ABORIGINAL LAND*

BY JOHN TOOHEY**

1 INTRODUCTION

I shall begin with a riddle, in fact three riddles:

1 What sort of interest in land is held as an estate in fee simple but is inalienable?
2 What sort of interest in land is held by a registered proprietor who has no power to make decisions relating to it, except with the consent of another, and who must act at the direction of that other?
3 What sort of interest in land does not carry with it ownership of minerals but can preclude mining thereon?

The answer to each of these questions is – Aboriginal land under the Aboriginal Land Rights (Northern Territory) Act 1976 (Cth) ("the Land Rights Act").

The purpose of this paper is not to trace the course of judicial history in this country, from the robust assertion of the Privy Council that the colony of New South Wales "consisted of a tract of territory practically unoccupied, without settled inhabitants or settled law, at the time when it was peacefully annexed to the British dominions"[1] to the judgment of Blackburn J in *Milirrpum* v *Nabalco Pty Ltd.*[2] His Honour found that evidence relating to Aboriginals in the Gove Peninsula showed a "government of laws, and not of men", but that the right of the clan to use or enjoy land bore so little resemblance to property, as Anglo-Australian law understands the term, that the claims made before him were not in the nature of proprietary interests.[3] The decision has been much debated and there is before the High Court, though not yet heard, a further attempt to assert the existence of Aboriginal title to land within the conventional legal framework.[4]

The notion of Aboriginal people as "a domestic dependent nation", a concept familiar in the United States since the decision of Chief Justice Marshall in *Cherokee Nation* v *State of Georgia*[5] has found no place in Australian law.[6] And in this country there has been no history of treaties, as in Canada and the United States, which give some acknowledgement to

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[1] *Cooper* v *Stuart* (1889) 14 AC 286, 291.
[2] (1971) 17 FLR 141.
[3] *Ibid* 267, 273.
[4] *Mabo and others* v *Queensland and the Commonwealth* (1982) 4 Aboriginal Law Bulletin 1.
[5] (1831) 5 Peters Supreme Court Reports 1, 17.
[6] *Coe* v *Commonwealth of Australia* (1979) 53 ALJR 403, 408.

indigenous title to land and may form the basis for legal action, if only for damages for breach of treaty arrangements.

But in the 1970s a political decision was made by the Commonwealth Government to give legal recognition in the Northern Territory to Aboriginal ownership of land and to accord it a place within the Anglo-Australian system of registration of title and dealings with land. The Land Rights Act was the result. It is the implications of that decision and of comparable decisions made since by some State governments with which this paper is concerned.

2 RECOGNITION OF ABORIGINAL LAND

The recognition of land as Aboriginal land gives rise to a number of questions, not all of which are questions of law.

It may be apparent from the residence of Aboriginals in a particular area over many years, their historical associations with the land and the use made by them of it, that the area may readily be regarded as traditionally theirs. This is in effect what happened in the Northern Territory to those large areas in Arnhem Land and in the south west which had been Aboriginal reserves. Without the requirement of any hearing, the Land Rights Act identified this land in Schedule 1 and provided for its vesting in land trusts. It was not thought necessary to identify the Aboriginal owners of the land concerned; the terms of reference of the Aboriginal Land Rights Commission, constituted by Woodward J, called for "arrangements for vesting title to land in the Northern Territory of Australia now reserved for the use and benefit of the Aboriginal inhabitants of that Territory ...".

The effect of the Act was to vest title to those particular areas in Aboriginal land trusts "for the benefit of groups of Aboriginals entitled by Aboriginal tradition to the use or occupation of the land concerned, whether or not the traditional entitlement is qualified as to place, time, circumstance, purpose or permission".[7] Other categories of land became the subject of a hearing before the Aboriginal Land Commissioner.

The qualification of "place, time, circumstance, purpose or permission" is a recognition of the fact that in Aboriginal law an entitlement to the use or occupation of land may carry restrictions of gender in the case of particular sites, or restrictions of time while ceremonies are in progress, or restrictions of purpose, so that there may be an entitlement to the use or occupation of land for residence or food gathering but not for the performance of ceremonies.

The notion of an entitlement, qualified as to permission, presents some difficulties. It seeks to reflect an obligation which is to some extent social, that even if one is entitled to go on to land there are persons in authority who should first be told. Failure to do so is a grave discourtesy even though the person approached might see his or her function as confined to warnings about places regarded as dangerous because of the presence of a malign spirit.

