2. LEGAL ISSUES AFFECTING MANAGEMENT OF THE KARLAMILYI (RUDALL RIVER) REGION

John Cotton

Aboriginal Legal Service
Nash Street, East Perth

ABBREVIATIONS:

AAPA	Aboriginal Affairs Planning Authority (W.A.)
AHA	Aboriginal Heritage Act 1972 (W.A.)
ALM	Aboriginal Liaison Manager
ANPWS	Australian National Parks and Wildlife Service
ATSIHPA	Aboriginal and Torres Strait Island Heritage Protection Act 984 (Commonwealth)
BBWG	Bungle Bungle Working Group
CALM	Conservation and Land Management (W.A.)
CCNT	Conservation Commission of the Northern Territory
DAS	Department of Aboriginal Sites of the Western Australian Museum
EPA	Environmental Protection Authority
EZ	Exclusion Zone
NLC	Northern Land Council
NPNCA	National Parks & Nature Conservation Authority
NT	Northern Territory
PCHC	Purnululu Cultural Heritage Committee
PM	Plan of Management
RRNP	Karlamilyi (Rudall River) National Park
SAA	Site Avoidance Agreement
SIS	Social Impact Study
SSCK	Senate Standing Committee on the Potential of the Kakadu National Park Region
WA	Western Australia
WATC	Western Australian Tourist Commission
WDPAC	Western Desert Puntukurnuparna Aboriginal Corporation

PREFACE

The basis for my participation in the Western Desert Working Group is different from that of the other members. They are making available in a convenient form, the results of their researches on the ground and in direct contact with the people of the Rudall River region.

My relationship with the people has been more detached, dealing with legal issues upon which I have been instructed by WDPAC. My contribution to this Resource Document will, therefore, not consist of marshalling existing data, but rather of trying to provide a legal perspective on issues which may be considered by the CALM project team and the SIS.

There are dangers inherent in advising or commenting on what *may* be considered; the most obvious being that the reader will be swamped by excessive length and dubious relevance. I have, therefore, stuck to my original plan with its four topics, even though it was prepared in haste and the selection of the topics could be seen as piecemeal or arbitrary.

The first section deals with the problems arising from the different status of the various land being considered by the CALM Project Team and the SIS. I have engaged in abstruse correspondence with various Government departments on this subject. Hopefully, the results will be of assistance and have therefore been included in this Resource Document.

The second section deals with options for involvement in running the RRNP. I can claim no particular experience or specialist knowledge in this area and my contribution does no more than collate information from various sources. This information may well be already known to the CALM Project Team, but at least it will appear here in a convenient form for reference.

The third section deals with land tenure in the RRNP. Again, it draws from outside sources, but with the addition of some specialist knowledge which I have acquired over the past eight months.

The fourth section deals with Site Protection. I have some practical experience with the problems of protecting sites against mineral explorers. In relation to tourists, I have drawn heavily on Dr. Clive Senior's unpublished Report on Tourism and Aboriginal

Heritage. As that Report was written with particular reference to the Kimberleys, I have tried to apply its conclusions to the Rudall River Region.

Finally, it should be noted that the issue of mining is not addressed, in spite of the well-known presence of Kintyre, 700 metres inside the Park. There is some justification for saying that the issue is being ducked because it is too difficult. Certainly, WDPAC, CRA and the WA Government were all happy, during discussions prior to the SIS being arranged, that any study should deal with the effects of exploration and leave mining till later. The political complexities are simply too great to deal satisfactorily with mining now, especially in view of the current review of Federal ALP policy. However, it is reasonable to hope that some of the work undertaken now with reference to exploration, may be applicable or can be easily adapted to mining, if it takes place.

1.0 PROBLEMS FROM DIFFERENT STATUS OF LAND

1:1 INTRODUCTION

The WA Government has chosen to draw two sets of boundaries in the Rudall River area: in May 1977, the Rudall River National Park and in October 1987, the Exclusion Zone. To Aboriginal eyes these boundaries are arbitrary, since they do not correspond with any boundaries which they would draw. However, in legal terms, they cannot be ignored because legal consequences flow from them. An obvious example is that by including the land in a National Park, it becomes subject to the CALM Act and is taken out of the jurisdiction of the Land Act in certain important respects: for example, the usual 99 year lease is not available.

The arbitrary fashion in which the boundaries were drawn, has resulted in land in the area falling into one of four broad categories: (1) Park and EZ; (2) Park and not EZ; (3) EZ and not Park; and (4) neither EZ nor Park. Some of these categories are more helpful than others: for example, only a small area comes in the third category.

Categorization is unhelpful in other respects. If the PM Project Team and the SIS Group come to the same conclusions, they could well be uniformly applicable to the first three categories. On the other hand, land might come in the fourth category, being outside the Park and the EZ, and yet still have a special status by virtue of, for example, reservation under the Land Act.

Nevertheless, some structure, however inadequate, has to be imposed because any conclusions reached by the PM Project Team and the SIS Group will be of limited value, if they cannot be enforced: for example, the inclusion of land within the Park obviously

provides more scope for enforcement. The four categories will be examined in turn with the aim of seeing how the legal status of each of them affects the ability of the Government to control what happens there, with particular reference to mineral explorers and tourists. If it seems unduly complicated, it should be noted that it is nothing compared to Kakadu, which is a patchwork quilt of zones, stages and Aboriginal and non-Aboriginal land.[1]

1:2 PARK AND EZ

1:2:1 MINERAL EXPLORERS

Most of the eastern half of the Park is also covered by the EZ. This makes for an uneasy mix in legal terms.

1:2:1:1 Legal Basis for Park

The National Park is an "A" class reserve, controlled by CALM and subject to the provisions of the CALM Act. Its boundaries cannot be altered according to Section 31A of the Land Act, except by legislation passed by both Houses of the WA Parliament.

Added to this are the recommendations of the Bailey Report.[2] These have been adopted with some amendments as Government Policy and publicized as such in a Government Policy Report.[3] The problem is that although the Mines Department considers that the Bailey proposals apply to all mining tenements granted after 22 February 1988, there is as yet no legislative basis for their policy, because the necessary amendments to the Mining Act are still to be passed.

1:2:1:2 Legal Basis for EZ

The basis for the EZ, on the other hand, is delightfully simple. The Ministers for Mines, CALM and Aboriginal Affairs made an administrative decision in October 1987 that no exploration or mining would be permitted within the EZ, unless or until otherwise determined by the Government. In July 1988, this was extended until such time as the future land tenure of the two communities in the RRNP was resolved or they agreed to mineral exploration proceeding.

---

1 See pages 72 to 75 of the Report of the Senate Standing Committee on Environment Recreation and the Arts on the Potential of the Kakadu National Park Region, (1988,A.G.P.S., ISBN 0 644 07647X).

2 Report of the Committee on Exploration and Mining in National Parks and Nature Reserves (December 1986, ISBN 0 7309 0683 3).

3 "Mining and the Environment. Balancing the Scales" WA Government Policy Report (undated but released in early 1988).

This administrative decision has been implemented by the Mines Department. It has instructed holders of granted tenements within the EZ not to explore within the EZ, and any applications for tenements within the EZ have been held in abeyance.

There are obvious difficulties inherent in administrative directions of this kind. There is no legal reason why, at any time, the Ministers should not decide to remove the EZ and instruct the Mines Department accordingly. The precise implementation can also be unclear. I have been involved in convoluted correspondence in relation to several tenement applications lodged by explorers, affecting land within the EZ.

The Mines Department wants them to be held in abeyance *after* the Warden has made his recommendation. Thus they would be frozen in the Mines Department in Perth and not put before the Minister for Mines, so that he can exercise his power to grant them. As the Warden's Court is the only possible forum for Aboriginal objections to be heard publicly, we would prefer the applications to be frozen *before* the Warden hears them, but in some cases the Warden had already made his recommendations before they came to our notice.

It is not a hugely important point, but it illustrates the difficulty, and the basic vulnerability, of a position based upon administrative direction.

1:2:1:3 Problems with Bailey Implementation

However, curiously enough, the same problem has arisen with the implementation of the Bailey proposals. The applications in the EZ, held in abeyance as mentioned in 1:2:1:3, can also be challenged because they do not comply with the Bailey proposals. To take a simple example, no exploration can take place in a National Park unless it is declared open for exploration. Application has been made by at least one mining company to have the RRNP declared open for exploration, but the procedure for this is still in doubt. The Government Policy Report[4] suggests that the opening needs the agreement of both Houses of Parliament, but this goes further than the Bailey proposals. The only course seems to be to wait for the legislation implementing the proposals, assuming, of course, that it is ever passed.

There is also another important point which is still unclear. As mentioned above, the Bailey proposals only cover tenements granted after 22nd February 1988. Any granted before then, including CRA's tenements, are subject to the old rules. It is in such cases

---

4 Op.cit. n.3.

that inclusion in both the Park and the EZ can be important. The EZ is still holding up exploration, even though inclusion in the Park would not prevent it.

Underlying all of this is the philosophical question of whether National Parks should be the subject of mineral exploration at all. The WA Government has made its position clear: for example, in a submission to the SSCK, it suggested that "land use decisions can only be made effectively when a full inventory of the land and its resources is available."[5] It is difficult to see what interest the WA Government has in Kakadu, but it has expressed a similar view on numerous other occasions.

One method of implementing this view is to specify a date by which exploration must be completed. In Stage 3 of Kakadu, for example, a five year limit has been placed on exploration in the Conservation Zone. The EPA has recommended a fourteen year period for all National Parks in WA, during which exploration activity can take place under exceptional circumstances.[6] The danger with time limits of this kind is, as the SSCK said with respect to Kakadu, that "companies will probably seek to extract the maximum amount of information in the time available. These pressures may well pose serious environmental risks for the area."[7]

The same would be likely to occur in the RRNP, with increased disruption to the life of the Aborigines in the Park, as well as serious environmental risks. The EPA, for example, commented on the necessity for "limiting the effects of disruptive activities on the life-style and pursuits of some indigenous peoples."[8] It also quoted its comments in 1984 that "as a matter of principle, mining on leases granted following the declaration of a National Park should only be allowed if the following criteria are met:

(a) there is a strategic need for the mineral, or(and)

(b) the mineral resource is rare and of high value, and its exploitation would be of significant material benefit to the State, or the nation."[9]

---

5 Op.cit. n.1 p94.

6 Report and Recommendations by the Environmental Protection Authority on the Bailey Report (August 1987, EPA Bulletin 287).

7 Op.cit. n.1 p129.

8 Op.cit. n6 p8.

9 Op.cit. n6 pp5 and 6.

1:2:1:4 Summary

The whole picture is thus a confusing one, but in simple terms, the next step must depend upon whether and in what form the Bailey proposals are implemented. The result of the legislation may be that there is a duplication of restriction by virtue of tenements being covered by both the Park and the EZ, or it may be that only the EZ is holding up exploration.

If only the EZ is holding things up, it is open to the Government to remove it and the removal would be a purely political decision, as the creation was.

1:2:2 TOURISTS

The EZ is of no relevance to tourists, but in any event the Park provides the Department of CALM with as much power as it needs to impose controls on tourist activities within the Park. I will discuss in detail, under (2) below, the Aboriginal role in running the Park and the extent to which the Department of CALM will implement the Aboriginal wishes.

1:3 PARK AND NOT EZ

1:3:1 MINERAL EXPLORERS

This comprises the Western portion of the Park, including the site of the Kintyre prospect. For the reasons given in 1:2:1, there is uncertainty as to the precise terms of the amendments to the Mining Act, which will implement the Bailey Report.

However, for pre-existing tenements, granted before 22nd February 1988, exploration can continue because they are not in the EZ: for example, CRA carried out drilling in Graphite Valley in 1988. Apparently, the Department of CALM does impose some controls on such exploration, such as requiring holes to be filled in.

For mining tenements not granted before 22nd February 1988, they are held up pending the implementation of the Bailey Report, but presumably they cannot even be granted unless the Park is declared open for exploration. Obviously, such a declaration is more likely to occur for the portion of the Park which includes Kintyre and all the other pre-existing tenements, which are being explored. However, this is an area of speculation which I have decided to avoid for the reasons given in the Preface.

1:3:2 TOURISTS

The position is the same as described in 1:2:2, because the EZ is of no relevance to them.

1:4 EZ AND NOT PARK

This is only a small area with two parts: one between the south end of the Park and the McKay Ranges; the other sticking out at the north end of the Park. Its existence is an anomaly, but in practical terms, because of its size, it does not present any insuperable problems, as long as its special status is taken into account.

1:4:1 MINERAL EXPLORERS

1:4:1:1 Current Position

It falls outside the Department of CALM's jurisdiction, but will certainly be included in the SIS. No exploration can take place there on granted mining tenements and any applications are being held in abeyance.

Most have already been granted including several in the southern part, over an area known as the Dome. However, there is one application which, although recommended for approval by the Warden, has been held up in the Mines Department. When he made his recommendation for approval, the Warden did not even seem to be aware of the existence of the EZ, which highlights the vulnerability of rights based upon administrative direction.

1:4:1:2 Anomalies

The southern part includes the air-strip which services the Cotton Creek community, even though the community itself is a few kilometres away and inside the Park. It also includes a portion of the Talawana track itself.

This raises the question of what precisely the EZ "excludes". One of the main objections of the Aboriginal people to mineral exploration has always been the invasion of their privacy. However, the ban in the EZ was stated to be on "mining and exploration", without making clear whether "exploration" includes "access for exploration."

In practice, neither side has pushed the point. In 1988, CRA initially avoided overflying the EZ on its way to the Harbutt Ranges to the south-east, but eventually decided that it cost too much in time and fuel. This resumption was noticed by, and a source of irritation to members of the Parnngurr Community, even though the flight path was not directly over them.

CRA's land access to the Harbutt Ranges avoided the EZ, except that it used the portion of the Talawana track mentioned above. Again, the point was not taken by the Aborigines, or WDPAC on their behalf.

1:4:1:3 Enforceability of the EZ

Up to now there has been no exploration in the EZ by existing holders and applications have been held in abeyance somewhere in the system. There has thus been no test of the ability of the Mines Department to enforce the EZ. Against existing tenement holders, it has the remedy of forfeiture for breach of condition. Against others, it would have to rely on criminal proceedings for some incidental breach of the Mining Act. This would come before the Warden in Marble Bar and it has occurred often, in the history of WA Mining Law, that the Courts have failed to recognise administrative actions of the Mines Department as having the force of law.

1:4:2 TOURISTS

The Department of CALM has no power to regulate tourism outside National Parks, and it can do nothing in this small area. However, it can put up notices to warn tourists of the position in the RRNP (e.g. where roads are closed) and on the face of the NPA Regulations (e.g. Reg.8), these notices do not have to be in the Park itself.

In practice, the judicious placing of such notices (e.g. at the turn-off on the Talawana track) could discourage tourists from entering the area at all.

1:5 NEITHER EZ NOR PARK

Clearly this is not the concern of the PM Project Team, and the precise area of the "Western Desert (Rudall River) region", over which the SIS is to be carried out, was not made clear when Cabinet originally authorised it.

However, the SIS must surely cover areas outside the Park, for example, portions of the Canning Stock Route. This raises the problem of how its findings can be enforced against mineral explorers and tourists, since one of its main aims is to help to manage interactions between Aboriginal, mining and tourist interests.

1:5:1 MINERAL EXPLORERS

1:5:1:1 Special Situations

It is possible to pass a Statute or regulations governing this interaction. This already occurs indirectly with the AHA, as discussed in 4:2. More directly, the permit provisions in the AAPA Act and Regulations govern interaction between Aboriginal

communities and whites on a geographic basis, since the permit is for access onto a reserve.

This may provide Aborigines in particular areas of the Western Desert with some control over mineral exploration, as they have made several applications for 99 year leases over these areas. If granted, these will be over land which has already been reserved and subject to Part III of the AAPA Act. This is the basis upon which 99 year leases are invariably given by the Aboriginal Lands Trust.

