriginal administrative and service costs was cut by 20 per cent. This was a fall of disastrous proportions from the votes of those previous years. Under Mr McMahon, the Budget for Aboriginal affairs in 1972 was so low that Mr Whitlam's first Budget had nearly doubled it. It was immediately clear that services for Aborigines would suffer heavily from the return of the coalition. Yet in November 1975, in the lead-up to the 1975 election, the shadow minister for Aboriginal Affairs, R. M. Ellicott, had promised there would be no cut in the Aboriginal vote. At that time, the question of Aboriginal welfare and rights represented a sore spot in the nation's conscience — a spot which was to be concealed for the time being in the induced 'backlash' of the Fraser years.

In fact, money was not the main issue to Aborigines. For them, as ever, land was the first essential for their lives. The passing of the 1976 Act gave them hope, in the Northern Territory at least, for some restitution. The problem, they soon knew, would be the recent discoveries of huge uranium resources, and the conflict between Aboriginal claims, the claims of miners, and the demands of environmentalists and those who feared nuclear warfare.

For the Fraser Government, a coalition dependent on support from the National Country Party — traditional champion of the pastoralists and now firmly on the side of the mining industry — uranium would clearly be the key issue. The need for overseas exchange, the prices which the government hoped to realize, the fact that the

Commonwealth itself was the administrative power in the Northern Territory, were all factors that seemed likely to work on the side of the mining companies, while support for Aboriginal interests and opposition to uranium mining were weak issues politically, and rested on the caprices of the public conscience.

Nevertheless, on 20 February 1975, the Senate had unanimously passed a resolution moved by Liberal Senator Neville Bonner, the first and so far the only Aboriginal to sit in the Federal Parliament. It called on the government to recognize that Aborigines had had 'prior ownership' of 'this entire nation' and should be compensated for their dispossession.

Bonner used the term 'prior ownership' (not merely occupation or settlement); the Senate's acquiescence in this could be interpreted as a contradiction of the Blackburn judgment, which in effect had rejected the idea that the Aborigines had 'owned' the land; and the words 'this entire nation' (not 'country' or 'continent') might be thought to have carried the implication that Aborigines were themselves a 'nation' or 'nations'. Both terms have legal connotations for which the Constitution had no provision.<sup>1</sup>

During the rest of 1975 the Senate resolution had lain dead. Under the new Cabinet (whatever Fraser's personal sympathies) it would clearly stay so. And though the Whitlam Government had been generous as far as its money allocations and its draft legislation for Northern Territory land claims were concerned, it had not fully faced the central issue and taken up its responsibilities under the 1967 referendum of actually overriding certain states' repressive legislation for Aborigines, though its Racial Discrimination Act (1975) was a step in this direction. The Queensland and Western Australian Governments remained triumphantly

<sup>1</sup> Senate, *Hansard*, 20 February 1975, p. 367. For an account incorporating the text of Bonner's speech see S. Harris, *It's Coming Yet*. Canberra, Aboriginal Treaty Committee, 1979, pp. 5-6.

intransigent, though Queensland in particular was easily shown to be in probable contravention of human rights conventions which Australia had signed.<sup>2</sup> Without Commonwealth intervention, Aborigines would not have the right to land, the right to compensation, and the right to decide and direct their own destiny, for which they were pressing and would continue to press.

The Council for Aboriginal Affairs had continued to exist when the associated Office of Aboriginal Affairs was made a separate department under Whitlam's Government. The latter was a move on which Dr Coombs, for one, had reservations. As he wrote, 'A department would inevitably seek responsibility for the administration of policies which it recommended to Cabinet. This, I felt, was likely to cause duplication and irritation between it and the functional departments responsible for similar policies which affected the community generally and, even more serious, would identify the Department of Aboriginal Affairs with those policies and make it a defender of them and of their administration and indeed of the *status quo* generally. This would lead inevitably to isolation from Aborigines so that the Department would become the focus of Aboriginal criticism'.<sup>3</sup>

The Council's advice had been important in the framing of the Land Rights Bill (though not wholly accepted) and in other issues, from 1972 to 1975. But its members (two of whom, supposedly part-time advisers, in fact devoted as much as half their time to Council work) had other duties. Indeed, the Council had asked to be wound up during the first year of the Labor Government. One of its members, Barrie Dexter, had become the head of the newly set up Department of Aboriginal Affairs. Professor Stanner had

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2 For a thorough examination of Queensland legislation in this regard, see G. Nettheim, *Victims of the Law: Black Queenslanders Today*. Sydney, George Allen & Unwin, 1982.

