

Lost Lands Report



DEPARTMENT OF
INDIGENOUS AFFAIRS



Foreword

Over a number of years, many Aboriginal people have expressed a desire for Government to undertake a review of lands in Western Australia which were once reserved for Aboriginal use but, for one reason or another, are no longer part of the Aboriginal estate. The Lost Lands Report attempts to identify all lands originally set aside for Aboriginal “use and benefit” but which are no longer available and also provides an informative account of the changing legislative, administrative and social contexts of these reserves.

It is my hope and that of the current Government that the Report will be a valuable resource for Aboriginal people throughout the State, and will perhaps assist them to regain a stake in some of these lands where possible.

In the interests of reconciliation, it is important for all of us to be aware that in the past many of the laws and policies relating to Aboriginal people were unjust and oppressive, reflecting the prevailing public attitudes of the time. However, it is equally important for all people of this State to understand how far things have progressed since those times.

While many of these Reserves may have sad memories for the Aboriginal community, they were also the source of much joy and community bonding with people developing close ties with these areas. Many members of the Aboriginal community may still retain those ties and wish to renew them.

Some 12 per cent of the State remains reserved for “Aboriginal use and benefit”. This land is held by the Aboriginal Lands Trust (ALT). The present Government is committed to the return of ALT estate to the direct management and control of Aboriginal people and this process is currently underway. This initiative is a matter of pride for the Government and reflects the changing public attitudes as well as the desire for reconciliation within our society.

With regard to the former Aboriginal reserves identified in this Report, I have requested the Department of Indigenous Affairs (DIA), together with the ALT, to assist the Aboriginal community to further their interests in these lands where possible, at the same time ensuring that the current rights and interests of other land users are respected.

I take great pleasure in presenting this Report in the hope that it will help all Western Australians to better understand our past and work towards a more conciliatory future.



JOHN KOBELKE MLA
MINISTER FOR INDIGENOUS AFFAIRS
NOVEMBER 2003



Explanatory notes

This document was drafted by the former Aboriginal Affairs Department in December 1997, as a response to a recommendation contained in the report of the Review of the Aboriginal Lands Trust of 1996.

The research for the document was undertaken between December 1996 and August 1997. As is acknowledged in this document, the sole source of land tenure information, utilised at that time was the *Crown Reserves Register* as administered by the [then] Department of Land Administration.

Other Land tenures NOT listed may include temporary reserves, freehold lands, conditional purchase leases, pastoral leases and other leases or land interests issued under land legislation prior to 1997.

This document does NOT provide confirmation of the current land tenure of the places described herein.

For inquiries about the Crown Estate (Reserves and land interests issued by the State of Western Australia), refer to:

*Asset Management Services, Department of Planning & Infrastructure,
Post Office Box 1575, Midland WA 6936,*

and for freehold Lands, refer to :

*The Registrar of Titles, Department of Land Information,
Post Office Box 2222, Midland WA 6936.*

Readers requiring assistance about places listed herein may contact:

*The Department of Indigenous Affairs, Land Branch, Post Office Box 7770,
Cloisters Square, Perth WA 6850.*

A current listing of the Estate of the Aboriginal Lands Trust & the Aboriginal Affairs Planning Authority can be found at www.dia.wa.gov.au.

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2 Abbreviations

| | |
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| AAD | Aboriginal Affairs Department |
| AD | Aborigines Department |
| AIM | Aboriginal Inland Mission |
| ALT | Aboriginal Lands Trust |
| DAF | Department of Aborigines and Fisheries |
| DCW | Department of Community Welfare |
| DIA | Department of Indigenous Affairs |
| DLS | Department of Lands and Surveys |
| DNA | Department of Native Affairs |
| DNW | Department of Native Welfare |
| DOLA | Department of Land Administration |
| FCS | Department of Family and Children's Services |
| GEHA | Government Employees Housing Authority |
| SHC | State Housing Commission |

3 Introduction

This report has been written in response to a supplementary recommendation of the Report of the Review of the ALT:

that the Western Australian Government conduct a review into Aboriginal reserves which have been lost to the Aboriginal land estate and options for their recovery or replacement.¹

This recommendation was included in the Report of the Review of the ALT because of long-standing interest on the part of many Western Australian Aboriginal people in the recovery of land which had once been reserved for their accommodation. During consultations with Aboriginal community representatives in 1995, strong expressions of interest in the recovery of these reserves were made to Neville Bonner, Chairman of the Review of the ALT. Twelve years earlier, similar concerns were also expressed to Commissioner Paul Seaman during the Aboriginal Land Inquiry. The Report of the Aboriginal Land Inquiry, which was released in 1984, made the following statement:

Aboriginal people frequently submitted that past governments had moved them from their homes on reserves at the stroke of a pen so that the land could be used for other purposes. The point was made with great feeling in the South West and at Roebourne, and it is clear from the evidence that the submissions are accurate. I accept that Aboriginal people while despising the methods by which they were put on the reserves and moved off them, have very deep feelings for them as homes and places where parents died and children were born.²

As a first step towards the enactment of the aforementioned supplementary recommendation of the Report of the Review of the ALT, the present document identifies all lands in Western Australia that were at one time reserved with the intention that they be used by or for Aboriginal people, and details are given of all such reserved lands which are not presently vested directly with Aboriginal corporations, or Aboriginal individuals, or with the ALT.

In compiling this report it was difficult to determine which of the many past and current Aboriginal reserves that are no longer vested with Aboriginal interests should legitimately be considered to be lost to the Aboriginal estate. These reserves vary greatly in terms of their size, geography, their intended purpose and their history of use.

They may also vary considerably with respect to the degree and nature of attachment that Aboriginal people may have to them. Consequently, no attempt was made to distinguish between former reserves in this way. Nor was any attempt made to comment on any legal claim that Aboriginal people may have to any of these reserves. Instead, the reserves are simply presented in two categories.

The first category contains all those reserves which are considered to most clearly correspond to those referred to by the supplementary recommendation of the Report of the Review of the ALT. These are lands which were reserved with the intention that Aboriginal people were to permanently reside on those lands and which are now no longer being used for such purposes. Thus, Category One Reserves are those which were variously vested with ministers, government departments, churches, missions, or other non-government bodies for the following purposes:

- the protection of Aboriginal people;
- the segregation of Aboriginal people;
- farming by Aboriginal individuals;
- Aboriginal pastoral stations;
- native camping;
- Aboriginal settlements; and
- native housing.

The location of Category One Reserves is shown by map, or in the case where the reserve comprised one or more residential housing lots then the location is given by the town lot number. If a reserve consisted of lands other than town lots and a map could not be found, then just the location recorded in the Crown Reserve Register is given. Category One Reserves identified by maps are displayed first, according to reserve number, and those identified by town lot numbers or the location recorded in the Crown Reserve Register follow, also by reserve number.

In many cases the area of the reserves is given as it was originally recorded, in terms of acres, roods and perches. Readers should therefore be aware that where the area of a reserve is given in empirical measures, for example, 0.1.12.3 acres, the area is in fact 0 acres, 1 rood and 12.3 perches. Where 40 perches = 1 rood, 4 roods = 1 acre, 1 acre = 2.47 hectares or 2047 square metres. The familiar family quarter acre block equals 1012 square metres.

The second category contains all other lands which were reserved with the intention that they be used for the administration of Aboriginal people, for Aboriginal physical or spiritual welfare, or for the preservation of Aboriginal Heritage, but *not* with the intention that Aboriginal people permanently reside on the land. Reserves which could arguably fit in either category, such as Aboriginal hostels or Aboriginal cemeteries, have also been placed in Category Two, as have reserves on which Aboriginal people currently reside and which are also vested with churches, missions, government ministers or government departments. Information on these reserves is also displayed according to reserve number.

All reserves that have at any time been created with the intention that they be used for 'Aboriginal' purposes are listed in the index. This includes those reserves presently vested with Aboriginal corporations and with the ALT.