On the other hand, there have been applications for Special Purpose Leases. These leases are granted for the Use and Benefit of Aboriginal Inhabitants under Section 116 of the Land Act. Their terms may vary, but generally they will not prevent mineral exploration over the area of the lease.

1:5:1:2 Vacant Crown Land

However, I will leave aside those special cases and deal with the situation where the land in question is vacant Crown Land. If the SIS concluded that it was desirable, it would be possible for the Mining Act itself to be amended to control the way that mineral explorers deal with Aborigines in the Western Desert. The difficulty is that the provisions would not apply State-wide and the Government would probably use that as an excuse for not enacting such provisions. Certainly, it causes difficulties, but over the years the WA Government has passed dozens of State Agreement Acts, each of which provides for special laws to apply in a particular area of the State, (e.g. the Argyle project has special powers of search in "designated areas").[10]

Whether the Government would be prepared to do the same for the Aborigines of the Western Desert, depends upon political considerations. It seems more likely that it would do no more than regulate the holders of mining tenements through the conditions imposed on the grant. Breach of those conditions would give the Mines Department the right to require forfeiture of the tenements. This is a real weapon, but its obvious weakness is that it involves exercise of an administrative discretion by a Government department.

The other weakness is that this would not cover prospectors operating without a mining tenement. In the absence of a breach of a provision of the Mining Act (e.g. not having a Miner's Right) the only controls applicable here would be those applicable to "tourists."

---

10 See Part IV of the Diamond (Ashton Joint Venture) Agreement Act 1981.

1:5:2 TOURISTS

The particular problem of tourists and Aboriginal sites is discussed in 4:5. However, the operation of the AHA in that context highlights the general problem of enforcing laws against people who only go to a place once. It has three aspects:

(1) how to inform them of the rules in the first place;

(2) how to prove that they breached the rules; and

(3) how to find them afterwards.

It is really a question of how far the Government is prepared to go. Using the Argyle analogy (see 1:5:1:2), it could erect guard posts at each exit from the Canning Stock Route. However, political considerations are more likely to dictate that statutory controls are rejected in favour of education and information, particularly where tourist operators are involved on a continuing basis. That is for the SIS to recommend and the Government to decide. However, it should not be forgotten that with tourists, as with mineral explorers, it is possible in legal terms for the Government to bring in the necessary laws if it has the political will. If it chooses not to, because of the difficulty of passing laws for a particular geographical area, or of enforcing them, that is a political decision and should be seen as such.

2.0 OPTIONS FOR INVOLVEMENT IN RUNNING THE PARK

2:1 INTRODUCTION

As mentioned in the preface, I have no particular inside knowledge on these matters, and in fact anyone in the Department of CALM who has been involved with Bungle Bungle, will probably be familiar with most of the material from which my comments are drawn. In relation to the Bungle Bungle itself, the Department will be more aware of the current position than I am.

Nevertheless, I suggest that there is some point in collating the relevant information in one place, particularly concerning the most recent PMs in Uluru and Kakadu. Because of my incomplete information on Bungle Bungle, I have considered two basic sets of arguments: the first, which I have called "Bungles Mark I" is the Report in May 1986 of the Bungle Bungle Working Group;[11] the second, called "Bungles Mark II" is a compromise proposal which apparently was put to the Government late in 1987. There

---

11 Final Report by the Bungle Bungle Working Group to the Environmental Protection Authority (May 1986, D.C.E. Bulletin 261).

have undoubtedly been changes in position since that time, but that will not necessarily invalidate the possible applicability of the mechanisms in Bungles Mark II to the RRNP.

2:2 THE CONCEPT OF ABORIGINAL PARKS

The idea of Aboriginal involvement in the running of National Parks on any level, is a novel one in WA. It is only recently that Aborigines have even been employed as rangers. The idea of Aboriginal involvement in management of a Park, jointly with the Department of CALM, has never been implemented in WA. It was never even considered until the creation of the Bungle Bungle National Park was contemplated.

2:2:1 GENERAL NT APPROACH

This contrasts strongly with the NT where there are several examples of Aboriginal involvement in joint management. In view of the existence of land rights in the NT, this is not perhaps surprising. Most of the examples involve the Aboriginal owners of the land leasing it to an agency of the NT Government in the first place, and one of the terms of the lease is usually their continuing involvement in management. However, this is not always the case and the concept that Aborigines have something to contribute and therefore *should* be involved, seems to have greater recognition in the NT.[12]

Thus Section 11(8) of the NT National Park and Wildlife Conservation Act specifically mentions, amongst the objects to which regard shall be had in the preparation of a PM, the interests of the traditional Aboriginal owners of, and of other Aboriginals interested in, the land.

2:2:2 GENERAL WA APPROACH

In contrast, the corresponding section of the CALM Act, Section 56(1), makes no mention of Aborigines. Section 56(1)(c) puts the emphasis on "so much of the demand for recreation by members of the public, as is consistent with the proper maintenance and restoration of the natural environment, the protection of indigenous flora and fauna and the preservation of any feature of archaeological, historic or scientific interest." Apparently, one of the arguments against Aboriginal involvement in joint management of the Bungle Bungle National Park, was a legal one. The CALM Act was said not to allow it because of provisions like Section 56(1)(c).

---

12 E.g. - in the King's Canyon National Park, Aborigines have control of the Board of Management (see the Report of the SSCK, page 36), even though apparently they had no claim to the land in the Park under Land Rights legislation (see 3:1:4).

Certainly, the BBWG had its doubts because it recommended the vesting of the Park "be subject to mechanisms providing secure residence and equitable input to management for Aboriginal traditional owners. Such mechanisms are not available under existing legislation..."[13] The BBWG was primarily referring to problems of tenure (discussed in 3:2), but it also recognised that the CALM Act "does not facilitate all the elements of the joint-management mechanisms proposed in this report."[14]

However, it could be argued that the presence of Aborigines in a National Park is necessary for the maintenance of the environment and the preservation of archaeological and historic features. There is thus no inherent conflict with Section 56(1)(c). The various Cabinet decisions on the subject of Bungle Bungle suggest that the WA Government accepts, at least in part, the concept of an "Aboriginal Park." In June 1985, the Premier announced that joint management was intended, and although there was a retreat from this position, Cabinet decisions in April 1986 and September 1987 recognised that there were Aboriginal interests which required special treatment in setting up the Park. It is apparently only the precise mechanisms which are still being discussed.

2:2:3 COMPARISON BETWEEN BUNGLE BUNGLE AND RRNP

The case for an "Aboriginal Park" at Rudall River is stronger than in the case of Bungle Bungle. Aboriginals were not living permanently at Bungle Bungle when a National Park was first contemplated and the Department of CALM was able to say quite legitimately that, while it was prepared to fund Aboriginal in-put into the PM, its role is not to assist in the establishment of Aboriginal outstations.

In the RRNP, there are two established Aboriginal Communities. Admittedly, the Park was gazetted in May 1977, whereas the Punmu Group only settled at Lake Dora in 1981, and the Parnngurr Group at Cotton Creek in 1984. It says much about the reasons for the creation of the Park that the Aboriginal residents did not become aware of it until the Seaman Inquiry on Land Rights in 1984-1985. It is not clear when the Department of CALM became aware of the presence of Aboriginal residents in the Park, but it was apparently several years after 1981.

It is also worth noting the number of Aborigines resident in the two Communities. It fluctuates considerably, but in excess of 200 Aborigines could legitimately claim to be resident in the RRNP. This compares with some 30 Aborigines who have been resident

---

13 Op.cit n.11 p(vii).
14 Op.cit n.11 p57.

in Bungle Bungle since 1987. Even in Kakadu, there were only 277 Aborigines living in the Park on 1986 figures, as compared with 60-70 in 1975 and 139 in 1980.[15]

Whatever the reasons may have been for gazetting the RRNP, they were not based upon the sort of objects mentioned in Section 56(1)(c). There was no "demand for recreation by members of the public." It is only in the last year or so that tourists have become a problem.

As for the natural environment, indigenous flora and fauna and scientific features, there seems to have been little work done prior to the Gazettal, or since then, for that matter. That leaves archaeological and historic features, both of which are inextricably tied up with the Aboriginal interests in the area.

There is also the practical question of whether the Park can be properly managed without Aboriginal participation. Bungle Bungle is only a few hours from the main road and already much used by tourists. The RRNP, on the other hand, is inaccessible, in harsh terrain and unlikely to attract large numbers of tourists. In these circumstances, it is doubtful whether the Department of CALM will be able or willing to maintain an adequate presence there without Aboriginal co-operation or assistance. If that is the case, it seems unreasonable to expect Aboriginal assistance in running the Park without any corresponding participation in the overall management structure.

It is difficult, therefore, to resist the conclusion that the RRNP is an even more suitable candidate for WA's first Aboriginal Park than Bungle Bungle. Even if the Government does not fully accept the principles of joint management in Bungle Bungle, the decisions of Cabinet suggest that the concept of an "Aboriginal Park", as distinct from a "normal" National Park, has achieved some acceptance in government thinking in WA.

2:3 REPRESENTATION ON THE BOARD OF MANAGEMENT

The phrase "joint management" is used rather loosely, especially by advocates of the Aboriginal view-point, who use it to mean that the Aborigines will have ultimate control over management of the Park. I prefer to adopt the BBWG approach which uses the term to mean mechanisms whereby both the traditional owners and the National Park Agency are guaranteed equitable input into management decision-making.

---

15 Op.cit n.1 p15.

The conventional wisdom is that equitable input into management is best achieved by representation on a Board, which is the primary decision-making authority in the management of the Park. This may well be true in most cases, but under 2:4, the possibility of other mechanisms is contemplated, particularly in view of the experience with the first Kakadu PM.

The traditional owners had, as described in 2:4, considerable input into Park planning and management, even though there was no Board of Management. This was because they were represented by a vigorous incorporated body, the Gagudju Association. By way of contrast, in the Gurig National Park, the traditional owners could have had effective control of the Board of Management, but for reasons discussed in 2:3:1, failed to make good use of it.

Having said that, it is worth noting that the second Kakadu Plan of Management states: "Negotiations will be conducted with a view to establishing a Board for the Park. The Board is expected to include representatives of the traditional Aboriginal owners."[16] This has been requested by the traditional owners because the previous mechanisms had them reacting to proposals, rather than participating fully in the decision-making process. As the Gagudju Association put it to the SSCK, "the Director is only required to consult with Traditional Owners, but we wish to have direct input in decisions on the management of the Park."[17]

Assuming that there is a Board of Management in the RRNP and that Aborigines are represented on it, it is necessary to decide who should appoint the Aboriginal representatives and whether those representatives should have control of voting power on the Board.

2:3:1 APPOINTMENT OF ABORIGINAL REPRESENTATIVES

2:3:1:1 Kakadu

As mentioned, one of the strengths of the Kakadu traditional owners was the Gagudju Association. From the ANPWS point of view there were advantages in dealing with the incorporated body, rather than with each of up to 16 clans who might be affected by a management decision in the Park.

---

16 Page 12 of the Kakadu National Park Plan of Management (January 1988, A.G.P.S. MP10/500).

17 Op.cit n.1 p218. However, Department of Aboriginal Affairs disagreed, considering that the current arrangements are "working well" Op.cit n.1 p35.

2:3:1:2 Gurig

On the other hand, the Aboriginal representatives on the Gurig Board were not properly briefed or advised through their own organisation and decisions were made at Board meetings without the Aboriginal board members fully appreciating the implications of the decisions being made.

2:3:1:3 Bungles Mark I

Both the Kakadu and Gurig experience point to the need for an incorporated association to appoint the Aboriginal representatives, as well as organise the extensive preliminary discussions with the relevant people which are an integral part of the Aboriginal decision-making process. Thus the BBWG recommended that the traditional owners should form a legally incorporated body which would appoint representatives to the Board of Management.[18] It also amended its draft recommendation for a technical sub-committee as a mechanism for consultation within the Aboriginal Community, feeling in the end that the incorporated body could fulfil this role.[19]

In the case of Bungle Bungle, there were different groups of traditional owners which were widely scattered, and the need for a structured body was perhaps obvious. However, submissions to the BBWG mentioned the problem of whether a hierarchical system of decision-making within the body would achieve effective or equitable results. It obviously conflicts with the Aboriginal preference for making decisions by consensus. However, the submissions generally agreed that some form of Aboriginal organisation was necessary and that in the end it was for the traditional owners to work out a form of organisation which suited their expectations of consultation and conflict resolution.[20]

2:3:1:4 RRNP

This may well not be an issue in the context of the RRNP. There is no question that WDPAC represents the Aborigines who are actually living in the Park and it provides an organisational structure which would enable its representatives on any Board of Management to consult with the people, and, where necessary, to obtain independent advice. The BBWG thought it important that members of the Board should have access to independent advice.[21]

---

18 Op.cit n.11 pp56-57.

19 Page 16 of the Review of Public Submissions on the Bungle Bungle Working Group Draft Report to the Environmental Protection Authority (May 1986, D.C.E. Bulletin 260).

20 Op.cit n.19 p14.

21 Op.cit n.11 Recommendation 3:4.

This leaves open the question of whether *other* Aboriginal interests should be represented on the Board of Management. It is certain that there are others with traditional affiliations to the area, who are not actually living in the Park. It is difficult to see why they should be involved in management, except where it can be shown that a decision is being made which affects their interests.

In summary, therefore, WDPAC should appoint the representatives on the Board of Management and provide the necessary consultative and conflict-resolving mechanisms to ensure that those representatives reflect the views of the Aborigines in the Park.

2:3:2 VOTING CONTROL

Both sides represented on the Board would obviously prefer to have voting control, even if they chose not to exercise it. However, experience in other Parks suggests that it may not be crucial. This can be seen by comparing the Uluru and Gurig experiences.

2:3:2:1 Uluru

Here the Board comprises 6 traditional owners, 2 representatives of Federal Ministers, the Director of ANPWS and an appointee of the NT Opposition. The NT Government refused to take up a place on the Board. In any case, the traditional owners still have majority voting power. Each member has one vote, except the chairman who has an extra vote in the case of equality, and decisions are taken on a simple majority.

In practice, "reflecting the Aboriginal style of resolving matters, all decisions of the Board to date have been arrived at by consensus and unanimously adopted."[22] This raises the question of whether a better approach would not be to require all decisions to be unanimous, failing which the matter can be taken to an independent arbitrator. The use of, say, a white lawyer as independent arbitrator, presents problems of unwitting bias or failure to understand Aboriginal values, but arguably this consensus approach accords more closely with the Aboriginal decision-making process than the "majority wins" approach.

2:3:2:2 Gurig

The BBWG made the same point about consensus when discussing the Gurig experience.[23] As mentioned, Gurig also shows that the "control" from majority voting

---

22 Page 3 of the Uluru (Ayers Rock-Mount Olga) National Park Plan of Management (January 1988, A.G.P.S. MP9/500).

23 Op.cit n.11 p50.

power can be something of an illusion if the Aboriginal representatives are not properly briefed. According to the BBWG, the failure of Aboriginal Board members to appreciate fully the implications of the decisions which they were making, was not the result of any bad faith on the part of the CCNT which was the agency managing the Park. However, this is always a possibility where one of the participants has control of the relevant information and the expertise. That makes it particularly vital for Aboriginal representatives to have access to independent advice, as mentioned above.

In the Gurig case, the problem seems to have been caused by white expectations that matters could be raised at Board meetings and decisions made on the spot. This may be the best way to deal with the maximum number of issues at a meeting, but it creates difficulties in an Aboriginal context. There was no supporting organisation for the traditional owners, and much of the subject matter was new to them. Besides, the procedure took no account of the need in the Aboriginal decision-making process for extensive discussions with the relevant traditional owners. At Gurig, a system of supervisors' meetings had to be instituted in an effort to take the load off the Board meetings. This can best be dealt with under the next heading, which deals with other methods of involving Aborigines in management decisions.

2:4 OTHER MECHANISMS FOR ABORIGINAL INVOLVEMENT

2:4:1 GURIG

Supervisors' meetings at Gurig are held monthly and are designed to involve traditional owners as well as Aboriginal Board members. They are held in rotation at the Aboriginal outstations and are attended by traditional owners and Aboriginal Board members, as well as NLC and CCNT officers. The aim is to have issues talked through informally before the Board has to make a decision on them.