3 H. C. Coombs, *Trial Balance*. Melbourne, Macmillan, 1981, pp. 298-9.

obligations to the Australian National University and was now acting as a part-time consultant to the Parliamentary Committee on Aboriginal Affairs; and Dr Coombs was shortly to head a Royal Commission on Australian Government Administration. But, with its role and independence newly defined under Senator J. Cavanagh, the second Labor Minister for Aboriginal Affairs, the Council remained active until the end of the Whitlam years.

Its members again asked that the Council should be wound up when the new government came to power. But they were persuaded to stay on until the role of the Aboriginal advisory body, the NACC, should be fixed at the presentation of the report on its future. This they agreed to do, providing advice to the new Minister if it was requested. Before the 1975 election, the coalition parties had issued a statement on their new policies on Aboriginal affairs which much heartened the Council. In government, they stated, they would recognize the right of Aborigines to 'retain their racial identity and traditional lifestyle or where desired to adopt a partially or wholly European style'. This was a considerable retraction from the 'assimilation policy' so detested by Aborigines. And the rest of the policies which the statement outlined were also a reversal of the past; in Aboriginal land rights, in participation in decision-making, and in new programmes for self-sufficiency and self-management. The members of the Council felt that they could continue to work with the new Minister, Ian Viner, on such terms.

The almost immediate breaking of the promise made by the coalition's shadow minister, that there would be no cuts in finance for Aboriginal affairs, was a shock. The much greater cuts in the August Budget of 1976 were even more alarming. Nevertheless, during 1976 the Council and the Minister had remained on good terms. Wrote Coombs: 'The period of our association with Viner had been fruitful. Despite the financial problems the changed basis for the

coalition's policies . . . made possible a cordial working and personal relationship'<sup>4</sup>.

The inquiry into the NACC continued throughout 1976, and in November its report was issued.

This first official Aboriginal body under the Commonwealth Government had been set up as a result of a set of proposals made by Aborigines themselves, the first interim body having been called together by the first Minister under the Whitlam Government, Gordon Bryant. Its function was always intended to be purely consultative, with separate state branches meeting quarterly, a Canberra-based executive, and yearly plenary sessions. A democratically elected base presented problems from the beginning, since the electorates as they had been drawn up sometimes cut across community boundaries or included electors from several different distant communities.

Distance, and lack of funding, would always be a major problem for any national Aboriginal organization such as the NACC; proper representation of distant communities, many isolated not only from the centres of government but from each other, required a great deal of communication and mobility which were seldom available to members. Many of the elected representatives distrusted any attempt by officialdom to determine their actions. From the beginning many had criticized the formation and functions of the new Department of Aboriginal Affairs. It was not an advisory role they wanted, but a policy directed towards complete management of Aboriginal affairs by Aborigines, and meanwhile, a more significant part in decision-making for the NACC itself. They were not willing to accept subordination to an executive bureaucracy, as soon became clear.

The NACC had no money of its own; its proposals for its own constitution and functions, put up to the second

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4 Coombs, *Kulinma*, p. 25.

Minister for Aboriginal Affairs under the Labor Government, Senator Cavanagh, were rejected on the ground that they gave too much power to the executive. By November 1975, the third Minister, Les Johnson, had approved a revised constitution. But after the 1975 election, the new Minister, Ian Viner, rejected it on the ground that his government could not approve the existence of a body set up between the government and the Aboriginal people, with full control over the use of public funds and no provision for parliamentary intervention. The appointment of a committee of inquiry into the NACC, headed by L. R. Hiatt, chairman of the Australian Institute of Aboriginal Studies, followed. It was the report of this committee for which the Council for Aboriginal Affairs was waiting, before handing over its own advisory function and winding up its activities.

The NACC's stormy history was legendary. State governments such as Queensland were especially hostile to this Federal initiative. Queensland's own appointed advisory 'Aboriginal Councils' on reserves reportedly did not take kindly to the idea of being superseded either by NACC representatives or by an NACC executive based in Canberra. According to the Hiatt Report, when it was issued in 1976, few Aborigines had even heard of the NACC, and those who knew of it often felt themselves poorly represented, or objected to the idea of being represented at all by people elected under this unfamiliar procedure and whom they might not even know personally.

The NACC was also handicapped from the beginning by its lack of a clear charter and constitution, its members' problem of acceptance in hastily-drawn-up electorates, and by language problems, distance and communication. Thus it had made little headway by the end of 1975, but it had gained national press attention for its vocal role in opposition to bureaucracies and Ministers.