It is important to stress that this report only identifies lands which have been recorded in the Crown Reserves Register. The report does not identify freehold land which may have at any time been owned by Aboriginal people, nor does it list 'unofficial reserves': freehold land that was once either rented or purchased by government departments for the purposes of Aboriginal accommodation. Those seeking further information about freehold lands are encouraged to contact the Department of Land Administration (DOLA).

Due to limited research time, the report also does not identify land which may have been excised from current reserves. Those seeking information about land excised from current reserves are encouraged to contact DOLA.

For the benefit of readers who may have little, if any, experience or knowledge of the history of the reserved land identified, this report opens with an overview of the historical context of Western Australia's Aboriginal reserve system. The historical overview has been included with the aim of improving public understanding of the multifaceted and extremely influential role that these reserves have played in the history of Aboriginal affairs in Western Australia and in the lives of many Aboriginal people. This overview includes four more detailed accounts of the reservation of land for Aboriginal people in and around the towns of Katanning, Brookton, Guildford and Collie. These locations receive extra attention in the report in an attempt to improve public

understanding of what the reservation of land for Aboriginal people has meant on a local level.

Although the preparation of this document involved the contributions and cooperation of a number of Aboriginal people, it must be stressed that the main sources used have been official government records and the works of white historians. In sifting through the available material it was often difficult to find any consistent Aboriginal voice, and the relative silence in the records with respect to an Aboriginal perspective is a sobering reminder of how much work still needs to be done in order to rectify a startling deficiency in historical representation. Whilst the report is an important addition to the body of public information concerning the reservation of land for Aboriginal people in Western Australia, it cannot claim to have addressed that deficit. Instead, the report is presented in the hope that it will prove to be a useful reference for Aboriginal people and non-Aboriginal people interested in the location and history of former Western Australian Aboriginal reserves.

¹ Bonner, N.T., *Report of the Review of the Aboriginal Lands Trust*, Government of Western Australia, 1996, p. 73.

² Seaman, P., *The Aboriginal Land Inquiry*, Government of Western Australia, September 1984: 4.11.

3.1 The history of the Aboriginal reserve system in Western Australia

The establishment of the Swan River Colony in 1829 was accompanied by a declaration made by Governor Stirling that land in what is now known as Western Australia was to be British Sovereign Territory. Implicit in this declaration was a convenient assumption of great legal significance: that the indigenous inhabitants, the many Aboriginal peoples of Western Australia, did not possess any rights to the land because they displayed no recognisable form of social, economic, or religious organisation. According to English law, if unoccupied land was acquired by the Crown then the statute law of England to the date of acquisition, and the common law, which was deemed to be certain and unchanging, were to be applied throughout the new colony. However, if land in the possession of an indigenous people was conquered by the Crown then English law provided for the continuation of indigenous laws, with the reservation that the Crown had the right to override those laws and to introduce new laws. Stirling's declaration thus paved the way in English law for the "settlement" of Western Australia, rather than its conquest, and the introduction of English laws and customs as if Western Australia was *terra nullius* – nobody's land.¹

This injustice did not go completely unnoticed by the early colonists, a number of whom willingly conceded the existence of established patterns of Aboriginal land-holding:

the right of property is well recognised among them the land appears to be apportioned to different families. (Armstrong, 1836)²;

the quantity of land owned by each individual being very considerable . . . others of his family have certain rights over it. (Scott Nind, 1831)³;

particular districts are not merely the property of particular tribes; particular sections . . . are recognised . . . as the property of individual members. (John Eyre, 1845)⁴

In assuming sovereignty of Western Australia, the Crown also claimed the power to grant land tenure, which it did almost immediately in order to satisfy the expectations of settlers, impatiently awaiting the allocations of land they had been led to believe they would receive. The Swan River Colony was the first British colony in Australia founded exclusively for private settlement, and the only one to be founded on a land grant

system, where grants were apportioned according to the value of assets and labour introduced by settlers.⁵

The Crown's conception of a rightful relationship to land was in many ways incompatible with that of Aboriginal people, and before long the occupation of land by colonists was accompanied by violent conflict between blacks and whites. By the 1850s, disease, violence and exclusion from traditionally occupied lands had decimated the Aboriginal population in the south-west. In the north-west, the establishment of pearling, and the pastoral industry from the 1860s, was also accompanied by violent conflict and by the use of Aboriginal men as labourers and Aboriginal women as both labourers and prostitutes. Officially, Stirling's proclamation had afforded protection for Aboriginal people under English law as British subjects, but being under the protection of English law had one set of meanings for white colonists and another for Aboriginal people: acquisition as opposed to dispossession; licence as opposed to restriction; entrenchment as opposed to displacement.

In 1851 the Colonial Government took steps to legally protect the needs of Aboriginal people to have access to certain lands in those regions of Western Australia that were rapidly being taken for pastoral purposes. On 9 September 1851, an Order in Council dated 22 March 1850 was proclaimed in the Colony. These regulations stated "nothing contained in any pastoral lease shall prevent the aboriginal natives [sic] from entering upon the lands comprised therein, and seeking sustenance in their accustomed manner."⁶

Many colonists accepted the decline of Aboriginal people and culture in the wake of European invasion as a tragic but inevitable consequence of the law of natural selection. This belief coalesced with the more humanitarian ideals of other colonial leaders and the evangelistic aspirations of Christian churches and missions to form a colonial policy of Aboriginal 'protection' which aimed to shield Aboriginal people from the pernicious influences of European and Asian cultures. The first Aboriginal reserves were created for such protectionist purposes. They were lands the Crown had declared were to be reserved "for the use and benefit of aboriginal inhabitants" with the intention that, at best, they would facilitate missionary efforts to Christianise and civilise Aboriginal people, and at the very least, they would help to 'smooth the dying pillow' of a doomed race.⁷

Under the *Waste Lands Act 1842 (Imperial)*, the Governor gained the power to set aside such reserves by “excepting from sale, and either reserving to Her Majesty, Her Heirs and Successors, or disposing of in such other Manner as for the public interests may seem best, such lands as may be required... for Use or benefit of the Aboriginal inhabitants of the Country.” This was re-stated in land regulations approved in 1872.⁸ The first such reserve was created in 1874 and consisted of 29 acres [11.7 ha] surrounding the Benedictine Mission at New Norcia. Soon after, several other small reserves of between 10[4 ha] and 100 acres [40.4 ha] were created as sites for mission schools which were to be established in Roebourne, Carnarvon, and near Bridgetown.⁹

A number of larger reserves were also created, apparently with an original intention of ensuring that in certain selected areas, Aboriginal people had uncontested access to their traditional means of subsistence. However, later these lands too were to support Christian missions to Aborigines. In 1878, 50,000 acres [20 234.2 ha] were reserved for this purpose between the Sandford and Murchison rivers.¹⁰ In 1883, 100,000 acres [40 468.5 ha] were reserved for similar purposes near Mount Dalgety on the upper Gascoyne River¹¹ and 5000 acres [2023.4 ha] reserved in the Kennedy Range. In 1884, 600,000 acres [242 811 ha] was reserved on the Fraser River on the western side of King Sound.¹² Management of Aboriginal reserves was officially the responsibility of the Aborigines Protection Board¹³, a department of five persons appointed by the Governor and reporting directly to him, but in practice the Aborigines Protection Board had little to do with large remote reserves. These larger reserves were essentially an ad hoc gesture, and they did not represent any systematic attempt to make adequate provision for the future of Aboriginal people.¹⁴

In 1890, Western Australia was granted responsible government. Due to pressure from British philanthropists concerned about the treatment of Aboriginal people in Western Australia, the Western Australian Government did not immediately acquire full control of the administration of Aboriginal affairs. The *Western Australian Constitution Act 1889* provided for one per cent of gross revenue, with a minimum of five thousand pounds, to be “appropriated to the welfare of the aboriginal natives”. Power to distribute these funds, however, remained with the Aborigines Protection Board. This proved to be an unpopular provision, particularly after the jump in revenue stimulated by the gold rushes. In 1897, Premier Forrest successfully appealed to the Secretary of State for the Colonies, Joseph Chamberlain, to have this provision of the *Constitution Act 1889*

repealed. The Western Australian Government undertook the administration of Aboriginal people through the Aborigines Department, created in 1898.