As an attempt to accommodate the Aboriginal decision-making process, it has obvious merits, although it still needs further development to ensure adequate consideration by traditional owners. The main point, though, is that at Gurig, it is an adjunct to the main mechanism for involvement, which is representation on the Board of Management.

2:4:2 KAKADU

The problem with most of the other mechanisms for Aboriginal involvement is that they are seen as a *substitute* for representation on the Board. Even so, they can still be moderately successful as in the case of the first Kakadu PM. There, the ANPWS ran

the Park for over four and a half years without any Board of Management involving the traditional owners in the management of the Park.

However, there were some other consultative mechanisms which were described in the Second Kakadu PM as follows :[24]

(a) The NLC has a statutory right to be involved in the development of PMs and the establishment of a Board of Management. In effect, this gives the NLC a right of veto in these matters.

(b) The Gagudju Association managed, by vigorous representation of the traditional owners, to create an increasingly important role for itself. It "facilitated Aboriginal involvement in Park planning and management. Close and continuing liaison occurs on a broad range of management matters."[25]

(c) The Kakadu Interest Groups Advisory Committee provided an on-going consultative mechanism. The Gagudju Association is represented on this committee, with eleven other widely assorted interest groups. The SSCK described the contribution of this Committee to the management of the Park as "minimal", because its role was rather circumscribed and it was not involved in broad policy issues.[26]

(d) A consultative committee of traditional owners provided advice during the preparation of the second Kakadu PM.

(e) Cultural Advisors are employed from among senior and well respected traditional owners on a permanent basis. They have real power to require modifications to proposals which would otherwise effect areas of significance.

(f) Other traditional owners and Aboriginal residents are consulted on Park management matters, where appropriate.

(g) Traditional owners employed as park rangers or in casual positions "provide an invaluable link in undertaking the often complex and highly sensitive task of liaison."[27]

---

24 Loc.cit. n.16.
25 Loc.cit. n.16.
26 Op.cit n.1 pp36 and 219.
27 Loc.cit. n.16.

This mixture of formal and informal consultation processes provides flexibility and adaptability, but informal consultation can lead to problems where there are competing interests in the Aboriginal groups. This can be exacerbated when the consulting officers of the National Park agency are in a hurry or acting in bad faith. This is reminiscent of the mining company employees who insist that they are the ones who can best sit down with Aborigines to get the true story without interference from White advisors, anthropologists, lawyers and the like. Whether they believe this to be true or not, the "consultation" is rarely satisfactory from the Aborigines' point of view. One of the reasons for this is that, in this setting, individuals may be reluctant to be assertive and so may not speak up about their concerns.

Interestingly, this occurred even within the structure existing under the first Kakadu PM. The result was that when the true feelings of the traditional owners emerged later, projects which by then were well advanced, had to be modified.[28] This seems to have been a factor in increasing the use of the Gagudju Association as a means of consultation on management issues, and ultimately in the strong belief that in the Second PM there should be a Board of Management, upon which there should be Aboriginal representation.

2:4:3 SUMMARY OF NT EXPERIENCE

The NT experience seems to show that the best results can be achieved from informal mechanisms as an adjunct to Aboriginal representation on the Board of Management. These may be by the use of Cultural Advisors or Supervisors' Meetings, but the involvement of an Aboriginal association in these, as well as the Board's activities, are essential to proper consultation with, and conflict resolution amongst, the traditional owners. The Kakadu experience seems to show that these informal mechanisms are not a substitute for Aboriginal representation on the Board of Management, and that the converse is also true. Thus, the SSCK commented that "while a Board would go some way to solving some of the problems identified by the Committee, it might not be sufficient in itself, without other administrative changes."[29]

2:4:4 BUNGLES MARK II

As mentioned, I have no inside knowledge of the fate of BBWG's recommendation in May 1986. The BBWG was in favour of Aboriginal representation on the Board of

---

28 Op.cit n.11 p49.

29 Op.cit n.1 p221. Also see BBWG op.cit n.11 p56.

Management as the primary decision-making authority, although it did not make any recommendations as to voting control.

The concept of joint management was apparently unacceptable to the Government, and in late 1987 an alternative proposal was put. Under this proposal, an Aboriginal incorporated body would be guaranteed representation on some sort of Committee providing input into the management of the Park. That Committee would operate on a consensus basis and have an advisory role. However, on Aboriginal issues, the Committee would have some ability to force matters to arbitration by a White lawyer and any disagreement between the Department of CALM's and Aboriginal representatives on the Committee, could likewise be forced to arbitration before any action is taken.

In the end, though, the Minister would be able to override the findings of the arbitrator, although he would have to give his reasons for doing so. In comparison with the simple joint management recommendation by the BBWG, the suggested arrangement seems to remove the Aborigines to an advisory role, at the same time making the whole exercise extremely complicated. If accepted, it would represent a compromise, being the result of both sides trying in an adversarial way to give the other as little power as possible.

Looked at in the context of the NT experience, it seems to offer some of the benefits. An incorporated body is involved and the overall structure can be documented in an agreement under Section 44(b) of the CALM Act, which enables the Minister to enter into arrangements with any body or person with respect to the carrying out of any work desirable for the purposes of the Act.

It also has the advantage of saving the Aborigines having to worry about issues of management of the Park which do not concern them (although this may itself be contentious, depending upon definition of "matters of Aboriginal interest"). The meetings can be held regularly in the Park at their convenience.

The disadvantage is that they are getting all the formality with little of the real power. To get their own way, they have to embark upon a path which could include the following: having the arbitrator appointed by an independent (and possibly ignorant) third party because they cannot agree with the Department of CALM on a suitable person; having Aboriginal issues arbitrated by a White lawyer who may or may not have the necessary knowledge or sympathy; and having the arbitrator's findings

overridden by a Minister advised by the Department of CALM. Even if the Aborigines are not aware of the real location of power at the beginning, one trip down that path, would be enough to lead to disenchantment.

In the case of Bungle Bungle, the confrontation which would lead to this, would be likely to concern tourism. In the RRNP, it could concern tourism, but is more likely to involve mining. The experiences of the Aborigines in the RRNP would, no doubt, have sharpened their awareness of the realities of power, and particularly the influence of the mining lobby on government policy. And they have ample experience of government "consultative" exercises which seem to have little effect on the decisions made.

2:4:5 SUMMARY

It is recognized that joint management is a novel concept in WA, but there is little point in other more complex mechanisms which obscure the fact that power lies elsewhere. The adversarial approach, which seems to have prevailed in the Bungle Bungle negotiations, is in danger of leaving the Aborigines with a structure which they will be unable to understand. Cabinet has apparently approved the concept of a Committee, but will not give it any real power, because in the Crown Law Department's view, that would fetter the Minister's exercise of his powers and discretions under the CALM Act. Leaving aside the question of whether that view is legally correct, the better course if the Government is genuine, is surely to return to the beginning and amend the CALM Act, as suggested in 3:6.

There may well be a place for informal mechanisms of the type developed in Kakadu and Gurig, but only as a means of making representation on the Board of Management operate more effectively. Even then, care should be taken to avoid a danger which is already evident: that these desert people should not be "meetinged-to-death" by White bureaucrats.

2:5 INPUT IN PREPARATION OF THE PM

Again, there is the wide difference between the NT models and what is apparently the current approach in WA.

2:5:1 GURIG

The NLC, representing the traditional owners, had to agree to the PM before it could come into effect.

2:5:2 ULURU

The Board of Management had to agree to the PM, thereby again giving the traditional owners control over whether it came into effect.

2:5:3 KAKADU

The Director of the ANPWS had a statutory obligation to consult with the NLC with regard to the wishes of the traditional owners. For the second PM "wider consultation was undertaken, formally through committees such as the Kakadu Interest Groups Advisory Committee and a Consultative Committee of traditional Aboriginal owners and informally through contact with individuals and groups ... It is anticipated a planning team including representatives of the traditional owners and the NLC, specialist ANPWS planning staff and a senior ANPWS officer will be established to carry out the planning process from beginning to finalization of the Plan."[30]

2:5:4 BUNGLES MARK I

The BBWG again recommended that the Board of Management, on which Aborigines would be represented, should liaise with the Department of CALM in the preparation of the draft PM and enforce the final PM.[31] In fact, during the preparation, they were not represented on the Project Team, but were included with WATC, the Halls Creek Shire Council and the Department of CALM on an advisory Planning Group. They were dissatisfied that the interests of tourist and local government groups were given equal weight to that given to their interests as traditional owners of the land.

2:5:5 BUNGLES MARK II

The Committee on which Aboriginal representatives will sit, will be involved in an advisory capacity in the preparation of the PM and may even request alterations to it. However, it appears from Section 60 of the CALM Act that such a request could be ignored.

2:5:6 SUMMARY

Each of the above models reflects a general philosophy on joint management. In the case of the RRNP, the Aboriginal wish must be for joint management and this should be reflected by requiring the consent of the Board to the PM, as in the case of Uluru.

---

30 Op.cit n.16 p2.

31 Op.cit n.11 p57 Recommendation 3:7.

2:6 ON THE GROUND MANAGEMENT

On the face of it, this is a topic on which there is a high degree of unanimity. In what was otherwise a general litany of gloom, the Report on Aborigines and Uranium in 1984 was able to report that in Kakadu ANPWS had been a successful employer of Aborigines, in contrast to the mining industry, in which they did not often seek employment.[32]

The attractions for Aboriginal traditional owners of employment as Rangers are obvious: a congenial environment; an opportunity to make use of traditional skills; flexibility of working hours; the reduced dependency of the community on social welfare which results from employment; and, above all, involvement in management of their country, with which they have a deep and ongoing attachment.

In 1986, the first training course for Aboriginal Rangers in WA was conducted at Millstream, resulting in graduation of four Aboriginal Rangers, who are now employed in the Hamersley Range and Millstream National Parks. A similar course is being conducted at Bungle Bungle and is due to finish in June 1989.

Obviously, the Department of CALM's experience with these courses and their results, makes it well qualified to assess how best to implement a similar scheme in the RRNP. However, with the assistance of Steve Szabo's report on the Millstream course,[33] it may be helpful if I make some general comments and also some specifically directed to the situation in the RRNP, as I have observed it :

2:6:1 INTERACTION WITH THE COMMUNITIES

It is clear that Aboriginal Rangers take their stewardship responsibilities seriously and see themselves as managing the country for the Old Men. They therefore, look to the Old Men for knowledge and for approval of how they are performing their duties.

---

32 Page 296 of "Aborigines and Uranium" - Consolidated Report on the Social Impact of Uranium Mining on the Aborigines of the Northern Territory by the Australian Institute of Aboriginal Studies (A.G.P.S. 1984, ISBN 0 644 03640 0). However, the experience of all mining companies has not been the same. The Report noted (at page 67) that the Gemco project on Groote Eylandt employed a relatively large number of Aborigines. The Report of the SSCK also noted (at page 143) that Jawoyn made up half the twenty field workers at Coronation Hill in Kakadu. This may reflect different employment strategies, but may also mean that work in smaller field based operations suits Aborigines better.

33 Steve Szabo - Aboriginal Ranger Training Program - Millstream - Chichester National Park (March 1987 - obtainable from ANPWS or the Department of CALM).

Thus Aboriginal Rangers immediately find themselves in a dual role, serving both their communities and the Department of CALM.[34] There is obvious potential for conflicting pressures: for example, the Aboriginal views on issues such as hunting, fire, dogs and rubbish disposal may not be the same as those of the Department.[35] In the RRNP, this conflict may be heightened by resentment over the way that the Park was created in the first place.

This makes it particularly important that there should be a Steering Committee upon which the Communities have at least equal representation. Such Committees have been found to provide a vital link with the elders, both in terms of how the Rangers are performing and as a source of information and inspiration.[36]

However, even if a Steering Committee can resolve such conflicts, there is still the problem of maintaining performance to an acceptable level. This was apparently a problem in Kakadu, but interestingly, the Gagudju Association was prominent amongst those who thought that lack of performance by Rangers reflected badly on all Aborigines and should result in dismissal.[37]

Amongst the Aboriginal Rangers in WA, it does not seem to have been a problem. In fact, during the training at Millstream, the harshest critics of the trainees were the Aboriginal members of the Steering Committee. However, unlike the trainees at Millstream, the Rangers in the RRNP will be living and working in the communities, which may put them under greater pressure.

Senior noted in the Kimberley that "appointments can cause problems of jealousy within communities" and that "rangers can come under considerable personal pressure from friends and relatives in the way they perform their duties."[38] It seems likely that this will also occur in the RRNP. It is worth noting that, even at Millstream, members of the Steering Committee were often absent, especially from meetings at which controversial decisions were to be made.[39]

---

34 Szabo, Op.cit n.33 p26.

35 These conflicts in practical matters may, in many respects, be symptomatic of more fundamental philosophical differences. See Aborigines and Uranium, op.cit n.32 p56, and BBWG op.cit. n.11 p56.

36 Szabo, op.cit n.33 pp7-8.

37 Reported by the BBWG, op.cit n.11 p62.

38 Page 186 of "Tourism and Aboriginal Heritage with Particular Reference to the Kimberley" by Dr. C.M. Senior - an unpublished report prepared for the Western Australian Museum reflecting the situation as at 30th September 1987. However, he was referring to "community rangers."

39 Szabo, op.cit n.33 pp8-9.

Both Szabo and Senior agree that Rangers should not be left in isolation and that extensive support from the Department is essential.[40] This again has its problems in the RRNP. In Kakadu and Gurig, support is provided by Rangers working in teams of two, one of whom is non-Aboriginal. The Department in WA is unlikely to have enough staff to do this in the RRNP. Nevertheless, interaction with non-Aboriginal staff is crucial to the success of any Ranger training in the RRNP.

2:6:2 INTERACTION WITH WHITE RANGERS

An important feature of Ranger training has been to avoid the idea that the Department teaches and the trainees learn. This "cross-cultural exchange" works both ways, as there may be a view among some Aborigines that they are already qualified for the job of protecting their country.[41] However, generally trainees have been prepared to accept that they must learn the Department's ways, as long as the Department learns from Aboriginal knowledge.

In some respects it clearly has. In Kakadu, for example, the ANPWS is attempting to re-establish traditional Aboriginal patterns of burning.[42]

The idea that traditional National Park principles need to be applied flexibly, is probably accepted by the training personnel of the Department, but it may not extend to non-Aboriginal Rangers. They are, after all, likely to be practical men, not natural teachers, and they have normal concerns about competition from apparently less qualified[43] Aborigines for a limited number of Rangers' jobs.

This problem is not a new one, but it is particularly important in the context of the RRNP where adequate support will be crucial to the success of the scheme. Any non-Aboriginal personnel, especially mobile rangers,[44] should be carefully selected, preferably with input from the Communities beforehand. They should have received instruction in Aboriginal culture and should have not only practical but training

---

40 Senior loc.cit n.38. Szabo op.cit n.33 p25.

41 Senior op.cit n.38 p185. This view is already being expressed by the Aborigines of the RRNP.

42 SSCK op.cit n.1 p211.

43 The Department of CALM has real difficulty with this at a time when it is trying to improve the educational qualifications of non-Aboriginal Rangers. Szabo recommends some sort of unit accreditation and exemptions for those who have completed an Aboriginal Ranger training course. Op.cit n.33 p26.

44 In the case of Bungle Bungle, it was submitted that non-Aboriginal mobile rangers should not be used at all because traditional Aboriginal owners need a stable ranger force which they can get to know at their own pace. Opposition to mobile rangers is already being voiced by the Aborigines of the RRNP.

skills. It seems a tall order, but a bad selection could put the scheme back several years.