The Hiatt Report recommended that it should continue,

still on an advisory basis and as a democratically elected body representing Aboriginal electorates. It rejected the idea of replacing the democratic base by a system of government appointments, as had been suggested. Further, it recommended that in order to handle the funding for Aboriginal projects and land purchases, a statutory Commission for Aboriginal Development, with some representation from the NACC, should be set up by 1980. Though the Hiatt Report advised that the name of the body should be changed from 'Committee' to 'Congress', as the NACC itself had demanded, the body in fact became the 'National Aboriginal Conference' by decision of the coalition Cabinet.

With the establishment of the NAC on a continuing and funded basis, the role of the Council for Aboriginal Affairs was no longer necessary, and in December 1976 the Council was officially wound up. However, Professor Stanner and Dr Coombs still served on a part-time advisory basis for the government. Stanner, who had officially retired from the university in 1970, continued his active involvement in Aboriginal land claims, as well as the anthropological writing interrupted when he accepted appointment to the Council in 1967. Barrie Dexter, resigning as Head of the Department of Aboriginal Affairs after these turbulent years, returned to the diplomatic service and was soon Ambassador to Yugoslavia. Dr Coombs, after heading the Royal Commission into Commonwealth Government Administration, had taken up the offer of a fellowship with the Australian National University, working in the field of environmental economics. This allowed him to keep in touch, on occasional field trips, with Aboriginal friends he had made during his years as chairman of the Council for Aboriginal Affairs. All three past members of the Council retained their deep interest and concern for the future of Aborigines and their fate under the coalition government.



From 1976 onward, the chief area of probable conflict was the relationship between the three parties in the Uranium Province — the Commonwealth Government, with its divided commitments both to granting proven Aboriginal land claims through the operation of the new Act and to encouraging, and profiting from, mining enterprises in the Northern Territory; the mining companies; and the weakest of the parties, the Aborigines themselves.

The Woodward Commission of inquiry had recommended that minerals should remain the property of the Crown on Aboriginal land. The Aboriginal Land Rights (NT) Act 1976 followed this recommendation, but provided for a veto by Aboriginal owners whose claims had been proved successful under the Act, over aspects of mineral exploitation to which they objected (subject to previous commitments by the Administration of the Northern Territory). This power was especially important to protect sacred sites and areas of high significance to Aborigines. In the areas where this veto could formally be exercised, however, it could be overridden (even without reference to the draconian Atomic Energy Act of 1953) if the government decided that mining was 'in the national interest'. This phrase from the Woodward Report was to become a strong instrument in the hands of an unsympathetic government.

The Ranger Uranium Environmental Inquiry, more often known as the Fox Commission, which had been set up by the Whitlam Government on 16 July 1975, issued its first report on the afternoon of Thursday 27 October 1976. It was almost entirely concerned with environmental hazards and problems. Its first findings began the Report:

1. The hazards of mining and milling uranium, if those activities are properly regulated and controlled, are not such as to justify a decision not to develop Australian uranium mines;

2. the hazards involved in the ordinary operations of nuclear power reactors, if those operations are properly regulated and controlled, are not such as to justify a decision not to mine and sell Australian uranium.

The third finding (the three Commissioners themselves were soon obliged to emphasize that these were not recommendations) began with these sentences: 'The nuclear power industry is unintentionally contributing to an increased risk of nuclear war. This is the most serious hazard associated with the industry'.

The Report was issued late in the afternoon, after stock exchanges had closed. Speculators, investors and mining companies were eagerly awaiting it. The following morning's newspapers carried ecstatic misinterpretations of the Report — which was in fact hedged about with many warnings and reservations. The *Melbourne Sun* of 29 October led with the headline 'URANIUM: IT'S YES!' The *Sydney Morning Herald* declared 'WAY OPEN TO URANIUM SALE'. Even the *Melbourne Age*, usually more thoughtful, agreed, 'URANIUM: CAUTIOUS YES'. The government reaction was clearly similar. The Fox Commissioners later wrote to the Minister for Environment, Housing and Community Development, emphasizing that their first two findings did not amount to recommendations — since the government had immediately used them to give the green light to existing contracts — and should not have been used to support the government's stated policy for development of the Uranium Province.

It was, however, too late. The report's final recommendation, which called for ample time to be allowed for public debate and consideration before the government took action, was in effect brushed far into the rear of the rush of speculation on share markets and mining companies. 'Although it can be argued that the wording and presentation of the report's findings and recommendations

are open to various interpretations, the commissioners are known to be alarmed at the tactics adopted by the Government and proponents of nuclear development', reported a journalist in the *Financial Review*.<sup>5</sup> The Labor Party had already announced that it was opposed to the development of Australian uranium resources at least until safe methods of waste disposal had been found. Some trade unions threatened to stop any yellowcake from leaving the country. Concern for the proposed Kakadu National Park, concern for the possible increase in the dangers of nuclear warfare and international terrorism, and anxiety over possible pollution of the Alligator River wetlands (which would certainly affect the lives and future of the Aborigines of the area) were all factors in the controversy which followed the publication of the Report.