The Pitjantjatjara Land Rights Act 1981 of South Australia was the result of negotiations between successive governments and the Pitjantjatjara over

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[7] Aboriginal Land Rights (Northern Territory) Act 1976 (Cth) s 4(1).

several years. The Act identified a large area of land in the north west of South Australia and empowered the Governor to issue a land grant, in fee simple, to the Anangu Pitjantjatjaraku, an Aboriginal organisation, for the benefit of the Pitjantjatjara people. In that respect the statute followed the approach taken to Schedule 1 land in the Land Rights Act. So too did the Maralinga Tjarutja Land Rights Act 1984 of South Australia.

The presence of Aboriginals on a particular government settlement or mission will not always be a guide as to those to whom the land traditionally belongs. Too often Aboriginals were collected in or attracted to settlements with little regard to where their traditional land lay. Ali Curung (formerly Warrabri), north-east of Alice Springs, is but one of many cases of a settlement on the land of one Aboriginal group, to which people from other groups have been brought or have found their way. It is on the country of the Kaititja who are now in a minority among the Warlpiri, the Warumungu and the Alyawarra. The consequence is a community lacking the cohesion that derives from belonging to one land holding group. There is a desire on the part of those whose country lies elsewhere to return to their own country and resentment on the part of those whose traditional land is occupied by others.

3 ABORIGINAL OWNERSHIP OF LAND

A *Traditional Aboriginal owners*

What then is meant by ownership of Aboriginal land? How does one determine the Aboriginal owners of a particular area? Let me return to the Land Rights Act, not because I wish to confine this paper to the legislation of the Northern Territory, but because it is there that the parliamentary draftsman has had to formulate answers to these questions and others have had to implement those answers.

Before doing so I wish to suggest that, as Blackburn J pointed out in *Milirrpum*, "the fundamental truth about the aboriginals' relationship to the land is that whatever else it is, it is a religious relationship".[8]

It was explained by the late Professor W E H Stanner in this way:

> No English words are good enough to give a sense of the links between an Aboriginal group and its homeland. Our word "home", warm and suggestive though it be, does not match the Aboriginal word that may mean "camp", "hearth", "country", "everlasting home", "totem place", "life source", "spirit centre" and much else all in one. Our word "land" is too spare and meagre. We can now scarcely use it except with economic overtones unless we happen to be poets. The Aboriginal would speak of "earth" and use the word in a richly symbolic way to mean his "shoulder" or his "side". I have seen an Aboriginal embrace the earth he walked on. To put our words "home" and "land" together into "homeland" is a little better, but not much. A different tradition leaves us tongueless and earless towards this other world of meaning and significance.[9]

During the hearing of the Finniss River land claim, one of the witnesses spoke in these terms:

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[8] (1971) 17 FLR 141, 167.

[9] W E H Stanner, *White Man Got No Dreaming* (1979) 230. The passage is from one of Professor Stanner's Boyer Lectures "After the Dreaming" (1968). See also Brennan J in *Re Toohey ex parte Meneling Station Pty Ltd* (1982) 57 ALJR 59, 70.

> We belong to this special place. We do not think to possess the earth, the trees, rocks and waters of our traditional home, because it is the other part of us. It brought us forth and has taken many of us back ... There are the sacred places of the dreaming. There are the special places for food gathering, water to drink and where we once hunted for game to feed us. This land is our heritage; our home; it is our history. This land is our very life. Separate us from it and we are nothing.[10]

People speak of the land as "father" or "mother". They give witness to the very special relationship that exists between them and the land by complex rituals of song and dance. In those land claims associated with the Centre, women often chose to give evidence orally and then to perform *awulya*, dances in which they depicted their country and the stories associated with it.[11]

It is against that background that the Land Rights Act grapples with traditional land claims, meaning "a claim by or on behalf of the traditional Aboriginal owners of the land arising out of their traditional ownership". The expression "traditional Aboriginal owners" is defined to mean a local descent group of Aboriginals who –

> (a) have common spiritual affiliations to a site on the land, being affiliations that place the group under a primary spiritual responsibility for that site and for the land; and
> (b) are entitled by Aboriginal tradition to forage as of right over that land.[12]

The definition has a number of components – local descent group, primary spiritual responsibility, common spiritual affiliations and entitlement to forage. None of these is a term of art and, with the exception of the expression "local descent group", none has any particular significance in the language of anthropology.