The economic slump that followed the demise of the goldrushes in the 1890s prompted the Government to embark upon the agricultural development of the State's south-west. The south-west pastoral system, which had been established in the early years of the colony, was phased out in favour of a system of smaller blocks for mixed farming, with an emphasis on intensive wheat cultivation. This, it was hoped, would ease the increasing unemployment problem, produce the necessary incentives to maintain population levels and create new export markets.

The transition severely disrupted the lifestyle many south west Aboriginal people had built around the pastoral industry. Prior to these developments, Aboriginal people had provided a valuable supply of labour and the availability and accessibility of large tracts of land enabled them to remain on the land of their forebears and to retain certain aspects of their traditional way of life.¹⁵ The ensuing changes markedly reduced employment opportunities for Aboriginal people and gradually reduced their ability to sustain any form of socio-economic self-sufficiency. As a result of the alterations, some Aboriginal people became farm-hands when the work was available, whilst many became increasingly dependent on rations.

A small number of Aboriginal people attempted to participate in the burgeoning farm activity. A few managed to purchase farms or were granted farming land under the same conditions as white applicants, but most were granted or leased farming land under land regulations proclaimed in 1887, and later under the *Land Act 1898*. Under these regulations the farms they received were declared as reserves. Historian Anna Haebich notes that the Government "had no intention of granting Aborigines full ownership",¹⁶ in strict contrast to the situation of prospective white landholders.

The Aboriginal people who applied to the Government for farming land were generally well educated, often at New Norcia. They were hard-working individuals who tried to meet Anglo-Australian expectations. In most cases they were individuals who had received complimentary reports from local government officials when making their applications. Nevertheless, Aboriginal farmers had to contend with several major difficulties which the rest of the farming community did not face. A major difficulty was that the *Land Act 1898* prohibited Aborigines from being given more than 200 acres

[80.9 ha] to farm – despite the fact that in 1907 the Agricultural Bank declared that 400 acres [161.8 ha] of good land was the minimum requirement for a viable wheat and sheep farm. Another difficulty was that because Aboriginal farmers were not granted title to the land, they were unable to secure loans for improvements. It was a strict condition of the land allocation that within two years they build a house and clear or crop land to the value of 30 pounds. Within five years they had to fence at least a quarter of the land, and within seven years the entire block.¹⁷ Unable to obtain bank loans, the only way Aboriginal farmers could finance these requirements was to work for others. This would often take them away for a season at a time placing themselves at risk of being accused of having abandoned their farm. In some cases, this judgement was made with frightening speed. In the mid-1890s three Aboriginal farmers applied for land near Katanning. The town's Resident Magistrate supported their application, noting that the applicants were anxious to get on the land, that they had been brought up on farms in the area, that each was a fit person to receive an allocation of land, and that each of the three were "away working in different directions".¹⁸ Yet despite being aware of this employment, less than two years later after the land was first allocated, the same magistrate wrote to the Department stating that the land was not being used and that "a new arrival in the colony has just applied for this land, and I think it would be as well to let him have it".¹⁹ A further disincentive to Aboriginal farmers was that they could not leave the land to their wives and children. Several records note widows being left destitute despite having helped establish successful farms because the land reverted to the Crown on the death of their husbands. Of the 22 blocks of farming land reserved for Aboriginal people by 1904, 12 had been cancelled by 1907 and 20 were cancelled by 1918.

In 1904, a Royal Commission into the condition of Aborigines in Western Australia was called in response to criticism from Britain and the eastern states of the manifest problems and abuse of the Aboriginal population in the State's north. Amidst enormous local controversy the Commissioner, Dr WE Roth, largely overlooked the treatment of Aboriginal people by pastoralists, instead denouncing ineffectual government administration and heavy-handed policing of Aboriginal people. Roth recommended, among other measures, the payment of cash wages to Aboriginal pastoral workers, and for large tracts of land to be set aside for Aborigines – "imperative not only on humanitarian grounds, but also on grounds of practical policy".²⁰

The Roth Royal Commission was followed by the *Aborigines Act 1905*. This Act was to become the foundation of Aboriginal policy until 1963.²¹ The *Aborigines Act 1905* ignored Roth's recommendation regarding the payment of cash wages to Aborigines working on pastoral stations, and it curtailed the size of Aboriginal reserves to 2000 acres [809.3 ha], but on the whole it fitted closely with the basic thrust of Roth's report.²² With the stated intention of making "provisions for the better protection and care of the Aboriginal inhabitants of Western Australia", the Act set up the necessary bureaucratic and legislative mechanisms for the legal segregation of Aboriginal people from white society and an unprecedented regime of control of Aboriginal people by government.²³

Aboriginal reserves were crucial to the operation of the *Aborigines Act 1905*. The Act vested the Chief Protector of Aborigines (a position established in 1898) with the power to declare any area prohibited to Aborigines, and the power to remove and confine Aboriginal people within any reserve proclaimed under the Act. Under the Act 'native reserves', as they were known, effectively became locations to which the Government could remove Aboriginal people in order to appease the growing separatist sentiments of white Western Australians. The *Aborigines Act 1905* also prohibited co-habitation and interracial marriage without permission, the supply or sale of liquor to Aborigines, it made the Chief Protector the legal guardian of all Aboriginal and half-cast children under the age of sixteen with the power to forcibly separate children from their parents when he deemed fit. Furthermore, the Act gave the Chief Protector the power to oversee and control the property of Aboriginal people and it enabled the police to arrest, without warrant, any Aboriginal person not conforming to any of the Act's discriminatory restrictions. Further the *Wine, Beer and Spirit Sale Act 1880* also prevented the supply or sale of liquor to Aborigines.

In the north, government policy on Aboriginal affairs after 1905 was largely formulated with pastoral land in mind and the need to protect the white man's stock. The taking of cattle by Aboriginal people was a widespread practice, and the established deterrent of regular mass arrests and imprisonment was proving to be expensive, ineffectual, and attracting unwanted national and international criticism. In an effort to remove the need for Aboriginal people to take pastoralists' livestock, 'Aboriginal' pastoral stations were established and run by the Department of Aborigines and Fisheries. In 1910, the Government purchased three pastoral stations, at Nicholson Plains, Greenvale and Mary Downs, a combined area of nearly one million [404 685 ha]. The land was reserved under the *Land Act 1898* and the property, which came to be known as Moola

Bulla ('plenty tucker'), was officially designated as a government-funded feeding depot.²⁴ The Government also hoped that Moola Bulla would eventually become a self-supporting institution, training Aborigines in 'civilised' farming methods and educating them in general, but to the dismay of the Chief Protector, the local Aboriginal people did not abandon their semi-nomadic lifestyle, using Moola Bulla only when their stomachs demanded. Some reserves were again created with the rationale of preserving Aboriginal culture through isolation. The gazettal of the four-million-acre [1 618 000 ha] Marndoc reserve (1911) near the Cambridge Gulf exemplified this attitude. However, the establishment of feeding depots and reserves for the protection of Aboriginal people was still poorly coordinated and tension between Aboriginal people and pastoralists over cattle killing persisted, eventually becoming a major factor in the Marndoc Reserve massacre of 1926.²⁵

A further example of the isolationist policies being pursued in the north was the establishment of lock hospitals to quell the frequent outbreaks of venereal disease among the Aboriginal population, and to prevent its transmission into the white community. In 1908, upon receipt of medical advice, the Government selected two islands off the coast at Carnarvon, Bernier and Dorre, for male and female patients respectively. Their tenure as reserves was marked by an outrageously high death rate and muddled administration. Just over a decade later, the particular venereal disease afflicting the Aboriginal inmates was discovered to be of little risk to the general population, and as a result, the hospitals and the reserves were closed by 1922.²⁶

In 1920, a fourteen-million-acre [5 665 000 ha] reserve was created at Rawlinson Range, abutting the South Australian and Northern Territory border,²⁷ and by the end of the 1920s an expanding programme of Aboriginal protection and segregation saw a total of over twenty-three million acres [9 307 000 ha] under reservation. Nevertheless there were a number of paradoxes within protectionist/segregationist ideology: pastoralists, seeking cheap labour advocated a round-up of the remote tribes onto stations, whilst the labour movement favoured segregation as a way of protecting white jobs; the church favoured segregation as a means of protecting Aboriginal people from the white man and for their efficacy in Christianising the Aboriginal population; and the growing desire for land by the expanding State economy undermined any realistic hope of keeping native reserves inviolable.