The second Fox Report, concerned with the legitimacy of Aboriginal land claims and Aboriginal views of mining, appeared in May 1977. Meanwhile, in April 1977, a coincident publication had appeared in Canada. This was Mr Justice Berger's report, *Northern Frontier Northern Homeland*<sup>6</sup> concerned with questions of development in relation to indigenous land claims. Its conclusion, that recognition of such claims must precede development, made headlines throughout North America but was barely noticed by the press in Australia.

Much of the evidence the Commission had heard was taken before the Aboriginal Land Rights (NT) Act 1976 was put into final draft form and passed. It was natural, then, that Aboriginal witnesses and the people they represented were uncertain both as to what claims they might be able to make, and whether to speak on their own forebodings over

<sup>5</sup> J. Hoare, 'Fox Commissioners Join in Attack on Government'. *Financial Review*, 30 November 1976.

<sup>6</sup> The Mackenzie Valley Pipeline Report, 1977.

the mining proposals. However, said the Report, 'at a late stage of the main hearings, with the very considerable assistance provided by the Northern Land Council, it was established to the satisfaction of the Commission that the Aboriginal people concerned were opposed to mining on their land.' (An interim Northern and Central Land Council had been set up by the Woodward Commission to help and advise on gathering evidence on land and how Aborigines related to it. Both were now, under the 1976 Act, established on a statutory basis and incorporated. The NLC's forty Aboriginal members, and its chairman, Gularrwy Yunupingu, were charged under the Act with representing the traditional 'landowners' and their interests. The views of the NLC members were therefore, in theory, coincident with the views of the people they represented, although staff members largely recruited from the Department of Aboriginal Affairs might have considerable input into their deliberations.)

The second Fox Report recognized that the group concerned with land — 'Aboriginals entitled by Aboriginal tradition to the use and occupation of the land concerned' — was in fact usually 'a wider group than is made up by the traditional owners'. In fact, defining the term 'owners' was to cause much difficulty in the ensuing application of the Act's procedure for claims. Here, the necessity for consensus in Aboriginal decision-making and the need for all concerned to know the issues and to reach that consensus, made the time allowed for the Fox Commission's inquiry farcical.

The Aboriginal Land Rights Act stipulated (in subsection 151) that

a Land Council shall not give a direction . . . for the grant, transfer or surrender of an estate or interest in land unless:

- a traditional Aboriginal owners of land understand the nature and purpose of the proposed grant [etc.] and as a group, consent to it;
- b any Aboriginal community or group that may be affected by the proposed grant . . . has been consulted and has had adequate opportunity to express its view to the Land Council; and
- c in the case of a proposed grant [etc.] the terms and conditions of that lease or licence are reasonable.

Section 40 (1) of the Act required that a mining interest on Aboriginal land should not be granted unless both the Minister for Aboriginal Affairs and the NLC consented, 'or the Governor-General declares that the national interest requires that the interest be granted'. If the parties failed to reach agreement, the Minister was to consult with the Land Council and the applicants for the grant, after which he might appoint an arbitrator who was to determine the terms and conditions that 'should be acceptable to the Land Council and to the applicants'. This determination was then to have effect.

Clearly, the potential for pressure both on the traditional owners and on the Land Council from the two most powerful parties to such agreements was immense. The concept of 'national interest' was vague and nowhere defined. Moreover, the government was considerably advantaged, if it wished to advance the mining interest, by its power to appoint an arbitrator of its choice.

The chief area on which the Fox Commission was to report was that concerned in the Ranger project, where a huge mining consortium, Pancontinental, held an exploration licence over large deposits at Jabiluka and elsewhere. Pancontinental, under environmental legislation, had to provide an environmental impact statement on its mining proposals; it had also to estimate the extent of impact, favourable or unfavourable, on the Aboriginal communities of the area. Another company,

Queensland Mines Ltd, held an exploration licence over a claim at Nabarlek, outside the proposed national park, where the ore deposit was smaller though immensely concentrated. Noranda Ltd had been granted an area at Koongarra, mostly within the proposed park limits, and within the Aboriginal reserve. Existing Aboriginal reserves in the Northern Territory were, under the 1976 Act, to become Aboriginal land without need for land claims to be proved; but there were likely to be claims pending over land beyond the limits of the reserves, and the land encompassed by the Ranger proposal was not then 'Aboriginal land' under the Act.