The expression "local descent group" seems to have had its origin in the writings of the English anthropologist E R Leach and has crept into the writings of Australian anthropologists.[13] The adjective "local" does not require residence; it emphasises the nature of ties to a locality, ties that are built into the definition in any event through the reference to common spiritual affiliations to a site on the land and to primary spiritual responsibility for that site and for the land. A local descent group is a collection of people, related by some principle of descent, possessing ties to the land. The principle of descent is one which the claimants themselves deem relevant.

While there is a respectable body of anthropological thinking that ties the land holding group to those who are members of a patriclan (that is those claiming descent through their father), the hearing of land claims since 1977 has made it apparent that the principle of descent may vary from group to

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[10] Report by the Aboriginal Land Commissioner to the Minister for Aboriginal Affairs and to the Administrator of the Northern Territory: *Finniss River Land Claim* (1981) para 258.

[11] Report by the Aboriginal Land Commissioner to the Minister for Aboriginal Affairs and to the Administrator of the Northern Territory: *Anmatjirra and Alyawarra Land Claim to Utopia Pastoral Lease* (1980) paras 157-162.

[12] Both concepts are defined in the Aboriginal Land Rights (Northern Territory) Act 1976 (Cth) s 3(1).

[13] There is a discussion of "local descent group" in the *Anmatjirra and Alyawarra Land Claim to Utopia Pastoral Lease* report, supra n11, paras 109–121, and in the Report by the Aboriginal Land Commissioner to the Minister for Aboriginal Affairs and to the Administrator of the Northern Territory: *Lander Warlpiri Anmatjirra Land Claim to Willowra Pastoral Lease* (1980) paras 85-89.

group. In some cases it may be matrilineal (tracing descent through the mother) or, as in the case of the Pitjantjatjara and Yankuntjatjara associated with the Uluru land claim,[14] ambilineal (tracing descent through either father or mother).

The words "common spiritual affiliations" are ordinary English words which have been taken to mean that the members of the group must possess associations of a spiritual nature with sites on the land in question.

An expression which has given rise to much debate in the course of the land claim hearings is "primary spiritual responsibility". "Primary" suggests "of the first importance", meaning that the responsibility of the members of the group is seen as more important than that of anyone else. The word "spiritual", at least as a concept, is reasonably well understood. The term "responsibility" suggests accountability for something, a charge for which one is responsible, in this case sites and land.

It has been necessary to grapple with these concepts in the course of the land claims in order to identify, with some precision, the traditional owners of land. Most often, the debate has centred on whether the traditional owners include those whom Aboriginals speak of as "workers" or "managers" as well as "owners" or "bosses" or whether it is confined to the latter. These expressions, derived from the language of cattle stations, distinguish those within a group whose membership is defined in terms of the patriline, and others (the children of the female members of the patriline for instance) who have responsibilities, often paramount, in the organisation and performance of ceremonies. In the Top End the respective categories are those of *mingirringi* and *djunggayi*, in the Centre those of *kirda* and *kurdungurlu*. In a number of land claims the concept of traditional owners has been held to extend to this wider group.[15]

The English expressions just mentioned can mislead if applied too literally. They suggest a hierarchy which does not exist. Dr D Bell, an anthropologist who has worked on a number of land claims, commented in a recent publication:

> Certainly *kurdungurlu* "work", but for Aborigines the "work" analogy is applied consistently to the spiritual domain. Ceremonial activity is called "business", the ritual store-house the "office" and the responsibility to prepare correctly and to perform is "work". The roles are laid down by the Law.[16]

The expression "entitlement to forage" does not present any great difficulty, except to note that one may be entitled to forage over a much wider area of land than that for which one has primary spiritual responsibility. And as Brennan J has pointed out:

> A traditional right to forage is the only "right" included as an element in the definition, but even that right is not necessarily exclusive of the foraging rights of others.[17]

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[14] Report by the Aboriginal Land Commissioner to the Minister for Aboriginal Affairs and to the Minister for Home Affairs: *Uluru (Ayers Rock) National Park and Lake Amadeus/Luritja Land Claim* (1980).

[15] See generally G J Neate, "Legal Language Across Cultures: Finding the Traditional Aboriginal Owners of Land" (1981) 12 F L Rev 187.