2:6:3 INTERACTION WITH THE PUBLIC

It has been noted in Kakadu that the employment of Aborigines or Park Rangers has not led to extensive interaction with the public. They are "not very keen on conducting guided tours", partly out of shyness and partly because they "preferred not to have to act as 'policemen' to rebuke tourists for their actions."[45] Similarly, Szabo includes "making daily contact with the public" as one of the changes in lifestyle which placed great pressure on the Aboriginal trainees at Millstream.[46] In the RRNP, this tendency is likely to be even more marked in view of the past history of the people, their natural shyness, and the unfortunate recent contacts with tourists. Since the purpose of tourism is to encourage more people to go to an area, the Rangers in the RRNP are almost certain to find this part of their work stressful. However, they will be helped by the fact that they will not have to cope with the same volume of tourists as at Kakadu or Uluru.

2:6:4 ROLE OF ABORIGINAL RANGERS

This raises the general question of whether Aboriginal Rangers should be doing the same jobs as non-Aboriginal Rangers. It is apparently not feasible at the moment to expect Aborigines to take up positions requiring high levels of technical skills, or managerial positions within the Department.

However, the BBWG noted that "Aboriginal rangers and traditional owners have left ranger positions because they find emptying rubbish bins and cleaning up after visitors to be a servile existence on their own land."[47] The BBWG's view was that "employment should aim to utilise the Aborigines' traditional skills and cultural knowledge for the benefit of park interpretation and management."[48] This view seems also to be held by the Department, but in its practical application to the RRNP, some problems could well arise.

For example, who *is* going to "empty the rubbish bins"? Someone has to do it, and there may well not be enough non-Aboriginal rangers to do it. Besides, in the context of increasing entrance requirements for Rangers, they may well resent less qualified Aboriginal Rangers being able to pick and choose the tasks which they perform. There

---

45 SSCK op.cit n.1 pp29-30, quoting "Aborigines and Tourism, a Study of the Impact of Tourism on Aborigines in the Kakadu Region" by Robert Lawrence and Maggie Brady.

46 Op.cit n.33 p27.

47 Op.cit n.11 p53.

48 Op.cit n.11 p62.

is also the danger of Rangers' positions becoming a sinecure for favoured traditional owners and their immediate family.

2:6:5 OTHER EMPLOYMENT

The BBWG noted that there are, in any case, not many Rangers' positions and that the opportunities for wider employment should be developed. One way of doing this was to give the Aborigines first option on any tourist business in the Bungle Bungle Park. However, the Miller Report, in 1985, noted less interest in the more commercially orientated aspects of tourism, than in Rangers' positions.[49]

Nevertheless, there could well be a place for part-time or contract employment as an adjunct to the full-time Rangers' positions. If the Rangers' programme is unsuccessful, it may even have to be considered not as an adjunct, but as an alternative.

There is also the possibility of other employment not connected with tourism, but necessary for the management of the RRNP. In Kakadu, for example, the Aboriginal residents have provided periodic assistance in projects such as weed control and buffalo eradication.[50] Pilbara Aborigines also have a record of employment with the Agriculture Protection Board, which suggests that the RRNP people would find this sort of employment congenial.

2:6:6 PARK MANAGER

One of the arguments against mobile Rangers is that the Aborigines do not have enough time to establish stable relationships with them. Stability seems an essential element in any successful scheme to manage the RRNP.

One way of providing such stability is to place the RRNP under the control of a Park Manager, who will be appointed for a lengthy term. He will oversee the relations between Aboriginal and non-Aboriginal Rangers, liaise with the Steering Committee and report to the Director of National Parks through the Regional Manager of the Department in Karratha. He could also be the lynch-pin of any mechanisms which are devised by the CALM Project Team or the SIS Group for regulating relations between mining companies and the communities in the Park and in its immediate vicinity.

---

49 M. Miller (Chairman) "Report of the Committee of Review of Aboriginal Employment and Training Programmes" 1985, pp332-3 quoted by Senior op.cit n.38 pp183-184.

50 SSCK op.cit n.1 p41.

2:6:7 SUMMARY

I doubt whether many of the problems, which I have mentioned, will be new to the training staff of the Department. The danger in listing them, is that the result sounds negative. To put the whole thing in perspective, it is clear that the alternatives are unacceptable. The Aborigines must be involved as Rangers, so that they feel that they have some control over what happens in their country. The full story of the erection of the signs in the RRNP in 1988 will, no doubt, be told elsewhere in this Resource Document. However, the anger which the incursions of the tourists and the destruction of one of the signs generated, reflects the feeling of powerlessness which the Aboriginal inhabitants of the RRNP feel in their own country.

The erection of signs by the Department and the appointment of Honorary Rangers should be used as an exercise in joint management, and also as a pilot scheme to see how the Aborigines take to the idea of being employed by the Department to look after their country. There are already indications that many of the potential problems, mentioned above, are emerging even in the implementation of these modest preliminary arrangements.

3.0 LAND TENURE IN THE PARK

3:1 INTRODUCTION

The BBWG acknowledged that the traditional owners had "indicated their preference for freehold title to the area, in conjunction with a negotiated establishment of a jointly managed Park."[51] Again, this position was based on the NT model.

3:1:1 ULURU

Uluru is vested in the Uluru-Kata Tjuta Land Trust, which holds inalienable freehold title to the Park on behalf of the traditional owners. The Trust, in turn, leases it to the Director of the ANPWS for a period of 99 years for a rental of $75,000 per annum, together with 20% of the entrance fees collected. The lease is reviewed at least every five years, but the term cannot be reduced.

3:1:2 KAKADU

A similar position existed in Stage 1 of Kakadu. The land was owned freehold by the traditional owners via the Kakadu Aboriginal Land Trust and leased in November 1978 to the Director of ANPWS for 99 years. A small part of the area covered by Stage 2 of Kakadu will become Aboriginal land, and when it does, it will be leased to the

---

51 Op.cit n.11 p55.

Director on the same terms. The rent payable by the Director is apparently being renegotiated as part of an overall review of the lease arrangements.

It is worth noting that in the case of both Uluru and Kakadu, the lease documents themselves, or an agreement signed at the same time, spell out the obligations of the Director with respect to Aboriginal interests. As such, the ownership of the land ties in with a contractual right to be involved in joint management of the Park.

3:1:3 GURIG

I do not have details of the precise structure of the Gurig arrangements. Certainly, the freehold is vested in the Coburg Sanctuary Land Trust and the CCNT pays to the Trust an annual rental of $20,000 indexed to the Consumer Price Index. However, I do not know whether there are formal lease documents, or specific contractual obligations protecting Aboriginal interests. In any event, the Board is required to protect such interests under the Coburg Peninsular Aboriginal Land and Sanctuary Act (1981) which set up the Park.

3:1:4 KING'S CANYON

Before moving on to WA, it is worth noting that Aborigines living in a National Park may be given freehold title, even if they have not already received it under Land Rights legislation. Again, I do not have any detailed knowledge, but it appears that in the King's Canyon National Park in the NT, the traditional owners are receiving freehold title over their living areas in the Park under the Crown Lands Act 1931, which forms part of the Law of the NT. This is apparently to assist them in their involvement with a tourist operator in a major tourist venture on land which was not previously Aboriginal land.

3:1:5 BUNGLES MARK I

The position in WA is very different. There was a predictable reaction to the traditional owners' request for the freehold in the Bungle Bungle Park to be vested in them and then leased to the National Park agency. Even the BBWG was unable to recommend that, but as mentioned in 2:2:2, it did comment that "at present there is no legislative basis in WA which will provide for the necessary security required by both parties to the joint management national park."[52] It recognized that it is preferable for the traditional owners to live within the park, even though this conflicts with normal National Park policy. However, it regarded security of tenure for the Department of CALM as "essential for a national park, if it is to perform its function in perpetuity as

---

52 Loc.cit n.13.

intended."[53] On this basis, it rejected a 99 year lease arrangement of the type which applied in Kakadu. "While this may seem a very long time, in geological, historical or evolutionary terms it is very short."[54]

It may be questioned whether that was really the reason why the BBWG found the traditional owners' approach unacceptable. It is also interesting that in its view, there are no legislative mechanisms to allow the traditional owners to reside in the Park. This is apparently because of "the potentially severe management problems associated with having enclaves of differently vested or freehold land within the national park, over which the park managing body has no control of landuse or management practices, even though they may be detrimental to the surrounding national park."[55]

It is difficult to believe that the potential for management problems is that severe, but in any event the purpose of this section is to examine the legislative mechanisms which *are* available, to provide security for the traditional owners to reside on and participate in the management of their traditional lands.

3:2 EXCISION

Bungles Mark II proposes that the living areas should be excised from the National Park and a 99 year lease granted for those areas to an incorporated body representing the traditional owners. This sounds simple enough and has been adopted in principle by the WA Government in the proposed Collier Bay National Park.[56] However, there are some difficulties :

3:2:1 APPROVAL OF BOTH HOUSES

To excise areas from an existing National Park requires the approval of both Houses of Parliament under Section 31A of the Lands Act. Unless the Government has the numbers in the Legislative Council as well, which Labor has never managed, there will always be a problem obtaining approval from the Council.

3:2:2 AAPA ACT PERMITS

Before 99 year leases are granted, the land is always reserved and vested in the Aboriginal Lands Trust. The reservation should take place under Section 29 of the Land Act and Section 25(1)(a) of the AAPA Act, and the vesting under Section 33 of the

---

53 Op.cit n.11 p54.

54 Loc.cit. n.53.

55 Loc.cit. n.53.

56 The West Australian of 18th October 1988 reports the Premier, Mr. Dowding, as saying that Aboriginal living areas in the new park would be given Aboriginal reserve status.

Land Act and Section 24 of the AAPA Act. The effect of Section 26 of the AAPA Act is that the living areas then become land to which Part III of the AAPA Act applies, in particular the system of permits under Section 31 and the Regulations. If "enclaves" do, in fact, provide the potential for management problems from the land-use point of view, this is not helped by having small areas of land which are subject to a permit system, operated by another Government department.

3:2:3 SIZE

The provision of more secure title to small areas of land is primarily to satisfy Government funding organizations who want to see buildings clustered in convenient blocks. There is, therefore, pressure to keep to a minimum, the size of the areas excised. In July 1987, the Aboriginal interests in Bungle Bungle asked for 4 residential areas, each approximately 4 kilometres square. Similarly in Kakadu, the total area to which access is restricted, is 23 square kilometres and that includes burial grounds and ceremonial areas, as well as living areas.[57]

Western Desert Aborigines are less impressed with such small areas, sometimes referring to them disparagingly as "match-boxes" or "paddocks". When considering the RRNP, this problem is particularly evident. An application for a living area which meets the needs of the traditional owners, would cover an area similar in size to the EZ. In political terms, it seems unlikely that an excision of almost half a National Park would be approved by both Houses of Parliament, and it would make little difference that the RRNP should probably not have been a National Park in the first place.

The anti-Land Rights lobby would have a field day, particularly when at the other end of the Park, the boundary only needs to be moved one kilometre to take a potential uranium mine outside the Park. It is not difficult to predict the reaction of the environmentalist lobby to such an excision. The National Director of the Australian Conservation Foundation has been quoted as saying that "Rudall River represents a natural conjunction of interests between Aborigines and environmentalists",[58] but it may be doubted whether the alliance between the two groups could survive this sort of a compromise in the RRNP.

---

57 SSCK op.cit n.1 p27.

58 Philip Toyne, quoted in Time Australia of 28th November 1988. Unlikely as that alliance may seem, however, it is more credible than the concept of the interdependence of conservation and sustainable development, endorsed by the Commonwealth Government in 1984 as part of its National Conservation Strategy. This concept seems to mean that mining and conservation interests are not necessarily in conflict.

The reality seems to be, therefore, that the best that the Aborigines in the RRNP can hope for, is excision of small living areas, combined with leases of surrounding areas under the CALM Act to reflect their real needs for living space.

3:3 LEASEHOLD

3:3:1 LEGAL POSITION

Once again, the existence of the National Park limits the options. By Section 7(3) of CALM Act, it vests in the NPNCA, but with the approval of the Minister and in conformity with Section 33(3) (see Section 99), the Executive Director of CALM may grant a lease under Section 100 of any land in a National Park for a term not exceeding 20 years.

Section 33(3) has been a stumbling block in attempts to date to obtain some sort of tenure for the Aborigines in the RRNP. Once a management plan is in place, Section 33(3)(a) allows a lease to be granted in accordance with that plan. However, it could only be for a maximum of 20 years. In 3:1:5, I quoted BBWG's comments about 99 years being a short time in geological, historical or evolutionary terms. To Aboriginal eyes, 20 years may not seem very long, either.

3:3:2 INTERIM POSITION

Until a management plan is in place, the combined effect of Sections 33(3)(b), 99 and 100 is that a lease could only be granted if part of carrying out management "in such a manner that only necessary operations are undertaken." In March 1986, an application for a lease for a living area was lodged with CALM by WDPAC on behalf of the Aborigines of the RRNP. It covered an area similar in size to the EZ but unlike the EZ, its south-eastern boundary followed the Park boundary, and its northern and north-western boundaries were pulled back below the Park boundary. The fate of that application will, no doubt, be discussed elsewhere in this Resource Document. I have never seen any written reason for refusal, but quite apart from the political implications of the type mentioned in 3:2:3, the Department of CALM could, perhaps, have argued that it did not need to grant a lease of almost half the Park, for the sole reason that it could not maintain a presence there.

In WDPAC's view, as expressed in its letter to the Premier dated August 5th, 1988, the tourist situation is getting so out of hand that necessary operations could include this. After all, Section 33(4) defines "necessary operations" as including those that are necessary for the protection of persons, or for the preparation of a management plan. WDPAC received a formal acknowledgement, but no actual response to its proposal.

It appears from meetings with representatives from the Department of CALM, that the Department's view of "necessary operations" is limited to taking steps to prevent fleets of 4-wheel-drive enthusiasts driving through the Punmu and Parnngurr Communities, when they feel like it. The Department is also thinking of putting a non-Aboriginal Ranger in the Park during the 1989 dry season. It is not surprising that the Department should prefer these relatively uncontroversial, practical steps to granting a lease of a large area of the Park before the PM is completed.

3:3:3 LONG TERM OPTIONS

Nevertheless, when the PM is produced, the CALM Project Team will have to address the question of whether a lease should be granted, and if so, of how much of the Park. This could be combined with excision of a small central area for a 99 year lease for housing, rather in the same way as the Government grants 99 years leases for living areas on vacant Crown Land surrounded by Special Purpose Leases.

It is worth repeating when comparing them with Special Purpose Leases, that a CALM Act lease can, by Section 100, be on such terms and conditions as the Executive Director thinks fit. The only limitation is that it cannot exceed 20 years. A CALM Act lease should provide enough flexibility to avoid the claim of land rights. An analogy can simply be drawn with Special Purpose Leases under the Land Act, with the CALM Act lease including similar provisions.

3:4 CLASSIFICATION

Section 62(1) of the CALM Act enables areas in a National Park to be classified in stated ways (e.g. prohibited, restricted, limited access) or as the Minister thinks appropriate. This was considered as an interim measure to control tourists' vehicles in the RRNP, but the Department of CALM took the view that it was not appropriate unless either it complied with one of the objects in Section 56 (see 2:2:2) or a PM had already been produced.

In fairness to the Department, zoning in a National Park is not perhaps as easy as it looks.

3:4:1 KAKADU

In Kakadu, for example, the basic information required for zone planning was unavailable during the preparation of the first PM and a detailed integrated use plan was not prepared. Only rudimentary management categories were identified, like minimum use and special use areas.

In the Second PM,[59] a system of zoning was devised based on intensity of use: intensive/intermediate/minimum management and wilderness zones. The aim is to allocate appropriate activities to specific areas and have a separate management strategy or combination of strategies for each zone. Within each of the four zones, Restricted Access Areas can be established, using the National Parks and Wildlife Regulations. Under Regulation 8, for example, four sacred sites have been closed,[60] and after requests by residents, legal restrictions have been applied on public access to Aboriginal living areas.[61]

3:4:2 ULURU

Here, Regulation 8 has also been used to protect four culturally sensitive areas, but as yet no zoning has actually taken place. A study of appropriate land use zoning systems will be undertaken in conjunction with the traditional owners.[62]

3:4:3 BUNGLES MARK I

The BBWG stopped short of making recommendations but stated that it had "developed a conceptual system of management zones based on a Conservation Zone and a Park Facilities Zone, each of which is subdivided into several management units with their own management emphasis."[63]

Thus, within the Conservation Zone, Aboriginal sites would be included in Conservation Units, and special areas would be set aside as Aboriginal Traditional Units for the use only of Aboriginal traditional owners, particularly for hunting. The Park Facilities Zone would encompass developed areas in the Park and would include Aboriginal Living Units. Entry to Aboriginal Traditional Units and Living Units would be restricted, except with the permission of the Community.