Meanwhile, in the south-west, the Government began to create native camping reserves around towns and settlements to facilitate the segregation of the growing numbers of Aboriginal people in the south-west of mixed racial descent. During the 1840s marriages between young settlers and mission-trained Aboriginal women had been officially encouraged,²⁸ but as the European gender ratio began to balance, and the mixed race population began to rise, there was an increasing intolerance towards the descendants of earlier interracial relationships and liaisons. In many south-west towns Aboriginal people were removed to native camping reserves which were close enough for farmers to draw on Aboriginal labour, but far enough away to prevent unsolicited contact.

After 1905, native camping reserves were created at Katanning, Pingelly, Beverley, Narrogin, Karramarra Wells near Moora, Kellerberrin, Bunbury and Guildford. Few basic amenities were provided on the camping reserves and living conditions were typically pitiful. The appalling conditions engendered by the lack of even the most rudimentary facilities on the reserves were then often used as an argument in favour of further segregation. For example, when Aboriginal children tried to attend school, there was often a public outcry that whites would not tolerate 'their foul smelling bodies and their dirty habits'.²⁹ The attitude towards Aborigines was such that even when complaints about Aboriginal hygiene were shown to be unfounded, pressure was still put on the schools to remove Aboriginal children. Historian Peter Biskup comments that:

*this eventuated into the wholesale expulsion of Aboriginal children from state schools leaving a lasting legacy of resentment and bitterness.*³⁰

From 1915, with the appointment of Auber Octavius Neville as Chief Protector of Aborigines, the centralised native settlement system began to dominate Government policy on the administration of Aboriginal people. Neville gave new direction to Aboriginal policy. He intended to use centralised government-controlled native settlements, which were intended to eventually become self-supporting agricultural enterprises,³¹ to help create conditions that would enable Aboriginal people of mixed racial descent to be more effectively absorbed by the white community, whilst leaving full-blood Aborigines to 'die out as quickly as possible'.³² In June 1915, a superintendent was appointed to establish a settlement on the reserve at Carrolup and the following year the Carrolup reserve was expanded from seven hundred acres [283 ha] to ten thousand acres [4046 ha]. In April 1918, another government native

settlement was opened on a 10,000 acre [4046 ha] reserve created on a traditional camping ground known as Palm Flats on the Moore River in the vicinity of the Mogumber railway siding. In order to fund the settlements, Neville closed down ration depots and halved government assistance to missions. Missions were obliged to relinquish their role in educating Aboriginal children who were sent to the settlements instead.³³ With the exception of New Norcia, missionary activity in the south became confined to providing a Christian influence in the settlements.

Anna Haebich describes the settlements as follows:

*Staff quarters, dormitories for the children and trainees, and settlement facilities were located in a central area called the compound. Within walking distance was a cleared camping area for adults. The compound and the camp were surrounded by farming land and a small dirt road linked the settlement to the outside world. Each settlement also had a cemetery, and detention rooms for the punishment of Aboriginal residents were added in 1918. This layout reflected the different roles of the three main groups of people living there and their relative importance in the eyes of the Department. The white staff appointed to run the settlements lived in houses in the compound close to the settlement facilities and the children who were to be the focus of their attention. The superintendent was responsible for the administration of the settlement and the general welfare of the Aborigines and he was assisted by his wife, the Matron, and the Farm Assistant who supervised the agricultural activities and organised the men into work groups. Other staff, including a teacher, nurse, sewing mistress and children's assistants were appointed in 1917. The children and young married adults lived in dormitories and were expected to spend time within the confines of the compound where they attended school and were trained to work around the compound and on the farm. The adults were secondary to the long-term goals of the settlements, although their labour was essential. Those adults who were capable of supporting themselves and those whose services were not required at the settlements were encouraged to go out to work while the sick and elderly folk were left to survive in the camp in make-shift shelters and tents.*³⁴

In December 1920, the administration of Aboriginal people north of the 25th parallel became the responsibility of the Department of the North-West. Neville was appointed as secretary of this Department. However, responsibility for Aboriginal affairs in the south was transferred to the Chief Inspector of Fisheries and Deputy Chief Protector of Aborigines, Frederick Aldrich. Under Aldrich's administration the Department placed less emphasis on the removal of Aboriginal people to the settlements. Instead, it responded to petitions from white townspeople for the control of Aboriginal people by resuming the practice of gazetting native camping reserves, which was seen as a less expensive alternative.³⁵ By 1925, native camping reserves had been gazetted at

Albany, Gnowangerup, Katanning (for a second time), Pinjarra, Williams and York. The work of missionaries from the Australian Aborigines Mission (renamed United Aborigines Mission in 1929) relieved the situation somewhat on camping reserves in some districts, but Aboriginal people were nevertheless living in conditions which whites would have considered intolerable.

The onset of the depression in the early 1930s meant that most farmers could no longer afford to employ Aboriginal workers, reducing the means of many Aboriginal people. As a result, many more Aboriginal people moved onto the south-west native camping reserves in search of rations, the limited work available, and the support of kin networks as well as the other attractions of town. The reserves at Beverley, Kellerberrin, Kojonup and Williams were subsequently moved, in most cases further from the towns, and in Brookton and Collie new reserves were gazetted to cope with the rising local Aboriginal population.³⁶ By 1935, many white communities in the Great Southern District were demanding what was virtually a system of apartheid.³⁷ In addition to the segregation of country centres, a concerted attempt was made to keep Aboriginal people out of the Perth metropolitan area. In 1937, a pass system was introduced to restrict access to Perth. Any Aboriginal person who was not a permanent resident of Perth or could not prove legitimate business was barred from the city.³⁸

In the mid-1930s all aspects of Aboriginal affairs again came under scrutiny. Allegations of slavery, maltreatment of Aborigines by pastoralists and the abuse of Aboriginal women, which had featured in the local and international press for some five years,³⁹ prompted the Governor to appoint HB Moseley SM as a Royal Commissioner to review the administration and policies of the Aborigines Department. The recommendations of Moseley's report formed the basis for an overhaul of the *Aborigines Act 1905*, which was renamed the *Native Administration Act 1905–1936 (NAA 1936)*. This followed Moseley's recommendation that Courts of Native Affairs be established which acknowledged, among other things, tribal customs as mitigation of punishment. The Act also established a Native Medical Fund. However, overall, the new *NAA 1936* continued the discriminatory policies of the *Aborigines Act 1905*.