The sheer size of the mining proposals, their extent, and the effect they would have on land and waters were difficult to envisage even for people familiar with such projects. In addition to the actual mining activities, the establishment of mining towns, roads, transport and communication services would leave immense scars. It was virtually impossible, given the bond of Aborigines to the land and the sacredness of much of the area to them, to imagine that if they really understood what was to happen, they would freely consent. The companies, and the Commonwealth Government, were nevertheless impatient for a start to these long-heralded projects which were to give the lead in the much touted 'resources boom' and help to lift Australia's economy out of recent recession. The prices forecast by the mining lobby for overseas uranium sales whetted the appetites of governments and shareholders alike, though other analysts predicted that the market was overestimated and that when the dangers of nuclear power were better understood it would be difficult to keep demand up to anywhere near the extent of supply which was forecast from the Uranium Province. However, contracts were already being sought, not only by the sales staffs of the companies concerned, but by government representatives and even by Ministers.

The second Fox Report, focusing on the question of Aboriginal land claims and the consequences for Aboriginal communities, made none of the recommendations urged by the Council for Aboriginal Affairs except to say that the mining projects should be developed sequentially rather than all at once. The Report, however, suggested that the Commission was sympathetic to the Aboriginal plight.

They are a community whose lives have been, and are still being, disrupted by the intrusion of an alien people . . . They feel helpless and lost. Their culture and their traditional social organisation do not enable them to cope with the many problems and questions to which this development gives rise. (p. 46).

Wrote the Commissioners:

Of all the relationships traditional Aboriginal man has with anybody or anything, the most important is that which binds him to a particular tract of land which he refers to as 'his country'. This is a religious bond. (p. 33)

This emphasis on the religious aspect of Aboriginal relationships with land was scarcely likely to rouse much compassion in mining companies. It also failed to take into account the fact that many Aborigines in the Uranium Province obtained much, though not all, of their food supplies from lands and waters which, environmentalists feared, would be polluted with radioactivity through the mining enterprises, however carefully the recommendations of the first Fox Report might be followed.

The then chairman of the NLC, Silas Roberts, had said in evidence, 'We have got to make decisions in respect to land our own way. It is a long and hard road to a final answer . . . That may be years after the first talks, if the question is a hard one'. (p. 47) No question, for the Aborigines, could have been harder. Nor could any group have been less

informed on the issues of the mining, its effects, and the size of the invasion of foreign miners and tourists which would follow the granting of the applications.

Yet the main emphasis of the second Fox Report in relation to Aborigines lay on the adaptation of the Aboriginal community to mining, an outcome which the Report appeared to assume was inevitable. Here its recommendations all related to employment, welfare, and information services to acquaint miners, tourists and other intruders with Aboriginal customs, traditions and ways of living. There was no recommendation for a moratorium and little emphasis on the need for information to Aborigines themselves, for consultation, translation into Aboriginal languages of any agreement, or time for decision-making. In the event few of the measures recommended in the first Report for slowing down the development of the mining projects, or in the second Report, for Aboriginal welfare were accepted or at least put into practice.<sup>7</sup>

As soon as the first Report was issued, in the previous October, the mining companies through the Australian Mining Industry Council had begun a massive campaign of propaganda for uranium projects. Most of this was directed towards lulling public fears of the misuse of uranium and plutonium, and of environmental damage. Much emphasis was laid on the fortunes Aborigines would receive through mining royalties. The headlines promised that they would become 'STONE AGE MILLIONAIRES'. The Council forecast that uranium demand would quadruple by 1985 and that Australia would have a guaranteed steady income of fantastic proportions from the Ranger development alone by the turn of the century.

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<sup>7</sup> For an account of later developments and their effects, see J. C. Altman. *Aborigines and mining in the Northern Territory*. Canberra. AIAS. New Series 45, 1983.



There were to be negotiations with the traditional 'landowners', through the Northern Land Council. But already, at the beginning of September 1977, Prime Minister Fraser announced that the government would proceed with the projects, and that the negotiations would be concluded as soon as possible.

Meanwhile, the Canadian Government had acceded to Justice Berger's demand for a ten-year moratorium on the oil pipeline through indigenous territory, despite international pressure. Influenced by a favourable Supreme Court decision, and the outrage of most sections of the Canadian public, the Queen's representatives in Canada had agreed in 1973 to negotiate with indigenous people to resolve their claims for land compensation for past injustice and a moral settlement of their rights in future. With no such strength of public opinion on their side, Australian Aborigines were once again to suffer the consequences of an unsympathetic dominant society.