3:4:4 BUNGLES MARK II

Aboriginal interests here are pushing for a zoning plan which takes into account Aboriginal hunting and food gathering, ceremonial use, protection of areas of cultural significance and permanent and temporary residence. They wish to preclude completely alcohol and large tourist developments, but otherwise the implementation of zoning should be subject to ongoing review. However, central to any zoning strategy would be the determinations of the PCHC (see 4:3).

---

59 Op.cit n.16 pp18-20.
60 Op.cit n.16 p43.
61 Op.cit n.16 p62.
62 Op.cit n.22 p53.
63 Op.cit n.11 p59.

3:4:5 RRNP

In the RRNP, a study of land-use zoning systems could be undertaken between now and completion of the PM, or possibly as part of the SIS. By Section 62(1), classification needs only a notice by the Minister, published in the Gazette, which means that it should avoid much of the "Land Rights" publicity. That is also all that is needed to amend or cancel the classification. From the Aboriginal stand-point, this is hardly security of tenure, but if combined with excision of living areas and a surrounding lease, it could in practice give them sufficient protection from tourist and other incursions to satisfy their needs for living space.

3:5 LICENCES AND OTHER INTERESTS

3:5:1 LICENCES

In theory, a lease gives an interest in land, while a licence gives a personal right to use it under a purely contractual arrangement. This gives rise to technical legal distinctions between leases and licences which are not relevant to this case. The aim of mentioning licences here is to note that it is possible to give contractual rights in land, short of having absolute possession for all purposes. In this sense, the rights under a Special Purpose Lease are, perhaps, analogous to those under a licence rather than a lease.

Section 101 of the CALM Act provides for the Executive Director to grant a licence in writing to any person to enter and use any land in a National Park. The Section may well have been drafted to enable the issue of licences for particular activities (e.g. crabbing), but it is broad enough to cover simply closing off an area of the Park to everyone, except those with a licence. Licences could then be given to Aborigines. However, licences are contractual arrangements and, as a type of "back-door tenure", they would be weakened by the provisions of Section 101(3)(b) which allows the Executive Director to change the terms of the contract at any time.

3:5:2 OTHER INTERESTS

The reference to "other interests" in the heading is really a reminder that the options are not restricted to established forms of land tenure in National Parks, even to those in other states. One example which comes to mind, is that endlessly adaptable legal form, the trust. In the NT, the Kakadu Land Trust, the Uluru-Kata Tjuta Land Trust and the Coburg Peninsular Sanctuary Land Trust, all hold land on trust for groups of Aborigines. This gives remedies to those Aborigines, as "beneficiaries" under a trust, against the trustee for any breach of the terms of that trust. Presumably, the Deed of Trust system of land tenure in Queensland operates on the same basis.

In the context of the RRNP, it should be considered, at least, whether the NPNCA could declare that it is holding particular areas of the Park on trust for the Aboriginal inhabitants. Obviously, the terms of the trust would have to be carefully set down, but this would provide another alternative to taking the freehold title to the land out of the hands of the NPNCA, with the attendant publicity in Parliament and the usual Land Rights debate.

No doubt, the Department of CALM will protest that the CALM Act does not give the NPNCA the power to declare trusts, which brings me to the final heading in this section.

3:6 AMENDMENT OF THE CALM ACT

It is, of course, too easy to accuse the Department of CALM of hiding behind the deficiencies of its own Act, but it remains true that many of the suggestions made above have been, or could be, met with the objection, "the Act does not allow it." Sometimes the objection could be only: "there is some doubt as to whether the Act allows it."

As mentioned in 2:2:2, such objections were even raised by the BBWG in May 1986. Clearly, the CALM Act was not drafted to take into account the concept of Aboriginal Parks. Whatever the final result with Bungle Bungle, it has clearly advanced that concept to an option which should be considered in the preparation of the PMs. The RRNP exercise should continue that process and the time has surely come to amend the CALM Act to give the Department of CALM the option of managing "Aboriginal Parks". This suggestion was put to the Premier in WDPAC's letter of August 5th, 1988, but as with the rest of the letter, no response was forthcoming, beyond a formal acknowledgement. It is obviously the Government which has to amend the Act, and if a Labor Government, it must always contend with the Legislative Council. Nevertheless, amendments are made to statutes to accommodate the interests of, say, mining companies and farmers. The same should at least be attempted with respect to the CALM Act and Aboriginal Parks.

4.0 SITE PROTECTION

4:1 INTRODUCTION

The issue of protection of Aboriginal sites is a difficult one, but not just in terms of the practical question of how it can best be achieved. Surprisingly few, if any, of the players involved in the saga of the RRNP would say that sacred sites should *not* be protected. Yet there are broader questions upon which there would be disagreement :

4:1:1 NATURE OF SITES

The first question concerns what it is that makes them sites of significance. Most non-Aboriginals can just about accept that Aborigines find sites significant if, for example, they have a specific place in a religious ceremony. However, non-Aboriginals become confused when the significance appears to increase or decrease over time, or to be affected by reasons other than those which could be seen as religious in non-Aboriginal terms. Nevertheless, this seems to be what happens. Von Sturmer describes as "a very idealised account of Aboriginality" any discussion of land tenure which "separates spiritual links from economic use."[64] Thus, "post-contact history has added significance to some sites which were already important, and certain sites, which had never before been important in economic terms, have a new evaluation in Aboriginal eyes."[65]

Even if the link is spiritual, there are difficulties. Dr. Kingsley Palmer, in evidence to the SSCK, commented that "it is misleading to think in terms of a clear distinction between sites which are 'sacred' and those which are not." There is "a kind of sliding scale but it is very difficult to ask Aboriginal people: 'Is this a really important site or only just a very unimportant site?'[66]

The danger with this broader view of sites, is that confusion leads to cynicism in the case of mining companies and others affected by the upholding of Aboriginal cultural values. They cannot understand it, therefore it must have been devised for the sole purpose of making their lives difficult.

4:1:2 MEANS OF PROTECTION

The simplistic view of sites is reflected in the means of protection offered by White law. This could be described as putting the site in a glass case. The protection consists of putting a cover over the site, which can only be lifted by the appropriate Aborigines. There is a body of anthropological opinion that this misses the point of why sites are significant to Aborigines, and ultimately has the effect of ossifying them, thus destroying their significance for Aborigines. Even the Seaman Report was against any means of protection which "would deny the dynamism of a living culture and make 'sacred sites' relics of an era."[67]

---

64 Op.cit n.32 p38.

65 Op.cit n.32 p47.

66 Op.cit n.1 p149.

67 Paragraph 8:18 of "The Aboriginal Land Inquiry - Report by Paul Seaman Q.C." (September 1984).

4:1:3 OTHER IMPACTS

Finally, in the view of some anthropologists, emphasis on sites gives to the White Man the idea that this is the *only* impact which his activities have on Aborigines. The SIS is the result of a long period of argument by WDPAC that protection of sites is only one of a broad range of deleterious effects which the incursion of mineral explorers and tourists into the RRNP will have on the Aboriginal inhabitants.

The above questions are definitely in the area of expertise of the anthropologist, and outside mine as a lawyer. They are only mentioned in passing because, by concentrating on sites, I do not wish to be seen as reinforcing the view that they are all that is important. The reason is simply that as a lawyer, I must concern myself with White law and White law only concerns itself, after a fashion, with "sites."

4:2 ABORIGINAL HERITAGE ACT

This is the key to protection of Aboriginal sites in WA and has been roundly criticised by just about everyone who has ever dealt with it in print. The Seaman Report, for example, commented that Aborigines "have no confidence in any part of the legislation and there are many complaints about its operations."[68] In his Discussion Paper, he was even more critical, stating that "from an Aboriginal viewpoint it affords no realistically enforceable legal protection in its present form."[69]

The kindest thing which can be said about the AHA, is that it is an avenue of last resort and that, arguably, its best work is done in encouraging miners and others to commission anthropological and archaeological surveys before the AHA is breached. It could also be argued that, once a breach is committed, the damage has been done in Aboriginal eyes and criminal remedies are inappropriate, although some traditional owners do not seem to share that view and regard prosecution under White law as a valid "pay-back."

It is also true that, however strong the criminal law is, there will always be breaches of it: murders are still committed, even though everyone knows that murder is a punishable offence. However, the problem with the AHA is that, although it is the key to protection of significant sites, it has only been used successfully once in more than 15 years. On numerous occasions, breaches have been reported by Aborigines, but no successful prosecution, in fact no prosecution at all, has resulted. There have been various reasons for this :

---

68 Op.cit n.67 para 8:21.

69 Paragraph 7:6 of "The Aboriginal Land Enquiry - Discussion Paper" (January 1984).

4:2:1 TIME LIMITS

The breach must be reported within 6 months. By Section 51 of the Justices Act, a complaint for a summary offence in a magistrate's court must be made within 6 months from the time when the matter of complaint arose. Although it was probably not intended, this covers an offence under Section 17 of the AHA, which is tried summarily, and rules out many prosecutions, simply because sites are often in remote areas and are not visited every few months. In his Discussion Paper, Seaman suggested increasing the 6 months period to 2 years.[70] Senior suggested increasing it to 3 years,[71] but no attempt has ever been made to change the period, even though amendment would be a simple and apparently reasonable exercise, to which even the Legislative Council could not object.

4:2:2 EVIDENTIARY

The other main problem might be described generally as "evidentiary difficulties". These include practical problems, such as proving, for example, who was driving the bull-dozer. It is rare (although not unknown) for a site to be desecrated before the eyes of Aborigines. More usually, it is discovered after the event with only circumstantial evidence of who did it. This is not good enough in criminal proceedings, where guilt must be proved beyond reasonable doubt.

There are also "technical" legal difficulties: for example, the place may not qualify as a site within the terms of Section 5 of the AHA. Another problem is that it may not have been damaged, or altered within the terms of Section 17: for example, secret sites being approached by the uninitiated. Seaman described the "distinction between a desecration which occurs by entry without damage and a desecration where physical damage occurs" as "meaningless to traditional Aboriginal people", yet still proposed that distinction.[72] This illustrates the difficulty of protecting Aboriginal culture by written White laws.

Finally, the defendant, if the Museum can identify him and then find him, has the benefit of a defence under Section 62 if he can "prove that he did not know or could not reasonably be expected to have known" that it was a site. The scope of this defence is largely unknown because of the lack of prosecutions under the AHA. Apart from the one successful prosecution, most, if not all, prosecutions are withdrawn, or never take place because the Crown Law Department advises that they will fail.

---

70 Op.cit n.69 para 7:9.
71 Op.cit n.38 p172.
72 Op.cit n.67 para 8:50.

Seaman, in his Discussion Paper, suggested that a person charged with an offence should have the burden of proving that he had no reasonable grounds for suspecting that he was involved with a site which in turn would demand proof on his part that he had made reasonable inquiry. He also suggested that directors of a company should be guilty unless they could prove that they could not, by the exercise of reasonable diligence, have prevented the commission of an offence. In his view, apparently, the person who makes no inquiry at all, has a defence under the AHA in its present form.

As a matter of common sense, if an area were shown on Mines Department maps as an area protected under Section 19 of the AHA, a mineral explorer could "reasonably be expected to have known" that there was a site there. Other cases tend to be much less clear. Even a site registered with the DAS, might not reasonably be expected to have been known. The DAS now follows a policy of only revealing the location of registered sites with the consent of the appropriate Aborigines. If they refused to allow the location to be revealed, it is a matter for argument whether a prosecution for desecration of that registered site, could be met by a defence under Section 62.

In view of these difficulties, the DAS and the Crown Law Department can perhaps be forgiven for their reluctance to prosecute, but it has meant that the provisions of, and terms used in, the AHA have not been much discussed by the Courts. There has also been a view that if the AHA is held up to scrutiny by the Courts, it will be recognised as the toothless tiger which it is, and its role as a persuader and educator will be diminished, or eliminated altogether.

4:2:3 PENALTIES

This seems a curious way to enforce a penal statute, but again it makes some sense, especially because the maximum penalty under Section 57 is only $500 or 3 months imprisonment or both for a first offence. Both Seaman and Senior comment on the need to increase these penalties.[73] They are hardly effective deterrents, especially as a mining company cannot be imprisoned. This should be compared with the penalties under the ATSIHPA: a first offence carries a fine of $2,000 or 12 months jail or both on summary conviction [Section 23(3)], or in a higher Court, $10,000 or 5 years jail or both [Section 22(1)]. There are also heavier fines for bodies corporate: $10,000 under Section 23(3) and $50,000 under Section 22(1).[74]

---

73 Senior op.cit n.38 p171 and Seaman op.cit n.69 para 7:8.

74 However, Seaman op.cit n.67 Appendix 37 sets out penalties under similar legislation in other States, in 1985. Some of these are even smaller than in WA.

4:2:4 COMMONWEALTH LEGISLATION

At this point, it should be mentioned why the ATSIHPA has not figured in this description of the law relating to site protection. Before an area can be permanently declared as a significant Aboriginal area under Section 10(1), the Commonwealth Minister for Aboriginal Affairs must receive a report containing various information, including the extent to which the area is protected under State law [Section 10(4)(g)]. He must also consult with the appropriate State Minister on this point under Section 13(2), and revoke any declaration if he is satisfied that State law makes effective provision for protection of an area [Section 13(5)].

In practice, no declarations have been made in WA under the ATSIHPA and in other States, declarations have concentrated on protection of objects under Section 12. A strenuous application was made on behalf of the Roebourne people to stop the Harding River Dam in 1984. Even though the consultation with traditional owners had been manifestly inadequate,[75] and the AHA did not allow prosecution against the State instrumentality responsible for the dam, the Federal Minister declined to make a declaration. Thus, the ATSIHPA seems to be ineffectual, although the power to make emergency declarations under Section 9 for 30 days, which can be extended to 60 days, might prove useful in the hands of a strong and sympathetic Federal Minister.

In terms of legal remedies to protect sites against tourists outside the RRNP, the AHA is therefore the only statute to which Aborigines can look for legal protection. There may be other less direct avenues and these are discussed under 4:5.

Against mineral explorers outside the Park, it may be possible to exert more pressure under the conditions attached to their mining tenements, as discussed under 4:4.

4:3 PROTECTION WITHIN THE RRNP

The strongest remedies should be available within the RRNP where the Department of CALM can provide for classification into zones under Section 62 and enforce any closing of areas through the National Parks Authority Regulations. This has occurred in Kakadu, as mentioned in 3:4:1, where the ANPWS is also considering establishing a formal register of sites of significance to Aboriginal people within the Park in consultation with interested parties, including the NT Aboriginal Sacred Sites Authority.[76] Thus the ANPWS takes prime responsibility and the NT Aboriginal

---

75 See Seaman op.cit n.67 paras 8:22 and 8:23.

76 Op.cit n.16 p43.

Sacred Sites Authority has an advisory role, for example regarding management of sites.

However, this sort of approach is not favoured by Senior, apparently because in the past, treatment of Aboriginal sites in areas managed by CALM, has been unsatisfactory.[77] He, therefore, recommends that the role of the DAS should be more than advisory and this should be more clearly defined, if necessary, by amendment to the AHA and the CALM Act.[78] He notes the difficulty of reading the two Acts together: for example, Section 4 of the CALM Act makes no reference to the AHA under the heading "Relationship of this Act to other Acts." The AHA makes no reference to other Acts at all. He concludes that the ultimate control of sites rests and should rest with the DAS and if necessary, the two Acts should be amended to make this clear.