The Act implemented recommendations of Moseley's report that were essentially a rapprochement with pastoralists' concerns to maintain their access to Aboriginal labour. Moseley had dismissed accusations of mistreatment of Aborigines by pastoralists as isolated incidents. He had also supported the use of indentured Aboriginal labour and

the non-payment of wages by Kimberley pastoralists, commenting: "as he never had any money and would not recognise if he saw it, he is not deprived of anything".⁴⁰ Moseley further justified this position citing as evidence the fact that Aborigines had been paid for two decades in the Pilbara and that this had only encouraged unwanted 'instincts' leading to an "insatiable desire to spend their money".⁴¹ In the same spirit, the *NAA 1936* awarded pastoralists strict controls on the wages of Aboriginal labourers and government assistance to 'persuade' Aboriginal people of the efficacy and benefits of station life. Pastoralists were in turn required to assume a measure of responsibility for any destitute Aborigines on their property.⁴²

The *NAA 1936* extended restrictions applicable to Aboriginal people such that the Commissioner of the Department of Native Affairs (who replaced the Protector of Aborigines after 1936) gained the power to withhold consent to any Aboriginal marriage on any of the following grounds:

- S46
- (a) That the marriage is inadvisable as being in contravention of tribal custom;*
 - (b) that one of the parties is afflicted with any communicable or hereditary disease; or*
 - (c) that it is inadvisable that the marriage should take place owing to any gross disparity in the ages of the parties; or*
 - (d) that there are any other circumstances which render it advisable that the marriage should not take place.*⁴³

In 1938, regulations to the *NAA 1936* were introduced which provided for the licensing of missions in order to ensure uniform standards of staff, education and location.⁴⁴ This provision was strongly opposed by missionaries and relations between the Department and missions were strained for many years. Nevertheless, some missions actively cooperated with the policy of separating families as it was felt that Aboriginal people would be more receptive to Christianisation if they were unencumbered by traditional custom and culture.⁴⁵ By the end of the 1930s, white control of Aboriginal people was at its zenith. There were 40 native camping reserves in the State created for the purposes of segregation, whilst of the 39 farming properties reserved for particular Aboriginal persons, only nine had not been resumed by the Crown.

The first movements away from a government policy of strict segregationism came during World War II. During, and immediately after the war, growing radical manifestations of the European concept of progress were gaining momentum around the world. With the upsurge of idealism came a more widespread willingness to see the

situation of Aboriginal people as a historical, social and environmental issue, rather than an issue of biological determinism. More tangibly, the war provided some Aboriginal people with greater economic opportunities due to the drain on white manpower, consequently creating practical opportunities for whites to mix with Aboriginal people on a more equal footing. Although, in an effort to limit the spread of leprosy, a 1941 amendment to the *NAA 1936* prevented Aboriginal people in the north of the State from moving south of the 20th parallel, in the same year the Commonwealth Government passed an amendment to the *Social Securities Act* [Cmlth] which extended the child endowment to 'detribalised' Aborigines. Other amendments to the *Social Securities Act* soon followed: age and invalid pensions (1942); and unemployment and sickness benefits (1944).⁴⁶ Meanwhile the Western Australian Government passed the *Native (Citizenship Rights) Act 1944* which gave a citizenship certificate to any Aborigine, upon application to a magistrate, provided it could be established that:

- s.5(1) *(a) for the past two years immediately prior the applicant had adopted the manner and habits of civilised life;*
(b) the full rights of citizenship are desirable for and likely to be conducive to the welfare of the applicant;
(c) the applicant is able to speak and understand the English language;
(d) the applicant is not suffering from active leprosy, syphilis, granuloma or yaws;
(e) the applicant is of industrious habits and good behaviour and reputation; and
*(f) the applicant is reasonably capable of managing his own affairs.*⁴⁷

However, this qualified citizenship could be withdrawn at any time if the holder of a citizenship certificate breached any of the above requirements. For many Aboriginal people the social cost of citizenship was very high indeed as associating with relatives who did not have such citizenship could be considered a breach of subclause (a) above. Seaman's report in 1984 made the comment:

*by the close of the Second World War there was a confusing array of restrictive legislation applicable to Aboriginal people who might apply for 'exemption from the provisions of the Native Administration Act and/or apply for 'citizenship' under the Natives (Citizenship Rights) Act.*⁴⁸

More native camping reserves were created during and immediately after the war as the Aboriginal population began to concentrate around regional centres because of improved employment, improving means of transport, and the provision of better

schooling, bringing the total of land set aside for Aboriginal people to more than 38 million acres [15 378 000 ha].

On 21 July 1947, FEA Bateman was appointed by the Minister for Native Affairs to survey the existing native institutions as defined under the *NNA 1936 [as amended 1941]*, and make recommendations to the Government with regard to the need for legal and institutional change in order to improve the education and welfare of Aborigines including their employment and vocational opportunities. The Bateman report drew attention to the deplorable conditions experienced by Aboriginal people and called for the abandonment of the 'protective' measures in place in favour of a long-term policy of positive welfare and the assimilation of Aboriginal people into the general community. Bateman's recommendations were directed towards measures which aimed to make Aborigines an industrious section of the community. In pastoral districts, Bateman recommended that instruction given to Aboriginal children should be limited to reading, writing, and to the inculcation of the "habits of personal hygiene and to establish a higher moral code".⁴⁹ Bateman also described the overall practice of pastoralists as "not in accord with modern civilisation".⁵⁰ In the south, although advocating the assimilation of Aboriginal people, Bateman recommended Aboriginal children be educated in special institutions rather than State schools.

The Bateman report was submitted in 1948 to a Government committed to reform and a new Commissioner of Native Affairs, SG Middleton. Under Middleton's stewardship, a general policy of "assimilation and supervision" was ushered in. There was also a shift in reserve policy which saw the decline of native camping reserves. In the 1950 Annual Report of the Department of Native Affairs Middleton wrote:

The policy in regard to native reserves remains as previous, in that reserves are inviolable to other than natives. This is naturally of greater importance in the areas peopled by tribal natives than that of the southern districts, where reserves are inhabited mainly by transient caste natives. The Southern reserves are invariably situated near the proximity of the town, and in many cases are not being used in the manner originally intended, i.e. for the use of transient natives. Large numbers of semi-permanent native residents are being encouraged to settle permanently in particular districts on their own blocks of land, and the necessity of many such reserves in the future may be obviated.⁵¹

Many native reserves not being used in the manner originally intended were returned by the Department to the Crown. In total, 42 native camping reserves were cancelled

between 1950 and 1959⁵² and the provision of “adequate and suitable” housing and better educational opportunities became the Department’s priority. The Department’s Aboriginal housing program initially involved building intermediate or transitional housing on existing reserves. Departmental expenditure on reserves gives a clear indication of the various stages of the Aboriginal accommodation policy. In 1948–49, expenditure on reserves was nil. The first stage in improving facilities was the provision of toilets and improved water supplies and between 1949–50 and 1952–53 annual expenditure rose to between £1733 and £1910. The policy of providing temporary accommodation on reserves (initially tin sheds) began in 1953 and expenditure jumped to £3913 in 1953–54. A second phase of Aboriginal accommodation programs began in the second half of the decade, with the aim of providing better, but still temporary, houses on reserves. By 1956–57 expenditure on reserves had climbed to £7019.⁵³

In 1954, the *Native Welfare Act [NWA]* was passed. This Act swept away many of the more restrictive and discriminatory clauses of the *NAA 1936*. Towns and cities could no longer be declared as prohibited to Aborigines. Penalties for cohabitation were removed. Aboriginal protectors no longer had the power to demolish Aboriginal camps, remove residents and confine them to another area, and police no longer had the power to force an Aboriginal person to leave town for loitering or being poorly clothed. Although Middleton had hoped for even more progressive legislation,⁵⁴ he nevertheless believed that the *NWA*

*represents a positive and final departure from the policy of protection, “handouts” and control as the dominant feature of the department’s functioning, and gives expression to one which places more emphasis on providing for equality of social and economic uplift as a prerequisite to the native’s assimilation or absorption into community life.*⁵⁵

The Act maintained restrictions on alcohol and only exempted service veterans from its definition of ‘an Aborigine’. The controversial issue of citizens rights was ignored, and the reserve system remained intact with no concessions or security of tenure similar to the 99-year leases given to missions as long as they remained “a mission to natives”. In keeping with the policy of assimilation, and the conditions so scathingly rebuked in the Bateman report, Middleton was now convinced that “aboriginal settlements were a burden politically, as well as wrong, since they postulated a policy of isolation and segregation”.⁵⁶ Moore River and Carrolup were subsequently dismantled and the facilities given over to the control of the Methodist and Baptist Churches respectively in 1951 and 1952. Administered by the churches, and with financial support from the