[16] D Bell, *Daughters of the Dreaming* (1983) 139.

[17] *Re Toohey; ex parte Meneling Station Pty Ltd* (1982) 57 ALJR 59, 71.

The definition of traditional Aboriginal owners in the Land Rights Act has been criticised by some as being unduly narrow and paying insufficient regard to other ties that Aboriginals may have with land, for instance the place where they were conceived or born. The Pitjantjatjara Land Rights Act requires of traditional owners, in relation to the land described in the Act, only that they have "in accordance with Aboriginal tradition, social, economic and spiritual affiliations with, and responsibilities for, the lands or any part of them."[18]

B *Expert Evidence*

It is not the object of this paper to explore to any depth the concept of traditional Aboriginal owners of land. But the expression, or something like it, is used in legislation of the Commonwealth and of South Australia and some understanding is useful for anyone called upon to implement or construe such legislation.

Courts or tribunals, asked to deal with land claims based upon traditional ownership, will be assisted by the evidence of anthropologists. The experience of the land claims in the Northern Territory has been that the evidence of anthropologists is of great help in understanding systems of land holdings and relevant principles of descent. The language of the statutory definition of traditional ownership, so far as existing definitions are a guide, is for the most part not technical. Hence questions will arise as to the precise role of the anthropologist, though to a tribunal not constrained by evidentiary rules the questions will not be so troublesome.

If the anthropologist does no more than record statements made by Aboriginal claimants, his or her evidence will be hearsay though, in the hands of a tribunal, not necessarily to be rejected on that ground. But an anthropologist, suitably qualified, may use statements made to him or her in the course of fieldwork to express a view of the model of land holding of a particular group. As Blackburn J commented in *Milirrpum*:

> The anthropologist should be able to give his opinion, based on his investigation by processes normal to his field of study, just as any other expert does. To rule out any conclusion based to any extent upon hearsay — the statements of other persons — would be to make a distinction, for the purposes of the law of evidence, between a field of knowledge not involving the behaviour of human beings (say chemistry) and a field of knowledge directly concerned with the behaviour of human beings, such as anthropology.[19]

The anthropologist is an observer and recorder of Aboriginal social organisation, with opinions that may and usually will be of great assistance in determining whether there are traditional Aboriginal owners of a particular area of land and, if so, who they are. Inevitably the anthropologist will come close to expressing opinions about the meaning of the relevant statutory definition. But the issue is not an anthropological one; it is about the meaning of a statute. And however flexibly that statute may be construed,

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[18] s 4.
[19] (1971) 17 FLR 141, 161.

it will have elements that must control decisions regarding traditional Aboriginal ownership.[20]

C *Land Claims*

Under the Land Rights Act the ascertainment of the traditional Aboriginal owners of an area of land is through the machinery of an application to the Aboriginal Land Commissioner. In making a recommendation to the Minister for Aboriginal Affairs for a grant of land (if thought appropriate) the Commissioner is required to find whether there are traditional Aboriginal owners of the land and, if there are, to comment upon the strength of their traditional attachment to that land. Other considerations enter into the Commissioner's report including the advantage that would accrue to Aboriginals if the claim were acceded to, the detriment to other persons or communities that might result and the effect which acceding to the claim would have on the existing or proposed patterns of land usage in the region.[21] The High Court has upheld the view taken in land claim reports that, on the proper construction of the Act, the Commissioner's function is to make recommendations based on a finding of traditional ownership and strength of attachment, and only to comment on questions of detriment. The final decision as to whether there will be a grant of land is one for the Minister to make.[22]

The Aboriginal Land Rights Act 1983 of New South Wales (assented to on 4 May 1983) confers upon the Land and Environment Court a roughly comparable function, though it is expressed in s 36 to be by way of appeal from a refusal by the Crown Lands Minister to grant a claim to what the Act describes as "claimable Crown lands".