However, he also points to Section 12(2) of the AHA as enabling the Trustees of the Museum to make an agreement with the NPNCA to "take such action as they think is practicable for the proper care and protection" of a site. Assuming co-operation between the Department of CALM and DAS, this should enable DAS to be involved in the preparation of a Site Management Plan and the protection of sites.

Broadly, he sees the DAS as being responsible for producing Site Management Plans for all National Parks in consultation with traditional owners and the Department of CALM. The Department of CALM can then incorporate the particular Site Management Plan into its PM for the whole Park. However, the Department should be obliged to follow DAS advice, for example, that sites should be closed to the public because of risk of damage.

Suggestions based upon the need for statutory amendment, are obviously going to be difficult to implement in the short term. There is also the practical problem of resourcing the DAS for such a mammoth undertaking. However, experience with the proposed Collier Bay National Park suggests that a co-operative approach between DAS and the Department of CALM should be able to achieve a similar result. The advantage of the involvement of the Department of CALM is that it is much easier to control access to known sites than to prosecute for breaches of the AHA.

Clearly, the Aborigines of the RRNP will need to be involved in this exercise, in their capacity as Park Rangers. They could also be honorary wardens under the AHA, but

---

77 Op.cit n.38 p149.

78 Op.cit n.38 pp172-173. Also see pp72-76 for general discussion of this topic.

their powers under the AHA regulations are inadequate in certain particulars. It may be that the National Parks Authority Regulations suffer from similar defects, but in practical terms, the public are more likely to obey a direction from a Park Ranger, than one from an Honorary Warden.

At Bungle Bungle, Aboriginal interests have sought to use the provisions of the AHA to vest control of sites and cultural matters in the Park in a Committee of Aboriginal traditional owners. This would be called the Purnululu Cultural Heritage Committee and the idea is that the Trustees of the Museum would vest their statutory powers and duties in the PCHC under Section 9, or delegate those powers and duties under Section 13. In effect, this would give the Aboriginal interests the power of veto in all cultural matters, as long as the Minister followed their advice.

However, there is another side to this. In relation to Kakadu, the SSCK concluded after a detailed consideration of an incident at Coronation Hill, that "in order to clarify lines of communication and reduce pressure on Aboriginal people", the Aboriginal Sacred Sites Authority should be given primary responsibility for sites in the Park.[79] The Bungle Bungle approach should be closely observed to see if the vesting or delegation of the Trustees' powers puts the Aborigines under excessive pressure, remembering that there are no valuable mining interests at stake there, as there are in the RRNP.

4:4 OBLIGATORY SURVEYS FOR EXPLORERS

4:4:1 OPTIONS FOR EXPLORERS

The effect of the AHA, and the condition on their tenements that they should comply with the AHA, is that mineral explorers are faced with the risk of trouble if they ever damage an Aboriginal site. There are basically four options open to them :

4:4:1:1 Take their chances, by exploring without taking any steps to guard against damaging sites. If a mining company is unlucky enough to damage a site, the worst that can happen will be a $500 fine. There is also a good chance of prosecution not occurring if it can cover its tracks well enough, or at least conceal the damage for 6 months. For a small explorer operating on a shoe-string, this approach has considerable attractions. Larger companies tend to be more conscious of the damage to their public image in acting like this.

---

79 Op.cit n.1 p151.

4:4:1:2 Find out where the registered sites are and avoid them, but otherwise proceed as in 4:4:1. By this approach, they hope to give themselves a defence under Section 62, and minimize the damage to their public image.

4:4:1:3 Have a perfunctory survey done. Various approaches have been tried. The most common is for the mineral explorers themselves to take out some Aborigines who may or may not speak for the area. They are asked to point out any sites, or better still, sign a piece of paper saying that there are no sites. A more recent variation is to employ an accommodating "anthropologist" to go through a similar exercise. This avoids the criticism that the mineral explorer's geologists or engineers do not have the necessary expertise to ask the right Aborigines or correctly understand the cultural information. It also insulates the mineral explorer from criticism of methodology: it is a matter for the anthropologist's professional assessment, if, say, he chooses to do a survey by asking the wrong Aborigines, and/or by simply flying them over the area in a fixed wing aeroplane. Unfortunately, in the absence of a strong professional association, the professional expectations and controls are in practice only really provided by the individual anthropologist himself. The mineral explorer, however, pleads in its defence under Section 62, "we paid our money and reasonably expected to be able to rely on the results". It would not be an easy defence to break down, especially since there is so little law to guide mineral explorers on what constitutes the taking of "reasonable steps."

4:4:1:4 Have a survey done by a competent professional anthropologist, who takes appropriate steps as part of his contract to consult the right Aborigines and correctly report on their concerns. Obviously, this is the only satisfactory option from the Aboriginal point of view and the more enlightened mineral explorers are coming to realise that this may also be their best option. The trouble is that it takes time and can be expensive, if the job is to be done properly. Even so, it is not unduly expensive when compared with the costs which companies cheerfully incur on drilling rigs, helicopters and the like, in the normal course of exploration. The difference is that the explorers regard it as an unnecessary expense.

4:4:2 ROLE OF SAAs

Elsewhere in this Resource Document, Peter Veth (Veth, Sect. 5:3) will be discussing in detail the different sorts of survey and how they should be undertaken. At the risk of overlapping with his contribution, I would like to discuss the role of the so-called "Site Avoidance Agreement."

Site surveys and SAAs were applauded in the Seaman Report as the way forward in obtaining protection for Aboriginal sites. He seems to have been impressed with the co-operative arrangements achieved in the Central Desert to clear large areas for exploration, remarking that the "communities and their resource agency have worked in a way which explorers have described to me as professional and efficient." He contrasted that with "other areas where explorers and communities have been at cross purposes, so that tension and frustration has been generated on both sides."[80]

Since about that time, SAAs have commonly been used in the organization of site surveys and have achieved, in the eyes of employees of Resource Agencies particularly, a status which is to some extent unjustified. It is probably true to say that if the mineral explorer does not have co-operative intentions, a SAA will not bind him in such a way as to force him to be co-operative.

The scope of a SAA is surprisingly narrow. Most of the SAA deals with the mechanics of the survey. There are only a few clauses designed to bind both parties after the end of the survey in matters such as maintaining confidentiality and respecting the findings of the survey. Everyone assumes (or hopes) that they are enforceable.

Mineral explorers would prefer to cover the whole exercise by an exchange of letters. For some reason, they seem to regard an agreement in an exchange of letters, as less binding than a formal contract. Their Legal Advisors would tell them differently, but possibly they wish to avoid formal contracts for the purpose of keeping their Legal Advisors out of the exercise.

In fact, an exchange of letters can cover the same matters as are covered in a formal SAA, and it is just as binding. However, on balance WDPAC has encouraged the use of formal SAAs for two reasons: first, although the idea of writing things down is to avoid arguments later, there is a tendency in an exchange of letters for each side to let a vague provision or ambiguity pass unchallenged, in the hope that it will turn out to be of advantage later on. In the case of a SAA, the formality and involvement of lawyers mean that such issues are usually thrashed out in advance. This is why having a SAA tends to result in delay, which is another reason why mining companies do not like them.

The second reason goes back to the need, mentioned in 4:4:1:4, to educate mineral explorers. They should see site surveys as just another exploration expense, to be added

---

80 Op.cit n.67 para 8:43.

with environmental reviews, and suchlike, to the ever-growing list of crosses which the mining industry thinks that it is being unfairly asked to bear. Others would argue, of course, that it has for too long been receiving a cheap ride, and these requirements are long overdue. Whichever view is taken, companies make contracts with drillers, suppliers and numerous others as part of their normal activity. If they also make contracts in fulfilling their responsibilities to Aborigines, it might encourage them to see those responsibilities in the same context, as just another exploration expense.

4:4:3 OBLIGATORY SURVEYS

It is obviously unsatisfactory for Aborigines, that in practice mineral explorers can choose whether to have a proper survey done or not. Within the National Park, it may well be only an academic question if, as suggested in 4:3, the DAS draws up a plan for managing sites throughout the Park. The preparation of such a plan would presumably require the DAS itself to organise a survey of the whole Park, as will apparently occur in the Collier Bay National Park.

Even if this is not possible because of the size of the RRNP, or other reasons, the Department of CALM can simply make it a condition of exploration within the RRNP that a proper survey should first be done. It is outside the Park that it becomes more difficult, and this would include land mentioned in 1:4 above, if the EZ were lifted.

Currently, the condition which is imposed on most mining tenements contains words along the lines of: "Compliance with the provisions of the Aboriginal Heritage Act 1972 to ensure that no action is taken which is likely to interfere with or damage any Aboriginal site." It may be questioned whether that condition is forceful enough to provide effective protection anywhere in the State. For the reasons given in 4:4:1, it leaves mineral explorers with three options apart from the only satisfactory one from the Aboriginal point of view. As far as I know, no mining tenement has ever been forfeited in WA for breach of this condition. This is not surprising, as there have been so few successful prosecutions under the AHA, and the Mines Department would hesitate to enforce forfeiture of a tenement because an Aborigine, or even the DAS, says that there has been a breach.

It is suggested, therefore, that in the Study Area, as well as the RRNP if necessary, a condition should be placed on all mining tenements requiring a proper survey to be done. The precise wording may cause difficulty, but at the very least it could refer to a requirement for approval by the DAS. Normally, the DAS feels that it has only an advisory role and such a condition would give it the teeth which it lacks under the AHA.

As already mentioned, there would be good reason to extend this condition to the whole State, but this Resource Document is only concerned with the Study Area, where in view of the continuing strength of Aboriginal culture, it is clearly justified. Of course, the simplest way of making surveys obligatory throughout the State would be to amend the AHA, but historically it has been difficult to have any amendments passed to strengthen it, even in the obvious areas mentioned in 4:2:1 and 4:2:3, such as the 6 month time limit and penalties.

In fact, the trend has been the other way: for example, when the AHA was first passed in 1972, the Court could order forfeiture of a mining tenement under Section 58, if an offence was committed knowingly and for gain. That section was repealed in 1980 by the Court Government with various other amendments designed to weaken the AHA's effect.

4:5 TOURISTS AND SITES

The general problem of how to control tourists, particularly outside National Parks, was discussed in 1:5:2. An important aspect of that control involves the protection of sites. As mentioned in the preface, I have made considerable use of Dr. Clive Senior's Report on Tourism and Aboriginal Heritage, although that was produced with particular reference to the Kimberley. It is unpublished and still being considered by the various affected Government departments.

4:5:1 INSIDE THE RRNP

Within the RRNP, it appears that the Department of CALM is in a position to protect sites using classification and its powers under the National Parks Authority Regulations. The only question seems to be how it exercises that power. As mentioned in 4:3, Senior comments that, in the past, treatment of Aboriginal sites in areas managed by the Department of CALM has been unsatisfactory, and makes recommendations giving DAS more than an advisory role.

There is no doubt that a concentration of tourists in an area, poses a threat to sacred sites. In Kakadu, for example, serious acts of desecration, including the theft of skeletal material, occurred at a number of sites in the early Seventies. Similarly, in Bungle Bungle, desecration of an Aboriginal burial site has been reported in the last two years.

However, there is not an inevitable correlation between numbers of tourists and acts of desecration. The SSCK points out, for example, that because "overt acts of vandalism

are more likely to occur when other people are not present, large numbers of tourists tend to reduce the risk of damage."[81] On this basis, the sites in the RRNP are perhaps vulnerable.

In Kakadu, it has been suggested that tour operators should be licensed to operate within the Park.[82] The basis for this would be Regulation 7AA of the National Parks and Wildlife Regulations. This provides that, whenever a fee is charged for any commercial activity, the operator will be required to have the permission of the Director of the ANPWS.

The same suggestion has been put forward for Bungle Bungle. The problem is that, under the National Parks Authority Regulations which apply in WA, there is no provision comparable to the NT one. This means that it will be necessary to educate tour operators rather than regulate them.

This is discussed in 4:5:3 under non-legal means for improving the position of sites outside the RRNP. Some of the other ideas discussed in 4:5:3 could also be adopted inside the RRNP: for example, improvement in sign-posting; manuals for tour operators; brochures containing interpretive information on Aboriginal culture; and a pool of Aboriginal guides to show tourists non-sensitive areas and keep them away from sensitive ones. As the SSCK points out, tourists are less likely to resent closure of areas of the Park, if the reasons are clearly explained in brochures and other information services.[83]

4:5:2 OUTSIDE THE RRNP

Outside the Park, including the small areas of EZ, it is much more difficult to make constructive suggestions. This is because tourists only go to a place once and they may come from any direction using any one of several access routes. This raises the problems of information and enforcement mentioned in 1:5:2 above.

Senior makes various suggestions on the information aspect which will be considered later. However, on the subject of enforcement, it is worth repeating that the only direct legal basis for control is the AHA. Quite apart from the difficulties of prosecution under the AHA, there is the problem with tourists, of finding them and then proving that on their one visit, they breached the Act. And because of their likely lack of familiarity

---

81 Op.cit n.1 p38.
82 Op.cit n.1 p33.
83 Op.cit n.1 p31.

with the area and Aboriginal culture, the defence under Section 62 is an obvious possibility.

4:5:2:1 Legally Based Methods

Legally based methods of improving the position would be :

4:5:2:1:1 Protected Areas

The use of protected areas under Section 19 of the AHA. This assumes that the Aborigines accept the concomitant disadvantages of publicising, and giving the DAS control of, their sites. If they decide that this is better than having them damaged, there are a range of protective measures that can be employed, including sign-posting and use of honorary wardens to look after the area. These measures may also be available for sites that have not been declared protected areas and are discussed further below. The advantage of a protected area is that it has boundaries which must be specified in the declaration under Section 19, and these can be shown on maps: for example, they appear on Mines Department maps under current practice.

4:5:2:1:2 Reserves

As mentioned in 1:5:1:1, areas outside the Park may have different legal status which enables the Aborigines to exert extra control, and this could assist in the protection of sites. Most obviously, if the site is situated within the boundaries of a reserve, a permit is required to enter the reserve. If a tourist finds his way to the site, he will automatically be in breach of Section 31 of the AAPA Act, as well as being guilty of any offence which he may commit under the AHA by damaging it. As mentioned briefly in 4:2:2, one of the weaknesses in the AHA is that, although a tourist may not have damaged a site physically, his mere presence there may have been deeply offensive to the Aborigines, and even result in serious consequences in their culture. Quite apart from all the other difficulties, there is little chance of bringing that within the terms of Section 17, which says "excavates, destroys, damages, conceals or in any way alters." In these circumstances, the only remedy against him is under Section 31 of the AAPA Act.

4:5:2:1:3 S.P.L.s

If the site is within the boundaries of a Special Purpose Lease, the position is less clear. There are two basic views: the first is that tourists are not prevented from entering the area, but the Aborigines can take reasonable steps to implement the "special purposes" for which the lease was granted. This will usually be "Use and Benefit of Aboriginal Inhabitants" and would obviously include the protection of their culture, particularly

sites. They would have the right to fence sites or do whatever is necessary to protect them, but when it comes to enforcement, they would have to fall back on the AHA, with all its defects. The other view, held by some people in the Aboriginal Lands Trust, is that the holders of Special Purpose Leases are in the same position as Pastoral Lessees. This is said to mean that they can keep out tourists and everyone else except mineral explorers.

4:5:2:1:4 Delegation of Museum Trustees' Powers

There is no logical reason why the powers of the Trustees under the AHA should not be delegated or vested outside a National Park, in the same way as inside. Section 9 of the AHA, for example, only requires that "a representative body of persons of Aboriginal descent has an interest in a place or object to which this Act applies that is of traditional and current importance." However, it is only being attempted on a trial basis in the Bungle Bungle National Park and it would perhaps be premature, at this stage, to try it outside the RRNP, especially in view of the doubts expressed in 4:3 as to its application inside the RRNP.