Government, these institutions were then used to cater for Aboriginal children removed from their families.⁵⁷

In the north, the Department also disposed of a number of cattle stations reserved for Aboriginal use,⁵⁸ and in 1955 excised over four million acres [1 618 000 ha] from the Rawlinson Range reserve next to the South Australian and Northern Territory border. The sale of Moola Bulla in 1955 was particularly controversial. Middleton's justification for the sale – that it was a financial liability – was widely disputed. The Lands and Surveys pastoral inspector was agitated by the sale and declared that Moola Bulla was the best property in the East Kimberley. There was widespread suspicion of the devaluation of the station in the early 1950s, supposedly because of drought-induced stock losses. Moola Bulla was sold on the basis of having 15,000 head of cattle, but the buyer later declared he counted 70,000 head, worth one million pounds, when he bought the station. However, to further complicate the issue, at exactly the same time as the sale was being organised, the Department of Native Welfare was forced to investigate allegations of beatings and inmates being chained by the neck. The dismissal of two staff members was recommended, while the manager resigned. The process of selling Moola Bulla was rushed and as a result, the 100,000 pounds the Government received was far less than the property was worth. Five years later, it was resold for 10 times that amount. The first buyer later stated the station's "values were placed so shockingly low . . . the place was a derelict, an utter wreck, it must have lost in profits, and actual losses, many millions of pounds".⁵⁹ However, the real injustice was that some 260 Moola Bulla residents, including 80 children, were forcibly evicted on the morning the new owner arrived and sent to a makeshift camp in Hall's Creek. These people, some of whom had lived on the station for decades, were instantly homeless and unemployed.

Momentum for reform continued to gather pace. In 1960, a further amendment to the *NWA* removed "all persons of quarter blood or less" from its jurisdiction, including children. In 1963, the Western Australian Government passed the *Native Welfare Act 1963 [NWA 1963]* which finally repealed the *NWA*, removing virtually all legal restrictions on Aborigines, but maintaining the right to regulate the use of Aboriginal reserves. Meanwhile, the reservation of land for housing continued, with the creation of new reserves within town and city boundaries comprising of blocks of land on which it was intended that more conventional houses and trade and technical schools would be built. Expenditure on reserves climbed to £225,162 in 1962–63. Finally in about 1965,

the Government committed itself to building suburban housing and expenditure jumped again reaching \$710,785 in 1965-66.⁶⁰

The reservation of land for native housing was rather haphazard. The Department of Native Welfare requested the reservation of town lots throughout Western Australia, but gave little consideration to their location or available resources for their development. Many lots were undeveloped, unserviced, or without adequate access roads, and where lots were developed the houses were consistently substandard. Furthermore, despite the declared policy shift away from segregation made in the early 1950s, the housing lots reserved for Aboriginal purposes were often in remote areas of town. In a few instances the Department of Lands & Surveys actually organised for the survey and creation of town lots that were outside town planning boundaries, and on a few occasions it was discovered after reservation that land was actually zoned for industrial purposes and building could not take place.⁶¹ For some Aboriginal people the enforced change from a communal camping reserve lifestyle to life in Departmental housing, and the associated public expectation of more individualistic and materialistic expressions of social respectability, was clearly a difficult and sometimes traumatic experience. However, for others the move to accommodation in Departmental houses was, on the whole, a welcome one.

The *Aboriginal Affairs Planning Authority Act (AAPA Act 1972)* was passed in 1972. This Act repealed the *Native Welfare Act 1963*, abolished the Department of Native Welfare and established the much smaller Aboriginal Affairs Planning Authority (AAPA). The AAPA was given responsibility for the general coordination of Government activities with respect to Aboriginal affairs. The administration of Aboriginal housing matters was transferred to the State Housing Commission (SHC), and responsibility for welfare matters and matters concerning Aboriginal children was given over to the Department of Community Welfare (established by the *Community Welfare Act 1972*, which also incorporated functions of the Child Welfare Department). The *AAPA Act 1972* also created the ALT as a statutory body, and provided for reserve lands to be placed under ALT's authority. The administration of the ALT was the responsibility of the AAPA. The members of the ALT were Aboriginal people appointed by the Minister for Aboriginal Affairs, but title and control of reserved lands were effectively retained by the Crown.

Not all reserves previously vested with the Minister for Native Welfare were transferred to the ALT. In June 1972, the Government transferred responsibility under the *Land Act*

1933 of more than 1200 properties reserved for the purpose of 'native housing' from the Department of Native Welfare to the SHC. Other reserves, including hostel sites, community halls and lots reserved for the "Requirements of the Department of Native Welfare" were vested in the Department of Community Welfare.

Once the transfers were complete, 86 reserves comprising 47,426,570 acres [19 192 800 ha] remained entrusted to the ALT.⁶² These various purposes of these reserves were:

| | |
|---------------------------|--|
| <i>Sanctuaries</i> | <i>27 reserves totalling 43,286,543 acres [17 517 442 ha];</i> |
| <i>Missions</i> | <i>17 reserves totalling 3,485,348 acres [1 410 470 ha];</i> |
| <i>Land settlement</i> | <i>10 reserves totalling 47,491 acres [19 218 ha];</i> |
| <i>Art and historical</i> | <i>23 reserves totalling 43,962 acres [17 790 ha];</i> |
| <i>Miscellaneous</i> | <i>9 reserves totalling 563,226 acres [227 929 ha].⁶³</i> |

The SHC either purchased freehold title or relinquished control of most of the properties it had received, many of which were undeveloped. In 1974, there was a blanket reversion to Vacant Crown Land of many of the lots vested in the SHC. In a few instances, Aboriginal people were residing on these lots and once the title of the land reverted to the Crown they were officially considered to be there illegally.⁶⁴

By the early 1980s, the transfer to the ALT of some reserves vested with the Department of Community Welfare brought the total of reserve land vested with the ALT to 19,216,209 hectares (47,484,213 acres), which together with freehold properties, and pastoral and other leases also vested with the ALT made up its estate of 20,839,905 hectares (51,496,447 acres).

In 1983, the Western Australian government appointed Commissioner Paul Seaman to conduct the Aboriginal Land Inquiry. The aim of the Inquiry was to examine the issue of Aboriginal land tenure and title and to make recommendations about conditions and terms "accommodating the legitimate concerns of Aboriginal people about land and the social impact of development in the granting of land".⁶⁵ During the Inquiry's investigations, Commissioner Seaman received 233 written submissions and met 2200 Aboriginal people and 500 non-Aboriginal people in public and private hearings. This was the first government inquiry in Western Australia in which Aboriginal people were given a significant opportunity to express their opinions.

The Aboriginal Land Inquiry reported in September 1984. Seaman recommended that all land which was vested pursuant to the *Aboriginal Affairs Planning Authority Act 1972* be vested

*in the various regional Aboriginal organisations by statute on a caretaker basis until those organisations exercise their full functions following elections. The balance of the reserved lands . . . should be transferred administratively to the regional Aboriginal organisations in trust for distribution. Difficulties which cannot be resolved by negotiation will be resolved by the Tribunal procedures.*⁶⁶

Seaman also recommended that Aboriginal reserves which were transferred to the Department of Community Welfare and the SHC be identified and vested in regional Aboriginal organisations for distribution.⁶⁷ If third parties had been granted an interest in that land, Seaman recommended they “be compensated for the loss of their interests or the regional Aboriginal organisation should be compensated for the loss of the land”.⁶⁸

The Aboriginal Land Inquiry set the context for the drafting of specific legislation to facilitate the granting of land in Western Australia to meet Aboriginal aspirations. The proposed legislation was defeated in the Legislative Council of the Western Australian Parliament in 1985, but the importance of granting Aboriginal people secure tenure over land in order to meet social, cultural and economic needs was recognised, and the State Government began to employ a previously little used procedure of granting land to Aboriginal corporations through the application of powers provided by the *Land Act 1933* and the *AAPA Act 1972*. This procedure became known as the Aboriginal Living Area Program.