D *Unowned Land?*

Some anthropologists contend that in Aboriginal law all land is owned, that there is never a point in time when there are not owners of land and that it must always be possible to identify those owners. Sometimes the contention is asserted rather than expounded, though in the Warlmanpa, Warlpiri Mudbura and Warumungu land claim an explanation was offered by Dr D Nash, a linguist, that in Aboriginal thinking "country must be owned, otherwise it would not exist" and that the process of succession will always ensure owners for country.[23]

In Aboriginal law the concept of alienability, as Anglo-Australian law understands it, seems unknown. Certainly no instance appears to have been recorded of land changing hands in any commercial sense. People are conscious of the possibility of a clan or land owning group, such as a *gunmugugur* of the Alligator Rivers Region, becoming extinct through the death of the few remaining survivors. In such a case there are processes of succession by which adjoining land owning groups may "take over" the land on the death

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[20] The role of the anthropologists is discussed in a number of reports under the Aboriginal Land Rights (Northern Territory) Act 1976 (Cth). See for instance the *Utopia* report *supra* n11 para 89 and *Finniss River* report, *supra* n10, para 134.

[21] ss 50(1), 50(3).

[22] *Re Toohey; ex parte Meneling Station Pty Ltd* (1982) 57 ALJR 59.

[23] Report by the Aboriginal Land Commissioner to the Minister for Aboriginal Affairs and to the Administrator of the Northern Territory: *Warlmanpa, Warlpiri, Mudbura and Warumungu Land Claim* (1982) para 97.

of the last survivor. The experience of the land claims would tend to confirm the view expressed by Woodward J that "taking over should be seen as a form of trusteeship rather than a transfer of rights."[24]

The history of Aboriginals since white settlement is one of movement and often of sudden dispersal. They have been driven from their traditional country by the development of towns, pastoral properties and mines. But the movement has not always been involuntary; towns and stations have had their own attractions.

In the Finniss River land claim there was evidence of a movement, at the turn of the century, of Maranunggu people from south of the Daly River to country between the Finniss and Reynolds River just south of Darwin. And there was evidence that the Kungarakany, who once occupied that land, had moved eastwards. In terms of the Land Rights Act, primary spiritual responsibility for particular sites and for the land on which they stood had been lost to the Kungarakany and gained by the Maranunggu, though not by any process of succession.

During the Alligator Rivers Stage II land claim, old men, the last survivors of certain land holding groups, spoke of the burden of responsibility of "looking after" large areas of land. The term "looking after" was used sometimes to indicate ownership, sometimes with a sense of trusteeship because traditional owners were dead or absent and sometimes in the sense of visiting country to protect it against desecration. One of the claimants said:

> Nobody alive any more. We got too much land ourselves. We got a lot of problems ourselves and we don't want to get more land. We would like everybody to be able to share the whole lot.[25]

E *Boundaries of Aboriginal Land*

While Aboriginal people, at any rate in the Northern Territory, generally have a clear idea of where their country lies, they do not seek to define it with precision nor, in the past, has there been any reason why they should do so. In the Top End, where physical features are more pronounced, a river such as the Daly River or the East Alligator River may mark the boundary between the country of different land holding groups. Even so, people tend to define their land by reference to what lies within or without, rather than by attempting to delimit boundaries.

In the Centre, where topographical features are less pronounced, Aboriginals define land by reference to clusters of sites and to handover points on dreaming tracks (the tracks of the mythical ancestors) which may stretch for hundreds of miles. Usually the handover point will be related to a water hole or some such feature, sometimes with a notion of common ownership of an area where the handover takes place.

This of course presents problems of definition when a certificate of title is called for. In the Northern Territory the Registrar of Titles has been prepared to accept surveys in relation to some large areas that lacked the precision required where land is in more closely settled areas.

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[24] Aboriginal Land Rights Commission: Second Report (1974) 138.

[25] Report by the Aboriginal Land Commissioner to the Minister for Aboriginal Affairs and to the Administrator of the Northern Territory: *Alligator Rivers Stage II Land Claim* (1981) para 118.

F *Land Available for Claim*

Any system of Aboriginal land claims must define the land available for claim. The Land Rights Act has made available for claim "unalienated Crown land" and "alienated Crown land in which all estates and interests not held by the Crown are held by, or on behalf of, Aboriginals".[26]

Unalienated Crown land will ordinarily not involve any person other than the Crown and the claimants, except where mining is involved. The grant of a mining interest does not change the status of unalienated Crown land for land claim purposes.[27] Of course a claim may have implications for adjoining land owners, particularly in terms of access to their land or the use of water. There is also the wider question of Crown land that is or may be required at some future date for a public purpose, such as a park or the construction of a dam or power lines.