4:5:3 NON-LEGAL METHODS

Apart from these special measures, the protection of sites outside the RRNP must rest on non-legal means :

4:5:3:1 Sign-posting

There is a fundamental incompatibility between this sort of publicity, and the secrecy of, and limited access to, some sites. Seaman refers to "evidence that the posting of signs near significant Aboriginal areas only serves to attract vandals."[84]

According to Senior, cryptic phrasing of notices serves to arouse interest in visitors. He discusses the "uncertain science" of the phraseology on such notices and makes some helpful suggestions.[85] I do not propose reproducing his arguments, but rather wish to put them in their context. They inform the tourists, thus hopefully avoiding damage and other problems and, if they are not obeyed, they greatly improve the chances of successful prosecution under the AHA by removing the defence under Section 62. If a tourist has walked past a sign-post, it is difficult for him to argue that he did not know it was a site.

---

84 Op.cit n.67 para 8:39.

85 Opcit n.38 pp157-160.

However, there is another aspect which was raised in the case of Bungle Bungle. The traditional owners were concerned that, where culturally appropriate, Aboriginal place names should be used, spelt in a way which conformed with orthographies approved by them. Obviously, this requires extensive consultation, before signs are erected, to formulate an appropriate interpretative policy.

4:5:3:2 Education of Tour Operators

As I understand it, very little control is exercised legally or in practice by the Government tourist authorities over tour operators and there is also evidence, from Senior and elsewhere, that there are some tour operators who will resist all attempts to educate them to do anything which does not suit them.

However, the problem with tourists is that they only come once and can say that they did not know it was a site. Tour operators, on the other hand, like mineral explorers, come more regularly and thus provide the continuity of contact which improves the chances of control. The Canning Stock Route is not a place for the inexperienced and this suggests that most tourists would be in organised groups, under leaders familiar with the area. The net result is that there seems to be a small pool of people whom the WATC should aim to educate, for example, by producing some sort of manual. It has been suggested both at Kakadu and Bungle Bungle that a tour operator regulation manual should be produced. The same should be done for the Canning Stock Route and RRNP.

4:5:3:3 Education of Tourists

Even those tourists who choose to travel in the area independently can be educated. Senior comments on the lack of informative material in WA brochures on Aboriginal culture, as compared with the NT.[86] The Aboriginal interests at Bungle Bungle have complained about the publishing of irresponsible and inaccurate promotional literature about the Park, particularly in relation to its Aboriginal cultural heritage values. Even for the small numbers involved, surely a brochure could be produced to be handed by the WATC to anyone contemplating a trip in the area, and to be available at Police Stations and Road Houses in the area. As I understand it, the RAC of WA already produces a detailed map of the Canning Stock Route. There could also be liaison with other Government Departments to assist in distribution of WATC brochures and to ensure that their publications reflect the same aim. For example, every map produced by a Government agency should show where permits are required under the AAPA Act because of reservation, and where access is restricted because of protected areas under the AHA.

---

86 Op.cit n.38 pp138-143.

4:5:3:4 Appointment of Aboriginal Liaison Manager

This raises the question of who does all this educative work. In Senior's view, the Kimberley Region should follow the NT by appointing an ALM,[87] and the objectives of the position should include: "Develop and implement strategies to minimise negative impacts of tourism on the Aboriginal Community."[88]

Clearly, tourism in the Kimberley is more developed and has more potential than in the Pilbara and a separate ALM in the Pilbara may not be justified. However, someone in the WATC should be fulfilling these duties, even on a part-time basis.

One of the duties of an ALM suggested by Senior, is "to act as a focal point for processing enquiries from tourists and tour operators relating to the Aboriginal community; to screen those enquiries and to direct them to the appropriate organisations; to assist and advise persons making the enquiries of the appropriate way to proceed."[89] The existence of such a focal point is vital to any attempt to educate tourists and tour operators.

Another important task which the ALM could undertake, would be research into the numbers of tourists using the RRNP. In 1987, the number of visitors to Kakadu was estimated at 200,000 and to Uluru 250,000. Clearly the number of tourists in the RRNP will be nowhere near those figures, but that does not necessarily mean that they will cause less problems. In Kakadu, there has been criticism that to date no assessment of the human carrying capacity of the park has been attempted. In the RRNP this capacity will be relatively small and steps should be taken to start research on it as soon as possible. If the ALM were the contact point for tourists, he would be well placed to undertake such research.

Senior suggests one other important objective of the ALM's position: "to foster an understanding and awareness of tourism amongst Aboriginal people."[90]

4:5:3:5 Involvement of Aborigines

Senior comments that in the Kimberley "most people sought involvement in tourism in ways that could provide them with control mechanisms rather than in ways which were likely to provide financial benefits."[91] The problem with Honorary Wardens is that

87 Op.cit n.38 pp128-137.
88 Op.cit n.38 p128.
89 Op.cit n.38 p129-130.
90 Op.cit n.38 p128.
91 Op.cit n.38 p96.

they tend to be based around the sites and to arrive on the scene in time, or possibly too late, to prevent the tourists doing something which offends them. This is always likely to be a situation fraught with hostility. The idea of Aboriginal guides avoids that. They are involved with the tourists from the start and can, with sensitive handling, keep them away from trouble. However, as mentioned in 2:6:3, there may be some reluctance to act as a "policeman" in this context and careful training would be needed to provide appropriate diplomatic skills.

Senior sets out the advantages of having a pool of Aboriginal guides,[92] but it is difficult to see how any of this could be implemented in the RRNP without someone in the WATC to act as a contact point.

As already mentioned, there is also within the RRNP more innate resistance than in the Kimberleys, to involvement with tourists. The Aborigines went out there in the first place to get away from White society and their contacts with tourists to date have been less than happy. In these circumstances the need to "foster an understanding and awareness of tourism" is particularly great, but it is a process of education which will need a lot of time and patience. It is difficult to see it being achieved except by an ALM, specifically appointed full-time for the purpose.

One point which should be considered by the Aborigines, is that it is ultimately better to control tourists, than to ignore them in the hope that they will go away. The key to control is to give them something to look at in a regulated environment: the SSCK suggests a cultural museum in Kakadu to "act as a buffer between tourists and Aborigines by helping to satisfy the natural curiosity of the former about Aboriginal lifestyle and culture."[93] Senior suggests a Kimberley Museum of Aboriginal Culture,[94] although he concentrates on its educational value.

Clearly, this sort of project is not feasible in the RRNP, but the idea of a "buffer" should be considered in conjunction with the provision of guides. Tours should be arranged in non-sensitive areas to satisfy the tourists' curiosity and possibly engender sufficient respect for the sincerity of Aboriginal beliefs, to keep them away from sensitive areas.

---

92 Op.cit n.38 pp19-22 and 95.
93 Op.cit n.1 p34.
94 Op.cit n.38 pp161-162.

5.0 CONCLUSION

In the course of this contribution, my personal opinions in some areas may well have been obvious, but I have deliberately made no recommendations or submissions. This is not surprising. This is a Resource Document, albeit one commissioned through WDPAC and produced by people who have been involved with the Aborigines of the Western Desert.

However, the absence of recommendations or submissions can lead to lack of focus. The CALM Project Team and the SIS Group may read it and may even find it interesting, but may then forget it because it is not obviously relevant to the issues as they perceive them.

This is one of the dangers inherent in commenting on the hypothetical, as I mentioned in the preface. In conclusion, therefore, I shall mention briefly some general questions which, in my view, require consideration by the CALM Project Team, or the SIS Group, because they are central to any resolution of the issues raised in my contribution.

These questions concern the extent to which :

(1) it is Government policy that every square centimeter of every National Park should have its mineral potential assessed by ground exploration;

(2) that policy overrides all other considerations, including the wishes of Aborigines living in the Exclusion Zone;

(3) the Government is prepared to make special rules to protect the interests of the Aborigines in the RRNP, in particular to safeguard their sites, to give them some sort of land tenure and to involve them in management of the land;

(4) the Government is prepared to make special rules to protect Aboriginal interests outside the RRNP.

It may well be that some or all of these questions cannot be answered clearly at the outset and that the Government is hoping that the draft PM and the SIS will help it to make up its mind. Nevertheless, if it does have in mind any fixed requirements which are "non-negotiable", this could wipe out some of the options which I have suggested. The most obvious example is the first question :

5:1 EXPLORATION THROUGHOUT NATIONAL PARKS

The missionary fervour of the WA Government's submission to the SSCK suggests that this may not be an issue upon which it is prepared to compromise. It is true that much depends upon the form in which the Bailey Report is implemented, if at all. However, the legislation is likely to give the Minister the ability to open any Park for mining, and in any case, pre-existing tenements, like those of CRA in the RRNP, will be outside the scope of the legislation.

5:2 EXPLORATION IN THE EZ

For pre-existing tenements in the EZ, it is only the EZ which is preventing exploration. This represents a direct clash between the wishes of mineral explorers and Aborigines and it is difficult to see any compromise which will satisfy both sides. However, the off-the-cuff comments of the Premier at Kalkan Kalkan on 5th August 1988, included a suggestion that "the exclusion zone be explored in a carefully managed way and supervised directly by Aborigines. After exploration it would return to an exclusion zone."[95]

It is to be hoped that the Premier now has a better understanding of the issues involved in the RRNP, than he displayed at that meeting. Nevertheless, it may be evidence of a fixed view that nothing, not even Aboriginal interests, can be allowed to hamper the exploration of every square centimetre of every National Park.

It is also worth noting that even if the Government decided that the concept of the EZ should be preserved, the EZ itself should be replaced by, or linked with, some sort of land tenure to provide it with a legal basis.

5:3 SPECIAL RULES FOR ABORIGINES IN THE RRNP

To a greater or lesser extent, this involves acceptance of the concept of an "Aboriginal Park", even if the Government does not put it in those terms. The Department of CALM has been conservative in its approach to interim protection, but in the PM for the RRNP it will, at the very least, have to address the following issues :

5:3:1 SITES

It seems to be accepted that sites in National Parks should receive greater protection than those outside. This may be by way of a special DAS study, as is proposed for Collier Bay, or vesting or delegation of powers in the traditional owners, as at Bungle Bungle.

---

95 As reported in the West Australian of 6th August 1988.

5:3:2 TENURE

Again, the concept seems to be accepted, but the difficulties arise when it comes to deciding how much land and how it should be held. The choice seems to lie between excision, a CALM Act lease which looks either like a 99 year lease or a Special Purpose Lease, or classification into zones. The answer may have to be a combination of these, because of political factors.

5:3:3 MANAGEMENT

The location of the RRNP seems to make Aboriginal involvement unavoidable. It seems likely that, at the very least, there will be Aboriginal Ranger Training and, overseeing it, a Steering Committee. Political considerations will determine how far Aboriginal involvement in management extends beyond that. The NT experience suggests that joint management benefits both sides and an overview of the negotiations regarding Bungle Bungle, leads to the conclusion that the concept must be accepted eventually in WA, even if currently more circuitous routes are being followed.

5:4 SPECIAL RULES FOR ABORIGINES OUTSIDE THE RRNP

The problem of site protection is greater outside the RRNP, because it relies upon the ineffectual provisions of the AHA. There is a clear case for strengthening the AHA, but then there always has been. For political reasons, the only amendments which have been passed, have been designed to weaken it. The question is whether the Government is prepared to reverse that trend.

The issues of tenure and management do not arise directly outside the RRNP, but the problem of "social impact" still remains. The Government apparently accepts this concept: in the East Kimberley, it contributes to the Argyle Social Impact Group, which attempts to alleviate the social impact of one particular mining project on Aborigines in the area. Whether the Government also embraces the concept in the Rudall River region, will presumably depend upon the recommendations of the SIS.

5:5 IMPLEMENTATION OF SPECIAL RULES

Obviously this will be easier inside the RRNP than outside. However, if "special rules" are to be made, there will have to be changes, which I shall divide into three categories: legislative, "administrative" and "developmental."

5:5:1 LEGISLATIVE CHANGES

I have suggested various amendments to the AHA and the CALM Act, but there are other, less obvious, changes which would require legislation: for example, the

amendment of the boundaries of the RRNP or licensing for tour operators, operating outside the RRNP.

5:5:2 "ADMINISTRATIVE" CHANGES

Here, the Government department has the statutory power, but will have to exercise it differently: for example, putting on mining tenements extra conditions requiring site surveys; and including appropriate provisions in CALM Act leases. However, an amendment of the National Parks Authority Regulations to require licensing of tour operators inside the RRNP, would be both "administrative" and legislative, as it has to be tabled in Parliament.

5:5:3 "DEVELOPMENTAL" CHANGES

This would include activities with no legal connection, such as improving sign-posting, employing Aboriginal guides, appointing an ALM, educating tourists and tour operators, and improving maps.

5:6 SUMMARY

Obviously, legislative changes are more difficult to implement than "administrative" or "developmental" ones. There is the constant problem, particularly for a Labor Government, of getting statutory amendments through the Legislative Council, although this difficulty may sometimes be exaggerated to excuse inaction.

All of these variables complicate the task of the CALM Project Team and the SIS Group, which is akin to trying to build a cathedral on a quicksand. I can only suggest that they seek to minimise the variables by finding out from the Government whether anything is "non-negotiable". They will then have to work through the various options on that basis, and I hope that they will find my contribution of assistance in that exercise.

BIBLIOGRAPHY

Anon. Kakadu National Park Plan of Management (January, A.G.P.S. MP10/1988 500).

Anon. (n.d.) Jigalong Community Traditional Lands Reserve Proposal. Perth: Western Australian Museum.

Anon. (1984) "The Aboriginal Land Enquiry" - Discussion Paper (January).

Anon. (1984) "The Aboriginal Land Inquiry" - Report by Paul Seaman Q.C. (September).

Anon. (1986) Review of Public Submissions on the Bungle Bungle Working Group Draft Report to the Environmental Protection Authority (May D.C.E. Bulletin 260).

Anon. (1986) Final Report by the Bungle Bungle Working Group to the Environmental Protection Authority (May D.C.E. Bulletin 261).

Anon. (1986) Report of the Committee on Exploration and Mining in National Parks and Nature Reserves ("The Bailey Report").

Anon. (1987) Report and Recommendations by the Environment Protection Authority, on the Bailey Report (August, E.P.A. Bulletin 287).

Anon. (1987) Return to Country: The Aboriginal Homelands Movement in Australia. Standing Committee on Aboriginal Affairs.

Anon. (1988) Uluru (Ayers Rock-Mount Olga) National Park Plan of Management (January, A.G.P.S. MP9/500).

Anon. (1988) "Mining and the Environment. Balancing the Scales" W.A. Government Policy Report .

Anon. (1988) "The Potential of the Kakadu National Park Region". Report of the Senate Standing Committee on Environment, Recreation and the Arts (A.G.P.S. ISBN 0 644 07647 X).

"Aborigines and Uranium" (1984) - Consolidated Report on the Social Impact of Uranium Mining on the Aborigines of the Northern Territory by the Australian InstituteofAboriginal Studies (A.G.P.S. IBSN 0 644 03640 0).

Altman, J.C. (1987) Hunter-gatherers today: an Aboriginal economy in north Australia. Australian Insitute of Aboriginal Studies, Canberra.

——— (1985) Studies into the ecological revegetation of an iron ore mine site in the arid Pilbara region of Western Australia. Ph.D. Thesis, University of Western Australia.

Ashe, P. (1984) Western Desert Homelands Report, Perth: Department of Aboriginal Affairs.

Baker, L. and G. Allan (in press) Uluru National Park: A Case History of Fire Management. Proc. Ecol. Soc. Aust.

Barker, G. (1976) The ritual estate and Aboriginal polity. Mankind 10(4):225-39

Beard, J.S. and M.J. Webb (1974) Vegetation Survey of Western Australia, Great Sandy Desert. The University of Western Australia.

Bern, J. (1979) Ideology and domination: toward a reconstruction of Australian Aboriginal social formation. Oceania 50, 118-132.

Berndt, R.M. (1959) The concept of 'The Tribe' in the Western Desert of Australia. Oceania 30(2): 81-107.

Berndt, R.M. and C.H. (1945) A Preliminary Account of Fieldwork in the Ooldea Region, Western South Australia. Oceania Bound Offprint. Sydney.

——— (1964/88) The World of the First Australians, Ure Smith, Sydney.