Under the Aboriginal Living Area Program, applications from Aboriginal corporations for secure tenure over land were assessed by the AAPA and the Department of Land Administration, who would then consult with any other parties who may have also had an interest in the land. If the application was successful, the land in question would usually be reserved under the *Land Act 1933* for the ‘Use and Benefit of Aboriginal Inhabitants’. The land would then be vested with the ALT with power to lease, and a 99-year lease offered to an Aboriginal corporation. In a small number of cases the reserves were also proclaimed under section 25 of the *AAPA Act* to prevent any amendment to the tenure of the land without the approval of both Houses of Parliament. In cases where the land sought was covered by a mineral tenement or considered to have mineral potential, a grant of a 50-year special lease would be made directly to the

Aboriginal corporation. From 1983 to 1993, 63 Crown Reserves and 11 Special Leases were established under the Aboriginal Living Area Programme, mostly for residential and domestic purposes.

In 1986, the State Government also entered into an agreement with the Commonwealth Government concerning Aboriginal land needs. Among other issues, the State Government agreed:

- that 99-year leases would be granted to Aboriginal communities resident on ALT lands;
- town reserves under the control of the Department of Community Services would be transferred to Aboriginal ownership;
- negotiations would be undertaken to transfer church-held mission lands to Aboriginal communities.

Many of these issues have since been addressed: all Department of Community Services town reserves have been transferred to the ALT and leased to Aboriginal corporations; mission and church-held lands at Norseman, Warburton, Marribank, and Fitzroy Crossing have been transferred to the ALT and either leased to Aboriginal corporations or directly vested with Aboriginal corporations; and negotiations are currently under way between the ALT and the Catholic Church with respect to the transfer to Aboriginal interests of mission land at Balgo, Kalumburu, Lombardina/Djarindjin, Beagle Bay and Bidyadanga .

The legal context of Aboriginal interests in land was radically changed in 1992 when the High Court handed down its decision on the case *Mabo vs Queensland (no 2)*, and for the first time in Australia's history judicially recognised the concept of 'native title', finally sweeping away the legal doctrine of 'terra nullius'. In the *Mabo* case, the High Court found that when the British Crown acquired sovereignty over the lands of Australia, it had not acquired absolute ownership, but rather it had acquired 'radical' title to them. Any pre-existing common law rights and entitlements recognised by the various clans and tribes of the indigenous inhabitants of Australia were therefore unaffected by the acquisition of sovereignty, but the Crown nevertheless had the right to extinguish indigenous rights and entitlements by any valid exercise of sovereign power which impaired the ability of indigenous people to continue to enjoy those rights and entitlements.

One of the implications of the *Mabo* decision was that the Crown became obliged to compensate (or to cause other parties to compensate) any native title holders whose rights were extinguished or impaired by the grant of other forms of title. Furthermore, the *Mabo* decision also raised questions about the validity of titles which had been issued at any time after the *Racial Discrimination Act (Cwlth) Act 1975* came into effect and where there had been a failure to pay compensation or a failure to treat native title holders in the same way as the holders of other forms of title.

In December 1993, the Western Australian Government responded to these issues by passing the *Land [Titles and Traditional Usage] Act* and establishing the Office of Traditional Land Use (OTLU) to implement the legislation. The aim of the *Land [Titles and Traditional Usage] Act 1993* and OTLU was to provide an efficient means by which the State could continue to issue valid title to land in Western Australia which may also be subject to native title as defined by the *Mabo* decision. The effect of the Act was to confirm the validity of titles granted by the State of Western Australia since the enactment of the *Racial Discrimination Act*, and to extinguish Aboriginal common law rights and entitlements and replace them with statutory rights of 'traditional usage'. The Act also provided for compensation where native title had been extinguished since the enactment of the *Racial Discrimination Act*.⁶⁹

The *Land [Titles and Traditional Usage] Act 1993* and OTLU were not to be long lived. On 22 December 1993, the Commonwealth Government passed its response to the *Mabo* decision, the *Native Title Act 1993* (NTA). This Act enabled the validation of titles issued by Commonwealth, State and Territory governments, but rather than extinguishing common law native title it provided for the principle of native title to be recognised as a principle of Commonwealth law.⁷⁰ The Western Australian Government subsequently instituted a High Court challenge to the constitutional validity of the NTA. Meanwhile, the Wororra Peoples also challenged the validity of the Western Australian legislation. On 16 March 1995, the High Court ruled against the Western Australian challenge to the validity of the NTA and in favour of the Wororra Peoples' challenge of the *Land [Titles and Traditional Usage] Act 1993*. The High Court declared the *Land [Titles and Traditional Usage] Act 1993* to be invalid and the Act was later repealed by the *Acts Amendment and Repeal (Native Title) Act 1995*, which was assented to on 24 November 1995. During the short life of the *Land [Titles and Traditional Usage] Act*, only two grants of tenure were made to Aboriginal corporations in accordance with its

provisions, and in both of these cases the land in question had previously been reserved for Aboriginal people.

Also in 1993, the Aboriginal Living Area Program had been placed on hold, pending the outcome of a review. The review reported to the Minister of Lands in October 1994 recommending that the program be continued in a more coordinated manner, however, the moratorium was not lifted. Despite the suspension of the Aboriginal Living Area Program many Aboriginal groups have continued to seek the progress of their applications and new applications continue to be submitted. Some of these applications have since been addressed by other means. In a few cases, where Aboriginal communities with established infrastructure have sought secure tenure over the land they are living on, Crown leases have been offered to these communities under Section 9 of the *Land Act 1933*. To date (August 1997), three such Crown leases have been finalised.

In recent years, the Western Australian Government has given new attention to the issue of granting Aboriginal people legal title to lands in which they have rights and interests. In 1995, in response to the 1994 Task Force on Aboriginal Social Justice, the Government commissioned a review of the ALT under the Chairmanship of former Senator Neville Bonner AO and a selected group of advisers. The Report of the Review of the Aboriginal Lands Trust found that since the inception of the ALT in 1972, the management of Aboriginal land by the ALT had been ineffective and that major reform is unavoidable.⁷¹ On 21 April 1997, the following recommendations of the Review of the Aboriginal Lands Trust received the in-principle approval of Cabinet:

1. *Title to lands managed by the ALT be transferred into the ownership of Aboriginal people, with all transfers to be completed in the period 1996-2002 (and with the qualification that each area of land to be transferred is to be first referred to Cabinet for approval);*
2. *The transferred land title reconciles traditionally and historically-acquired rights of Aboriginal people over each property;*
3. *Aboriginal people are given wider choice in the types of land tenure which can be adopted over ALT land, leading to a more effective balance of cultural and economic interests on Aboriginal land;*
4. *The ALT and the Department of Land Administration initiate a comprehensive program to expand understanding about land title among Aboriginal people;*

5. *Land title must be transferred to legally durable and constitutionally fair corporate bodies which will protect the interests of Aboriginal owners and inhabitants of the land;*

6. *The members of the ALT:*
 - *are appointed by the Minister for Aboriginal Affairs from nominations made by Aboriginal organisations with a community membership, ensuring regional representation;*
 - *must have adequate knowledge of Aboriginal land issues and the ability to contribute objectively and effectively to the transfer of land title from the ALT to Aboriginal ownership;*
 - *are increased to nine (including the Chairperson);*
 - *are appointed for two- and three-year periods, with half the ordinary members retiring after two years;*
 - *are compensated fairly for their involvement in ALT affairs;*
 - *are provided with adequate resources to assist consultations and negotiations with communities in the transfer of ownership of land to Aboriginal people;*
 - *are presided over by a full-time Chairperson who is appointed by the Minister after a formal interview process;*

7. *The Western Australian Government establish a cross-government program to expand assistance to Aboriginal people to improve land use.*

August 1997

¹ Seaman, P., *The Aboriginal Land Inquiry*, Government of Western Australia, September 1984: 12.1.