The reference to alienated Crown land in effect means that pastoral leases held by Aboriginals may be claimed under the Land Rights Act and thus converted into the form of freehold for which the Land Rights Act provides.[28]

G *The Registered Proprietor*

When grants of land are made under the Land Rights Act, who is the registered proprietor? The Act refers to Aboriginal land trusts, established for the purpose of holding land granted under the Act. The land trust is little more than a bare trustee, having no power to act without the consent of the relevant land council and obliged to act at the direction of that council.

As mentioned earlier, the land trust holds the land for the benefit of those entitled by Aboriginal tradition to the use and occupation of the land, a concept that does not require identification of the beneficiaries at the time the grant is made. However, if land is granted as the result of a hearing before the Aboriginal Land Commissioner, the traditional owners will have been identified. In the case of Schedule I land, there has been no land claim hearing and therefore no necessary identification of the traditional owners or of those entitled to the use and occupation of the land.

Land councils are established under the Act for particular areas. They have a wide range of functions and effectively make decisions in regard to Aboriginal land.

The Act provides for the Governor-General to execute a deed of grant "of an estate in fee simple" in land that has been recommended for a grant by the Minister following a report by the Aboriginal Land Commissioner or in land described in Schedule I to the Act.

The relevant legislation of South Australia and New South Wales also provides for the grant of an estate in fee simple.

H *Characteristics of the Estate in Fee Simple*

To apply the term "estate in fee simple" to land vested in a land trust under the provisions of the Land Rights Act is to invite some comment. In

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[26] s 50(1).
[27] s 3(2).
[28] *In re Ross; ex parte A-G for Northern Territory* (1979) 54 ALJR 145.

Commonwealth v *New South Wales* Isaacs J gave his unqualified approval to the statement in *Challis's Real Property* (3rd ed) 218 that:

> A fee simple is the most extensive in quantum, and the most absolute in respect to the rights which it confers, of all estates known to the law. It confers, and since the beginning of legal history it always has conferred, the lawful right to exercise over, upon, and in respect to, the land, every act of ownership which can enter into the imagination, including the right to commit unlimited waste; and, for all practical purposes of ownership, it differs from the absolute dominion of a chattel, in nothing except the physical indestructibility of its subject. Besides these rights of ownership, a fee simple at the present day confers an absolute right, both of alienation *inter vivos* and of devise by will.[29]

Although Challis's description may have been true of English law in the late 19th century, it is doubtful that it offered a complete picture of Australian law in the 1920s. Certainly it presents conceptual difficulties so far as the Land Rights Act is concerned. In particular the lawful right to exercise every act of ownership which can enter into the imagination and the absolute right of alienation are both absent.

The doctrine of the common law is that:

> Mines, quarries and minerals in their original position are part and parcel of the land. Consequently the owner of surface land is entitled prima facie to everything beneath or within it, down to the centre of the earth.[30]

Even at common law, mines of gold and silver belong to the Crown and of course, in Australia, from an early time grants of land contained a reservation of minerals.

A deed of grant under the Land Rights Act is expressed to be subject to a reservation that the right to any minerals vested in the Commonwealth remains with the Commonwealth and the right to any minerals vested in the Northern Territory remains with the Territory.[31] It should be remembered that, when the Land Rights Act was enacted, the Northern Territory (Self-Government) Act 1978 (Cth) had not been passed. Self-government meant that the Land Rights Act had to accommodate the notion that all interests of the Commonwealth in land in the Territory are vested in the Territory; all interests in land held from the Commonwealth are held from the Territory; and all interests of the Commonwealth in respect of minerals, other than uranium and other prescribed substances under the Atomic Energy Act 1953 (Cth), are vested in the Territory.[32] As I shall show later, though there was a reservation of minerals the Land Rights Act precludes mining on Aboriginal land except with the consent of the Minister for Aboriginal Affairs and the relevant Land Council.

The Pitjantjatjara Land Rights Act 1981 (SA) did not disturb the notion of Crown ownership of minerals though it placed certain constraints on mining. The Aboriginal Land Rights Act 1983 (NSW) adopted a rather different approach, including in a transfer of lands to an Aboriginal land council "the transfer of the mineral resources or other natural resources contained in those

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[29] (1920-1923) 33 CLR 1, 42.
[30] *Halsbury's Laws of England* (4th ed 1980) XXXI para 16.
[31] s 12(2).
[32] Northern Territory (Self-Government) Act 1978 (Cth) ss 69(2), (3), (4).