Binford, L.R. (1980) Willow Smoke and Dogs' Tails: Hunter-Gatherer Settlement Systems and Archaeological Site Formation. American Antiquity, 1, 5-31.

Birdsell, J.H. (1970) Local Group Composition among the Australian Aborigines: a Critique of the Evidence from Fieldwork Conducted since 1930. Current Anthropology 11(2), 115-131.

Booth, J. (1982) *Mirrka Kama Wamakaja Pujimanjanu.*. Martu Wangka Publications, Jigalong.

Brand, J.C. and V. Cherikoff (1985) Australian Aboriginal Bushfoods: the nutritional composition of plants from arid and semi-arid areas. Australian Aboriginal Studies 2, 38-46.

Burbidge, A.A., K.A. Johnson, P.J. Fuller and R.I. Southgate (1988) Aboriginal Knowledge of the Mammals of the Central Deserts of Australia. Aust. Wildl. Res., 15, 9-39.

Cane, S. and O. Stanley (1985) Land Use and Resources in Desert Homelands. Darwin: North Australia Research Unit.

Cane, S.B. (1984) Desert Camps, unpubl. Ph.D. Thesis, Department of Prehistory Research School of Pacific Studies, A.N.U., Canberra.

——— (1986) 2.11 Bush tucker - intensified use of traditional resources on Aboriginal outstations.

Charles, A. and J. Booth (1981) *Mataku Jawalkuraku* (How to Dig Bush Potatoes). Martu Wangka Publications, Jigalong.

——— (1984) *Mankuraku Praku* (How to Get Bush Apples), Summer Institute of Linguistics, Australian Aborigines Branch.

Clark, R.L. and R.J. Wasson (1988) Environmental History - Learning from the Past for the Future. Paper presented at Ecological Society of Australia Biennial Symposium, Geraldton, Western Australia, Aug. 28-Sept. 2., 1988

Dixon, R.M.W. (1976) Tribes, languages and other boundaries in northeast Queensland. In N. Peterson (ed), Tribes and Boundaries in Australia. Australian Institute of Aboriginal Studies, Canberra, pp 207-238.

Elphinstone, J.J. (1958) Report on Health and Nutrition of Natives from Rawlinson Range to Lake McDonald, 1958. Unpubl. report, W.A. Herbarium, Perth.

——— (1971) The Health of Australian Aborigines with No Previous Associations with Europeans. Medical Journal of Australia, 2, 293.

Fried, M. (1975) The Notion of Tribe. Cummings, Menlo Park, California.

Gara, T. (1985) Aboriginal Techniques for Obtaining Water in South Australia. Anthrop. Soc. S.A., 23(2), 6-11.

George, A.S. and Mitchell, A.S. (1983) Part II, Flora. In: Wildlife of the Great Sandy Desert, Western Australia. A.A. Burbidge and N.L. McKenzie, (Eds.) Wildl. Res.Bull. West. Aust. Dept. Fish.Wildl., Perth, (12) 38-39.

Goble-Garratt, E.M. (1987) Phytoscoiology of the Telfer Area of the Great Sandy Desert, Western Australia, unpubl. M.Sc. Thesis, The University of Western Australia.

Goddard, C. (1984) A Grammar of Yankunytjatjara, Alice Springs: IAD.

Gould, R.A. (1969a) Yiwara: Foragers of the Australian Desert. Scibner, New York.

——— (1969b) Subsistence Behaviour among the Western Desert Aborigines of Australia, Oceania 39(4), 253-74.

——— (1980) Living Archaeology. Cambridge University Press, Cambridge.

——— (1969) Subsistence Behaviour Among the Western Desert Aborigines of Australia. Oceania, 39(4), June 1969, 253-274.

Griffin, G.F. (1984) Climate, Vegetation, Man and Fire. In: E.C. Saxon (ed.) Anticipating the Inevitable: A Patch-Burn Strategy for Fire Management at Uluru (Ayers Rock-Mt. Olga) National Park. CSIRO, Melbourne.

Griffin, G.F. and G.E. Allan (1984) Fire Behaviour. In: E.C. Saxon (Ed.), Anticipating the Inevitable: A Patch Burn Strategy for Fire Management at Uluru (Ayers Rock-Mt. Olga) National Park, CSIRO, Melbourne.

Hamilton, A. (1980) Dual Social Systems: Technology, Labour and Women's Secret Rites in the Eastern Western Desert of Australia. Oceania, 15, 4-19.

Hansen, K.C. (1984) 'Communicability of some Western Desert communilects', pp 1-112 in J. Hudson and N. Pym (eds.) (1984) Language Survey, Series B, Vol.11. SIL/AAB, SIL, Darwin.

Hiatt, L.R. (1962) Local Organisation among the Australian Aborigines. Oceania 32(4), 267-86.

——— (1966) The Lost Horde, Oceania 37(2), 81-92.

——— (1984) Aboriginal Landowners, Oceania Monograph No.27.

——— (1986) Aboriginal Political Life. (1984 Wentworth Lecture). Australian Institute of Aboriginal Studies, Canberra.

Hnatiuck, R.J. and B.R. Maslin (1988) The Distribution of *Acacia (Leguminosae-Mimosoideae)* in Western Australia. Part 2: Lists of Species Occurring in 1 x 1.5 Degree Grid Cells. W.Aust. Herb. Res. Notes 8, 1-5.

Institute for Aboriginal Development (1988) *Punmu: Yankunytaj Atjara* Plant Use. Angus and Robertson, Sydney.

IUCN (1988) Partnerships. In: Tradition, Conservation and Development. Occasional Newsletter of Commission on Ecology's Working Group on Traditional Ecological Knoweldge.

IUCN (1988) Tradition, conservation and development : occasional newsletter of a commissioned on ecology's working group on traditional ecological knowledge. Issue No 6, IUCN, Brisbane.

Johannes, R.E. (1981) Words of the Lagoon : Fishing and Marine Lore in a Palau District of Micronesia. University of California Press, Berkeley.

Kalotas, A.C. (Unpubl. paper) Applying Traditional Ecological Knowledge in Central and Western Australia: Some Examples from the Past and Future Prospects.

Kamminga, J. (1988) Wood Artefacts: A Checklist of Plant Species Ulitised by Australian Aborigines. Australian Aboriginal Studies, 1988/2, 26-59.

Kean, J.S., Richardson, G. and Trueman, N. (1988) Aboriginal Role in Nature Conservation. Emu Conference, June 7-9.

Keen, I. (1988) Kinship: twenty-five years of kinship studies. In R.M. Berndt and R. Tonkinson (eds), Social Anthropology and Australian Aboriginal Studies. Aboriginal Studies Press, Canberra, pp79-123.

Kimber, R.G. (1983) Black Lightening: Aborigines and Fire in Central Australia and the Western Desert. Archaeol. in Oceania, 18, 38-45.

——— (1984) Resource Use and Management in Central Australia. Australian Aboriginal Studies. 1984(2), 12-23.

Latz, P.K. (1982) Bushfires and Bushtucker: Aborigines and Plants in Central Australia. M.A. Dissertation. University of New England, New South Wales.

Layton, R. (1986) Uluru: An Aboriginal History of Ayers Rock. Australian Institute of Aboriginal Studies, Canberra.

Liberman, K. (1985) Understanding Interaction in Central Australia: An ethno-methodological study of Australian Aboriginal people. London: Routledge & Kegan Paul.

Loorham, C. (1985) The Walpiri and the Rufous Hare Wallaby. Habitat, 14, 8-9.

Mack, (1988) *Mackku-ra Wangka* (Mack's Story), In: *Yintakaja-Lampajuya* These Are Our Waterholes. Community Resource Document.

Masini, R.J. (1988) Inland Waters of the Pilbara, Western Australia, Park I. Technical Series No.10, Environmental Protection Authority, Perth, Western Australia.

McKenzie, N.L. and W.K. Youngson (1983) Mammals. In: A.A. Burbidge and N.L. McKenzie (Eds.) Wildlife of the Great Sandy Desert, Western Australia. Wildl. Res. Bull. West. Aust., 12, 62-93.

Merlan, F. (1981) Some functional relations among subordination, mood, aspect and focus in Australian languages, pp175-210 in Australian Journal of Linguistics. 1(2).

——— (1987) 'Catfish and Alligator: Totemic songs of the Western Roper River, Northern Territory', pp143-167 in Clunies Ross, M.T. Donaldson and S.A. Wild (eds.) (1987). Songs of Aboriginal Australia, Oceania Monograph 32, Sydney: University of Sydney.

Morton, S.R. (in press) The Impact of European Settlement on the Vertebrate Animals of Arid Australia: A Conceptual Model. Proc. Ecol. Soc. Aust.

Myers, F.R. (1982) Always Ask: Resource Use and Land Ownership Among *Pintupi* Aborigines of the Australian Western Desert. In: N.M. Williams and E.S. Hunn. Resource Managers: North American and Australian Hunter-Gatherers. Australian Institute of Aboriginal Studies, Canberra.

——— (1986) Pintupi Country, Pintupi Self: Sentiment, Place and Politics among Western Desert Aborigines. Smithsonian Institute Press and Aboriginal Studies Press, Washington and Canberra.

O'Connell, J.R. (1976) Report of Investigations of Alyawara Land Claims. Department of Prehistory, Research School of Pacific Studies Australian National University, Canberra. (Mimeo. 27 pages)

O'Connor, R. and Associates (1987) A Report on the Inquiry into Traditional Links of Members of the Nomads Group with the Rudall/Yandagooge Region. Unpublished report (Mimeo. 26 pages)

O'Dea, K., N.G. White and A. J. Sinclair (1988) An Investigation of Nutrition-Related Risk Factors in an Isolated Aboriginal Community in Northern Australia: Advantages of a Traditionally Orientated Lifestyle. Med. J. Aust.. 148, 177-180.

Pate, D. (1986) The Effects of Drought on *Ngatatjara* Plant Use: An Evaluation of Optimal Foraging Theory. Human Ecology, 14, 95-115.

Peterson, N. (1972) Totemism Yesterday, Sentiment and Local Organisation among the Australian Aborigines, Man 7(1), 12-32.

——— (1975) Hunter-gatherer Territoriality: the Perspective from Australia. American Anthropologist 77, 53-68.

——— (1976) Tribes and Boundaries in Australia. Australian Institute of Aboriginal Studies, Canberra.

——— (1986) Australian Territorial Organization. Oceania Monograph 30.

Peterson, N. and J. Long. Australian Territorial Organisation. Oceania Monograph, 30.

Radcliffe-Brown, A.R. (1930-31) The Social Organization of Australian Tribes. (Oceania Monograph No.1), Oceania Publications, Sydney.

Rumsey, A. (n.d.) Language Groups in Australian Aboriginal Land Claims. Unpublished paper, presented at the 5th International Conference on Hunting and Gathering Peoples, Darwin, 1988.

Saxon, E.C. (Ed.) (1984) Anticipating the Inevitable: A Patch-Burn Strategy for Fire Management at Uluru (Ayers Rock-Mt. Olga) National Park. CSIRO, Melbourne.

Scarlett, N., N. White and J. Reid (1982) "Bush Medicines": The Pharmacopoeia of the Yolngu of Arnhem Land. In: J.C. Reid (ed.) Body, Land and Spirit: Health and Healing in Aboriginal Society. University of Queensland, St. Lucia, Queensland.

Senft, R.L., M.B. Conghenour, D.W. Bailey, L.R. Rittenhouse, O.E. Sala and D.M. Swift (1987) Large Herbivore Foraging and Ecological Hierarchies. Bioscience, 37(11), 789-799.

Senior, C.M. (1987) "Tourism and Aboriginal Heritage with Particular Reference to the Kimberley, reflecting the situation as at September 1987. Unpublished report prepared for theWestern Australian Museum.

Shapiro, W. (1979) Social Organization in Aboriginal Australia. Australian National University Press, Canberra.

Stafford-Smith, D.M. and G. Pickup (in press) Pattern and Production in Arid Lands. Proc. Ecol. Soc. Aust.

Stanner, W.E.H. (1965) Aboriginal Territorial Organization: Estate, Range, Domain and Regime, Oceania 36(1), 1-26.

Steve Szabo (1987) Aboriginal Rangers Training Program(ANPWS/CALM).

Stevens, (1988) Inhabited National Parks. East Kimberley Working Paper, East Kimberley Impact Assessment Project.

Strehlow, T.G.H. (1971) Songs of Central Australia. Sydney: Angus and Robertson.

Suijdendorp, H. (1981) Responses of the Hummock Grasslands of North-Western Australia to Fire. In: A.M. Gill, R.H. Groves and I.R. Noble (eds.), Fire and The Australian Biota. Australian Academy of Science.

Sutton, P. (1976) Linguistic Aspects of Ethnobotanical Research, St. Lucia, Queensland. Unpubl. Manuscript, Australian Institute of Aboriginal Studies.

——— (1978) Wik: Aboriginal Society, Territory and Language at Cape Keerweer, Cape York Peninsula, Australia. Ph.D. thesis, University of Queensland.

Sutton, P. and B. Rigsby (1982) People with "Politicks": Management of Land and Personnel on Australia's Cape York Peninsula. In: N.M. Williams and E.S. Hunn (eds.) Resource Managers: North American and Australian Hunter-Gatherers, Australian Institute of Aboriginal Studies.

Tindale, N.B. (1974) Aboriginal Tribes of Australia. University of California Press, Berkeley.

Tonkinson, R. (1974) The Jigalong Mob: Victors of the Desert Crusade, Benjamin/Cummings, Menlo Park.

——— (1978) The Mardudjara Aborigines: Living the Dream in Australia's Desert, Holt, Rinehart and Winston, New York.

——— (1987) Mardujarra kinship. In D. Mulvaney and J. White (eds), Australia to 1788, Vol. 1, Australians: a Historical Library, Fairfax, Syme and Weldon, Sydney, pp 196-219.

——— (1988) 'Ideology and domination' in Aboriginal Australia: a Western Desert test case. In T. Ingold, D. Riches and J. Woodburn (eds), Hunters and Gatherers (Vol.I): Property, Power and Ideology, Berg, Cambridge, pp170-84.

——— (n.d.) Report on Rudall River Visit, August 1987. Unpublished report. (Mimeo 11 pages).

Trigger, D. (1987) Languages, linguistic groups and status relations at Doomadgee, an Australian settlement in North-West Queensland, Australia, Oceania, 57, 217-38.

Turner, D. (1980) Australian Aboriginal Social Organisation. Humanities Press and Australian Institute of Aboriginal Studies, Atlantic Highlands and Canberra.

Veth, P.M. and F.J. Walsh (1986) Old Camping Places and Plant Use in *Martujarra* Lands. Community Resource Document, Perth.

——— (1988) The Concept of 'Staple' Plant Foods in the Western Desert Region of Western Australia. Australian Aboriginal Studies, 1988/2, 19-25.

Veth, P.M. and Hiscock (n.d.) The tula adzes ain't : a re-analysis of the adzes from Puntutjarpa. Paper presented to the Technology Conference, Armadale, 1988.

Walsh, F.J. (1987) Patterns of Plant Resource Use by *Martujarra* Aborigines. M.Sc. (Prelim.) Dissertation. University of Western Australia.

——— (1988) The Influence of the Spatial and Temporal Distribution of Plant Food Resources on *Martujarra* Subsistence Strategies. Australian Archaeology, 25, 88-101.

——— (in press) Traditional Patterns of Resource Use and Management by the *Martujarra* of the Western Desert. Proc. Ecol. Soc. Aust.

Wild, S.A. (1987) 'Recreating the *Jukurrpa* : Adaptation and innovation of songs and ceremonies in Warlpiri society', pp97-120 in Clunies Ross, M., T. Donaldson and S.A. Wild, (eds.) Songs of Aboriginal Australia, Oceania Monograph 32, Sydney: University of Sydney.

White, Neville G. (1978) A Human Ecology Research Project in the Arnhem Land Region: An Outline. Aust. Inst. Aboriginal Stud. Newsl., 9, 39-52.

Williams, N. (1986) The Yolngu and their land. Stanford University Press and the Australian Institute of Aboriginal Studies, Stanford and Canberra.