² quoted in *Ibid.*: 12.4

³ quoted in *Ibid.*: 12.4

⁴ quoted in *Ibid.*: 12.4

⁵ Statham, P., 'The Swan River Colony 1829-1850', C.T. Stannage (ed.), *A New History of Western Australia*, p. 181.

⁶ Biskup, P., *Not Slaves, Not Citizens: the Aboriginal Problem in Western Australia 1898-1954*, St Lucia: University of Queensland Press, 1973, p.18.

⁷ *Ibid.*: p.140.

⁸ *Ibid.*: p.101.

⁹ Hasluck, P., *Black Australians: A Survey of Native Policy in Western Australia 1829-1897*. Melbourne: Melbourne University Press, 1942; 2nd ed. 1970, p.115.

¹⁰ Reserve 297 (Pia), now vested with the Aboriginal Lands Trust.

¹¹ Reserve 598. This reserve was exchanged in 1897 for Reserve 3960, a reserve of similar size on the Forrest River in the Kimberley. The Forrest River Mission was established on the new reserve.

¹² Reserve 747, which was cancelled in 1891 and replaced by Reserve 1834, a 700,000 acre reserve on the Dampier peninsular north of the Fraser River. The Beagle Bay Mission was established on the new reserve in the same year.

¹³ Established by the *Aborigines Protection Act 1886*.

¹⁴ Hasluck, *op. cit.*: p.117.

¹⁵ Haebich, A., *For Their Own Good: Aborigines and Government in the South West of Western Australia 1900-1940*. Nedlands: University of Western Australia Press, 1992, p.2.

¹⁶ *Ibid.*: p.28.

¹⁷ *Ibid.*: p.30.

¹⁸ Department of Lands and Surveys: file 541 - 1508/1894.

¹⁹ *Ibid.*

²⁰ Dr W. E. Roth, *Royal Commission on the Condition of the Natives*, Government of Western Australia, 21 January 1935, p. 28.

²¹ Seaman, *op. cit.*: 12.27

²² Haebich, *op. cit.*: p.79.

²³ *Ibid.*: p.83.

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- ²⁴ Rumley, H. and Toussaint, S 'For Their Own Benefit'? A Critical Overview of Aboriginal Policy and Practice At Moola Bulla, East Kimberley, 1910-1955', in *Aboriginal History*, Vol 14, 1990, pp.85-86.
- ²⁵ Historian Peter Biskup comments that similar incidences were probably prevented in the West Kimberley by the reservation of Munja station for Aboriginal use in 1927 (*Not Slaves, Not Citizens...* p.104).
- ²⁶ Biskup, *op. cit.*: p.112-114.
- ²⁷ Reserve 17614. This reserve was expanded to 19,809,400 acres in 1937.
- ²⁸ Haebich, *op. cit.*: p.48.
- ²⁹ Department of Education: file 4259/1915.
- ³⁰ Biskup, *op. cit.*: p.152.
- ³¹ A precedent to the settlement ideal had been established as early as 1899 on a 500-acre reserve at Welshpool. The Welshpool settlement was initially modelled on the New Norcia Mission. Aboriginal inhabitants had freedom of movement, and were allocated small blocks of land in the hope they would become self-sufficient, with any surplus to be absorbed by the Perth Market. However, in 1903, the then Chief Protector of Aborigines Henry Prinsep decided to make the settlement a central ration depot and camping ground (Haebich 1992, *For Their Own Good...* p.64) and as a result many of the Aboriginal residents who had taken up farming lots moved on, annoyed at what they saw as unwarranted interference and control.
- ³² Western Australia, Parliamentary Debates, 52, 1915: 1642-1644, cited in Haebich, *op.cit.*: p.14.
- ³³ Haebich, *op. cit.*:p.166.
- ³⁴ *Ibid.*: p.169.
- ³⁵ *Ibid.*: p.232.
- ³⁶ *Ibid.*: p.292.
- ³⁷ Bolton, G.C., 'Black and White after 1897', C.T. Stannage (ed.), *A New History of Western Australia*. Nedlands: University of Western Australia Press, 1981, p.149.
- ³⁸ Department of Native Affairs: Brookton 1667: 1225/38.
- ³⁹ Moseley, H.D., *Report of the Royal Commission into the condition and treatment of Aborigines*, Perth, 1934.
- ⁴⁰ quoted in Seaman, *op. cit.*: 12.41.
- ⁴¹ quoted by Seaman, *op. cit.*: 12.41.
- ⁴² Biskup, *op. cit.*: p.181.
- ⁴³ quoted in Seaman, *op. cit.*: 12.42.
- ⁴⁴ Biskup, *op. cit.*: p.185.
- ⁴⁵ Seaman, *op. cit.*: 12.35.
- ⁴⁶ *Ibid.*: 12.45.
- ⁴⁷ quoted in *Ibid.*: 12.46.
- ⁴⁸ *Ibid.*: 12.47.
- ⁴⁹ see Bateman, F.E.A., *Report on Survey of Native Affairs*, Government of Western Australia, Perth, 1948. p.25.
- ⁵⁰ *Ibid.*: p. 15.
- ⁵¹ Department of Native Affairs, *Annual Report 1950*: pp.72-73.
- ⁵² The Commissioner for Native Affairs noting in 1953 that "camping areas are retained only near townsites, and remote unused reserves which have outlived their purpose have been cancelled" (Department of Native Affairs, *Annual Report*, 1953).
- ⁵³ Figures obtained from the Annual Reports of the Department of Native Affairs and the Department of Native Welfare.
- ⁵⁴ Department of Native Affairs, *Annual Report 1954*: p.3.
- ⁵⁵ Department of Native Affairs, *Annual Report 1955*: p.6.
- ⁵⁶ Biskup, *op. cit.*: p.234.
- ⁵⁷ Human Rights and Equal Opportunity Commission, *Bringing them home: National Inquiry into the Separation of Aboriginal and Torres Strait Islander Children from Their Families*. Commonwealth of Australia, 1997, pp.110-111.
- ⁵⁸ In April 1949, Munja Station (Reserve 19560) was given over to the Presbyterian Church. Udialla Station (Reserve 22504), which had been reserved in 1945, was abandoned less than five years later in December 1949 and the Aboriginal residents transferred to a feeding depot at La Grange, south of Broome (Biskup 1973, *Not Slaves, Not Citizens...* p.235).
- ⁵⁹ *Daily News*: 17.8.61.
- ⁶⁰ Figures obtained from the Annual Reports of the Department of Native Welfare.
- ⁶¹ Department of Lands and Surveys: files 4180/68; 2926/65; 639/989.
- ⁶² This figure includes the four-million-hectare excision from the Rawlinson Range reserve (Reserve 17614) which was returned in 1972.
- ⁶³ Figures obtained from Aboriginal Affairs Planning Authority, *Annual Report 1973*.
- ⁶⁴ Department of Lands and Surveys: files 1983/67; 386/61.
- ⁶⁵ Terms of reference, Aboriginal Land Inquiry, 7.
- ⁶⁶ Seaman, *op. cit.*: 4.16.

⁶⁷ “all the land that was subject of proclamation under Section 18 (1) (a) of the Native Welfare Act in June 1972” (Seaman 1984, S. 4.24).

⁶⁸ Seaman *op. cit.*: 4.24.

⁶⁹ see *Native Title News*, 1994, vol. 1 (1), p.2, Butterworths, Aust.

⁷⁰ see *Ibid.*: p.1.

⁷¹ Bonner, *op. cit.*: p.3.